

Texas Federal Court ‘Sets Aside’ FTC’s Noncompete Clause Rule

A Practical Guidance® Article by Debra L. Fischer, Seth M. Gerber, Michael P. Jones, Siobhan E. Mee, Mims Maynard Zabriskie, John Ceccio, and Johnathon P. Bramble, Morgan, Lewis & Bockius LLP



Debra L. Fischer
Morgan, Lewis & Bockius LLP



John Ceccio
Morgan, Lewis & Bockius LLP



Seth M. Gerber
Morgan, Lewis & Bockius LLP



Johnathon P. Bramble
Morgan, Lewis & Bockius LLP



Michael P. Jones
Morgan, Lewis & Bockius LLP



Siobhan E. Mee
Morgan, Lewis & Bockius LLP



Mims Maynard Zabriskie
Morgan, Lewis & Bockius LLP

Judge Ada Brown of the U.S. District Court for the Northern District of Texas entered a final judgment in *Ryan LLC v. Federal Trade Commission* (FTC) on August 20, 2024, holding unlawful and setting aside the FTC Noncompete Clause Rule just weeks before it was set to take effect on September 4, 2024.

Unlike the preliminary injunctive relief that Judge Brown entered in July 2024, which applied only to the parties and intervenors in the litigation, the court’s final judgment has a “nationwide effect,” halting the ban universally, including those not involved in the lawsuit.

The Ryan Court’s Preliminary Injunction

In the first major order concerning the ban, as detailed in our prior [LawFlash](#), the *Ryan* court issued an injunction preliminarily enjoining the FTC Noncompete Clause Rule (the Rule) on July 3, 2024, staying the effective date of the

FTC's noncompete ban. Critically, however, the *Ryan* court limited the scope of its preliminary injunction to the parties and plaintiff-intervenors to the lawsuit, expressly declining to issue nationwide injunctive relief staying the injunction for other employers at that "preliminary stage."

The Ryan Court's Final Judgement

On August 20, the *Ryan* court entered a final judgment granting the plaintiffs and plaintiff-intervenors' motions for summary judgment, asking the court to set aside the Rule. The *Ryan* court made clear at numerous points in its order that "the question to be answered is not what the Commission thinks it should do but what Congress has said it can do." Against that backdrop, the court found the Rule unlawful and held that (1) the FTC lacked the substantive rulemaking authority to promulgate the ban, and (2) the ban was arbitrary and capricious because it was unreasonably overbroad and without explanation.

In rejecting the FTC's argument that any relief should be limited to the named plaintiffs, the *Ryan* court stated that it "must hold unlawful and set aside the FTC's Rule as required under the [Administrative Procedures Act]." To this end, the court's relief is not "party-restricted" and instead has a "nationwide effect." The court thus held "unlawful and set[] aside the Rule," ordering that "the Rule shall not be enforced or otherwise take effect on its effective date of September 4 or thereafter."

The Possibility of Appeal and Other Legal Challenges

It is unclear whether the FTC will appeal the *Ryan* court's final judgment. Any appeal would be to the U.S. Court of Appeals for the Fifth Circuit. Absent a showing of an emergency and the Fifth Circuit entering an emergency stay, it is unlikely that the Fifth Circuit will issue any order in advance of the previously scheduled September 4 effective date.

Two other courts have also issued inconsistent preliminary ruling on the noncompete ban. In contrast to the *Ryan* court, the court in *ATS Tree Services LLC v. FTC* held that the FTC acted within its authority under the FTC Act to promulgate substantive unfair methods of competition rules, and therefore the FTC has the authority to enforce the noncompete ban. Similar to the *Ryan* court, the court in *Properties of the Villages Inc. v. FTC* preliminarily enjoined the ban with respect to the plaintiff in the lawsuit. But unlike the *Ryan* court, the judge in *Properties of the*

Villages Inc. held that the FTC likely did have substantive rulemaking authority, instead enjoining the ban based on the "major questions doctrine." As a result, if the judges in *ATS Tree Services* and *Properties of the Villages Inc.* follow the decisions from their preliminary rulings, three federal district courts will be split on the issue, likely setting up challenges to proceed to the appellate courts and ultimately to the U.S. Supreme Court.

Employer Considerations

For now, employers can continue to enforce and enter into noncompetes subject to applicable state law. Given the months of uncertainty as to the validity of the FTC noncompete ban, employers should consider communications to employees who may be confused about the status, including preparing HR teams with clear talking points to respond to employee inquiries about their noncompetes. In addition, employers should continue to focus on improving their protections for confidential, proprietary, and trade secret information and monitor state legislation concerning and court opinions challenging the overbreadth of confidentiality clauses and restrictive covenants.

Related Content

Prior Legal Developments & Analysis

- [U.S. District Court Issues Order Blocking the FTC's Non-Compete Ban Nationwide: Client Alert Digest](#)
- [Federal Trade Commission Noncompete Clause Rule Litigation Update](#)

Practice notes

- [Restrictive Covenants: Drafting Common Provisions](#)

Statutes & Regulations

- 89 Fed. Reg. 38,342 (May 7, 2024)

Cases

- *Ryan LLC v. FTC*, Civil Action No. 3:24-CV-00986-E, 2024 U.S. Dist. LEXIS 148488 (N.D. Tex. Aug. 20, 2024)
- *ATS Tree Servs., LLC v. FTC*, No. 24-1743, 2024 U.S. Dist. LEXIS 129398 (E.D. Pa. July 23, 2024)
- *Ryan LLC v. FTC*, Civil Action No. 3:24-CV-00986-E, 2024 U.S. Dist. LEXIS 117418 (N.D. Tex. July 3, 2024)
- *Chamber of Commerce of the United States v. FTC*, No. 6:24-cv-00148, 2024 U.S. Dist. LEXIS 81436 (E.D. Tex. May 3, 2024)

Debra L. Fischer, Partner, Morgan, Lewis & Bockius LLP

Debra Fischer has practiced employment law and unfair competition/trade secret litigation for over 30 years, successfully trying cases in both California state and federal courts as well as in arbitration. Debra regularly counsels employers in all aspects of employment law compliance, risk avoidance, and crisis management. She is regularly called upon to give advice on trade secret and unfair competition issues that arise when employees change employment and handles the litigation that often ensues from such departures.

Seth M. Gerber, Partner, Morgan, Lewis & Bockius LLP

Seth M. Gerber is an accomplished lead trial lawyer who focuses on trade secret, restrictive covenant, and employee mobility matters. Seth has been recognized by the *Daily Journal* four times as one of California's Top Trade Secrets Lawyers and named as a Leading Lawyer nationally for his trade secrets practice. According to *The Legal 500*, Morgan Lewis's "trade secrets working group head Seth Gerber enjoys a stellar reputation in the space for his work as a trial lawyer, prosecuting and defending claims for misappropriation and mass raid cases."

Michael P. Jones, Partner, Morgan, Lewis & Bockius LLP

Michael P. Jones, a partner in the firm's labor and employment practice, focuses his practice on high-stakes business disputes involving restrictive covenant agreements and trade secrets, including noncompete, nonsolicitation, nondisclosure, and related post-employment obligations, in state and federal courts throughout the country. As co-leader of the Trade Secrets and Unfair Competition Task Force, Mike stays abreast of the latest developments in restrictive covenant and trade secret law, including the recent rulemaking by the Federal Trade Commission, and uses his knowledge to litigate on behalf of, advise, and counsel clients in nearly every industry, including the automotive, banking, energy, healthcare, insurance, life sciences, retail, and technology industries.

Siobhan E. Mee, Partner, Morgan, Lewis & Bockius LLP

Siobhan E. Mee represents companies and individuals in complex employment litigation matters, including noncompetition lawsuits, discrimination cases, and whistleblower actions. She also advises employers in connection with internal and government investigations. Her recent work includes defending a biotech company in litigation brought by its former CEO who claimed entitlement to a substantial ownership interest in the company, conducting an internal investigation into alleged fraud and other compliance issues raised by a whistleblower, and obtaining injunctive relief against a client's former sales team to prevent their breach of restrictive covenants and misappropriation of trade secrets. Siobhan is the leader of the labor and employment practice for the Boston office.

Mims Maynard Zabriskie, Partner, Morgan, Lewis & Bockius LLP

Mims Maynard Zabriskie advises on complex executive compensation and employee benefit plan matters, including the design, negotiation, and implementation of executive compensation, equity compensation, and tax-qualified retirement plans and shareholder approval of equity plans. She counsels large publicly and privately owned businesses, including Fortune 500 enterprises, as well as technology companies, colleges and universities, and other non-profit entities, on a range of legal issues related to executive compensation governance, and employee benefit plans.

John Ceccio, Associate, Morgan, Lewis & Bockius LLP

John Ceccio advises clients on a broad spectrum of antitrust and competition matters, encompassing complex transactions, product counseling, government investigations, and high-stakes private litigation. With experience in innovation-driven industries, John guides cutting-edge advancements across technology, life sciences, healthcare, and financial services sectors. He leverages his deep understanding of emerging technologies such as artificial intelligence (AI), biotechnology therapies, and advanced medical devices and diagnostics to provide solutions for navigating complex regulatory landscapes, facilitating desired business outcomes. By translating multifaceted business and legal contexts to competition enforcers and adversaries, John bridges the gap between technology, business strategy, and legal principles.

Johnathon P. Bramble, Associate, Morgan, Lewis & Bockius LLP

John P. Bramble litigates complex cases in US state and federal court involving unfair competition, trade secret misappropriation, employee departures, employee terminations, and other labor and employment matters. A detail-oriented and creative advocate, John is frequently called upon to draft and argue significant, case-altering motions throughout Texas and the United States. John draws on his litigation experiences in advising clients about a day-to-day labor and employment matters, including employment agreements and workplace policies.

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