Proskauer

Price Gouging Weekly Round Up

June 8, 2020

Price gouging enforcement and litigation is front and center for company counsel and business managers nationwide. Our weekly round up highlights some of the most relevant news and information to our clients and friends.

AG James Sues Wholesaler for Price Gouging During the Coronavirus Pandemic

New York Attorney General Letitia James announced that her office filed a lawsuit against a wholesale grocery distributor – Quality King Distributors – and its CEO for price gouging. The lawsuit alleges that between January 2020 and April 2020, the wholesaler raised the price of Lysol from around $4.25 for a 19-ounce can, up to as high as $9.15. According to the lawsuit, Quality King's costs did not increase. The wholesaler's alleged actions resulted in a median unit margin on sales of Lysol of 47% for February, and 95.5% for March 2020. Quality King sold 46,104 cans of Lysol during the time in question, and "each time one of these [] cans of Lysol was sold at retail for an inflated price – and each time a person bought any other Lysol product whose price Quality King had inflated – Quality King's price-gouging caused injury to a consumer," the lawsuit stated. The Attorney General seeks, among other relief, disgorgement of all profits from the illegal practice and a civil penalty of $25,000.

Most Price Gouging Complaints Aren't Criminal, Utah Investigators Find

Since the beginning of the pandemic, Utah has received over 900 complaints alleging price gouging. Under Utah law, “a person may not charge a consumer an excessive price for goods or services sold or provided at retail.” The law provides an objective standard, stating that a “price is not excessive if it does not exceed 30% above the person's total cost of obtaining the good or providing the service.” However, according to Utah Director of the Division of Consumer Protection Daniel O’Bannon, action has been taken against only four. According to O’Bannon, they have “seen the gamut in investigating these price gouging complaints. And the reality is a lot of these complaints, people might think the prices are higher, but it’s not in a way that violates the law.” O’Bannon further stated that “[t]he law covers items that are necessary for response to an emergency.” Those found in violation of Utah’s price gouging statute may face a fine up to $1,000 per violation and up to $10,000 per day.

Complaints by New Jersey Consumers of Price Gouging Related to COVID-19

On May 11, 2020, New Jersey had received 4,554 complaints related to COVID-19 price gouging. A few weeks later, this number increased to 5,033. According to the New Jersey Office of the Attorney General, “more than 84 percent of the complaints allege unlawful price hikes on essential items like food, bottled water, cleaning products, and personal protective equipment such as masks.” To date, the New Jersey Division of Consumer Affairs has issued approximately 1,486 cease-and-desist letters and 105 subpoenas to retailers and online marketplaces for alleged price gouging. New Jersey’s price gouging law prohibits excessive price increases during a state of emergency and the subsequent 30 days following its termination. The law defines “excessive price increase” to mean the “price exceeds by more than 10 percent the price at which the good or service was sold or offered for sale by the seller in the usual course of business immediately prior to the state of emergency.” Those found in violation of the law may face a fine of up to $10,000 for the first violation, and $20,000 for subsequent violations.

Amazon Sellers Are Marking Products As ‘Collectible’ to Get Around Price Gouging Rules

While Amazon has taken a strong stance against price gouging on its platform, some sellers have found a loophole. To avoid alerting the automated systems that detect price gouging, sellers have started listing the condition of their products as “collectible” rather than “new.” Dumbbells, game consoles, inflatable hot tubs, and bread makers – all of which have been listed as “collectibles” – have been spotted selling at significantly higher prices than pre-pandemic. According to an Amazon spokesperson, while sellers set their own prices, the company monitors its store and removes offers that violate its policies. Amazon has removed some listings with the “collectibles” description, but there are reports that other instances of the loophole remain.

Los to Angeles Crack Down on Food Delivery Price Gouging During Pandemic

On June 3, 2020, the Los Angeles City Council took action to limit third-party food delivery services from charging restaurants more than 15% of the cost of the order or more than 5% to use their services and pay commission. The action is expected to be made official by the mayor and will remain in place for 90 days following the city allowing on-site dining to resume. In connection with the action, Councilman Mitch O’Farrell stated, "[d]uring the pandemic, it is estimated that up to 90% of restaurant sales are attributed to delivery orders. Why should our local mom-and-pop restaurants, as well as their customers, be put in a position to subsidize delivery app companies? This is about local interests over Wall Street interests. Only a level playing field will help our small businesses survive."

Related Professionals

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