

U.S. Supreme Court Docket, October 2019 Term — Antitrust & Trade Regulation Cases

Issued Decisions	Docket No.	Subject	Status, Transcript, Filing	Holding
Enclarity Inc. v. Fulton	18-1258 (3/29/19)	Privacy	<p>10/7/19 – Decided</p> <p>Petition granted 10/7/19</p> <p>Response due 4/29/19</p> <p>Brief in opposition Matthew N. Fulton 6/13/19</p> <p>Reply brief Enclarity Inc. 7/2/19</p> <p>Attorneys: Bryan J. Leitch (Morrison & Foerster LLP) for Enclarity Inc. and LexisNexis Risk Solutions, Inc. Phillip A. Bock (Bock, Hatch, Lewis & Oppenheim, LLC) for Matthew N. Fulton</p> <p>Supreme Court Docket</p>	<p>Held: Vacated and remanded for further consideration in light of PDR Network, LLC v. Carlton & Harris Chiropractic, Inc., 588 U. S. ____ (2019).</p> <p>Whether faxes that only request information and propose no commercial transaction with recipients are “advertisements” under the TCPA.</p> <p>Sixth Circuit decision 11/2/18</p>
Pending Petitions	Docket No.	Subject	Status, Deadlines	Questions Presented
Robert W. Mauthe, M.D., P.C. v. Optum, Inc., et al.	19-413 (9/27/19)	Privacy	<p>Response due 10/28/19</p> <p>Attorneys: Phillip A. Bock (Bock, Hatch, Lewis & Oppenheim, LLC) for Robert W. Mauthe, M.D., P.C.</p> <p>Supreme Court Docket</p>	<p>Did the Third Circuit err by holding that a commercial fax cannot be an advertisement as defined by the TCPA unless it promotes a direct sale of the sender’s goods or services to the recipient where the Sixth Circuit held the opposite in Matthew N. Fulton, DDS, P.C. v. Enclarity, Inc., 907 F.2d 948 (6th Cir. 2018), <i>reh’g denied</i>, 2018 U.S. App LEXIS 36638</p>

				<p>(Dec. 27, 2018), <i>pet. for cert. filed</i>, Enclarity Inc. v. Matthew N. Fulton DDS, P.C., No. 18-1258 (U.S. March 27, 2019).</p> <p>Third Circuit decision 5/28/19</p>
<p>Levy v. BASF Metals, Ltd.</p>	<p>19-397 (9/24/19)</p>	<p>Antitrust/ RICO</p>	<p>Response due 10/24/19</p> <p>Attorneys: Susan Joan Levy, pro se. Michael F. Williams (Kirkland & Ellis LLP) for BASF Metals Ltd. and BASF Corp. Stephen Ehrenberg (Sullivan & Cromwell LLP) for Goldman Sachs International.</p> <p>Supreme Court Docket</p>	<p>1. Whether the lower courts erred in failing to apply <i>American Pipe</i> tolling to petitioner’s opt-out case?</p> <p>2. Whether the lower courts erred in refusing to apply the Discovery Accrual Rule to petitioner’s Commodity Exchange Act (“CEA”) claims?</p> <p>A. Whether petitioner’s monetary losses in her customer account constituted Actual Notice of her federal claims?</p> <p>B. Whether petitioner’s monetary losses in her customer account standing alone constituted Inquiry Notice or “Storm Warnings” of her federal claims?</p> <p>3. Whether the lower courts erred in refusing to apply the Discovery Accrual Rule to petitioner’s RICO case?</p> <p>4. Whether the lower courts erred in refusing to apply the doctrine of Equitable Tolling based on Fraudulent Concealment to all federal claims?</p> <p>5. Whether the lower courts erred in failing to consider petitioner’s due process rights as</p>

				<p>an opt-out from a companion class action In re Platinum & Palladium Antitrust Litigation, 1:14-cv-09391, 2017 WL 116962 (S.D.N.Y. 2017) when dismissing her case as untimely.</p> <p>6. Whether petitioner is still a bona fide member of the Class Action in <i>In re Platinum & Palladium II</i>, even though her individual case has been dismissed?</p> <p>Second Circuit decision 2/28/19</p>
James v. Hunt	19-390 (9/23/19)	RICO	<p>Response due 10/24/19</p> <p>Attorneys: William James, pro se. Noel J. Francisco, Solicitor General for Judge Thomas W. Thrash, Jr.</p> <p>Supreme Court Docket</p>	<p>1. Whether district court orders dedicate any section of the opinion(s) to deny petitioner’s Civil RICO 18 U.S.C. 1961-1964, in the verified complaint, Jury Demanded, U.S. Const., Seventh Amend., right to a trial by jury; and the RICO complaint to proceed to trial court; Whether predicate acts of Civil RICO allowed for use in respondents counterclaims copyright infringement have be denied and collaterally estopped, since it received a final decision in a prior action.</p> <p>2. Whether when “Fraud Upon the Court” exists on a Civil RICO complaint pursuant to 18 U.S.C 1961-1964, by the Officers of both the appellate and district court, the Judge, the clerks and the licensed attorney, would all orders be vitiated in favor of the injured party ; violations obstruction of justice and document tampering; U.S. Const., First Amendment.</p> <p>3. Whether the district court judge issued</p>

				<p>orders repeatedly in this case using a Fed.R.Civ.P. 54(b), intentionally, violating the petitioners U.S. Const. Fifth and Fourteenth amend., for due process, when the judge violated the Final Judgment Act Rule that limits him to a final judgment; after a first use, of the Final Judgment Act & Interlocutory Appeal 28 U.S.C. 1291-1292(b) to destroy the merits of Civil RICO 18 U.S.C. to create a manifest of injustice that would be so difficult to unravel, the review courts would not be able to determine the true merits of this case.</p> <p>4. Whether the appellate and district court violate petitioners U.S. Constitution First, Fifth and Fourteenth Amendments, by allowing the respondents to file an injunction into the district court, using an all writs act, out of time and illegal, during the appellate jurisdiction over the case, while judges status was pending on issues in the appellate court for abuse of discretion and “fraud upon the court”, or any rulings for adjudication Civil RICO 18 U.S.C. 1961-1964 claims.</p> <p>5. Whether restricting petitioner’s ability to freely participate in proceedings before retrial actions, demonstrate a prohibited violation of petitioner’s access to the federal courts and freedom of speech, the ability to freely execute simple motions and pleadings requiring permission and restricting, a violation of the U.S. Constitution First, Fourth, Fifth, Sixth, Seventh, Eleventh and</p>
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				<p>Fourteenth Amendment, causing undue burden of costs associated with filings that only affect petitioners' Civil rights and liberties when it is petitioners that initiated complaint.</p> <p>6. Whether the appellate court erred when they affirmed the prior appellate case 17-14866 as the law-of-the-doctrine of the case on a final set of orders pursuant to 28 U.S.C. 1331; a. whether the abuse of discretion on Fed.R.Civ.P. 54(b), discovery , perjury, document tampering, dismissal of judge, subject matter jurisdiction and "fraud upon the Court" were avoided in appellate order(s), failing adjudication of petitioners issues, yet allowing a review of the entire district court record, when respondent's abandoned those arguments, the appellate court abandoned adjudication, and erroneously stated petitioners abandoned arguments on appeal, what was before them to make the determination; and b. Whether petitioners issues are clearly outlined in their "notice or amended notice of appeal", reply brief(s), with references to laws of citations and district court arguments asserted, but somehow it is possible that petitioners actual</p> <p>appeal brief(s) in both cases 17-14866 and 18-13553 are missing all citations, whether it is evident the court removed those citations of authorities;</p> <p>7. Whether respondents' counterclaims for</p>
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				<p>the same claims in a prior case and in the same case are collaterally estopped and res judicata on issues of copyright infringement as a defense in an unrelated case for Civil RICO claim(s); a. Whether the defense is also estopped and inter alia, res judicata, pursuant to Civil RICO, anti-trust act actions never heard or decided any court of law, and under Civil RICO 18 U.S.C. 1962, are prior actions used as predicate acts allowed as a defense.</p> <p>8. Whether if petitioner's complaint and merits of Civil RICO 18 U.S.C. 1964 and other anti-trust claims ever adjudicated on district court decisions opinioned order(s), a. whether defense(s) as a counterclaim on a 1292(b), Fed.R.Civ.P. 54(b), for some claims end litigation; allowing respondents a second counterclaim and summary judgment, out of time and illegal, in the same case, receive an injunction and attorney costs not previously requested then forbid petitioners to move forward with the open Civil RICO issues of the complaint remaining open on a closed case ending orders with a 54(b) to forever lock appellate courts out.</p> <p>9. Whether a chief district court judge while presiding on a case, becomes a defendant, remain impartial and unbiased; enough to dismiss himself without three panel district judge or the appellate chief judges' permission; violate subject matter jurisdiction</p>
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				<p>while that decision is pending, and not have been recused.</p> <p>10. Whether it is lawful in a Civil RICO case to erroneously assert prior action were Civil RICO and then change the narrative in same case to state the prior case was copyright infringement and use the collaterally estopped defense for a counterclaim against a predicate act of Civil RICO to gain favor affecting entire case.</p> <p>Eleventh Circuit decision 8/12/18</p>
<p>Swisher International, Inc. v. Trendsettah USA, Inc.</p>	<p>19-349 (9/13/19)</p>	<p>Antitrust</p>	<p>Response due 10/17/19</p> <p>Brief in opposition Trendsettah USA, Inc. 9/18/19</p> <p>Reply brief Swisher International, Inc. 10/2/19</p> <p>Attorneys: Thomas G. Hungar (Gibson, Dunn & Crutcher LLP) for Swisher International, Inc. Eric F. Citron (Goldstein & Russell, P.C.) for Trendsettah USA, Inc.</p> <p>Supreme Court Docket</p>	<p>1. Whether a jury verdict finding a defendant liable under Section 2 of the Sherman Act for refusing to deal or cooperate with a competitor may be upheld when the jury was not instructed (a) that a monopolist has no general duty to deal with its business rivals or (b) that the plaintiff must prove that the refusal was contrary to the defendant's short-run interests.</p> <p>2. Whether an impact on a single firm's output can give rise to a presumption of injury to competition under Section 2 of the Sherman Act, even when market-wide output is increasing.</p> <p>Ninth Circuit decision 2/8/19</p>
<p>The Medical Center at Elizabeth Place,</p>	<p>19-322 (9/9/19)</p>	<p>Antitrust</p>	<p>Response due 10/9/19</p>	<p>(1) For a restraint to be deemed "ancillary" to a joint venture, and thus exempt from</p>

LLC v. Atrium Health System			<p>Attorneys: Richard Arthur Ripley (Ruyak Cherian LLP) for The Medical Center at Elizabeth Place, LLC. Shay Dvoretzky (Jones Day) for Atrium Health System.</p> <p>Supreme Court Docket</p>	<p>per se condemnation, must the restraint be reasonably necessary to achieve an efficiency-enhancing purpose of the venture?</p> <p>(2) For a joint venture to satisfy this test at summary judgment must it substantiate through verifiable means the claimed efficiencies and efficiencies' relationship to the restraint, or is it sufficient for the defendants merely to proffer a "plausible procompetitive rationale"?</p> <p>Sixth Circuit decision 4/25/19</p>
U.S. v. Sanchez	<p>19-288 (9/4/19)</p>	<p>Antitrust</p>	<p>Response due 10/24/19</p> <p>Attorneys: Jeffrey L. Fisher (O'Melveny & Myers LLP) for Javier Sanchez. Noel J. Francisco, U.S. Department of Justice, for the United States.</p> <p>Supreme Court Docket</p>	<p>Whether the operation of the per se rule in criminal antitrust cases violates the constitutional prohibition—grounded in the Fifth and Sixth Amendments—against instructing juries that certain facts presumptively establish an element of a crime.</p> <p>Ninth Circuit decision 1/25/19</p>
Weisskopf v. Jewish Agency for Israel	<p>19-176 (8/8/19)</p>	<p>RICO</p>	<p>Response due 9/9/19</p> <p>Attorneys: Robert Reeves Anderson (Arnold & Porter Kaye Scholer LLP) for Tzipi Livni, et al.</p> <p>Supreme Court Docket</p>	<p>Whether the appellate court below erroneously held, in conflict with the decisions of this Court, and in a three-way split with the Third Circuit and Seventh Circuit, that the Plaintiffs injury to business and property in the United States resulting from RICO violations including extortion, mail fraud, and aiding & abetting is insufficient to satisfy the domestic injury requirement.</p>

				Second Circuit decision 3/27/19
Remington Arms Co., LLC v. Soto	19-168 (8/5/19)	State Unfair Trade Practices	<p>Response due 10/4/19</p> <p>Brief in Opposition Donna L. Soto 10/4/19</p> <p>Amicus briefs: National Rifle Association of America, Inc., et al.; Twenty-Two Members of the United States House of Representatives; States of Texas, et al.; National Shooting Sports Foundation; Professors of Second Amendment Law, et al.; Gun Owners of America, Inc.</p> <p>Attorneys: Scott A. Keller (Baker Botts LLP) for Remington Arms Co., LLC, et al. Joshua David Koskoff (Koskoff, Koskoff & Bieder, P.C.) for Donna L. Soto, Administratrix of the Estate of Victoria L. Soto, et al.</p> <p>Supreme Court Docket</p>	<p>Whether the Protection of Lawful Commerce in Arms Act’s predicate exception encompasses alleged violations of broad, generally applicable state statutes, such as the Connecticut Unfair Trade Practices Act, which forbids “unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.”</p> <p>Supreme Court of Connecticut decision 3/19/19</p>
Amarin Pharma, Inc. v. International Trade Commission	19-152 (8/1/19)	Advertising	<p>Response due 11/4/19</p> <p>Attorneys: Ashley C. Parrish (King & Spalding LLP) for Amarin Pharma, Inc., et al. Noel J. Francisco, Solicitor General United States Department of Justice for the International Trade Commission, et al.</p> <p>Supreme Court Docket</p>	<p>When a manufacturer files a Lanham Act claim under the Tariff Act for competitive injuries caused by unfair trade practices, is the claim barred as a matter of law when the International Trade Commission would need to consider the meaning of terms used in the Food, Drug and Cosmetic Act in order to determine whether the claim has merit?</p> <p>Federal Circuit decision 5/1/19</p>
Katz v. Cellco Partnership dba	18-1543 (6/14/19)	State Unfair Trade	<p>Response due 7/15/19</p> <p>Brief in opposition Cellco Partnership 9/13/19</p>	<p>Whether Federal Arbitration Act (“FAA”) § 3 requires the district court to stay the action after it compels arbitration of all claims and</p>

Verizon Wireless		Practices	<p>Attorneys: William Robert Weinstein (Law Offices of William R. Weinstein) for Michael Katz. Joshua S. Turner and Scott Block Wilkens (Wiley Rein LLP) for Cellco Partnership d/b/a Verizon Wireless</p> <p>Supreme Court Docket</p>	<p>a stay is requested by one of the parties.</p> <p>Whether the standard for voluntary consent prescribed in <i>Wellness Int'l Network, Ltd. v. Sharif</i>, 135 S. Ct. 1932, 1948 (2015), applies under the FAA to the waiver of the constitutional rights (i) to the exercise of the Article III judicial power in connection with state law private rights brought within the jurisdiction of the federal courts, and (ii) to judicial review of non-Article III rulings of law required under the Due Process Clause of the Fifth Amendment.</p> <p>Second Circuit decision 3/12/19</p>
Archdiocese of Washington v. Washington Metropolitan Area Transit Authority	18-1455 (5/22/19)	Advertising	<p>Response due 7/22/19</p> <p>Brief in opposition Washington Metropolitan Area Transit Authority 7/22/19</p> <p>Reply brief Archdiocese of Washington 8/6/19</p> <p>Amicus briefs: Foundation for Moral Law; Christian Legal Society, et al.; National Association of Evangelicals, et al.</p> <p>Attorneys: Paul D. Clement (Kirkland & Ellis LLP) for Archdiocese of Washington. Donald B. Verrilli Jr. (Munger, Tolles & Olson LLP) for Washington Metropolitan Area Transit Authority, et al.</p> <p>Supreme Court Docket</p>	<p>1. Whether Washington Metropolitan Area Transit Authority's policy of refusing to accept advertisements that promote or oppose religion or reflect a religious perspective violates the First Amendment.</p> <p>2. Whether that discrimination against religious speech violates the Religious Freedom Restoration Act.</p> <p>District of Columbia Circuit opinion 7/31/18</p>
Denied Petitions	Docket No.	Subject	Status, Deadlines	Questions Presented

GEFT Outdoor L.L.C. v. City of Westfield, Hamilton County, Indiana	19-245 (8/23/19)	Advertising	<p>Denied 10/7/19</p> <p>Response due 9/23/19</p> <p>Attorneys: Richard M. Blaiklock (Lewis Wagner, LLP) for Geft Outdoor, LLC. Libby Yin Goodknight (Krieg DeVault LLP) for City of Westfield, Hamilton County, Indiana.</p> <p>Supreme Court Docket</p>	<p>Whether a citizen who seeks to exercise core First Amendment rights must first seek and obtain an order from a court of competent jurisdiction invalidating a facially unconstitutional city ordinance before engaging in protected speech activity and desist completely while the validity of the ordinance remains before the trial court.</p> <p>Seventh Circuit decision 4/25/19</p>
7 West 57th Street Realty Company, LLC v. Citigroup, Inc.	19-148 (7/31/2019)	Antitrust	<p>Denied 10/7/19</p> <p>Response due 8/30/2019</p> <p>Attorneys: Sarah Elaine Harrington (Goldstein & Russell, P.C.) for 7 West 57th Street Realty Company, LLC. Beth Susan Brinkmann (Covington & Burling) for Citigroup, Inc., et al.</p> <p>Supreme Court Docket</p>	<p>Whether an antitrust plaintiff with a direct privity relationship to a price-fixer has antitrust standing under Section 4 of the Clayton Act, 15 U.S.C. § 15, when it was injured by its participation in a market that was foreseeably affected by defendants' anticompetitive manipulation of a directly related market.</p> <p>Second Circuit decision 4/30/2019</p>
Xitronix Corporation v. KLA-Tencor Corporation	19-58 (7/10/19)	Antitrust	<p>Denied 10/7/19</p> <p>Response due 8/9/19</p> <p>Brief in opposition KLA-Tencor Corporation 8/23/19 Reply brief Xitronix Corporation 9/5/19</p> <p>Attorneys: Adam G. Unikowsky (Jenner & Block LLP) for Xitronix Corporation. Aaron Gabriel Fountain (DLA Piper LLP (US)) for KLA-Tencor Corporation, DBA KLA-Tencor, Inc.</p>	<p>Does appellate jurisdiction over <i>Walker Process</i> claims lie in the regional circuits, or in the Federal Circuit?</p> <p>Federal Circuit decision 3/14/19</p>

			Supreme Court Docket	
Xitronix Corporation v. KLA-Tencor Corporation	18-1170 (3/8/19)	Antitrust	<p>Denied 10/7/19</p> <p>Response due 4/8/19</p> <p>Brief in opposition KLA-Tencor Corporation 6/24/19</p> <p>Reply brief Xitronix Corporation 7/10/19</p> <p>Attorneys: Adam G. Unikowsky (Jenner & Block LLP) for Xitronix Corporation</p> <p>Supreme Court Docket</p>	<p>Does appellate jurisdiction over <i>Walker Process</i> claims lie in the regional circuits, or in the Federal Circuit?</p> <p>Fifth Circuit decision 2/15/19</p>
Gospel for Asia, Inc. v. Murphy	18-969 (1/25/19)	RICO	<p>Petition dismissed 8/14/19</p> <p>Response due 8/12/19</p> <p>Attorneys: Carter G. Phillips (Sidley Austin LLP) for Gospel For Asia, Inc., et al.</p> <p>Supreme Court Docket</p>	<p>Whether a RICO class may be certified under Federal Rule of Civil Procedure 23(b)(3) based on a presumption that all class members were injured by the allegedly fraudulent activity, even though defendants presented un rebutted evidence that the presumption is plainly not true in many individual instances.</p> <p>Whether all circuit courts of appeals should apply the same standards in deciding whether to grant petitions for interlocutory review of class certification orders under Federal Rule of Civil Procedure 23(f).</p> <p>Eighth Circuit decision 10/16/18</p>