

Additional Questions for the Record

Subcommittee on Consumer Protection and Commerce

Hearing on

“Safeguarding American Consumers: Fighting Fraud and Scams During the Pandemic”

February 4, 2021

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The Honorable Jan Schakowsky (D-IL)

Question 1. What can the FTC do to make it easier for consumers to confirm the authenticity of PPE online, especially claims of CDC or FDA “certification”?

Question 2. How can the FTC better inform consumers about how they can verify claims of PPE “certification” by the CDC and FDA?

Question 3. How can the FTC work more closely with the CDC and FDA to prevent fraudulent PPE sales online?

- Answer to Questions 1, 2, and 3:

As the FTC has [testified](#) before Congress and described on its [website](#), the agency has worked hard since the beginning of the pandemic to educate consumers and businesses about COVID-related scams, and to send warning letters and bring lawsuits against the scams’ perpetrators. The COVID Consumer Protection Act, passed with your leadership and support last year, has significantly strengthened FTC’s ability to deter and take action against these scams.

Some of the FTC’s actions have involved fraud and deception related to the sales of PPE. For example, the FTC has provided [tips to consumers](#) about checking the credentials of PPE merchants and disputing fraudulent sales, and has disseminated these tips through numerous partners nationwide. It also has brought lawsuits against [companies](#) that [falsely promised rapid shipping](#) of facemasks and other PPE. Importantly, however, the FTC does not have the expertise to evaluate the *quality* of PPE or the accuracy of certifications regarding quality. Such evaluations need to be performed by the CDC, FDA, or other agency with medical or public health expertise.

Based on conclusions drawn by the CDC and/or FDA about PPE quality or certifications, the FTC can work with these agencies to develop and disseminate clear and accurate messages for consumers about what PPE to buy and what PPE to avoid. In addition, if the CDC and/or FDA determine that particular sellers are making false claims about PPE quality or certifications, the FTC can challenge these claims as deceptive under the FTC Act.

The FTC is currently stretched for resources, so I am sure it could use additional staff to perform this important work.

Question 4. What, if any, additional resources and authorities does the FTC need in order to prevent and take enforcement actions against website domains that are clearly fraudulent (for example, coronavaccinefree[dot]com)?

- Answer:

If the FTC determines that a website domain is communicating a deceptive and fraudulent message to consumers, the FTC can challenge that domain name just as it challenges other deceptive and fraudulent claims. For example, last fall, the agency took action against a [PPP loan scam](#) that claimed to be affiliated with the Small Business Administration and used the domain name SBALoanProgram.com.

To date, the FTC has been able to take action against such frauds under Section 13(b) of the FTC Act, which has allowed the FTC to obtain both injunctive relief shutting such frauds down, and the return of money to the frauds' victims. As discussed at the February 4 hearing, however, the FTC's ability under Section 13(b) to return victims' money is under threat, and may well be eliminated by a [pending proceeding](#) at the Supreme Court. Therefore, to enable the FTC to fully address COVID-related frauds, it would be critical for Congress to restore this authority to the agency. In addition, Congress should consider granting the FTC broader civil penalty authority, and then creating a civil penalty fund from which consumer refunds could be paid.¹ Finally, as discussed above, the FTC needs more resources to support this and other important work.

¹Thanks to the COVID Consumer Protection Act, the FTC now has civil penalty authority for these types of frauds. However, returning money to injured consumers, rather than sending it to the U.S. Treasury, is always the best option if feasible. Further, this civil penalty authority lasts only for the duration of the pandemic and will not apply to future frauds.

Question 5. How can the FTC partner with ICANN, the domain name industry, and other stakeholders to prevent fraudulent pandemic-related websites?

- Answer:

Because I am no longer working at the FTC, I do not know how the agency currently works with ICANN and other members of the domain name industry. However, during my tenure at the FTC, the agency routinely reached out to ICANN and other registries to alert them about fraudulent companies using their registries, so that the registries could exercise oversight over such companies and possibly terminate services to them. Such communications were informal; ICANN was not required to follow the advice of the FTC or grant its requests. If Congress wants the FTC to play a more formal role with respect to the registries, it will need to establish such a role through legislation.

Of course, if a registry persists in enabling fraud by companies using its services, the FTC might be able to take legal action against the registry for “assisting and facilitating” fraud. Currently, such cases are difficult to prove, since the FTC has limited authority to pursue “assisters and facilitators” and generally must prove such claims under its “unfairness” authority. If Congress wants the FTC to play a stronger enforcement role here, it should consider providing the FTC with stronger authority to challenge entities “assisting and facilitating” fraud.