

AMG Capital Management v. FTC

April 23, 2021

On April 22, 2021, the Supreme Court unanimously held that section 13(b) of the Federal Trade Commission Act—which authorizes “a permanent injunction”—does not authorize the Federal Trade Commission to seek, or a court to award, equitable monetary relief such as restitution or disgorgement. See [*AMG Capital Management, LLC v. Federal Trade Commission*](#), No. 19-508 (U.S. April 22, 2021). Instead, the Court held that to obtain equitable monetary relief, the FTC must follow the process in sections 5 and 19 of the Act, which requires the agency first to obtain a cease and desist order in administrative proceedings (among other things).

The holding significantly restricts the remedial authority of the FTC, which has an extensive record of obtaining monetary relief in court under section 13(b) in consumer protection actions and, increasingly, in antitrust cases. Indeed, the FTC told the Court that it “brings dozens of [section 13(b)] cases every year seeking a permanent injunction and the return of illegally obtained funds” and that “there’s no question that the agency brings far more cases in court than it does in the administrative process.”

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Facts and Procedural History

The FTC filed a complaint against Scott Tucker and his companies alleging deceptive payday lending practices in violation of section 5(a) of the Federal Trade Commission Act. The District Court relied on section 13(b) of the Act as authority to direct Tucker to pay \$1.27 billion in restitution and disgorgement. The Ninth Circuit upheld the District Court's ruling, rejecting Tucker's argument that section 13(b) does not authorize the award of equitable monetary relief. The Supreme Court granted certiorari in light of a circuit split on the issue.

The Court's Decision

The Supreme Court unanimously reversed, holding that section 13(b) of the Act does not authorize the FTC to seek restitution or other equitable monetary relief. The Court held that:

- The plain meaning of section 13(b) does not authorize the FTC to seek retrospective monetary relief. It authorizes “a permanent injunction,” which is not the same as “monetary relief.”
- Section 13(b) as a whole focuses on present and future violations of the Act by using phrases such as “is violating” and “is about to violate,” which suggests that the section does not contemplate retrospective relief.
- Section 19 of the Act authorizes the FTC to seek relief to “redress injury to consumers” only after it obtains a cease and desist order in the administrative process and satisfies other requirements. It is unlikely that when Congress passed section 19, it intended for the FTC to be able to bypass section 19's requirements by seeking monetary relief directly from courts under section 13(b).

- The Court observed that Congress could address this perceived gap in the FTC's remedial authority. Recent statements from Congress and the FTC Commissioners suggest that a legislative fix might be a realistic possibility.

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