

Wash Your Hands, and Avoid Bogus COVID-19 Claims

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On March 6, 2020, the Federal Trade Commission (FTC) and U.S. Food and Drug Administration (FDA) sent warning letters to seven companies that allegedly sell unapproved products making deceptive or scientifically unsupported claims about their ability to treat coronavirus (COVID-19). The warning letters are the first issued by the agencies alleging unapproved and/or unsupported claims that products can treat or prevent coronavirus. One of the entities that received a letter—The Jim Bakker Show—produces programming that is broadcast on a handful of television stations, satellite/cable providers, and over-the-top (OTT) platforms, and the letters serve as a good reminder to broadcasters to exercise caution when airing ads or programs making health claims, particularly about coronavirus.

In the letter sent to The Jim Bakker Show, for example, the FTC and FDA provide examples of claims made on the show's website that the agencies allege misleadingly represent that products sold by the show are safe or effective for the treatment or prevention of coronavirus:

- "But this influenza [sic] that is now circling the globe, you're saying that Silver Solution would be effective? Well let's say it hasn't been tested on this strain of the coronavirus, but it's been tested on other strains of the coronavirus, and has been able to eliminate it within 12 hours, totally eliminate it, kills it, deactivates it"
- "Silver Solution has been proven ... to kill every pathogen it has ever been tested on ... and it can kill any of these known viruses ..."

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- “So the virus, like the coronavirus that we’re talking about ... affects the lung tissue so what you can do ... put it straight ... in a nebulizer which then creates a steam and you breathe it in and it will go directly into your lungs where that virus is and any other infection”

The letters direct the recipients to correct or remove the misleading claims and confirm to the agencies that they have done so within 48 hours. The agency warns that failure to take corrective action “may result in legal action, including, without limitation, seizure and injunction.”

According to the FDA, there are no approved vaccines, drugs, or investigational products currently available to treat or prevent the coronavirus. Thus, products claiming to prevent, treat, or cure the virus are misbranded in violation of the Food, Drug, and Cosmetic Act as well as the FDA’s implementing regulations. According to the FTC, such products also run afoul of the FTC Act, which prohibits advertisements claiming, directly or indirectly, that a product can prevent, treat, or cure disease unless such claims can be substantiated by competent and reliable scientific evidence.

Although federal regulators typically pursue enforcement or legal action against the companies that themselves make misleading or deceptive claims, the FTC has made clear in other contexts that broadcasters are expected to do their part to spot false claims and weed them out before they air. The vigilance of broadcasters may be especially important now that public anxiety over coronavirus is high.

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