Proskauer

Price Gouging Weekly Round Up

September 14, 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.

Consumer Watchdog Accuses Amazon and Third-Party Sellers of Price Gouging

According to a September 10, 2020, report from consumer rights nonprofit Public Citizen, Amazon listed its own products, including face masks, hand sanitizer, flour, and sugar at markups “ranging from 76% to more than 1,000%.” For example, Public Citizen reports that between April 1 and August 16, 2020, Amazon sold disposable face masks in packs of 50 for $39.99, a price 1,000% greater than the expected price of $4.00. While between May 1 and August 16, 2020, Amazon reportedly sold 5 pound (pack of 8) flour for $80.35. Public Citizen has said that is more than $10 per bag of flour, compared to other online retailers selling flour for as little as $2.36. The report alleges that Amazon’s third-party sellers are also engaged in price gouging. Third-party sellers were spotted selling disinfectant spray at a 416% price increase, while another seller was charging $24.95 for a 24-ounce jar of pasta sauce. Other retailers were charging just $7.99 for the same product, while the lowest price by an Amazon third-party seller was $10.39. According to the author of the report, "Amazon has fundamentally misled the public, law enforcement and policymakers about price increases during the pandemic. Amazon has publicly blamed third-party sellers for price increases while continuing to raise prices on its own products and allowing those sellers to increase their prices.” The author further comments that "Amazon is not a victim in the price gouging on its marketplace – it is a perpetrator. Price gouging is an insidious exploitation of the most vulnerable, especially during a national emergency. There is no excuse for Amazon, one of the largest and most successful corporations in history, to take advantage of vulnerable, scared consumers."

Oregon Governor Declares Abnormal Disruption of Market Due to Wildfires

On September 10, 2020, Oregon Governor Kate Brown declared and abnormal disruption of the market due to the wildfires sweeping across the west coast. The abnormal disruption declaration, which Governor Brown declared in effect beginning September 9, 2020, is in effect for thirty days. The abnormal market disruption triggers Oregon's price gouging statute, which prohibits selling or offering to sell "essential consumer goods or services for an amount that represents an unconscionably excessive price." Or. Rev. Stat. §401.965. The statute also provides that a price is unconscionably excessive where it exceeds by 15 percent or more the price of the goods or services immediately prior to the declaration, or exceeds by 15 percent or more the price at which "the same or similar consumer goods or services were readily obtainable by other consumers in or near the geographical area covered by the declaration." However, the statute contains an exception for increased costs. Governor Brown's declaration is in addition to the abnormal declaration declared March 17, 2020. In April, Governor Brown issued an executive order declaring that the abnormal market disruption due to COVID-19 shall remain in effect until terminated. For more information on overlapping states of emergency, read Price Gouging Laws and Overlapping States of Emergency.

California Attorney General Reminds Californians Price Gouging is Illegal

On September 9, 2020, California Attorney General Xavier Becerra issued a consumer alert reminding Californians that during a state of emergency, price gouging is prohibited under Section 396 of California's penal code. Attorney General Becerra stated "[m]ultiple fires burning throughout the state have forced evacuations for thousands of California residents. During this difficult time, they shouldn't have to worry about whether they're being illegally cheated out of fair prices. Our state's price gouging law protects people impacted by an emergency from illegal price gouging on housing, gas, food, and other essential supplies." For more information on California's price gouging law, read California's Crackdown on the Price Gouging Gold Rush.

Pennsylvania Attorney General Stops Multiple Businesses Accused of Price Gouging

Pennsylvania Attorney General Josh Shapiro announced on September 3, 2020, that he had entered into an Assurance of Voluntary Compliance with a New York-based wholesaler alleged to have price gouged protective face coverings. According to the Attorney General, the wholesaler sold N95 masks for an average price of $12/mask, in violation of Pennsylvania's price gouging law. According to Attorney General Shapiro, "[s]ince the start of this public health emergency, we have worked to stop price gouging by online sellers, brick-and-mortar shops, and the wholesalers and distributors that choose to take advantage of a bad situation. Selling N95 masks for $12 apiece is not something my office will allow, no matter the company's location."

Attorney General Shapiro also announced on September 9, 2020, that he put a stop to price gouging by a local Pennsylvania pharmacy. According to Attorney General Shapiro, the pharmacy violated Pennsylvania's price gouging law by selling N95 Masks, KN95 Masks, and bottles of hand sanitizer at prices greater than the twenty percent cap under the state's price gouging law. Provided the pharmacy complies with the terms of the Assurance of Voluntary Compliance, the pharmacy will not have to pay civil penalties of $13,350. According to Attorney General Shapiro, his office has been "hard at work holding those who would take advantage of the pandemic to make a profit accountable. Our work has not slowed or stopped. We are still in a state of emergency, and for as long as that remains the case, Pennsylvanians have a right to purchase life-saving goods at reasonable prices."

Related Professionals

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