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## WLF Asks Appeals Court to Limit FTC's Authority to Sue for Injunctive Relief

*(FTC v. Shire ViroPharma Inc.)*

**“To sue for an injunction against those it believes are engaged in unfair competition, the Federal Trade Commission must demonstrate that the defendant either is, or is about to, violate the law. The FTC is abusing its power when it seeks injunctions based solely on claims that its target violated the law in the past and might do so again at some unspecified future date.”**

**—Richard Samp, WLF Chief Counsel**

WASHINGTON, DC—Washington Legal Foundation (WLF) yesterday urged the U.S. Court of Appeals to enforce limits on the Federal Trade Commission’s (FTC) statutory authority to file lawsuits for injunctive relief against those it accuses of having engaged in unfair competition. In a brief filed in *FTC v. Shire ViroPharma Inc.*, WLF argues that Congress limited the FTC’s authority to file suit to those instances in which a defendant “is violating, or is about to violate” the Federal Trade Commission Act. WLF further argues that the about-to-violate standard requires the FTC to provide evidence of the defendant’s near-term plans.

The FTC’s lawsuit contends that a drug company filed a “sham” petition with the Food and Drug Administration for the purpose of delaying FDA approval of generic versions of its brand-name drug. But the FTC did not file its lawsuit until 2017, five years after the drug company had ceased its petitioning activity and five years after generic competition began. The FTC asserted that it satisfied the “about to violate” standard because there was a “reasonable likelihood” that the defendant—based on its past behavior and the fact that it continues to manufacture other brand-name drugs—would renew its “sham” petitioning activity. The district court disagreed and dismissed the lawsuit, ruling that the FTC Act’s “about to violate” standard requires a showing that the defendant is likely to act in the near term. The FTC appealed that ruling.

In its brief, WLF argues that the proper procedure, when the FTC concludes that a business may have violated the FTC Act, is to initiate administrative proceedings. If, at the end of those proceedings, the FTC finds against the company, it may issue a cease-and-desist order to prevent future violations. WLF argues the FTC is authorized to turn immediately to federal courts for injunctive relief only when the business is currently violating or is about to violate the law; Congress granted that authority to ensure that businesses would not be able to continue with their wrongdoing during the months or years it takes to complete administrative hearings. WLF asserts that the FTC is exceeding its authority when it initiates court proceedings for injunctive relief when (as here) it lacks evidence that future violations are imminent.

*Celebrating its 41st year, WLF is America’s premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.*