



Written testimony from

Teresa Murray

**Consumer Watchdog Director
U.S. Public Interest Research Group**

Hearing on

“Stopping COVID-19 Fraud and Price Gouging”

**U.S. Senate Committee on Commerce, Science, and Transportation
Subcommittee on [Consumer Protection, Product Safety, and Data
Security](#)**

Tuesday, February 1, 2022

Good afternoon Chairman Blumenthal, Ranking Member Blackburn and members of the Consumer Protection Subcommittee. I'm Teresa Murray and I'm the director of the Consumer Watchdog program with the U.S. Public Interest Research Group. U.S. PIRG is an independent, non-partisan group that works for consumers and the public interest. Thank you for the opportunity to talk today about challenges facing consumers as they continue trying to keep themselves safe from COVID.

I'd like to talk today about two of the biggest consumer issues during this pandemic: First, counterfeit products and other scams. Second, price-gouging of legitimate products.

Counterfeit or substandard products started infecting the marketplace in the earliest days, in February 2020. We saw massive amounts of substandard and even dangerous hand sanitizer filling store shelves and retailers' web sites. People were terrified and desperate and they'd buy almost anything in hopes of protecting themselves and their families. Some of the items peddled as hand sanitizer actually contained methanol and other dangerous substances. Since July of 2020, the Food and Drug Administration has recalled 273 different brands of hand sanitizer because they were dangerous or ineffective and a year ago issued an import alert on

all alcohol-based hand sanitizers from Mexico¹; the most recent recommended recall was less than two weeks ago, on Jan. 20, 2022.²

All sorts of other COVID-related products have surfaced that are counterfeits or knockoffs or simply don't do what they say. Most recently, we've seen a surge in counterfeit masks.

The FDA is working with other government offices to squash the surge in counterfeits. It has issued import alerts for fraudulent products.³ It also has been working with customs officials to stop banned imports. During 2020 and 2021, agents with Customs and Border Protection seized some 34 million counterfeit masks, half of them from China, according to the New York Times.⁴ Those are just the ones that got confiscated. Those are the ones we know about. We know that other counterfeit and substandard products do slip through and are purchased by unsuspecting consumers or provided to healthcare workers because they look genuine.⁵ For example, last February, the Department of Homeland Security said it had confiscated

1

<https://www.fda.gov/news-events/press-announcements/coronavirus-covid-19-update-fda-takes-action-plate-all-alcohol-based-hand-sanitizers-mexico-import>

2

<https://www.fda.gov/drugs/drug-safety-and-availability/fda-updates-hand-sanitizers-consumers-should-not-use-products>

³ https://www.accessdata.fda.gov/cms_ia/importalert_1165.html

⁴ <https://www.nytimes.com/2021/11/30/health/covid-masks-counterfeit-fake.html>

⁵ See appendix 4 for a photo of a counterfeit mask that looks legitimate.

10 million counterfeit 3M N95 masks, some of which were reportedly being shipped to hospitals.⁶

Meanwhile, data from the Centers for Disease Control and Prevention shows that 60 percent of KN95 masks sold in the US during 2020 and 2021 failed to meet safety standards.⁷

Counterfeit masks have been a particular problem the last couple of months, as omicron surged and people wanted better protection.

Of course the biggest issue with counterfeit masks is people have a false sense of security. These substandard masks aren't providing someone with the protection they think they're getting.

We're also seeing fake COVID test sites, according to the Federal Trade Commission.⁸ The test sites look real with people in hazmat suits. But you get charged for a free test. Sometimes your information is used to steal your identity. And you of course don't get any test results.

The FTC says we're also seeing a surge in unauthorized home test kits, fueled by the shortage of COVID test kits.^{9 10}

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<https://abcnews.go.com/Politics/senators-aim-fraudsters-flooding-market-fake-masks/story?id=81778809>

⁷ <https://www.cdc.gov/niosh/npptl/respirators/testing/NonNIOSHresults.html>

⁸ <https://www.consumer.ftc.gov/blog/2022/01/dont-assume-every-covid-19-test-site-legit>

⁹ <https://www.cnbc.com/2022/01/06/fake-covid-testing-kits-are-everywhereheres-how-to-avoid-them.html>

¹⁰ <https://www.consumer.ftc.gov/blog/2022/01/how-avoid-buying-fake-covid-tests-online>

Sen. Richard Blumenthal and Sen. Ed Markey have asked the FTC to investigate fraudulent test kits and price gouging of home test kits. This can't happen quickly enough.¹¹

On price gouging, like with counterfeit products, we saw this at the very beginning of the pandemic. In spring of 2020, U.S PIRG researched more than 90 types of face masks and hand sanitizers and used a price-tracking tool to compare current prices with the three-month average leading up to the pandemic. We found price increases of at least 50 percent on more than half of the products.

In January 2021, we did another report. We researched 750 products such as face masks, disinfecting wipes, oral thermometers and cough syrup. For each product, we looked at the price of the listing on Dec. 1, 2019 – before the pandemic – and the price again on Dec. 1, 2020. Out of the 750 listings, 409 saw price increases of more than 20 percent, and 136 at least doubled in price.¹²

In the last couple of months, we've seen huge price spikes on home

¹¹ U.S. PIRG has worked closely with the Federal Trade Commission on issues including scams, data privacy, Big Tech oversight and the right to repair. We support, among other improvements to help the FTC, increased funding for this chronically under-funded agency, reinstatement of its 13(b) authority to impose restitution orders and granting the FTC new authority to impose civil penalties for first-time violations of the FTC Act. We also urge the Senate to confirm President Biden's well-qualified nominee to the commission, Alvaro Bedoya, as soon as possible.

¹²

<https://uspirg.org/sites/pirg/files/reports/1%20Year%20Later-%20Comparing%20Pre-Pandemic%20Prices%20to%20Today%27s%20on%20Amazon%20%281%29.pdf>

COVID tests and on N95 and KN95 masks. For example, 90 days ago, ON/GO home COVID rapid antigen tests were selling for an average of \$29.07 on Amazon. But three months ago, at least one merchant was selling the two-pack test kit for 38 percent more – at a price of \$39.99. As of last Saturday, Jan. 29, 2022, the price was down to \$24.¹³

Also Saturday, I pulled up information for top 3 listings on Amazon for N95 masks. One is the Benehal NIOSH Approved N95 Mask particulate respirators, pack of 20 individually wrapped, which is one of the masks recommended by Project N95. The 20-pack was selling for as low as \$16.78 two months ago. But then federal health officials recommended higher quality masks than simple cloth masks. And 17 days ago, this same box of Benehal masks was selling for as much as \$69.98.¹⁴ How is this an acceptable business practice? For its part, Amazon vowed in an April 2020 letter to U.S. PIRG that it was committed to fair pricing and would work harder to rid the site of exorbitant prices.¹⁵ It's not working. And it's certainly not just Amazon.

In December, New York Attorney General Letitia James issued a consumer alert regarding price gouging after consumers filed complaints about at-home tests being sold at double or triple their normal prices. Some that

¹³ Per Keepa. See screenshots in appendix 2.

¹⁴ Per Keepa. See screenshots in appendix 3.

¹⁵ See appendix 1, Amazon Response - U.S. PIRG

you could buy in November for maybe \$20 were selling for as much as \$70 per package at New York stores.¹⁶ This is outrageous.

My 103-year-old grandmother just died of COVID a few weeks ago. It's personal for me, as I suspect it is for many of you. She did not contract COVID because of counterfeit masks or highly priced COVID tests. But it infuriates me to think the pain of this pandemic could be prolonged by even one day or one more person might get sick because of counterfeit masks or home COVID tests marked up three times their normal price.

Recommendations:

1. Customs and Border Patrol needs to do as much as possible to stop counterfeit and unauthorized products from entering this country.
Regulators need to proactively investigate what's for sale at retailers and especially online, including products that falsely offer miracle cures.
2. Authorities including state attorneys general need to investigate reports of price gouging and prosecute any business that tries to take advantage of a public emergency or natural disaster by dramatically increasing its prices.

¹⁶

3. The chronically under-funded FTC needs help, including increased funding, reinstatement of its 13(b) authority to impose restitution orders¹⁷ and new authority to impose civil penalties for first-time violations of the FTC Act.¹⁸
4. In the United States, 37 states, three territories and Washington DC currently have price gouging laws. But it's a patchwork of confusion and inconsistency. Many take effect when the state declares an emergency. Some only apply to certain products such as gasoline or milk. While laws vary by state, increases of 20 percent or more may be considered price gouging. We need meaningful price gouging legislation in every state and we must also pass comprehensive federal price gouging legislation that would apply during pandemics, natural disasters and other emergencies
5. Congress needs to pass the INFORM act, which has bipartisan support.¹⁹ It would help squash the sale of counterfeits by third-party sellers by requiring online marketplaces to acquire the seller's government ID, tax ID, bank account information, and contact information.

¹⁷

<https://www.consumerfinancemonitor.com/2021/04/22/scotus-rules-ftc-act-section-13b-does-not-authorize-ftc-to-seek-restitution-or-disgorgement/#:~:text=In%20a%20unanimous%20decision%2C%20the,AMG%20Capital%20Management%2C%20LLC%20v.>

¹⁸ <https://castor.house.gov/news/documentsingle.aspx?DocumentID=403667>

¹⁹ <https://www.congress.gov/bill/117th-congress/senate-bill/936>

6. Businesses need to be more responsible and not sell products that could be substandard.
7. Social media platforms need to eliminate harmful content and advertising, including false promises of miracle cures.²⁰
8. Congress needs to look at granting more authority to the FDA to crack down on and punish mask counterfeiters. The new bi-partisan Protecting Patients from Counterfeit Medical Devices Act²¹ that was introduced six weeks ago could be a good first step. It's part of an effort to improve this country's pandemic response and improve the supply chain.

We all need to do better. We all need to do more. Regulators. Lawmakers. Law enforcement. Consumer advocates. As long as consumers are still getting ripped off, we can't stop trying to do more.

Thank you again for the opportunity to address this committee. I look forward to answering your questions.

²⁰

<https://www.ftc.gov/news-events/blogs/business-blog/2021/11/ftc-analysis-shows-covid-fraud-thriving-social-media>

²¹ <https://www.congress.gov/bill/117th-congress/senate-bill/3416?s=1&r=8>

Appendix 1



April 8, 2020

U.S. PIRG and U.S. PIRG Education Fund
CC: All Signatories
1543 Wazee Street
Suite 460
Denver, CO 80202

To All Signatories,

Thank you for your letter, received April 7, 2020, regarding the efforts of online retailers to combat price gouging related to COVID-19. There is no place for price gouging on Amazon, and we will not tolerate attempts to artificially raise prices on basic-need products during a global health crisis. It is unconscionable.

We are working around the clock to ensure our customers have access to the necessities that keep their households healthy and safe, while doing all we can to ensure no one takes advantage of our customers. Third-party sellers set their own prices for the products they sell in our stores. In the vast majority of cases, they offer our customers great products at low, competitive prices. Our long-standing Marketplace Fair Pricing Policy¹ strictly prohibits excessive prices on products and shipping. We proactively monitor our stores for unfair prices, and we aggressively enforce this policy in order to protect our customers. To date, Amazon has removed more than half a million offers from our stores for coronavirus-based price gouging, many before the offer was even available to customers. We have suspended more than 3,900 seller accounts in our U.S. store alone for violating our price gouging policies.

We have pursued strong partnerships with law enforcement at all levels to hold bad actors accountable for abuse in our stores. We proactively reached out to every state attorney general's office on March 6, 2020 to offer our assistance with any price gouging investigations and enforcement. We have spoken to several AG offices since then and have encouraged investigations and prosecution of bad actors for price gouging. As of today, we are actively collaborating with more than 20 AG offices (including California, Connecticut, Florida, New York, Missouri, Illinois, Michigan, and Tennessee) as they work to investigate and prosecute alleged price gougers. To advance price gouging investigations and resolutions, we have also created a special mechanism for state AG offices to quickly and easily escalate any consumer complaints they receive about third-party sellers. To stay a step ahead of bad actors, we are also proactively sharing information with all state AG offices about the sellers we have identified as potentially engaging in price gouging related to the COVID-19 crisis. We welcome the opportunity to partner with states in using this data to pursue any violations of specific state laws by these sellers.

¹ Full policy:

https://sellercentral.amazon.com/gp/help/external/G5TUVJKZHUVMN77V?language=en_US&ref=efph_G5TUVJKZHUVMN77V_cont_521

601 New Jersey Ave NW
Washington, DC 20001

Appendix 1 continued

We are actively deploying a number of other solutions to aggressively fight price gouging in our stores and support these broader efforts.

Technology-driven detection systems complemented by 24/7 manual audits. In order to enforce our long-standing policy against price gouging, our dynamic, automated systems are continuously comparing the prices submitted by our selling partners with current and historic prices within and outside of the Amazon store in order to locate and remove unfairly priced items. In addition, we have deployed a dedicated team that is working 24 hours a day, seven days a week to search for, investigate, and remove offers for unfairly priced products in high demand because of coronavirus, such as protective masks and hand sanitizer. If any of these methods find a price that violates our policy, we remove the offer and, in cases of confirmed misconduct, take action against the sellers, including suspending or terminating seller accounts and referring bad actors to enforcement agencies for prosecution.

Proactively combatting price gouging. Our price gouging efforts are always active and we take action independent of any actions taken by government officials. We are guided in real-time by conditions that might affect our customers and our stores. In the case of COVID-19, we began taking action against bad actors before many states made emergency declarations. In addition to our engagement with state AGs, we are also partnering directly with federal prosecutors and city attorney offices across the country as they work to investigate and prosecute alleged price gougers.

Keeping our customers protected and informed. Amazon is and will remain a customer-obsessed company, and our commitment to outstanding customer service has never been stronger. Our strong existing customer service engagement processes and metrics equip us well to handle customer questions and complaints about products related to price gouging, and we are encouraging customers to bring any concerns to our attention.

We recognize that efforts to define and penalize price gouging start with federal and state legislators. Although we already proactively set our automated systems to remove unfairly priced offers from our store, we are and will continue collaborating with state and federal policymakers to help strengthen price gouging laws. We strongly support legislative efforts to ensure unreasonably excessive price increases are illegal during this and other national crises. For example, we have worked with state retail associations as they engage legislative leadership interested in price gouging legislation.

Thank you for your sharing your concerns with us. We look forward to our continued partnership with policymakers and law enforcement as we all rise to the challenges posed by the COVID-19 crisis.

Sincerely,



Brian Huseman
Vice President, Public Policy

Appendix 2, On/Go at-Home COVID-19 Antigen Self-Test

T-Mobile Wi-Fi 9:29 AM 82%

On/Go at-Home COVID-19 Rapid Ant... 🇺🇸

Rating ★ ★ ★ ★ ☆ 4.1

Review Count 8,753



on/go™
COVID-19 Antigen Self-Test

Results in 10 minutes 2 Tests

Overview Track Product Variations

App Store 5:18 PM 48%

On/Go at-Home COVID-19 Rapid Ant... 🇺🇸

Show on Keepa amazon

Title On/Go at-Home COVID-19 Rapid Antigen Self-Test, 2 Tests Per Pack, Test Results in 10 Minutes, FDA Authorized, Expiration Extended

New \$ 24.00
Lowest \$ 23.49 (39 days ago)
Highest \$ 39.99 (3 months ago)
90d \$ 29.07 180d \$ 29.89

Rating ★ ★ ★ ★ ☆ 4.0

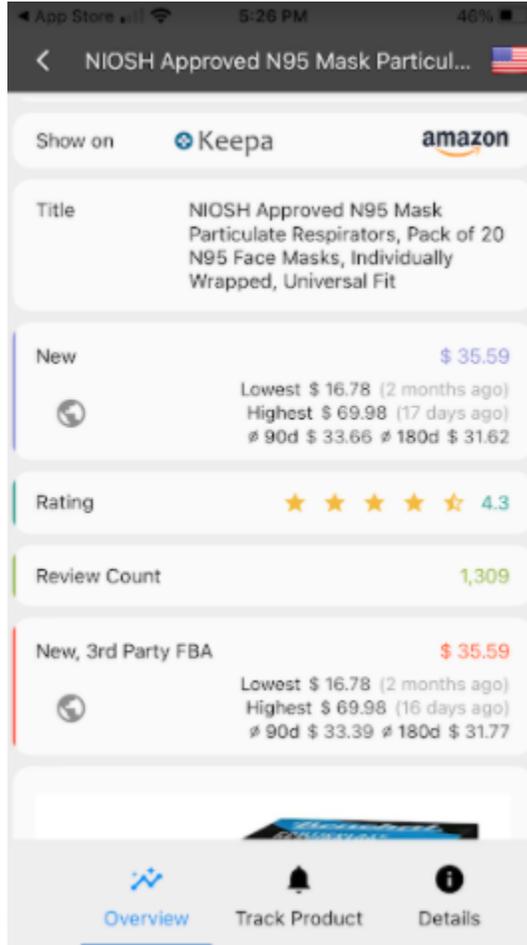
Review Count 8,121

New, 3rd Party FBA \$ 24.00
Lowest \$ 24.00 (14 days ago)
Highest \$ 34.99 (2 months ago)
90d \$ 29.44 180d \$ 29.44

New, 3rd Party FBM \$ 24.00
Lowest \$ 23.99 (14 days ago)

Overview Track Product Variations

Appendix 3, Benehal N95 Masks



Appendix 4, example of a counterfeit mask confiscated by CBP in 2021.



This counterfeit mask infringes on the NIOSH trademark.

This is a photo of a mask that's similar to 171,460 masks seized in April 2021 by CBP in Houston. The caption is from U.S. Customs and Border Protection. The shipment had the National Institute for Occupational Safety and Health logo on the boxes.

Consumers are told to look for the NIOSH stamp. If masks have this stamp, but are counterfeits, how can consumers or healthcare workers really tell?

Source:

<https://www.cbp.gov/newsroom/local-media-release/cbp-seizes-counterfeit-n95-masks>