

Post-AMG Scorecard (Updated): Different Roads Forward for the FTC in Pending Cases

John E. Villafranco

June 17, 2021



The ripple effects continue from the Supreme Court's holding in *AMG Capital Management, LLC v. FTC*, explaining that Section 13(b) of the FTC Act does not allow (and never did allow) monetary remedies.

In some cases, the FTC has stricken equitable monetary remedies entirely by removing those requests for relief in amended complaints. In others, the FTC is attempting to retain its request for monetary relief by newly tying it to another statutory provision. In still others, the Agency has requested that courts ignore *AMG*, because Congress may, at some unspecified future date, amend the statute.

Latest update follows.

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 and oral arguments scheduled for June 9, 2021 were cancelled. The Ninth Cir. noted that the issue was adequately presented in the briefs and oral argument would not significantly aid the decisional process.

On June 11, 2021, the Ninth Circuit vacated the district court's judgment granting monetary relief in light of *AMG*.

FTC v. American

On April 30, defendants filed a notice of supplemental authority notifying

Future Systems, Inc., No. 20-cv-02266 (E.D. Pa.), 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.

AMG Capital

Management, INC. v. FTC, No. 19-508 (U.S. S. Ct.), No. 16-17197 (9th Cir.), No. 12-cv-00536 (D. Nev.) On June 8, 2021, the 9th Circuit vacated its December 3, 2018 order and reversed the district court's order awarding equitable monetary relief to the FTC. The 9th Circuit then remanded the case to the district court for further proceedings consistent with the Supreme Court's opinion.

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.

On May 26, 2021, the District Court noted that it had to rule on the effect of *AMG* on the 2018 preliminary injunction and what remedies remain. This issue is fully briefed, but no order has yet issued.

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 filed their response on May 28, 2021 calling the FTC's motion a "desperate attempt to overturn *AMG*."

On June 11, 2021, the FTC filed their reply, stating that ROSCA and Section 19 provide an independent statutory basis apart from 13(b) to obtain a monetary judgment.

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*.

On May 10, 2021, defendants filed a Motion for Reconsideration of the denial for a Judgment of the Pleadings based on the new authority provided by *AMG*. At a status conference on June 14, 2021, the judge ordered the FTC to file a response to this motion. That response is pending.

FTC v. Elegant Solutions, Inc., No. 20-55766 (9th Cir.); No. 19-cv-01333 (C.D. Cal.)

While Ninth Circuit briefs had already been filed prior to *AMG*, the Ninth Circuit is requiring new briefing following *AMG*. Appellants filed their revised brief on June 1, 2021 in which they argue that the FTC does not have the authority to impose some of the remedies that the FTC has imposed.

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*.

FTC v. Facebook, Inc., No. 20-cv-03590 (D.D.C.)

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."

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.

FTC v. FleetCor Technologies, Inc., No. 19-cv-05727 (N.D. Ga.)

On May 17, 2021, defendants filed a partial motion for summary judgment, asserting that, following *AMG*, "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."

FTC v. Golden Sunrise Nutraceutical, Inc., No. 20-cv-01060 (E.D. Cal.)

Despite *AMG*, on June 6, 2021 the parties entered a stipulation and proposed order, granting the FTC a permanent injunction and monetary remedies, pursuant to Sections 13(b) of the FTC Act and 15 U.S.C. § 53(b). On June 11, 2021, the district court entered the stipulated order.

FTC v. Hornbeam Special Situations, LLC, No. 17-cv-03094 (N.D. Ga.)

On April 22, 2021, the FTC filed a Notice with the Court of the *AMG* decision. Summary judgment motions are pending in the case.

FTC v. Innovative Designs, Inc., Nos. 20-3379 (3d Cir.); 16-cv-01669 (W.D. Pa.)

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

There is a motion to lift the asset freeze pending due to *AMG*. On May 21, 2021, defendants filed a motion entitled "The Effect of *AMG* 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.”

On May 28, 2021, the FTC filed a response to defendant’s memo calling it a “fanciful reading of *AMG* . . . untethered from its holding.”

FTC v. Noland, No. 20-cv-00047 (D. Ariz.)

On June 1, 2021, proposed intervenors, who had previously been denied intervention, filed a motion to intervene saying they have been harmed by the FTCs unlawful reading of 13(b) as held by *AMG* and should thus be allowed to intervene. The FTC responded on June 4, 2021 calling the motion untimely and calls *AMG* “irrelevant” to the court’s prior ruling. On June 14, 2021, the proposed intervenors filed a reply reiterating that their motion is timely and that they are affected by the holding in *AMG*.

On June 11, 2021, Defendants filed a Reply in Response to the Motion for Preliminary Injunction, noting that “Section 13 has always been the FTC’s focus in this case, even though this court recognized the FTC sought relief not found in the text of the FTCA.”

Following *AMG* the parties stipulated, and on May 14, 2021 the Magistrate Judge ordered, “that the demand for equitable

FTC v. Lending Club Corp., No. 18-cv-02454 (N.D. Cal.)

monetary relief in the FTC’s First Amended Complaint should be stricken.”

On June 10, 2021, the parties filed a case management statement in which they agreed that settlement discussions would now be more “fruitful” based on *AMG*’s holding.

FTC v. Mail Tree Inc., No. 15-cv-61034 (S.D. Fla.)

On April 30, 2021, the FTC filed a Notice of Supplemental Authority informing the Court that, per *AMG*, 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 *AMG*, 13(b) does not allow for monetary relief.

On May 10, 2021, the FTC and defendants filed dueling statements contesting the breadth of *AMG*’s repercussions.

On May 17, 2021, 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.

FTC v. Neora, LLC, No. 20-cv-01979 (N.D. Tex.)

On June 7, 2021, the FTC filed their response to the May 17th Motion, arguing that *AMG* only applies to a very narrow issue, and that Neora is trying to use the ruling to dismiss the entire case, when 13(b) still allows the FTC to bring cases in federal court to obtain injunctive relief. The FTC accused Neora of “doing violence to the language of the Supreme Court’s decision.” The FTC did agree to dismiss the claims for monetary restitution and disgorgement, directly acknowledging that *AMG* “currently prevents the FTC from recovering equitable monetary relief under Section 13(b) in this case.”

On June 14, 2021, defendants filed a Motion for a Protective Order and a Motion to Quash a Subpoena, arguing that per the holding in *AMG*, the FTC cannot look at past conduct and prescribe retrospective relief, they can only

provide relief for future actions.

***FTC v. Netforce
Seminars, 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 *AMG*, explaining “that the priority for all parties is to address the continuing application of the Preliminary Injunction in light of *AMG*.” 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.

On June 2, 2021, the FTC filed a non-opposition response to Nudge’s May 5th Motion for partial summary judgment, noting that it does not oppose Nudge’s Motion “to the extent it requests ‘an order stating that the FTC is not entitled to any equitable monetary relief under Section 13(b)’ of the FTC Act.” The motion remains pending.

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.

***FTC v. Publishers
Business Services,
Inc., No. 19-507 (S.
Ct.); Nos. 17-15600;
11-17270 (9th Cir.);
No. 08-cv-00620 (D.
Nev.)***

On June 4, 2021, the FTC sent a letter to the 9th Circuit explaining that it sought money under Section 19 as well as Section 13(b), so *AMG* does not affect them and that Publishers Business Services already waived their 13(b) challenge. On June 9, 2021, defendants responded saying they did not waive this claim and argued that the FTC actually waived any §19 claim because they stopped arguing that.

On June 10, 2021, the 9th Circuit affirmed the District Court’s order that granted the permanent injunction, and vacated the District Court’s order that awarded equitable monetary relief under Section 13(b).

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 May 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 June 11, 2021, the FTC filed a motion for leave to file an amended complaint. This amended complaint could “remove the FTC’s request for equitable monetary relief under Section 13(b) of the FTC Act, in light of the Supreme Court’s recent decision in *AMG Capital*...”

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.

On June 10, 2021, the FTC filed an Amended Complaint where it seeks to bring monetary penalties and a permanent injunction under Sections 5(a), 5(m)(1)(A), 13(b), 16(a), and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), 56(a), and 57b, and Section 522(a) of the Gramm-Leach-Bliley Act, 15 U.S.C. §6822(a).

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*.

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

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 June 10, 2021, defendants filed a response to an order of supplemental briefing regarding *AMG* and their April 22 Motion to Dissolve. They argued that the situation in *AMG* is analogous to their situation. The FTC also filed its response, in which it argued that the Agency retains the power to issue preliminary injunctive relief under Section 19 of the Act.

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.”

On May 26, 2021 the court granted SPM’s Motion to Dismiss on all parts relating to *AMG*.

On June 2, 2021, the FTC filed its First Amended Complaint for permanent injunction and other equitable relief., but kept their claim under Section 13(b).

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

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

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

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

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.

On June 9, 2021, the Court found the defendants’ motion to dismiss moot due to the FTC’s withdrawal of claims regarding monetary relief under 13(b).

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

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

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

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

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

Summer associate Darby Hobbs contributed to this article. Ms. Hobbs is not a practicing attorney and worked under the supervision of principals of the firm who are members of the D.C. Bar.

* * *

[Subscribe here](#) to Kelley Drye’s [Ad Law Access](#) blog and [here](#) for our [Ad Law News and Views](#) newsletter. Visit the [Advertising and Privacy Law Resource Center](#) for update information on key legal topics relevant to advertising and marketing, privacy, data security, and consumer product safety and labeling.

Follow us on [LinkedIn](#) and [Twitter](#) for the latest updates.