INFORM Consumers Act: Brief Overview on What Online Marketplaces and Brands Need to Know

DENTONS

July 10, 2023

The Integrity, Notification, and Fairness in Online Retail Marketplaces for Consumers Act (the “INFORM Consumers Act” or “The Act”) took effect on June 27, 2023.

The INFORM Consumers Act was enacted by Congress in a bid to help protect consumers from counterfeit products, by providing consumers and brands with contact information for high-volume third party sellers on online marketplaces. Many businesses and retailers are impacted – here’s what you need to know.

Scope:

INFORM Consumers Act requires online marketplaces to verify the identities of high-volume third party sellers on their platforms. While this does not apply to all online marketplaces, many of those that pose the greatest risk of distributing counterfeit products are impacted and their activities will be easier to target under the Act .

Who is affected?:

The Act defines a “high-volume, third-party seller” as, “a participant on an online marketplace's platform who is a third party seller and who, in any continuous 12-month period during the previous 24 months, has entered into 200 or more discrete sales or transactions of **new or unused** consumer products resulting in the accumulation of an aggregate total of $5,000 or more in gross revenues.” This means that many sellers on platforms such as Amazon, eBay or Etsy will be affected; however, those selling used or second hand products are not (which appears to be a loophole as sellers may simply list products as “used” in order to circumvent the new requirements).

What action is required?:

Sellers reaching the threshold sales figures noted in The Act are required to provide the following details to the online marketplace within 10 days of becoming a high-volume seller:

- Bank account number
- Contact information
  - For individuals: copy of a valid government-issued identification that includes the individual's name and physical address (i.e. driver’s license or non-driver ID card).
  - For businesses:
    - copy of a valid government-issued identification for an individual acting on behalf of the business that includes the individual's name and physical address; or

- copy of a valid government-issued record or tax document, such as a W-2 or 1099, that includes the business name and physical address of the seller

- Tax identification number
- Phone number
- Email address

The online marketplace must then disclose the contact information to consumers in a clear and conspicuous manner on the product listing. Additionally, the online marketplace is to disclose on the product listing whether the seller engages in the manufacturing, importing, or reselling of consumer products.

Exceptions:

Individuals who do not have a business address are exempt from sharing their full physical address and only a state and country is required. Another exception occurs where the seller is a business that has a physical address for product returns, the online marketplace may disclose the seller's physical address for product returns on the product listing. Sellers that only have a personal phone number are exempt from sharing such a number, and consumers are directed to contact such sellers via email.

Penalties for non-compliance:

Online marketplaces are required to suspend any users who fail to comply with these requirements. Violations could result in civil penalties of $50,120 per violation for online marketplaces, effectively placing marketplaces on the first line of defense.

Many major online marketplaces have proactively responded to the new legislation. Marketplaces such as eBay and Amazon have issued guidance for sellers and are requiring compliance with the disclosure requirement. For example, on its listing for **Crocs Unisex-Adult Classic Clogs,** Amazon has linked the Seller's information under the "Add to Cart" button. The "sold by" **link** provides "Detailed Seller Information" including business name and address. Given the sheer number of online sellers it may take some time for all necessary disclosures to appear on product listings, particularly as the online marketplaces hold the necessary sales information to determine who qualifies as a "high-volume, third-party seller."

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