

## The FTC Remains Focused on Misleading COVID-19 Claims

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In 2020, the Federal Trade Commission (“FTC”) sent letters to a number of direct sellers, alleging that they or members of their sales force had made false or misleading health and earnings claims related to COVID-19. Then in 2021, Congress enacted the COVID-19 Consumer Protection Act (the “Act”), providing for civil penalties of up to \$46,517 for every misleading claim about the treatment, cure, prevention, or mitigation of COVID-19. And just recently, many of our direct selling clients received letters from the FTC reminding them of the FTC’s authority under the Act.

Although these “reminder” letters do not seek actual penalties, they demonstrate the FTC is actively monitoring the direct sales channel and searching for the right opportunity to strike. In fact, since the enactment of the Act, the FTC has taken an aggressive stance in targeting those companies and their distributors who attempt to capitalize on COVID-19 and its effects. The FTC is sending a clear message to direct sellers that they must not only monitor their field to identify misleading COVID-19 claims, but they must also act swiftly to remove the claims and impose appropriate corrective measures to deter future claims considered by the FTC to be problematic.

If your company does not currently have a system for identifying misleading distributor earnings and product claims (which of course includes claims made regarding COVID-19), you should consider implementing one right away. And if your company has a system in place, now is a good time to review the system to ensure it is effectively identifying problematic claims. A system is not much help if it is identifying massive amounts of false hits, or if it fails to sweep in terms of interest to the FTC. Most systems, however, can be swiftly optimized by tweaking the search criteria, which is something we routinely help our direct sales clients accomplish.

Ultimately, you want to show the FTC that you have an effective compliance system that identifies and addresses misleading claims. More importantly, ensuring your system is operating efficiently can minimize the risk that the FTC will set its sights on your company in the first place. If you need guidance implementing a system or want assistance with better optimization, we can help.

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