

# Back to Basics, Continued—The Federal Trade Commission flexes its muscles—or if at first you don't succeed...

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Last year, I wrote about the role of the Federal Trade Commission (FTC) in light of the newer and mightier Consumer Financial Protection Bureau (CFPB). See [here](#). Just when it seemed that the FTC's role would be diminished by the CFPB's use of its broader rule-making ability and enforcement powers, the FTC seems to have other thoughts.

First, here is some history.

The FTC was the first federal government watchdog agency, organized under the Federal Trade Commission Act of 1914. Remember where we were in our history when the FTC was organized—we had just come out of the first President Roosevelt's "trust-busting" days, Upton Sinclair was writing about the evils inflicted on workers in Chicago's slaughterhouses, and the death of 186 mostly-women in the Triangle Shirt Waste Factory fire had horrified the nation. Congress for the first time became interested in regulating child labor and other societal issues. Over the next 90 years, the FTC became the nation's conscience when it came to deterring fraud and unfair and deceptive acts and practices in commerce.

An important tool of the FTC was to file lawsuits against recalcitrant companies to force their compliance with the nation's laws, rules and regulations—particularly with respect to consumers. However, a blow was delivered to the FTC in April of this year when the U.S. Supreme Court said that the section of the FTC Act used by the FTC did not authorize it to seek monetary relief against bad actors.

However, the lawyers at the FTC were not deterred—in a classic case of "if at first you don't succeed, try, try again." What the FTC next did was to file an administrative complaint against the bad actor, and to preserve its ability to obtain a monetary judgement for injured consumers, it filed its own motion to stay its lawsuit pending a determination of the administrative complaint.

We may not have heard the last of this; and the FTC's work-around may turn out not to work.

However, it is important to note here that the CFPB has all of the power to fight unfair or deceptive acts and practices that the FTC has—and without the need to first seek administrative relief. Also, the CFPB actually has broader power since its mandate also allows it to sue bad actors for "abusive" acts and practices.

**Please Note:** This is the one hundred seventy-fourth blog in a series of *Back to Basics* blogs, in which relevant and resourceful information can be easily accessed by [clicking here](#).

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