

[Antitrust Law Daily Wrap Up, CONSUMER PROTECTION NEWS: Deputy AG Rosen describes Justice Department's multi-faceted approach to COVID-19 fraud, \(Oct. 8, 2020\)](#)

Antitrust Law Daily Wrap Up

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By [Colleen M. Svelnis, J.D.](#)

Jeffrey A. Rosen, who holds the number 2 spot at the Justice Department, chronicled steps taken to combat fraud since the start of the pandemic at the BBB National Programs NAD 2020 Conference.

Deputy Attorney General Jeffrey A. Rosen delivered his [keynote address](#) on combatting fraud in the age of COVID-19 at the Better Business Bureau National Programs National Advertising Division (NAD) 2020 Conference on October 7. Deputy AG Rosen explained how the Justice Department approached this set of problems, and the different tools they have applied—including criminal, civil, and other means—and what the results have been. Rosen also included more general thoughts about enforcement.

According to Rosen, the Justice Department and other enforcement agencies across government "have seen a disconcerting increase in reports of false, misleading, or unfair commercial practices" like deceptive advertising related to COVID-19 with individuals using the pandemic to exploit consumers. He described how "scammers have deployed an array of schemes, some sophisticated and others less so, touting products and services that purportedly prevent, cure, or treat COVID-19, but which don't actually do so."

From the start of the pandemic, Rosen stated that the Justice Department knew from past experiences with other disasters that "fraud and predatory behavior by unscrupulous individuals would spike." We "were seeing bad actors selling fake testing kits, cures, so-called "immunity" pills, and fake promises of personal protective equipment, in addition to those using robocalls, social media, and other mechanisms to offer fake services like free coronavirus testing in order to obtain credit card numbers and personally identifiable information that they would then unlawfully use for their own gain."

Efforts to combat fraudulent behavior. The Justice Department's response to coronavirus-related fraud has been "multifaceted," stated Rosen. "Our objective has been to disrupt and take down these criminal schemes and to hold accountable those who bear responsibility. In pursuit of that goal, we use a variety of legal tools."

Rosen issued a memorandum on March 18 to U.S. Attorney's Offices across the country to emphasize the importance of continuing to protect the public and instructed Department personnel to guide the public to direct coronavirus-related complaints to the National Center for Disaster Fraud. He directed that the Justice Department utilize the FTC's Sentinel database to share complaint information with other enforcement agencies. Many U.S. Attorneys established state-wide and regional task forces to ensure federal, state, and local law enforcement were coordinating closely. They proactively engaged their communities to warn about the heightened threat of consumer fraud and to encourage the public to report any schemes to law enforcement.

The memorandum shared "legal authorities which prosecutors had identified for potential consideration in cases that might involve these bad actors. They included the mail, wire, computer, and healthcare fraud statutes that are widely known, and also included perhaps less widely known but equally important statutes like the Food, Drug and Cosmetic Act, which prohibits, among other things, the marketing of misbranded or adulterated drugs."

In addition, the Justice Department has been promptly filing criminal charges against bad actors as soon as the evidence supports such action, with charges filed in 110 COVID-19-related cases nationwide, and hundreds more under active investigation. The Justice Department has also brought cases under other legal grounds for criminal liability, he said.

Anti-hoarding statute. Another notable tool has been the anti-hoarding provision of the Defense Production Act, under which hoarding or price-gouging in the sale of the designated scarce medical supplies like respirators, face masks, sanitizer, and other essential medical supplies became a federal misdemeanor. Rosen stated that a task force was established to identify, investigate, and prosecute violations of this anti-hoarding statute. To date, that task force has filed 13 criminal complaints and has hundreds of open investigations about hoarding or price-gouging.

Fraudulent schemes. Section 1345 of Title 18 of the United States Code permits the Justice Department to commence civil actions to enjoin certain frauds, and this statute has proven to be an efficient tool to disrupt some types of schemes and protect consumers while federal agents conduct criminal investigations, according to Rosen. To date, during the pandemic DOJ has filed 10 injunctive actions against coronavirus fraud schemes. The Justice Department has also engaged directly with Internet domain providers and registrars, and many domain registrars and hosting services have established teams to review their domains for coronavirus-related fraud and other malicious activity, putting them in the position to take appropriate action against fraudulent websites on their own.

PPP relief funds. Rosen also discussed the Justice Department's efforts related to protecting the integrity of the relief funds and loans that became available under the CARES Act, including going after those who submitted false applications under the Paycheck Protection Program (PPP). The Justice Department has already charged 65 people with defrauding the relief program, involving over \$227 million in PPP loans.

High volumes of complaints. The National Center for Disaster Fraud, has received more than 74,000 calls and emails which have been directed to law enforcement. Additionally, FBI's Internet Crime Complaint Center has also received more than 20,000 tips regarding suspicious coronavirus-related websites or social media postings.

False advertising. Rosen also praised the efforts of NAD and the Direct Selling Self-Regulatory Council, which has, as of October 1, addressed the marketing of 97 coronavirus-related products or services challenged as false or misleading. According to Rosen, 82 of those matters were resolved after the advertiser agreed to discontinue the challenged advertising, and 3 were referred to the FTC or FDA for investigation.

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