

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

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

RESPONDENT’S ANSWER TO COMPLAINT

Pursuant to 16 C.F.R. § 1025.12, Respondent Amazon.com, Inc. (“Amazon”), by and through its undersigned counsel, hereby files this Answer and responds to the allegations in the Complaint.

The Consumer Product Safety Act (“CPSA”) does not authorize the Consumer Product Safety Commission (“CPSC” or “Commission”) to bring this lawsuit, because the CPSA does not empower the CPSC to sue a company if it is acting as a third-party logistics provider rather than a distributor. When Amazon provides logistics services to independent merchants on Amazon.com, Amazon is plainly not acting as a distributor. Even the CPSC’s Acting Chairman, Robert Adler, publicly announced on the day the case was filed that he did not believe the CPSA clearly authorized the CPSC to pursue this type of action.¹

Although this Complaint is legally untenable because the CPSC does not have statutory authority to compel third-party logistics providers to conduct recalls, Amazon has already taken action to protect customers by: (i) removing the products listed in the Complaint from Amazon.com, (ii) informing customers about the possible safety issues

¹ *Statement of Acting Chairman Robert S. Adler on the Vote to Approve Filing of an Administrative Complaint Against Amazon.com*, CPSC (July 14, 2021), <https://www.cpsc.gov/s3fs-public/Statement%20on%20Amazon%20RSA%207.14.pdf>.

with the products, (iii) instructing customers not to use the products, and (iv) providing full refunds—even if Amazon itself did not make the sale.

Amazon agrees with Acting Chairman Adler that establishing “a framework for dealing with . . . products” handled by third-party logistics providers is the most constructive approach, and that suing individual companies over individual products is “like using an eyedropper to empty the ocean—ineffective, inefficient, and frustratingly insufficient to protect consumers.” Amazon remains ready to work with the CPSC to create such a framework for consumer product safety through a uniform standard applicable to all third-party logistics providers, but this lawsuit is legally flawed because a court cannot bestow powers on the CPSC that its founding statute does not. Accordingly, Amazon responds to the specific allegations in the numbered paragraphs in the Complaint as follows.

When Amazon says that something “speaks for itself,” it does not admit that the referenced material exists, is accurate, or is placed in the proper context.

Amazon is not obligated to respond to the headings of the Complaint. The headings are re-produced here for ease of reference. Inclusion of the headings does not constitute an admission of the Complaint’s allegations or characterizations. Amazon denies all titles and subheadings in the Complaint.

With respect to all allegations referring to “consumers,” Amazon states that it is without sufficient knowledge or information to distinguish between “consumers” and non-consumer purchasers, and therefore lacks sufficient knowledge or information to determine the number of “consumers” who purchased any given product.

Amazon denies all allegations that are not specifically admitted.

I. “NATURE OF THE PROCEEDINGS”

1. Amazon admits that the products subsequently defined in the Complaint as “Subject Products” were sold by third-party sellers on Amazon.com and the orders for the Subject Products were fulfilled by Amazon through its Fulfillment by Amazon (“FBA”) logistics service, except for a limited number of units of the Subject Products that were transferred from third-party sellers to Amazon and later sold through the “Amazon Warehouse” program. The allegation that each of the Subject Products presents a “substantial product hazard” under 15 U.S.C. § 2064(c) is a legal conclusion to which no response is required. To the extent a response is required, Amazon states that the CPSC has refused to provide, in response to requests from Amazon, all the relevant facts and information necessary to determine whether any Subject Product presents a “substantial product hazard” under 15 U.S.C. § 2064(c), and therefore Amazon lacks a basis to admit or deny the allegation. The remaining allegations in this Paragraph state legal conclusions and a characterization of the Complaint, to which no response is required. To an extent a response is required, Amazon denies that the Subject Products were “distributed by Amazon”; states that Amazon is not a “distributor” within the meaning of the CPSA with respect to third-party sellers’ products for which orders are fulfilled by Amazon, of third-party sellers’ products fulfilled by Amazon through the FBA logistics service. Amazon otherwise denies the allegations in this Paragraph.

2. This Paragraph states legal conclusions to which no response is required. To the extent a response is required, Amazon states that 16 C.F.R. § 1025 speaks for itself, states that other sources of substantive and procedural law may apply to this proceeding, and otherwise denies the allegations in this Paragraph.

II. “JURISDICTION”

3. This Paragraph states legal conclusions and a characterization of the Complaint, to which no response is required. To the extent a response is required, Amazon (i) states that 15 U.S.C. §§ 2064(c) and (d) speak for themselves, and (ii) denies that these provisions apply to Amazon with respect to the claims in the Complaint. Amazon otherwise denies the allegations in this Paragraph.

III. “THE PARTIES”

4. Amazon admits the first sentence of this Paragraph. The second sentence of this Paragraph states legal conclusions to which no response is required. To the extent a response is required, Amazon states that 15 U.S.C. § 2053 speaks for itself and otherwise denies the allegations in this Paragraph.

5. Admitted.

6. This Paragraph states legal conclusions and characterizations to which no response is required. To the extent a response is required, Amazon denies that “with respect to its FBA products Amazon is a ‘distributor’” and otherwise denies the allegations in this Paragraph.

IV. “AMAZON’S ‘FULFILLED BY AMAZON’ PROGRAM”

7. Amazon admits that it operates Amazon.com, a website on which third-party sellers can list and sell consumer products. The allegation in this Paragraph that Amazon.com is an “online marketplace” with respect to third-party sellers who use the FBA logistics service is a characterization and legal conclusion to which no response is required. To the extent a response is required, Amazon denies that Amazon.com is an “online marketplace” of third-party sellers’ products to the extent this allegation implies that Amazon is a “distributor” of third-party sellers’ products within the meaning of the

CPSA, states that 15 U.S.C. § 2052(a)(5) speaks for itself, and otherwise denies the allegations in this Paragraph.

8. Amazon admits that Amazon.com is a website on which third-party sellers sell products. The allegation in this Paragraph that Amazon.com is a “marketplace” for products fulfilled by Amazon is a characterization and legal conclusion to which no response is required. To the extent a response is required, Amazon denies that Amazon.com is a “marketplace” of third-party sellers’ products to the extent this allegation implies that Amazon is a “distributor” of third-party sellers’ products within the meaning of the CPSA. Amazon is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in this Paragraph. Amazon otherwise denies the allegations in this Paragraph.

9. Amazon admits that participation in the FBA logistics service is governed by a Business Services Agreement and other policies. Amazon admits that products on Amazon.com are assigned Amazon Standard Identification Numbers (“ASINs”). Amazon states that the allegations relating to “a business arrangement,” a “consumer marketplace,” and “offer[ing] [products] for sale on amazon.com” are legal conclusions and characterizations to which no response is required. To the extent a response is required, Amazon denies that Amazon.com is an “online marketplace” for “FBA products” (*i.e.*, third-party sellers’ products) to the extent this allegation implies that Amazon is a “distributor” of third-party sellers’ products within the meaning of the CPSA, denies that all products that appear on Amazon.com are “offered for sale” by Amazon, and otherwise denies the allegations in this Paragraph.

10. Amazon admits that it sells some consumer products on Amazon.com as a retailer. Amazon admits that third-party sellers sell their products on Amazon.com.

Amazon states that third-party sellers in Amazon's Merchant Fulfilled Network ("MFN") elect to store products and fulfill orders on their own. Amazon states that alternatively, third-party sellers can elect to pay Amazon for FBA logistical services, in which Amazon stores products and delivers to customers for third-party sellers. The remainder of this Paragraph states legal conclusions to which no response is required. To the extent a response is required, Amazon denies that Amazon is a "distributor" or "retailer" of any products sold by third-party sellers in the FBA or MFN programs, denies that third-party sellers' sales in the FBA and MFN programs are "Amazon's sales," and states that orders for the Subject Products were, at certain points in time, fulfilled by Amazon, except for a limited number of units of the Subject Products that were transferred from third-party sellers to Amazon and later sold through the "Amazon Warehouse" program. Amazon otherwise denies the allegations in this Paragraph.

11. Amazon admits that it provides logistics services to third-party sellers through its FBA logistics service, including storing third-party sellers' products in Amazon fulfillment centers; using technology to track, move, and ship products to customers; processing product returns; and delivering or arranging for delivery to customers. Amazon denies that it "approv[e]s . . . all FBA ASINs," denies that the assignment of an ASIN is a "service," and states that ASINs are automatically generated when a seller creates a new product page. The remainder of the allegations in this Paragraph contains vague allegations regarding the FBA logistics service (*e.g.*, that Amazon employees engage in unspecified "interact[i]ons with [FBA] product[s]," "labels" products, "approves" ASINs, or provide "additional services" with respect to such products). Amazon is without sufficient knowledge or information to form a belief as to the truth of such allegations, and therefore denies the allegations, except states that

Amazon has at times provided certain labeling services to some third-party sellers for some products for which Amazon fulfills orders through the FBA logistics service. In addition, the remaining allegations in this Paragraph state characterizations and legal conclusions to which no response is required. To the extent a response is required, Amazon denies that Amazon's activities with respect to FBA logistics service are "the distribution process," denies that Amazon "move[s] [FBA] products through the distribution process," and otherwise denies the allegations in this Paragraph.

12. Amazon admits that it generally maintains electronic records to track products, including products belonging to third-party sellers, at Amazon warehouses and facilities, and that this tracking facilitates the third-party logistics services that Amazon provides through its FBA logistics service. Amazon otherwise denies the allegations in this Paragraph.

13. Amazon admits that (i) Amazon fulfills orders placed by customers for products sold by third-party sellers on Amazon.com, (ii) multiple products ordered by a customer from different third-party sellers may be combined in one shipment to that customer, and (iii) Amazon employees and equipment may be used to fulfill orders for products sold by third-party sellers. The allegation in this Paragraph that Amazon.com is an "online marketplace" for "FBA products" (*i.e.*, third-party sellers' products) is a legal conclusion to which no response is required. To the extent a response is required, Amazon denies this allegation to the extent it implies that Amazon is a "distributor" of third-party sellers' products within the meaning of the CPSA. Amazon otherwise denies the allegations in this Paragraph.

14. Amazon admits that its contracts with third-party sellers (merchants) participating in the FBA logistics service provide that the third-party sellers retain legal

title to their products even while the products are stored, sorted, and delivered to customers from Amazon's facilities. Amazon admits that some customer returns of third-party sellers' goods are shipped to Amazon for processing, and thereafter may be returned to the third-party seller, handled by Amazon in accordance with the third-party seller's instructions, or transferred by the third-party seller to Amazon for later sale through the "Amazon Warehouse" program. Amazon is without sufficient knowledge or information to form a belief as to the truth of the remainder of the allegations in this Paragraph, and therefore denies the allegations.

15. The allegation in this Paragraph that Amazon.com is an "online marketplace" for "FBA products" (*i.e.*, third-party sellers' products) is a characterization and legal conclusion to which no response is required. To the extent a response is required, Amazon denies this allegation to the extent it implies that Amazon is a "distributor" of third-party sellers' products within the meaning of the CPSA. Amazon also states that the contracts governing the FBA logistics service speak for themselves. Amazon otherwise denies the allegations in this Paragraph.

16. Amazon admits that third-party sellers pay Amazon fees for FBA logistics services rendered. Amazon further states that the relevant fee information is at the "FBA features, services, and fees" page at Amazon.com's SellerCentral (<https://sellercentral.amazon.com/gp/help/external/201074400>) and that such information speaks for itself. Amazon otherwise denies the allegations.

17. Amazon admits that it has a Fair Pricing Policy, admits the accuracy of the excerpted quotation, and states that the Fair Pricing Policy speaks for itself. The remaining allegations in this Paragraph, such as the allegation that Amazon's Fair Pricing Policy "polices the prices charged by merchants," are vague characterizations to which no

response is necessary. To the extent a response is required, Amazon denies the allegations in this Paragraph.

18. This Paragraph's allegation regarding what "consumers . . . may reasonably believe" states a legal conclusion to which no response is required. To the extent a response is required, Amazon denies that "consumers who purchase products on amazon.com may reasonably believe they are purchasing the products from Amazon," denies that the "Sold by [merchant]" identifier is "in small print," states that Paragraph 16 of the "Conditions of Use" speaks for itself, and otherwise denies the allegations in this Paragraph.

19. This Paragraph states legal conclusions to which no response is required. To the extent a response is required, Amazon denies the allegations in this Paragraph.

V. "THE CONSUMER PRODUCTS"

20. Amazon admits that certain children's sleepwear garments were sold by third-party sellers, and the orders were fulfilled by Amazon. Amazon otherwise denies the allegations in this Paragraph.

21. Amazon admits that children's sleepwear garments corresponding to the ASINs identified in this Paragraph were sold by third-party sellers, and that orders for those children's sleepwear garments were fulfilled by Amazon. Amazon is without sufficient knowledge or information to form a belief as to the truth of the allegations in this Paragraph related to "CPSC Sample Numbers," and therefore denies the allegations. Amazon otherwise denies the allegations in this Paragraph.

22. This Paragraph states legal conclusions to which no response is required. To the extent a response is required, Amazon admits that the children's sleepwear garments are consumer products, denies that Amazon was the distributor or seller of the

children's sleepwear garments, denies that Amazon "distributed in U.S. commerce" or "offered for sale" the children's sleepwear garments, and otherwise denies the allegations in this Paragraph.

23. Amazon is without sufficient knowledge or information to form a belief as to the truth of the allegations in this Paragraph, and therefore denies the allegations. Amazon further states that the Flammable Fabrics Act ("FFA") and its implementing regulations speak for themselves.

24. Amazon admits that the four entities identified in this Paragraph sold the children's sleepwear garments. Amazon is without sufficient knowledge or information to form a belief as to the truth of the allegation that each third-party seller of the children's sleepwear garments was also the manufacturer of the children's sleepwear garments, and therefore denies the allegation. Amazon otherwise denies the allegations in this Paragraph.

25. Amazon denies that Amazon "made . . . available for purchase," or "offered for sale," the children's sleepwear garments "through Amazon's FBA program." Amazon admits that the third-party sellers offered and sold children's sleepwear garments on Amazon.com. Amazon states that third-party sellers elected to have Amazon fulfill orders for the identified children's sleepwear garments between June 2019 to February 2020. Amazon otherwise denies the allegations in this Paragraph.

26. Amazon admits that third-party sellers sold the children's sleepwear garments at approximately the prices alleged in this Paragraph and that orders for these products were fulfilled by Amazon. Amazon otherwise denies the allegations in this Paragraph.

27. Admitted.

28. Amazon states that it removed the ASINs for the products referenced on the following dates: January 29, 2020 (Taiycyxgan), March 31, 2020 (Home Swee), February 20, 2020 (IDGIRLS), and March 12, 2020 (HOYMN). Amazon otherwise denies the allegations in this Paragraph.

29. Amazon admits that third-party sellers sold certain carbon monoxide (“CO”) detectors equipped with alarms intended to alert consumers to the presence of harmful CO gas, and that the third-party sellers elected to have Amazon provide FBA logistics services to store and deliver the CO detectors sold by the third-party sellers. Amazon otherwise denies the allegations in this Paragraph.

30. Amazon admits that the CO detectors corresponding to the identified ASINs were sold by third-party sellers and that the third-party sellers elected to have Amazon provide FBA logistics services to store and deliver the CO detectors sold by the third-party sellers. Amazon is without sufficient knowledge or information to form a belief as to the truth of the allegations in this Paragraph related to CPSC file numbers or sample numbers, and therefore denies the allegations. Amazon otherwise denies the allegations in this Paragraph.

31. This Paragraph states legal conclusions to which no response is required. To the extent a response is required, Amazon admits that the CO detectors are consumer products, admits that the third-party sellers “distributed in U.S. commerce” or “offered for sale” the CO detectors, and otherwise denies the allegations in this Paragraph.

32. Amazon is without sufficient knowledge or information to form a belief as to the truth of the allegations in this Paragraph, and therefore denies the allegations.

33. Amazon is without sufficient knowledge or information to form a belief as to the truth of the allegations in this Paragraph, and therefore denies the allegations.

34. Amazon denies that Amazon “made . . . available for purchase,” or “offered for sale,” the CO detectors “through Amazon’s FBA program.” Amazon admits that third-party sellers offered and sold the CO detectors on Amazon.com. Amazon states that third-party sellers elected to have Amazon provide FBA logistics services to store and deliver the CO detectors sold by the third-party sellers, with fulfillment of certain of those orders between July 2019 and August 2020. Amazon otherwise denies the allegations in this Paragraph in this Paragraph.

35. Amazon admits that the identified third-party sellers sold the CO detectors at approximately the prices alleged in this Paragraph and that the third-party sellers elected to have Amazon provide FBA logistics services to store and deliver the CO detectors sold by the third-party sellers. Amazon denies that “Amazon listed the carbon monoxide detector for sale through its FBA program” and otherwise denies the allegations in this Paragraph.

36. Amazon admits that approximately 23,422 units of the CO detectors were sold by third-party sellers on Amazon.com, admits that approximately 28 units of CO detectors (two B07BDJTX8W units, ten B07C2KM8RB units, two B07HK8JHDV units, and fourteen B07MPP42GT units) were sold by Amazon through its “Amazon Warehouse” program, and otherwise denies the allegations in this Paragraph.

37. Amazon admits that it removed the ASINs of the identified products on or about the dates identified in the Paragraph.

38. Amazon admits that third-party sellers sold certain hair dryers. Amazon is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in this Paragraph, and therefore denies the allegations.

39. Amazon admits that third-party sellers sold the hair dryers

corresponding to the identified ASINs, and that orders for the hair dryers were, at certain points in time, fulfilled by Amazon. Amazon is without sufficient knowledge or information to form a belief as to the truth of the allegations in this Paragraph related to CPSC sample numbers, and therefore denies the allegations. Amazon otherwise denies the allegations in this Paragraph.

40. This Paragraph states legal conclusions to which no response is required. To the extent a response is required, Amazon admits that the hair dryers are consumer products, admits that third-party sellers distributed in U.S. commerce and offered for sale the hair dryers, and otherwise denies the allegations in this Paragraph.

41. Amazon is without sufficient knowledge or information to form a belief as to the truth of the allegations in this Paragraph, and therefore denies the allegations. Amazon further states that the UL 859 and UL 1727 standards speak for themselves.

42. Amazon is without sufficient knowledge or information to form a belief as to the truth of the allegations in this Paragraph, and therefore denies the allegations.

43. Amazon denies that Amazon “made . . . available for purchase,” or “offered for sale,” the hair dryers “through Amazon’s FBA program.” Amazon admits that third-party sellers offered and sold the hair dryers on Amazon.com. Amazon states that third-party sellers elected to have Amazon fulfill certain of those orders between June 10, 2019, and March 9, 2021. Amazon otherwise denies the allegations in this Paragraph.

44. Amazon admits that the identified third-party sellers sold the hair dryers at approximately the prices alleged in this Paragraph and that orders for the hair dryers were fulfilled by Amazon. Amazon denies that “Amazon listed the hair dryers for sale through its FBA program” and otherwise denies the allegations in this Paragraph.

45. Amazon admits that approximately 395,020 units of the hair detectors

were sold by third-party sellers on Amazon.com, admits that approximately 4 units of the B07V5WV28 hair dryer were sold by Amazon through the “Amazon Warehouse” program, and otherwise denies the allegations in this Paragraph.

46. Amazon admits that it removed the ASINs of the identified products by March 2, 2021.

VI. “AMAZON’S UNILATERAL ACTIONS RELATING TO THE CONSUMER PRODUCTS ARE INSUFFICIENT”

47. The allegation that Amazon’s actions were “unilateral” is a characterization and legal conclusion to which no response is required. To the extent that a response is required, Amazon states that it took affirmative actions to protect customers after receiving notifications from the CPSC regarding the Subject Products, including (i) removing the ASINs of the Subject Products, (ii) sending a message to customers to inform them about possible issues with the Subject Products, (iii) instructing customers not to use the Subject Products, and (iv) providing full refunds. Amazon states that Amazon had no obligation to wait for CPSC approval before sending notifications and refunds to customers. Amazon states that the CPSC has refused to provide, in response to requests from Amazon, all the relevant facts and information necessary to determine whether any Subject Product presents or presented a “hazard” and therefore Amazon lacks a basis to admit or deny the allegation that the CPSC provided Amazon “notification . . . about the hazards presented by” the Subject Products. Amazon otherwise denies the allegations in this Paragraph.

48. Admitted.

49. The allegation that Amazon’s actions were “unilateral” is a characterization and legal conclusion to which no response is required. To the extent that

a response is required, Amazon states that it took affirmative actions to protect customers after receiving notifications from the CPSC, including notifying customers who purchased the Subject Products to inform them about the potential issues with the Subject Products and offering a refund to customers in the form of an Amazon gift card credited to their accounts. Amazon states that Amazon had no obligation to wait for CPSC approval before sending notifications and refunds to customers. Amazon otherwise denies the allegations in this Paragraph.

50. This Paragraph states legal conclusions to which no response is required. To the extent a response is required, Amazon denies the allegations.

51. This Paragraph states legal conclusions to which no response is required. To the extent a response is required, Amazon denies that it is a “distributor” of products sold by third-party sellers, denies that “a Section 15 order requiring Amazon to take additional actions in conjunction with the CPSC is necessary for public safety,” and otherwise denies the allegations in this Paragraph.

VII. “THE CHILDREN’S SLEEPWEAR GARMENTS VIOLATE THE FFA BECAUSE THEY DO NOT MEET FLAMMABILITY REQUIREMENTS”

52. This Paragraph states legal conclusions to which no response is required. To the extent a response is required, Amazon admits that the FFA was enacted in 1953, states that the FFA and its legislative history speak for themselves, states that Amazon is without sufficient knowledge or information to form a belief as to the allegation regarding the intent of Congress, and otherwise denies the allegations in this Paragraph.

53. Amazon is without sufficient knowledge or information to form a belief as to the truth of the allegations in this Paragraph, and therefore denies the allegations. In addition, this Paragraph states legal conclusions to which no response is required.

Amazon further states that the Standards for the Flammability of Children’s Sleepwear (“Standards”), 16 C.F.R. parts 1615 and 166, speak for themselves.

54. Amazon is without sufficient knowledge or information to form a belief as to the truth of the allegations in this Paragraph, and therefore denies the allegations.

55. This Paragraph states legal conclusions to which no response is required. To the extent a response is required, Amazon states that 16 C.F.R. §§ 1615.3(b) and 1616.3(b) speak for themselves and otherwise denies the allegations in this Paragraph.

56. This Paragraph states legal conclusions to which no response is required. To the extent a response is required, Amazon states that the FFA, 15 U.S.C. §§ 1191-1204, speaks for itself and otherwise denies the allegations in this Paragraph.

57. This Paragraph states legal conclusions to which no response is required. To the extent a response is required, Amazon states that the 16 C.F.R. §§ 1615.64(a)(2) and 1616.65(a)(2) speak for themselves, and otherwise denies the allegations in this Paragraph.

58. This Paragraph states legal conclusions to which no response is required. To the extent a response is required, Amazon states that it is without sufficient knowledge or information to form a belief as to CPSC staff’s evaluation and determination, and therefore denies the allegations in this Paragraph.

59. Amazon is without sufficient knowledge or information to form a belief as to the truth of the allegations in this Paragraph, and therefore denies the allegations.

60. Amazon states that the CPSC has refused to provide, in response to requests from Amazon, all the relevant facts and information necessary to determine whether the children’s sleepwear garments failed to meet the flammability requirements for children’s sleepwear garments. In addition, this Paragraph states legal conclusions to

which no response is required.

61. Amazon is without sufficient knowledge or information to form a belief as to the truth of the hypothetical allegations in this Paragraph about what “can occur” under certain circumstances, and therefore denies the allegations. In addition, this Paragraph states legal conclusions to which no response is required.

VIII. “THE CARBON MONOXIDE DETECTORS ARE DEFECTIVE BECAUSE THEY FAIL TO ALARM”

62. Admitted.

63. Amazon admits that a CO detector that does not detect CO will not provide an alert to the presence of CO. Amazon is without sufficient knowledge or information to form a belief as to the truth of the hypothetical allegations of the remainder of the allegations in this Paragraph, and therefore denies the allegations.

64. Admitted.

65. Amazon is without sufficient knowledge or information to form a belief as to the truth of the allegations in this Paragraph, and therefore denies the allegations.

66. Amazon is without sufficient knowledge or information to form a belief as to the truth of the allegations in this Paragraph, and therefore denies the allegations.

67. Amazon states that the CPSC has refused to provide, in response to requests from Amazon, all the relevant facts and information necessary to determine whether the CO detectors failed to properly detect or alarm, and therefore Amazon lacks a basis to admit or deny the allegation. In addition, this Paragraph’s allegation regarding what “consumers would reasonably expect” states a legal conclusion to which no response is required.

68. Amazon states that the CPSC has refused to provide, in response to

requests from Amazon, all the relevant facts and information necessary to determine whether each of the CO detectors are “defective” and therefore Amazon lacks a basis to admit or deny the allegation. In addition, the Paragraph’s allegation that the CO detectors “are defective” states a legal conclusion to which no response is required.

69. Amazon states that the CPSC has refused to provide, in response to requests from Amazon, all the relevant facts and information necessary to determine whether each of the CO detectors are “defective” or “create a substantial risk of injury to consumers” under 15 U.S.C. § 2064(a)(2) and therefore Amazon lacks a basis to admit or deny the allegation. In addition, the Paragraph’s characterization of the CO detectors as “defective” and the reference to “substantial risk of injury” state legal conclusions to which no response is required.

IX. “THE HAIR DRYERS VIOLATE SECTION 15(J) BECAUSE THEY DO NOT HAVE IMMERSION PROTECTION”

70. This Paragraph states legal conclusions to which no response is required. To the extent a response is required, Amazon states that UL 859, UL 1727, 15 U.S.C. §§ 2064(a) and (j), 16 C.F.R. § 1120.3, and related *Federal Register* entries speak for themselves, and otherwise denies the allegations in this Paragraph.

71. Amazon is without sufficient knowledge or information to form a belief as to the truth of the allegations in this Paragraph, and therefore denies the allegations. Amazon further states that the text and history of the Integral Immersion Protection Rule speak for themselves.

72. Amazon is without sufficient knowledge or information to form a belief as to the truth of the allegations in this Paragraph, and therefore denies the allegations.

73. Amazon states that the CPSC has refused to provide, in response to

requests from Amazon, all the relevant facts and information necessary to determine whether each of the hair dryers presents “a significant electric shock and electrocution hazard to users,” and therefore Amazon lacks a basis to admit or deny the allegation. In addition, this Paragraph states legal conclusions to which no response is required.

74. This Paragraph states legal conclusions to which no response is required. To the extent a response is required, Amazon states that the CPSC has refused to provide, in response to requests from Amazon, all the relevant facts and information necessary to determine whether each of the hair dryers present a “substantial product hazard” under 15 U.S.C. § 2064(a)(2).

X. “LEGAL AUTHORITY”

75. This Paragraph states legal conclusions to which no response is required. Amazon further states that 15 U.S.C. §§ 2064(c) and (d) speak for themselves. To the extent a response is required, Amazon denies the allegations in this Paragraph.

76. This Paragraph states legal conclusions to which no response is required. Amazon further states that 15 U.S.C. § 2064(a)(1) speaks for itself. To the extent a response is required, Amazon denies the allegations in this Paragraph.

77. This Paragraph states legal conclusions to which no response is required. Amazon further states that 15 U.S.C. § 2064(j)(1) speaks for itself. To the extent a response is required, Amazon denies the allegations in this Paragraph.

78. This Paragraph states legal conclusions to which no response is required. Amazon further states that UL 859 (10th edition), UL 1727 (4th edition), and 15 U.S.C. § 2064(j)(1) speak for themselves. To the extent a response is required, Amazon denies the allegations in this Paragraph.

79. This Paragraph states legal conclusions to which no response is required.

Amazon further states that 15 U.S.C. § 2064(a)(1) speaks for itself. To the extent a response is required, Amazon denies the allegations in this Paragraph.

80. This Paragraph states legal conclusions to which no response is required. Amazon further states that 15 U.S.C. § 2064(a)(2) speaks for itself. To the extent a response is required, Amazon denies the allegations in this Paragraph.

81. This Paragraph states legal conclusions to which no response is required. Amazon further states that 16 C.F.R. § 1115.4 speaks for itself. To the extent a response is required, Amazon denies the allegations in this Paragraph.

82. This Paragraph states legal conclusions to which no response is required. Amazon further states that 15 U.S.C. § 2064(b) speaks for itself. To the extent a response is required, Amazon denies the allegations in this Paragraph.

83. This Paragraph states legal conclusions to which no response is required. Amazon further states that 16 C.F.R. § 1115.13(d) speaks for itself. To the extent a response is required, Amazon denies the allegations in this Paragraph.

Count I: “The Children’s Sleepwear Garments are a Substantial Product Hazard Because They Violate the FFA and Create a Substantial Risk of Injury to Children”

84. Amazon repeats and restates its answers, denials, and defenses to Paragraphs 1 through 83 and incorporates each by reference as if fully set forth herein.

85. Denied.

86. Amazon is without sufficient knowledge or information to form a belief as to the truth of the allegations in this Paragraph, and therefore denies the allegations. In addition, this Paragraph states legal conclusions to which no response is required.

87. Amazon is without sufficient knowledge or information to form a belief as to the truth of the allegations in this Paragraph, and therefore denies the allegations.

In addition, this Paragraph states legal conclusions to which no response is required.

88. This Paragraph states legal conclusions to which no response is required. To the extent a response is required, Amazon is without sufficient knowledge or information to form a belief as to the truth of the allegations in this Paragraph, and therefore denies the allegations.

Count II: “The Carbon Monoxide Detectors are a Substantial Product Hazard Because They Contain a Product Defect that Creates a Substantial Risk of Injury to the Public”

89. Amazon repeats and restates its answers, denials, and defenses to Paragraphs 1 through 88 and incorporates each by reference as if fully set forth herein.

90. Denied.

91. Amazon is without sufficient knowledge or information to form a belief as to the truth of the allegations in this Paragraph, and therefore denies the allegations.

92. Amazon is without sufficient knowledge or information to form a belief as to the truth of the allegations in this Paragraph, and therefore denies the allegations. In addition, this Paragraph’s reference to a “defect that creates a substantial risk of injury to the public” states legal conclusions to which no response is required.

93. This Paragraph states legal conclusions to which no response is required. To the extent a response is required, Amazon is without sufficient knowledge or information to form a belief as to the truth of the allegations in this Paragraph, and therefore denies the allegations.

Count III: “The Hair Dryers are a Substantial Product Hazard Because They Violate Section 15(j)(1) Due to the Lack of Immersion Protection”

94. Amazon repeats and restates its answers, denials, and defenses to Paragraphs 1 through 93 and incorporates each by reference as if fully set forth herein.

95. Denied.

96. Amazon is without sufficient knowledge or information to form a belief as to the truth of the allegations in this Paragraph, and therefore denies the allegations. In addition, this Paragraph states legal conclusions to which no response is required.

97. Amazon is without sufficient knowledge or information to form a belief as to the truth of the allegations in this Paragraph, and therefore denies the allegations. In addition, this Paragraph states legal conclusions to which no response is required.

98. Amazon is without sufficient knowledge or information to form a belief as to the truth of the allegations in this Paragraph, and therefore denies the allegations. In addition, this Paragraph states legal conclusions to which no response is required.

XI. “RELIEF SOUGHT”

Amazon denies that CPSC is entitled to any relief, including the “Relief Sought” set forth in Paragraphs 1 through 7, inclusive of subparts.

ADDITIONAL AND AFFIRMATIVE DEFENSES

By asserting the matters set forth below, Amazon does not concede or admit that it has the burden of proof or burden of persuasion with respect to any of these matters:

1. The Complaint fails to state a claim upon which relief can be granted, or upon which relief can be granted against Amazon.

2. The Commission lacks jurisdiction over Amazon with respect to the Subject Products.

3. Amazon is not a seller, manufacturer, distributor, or retailer of the Subject Products, except for approximately 28 units of CO detectors and approximately 4 units of hair dryers sold by Amazon through the “Amazon Warehouse” program. With respect to all other Subject Products, Amazon was not the manufacturer, distributor, or seller, and Amazon provided only logistics services to the third-party sellers through the FBA logistics service. Therefore, no order with respect to such products can be entered against Amazon pursuant to 15 U.S.C. § 2064(c), (d), or (e), and Amazon is not a proper respondent to a 15 U.S.C. § 2064(f) proceeding with respect to such products.

4. The Complaint’s novel interpretation of the term “distributor,” which was asserted without prior notice, an opportunity to comment, or other requisite process, violates the Administrative Procedure Act, the Due Process Clause of the Fifth Amendment to the United States Constitution, and the rulemaking provisions of the CPSA, FFA, and other statutes enforced by the CPSC.

5. This proceeding violates the Due Process Clause of the Fifth Amendment to the United States Constitution because no Presiding Officer has yet been appointed or duly assigned.

6. This proceeding is constitutionally and equitably moot.

7. The Complaint’s request that the Commission issue an order directing Amazon to “take” unspecified “other and further actions as the Commission deems necessary to protect the public health and safety and to comply with the CPSA and FFA” is vague and indefinite, and the Commission lacks jurisdiction and other statutory and regulatory authority to issue such an order.

8. The Complaint’s request that the Commission issue an order “[d]etermin[ing] that Amazon is a distributor of consumer products in commerce” is

unlawful and in excess of statutory authority, since it is not tied specifically to any Subject Product and the Complaint does not identify the specific consumer product(s) as to which it is seeking such a determination.

9. The Presiding Officer for this proceeding must be an “Officer of the United States” appointed in accordance with the Appointments Clause of the U.S. Constitution. The Commission’s procedures for appointing a Presiding Officer are not consistent with the constitutional requirements for appointments of “Officers of the United States.”

10. The Commission order that purportedly initiated proceedings in this matter is invalid because the composition of the Commission—specifically the fixed-term requirement and political-party affiliation limitation of 15 U.S.C. §§ 2053(b) and (c)—unconstitutionally violates the separation of powers by infringing upon the President’s executive power, including but not limited to the Appointments Clause power to appoint and remove Officers of the United States.

11. The claims included in the Complaint and the relief requested in the Complaint are barred, in whole or in part, by the statute of limitations.

12. The claims included in the Complaint and the relief requested in the Complaint are barred, in whole or in part, by the doctrines of reliance, estoppel, waiver, or laches.

13. The Complaint fails to identify a “defect” as to some or all of the Subject Products within the meaning of 15 U.S.C. §§ 2064(a)(2) and (b)(3), and 16 C.F.R. § 1115.4.

14. The Complaint fails to identify a “substantial product hazard” as to some or all of the Subject Products within the meaning of 15 U.S.C. §§ 2064(a)(2) and (b)(3), and 16 C.F.R. § 1115.4.

15. The Complaint fails to identify a “substantial risk of injury to the public” as to some or all of the Subject Products within the meaning of 15 U.S.C. §§ 2064(a)(2) and (b)(3).

16. The Complaint fails to identify an “unreasonable risk of serious injury or death” as to some or all of the Subject Products within the meaning of 15 U.S.C. § 2064(b)(4) and 16 C.F.R. § 1115.6.

17. The Complaint fails to identify a risk of injury that outweighs the utility to a consumer of the Subject Products.

18. Amazon reserves the right to amend this Answer to add additional defenses if they become apparent from further discovery or otherwise.

WHEREFORE, Amazon requests the entry of an Order:

- A. Dismissing this proceeding;
- B. Declaring that Amazon, by providing FBA logistics services to third-party sellers as to certain products, does not become a “manufacturer,” “importer,” “distributor,” or “retailer” of such products within the meaning of the CPSA, the FFA, or any other applicable statutes;
- C. Awarding Amazon its reasonable costs and expenses, including but not limited to attorneys’ fees and expert fees; and
- D. Granting to Amazon such other and further relief as may be justified.

Dated: August 3, 2021

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on August 3, 2021, a true and correct copy of the foregoing Answer was served by U.S. Mail, first-class and postage prepaid, on the Secretary of the U.S. Consumer Product Safety Commission, and all parties and participants of record in these proceeding in the following manner:

Original and three copies by U.S. Mail, first-class and postage prepaid, and one copy by electronic mail, to the Secretary of the U.S. Consumer Product Safety Commission, Alberta Mills:

Alberta Mills
Secretary
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814
301-504-7479
amills@cpsc.gov

As no Presiding Officer has been appointed as of this date, one copy by U.S. Mail, first-class and postage prepaid, to the Presiding Officer in the care of Secretary Mills at the above address.

One copy by electronic mail to:

Robert Kaye
Assistant Executive Director
Office of Compliance and Field Operations
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814
rkaye@cpsc.gov

One copy by U.S. Mail, first-class and postage prepaid, and one copy by electronic mail to Complaint Counsel:

Mary B. Murphy, Director
Howard N. Tarnoff, Deputy Director
John C. Eustice, Senior Trial Attorney

Liana G.T. Wolf, Trial Attorney
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A handwritten signature in cursive script that reads "Sarah Wilson". The signature is written in black ink and is positioned above a horizontal line.

Sarah L. Wilson