



Office of Commissioner
Rohit Chopra

UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

**STATEMENT OF
COMMISSIONER ROHIT CHOPRA**
In the Matter of Reckitt Benckiser Group, plc
Commission File No. 1310036
July 11, 2019

Summary

- When corporations engage in deceptive schemes, this harms both consumers and undermines fair competition. In competition cases, asserting claims of unfairness or deception can open up additional measures to remedy wrongdoing under Section 19.¹
- This matter is noteworthy for confronting an illegal product-hopping scheme, one of the many ways pharmaceutical companies abuse the exclusive sales rights and patent monopolies granted by the public.

Abusing Patients Suffering from the Opioid Epidemic

Nearly every eight minutes, an American dies of a drug overdose. While the opioid crisis has wreaked havoc on the lives of individuals, families, and communities across the country, law-breaking pharmaceutical companies and their executives have profited handsomely off taxpayers and those suffering from addiction.

Today, the Federal Trade Commission has taken action against the maker of an opioid addiction therapy drug for abusing its exclusive sales rights granted by the public.² The challenged conduct involved a scheme to reformulate the drug and trick doctors into prescribing the new version to keep cheaper, generic substitutes of the original formulation out of the market as much as possible and preserve its monopoly profits. “Product hopping” or “evergreening” is just one of many ways that bad actors in the pharmaceutical industry can illegally abuse patients and taxpayers. This is the first time the FTC is challenging this type of conduct.

The facts here are particularly egregious. Reckitt Benckiser Pharmaceuticals (now known as Indivior), the former subsidiary of Reckitt Benckiser Group plc (“RB Group”), sold the lucrative opioid addiction therapy drug Suboxone in the United States.³ Suboxone was given exclusivity protection by the Food and Drug Administration (“FDA”) for a period of time. When RB Group

¹ In matters involving anticompetitive conduct, the Commission typically relies on Section 13(b) of the FTC Act to seek monetary relief. However, Section 19 of the FTC Act authorizes the Commission to obtain a broader set of monetary remedies, including damages, under certain circumstances.

² The matter was resolved contemporaneously with other agencies, including the Department of Justice. I take no position on the resolution of claims outside of the FTC’s complaint.

³ Suboxone has become a mainstay of opioid addiction treatment, with annual sales reaching more than \$800 million.

saw that it would soon face generic competition, the company, with and through Indivior, executed an anticompetitive and fraudulent scheme to preserve its Suboxone monopoly profits.

The scheme included a campaign of false and misleading statements to induce doctors and patients to switch from the tablet form of Suboxone, which was subject to impending generic entry, to a new formulation with extensive patent protection.⁴ In particular, the scheme involved, lying to doctors by claiming that the tablets were more likely to harm children. The scheme was successful: lower-cost generic competition to Suboxone tablets was blocked and patients ended up paying more for the reformulated product than they would have for generic Suboxone tablets.

Securing Relief under Section 19

I support the FTC's complaint, which includes a count of monopolization, but I would have preferred to include an additional count alleging deception. Here, the scheme of making false claims about patient safety was also deceptive, in violation of the FTC Act's prohibition against unfair and deceptive acts or practices.⁵ The conduct at hand occurred years ago. But, if the deception here involving substance use disorder treatment occurred today, it would be treated as a rule violation, pursuant to the SUPPORT Act,⁶ which was recently enacted to address the opioid crisis. Rule violations expose violators to civil penalties and allow the FTC to seek additional relief under Section 19 of the FTC Act,⁷ including the payment of damages, which goes beyond what is available under Section 13(b) of the FTC Act.⁸

The Commission must be mindful that the FTC Act's ban on unfair or deceptive acts or practices is not only about consumer protection, but is also a critical law to safeguard competition in our markets. Cheating is not competing. When a company deceives customers to scare them away from new entrants, or lies about a product's attributes, this puts honest businesses at an unfair disadvantage.

More broadly, the FTC should always assert claims of unfairness or deception in competition cases when the evidence suggests a violation. When a bad actor engages in unfair or deceptive acts or practices, this can distort competition just as much as traditional forms of anticompetitive conduct. For example, many competition cases pursued by the FTC may involve deception to competitors, customers, workers, suppliers, standard-setting organizations, and other parties. Including claims of unfairness or deception opens up the possibility of new remedies under Section 19.

The public is expecting that the Commission crack down on anticompetitive abuses, especially in the pharmaceutical and technology industries. We should use all of our tools to do so.

⁴ The campaign was based on a fraudulent claim that the tablets had a higher risk of child exposure than the new formulation. The same false safety story was used in a citizen petition to the FDA.

⁵ 15 U.S.C. § 45(a).

⁶ SUPPORT for Patients and Communities Act, Pub. L. No. 115-271, 132 Stat. 3894 (2018).

⁷ Section 19 of the FTC Act also authorizes the Commission to seek this additional relief in a district court action from a person who is subject to a final Commission order involving an unfair or deceptive act or practice, if a "reasonable man" would have known that the act or practice was dishonest or fraudulent. 15 U.S.C. § 57b. Firms that engage in conduct meeting this standard should be aware that the Commission can seek substantial remedies without relying on Section 13(b).

⁸ 15 U.S.C. § 53(b).