



UNITED STATES OF AMERICA  
Federal Trade Commission

December 19, 2013

**VIA ECF**

Honorable Esther Salas, U.S.D.J.  
United States District Court  
District of New Jersey  
50 Walnut Street  
Newark, New Jersey 07102

**Re: *FTC v. Wyndham Worldwide Corp., et al.*,  
Civil Action No. 13-cv-1887 (ES) (JAD)**

Dear Judge Salas:

Attorneys for the Federal Trade Commission (“FTC”) provide this letter to clarify any misconceptions that may have been created by the notice submitted on December 13, 2013, by Wyndham Worldwide Corp., Wyndham Hotel Group, LLC, Wyndham Hotels and Resorts, LLC, and Wyndham Hotel Management, Inc. (collectively, “Defendants”) in the above-captioned matter. *See* ECF No. 142.

Defendants’ letter to this Court selectively excerpted the December 3, 2013, testimony of Commissioner Joshua D. Wright on the scope of the FTC’s *competition* authority under Section 5 of the FTC Act and represented that Commissioner Wright’s statements had “bearing on Defendants’ motions to dismiss” in this *consumer protection* case. This representation is misleading.

As the full hearing transcript provided by Defendants reflects, Commissioner Wright’s testimony about “unfair methods” concerned the scope of the Commission’s enforcement of Section 5 in the *competition* context. As the quotes excerpted in Defendants’ own letter make clear, Commissioner Wright was addressing “unfair methods” – a term that refers to the Commission’s “unfair methods of competition” authority, not to the Commission’s “unfair or deceptive acts or practices” authority.

Congress expressly empowered and directed the Federal Trade Commission to prevent businesses from using “unfair methods of competition” and “unfair or deceptive acts or practices” in or affecting commerce. *See* 15 U.S.C. § 45. The Commission, therefore, has a dual mission of promoting vigorous competition while also protecting consumers from deceptive and unfair business practices. The FTC pursues its dual mission by bringing enforcement actions in both the competition context and the consumer protection context pursuant to Section 5 of the

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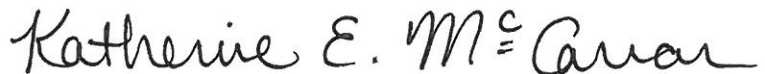
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FTC Act. The instant case is a Section 5 enforcement action brought in the *consumer protection* context, under the Commission's "unfair or deceptive acts or practices" authority.

When the Commission brings an unfairness case in the consumer protection context, it is limited by statute — namely, 15 U.S.C. § 45(n) — to declare unlawful only acts or practices in which “the act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition.” 15 U.S.C. § 45(n). The plain language of Section 45(n) addresses only unfair “act[s] or practice[s]” perpetrated against “consumers.” It does not apply to unfair “methods of competition.” Thus, contrary to Defendants’ claim, Commissioner Wright’s testimony in the competition context has no “bearing on Defendants’ motions to dismiss” in this consumer protection case.

We thank Your Honor for your consideration of this submission. Should the Court require further information, we are available at the Court’s convenience.

Respectfully Submitted,

A handwritten signature in black ink that reads "Katherine E. McCarron". The signature is written in a cursive, flowing style.

Katherine E. McCarron

cc: All Counsel (*via* ECF)