



Inspiring Generations of Play

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July 8, 2020

The Honorable Jan Schakowsky  
Chairwoman, Consumer Protection and Commerce Subcommittee  
2367 Rayburn House Office Building  
Washington D.C., 20515

The Honorable Cathy McMorris Rodgers  
Ranking Member, Consumer Protection and Commerce Subcommittee  
1035 Longworth House Office Building  
Washington, D.C. 20515

Chairwoman Schakowsky and Ranking Member McMorris Rodgers:

On behalf of The Toy Association, thank you for holding the hearing, “Consumers Beware: Increased Risks During the COVID-19 Pandemic.” We appreciate your attention to this important matter and continued focus on counterfeit and unsafe products particularly given the changing landscape of consumer online shopping.

As background, The Toy Association represents more than 1,000 businesses – toy manufacturers, importers and retailers, as well as toy inventors, designers, licensors and studios – all involved in bringing safe, fun and educational toys and games for children to market. With an annual positive U.S. economic impact of \$97.2 billion, the U.S. toy industry supports 623,067 U.S. jobs and generates \$13.1 billion in state and federal tax revenue each year. Approximately 3 billion toys are sold in the U.S. each year, totaling \$27 billion at retail, and our members account for approximately 90% of this market. Importantly, over 95% of toy manufacturers, wholesalers, distributors in the United States are small businesses.

In the first quarter of 2020, when we saw schools around the country closing their doors to help combat the COVID-19 outbreak, toy sales increased 7.6% year-over-year.<sup>1</sup> In addition consumers were buying more toys online due to the health concerns with in-person shopping. Toys are an essential part of keeping kids learning through play. Toys are the tools of play and play activities foster kids’ learning and teaches them valuable cognitive, creative, physical, emotional, social and communications skills. Toys ignite kids’ imaginations, curiosity, critical thinking and are the building blocks for a healthy childhood. During this time, toys are playing an increasingly invaluable role in providing kids and parents with the tools to enhance learning opportunities and develop fundamental skills outside the classroom.

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<sup>1</sup> The Toy Book, “COVID-19 The Problem Persists” <https://toybook.com/covid-19-the-battle-persists/>

While access to play is important, it is equally important for children to have access to safe play and curbing the flow of counterfeit and noncompliant goods in ecommerce is an issue of critical importance to the U.S. toy industry. Unfortunately, the third-party marketplace structure has given equal footing to illicit sellers competing with toy brands consumers have come to know and trust.

By law, all toys sold in the U.S. must be compliant with mandatory product safety requirements, must be tested by an accredited, independent testing facility and must have a children's product certification. Legitimate toy companies spend significant resources to bring new, fun, educational and safe toys to the U.S. market. Suffice to say, counterfeit toys do not submit to any of these safety and testing regulations and there is no assurance that they comply with these safety requirements. For these sellers, bypassing U.S. safety and testing regulations is a competitive advantage to provide toys cheaper and quicker. This problem is global with The Toy Industries of Europe reporting in a recent study that, of the nearly 200 non-branded toys purchased from four major marketplaces, 97% did not comply with EU safety standards.<sup>2</sup>

Consumers have come to rely on ecommerce platforms to provide discounted pricing and wide selection of name-brand quality toys also found at brick-and-mortar retail. Under the current third-party marketplace system, illicit sellers with little or no accountability take advantage of this consumer faith by offering inferior and unsafe counterfeit toys that put our children at risk. Meanwhile, intermediaries are making substantial profit from these sales with minimal risk. Any business selling toys in the U.S must be held to the same high safety standards and it is time for marketplaces to take greater responsibility in implementing proactive measures to keep these noncompliant products off their sites.

Unfortunately, enforcement efforts and platform initiatives have thus far been insufficient to stop the flow of IP infringing goods sold in the U.S. In fact, the problem has gotten worse, not better. According to a March 2019 report from the Organization for Economic Co-Operation and Development (OECD) and the European Union's Intellectual Property Office (EUIPO), trade in counterfeit and pirated goods continue to rise steadily year over year with 2016 worldwide customs seizures valued at \$509 billion in 2016 up from 461 billion in 2013. Toys were the eighth top seized counterfeited category of goods accounting for 3% of the total dollar amount.<sup>3</sup>

Put simply, the counterfeit business on ecommerce is flourishing and without significant changes to the existing framework, brands will continue to lose the war on fake toys putting our children at risk.

### **Proposed Solutions**

The Toy Association's IP Committee has been working with ecommerce platforms and members to improve communication and discuss our concerns. Toy Association members Amazon and Walmart and non-member Alibaba have been directly engaged with our members to learn more about what we are seeing in an effort to reduce the number of unsafe counterfeit toys on their marketplaces.

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<sup>2</sup> TIE's EU Toy Safety report: The problem of un reputable sellers on online marketplaces

<https://www.toyindustries.eu/ties-eu-toy-safety-the-problem-of-unreputable-sellers-on-online-marketplaces/>

<sup>3</sup> OECD "Trade in fake goods is now 3.3% of world trade and rising" <https://www.oecd.org/newsroom/trade-in-fake-goods-is-now-33-of-world-trade-and-rising.htm>

In January of 2019, The Toy Association released a paper, [The Real Threat of Fake Toys](#), submitted for the record as part of our statement, exploring the factors contributing to the rise in counterfeit goods sold through ecommerce platforms and some possible solutions. Specifically, the white paper explored the following:

- Ecommerce creates a low hurdle to sellers giving illicit sellers near unfettered access to U.S. consumers. More must be done to ensure the legitimacy of the sellers and to provide transparency into who is selling on marketplaces. And more must be done to prevent identified illicit sellers that have been taken down from reappearing on marketplaces selling the same products. Increased and improved vetting of sellers prior to joining marketplaces, consistent data requirements across platforms and information sharing among platforms, brand owners and enforcement agencies would all be possible solutions to reduce the number of infringing goods sold online.
- The burden of enforcement is disproportionately placed on the rightsholder who must register with each ecommerce platform to do takedowns – a costly and time intensive process. As I mentioned, 95% of the toy industry is made up of small businesses and they are at a significant disadvantage when it comes to tackling counterfeits. While platforms have established programs to help brands remove counterfeit listings, many of these programs are reactive and require the constant vigilance and engagement of the brand owner to identify counterfeit listings. Moreover, some platforms offer more protection to “more important brands” than they offer to others putting small businesses at a further disadvantage. We encourage Congress to explore whether marketplaces should have greater liability to ensure the authenticity and the safety of the products they sell. Without liability, the incentive for platforms to police their own marketplace is weak as they are profiting from the sales of counterfeit goods with little to no risk.
- Finally, consumer awareness is a critical component to reducing the prevalence of counterfeits as consumers are largely unaware of the scope of the problem and they are often unable to distinguish between known sellers and illicit sellers on marketplaces. Some suggestions to solve this problem include increasing transparency into the identity of the seller and educating consumers on smart online shopping.

We appreciate that platforms have been willing to engage with us on these concerns and have taken some meaningful steps in a positive direction. However, as it stands today, legitimate toy brands selling through local toy stores are playing by one set of rules and foreign sellers that exploit marketplaces do not have to follow. And without significant changes to level the playing field, we will continue to fight a losing battle.

### **Legislative Solutions**

We are strongly supportive of three bills recently introduced in the House and Senate that would help level the playing field and reduce the number of unsafe products sold online. These bills, summarized below, would provide greater transparency to consumers in making decisions on what toys to buy and who to buy from and would impose contributory liability on marketplaces that sell counterfeit products that impact health and safety.

### ***H.R. 6058 – SHOP SAFE Act***

The Stopping Harmful Offers on Platforms by Screening Against Fakes in E-Commerce (“SHOP SAFE”) Act was introduced by Rep. Jerry Nadler (D-NY), on March 3, 2020, to the House Judiciary Committee. The bill is cosponsored by Rep. Doug Collins (R-GA), Rep. Henry “Hank” Johnson (D-GA), and Rep. Martha Roby (R-AL), Rep. Theodore Deutch (D-FL) and Rep. Ben Cline (R-VA). The bill would amend the Trademark Act of 1946 to provide for contributory liability for certain e-commerce platforms for use of a counterfeit mark by a third party on such platforms, and for other purposes.

This bill seeks to combat the proliferation unsafe counterfeit goods for sale on e-commerce websites by incentivizing platforms to engage in a set of best practices for vetting sellers and goods, punishing repeat offenders, and ensuring that consumers have the best, most accurate information available to them when making purchases online. SHOP SAFE applies to goods with a health and/or safety impact, as counterfeit goods in this category pose the most serious consequences for consumers. Online retail platforms that follow SHOP SAFE’s best practices may be immunized from contributory liability for trademark infringement.

### ***S. 3073 – SANTA Act***

Senator Bill Cassidy (R-LA), together with cosponsors Senator Thom Tillis (R-NC), Senator Robert Menendez (D-NJ), and Senator Dick Durbin (D-IL) introduced the Stopping All Nefarious Toys in America (“SANTA”) Act on December 17, 2019. This bipartisan bill requires online marketplaces to verify and disclose the identity of a seller of children’s products to consumers. An online marketplace must obtain a seller’s bank account information, a government-issued photo identification, and business contact information. Online marketplaces must then disclose each seller’s name, business address, phone number, and email address to consumers. Marketplaces must also disclose if they are shipping from a seller that is different from whom the consumer purchased.

### ***S. 3431 – INFORM Consumers Act***

The INFORM Consumers Act requires online marketplaces to disclose certain verified information regarding high-volume third-party sellers of consumer products. The bill was introduced by Senators Cassidy (R-LA), Durbin (D-IL), Perdue (R-GA), and Hirono (D-HI) on March 10, 2020. The bill will require certain disclosures from high-volume third-party sellers on e-commerce platforms. In addition to providing increased transparency for online consumers, the INFORM Consumers Act will allow law enforcement to better identify high-frequency sellers suspected of trafficking stolen and counterfeit goods. Consumers will be also provided information regarding whether a given seller is a manufacturer, retailer, importer, or reseller of consumer products. With greater volume of available information on online sellers provided under this scheme, informed consumers can avoid purchasing goods from unscrupulous and criminal actors in the online marketplace and combat Organized Retail Crime (ORC).



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### **Conclusion**

We welcome the opportunity to explore these concerns and potential solutions with the Subcommittee and others. Thank you again for holding this hearing. We look forward to continuing to work with you on this important issue. If you have any questions, please feel free to contact Rebecca Mond, Vice President of Federal Government Affairs at The Toy Association at [rmond@toyassociation.org](mailto:rmond@toyassociation.org).

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Pasierb".

Steve Pasierb  
President & CEO  
The Toy Association

