

Digital Marketplace Accountability

The Problem for Consumers

The convenience of online commerce has resulted in its rapid growth over the past decade.ⁱ As the popularity of shopping online continues to grow, today's product liability and consumer product safety laws in the U.S. that are designed to protect shoppers have not yet caught up to the evolving marketplace, potentially leaving consumers vulnerable when shopping online. As a result of these outdated laws, consumers have encountered dangerous or recalled productsⁱⁱ for sale in digital marketplaces by third-party sellers who may be unreachable or otherwise unaccountable for harms caused by their products.ⁱⁱⁱ In 2023, the Consumer Product Safety Commission (CPSC) requested the removal of more than 50,000 hazardous products found online.^{iv} With access to millions of products at any moment, consumers are more likely than before to encounter unsafe consumer products that may put them at unreasonable risk of injury and death.

The Policy Opportunity

Consumers should be able to buy products online that do not pose unreasonable risks to their health and safety, and digital marketplaces play a key role in making this a reality. Digital platforms that offer marketplaces should provide consumers with adequate and accurate information to help them make informed buying decisions. Platforms should also work to better ensure the safety of all of their products by thoroughly vetting and monitoring third-party sellers and their offerings. If things go wrong, platforms should also be ready to respond quickly to make consumers whole. Unfortunately, today's e-commerce ecosystem falls short of these basic expectations, but lawmakers and regulators have an opportunity to act and help create safe and fair online marketplaces.^v

Consumer Reports' Positions

CR supports federal and state efforts to update outdated laws to clarify when digital marketplaces should be held accountable for consumer products sold by third-party sellers on these sites.^{vi} Some degree of liability for harms resulting from unsafe product sales seems warranted when, for example, platforms: (1) actively choose to insert themselves into or exert greater control over the

chain of commerce—such as by shipping goods or facilitating a purchase; 2) opaquely control how products are presented or priced to consumers, through the use of proprietary algorithms that assess and rank products, for example; or 3) incentivize or require third-party sellers to use the distribution or programs, such as Fulfilled by Amazon and Walmart Pro Sellers.

In addition to supporting these state and federal efforts, CR is also engaging platforms to make changes to their practices to ensure that consumers have the information necessary to be savvy online shoppers and are made whole if an issue with the product arises. We are also working on an evaluation of digital platforms that reviews and assesses their policies and practices to ensure greater accountability and protection for consumers from unsafe products sold online by third-party sellers.

For more information on our Digital Marketplace Accountability work, please contact Oriene Shin at oriene.shin@consumer.org.

ⁱ “Quarterly Retail E-Commerce Sales 2nd Quarter 2023” (U.S. Census Bureau News Release), U.S. Department of Commerce, August 17, 2023, https://www.census.gov/retail/mrts/www/data/pdf/ec_current.pdf.

ⁱⁱ “Remarks of Chair Alexander D. Hoehn-Saric International Consumer Product Health and Safety Organization (ICPHSO) 2024 Annual Symposium,” Consumer Product Safety Commission, February 20, 2024, <https://www.cpsc.gov/About-CPSC/Chairman/Alexander-Hoehn-Saric/Speech/Remarks-of-Chair-Alexander-D-Hoehn-Saric-International-Consumer-Product-Health-and-Safety-Organization-ICPHSO-2024-Annual-Symposium>; Jenny Cowley, Asha Tomlinson, and Nelisha Vellani, “We Bought Dozens of Products from Aliexpress, Amazon, Ebay, Walmart and Wish. Over Half Were Suspected Fakes,” CBC News, February 21, 2020, <https://www.cbc.ca/news/business/marketplace-counterfeits-fakes-online-shopping-1.5470639>. See also Laura Murphy, “How to Avoid Buying Counterfeit Products Online,” Consumer Reports, December 7, 2018, <https://www.consumerreports.org/online-shopping/how-to-avoid-buying-counterfeit-products-online>.

ⁱⁱⁱ *Bolger v. Amazon.com, LLC*, 53 Cal. App. 5th 431 (2020), 2, <https://law.justia.com/cases/california/court-of-appeal/2020/d075738.html>; see also *Oberdorf v. Amazon.com Inc.*, 930 F.3d 136 (2019), <https://law.justia.com/cases/federal/appellate-courts/ca3/18-1041/18-1041-2019-07-03.html>.

^{iv} CPSC, “Remarks of Chair Alexander D. Hoehn-Saric,” February 20, 2024.

^v Alexandra Berzon, Shane Shifflett, and Justin Scheck, “Amazon Has Ceded Control of Its Site. The Result: Thousands of Banned, Unsafe or Mislabeled Products,” *The Wall Street Journal*, August 23, 2019, <https://www.wsj.com/articles/amazon-has-ceded-control-of-its-site-the-result-thousands-of-banned-unsafe-or-mislabeled-products-11566564990>; see also Kate Wagner, “Etsy promised shopping with a soul. Then the scammers came,” *The Washington Post*, May 17, 2023, <https://www.washingtonpost.com/home/2023/05/17/etsy-dropshipping-knockoffs>.

^{vi} Colin Lecher, “How Amazon Escapes Liability for the Riskiest Products on Its Site,” *The Verge*, January 28, 2020, <https://www.theverge.com/2020/1/28/21080720/amazon-product-liability-lawsuits-marketplace-damage-third-party>.

About Consumer Reports

Founded in 1936, CR is on a mission to create a fair and just marketplace for all. Widely known for our rigorous research and testing of products and services, we also survey millions of consumers each year, report extensively on marketplace issues, and advocate for consumer rights and protections around safety, digital rights, financial fairness, and sustainability. CR is independent and nonprofit.