

April 22, 2021

**Supreme Court Strikes Down FTC's Power to
Seek Court-Ordered Restitution and Disgorgement Remedies**

Today, in a closely watched and important [decision](#), the Supreme Court unanimously ruled that §13(b) of the Federal Trade Commission Act does not authorize the Commission to seek, or a court to award, equitable monetary relief such as restitution or disgorgement. In reaching that result, the Court was careful to note that the Commission does have power, under §5 and §19 of the Act, to pursue such monetary relief, but may do so only through the Commission's existing administrative procedures.

Rather than going through its own cumbersome administrative process, the FTC has in recent years increasingly used §13(b) to seek monetary relief, including restitution and disgorgement, directly in federal court. In holding that §13(b)'s "permanent injunction" language does not authorize the Commission directly to obtain court-ordered monetary relief, the Court noted it was simply restoring the "coherent enforcement scheme" that Congress has ordained: thus, the Commission may obtain monetary relief only by first using its administrative procedures under §5 and then invoking §19's redress provisions. The FTC may only use §13(b) to secure an injunction against violative conduct — but not monetary relief — while such administrative proceedings are planned or under way.

The decision also provides guidance on the Court's current approach to statutory interpretation. The Court observed in this regard that a statutory grant of "injunctive" power "does not automatically authorize a court to provide monetary relief," and instead depends upon a careful examination of the language and structure of the particular statutory scheme. Likewise, in rejecting the Commission's argument that acceptance of its broader reading of §13(b) would be desirable as a policy matter, the Court noted the Commission retained full power to seek restitution administratively, and that it was of course "free to ask Congress to grant it further remedial authority."

Time will tell whether Congress will act upon a likely request by the FTC to confer the authority to seek court-ordered monetary relief that the Court today definitively ruled the Commission does not currently possess. Until then, however, the FTC has clearly lost one of its major enforcement weapons.

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