

Advertising Law Alert--The INFORM Consumers Act Imposes New Requirements on Online Marketplaces and Sellers

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Effective as of June 27, 2023, the Integrity, Notification, and Fairness in Online Retail Marketplaces for Consumers Act (“INFORM Consumers Act”) imposes new federal requirements aimed at deterring organized retail theft and sales of counterfeit and harmful products on online marketplaces like Amazon and eBay. The Federal Trade Commission (“FTC”) and States have the authority to enforce the new statute and impose civil and equitable penalties if online marketplaces do not comply with collection, verification, disclosure, reporting and suspension of non-compliant third-party online sellers.

Online Marketplaces

“Online marketplaces” are defined as “any person or entity that operates a consumer-directed electronically based or accessed platform that is used by third-party sellers to engage in the sale, purchase, payment, storage, shipping, or delivery of consumer products in the US.” E-commerce platforms that meet this definition are required to collect and verify data from high-volume third-party sellers (“HVTPS”).

High-volume Third-Party Sellers

HVTPS are third-party sellers that entered into 200 or more discrete sales or transactions of new or unused consumer products and an aggregate total of \$5,000 or more in gross revenues in any continuous 12-month period during the previous two years.

Collection, Reporting and Disclosure Requirements

To prevent suspect third parties from selling stolen, counterfeit, or potentially dangerous merchandise, an HVTPS must report to the online marketplace its bank account information, contact information, and Tax ID number within ten days after qualifying as a HVTPS. The online marketplace is required to verify that information within ten days after collection. At least once a year, the marketplace must require the seller to electronically certify that its information has not changed or that it has provided the marketplace with updated information. An online marketplace must implement and maintain reasonable security procedures and practices, and it may not use this information for any other purpose unless required by law.

If the HVTPS does not provide the required information within the prescribed period, the online marketplace must suspend the HVTPS for failure to comply within ten days of giving the HVTPS a notice and opportunity to comply.

If a HVTPS has annual gross revenues of \$20,000 or more on a particular online marketplace, the marketplace also must clearly disclose the following information on each of the seller's product listing pages or in order confirmation messages and account transaction histories on that platform: the seller's full name, the seller's physical address; and contact information that will allow consumers to have what the law calls "direct, unhindered communication" with the seller.

Enforcement

The FTC has the authority to initiate civil actions seeking penalties up to \$50,120 per violation if an online marketplace fails to collect and disclose HVTPS information. States are also empowered to seek injunctions, damages, restitution, or other compensation.

The statute only provides for public enforcement against online marketplaces. HVTPS are simply subject to suspension by the online marketplaces for non-compliance.

Takeaways

Online marketplaces should take inventory of third-party sellers that qualify as HVTPS and collect and verify the statutorily required information. These online marketplaces should also implement processes to monitor which qualified HVTPS have not submitted the required information to ensure they properly freeze their accounts. Processes must also be implemented to allow consumers to report suspicious sellers.

Sellers should also evaluate whether they meet the definition of an HVTPS and prepare to submit the required information to their online hosts to ensure their accounts do not get frozen.

This alert is intended to provide a brief overview of the new INFORM Act but it is not intended to be relied upon as a comprehensive analysis of the statute, which is detailed and contains other definitions and some exemptions. The Act can be found at <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title15-section45f&num=0&edition=prelim>.