

POINT OF SALE

Updates from Benesch's **Retail, Hospitality & Consumer Products** Industry Group

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Fraud During COVID-19 Pandemic

As the COVID-19 pandemic continues to alter daily life across the globe, reports of pandemic-related fraud are increasing. With the World Health Organization (WHO) declaring a “news infodemic” to coincide with the COVID-19 pandemic, an array of misinformation and scams are arising. Similar to those that surfaced in the 2008 financial crisis, some businesses have [preyed upon consumer fear](#) of uncertainty. From fraudulent treatments to phishing attacks, unsolicited robocalls and investment scams, the increase in fraud and deceptive advertising is drawing the [attention of enforcers](#). As such, it is increasingly important for companies to carefully review consumer advertising efforts as regulators heighten their oversight of potential fraud or infringement on consumer rights during the pandemic.

For example, the Department of Justice (DOJ) is actively [overseeing](#) potential wrongdoing related to the COVID-19 pandemic and trying to root out “wrongdoers seeking to profit from public panic.” The DOJ also ordered U.S. attorneys to appoint special COVID-19 fraud coordinators to assist with these efforts. In parallel, the Federal Trade Commission (FTC) recently [warned](#) consumers to be mindful of potential scams following an [increase in consumer complaints](#) related to the virus. As of [April 14, 2020](#), the FTC had received 10,057 coronavirus-related fraud reports from consumers. The top complaints involved travel and vacation related reports about cancellations and refunds, problems with online shopping, mobile texting scams, and government and business imposter scams. Consumers reported losing a whopping total of \$13.44 million in fraud complaints that mentioned the coronavirus. The FBI also has reported an [uptick in fraud schemes](#).

The FTC and Food and Drug Administration (FDA) similarly undertook [joint enforcement efforts](#) against companies selling unapproved and misbranded products for treating COVID-19. These [joint warning letters](#) called out companies allegedly selling unapproved products that may violate federal law by making deceptive or scientifically unsupported claims about their ability to treat or cure the virus. The agencies are actively [monitoring](#) social media hashtags and third-party seller product descriptions to identify potentially misleading marketing and claims not supported by competent and reliable scientific evidence. Both agencies have also undertaken individual enforcement efforts. The FDA additionally [advised](#) commercial manufacturers and laboratory developers against claiming their serological tests for COVID-19 are approved or authorized.

The FTC recently issued warning letters to Voice over Internet Protocol (VoIP) service providers for “assisting and facilitating” [illicit COVID-19-related telemarketing calls](#). The agency has also teamed up with the Federal Communications Commission (FCC) to issue [warnings](#) to three “gateway providers,”

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cautioning that they would block all their phone traffic if they failed to implement changes to block COVID-19 scams.

The Securities and Exchange Commission (SEC) [warned](#) against coronavirus-related investment scams, citing internet promotions, including on social media, claiming that products or services of publicly-traded companies can prevent, detect or cure the virus and suggesting that stock prices will increase as a result. State attorneys general are also [paying close attention](#) to potential pandemic-related fraud and the Department of Health and Human Services (HHS) HHS Office of Inspector General (OIG) issued a [COVID-19 Fraud Alert](#) warning of healthcare fraud scams.

Amid this heightened regulatory scrutiny, advertisers are adding virus-related keywords to block lists, [cutting back](#) on ad spending, or pausing advertising spend completely. Ad prices are low and competition is less stiff, creating an opportunity for low-quality ads to gain access to prime ad slots. Subsequently, there has been an [increase in malvertising campaigns](#) and other

malicious activity. With more people on personal devices, rather than work devices, there are more opportunities for ad fraud, pushing advertising platforms to respond. For instance, the *New York Times* [stopped](#) running programming ads on its coronavirus newsletter after several ads were displayed for N95 respirators. Google has blocked tens of thousands of ads that were “capitalizing” on the pandemic and has pulled ads from YouTube.

While advertising platforms ramp up [efforts](#) to reduce harmful content, [research](#) by the Digital Citizens Alliance (DCA) and the Coalition for a Safer Web suggests that those efforts may have fallen flat, allowing “shadowy sellers” to advertise fraudulent products. For instance, the DCA pressed regulators to take action against YouTube and its parent Google for failing to do enough to prevent this false advertising. Senators have also urged the FTC to intervene to prevent ads through Google’s AdChoices that allow sellers to “exploit... fear for profit.” They asked the commission to intervene to address Google’s “inattention to the misuse of its advertising platform.”

Warnings and letters are likely to escalate to legal action. Already, class action lawsuits are emerging due to forced business closures and allegations of fraud against consumers and shareholders, including claims that consumers and shareholders were misled about the risks of COVID-19. Potential cases are expected to emerge related to mislabeled health products and other consumer claims.

Beyond advertising, regulators, investors and consumers are becoming more critical of privacy practices as more people flock to web-based solutions to work and connect. For instance, the video calling app Houseparty, which allows users to join video calls and play games with friends, has [raised privacy concerns](#). The app, which is owned by California-based Epic Games, has seen a [surge](#) in use since the COVID-19 pandemic began. However, its privacy statement has raised concerns about data being exploited for commercial interests. Social media users also alleged Houseparty was hacked, claiming they were locked out of accounts from third party apps after downloading the app.

Questions have also [emerged](#) about Zoom’s privacy policy and terms of use, as well as the rights provided to hosts as the number of users [surges](#). Zoom is already facing lawsuits by users and shareholders over allegedly unlawful sharing of personal data with third parties. Several social media platforms were also [sued](#) in California federal court for allegedly “eavesdropping” on Zoom users. Although unrelated to the pandemic, an uptick in such lawsuits is possible as more users turn to remote conferences services and other web-based tools, [drawing more attention](#) to privacy and security practices and putting more pressure on companies to address any potential misuse of data or security vulnerabilities. The FTC may take action against companies that engage in activities that are inconsistent with privacy policies, which would be misleading to consumers.

Recent Regulatory Actions

Regulator	Enforcement Claims	Status
DOJ	In its first action against COVID-19 fraud, the DOJ filed an enforcement action in federal court against operators of the fraudulent website “coronavirusmedialkit.com.” The civil complaint alleges that the operators of the website engaged in a wire fraud scheme seeking to profit from the confusion and fear surrounding the pandemic. The website claimed to offer consumers access to WHO vaccine kits in exchange for a \$4.95 shipping charge, which consumers would pay by providing credit card information. The government used a federal statute that allows federal courts to issue injunctions to prevent harm to potential victims of fraudulent schemes.	The court granted the DOJ’s motion for a temporary restraining order. The order directed the registrar of the fraudulent website to immediately take action to block public access to it.
New York AG	The New York AG issued cease and desist letters to The Silver Edge Co. and a naturopathic doctor in Oklahoma directing them to immediately stop promoting products as treatments or cures for COVID-19. The letter to The Silver Edge Co. cited claims that its Micro-Particle Colloidal Silver Generator “beats coronavirus” and suggesting there is “clinical documentation” to support that claim, while the letter to Sherill Sellman cited marketing of colloidal silver products as a cure online and on the religious TV show The Jim Bakker Show. The cease and desist letters cite violations of the state consumer protection statutes prohibiting fraudulent and deceptive business practices and false advertising.	The AG ordered Sellman to add a disclaimer to her website indicating that the products have not been evaluated by the FDA and are not intended to “diagnose, treat, cure or prevent any disease.” The AG also ordered The Jim Bakker Show to stop marketing the products. The FDA also issued a letter to The Jim Baker Show directing it to stop making claims about the product that are not supported by competent and reliable scientific evidence. The AG in Missouri filed a suit against Sellman and The Jim Bakker Show for similar violations (see below).
New York AG	The New York AG issued cease and desist letters to three companies selling air purifiers, directing them to immediately stop making claims the filters could prevent the spread and contraction of COVID-19. The letters allege that AllerAir Industries, Airpura Industries and Sylvane Inc. misrepresented that COVID-19 is primarily airborne and that air purifiers can remove virus particles from the air, failing to disclose that health organizations have determined the virus is primarily transmitted through respiratory droplets rather than air. The letters allege violations of state consumer protection laws prohibiting fraudulent and deceptive business practices and false advertising.	The letters order the companies to immediately stop making the misleading claims. They also direct the companies to add language to their websites to indicate that air purifiers may be most effective in medical environments where particles are aerosolized. The AG warned that failure to comply with the directive may result in further action, including suit to enjoin any deceptive acts and practices and seek restitution, damages and penalties of up to \$5,000 per violation.
New York AG	The New York AG issued a cease and desist letter to Finest Herbalist for allegedly using fake news to promote fraudulent COVID-19 treatments. The letter alleges the company spammed consumers with e-mails and text messages falsely promoting CBD oil as a cure for the virus, citing a fake Fox News article. The letter alleges violations of the state consumer protection statutes prohibiting fraudulent and deceptive business practices and false advertising.	The AG, who is “aggressively” targeting COVID-19 scams, advised the company to add a disclaimer specifying that the product is not intended to diagnose, treat, cure or prevent any disease. The letter warned that a failure to comply with the cease and desist directive may result in further action, including a suit to enjoin any deceptive acts and practices and seek restitution, damages and penalties of up to \$5,000 per violation.

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Regulator	Enforcement Claims	Status
Arizona AG	The Arizona AG issued a cease and desist letter to cannabis dispensary operator YiLoLife LLC, saying the company violated the state Consumer Fraud Act by advertising a Coronav Immunization Stabilizer Tincture for consumers with a “life threatening virus.” Without scientific evidence to support the claim, the letter said advertising a product as providing immunization against COVID-19 creates a misrepresentation and false promise of a medical preventative or cure.	The FTC declined to take formal action, stating the company told the agency it had removed the claims. The company maintained that changes to its website were unrelated to the complaint. The Humane Society has sent letters to state attorneys generals in 14 states, plus the Department of Consumer and Regulatory Affairs in the District of Columbia. The SEC complaint and FWW and ORA’s lawsuit are ongoing.
Missouri AG	The Missouri AG filed a lawsuit against Jim Bakker and Morningside Church Productions for misrepresentations about the effectiveness of “Silver Solution” as a COVID-19 treatment. The suit alleges that a production of The Jim Bakker Show featuring “naturopathic doctor” Sherill Shellmanmade claims that the solution can cure the virus.	The lawsuit seeks a restraining order and permanent injunction ordering Bakker to stop selling the product as a COVID-19 treatment.

Recent Cases

Case	Key Claims	Status
Douglas v. Norwegian Cruise Lines et al	An investor filed a proposed class action alleging Norwegian Cruise Lines inflated its stock price through allegedly false and misleading statements about the COVID-19 pandemic. The plaintiff filed a suit in the Southern District of Florida alleging securities filings and press releases made materially false or misleading statements because they failed to disclose Norwegian was using sales tactics that include providing customers with “unproven and/or blatantly false statements” about the pandemic. The suit cites news reports featuring a leaked internal communication and company employees speaking on a condition of anonymity who said managers had pressured sales agents to mislead potential customers and provided scripted answers with false reassurances about the outbreak. The complaint alleges violations of federal securities law. It alleges significant losses and damages as a result of a decline in the market value of the company’s securities.	The complaint seeks to certify a class of purchasers of Norwegian stock publicly traded on the New York Stock Exchange from February 20 through March 12. Separately, the Florida AG launched an investigation into reports the company fed sales staff “inaccurate one-liners” that minimized the danger of the COVID-19 outbreak to use as responses to questions from concerned customers.

Case	Key Claims	Status
WASHLITE v. Fox News	The Washington League for Increased Transparency and Ethics filed a lawsuit in King County Superior Court alleging that Fox News, its parent companies and owners violated the state Consumer Protection Act and acted in bad faith by disseminating false information about COVID-19 on news broadcasts, downplaying the danger posed by the pandemic. The lawsuit maintains that Fox News engaged in unfair and deceptive acts by representing the virus as a hoax in broadcasts, which caused viewers to fail to properly protect themselves from the virus' spread, thereby contributing to the public health crisis and preventable mass death. The lawsuit seeks an injunction to bar the outlet from "interfering with reasonable and necessary measures to contain the virus by publishing further false and deceptive content."	Fox asked a Washington state judge to dismiss the lawsuit, denying WASHLITE's assertion that its hosts minimized the severity of the pandemic and saying that statements made are protected under the First Amendment. The request came after a group of journalism professors and working journalists published an open letter to Fox News accusing it of regularly subjecting its viewers to misinformation about the COVID-19 outbreak.
Drieu v. Zoom Video Communications, Inc. et al	A proposed class action filed in the District Court in the Northern District of California alleges that Zoom misled shareholders about the extent of data privacy and security measures and failed to disclose that its service was not end-to-end encrypted. The suit alleges that investors were hurt when Zoom's subpar data privacy and security measures were brought to light as the COVID-19 pandemic ramped up and entities started backing off the service. The suit alleges violations of federal securities laws. It maintains that Zoom included false or misleading statements and omissions in its initial public offering documents.	The lawsuit, which comes as Zoom's usage surges amid stay-at-home mandates, seeks to recover damages caused. The company is facing separate litigation and heightened concerns about its data privacy practices, including a proposed class action for allegedly unauthorized sharing of user data with Facebook.
McDermid v. Inovio Pharmaceuticals, Inc. et al	A proposed class action filed in Philadelphia federal court alleges Inovio Pharmaceuticals' CEO claimed the company had developed a vaccine for COVID-19 but subsequently backpedaled on the claims, leading to a drop in stock prices. The suit alleges the company made false and misleading statements to the market and were "deliberately reckless as to the falsity of their claims." The suit alleges violations of the Securities Exchange Act.	The lawsuit seeks to represent a class of all Inovio investors who bought stock between February 14 and March 9. It seeks to recover their losses from the alleged false statements.



Price Gouging

Some states are looking at legislation to prohibit businesses from price gouging, and are implementing emergency price gouging hotlines

Consumer protection and antitrust enforcers are also [responding](#) as [complaints](#) about price gouging have [swelled](#) against both “mom-and-pop stores” and large retailers. Prosecutors across the U.S. are investigating price increases on an array of products, and class actions are expected to arise over price gouging across the country. About 40 states have laws against price gouging, some of which define it as an increase above a certain threshold and others that ban increases deemed unreasonable. While not all states permit private attorneys to file cases such as class actions under price gouging statute, suits may also be filed under consumer fraud laws.

The DOJ has heightened [attention](#) to potential hoarding and price gouging and House Democrats have also [introduced](#) legislation to address price gouging. The COVID-19 Price Gouging Prevention Act would bar the excessive pricing of consumer goods and services during the emergency declared as a result of the outbreak while the Disaster and Emergency Pricing Abuse Prevention Act would extend similar protections to

essential goods and services before, during and immediately following “any pandemic, natural disaster or state of emergency.” Lawmakers have also [pressed](#) the FTC to address price gouging and a COVID-19 Hoarding and Price Gouging Task Force was established.

Some states are looking at [legislation](#) to prohibit businesses from price gouging, and are implementing emergency price gouging hotlines. The Massachusetts AG, for instance, filed an [emergency regulation](#) banning price gouging of essential products during the pandemic. State law enforcement officials are also [pressing](#) online sellers to address price gouging as complaints surge about price increases due to the COVID-19 pandemic. New York City alone has already issued 550 violations and imposed \$275,000 in fines for price gouging.

As consumers and regulators pay more attention to price increases, any price changes will need to be carefully considered. While supply chain disruptions may lead to higher prices, price increases need to be weighed against any potential appearance of price gouging.

Recent Regulatory Actions

Regulator	Enforcement Claims	Status
Michigan AG	The Michigan AG filed an enforcement action against an individual selling high-priced products online through eBay. The enforcement action cites respirator mask sales to the public at a “price that is grossly in excess of the price at which similar property or services are sold,” and an apparent effort to seek profit from the COVID-19 pandemic. Per the letter, this represents unfair trade practices under the state Consumer Protection Act.	The AG's office issued a Notice of Intended Action letter directing the individual to cease and desist the reported price gouging practices. The NIA is the first action the AG has taken against an online seller. The AG said the goal is not to shut down or “financially jeopardize” business owners with fines but will take legal action to protect state consumers.
Texas AG	The Texas AG filed a lawsuit against Auctions Unlimited LLC for price gouging necessary health-related supplies. The company was auctioning face masks, N95 particulate respirators, hand soap, cleaner, and disinfectant wipes. Bidding on the respirator masks reached as high as \$180 for just 16 masks. Per the Texas Deceptive Trade Practices Act, it is prohibited to sell necessary items at an excessive price during a disaster declaration.	Price gouging is illegal in the state of Texas, and penalties under the Texas Deceptive Trade Practices Act are bolstered when a disaster is declared. Penalties for price gougers during the COVID-19 disaster could include reimbursing consumers and being held liable for civil penalties of up to \$10,000 per violation with an additional penalty of up to \$250,000 if the affected consumers are elderly.
Mayor of NY & DCWP Commissioner	Mayor De Blasio and the Commissioner of the Department of Consumer and Worker Protection (DCWP) filed lawsuits against three businesses for repeated price-gouging on necessary items amid the coronavirus pandemic. Burns Pharmacy in Queens, Hong Kong Supermarket in Manhattan and Thomas Drugs in Manhattan were issued a total of 203 violations by the DCWP for selling face masks, hand sanitizer and other products at drastically increased prices. The DCWP is seeking a total of up to \$101,500 in fines for the violations of the emergency rule under New York's Consumer Protection Law, which prohibits price gouging of any personal or household good or service that is needed to prevent or limit the spread of or treat COVID-19.	The DCWP encourages consumers who are overcharged to file a complaint and is actively inspecting stores based on consumer complaints. Businesses found to be overcharging consumers by 10% or more for any necessary items related to COVID-19 will be issued a violation. Since March 5, DCWP has received more than 7,200 complaints and issued more than 2,700 violations for price gouging.

Recent Cases

Case	Key Claims	Status
3M vs. Performance Supply LLC	3M filed a lawsuit accusing New Jersey company Performance Supply LLC of violating federal trademark law by trying to resell millions of the company's N95 masks to New York City at drastically increased prices. According to 3M, the company was selling the masks at more than four times the list price. Performance Supply is not accused of traditional trademark infringement like using the 3M name on their products or selling counterfeit masks; rather, the company is accused of using confusing tactics to mislead buyers into thinking the price gouging was somehow authorized by 3M.	3M is working with technology companies to flag and remove websites and social media posts that imply 3M endorsements. NYC officials have asked 3M to sell directly to the city.

Business Interruptions

Businesses should be vigilant regarding ongoing contractual relationships with clients, vendors and other business partners, particularly for those situations in which COVID-19 restrictions make it impossible for them to fulfill the terms of service within those contracts, and in how they communicate any changes they are seeking to make to terms of service.

Numerous businesses have already faced class action litigation in connection with changes to cancellation or refund policies absent proper advance notice to consumers of changes to terms of service. Similarly, as companies across the globe are impacted by state-at-home orders, contractual relationships will be affected and legal and financial liabilities may arise related to business disruptions and cancellations. Already, breach of contract lawsuits stemming from major supply chain disruptions have been filed. Disputes are also [emerging](#) with insurers as companies assess whether business interruption insurance [policies](#) cover the impact of the pandemic.

To navigate these challenges, retailers and hospitality groups need to be transparent about contractual modifications and ensure they are adhering to any contractual terms that may govern in the event of an inability to perform. Retailers should consider carefully the timing of

any amendments to the terms of service with customers regarding refund or cancellation policies, to ensure that consumers are provided with adequate notice and an opportunity to cancel membership before those amendments go into effect. Similarly, customers should be provided with adequate notice that they will be billed for substitute services, such as a livestream course membership where a customer can no longer physically attend a physical space, prior to charging the customer for these services. In the case of service terminations, retailers may owe consumers if they continue charging them for foods or services that can no longer be delivered.

To be proactive and mitigate the risk of a material breach with vendors or business partners, a retailer may sign a letter of amendments to its master service agreement with business partners. Such a letter could acknowledge, for instance, that during the pandemic the retailer may not satisfy all performance requirements, while outlining the commercially reasonable steps it is taking to comply with obligations and a good faith agreement between parties to resolve any issues.

A retailer may also invoke its rights under a force majeure clause—if such a clause exists within contract—which will generally excuse

noncompliance and suspend performance obligations if noncompliance or an inability to perform is caused by a force majeure event such as the COVID-19 pandemic.

If a business or service contract does not have a force majeure clause or relevant provisions, a retailer may be able to excuse contractual performance under the common law doctrine of impossibility, under which a court will typically examine (i) whether the event could have been reasonably foreseen by the parties; and (ii) whether the parties could have guarded against such risk. Unlike the force majeure provision, the doctrine of impossibility will not permit a court to rewrite the agreement to excuse performance for a limited timeframe, meaning the only outcome is termination of the agreement. A retailer may also argue that the doctrine of impossibility excuses performance if the force majeure clause is too narrow to cover a COVID-19 emergency.

Finally, a business should carefully evaluate any insurance policy for the ability to bring a business interruption claim and provide the carrier with notice of the claim as soon as possible. Coverage denial suits have already been filed by numerous retailers, and such suits are expected to rise in the coming months.

Recent Cases

Case	Key Claims	Status
Rudolph v. United Airlines Holdings, Inc. et al	A proposed class action filed in Chicago federal court alleges that United Airlines violated consumer protection laws by refusing to refund passengers for flights canceled to stem the spread of COVID-19. The complaint alleges the airline violated the Illinois Consumer Fraud and Deceptive Business Practices Act and consumer protection laws for 49 separate states.	The suit is seeking unrefunded money, along with statutory and punitive damages.

Case	Key Claims	Status
McMillan, Matthew v. Stubhub Inc. et al	A class action filed in Wisconsin federal court allege StubHub reneged on its guarantee to provide cash refunds as customers looking to get their money backs for events canceled due to COVID-19. The suit contends that StubHub is “retroactively” backing out of its “FanProtect” guarantee in response to liabilities arising from the pandemic and is refusing to give consumers cash refunds, offering instead only vouchers for future ticket purchases. The suit alleges breach of contract and violations of California false advertising laws.	The complaint seeks actual damages and equitable relief, along with a disgorgement of profits realized as a result of the unlawful conduct. StubHub has said it will provide a refund to buyers in jurisdictions where a refund is required if the buyer requests a refund.
Namorato v. Town Sports International LLC et al.	A New York resident filed a proposed class action lawsuit in the Southern District of New York alleging Town Sports International has continued billing members of its fitness centers in eight eastern states and Washington, D.C., despite having closed due the COVID-19 outbreak. The suit alleges breach of contract and violations of New York’s General Business Law for misrepresenting that the gyms would provide accessible services and for refusing to allow people to cancel their memberships.	The lawsuit seeks damages for customers who were not permitted to cancel memberships or receive reimbursed fees.
Barnett v. Fitness International LLC	A resident of Florida sued Fitness International, which operates as LA Fitness, in the Southern District of Florida, alleging the company continued to bill customers through March at its locations across the U.S., despite having closed on March 16 due to the COVID-19 pandemic. The complaint alleges that members received a notice on March 30 in which LA fitness apologized for not refunding March dues and offered a free one-month membership extension or a free three-month membership to a family member or friend. However, the suit contends that members had to agree to terms of service that included a clause clearing the company of liability for the March membership fees in order to receive the benefits. The complaint alleges claims of unjust enrichment and negligence.	The proposed class action seeks damages for customers who were not permitted to cancel memberships or receive reimbursed fees.
Cajun Conti LLC, d/b/a Oceana Grill v. Certain Underwriters at Lloyd’s London et al.	Oceana Grill filed a lawsuit asking a New Orleans state judge to rule that its property and business interruption policy with underwriters at Lloyd’s of London will cover its losses due to government-mandated shutdowns due to the COVID-19 pandemic. The restaurant maintains that its “all risk” policy with the underwriters should apply, as the policy doesn’t contain any provisions excluding coverage for losses arising from viruses or global pandemics.	The suit seeks a declaratory judgment that the government restrictions trigger the civil authority provision of the policy and any future civil authority shutdowns due to physical loss from COVID-19 contamination. The suit asks the court to affirm that the policy provides business income coverage for COVID conformation on insured premises.
French Laundry Partners, d/b/a The French Laundry, et al. v. Hartford Fire Insurance Company, et al.	A pair of restaurants owned by chef Thomas Keller filed a lawsuit in California state court against Hartford Fire Insurance Co., seeking a ruling that the insurer must cover losses due to government-mandated shutdowns as a result of the COVID-19 pandemic. The suit maintains the restaurants are entitled to payment under the “civil authority” provision of their “all-risk” property policy.	The restaurants are seeking a ruling that a government order triggers the civil authority coverage, pointing out that the policy doesn’t include an exclusion for losses causes by viruses.

Executive Summary

Development	Summary	Implications
Regulators, investors and consumers increasing scrutiny of advertising, marketing claims amid COVID-19 pandemic	As the COVID-19 pandemic continues to change daily life across the globe and people increasingly turn to web-based platforms and social media to work and stay connect, fraud scams are growing. Regulators are warning consumers to be mindful of potential fraud as the number of complaints grows. From the DOJ to the FTC, FDA and SEC, regulators across the U.S. are directing their enforcement efforts towards potentially unlawful attempts to profit from consumer fear and panic. Government warnings will likely escalate to legal action by regulators and consumers alike.	In this environment of close scrutiny, advertising claims need to be carefully vetted to ensure they will not be received by regulators or consumers as infringing on consumer rights or drawing on consumer fears for profit.
Enforcement agencies, selling platforms across U.S. key in price gouging	From the FTC and DOJ to state AGs across the country, regulators are paying close attention to any potential price gouging arising from the COVID-19 pandemic. Many enforcement agencies are actively working with platforms such as Amazon to identify and act against sellers seen to be artificially inflating prices to profit from pandemic-related fears.	While disruptions to the supply chain may make price hikes necessary, small and large retailers alike need to be mindful of any potential consumer or regulator concern about price gouging. With both federal and state lawmakers exploring potential price gouging legislation, and directing agencies like the FTC to crack down, potential challenges to price increases may arise.
Business interruptions sparking litigation, battles over insurance coverage	With government-mandated shutdowns profoundly impacting companies across the world, a litany of challenges are emerging due to business interruptions. Already litigation is emerging in state and federal court over alleged breaches of business contract and denied business disruption insurance claims.	Retailers can be proactive in addressing contractual relationships being challenged by the COVID-19 impact by being transparent about contractual modifications, ensuring they adhere to contractual terms that govern under an inability to perform and proactively mitigate the risk of material breach. Retailers should also carefully scrutinize insurance policies to determine whether any potential COVID-19 business disruption claim is covered.

For more information, please contact

DAVID S. ALMEIDA

Chair, Retail, Hospitality & Consumer Products Group
312.212.4954 | dalmeida@beneschlaw.com

SUZANNE M. ALTON DE ERASO

312.212.4977 | saltondeeraso@beneschlaw.com

MARK S. EISEN

312.212.4956 | meisen@beneschlaw.com

MATTHEW J. LANGLEY

312.634.6408 | mlangley@beneschlaw.com