

Illinois Court Dismisses Neora's Declaratory Judgment Suit against FTC on Jurisdictional Grounds

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Turns out the best defense may not be a good offense, at least when litigating against the FTC. The Northern District of Illinois yesterday rejected an attempt by multi-level marketer Neora, LLC (formerly Nerium) to obtain a declaratory judgment that the company did not operate as a pyramid scheme and that the FTC was not authorized to seek restitution or disgorgement under Section 13(b) of the FTC Act.

The court granted the FTC's motion to dismiss, finding that the "the claims presented are not ripe for judicial resolution and Plaintiffs can defend themselves in the enforcement action" that remains ongoing in the Northern District of Texas." As we [discussed](#) back in November 2019 when the suit was first filed, Neora sought a number of declaratory judgments, including that: (1) the FTC was overstepping its authority under the FTC Act in attempting to regulate multi-level marketing companies by guidance and declining to count certain internal consumption as genuine demand when conducting a pyramid scheme analysis; and (2) the FTC lacks authority under Section 13(b) to seek monetary relief.

The latter issue will be considered by the Supreme Court in the coming term in two consolidated cases, *F.T.C. v. Credit Bureau Center* and *AMG Capital Management, LLC v. F.T.C.* Just last week, as [discussed here](#), the Northern District of California granted a stay in the FTC's pending enforcement action against Lending Club on the grounds that the Supreme Court's decision on the FTC's powers under Section 13(b) would "greatly simplif[y]" the case, "as no monetary relief will be at issue."

For Neora, the battle remains ongoing. The court emphasized that "Plaintiffs undoubtedly have an adequate remedy in the [pending] enforcement action" because they "can raise the same arguments they assert here as defenses in that action." That case was recently transferred from the District of New Jersey to the Northern District of Texas, where it remains pending.