

DOJ Continues Price Gouging Enforcement Under the Defense Production Act

Minding Your Business Blog on April 12, 2021

On April 2, 2021, the acting U.S. Attorney for the District of New Jersey released an update of her office's efforts to prevent fraud related to the COVID-19 pandemic, noting prosecutions involving the Paycheck Protection Program, the Economic Injury Disaster Loan program, and the Unemployment Insurance programs, as well as prosecutions involving price-gouging and hoarding of critical personal protective equipment. The announcement comes on the heels of a similar one by Attorney General Merrick Garland last month, who marked the one year anniversary of the passage of the CARES Act by announcing that, in the past year, the Department of Justice has charged nearly 500 individuals with COVID-related fraud. These announcements serve as important reminders that, even as the vaccine roll out continues and life regains a sense of normalcy, federal prosecutors continue to actively monitor price gouging compliance.

In New Jersey, acting U.S. Attorney Rachael A. Honig stated that in the past year her office has charged 18 defendants, including four companies, with fraud, price gouging, and other crimes related to the COVID-19 pandemic. Of the corporate defendants, two were Chinese manufacturers charged with exporting misbranded and defective masks falsely purporting to be respirators. The first company, Crawford Technology Group (HK), was charged with misbranding over 140,000 masks purporting to be KN95 respirators. The charge in the complaint carried a maximum fine of \$200,000. Relatedly, King Year Packaging and Printing was charged earlier this year with three counts of violating the Federal Food, Drug and Cosmetic Act for importing nearly half a million defective masks that falsely purported to be N95 respirators.

Two import companies from Ocean County, New Jersey, CSG Imports and KG Imports, entered deferred prosecution agreements for alleged violation of the Defense Production Act. The prosecutions arose following the seizure of over 11 million items of PPE, mainly respirator and disposable face masks, from three warehouses in Lakewood, New Jersey. Notably, CSG Imports had never imported PPE, or indeed any health-care products of any kind, prior to the pandemic, and KG imports was formed after the pandemic began specifically to import PPE. Under the terms of the agreements, the companies were required to sell the 11 million items at cost and disgorge nearly \$400,000 in profits stemming from transactions with two customers who purchased PPE from CSG at excessive costs.

Attorney General Merrick Garland has said the DOJ would continue to vigorously monitor fraud related to the pandemic, an effort started last March by then-Attorney General William Barr. Still, questions remain about the ability of the government to prevent fraud. This was the sentiment expressed by the House Select Subcommittee on the Coronavirus, which stated in a majority staff memo released last month that the Trump administration's lax oversight of CARES Act funds led to billions of dollars in potential fraud. While questions over the scope of DOJ enforcement may remain, it is clear that pricing enforcement remains at the front of the Department's mind and enforcement priorities.

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