

# Alerts & Publications



## Price Gouging Update—April 2020

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A number of O'Melveny clients have expressed an interest in receiving information regarding the legal landscape governing price gouging, including legislation, enforcement, and litigation. O'Melveny continues to keep abreast of price gouging news as it develops and offers this update on recent price gouging litigation for the month of April.

### State Attorney General Enforcement

On April 23, 2020, Texas Attorney General Ken Paxton brought a [price gouging enforcement action](#) against Cal-Maine Foods, Inc., the nation's largest producer of shell eggs. Texas alleges that Cal-Maine violated Texas's Deceptive Trade Practices Act by "offering, demanding in connection with the sale, and/or selling at an exorbitant or excessive price during a declared state of disaster, eggs." Specifically, Texas alleges that Cal-Maine sold eggs at over \$3 a dozen during the crisis, compared to the pre-pandemic rate of 94 cents per dozen that prevailed earlier in March. Texas seeks injunctive relief, civil penalties of \$10,000 per violation, disgorgement of profits, and attorney's fees and costs.

*O'Melveny has developed a 50-state survey of price gouging statutes and state enforcement activity. Please let us know if you are interested in receiving a copy.*

### Federal Enforcement

On April 24, 2020, the US Attorney's Office for the Eastern District of New York charged Amardeep Singh, a New York business owner, in the [first-ever criminal prosecution](#) for price gouging under the Defense Production Act (DPA). The United States alleges that Singh has accumulated or attempted to accumulate over five tons of protective equipment apparel, sanitizing and disinfecting products, and other goods designated by the President as "scarce," thereby violating the anti-hoarding provision of the DPA. The United States also alleges that Singh sold or offered to sell these goods to the public at substantial markups, ranging from 59% on the low end to 1,328% on the high end, thereby violating the anti-price gouging provision of the DPA. If convicted, Singh faces up to one year in prison.

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## Private Consumer Litigation

As many observers have anticipated, class action plaintiffs have invoked private-action rights under state price gouging statutes to file price gouging suits. For example, on April 21, 2020, plaintiffs seeking to represent a class of Amazon customers brought suit against the company in California, alleging that it violated California's Unfair Competition Law (UCL) by increasing prices more than 10% for products including face masks, pain reliever, cold remedies, black beans, flour, and disinfectant. Interestingly, plaintiffs assert that price gouging liability should attach to both Amazon's sale of its own inventory of products, as well as the third-party sales that Amazon hosts on its site, which plaintiffs allege are in Amazon's control and generate a profit for Amazon. Given the possibility that California's UCL may not encompass Amazon's hosting of third-party sellers, plaintiffs allege in the alternative that Amazon is liable for negligence or unjust enrichment based on its profiting from and failure to halt alleged third party price gouging on its website.

## Private Manufacturer Litigation

Finally, businesses should be aware that private scrutiny of potential price gouging behavior can come not just from consumers, but also from manufacturers and suppliers. On April 23, 2020, Medline Industries, Inc., a producer of hospital gowns, scrubs, lab coats, and other medical apparel, filed a trademark infringement suit against a similarly situated unauthorized distributor for offering to sell Medline products at a 200-300% markup. And Clorox, the nation's largest producer of household sanitizing and disinfecting products, has released [a public statement](#) that "we plan to take action to the extent appropriate if we learn of price gouging of our products by third-party distributors, or any other third-party in the chain of distribution of our products."

*O'Melveny will continue to track the status of price gouging litigation as it progresses, and plans to issue further litigation updates in the future.*

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*This memorandum is a summary for general information and discussion only and may be considered an advertisement for certain purposes. It is not a full analysis of the matters presented, may not be relied upon as legal advice, and does not purport to represent the views of our clients or the Firm. Ben Bradshaw, an O'Melveny partner licensed to practice law in California and the District of Columbia, Riccardo Celli, an O'Melveny partner licensed to practice law in the Capital Region of Brussels, the Law Society England & Wales, and Roma, Courtney Dyer, an O'Melveny partner licensed to practice law in the District of Columbia and New York, Andrew Frackman, an O'Melveny partner licensed to practice law in New Jersey and New York, Philip Monaghan, an O'Melveny partner licensed to practice law in the Capital Region of Brussels, Hong Kong, the Law Society England & Wales, and the Law Society Ireland, Bo Pearl, an O'Melveny partner licensed to practice law in California, Anna Pletcher, an O'Melveny partner licensed to practice law in California, Katrina Robson, an O'Melveny partner licensed to practice law in California and the District of Columbia, Ian Simmons, an O'Melveny partner licensed to practice law in the District of Columbia and Pennsylvania, Michael Tubach, an O'Melveny partner licensed to practice law in California and the District of Columbia, Courtney C. Byrd, an O'Melveny counsel licensed to practice law in the District of Columbia and Maryland, Stephen McIntyre, an O'Melveny counsel licensed to practice*



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