

Dissenting Statement of Commissioner Christine S. Wilson

*Notice of Penalty Offenses Concerning Substantiation of Product Claims*

March 31, 2023

The Commission has voted to issue a Notice of Penalty Offenses Concerning Substantiation of Product Claims.<sup>1</sup> This vote closed on March 31, 2023, the day my tenure on the Commission concluded. This Notice is prompted by the fact that our remedial authority is limited. The Commission cannot obtain civil penalties for first-time violations of Section 5 of the FTC Act, and the Supreme Court's decision in *AMG* ended the Commission's use of Section 13(b) to obtain equitable monetary relief.<sup>2</sup> I applaud staff's efforts to use every tool in the FTC's toolbox to obtain monetary relief for consumers subjected to unlawful conduct, and I support the Commission's ability to seek equitable monetary relief *in appropriate cases*

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establish that the conduct is subject to civil penalties, the Commission must demonstrate that the conduct of the proposed defendant is sufficiently similar to the litigated cases cited in the Notice. This showing will prove to be far more complex and uncertain for substantiation cases than for other areas in which Notices have been issued recently. Indeed, I anticipate that relatively few cases in this topic area will result in civil penalties. But identifying recipients, transmitting the Notices, and monitoring firms' conduct will consume significant resources.

I would note, however, that