

## [Antitrust Law Daily Wrap Up, TOP STORY: Federal agencies watching for antitrust, consumer protection violations stemming from COVID-19 crisis, \(Mar. 9, 2020\)](#)

Antitrust Law Daily Wrap Up

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In light of the Coronavirus outbreak, individuals and companies that fix prices, rig bids, or allocate customers for personal health protection equipment are being reminded by the Justice Department that they could face criminal prosecution, and the FTC and FDA are warning businesses to stop making Coronavirus claims.

Manufacturers of personal health protection equipment, such as sterile gloves and face masks, and marketers making health benefit claims are being reminded of the need to comply with antitrust and consumer protection laws during the Coronavirus outbreak. U.S. Attorney General William P. Barr issued a [statement](#) today, saying that anyone who violates U.S. antitrust laws in connection with the manufacturing, distribution, or sale of public health products such as face masks, respirators, and diagnostics to take advantage of emergency response efforts to the coronavirus disease (COVID-19) will be held accountable. The statement is part of a broader Trump Administration effort to ensure that federal, state, and local health authorities, the private health care sector, and the public at large are in the strongest possible position to respond to the outbreak.

Anticompetitive and fraudulent conduct impacting federal, state, and local governments is already on the Justice Department's radar. In November 2019, the Justice Department launched its Procurement Collusion Strike Force (PCSF). Among other things, the PCSF has been working on ways to improve the use of data analytics programs to identify the potential red flags of collusion in government procurement data. In today's statement, Barr said that the PCSF will be on high alert for collusive practices in the sale of health protection products to federal, state, and local agencies.

**Health marketing claims.** Separately, the FTC and Food and Drug Administration (FDA) [announced](#) today that they have issued their first warning letters regarding the marketing of unapproved products intended to prevent or treat Coronavirus Disease. [According to the FDA](#), there are no approved vaccines, drugs, or investigational products currently available to treat or prevent the virus.

The agencies sent the letters to the following companies: (1) [Vital Silver](#), (2) [Quinessence Aromatherapy Ltd.](#), (3) [N-ergetics](#), (4) [GuruNanda, LLC](#), (5) [Vivify Holistic Clinic](#), (6) [Herbal Amy LLC](#), and (7) [The Jim Bakker Show](#). The products cited in these warning letters are teas, essential oils, tinctures and colloidal silver. The seven notified companies are expected to respond within 48 hours describing the specific steps they have taken to correct the violations.

"What we don't need in this situation are companies preying on consumers by promoting products with fraudulent prevention and treatment claims," said FTC Chairman Joe Simons in announcing the effort. "These warning letters are just the first step. We're prepared to take enforcement actions against companies that continue to market this type of scam."

**Efforts in past outbreaks.** It's not uncommon for the FTC and FDA to send out warning letters to marketers claiming to have cures or treatments in response to new viruses. In November 2019, the FTC sent 10 warning letters to website operators who made questionable claims that their dietary supplements, air filtration devices, and other products could prevent, treat, or cure the H1N1 flu, commonly known as swine flu.

The agency also sent warning letters to online marketers of Zika virus protection products in August 2016. The agencies had concerns about wristbands, patches, and stickers that purportedly could repel the mosquitos that carry Zika or otherwise protect users from the virus. Two years after the Zika outbreak, the FTC announced

a settlement with a Georgia-based public relations firm and a publisher over allegations that the companies failed to properly disclose that while promoting a new insect repellent during the 2016 outbreak and the Summer Olympics in Brazil, they deceptively advertised their paid celebrity endorsements from gymnastic gold medalists as independent consumer opinions in violation of the FTC Act.

Companies: Quinessence Aromatherapy Ltd.; N-ergetics; GuruNanda, LLC; Vivify Holistic Clinic; Herbal Amy LLC

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