



1200 G Street NW • Suite 200 • Washington, DC 20005
t. 202.459.0354 • e. info@toyassociation.org

November 1, 2021

The Honorable Dick Durbin
Chairman
Senate Committee on Judiciary
U.S. Senate
Washington, DC 20510

The Honorable Chuck Grassley
Ranking Member
Senate Committee on Judiciary
U.S. Senate
Washington DC 20510

Dear Chairman Durbin and Ranking Member Grassley,

On behalf of the Toy Association, thank you for holding the hearing entitled “Cleaning up Online Marketplaces: Protecting Against Stolen, Counterfeit and Unsafe Goods.” We share your concerns about unsafe, unreliable, and unregulated products being sold on ecommerce marketplaces and we appreciate your commitment to exploring possible solutions.

As background, The Toy Association represents more than 950 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. For more than 40 years we have been global leaders in toy safety. We helped develop the first toy safety standard and remain committed to working with medical experts, government, consumers, and industry on ongoing safety programs and outreach, including [PlaySafe.org](https://www.play-safe.org). 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.

Curbing the flow of counterfeit goods in ecommerce is of critical importance to the U.S. toy industry. In our 2020 white paper [“Taking Fake Toys Offline: A 2020 Focus on Proactive Measures to Reduce Counterfeits and Unsafe Toys Sold on Online Marketplaces,”](#) we closely examined the factors contributing to the rise of counterfeit goods in ecommerce, highlighted the safety concerns of non-compliant toys sold by illicit sellers, and recommended solutions for all stakeholders to collaboratively combat this issue.

By law, legitimate toy manufacturers and brick-and-mortar retailers of children’s products must obtain safety certifications and comply with over 100 federal safety standards. Legitimate toy companies spend significant resources to bring new, fun, educational and safe toys to the U.S. market. However, under current law, the third-party online marketplace system is not held to these same regulations. This has created an ecommerce environment where third-party sellers can operate anonymously online and take advantage of consumer faith by selling counterfeit or stolen products that may not comply with federal

safety standards and put our children at risk. For these sellers, exploiting the system and bypassing US safety and testing regulations is a competitive advantage to provide toys cheaper and quicker.

Every day, there are examples of listings for unsafe and non-compliant toys being offered and sold on online marketplaces. Listings frequently include products with battery compartments without a locking mechanism, toys marketed to children under the age of three that pose choking hazards, or toys without small parts warning labels. On their face, these products blatantly violate safety regulations, yet are offered on popular mainstream online marketplaces and marketed as intended for children. Any business selling toys in the U.S must be held to the same high safety standards that apply to the toy brands and brick and mortar retailers' consumers have come to know and trust.

Unfortunately, consumers remain largely unaware of the scope of counterfeit product being sold through some online marketplaces. The Toy Association conducted a study of 1,000 toy-buying parents in 2019 and found that nearly 1 in 3 incorrectly believed counterfeit toys are not sold on major online marketplaces, representing a blind spot through which non-compliant toys can slip into households.¹ Counterfeiters have become increasingly adept at blending in and hiding on these sites making it difficult for consumers to differentiate between counterfeit and legitimate products. Counterfeits use tactics such as categorizing the product under a rights holder's brand name, piggybacking on legitimate listings, using keywords, and pricing at the same or even higher than legitimate products. This creates a situation where the true source of the product is not what the consumer is led to believe.

Currently, online marketplaces lack an effective, proactive, transparent process for screening sellers or products that are offered by sellers and disclosing basic seller information to consumers so they know the source of their product. Requiring online marketplaces to verify the identity of sellers and disclosure basic seller contact information to consumers are important steps in creating more transparency and accountability in ecommerce. Verification and disclosure make it easier to track and suspend bad actors and makes it easier for consumers to know who to contact if they receive a product that does not meet their expectations or even worse, causes harm. If there is no verified contact information, there is no ability for a rights holder, consumer, or law enforcement to trace and enforce at the source. For these reasons, we support the INFORM Consumers Act introduced with bi-partisan support in both the Senate and House as a good first-line of defense in protecting consumers from these illicit third-party sellers.

In addition to the INFORM Consumers Act, we also support the "The Stopping Harmful Offers on Platforms by Screening Against Fakes in E-Commerce ("SHOP SAFE") Act to 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. Currently, the burden of enforcement disproportionately relies on rights holders and consumers to police and report infringement. The current system places no responsibility on the seller or the marketplace and instead requires that rights holders scour online marketplaces and investigate, report, and prove infringement to the marketplace before counterfeit items are removed. This causes delay, allows sales of counterfeits to unsuspecting consumers, and puts the responsibility and expense on brand owners. This problem is compounded because marketplace processes vary, forcing rights holders to constantly navigate different, and often

¹ The Toy Association, *1 in 3 Parents Don't Know that Counterfeit Toys are Lurking Online* (Nov. 2019) <https://www.prnewswire.com/news-releases/1-in-3-parents-dont-know-that-counterfeit-toys-are-lurking-online-300949751.html>.

changing, marketplace enforcement procedures. This process removes the initial burden from the seller and without basis further gives the sellers the benefit of the doubt, to the detriment of rights holders and consumers. SHOP SAFE would address many of these issues 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.

As it stands today, legitimate toy manufacturers and brick-and-mortar retailers are playing by one set of rules and anonymous third-party sellers that exploit marketplaces are playing by another set of rules or are not playing by the rules at all. This harms both consumers and toy businesses large and small who are trying to bring safe, fun, and educational toys to market. More needs to be done to ensure that illicit third-party sellers are not able to take advantage of the current online marketplace environment and sell products that can pose serious health and safety risks. We encourage the Committee to consider and support both INFORM Consumers and SHOP Safe as important legislative steps to combating this problem.

Thank you for your attention to this important issue. If you have any questions or would like to discuss further, please contact me at jgibbons@toyassociation.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'JGibbons', with a long horizontal flourish extending to the right.

Jennifer Gibbons
SVP, Government Affairs
The Toy Association