

# Everything but the Cape: Careers for Superheroes at the FTC

FTC Chairman Jon Leibowitz  
Remarks at Harvard Law School  
October 10, 2012

Thank you, Dean Martha Minow, for that kind introduction and for inviting me here today.

We at the FTC feel particularly at home at Harvard Law School: two of our five Commissioners (Edith Ramirez and J. Thomas Rosch) graduated from the law school.

To start today, I'd like to show you a brief video clip—some of you may remember this ad from a few years ago.<sup>1</sup>

[Monster.com Ad Shown]

What did you want to be?

A corporate lawyer? A tax attorney? A law professor? A federal regulator?

Of course not. That commercial never fails to remind me of how—sometimes between lunchboxes on the playground and LSATs—our ideas about who we are and where we are going change profoundly. At some point, reality washes over all of us and we understand that we are not going to play in the NBA, record a Top 40 hit, or develop superpowers that allow us to fly down the street and vanquish the neighborhood bully.

And for many of you students here tonight, your next few months or years will be filled with job recruiters appealing to that adult self, offering—perhaps not the opportunity to “file all day” (at least not directly)—but pension plans, stock options and partnership prospects.

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<sup>1</sup><http://www.hulu.com/watch/321947>.

My colleague in the public sector will tell you about the satisfaction you can get from working for your government or for a cause, the excitement of joining colleagues fighting for ideals—the reward of seeing people’s lives get better of get the lives

Like any good collection of Superheroes, we don't confine ourselves to righting just one  
sort of wrong. We guard against



And that makes sense. Because when it comes to a right as valuable as our privacy, we have to remember the words of Captain America: "When the mob and the press and the whole world tell you to move, your job is to plant yourself like a tree beside the river of truth and tell the whole world—'No. You move.'"<sup>4</sup>

Let me tell you in more detail about a few more areas in which the FTC is using our power for good. The first is in the market for so-called "foreclosure consultants"—carriers that circle homeowners in financial distress to take the last dollar out of their pockets. As any superhero can tell you: where there is money, there are villains. And sadly, villains abound in this story as do their prey—victims of the housing market collapse of record: diseased foreclosure and, finally, of unscrupulous scammers who offer struggling homeowners a lifeline but throw them an anchor instead.

Take Homeowner Relief: That operation charged up to \$4,250 for a promise to reduce consumers' short-gage payments, interest rates and sometimes even loan balances. Homeowner Relief never contacted the mortgage servicers, leaving consumers already dry pocket \$ thousands of dollars drier.

Or take Crowde Law Group, which masqueraded as a government bailout program, not only stealing money from homeowners but also diverting them from legitimate free help from the government. We just received a \$2.6 million court judgment against them.

In each of these cases and many other like them, the FTC sued, stopped the scam, shut the villains down, and returned the money to their victims. And we enacted rules that say in

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<sup>4</sup> [J. Michael Straczynski, Stan Lee (w), Ron Frenz (p), Bill Reinhold (i).] "Civil War." The Amazing Spiderman #537 (Jan. 2007) Marvel Comics.

the future before companies offering mortgage modifications can charge the first dollar, these companies have to deliver the mortgage modifications they promise.

Slapping down the bad guys. Helping victimized families. Making companies keep their word. All in a day's work at the FTC.

And we have not confined ourselves to the villainous fringe of foreclosure consultants. As many a Green Lantern has put it: "In brightest day, in blackest night, no evil shall escape [our] sight."<sup>5</sup>

Last June we announced one of the largest judgments in the FTC's history against two Countrywide mortgage servicing companies—\$1.08 billion in refunds to the well over 450,000 homeowners we believed were victimized.

Countrywide profited from making risky loans to homeowners during the housing market boom and profited again when the market went bust. It took advantage in two ways: First, when homeowners fell behind on their payments, Countrywide overcharged them for default-related services like property inspections and foreclosure trustee services. It created affiliated companies to perform the required services and added a big markup—often 300% or more—that Countrywide passed on to borrowers. Under Countrywide's vastly overpriced fee schedule, just mowing a lawn could result in a \$300 bill to a homeowner—even if Countrywide paid only a fraction of that.

Incidentally and apparently of no interest to Countrywide, its own mortgage contracts prohibited these inflated charges, as does the FTC Act.

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<sup>5</sup>The Green Lantern cites an oath when he charges a being that gives him his superpower. There have been almost as many oaths as there have been Green Lanterns. This quote is from the version favored by the Green Lantern Hal Jordan.

In the case of Countrywide, the FTC followed the admonition of Captain America and spoke loudly for those who have no voice.<sup>6</sup> As I mentioned, we returned \$108 million to over 450,000 milked consumers, which is not bad for an agency that handles both consumer protection and antitrust, covers almost all of the economy, has far fewer employees—about 1,200—that the SEC, FCC, EPA, and—by a large multiple—every single Cabinet Department.

There are other epic battles that we haven't won yet—but we will. One of those is to keep greed from blocking consumers from obtaining reasonably priced generic drugs. Let me give you a brief history.

More than two decades ago, Congress passed the Hatch-Waxman Act to make it easier for generic medicines to enter the market, while giving brand-name manufacturers the patent protection they needed to encourage the lifesaving research that is the hallmark of America's pharmaceutical industry. One of the critical parts of the law encourages generic drug firms to challenge weak branded drug patents—those that are likely invalid or not infringed.

For a time, the legislation worked. Generic manufacturers brought patent challenges and won in two thirds of the cases in which they took on branded drugs according to a 2002 FTC study. As generics entered the market, the price for prescription drugs fell.

Enter the bad guys, drug companies, who derailed the law—and this is by no means all drug companies, by the way—by inventing pay-for-delay patent settlements. In these settlements, brand companies literally pay

It is true that if a generic competes, it makes a profit. But that profit is much smaller than the brand's loss when its monopoly pricing power evaporates. In fact, the brand can keep the bulk of its profits and still pay the generic more than the generic could earn by competing. That's because on average the generic costs 85 percent less than the branded product, meaning the generic's revenues and profits are tiny compared to the branded competitor.

In one of these sweetheart deals, the brand wins because it avoids the possibility of competition and the destruction of its franchise. The generic wins because it makes more than if it competes. Consumers lose because the agreement delays the generic entry that would have lowered their drug prices.

The FTC has targeted these deals from their inception. And at first, under the leadership of both Democrat Bob Pitofsky and Republican Tim Muris, we stopped them cold.

But since 2005, several circuit courts have mistakenly blessed these anticompetitive arrangements. Their decisions conclude that because the brand's patent might block the generic's product, a brand can pay to eliminate the possibility of competition until its patent expires. That is a misguided approach, one at odds with both market realities and established antitrust principles.

An industry investment analyst got it right when he said that these court decisions "opened a Pandora's box of settlements. Instead of competing to be first to come to market, generic companies now compete to be the first to get a pay off."

Some in the industry are quite candid—at least privately—about the greed that drives pay-for-delay deals. Some are even candid in public. The CEO of Cephalon, a company that is the subject of a current FTC action, announced settlements with four generic drug makers that



will keep the generic versions of

We have the law on our side. We have justice on our side. The health of millions of Americans hangs in the balance.

As Wonder Woman once said, "If it means interfering in an entrenched, outdated system to help just one woman, man, or child... I'm willing to accept the consequences."

And what are the consequences in the case of pay for delay—and bureaucratic actions against abuses of market power and on the behalf of consumers—maybe a few angry lobbyists, a couple of bridges to the world of corporate law burned, and occasional decrees against bur work in an industry