

Client Alert

FTC Files First Civil Penalty Complaint Alleging Deceptive COVID-19 Marketing

April 23, 2021

On April 15, 2021, the [FTC](#) filed its first [complaint](#) under the COVID-19 Consumer Protection Act (the CCP Act). The complaint, filed in the United States District Court for the Eastern District of Missouri, alleges that an in-state chiropractor and his company violated both the CCP Act and the FTC Act by deceptively marketing Vitamin D and Zinc products to treat COVID-19.

According to the complaint, St. Louis-based Eric A. Nepute and his company, Quickwork LLC, promote scientifically proven representations that the Wellness Warrior products containing Vitamin D and Zinc will provide equal or better protection against COVID-19 than currently available COVID-19 vaccines. Additionally, Nepute's videos claimed that "COVID-19 Patients who get enough Vitamin D are 52% less likely to die" and that people who consume enough Vitamin D3 "have a 77% less chance of getting infected in the first place."

In May 2020, Nepute received a [warning letter](#) advising him to review the claims for his products and to cease making representations unsupported by reliable scientific evidence. According to the complaint, despite the warning letter, the defendants "ramped up their unsubstantiated claims regarding Vitamin D and Zinc." The FTC is now seeking monetary penalties and a preliminary injunction that bars defendants from making health claims unless they are true and can be substantiated by competent and reliable scientific evidence.

The COVID-19 Consumer Protection Act

Titled the "COVID-19 Consumer Protection Act" (see page 2094 [here](#)), the law lasts for the duration of the COVID-19 public health emergency declared pursuant to section 319 of the Public Health Service Act (42 U.S.C. 247d).

The Act makes it unlawful under Section 5 of the Federal Trade Commission Act for any person, partnership, or corporation to engage in a deceptive act or practice in or affecting commerce associated with the treatment, cure, prevention, mitigation, or diagnosis of COVID-19 or a government benefit related to COVID-19. The Act provides that such a violation shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under Sec. 18(a)(1)(B) of the FTC Act enabling the FTC to obtain civil penalties.

The FTC's Efforts to Enforce the COVID-19 Consumer Protection Act

The FTC has made it clear by sending hundreds of warning letters during the COVID-19 pandemic that it is closely monitoring deceptive COVID-19 acts and practices. Advertisers cannot make any express or implied claims that their products or services are effective against preventing or curing coronavirus absent competent and reliable scientific evidence. Now, the FTC is armed with the power to seek civil penalties and we should expect additional lawsuits under the CCP Act as it continues to monitor the marketplace.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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