12-416 FEDERAL TRADE COMMISSION V. WATSON PHARMACEUTICALS

DECISION BELOW: 677 F.3d 1298

LOWER COURT CASE NUMBER: 10-12729-DD

QUESTION PRESENTED:

Federal competition law generally prohibits an incumbent firm from agreeing to pay a potential competitor to stay out of the market. See *Palmer v. BRG of Ga., Inc.*, 498 U.S. 46, 49-50 (1990). This case concerns agreements between (1) the manufacturer of a brand--name drug on which the manufacturer assertedly holds a patent, and (2) potential generic competitors who, in response to patent-infringement litigation brought against them by the manufacturer, defended on the grounds that their products would not infringe the patent and that the patent was invalid. The patent litigation culminated in a settlement through which the seller of the brand-name drug agreed to pay its would-be generic competitors tens of millions of dollars annually, and those competitors agreed not to sell competing generic drugs for a number of years. Settlements containing that combination of terms are commonly known as "reverse payment" agreements. The question presented is as follows:

Whether reverse-payment agreements are per se lawful unless the underlying patent litigation was a sham or the patent was obtained by fraud (as the court below held), or instead are presumptively anticompetitive and unlawful (as the Third Circuit has held).

JUSTICE ALITO TOOK NO PART.
CERT. GRANTED 12/7/2012