

Concurring Statement of Commissioner Christine S. Wilson
FTC. V. ITMedia Solutions
File No. 1723017

December 16, 2021

Today's settlement resolves the FTC's allegations that ITMedia Solutions LLC ("ITMedia"), its affiliated companies, and several individual defendants engaged in lead generation activities that violated the FTC Act and the Fair Credit Reporting Act ("FCRA"). I write to address issues of individual liability, particularly with respect to in-house legal counsel.

The legal standard to seek injunctive relief with respect to company leadership is a low bar. The Commission must show only that the individual "participated directly in the deceptive practices or had authority to control those practices."¹ This broad standard effectively could enable the Commission to hold individually liable most senior executives holding positions at companies against which we initiate enforcement action. But overzealous pursuit of individual liability could push business leaders to devote inefficient amounts of time to compliance at the expense of core business issues or deter qualified and conscientious candidates from accepting employment at firms that could most benefit from their expertise in driving a culture of compliance. And as a practical matter, naming CEOs or other executives of established companies rarely will be necessary to obtain effective relief. For these reasons, I have challenged the Commission to exercise carefully its prosecutorial discretion regarding individual liability.²

That said, I do not rule out the possibility of holding senior executives liable. In previous cases, I have voted to name executives when necessary to obtain effective relief and protect consumers going forward.³ And I do so again today. I support liability for Michael Ambrose and Daniel Negari, the founders of ITMedia who managed several of the corporate defendants; Jason

¹ *FTC v. Ross*, 743 F.3d 886, 892-93 (4th Cir. 2014) (adopting the test for individual liability used by other federal appellate courts, including the First, Seventh, Ninth, Tenth, and Eleventh Circuits). The Commission also can establish liability for monetary relief by showing the defendant "had actual knowledge of the deceptive conduct, was recklessly indifferent to its deceptiveness, or had an awareness of a high probability of deceptiveness and intentionally avoided learning the truth." *Id.*

² Christine S. Wilson, "One Step Forward, Two Steps Back: Sound Policy on Consumer Protection Fundamentals," Remarks at NAD 2020, Virtual Event, Oct. 5, 2020, https://www.ftc.gov/system/files/documents/public_statements/1581434/wilson_remarks_at_nad_100520.pdf; Statement of Commissioner Christine S. Wilson Regarding *FTC v. Progressive Leasing* (Apr. 20, 2020) (discussing individual liability), https://www.ftc.gov/system/files/documents/public_statements/1571921/182_3127_prog_leasing_-_statement_of_commissioner_christine_s_wilson_0.pdf.

³ I have supported the filing of complaints and settlements against numerous company principals. *See, e.g.*, First Complaint for Injunctive and Other Equitable Relief, *FTC v. Vyera Pharmaceuticals*, No. 20-cv-0076-DLC (S.D.N.Y. Jan. 27, 2020), available at <https://www.ftc.gov/enforcement/cases-proceedings/161-0001/vyera-pharmaceuticals-llc> (naming defendants Martin Shkreli and Kevin Mulleady and alleging they were directly responsible for orchestrating the anticompetitive scheme to preserve a monopoly for a life-saving drug); Complaint and Consent Order, *In re: Sunday Riley Modern Skincare*, File No. 192-3008, available at <https://www.ftc.gov/enforcement/cases-proceedings/192-3008/sunday-riley-modern-skincare-llc-matter> (naming company CEO Sunday Riley, alleging she directed staff to draft and post fake reviews).

Ramin, the vice president of business operations of ITMedia; and Anisha Hancock and Sione Kaufusi, who owned and controlled several of the ITMedia-affiliated LLCs.

When considering whether to hold senior *legal* executives liable, I am even quicker to urge the FTC to exercise its prosecutorial discretion with care. As in-house legal departments grow and as in-house lawyers assume varied responsibilities, questions regarding dual roles can present complex challenges. An aggressive posture of routinely holding in-house counsel individually liable could chill frank conversations between lawyers and company leadership and thereby undermine compliance efforts, disincentivize qualified lawyers from assuming in-house roles, and undercut the attorney-client privilege. That said, given the facts before me in this case, I believe it is appropriate to hold Grant Carpenter individually liable. Although Mr. Carpenter served as General Counsel and Chief Compliance Officer for ITMedia and some of its affiliates, the complaint alleges that Mr. Carpenter frequently acted in a business capacity. For example, he was responsible for the day-to-day business operations of ITMedia, and he also managed its interrelated affiliates, 123 LLC and GREAT LLC. Given his alleged participation in the challenged conduct as a business manager rather than as a lawyer, and his ongoing business roles with affiliates of ITMedia, I conclude that individual liability is both warranted and necessary to achieve effective relief.