FTC Developments Impacting Healthcare Enforcement and False Advertising Challenges

March 31, 2026

Against a backdrop of shifting enforcement priorities and renewed scrutiny of the agency's authority, two recent developments signal a potentially consequential moment for the Federal Trade Commission (the "FTC"). On March 20, 2026, FTC Chairman Andrew N. Ferguson issued a memorandum directing staff to form a Healthcare Task Force (the "Task Force") to take a "coordinated, integrated approach to healthcare enforcement and advocacy."[1]

The creation of the Task Force underscores the FTC's continued focus on the healthcare and life sciences industries, consistent with the Trump administration's stated goal of reducing healthcare and pharmaceutical costs. Although the FTC has already intensified its oversight of the healthcare sector in recent years, this initiative is likely to increase investigation and enforcement activity, increasing risk for healthcare and life sciences companies.

This announcement coincides with a decision by the U.S. Court of Appeals for the Fifth Circuit vacating the FTC's cease-and-desist order against Intuit, Inc. and raising questions about the constitutionality of the agency's structure (particularly in the context of FTC false advertising challenges, including those targeting healthcare and life sciences companies).[2] Taken together, these developments are likely to shape the scope of the FTC's near-term enforcement agenda.

FTC Healthcare Task Force

In his memorandum announcing the Healthcare Task Force, Chairman Ferguson directed the FTC's Bureau of Competition, Bureau of Consumer Protection, Bureau of Economics, Office of Policy Planning and Office of Technology to join together to "identify and lead targeted enforcement and advocacy initiatives focused on key

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1 Memorandum from FTC Chairman Andrew N. Ferguson, Directive Regarding Healthcare Task Force (Mar. 20, 2026).

2 *Intuit, Inc. v. FTC*, No. 24-60040 (5th Cir. Mar. 20, 2026).

priorities within the healthcare space" in coordination with the Chairman's office and the Bureau Front Offices.[3] Chairman Ferguson cited a February 2025 executive order from President Trump to justify the FTC's focus on healthcare through the Task Force.[4]

The goal of the Task Force appears to be organizational: although the FTC's focus on healthcare issues is not new, the Task Force represents a coordinated effort between the Bureau of Competition (antitrust enforcement) and Bureau of Consumer Protection (enforcement against unfair or deceptive practices, including false advertising, cybersecurity and privacy-related investigations). The Task Force will meet at least monthly and report to the Chairman on a quarterly basis. As a result, we expect investigations and enforcement related to healthcare and life sciences to increase from current levels.

Chairman Ferguson's memorandum highlighted numerous FTC initiatives and enforcement actions over the last year in the healthcare space. These examples are likely indicative of future Task Force enforcement priorities.

Matters Led by the FTC Bureau of Competition

- **Actions targeting pharmacy benefit managers ("PBMs")**: In 2024, the FTC filed an administrative complaint against the three largest PBMs. The FTC alleged the PBMs artificially inflated the list price of insulin drugs by using anticompetitive and unfair rebating practices and impaired patient access to lower list price products, ultimately shifting the cost of high insulin list prices to patients. The FTC alleged that certain rebate structures can create misaligned incentives, rewarding higher list prices rather than lower net costs. In February 2026, the FTC reached a settlement with one of the PBMs requiring enhanced transparency and changes aimed at lowering patient cost-sharing, and subsequently another PBM announced a comparable settlement on March 24, 2026. The PBM matter signals a broader enforcement priority: the FTC is increasingly targeting intermediaries and pricing mechanisms that operate behind the scenes of drug distribution, reflecting a shift from traditional price-focused scrutiny of manufacturers to a more systemic examination of how vertical relationships and financial incentives affect competition and patient costs.

- **Challenges to life sciences transactions**: The FTC has continued to scrutinize consolidation in the life sciences industry, including by challenging multiple medical device acquisitions and mergers. These actions reflect the agency's concern that

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[3] Memorandum from FTC Chairman Andrew N. Ferguson, Directive Regarding Healthcare Task Force (Mar. 20, 2026).

[4] Executive Order No. 142218, Making America Healthy Again by Empowering Patients with Clear, Accurate, and Actionable Healthcare Pricing Information (Feb. 25, 2025). *See also* Debevoise In Depth: Unpacking President Trump's New Executive Order on Prescription Drug Pricing (Apr. 24, 2025).

transactions involving innovative or emerging technologies may eliminate nascent or future competition, particularly in concentrated or highly specialized markets. More broadly, the challenges signal the FTC is prepared to intervene in strategic acquisitions involving pipeline products or complementary technologies where it perceives a risk to future innovation or reduced competitive pressure, even absent significant current market overlap.

- **Scrutiny of patent listings in FDA's Orange Book:** The FTC has intensified its scrutiny of pharmaceutical patent listings in the FDA's Approved Drug Products with Therapeutic Equivalence Evaluations (the "Orange Book"), challenging what it views as improper or overbroad listings that may delay generic and biosimilar competition. Building on a 2023 policy statement,[5] the agency issued warning letters and pursued enforcement actions targeting patents that allegedly do not meet the statutory criteria for listing. These efforts reflect the FTC's position that strategic Orange Book listings can function as barriers to entry by triggering automatic stays of Food and Drug Administration ("FDA") approval and deterring generic challengers. The agency's activity in this area signals continued willingness to police listing practices and to coordinate closely with FDA, increasing risk for manufacturers that take aggressive approaches to Orange Book filings.

Matters Led by the FTC Bureau of Consumer Protection

- **Action targeting GLP-1 weight-loss telehealth company**: In December 2025, the FTC finalized a settlement with a telehealth company offering GLP-1-based weight-loss programs, resolving allegations the company used deceptive pricing, unsubstantiated weight-loss claims and fake reviews and testimonials to market its services. The FTC alleged that advertised monthly fees did not reflect the true cost of participation, with key components—such as GLP-1 medications, lab testing and medical consultations—either excluded or inadequately disclosed, and that the company failed to disclose material terms to consumers, such as a 12-month commitment and early termination fee. The FTC also alleged that claims of significant weight loss (e.g., average loss of 53 pounds and 23% of body weight) were unsubstantiated. The case underscores the FTC's focus on telehealth and digital health platforms, particularly in the context of rapidly growing demand for GLP-1 therapies, and highlights the agency's expectation of clear, non-misleading advertising and transparent billing practices.

- **Health data privacy enforcement**: The FTC has brought a series of enforcement actions against digital health and telehealth platforms for allegedly sharing sensitive consumer health information with third-party advertisers despite representations to

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[5] Federal Trade Commission Statement Concerning Brand Drug Manufacturers' Improper Listing of Patents in the Orange Book (Sept. 14, 2023).

the contrary. These matters have involved disclosures of data related to prescription use, mental health services and other highly sensitive information, often through tracking technologies and advertising integrations. The resulting settlements have imposed restrictions on the use of health data for advertising, required comprehensive privacy programs and, in some cases, included civil penalties and consumer redress. Collectively, these actions demonstrate the FTC's expansive approach to health privacy and its focus on ensuring that companies' data practices align with their representations to consumers.[6]

- **Challenges to deceptive health insurance marketing practices**: The FTC has prioritized enforcement against deceptive marketing of health insurance, particularly involving limited-benefit products marketed as comprehensive insurance. In 2025, the FTC obtained $145 million in consumer redress from companies alleged to have misled millions of consumers seeking health insurance into purchasing indemnity, telemedicine and health discount plans. In a separate January 2026 action, the FTC secured a temporary restraining order halting an alleged telemarketing scheme that caused tens of millions of dollars in consumer harm through the deceptive promotion of health plans. These matters reflect the agency's ongoing focus on lead generation, telemarketing practices and digital marketing in the health insurance space, as well as its willingness to address conduct that misrepresents the nature or scope of coverage.

Key Takeaways for Healthcare and Life Sciences Companies

Due to the establishment of the dedicated Healthcare Task Force at the FTC, healthcare and life sciences companies should expect heightened scrutiny of their marketing and business practices. To mitigate risk, companies should consider the following:

- **Substantiate health-related claims**: Ensure all efficacy, safety and comparative claims comply are supported by "competent and reliable scientific evidence" (and generally comply with the FTC's Health Products Compliance Guidance).[7] As a general rule, claims about the health benefits of drugs, devices and other health-related products require substantiation in the form of "competent and reliable scientific evidence," typically through randomized, controlled clinical trials. Apply heightened caution to weight-loss, disease-related and emerging therapy claims (including GLP-1-related marketing).[8]

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6 See Debevoise In Depth: Federal Trade Commission Finalizes Updates to the Health Breach Notification Rule (May 20, 2024).

7 FTC, Health Products Compliance Guidance (Dec. 2022).

8 The truth and accuracy of claims may also be challenged before the BBB National Programs' National Advertising Division (the "NAD"), the U.S. advertising industry's self-regulatory body. The NAD assesses

- **Account for FTC Notices of Penalty Offense**: Review marketing and promotional practices in light of the FTC's Notices of Penalty Offense, which purportedly put companies on formal notice of conduct the agency has previously determined to be unfair or deceptive under Section 5 of the FTC Act. Notices of Penalty Offense have focused on areas such as weight loss claims,[9] substantiation requirements for product claims[10] and the proper use of endorsements and testimonials.[11] The FTC takes the position that a Notice of Penalty Offense enables the FTC to seek civil penalties—rather than only injunctive relief—if a company engages in substantially similar conduct with actual knowledge the conduct is unlawful.

- **Strengthen subscription and negative option compliance**: Ensure continuity programs comply with the Restore Online Shoppers' Confidence Act ("ROSCA"), which governs online negative option features, arrangements where a consumer's silence or failure to cancel is treated as consent to ongoing, recurring charges for goods or services. ROSCA requires clear and conspicuous disclosure of all material terms before billing information is collected, express informed consent and a simple mechanism to stop recurring charges. Companies should also avoid "dark patterns" (i.e., manipulative or misleading design practices that impair consumer choice, such as obscuring key terms, steering users toward enrollment or making cancellation unnecessarily difficult), as regulators increasingly view such practices as potentially unfair or deceptive, particularly in the subscription context.

- **Enhance endorsement and testimonial practices**: Verify that testimonials and reviews are truthful, typical (or appropriately qualified) and not misleading and that material connections are clearly disclosed. Companies should also ensure compliance with the FTC's Rule on the Use of Consumer Reviews and Testimonials, which prohibits practices such as the use of fake or AI-generated reviews, the suppression or selective display of negative reviews, the buying or selling of reviews and the misuse of insider or affiliated endorsements without clear disclosure and exposes violators to civil penalties.[12]

- **Prioritize health data privacy and security**: Evaluate data collection, sharing and cybersecurity practices involving sensitive health information. The FTC is increasingly treating unauthorized data sharing and inadequate safeguards as

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claims made in national advertising in response to challenges by competitors, as well as through inquiries opened on its own initiative. See Debevoise & Plimpton LLP, Advertising Self-Regulatory Body Sets Its Sights on Private Equity Healthcare and Consumer Product Portfolio Companies (Nov. 2025).

9 FTC, Penalty Offenses Concerning Weight Loss (1983).

10 FTC, Notice of Penalty Offenses Concerning Substantiation of Product Claims (2023).

11 FTC, Notice of Penalty Offenses Concerning Deceptive or Unfair Conduct around Endorsements and Testimonials (2021).

12 Rule on the Use of Consumer Reviews and Testimonials, 16 C.F.R. Part 465.

potential unfair practices, even outside the Health Insurance Portability and Accountability Act ("HIPAA"), particularly where practices conflict with consumer expectations.[13]

- **Assess antitrust risk in collaborations and transactions**: Consider that healthcare-related mergers, acquisitions and strategic partnerships, particularly those involving pipeline products, emerging technologies or vertical relationships (e.g., PBMs, platforms or data intermediaries), may be at higher risk of scrutiny from the FTC. In anticipation of this potential scrutiny, involve legal counsel early to consider potential antitrust risk.

- **Review contracting and commercialization practices**: Take care to scrutinize rebate offers, exclusivity provisions and formulary or platform access decisions that could be viewed as foreclosing competitors or distorting competition, especially in concentrated or intermediary-driven markets to ensure ordinary business conduct is not misconstrued as anticompetitive behavior.

- **Implement ongoing compliance documentation and monitoring**: Establish cross-functional review processes for claims, pricing, data practices and competition risk and maintain documentation to support substantiation and business justifications. Continuous monitoring is critical given the FTC's focus on evolving digital and healthcare business models.

Intuit v. FTC False Advertising Challenge: FTC Structure Again Under Scrutiny

The recent decision in *Intuit v. FTC* marks a significant development affecting the FTC's enforcement options, particularly related to the agency's longstanding reliance on its in-house administrative adjudication. The FTC has historically had the option of filing cases administratively or in federal court, and for decades, the FTC has pursued a large percentage of cases administratively via a process developed by Congress and memorialized in the FTC Act. The FTC has often chosen this forum to streamline its enforcement efforts and, historically, to establish a robust factual record on its home turf in anticipation of potential appeals.

On March 20, 2026, the Fifth Circuit in *Intuit v. FTC* held that the FTC may no longer bring deceptive advertising claims under Section 5 of the FTC Act (including false advertising claims targeting healthcare and life sciences companies) through its internal

[13] See Debevoise In Depth: A New Era of Federal Trade Commission ("FTC") Privacy and Cybersecurity Oversight: Top Ten Things Companies Should Know When Assessing FTC Compliance and Exposure (Jan. 12, 2022).

administrative process.[14] Relying on *SEC v. Jarkesy*,[15] the court concluded that this enforcement structure is unconstitutional, reasoning that deceptive advertising claims under Section 5 are rooted in the common law of fraud and deceit and therefore must be adjudicated in Article III courts rather than before FTC administrative law judges. The decision significantly constrains the FTC's ability to use its in-house adjudicative forum for these claims—at least within the Fifth Circuit—and may prompt the agency to shift more enforcement actions to federal court in the near term. It is unclear whether the FTC will appeal this decision, leaving the decision's broader nationwide impact unresolved.

The Fifth Circuit's opinion calls attention to the broader trend of judicial scrutiny of administrative agencies' structure and authority. While the ruling is formally limited to deceptive advertising claims, its reasoning has the potential to extend beyond that context, raising uncertainty about the FTC's ability to continue relying on administrative proceedings in other areas of consumer protection. The decision also introduces practical implications for enforcement strategy, litigation risk and the overall deterrent effect of FTC actions, as cases shift into federal courts with different procedural dynamics and available remedies.

We anticipate that this decision may affect other consumer protection areas of enforcement that are routinely brought under Section 5 of the FTC Act, including cybersecurity and data privacy cases. However, we believe the decision is unlikely to affect the agency's routine competition enforcement and merger review practices.

Enforcement and Litigation Implications

Companies should be aware that this development could materially affect the FTC's enforcement and litigation strategies. Following the Supreme Court's decision in *AMG Capital Management, LLC v. FTC* (2021),[16] the FTC can no longer obtain equitable monetary relief (such as restitution or disgorgement) directly under FTC Act Section 13(b) in federal court. In response, the agency has increasingly relied on its administrative process to pursue monetary remedies. Requiring the FTC to proceed in federal court for certain Section 5 claims may, in many cases, limit its ability to recover such relief, particularly where no alternative statutory basis is available. That said, the FTC retains authority to seek monetary relief under other statutes, including the Restore Online Shoppers' Confidence Act ("ROSCA"), the Fair Credit Reporting Act

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14 *Intuit, Inc. v. FTC*, No. 24-60040 (5th Cir. Mar. 20, 2026).

15 *SEC v. Jarkesy*, 603 U.S. 109 (2024) (holding the SEC does not have authority to bring certain charges in its internal administrative legal system).

16 *AMG Cap. Mgmt., LLC, et al. v. FTC*, 593 U.S. 67 (2021). See Debevoise In Depth: Unanimous Supreme Court Curtails the Federal Trade Commission's Authority to Obtain Monetary Remedies in Federal Court (Apr. 26, 2021).

("FCRA") and the Children's Online Privacy Protection Act ("COPPA") and may increasingly couple those claims with Section 5 allegations in federal court to preserve its ability to obtain monetary remedies.

Companies should be aware that they may still face suits from private plaintiffs for similar claims, particularly under the Lanham Act (15 U.S.C. § 1125(a)), which creates a private right of action for false advertising and unfair competition. However, such claims are less common and can be difficult to prove, as private plaintiffs face a higher burden of proof under the Lanham Act than the FTC does under Section 5 of the FTC Act—even when the claims arise from the same underlying conduct.

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For additional information on the FTC's priorities under the second Trump administration, see Debevoise In Depth, The Federal Trade Commission Bureau of Consumer Protection Under the Second Trump Administration: Top 10 Things to Know About Priorities, Enforcement, and Case Law Developments.[17]

Please do not hesitate to contact us with any questions.

[17] *See also* Debevoise In Depth: Flurry of New FTC Rules and Policies Signals Era of Aggressive Enforcement Despite Recent Supreme Court Defeat (July 13, 2021).

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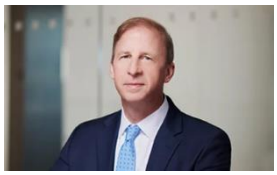

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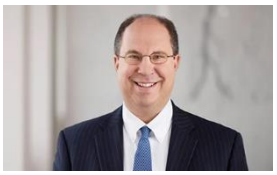

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