

# The SHOP SAFE Act of 2020

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

**Customers may be unknowingly purchasing harmful counterfeits when they make an online purchase—and this problem is likely to continue to grow.**

- More and more American consumers are shopping online—e-commerce sales are expected to reach nearly 15% of total retail spending and more than \$4 trillion in 2020.
- But counterfeiters have moved online too. They frequently take advantage of the features of online platforms to appear as legitimate sellers. They may use false and unvetted credentials and make their counterfeit listings appear as authentic as possible to online shoppers, often by lifting wording and images from the real brand owner.
- As a result, it is surprisingly easy for customers to be misled into buying counterfeits 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:*
  - A CNN investigation found that a counterfeit children's car seat purchased on an e-commerce platform broke into pieces in a 30-mph crash test, with the toddler-sized crash-test dummy twisting as the car seat fractured, failing federal regulatory requirements.
  - One company's investigation of counterfeit cellphone adapters found several that were constructed so poorly that they had the capacity for lethal electrocution.
- Right now, brand owners have a limited set of options to police counterfeit versions of their goods that infringe their trademarks. These options are often resource-intensive and ineffective at scale.
- Additionally, untraceable sellers with fake aliases leave brand owners with little recourse against the third-party seller through the U.S. court system. Under current law, it is hard or impossible to hold online platforms accountable when a seller disappears or cannot be located.

**The SHOP SAFE Act addresses this problem by incentivizing online platforms to adopt best practices regarding sellers of these potentially harmful products.**

- SHOP SAFE addresses the problem of the sale of unsafe counterfeit goods by incentivizing platforms to engage in a set of best practices for screening and vetting sellers and goods, penalizing repeat offenders, and ensuring that consumers have the best (and most accurate) information available to them when they make their online purchases.
- SHOP SAFE is tailored to goods that have a health or safety impact, targeting counterfeit goods that have the most serious consequences for consumers.
- In exchange for following SHOP SAFE's best practices, online platforms benefit from being immunized from contributory liability for trademark infringement. The statute provides platforms the reciprocal benefit of certainty over the current caselaw, which leaves open the question—at least in certain circuits—of when a platform can be held contributorily liable.