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Eastern District of Pennsylvania Rules in Favor of FTC's Noncompete Rule

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July 24, 2024 - On Tuesday, July 23, 2024, Judge Kelley Hodge of the United States District Court for the Eastern District of Pennsylvania declined to stay the Federal Trade Commission's (FTC) rule banning non-competition agreements (the "Noncompete Rule"), which the FTC promulgated in April, or preliminarily enjoin its enforcement. Plaintiff ATS Tree Services LLC had challenged the FTC's authority to enforce the rule, which is slated to go into effect on September 4, 2024.

Judge Hodge determined that ATS had failed to demonstrate irreparable harm and that ATS's alleged harms, such as the cost of complying with the Noncompete Rule and the potential loss of its employees, were insufficient to warrant issuance of an injunction.

Of particular note, Judge Hodge found that the plaintiffs were unlikely to succeed on the merits of their claim. Instead, she found that Section 6(g) of the Federal Trade Commission Act (FTC Act) authorizes the FTC to issue substantive rules defining unlawful unfair methods of competition under Section 5 of the FTC Act – including the Noncompete Rule. According to Judge Hodge:

"Nothing in Section 6(g) limits Section 5; rather, Section 6 is complementary to Section 5, as is clear from its title: "Additional powers of Commission." 15 U.S.C. § 46. Neither the word "procedural" nor the word "substantive" appears in the text of Section 6(g), and the Court will not infer meaning from that absence, particularly as the ordinary meaning of the text speaks for itself. Section 6(g) empowers the FTC to "make rules and regulations." *Id.* When taken in the context of the goal of the Act and the FTC's purpose, the Court finds it clear that the FTC is empowered to make both procedural and substantive rules as is necessary to prevent unfair methods of competition."

As we previously noted in our alert dated July 3, 2024 (available [here](#)), on July 3, 2024, Judge Ada Brown of the United States District Court for the Northern District of Texas reached the opposite conclusion on this issue and stayed the Noncompete Rule and entered a preliminary injunction against its enforcement. That stay and preliminary injunction applies only to plaintiffs in that case, although the plaintiffs in the Texas case asked for a nationwide injunction. Judge Brown noted in her July 3 opinion that she expects to reach a decision on the merits of plaintiffs' challenge to the Noncompete Rule by August 30, 2024. We believe Judge Brown is likely to issue an injunction striking down the

Noncompete Rule on a nationwide basis.

Judge Hodge's decision foreshadows a potential conflict between the Third Circuit (encompassing Pennsylvania) and the Fifth Circuit (encompassing Texas). We anticipate further litigation, with recourse to the Supreme Court.

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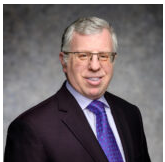
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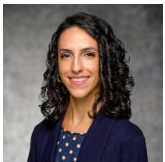
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