



**MEMORANDUM**

**October 25, 2019**  
*(revised)*

**To: Subcommittee on Consumer Protection and Commerce Members and Staff**

**Fr: Committee on Energy and Commerce Staff**

**Re: Legislative Hearing on “Reauthorizing Brand USA and the U.S. SAFE WEB Act”**

On **Tuesday, October 29, 2019, in room 2322 of the Rayburn House Office Building**, the Subcommittee on Consumer Protection and Commerce will hold a legislative hearing entitled, “Reauthorizing Brand USA and the U.S. SAFE WEB Act.” This hearing will begin at **1:30 p.m. or 30 minutes after the completion of another hearing in that room, whichever is later.**

**I. H.R. 3851, THE TRAVEL PROMOTION, ENHANCEMENT, AND MODERNIZATION ACT OF 2019**

H.R. 3851 was introduced by Reps. Welch (D-VT) and Bilirakis (R-FL) on July 18, 2019. The bill would extend the Travel Promotion Act (TPA) of 2009,<sup>1</sup> which established the public-private Corporation for Travel Promotion, later renamed Brand USA, as a national, coordinated marketing organization to promote international travel to the United States.

**A. Brand USA**

Brand USA plans advertising programs and activities, along with several industry advisory groups, which are designed to promote travel to the United States. It also develops industry partnerships to help further that goal. Brand USA is governed by a board of directors, whose members have knowledge of international travel promotion and marketing and are appointed by the Secretary of Commerce.

Brand USA is financed by a combination of public and private funds. Private-sector funding may come from either cash or in-kind contributions, with such contributions able to make up a maximum of 70 percent of the private sector’s financial contribution to the organization.<sup>2</sup> For fiscal year 2018, Brand USA received \$108 million in contributions from

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<sup>1</sup> Pub. L. No. 111-145.

<sup>2</sup> Pub. L. No. 113-235.

private industry with 43 percent from cash contributions and 57 percent from in-kind contributions.<sup>3</sup> Public matching funds are contributed from the Travel Promotion Fund, a U.S. Treasury fund sourced by a portion of the Electronic System for Travel Authorization (ESTA) fee, which is collected from foreign visitors to the United States by the Department of Homeland Security. TPA authorizes a maximum annual public contribution of \$100 million at a private-sector matching ratio of 1-to-1. No U.S. taxpayer dollars are used to fund Brand USA.

TPA assigns to the Department of Commerce most Brand USA oversight responsibilities, including approving the organization's annual goals; reviewing private-sector contributions, including assessing the fair market value of in-kind goods and services; and directing Treasury to disburse Federal matching funds after having approved Brand USA's requests and documentation. Brand USA is also required to make its budget and the result of an independently conducted annual financial audit available to Congress. TPA requires that Brand USA provide an explanation in its budget for any single expenditure that exceeds \$5 million.

In December 2014, as part of the Consolidated and Further Continuing Appropriations Act, 2015, Congress reauthorized TPA through September 30, 2020.<sup>4</sup>

## **B. Reauthorization**

H.R. 3851 would reauthorize Brand USA through September 30, 2027. In addition, it would moderately increase the ESTA used to partially fund the program.

## **II. H.R. 4779, A BILL TO EXTEND THE UNDERTAKING SPAM, SPYWARE, AND FRAUD ENFORCEMENT WITH ENFORCERS BEYOND BORDERS ACT OF 2006**

### **A. The U.S. SAFE WEB Act of 2006**

Enacted into law on December 22, 2006, the "Undertaking Spam, Spyware, And Fraud Enforcement With Enforcers beyond Borders Act of 2006" or "U.S. SAFE WEB Act of 2006", amended the Federal Trade Commission (FTC) Act to improve the FTC's ability to combat unfair or deceptive acts or practices that are international in scope.<sup>5</sup> The Act was last reauthorized in December 2012 for an additional seven years.<sup>6</sup> The law is scheduled to expire on September 30, 2020.

SAFE WEB bolstered the FTC's authority in five key areas:

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<sup>3</sup> Brand USA, *Annual Report: Fiscal Year 2018, October 1, 2017 to September 30, 2018* ([www.thebrandusa.com/about/reports](http://www.thebrandusa.com/about/reports)).

<sup>4</sup> See Note 2.

<sup>5</sup> Pub. L. No. 109-455.

<sup>6</sup> Pub. L. No. 112-203.

- Enhanced investigation and litigation tools: The law clarifies that the FTC’s section 5 authority to combat unfair or deceptive acts or practices includes acts or practices involving foreign commerce that cause or are likely to cause injury in the United States or that involve material conduct within the United States.<sup>7</sup> It also allows the FTC to seek a court order to delay or prohibit a third-party recipient of a subpoena from notifying the investigative target when that action would cause an adverse result.<sup>8</sup> It also exempts financial institutions, payment system providers, Internet service providers, telephone service providers, and domain name registrars, among others, from liability for voluntarily providing certain information to the FTC when they might otherwise be prohibited from sharing such information.<sup>9</sup>
- Information sharing: SAFE WEB allows the FTC to share compelled and confidential information with a foreign law enforcement agency in connection with consumer protection matters if certain statutory factors are met, including that the foreign agency has the authority to maintain the information in confidence and that it will be used to carry out consumer protection laws.<sup>10</sup>
- Investigative assistance: SAFE WEB allows the FTC, after considering certain statutory and other relevant factors, to provide investigative assistance in consumer protection matters to foreign law enforcement agencies.<sup>11</sup>
- Confidentiality: SAFE WEB facilitates the sharing of information from foreign entities with the FTC by allowing the agency to not disclose to the public information obtained from a foreign entity that requested confidential treatment as a condition of providing the information.<sup>12</sup>
- Relationship building: To foster and strengthen relationships with foreign agencies, SAFE WEB allows the FTC to participate in staff exchanges. It also allows the FTC to enter into consumer protection agreements with foreign agencies when they are required as a condition of information sharing or investigative assistance.<sup>13</sup>

## **B. Reauthorization**

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<sup>7</sup> Pub. L. No. 109-455 at § 3.

<sup>8</sup> Pub. L. No. 109-455 at § 7.

<sup>9</sup> Pub. L. No. 109-455 at § 8.

<sup>10</sup> Pub. L. No. 109-455 at § 6.

<sup>11</sup> Pub. L. No. 109-455 at § 4.

<sup>12</sup> Pub. L. No. 109-455 at § 6.

<sup>13</sup> Pub. L. No. 109-455 at § 9.

H.R. 4779 reauthorizes the U.S. SAFE WEB Act through September 30, 2027. It also requires the FTC to issue a report to Congress describing the Commission's use of and experience with the authority granted by the U.S. SAFE WEB Act.

**V. WITNESSES**

The following witnesses have been invited to testify:

**Christopher L. Thompson**

President and CEO

Brand USA

**Tori Barnes**

Executive Vice President, Public Affairs and Policy

U.S. Travel Association

**Aaron J. Burstein**

Partner

Wilkinson Barker Knauer, LLP

*Note:* An additional witness may be invited to testify. As soon as that information becomes available, it will be provided to the Subcommittee Members and staff.