



MEMORANDUM

July 6, 2020

To: Subcommittee on Consumer Protection and Commerce Members and Staff

Fr: Committee on Energy and Commerce Staff

Re: Hearing on “Consumers Beware: Increased Risks During the COVID-19 Pandemic”

On Thursday, July 9, 2020, at 12 p.m., via Cisco Webex online video conferencing, the Subcommittee on Consumer Protection and Commerce will hold a hearing entitled, “Consumers Beware: Increased Risks During the COVID-19 Pandemic.”

I. BACKGROUND

The coronavirus disease of 2019 (COVID-19) pandemic has dramatically changed how and where Americans work, socialize, and learn, increasing risks to health, safety, and financial well-being. Americans are more vulnerable to unsafe and counterfeit products, as the pandemic has accelerated the trend towards online shopping, including for scarce personal protective equipment (PPE) and necessities.¹ In addition, Americans are spending more time at home, magnifying existing household dangers, especially for those juggling work and childcare or the care of aging parents.² COVID-19 fears and new financial struggles have also made Americans more vulnerable to medical and financial scams.³

Two federal agencies responsible for protecting Americans from such fraudulent activity are the Federal Trade Commission (FTC) and the Consumer Product Safety Commission (CPSC). The FTC is an independent agency whose mission is to protect “consumers and competition by preventing anticompetitive, deceptive, and unfair business practices.”⁴ Its primary mandate stems from Section 5 of the FTC Act, which makes “unfair or deceptive acts or practices in or affecting commerce” unlawful.⁵

The CPSC is an independent agency responsible for protecting consumers from

¹ *Coronavirus Closures Froze Swaths of U.S. Economy in March*, Wall Street Journal (Apr. 15, 2020).

² *Prevent Home Injuries to Kids During the Coronavirus Pandemic*, Consumer Reports (Apr. 17, 2020).

³ *A Guide to Pandemic Scams, and What Not to Fall For*, New York Times (May 13, 2020).

⁴ Federal Trade Commission, *About the FTC* (www.ftc.gov/about-ftc).

⁵ 15 U.S.C. § 45.

unreasonable risk of injury or death from consumer products.⁶ The CPSC's Office of Import Surveillance (EXIS) is responsible for ensuring the safety of products entering the country through our ports. CPSC inspectors work alongside U.S. Customs and Border Protection (CBP) agents at key ports of entry to identify and interdict violative products before they can reach consumers.⁷

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

A. Select Unfair and Deceptive Practices Relating to COVID-19

1. *Fake Treatments*

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, including hydroxychloroquine and chloroquine, and other untested products like cow urine, colloidal silver, and oregano.⁸ The Food and Drug Administration has warned that these products can be dangerous to one's health.⁹ Since the start of the pandemic, the FTC has sent warning letters to over 250 companies and individuals for allegedly selling unapproved and misbranded products claiming to prevent or treat COVID-19.¹⁰

2. *Scams*

Scammers are also coming up with new versions of old scams, taking advantage of the COVID-19 pandemic and the economic crisis. Scammers have targeted stimulus checks and unemployment benefits intended to provide critical relief to Americans suffering from the economic repercussions of the coronavirus pandemic.¹¹ Identity thieves posing as Government employees are calling Americans supposedly to verify personal information necessary to qualify

⁶ Consumer Product Safety Commission, *About CPSC* (www.cpsc.gov/en/About-CPSC/).

⁷ Consumer Product Safety Commission Office of Import Surveillance, *CPSC e-Commerce Assessment Report* (Nov. 2019).

⁸ *Coronavirus Scammers are Flooding Social Media with Fake Cures and Tests*, Vox (Apr. 17, 2020).

⁹ Food and Drug Administration, *Beware of Fraudulent Coronavirus Tests, Vaccines and Treatments* (Apr. 29, 2020) (www.fda.gov/consumers/consumer-updates/beware-fraudulent-coronavirus-tests-vaccines-and-treatments).

¹⁰ Federal Trade Commission, *FTC Coronavirus Warning Letters to Companies*, (www.ftc.gov/coronavirus/enforcement/warning-letters).

¹¹ *Scammers are Using Fake Coronavirus Stimulus Payment Sites to Steal Your Money*, CNBC (Apr. 23, 2020).

for COVID-19 funds.¹² Other scammers suggest people can get more money or get it faster by sharing their personal information and paying a processing fee.¹³

The FTC has posted warnings about many coronavirus-related scams, including contact tracing scams, scams related to small business loans, work-from-home scams and pyramid schemes, and fake charities, among others.¹⁴ Last week, the FTC also reported an uptick in online shopping complaints by consumers who purchased in-demand health and safety products, like face masks and sanitizer online, but never actually received any goods.¹⁵

3. *Price Gouging*

Some unscrupulous sellers are capitalizing on the COVID-19 pandemic by selling cleaning products, PPE, and other necessities at exorbitant prices. As the pandemic intensified, the price of most hand sanitizers and facemasks rose by at least 50 percent on Amazon.¹⁶ On April 8, 2020, Chair Jan Schakowsky (D-IL) and Committee Chairman Frank Pallone, Jr. (D-NJ) introduced H.R. 6472, the COVID-19 Price Gouging Prevention Act, which would prohibit the sale of consumer goods and services at unconscionably excessive prices during a public health emergency.

4. *Funeral Rule*

The COVID-19 pandemic has further complicated funeral planning—an already stressful process that calls on grieving families to make quick decisions under immense emotional duress. Under the FTC’s Funeral Rule, funeral homes are required to provide price information upon request over the telephone, and a written, itemized price list in person.¹⁷ The rule, last updated in 1994, does not require funeral homes to post pricing information online.¹⁸ Earlier this year,

¹² *Beware of Stimulus Check Scams and Related Hoaxes*, Forbes (Mar. 28, 2020); 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).

¹³ *Beware of Stimulus Check Scams and Related Hoaxes*, Forbes (Mar. 28, 2020).

¹⁴ Federal Trade Commission, *Coronavirus Advice for Consumers* (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).

¹⁵ 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).

¹⁶ U.S. PIRG, *Coronavirus Worry Triggers Most Surgical Mask, Sanitizer Prices to Spike at Least 50% on Amazon* (Mar. 11, 2020) (uspig.org/news/usp/coronavirus-worry-triggers-most-surgical-mask-sanitizer-prices-spike-least-50-amazon).

¹⁷ Federal Trade Commission, *The FTC Funeral Rule* (July 2012) (www.consumer.ftc.gov/articles/0300-ftc-funeral-rule).

¹⁸ *Should Funeral Homes Be Required to Post Prices Online?*, New York Times (June 12, 2020).

the FTC announced it would review the Funeral Rule.¹⁹ Consumer advocates have urged the Commission to make online pricing information mandatory so that consumers can comparison shop online.²⁰

B. Product Safety Issues

1. Fake and Unsafe Products

During the COVID-19 pandemic, consumers have increasingly turned to online sellers to get household essentials. According to one estimate, e-commerce spending in the United States was up more than 30 percent from March through mid-April 2020 compared to last year.²¹ With supply chains strained and certain necessities widely unavailable, counterfeiters are preying on consumers' needs and fears by selling "counterfeit safety equipment, unapproved COVID-19 test kits, unproven medicines and substandard hygiene products through the online marketplace."²²

Many unsafe and counterfeit goods enter the United States from other countries, especially China, under the de minimis exception.²³ Direct-to-consumer sales may escape inspection at ports under this exception, making it easier for dangerous or counterfeit products to enter the country illegally.²⁴

2. Household Dangers

With Americans spending more time at home, household dangers have intensified. Pediatricians warned that drowning risk for kids may increase during the COVID-19 pandemic due to an increase in unsupervised access to swimming pools and increased use of kiddie pools

¹⁹ Federal Trade Commission, *FTC Seeks Public Comment as Part of its Review of the Funeral Rule* (Feb. 20, 2020) (www.ftc.gov/news-events/press-releases/2020/02/ftc-seeks-public-comment-part-its-review-funeral-rule).

²⁰ See note 18.

²¹ *As Coronavirus Restrictions Drag On, Americans Shift Online Spending from Stockpiling to Entertainment*, CNBC (June 10, 2020).

²² Customs and Border Protection, *CBP Continues to Seize Large Number of Counterfeit and Unapproved COVID-19 Products* (June 5, 2020) (press release).

²³ Department of Homeland Security, *Combating Trafficking in Counterfeit and Pirated Goods* (Jan. 24, 2020) (www.dhs.gov/sites/default/files/publications/20_0124_plcy_counterfeit-pirated-goods-report_01.pdf); Consumer Product Safety Commission Office of Import Surveillance, *CPSC e-Commerce Assessment Report* (Nov. 2019).

²⁴ *Id.*

and wading pools.²⁵ Some states have seen a spike in child drowning deaths.²⁶ Accidental poisonings are also on the rise; calls to poison control centers involving children ingesting hand sanitizer increasing by more than 50 percent in March 2020 compared with January 2020²⁷, and calls regarding exposure to household disinfectants increased dramatically after President Trump suggested that the injection of disinfectants could treat COVID-19.²⁸

In response to the pandemic, the CPSC has issued a series of safety checklists to help families identify and handle hidden hazards, including outdoor hazards such as hoverboards and backyard trampolines, and indoor hazards such as furniture tip-overs, dangerous window coverings, and recalled infant products.²⁹

III. WITNESSES

The following witnesses have been invited to testify:

Kevin Anderson

Senior Deputy Attorney General
Director, Consumer Protection Division
North Carolina Department of Justice

Sally Greenberg

Executive Director
National Consumers League

Thomas Quadman

Executive Vice President
Center for Capital Markets Competitiveness
Chamber Technology Engagement Center
Global Innovation Policy Center
U.S. Chamber of Commerce

²⁵ American Academy of Pediatrics, *Wading Pools, In-Ground and Inflatable Pools Pose Drowning Risk During COVID-19* (June 23, 2020) (services.aap.org/en/news-room/news-releases/aap/2020/wading-pools-in-ground-and-inflatable-pools-pose-drowning-risk-during-covid-19/).

²⁶ *COVID-19 Pandemic Leads to Spike in Child Drownings in Texas*, KHOU 11 (May 21, 2020); *Florida Drowning Deaths Up 70% from this Time Last Year, Nonprofit Says*, ABC Action News (Apr. 13, 2020).

²⁷ American Association of Poison Control Centers, *Hand Sanitizer* (aapcc.org/track/hand-sanitizer/).

²⁸ *Calls to Poison Centers Spike After the President's Comments about Using Disinfectants to Treat Coronavirus*, Forbes (Apr. 25, 2020) (www.forbes.com/sites/robertglatter/2020/04/25/calls-to-poison-centers-spike--after-the-presidents-comments-about-using-disinfectants-to-treat-coronavirus/#18a32b231157).

²⁹ Consumer Product Safety Commission, *COVID-19 Home Safety Information Center* (www.cpsc.gov/Safety-Education/Safety-Education-Centers/covid-19-home-safety).