

The SHOP SAFE Act of 2023

Stopping Harmful Offers on Platforms by Screening Against Fakes in E-Commerce

Customers may be unknowingly purchasing harmful counterfeit products when they make an online purchase—and the problem is growing.

- The COVID-19 pandemic led to an unprecedented increase in online shopping among American consumers. Last year, U.S. e-commerce sales exceeded \$1 trillion for the first time ever.
- But counterfeiters have moved online too. They frequently take advantage of the features of online platforms to appear legitimate. They may use false and unvetted credentials. And they may make their counterfeit listings appear authentic to online shoppers, often by copying wording and images from a real brand owner.
- As a result, it is surprisingly easy for customers to be misled into buying counterfeit products online. *Some reports estimate that about one-quarter of U.S. consumers have unknowingly purchased a counterfeit good online.*
- Most troubling, counterfeiters can escape the strict health and safety standards and regulations with which authentic goods must comply, posing significant threats to Americans' health and safety. Counterfeit toys, car seats, cosmetic products, electronics, bicycle helmets, apparel and footwear, and car parts have all been found on online marketplaces.

The SHOP SAFE Act aims to reduce the availability of harmful counterfeit products by incentivizing online platforms to adopt best practices that will prevent third-party sellers from listing counterfeit products for sale.

- Current law holds direct sellers, like brick-and-mortar retailers, liable for the sale of counterfeit products. But, under current law, platforms that allow third-party sellers to sell harmful counterfeit products are often not liable for the sales of those counterfeit products, even when the third-party seller is unavailable to remedy damage to a brand owner.
- The SHOP SAFE Act aims to combat the sale of unsafe counterfeit goods by incentivizing platforms to engage in best practices for screening and vetting sellers and goods, addressing repeat counterfeiter sellers, and ensuring that consumers have relevant information available to them when they make their online purchases.
- The Act is tailored to goods that have a health or safety impact, targeting counterfeit goods that have the most serious consequences for consumers.
- The SHOP SAFE Act will protect consumers by reducing the presence of counterfeits online.

The SHOP SAFE Act takes a balanced approach.

- When platforms follow the best practices in the bill, they have a safe harbor from liability for third-party seller counterfeit listings.
- Brands are required to provide platforms advanced notice of their mark(s) and a point of contact.