

.....
(Original Signature of Member)

116TH CONGRESS
2D SESSION

H. R. _____

To amend the Trademark Act of 1946 to provide for contributory liability for certain electronic commerce platforms for use of a counterfeit mark by a third party on such platforms, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. NADLER introduced the following bill; which was referred to the
Committee on _____

A BILL

To amend the Trademark Act of 1946 to provide for contributory liability for certain electronic commerce platforms for use of a counterfeit mark by a third party on such platforms, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Stopping Harmful Of-
5 fers on Platforms by Screening Against Fakes in E-com-
6 merce Act of 2020” or the “SHOP SAFE Act of 2020”.

1 **SEC. 2. CONTRIBUTORY LIABILITY FOR ELECTRONIC COM-**
2 **MERCE PLATFORMS.**

3 Section 32 of the Act entitled “An Act to provide for
4 the registration and protection of trademarks used in com-
5 merce, to carry out the provisions of certain international
6 conventions, and for other purposes”, approved July 5,
7 1946 (commonly known as the “Trademark Act of 1946”)
8 (15 U.S.C. 1114) is amended by inserting at the end the
9 following:

10 “(4)(A) An electronic commerce platform shall
11 be contributorily liable for infringement by a third-
12 party seller participating on the platform for use in
13 commerce of a counterfeit mark in connection with
14 the sale, offering for sale, distribution, or advertising
15 of goods that implicate health and safety, unless the
16 following requirements are met:

17 “(i) The third-party seller is available for
18 service of process in the United States.

19 “(ii) Before any alleged infringing act by
20 the third-party seller, the platform dem-
21 onstrates that the platform took each of the fol-
22 lowing reasonable steps to prevent such use on
23 the platform:

24 “(I) Verified through governmental
25 identification and other reliable docu-
26 mentation the identity, principal place of

1 business, and contact information of the
2 third-party seller.

3 “(II) Required the third-party seller
4 to verify and attest to the authenticity of
5 goods on or in connection with which a
6 registered mark is used.

7 “(III) Imposed on the third-party sell-
8 er as a condition of participating on the
9 platform contractual requirements that—

10 “(aa) the third-party seller
11 agrees not to use a counterfeit mark
12 in connection with the sale, offering
13 for sale, distribution, or advertising of
14 goods on the platform; and

15 “(bb) the third-party seller con-
16 sents to the jurisdiction of United
17 States courts with respect to claims
18 related to the third-party seller’s par-
19 ticipation on the platform.

20 “(IV) Displayed conspicuously on the
21 platform the verified principal place of
22 business, contact information, and identity
23 of the third-party seller, the country of ori-
24 gin and manufacture of the goods, and the

1 location from which the goods will be
2 shipped.

3 “(V) Required each third-party seller
4 to use images that the seller owns or has
5 permission to use and that accurately de-
6 pict the actual goods offered for sale on
7 the platform.

8 “(VI) Implemented at no cost to the
9 registrant proactive technological measures
10 for screening goods before displaying the
11 goods to the public to prevent any third-
12 party seller’s use of a counterfeit mark in
13 connection with the sale, offering for sale,
14 distribution, or advertising of goods on the
15 platform.

16 “(VII) Implemented at no cost to the
17 registrant a program to expeditiously dis-
18 able or remove from the platform a listing
19 by any third-party seller that reasonably
20 could be determined to have used a coun-
21 terfeit mark in connection with the sale,
22 offering for sale, distribution, or adver-
23 tising of goods.

24 “(VIII) Terminated use of the plat-
25 form by any third-party seller that has en-

1 gaged in more than three instances of use
2 of a counterfeit mark in connection with
3 the sale, offering for sale, distribution, or
4 advertising of goods on the platform.

5 “(IX) Implemented at no cost to the
6 registrant technological measures for
7 screening third-party sellers to ensure that
8 sellers who have been terminated do not
9 rejoin or remain on the platform under a
10 different seller identity or alias.

11 “(X) Provided the information verified
12 under clause (I) of each third-party seller
13 that used a counterfeit mark in connection
14 with the sale, offering for sale, distribu-
15 tion, or advertising of goods on the plat-
16 form to relevant law enforcement and,
17 upon request, the registrant.

18 “(B) In this paragraph:

19 “(i) The term ‘counterfeit mark’ has the
20 meaning given that term in section 34(d)(1)(B).

21 “(ii) The term ‘electronic commerce plat-
22 form’ means any electronically accessed plat-
23 form that includes publicly interactive features
24 that allow for arranging the sale, purchase,
25 payment, or shipping of goods, or that enables

1 a person other than an operator of such plat-
2 form to sell or offer to sell physical goods to
3 consumers located in the United States.

4 “(iii) The term ‘goods that implicate
5 health and safety’ means goods the use of
6 which can lead to illness, disease, injury, serious
7 adverse event, allergic reaction, or death if pro-
8 duced without compliance with all applicable
9 Federal, State, and local health and safety reg-
10 ulations and industry-designated testing, safety,
11 quality, certification, manufacturing, packaging,
12 and labeling standards.

13 “(iv) The term ‘third-party seller’ means a
14 person other than the electronic commerce plat-
15 form who uses the platform to arrange for the
16 sale, purchase, payment, or shipping of goods.

17 “(C) Nothing in this paragraph may be con-
18 strued to limit liability for direct infringement.”.