Proskauer

Price Gouging Weekly Round Up

August 17, 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.

Bipartisan Effort in the Senate to Target Price Gouging

A recent bipartisan Senate bill—the Make Medications Affordable by Preventing Pandemic Price-gouging (MMAPPP) Act—was introduced by Oregon's Jeff Merkley and Minnesota's Tina Smith, and is also co-sponsored by California's Kamala Harris, New York's Kirsten Gillibrand, and Wisconsin's Tammy Baldwin. Similar to the house bill introduced in June, the Senate bill focuses on ensuring that taxpayer-funded vaccines and treatments for COVID-19, and future diseases, are financially accessible. The MMAPPP would: (1) prohibit exclusive licensing of new, taxpayer-funded drugs that are used to diagnose, mitigate, prevent, or treat COVID-19 in order to ensure universal access to the drugs; (2) require the federal government to mandate reasonable, affordable pricing of any new, taxpayer-funded drug used to diagnose, mitigate, prevent, or treat COVID-19; (3) ensure transparency by requiring manufacturers to publicly report a specific breakdown of total expenditures on any drug used to diagnose, mitigate, prevent, or treat COVID-19, including what percentage of those expenditures were derived from federal funds; and (4) apply these same criteria to drugs used to treat future diseases that would cause a public health emergency.

California, Florida, New York, Texas and Pennsylvania Lead in Reports of COVID-19 Related Consumer Violations

The five most populous U.S. states appear to be the states with the highest incidences of COVID-19 related "scams" reported to the FTC, including reports of price gouging. The data does not indicate how many of those reports are due to price gouging issues alone, since it lumps those reports together with scams such as those offering free groceries, promising to cure the virus, or fake promises of government stimulus checks. In total, however, out of over 150,000 instances of fraud reported nationwide, California, Florida, New York, Texas and Pennsylvania account for about a third of the reports. The FTC reports a total of nearly $100 million in losses since the onset of the pandemic.

Connecticut AG Doubles Down on Price Gouging Warning During Dual Pandemic and Hurricane Emergency Declarations

After Tropical Storm Isaias caused mass power outages, Connecticut's Governor Ned Lamont proclaimed a civil preparedness emergency. Since price gouging is against Connecticut law during both civil preparedness emergencies and public health emergencies, this created another example of overlapping states of emergency. Connecticut Attorney General William Tong warned that his office was receiving new complaints of price increases on generators and hotel rooms. Dealing with "mass power outages in the midst of a global pandemic," he urged, is "an emergency, and not an opportunity to profit." Attorney General Tong promised to continue to investigate price gouging, and encouraged residents to continue filing complaints.

Reverting to Normal Pricing does not cure Price Gouging Liability

Pennsylvania Attorney General Josh Shapiro announced that his office has entered into an Assurance of Voluntary Compliance (AVC) with the Super Gigante/West Norriton Farmers Market, after receiving tips that it was selling 24-bottle cases of water at double the normal price. Over 140 consumers bought cases at the unlawful price before the store returned the price to normal. Correcting the unlawful prices does not avoid liability, however, as the AVC requires the store to pay $1,930 in civil penalties and costs, in addition to restitution to consumers who bought cases of water at an unlawful price. Attorney General Shapiro said that, while the Office of the Attorney General "appreciated" the store's voluntary correction, that did not cure the store of its unlawful behavior, and "it is important that all Pennsylvania businesses understand that price gouging during a state of emergency is not only wrong, it is illegal."

College Students Create Price Comparison Tools

A group of college students from across the U.S. has created a browser extension, OctoShop, to combat price gouging. After returning home from their respective colleges and noticing challenges with finding goods and comparing prices, the team built a website, Instok, which aggregates inventory in stores to help users easily locate high-demand items. The OctoShop tool enables online shoppers to both check inventory across stores and also compare prices. After users install the OctoShop browser extension, they can activate it when shopping, and the tool will show the item's listed price with other sellers that have the same item in stock. Users can also track an item's price, setting alerts for price drops and in-stock notifications from retailers.

Related Professionals

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