

FTC Embarks on Rulemaking to Address Impersonation Fraud

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By: Elizabeth Avunjian

On December 16, 2021, the Federal Trade Commission (FTC) initiated a rulemaking to address government and business impersonation fraud, which involves “[i]mpersonators us[ing] all methods of communication to trick their targets into trusting that they are the government or an established business and then trad[ing] on this trust to steal their identity or money.”^[1] While such fraud is not a novel concern, the pandemic has resulted in a sharp spike in cases, with reported costs to consumers increasing 85% year-over-year and \$2 billion in total losses between October 2020 and September 2021.^[2]

The FTC stated that it is “prepared to use every tool in [its] toolbox to deter government business impersonation fraud, penalize wrongdoers, and return money to those harmed.”^[3] Indeed, the FTC’s Advance Notice of Proposed Rulemaking, the first rulemaking initiated under the FTC’s streamlined rulemaking procedures, notes that an “impersonator rule that builds on the existing sector- and method-specific rules could more comprehensively outlaw government and business impersonation fraud.”^[4] Though the FTC has previously addressed such schemes through law enforcement actions, the Supreme Court’s recent decision in *AMG Cap. Mgmt., LLC v. FTC*, 141 S. Ct. 1341, 1352 (2021) has limited the FTC’s remedial options for actions brought pursuant to its statutory authority.^[5]

The FTC is soliciting public comments for a period of 60 days after publication in the Federal Register regarding “the prevalence” of impersonation schemes, “the costs and benefits of a rule that would address them, and alternative or additional action to such a rulemaking.” If public comments evidence the need for a trade regulation rule, the next step will be for the FTC to issue a notice of proposed rulemaking.

[1] “FTC Launches Rulemaking to Combat Sharp Spike in Impersonation Fraud”, December 16, 2021, *available*.

[2] *Id.*

[3] *Id.*

[4] Advance Notice of Proposed Rulemaking, at 10.

[5] Advance Notice of Proposed Rulemaking, at 7, n. 24 (citing *AMG Cap. Mgmt., LLC v. FTC*, 141 S. Ct. 1341, 1352 (2021) to explain that “The U.S. Supreme Court recently held that equitable monetary relief, including consumer redress, is not available under Section 13(b) of the FTC Act.”); *see also* “Statement by FTC Acting Chairwoman Rebecca Kelly Slaughter on the U.S. Supreme Court Ruling in *AMG Capital Management LLC v. FTC*”, April 22, 2021.

Related Attorneys

Elizabeth Avunjian

Associate

eavunjian@jenner.com

+1 213 239 5173

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