



UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

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Background on Section 13(b) and Other Commission Authorities

Let me start by providing some background on the FTC's various remedial tools, starting with Section 13(b), the authority under challenge. Section 13(b) authorizes the Commission

misrepresent income, generate fake reviews, misrepresent educational outcomes, or engage in other misconduct that the Commission previously declared to be illegal.

To be sure, this strategy is not a panacea, and the Commission will need to be strategic in designating penalty offenses that will be sustained in court. But there is zero downside to incorporating this authority into the FTC's toolkit.

For example, since the onset of this pandemic, the Commission has sent dozens of warning letters.

USA guidance through a rulemaking. The Commission listened, and ~~invented~~ ^{invented} 4-1 to propose restating the existing Made in USA standard into a rule. This would allow the Commission to seek redress, damages, and penalties against Made in USA fraud, imposing zero burden on firms that actually make their products here in the United States. If finalized, the rule would turn the page on the era of no-money Made in USA settlements, regardless of how the Supreme Court rules on Section 13(b).

Now, many of you know that Congress granted the Commission specific authority to write Made in USA Rules under the Administrative Procedure Act, rather than the procedures set forth

Perhaps most importantly, we must expand our partnerships with criminal law enforcement – and not just for small-time scams. Corporate fraud, including in the digital economy, can violate criminal statutes. We can and should do more to refer wrongdoing in the boardroom to appropriate authorities.

I think all of us agree that getting good results should take precedence over getting credit. Just as groups like TINA.org refer cases to the FTC for enforcement, even if it means sharing credit for the ultimate result, the FTC should not be afraid to reach out to state and federal partners to ensure the best possible outcome for consumers.

Conclusion

I know there are many rooting against the FTC this week. They hope the Supreme Court cloud hanging over the agency will cow us into accepting subpar settlements. They hope we will slink away from challenging misconduct by major firms, and instead target outfits less able to defend themselves. They hope we will fade further into irrelevance when it comes to addressing serious problems in the market.

I believe we can prove them wrong. While it is vital that the Commission prevail in the Supreme Court, regardless of what happens, the Commission can take steps to diversify our toolkit and ensure we can continue to seek accountability for wrongdoers and compensation for victims. Whether it's initiating a Restatement Rulemaking, designating penalty offenses, reviving administrative litigation, or partnering with other authorities, there are tools we should use today to step up our deterrence of harmful practices. By pursuing this path, I am confident the Commission can emerge from this moment of crisis stronger than ever.

Thank you again to TINA.org for hosting this important discussion. I'm happy to take your questions.