

July 3, 2024

Court Preliminarily Enjoins Enforcement of FTC Non-Compete Rule, Finding that it is Likely Invalid

On July 3, 2024, in *Ryan, et al. v. Federal Trade Commission*, No. 24-cv-00986 (N.D. Tex. July 3, 2024), a federal court in Texas [found](#) that the plaintiffs challenging the Federal Trade Commission's (FTC) [Non-Compete Clause Rule](#) are likely to succeed on the merits. Specifically, the court found that the FTC lacks substantive rulemaking authority with respect to unfair methods of competition under Section 6(g) of the FTC Act. The court also found that the FTC's promulgation of the rule was arbitrary and capricious because the rule is a "one-size-fits-all approach with no end date, which fails to establish a rational connection between the facts found and the choice made," and because the FTC failed to sufficiently consider alternatives to the rule.

The court issued a preliminary injunction preventing the rule from going into effect as scheduled and preventing the FTC from "implementing or enforcing the rule" as against the plaintiffs, pending the court's final ruling on the merits of the challenge. The rule had been set to become effective on September 4, 2024. The court limited the preliminary injunctive relief to the plaintiffs because of what it perceived to be a lack of briefing and limited guidance from the U.S. Court of Appeals for the Fifth Circuit about the appropriate circumstances in which a federal court may issue a nationwide injunction. The court intends to issue a merits ruling in the action, including a decision whether to permanently enjoin enforcement of the rule, on or before August 30, 2024.

There are two other pending federal court challenges to the rule, one in Pennsylvania and the other in Florida. These challenges raise similar arguments against the rule, with the Florida action also challenging the rule to the extent it applies to purely intrastate commerce (in that case, sales agents for a real estate development in central Florida). Those courts have not yet ruled on similar motions for preliminary injunction, and it is possible that the courts considering the rule will come to different conclusions. Whatever the ultimate disposition of these actions, we expect that the losing party will appeal, given the import and potential effect of the rule and the questions raised about the FTC's authority to promulgate it. Along the way, it will be up to the district courts, the courts of appeals and potentially the Supreme Court to decide whether to stay the effectiveness of the rule pending the final disposition of these challenges. We are closely monitoring developments in these actions.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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