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FTC Works to Thwart Coronavirus Scams

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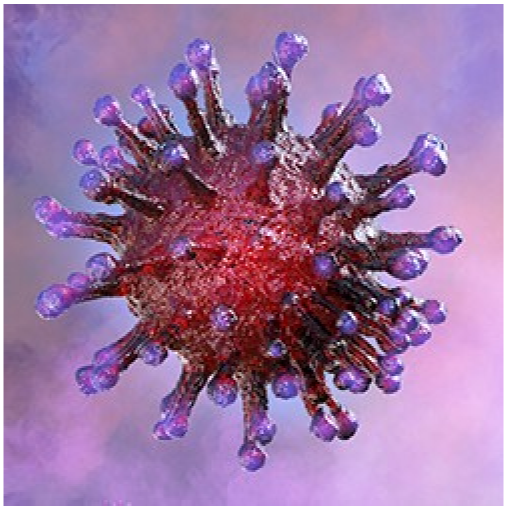

As the collective consciousness coalesces around coronavirus fears, scammers are capitalizing on the opportunity to exploit the concerned. In recent months, the Federal Trade Commission ("FTC") has noted the emergence of scams related to the coronavirus, including Medicare scams, scams around relief payments, scams implicating goods that are never delivered, and scams collecting money in the name of fake charities, among others. In an effort to thwart this fraudulent behavior, the FTC has developed a webpage designed to protect consumers from predatory behavior related to the coronavirus.

The FTC is not merely providing information; it is also taking action. In March, the FTC teamed up with the Food and Drug Administration ("FDA") to begin sending warning letters to companies they allege to be engaged in selling unapproved products that potentially violate laws against making deceptive, or otherwise scientifically unsubstantiated, claims regarding their efficacy in treating COVID-19. Although the recipient companies offer products—including essential oils, teas, and colloidal silver—that they claim can treat or prevent coronavirus, the FDA states that there does not yet exist any approved methodology (such as products, drugs, or vaccines) to treat or prevent transmission of the virus.

Thus, stating that claims made by the companies related to the treatment and prevention of coronavirus are unsubstantiated, and may run afoul of the FTC Act (15 U.S.C. 41 et seq.), the FTC has sent letters to companies advising them to immediately cease making any such representations.

Related Capabilities

- Trademark, Copyright + Advertising
- Intellectual Property Litigation

According to the FTC's letters (*see* here for a current list of warning letters), failure to discontinue the propagation of false claims may impel the FTC to seek a federal court injunction and an order obligating the recipient companies to refund money to consumers. Recipient companies were finally instructed to notify the FTC of the specific remedial actions they intended to take within 48 hours. Both the FTC and the FDA plan to not only follow up with those companies failing to institute corrective actions, but also to monitor complaints, online marketplaces, and social media to catch companies trying to market offending products on a different website or under a different name (*see* press release).

The FTC has since indicated that the seven original companies to which it delivered letters have worked to remove unsubstantiated claims from their advertising. However, a review of the FTC website indicates that the FTC and the FDA continue to issue warning letters to new companies.

In addition to the fraudulent advertising claims noted above, the FTC is also tackling robocalls related to coronavirus. At the end of March, the FTC sent letters to nine companies, including Voice over Internet Protocol (VoIP) service providers, warning them that it is against the law to "assist[] and facilitate[]" illegal robocalls or telemarketing in relation to the coronavirus.

The FTC has indicated that it may pursue legal action against companies that assist telemarketers or sellers that they either know, or "consciously avoid[] knowing," are violating the Telemarketing Sales Rule (occasioned by such conduct as misrepresentations of governmental agency affiliations, and declarations of misleading or false statements for the purposes of inducing consumers to make purchases or donate to charities, among other offenses) (*see*, for example, here). To address Telemarketing Sales Rule violations, the FTC can seek court injunctions, civil penalties, and money to refund injured consumers.

Companies that want to avoid running afoul of the FTC and FDA should be careful to ensure that their practices comply with the regulatory requirements of both agencies, paying attention to the representations being made on their labels, websites, and in their promotions, for example. Companies must not misbrand their products, or represent them for coronavirus uses for which they have not been approved. Companies must also ensure that their advertising claims are supported by substantiating scientific evidence, and make efforts to avoid assisting and facilitating illegal conduct in the robocall arena.