

Andrew Lustigman Contributes to Business Ethics During COVID-19 Companies Digest Article

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Andrew Lustigman, head of Olshan's Advertising, Marketing & Promotions Practice Group, was featured in a Companies Digest article comprising assessments by leading business law attorneys. Authoring the section on the United States, Mr. Lustigman advises that businesses "take a long-run approach to protect their brand and image, and to ensure that their conduct is ethical and fair to consumers." More than ever, he reminds, businesses must reinforce integrity in their business practices: "From the consumers' perspective, a perceived unethical business practice in the COVID-era may result in a social media and/or public relations disaster." The FTC and the FDA have already issued over 100 warning letters to companies who have made misleading COVID-19 treatment and prevention claims. "The agencies' positions," he explains, "have appeared, in at least some instances, to be quite aggressive, given that in many cases, the challenged claims appeared to be consistent with structure function claims. These letters signal that regulators are and will continue to be focused on claims that could be perceived as trying to profiteer off the virus. These warning letters may result in enforcement actions, particularly if the articulated concerns are not addressed by the companies making the claims at issue." Likewise, the SEC has filed securities fraud actions against businesses issuing deceptive press releases promoting products that have yet to be FDA-approved. Mr. Lustigman concludes with a simple but powerful piece of guidance: "The obvious approach is for businesses to take the high road in these trying times. They will likely be rewarded for doing the right thing and punished (either by the government or consumers) if they fail to do so."

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