

# When Advertising Claims "Go Viral" – Labeling Considerations for Coronavirus

As COVID-19, or, as it is more commonly known, coronavirus, continues to spread across the country, consumers can find a number of products on shelves with labels promising protection against the disease. Unfortunately, many of these claims are proving false or lack adequate substantiation, and several federal agencies and consumers are taking note and taking names.

[The FDA and the Federal Trade Commission are cracking down](#) on claims that unapproved drugs and other products like tea and essential oils can treat coronavirus. The agencies served joint letters on televangelist Jim Bakker and several companies promoting supplements, sprays and lotions, ordering them to correct their websites or face action.

The FDA and FTC are reminding businesses that it is illegal to advertise "that a product 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." And, because there is not currently a vaccine or medication—either prescription or over-the-counter—available to consumers to "treat or cure coronavirus disease 2019 (COVID-19)," the FTC is telling companies to immediately cease making such claims.

Following the lead of the FDA and FTC, consumers are already bringing lawsuits against companies that make similar claims.

Germ-X, a popular brand of hand sanitizer, claims that it protects users against the coronavirus, the flu, and other viruses.<sup>[1]</sup> Several buyers have sued Vi-Jon Inc., the manufacturer, saying that the FDA has warned Vi-Jon that it doesn't have any evidence to back up that claim. The suit includes claims for violations of California's false advertising and unfair competition laws as well as the state's Consumer Legal Remedies Act.

The makers of Purell are facing a similar suit in New York federal court by a group hoping to achieve nationwide class-action status.<sup>[2]</sup> The plaintiffs allege that Gojo Industries, Inc. (through the marketing of its Healthcare Advanced Hand Sanitizer) violated consumer protection laws. Specifically, they assert Gojo improperly advertises that Purell reduces the spread of norovirus, prevents the flu, and could

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even help in the fight against Ebola.

Both Germ-X and Purell contain high amounts of ethyl alcohol—70 and 62 percent, respectively—but they have not been evaluated by the FDA to determine whether or not they are effective against spreading certain viruses. Therefore, the products are "unapproved new drugs" under the Federal Food, Drug and Cosmetic Act.

Even without coronavirus concerns, a company can be held liable by competitors and consumers for misleading or false advertising claims at any time. But as fears rise amidst the increasing number of cancelled high-profile events like the cessation of the rest of the NBA's regular season and the decision by both the NHL and MLB to suspend their seasons, ensuring product labels are accurate and truthful becomes even more important.

Companies should also take precautions if they become aware of misleading consumer claims about its products, even if they are not the parties making such claims. For example, Tito's Vodka addressed the popular social media claim that its vodka can be used as hand sanitizer. Although it did not make the claims, it made it clear that Tito's products are for drinking only. "Per the CDC, hand sanitizer needs to contain at least 60% alcohol. Tito's Handmade Vodka is 40% alcohol, and therefore does not meet the current recommendation of the CDC," the [company posted on its Twitter account](#).

Feel free to contact Reinhart's Advertising, Media and Entertainment Team or Commercial and Competition Law Group if you have any questions about your company's (or your competitors') advertising and promotions, especially during challenging times like these.

[1] *Geraldine David et al. v. Vi-Jon Inc.*, United States District Court for the Southern District of California Case No. 3:20-cv-00424

[2] *Magdiela Gonzales et al. v. Gojo Industries Inc.*, United States District Court for the Southern District of New York Case No. 1:20-cv-00888

Please visit Reinhart's [Coronavirus Resource Center](#) for additional up-to-date information.

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