

Intellectual Property

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Nationwide Injunctions: A Substantive View Considering Recent Headline Buzz Words

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Introduction

Nationwide injunctions

COMPARING THE JUNE 27, 2025

Supreme Court *Trump v. CASA*¹ decision to a Seventh Circuit decision in Spring, 2025, *Republic v. BBK*² underscores the distinction between the geographical scope of injunctions (“nationwide”) and injunctions that bind the U.S. government, without geographical limitation (“universal”). The term “nationwide injunctions” has become a contemporaneous political headline and the political complaints fail to examine the logic in Federal Courts having the power to grant equitable relief sufficient to provide a remedy involving the parties before the Court. The conflation was observed, but not explained, in *Trump v. Hawaii*³: “Injunctions that prohibit the Executive Branch from applying a law or policy against anyone—often called “universal” or “nationwide” injunctions—have become increasingly common.” Better terminology would respect the scope of an injunction relating to the parties and the geographical scope of injunctions.

Universal injunctions are different than nationwide injunctions

The incorrectness of the term “nationwide” is explained in footnote 1 in *Trump v. CASA, Inc.*⁴ “Universal” injunctions in recent news, are different than geographically “nationwide” injunctions:

Such injunctions are sometimes called

“nationwide injunctions,” reflecting their use by a single district court to bar the enforcement of a law anywhere in the Nation. But the term “universal” better captures how these injunctions work. Even a traditional, parties-only injunction can apply beyond the jurisdiction of the issuing court. *Steele v. Bulova Watch Co.*, 344 U.S. 280, 289 (1952) (When “exercising its equity powers,” a district court “may command persons properly before it to cease or perform acts outside its territorial jurisdiction”). The difference between a traditional injunction and a universal injunction is not so much where it applies, but whom it protects: A universal injunction prohibits the Government from enforcing the law against anyone, anywhere. H. Wasserman, “*Nationwide Injunctions Are Really ‘Universal’ Injunctions and They Are Never Appropriate*,” 22 Lewis & Clark L. Rev. 335, 338 (2018).

Thus, where parties are properly before the Court, the territorial scope of the injunction can be evaluated as needed for the remedy to be effective.

Republic v. BBK: Permanent injunction not limited to one state

*Republic v. BBK*⁵ was filed as a Declaratory Judgment action after Republic received a Cease and Desist letter⁶ (BBK does business as HBI and is referred to as HBI) asking to change trade dress because it was allegedly too similar. Republic’s Declaratory Judgment action alleged noninfringement and added unfair competition and deceptive advertising “under the federal Lanham

Act,⁷ Illinois common law, and the Illinois Uniform Deceptive Trade Practices Act (“IUDTPA”).⁸ In the event, the jury decided (1) there was trade dress infringement (BBK/HBI won, Republic lost) and also (2) there was misleading advertising under Illinois law (Republic won, BBK/HBI lost).

Discontinuing the trade dress (BBK/HBI won, Republic lost) is fairly straightforward, but the scope of the remedy for misleading advertising illustrates a territorial scope of injunction question—the issue covered in this paper.

There were two primary criticisms of the BBK injunction’s misleading advertising terms: (1) whether it had enough detail to understand what was required and prohibited and (2) whether its geographic scope was too broad since the misleading advertising counts were based on Illinois law.

(1) Sufficient Clarity In the BBK Geographically Nationwide Injunction

Recognizing a district court’s discretion in crafting an injunction (“Rule 65(d)(1) requires an order granting any injunction to “state its terms specifically” and to “describe in reasonable detail . . . the act or acts restrained or required” 135 F. 4th at 587, the Seventh Circuit observed, “We have explained that a ‘prohibition on implied falsehoods makes the use of somewhat inexact language unavoidable.’ *Eli Lilly & Co. v. Arla Foods, Inc.*, 893 F. 3d 375, 384 (7th Cir. 2018).” *Id.* Thus,

an injunction essentially prohibiting a company from portraying a product “as something it’s not” is sufficiently definite. Maintaining substantiation of the truth of advertising claims was also within the scope of the Court’s authority.⁹ The requirement for not making unsubstantiated claims was affirmed.

(2) Geographic Scope—“Nationwide”?

The two contrary positions urged in *BBK* can be summarized: (1) the injunction bars unsubstantiated advertising claims, on a geographically “nationwide” basis because the parties do business “nationwide” and commerce is effectively “nationwide” (Republic’s position) or (2) the injunction is overbroad because in some states, substantiation might not be required (*BBK/HBI*’s position).

In *BBK*¹⁰ the Seventh Circuit stated:

First, it is well established that a district court “exercising its equity powers may command persons properly before it to cease or perform acts outside its territorial jurisdiction.” *Steele v. Bulova Watch Co.*, 344 U.S. 280, 289 (1952) [citation omitted]. The important limiting principle is generally that “injunctive relief should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs.” *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979); accord, *City of Chicago v. Barr*, 961 F.3d 882, 920–21 (7th Cir. 2020) (“It is widely accepted—even by self-professed opponents of universal injunctions—that a court may impose the equitable relief necessary to render complete relief to the plaintiff . . .” (citing *Yamasaki*, 442 U.S. at 702)).

* * *

As *HBI* notes, several states—including Arizona, where *HBI* is headquartered—have not adopted the Uniform Deceptive Trade Practices Act and have differences in their consumer protection laws. But *HBI* does not argue that any state permits false or misleading statements of fact in advertising. See, e.g., *Ariz. Rev. Stat. Ann.* § 44-1522(A) (2025) (unlawful practice to use a “false pretense, false promise, [or] misrepresentation . . . in connection with the sale or advertisement of any merchandise”).

* * *

Unlike the situation before the Supreme Court in *Phillips Petroleum*, *HBI* has not shown that Illinois unfair competition law differs from the law of other states in a way that is “material” to the injunction.

* * *

[I]f *HBI* engages in advertising activities unrelated to the facts at issue in this case—or that have no connection to Illinois—it may seek “clarification or modification” of the injunction from the district court to ensure that its activities do not run afoul of the injunction.

* * *

The injunction here is appropriately tailored to “provide complete relief” to Republic, see *Yamasaki*, 442 U.S. at 702, and the district court did not abuse its discretion or make a legal error by allowing the injunction to take effect nationwide. Factual differences relating to future *HBI* advertising campaigns may require a different conclusion, though, and the district court will be free to consider those issues they arise.

Geographic scope of injunctions

Nationwide injunctions are permissible if no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs. *Trump v. CASA*¹¹ (See *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979) (“[I]njunctive relief should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs”). The nature of commerce is such that limiting geographic scope to a particular state (under *BBK*’s facts, is it OK to lie in Arizona or Indiana?) would be ineffective. Indeed, effectively tailoring advertising statements to be limited to particular states is burdensome for most parties selling products in commerce in the present day.

Injunctions, preliminary or permanent, generally require (1) irreparable harm; (2) inadequate remedy at law; (3) balancing of hardships; and (4) public interest supported. Of course, as between a preliminary injunction and a permanent one, for a permanent injunction, the party seeking the injunction has already “won”—no need to evaluate their likelihood of success—and whether or not there is an adequate remedy at law has been finally decided. See *Amoco Prod. Co. v. Vill. of Gambell, AK*¹² (“The standard for a preliminary injunction is essentially the same as for a permanent injunction with the exception that the plaintiff must show a likelihood of success on the merits rather than actual success.”).¹³

Geographic scope—nationwide—and “universal” injunctions have different aspects. Where the harm, adequacy of remedy at law, balance and public interest support a “wide” geography, a Federal District Court has authority to do so.

Under the *BBK* facts, interstate commerce is a reality, not just a Constitutional power. The effect of misstatements outside of Illinois, and where neither party is limited to Illinois, should be obvious. Indeed, *Steele* involved parties over whom the Court had jurisdiction. The Petitioner was in San Antonio, Texas and moved his watch business to Mexico, arranging for Swiss movements to be shipped to Mexico and watches assembled there, bearing the trademark *Bulova*. The subterfuge was not permitted. (“He bought component parts of his wares in the United States, and spurious ‘Bulovas’ filtered through the Mexican border into this country; his competing goods could well reflect adversely on *Bulova Watch Company*’s trade reputation in markets cultivated by advertising here as well as abroad.”). Congress had authorized such conduct to be within the reach of the Lanham Act.

Under different facts, acts being exclusively extraterritorial—in foreign countries, neither within the U.S. controlled outside (*Steele*) or crossing U.S. state lines (*BBK*)—extending remedies to cover things like damages solely from international sales, may exceed authority. *Abitron Austria GmbH v. Hetronic Int’l, Inc.*¹⁴

Conclusion

Geographically “nationwide” is well within the authority of U.S. District Courts. Traditional injunction factors should dominate—whether the remedy of local or non-local geographic scope is adequate remedies the harm and whether hardships and public interest properly considered. Considering modern commerce, a premise such as “OK to do it on the other side of State Line Road” appears somewhat illogical. But a “nationwide” injunction is much different than a “universal” injunction which may itself go beyond the factors for every

injunction—adequate to provide a remedy to the prevailing party, balancing hardships on each party, and considering the public interest. This may be particularly sensitive at a temporary restraining order or preliminary injunction stage where there is not yet a “win” on the merits. ■

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1. ___ US ___ No. 24A884 (June 27, 2025).
2. *Republic Techs. (NA), LLC v. BBK Tobacco & Foods, LLP*, 135 F.4th 572 (7th Cir.2025).
3. *Trump v. Hawaii*, 585 U.S. 667, 717 (2018) (Thomas, J., concurring).
4. ___ US ___ No. 24A884 (June 27, 2025).
5. *Passim*.
6. As an aside, evaluating one’s own commercial conduct before sending a cease and desist letter may have practical advantage.
7. 15 U.S.C. § 1125(a).
8. 815 ILCS 510/2 (2024).
9. Not mentioned, substantiation and maintaining evidence thereof is generally required by the Federal Trade Commission (FTC Policy Statement Regarding Advertising Substantiation, November 23, 1984, *In the Matter of Thompson Med. Co., Inc.*, 104 FTC 648, 839 (1984), *aff’d*, *Thompson Med. Co. v. FTC*, 791 F.2d 189 (D.C. Cir. 1986)) and the Illinois Consumer Fraud Act, 815 ILCS 505/2 (although competitors do not have standing under the Consumer Fraud Act, only consumers, *Tri-Plex Tech. Servs., Ltd. v. Jon-Don, LLC*, 2024 IL 129183, 241 N.E.3d 454 (May 23, 2024)) incorporates by reference FTC regulations and decisions.
10. *Id.* at 589-590.

11. *Trump v. Casa*, No. 24A884, slip op. at 23 (June 27, 2025).

12. 480 U.S. 531 (1987).

13. Compare *Authenticom, Inc. v. CDK Glob., LLC*, 874 F.3d 1019 (7th Cir. 2017) (“A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.”) to *eBay, Inc. v. MercExchange, LLC*, 547 U.S. 388 (2006) (“According to well-established principles of equity, a plaintiff seeking a permanent injunction must satisfy a four-factor test before a court may grant such relief. A plaintiff must demonstrate: (1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction. See, e.g., *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 311-313 (1982); *Amoco Production Co. v. Gambell*, 480 U.S. 531, 542 (1987). The decision to grant or deny permanent injunctive relief is an act of equitable discretion by the district court, reviewable on appeal for abuse of discretion. See, e.g., *Romero-Barcelo*, 456 U.S. at 320.”).

14. 600 U.S. 412 (2023).

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