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Administrative Law & Regulatory Practice Update

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## Motions for Summary Judgment Filed in Challenge to the Federal Trade Commission's Non-Compete Rule

The challengers to the Rule have explained that if the court rules for them on the merits, then the remedy is for the court to vacate the Rule nationwide, in an order that is not limited to the parties in the case. A decision is expected by August 30.

This past Friday, July 19, global tax-consulting firm Ryan, LLC moved for summary judgment in its challenge to the Federal Trade Commission's Non-Compete Rule in the U.S. District Court for the Northern District of Texas.<sup>[1]</sup> Gibson Dunn represents Ryan. A group of trade associations led by the United States Chamber of Commerce has likewise moved for summary judgment. Ryan and the trade associations previously won a preliminary injunction and stay of the Rule's effective date (see Gibson Dunn's [July 5 client alert](#)), which was limited to the parties to the case.<sup>[2]</sup>

Ryan's primary argument—which the Court already found was likely to succeed—is that the FTC lacks statutory authority to promulgate the Non-Compete Rule. Ryan also argues that a grant of rulemaking authority to define “unfair methods of competition” would constitute an unconstitutional delegation of legislative power; that the rule is unlawfully retroactive; and that the FTC Commissioners are unconstitutionally insulated from the President's control. Ryan further contends that the Non-Compete Rule is arbitrary and capricious in violation of the Administrative Procedure Act, because the FTC failed to justify the nearly universal breadth of its ban, overstated the Rule's purported benefits, and understated its costs.

Ryan has asked the Court to vacate the Non-Compete Rule, with nationwide effect. As Ryan explained in its motion, under applicable Fifth Circuit precedent, if the Court rules for Ryan on the merits, then under the Administrative Procedure Act it is required to vacate the Rule in an order that is not limited to the parties to the case.

The Court has stated that it will rule on the summary judgment motions by August 30, shortly before the Rule is set to take effect on September 4. Briefing on Ryan's and the trade associations' motions, as well as the FTC's expected cross-motion for summary judgment, is scheduled to be completed on August 16.

[1] Ryan's brief in support of its motion is available [here](#).

[2] Further analysis of the FTC's Non-Compete Rule is available [here](#).

**Eugene Scalia, Allyson N. Ho, Amir C. Tayrani, Andrew Kilberg, Elizabeth A. Kiernan, Aaron Hauptman, and Josh Zuckerman represent Ryan, LLC and prepared this update.**

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding the issues discussed in this update. Please contact the Gibson Dunn lawyer with whom you usually work, the authors, or any leader or member of the firm's Administrative Law & Regulatory, Labor & Employment, or Antitrust & Competition practice groups:

**Administrative Law and Regulatory:**

Allyson N. Ho – Dallas (+1 214.698.3233, [aho@gibsondunn.com](mailto:aho@gibsondunn.com))

Eugene Scalia – Washington, D.C. (+1 202.955.8673, [escalia@gibsondunn.com](mailto:escalia@gibsondunn.com))

Amir C. Tayrani – Washington, D.C. (+1 202.887.3692, [atayrani@gibsondunn.com](mailto:atayrani@gibsondunn.com))

Helgi C. Walker – Washington, D.C. (+1 202.887.3599, [hwalker@gibsondunn.com](mailto:hwalker@gibsondunn.com))

**Labor and Employment:**

Andrew G.I. Kilberg – Washington, D.C. (+1 202.887.3759, [akilberg@gibsondunn.com](mailto:akilberg@gibsondunn.com))

Karl G. Nelson – Dallas (+1 214.698.3203, [knelson@gibsondunn.com](mailto:knelson@gibsondunn.com))

Jason C. Schwartz – Washington, D.C. (+1 202.955.8242, [jschwartz@gibsondunn.com](mailto:jschwartz@gibsondunn.com))

Katherine V.A. Smith – Los Angeles (+1 213.229.7107, [ksmith@gibsondunn.com](mailto:ksmith@gibsondunn.com))

**Antitrust and Competition:**

Rachel S. Brass – San Francisco (+1 415.393.8293, [rbrass@gibsondunn.com](mailto:rbrass@gibsondunn.com))

Svetlana S. Gans – Washington, D.C. (+1 202.955.8657, [sgans@gibsondunn.com](mailto:sgans@gibsondunn.com))

Cynthia Richman – Washington, D.C. (+1 202.955.8234, [crichman@gibsondunn.com](mailto:crichman@gibsondunn.com))

Stephen Weissman – Washington, D.C. (+1 202.955.8678, [sweissman@gibsondunn.com](mailto:sweissman@gibsondunn.com))

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