

## **Additional Questions for the Record**

### **Subcommittee on Consumer Protection and Commerce Hearing on “Buyer Beware: Fake and Unsafe Products on Online Marketplaces” March 4, 2020**

#### **Mr. David Friedman, Vice President, Advocacy, Consumer Reports**

#### **The Honorable Jan Schakowsky (D-IL)**

1. A recent report by CNBC found that some Amazon third-party sellers were only asked to submit safety documentation weeks after they start selling.<sup>1</sup> I am concerned that this leaves consumers vulnerable to potentially hazardous products for much too long.
  - a. Shouldn't online marketplaces require sellers to provide product safety documentation before allowing the product to be listed?

Friedman Response: Yes, without a doubt, online marketplaces should require sellers to provide product safety documentation before allowing a product to be listed on their platforms. This kind of requirement is especially important—and should be particularly straightforward for the seller to fulfill—in the case of a listing that involves a product subject to a mandatory consumer product safety standard, rule, regulation, or ban; mandatory third-party testing or self-certification; or a reputable voluntary safety standard. If a seller cannot provide safety documentation for such a product prior to listing, then it would be profoundly irresponsible and put consumers' safety at risk to permit the listing to be accessible by the public.

- b. Should online marketplaces require sellers to provide safety documentation for all products required by law to have undergone such third-party testing or self-certification?

Friedman Response: Yes, online marketplaces should require sellers to provide safety documentation for all products subject by law to third-party testing or self-certification requirements; however, to better protect consumers' safety, this requirement should be broader, and apply as well to any product subject to a mandatory consumer product safety standard, rule, regulation, or ban; or a reputable voluntary safety standard. If a voluntary standard applies to a product but the company has chosen not to conform to its provisions, that fact should be disclosed when it is made available for sale.

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<sup>1</sup> *Amazon Allows Some Toys To Go On Sale Before Asking For Proof of Safety Compliance*, CNBC (Sep. 11, 2019) ([www.cnbc.com/2019/09/11/amazon-toy-safety-documentation-not-required-immediately.html](http://www.cnbc.com/2019/09/11/amazon-toy-safety-documentation-not-required-immediately.html)).

2. What are some best practices that online marketplaces should be implementing for vetting sellers? What information should be required? Based on your assessment, has Amazon implemented all of these best practices?

Friedman Response: While we cannot be certain which measures Amazon has or has not implemented, we consider the best practices compiled by the Department of Homeland Security at pp. 34-40 in its January 24, 2020, report, *Combating Trafficking in Counterfeit and Pirated Goods*, to be a good starting point for online marketplaces.

In particular, to enable effective vetting and help keep counterfeit or unsafe goods from ever making it into consumers' hands, we urge online marketplace platforms to require any seller to: (1) provide its name, location, and contact information, and the same information for any underlying business; (2) disclose any other seller profile or account on the site that it owns or controls or through which it clears transactions; (3) certify whether the seller or any person or entity related to the seller has been banned or removed from any e-commerce platform or otherwise implicated in selling counterfeit, pirated, or unsafe products; (4) identify when the seller is offering trademarked products for which the seller does not own the rights; and (5) receive prior approval from the platform before selling any item that is particularly prone to counterfeiting or could present an elevated safety risk to consumers. Platforms should verify the accuracy of any information provided by a third-party seller, including both on the front end and through rigorous and ongoing audit programs of existing sellers.

More broadly—in light of the scale and breadth of available products that can harm consumers' safety, health, and financial well-being, and as a matter of federal law—online marketplaces should bear more responsibility for counterfeit and dangerous products that consumers can buy on their sites, whether they are sold by a third-party seller or the owner of the marketplace itself. At a minimum, marketplaces should have to take the same steps required of product retailers or dealers, and bear a significant level of responsibility for fraudulent, unfair, or deceptive practices associated with products offered on their sites when they are aware, or should be aware, of those practices.

3. Should third-party sellers be required to disclose their full contact information, including location and country of origin of the seller and the product?

Friedman Response: Yes. Just as products for sale at brick-and-mortar stores must be labeled for country of origin, products for sale by third-party sellers online should be required to come with clear and conspicuous public disclosure of country-of-origin information, as well as full contact information and location of the seller. This information could help consumers make a more informed purchase decision, especially as public interest and government entities use this information to better document safety or counterfeit risks associated with production or distribution in a country.