

IN THE SUPREME COURT OF THE UNITED STATES

No.

FEDERAL TRADE COMMISSION

v.

CREDIT BUREAU CENTER, LLC

APPLICATION FOR AN EXTENSION OF TIME
WITHIN WHICH TO FILE A PETITION FOR A WRIT OF
CERTIORARI FROM A JUDGMENT BY THE UNITED STATES
COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Pursuant to Rules 13.5 and 30.3 of the Rules of this Court, the Appellants, Credit Bureau Center and Michael Brown (“CBC” or “Brown”)) respectfully requests a 60-day extension of time, to and including January 18, 2019, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit in this case. The court of appeals entered its judgment, accompanied by a denial of rehearing en banc, on August 21, 2019. The time within which to file a petition for a writ of certiorari is therefore currently set to expire on November 19, 2019. The jurisdiction

of this Court would be invoked under 28 U.S.C. 1254(1). The opinion of the court of appeals (App., *infra*, 1a-66a) is reported at 937 F.3d 764.

1. This case concerns the scope of Section 13(b) of the Federal Trade Commission Act (FTC Act), 15 U.S.C. 53(b).

a. Section 53(b), in pertinent part, authorizes the FTC, “pending the issuance of a complaint by the Commission and until the complaint is dismissed (or otherwise resolved) by the Commission”, the Commission may bring suit to seek temporary restraining orders, preliminary injunctions and, in proper cases, permanent injunctions for violations of statutes enforced by the FTC, including Section 5(a) of the FTC Act, which prohibits “unfair methods of competition” and “unfair or deceptive acts or practices,” 15 U.S.C. 45(a). Section 53(b). Section also provides “That if a complaint is not filed within such period (not exceeding 20 days) as may be specified by the court after issuance of [injunctive relief], the order or injunction shall be dissolved by the court and be of no further force and effect....”

b. Defendants CBC and Michael Brown operated websites designed for one of many affiliate companies that referred consumers seeking rental homes. The affiliates would receive a referral fee for each consumer

directed to CBC's website. The affiliate, Danny Pierce and his associate Andrew Lloyd, however, concocted a scheme where he and Lloyd stole real MLS Listings and misled consumers to contact them seeking rental homes. Pierce and Lloyd told them that they had to get a credit report to inspect or rent the Home. Consumers contacted CBC's site and enrolled in a membership that provided credit reports and ongoing credit monitoring.

c. The FTC sued Brown and his company under Section 53(b) and sought a temporary and preliminary injunctive relief and a permanent injunction against future violations and "equitable monetary relief." The district court issued a temporary restraining order, followed by a preliminary injunction. However, the FTC did not file a complaint seeking relief under Section 45 of the Act and the Court did not dissolve the injunctions entered. The trial court granted the FTC's motion for summary judgment and entered a permanent injunction, which included a \$5.2 million restitution award. See 325 F. Supp.3d 852, 867, 869-870 (N.D. Ill. 2018).

d. The circuit court reversed the trial court's award of "equitable monetary relief" based on the text of statute, which authorizes only

restraining orders and injunctions, but did not provide for imposition of monetary damages. The Court further held that the elaborate enforcement mechanisms of the Act did not implicitly authorize other remedies. 937 F.3d 756 citing *See Meghrig v. KFC W., Inc.*, 516 U.S. 479, 487–88, 116 S. Ct. 1251, 134 L.Ed.2d 121 (1996).

e. The circuit court also noted that Section 13(b) was procedurally incompatible with Section 57b of the Act in that there was no statute of limitations and required the Commission bring an administrative cease-and-desist action where it could secure restitution only by proving that the violation occurred after its order became final or that a reasonable man would have known that the alleged conduct was fraudulent. 937 F.3d at 783-784.

f. The circuit rejected Appellant's argument that the FTC must file an administrative complaint if it seeks a TRO, preliminary injunction and a permanent injunction affirming prior circuit precedent, *United States v. JS&A Grp.*, 716 F.3d 451, 456-7 (7th Cir. 1983). In *Federal Trade Commission v. Shire ViroPharma, Inc.* 917 F.3d 147 (3d Cir. 2019), the circuit court concluded that Section 13(b) was expected to be used for obtaining injunctions against illegal conduct pending completion of FTC

administrative hearings. *Id.* at 156. Appellant contends that the FTC's failure to file administrative hearings violates Congressional intent, as expressed in the plain language of the statute which requires filing of a complaint until the Commission dismisses or otherwise resolves the complaint. Entry of the permanent injunction should be reversed.

g. The circuit court upheld an injunction with an industry ban and limitations that are overly broad and punitive in nature. Neither the trial court nor the FTC cited any cases setting out factors to be considered and weighed by the court in imposing a lifetime ban. In *Sec. & Exch. Comm'n v. Gentile*, No. CV 16-1619 (JLL), 2017 WL 6371301 (D.N.J. Dec. 13, 2017) the court found that an "obey the law" injunction and industry bar requested by the SEC were punitive "noncompensatory sanctions" based on the rationale of *Kokesh v. United States*, __U.S. __, and that the bar requested would not "restore any 'status quo ante.'" *See Saad v. S.E.C.*, 718 F.3d 904, 913 (D.C. Cir. 2013) (purpose of a lifetime bar must be remedial, not penal); *see also PAZ Sec., Inc. v. SEC*, 566 F.3d 1172,

1176 (D.C. Cir. 2009)(lifetime bans must be remedial and not “excessive or oppressive”).¹

2. Appellant’s counsel is still evaluating whether to file a petition for writ of certiorari but has been hampered by a busy litigation and trial schedule. The Cochell Law Firm is a small firm practice comprised of two lawyers, the undersigned counsel and Jonathan Slotter, a fourth year associate. Counsel has an active practice that has grown in the last several months, including entry of an appearance *pro hac vice* in a complex case in Orange County, *FTC v. Elegant Solutions, Inc.* 8:19-cv-01333-JVS (C.D. Cal.) and consulting on other FTC matters. Counsel is actively engaged in two significant personal injury claims, *Singleton v.*

¹ In cases where a lifetime ban has been imposed, a lifetime bar has been reserved to cases where the evidence overwhelmingly showed that the defendant was the leader and implemented the scheme. *See e.g. FTC v. Think Achievement Corp*, 144 F. Supp. 2d 1013 (N.D. Ind. 2000); *see also Commerce Planet*, 878 F.Supp.2d at 1086. *Id.* Before this case, Brown had no history of violations. Brown’s alleged misconduct related only to Pierce and did not show a pattern of conduct supporting this sanction. In the instant case, the Court should also consider the sanctions imposed against co-defendants. There was no evidence that Brown conceived of or designed Pierce and Lloyd’s scheme. Indeed, Pierce and Lloyd received extremely favorable treatment compared to Brown, and they concocted the fraudulent scheme that led consumers to CBC! The Court required Brown to obtain agreements from any future affiliates to agree to substantial disclosure requirements about their businesses and consent to comply fully with the Court’s order. This provision, standing alone, prevents Brown from participating in any business using marketing affiliates, a widespread practice in the internet marketing industry.

State Farm, 2019-23475 (113th District Court, Harris County) and *Oyefeso v. Brixmor* 2019-55963 (80th District Court, Harris County) as well as landlord tenant matters in litigation, *Pearl Chan Lee v. Alvani Investments*, 2018-44212 (281st District Court, Harris County) (trial set January 6, 2019); a complex commercial dispute over the sale of jewelry imported from India, *Chandra Corporation v. Atashi Jewelry, Inc.*, 18 DCV-250844 (458th District Court, Fort Bend County), a complex custody dispute, *Stefanides v. Stefanides*, 2012-04758 (310th District Court, Harris County), a custody dispute, *In re Harley Jae Sanchez*, 15-DCV-226198 (505th District Court, Fort Bend) and *Amelia Colvin v. Deutsche Bank Trust Company*, Case 67142 (239th District Court, Brazoria County, a complex foreclosure case that is pending summary judgment motions) and *George Barforough v. American Banker's Insurance Company of Florida*, Case No. 4:18-cv-04569 (S.D. Tex.) (summary judgment briefing ongoing), collective action under the FLSA, *Aliakber Mustakali Momin v. Miahmood Miahmed*, Case No. 4:19-cv-01897 (S.D. Tex) (briefing due November 15, 2019 re motion for collective action). Many of our clients have disputes with their landlords or have commercial disputes with partners that cannot be disclosed but are time consuming.

The *Chandra Corporation, Oyefeso, Barforough and Stefanides* cases have been extremely active the last several months. We are about to file additional pleadings in *Sanchez* and defend depositions in *Oyefeso* on November 18, 2019 with contested hearings for enforcement (contempt) on December 4, 2019, summary judgment on December 11, 2019 and mediation on December 19, 2019 in *Stefanides*. Counsel recognizes his obligation to prepare a thorough petition and anticipates working over weekends this month and the Thanksgiving or Christmas holiday to complete a petition for certiorari that will assist the Court in its consideration of the case.

For the foregoing reasons and good cause shown, Applicants request the Court grant this Application for an extension of time (60 days) to file a petition for writ of certiorari.

Respectfully submitted,

By: /s/ Stephen R. Cochell

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Applicants' Application for an Extension of time Within which to File a Petition for a writ of Certiorari from a Judgment by the United States Court of Appeals for the Seventh Circuit by first class mail and email to:

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