



Office of Commissioner
Andrew N. Ferguson

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

**Concurring Statement of Commissioner Andrew N. Ferguson
Joined by Commissioner Melissa Holyoak
Regarding the Statement of Interest Supporting Elon Musk,
Musk v. Altman, 4:24-cv-04722-YGR (N.D. Cal.)
Matter Number 2323044**

January 8, 2025

I am glad that after a multi-year war against Elon Musk,¹ the Commission today is defending the interests of an American citizen who is seeking to hold accountable the alleged perpetrators of anticompetitive conduct.

I write to clarify that were I the brief writer, I would not have included the argument regarding Section 5 of the Federal Trade Commission Act² in this filing. The Commission claims that it has an interest in the correct interpretation of California's Unfair Competition Law³ ("UCL") because, similarly to Section 5, the UCL prohibits unfair competition.⁴ But the UCL is not formally relevant to the Commission's authority to prevent unfair methods of competition under Section 5. Some state antitrust and consumer-protection laws draw on Section 5 jurisprudence and Commission precedents to inform the meanings of those laws.⁵ But the reverse is not true.⁶ The district court's decision on the UCL claim therefore cannot affect our enforcement of Section 5, and we have no direct interest in the outcome of that claim. Nor does the Section 5 argument presented in the statement necessarily correctly describe the law.

Nevertheless, given the importance of the remaining issues addressed in the statement of interest, I concur in its filing.

¹ See H. Comm. on the Judiciary, Interim Staff Report, *The Weaponization of the Federal Trade Commission Part II: Harassment of Elon Musk* (Oct. 28, 2024), https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/FILE_5259.pdf.

² 15 U.S.C § 45.

³ Cal. Bus. & Prof. Code § 17200.

⁴ Statement of Interest of the United States & Federal Trade Commission at 1–2, *Musk v. Altman*, No. 4:24-cv-04722-YGR (N.D. Cal.).

⁵ See *Cel-Tech Commc'ns, Inc. v. Los Angeles Cellular Tel. Co.*, 20 Cal. 4th 163, 185–86 & n.11 (1999) ("Our notice of federal law under section 5 means only that federal cases interpreting the prohibition against 'unfair methods of competition' may assist us in determining whether a particular challenged act or practice is unfair under the test we adopt. We do not deem the federal cases controlling or determinative, merely persuasive."); FLA. STAT. ANN. § 501.204(b) ("[D]ue consideration and great weight shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to [Section 5]"); TEX. BUS. & COM. CODE ANN. § 17.46(c) ("[C]ourts to the extent possible will be guided by Subsection (b) of this section and the interpretations given by the Federal Trade Commission and federal courts to [Section 5].").

⁶ Cf. *Cel-Tech Commc'ns*, 20 Cal. 4th at 186 ("California courts remain the ultimate arbiters of the meaning and scope of the [California] unfair competition law, just as the federal courts are the ultimate arbiters of the meaning and scope of section 5 and the FTC's authority under it.").