

Beware the COVID-19 Cure: The FTC Issues Warnings to Products Making COVID-19 Treatment Claims

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With no approved vaccine, the world waits for the next big breakthrough in 2020's medical emergency. Some companies already claim to have found it – and subsequently received warning letters from the Federal Trade Commission (FTC) for misbranding. The FTC is targeting companies promoting products with supposed COVID-19 cures, treatment or prevention for making illegal, unsubstantiated claims.

One of the FTC's objectives is eliminating false and misleading information from the marketplace. The FTC Act defines false advertising as misleading in a "material respect," which includes both affirmative statements and failure to "reveal facts material in the light of [the product's] representations[.]" See 15 USC 55(a)(1).

The FTC accomplishes its goal by sending warning letters. Under the FTC Act, a product may be misbranded if it is promoted as a prevention, cure or treatment for COVID-19 – when in fact it has not been approved for such use by the Food and Drug Administration. Since March 2020, the FTC has issued more than 200 warning letters to various businesses that advertise wellness products and other services that allegedly address COVID-19.

In some instances, the claims involved a gross exaggeration of the product's effectiveness. For example, the website "NothingsIncurable.com" advertised products alleged to "literally make you invulnerable." The FTC concluded those claims constituted misbranding. But even when promotional statements do not include an explicit falsehood, overpromotion still can cross into misbranding. For example, businesses that claimed, "[this product] will target and increase your immunity to help ward off the COVID-19 virus" or that recommended their products as "scientifically proven to support healthy immune function" also were found to be misbranded.

In another example, a company included "Coronavirus" in the website navigation menu that led consumers to therapy kits intended to provide "specific nutrition" to "balance the terrain of the body to make it conducive to" its particular function. Although the product description did not reference COVID-19, the FTC concluded that the website navigation menu was suggestive enough to warrant a warning for misbranding.

Summary

The FTC warning letters advise businesses that “under the FTC Act, 15 U.S.C. § 41 *et seq.*,” they are prohibited from advertising “that a product or service can prevent, treat, or cure human disease unless you possess competent and reliable scientific evidence, including, when appropriate, well-controlled human clinical studies, substantiating that the claims are true at the time they are made.” In addition, products that claim or imply the ability to mitigate, prevent, treat, diagnose or cure COVID-19 must be approved drugs under section 505(a) of the Federal Food, Drug and Cosmetic Act. In each case, the FTC required a response from the business within 48 hours, detailing the actions taken to address the FTC’s concerns.

During this unprecedented health crisis, companies that sell consumer products should exercise caution when mentioning COVID-19 in advertising or promotional statements. Mentioning COVID-19 in relation to a product, even if the product is intended to address more routine health issues, could be misleading.

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