

Article III Judge Required: Deceptive Advertising Just Got Harder (and More Public) for the FTC to Litigate

March 25, 2026

On March 20, 2026, the U.S. Court of Appeals for the Fifth Circuit issued a sweeping **decision** that significantly constrains how the Federal Trade Commission may pursue deceptive advertising claims. In *Intuit, Inc. v. FTC*, the court vacated a broad cease-and-desist order arising from Intuit’s “TurboTax Free” advertising, holding that **Section 5 deceptive advertising claims must be adjudicated in Article III federal courts and not before FTC administrative law judges**. The decision builds directly on the Supreme Court’s 2024 ruling in *SEC v. Jarkesy* and has the potential to reshape the FTC’s enforcement playbook.

The Fifth Circuit concluded that deceptive advertising claims under Section 5 of the FTC Act involve “private rights.” As a result, the court held that the Constitution requires such claims to be resolved by independent federal courts rather than through agency-run adjudications. The court therefore vacated the FTC’s cease-and-desist order and remanded the matter to the FTC to proceed, if at all, in federal court. The court did not hold that Intuit’s advertising was lawful; instead, it ruled that the forum the FTC selected was unconstitutional for this category of claims.

The Fifth Circuit’s decision in *Intuit v. FTC* builds directly on *SEC v. Jarkesy* by applying the Supreme Court’s private-rights framework to FTC deceptive advertising enforcement. Just as *Jarkesy* rejected the SEC’s use of in-house proceedings for securities-fraud actions because they involve “private rights” and mirror common-law claims historically tried in court, the Fifth Circuit in *Intuit* concluded that Section 5 deceptive advertising claims likewise involve private rights that must be resolved in Article III courts. The Fifth Circuit rejected the argument that serving the public interest justifies administrative adjudication and extended *Jarkesy*’s reasoning beyond civil penalties to equitable relief, signaling a broader constitutional shift toward court-based adjudication of traditional enforcement claims.

Practical Takeaways

Does this decision mean the FTC can no longer enforce deceptive advertising laws?

No. The FTC retains full authority to police deceptive advertising under Section 5 of the FTC Act. The decision affects *how* the FTC may bring those cases, not *whether* it can bring them. Deceptive advertising claims must now be litigated in federal court rather than decided by the FTC’s in-house administrative judges.

Does this make it easier to advertise products as “free”?

No. The legal standards governing “free” claims have not changed. Advertising claims must still be truthful, not misleading, and supported by clear and conspicuous disclosures where required. The decision does not relax substantive advertising rules. It changes the forum where disputes will be resolved.

Will this apply nationwide?

For now, the decision is binding only within the Fifth Circuit (Texas, Louisiana, and Mississippi). That said, because the ruling is grounded in Supreme Court precedent (*SEC v. Jarkesy*), it may influence courts in other jurisdictions and affect the FTC’s national enforcement strategy.

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If the FTC investigates us, can it still use administrative proceedings?

For deceptive advertising claims, the Fifth Circuit held that administrative adjudication is unconstitutional. As a practical matter, the FTC may increasingly bring advertising cases directly in federal court, particularly where respondents raise constitutional objections to agency proceedings.

Does this affect ongoing or past FTC orders?

The decision does not automatically invalidate existing FTC orders. But companies currently subject to administrative proceedings, or those considering settlement, may reassess their procedural options and defenses in light of this ruling.

Will FTC cases now be harder for the agency to win?

Federal court litigation generally involves higher procedural rigor, more robust discovery, greater judicial scrutiny of evidence and remedies, and broader appellate review than administrative proceedings. The process may be more resource-intensive and less predictable than administrative adjudication.

What does this mean for marketing and compliance teams right now?

Marketing and compliance teams should not change day-to-day practices based on this decision alone. Instead, they should continue to focus on substantiation, clear disclosures, and consumer-focused messaging, while understanding that enforcement disputes are more likely to play out in a public court rather than before an agency tribunal.

We are closely monitoring how the FTC adjusts its enforcement strategy in response to this decision and whether other courts adopt similar reasoning. If you have questions about how this ruling may affect your advertising practices, compliance programs, or litigation posture, please contact your Miller Canfield attorney or one of the authors of this alert.