

STATE OF MICHIGAN  
DEPARTMENT OF ATTORNEY GENERAL



DANA NESSEL  
ATTORNEY GENERAL

P.O. Box 30736  
LANSING, MICHIGAN 48909

May 8, 2020

Smokehouse Distribution  
Resident Agent: [REDACTED]  
1800 West Maple Rd.  
Commerce Township, MI 48930

Dear Mr. [REDACTED]:

*Re: Beamer Company Face Mask Sales*

This letter gives you notice of intended action in accordance with MCL 445.905(2) and directs you to immediately cease and desist from engaging in the unlawful business practices described below.

As background, this Office is responsible for enforcement of the Michigan Consumer Protection Act, MCL 445.901 *et seq.* Under this Act, the Attorney General may bring injunctive actions to protect the interests of consumers. Furthermore, this Office is responsible for enforcement of Governor Gretchen Whitmer's Executive Orders under the Emergency Management Act, MCL 30.401 *et seq.*

It has come to this Office's attention that on or about April 11, 2020, you began advertising face masks for sale to the public on a website called BeamerSmoke.com. This website is operated by Smokehouse Distribution, which is an assumed name for Beamer Company. Based on information the Attorney General received through a consumer complaint, the masks were being sold at a price of 2 for \$18.00 for disposable, surgical type masks. On April 30, 2020, when an Investigator from our Office contacted you to inquire into the face masks and pricing, you told the Investigator you purchased these face masks from a supplier for "55 cents plus shipping per mask which make[s] it 56.4 cents". Additionally, you informed the Investigator that the 2 for \$18.00 price was a "clinical error" made on your website and that this price was changed as soon as you discovered the error. However, you further stated that you dropped the price to \$11.99 for two masks, and then to \$9.99 for two masks. Given the well-known fears surrounding Coronavirus, it is apparent you were seeking to profit from an evolving public health emergency at an extreme markup.

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Currently, BeamerSmoke.com does not have any face masks or gloves available to purchase. You informed our Office that you made only 17 sales of face masks on your website, including 4 orders at 2 masks for \$18.00. However, the invoice you provided our Investigator demonstrates that you ordered 9 cases of 2,000 masks each from your supplier. Our Office is concerned that you may still have inventory on hand that you will seek to sell at irresponsible prices during the ongoing Coronavirus pandemic.

The Coronavirus pandemic has unfortunately been a time of fear and uncertainty for many. As a result, much media attention has been brought to examples of price-gouging on essential products throughout the country (<https://www.goodmorningamerica.com/news/video/prices-hand-sanitizers-masks-spike-due-coronavirus-69383537>). In Michigan, Governor Whitmer has issued a series of Executive Orders aimed at protecting consumers from grossly excessive pricing. Executive Order 2020-53 expressly states “[a] person must not resell a product in this state at a price that is grossly in excess of the purchase price at which the person acquired the product.” Therefore, when your website advertised for sale face masks at 2 for \$18.00, you sent a message to consumers that the price being charged is fair and substantiated based on your costs. However, the invoice and information you provided our Office demonstrates that is simply not the case. Instead, and unbeknownst to your customers, you marked up prices over 1000%. Though you later moved the prices down to be somewhat less egregious, you continued offering the face masks at grossly excessive prices. The fact you removed these items from your website after the inquiry from our investigator shows you know this.

These facts implicate the following unfair trade practices, as identified in Michigan’s Consumer Protection Act:

- (n) Causing a probability of confusion or of misunderstanding as to the legal rights, obligations, or remedies of a party to a transaction.
- (z) Charging the consumer a price that is grossly in excess of the price at which similar property or services are sold.
- (aa) Causing coercion and duress as the result of the time and nature of a sales presentation.

[MCL 445.903(1).]

The purpose of this letter is to put you on notice as required by the MCPA. From this point, this Office has the latitude to either commence a lawsuit after ten days or invoke a judicial process for a formal investigation through subpoenas. While we are prepared to follow one or both of these paths, we are willing to enter into an assurance of voluntary compliance—a device anticipated in the MCPA. Be

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advised, however, that we will require compensation to affected consumers and businesses as part of any assurance agreement.

Please contact us soon to schedule a telephonic meeting on or before May 22, 2020. You are welcome and encouraged to consult with, and be accompanied by, an attorney for this discussion.

We look forward to hearing from you soon.

Sincerely,



Andrea Moua  
Darrin Fowler  
Assistant Attorneys General  
Corporate Oversight Division  
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ALM/lsm