



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES
ATTORNEY GENERAL

DIVISIONS OF ECONOMIC & SOCIAL JUSTICE

September 11, 2019

VIA OVERNIGHT MAIL

MeToo Kits Company
370 Jay Street, 7th Floor
Brooklyn, New York 11201

Re: CEASE AND DESIST NOTIFICATION

Dear MeToo Kits Company:

The New York State Office of the Attorney General ("OAG") is extremely concerned by the MeToo Kits Company's ("MeToo")'s advertising representations and marketing for sale of an at-home sexual assault evidence kit.

Pursuant to New York Executive Law § 63(12) and General Business Law § 349, the OAG has the authority to commence legal action to enjoin deceptive, fraudulent or illegal business practices, as well as to obtain restitution, disgorgement, damages, penalties and costs. The OAG is also authorized to issue subpoenas and take testimony prior to any legal proceeding.

Sexual assault is a serious problem. One in five women and one in fourteen men experience sexual violence during their lifetime. By law, New York State provides sexual offense evidence collection kits and examinations at no charge to the survivor. *See* Executive Law § 631(13). The examinations and evidence collection may take place at a number of locations including hospitals and SAFE ("Sexual Assault Forensic Exam") Centers, where survivors will be offered a range of services as appropriate, including testing for sexually transmitted infections, post-exposure HIV prophylaxis, pregnancy prevention medication, treatment of injuries, referrals and follow-up. New York law further provides that all sexual offense evidence be kept in a locked, separate and secure refrigerated area for 20 years from the date of collection unless the patient directs the hospital to surrender it to the police, the patient directs the hospital to dispose of the evidence, or for certain kinds of evidence, if the police request its surrender. *See* Public Health Law § 2805-i.

Your advertising for MeToo's at-home evidence kit fails to disclose that testing, evidence preservation and other services are available for free in New York. Further, by focusing solely on evidence collection, your advertisements do a grave disservice to survivors of sexual assault, as it may lead them to forgo necessary medical treatment and ignores their potential short and long-term support or counseling needs.

We also have serious concerns about a number of your specific advertising representations. Your product is advertised as "the first at-home kit for commercial use." The website advertisement prominently features the use of the kit for "evidence collection," its ability to "accurately collect evidence" and its collection of "evidence required in a court of law." These representations give the misleading impression that the evidence collected will be admissible in a court of law. However, the New York State Department of Health website specifically notes the following:

Accurately maintaining and accounting for the chain of custody of sexual offense evidence is essential for the evidence to be useful in a court of law. **A patient, family member, or support person should never be left alone with evidence or ever allowed to handle or transport evidence after it has been collected.**

<https://www.health.ny.gov/professionals/safe/> (emphasis added).

Additionally, the Department of Justice "National Protocol for Sexual Assault Medical Forensic Examinations" ("DOJ National Protocol") states that "[o]nly a law enforcement official or duly authorized agent should transfer evidence from the exam site to the appropriate [storage site]... Examiners must maintain control of evidence during the exam, while evidence is being dried, and until it is in the kit container and sealed... Documentation should continue with each transfer of the evidence... Patients, advocates, family members, and other support persons should not handle the evidence. Documentation of the chain-of-custody information is vital to ensuring that there has been no loss or alteration of evidence prior to trial."

With respect to the kit itself, the DOJ National Protocol is emphatic that "it is critical that every [sexual assault examination] kit meets or exceeds the following minimum guidelines for contents." Among minimum guidelines, it lists "[m]aterials for collecting and preserving the following evidence: ... * Foreign materials on patients' bodies, including blood, dried secretions, fibers, loose hairs, vegetation, soil/debris, fingernail scrapings and/or cuttings, matted hair cutting, material dislodged from mouth, and swabs of suspected semen, saliva, and/or areas highlighted by alternate light sources... * Hair if required in the jurisdiction... * Body swabs." It also notes that "[i]t is critical to air-dry wet evidence at room temperature in a clean, sterile environment and quick manner that prevents contamination... Following proper drying and packaging procedures is vital to prevent the growth of mold and bacteria that can destroy an evidentiary sample." See <https://www.ncjrs.gov/pdffiles1/ovw/241903.pdf>. It does not appear that the MeToo kit meets these guidelines, making its representations concerning its suitability for collecting evidence particularly questionable.

Your disclaimer in the "Frequently Asked Questions" section of your website, accessible only by clicking on the "FAQ" link after scrolling through several screens of text, that "there is no guarantee that any of the evidence . . . will be admissible in court" is insufficient to contradict the overall message of your advertisement that the evidence will be admissible in court. Further, your

repeated references to “evidence” gives the misleading impression that the evidence collected with your kit is all the evidence that could be collected concerning the assault. A medical forensic examination involves much more than the “SWAB, SPIT, SEAL” you advertise on your product’s packaging. It may include photographs, documentation of injuries and other critical evidence.

We also have serious concerns about the accuracy of your representation that “[the kit] is universal and does not need any specialized training to be administered, unlike most of the standard DNA evidence retrieval kits for sexual assault survivors.”

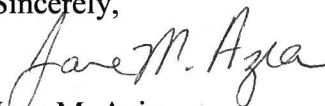
Your FAQ section states that after the kit is completed the survivor must take it to the police (or Title IX office, if the individual is attending an institute of higher education), where the survivor “will need to file an official police report or Title IX report.” This misleadingly suggests that survivors must involve law enforcement, when this is not the case. In New York, it is the survivor’s decision whether or not to file a police report, except in limited circumstances where child abuse reporting laws apply or the use of certain weapons is involved. Your representation may deter survivors from evidence collection.

Finally, your advertising claim that MeToo “trust[s] [the kit] to be a deterrent for sexual assault” gives the misleading impression that individuals are somehow safer from sexual assault as a result of purchasing the kit. This reckless and unsupported representation could lead to serious consequences, as individuals may be lulled into a false sense of security and be less careful with their personal safety as a result.

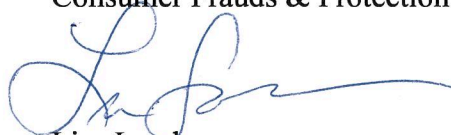
Accordingly, you are hereby directed to immediately cease and desist from advertising your product. Further, we hereby request that you take all necessary steps to preserve all physical and electronic records and data pertaining to matters that are the subject of this letter. The information that should be preserved includes active data (readily accessible today), archived data (stored on backup media), and deleted data (still recoverable through the use of computer forensics). We also request that you take affirmative steps to prevent anyone with access to your data systems and archives from seeking to modify or destroy electronic evidence on network or local hard drives.

Please contact the undersigned within the next five days to confirm that you have ceased your advertisements. Your failure to comply with this directive may result in further action by this office.

Sincerely,



Jane M. Azia
Bureau Chief
Consumer Frauds & Protection Bureau



Lisa Landau
Bureau Chief
Health Care Bureau