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FTC CHAIRMAN ISSUES WARNING LETTERS RELATING TO DIVERSITY INITIATIVES TO LAW FIRMS WHICH HAVE IMPLICATIONS TO CORPORATE EMPLOYERS AS WELL

Feb 04, 2026

SUMMARY

Summary: On Friday, January 30, 2026, Andrew Ferguson, the Chairman of the Federal Trade Commission (FTC), sent warning letters to over 40 law firms about their purported involvement in the Mansfield Certification program, a diversity initiative pursuant to which law firms commit to considering diverse applicant pools. The warning letters characterize the Mansfield Certification program as an illegal collusion scheme, often referred to as a "hub and spoke" cartel. The current administration has used this type of "cartel" claim frequently. Several of us predicted last year (in the context of U.S. antitrust challenges to environmental sustainability initiatives) that the cartel type claims would be increasingly invoked.

But significant challenges exist between these warning letters and legal action sufficient to withstand a motion to dismiss. Clients, whether law firms or other entities that participate in the Mansfield Certification program, should review their hiring practices to ensure that they are making independent hiring decisions, even if those actions parallel other firms' decisions.

On January 30, 2026, Chairman Andrew Ferguson sent letters to 42 law firms—including some of the nation's largest law firms—warning them about potential antitrust liability related to their involvement in the Mansfield Certification program. The warning letters focused on a company known as Diversity Lab, which promotes a diversity initiative with respect to legal hiring. To obtain the Mansfield Certification, Diversity Lab asks law firms to self-certify that law firms have considered "at least 30% qualified underrepresented talent" when making various employment decisions such as hiring, promotion, and leadership roles. The Chairman's letters warned that it considers collusion or unlawful coordination on DEI metrics to be unfair and anticompetitive labor practices. According to the Chairman's warning letters, these unlawful labor practices cover not just hiring and promotion decisions but also sharing of pay and other benefits.

These letters are consistent with the Chairman Ferguson's past comments. He has referred to DEI programs as "a scourge on our institutions" in January 2025. He also highlighted the potential for anticompetitive actions around DEI metrics in February 2025 when he launched the Labor Markets Task Force.

Chairman Ferguson's warning letters, however, likely face significant hurdles in translating those letters into formal complaints that survive motions to dismiss. One particular challenge for the FTC will be the fact that several district courts have considered the Mansfield Certification process and held that, standing alone, a certifier's commitment to consider a more inclusive hiring pool is not illegal.[1] Based upon those decisions, the FTC will likely need at least some additional evidence that the law firms did something beyond merely becoming certified by Diversity Lab. Of course, the FTC often cannot find evidence unless it begins an investigation, but here the warning letters rely solely on statements in a single article. It will be important to understand what additional evidence FTC staff uncovers, should the Commission as a whole vote to open a formal investigation (usually the next step after the issuance of warning letters).

Nor is this the only hurdle the FTC may face in building a legally valid complaint. Because Diversity Lab is not a law firm, presumably Chairman Ferguson's theory is that the Mansfield Certification is a "hub-and-spoke" conspiracy. The theory is that competitors (the spokes, allegedly here law firms) collude together via a central actor (the hub, allegedly here Diversity Lab). Under longstanding antitrust doctrine, this legal theory requires a "rim," which is often evidence that competitors are acting in a manner that only makes sense because others are also participating. [2] When competitors act independently, such as exercising business judgment based on their own incentives, there is no conspiracy, only an insufficient "rimless wheel." [3] If the FTC were to bring suit, it would need to develop similar evidence of a "rim," which likely must be sufficient to exclude competing inferences, such as that the firms were each acting in their independent, albeit parallel, business judgment.

Nevertheless, Chairman Ferguson's warning letters provide a timely reminder for law firms as well as companies to review their DEI policies with an eye for any commitments made to outside parties. Whether law firms or another type of business, clients should ensure that their commitments allow the company to act independently, based on their own incentives and business judgment, as opposed to taking actions that only make sense if the company knows all other companies are doing the same thing.

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[1] *Jenner & Block LLP v. U.S. Dep't of Justice*, 784 F. Supp. 3d 76, 107, 110 (D.D.C. 2025); *Perkins Coie LLP v. U.S. Dep't of Justice*, 783 F. Supp. 3d 105, 153-54 (D.D.C. 2025).

[2] *See Toys "R" Us, Inc. v. F.T.C.*, 221 F.3d 928, 935-36 (7th Cir. 2000).

[3] *In re Musical Instruments & Equip. Antitrust Litig.*, 798 F.3d 1186, 1192-93 (9th Cir. 2015).

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