

# Client Alert

Antitrust

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## Court Grants Injunction to Pause Handbag Merger

### District Court Agrees with FTC's Narrow Market Definition

On Thursday, October 24, 2024, a New York federal judge granted the Federal Trade Commission's request for a preliminary injunction to halt the merger between Tapestry Inc. and Capri Holdings Ltd. The court held that the parties, owners of handbag retailers, operated in the same relevant market as defined by the FTC—“accessible luxury” handbags, ranging from \$100 to \$1,000.

#### HISTORY OF THE MERGER

Tapestry Inc., owner of Kate Spade and Coach, and Capri Holdings Ltd., owner of Michael Kors, announced plans to merge in August 2023. The FTC filed its [complaint](#) in April 2024, alleging that the deal would eliminate direct head-to-head competition between Tapestry's and Capri's brands. The FTC described the market in which the combined company would have a dominant share as the “accessible luxury” handbag market, using a term that Tapestry coined to describe quality leather and craftsmanship handbags at an affordable price. The Agency further distinguished accessible luxury from “true luxury,” which it noted includes Chanel, Louis Vuitton, and Hermes. According to the FTC, the merger threatened not only competition for customers, but also competition for labor, as Tapestry and Capri together employ more than 33,000 employees. In a post merger world, the FTC alleged the combined company would create a highly concentrated market, with “considerably more than 30 percent” market share. The FTC also criticized Tapestry's history of serial acquisitions.



## THE CURRENT STATE OF PLAY

On October 24, after seven days of testimony, the Southern District of New York granted the FTC's request for a preliminary injunction, temporarily enjoining the merger pending the completion of the FTC's in-house administrative proceedings. Nearly half of the 169-page opinion focused on market analysis, with the court ultimately siding with the FTC and accepting the proposed "accessible luxury handbags" market. The court first differentiated "accessible luxury" from "true luxury" and "mass market" products. While the handbags in each market might function the same, the court found that a consumer would not view them as interchangeable, just as a consumer would not view a Chevrolet, a Lexus and a Lamborghini as interchangeable. The court emphasized this point by saying "To ignore the peculiar role of brands in the handbag market would be to ignore the commercial realities of the industry."

In analyzing the *Brown Shoe* factors<sup>i</sup>, the court identified differences in materials used by "mass market" brands, differences in production facilities compared with "true luxury" brands, industry recognition of differentiation, and the price distinction among the three markets. The court found accessible luxury handbags pricing to be a distinguishing factor because (i) the bags generally cost between \$100 and \$1,000, and (ii) unlike the other markets, pricing heavily relies on discounting. Capri introduced evidence that Michael Kors sold about 70.4% of its handbags for under \$100 in 2023, and Tapestry asserted that nearly 62% of Kate Spade handbags sold for less than \$100 in 2023. The court dismissed these figures, stating that they are misleading, neglect to include higher wholesale pricing, and only take into account the "out the door" price, rather than the ticket price. The court also emphasized the \$1,000 minimum for "true luxury," citing a Tapestry board presentation for the assertion that luxury "owns" the above \$1,000 market. This is an example of a party's own contemporaneous documents coming back to hurt them when they try to take a different position in litigation and underscores the importance of educating business teams on how to—and, critically, how not to—create documents discussing competition.

The court also rejected arguments by Tapestry and Capri that (i) the FTC's market definition does not accord with the commercial realities of handbag competition; and (ii) the existence of cross-shopping defeats the FTC's market definition. The court again cited to *Brown Shoe* for the proposition that the existence of "a broad market for handbags overall does not negate the existence of a relevant submarket of affordable-luxury handbags."

After accepting the FTC's narrow market definition, the court held that the FTC had established a prima facie Section 7 case, and ultimately granted the FTC's injunction.

The court also favorably cited the relatively new 2023 DOJ/FTC Merger Guidelines. While noting that the Guidelines are non-binding, the court nonetheless relied upon them as persuasive in reaching its decision. Of particular note, the court cited the change in HHI requirements, wherein markets with an HHI greater than 1,000 are considered "concentrated," markets with an HHI greater than 1,800 are considered "highly concentrated," and a change of more than 100 points is regarded as a "significant increase." Further, the court declined to decide whether, under the 2023 Guidelines, the FTC could prove its prima facie case by demonstrating that the merger "will eliminate head-to-head competition between close competitors" without analyzing market concentration, thus leaving the door open for the government to advance such a theory in a future case.



## TRENDS IN MERGER ENFORCEMENT

Nearly a year ago, Lina Khan wrote a letter defending her track record in merger enforcements. Between June 2021 and November 2023, she catalogued 10 challenged mergers, 19 abandoned mergers, 16 consent decrees, and 1 loss. Bloomberg Law reported that 2022 set a record for the amount of merger enforcement activity, with a total of 50 combined merger challenges by the FTC and DOJ. This marked the highest number since 1976. In contrast, fiscal year 2023 marked the lowest year for FTC merger enforcement actions since 2006, with only 16 actions. However, of the 16 actions, four complaints were issued, and all four complaints resulted in a federal injunction, showing a high success rate in federal courts.

The Southern District of New York's ruling in this case marks the FTC's first federal merger litigation win of the year. This also comes mere days after the FTC announced its long awaited changes to the HSR rules, updating a decades old form to require a more strenuous process for parties undertaking a merger or acquisition and subject to the Hart-Scott-Rodino Act. Looking forward, closings in the Kroger/Albertsons merger and the Sealy/Mattress Firm merger are both on pause, with the Kroger trial wrapping up on October 24<sup>th</sup>, and hearings in the Sealy trial set to begin on November 12<sup>th</sup>.

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<sup>i</sup> In 1962, the Supreme Court laid out a list of factors to be used in defining submarkets. Those factors include: (1) industry recognition, (2) peculiar characteristics and uses, (3) unique production facilities, (4) distinct customers, (5) distinct prices, (6) sensitivity to price changes, and (7) specialized vendors. *Brown Shoe Co. v. United States*, 370 U.S. 294, 82 S. Ct. 1502 (1962).