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THE U.S. AND TIKTOK: TIME'S UP?

CATHERINE BRADSHAW*

Viral social media star machine TikTok has announced a potential deal with two American companies in an effort to skirt President Trump's executive order promising to ban the app if it remains under Chinese control.¹ ByteDance, TikTok's Chinese owner, is in talks to create a new U.S.-based company, TikTok Global, of which Oracle and Walmart, both American companies, would own 20 percent.² President Trump voiced approval of the deal, stating he has “given the deal [his] blessing.”³ This statement came following weeks of increasing tensions between the U.S. government and the social media giant over allegations from Trump officials that the Chinese government could use the app to steal data from American users and threatens U.S. national security.⁴

Before the deal was announced, it appeared the president would face TikTok in an arena not dominated by cell phone screens: the courtroom. On August 24, TikTok filed a lawsuit against President Trump and the U.S. Department of Commerce, alleging that his August 6th executive order banning the app deprived TikTok and ByteDance of due process of the law for political reasons and not because of an “unusual and extraordinary threat,” a necessary condition for presidential action under the International Emergency Economic Powers Act (“IEEPA”) under which the executive order was issued.⁵ The complaint described in detail the steps TikTok

*J.D. Candidate, Class of 2022, Arizona State University Sandra Day O'Connor College of Law.

¹Exec. Order No. 13,942, 85 Fed. Reg. 48,637 (Aug. 11, 2020).

²Ana Swanson, David McCabe, and Erin Griffith, *Trump Approves Deal Between Oracle and TikTok*, N.Y. TIMES (Sept. 24, 2020, 6:58 PM), <https://www.nytimes.com/2020/09/19/technology/trump-oracle-and-tiktok.html>.

³*Id.*

⁴Ana Swanson, Mike Isaac, and Paul Mozur, *Trump Targets WeChat and TikTok, in Sharp Escalation With China*, N.Y. TIMES (Sept. 24, 2020, 6:45 PM), <https://www.nytimes.com/2020/08/06/technology/trump-wechat-tiktok-china.html>.

⁵*TikTok Inc. et al v. U.S. Dept. of Commerce et al*, 2:20CV07672 (C.D. Cal dismissed Sept. 18, 2020).

had taken both to protect the privacy and security of U.S. user data, as well as store that data separately from the user data of other apps owned by ByteDance.⁶

Despite this suit, the Trump administration did not back down from its executive order until news of TikTok's pseudo sale came to light, though the deal is a far cry from what the President initially demanded. The deal is structured to create a 20 percent divestment of TikTok ownership which leaves 80 percent ownership control to ByteDance; Chinese control over TikTok's user data would remain unchanged, so it is hard to see how administration concerns over Chinese ownership of U.S. user data will be quelled. Nonetheless, President Trump's most recent comments indicate satisfaction with the deal, and the likelihood of revocation of his August executive order seemed high enough that TikTok voluntarily dismissed its complaint. That is, until September 18, when administration officials clarified that the ban was still pending and would go into effect two days later.⁷

That same day, TikTok refiled its complaint requesting an injunction on the ban.⁸ Though the ban was initially scheduled to go into effect September 20, the Department of Commerce extended it by one week, to September 27, citing "positive efforts" from TikTok.⁹

On September 24, the federal judge presiding over TikTok's suit gave the Trump administration until Friday, September 25 to either defend its ban in court or again postpone.¹⁰ If the administration fails to voluntarily postpone the ban, it will have to attend a hearing on September 26 where the judge will rule on TikTok's requested injunction.¹¹ At this time, there has been no further comment from the Trump administration.

Will TikTok soon be banned from American phones? Or will it live to dance another day? Only time will tell.

⁶ *Id.*

⁷ Katie Cox, *Trump admin orders TikTok, WeChat gone from app stores on Sunday*, ARS TECHNICA (Sept. 24, 2020 6:32 PM), <https://arstechnica.com/tech-policy/2020/09/tiktok-wechat-to-be-pulled-from-us-app-stores-as-of-september-20/>.

⁸ Katie Cox, *Judge gives Trump admin. Friday deadline to delay or defend TikTok ban*, ARS TECHNICA, <https://arstechnica.com/tech-policy/2020/09/judge-gives-trump-admin-friday-deadline-to-delay-or-defend-tiktok-ban/>.

⁹ Press Release, Wilbur Ross, U.S. Dept. of Commerce, Statement on Delayed Prohibitions Related to TikTok (Sept. 19, 2020).

¹⁰ Katie Cox, *Judge gives Trump admin. Friday deadline to delay or defend TikTok ban*, ARS TECHNICA, <https://arstechnica.com/tech-policy/2020/09/judge-gives-trump-admin-friday-deadline-to-delay-or-defend-tiktok-ban/>.

¹¹ *Id.*