

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 12-5054

September Term 2011

1:12-cv-00206-ABJ

Filed On: March 5, 2012

Electronic Privacy Information Center,

Appellant

v.

Federal Trade Commission,

Appellee

BEFORE: Henderson, Tatel, and Brown, Circuit Judges

ORDER

Upon consideration of the emergency motion for summary reversal and to expedite case, and the opposition thereto; and the motion for summary affirmance, it is

ORDERED that the motion for summary reversal be denied and the motion for summary affirmance be granted. The merits of the parties' positions are so clear as to warrant summary action. See Taxpayers Watchdog, Inc. v. Stanley, 819 F.2d 294, 297 (D.C. Cir. 1987) (per curiam). The district court correctly dismissed appellant's complaint seeking to compel the Federal Trade Commission to enforce its Consent Order. "[A]n agency's decision not to prosecute or enforce . . . is a decision generally committed to an agency's absolute discretion." Heckler v. Chaney, 470 U.S. 821, 831 (1985). Appellant has not shown that Congress "has provided guidelines for the agency to follow in exercising its enforcement powers" and therefore has failed to rebut the presumption that the Commission's enforcement decision is not subject to judicial review. Id. at 833.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

FOR THE COURT:

Mark J. Langer, Clerk

BY: /s/
Timothy A. Ralls
Deputy Clerk