



**OFFICE OF THE ARIZONA ATTORNEY GENERAL
STATE OF ARIZONA**

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ATTORNEY GENERAL**

**CIVIL LITIGATION DIVISION
CONSUMER PROTECTION & ADVOCACY SECTION**

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June 30, 2020

VIA U.S. MAIL & E-MAIL

Varsity Tavern
501 S. Mill Ave.
Suite 201
Tempe, AZ 85281
tempe@varsitytavern.com
info@varsitytavern.com

Varsity Tavern
5500 State Hwy 121
Suite 2112
Lewisville, Texas 75056

Ipsium Creative LLC
2808 McKinney Ave.
Apt. 140
Dallas, TX 75204-8604

Re: COVID-19 Policies

To Whom It May Concern:

The Arizona Attorney General's Office ("AGO") has received reports that at least one Varsity Tavern employee with COVID-19 has been told to come into work by Varsity Tavern management or risk losing his or her job. This policy appears to violate the Arizona Consumer Fraud Act, A.R.S. §§ 44-1521 *et seq.* ("CFA") in two ways.

First, most, if not all, potential customers purchasing food or beverages from Varsity Tavern, either through sit-down or carry-out service, would be troubled by this policy in general and alarmed by these specific facts, but Varsity Tavern's advertising, including its website, Facebook, and Instagram pages, makes no mention of the material fact that employees with COVID-19 are required to come into work. Under the CFA, it is illegal to conceal, suppress, or omit material facts with intent that others rely on such concealment, suppression, or omission, as stated in A.R.S. § 44-1522:

[T]he act, use or employment by any person of any deception, deceptive or unfair act or practice, fraud, false pretense, false promise, misrepresentation, or concealment, suppression or omission of any material fact with intent that others rely on such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice.


Second, given the highly contagious nature of COVID-19 and the aforementioned lack of disclosure to potential customers, Varsity Tavern's policy appears to be likely to cause substantial injury to consumers, and that injury is not reasonably avoidable by consumers or outweighed by countervailing benefits to consumers or to competition. If an act or practice meets those three criteria, it is unfair and illegal under the CFA. A.R.S. § 44-1522; *see* 15 U.S.C. § 45(n) (defining unfairness).

Those who violate the CFA may be subject to civil penalties of up to \$10,000 per violation. Additionally, violators may be subject to disgorgement of profits and also may be responsible to pay restitution to consumers and any fees and costs for an action brought by the AGO to enforce the law.

The AGO demands that Varsity Tavern immediately and permanently cease and desist from instructing or otherwise requiring employees with COVID-19 to report to work. The deadline for complying with this demand is 5:00 p.m. on Wednesday, July 1, 2020, followed by a written confirmation of compliance to be delivered to this office no later than 5:00 p.m. on Friday, July 3, 2020.

Additionally, you are hereby notified to preserve all written and electronic materials related to this policy in anticipation of consumer fraud litigation. If you have questions about this letter, you may contact me at Stephanie.Elliott@azag.gov or 602-542-8798.

Sincerely,



Stephanie Elliott
Senior Litigation Counsel