



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

Office of Commissioner
 Andrew N. Ferguson

Statement of Commissioner Andrew N Ferguson
 Concurring in Part and Concurring in the Decision
 Commission Decision Regarding Section 5(B) Modification Authority
 In the Matter of Facebook, Inc.
 Docket Number C-4365

January 1 , 2025

Today the Commission issued a decision rejecting various arguments that Meta Platforms, Inc. (previously known as Facebook, Inc.) raised against the Commission Order to Show Cause Why the Commission Should Not Modify the Order and Enter the Proposed New Order.

but I think the decision's analysis of this argument misses the mark.

"Enforcement" of an order involves some process for compelling a party subject to an order to conform its conduct to the requirements of the order. Meta is correct that "enforcement" of Commission orders is reserved to the judiciary. Only the judiciary can issue an injunction compelling the subject of an order to comply with the order, or civil penalties or consumer redress for failing to obey the order. Modification of an order even when the basis for that modification rests in part on violations of the order, is not enforcement of that order in any meaningful sense. Modifying an order does nothing to compel the party to comply with that order. The Commission's loose use of the word "enforcement" to describe order modification has created considerable confusion and given rise to Meta's argument that the Order to Show Cause is an illegal attempt at "enforcement." Order modification is not enforcement. The Commission's use of the word to describe it was a mistake. We ought not to repeat it. But the Commission's misuse of the English language does not transform order modification into enforcement. Order modification cannot compel compliance with an order; it therefore is not enforcement of that order no matter what label the Commission has attached to it. I therefore concur in the decision's rejection of Meta's argument to the contrary.

¹ In re Facebook, Inc., Dkt. No. G4365 (May 3, 2023)

² 15 U.S.C. §45(b).

³ Enforcement Black's Law Dictionary (12th ed. 2024) ("The act or process of compelling compliance with a law, mandate, command, decree, or agreement; specif., the forcible or compulsory exaction of some duty, such as making a payment, honoring a promise, or otherwise meeting a responsibility").

⁴ See 15 U.S.C. §5(c)-(e), (l)-(m); id. § 57b(a)(2).