

Concurring Statement of Commissioner Christine S. Wilson

R360 LLC

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The Commission today announces its first case under the Opioid Addiction Recovery Fraud Prevention Act (OARFPA). Careful observers will note, however, that this settlement agreement was executed on November 23, 2020 by counsel for defendants. In other words, announcement of this settlement was delayed by nearly 18 months. Why?

In my inaugural Congressional hearing as a Commissioner, I highlighted the important work of the FTC in the health care arena. It has long been a longstanding priority for the agency in both its antitrust and consumer protection missions, because health care issues have a daily and frequently significant impact on consumers, their families, and their wallets. In that testimony, I also highlighted the ongoing opioid epidemic and thanked Congress for passing OARFPA, which strengthens the Commission's ability to halt the use of deception by companies that sell substance use disorder treatments and services.

For these reasons, I am pleased that the Commission is announcing a settlement with Steven Doumar and R360 LLC for violations of OARFPA Section 5 of the FTC Act. Today's settlement resolves allegations that the R360 Network and its sole director, owner, and employee, Steven Doumar, falsely claimed that the company could help individuals identify the best treatment center for their substance use disorder from a network of facilities evaluated against rigorous, objective criteria. Stated simply, the complaint alleges that defendants lied about being a literal lifeline for individuals struggling with addiction. Those defendants appropriately chose to resolve the matter with the FTC 18 months ago.

Readers will rightly wonder why this case was delayed for so long. Was it prompted by the first case under OARFPA moved to the back burner for almost 18 months? Did it fall victim to the agency's habit of suppressing staff's excellent work? Was it lost in the shuffle as new leadership prioritized the repeal of long-standing bipartisan policies and planning for a tidal wave of rulemaking? Although I cannot discuss the public aspects of this case, I can observe that the delay of nearly one and a half years does not appear to have deterred new defendants, injunctive relief, or financial

⁵ Would a timelier announcement of this case have ended the opioid crisis? No. But I have no doubt that it would have resulted in important market changes when consumers most needed them. This case makes clear that companies must avoid deceptively marketing substance abuse treatment options as our neighbors, friends, and family engage in the daunting task of seeking help. But this message went unheeded for 18 months.

Finally, readers may ponder whether other important cases similarly are being delayed. What other cases have been deprioritized by current leadership? What other unlawful conduct is going unannounced, and therefore undeterred? What other culpable companies are escaping

accountability? What other groups of consumers are suffering harms that could be prevented by swift enforcement actions?

Statistics imply that at least some of the delays are occurring. After all, FTC enforcement actions plummeted by more than 60 percent from the last year of President Trump's administration to the first year of President Biden's administration. For the protection mission, one analysis found there were 79 actions in 2020 but only 31 in 2021. This shortfall occurred in the antitrust division. Business owners know that our dedicated and diligent staff did not become 50 percent less productive. So where are the cases?

To be clear, I am not leveling criticism at our staff who work tirelessly on investigations to secure outstanding outcomes for American consumers. Staff who fulfilled that mission here, obtaining an excellent settlement following a thorough investigation. Instead, the questions raised in this statement are directed to the leadership of the agency, those who will be held accountable for effectively using our scarce resources and fulfilling the mission of protecting consumers.

While I appreciate that this settlement finally has been announced, I hope the future Commission will appreciate the imperative to act swiftly on deceptive addiction treatment marketing rather than unnecessarily delaying actions that could salvage lifelines for desperate consumers.

¹ Oral Statement of Commissioner Christine S. Wilson, FTC, Before the Committee on Commerce, Science, and Transportation (Nov. 27, 2018), https://www.ftc.gov/system/files/documents/public_statements/1423835/p180101_commission_testimony_ghs_senate_11272018_0.pdf

² During the Trump administration, my Democrat colleagues regularly dismissed the investigations and recommendations of staff. See Remarks of Christine S. Wilson, Commissioner, Fed. Trade Commission, at the Mercatus Antitrust Forum: One Year of Biden Antitrust, Governing is Hard: Antitrust Enforcement in the First Year of the Biden Administration (Jan 26, 2022), https://www.ftc.gov/system/files/documents/public_statements/1600479/governing_is_hard_antitrust_enforcement_the_first_year_of_the_biden_administration_012622.pdf. See, e.g., Dissenting Statement of Commissioner R(ou)p(s)2.5 g1i,2U0

³ Statement of the Commission on Use of Prior Approval Provisions in Merger Orders (Oct. 25, 2021), https://www.ftc.gov/system/files/documents/public_statements/1597894/p859900priorapprovalstatement.pdf
Statement of Chair Lina M. Khan Joined by Commissioner Rohit Chopra and Commissioner Rebecca Kelly Slaughter on the Withdrawal of the Statement of Enforcement Principles Regarding Methods of Competition Under Section 5 of the FTC Act (July 1, 2021), https://www.ftc.gov/system/files/documents/public_statements/1591498/final_statement_of_chair_khan_joined_rc_and_rks_on_section_5.pdf
Statement of Chair Lina M. Khan, Commissioner Rohit Chopra, and Commissioner Rebecca Kelly Slaughter on the Withdrawal of the Vertical Merger Guidelines, File No. P810034 (September 15, 2021), https://www.ftc.gov/system/files/documents/public_statements/1596396/statement_of_chair_lina_m_khan_commissioner_rohit_chopra_and_commissioner_rebecca_kelly_slaughter_on.pdf

⁴ See Oral Remarks of Commissioner Christine S. Wilson, Open Commission Meeting on Dec. 16, 2021, Advance Notice of Proposed Rulemaking to Combat Government and Business Impersonation Fraud (Dec. 16, 2021) (discussing the planned B-Palooza); FED. TRADE COMMN, Semiannual Regulatory Agenda (Dec. 10, 2021), <https://www.reginfo.gov/public/jsp/eAgenda/StaticContent/202110/PreambleFEDTRADETC.pdf>
COMM N Statement of Regulatory Priorities (Dec. 10, 2021), <https://www.reginfo.gov/public/jsp/eAgenda/StaticContent/202110/StatementFEDTRADETC.pdf>

