

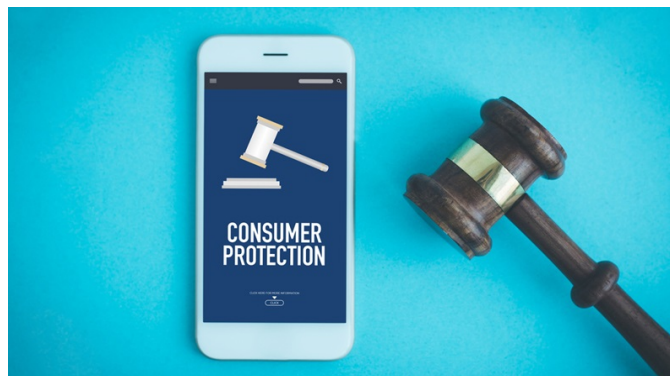
State Agencies Sharpen Supplement Market Oversight During Pandemic, With Industry's Thanks

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Executive Summary

"We're particularly concerned about the health care area right now because obviously that's driving everything now," says Tennessee AG Herbert Slatery III. He and CRN CEO Steve Mister spoke with HBW Insight about regulation of the consumer health marketplace with FDA suspending inspections of facilities operated by businesses manufacturing and marketing products subject to its oversight.



Maintaining regulatory oversight of the US consumer health product marketplace during the novel coronavirus pandemic is putting in the spotlight two groups normally overshadowed by the work of federal agencies.

State agencies, particularly attorneys general offices, increased their monitoring of the consumer health market in anticipation that some businesses or individual operators would attempt to capitalize on consumer concern by offering dietary supplements, lotions or other products available nonprescription with fraudulent claims of treating or preventing coronavirus infection, or the Covid-19 disease caused by the virus. AGs and other state authorities also are investigating and conducting enforcement against sellers of lawful consumer health products at exorbitant prices.

One target of state authorities' enforcement, televangelist and convicted felon Jim Bakker, was on both appeared on both the Missouri and New York state AGs' coronavirus fraud radar, and the New York agency also ordered conservative online political conspiracy promoter and supplement seller Alex Jones to stop bogus claims.

"We're particularly concerned about the health care area right now because obviously that's driving everything now. People, the bad actors, who would try to take advantage of that, I think everybody's on the lookout for them," said Tennessee Attorney General Herbert Slatery III (R).

Like state AGs, supplement industry stakeholders routinely emphasize self-regulation to complement regulatory agencies' marketplace oversight. The coronavirus pandemic has amplified their call for manufacturers and marketers to prioritize quality control.

"What we are reminding companies is that they don't have a cop on the beat right now looking over their shoulder," said Steve Mister, president and CEO of the Council for Responsible Nutrition.

Slatery, who along with North Carolina Attorney General Josh Stein (D) is co-chair of the National Association of Attorneys General Consumer Protection Committee, and Mister spoke with HBW Insight about regulation of the consumer health product marketplace with the Food and Drug Administration temporarily suspending inspections of facilities operated by businesses manufacturing and marketing products subject to its oversight.

Additionally, the Federal Trade Commission's monitoring of advertising for health products and other consumer packaged goods likely is slowed as it, like the FDA and other federal agencies, has assigned its staff to work remotely. State AGs, and other agencies enforcing against consumer fraud, take on a larger role in policing the marketplace, both in stores and online, for bogus coronavirus claims.



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High-Profile Cases And More On States' Radar

The New York AG sent a "cease and desist" letter in February to Bakker after he promoted an immunity supplement, which is offered on his show on the PTL Network and is made by Utah firm iMov LLC, dba Optivida Health, as a prevention and treatment of Covid-19, among other ailments. (Also see "Like Other Outbreaks, Coronavirus Symptoms Include False Health Claims, Price-Gouging" - HBW Insight, 6 Mar, 2020.)

The Missouri agency on 10 March filed a petition for temporary restraining order, a preliminary injunction, civil penalties and other relief against Bakker and Morningside Church Productions Inc., dba Jim Bakker Show Ministry, alleging false advertising for a coronavirus cure.

According to the complaint filed in Missouri state court, in a 12 February broadcast of Bakker's TV ministry, he and Sherrill Sellman, referred to as a naturopathic doctor and "natural health expert" discussed the same product identified in the New York AG's letter, "Silver Solution Immunity Supplement."

While Sellman isn't named as a defendant in the Missouri complaint, he is the target of a cease and desist order submitted to his office in Tulsa, OK, on 11 March by the New York AG linked to his claims on Bakker's show for Silver Solution.

At his Austin, TX, headquarters, meanwhile, political conspiracy promoter Jones, received an order from the New York agency on 12 March to stop making bogus claims for "toothpaste, dietary supplements, creams, and several other products as treatments to prevent and cure the coronavirus. Jones' fraudulent claims include that "the United States government has said his Superblue Toothpaste 'kills the whole SARS-corona family at point-blank range'," the agency says.

'Closer To The Issues And The People'

Slatery, appointed to an eight-year term as Tennessee's AG in 2014, said AGs and other state agencies likely will learn before federal agencies not only about high-profile noncompliance such as is alleged against Bakker and Jones, but also of violations that won't attract media coverage.

"The AGs are just particularly closer to the issues and the people who are victims and hear about them probably a little more quickly. The AGs are capable of responding with some particularly broad consumer protection powers," he said.

"The FTC has broad powers, too, but they can't react in the way a state AG can."

Slatery referenced recent media coverage of two Tennessee men buying a large supply of consumer hand sanitizer products with plans to sell them for much higher prices as consumers became more concerned about avoiding coronavirus exposure.

CDC Covid-19 Tracking

The US Centers for Disease Control and Prevention Covid-19 pandemic data 4 p.m. EDT on March 29 indicated :

- > Total cases: 122,653;
- > Total deaths: 2,112;
- > Jurisdictions reporting cases: All states and Washington, DC, Puerto Rico, Guam, Northern Marianas, and US Virgin Islands.

The Tennessee agency has a division of more than 30 attorneys and other staff focused on consumer fraud. Slatery acknowledged that the coronavirus pandemic could extend for months and the div

"The first article about that posted on Saturday morning and we had an investigator at that guy's doorstep Saturday afternoon to handle that," he said, adding, "that gives you an idea of how quickly can respond to something."

ision's resources could be stretched thin.

"We'll dedicate a fair number of those folks to Covid-19 just to keep tabs on that, but we've



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"This actually gives FDA 51 deputies out there that can help enforce things that FDA might not have resources to do on its own."

Compliant Claims Sell, Too

Egregiously fraudulent claims will get media attention as well as regulators, Mister added, but the US supplement industry's role in consumer health is apparent in consumers' response to the pandemic. "Generally, the news for the supplement industry has been positive," he said.

Sales data CRN receives show "supplement sales have been way up since near the end of February," and that increase isn't from consumers looking to treat or cure Covid-19, he said. Instead, supplements that are selling are lawfully advertised for uses including help ensure sufficient nutrition intake, boost immunity function, improve sleep and reduce stress.

"I think consumers are very stressed right now," Miser said.

"It's just general health, supplements are great support for that and consumers are understanding that, too, which is seen in them buying these products."

Compliance 'More Important Than Ever'

To sustain consumer demand for its products, the supplement industry must maintain effective quality control in the absence of FDA inspections, which the agency temporarily has suspended as its inspectors and other staff work at home in response to the pandemic. (Also see "US FDA Suspends Domestic Inspections As Staff Work Remotely In Covid-19 Response" - HBW Insight, 19 Mar, 2020.)

got plenty of other issues, too, including opioids," he said.

'51 Deputies' To Help FDA

Supplement industry stakeholders have been critical of states' enforcement in the marketplace and against manufacturers, contending that AGs and other authorities attempt to impose standards more stringent than required by the FDA. (Also see "State AGs Out Of Their Bailiwick Testing Supplement Ingredient Identities" - HBW Insight, 22 Sep, 2016.)

Currently, though, more eyes on the market are welcome, said CRN's Mister.

"Generally, we applaud that because when you look at the kinds of investigations they're initiating, these are really egregious, these are people who really try to prey on consumer fears about the pandemic," he said.

Good manufacturing practices compliance, including assuring ingredient identity throughout the supply chain, should be an even higher priority across the industry. "One of the things we keep reminding our members is, right now FDA is not doing any inspections," Mister said.

"It's more important than ever right that companies who want earn the trust of their consumers are doing double and triple of what they normally do to ensure that they're getting good, quality ingredients, they're following their own GMPs and those sorts of things so that even though FDA is not watching, the industry is watching itself," he said.

"We even cautioned our members that they should be doubling down on what they're doing, not cutting corners, not taking something less than they normally would because of the situation, not turning a blind eye to something that looks a little bit unusual. We keep reminding our members that we are the responsible industry and we need to do the thing that we're expected to do."