

Post-AMG Scorecard: The FTC is Required to Pay Receiver's fees in Cardiff

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Section 13 (b)log



Last Month, in *AMG Capital Management, LLC v. FTC*, the Supreme Court ruled that Section 13(b) of the FTC Act does not allow for monetary remedies. While the importance of this ruling is plain, its implications are only now becoming more clear. Just yesterday, for example, in *FTC v. Cardiff*, a California federal court found the FTC liable to pay all of the Receiver's fees from the date of the *AMG* ruling going forward. The Court explained that it would be inequitable for the defendants to pay these fees, now that the Supreme Court has clarified that the 13(b) relief provided only allowed for an injunction.

This is the first instance we know of where the FTC has been required to pay a Receiver's fees during the pendency of a 13(b) injunction.

As we've discussed in earlier posts, the FTC has asked Congress to rewrite the statute in a way that would allow it to unambiguously go straight to Federal Court to obtain money judgments. For now, however, the FTC can no longer rely on Section 13(b) to provide anything other than injunctive relief. As Cardiff illustrates, this will mean different things in the dozens of enforcement actions that are presently pending.

The following table summarizes relevant post-*AMG* action in these cases. Our team will provide periodic updates.

CASE

FTC v. Adept Management, Inc.,
Nos. 19-35668, 19-35669 (9th Cir.)

RELEVANT POST-*AMG* ACTION

The pending Ninth Circuit appeal was held in abeyance pending *AMG*'s outcome. Following the *AMG* decision, the parties filed supplemental briefs regarding how the appeal should proceed. Both the FTC and defendants conceded that the monetary judgment under 13(b) should be vacated. The FTC argued *AMG* has no other effect; defendants disagree. The appeal remains pending.

FTC v. American Future Systems, Inc., No. 20-cv-02266 (E.D. Pa.) On April 30, defendants filed a notice of supplemental authority notifying the court of the *AMG* decision, and arguing that significant portions of the FTC's complaint should be stricken. On May 17, 2021, defendants filed their answers to the (pre-*AMG*) complaint, making the same requests.

FTC v. American Screening, LLC, No. 20-cv-1021 (E.D. Mo.) There have been no *AMG*-related filings on this docket.

On April 28, in a brief, three-paragraph order, a *per curiam* panel vacated the district court's preliminary injunction order that had been entered into "to preserve assets pending a final judgment that could include equitable monetary relief in this action under § 13(b) of the FTC." Given *AMG*, the panel explained that the injunction was no longer necessary, and remanded the case to the district court.

FTC v. Cardiff, Nos. 20-55858, 20-55397, 20-55066, 19-56397 (9th Cir.); No. 18-2104 (C.D. Cal) Before the district court, the parties filed expedited briefing regarding the import of *AMG* on the FTC's complaint, with the FTC arguing it can obtain monetary redress by way of ROSCA. Defendants argued that the FTC had always been seeking monetary relief under 13(b), and cannot change its position now.

On May 24, 2021, the District Court ordered the FTC to pay the Receiver's fees, from the date of the *AMG* ruling going forward. The Court explained that it would be inequitable to force defendants to pay these fees now that the Supreme Court has established that 13(b) does not allow for monetary relief.

FTC v. Credit Bureau Center LLC, No. 17-cv-194 (N.D. Ill.) On May 6, 2021, the FTC filed a Motion to Amend Judgment. The FTC claims it now seeks monetary relief under ROSCA and Section 19 of the FTC Act, as opposed to Section 13(b). The defendant has been ordered to file a response to the Motion by June 11, 2021.

FTC v. Disruption Theory LLC, No. 20-cv-06919 (N.D. Cal.) Following *AMG* the parties stipulated, and on May 18, 2021 the Court issued an order, "dissolving the asset freeze entered in the Court's October 6, 2020 *Ex Parte* Temporary Restraining Order."

On April 26, 2021, defendants asked the Court in a Motion for Reconsideration "to reconsider its denial of [the] motion to dismiss the FTC's monetary claim [] for consumer redress, disgorgement and restitution as set forth in the FTC's first amended complaint."

FTC v. Electronic Payment Solutions of America, Inc., No. 17-02535 (D. Ariz.) On May 3, 2021, the FTC filed a Motion to Withdraw the pending Summary Judgment Motion, requesting the Court provide monetary relief through 13(b), due to *AMG*.

Both Motions are pending.

FTC v. F&G International Group Holdings, LLC, No. 20-cv-73 (S.D. Ga.) In a May 11, 2021 status report, the defendants stated their intent to file a dispositive motion striking the FTC's claim for monetary relief following *AMG*.

On April 27, 2021, Facebook filed a notice of supplemental authority regarding *AMG*, arguing that, following the Supreme Court's decision "the FTC lacks statutory authority to maintain its lawsuit in federal district court."

FTC v. Facebook,

<i>Inc.</i> , No. 1:20-cv-03590-JEB (D.D.C.)	On May 3, 2021, the FTC filed a Response. The FTC’s response argues that the action is still appropriate because, the FTC asserts, Section 13(b) still empowers the FTC to seek a permanent injunction.” Of course, the statutory text only speaks of preliminary injunctive relief.
<i>FTC v. FleetCor Technologies, Inc.</i> , No. 19-cv-05727 (N.D. Ga.)	On May 17, 2021, defendants filed a partial motion for summary judgment, asserting that, following <i>AMG</i> , “the FTC is not entitled to relief on its claim for equitable monetary relief, and [] the FTC is not entitled to relief on its claim for prospective injunctive relief.”
<i>FTC v. Golden Sunrise Nutraceutical, Inc.</i> , No. 20-cv-01060 (E.D. Cal.)	There have been no <i>AMG</i> -related filings on this docket.
<i>FTC v. Hornbeam Special Situations, LLC</i> , No. 1:17-cv-03094 (N.D. Ga.)	On April 22, 2021, the FTC filed a Notice with the Court of the <i>AMG</i> decision. Summary judgment motions are pending in the case.
<i>FTC v. Innovative Designs, Inc.</i> , Nos. 20-3379 (3d Cir.); 16-cv-01669 (W.D. Pa.)	There have been no <i>AMG</i> -related filings on this docket. There is a motion to lift the asset freeze pending due to <i>AMG</i> . On May 21, 2021, defendants filed a motion entitled “The Effect of <i>AMG</i> Capital on This Case.” In the filing, defendants stated, “The FTC’s wanton approach and this court’s complaisance approach has resulted in an illegal prejudgment attachment and dissipation of assets under the guise of equity. But it is a farce. This court was duped. The FTC’s unclean hands entitles it to nothing. Its complaint should be dismissed.”
<i>FTC v. Noland</i> , No. 20-cv-00047 (D. Ariz.)	Following <i>AMG</i> the parties stipulated, and on May 14, 2021 the Magistrate Judge ordered, “that the demand for equitable
<i>FTC v. Lending Club Corp.</i> , No. 18-cv-02454 (N.D. Cal.)	monetary relief in the FTC’s First Amended Complaint should be stricken.”
<i>FTC v. Mail Tree Inc.</i> , No. 15-cv-61034 (S.D. Fla.)	On April 30, 2021, the FTC filed a Notice of Supplemental Authority informing the Court that, per <i>AMG</i> , 13(b) does not allow for monetary relief. On April 30, 2021, the FTC filed a Notice of Supplemental Authority informing the Court that, per <i>AMG</i> , 13(b) does not allow for monetary relief.
<i>FTC v. Neora, LLC</i> , No. 20-cv-01979 (N.D. Tex.)	On May 10, 2021, the FTC and defendants filed dueling statements contesting the breadth of <i>AMG</i> ’s repercussions. On May 17, the defendants filed a Motion for Judgment on the Pleadings, arguing that the FTC cannot prevail now that it cannot obtain 13(b) monetary relief. That Motion is pending.
<i>FTC v. Netforce Seminars</i> , No. 00-cv-02260 (D. Ariz.)	On May 4, 2021 FTC filed an unopposed Motion to extend the summary judgment briefing schedule in light of <i>AMG</i> , explaining “that the priority for all parties is to address the continuing application of the Preliminary Injunction in light of <i>AMG</i> .” That Motion was granted. The FTC’s Summary Judgment Motion

is due on June 23, 2021.

FTC v. Nudge LLC, No. 19-cv-00867 (D. Utah) On May 5, 2021, the defendants filed a partial Summary Judgment Motion in light of *AMG*. The defendants asked the court to rule that the FTC “is not entitled to equitable monetary relief under Section 13(b) of the FTC Act.” The motion remains pending.

FTC v. Publishers Business Services, Inc., No. 19-507 (S. Ct.); Nos. 17-15600; 11-17270 (9th Cir.); No. 08-cv-00620 (D. Nev.) The case was remanded from the Supreme Court to the Ninth Circuit in light of *AMG*. The case is currently pending before the Ninth Circuit.

On April 27, 2021, defendants filed a letter requesting “a pre-motion conference concerning Defendants’ anticipated motion for judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c) dismissing with prejudice plaintiff the [FTC’s] request for monetary relief.”

FTC v. Quincy Bioscience Holding Co, No. 17-cv-00124 (S.D.N.Y.) On May 10, 2021, the FTC filed a response, claiming that judgment on the pleadings would be premature, because “Congress is considering changes to the Federal Trade Commission Act in response to *AMG Capital*.”

On May 11, 2021, defendants filed a reply, explaining that the FTC’s “speculative hope that the House and Senate may agree upon and pass legislation, at some unspecified future time” is an insufficient basis to delay ruling.

The parties stipulated to allow the FTC to amend its complaint shortly following *AMG*, presumably so the FTC could include an alternative basis for monetary relief. The district court granted the FTC’s request on May 18.

FTC v. QYK Brands, LLC, No. 20-cv-1431 (C.D. Cal.) On May 19, the FTC filed an Amended Complaint, striking all requests for 13(b) monetary relief, and instead requesting monetary relief pursuant to the FTC’s Trade Regulation Rule Concerning the Sale of Mail, Internet, or Telephone Order Merchandise (“MITOR”)

The FTC filed a motion to stay the case in order to obtain approval to file an Amended Complaint, in order to file new claims to stand in for the current 13(b) claims. That motion was granted on April 30.

FTC v. Ragingbull.com, LLC, No. 20-cv-3538 (D. Md.) On March 18, in a related filing, the FTC conceded that it chose to voluntarily dismiss a number of defendants because the “FTC no longer has the ability to recover those assets as equitable monetary relief under Section 13(b) of the FTC Act, due to the Supreme Court’s decision in *AMG*.”

On May 10, 2021, the defendants wrote to the Court requesting the Court set a settlement conference in light of *AMG*. Defendants averred that as part of a settlement, they “will agree to the issuance of a permanent injunction preventing any future violations of the FTC Act as well as paying the amount of all costs accrued in favor of the Plaintiff to date.”

FTC v. RCG Advances LLC, No. 20-cv-04432 (S.D.N.Y.) On May 11, 2021, the FTC filed a responsive letter, stating its intention to file an Amended Complaint replacing the prior requested 13(b) monetary relief with a new “claim and seek civil penalties for Defendants’ violations of Section

521 of the Gramm-Leach-Bliley Act, 15 U.S.C. § 6821.”

On May 14, 2021, the FTC filed a Motion for Leave to file the aforementioned Amended Complaint. That Motion is pending.

FTC v. Simple Health Plans LLC, No. 18-cv-62593 (S.D. Fla.)

On April 22, 2021, one of the individual defendants filed an Emergency Motion to Dissolve the Preliminary Injunction, due to the Supreme Court’s ruling in *AMG*. The defendant followed up with two notices of supplemental authority, on April 28 and 30, referencing other lower court cases dissolving preliminary injunctions following *AMG*.

The FTC filed a response to the Motion on April 30, 2021, arguing that the Motion was not ripe and that the FTC still had Section 19 authority.

A hearing on the Motion took place on May 14, 2021. The Motion remains pending.

On May 14, 2021, the defendants filed a Motion to Dismiss the FTC’s claims for equitable monetary relief, due to *AMG*. The Motion remains pending.

FTC v. SPM Thermo-Shield, Inc., No. 20-cv-542 (M.D. Fla.)

On May 24, 2021, the FTC filed a response to the Motion to Dismiss, in which the FTC states: “In *AMG*, the U.S. Supreme Court addressed the narrow question of whether Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), authorized retrospective monetary relief. The Court held that Section 13(b) did not authorize such relief. Slip op. at 1, 14. At this time, in light of the *AMG* decision, the FTC does not seek such relief.”

FTC v. Supergooddeals.com, Inc., No. 20-cv-3027 (E.D.N.Y.)

There have been no *AMG*-related filings on this docket.

FTC v. Superior Products International II, Inc., No. 20-cv-2366 (D. Kans.)

On May 6, 2021, defendants filed a motion to dismiss FTC’s request for equitable monetary relief in light of *AMG*.

FTC v. Surescripts, LLC, 19-cv-01080 (D.D.C.)

On May 10, 2021, the FTC withdrew its request for equitable monetary relief, and informed the Court of its intent to seek leave to file an Amended Complaint seeking monetary relief on other grounds.

FTC v. Unknown Parties Deceiving Consumers, No. 20-cv-2494 (N.D. Ohio)

On May 14, 2021, the parties filed a joint stipulation, stating that, due to *AMG*, the FTC withdraws its request for equitable monetary relief under 13(b). The Court adopted the stipulation on May 17, 2021.

FTC v. ZAAPPAAZ, LLC, No. 20-cv-2717 (S.D. Tex.)

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