

THE GLOBAL TRADE LAW JOURNAL

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U.S. Consumer Product Safety Commission Finds Amazon Responsible for Hazardous Products Sold by Third-Party Sellers

Robert E. Tonn and William A. Ringhofer*

In this article, the authors review a decision by the U.S. Consumer Product Safety Commission finding that Amazon's popular "Fulfilled by Amazon" program—in which products are listed by Amazon but sold by third-party sellers—renders the e-commerce giant a "distributor" subject to regulation under the Consumer Product Safety Act. The authors also consider the potential legal implications for other online marketplaces.

In a closely watched case, the U.S. Consumer Product Safety Commission (CPSC) has decided that Amazon's popular "Fulfilled by Amazon" program—in which products are listed by Amazon but sold by third-party sellers—renders the e-commerce giant a "distributor" subject to regulation under the Consumer Product Safety Act (CPSA) and makes the company potentially liable under the terms of the CPSA for hundreds of thousands of hazardous products sold through the platform. Under the ruling, Amazon would also be legally responsible for the recall of those products.

Case Background and Decision

The CPSC's unanimous decision specifically addressed the sale of more than 400,000 products that pose a "substantial product hazard," including children's sleepwear that failed to meet flammability standards, carbon monoxide detectors that did not appropriately alert users of carbon monoxide, and hair dryers that lacked appropriate electrocution protection.

Amazon did not dispute the risks associated with the products and submitted a joint stipulation acknowledging that the subject

products presented substantial product hazards. However, the company argued that it did not have legal responsibility for sales made by third-party vendors through its Fulfilled by Amazon program.

The CPSC rejected Amazon's argument that it is a mere "third-party logistics provider" as defined in Section 3(b) of the CPSA. The CPSC deemed that the products at issue were delivered to Amazon for the purposes of commerce and, thus, made Amazon a distributor of such products under the CPSA. The CPSC also rejected Amazon's various constitutional challenges to the agency action.

Under the ruling, Amazon must now "develop and submit proposed plans (pursuant to Section 15 of the CPSA) to notify purchasers and the public about the product hazards, and to provide refunds or replacements for these products." The CPSC stopped short of making Amazon responsible for testing products before sale on the platform.

In a statement following the decision, Amazon vowed to appeal. Amazon argued that it had responded swiftly and adequately to warn consumers when it received notice of the potential safety hazards at the heart of the CPSC's case, including by instructing purchasers to stop using the products and offering refunds. The CPSC's ruling, however, rejected that argument and found Amazon's actual course of action to be inadequate. In particular, the CPSC noted in a statement released following the decision, "Notice to the public is important so that people who may have received one of the products as a gift or purchased it second-hand can learn about the hazards."

This decision underscores the CPSC's heightened commitment to enforcing compliance obligations on all parties involved in the distribution of consumer products and serves as a reminder of the increasingly aggressive role the CPSC has played during the Biden administration.

Potential Legal Implications for Other Online Marketplaces

The CPSC's Amazon decision potentially sets a significant precedent for other e-commerce sites like Amazon. The ruling gives further support to the notion that such online marketplaces are not merely intermediaries; rather, they are potentially liable parties in the chain of distribution and may be subject to the same

notice, reporting, replacement, and recall obligations as brick-and-mortar retailers.

The decision is a move toward treating online marketplaces in a similar way to traditional retailers and signals increased scrutiny of their role in product safety. According to the CPSC's ruling, online retailers may be required to provide public notice, cease distribution, and take remedial actions if they distribute third-party products that pose a substantial product hazard.

Other similarly situated e-commerce sites might be well advised to consider whether they should review and enhance their product safety policies and procedures in light of this ruling. Some potential improvements would be to implement more rigorous vetting processes for third-party sellers, establish clearer safety standards for products, and develop more effective mechanisms for reporting and potentially recalling hazardous products.

The ruling is a reminder that these marketplaces should consider what actions they should take to proactively monitor and manage the risks associated with product safety in order to protect consumers and comply with their obligations under the CPSA.

Note

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