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Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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November 2, 2020

The Honorable Joseph J. Simons
Chairman
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Chairman Simons:

We write with significant concerns that certain lawsuit marketing and advertising practices present a serious threat to public health and safety. Plaintiff lawyers intentionally continue to target and deceive vulnerable Americans into mistakenly believing that medications are unsafe. These schemes to generate lawsuits and revenue for themselves at the expense of consumers' health and safety are potentially illegal and deserve the attention of the Federal Trade Commission (FTC), which has the authority to scrutinize whether these scare tactics violate the FTC Act. As more therapeutics and vaccines come online to deal with the COVID-19 global pandemic, we are concerned that these lawsuit marketing and advertising practices will further hamper our country's ability to bring this health crisis under control and save lives.

Last year, the FTC sent warning letters to seven legal practitioners and lead generators expressing concerns about certain lawsuit ads.¹ The letters stated that "some lawsuit ads may make deceptive or unsubstantiated claims" and that "consumers who saw lawsuit ads about [certain] drugs they were taking, discontinued those medications, and suffered adverse consequences as a result."² The letters also stated that certain lawsuit ads may "mislead consumers into thinking they are watching a government-sanctioned" announcement.³ Some of the more misleading ads went so far as to include the Food and Drug Administration (FDA) logo

¹ <https://www.ftc.gov/news-events/press-releases/2019/09/ftc-flags-potentially-unlawful-tv-ads-prescription-drug-lawsuits>

² *Id.*

³ *Id.*

or text reading “FDA Warning,” a brazen attempt to deceive consumers into believing their ads have been approved by the agency.⁴

Unfortunately, plaintiff lawyers are successfully misleading and scaring people to stop taking their physician-prescribed medications. According to a 2016 survey, one in four respondents who had taken a prescription drug would stop taking that medication immediately after they viewed an actual lawsuit ad targeting that drug; four of five respondents would be concerned after viewing a lawsuit ad targeting a medication he or she was taking; and nearly 60 percent of respondents taking a targeted medication who were shown a lawsuit ad regarding that drug said they would reduce the amount of medication below what was physician-prescribed.⁵ Further, that same year, healthcare professionals filed 61 reports of patients stopping their prescribed medications after viewing a lawsuit ad.⁶ Tragically, these reports included six deaths and, for others, after stopping their medication they experienced variety of health issues, including strokes.⁷

Plaintiff lawyers are clearly prioritizing their own monetary interests over the public health and safety of Americans. And, they may be doing so in violation of the FTC Act. As the nation’s lead agency for combatting such deceptive behavior, we ask that you provide written answers to the following questions no later than November 13, 2020:

1. Please provide an update as it relates to the warning letters that the FTC sent last year to the seven legal practitioners and lead generators running potentially unlawful ads.
 - a. Has the FTC taken any additional actions? If yes, please identify what actions have been taken. If not, please explain why no additional actions have been taken.
2. Do lawsuit advertisements that make claims that are not based on competent and reliable scientific evidence violate the FTC Act? If yes, please explain why. If not, please explain why not.
3. Do lawsuit advertisements that include the FDA logo, when the FDA is not involved in the advertisement or related to the underlying action, violate the FTC Act? If yes, please explain why. If no, please explain why not.
4. Do lawsuit advertisements that include the text or phrase “FDA Warning,” when the FDA is not involved in the advertisement or related to the underlying action, violate the FTC Act? If yes, please explain why. If no, please explain why not.
5. Do lawsuit advertisements that include the text or phrase “medical alert” or “drug alert” violate the FTC Act? If yes, please explain why. If no, please explain why not.

⁴ https://institutelegalreform.com/uploads/sites/1/TLA_Advertising-Paper-WEB.pdf

⁵ *Id.*

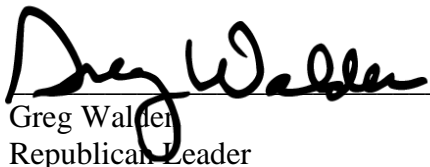
⁶ *Id.*

⁷ *Id.*

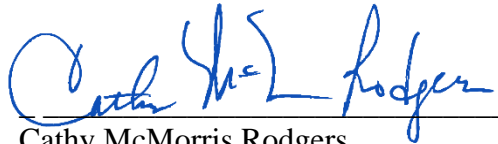
6. Does the FTC have the tools it needs to bring enforcement actions against plaintiff lawyers, legal practitioners, lead generators, or any other individual or organization responsible for deceptive lawsuit marketing and advertising practices? If no, please provide any recommendations for additional tools you may need, such as the request you recently made regarding your 13(b) authority.
7. Does the FTC conduct any kind of outreach, such as lectures or workshops, to interest groups who represent the plaintiff bar, such as the American Association of Justice, so that such parties are aware of FTC guidelines, concerns over certain lawsuit marketing and advertising practices, and the enforcement tools available to protect vulnerable Americans? If not, does the FTC plan to conduct such outreach in the future?
8. West Virginia, Texas, and Tennessee all have enacted laws that address deceptive lawsuit marketing and advertising practices within their respective states. Has the FTC reviewed such state laws and, if so, do you have any recommendation as to whether Congress should consider similar laws at the federal level?

If you have any questions, please contact Tim Kurth and Bijan Koohmaraie at (202) 225-3641. Thank you for your prompt attention to this request.

Sincerely,




Greg Walden
Republican Leader



Cathy McMorris Rodgers
Republican Leader
Subcommittee on Consumer Protection
and Commerce



Michael C. Burgess, M.D.
Republican Leader
Subcommittee on Health



Robert E. Latta
Republican Leader
Subcommittee on Communications
and Technology



Brett Guthrie
Republican Leader
Subcommittee on Oversight
and Investigations