

**UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION**

In the Matter of Amazon.com, Inc.,

Respondent

CPSC Docket No. 21-2

Hon. Jason S. Patil
Presiding Officer

**DECLARATION OF NICHOLAS GRIEPSMA
IN SUPPORT OF AMAZON'S SUPPLEMENTAL BRIEF ON REMEDIES**

I, Nicholas Griebsma, hereby declare that:

1. I am an attorney for Respondent Amazon.com, Inc. ("Amazon") in the above-captioned matter.
2. I am over the age of 18 and I am competent to make this declaration.
3. As used in this Declaration, "CPSC" refers to the U.S. Consumer Product Safety Commission.
4. For ease of reference, Amazon has continued its exhibit numbering from its September 23, 2022 Motion for Summary Decision (Exhibits 1–106), October 21, 2022 Opposition to Complaint Counsel's Motion for Summary Decision (Exhibits 107–122), and November 21, 2022 Reply in Support of Amazon's Motion for Summary Decision (Exhibits 123–129). Amazon Exhibits 130–32 are attached to this Declaration filed in support of Amazon's Supplemental Brief on Remedies.
5. Attached as Exhibit 130 is a true and correct excerpt from Amazon's Supplemental Objections and Responses to Complaint Counsel's Interrogatory Nos. 16 and 17, served on June 15, 2022.

6. Attached as Exhibit 131 is a true and correct excerpt from Complaint Counsel's Objections and Responses to Amazon's Interrogatory No. 14, served on March 21, 2022.

7. Attached as Exhibit 132 is a true and correct excerpt of data downloaded from the CPSC website, which enables a user to query a list of recall press releases according to filters such as date range and hazard category. Exhibit 132 lists the hazard descriptions utilized in CPSC press releases for all children's sleepwear and bathrobe recalls in 2023 categorized as "burn" hazards by the CPSC.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 30, 2023.

Nicholas Griepsma

Nicholas J. Griepsma

CERTIFICATE OF SERVICE

I hereby certify that on May 30, 2023, a true and correct copy of the foregoing document was, pursuant to the Order Following Prehearing Conference entered by the Presiding Officer on October 19, 2021:

- filed by email to the Secretary of the U.S. Consumer Product Safety Commission, Alberta Mills, at amills@cpsc.gov, with a copy to the Presiding Officer at alj@sec.gov and to all counsel of record; and
- served to Complaint Counsel by email at jejustice@cpsc.gov, lwolf@cpsc.gov, and sanand@cpsc.gov.

Nicholas Griepsma

Nicholas J. Griepsma

Exhibit 130

**UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION**

In the Matter of AMAZON.COM, INC.,)
) CPSC DOCKET NO.: 21-2
Respondent.)
)

**RESPONDENT'S SUPPLEMENTAL OBJECTIONS AND RESPONSES TO
COMPLAINT COUNSEL'S INTERROGATORY NOS. 16 AND 17**

Pursuant to Federal Rule of Civil Procedure 33 and the Presiding Officer's Order of January 19, 2022 (Doc. No. 27), Respondent Amazon.com, Inc. ("Amazon") hereby submits its supplemental objections and responses to Complaint Counsel's Interrogatory Nos. 16 and 17. Amazon incorporates herein its General Objections served with the Objections and Responses to Complaint Counsel's First Set of Interrogatories. Amazon continues to reserve the right to revise, correct, modify, amend, or supplement these responses as discovery and this proceeding continue.

RESPONDENT'S SUPPLEMENTAL RESPONSES

INTERROGATORY NO. 16: Identify all Documents which contain information on Respondent's attempts to identify any Functionally Equivalent Products to the Subject Products and the actions that Respondent has taken with regards to the Functionally Equivalent Products, including but not limited to sending notifications to consumers, processing returns, disposing of returned items, and providing refunds.

MARCH 21, 2022 RESPONSE TO INTERROGATORY NO. 16:

ANSWER: Amazon objects to this Interrogatory on the grounds set forth in its General Objections, which are incorporated by reference herein. Amazon further objects that the Interrogatory is vague and overbroad because the term "Functionally Equivalent Products" is not defined. Amazon further objects that this Interrogatory is in excess of the limit of 25 given the discrete subparts of prior Interrogatories. Subject to and without waiving these objections,

Amazon states that Documents produced in response to Complaint Counsel's Request for Production No. 10 might contain information responsive to this request.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 16:

ANSWER: Subject to and without waiver of the foregoing general and specific objections, Amazon reiterates that it is not obligated under the discovery rules to identify via Interrogatory "all Documents" relevant to a particular topic or theme, but identifies the following documents as containing lists of ASINs for which Amazon voluntarily elected to send messages to purchasers and provide refunds to purchasers, in addition to the Subject Product ASINs identified in the Complaint:

- Hair Dryers: Amazon-CPSC-FBA-00001839
- Children's Sleepwear: Amazon-CPSC-FBA-00001840
- Carbon Monoxide Detectors: Amazon-CPSC-FBA-00002377

INTERROGATORY NO. 17: Describe in narrative form the actions taken by Respondent to identify Functionally Equivalent Products to the Subject Products and the actions that Respondent has taken with regards to the Functionally Equivalent Products, including but not limited to sending notifications to consumers, processing returns, disposing of returned items, and providing refunds.

MARCH 21, 2022 RESPONSE TO INTERROGATORY NO. 17:

ANSWER: Amazon objects to this Interrogatory on the grounds set forth in its General Objections, which are incorporated by reference herein. Amazon further objects that the Interrogatory is vague and overbroad because the term "Functionally Equivalent Products" is not defined. Amazon further objects that this Interrogatory seeks information already in the CPSC's possession. Amazon further objects that this Interrogatory is in excess of the limit of 25 given the discrete subparts of prior Interrogatories. Subject to and without waiving these objections, Amazon provides a description of its efforts to identify products that might present a hazard

because of their similarity to the Subject Products (*i.e.*, the ASINs identified in paragraphs 21, 30, and 39 of the Complaint).

After deciding to remove the Subject Products from Amazon.com, Amazon undertook efforts to identify similar products based on the information available to it from the third-party sellers and the CPSC regarding the Subject Products. For example, for sleepwear items, Amazon sought to suppress, message, and refund consumers for identified ASINs that appeared to vary from the Subject Products only by size, color, or print pattern, and were similar to the CPSC-tested product. *See* CPSC_AM0000497 (CPSC emails discussing Amazon safety notice regarding Taiicyxgan product other than Subject Products). Amazon reserves the right to revise, correct, modify, amend or supplement these responses as discovery and this proceeding continues.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 17:

ANSWER: Subject to and without waiver of the foregoing general and specific objections, Amazon states that the ASINs originally identified as “Subject Products” for three out of four children’s sleepwear brands listed in the Complaint (Home Swee, HOYMN, and Taiicyxgan) were not the ASINs actually purchased and tested by the CPSC. Complaint Counsel’s pre-litigation correspondence to Amazon concerning these products contained this discrepancy, and Amazon made Complaint Counsel aware of the discrepancy on July 9, 2021—before Complaint Counsel filed its Complaint. *See* Amazon-CPSC-FBA-00000023 at 026, 072 (flagging that Amazon’s internal records showed no sales for the Home Swee, HOYMN, and Taiicyxgan ASINs listed in the pre-litigation NOVs issued to Amazon).

For the Home Swee, HOYMN, and Taiicyxgan ASINs listed in the CPSC’s NOVs and subsequent Complaint, Complaint Counsel only listed what is known as a “parent” ASIN. As explained on Amazon’s website, however, a “parent” ASIN is a “non-buyable product.” *See*

generally “Elements of a Parent-child Relationship,” <https://sellercentral.amazon.com/gp/help/external/G202135340> (last visited June 14, 2022). “Parent” ASINs are an administrative tool made available to third-party sellers to facilitate organization of their products into *categories*; “parent” ASINs therefore do not represent any *specific* product that can be purchased. *See id.* Actual products that have been assigned to a “parent” category are represented by what is known as a “child” ASIN. *Id.* Third-party sellers—not Amazon—organize FBA products into “parent” categories. The relationships and similarities between “children” assigned to a “parent” therefore vary widely between third-party sellers.

Although the CPSC’s pre-litigation NOVs and subsequent Complaint did not identify the “child” ASINs actually purchased and tested by CPSC staff, Amazon voluntarily identified Home Swee and Taiycyxgan child ASINs that appeared to be similar to the actual product purchased and tested by CPSC staff based on testing summary material appended to the NOVs. Amazon then messaged and refunded purchasers of those units. Subsequently, after review of testing and other documents produced by Complaint Counsel in this litigation, Amazon confirmed that the HOYMN product actually purchased and tested by CPSC staff was ASIN B0743BM1NV, even though ASIN B074V558SB was the ASIN listed on the original NOV and Complaint. Amazon thereafter voluntarily messaged and refunded customers who purchased one or more units of ASIN B0743BM1NV in addition to the following ASINs, which appeared similar in size, color, or print pattern to B0743BM1NV:

- B0743B5HBK
- B0743CW54X
- B0743FSD26
- B0743CQKJX

- B0743BWN76
- B0743CTHBX
- B0743D6PC8
- B0743CSTQN
- B0743BMFCD
- B0743CT1NZ
- B0743CT1P6
- B0743BRLXD
- B0743CWDQK
- B0743BKQ8W
- B07437NKWC
- B0743BTSNQ
- B0743CBXMJ
- B0743BWBYR
- B0743D6B2T
- B0743CNRTY

Exhibit 131

UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of)
AMAZON.COM, INC.)
Respondent.) CPSC DOCKET NO.: 21-2

**COMPLAINT COUNSEL'S OBJECTIONS AND RESPONSES
TO RESPONDENT'S FIRST SET OF INTERROGATORIES TO
CONSUMER PRODUCT SAFETY COMMISSION**

Pursuant to 16 C.F.R. § 1025.32, Complaint Counsel respectfully submits its objections and responses (“Responses”) to Respondent Amazon.com, Inc.’s (“Respondent’s”) First Set of Interrogatories to Consumer Product Safety Commission (“Interrogatories”).

PRELIMINARY STATEMENT

Discovery in this action is ongoing. The specific Responses set forth below are for the purposes of discovery only, and Complaint Counsel neither waives nor intends to waive, and expressly reserves, any and all objections it may have to the relevance, competence, materiality, admission, admissibility, or use at trial of any information, documents, or writings produced, identified, or referred to herein, or to the introduction of any evidence at trial relating to the subjects covered by such Responses.

These Responses are based solely upon information presently known and readily available to Complaint Counsel following a reasonable inquiry for responsive information, as described herein. Complaint Counsel will amend these Responses in accordance with 16 C.F.R. § 1025.31(f), as appropriate. Complaint Counsel expressly reserves the right to rely, at any time including trial, upon subsequently discovered information. Further, the specific Responses

RESPONSE TO INTERROGATORY NO. 14:

Complaint Counsel objects to this Interrogatory as premature to the extent it seeks Complaint Counsel's "complete[]" contentions relating to remedy at this early stage of the proceeding, and Complaint Counsel reserves the right to supplement its response with additional information in accordance with 16 C.F.R. § 1025.31(f). In addition, Complaint Counsel objects to this Interrogatory to the extent that it seeks information that may depend upon information and documents currently in the possession of Respondent that have yet to be produced in these proceedings. Complaint Counsel also objects to this Interrogatory to the extent it seeks information protected by privilege or other protection, including the attorney-client privilege, work product doctrine, or deliberative process privilege.

Subject to and without waiver of the foregoing general and specific objections, Complaint Counsel states that the remedies sought in these proceedings include a mandatory order stating that:

1. the Subject Products are substantial product hazards under Sections 15(a)(1), 15(a)(2), and 15(j) of the CPSA, 15 U.S.C. §§ 2064(a)(1), (a)(2), and (j);
 - a. This determination would be in the public interest, as it definitively establishes the hazards posed by the Subject Products.
2. Respondent must ensure that the ASINs relating to the Subject Products remain removed from Amazon's online marketplace, including ASINs for functionally identical products;
 - a. This order would be in the public interest, as it ensures that neither the Subject Products nor functionally identical products are sold through Amazon's online marketplace.

3. Respondent must issue a CPSC-approved direct notice to all consumers who purchased the Subject Products which includes a CPSC approved description of the hazard presented by each Subject Product, and which is different from the notice initially sent by Respondent in that it sufficiently identifies the hazard and encourages consumers to return or destroy the product, with or without an incentive provided to do so;
 - a. This order would be in the public interest, as it clarifies the hazard presented and promotes the removal of the hazardous Subject Products from homes and the stream of commerce.
4. The issuance of a press release, as well as any other public notice documents or postings required by CPSC staff that inform consumers of the specific hazards posed by the Subject Products.
 - a. This order would be in the public interest, as it both clarifies the hazards presented and promotes awareness of the hazardous products.
5. Respondent must facilitate the return and destruction of the Subject Products, at no cost to consumers, under Section 15(d)(1) of the CPSA, 15 U.S.C. § 2064(d)(1);
 - a. This order would again be in the public interest, as it promotes the removal of the hazardous Subject Products from homes and the stream of commerce.
6. Respondent must destroy the Subject Products that are returned to Amazon by consumers or that remain in Amazon's inventory, with proof of such destruction

via a certificate of destruction or other acceptable documentation provided to CPSC staff;

- a. This order would be in the public interest, as it ensures that no inventory of the Subject Products remains to re-enter the stream of commerce.
7. Respondent must provide monthly progress reports to reflect, among other things, the number of Subject Products located in Amazon's inventory, returned by consumers, and destroyed;
 - a. This order would promote the public's interest in tracking the return and destruction of the hazardous Subject Products.
8. Respondent must provide monthly progress reports identifying all functionally equivalent products removed by Respondent from its online marketplace, including the ASIN, the number distributed prior to removal, and the platform through which the products were sold;
 - a. This order would be in the public interest, as it would facilitate the identification and removal of products posing identical hazards.
9. Respondent is prohibited from distributing in commerce the Subject Products, including any functionally identical products. *See* CPSA Section 15(d)(2), 15 U.S.C. § 2064(d)(2);
 - a. This order would be in the public's interest, as it subjects Respondent to penalties if Respondent distributes the hazardous Subject Products or functionally identical products.

In addition, the CPSC reserves the right to request an order directing Amazon to take other and further actions as the Commission deems necessary to protect public health and safety.

Exhibit 132

Recall Number	Name of product	Hazard Description
23-754	Children's white robes	The recalled children's white robes fail to meet the federal flammability standards for children's sleepwear, posing a risk of burn injuries to children.
23-746	Children's robes	The children's robes fail to meet the federal flammability standards for children's sleepwear, posing a risk of burn injuries to children.
23-188	Children's sleepwear	The recalled children's sleepwear fails to meet the federal flammability standards for children's sleepwear, posing a risk of burn injuries to children.
23-187	Children's sleepwear	The recalled children's sleepwear fails to meet the federal flammability standards for children's sleepwear, posing a risk of burn injuries to children.
23-744	FunnyPaja Children's Bathrobes	The recalled children's bathrobes fail to meet the federal flammability standards for children's sleepwear, posing a risk of burn injuries to children.
23-743	Arshiner Children's Nightgowns	The children's nightgowns fail to meet federal flammability standards for children's sleepwear, posing a risk of burn injuries to children.
23-745	Children's robes	The recalled children's robes fail to meet the federal flammability standards for children's sleepwear, posing a risk of burn injuries to children.
23-731	Classic Whimsy children's pajamas	The recalled children's pajamas fail to meet the federal flammability standards for children's sleepwear, posing a risk of burn injuries to children.
23-123	Children's nightgowns	The recalled children's nightgowns fail to meet the federal flammability standards for children's sleepwear, posing a risk of burn injuries to children.

23-122	Children's pajamas and headbands	The recalled children's pajamas fail to meet the federal flammability standards for children's sleepwear, posing a risk of burn injuries to children; and the children's headbands contain levels of lead that exceed the federal lead content ban. Lead is toxic if ingested by young children and can cause adverse health issues.
23-121	Children's nightgowns	The children's nightgowns fail to meet the federal flammability standards for children's sleepwear, posing a risk of burn injuries to children.
23-113	Children's Robes	The recalled robes fail to meet the federal flammability standards for children's sleepwear, posing a risk of burn injuries to children.
23-112	Children's robes	The recalled children's robes fail to meet the federal flammability standards for children's sleepwear, posing a risk of burn injuries to children.
23-111	Children's Robes	The recalled robes fail to meet flammability standards for children's sleepwear, posing a risk of burn injuries to children.
23-110	Children's robes	The recalled children's robes fail to meet the federal flammability standards for children's sleepwear, posing a risk of burn injuries to children.
23-109	Children's pajamas	The recalled children's pajamas fail to meet the federal flammability standards for children's sleepwear, posing a risk of burn injuries to children.
23-104	Children's sleepwear	The recalled children's sleepwear fails to meet the federal flammability standards for children's sleepwear, posing a risk of burn injuries to children.
23-097	Children's Pajama Sets	The children's pajama sets fail to meet flammability standards for children's sleepwear, posing a risk of burn injuries to children.
23-103	Children's sleepwear	The recalled children's sleepwear fails to meet the federal flammability standards for children's sleepwear, posing a risk of burn injuries to children.

23-102	Children's sleepwear	The recalled children's sleepwear fails to meet the federal flammability standards for children's sleepwear, posing a risk of burn injuries to children.
23-101	Children's sleepwear	The recalled children's sleepwear fails to meet the federal flammability standards for children's sleepwear, posing a risk of burn injuries to children.
23-100	Children's sleepwear	The recalled children's sleepwear fails to meet the federal flammability standards for children's sleepwear, posing a risk of burn injuries to children.
23-095	Children's robes	The children's robes fail to meet the federal flammability standards for children's sleepwear, posing a risk of burn injuries to children.
23-085	Children's pajamas	The recalled children's pajamas fail to meet the federal flammability standards for children's sleepwear, posing a risk of burn injuries to children.