

FDA and FTC Joint Warning Letters Target Amazon Affiliates Making False COVID-19 Claims

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Earlier this week, federal regulators continued their efforts to combat the spread of products featuring allegedly false and misleading claims that products can diagnose, treat, cure, or prevent COVID-19. In warning letters issued to [CBD Gaze](#), [Alternavita](#), [Musthavemom.com](#), and [Careful Cents LLC](#), the agencies identify the respective recipients as participants in the Amazon Affiliate program. Amazon Affiliates are marketers who earn commissions by promoting products sold on Amazon. The letters state that the products at issue, which include essential oils, grapefruit seed extracts, cod liver oil, and others, feature false treatment and prevention claims such as the following:

- CBD Gaze: “Find the best CBD Oil to help fight Coronavirus.”
- Alternavita: “4 Proven Ways To Protect Yourself Against Coronavirus,” you represent that “Everyone is concerned about Coronavirus and looking for ways to protect themselves,” and then state the following:

“Grapefruit Seed Extract If you want a little extra daily protection GSE is a safe antibiotic . . . [Amazon associate link].”

- Musthavemom.com: “NATURAL REMEDIES FOR CORONAVIRUS. . . There are plenty of things you can do to boost your immune system and fight off any virus including coronavirus. Here are a few!” . . . “2. Vitamin D . . . This important vitamin plays a crucial role in immune health. Being deficient in Vitamin D can increase your risk of infection. I recommend this brand of Vitamin D [Amazon associates link] and starting at a minimum dose of 5,000 IU.” [from your website <https://musthavemom.com/coronavirus-prevention-treatment-plan/>]
- Careful Cents LLC: “How to Boost Your Immune System Naturally With Essential Oils to Fight Coronavirus” you state: “Can you use essential oils to boost your immune system and fight coronavirus? Yes! Essential oils are one of the best tools to strengthen your immune system

naturally . . .”

The letters state that the products are unapproved new drugs and misbranded pursuant to the Food Drug and Cosmetic Act. Causing the introduction or delivery for introduction of these products into interstate commerce is prohibited under sections 301(a) and (d) of the FD&C Act, 21 U.S.C. § 331(a) and (d). The letters also state that “it is unlawful under the FTC Act, 15 U.S.C. 41 et seq., to advertise that a product can prevent, treat, or cure human disease unless you possess competent and reliable scientific evidence, including, when appropriate, well-controlled human clinical studies, substantiating that the claims are true at the time they are made. For COVID-19, no such study is currently known to exist for the product identified above. Thus, any coronavirus-related prevention or treatment claims regarding such product are not supported by competent and reliable scientific evidence.”

What’s the lesson? The difference between these letters and the warning letters that FDA and the FTC issued earlier this year is that these are targeted not to the company making the product or even the retail platform on which they are sold. They were sent to the middleman marketer, who likely does not produce or possess the product, but who is promoting and profiting from its sale. This is consistent with the FTC’s letters to product influencers in other marketing contexts but is a departure from FDA’s typical enforcement approach. Although we have seen FDA pursue retailers (particularly online ones), FDA has not made pursuit of marketing affiliates a priority. Clearly, regulators want affiliate marketers (Amazon or otherwise) to understand that they are not immune from enforcement if they are making aggressive or unsubstantiated health claims.

