



**Testimony of David Friedman
Vice President, Advocacy
Consumer Reports**

**Before the
United States House of Representatives Committee on Energy & Commerce
Subcommittee on Consumer Protection and Commerce**

**Hearing on
“Buyer Beware: Fake and Unsafe Products on Online Marketplaces”**

March 4, 2020

Thank you Chairwoman Schakowsky, Ranking Member Rodgers and members of the Consumer Protection Subcommittee for inviting Consumer Reports (CR) to testify on the growing and serious problem of fake and unsafe products plaguing consumers online.

Since its founding 84 years ago, CR has worked for a fair, safe, and transparent marketplace, fueled by our trusted research, journalism, advocacy, and insights gained through consumer surveys and product testing. The topic of today's hearing strikes at the very heart of CR's mission and confronts us with a fundamental question: how do we make the digital marketplace work for consumers?

This question is the 21st century version of the original challenges Consumer Reports faced when it was founded in 1936. Back then, American families faced a number of new threats in the marketplace. A patchwork of poorly enforced regulations offered few safeguards to Americans grappling with seismic shifts in the economic and media landscapes. Rapid technological advancement led to new products unfamiliar to consumers. With little governing the veracity of advertising claims, consumers had no way to gauge the value, quality, or authenticity of the goods available to them.

The current state of e-commerce is a stark departure from the original, idealistic vision of the internet that one its founders, Tim Berners-Lee, even called utopian—that is, a platform where anyone, anywhere in the world could access all the world's knowledge with the click of a mouse.¹ Some websites, like Wikipedia, might still adhere to that ideal, and the current e-commerce system can bring convenience and choice, but the reality of today's online shopping experience is far from a utopia. Instead, consumers often face a far grittier version of the web:

- From defective and dangerous inclined sleepers and unstable dressers, to children's toys and motorcycle helmets that fail to meet federal rules, the online marketplace offers a new type of risky retail venue for consumers;
- Consumers also face risks from counterfeit bike helmets, water filters, airbags, phone chargers, and even medications that can be easily available online; and
- Online shoppers cannot trust key pieces of information available through e-commerce sites because of unreliable reviews and misinformation efforts that deprive consumers of the ability to make informed choices.

Consumers have too much to lose if e-commerce deteriorates any further. The buying and selling of goods online nearly doubled between 2014 and 2019,² and internet shopping is not going away anytime soon. Unless corrective measures are taken now, we risk a new sort of e-commerce that increasingly undermines its own innovations, and risks collapsing upon itself under the weight of dangerous products and fake goods bolstered and promoted by fake reviews—a future marked by broken trust between consumers and legitimate businesses.

¹ Quartz, "The Web Is Still In Its Awkward Teenage Phase According To Its Father, Tim Berners-Lee" (Mar. 12, 2019) (online at: qz.com/1568970/tim-berners-lee-on-founding-the-world-wide-web-30-years-ago).

² Business Insider, "E-commerce Sales Surpassed 10% Of Total Retail Sales In 2019 For The First Time" (Feb. 24, 2020) (online at: www.businessinsider.com/ecommerce-topped-10-percent-of-us-retail-in-2019-2020-2).

The solutions to this multidimensional problem should be inspired by a return to the original promise of an open internet which offers consumers a multitude of choices of safe products and services, and where innovation, competition, and transparency thrive. This Subcommittee hearing can help highlight solutions to one of the main roots of the problems today's hearing is attempting to address: a lack of online platform accountability. Doing so will take the combined efforts of Congress, federal agencies, and their state and local counterparts in addition to much more serious efforts by online vendors to police and regulate their platforms.

CR's testimony will cover all of these issues, and we hope it helps open the door to a range of solutions—and a future in which e-commerce is free of dangerous and fake goods, fundamentally empowers consumers, and has a level playing field. Ultimately, that is how the internet ecosystem can realize its original vision.

Online Marketplaces Offer a New Type of Venue for the Sale of Dangerous Products

One symptom of online marketplaces' lack of accountability to consumers is their role selling or facilitating the sale of products that pose serious safety hazards, especially those that put children at risk. These sales have happened despite companies' various obligations under federal consumer protection and safety laws within the Subcommittee's jurisdiction. As online marketplaces and sellers have fallen short of their responsibilities, consumers have faced an undue burden to protect themselves—often without the information they might need to do so.

For consumer products, federal law requires manufacturers, importers, distributors, and retailers to immediately report to the Consumer Product Safety Commission (CPSC) any defective product that could create a substantial risk of injury to consumers; any product that creates an unreasonable risk of serious injury or death; and any product that fails to comply with an applicable CPSC rule; among other things.³ Federal law also prohibits any person from selling, offering for sale, manufacturing for sale, distributing in commerce, or importing into the United States any consumer product that does not conform to an applicable CPSC rule; is subject to a recall; is subject to a CPSC substantial product hazard or imminent hazard order; or is a banned hazardous substance.⁴ Violating these laws can lead to civil penalties, criminal penalties, and, in certain circumstances, enforcement actions by state attorneys general and individuals.⁵

For cars and related products, such as child car seats, motorcycle helmets, and tires, federal law prohibits any person from manufacturing for sale, selling, offering for sale, introducing or delivering for introduction in interstate commerce, or importing into the United

³ 15 U.S.C. 2064; CPSC, "Duty to Report to CPSC: Rights and Responsibilities of Businesses" (online at: www.cpsc.gov/Business--Manufacturing/Recall-Guidance/Duty-to-Report-to-the-CPSC-Your-Rights-and-Responsibilities) (accessed Feb. 29, 2020).

⁴ It also is unlawful for any person to sell, offer for sale, distribute in commerce, or import into the United States any consumer product bearing certain safety certification marks, if the mark is being used in an unauthorized manner and the person knows or should have known that was the case. 15 U.S.C. 2068.

⁵ 15 U.S.C. 2069-2073.

States a motor vehicle or motor vehicle equipment unless it is certified to comply with all applicable federal safety standards; however, these requirements do not apply after the first retail sale in the U.S.⁶ Federal law also requires manufacturers of a motor vehicle, or manufacturers of motor vehicle equipment not installed in or on a motor vehicle at the time of delivery to the first purchaser, to ensure that their products are free of safety-related defects and to report to the National Highway Traffic Safety Administration (NHTSA) any safety-related defect or any noncompliance with motor vehicle safety standards within five working days of determining that one exists.⁷ Violations can lead to civil penalties assessed by NHTSA,⁸ and other enforcement actions.

Given these statutory requirements, and companies' safety and reporting responsibilities at various points throughout a product's journey to the consumer, one might think the marketplace would be free of unsafe products. Unfortunately, that is not the case. Investigations by Consumer Reports and others have found dangerous and deadly products offered for sale on online marketplaces.⁹ In some cases, these products were recalled or banned, while in others it has been made clear by medical experts and safety regulators that they are not safe.

1. Infant inclined sleepers and unstable dressers.

Two of the largest recalls of consumer products in recent years involved Fisher-Price Rock 'n Play infant inclined sleepers, which were recalled in April 2019 after CR tied them to dozens of infant deaths, and Ikea dressers, which were recalled in June 2016 after several children died from tip-over incidents. A Consumer Reports investigative story published in November 2019 reported that there were hundreds of recalled Rock 'n Play Sleepers and at least a dozen recalled Ikea dressers available secondhand on Facebook Marketplace and Craigslist.¹⁰ Neither company responded to CR's questions about steps they currently take to prevent the unlawful sale of recalled products on their websites. By contrast, both eBay and Kijiji.ca, a popular Canadian website, described a number of strategies to prevent the sale of recalled items on their websites.

After at least 73 child deaths linked to infant inclined sleepers were reported to the CPSC and the agency had released strong evidence that inclined sleepers are inherently unsafe for infant sleep, some inclined sleeper manufacturers still did not recall their products. So, in November 2019, CR wrote several retailers and online platforms urging them to remove all inclined sleepers

⁶ 49 U.S.C. 30112.

⁷ 49 U.S.C. 30102, 30103, 30116– 30121, 30166; 49 CFR 573.6.

⁸ 49 U.S.C. 30165.

⁹ Just last week, the United Kingdom consumer organization Which? and five other European consumers associations released research finding that of 250 products, representing 18 different product types, purchased on online marketplaces such as AliExpress, Amazon, eBay, and Wish, 165 products (66%) failed the organizations' rigorous safety testing. Which?, "66% of products tested from online marketplaces AliExpress, Amazon Marketplace, eBay and Wish failed safety tests" (Feb. 24, 2020) (online at: www.which.co.uk/news/2020/02/66-of-products-tested-from-online-marketplaces-amazon-marketplace-aliexpress-ebay-and-wish-failed-safety-tests).

¹⁰ CR, "Buyer Beware: Recalled Products Are Being Sold on Craigslist and Facebook Marketplace" (Nov. 6, 2020) (online at: www.consumerreports.org/product-safety/recalled-products-are-being-sold-on-craigslist-facebook-marketplace).

from their marketplaces and to permanently keep listings for them off their websites, regardless of their recall status.¹¹ eBay quickly informed CR it would be banning the products,¹² and soon thereafter, Amazon, Buy Buy Baby, and Walmart each said they would do the same.¹³ The CPSC previously had urged all parents and caregivers to stop using infant sleep products with inclined seat backs of more than 10 degrees,¹⁴ and the agency’s acting chairman issued a statement commending the companies’ decisions.¹⁵ To date, Facebook, Craigslist, and several retailers that sell products online have not responded to CR’s outreach, nor have they publicly committed to keep infant inclined sleepers from being sold in their stores or on their websites. CR, side by side with consumers nationwide, will continue to push for manufacturer recalls of all infant inclined sleep products and pressure both retailers and online marketplaces to put their customers’ safety first.

2. Toys and magnets.

Standards for most toys are widely considered strong. Toys intended for use by children must comply with the federal toy standard, a CPSC rule that incorporates by reference a wide-ranging voluntary standard, ASTM International F963. Since enactment of the Consumer Product Safety Improvement Act of 2008, federal law has required third party testing and certification for items subject to children’s product safety rules, including toys.¹⁶

Nevertheless, there have been numerous recent reports of toys purchased on online marketplaces that are not safe or do not meet applicable standards. A *Wall Street Journal* investigation published in August 2019 “found 4,152 items for sale on Amazon.com Inc.’s site that have been declared unsafe by federal agencies, are deceptively labeled or are banned by federal regulators—items that big-box retailers’ policies would bar from their shelves.”¹⁷ Among these items were toys that failed *Journal*-commissioned tests based on federal safety standards,

¹¹ CR, Letter to retailers and online platforms urging removal of all infant inclined sleepers (Nov. 27, 2019) (online at: advocacy.consumerreports.org/research/inclined-sleeper-retail-platform-letters-nov-2019).

¹² CR, “Consumer Reports hails eBay decision to ban infant inclined sleepers, urges other companies to take action,” press release (Dec. 3, 2019) (online at: advocacy.consumerreports.org/press_release/cr-ebay-inclined-sleepers-retailers-platforms-statement-dec-2019).

¹³ CR, “Consumer Reports praises Amazon, Walmart, and Buy Buy Baby for banning infant inclined sleepers, calls again for immediate recalls by manufacturers,” press release (Dec. 5, 2019) (online at: advocacy.consumerreports.org/press_release/cr-inclined-sleepers-amazon-walmart-bbb-dec-2019).

¹⁴ CPSC, “CPSC Cautions Consumers Not to Use Inclined Infant Sleep Products,” press release (Oct. 31, 2019) (www.cpsc.gov/content/cpsc-cautions-consumers-not-to-use-inclined-infant-sleep-products).

¹⁵ CPSC Acting Chairman Bob Adler, “CPSC Acting Chairman Robert Adler Commends Amazon, buybuy BABY, eBay, and Walmart for their Commitment to Safe Sleep for Infants; Companies Pledge to Discontinue Inclined Sleep Products,” statement (Dec. 6, 2019) (online at: www.cpsc.gov/s3fs-public/AdlerInclinedSleeperStatement.pdf).

¹⁶ CPSC, “Toy Safety Business Guidance & Small Entity Compliance Guide” (online at: www.cpsc.gov/Business--Manufacturing/Business-Education/Toy-Safety-Business-Guidance-and-Small-Entity-Compliance-Guide) (accessed Mar. 1, 2020).

¹⁷ Wall Street Journal, “Amazon Has Ceded Control of Its Site. The Result: Thousands of Banned, Unsafe or Mislabeled Products” (Aug. 23, 2019) (online at: www.wsj.com/articles/amazon-has-ceded-control-of-its-site-the-result-thousands-of-banned-unsafe-or-mislabeled-products-11566564990).

including lead limits; small, high-powered magnets linked to severe gastrointestinal injury; thousands of toys missing required choking-hazard warnings; and toys misleadingly listed as “FDA-approved” despite toys being outside the Food and Drug Administration’s jurisdiction. In September 2019, *CNBC* reported that Amazon had been allowing some toys to go on sale before asking for proof of safety compliance, with the company reaching out to new third-party sellers to submit “required safety documentation” only after their listings had been up for weeks.¹⁸ In December 2019, *CBS News* purchased four children’s toys from third-party sellers on Amazon’s marketplace, and all four failed safety standards when tested by an accredited lab.¹⁹

Specific to magnets, Consumer Reports has previously reviewed the websites of major retailers, including those of Amazon, Target, and Walmart, for how magnet sets appear to consumers using the sites and whether the products’ danger to children is communicated clearly. CR’s review found a variety of magnet-based toys with confusing guidance on age appropriateness, with some having vague age recommendations in their online listings and others whose information in the online listing directly contradicted the age guidance on the product packaging.

CR remains very concerned about the continued widespread exposure of children to small, high-powered magnet sets, and the great potential for consumer confusion around which magnets are safe for children and which are not. According to medical research published in December 2019, it is likely that there were nearly 1,600 reports to poison control centers of magnet ingestions in 2019—six times the number there were in 2016.²⁰ The fact that the problem with small, high-powered magnets is only getting worse reinforces the need both for strong federal standards and for e-commerce platforms to act to protect their users from a clear danger.

3. Motorcycle helmets.

Consumers may also purchase hazardous products related to motor vehicles when using online marketplaces. In one example documented by the *Wall Street Journal*, a Missouri man—whose mother said he had trusted Amazon’s quality control—died in a 2014 motorcycle crash that occurred while he was wearing a helmet falsely claiming compliance with Department of Transportation safety rules.²¹ NHTSA told the *Journal* in July 2019 that the helmet was

¹⁸ *CNBC*, “Amazon allows some toys to go on sale before asking for proof of safety compliance” (Sept. 11, 2019) (online at: www.cnbc.com/2019/09/11/amazon-toy-safety-documentation-not-required-immediately.html).

¹⁹ CBS noted in an update, “After this piece aired, Amazon appeared to remove the toys featured in the story from its website.” *CBS News*, “Some toys sold online don’t meet U.S. safety standards: ‘Our children should not be the testing grounds’” (Dec. 19, 2019) (online at: www.cbsnews.com/news/online-shopping-toys-sold-on-amazon-may-not-meet-us-safety-standards).

²⁰ *Washington Post*, “Number of children swallowing dangerous magnets surges as industry largely polices itself” (Dec. 25, 2019) (online at: www.washingtonpost.com/business/economy/number-of-children-swallowing-dangerous-magnets-surges-as-industry-largely-polices-itself/2019/12/25/77327812-2295-11ea-86f3-3b5019d451db_story.html).

²¹ *Wall Street Journal*, “Amazon Has Ceded Control of Its Site. The Result: Thousands of Banned, Unsafe or Mislabeled Products” (Aug. 23, 2019) (online at: www.wsj.com/articles/amazon-has-ceded-control-of-its-site-the-result-thousands-of-banned-unsafe-or-mislabeled-products-11566564990).

noncompliant and that it had been recalled, but it was not removed from Amazon’s site until after the *Journal* asked about it and other helmets that had failed federal safety tests.²²

Online Marketplaces Put Consumers at Risk of Unwittingly Buying Counterfeit Products That Will Harm Their Safety or Health; Rip Them Off; and Otherwise Fail to Deliver on What Consumers Reasonably Thought They Were Buying

Another symptom of online marketplaces’ lack of accountability to consumers is their susceptibility to counterfeit goods. The scale of the counterfeit problem, its breadth, and its impact on consumers are all on the rise in the U.S. market, and the growth in e-commerce is a major driver. A recent survey of more than 1,000 American consumers conducted last year revealed that more than one in four respondents “have been fooled into buying fake goods over the past 12 months.”²³ Counterfeits can harm consumers’ safety or health, rip them off, and otherwise fail to deliver on what consumers reasonably thought they were buying—all in one transaction.

Consumer Reports works to alert consumers and policymakers to the potential damage of counterfeits and other products that are not what they seem. CR regularly publishes stories related to counterfeits to be sure consumers have the best possible information on hand. For instance, in mid-2015, CR published a package of stories outlining the wide range of different product types where counterfeits are a threat, identifying those counterfeit products where harm to health and safety were likeliest to occur, and giving consumers tips on how best to navigate the market and protect themselves from counterfeits.²⁴

More recently, in December 2018, CR posted a guide for consumers on how to avoid buying counterfeit products online, advising them to take several different steps to ascertain whether a product is legitimate or counterfeit.²⁵ The steps we recommend—including researching the seller, being wary of discounts, scanning the customer reviews, examining the product’s packaging, and knowing the hallmarks of the real product—represent useful advice. These steps also can be time-consuming, and in the case of sophisticated sellers of counterfeits, ineffective. From the examples of the counterfeits we share below, it is clear that greater consumer awareness, alone, is inadequate in the face of today’s counterfeits to ensure a well-functioning marketplace and protect consumers from harm.

²² *Id.*

²³ WWD, “Survey Reveals Number of Shoppers Buying Counterfeit Goods” (Dec. 6, 2019) (online at: www.wwd.com/business-news/retail/incopro-consumer-survey-1203388913)

²⁴ This package of stories followed a 2008 CR investigation into counterfeits. CR, “Counterfeit goods: How to tell the real from the rip-off (May 28, 2015) (online at: www.consumerreports.org/cro/magazine/2015/05/counterfeit-goods-how-to-tell-real-from-riporff/index.htm); CR, “The true cost of fake goods” (Aug. 15, 2015) (online at: www.consumerreports.org/cro/news/2015/08/the-true-cost-of-fake-goods/index.htm); CR, “What you need to know about deadly counterfeits” (Aug. 18, 2015) (online at: www.consumerreports.org/cro/news/2015/08/deadly-counterfeits/index.htm).

²⁵ CR, “How to Avoid Buying Counterfeit Products Online” (Dec. 7, 2018) (online at: www.consumerreports.org/online-shopping/how-to-avoid-buying-counterfeit-products-online).

1. Fake or absent safety certifications, such as for bicycle helmets.

In July 2019, Consumer Reports published the results of an investigation finding that bike helmets not meeting safety standards were widely available.²⁶ CR shoppers, working with our testing experts, were able to find and purchase 13 helmets without a label certifying compliance with the CPSC standard for protection from skull fracture. We bought the helmets from four online marketplaces: Amazon.com, Sears.com, Aliexpress.com (a subsidiary of Chinese retail giant Alibaba), and LightInTheBox.com (a global retail company with headquarters in Beijing). These helmets represented a variety of styles, marketed toward road cyclists, mountain bikers, and recreational riders.

These helmets arrived without a required label, which would, at best, leave a consumer uncertain about their safety, and, at worst, indicate that they were not tested according to CPSC standards. The lack of a label itself, or the presence of an improper label (such as just the European “CE” safety standard but no label pertaining to the stronger impact requirements of the U.S. standard) made the helmets non-compliant, meaning they should not have been for sale in the U.S. CR contacted all four online retailers to inform them of what we discovered, and they all said they would remove or already had removed the items. While we were pleased with the swift response, our investigation highlighted a more pervasive issue: products that may threaten consumer safety are easy to purchase, even when regulations say they should not be.

Unfortunately, this is the case even for savvy buyers. The author of CR’s investigative story on bike helmets bought a helmet online for his toddler that claimed to have a CPSC certification on the online product listing, had a four-and-a-half star rating on Amazon, and even arrived with a label inside the helmet claiming certification to the CPSC standard. As CR’s journalist later discovered, that label did not contain all the information required by the CPSC, which is a red flag. The label lacked required information such as the month and year of product manufacture, and the statement saying which CPSC safety standard the helmet complies with, making the helmet not properly certified for safety. CR contacted the CPSC with our findings.

2. Home appliance parts, such as refrigerator water filters.

Given the steep cost of refrigerator water filters offered for purchase from the original manufacturer—up to \$60 per filter—consumers often seek out lower-priced alternatives, unwittingly feeding demand for fake water filters sold fraudulently under the refrigerator manufacturer’s name. CR has been concerned that these counterfeit filters can do more harm than good in contaminating the water that passes through them, potentially exposing consumers to heavy metals like arsenic that can increase the risk of serious long-term health issues. Therefore, CR has sought to provide advice for consumers on how to navigate this particular market. It is not easy.

²⁶ CR, “Bike Helmets That Don't Meet Safety Standards Are Widely Available, Consumer Reports Finds” (July 1, 2019) (online at: www.consumerreports.org/bike-helmets/bike-helmets-that-dont-meet-federal-safety-standards-are-widely-available).

There are three standards that apply to refrigerator water filters, all of them set by NSF International, including those covering material safety and the removal of chlorine, taste, and odors; health-related contaminants, including everything from lead to parasites to asbestos; and trace pharmaceuticals and chemicals, from ibuprofen to BPA to deet. Three large testing organizations certify filters to these standards and allow manufacturers to label their filters and packaging with certification badges, but requirements for receiving a badge are not always rigorous. Consumers wishing to get a replacement water filter from a source other than the refrigerator manufacturer must essentially check a filter’s certification records held in each testing organization’s (sometimes cumbersome) database.

When CR investigated in 2018 whether consumers could get aftermarket filters that offer the same level of quality and protection at a lower price, we had significant trouble finding brands on Amazon that were certified to international quality and safety standards at all.²⁷ Only one aftermarket brand had proper, verifiable certifications for its filters, and these were the only filters we identified that came close to matching the high standards that most refrigerator-branded filters meet. We hope that seller certifications and marketplace offerings have improved since 2018.

3. Automotive equipment, such as airbags, tires, and child seats.

Motor vehicle equipment is not immune to counterfeiting. In 2012, NHTSA alerted the public to counterfeit airbags that were for sale as replacement parts and could malfunction in a variety of ways, ranging from not deploying at all to expelling metal shrapnel into the passenger cabin.²⁸ In 2014, CR’s tire testing discovered “unauthorized” tires, disavowed by the manufacturer, that performed poorly and may have been counterfeit.²⁹ Most recently, in 2019, *Inc.* and *CNN Business* separately identified poor-performing, knock-off child car seats on Amazon that would fall far short of protecting a child adequately in a crash.³⁰

4. Electronics, such as phone chargers and hoverboards.

Apple iPhone chargers are commonly counterfeited, and a 2016 study by the product-testing company UL found that fake Apple iPhone chargers had a 99% failure rate, meaning they failed one of two simple tests—an electrical strength test and a touch current test. A

²⁷ CR, “How to Find a Cheaper Replacement Water Filter for Your Refrigerator” (Sept. 18, 2018) (online at: www.consumerreports.org/refrigerators/how-to-find-cheaper-replacement-water-filter-for-your-refrigerator).

²⁸ NHTSA, “Traffic safety agency urges vehicle owners and repair professionals to use only certified, original equipment replacement parts,” press release (Oct. 10, 2012) (online at: [www.vehiclehistory.gov/NHTSA%20Alerting%20Consumers%20to%20Dangers%20of%20Counterfeit%20Air%20Bags%20National%20Highway%20Traffic%20Safety%20Administration%20\(NHTSA\).pdf](http://www.vehiclehistory.gov/NHTSA%20Alerting%20Consumers%20to%20Dangers%20of%20Counterfeit%20Air%20Bags%20National%20Highway%20Traffic%20Safety%20Administration%20(NHTSA).pdf)).

²⁹ CR, “Counterfeit’ tires pose consumer risk” (Nov. 17, 2014) (online at: www.consumerreports.org/cro/news/2014/11/counterfeit-car-tires-pose-consumer-risk/index.htm).

³⁰ *Inc.*, “Why It’s So Easy to Sell Dangerous (and Illegal) Car Seats for Kids on Amazon” (May 2, 2019) (online at: www.inc.com/jeff-bercovici/amazon-dangerous-car-seats.html); *CNN Business*, “Fake and dangerous kids products are turning up for sale on Amazon” (Dec. 23, 2019) (online at: www.cnn.com/2019/12/20/tech/amazon-fake-kids-products/index.html).

charger that fails even one of these tests could cause a fire or an electrical shock.³¹

Hoverboards emerged rapidly in the marketplace, and quickly introduced both counterfeits and safety risks when they entered the U.S. market in 2015. In early 2016, CR found two scooters on Amazon inaccurately labeled "UL Certified" prior to UL revealing its certification program or actually certifying any products under that program.³² Faulty hoverboards were tied to dozens of house fires, and in 2017, a house fire began from a hoverboard that the CPSC says exploded while charging, killing a two-year-old girl and a ten-year-old girl.³³

5. Drugs, medical devices, and dietary supplements.

While primarily within the jurisdiction of the Health Subcommittee, FDA-overseen products account for a significant portion of the harm to consumers from counterfeits. With respect to drugs and medical devices, Consumer Reports has long supported efforts to lower costs by promoting greater competition—including through imports if safety is assured—so that consumers have more choices. At the same time, CR also has warned that consumers should avoid purchasing drugs and medical devices from Canada or other foreign countries at this time, including online, both because it is generally illegal and because research indicates items received may be adulterated or counterfeit, and could cause injury, illness, or death.³⁴

In recent weeks, the Federal Trade Commission has warned that “scammers follow the headlines,” and that therefore consumers should watch out for scams tied to the coronavirus. According to the FTC, these scams could include offers for fake drugs or vaccinations used as a hook to defraud consumers.³⁵

Finally, many consumers purchase dietary supplements online.³⁶ In recent CR testing, of the 16 echinacea and 13 turmeric products tested, we identified concerns with more than a third of them, including elevated levels of lead and bacteria, as well as low levels of key active compounds. One company that made a sample with elevated bacteria levels, in particular, told CR it “had been having problems with counterfeiting and could not confirm to CR that the products

³¹ CR, “How to Avoid Buying Counterfeit Products Online” (Dec. 7, 2018) (online at: www.consumerreports.org/online-shopping/how-to-avoid-buying-counterfeit-products-online).

³² CR, “Beware Misleading Safety Claims from Hoverboard Brands” (last updated Feb. 2, 2016) (online at: www.consumerreports.org/electronics-computers/beware-misleading-safety-claims-from-hoverboard-brands).

³³ PennLive, “Survivors sue importers of hoverboard blamed for Harrisburg house fire that killed 2 kids” (July 4, 2018) (online at: www.pennlive.com/news/2018/07/survivors_sue_importers_of_hov.html).

³⁴ See, e.g., CR, “Is it OK to buy medicine online?” (Aug. 30, 2015) (online at: www.consumerreports.org/cro/news/2015/08/is-it-ok-to-buy-medicine-online/index.htm); CR, “Don't Order EpiPens From Canada” (Aug. 31, 2016) (online at: www.consumerreports.org/drugs/dont-order-epipens-from-canada); CR, “Looking for Cheaper Meds From Canada? Not So Fast” (Aug. 7, 2019) (online at: www.consumerreports.org/drug-prices/cheaper-meds-from-canada).

³⁵ FTC, “Coronavirus: Scammers follow the headlines” (Feb. 10, 2020) (online at: www.consumer.ftc.gov/blog/2020/02/coronavirus-scammers-follow-headlines).

³⁶ IBISWorld estimates that online vitamin and supplement sales in the U.S. will be \$18.3 billion in 2020. IBISWorld, “Online Vitamin & Supplement Sales in the US Market Size 2002–2025” (online at: www.ibisworld.com/industry-statistics/market-size/online-vitamin-supplement-sales-united-states) (accessed Mar. 1, 2020).

we tested were theirs.”³⁷ CR also recently covered the sickening of 52 people tied to counterfeit cannabidiol (CBD) in Utah, and provided recommendations to consumers on how to have as much confidence as possible in the CBD products they buy.³⁸

Online Marketplaces Are Vulnerable to Misinformation Efforts That Deprive Consumers of the Ability to Make Informed Choices

Internet platforms give consumers unparalleled access to a variety of products—and a variety of information about those products—far beyond what is available at the average brick-and-mortar establishment. However, typically this information is not provided directly by the platform; in many cases the information will be provided by a third-party seller—with an incentive to portray its products in the most favorable light. Many times it will not be clear to prospective buyers who is providing what information. Platforms themselves have some degree of immunity for fraud committed by vendors, and may not otherwise have sufficient motivation and resources to root out misinformation and abuses on their networks

1. Fake reviews and artificial amplification.

Consumers heavily rely on online reviews.³⁹ However, research shows that popular sites are riddled with thousands of dubious reviews, polluting the information available to consumers to make an informed choice.⁴⁰ Companies can easily find people willing to post fraudulent reviews on freelancing sites like Fiverr.⁴¹ Even if a site requires confirmation that a reviewer purchased a product, companies often find positive reviews sufficiently valuable to surreptitiously reimburse paid reviewers for the purchase price of their items.⁴²

Deceptive review tactics continue to evolve: last year, Consumer Reports reported on “review hijacking” on Amazon, where retailers take advantage of reviews for other products to make it look like customers have reviewed entirely different products.⁴³ Sometimes retailers may just switch a new product into a particular listing (while the previous reviews remain the same). In other cases, companies take advantage of an Amazon feature that allows retailers to link together

³⁷ CR, “Consumer Reports Tests: Turmeric and Echinacea” (Oct. 30, 2019) (online at: www.consumerreports.org/supplements/testing-turmeric-and-echinacea-for-potency-and-purity).

³⁸ CR, “CBD May Be Legal, But Is It Safe?” (Apr. 15, 2019) (online at: www.consumerreports.org/cbd/cbd-may-be-legal-but-is-it-safe).

³⁹ BrightLocal, “Local Consumer Review Survey 2019” (Dec. 11, 2019) (online at: www.brightlocal.com/research/local-consumer-review-survey).

⁴⁰ NBC News, “Can you trust online reviews? Here's how to find the fakes” (Feb. 27, 2019) (online at: www.nbcnews.com/business/consumer/can-you-trust-online-reviews-here-s-how-find-fakes-n976756).

⁴¹ Fiverr, “Results for ‘reviews’” (online at: www.fiverr.com/search/gigs?query=reviews&source=main_banner&search_in=everywhere&search-autocomplete-original-term=reviews) (accessed March 2, 2020).

⁴² BuzzFeed News, “Her Amazon Purchases Are Real. The Reviews Are Fake.” (Nov. 20, 2019) (online at: www.buzzfeednews.com/article/nicolenguyen/her-amazon-purchases-are-real-the-reviews-are-fake).

⁴³ CR, “Hijacked Reviews on Amazon Can Trick Shoppers” (Aug. 26, 2019) (online at: www.consumerreports.org/customer-reviews-ratings/hijacked-reviews-on-amazon-can-trick-shoppers).

all reviews for different listings. This can make sense if the listings are for essentially the same product, with only minor stylistic differences (say, different colors of the same shirt). However, in many cases retailers link together wholly different products. Worse, some sellers will coopt others' reviews by linking to other companies' dormant listings without their knowledge. Consumer Reports found dozens of examples of these behaviors on Amazon: when we reported the fraudulent behavior to Amazon, the company generally remedied the problem. However, in other cases that we did not affirmatively flag for the company, the deceptively-linked reviews continued to be presented to potential buyers.

Fake reviews are illegal today, but the difficulty in detecting them and sporadic enforcement have resulted in an information ecosystem littered with fake endorsements. Section 5 of the Federal Trade Commission Act and comparable state laws broadly prohibit deceptive or unfair business practices in commerce. In 2009, the New York Attorney General's office brought the first enforcement action against a company for posting fake reviews against a plastic surgery company that paid a marketing firm to simulate satisfied customers on internet message boards.⁴⁴ That same year, the Federal Trade Commission revised its Endorsement Guides to more clearly mandate the disclosure of potential conflicts of interests when users post reviews of products online.⁴⁵ Regulators in recent years brought a number of cases against fake or undisclosed paid reviews online, including against companies who paid online "influencers" to promote products without disclosure of compensation.⁴⁶

Nevertheless, the problem of fraudulent online reviews continues. Moreover, the pace of regulatory action significantly lags behind technological and business practice evolution, and unscrupulous marketers continue to push the envelope in unregulated gray areas. The rise of social media has led to fraudulent amplification via fake followers, likes, retweets, and shares. And while regulators have recently brought cases against companies who sold fake followers and likes,⁴⁷ no one has yet brought a case against a company merely for buying fake engagement. The internet is littered with sites that will sell fake followers and likes for Twitter and Facebook.⁴⁸ In

⁴⁴ New York Attorney General, "Attorney General Cuomo Secures Settlement With Plastic Surgery Franchise That Flooded Internet With False Positive Reviews" (July 14, 2009) (online at: ag.ny.gov/press-release/2009/attorney-general-cuomo-secures-settlement-plastic-surgery-franchise-flooded)

⁴⁵ FTC, "Guides Concerning the Use of Endorsements and Testimonials in Advertising" (online at: www.ftc.gov/sites/default/files/attachments/press-releases/ftc-publishes-final-guides-governing-endorsements-testimonials/091005revise_dendorsementguides.pdf) (accessed March 2, 2020). The FTC is currently in the process of revising its Endorsement Guides to reflect changes to the way consumers access information, including through social media channels. FTC, "FTC Seeks Public Comment on its Endorsement Guides" (Feb. 12, 2020) (online at: www.ftc.gov/news-events/press-releases/2020/02/ftc-seeks-public-comment-its-endorsement-guides).

⁴⁶ FTC, "Lord & Taylor Settles FTC Charges It Deceived Consumers Through Paid Article in an Online Fashion Magazine and Paid Instagram Posts by 50 'Fashion Influencers'" (Mar. 15, 2016) (online at: www.ftc.gov/news-events/press-releases/2016/03/lord-taylor-settles-ftc-charges-it-deceived-consumers-through).

⁴⁷ New York Attorney General, "Attorney General James Announces Groundbreaking Settlement With Sellers of Fake Followers And 'Likes' On Social Media" (Jan. 30, 2019) (online at: ag.ny.gov/press-release/2019/attorney-general-james-announces-groundbreaking-settlement-sellers-fake-followers).

⁴⁸ *Supra*, n. 40-42.

fact, in 2017, *Vice* reported on a *vending machine* in Russia that sells 100 Instagram likes for \$0.99.⁴⁹

Disappointingly, these examples do not represent a new phenomenon. Consumer Reports has been focused on platforms and the role they play in policing (or sometimes encouraging) false information for years. In 2013, for example, CR analyzed six leading review platforms (such as Yelp and Angie’s List) to assess whether their policies were likely to lead to accurate assessments; to the contrary, CR determined that many of the platforms had policies—such as allowing companies to pay to move well-reviewed products higher in search results—that skewed reviews toward being overly positive.⁵⁰

2. Manipulation and dark patterns.

In addition to fake reviews, consumers are susceptible to other misinformation from companies. Deceptive and manipulative interfaces have always been illegal under the general prohibition against commercial deception, but there is a large gray area where the law is unclear. Typically, enforcement has only been targeted at the most egregious of behaviors.

While deceptive solicitations have long been a focus of the Federal Trade Commission, it has recognized that online advertising poses special challenges. In 2000, the FTC released the *.com Disclosures*, informal guidance to marketers on how to prevent online ads from being deceptive or unfair.⁵¹ In 2013, the FTC updated this guidance to reflect the increased commerce transacted on smartphones, and the challenges presented by small screens and less room to transmit information.⁵²

As awareness of these types of deceptive tactics has arisen, they have been given a name: *dark patterns*.⁵³ The term generally refers to a broad range of user interface tricks that websites and applications use to manipulate consumers into a certain course of action, often a sale or consent to share data. A few examples:

- a. *Hidden fees*: Companies often advertise one price, but then go on to add spurious fees when a consumer is ready to check out. Travelers may book a hotel at one price only to learn about a \$39.99 mandatory “resort fee” upon arrival. Event ticket sales—as this

⁴⁹ Vice, “This Russian Vending Machine Will Sell You Fake Instagram Likes” (June 6, 2017) (online at: www.vice.com/en_us/article/xw8yv3/russian-vending-machine-fake-instagram-likes).

⁵⁰ CR, “The truth about online ratings services” (online at: www.consumerreports.org/cro/2013/09/online-ratings-services/index.htm).

⁵¹ FTC, “.com Disclosures: How to Make Effective Disclosures in Digital Advertising” (Mar. 2013) (online at: www.ftc.gov/sites/default/files/attachments/press-releases/ftc-staff-revises-online-advertising-disclosure-guidelines/130312dotcomdisclosures.pdf).

⁵² FTC, “FTC Staff Revises Online Advertising Disclosure Guidelines” (Mar. 12, 2013) (online at: www.ftc.gov/news-events/press-releases/2013/03/ftc-staff-revises-online-advertising-disclosure-guidelines); FTC, “Advertising and Marketing on the Internet: Rules of the Road” (online at: www.ftc.gov/tips-advice/business-center/guidance/advertising-marketing-internet-rules-road) (accessed Mar. 2, 2020).

⁵³ Verge, “Dark Patterns: inside the interfaces designed to trick you” (Aug. 29, 2013) (online at: www.theverge.com/2013/8/29/4640308/dark-patterns-inside-the-interfaces-designed-to-trick-you).

Subcommittee has been examining—have similar practices. Consumers search for tickets only to find that the base fare is dramatically increased thanks to “venue fees,” “service fees,” and other add-ons that they don’t learn about until check out.

The full Committee included important, consumer-friendly provisions in the Television Viewer Protection Act last year that will end the worst practices in the cable industry to hide the true cost of service, often a mystery until customers receive their first bill. Thanks to this new law (passed as part of the year-end spending bill), cable companies will no longer be able obscure company-imposed fees in bills that cost consumers an additional 24 percent on top of the advertised price.⁵⁴ Consumer Reports has been working to shine a light on these practices through its “What the Fee?!” campaign and has supported legislation to mandate more transparent pricing.⁵⁵

- b. *False urgency*: A hotel booking site may dubiously tell a potential visitor “two rooms left!” without disclosing that additional rooms are available at an incrementally higher rate (or possibly even at the same—or lower—price).⁵⁶
- c. *Unequal choices*: Sites often make it much easier to agree to a potential transaction than to say no, relying on consumers’ limited attention span and an enurement to clicking “OK.” In response to Europe’s recent GDPR privacy law, many websites shunted users through confusing consent dialogs to ostensibly obtain consent to share and collect data for any number of undisclosed purposes.⁵⁷
- d. Examples of additional approaches can be found online at www.darkpatterns.org/types-of-dark-pattern.

Researchers have increasingly been paying attention to manipulative dark patterns as well. A 2019 Princeton University study of 11,000 shopping sites found more than 1,800 examples of dark patterns, many of which clearly crossed the line into illegal deception.⁵⁸

And this may only be the beginning. The potential for more sophisticated consumer manipulation is amplified by the advent of artificial intelligence, where companies can test

⁵⁴ CR, “How Cable Companies Use Hidden Fees to Raise Prices and Disguise the True Cost of Service” (Oct. 3, 2019) (online at: advocacy.consumerreports.org/research/2019-cable-fee-report).

⁵⁵ CR, “How Cable Companies Use Hidden Fees to Raise Prices and Disguise the True Cost of Service” (June 28, 2018) (online at: www.consumerreports.org/media-room/press-releases/2018/06/consumer-reports-launches-what-the-fee-campaign); CR, “New Legislation Will Help Consumers Fight Rising Cable Fees” (Oct. 2, 2018) (online at: advocacy.consumerreports.org/press_release/new-legislation-will-help-consumers-fight-rising-cable-fees).

⁵⁶ RetailWire, “Do urgency tactics used by online retailers amount to marketing deception?” (May 3, 2019) (online at: retailwire.com/discussion/do-urgency-tactics-used-by-online-retailers-amount-to-marketing-deception).

⁵⁷ Norwegian Consumer Council, “New analysis shows how Facebook and Google push users into sharing personal data” (June 27, 2018) (online at: www.forbrukerradet.no/side/facebook-and-google-manipulate-users-into-sharing-personal-data).

⁵⁸ Princeton Web Transparency & Accountability Project, “Dark Patterns at Scale: Findings from a Crawl of 11K Shopping Websites” (online at: webtransparency.cs.princeton.edu/dark-patterns) (accessed Mar. 2, 2020).

thousands of iterations of interfaces against consumers to find the most effective form of engagement. Unchecked data collection and sharing, where companies may have far greater capacity to personalize solicitations based on disparate data sources, can also play a significant role.⁵⁹

Making the Digital Marketplace Work for Consumers

At the heart of all the problems consumers face when engaging e-commerce platforms is the simple fact that, just as was the case 84 years ago, a significant undue burden is being placed on consumers. However, that burden is now magnified by the speed and reach of the internet. Consumers are confronted with what they may perceive as reasonable choices, when in reality some of their options are dangerous or disingenuous, and they cannot consistently rely on the information available to them on the platform to tell the difference. These problems strike at the very fundamentals of economics, where an efficient market requires consumers to have, among other things, access to real choices among comparable products that deliver what they promise, and full information about those products that is accurate and accessible to all.

To ensure that the digital marketplace lives up to the true potential of the internet and a well-functioning market, two fundamental changes are required. First, online marketplaces must have sufficient incentives to put consumers first by aggressively policing their platforms for dangerous products, counterfeits, and false, misleading, or manipulative information. As a baseline, these incentives should be evaluated against the level of incentives they would face in the physical market and then be further strengthened or otherwise adjusted to account for the complexity and pace of change in digital commerce. Second, government agencies must focus on finding problems, holding bad actors accountable, and adjusting the rules to address existing challenges and anticipate new ones. These agencies also need to be sufficiently resourced, in terms of personnel, budget, and authority to carry out this critical work.

Recommendation 1: Change the incentives for platforms in the digital marketplace.

The various problems outlined in this testimony would not exist if all e-commerce platforms supported robust, honest markets and tried to succeed, first and foremost, by truly meeting the needs of their users. At some level, platforms clearly have an interest in consumers trusting their marketplaces, but the existence of dangerous and counterfeit products, fake reviews and manipulative practices make clear that, currently, platforms do not have sufficient incentives to deploy resources to prevent abuse of their services. Indeed, in some cases, they are perversely incentivized to permit illegal behavior because it increases their profits.

A first step necessary to change the incentives would be to clarify what behavior is illegal. While many abusive behaviors are likely illegal under existing law, dishonest marketers are

⁵⁹ Forbes, “In What Ways Could Artificial Intelligence Be Leveraged To Cause Harm?” (Oct. 25, 2018) (online at: www.forbes.com/sites/quora/2018/10/25/in-what-ways-could-artificial-intelligence-be-leveraged-to-cause-harm/#58c20df940a6).

taking advantage of legal uncertainty, lax enforcement, and the ignorance and dearth of case law precedent to deceive and manipulate consumers. Therefore, wherever it is clear that the CPSC, FTC, or NHTSA have any statutory limitations or gaps hindering their ability to fulfill their missions with respect to online marketplaces, Congress should not hesitate to strengthen their authorities so they can better protect consumers. Congress should also enact legislation to specifically prohibit reviews made with conflicts of interest and artificial amplification and engagement. Finally, Congress should consider more clearly forbidding design choices that subvert user choice and autonomy.⁶⁰ Bills such as the BOSS Act (H.R. 3248) led by Rep. Pascrell and Chairman Pallone and the Hotel Advertising Transparency Act (H.R. 4489) would ban some of the worst practices in those two marketplaces.

In light of the scale and breadth of counterfeits and their impact on consumers' safety, health, and financial well-being, another key step is to ensure that online marketplaces bear an appropriate level of responsibility for dangerous and counterfeit products that consumers can buy on their sites, whether sold by the owner of the marketplace or a third-party seller. At a minimum, the marketplaces should have to take the same steps required of retailers or dealers. Furthermore, online marketplaces should bear a significant level of responsibility for fake reviews and other manipulative practices associated with products offered on their sites when they are aware, or should be aware, of those practices.

A primary challenge on this front is Section 230 of the Communications Decency Act, which was created to broadly insulate platforms from being “treated as the publisher or speaker of any information provided by another information content provider.”⁶¹ While previous cases have interpreted that definition to protect platforms from most liability, a Third Circuit panel ruled in July 2019 that Section 230 was not a blanket protection in the case of an apparently defective product sold on Amazon. Specifically, the panel indicated that, “[i]n this case, Amazon’s role extends beyond that of [a] sales agent, who in exchange for a commission merely accepted orders and arranged for product shipments. Amazon not only accepts orders and arranges for product shipments, but it also exerts substantial market control over product sales by restricting product pricing, customer service, and communications with customers.”⁶² The case was reheard by the full Third Circuit two weeks ago, and a decision is pending.⁶³

While we do not support the wholesale repeal of Section 230, it is clearly time to reexamine its limits. Section 230 became law nearly a quarter-century ago, just as many of

⁶⁰ For example, while CR has not yet fully analyzed it, Senators Warner and Fischer have proposed the DETOUR Act to try to rein into abusive interfaces. Senator Mark Warner, “Senators Introduce Bipartisan Legislation to Ban Manipulative ‘Dark Patterns’” (Apr. 9, 2019) (online at: www.warner.senate.gov/public/index.cfm/2019/4/senators-introduce-bipartisan-legislation-to-ban-manipulative-dark-patterns).

⁶¹ Electronic Frontier Foundation, “Section 230 of the Communications Decency Act” (online at: www.eff.org/issues/cda230) (accessed Mar. 2, 2020).

⁶² JD Supra, “Recent Rulings Highlight Limits of CDA Immunity in Products Liability Cases against E-Commerce Platforms” (Aug. 15, 2019) (online at: www.jdsupra.com/legalnews/recent-rulings-highlight-limits-of-cda-31855).

⁶³ Bloomberg Law, “Amazon’s Blame for Product Defect Injuries Gets Full Court Look” (Feb. 18, 2020) (online at: news.bloomberglaw.com/product-liability-and-toxics-law/amazons-blame-for-product-defect-injuries-gets-full-court-look).

today's e-commerce platforms were being created and long before they had reached the volume and economic impact they possess today.⁶⁴ Congress should very carefully consider proposals to give platforms more legal incentive to police and respond to abuse, including incurring liability when they are, or should be, reasonably aware of dangerous products or illegal behavior on their platforms.⁶⁵ Congress should also consider measures to ensure that platforms have a reasonable duty to proactively search for and deter abuses.

We are also interested in several of the action items outlined in the January 24, 2020, Department of Homeland Security report, "Combating Trafficking in Counterfeit and Pirated Goods," and Executive Order 13904 of January 31, 2020, and look forward to discussing potential paths forward with the Subcommittee at this week's hearing and afterwards.⁶⁶

Finally, CR stands ready to work with any company that is interested in directly and voluntarily changing the way it responds to the current incentives in order to put consumer interests first on their e-commerce platforms, as has happened in the limited circumstances cited in this testimony.

Recommendation 2: Strengthen the Consumer Product Safety Commission, Federal Trade Commission and the National Highway Traffic Safety Administration.

The CPSC, FTC, and NHTSA are critical agencies that play a significant role in protecting U.S. consumers despite lacking the resources they would need to carry out all that they are capable of doing using their existing authorities. For example, the CPSC, FTC, and NHTSA all have about half as many people working for them today as 1980; meanwhile, the economy has tripled in size. All three agencies should receive far greater funding and staff—at least doubling each of their current budgets for research, rulemaking, and enforcement—and should take the following steps to further bolster their work:

⁶⁴ According to Encyclopaedia Britannica, Amazon was founded in 1994 (www.britannica.com/topic/Amazoncom), and both Craigslist and eBay were founded in 1995 (www.britannica.com/topic/eBay, www.britannica.com/topic/Craigslist).

⁶⁵ Fake reviews are a clear example of illegal behavior that platforms are none-the-less incentivized to ignore. If reviewers are compensated for the price of a product in exchange for a positive review, the platform benefits both directly from the bad-faith transaction and any follow-on transactions that result from the inflated rating. Further, social media companies whose worth is determined by metrics such as engagement and ad views also benefit from fake accounts and fake engagement. In turn, social media algorithms directly encourage fraudulent engagement by algorithmically favoring content with higher rates of engagement. This gives companies an even greater incentive to fraudulently promote their product through artificial amplification, creating a vicious cycle of fraud. While fake reviews and artificial amplification are likely illegal under consumer protection law, the assumed protection from liability of platforms for these behaviors removes any incentive for the platform to address them.

⁶⁶ DHS, "Combating Trafficking in Counterfeit and Pirated Goods: Report to the President of the United States" (Jan. 24, 2020) (online at: www.dhs.gov/sites/default/files/publications/20_0124_plcy_counterfeit-pirated-goods-report_01.pdf); White House, *Ensuring Safe and Lawful E-Commerce for United States Consumers, Businesses, Government Supply Chains, and Intellectual Property Rights Holders*, E.O. 13904 (Jan. 31, 2020) (online at: www.federalregister.gov/documents/2020/02/05/2020-02439/ensuring-safe-and-lawful-e-commerce-for-united-states-consumers-b-usinesses-government-supply-chains).

- Update federal rules to account for current and future ways consumers shop for products, which includes addressing the growth of e-commerce and direct international shipments and incentivizing the adoption of best practices by online marketplaces;
- Work with Customs and Border Protection to assess imports by potential risk to consumers and stop entry of hazardous products to the U.S. market;
- Monitor the domestic market for available unsafe products, misleading and deceptive practices, and inadequate online marketplace or retail controls that could put consumers at greater risk;
- Publicize online marketplace hazards of which they are aware; and
- Enforce federal safety laws and regulations to deter wrongdoing.

Congress should specifically enhance the FTC’s ability to police the modern economy by:

- Expand the Commission’s powers to include the authority to directly levy civil penalties and promulgate rules under the Administrative Procedure Act;⁶⁷
- Clarifying that Section 5 of the FTC Act bars fake reviews and extends to more indirect promotion such as paid followers, likes, reposts, and types of engagement that distort the marketplace for goods and services.

Conclusion

Consumers need relief from a digital marketplace that has tipped far away from the founding vision of the internet. We look forward to working with this Subcommittee, colleague organizations, and industry to implement the solutions we have offered and to develop other novel approaches. In the meantime, CR will continue to expose dangerous products, counterfeits, fake reviews, and artificial amplification schemes, and we will innovate and expand our work with consumers and partners towards a fair, safe, and transparent digital marketplace—one that consumers can trust to always provide accurate and accessible information, offer real choices, and fundamentally deliver what it promises.

⁶⁷ 5 U.S.C. 553.