



Now, after the FTC got this authority in 1975, it was used quite widely. What the Commission did is send essentially warning letters we called them a synopsis to thousands of companies in various industries across the United States and warned them that the FTC had found business opportunity deception to be deceptive, that the FTC had found testimonial deception to be deceptive. And we initiated this nationwide program to curb some of these practices. And what

MR. SAMUEL LEVINE: Sure. So Section 13(b) allows the Commission to seek preliminary and permanent injunctions in federal court. And the way courts have interpreted that provision until pretty recently is that because courts can order permanent injunctions they also have the power to order what's called equitable relief. They can also order money to be returned to consumers, ill-gotten gains to be disgorged, asset freezes on hardcore fraud. Essentially, the authority allows



MR. VIKAS KUMAR: And companies largely view that as maybe potentially just the cost of doing business, to pay a small fine or small penalty, technically not a penalty, but small fine.

MR. SAMUEL LEVINE: Exactly. Not even a penalty. They just have to return what they took

MR. VIKAS KUMAR: And I assume lawyers and companies would potentially raise due process concerns. So they have to receive actual knowledge. But what other due process protections do companies get on the 5(m)(1)(B) front? Do they get to challenge underlying Commission decisions? Or do they say the facts that you're saying that we or the practices we're engaged in aren't the same as the facts in the underlying case that you're using to elevate something to Penalty Authority?

MR. SAMUEL LEVINE: So the Penalty Offense Authority, if you run afoul of it'2 reW\*necl64(1)-3

MR. VIKAS KUMAR: And there was a recent example, fairly recent example I should say, of the

















this particular industry and these companies? Or is that something that the companies will have to disclose if they feel that it's material?

MR. SAMUEL LEVINE: That's a good question. There is not a requirement that the FTC post a synopsis publicly. I generally err on the side of transparency and on the side of being public. I think that sends a positive message. And in fact, when we do publicize Penalty Offense warnings, that actually extends the number of people who have knowledge of the determination. It's another matter of whether we could go and prove that. But the point is it's an opportunity for the FTC to remind the market of its determinations.

Now, there may be cases where it does not make sense to do it publicly, and I don't want to prejudge that. But it's an excellent question. I would say my instinct could be toward transparency being better. But I think that would be a great discussion to have on a case-by-case. Or I should say on an industry-by-industry basis.

MR. VIKAS KUMAR: The last question is if the Supreme Court rules unfavorably against any you've touched on this, but if the Supreme Court rules unfavorably against the FTC regarding its ability to seek monetary relief, does that inevitably push the FTC to rely on the Penalty Offense Authority in conjunction with 13(b), which may be only limited to being able to seek injunctions?

MR. SAMUEL LEVINE: Yeah. Well, I don't want to be a broken record here, but it's really important the FTC prevail in the Supreme Court. It's really important we hold onto our 13(b) power. But regardless of what happens, we really believe the Commission should get going on using this authority, for all the reasons I have said. So, of course, we'll see what happens in the Supreme Court. But given all the limitations I've laid out about 13(b), I think , I tuld sf (i)-3(s)4( )-5(p)stt t itETC

MR. SAMUEL LEVINE: I don't want to get into that at this point.

MR. VIKAS KUMAR: Okay, that's fine. That's all the questions from the audience. Thank you so much. It's been a very informative call.

MR. SAMUEL LEVINE: Well, thanks for having this discussion. And I'm so glad. I think all of us should be invested in a vigorous, effective FTC that protects consumers and protects honest businesses. So I really appreciate people's interest in the article. I'm more than happy to talk about it offline with anyone interested. My email I'm sure can be made available. I'm happy to have further discussions about this because we're really excited about how this authority can be deployed to step up the FTC

MR. VIKAS KUMAR: Great, yeah. Thank you so much.

MR. SAMUEL LEVINE: Thank you. Take care, everyone.