Proskauer

Price Gouging Weekly Round Up

July 27, 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.

Nevada Attorney General's Office and U.S. Attorney's Office Form Joint Task Force

The U.S. Attorney's Office and the Nevada Attorney General's Office teamed up to form a joint task force to protect Nevada citizens from COVID-19 related scams. According to Attorney General Aaron Ford, there has been a total of 858 complaints made to the Bureau of Protection team related to consumer fraud during the COVID-19 pandemic. These complaints have ranged from price gouging, to hoarding, to medical scams. While Nevada does not have a price gouging statute, Nevada's March 13, 2020, Declaration of Emergency provides that "[l]aw enforcement, including the Nevada Attorney General, will diligently monitor and investigate a coordinated increase in prices for goods or services, and particularly goods or services necessary for the health and safety of the public…" EO 2020-03-12, § 5. In a statement, AG Ford said "[w]hen the COVID fraud starts hitting, whether it was price gouging or scams we were seeing … our conversation went very quickly toward figuring out ways we could work together to help protect Nevadans." The U.S. Attorney for Nevada added, "[w]e wanted to make sure that our offices were proactive, and that all of the local law-enforcement was proactive, making sure the consumers knew there was a potential for fraud and scammers were going to use this pandemic and the misinformation surrounding it to try and exploit consumers out of their financial resources."

Price Gouging in Missouri not One-Size-Fits-All

From January to July 2020, the Missouri Attorney General’s Office received 1,879 complaints related to COVID-19 price gouging. The complaints have ranged from milk, to personal protective equipment, to toilet paper. "We knew very early on, through experience that this was something our office was going to see, and we're going to see a spike in complaints," Missouri Attorney General Eric Schmitt said. "We had a lot of our team sort of transition to go after those folks." However, AG Schmitt’s office has only issued 11 cease-and-desist letters, issued 9 subpoenas, and filed 2 lawsuits to date. Missouri’s price gouging law states that “[i]t is an unfair practice for any person in connection with the advertisement or sale of merchandise to … charge within a disaster area an excessive price for any necessity.” Mo. Code Regs. tit. 15, § 60-8.030. Those who violate the price gouging law may face penalties of up to $1,000 per violation. According to AG Schmitt, [w]e probably have some additional tools that other states don't have because others use mathematical formulas. It allows us to take in a fuller breadth of information. It's not one-size-fits-all, that's probably the biggest benefit we have right now."

Michigan AG Signs Agreement with Online Company Settling Price Gouging Allegations

On July 16, 2020, Michigan Attorney General Dana Nessel announced an agreement had been reached with an online, dropshipping operation for violations of the Michigan Consumer Protection Act (MCPA). According to the AG's office, the online company engaged in abusive practices, including price gouging, misleading consumers about its goods and services, and failing to address legitimate requests for refunds or replacements. "Consumers being duped out of their hard-earned dollars through deceptive business practices and excessive pricing is an injustice I cannot allow," AG Nessel said. "My office has stood by our commitment to protect consumers from unfair treatment, and I'll make sure companies that do business in this State respect our laws and treat their customers fairly." While AG Nessel was first made aware of complaints against the company in 2017, more recent complaints allege that the online seller advertised R95 masks for $108 each. According to the company, however, that price was for 20 masks. The company agreed to pay a total of $17,400 to resolve the dispute, including $15,000 to the AG's office that will be used to compensate additional consumers who submit substantiated complaints. Michigan's MCPA provides that it is unlawful to "charg[e] the consumer a price that is grossly in excess of the price at which similar property or services are sold." Under Executive Order 2020-53, which expired on June 12, 2020, "[a] person must not offer for sale or sell any product in this state at a price that is more than 20 percent higher than what the person offered or charged for that product as of March 9, 2020, unless the person demonstrates that the price increase is attributable to an increase in the cost of bringing the product to market or to an extraordinary discount in effect as of March 9, 2020."

Pasadena City Council Approves Cap on Food Delivery Service Fees

On July 20, 2020, the Pasadena City Council approved a 20 percent cap on fees that delivery services like Uber Eats and Door Dash can charge. Before the new ordinance was unanimously approved, Councilman Victor Fordo told colleagues "[p]articularly in this time, we thought it was important to take the steps necessary to avoid price gouging." The ordinance will also require delivery companies to disclose the fees charged to customers and restaurants to promote transparency. The limitation will stay in place at least through the end of the COVID-19 pandemic. Pasadena is not alone in enacting such ordinances. Los Angeles, Santa Monica, and Berkeley have all enacted 20 perecent caps, while San Francisco and Santa Cruz have enacted 15 percent caps.

Attorney General Josh Shapiro Enters Assurance of Voluntary Compliance with Philadelphia Seller

On July 22, 2020, Pennsylvania Attorney General Josh Shapiro announced that his office entered into an Assurance of Voluntary Compliance ("AVC") with a Philadelphia seller accused of price gouging KN95 masks. According to the AG's office, the seller offered 1,050 masks for sale at $8.00 a mask. Pennsylvania's price gouging law prohibits "any party within the chain of distribution of goods or services or both to sell or offer to sell the goods or services … for an amount which represents an unconscionably excessive price." An "unconscionably excessive price" is defined as "parties within the chain of distribution charg[ing] a price that exceeds an amount equal to or in excess of 20 percent of the average price" of the same or similar goods. Id. Under the AVC, the seller agreed not to engage in any future conduct that violates Pennsylvania's consumer protection or price gouging laws. The AVC included civil penalties of $10,500, which are suspended unless and only until the Court determines that the seller violates any term of the AVC. "We won't tolerate illegal price gouging during this emergency, and we're taking action every day to stop it—here in Philadelphia and across Pennsylvania." said AG Shapiro.

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