

'I hate this rule': the FTC's controversial non-competes ban

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Jim Gale spoke with *World Intellectual Property Review* to discuss the Federal Trade Commission's proposed rule banning noncompete agreements and its impact on trade secrets. Jim believes that if implemented, the rule could encourage trade secret theft, make theft harder to prove in court, and will, ultimately, stifle innovation. "I hate this rule. I understand that the FTC was trying to protect low-income workers. But many states have already enacted statutes that would protect them—and that's a good thing," he said. He argues that the proposed rule is a conflict of the Defend Trade Secrets Act (DTSA) of 2016, which he believes made it easier for companies to pursue trade secret lawsuits in federal court. "There was an increase in trade secret litigation after the DTSA, about a 20 to 30% increase according to Lex Machina. This rule actually undermines the enactment of the DTSA, which was enacted by Congress, whereas this proposed law is being put forward by a few individuals who have never been elected," he said. He believes that there will be an upsurge in cases centering on unadjusted unjust enrichment, unfair competition, deceptive and unfair trade practices, and potentially some tortious interference claims. "Employers will indirectly try to do what they're unable to do directly, with the loss of non-competes. But the key question will be whether those cases will be sustainable," he said.

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