

Supreme Court Unanimously Concludes FTC Cannot Obtain Equitable Monetary Relief Through Section 13(b) of the Federal Trade Commission Act

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Justice Breyer wrote for a unanimous Supreme Court on Thursday in *AMG Capital Management v. Federal Trade Commission*, holding that § 13(b) of the Federal Trade Commission Act (FTCA) does not allow the Federal Trade Commission (FTC) to recover “equitable monetary relief such as restitution or disgorgement.” This ruling puts an end to the FTC’s ability to seek such relief against direct sellers in court under § 13(b). Rather, the FTC must initiate lengthy and burdensome administrative proceedings under the FTCA, which forces the FTC to deal with numerous disadvantages, including a 3-year statute of limitations and a higher standard of proof requiring demonstration that “a reasonable man would have known under the circumstances [that the conduct] was dishonest or fraudulent.”

The Details: The FTC filed suit against various payday loan companies it alleged were misleading consumers and charging deceptive fees. Instead of initiating administrative proceeding under § 5 of the FTCA, the FTC relied on § 13(b)’s “permanent injunction” language to seek approximately \$1.3 billion in restitution and disgorgement in addition to a permanent injunction preventing these companies from engaging in deceptive practices in the future. The court granted the FTC’s request, and the companies appealed. The Ninth Circuit affirmed the district court’s decision based on previous decisions allowing monetary relief under § 13(b), and the Supreme Court granted cert.

The Supreme Court determined that the plain language of § 13(b) and overall framework of the FTCA precluded the FTC from obtaining court-ordered monetary relief under § 13(b)’s “permanent injunction” language. The Court concluded that § 13(b) focuses on the prospective relief of stopping unfair practices and was not meant to function as an alternate avenue to obtaining monetary relief for previous deceptive action through § 5’s administrative proceeding framework. The Court explained: “In light of the historical importance of administrative proceedings, that reading would allow a small statutory tail to wag a very large dog.”

While the Supreme Court acknowledged that the FTC has previously used § 13(b) to collect billions of dollars in restitution to return to injured consumers, Justice Breyer noted that the Court’s ruling in no way prevents the FTC from using its administrative proceedings to obtain restitution on behalf of consumers in the future. Further, Justice Breyer offered one additional solution to the FTC, stating that “[i]f the Commission believes that authority too cumbersome or otherwise inadequate, it is, of course, free to ask Congress to grant it further remedial authority.”

As Justice Breyer foresaw, there are already efforts on Capitol Hill to provide the FTC with the powers the Supreme Court has just stripped away. We will be tracking those efforts and will provide updates as they come. But for now,

direct sellers can rest assured that the FTC will not be able to seek monetary relief in future enforcement actions without first employing the lengthy and less-favorable administrative procedures required under the FTCA.

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