



Office of Commissioner
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UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

**STATEMENT OF COMMISSIONER REBECCA KELLY SLAUGHTER
JOINED BY CHAIR LINA M. KHAN
REGARDING SECTION 13(b) OF THE FTC ACT**

Open Meeting of the Commission
April 28, 2022

One year ago, the United States Supreme Court ruled in *AMG Capital Management v. FTC*¹ that Section 13(b) of the FTC Act does not authorize federal courts to require defendants to pay refunds to harmed consumers or give up the unjust gains they earned from breaking the law. The federal court path now foreclosed had been used for forty years to make injured consumers whole and prevent wrongdoers from profiting from their unlawful conduct.² The Commission's loss of its ability to obtain monetary relief under 13(b) has already had a profound effect on consumers and honest businesses.

The Loss of Federal Court Monetary Relief for Consumers

The Supreme Court's ruling eliminated the Commission's primary and best tool to seek monetary remedies when a company violates the FTC Act. This tool, referred to by its statutory provision as Section 13(b), enabled the FTC to provide billions of dollars of relief—\$11.2 billion from 2016 to 2022—in a broad range of cases including telemarketing fraud, anticompetitive pharmaceutical practices, data security and privacy and scams targeting seniors and veterans. Examples of just a few cases in which the Commission was able to provide refunds to consumers solely through our now defunct 13(b) authority include:

- **Reckitt Benckiser:** Reckitt Benckiser agreed to pay \$50 million to consumers, settling charges that it illegally maintained a monopoly over the opioid addiction treatment Suboxone. Payments averaging \$855 have gone out to more than 50,000 consumers.³

¹ *AMG Capital Mgmt., LLC v. FTC*, No. 19-508, 593 U.S. ___, slip op. (Apr. 22, 2021), https://www.supremecourt.gov/opinions/20pdf/19-508_l6gn.pdf. *AMG* was an appeal by defendants from a 2018 Ninth Circuit ruling in which the court re-affirmed its precedent interpreting Section 13(b) to allow the FTC to obtain monetary relief, a judgment that the Supreme Court reversed. *See FTC v. AMG Capital Mgmt., LLC*, 910 F.3d 417 (9th Cir. 2018).

² Reliance on Section 13(b) to provide monetary relief to injured consumers was utilized and supported on a bipartisan basis throughout Republican and Democratic administrations, and it was upheld by eight different circuit courts of appeals.

³ *See* Press Release, Fed. Trade Comm'n, Reckitt Benckiser Group plc to Pay \$50 Million to Consumers, Settling FTC Charges that the Company Illegally Maintained a Monopoly over the Opioid Addiction Treatment Suboxone (July 11, 2019), <https://www.ftc.gov/news-events/news/press-releases/2019/07/reckitt-benckiser-group-plc-pay-50->

- University of Phoenix: We returned \$49 million to over 146,000 consumers nationwide to resolve allegations of deceptive claims regarding job placement.⁴
- Amazon Flex: Amazon agreed to return \$61.7 million in tips to flex drivers from whom compensation was illegally withheld.⁵
- Herbalife: We returned \$198 million to over 260,000 consumers nationwide to resolve allegations that the scheme engaged in unfair compensation practices.⁶
- Volkswagen: \$9.5 billion returned to consumers nationwide to resolve the company’s deceptive marketing of 550,000 “Clean Diesel” VWs and Audis.⁷

In the year since the Court ruled that we lack the ability to obtain monetary relief under Section 13(b), the FTC has confronted two predictable outcomes: consumers who were wronged are not getting money back and corporate wrong-doers are emboldened. There are a number of examples over this past year in which consumers received far less money back—and in some instances, lost all monetary relief, because of the loss of our 13(b) authority. We want to highlight just a few examples demonstrating what this means for consumers.

The loss of our 13(b) authority has hindered our ability to protect every group of consumers from scams, including seniors. In late 2020, the Commission voted unanimously to file a federal court complaint against RagingBull.com, LLC and its co-defendants. The FTC’s complaint alleged that the defendants fraudulently marketed investment-related services that they

[million-consumers-settling-ftc-charges-company-illegally](#); see also Tableau Public, Fed. Trade Comm’n, *FTC Refunds to Consumers* (last updated Apr. 25, 2022) https://public.tableau.com/app/profile/federal.trade.commission/viz/Refunds_15797958402020/RefundsbyCase.

⁴ See Fed. Trade Comm’n, *University of Phoenix Settlement Payments* (Mar. 2021), <https://www.ftc.gov/enforcement/cases-proceedings/refunds/university-phoenix-settlement-payments>; see also Tableau Public, Fed. Trade Comm’n, *FTC Refunds to Consumers* (last updated Apr. 25, 2022) https://public.tableau.com/profile/federal.trade.commission#!/vizhome/Refunds_15797958402020/RefundsbyCase.

⁵ See Press Release, Fed. Trade Comm’n, *Amazon To Pay \$61.7 Million to Settle FTC Charges It Withheld Some Customer Tips from Amazon Flex Drivers* (Feb. 2, 2021), <https://www.ftc.gov/news-events/press-releases/2021/02/amazon-pay-617-million-settle-ftc-charges-it-withheld-some>. This matter was filed administratively, but the parties reached this resolution while the FTC still had its 13(b) authority and the ability to seek monetary relief under 13(b) in federal court.

⁶ See Fed. Trade Comm’n, *Herbalife Refunds* (May 2019), <https://www.ftc.gov/enforcement/cases-proceedings/refunds/herbalife-refunds>; see also Tableau Public, Fed. Trade Comm’n, *FTC Refunds to Consumers* (last updated Apr. 25, 2022), https://public.tableau.com/profile/federal.trade.commission#!/vizhome/Refunds_15797958402020/RefundsbyCase.

⁷ See Press Release, Fed. Trade Comm’n, *In Final Court Summary, FTC Reports Volkswagen Repaid More Than \$9.5 Billion To Car Buyers Who Were Deceived by “Clean Diesel” Ad Campaign* (Jul. 27, 2020), <https://www.ftc.gov/news-events/press-releases/2020/07/final-court-summary-ftc-reports-volkswagen-repaid-more-than-9-billion>.

claimed would enable consumers to make consistent profits.⁸ The FTC alleged that, instead, consumers—many of them retirees, older adults, and immigrants—lost at least **\$137 million** to the scam in just the last three years. Following the loss of 13(b), the FTC ultimately resolved this matter with the company for about **\$2.4 million**—a fraction of the harm—leaving injured consumers, some retirees with tens of thousands of dollars in losses, with very little tangible help.

Cutting off our 13(b) authority has also hamstrung our ability to protect consumers trying to access credit and manage their loans. The FTC sued LendingClub in April 2018, charging that the company falsely promised loan applicants that they would receive a specific loan amount with “no hidden fees,” when in reality the company deducted hundreds or even thousands of dollars in hidden up-front fees from the loans.⁹ LendingClub charged consumers over **\$1.5 billion** in these hidden origination fees. Following the loss of our 13(b) authority, the FTC resolved its charges against LendingClub in a settlement for **\$18 million**, meaning consumers are unlikely to get back the vast majority of the fees they were unwittingly charged—LendingClub gets to keep them.

Loss of our 13(b) authority has also taken a heavy toll on our ability to provide redress to consumers suffering from illegal conduct in the pharmaceutical industry. In the sham patent litigation case *AbbVie*, the district court awarded **\$493 million** in monetary relief to consumers harmed by inflated drug prices.¹⁰ Previewing what the Supreme Court would ultimately make final in *AMG*, the Third Circuit held that the district court lacked authority under Section 13(b) to grant monetary relief to consumers. Defendants were able to keep their nearly \$500 million in illegal proceeds, and consumers received not one dollar back.

By conservative estimates, *AMG* has caused consumers to already lose out on more than \$1.5 billion of relief that the agency previously could have obtained under Section 13(b), and the losses increase with each passing day. Another \$1 billion in relief stands to disappear from consumers in cases still in active litigation—*relief that could be preserved if action were taken now to restore 13(b) to all current and future cases.*

Efforts to Use Other Tools to Protect Consumers—And Their Limitations

Staff throughout the FTC has done an incredible job of pivoting in terms of tools and tactics to blunt the effects on consumers. In the past year, staff has deployed every other available tool for obtaining monetary relief, including:

⁸ Am. Compl., *FTC v. RagingBull.com, LLC et al.*, No. 1:20-cv-3538 (Feb. 4, 2021), https://www.ftc.gov/system/files/documents/cases/ragingbull.com_-_amended_complaint_for_permanent_injunction_and_other_equitable_relief.pdf.

⁹ See Press Release, Fed. Trade Comm’n, *FTC Charges Lending Club with Deceiving Consumers* (Apr. 25, 2018), <https://www.ftc.gov/news-events/news/press-releases/2018/04/ftc-charges-lending-club-deceiving-consumers>; *LendingClub Agrees to Pay \$18 Million to Settle FTC Charges* (July 14, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/07/lendingclub-agrees-pay-18-million-settle-ftc-charges>.

¹⁰ *FTC v. AbbVie Inc.*, 329 F. Supp. 3d 98 (E.D. Pa. 2018); *FTC v. AbbVie Inc.*, 976 F.3d 327 (3d Cir. 2020).

- utilizing Section 19 to obtain monetary relief in consumer protection cases that involve rule violations;¹¹
- initiating new rulemakings to codify conduct that courts had already determined was unfair or deceptive, so that the agency can obtain refunds for harmed consumers under Section 19;¹²
- bringing more administrative proceedings to preserve a pathway to monetary relief in cases that do not involve rule violations;¹³
- partnering with state attorneys general to utilize their ability to obtain monetary relief for some consumers; and¹⁴

¹¹ See, e.g., Press Release, Fed. Trade Comm'n, *Federal Trade Commission Cracks Down on Warrior Trading For Misleading Consumers With False Investment Promises* (Apr. 19, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/04/federal-trade-commission-cracks-down-warrior-trading-misleading-consumers-false-investment-promises> (pleading violations of the FTC Act and Telemarketing Sales Rule); *Federal Trade Commission Takes Action Against For-Profit Medical School for Using Deceptive Marketing to Lure Students* (Apr. 15, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/04/federal-trade-commission-takes-action-against-profit-medical-school-using-deceptive-marketing-lure> (pleading violations of the FTC Act, Telemarketing Sales Rule, Holder Rule and Credit Practices Rule); *Operators of Credit Card Interest Rate Reduction Scam Permanently Banned from Debt Relief Business Under Settlement with the FTC and Florida Attorney General* (Feb. 28, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/02/operators-credit-card-interest-rate-reduction-scam-permanently-banned-debt-relief-business-under> (pleading violations of the FTC Act and Telemarketing Sales Rule); *Operator of Businesses that Scammed Prisoners and Their Families Permanently Banned from Magazine Sales in Settlement with FTC and Florida Attorney General* (Sep. 28, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/09/operator-businesses-scammed-prisoners-their-families-permanently-banned-magazine-sales-settlement> (pleading violations of the FTC Act and the Mail, Internet, or Telephone Order Merchandise Rule).

¹² See, e.g., [Trade Regulation Rule on the Use of Earnings Claims](#), 87 Fed. Reg. 13,951, 13,958 (Mar. 11, 2022) (to be codified at 16 C.F.R. pt. 462); [Trade Regulation Rule on Impersonation of Government and Businesses](#), 86 Fed. Reg. 72,901, 72,905 (Dec. 23, 2021) (to be codified at 16 C.F.R. pt. 461); [Made in USA Labeling Rule](#), 16 C.F.R. pt. 323 (July 14, 2021).

¹³ See, e.g., Fed. Trade Comm'n, *In re HomeAdvisor, Inc.* (Mar. 11, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/03/ftc-charges-homeadvisor-inc-cheating-businesses-including-small-businesses-seeking-leads-home>; Fed. Trade Comm'n, *In re (TurboTax) Intuit Inc.* (Mar. 29, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/03/ftc-sues-intuit-its-deceptive-turbotax-free-filing-campaign>; Fed. Trade Comm'n, *In re Dun & Bradstreet, Inc.* (Jan. 13, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/01/response-ftc-charges-dun-bradstreet-clean-small-business-credit-reporting-process-refund-customers>; Fed. Trade Comm'n, *In re Fashion Nova, LLC* (Jan. 25, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/01/fashion-nova-will-pay-42-million-part-settlement-ftc-allegations-it-blocked-negative-reviews>; Fed. Trade Comm'n, *In re CafePress* (Mar. 15, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/03/ftc-takes-action-against-cafepress-data-breach-cover>; Fed. Trade Comm'n, *In re BASF SE* (Apr. 1, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/04/companies-settle-ftc-charges-they-deceptively-marketed-fish-oil-supplements-false-claims-they-were>.

¹⁴ The FTC's joint action against Frontier Communications serves both as an example of joining with our partners to preserve the possibility of monetary relief for some consumers—and the limits of this approach. The FTC's complaint was filed with the attorneys general from Arizona, Indiana, Michigan, North Carolina, and Wisconsin, as

- warning companies not to engage in practices that the Commission has previously declared to be unfair or deceptive, and seeking civil penalties when they do not heed those warnings.¹⁵

Despite these impressive efforts, our best outcomes are still justice diminished and justice delayed. The scope of relief available using our other tools is often considerably smaller, limited by Section 19’s short 3-year statute of limitations. This limitation has particularly harsh effects for consumers who are early victims of an illegal practice—often their complaints initiate an investigation, but they are cut out from relief. In addition, in many instances there is no complementary rule violation under Section 19 to provide relief for unfair and deceptive practices that violate Section 5 of the FTC Act.

Longer term enforcement strategies such as sending companies penalty offense warnings and rulemaking initiatives take time. And as has been well-documented, proceeding through our administrative process can add years to the timeline of returning ill-gotten gains to the pockets of consumers when compared with our former federal court process and is also subject to Section 19’s abbreviated statute of limitations. Finally, the FTC has *no* alternative paths for monetary relief or disgorgement of ill-gotten gains for competition violations.

It is critical that Congress take prompt action to amend Section 13(b) to make clear what was well-established, black-letter law for more than forty years—namely, that when companies or individuals violate laws the Commission enforces, the agency can obtain equitable monetary relief under Section 13(b). This past summer, we were grateful that the House of Representatives passed a bill that would do exactly that. We call on the Senate to take up that bill and pass it as soon as possible.

well as the district attorneys’ offices of Los Angeles County and Riverside County on behalf of the State of California. However, the District Court for the Central District of California dismissed from the case all of our non-California partners. See Press Release, Fed. Trade Comm’n, *FTC Sues Frontier Communications for Misrepresenting Internet Speeds* (May 19, 2021) <https://www.ftc.gov/news-events/news/press-releases/2021/05/ftc-sues-frontier-communications-misrepresenting-internet-speeds>.

¹⁵ See Fed. Trade Comm’n, *Penalty Offenses Concerning Money-Making Opportunities* (Oct. 26, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/10/ftc-puts-businesses-notice-false-money-making-claims-could-lead-big-penalties>; Fed. Trade Comm’n, *Penalty Offenses Concerning Endorsements* (Oct. 13, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/10/ftc-puts-hundreds-businesses-notice-about-fake-reviews-other-misleading-endorsements>; Fed. Trade Comm’n, *Penalty Offenses Concerning Education* (Oct. 6, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/10/ftc-targets-false-claims-profit-colleges>.