



Coronavirus: State Attorneys General take action against alleged price gouging in personal protection equipment sales

COVID-19 Alert

21 April 2020

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Across the country, State Attorneys General are encouraging consumers to inform them of price-gouging incidents related to the coronavirus disease 2019 (COVID-19) pandemic and are issuing hundreds of cease-and-desist letters to sellers whom they believe are violating price gouging laws, regulations, and orders. On April 15, 2020, for example, New Jersey Attorney General Gurbir S. Grewal announced that his office had issued 514 cease-and-desist letters and 89 subpoenas to businesses that had been reported by consumers as having engaged in price gouging or other consumer protection violations related to COVID-19.

Two of the first formal Attorney General enforcement actions relating to price gouging in connection with COVID-19 have focused on the sale of personal protection equipment ("PPE"). On April 13, 2020, Vermont Attorney General T.J. Donovan filed a state court action against Shelley Palmer and Mr. Palmer's business Big Brother Security Programs. The complaint alleges that on March 9, 2020, Mr. Palmer purchased 5,000 surgical masks from a supplier in China for the equivalent of 10 cents each ((US\$0.10), then resold them to Vermont healthcare providers while (1) misrepresenting them as N95 masks and (2) marking up the price to US\$2.50 per mask. One of the healthcare providers specified in the complaint (a hospital) had purchased similar masks prior to the COVID-19 pandemic for 6

cents per mask (US\$0.06), meaning that the price allegedly demanded by the defendants was a 4,000 percent increase over the pre-pandemic prices and a 2,500 percent increase over the defendants' own cost. The complaint alleges violations of the Vermont Consumer Protection Act, and asks for both injunctive relief and a \$10,000 per violation fine. The Vermont Complaint can be found [here](#). The Vermont State Attorney General also filed a brief in connection with his request for a preliminary injunction, which contains a broad survey of statutes and case law from other states relating to price gouging. The court has designated the case an emergency under the Vermont state courts' administrative order relating to the COVID-19 pandemic and scheduled it for a hearing on April 22, 2020.

On April 14, 2020, Ohio Attorney General Dave Yost filed a civil enforcement action against Mario Salwan and a number of John Doe defendants, alleging that they hoarded over 1,200 N95 respirator masks, then sold the masks through an online platform at an average increase over pre-pandemic retail prices of 1,700 percent. The complaint alleges violations of state antitrust and consumer protection laws, as well as common law allegations of profiteering and public nuisance, and seeks both injunctive relief and financial penalties against the defendants – including a fine of \$25,000 for each violation of the state's consumer protection laws. The complaint also asks that the defendants be required to surrender any remaining N95 respirator masks to the state for reasonable compensation. The full Complaint can be found [here](#).

In addition to filing formal actions, both State AGs made clear in accompanying press releases that they would continue to be aggressive in preventing COVID-19 related price gouging, as have other Attorneys General coast to coast.

For more information, please contact the authors, your DLA Piper relationship attorney, or any member of our Litigation group.

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