



**MEMORANDUM**

**February 2, 2021**

**To: Subcommittee on Consumer Protection and Commerce Members and Staff**

**Fr: Committee on Energy and Commerce Staff**

**Re: Hearing on “Safeguarding American Consumers: Fighting Scams and Fraud During the Pandemic”**

On **Thursday, February 4, 2021, at 12 p.m., via Cisco WebEx online video conferencing**, the Subcommittee on Consumer Protection and Commerce will hold a hearing entitled, “Safeguarding American Consumers: Fighting Scams and Fraud During the Pandemic.”

**I. BACKGROUND**

During the ongoing coronavirus disease of 2019 (COVID-19) pandemic and related economic and financial crises, scams and fraud have been on the rise, threatening many aspects of consumers’ lives.<sup>1</sup> Since the beginning of the pandemic, Americans have reported losing more than \$300 million in pandemic-related fraud.<sup>2</sup>

**II. NOTABLE CONSUMER PROTECTION ISSUES DURING THE COVID-19 PANDEMIC**

**A. Scams**

Scammers are coming up with new versions of old scams, taking advantage of the COVID-19 pandemic and the related economic and financial crises. Scammers have targeted stimulus checks and unemployment benefits intended to provide critical relief to Americans.<sup>3</sup> Identity thieves posing as government employees are calling Americans supposedly to verify personal information that could be needed to qualify for COVID-19 funds.<sup>4</sup> New financial struggles and unemployment have made Americans more vulnerable to misleading schemes

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<sup>1</sup> *Americans Have Lost \$145 Million to Coronavirus Fraud*, New York Times (Sept. 23, 2020) ([www.nytimes.com/2020/09/23/us/coronavirus-scams-ftc-reports.html](http://www.nytimes.com/2020/09/23/us/coronavirus-scams-ftc-reports.html)).

<sup>2</sup> *Tricks Scammers Use around Stimulus Checks, Taxes*, Detroit Free Press (Jan. 20, 2021) ([www.freep.com/story/money/personal-finance/susan-tompor/2021/01/20/second-stimulus-triggers-another-round-scams/4215084001/](http://www.freep.com/story/money/personal-finance/susan-tompor/2021/01/20/second-stimulus-triggers-another-round-scams/4215084001/)).

<sup>3</sup> *A Guide to Pandemic Scams, and What Not to Fall For*, New York Times (May 13, 2020) ([www.nytimes.com/2020/05/13/technology/personaltech/pandemic-scams.html](http://www.nytimes.com/2020/05/13/technology/personaltech/pandemic-scams.html)).

<sup>4</sup> Federal Trade Commission, *Is a Scammer Getting Unemployment Benefits in Your Name?* (June 3, 2020) ([www.consumer.ftc.gov/blog/2020/06/scammer-getting-unemployment-benefits-your-name](http://www.consumer.ftc.gov/blog/2020/06/scammer-getting-unemployment-benefits-your-name)).

promising new sources of income.<sup>5</sup> Scammers are also preying on people's loneliness during the pandemic, leading to a sharp rise in online puppy scams.<sup>6</sup>

The Federal Trade Commission (FTC) issued warnings about contact tracing scams, scams related to small business loans, and fake charities, among others.<sup>7</sup> Fake vaccine appointments are one of the latest kinds of scams.<sup>8</sup> At least one local health department has issued a warning about fake EventBrite sites charging people for vaccination appointments.<sup>9</sup>

## **B. Fake, Misleading, and Non-Existent Products**

With supply chains strained and certain necessities widely unavailable, unscrupulous sellers are preying on consumers' needs and fears by selling counterfeit, unapproved, or otherwise substandard COVID-19 products.<sup>10</sup> Although no over-the-counter treatments or cures for COVID-19 have been approved, scammers are advertising and selling unproven and misbranded products that they claim can protect consumers from COVID-19.<sup>11</sup>

Other fraudsters are selling substandard personal protective equipment (PPE) or cleaning supplies. One investigation by the *Wall Street Journal* found that more than 100 face masks and respirators sold on Amazon were counterfeit or had unverifiable protection and certification claims.<sup>12</sup> Many "fly-by-night" operations hawking coronavirus-related products do so through

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<sup>5</sup> *Covid-19 Has Created New Jobs—for Scammers Preying on the Unemployed*, Washington Post (Dec. 15, 2020) ([www.washingtonpost.com/business/2020/12/15/covid-scams-ftc/](http://www.washingtonpost.com/business/2020/12/15/covid-scams-ftc/)).

<sup>6</sup> Better Business Bureau, *Online Puppy Scams Rising Sharply in 2020, BBB Warns* (Dec. 5, 2020) ([www.bbb.org/article/news-releases/23354-bbb-study-update-puppy-scams-rising-in-2020](http://www.bbb.org/article/news-releases/23354-bbb-study-update-puppy-scams-rising-in-2020)).

<sup>7</sup> Federal Trade Commission, *Coronavirus Advice for Consumers* ([www.ftc.gov/coronavirus/scams-consumer-advice](http://www.ftc.gov/coronavirus/scams-consumer-advice)); Federal Trade Commission, *COVID-19 Contact Tracing Text Message Scams* (May 19, 2020) ([www.consumer.ftc.gov/blog/2020/05/covid-19-contact-tracing-text-message-scams](http://www.consumer.ftc.gov/blog/2020/05/covid-19-contact-tracing-text-message-scams)).

<sup>8</sup> Federal Trade Commission, *FTC Issues Consumer Tips for Avoiding COVID-19 Vaccine Scams* (Dec. 8, 2020) ([www.ftc.gov/news-events/press-releases/2020/12/ftc-issues-consumer-tips-avoiding-covid-19-vaccine-scams](http://www.ftc.gov/news-events/press-releases/2020/12/ftc-issues-consumer-tips-avoiding-covid-19-vaccine-scams)).

<sup>9</sup> *Vaccine 'Train Wreck' Leaves Tampa Bay Seniors Scrambling for Shots*, Tampa Bay Times (Jan. 5, 2021) ([www.tampabay.com/news/health/2021/01/04/vaccine-train-wreck-leaves-tampa-bay-seniors-scrambling-for-shots/](http://www.tampabay.com/news/health/2021/01/04/vaccine-train-wreck-leaves-tampa-bay-seniors-scrambling-for-shots/)).

<sup>10</sup> Customs and Border Protection, *CBP Continues to Seize Large Number of Counterfeit and Unapproved COVID-19 Products* (June 5, 2020) (press release).

<sup>11</sup> *Coronavirus Scammers are Flooding Social Media with Fake Cures and Tests*, Vox (Apr. 17, 2020) ([www.vox.com/recode/2020/4/17/21221692/digital-black-market-covid-19-coronavirus-instagram-twitter-ebay](http://www.vox.com/recode/2020/4/17/21221692/digital-black-market-covid-19-coronavirus-instagram-twitter-ebay)).

<sup>12</sup> *Amazon Battles Counterfeit Masks, \$400 Hand Sanitizer Amid Virus Panic*, Wall Street Journal (Mar. 11, 2020) ([www.wsj.com/articles/amazon-battles-counterfeit-masks-400-hand-sanitizer-amid-virus-panic-11583880384](http://www.wsj.com/articles/amazon-battles-counterfeit-masks-400-hand-sanitizer-amid-virus-panic-11583880384)).

online stores.<sup>13</sup> While these online stores may look professional, many of the sellers do not actually possess products for sale or have not verified that the products are legitimate.<sup>14</sup> Such businesses often advertise on social media to drive traffic to their online stores.<sup>15</sup>

The number of reports about scams originating on social media has more than tripled in the past year.<sup>16</sup> Online shopping complaints by consumers who purchased in-demand health and safety products but never actually received any goods have also risen during the pandemic.<sup>17</sup>

### **C. Price Gouging**

Some unscrupulous sellers are capitalizing on the COVID-19 pandemic by selling cleaning products, PPE, and other necessities at exorbitant prices. For example, the average in-store price of hand sanitizer rose by 53 percent in 2020 compared to an equivalent period in 2019.<sup>18</sup> Another analysis found that Amazon inflated prices on essential products to levels that would be considered violations of price gouging laws in many states during the pandemic.<sup>19</sup>

## **III. RELATED TOPICS ON FTC'S AUTHORITIES**

The FTC is the primary federal agency responsible for protecting Americans from scams and fraud. Functioning as an independent agency, the FTC's mission is to protect "consumers and competition by preventing anticompetitive, deceptive, and unfair business practices."<sup>20</sup> Its primary consumer protection mandate stems from Section 5 of the FTC Act, which makes "unfair or deceptive acts or practices in or affecting commerce" unlawful.<sup>21</sup>

In most unfair and deceptive practices cases, the FTC lacks authority to obtain civil

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<sup>13</sup> *Coronavirus Spurs a Wave of Suspect Websites Looking to Cash In*, New York Times (Mar. 24, 2020) ([www.nytimes.com/2020/03/24/business/coronavirus-ecommerce-sites.html](http://www.nytimes.com/2020/03/24/business/coronavirus-ecommerce-sites.html)).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Federal Trade Commission, *Scams Starting on Social Media Proliferate in Early 2020* (Oct. 21, 2020) ([www.ftc.gov/news-events/blogs/data-spotlight/2020/10/scams-starting-social-media-proliferate-early-2020](http://www.ftc.gov/news-events/blogs/data-spotlight/2020/10/scams-starting-social-media-proliferate-early-2020)).

<sup>17</sup> Federal Trade Commission, *FTC Data Shows Record Surge in Online Shopping Complaints During Pandemic* (July 1, 2020) ([www.ftc.gov/news-events/press-releases/2020/07/ftc-data-shows-record-surge-online-shopping-complaints-during](http://www.ftc.gov/news-events/press-releases/2020/07/ftc-data-shows-record-surge-online-shopping-complaints-during)).

<sup>18</sup> *Hand Sanitizer Prices Have Jumped by a Massive 53% in the US During the Pandemic, as Accusations of Pricing Gouging Continue to Roll In*, Business Insider (Nov. 17, 2020) ([www.businessinsider.com/hand-sanitizer-prices-price-gouging-bleach-toilet-paper-face-masks-2020-11](http://www.businessinsider.com/hand-sanitizer-prices-price-gouging-bleach-toilet-paper-face-masks-2020-11)).

<sup>19</sup> Public Citizen, *Prime Gouging; How Amazon Raised Prices to Profit from the Pandemic* (Sept. 9, 2020) ([www.citizen.org/article/prime-gouging/](http://www.citizen.org/article/prime-gouging/)).

<sup>20</sup> Federal Trade Commission, *About the FTC* ([www.ftc.gov/about-ftc](http://www.ftc.gov/about-ftc)).

<sup>21</sup> 15 U.S.C. § 45.

penalties for initial violations.<sup>22</sup> For a first violation, the FTC may generally only obtain injunctive relief under Section 13(b) of the FTC Act.<sup>23</sup> “The Commission may seek not only permanent injunctions that bar unfair or deceptive practices, but also imposition of various kinds of monetary equitable relief (i.e., restitution and rescission of contracts) to remedy past violations.”<sup>24</sup> Such monetary equitable relief is generally disbursed to consumers who have been scammed.<sup>25</sup> Only after the FTC has obtained a final order can it subsequently pursue civil penalties for violations of such order.<sup>26</sup>

In 2020, the FTC returned more than \$482 million to over 1.6 million consumers harmed by fraud or illegal business practices.<sup>27</sup> However, the FTC’s ability to get money back for consumers under Section 13(b) has been challenged in court by defendants alleged to have violated section 5 of the FTC Act.<sup>28</sup> On January 13, 2021, the U.S. Supreme Court heard oral arguments on this issue in *AMG Capital Management v. FTC*. All five FTC Commissioners have called for congressional action to preserve the FTC’s ability to return money to victims should the Supreme Court take away the FTC’s ability to do so under Section 13(b).<sup>29</sup>

Since the start of the pandemic, the FTC has sent warning letters to more than 500 companies and individuals for allegedly selling unapproved and misbranded products claiming to prevent or treat COVID-19, including more than 100 sent in conjunction with the Food and Drug Administration (FDA).<sup>30</sup> The COVID-19 Consumer Protection Act, which became law in December as part of the Consolidated Appropriations Act, 2021, gives the FTC new authority to seek civil penalties on the first offense for scams and deceptive practices related to the COVID-

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<sup>22</sup> Government Accountability Office, *Internet Privacy: Additional Federal Authority Could Enhance Consumer Protection and Provide Flexibility* (Jan. 2019) (GAO-19-52) at 10.

<sup>23</sup> *Id.*

<sup>24</sup> Federal Trade Commission, *A Brief Overview of the Federal Trade Commission's Investigative, Law Enforcement, and Rulemaking Authority* (Oct. 2019).

<sup>25</sup> House Committee on Energy and Commerce, Testimony of Joseph Simons, Chairman, Federal Trade Commission, *Hearing on Oversight of the Federal Trade Commission: Strengthening Protections for Americans’ Privacy and Data Security*, 116th Cong. (May 8, 2019).

<sup>26</sup> 15 U.S.C. § 45(m)(1)(B).

<sup>27</sup> Federal Trade Commission, *FTC Returns More Than \$482 Million to Consumers in 2020* (Jan. 27, 2021) ([www.ftc.gov/news-events/press-releases/2021/01/ftc-returns-more-482-million-consumers-2020](http://www.ftc.gov/news-events/press-releases/2021/01/ftc-returns-more-482-million-consumers-2020)).

<sup>28</sup> National Law Review, *FTC Commissioners Urge Congress to Pass Legislation to Restore Section 13(b) of the FTC Act* (Nov. 3, 2020) ([www.natlawreview.com/article/ftc-commissioners-urge-congress-to-pass-legislation-to-restore-section-13b-ftc-act](http://www.natlawreview.com/article/ftc-commissioners-urge-congress-to-pass-legislation-to-restore-section-13b-ftc-act)).

<sup>29</sup> National Law Review, *FTC Commissioners Urge Congress to Pass Legislation to Restore Section 13(b) of the FTC Act* (Nov. 3, 2020) ([www.natlawreview.com/article/ftc-commissioners-urge-congress-to-pass-legislation-to-restore-section-13b-ftc-act](http://www.natlawreview.com/article/ftc-commissioners-urge-congress-to-pass-legislation-to-restore-section-13b-ftc-act)); House Committee on Energy and Commerce, *Hearing on Oversight of the Federal Trade Commission: Strengthening Protections for Americans’ Privacy and Data Security*, 116th Cong. (May 8, 2019).

<sup>30</sup> Federal Trade Commission, *FTC Coronavirus Warning Letters to Companies*, ([www.ftc.gov/coronavirus/enforcement/warning-letters](http://www.ftc.gov/coronavirus/enforcement/warning-letters)) (accessed Jan. 21, 2021).

19 pandemic.<sup>31</sup>

#### **IV. WITNESSES**

The following witnesses have been invited to testify:

**Bonnie Patten**

Executive Director  
TruthInAdvertising.org

**Jessica Rich**

Distinguished Fellow  
Institute for Technology Law & Policy  
Georgetown Law School

**Hon. William E. Kovacic**

Global Competition Professor of Law and Policy  
Professor of Law  
Director, Competition Law Center  
George Washington University Law School

**Traci Ponto**

Spokane COPS Crime Victim Advocate  
Spokane Community Oriented Policy Services

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<sup>31</sup> Pub. L. No. 116-260 (2020).