

3M Files Second Lawsuit To Combat COVID-19 Price Gouging

“After a public dispute with the White House about exporting N-95 masks, 3M is turning to trademark law to help combat impressions that it is price-gouging at home ... reported earlier this week on 3M’s lawsuit against Performance Supply, a New Jersey company that offered to sell 3M masks to New York City for 500-600% of 3M’s list price. Shortly after filing that complaint, 3M also sued a Utah company for similar activities in the Eastern District of California,” reports Kimberly Maynard in Frankfurt Kurnit Klein + Selz’s *IP & Media Law Updates*.

“In the second complaint, 3M alleges that Rx2Live, LLC contacted Community Medical Centers, Inc. (“CMC”), a healthcare provider based in Fresno, offering to sell 3M-branded N95 masks at 400-500% of the 3M list price (with a minimum purchase of 10 million masks). Rx2Live invoked the 3M name multiple times, stating that the masks were “direct from 3M” and that “3M requires payment in full before order can be placed.” According to 3M, neither of these statements is true. The case is 3M Company v. Rx2Live, LLC, 1:20-cv-00523.”

“As with the Performance Supply lawsuit, 3M does not allege that Rx2Live sold counterfeit products, placed the 3M marks or a colorable imitation thereof on its own masks, or sold “gray market” goods (i.e., 3M-branded products manufactured for sale outside the U.S. and improperly imported and sold in the U.S.). It is unclear from the complaints if the defendants are reselling authentic 3M masks they previously purchased, albeit at an unconscionable price. While price-gouging is illegal, it is not prohibited by the Lanham Act. In fact, the first-sale doctrine expressly allows consumers to resell unaltered, branded products and to advertise them as such.”

Read the article.