

- x Jurisdiction over non-profits and common carriers, which collect significant volumes of sensitive information; and
- x Targeted APA rulemaking authority so that the FTC can enact rules both to supplement legislation and to permit adjustments in response to technological developments.

Finally, and on a related note, I also encourage Congress to enact data security and data breach notification legislation.

Section 13(b) of the FTC Act

The second area where Congress could provide assistance is through a clarification of the FTC's authority under Section 13(b) of our statute.² Decades of cases have established two key principles. First, the FTC may bring actions in federal district court to obtain injunctive relief. Second, the authority to grant injunctive relief confers upon courts the full panoply of equitable remedies, including equitable monetary relief.³

Our ability to protect consumers relies heavily on this authority. For decades, the FTC has used Section 13(b) to halt unfair and deceptive practices that have caused billions of dollars

² 15 U.S.C. § 53(b).

³ See *FTC v. Commerce Planet, Inc.*, 815 F.3d 593, 598 (9th Cir. 2016); *FTC v. Ross*, 743 F.3d 886, 890-892 (4th Cir. 2014); *FTC v. Bronson Partners, LLC*, 654 F.3d 359, 365 (2d Cir. 2011); *FTC v. Direct Mktg. Concepts, Inc.*, 624 F.3d 1, 15 (1st Cir. 2010); *FTC v. Freecom Commc'ns, Inc.*, 401 F.3d 1192, 1202 n.6 (10th Cir. 2005); *FTC v. Gem Merch. Corp.*, 87 F.3d 466, 468-470 (11th Cir. 1996); *FTC v. Sec. Rare Coin & Bullion Corp.*, 931 F.2d 1312, 1316 (8th Cir. 1991); *FTC v. Amy Travel Serv., Inc.*, 875 F.2d 564, 571-572 (7th Cir. 1989); *FTC v. H. N. Singer, Inc.*, 668 F.2d 1107, 1113 (9th Cir. 1982).

in consumer injury. In 2018 alone, consumers received over \$1.6 billion in redress stemming from FTC enforcement actions.⁴

In 1994, Congress expressly affirmed that Section 13(b) authorizes the FTC to file suit to enjoin any violation of laws enforced by the FTC, to seek *ex parte* relief (including asset freezes), and

gives courts the authority to grant the full range of equitable relief.⁸ We believe this interpretation more accurately reflects Congressional intent.

For these reasons, I urge Congress to clarify Section 13(b) of the FTC Act.

REMs

The third area where I believe legislation would be beneficial concerns abuses of Risk Evaluation and Mitigation Strategies, or “REMS,” in the pharmaceutical industry. Concerns arise when branded pharmaceutical manufacturers subvert laws and regulations designed to protect consumer health and safety and instead use them to protect themselves from competition. I am grateful that members of the Committee share these concerns and have approved legislation to preserve competition in this important area of our economy.

Conclusion

In closing, the FTC would welcome the opportunity to provide technical assistance to Congress on these legislative issues. Thank you for your assistance in strengthening the FTC’s ability to fulfill its mission.

I am happy to answer any questions you may have.