

17-204 APPLE INC. V. PEPPER

DECISION BELOW: 846 F.3d 313

LOWER COURT CASE NUMBER: 14-15000

QUESTION PRESENTED:

Illinois Brick Co. v. Illinois, 431 U.S. 720 (1977) and its progeny hold that the damages remedy in antitrust disputes belongs only to the immediate victims of the anticompetitive conduct ("direct purchasers"), and not to downstream parties claiming "pass-through" damages ("indirect purchasers"). Electronic marketplaces such as Apple's App Store present a new wrinkle on this doctrine, because the marketplace sponsor (*e.g.*, Apple) interacts with and delivers goods "directly" to consumers, but as an agent on behalf of third party sellers.

The district court dismissed this action under *Illinois Brick*, holding that consumer plaintiffs alleging monopolization of distribution services Apple provides to app developers were necessarily seeking pass-through damages. The Ninth Circuit reversed, holding-in an acknowledged split with the Eighth Circuit-that consumers can sue whoever delivers goods to them, even if they seek pass-through damages.

The question presented is:

Whether consumers may sue for antitrust damages anyone who delivers goods to them, even where they seek damages based on prices set by third parties who would be the immediate victims of the alleged offense.

CERT. GRANTED 6/18/2018