

E-Commerce Platform Facing Price Gouging Scrutiny

Minding Your Business Blog on August 19, 2021

In the early days of the pandemic, COVID-19 was synonymous with a mad dash for anti-virus home items like hand sanitizer, toilet paper, and anti-bacterial wipes. Amazon emerged from the shopping frenzy as key source of these products and hosts of others. Even as many states are lifting states of emergency, businesses active during the pandemic, such as Amazon, are facing suits for conduct during the pandemic.

On July 2, 2021, a group of consumers filed a proposed class action complaint in Washington federal court against Amazon alleging “unlawful price gouging during the COVID-19 pandemic.” The plaintiffs bring three counts against the e-commerce giant: (1) violation of the Washington Consumer Protection Act (“WCPA”); (2) negligence; and (3) unjust enrichment.

Plaintiffs highlight that Amazon’s sales have increased more than 1,000 percent since the beginning of the pandemic and describe price increases on a range of products. Specifically, plaintiffs allege that Amazon unlawfully raised prices on face masks, cold remedies, toilet paper, pain reliever, black beans, baking soda, flour, yeast, and disinfectant wipes.

The plaintiffs paint a picture of prices increasing by between 233% and 1,800% since the U.S. Department of Health and human Services declared a public health emergency related to COVID-19. Plaintiffs allege that Amazon is responsible not only for increased prices on Amazon branded or owned produces, but also for products sold by third-parties on its platform. Plaintiffs cite several instances where Amazon branded products were sold well above the pre-pandemic price.

Additionally, early in the pandemic Amazon acknowledged that price increases were occurring on its platform and committed to removing third-party sellers who engaged in price gouging. Plaintiffs have alleged that such independent, third-party activity can be imputed to Amazon, and rest their case on Amazon’s policies—including “Sold by Amazon,” the “Minimum Gross Proceeds” price, and “Automated Pricing” services—for third-party sellers. With these policies, the Plaintiffs allege, Amazon is “[f]ar from serving as a passive intermediary,” but instead the company “controls the sale and marketing of all third-party products on its platform.” Plaintiffs also point to Amazon’s ability to set prices, set price ceilings, and “retains the ultimate right to reject a price.”

Unlike many U.S. states, Washington does not have an explicit price gouging statute. Plaintiffs, therefore argue that the WCPA, which prohibits “unfair or deceptive acts or [trade] practices,” effectively includes a price gouging prohibition. Plaintiffs acknowledge that there is no explicit percentage cap on price increases. Instead Plaintiffs ask the court to adopt a rule which establishes that 15% price increase during an emergency constitutes an unfair trade practice in violation of the WCPA. Plaintiffs also point to the fact that Washington Attorney General Bob Ferguson throughout the pandemic has invoked the WCPA to issue numerous cease-and-desist letters barring price gouging.

Amazon is continuing its investigation into the allegations in the complaint and the parties recently agreed to extend the deadlines to respond to the complaint. As Amazon litigates this case in Washington, related business should prepare for possible claims from consumers.

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