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The National Advertising Division Annual Conference 2022 The Next Era of Ad Law

Remarks of Samuel Levine
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for consumers throug

² It is difficult to overstate the impact this has had. For decades, the Bureau of Consumer Protection had relied on Section 13b)in the overwhelming majority of its cases. In fact, in the four years before AMG was decided, the Commission used the authority to return more than \$11 billion to consumers.³

AMG dealt a devastating blow to our ability to protect the public, and the decision marked a real inflection point. I'm sure that many expected – and perhaps some hoped – that we would retreat from our mission. That we would stop seeking redress in our cases. That we would settle for injunctions against further lawbreaking, and wait on Congress to restore our authometrum money to consumers who've been harr easy. Alternative paths to monetary relief can be slower and more challenging absolutely urgent that Congress restore our authority. But when we pursue a call inadequate relief, even if it means needing to invest greater resources – and tall we did when we could seek monetary relief under 13(b).

Importantly, as we inventory our tools to ensure we can continue delive

¹ I wish to thank Katherine Worthman for her substantial assistance in preparing these remarks. The views expressed here are my own and do not necessarily represent the views of the Federal Trade Commission or any Commissioner.

² AMG Capital Management, LLC v. FTC, 141 S. Ct. 1341 (2021).

³ See FTC Refunds to Consumers, Refunds by date, Fiscal Years 2017-2020, available at https://public.tableau.com/app/profile/federal.trade.commission/viz/Refunds_15797958402020/RefundsbyCase.

we're not just playing defense. We are undertaking a broader strategic pivot to ensure that we are deterring misconduct market-wide, providing clear rules of the road for industry, and seeking remedies that fix incentives and protect consumers going forward. And we are doing so not only by seeking significant monetary relief but also by securing strong injunctive relief to prevent future unlawful behavior.

Our strategy rests on three pillars. First, we are focusing our enforcement resources on the actors who are causing the most harm to consumers. Second, in pursuing these actors, we are seeking strong relief that not only brings them into compliance with the law but ensures that consumers are protected going forward. And third, when we identify broader problems in the market that are not being remedied through case-by-case enforcement alone, we are deploying additional tools to protect the public.

Today I'll discuss how we're applying this strategy in two key priority areas for the Commission: protecting consumers' pocketbooks in a challenging economy, and curbing unlawful commercial surveillance. I'll then spend a few minutes talking about national advertising in particular,

Walmart, ⁵	
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student borrowers, including by brit	nging a lawsuit against St. James Medica	l School, ¹⁶
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consumers in this space. Last year, we served Notices of Penalty Offenses on more than 800 recipients, making clear that they can face civil penalties for false earnings claims.³⁰ Earlier this year, we launched an Earnings Claims rulemaking, and we've received over a thousand comments from consumers who have suffered as a result of false claims.³¹ And just last week, the Commission voted out a Policy Statement on Enforcement Related to Gig Work,³² which affirmed the Commission's commitment to using its authority to protect gig workers when law violations occur – a commitment reflected in our recent lawsuits against HomeAdvisor³³ and Amazon Flex.³⁴

Another area where we're pursuing market-wide initiatives is around hidden fees and charges, which can hit consumers without their consent. Last year, the Commission issued a Policy Statement on Negative Option Marketing, which made clear, among other things, that companies should make it as easy for consumers to cancel services as it is to enroll.³⁵ Our actions against Raging Bull, Benefytt, First American, and Frontier make clear that we are following up. In addition, leveraging never-before-used authority under Dodd-Frank, we recently proposed a comprehensive rule to protect consumers from junk fees and other abuses when purchasing cars.

	
	
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indefinitely retained their sensitive data in violation of COPPA.⁴³ And we brought an order enforcement action against Twitter, which we charged with deceptively using consumers' phone numbers collected for security purposes to serve targeted advertising. 44 As notable as the cases we've brought are the remedies we are s

from our critical work, ad is in fact redoubling our efforts—inoughing cases of consequence, seeking cutting-edge remedies, and pursuimarketwide initiatives to prect the public. I am proud of our successes to date, and want to sinoughetwo groups in particular that weamade them possible. First, so many of our cases were built and prosecuted in partipewoith the Department of Justice and with state enforcers, who are on the frontex of fighting for consumers. As second, and most importantly, none of our victories would be possible without outrex ordinary BCP staff. Our attorneys, consumer education specialists, data alysts, investigators aralegals, and technologists play different roles throughout the Bureau, but they share a deep committed our mission that is nrivaled anywhere in the government. It is thanks to the hat I am confident that the commit year will bring more victories for consumers, and a more fair market for us all.

Thank you again for having me. I'mappy to take your questions.