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# Supreme Court Limits FTC's Authority to Obtain Monetary Relief in Federal Court Under Section 13(b) of the FTC Act

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On April 22, 2021, the Supreme Court issued a long awaited decision that rejects the Federal Trade Commission's (FTC) longstanding use of Section 13(b) of the FTC Act to obtain equitable monetary relief in federal courts. The Court's unanimous (9-0) decision in *AMG Capital Management, LLC v. Federal Trade Commission* significantly undermines the FTC's enforcement authority by removing its primary avenue for obtaining disgorgement and restitution for violations of Section 5 of the FTC Act (15 U.S.C. §45(a)(1)-(2), which prohibits unfair methods of competition and deceptive acts or practices.

The Court found that the FTC's undisputed authority to obtain prospective "injunctive relief" in federal court for violations of the FTC Act via Section 13(b) does not carry with it the right to obtain equitable monetary relief. Specifically, the Court cited several reasons for its conclusion.

First, the Court found that the plain language of Section 13(b) does not mention any authority for the FTC to seek monetary relief, and is concerned solely with prospective relief, while monetary relief is retrospective.

Second, the Court concluded that Section 13(b) was solely concerned with stopping unfair practices from occurring while the FTC determined their lawfulness in its own in-house adjudications. The FTC has explicit authority in other provisions of the FTC Act, namely Sections 5(l) and 19, to obtain monetary relief in federal court after issuing a cease and desist order. 15 U.S.C. §57b(d). Notably, however, the circumstances under which monetary relief could be obtained in administrative proceedings are further cabined by strict time limits on FTC action seeking monetary relief, and further limited to circumstances in which "a reasonable man" would have known that the conduct at issue was "dishonest or fraudulent." 15 U.S.C. §57b(a)(2). Consequently, the Court concluded that allowing the FTC to use Section 13(b) to obtain monetary relief would improperly allow it to be used as a substitute for the FTC Act's other dedicated monetary relief provisions.

The Court rejected the FTC argument that equitable monetary relief is included in 13(b)'s authority allowing for injunctive relief. The Court likewise repudiated the FTC's argument that Section 13(b) merely gave the FTC a judicial enforcement route in addition to the administrative route noting that "we cannot believe that Congress merely intended to enact a more onerous alternative to Section 13(b) when it enacted Section 19 two years later."

The FTC claimed in its briefing before the Court that over the last several decades the FTC had relied on Section 13(b) to obtain billions of dollars in disgorgement of profits and monetary restitution for victims of unfair and deceptive conduct. In addition, numerous district courts and several circuit courts had upheld the FTC's Section 13(b) monetary relief authority over that timeframe. Consequently, the Supreme Court decision will profoundly alter the FTC's enforcement agenda as it shifts to more frequent in-house adjudications, rulemaking, and cease and desist orders under Section 19 (despite the more onerous “dishonest or fraudulent” standard required). In addition, the decision will likely galvanize efforts already underway in Congress to amend Section 13(b) to explicitly allow the FTC to seek monetary relief in federal courts.

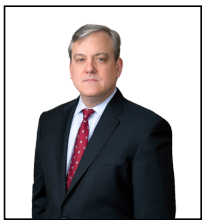
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