



SHOP SAFE Act: Bad For Innovation, Bad For Consumers

While well-intended, the SHOP SAFE Act isn't ready for primetime

Internet companies are at the forefront of protecting consumers from counterfeits. The experiences of Internet Association's members demonstrate that anti-counterfeiting policy must reflect the necessary partnership between brands and marketplaces, and focus on measures that encourage effective technology to target bad actors, including advanced learning machines, and dedicated investigative and trust and safety teams. A thriving online economy benefits all stakeholders, including millions of small and medium-sized businesses that are able to access global customers thanks to IA's member companies.

While well-intended, the SHOP SAFE Act could drastically change the online marketplace as we know it. The harms of passage could be extreme.

- The bill would hold platforms liable when a third-party sells a good that “implicates health and safety” unless the platform takes certain actions. **This definition is so broad that it could be used to describe nearly any product.** Broad definitions harm competition of all sizes and creates administrative challenges for small businesses.
- Changing the current law to increase the costs and risks platforms face may handicap smaller players in the market. **The proposed rules are both stringent and vague and smaller platforms and startups could be forced out of the market, or worse, decide not to engage at all.**
- The legislation raises **serious privacy and safety concerns** by requiring online sellers to disclose location, contact information, and provide government identification.
- **The bill would replace trademark holders' actual expertise and judgment in differentiating between legitimate products and fakes** with a vague “reasonable awareness” standard.
- **SHOP SAFE fails to address the true cause of counterfeiting– the actual infringer.** A company that delivers the products consumers order from third parties may have no way to know whether the third-party seller of those products, in turn, bought them from a legitimate supplier.
- **Current law already holds a platform liable when the platform knows that a particular listing is infringing, or where a service is willfully blind to infringing listings.** IA's members have invested heavily in developing collaborative and productive relationships with brands across industries and around the world, and they've worked cooperatively with brand owners, law enforcement, and other stakeholders to take down infringing listings and make the online shopping experience safer for consumers.
- While most brand owners act in good faith, some abuse the system. They may use the threat of trademark infringement lawsuits to pressure smaller companies or individuals to stop engaging in lawful activity that the brand owner does not like, thus **reducing competition, harming free speech, and imposing real costs on both companies and consumers.**

Protecting consumers from harmful counterfeit products – no matter how they enter the supply chain – is an important priority. But because professional counterfeiters are incredibly resourceful and adept at circumventing enforcement activities, it is also critical to examine and understand the unintended consequences of proposed solutions.