Proskauer

Price Gouging Weekly Round Up

July 7, 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.

Price Gouging Update in Oregon

According to the Oregon Department of Justice, the Attorney General's consumer hotline and price gouging hotline have received over 900 complaints relating to price gouging and other pandemic consumer issues. Oregon's price gouging law states that "[a] merchant or wholesaler may not sell or offer to sell essential consumer goods or services for an amount that represents an unconscionably excessive price during a declaration of an abnormal disruption of the market." Or. Rev. Stat. § 401.965(2). A price is unconscionably excessive if "the amount charged for essential consumer goods or services exceeds by 15 percent or more the price at which the goods or services were sold or offered for sale by the merchant or wholesaler in the usual course of business immediately prior to or during a declaration of an abnormal disruption of the market." Or. Rev. Stat. § 401.965(3). Although there does not appear to be much enforcement recently, Oregon has taken action over the course of the pandemic. A spokeswoman for the Oregon DOJ previously stated that "[w]e will typically contact the company or place of business, and if we are not satisfied we will send a cease-and-desist letter."

New Jersey Governor Signs Legislation Limiting Delivery Service Fees

On June 26, 2020, New Jersey Governor Phil Murphy signed legislation limiting the service fees third-party delivery apps and websites can charge restaurants during the COVID-19 state of emergency. The law prohibits service fees greater than 20 percent of the cost of the individual order. The law also prohibits a restaurant from charging greater than 10 percent of the cost of the individual order if the order is delivered by a restaurant employee or other party that has contracted directly with the restaurant to provide delivery services. Governor Murphy stated that “[t]hrough this legislation, now law, dining establishments throughout our state will receive much-needed relief from excessive service fees if public health necessitates the return of dine-in restrictions.” These restrictions remain in effect until the first day of the third month following any state of emergency declared by the Governor in response to COVID-19 that restricts restaurant dine-in service to less than 25% of the maximum capacity allowed by law.

Michigan Attorney General Continues to Fight Price Gouging

As of July 1, 2020, Michigan Attorney General Dana Nessel’s office has received 4,400 price gouging complaints. Most of the complaints relate to price gouging of grocery items, sanitizers, and face masks. However, the month of June saw only a 2.6 percent increase in complaints, from 4,279 on June 1, to 4,391 on June 30. This number compares to the large increase of complaints received during the month of April, from 2,506 on April 1, to 3,756 on May 1. According to AG Nessel, “we will continue to evaluate the many complaints reported to my office and take action on as many targets as possible."

New York City Department of Consumer and Worker Protection Combats Price Gouging

On June 26, 2020, the New York City Department of Consumer and Worker Protection (DCWP) announced an agreement with Metro Drugs over price gouging allegations. According to DCWP, Metro Drugs agreed to provide restitution to consumers who overpaid for face masks, disinfecting wipes, and gloves. In addition to restitution, Metro Drugs agreed to pay a $25,900 fine. “From the beginning of the COVID-19 pandemic, our message has been loud and clear—price gouging will not be tolerated in NYC,” said DCWP Commissioner Lorelei Salas. “We are pleased we were able to reach a resolution with Metro Drugs that ensures consumers can still come forward to claim restitution. Face masks have proven to be lifesaving and we remain vigilant in ensuring that New Yorkers are not overcharged as the city reopens and we head back to work.” Since the beginning of the pandemic, the DCWP has received over 11,000 complaints and issued more than 11,300 violations. Under the DCWP’s emergency rule – in effect until August 25 – businesses are prohibited from charging 10 percent or greater for any personal or household good or service that is used to limit or prevent the treatment or spread of COVID-19. Violators can face a fine of up to $500 per item or service, but may provide proof to the DCWP of any increased costs.

House Committee on Energy & Commerce Requests Information on Potential Price Gouging

On July 1, 2020, the Energy and Commerce Committee Chairman Frank Pallone, Jr (D-NJ), requested information from ten companies and a trade association regarding their pricing of COVID-19 tests. According to the Committee, the request comes after “an initial examination that has yielded disturbing information about the price of COVID-19 tests.” The Committee has received information in which some providers are charging up to $6,000 for just one COVID-19 test. “These examples we have received, if accurate, are unconscionable and clearly excessive,” Rep. Pallone wrote in the information requests to the companies. Among the information Rep. Pallone requested was information regarding how much the companies are charging for diagnostic and serological tests, along with whether companies have received any complaints regarding the tests and related items and services.

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