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# Praxis

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## Counterfeit Corner

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### INFORM ACT: What Brands Need to Know

In today's digital world, online marketplaces have become hotspots for organized crime, particularly relating to the sale of stolen and counterfeit goods by third-party sellers. These fraudulent sales mislead consumers, cost brands millions per year in lost sales, lead to potential harm from counterfeit goods, and supply funds to criminal operations. However, brands often find enforcement options to address such sales lacking, as online marketplaces are loath to assume the responsibility for monitoring and banning such sales absent law requiring such engagement.

For these reasons, brand owners are viewing the recently enacted Integrity, Notification, and Fairness in Online Retail Marketplaces for Consumers (INFORM) Act, which took effect June 27, 2023, as a (small) step in the right direction. The INFORM Act requires online marketplaces to collect, verify, and disclose the identity and information of third-party sellers (with sales over a certain limit) to consumers. It also requires online marketplaces to implement reporting mechanisms for consumers to report suspicious third-party seller activity.

### New Obligations for Online Marketplaces

The INFORM Act (the Act) directly addresses the lack of security of online marketplaces by mandating identity verification of high-volume third-party sellers of consumer products. For the purposes of the Act: (1) an online marketplace is a consumer-directed online platform which facilitates or enables third-party sellers to sell consumer products directly to consumers, (2) a consumer product is any physical and tangible personal property which is distributed in commerce and normally used for personal, family, or household purposes, and (3) a high-volume third party seller is a seller that, in any continuous 12-month period during the previous 24 months, has conducted 200 or more discrete sales of new or unused consumer products with a gross revenue exceeding \$5,000.

The Act requires online marketplaces to collect initial and ongoing data on the identity of such sellers, including bank account and identification information such as the seller's name, email address, phone number, and tax ID number. After an initial verification of seller identity, the Act mandates periodic verifications certifying the seller information

initially disclosed. Failure to provide the required information, certifications, or disclosures to online marketplaces within 10 days results in the seller's suspension from the platform.

In addition to collecting data on high-volume third-party sellers, the Act also requires online marketplaces to disclose some of this data to consumers. The Act only requires disclosure of seller identity where the seller aggregates at least \$20,000 in gross revenue. Online marketplaces must provide clear and conspicuous information to consumers on product listing pages or order confirmations. Such information must include seller name, physical address, contact information for direct communication (including email address and phone number), and other sellers who supplied the product purchase, if any.

Lastly, the Act requires online marketplaces to implement reporting mechanisms for consumers to flag suspicious high-volume third-party seller activity directly to the marketplace. This better equips online marketplaces to monitor for and mitigate criminal activity on their platform.

### FTC Enforcement and Notification Efforts

Failure to comply with the Act may result in enforcement by the Federal Trade Commission (FTC) to the fullest extent possible. State attorneys general are also authorized to enforce this statute. Violations of the Act are viewed as a deceptive act or practice under 15 U.S.C. 57(a)(1)(B) and may be subject to a statutory violation up to \$50,000.

In an effort to notify businesses affected by the law before its

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enactment, the FTC sent a letter to 50 online marketplaces about their new obligations under the Act, reminding them of the penalties associated with violations. Upon enactment, the FTC enabled a reporting mechanism on its website that allows consumers to report any violations of the Act directly to the agency. However, as CNBC recently reported, it is “not [yet] clear how the law will be enforced . . . if the FTC will actively seek out violations or only respond to complaints made through the new reporting systems.”

Thus far, online marketplaces have demonstrated public support for the Act. For example, eBay stated that it “fully supports transparency and is committed to a safe selling and buying

experience for all [its] customers.” Some online marketplaces have even begun to take preemptive action. Amazon notified high-volume sellers that they must verify their information before the law takes effect. Meta even rolled out a business verification tool for high-volume third-party sellers. Moving forward, other businesses may start to follow Meta’s model and implement software systems that assist in verifying seller information.

Time will tell whether the INFORM Act will move the needle in terms of platform engagement against counterfeit sales, but at a minimum it signals a willingness on the part of Congress to begin legislating to protect consumers and brands from this widespread, and not victimless, form of crime.

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