

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

In the Matter of Amazon.com, Inc.,

Respondent.

CPSC Docket No. 21-2

Hon. James E. Grimes
Presiding Officer

**AMAZON’S RESPONSE TO COMPLAINT COUNSEL’S STATEMENT OF
UNDISPUTED MATERIAL FACTS AND AMAZON’S STATEMENT OF
UNDISPUTED MATERIAL FACTS**

Respondent Amazon.com, Inc. (“Amazon”) hereby responds to Complaint Counsel’s Statement of Undisputed Material Facts (Doc. No. 10) and provides Amazon’s Statement of Undisputed Material Facts.

**AMAZON’S RESPONSE TO COMPLAINT COUNSEL’S STATEMENT OF
UNDISPUTED MATERIAL FACTS**

Amazon hereby responds to Complaint Counsel’s Statement of Undisputed Material Facts as set forth below.

By responding to a statement, or by indicating that a statement is undisputed, Amazon does not concede that such statement is relevant or material to (1) the issues presented in Amazon’s motion to dismiss, or, in the alternative, for summary decision or (2) the legal issues presented in Complaint Counsel’s motion for partial summary decision. A fact is “material” only if it “might affect the outcome of the suit under the governing law.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

I. AMAZON’S “FULFILLMENT BY AMAZON” PROGRAM

1. Amazon operates Amazon.com, “a website on which third-party sellers can list and sell consumer products.” Respondent Amazon.com, Inc.’s Answer to Complaint (hereinafter, “Answer”) at ¶ 7.

RESPONSE: Undisputed.

2. Amazon offers a Fulfillment by Amazon (“FBA”) program through which third parties sell products on Amazon.com. Answer at ¶ 1. When third-party sellers elect to pay Amazon for its FBA services, Amazon “stores products and delivers [them] to customers” for those third-party sellers. *Id.* at ¶ 10.1.

RESPONSE: Undisputed.

3. Amazon also sells “consumer products on Amazon.com as a retailer.” Answer at ¶ 10. In addition, Amazon contracts with third-party sellers in its Merchant Fulfilled Network (“MFN”) to offer products for sale on Amazon.com for which the third-party sellers “elect to store products and fulfill orders on their own.” *Id.*

RESPONSE: Undisputed, with the clarification that Amazon did not sell any of the Third-Party Products identified in the Complaint as a retailer except for the 32 units identified in the Response to Statement No. 4 below.

4. The Subject Products listed in the Complaint – comprised of the children’s sleepwear garments, carbon monoxide detectors, and hair dryers defined in the Complaint at ¶ 47 and discussed throughout Section V – “were sold by third-party sellers on Amazon.com and the orders for the Subject Products were fulfilled by Amazon” through its’ FBA program, “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.” Answer at ¶ 1.

RESPONSE: Undisputed, with the clarification that the “limited number of units of Subject Products” sold through the Amazon Warehouse program consisted of approximately 28 CO detectors and 4 hair dryers.

5. Participation in Amazon’s FBA program “is governed by a Business Services Agreement and other policies.” Answer at ¶ 9. Products on Amazon.com are assigned Amazon Standard Identification Numbers (“ASINs”). *Id.*

RESPONSE: Undisputed, with the clarification that ASINs are computer-generated once a third-party seller posts a product offering on Amazon.com.

6. Through its Business Services Agreement (“BSA”), titled “Business Solutions Agreement” in its sellercentral portal, Amazon requires that third-party sellers represent and warrant to Amazon that they have “all necessary rights to distribute” the products that they list on Amazon.com. See Amazon Services Business Solutions Agreement at Provision F-15 Additional Representation (https://sellercentral.amazon.com/gp/help/external/help.html?itemID=1791&language=en_US&ref=efph_1791_cont_SNV3657R94YP9DZ).

RESPONSE: Undisputed that Section F-15 of the Fulfillment By Amazon Service Terms states in relevant part: “In addition to your representations and warranties in Section 5 of the General Terms of this Agreement, you represent and warrant to us that: (a) you have valid legal title to all Units and all necessary rights to distribute the Units and to perform under these FBA Service Terms.” Undisputed that the Business Solutions Agreement (which applies to the Fulfillment By Amazon Service Term) defines the term “you” as “the applicant (if registering for or using a Service as an individual), or the business employing the applicant (if registering for or using a Service as a business) and any of its

Affiliates.” Declaration of Diane Ramirez (“Ramirez Decl.”), ¶ 4, Ex. A. Otherwise disputed to the extent this statement contravenes any of the above-cited provisions of the FBA Service Terms. *Id.*

7. Through Amazon’s FBA program, however, the third-party seller does not send their products to customers who order them through Amazon.com. Answer at ¶ 11. Instead, the third-party sellers send their products to Amazon. *Id.*

RESPONSE: Undisputed with the clarification that the third-party seller does not send their products directly to customers who order them through Amazon.com. Undisputed that the third-party sellers send their products to Amazon, with the clarification that (a) third-party sellers retain title to, and ownership of, the third-party products while they are in Amazon’s possession; (b) the shipment and receipt of third-party products from third-party sellers to Amazon is for the provision of FBA logistics services and not for sale or distribution by Amazon.

8. Amazon provides services to third-party sellers through its FBA program, 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.” Answer at ¶ 11.

RESPONSE: Undisputed.

9. Amazon has also, at times, “provided certain labeling services to some third-party sellers for some products for which Amazon fulfills orders through the FBA” program. Answer at ¶ 11.

RESPONSE: Undisputed.

10. Amazon “generally maintains electronic records to track products, including products belonging to third-party sellers, at Amazon warehouses and facilities.” Answer at ¶ 12. This tracking facilitates Amazon’s provision of services through its FBA program. *Id.*

RESPONSE: Undisputed, with the clarification that the “Amazon’s provision of services through its FBA program” means logistics services.

11. After receiving and storing third-party sellers’ products, Amazon “fulfills orders placed by customers for products sold by third-party sellers on Amazon.com.” Answer at ¶ 13.

RESPONSE: Undisputed.

12. When fulfilling orders, “multiple products ordered by a customer from different third-party sellers may be combined in one shipment to that customer.” Answer

at ¶ 13.

RESPONSE: Undisputed.

13. Amazon “employees and equipment may be used to fulfill orders for products sold by third-party sellers.” Answer at ¶ 13.

RESPONSE: Undisputed.

14. Amazon provides 24/7 customer service as part of its FBA program. See Amazon.com’s Seller Central web page cited at Answer ¶ 16 (<https://sellercentral.amazon.com/gp/help/external/201074400>). Specifically, Amazon promises to its third-party sellers that “[i]f there are any issues, Amazon’s top-rated customer service staff is standing by 24/7 to support all FBA orders.” *Id.* at Customer service for FBA orders, Customer Experience for Products Fulfilled by Amazon (https://sellercentral.amazon.com/gp/help/external/help.html?itemID=201229050&language=en_US&ref=efph_201229050_cont_200298130); see also Amazon Services BSA at Provision F-8.2 (“We will be responsible for all customer service issues relating to packaging, handling and shipment, and customer returns, refunds, and adjustments related to Amazon Fulfillment Units. We will determine whether a customer will receive a refund, adjustment or replacement for any Amazon Fulfillment Unit and we will require you to reimburse us where we determine you have responsibility in accordance with the Agreement (including these FBA Service Terms and the Program Policies).” (https://sellercentral.amazon.com/gp/help/external/help.html?itemID=1791&language=en_US&ref=efph_1791_cont_SNV3657R94YP9DZ)).

RESPONSE: Undisputed, with the clarification that Section F-8.2 is part of the FBA Service Terms and not the Amazon Services Business Solutions Agreement.

15. To the extent that third-party sellers need to communicate with customers regarding orders on Amazon.com, they must do so exclusively through the Amazon platform. See Amazon.com’s Seller Central web page cited at Answer ¶ 16 (<https://sellercentral.amazon.com/gp/help/external/201074400>). “For FBA orders, the Buyer-Seller Messages service is for product inquiries only. Any customer service inquiries should be directed to Amazon customer service.” *Id.* at How Amazon handles FBA returns, refunds, and inquiries (https://sellercentral.amazon.com/gp/help/external/200298130?language=en_US&ref=efph_200298130_cont_201074400).

RESPONSE: Undisputed that the linked SellerCentral policies are correct and apply to the FBA program. Undisputed that the linked SellerCentral policies speak for themselves. Disputed to the extent that the first sentence in the statement contravenes any of the above-cited provisions.

16. 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.” Answer at ¶ 14.

RESPONSE: Undisputed.

17. Amazon is the seller or retailer for sales of products through its Amazon Warehouse program. See Answer, Additional and Affirmative Defenses ¶ 3. Accordingly, Amazon has the contractual authority to receive a product through a customer return, handle the product, and sell it on Amazon.com as the seller or retailer. See Amazon Services BSA at Provision F-9.3 (“We may as appropriate keep part of or all proceeds of any Units that we are entitled to dispose of pursuant to F-7 above, or to which title transfers, including returned, damaged, or abandoned Units. You will have no security interest, lien, or other claim to the proceeds that we receive in connection with the sale, fulfillment, and/or shipment of these Units.”) (https://sellercentral.amazon.com/gp/help/external/help.html?itemID=1791&language=en_US&ref=efph_1791_cont_SNV3657R94YP9DZ).

RESPONSE: Undisputed that Amazon is the seller or retailer for sales of products through its Amazon Warehouse program. Disputed that Amazon generally has contractual authority to receive a third-party product through a customer return and then “sell it on Amazon.com as the seller or retailer.” The BSA and other governing documents, such as Section F-9.3 of the Fulfillment By Amazon Service Terms, set forth the specific circumstances under which Amazon may do so. Ramirez Decl., ¶ 4, Ex. A.

18. Third-party sellers pay Amazon fees for the services Amazon provides through its FBA program. Answer at ¶ 16.

RESPONSE: Undisputed.

19. Amazon’s “FBA fulfillment fee” information provided via link in its Answer lists at least 6 different categories of fees that may be charged through Amazon’s FBA program. Amazon.com’s Seller Central web page cited at Answer ¶ 16 (<https://sellercentral.amazon.com/gp/help/external/201074400>). These fee categories include Fulfillment fees for FBA orders, Monthly inventory storage fees, Long-term storage fees, Removal order fees, Returns processing fees, and Unplanned service fees. *Id.*

RESPONSE: Undisputed.

20. Amazon processes customer payments, charging the payment instrument designated in the customer’s account, and remits the agreed-upon monies to the third-party seller minus the FBA program fees set forth in the applicable

contract. See Amazon Services BSA at Provisions P-1 (“you authorize Amazon Payments, Inc. to act as your agent for purposes of processing payments, refunds and adjustments for Your Transactions, receiving and holding Sales Proceeds on your behalf”) and P-2 (“the applicable Amazon Payments Agents will remit funds to you in accordance with Section S-5 of the Agreement and these Transaction Processing Service Terms”) (https://sellercentral.amazon.com/gp/help/external/help.html?itemID=1791&language=en_US&ref=efph_1791_cont_SNV3657R94YP9DZ).

RESPONSE: Undisputed.

21. Amazon also applies a Fair Pricing Policy to prices charged by third-party sellers using its FBA program, and that Policy allows Amazon to take action against third-party sellers whose pricing practices may harm customer trust. “Pricing practices that harm customer trust include, but are not limited to: . . . setting a price on a product or service [on amazon.com] that is significantly higher than recent prices offered on or off Amazon.” Answer at ¶ 17 (admitting the accuracy of the quotation in Complaint ¶ 17).

RESPONSE: Undisputed.

22. Amazon has the contractual authority to force third-party sellers to notify Amazon of any safety alerts, recalls, or potential recalls of its products. See Amazon Services BSA at Provision F-7.4 (https://sellercentral.amazon.com/gp/help/external/help.html?itemID=1791&language=en_US&ref=efph_1791_cont_SNV3657R94YP9DZ). Accordingly, Amazon may cut off its relationship with a third-party seller if it violates this provision. *Id.*

RESPONSE: Undisputed that Section F-7.4 of the Fulfillment by Amazon Service Terms states in relevant part that “You will promptly notify us of any recalls or potential recalls, or safety alerts of any of Your Products.” Declaration of Diane Ramirez (“Ramirez Decl.”), ¶ 4, Ex. A. Undisputed that matters related to termination from the FBA program are governed by Section 3 of the BSA and Section F-13 of the Fulfillment by Amazon Service Terms. *Id.* Otherwise disputed, because the use of the words “force” and “cut off” are characterizations and statements of opinion rather than factual contentions.

23. Amazon also possesses the authority to “refuse registration in FBA of any product, including on the basis that it is an FBA Excluded Product or that it violates applicable Program Policies.” Amazon Services BSA at Provision F-1 (https://sellercentral.amazon.com/gp/help/external/help.html?itemID=1791&language=en_US&ref=efph_1791_cont_SNV3657R94YP9DZ).

RESPONSE: Undisputed, with the clarification that Section F-1 is part of the Fulfillment By Amazon Service Terms and not the Amazon Services Business Solutions Agreement.

24. A CPSC Internet Investigative Analyst purchased three units of one of the Subject Products in this case in July 2020. See Affidavit of Renee Morelli-Linen and Exhibits A through F attached thereto.

RESPONSE: Undisputed.

25. The FBA product ordered by the Analyst was a “Combination Smoke and Carbon Monoxide Detector Alarm Digital Display for Travel Home Bedroom and Kitchen 9V Battery Operated” (ASIN B07MPP42GT, CPSC Sample Number 20-800-1837). Affidavit of Renee Morelli-Linen ¶ 5.

RESPONSE: Undisputed.

26. The product was listed as “Sold by TJTQQZHZ and Fulfilled by Amazon.” *Id.* ¶ 7.

RESPONSE: Undisputed.

27. After purchasing the carbon monoxide detector, the Analyst received an email from Amazon (auto-confirm@amazon.com) confirming the order and stating “[t]he payment for your invoice is processed by Amazon Payments, Inc. P.O. Box 81226 Seattle, Washington 98108-1226.” *Id.* ¶ 10.

RESPONSE: Undisputed.

28. When the Analyst clicked on the hyperlink provided in the email to “View or manage order,” it brought her to an “Order Details” web page with her Amazon.com Order number. *Id.* ¶ 11 (citing Exhibit D (screenshot of “Order Details” web page on Amazon.com)). This page included pictures of and links to five products she had recently purchased under bold letters stating “Buy it again,” pictures of and links to five additional products under bold letters stating “Recommended based on your shopping trends Sponsored,” and six pictures of additional products she had recently viewed on Amazon under the heading “Your Browsing History.” *Id.*

RESPONSE: Undisputed.

29. The carbon monoxide detectors were delivered to the Analyst’s local UPS Store, where she picked them up on August 5, 2020. *Id.* ¶ 13.

RESPONSE: Undisputed.

30. On June 11, 2021, at 2:15 PM EDT, the Analyst received an email from Amazon Product Safety (order-update@amazon.com) with the Subject Line “Attention: Important safety notice about your past Amazon order.” *Id.* ¶ 14 (citing Exhibit E (Friday, June 11, 2021, 2:15 PM EDT email from order-update@amazon.com

to her email address)).

RESPONSE: Undisputed.

31. The message informed the Analyst that “We [Amazon] have learned of a potential safety issue that may impact your Amazon purchase(s) below:” and then listed the Order IDs of the affected purchases. *Id.* ¶ 16 (citing Exhibit E). The message further stated that the product she had ordered was “either a product that the U.S. Consumer Product Safety Commission (CPSC) has informed us [Amazon] about, or our Product Safety team has identified, that may fail to alarm on time, posing a risk of exposure to potentially dangerous levels of Carbon Monoxide.” *Id.*

RESPONSE: Undisputed.

32. The notice further stated that there was no need for the Analyst to return the product, and that Amazon was applying a refund in the form of a gift card to her Amazon Account. *Id.* ¶ 18. It included a link to view her available balance and activity on Amazon.com. *Id.* The message was signed “Sincerely, Customer Service, Amazon.com.” *Id.*

RESPONSE: Undisputed.

33. At no point did Amazon refer to or involve the third-party seller or manufacturer, BQQZHZ or TJTQQZHZ, in the process of the Analyst’s purchase or the notification and refund. *Id.* ¶ 19.

RESPONSE: Disputed. Amazon contacted the third-party seller on December 7, 2020, regarding the product. Exhibit A to the Affidavit of Renee Morelli-Linen (submitted by Complaint Counsel), BQQZHZ is the third-party seller or manufacturer referenced, and the phrase “by BQQZHZ” appears below the product name. Exhibit A also states “Sold by TJTQQZHZ and Fulfilled by Amazon.” Exhibit B states “Sold by: TJTQQZHZ.” Exhibit D states: “Sold by: TJTQQZHZ.”

II. AMAZON’S ACTIONS WITH RESPECT TO THE SUBJECT PRODUCTS

34. The children’s sleepwear garments identified in the Complaint are consumer products. Answer ¶ 22.

RESPONSE: Undisputed.

35. The children’s sleepwear garments corresponding to the ASINs identified in Paragraph 21 of the Complaint were sold by third-party sellers and those orders were “fulfilled by Amazon.” Answer ¶ 21.

RESPONSE: Undisputed.

36. The third-party sellers of the children's sleepwear garments sold them on Amazon.com and "elected to have Amazon fulfill orders for the identified children's sleepwear garments between June 2019 to February 2020." Answer ¶ 25.

RESPONSE: Undisputed.

37. The carbon monoxide detectors identified in the Complaint are consumer products. Answer ¶ 31.

RESPONSE: Undisputed, with the clarification that Amazon lacks knowledge of whether all of the CO detectors identified in the Complaint were used in consumer or household settings.

38. The carbon monoxide detectors corresponding to the ASINs identified in Paragraph 30 of the Complaint were sold via Amazon's FBA program in which Amazon stored and delivered them. Answer at ¶ 30.

RESPONSE: Undisputed, with the clarification that the CO detectors were sold by third-party sellers, and the storage and delivery services were FBA logistical services.

39. The carbon monoxide detectors were sold on Amazon.com via Amazon's FBA program between July 2019 and August 2020. Answer at ¶ 34.

RESPONSE: Undisputed.

40. The hair dryers identified in the Complaint are consumer products. Answer ¶ 40.

RESPONSE: Undisputed.

41. Orders for the hair dryers corresponding to the ASINs identified in Paragraph 39 of the Complaint were "fulfilled by Amazon." Answer at ¶ 39.

RESPONSE: Undisputed.

42. The hair dryers were on Amazon.com via Amazon's FBA program between June 10, 2019 and March 9, 2021. Answer at ¶ 43.

RESPONSE: Undisputed that the hair dryers identified in the Complaint were (with the exception of 4 units) sold by third-party sellers who elected to have Amazon fulfill certain orders for the hair dryers between June 10, 2019, and March 9, 2021 under Amazon's FBA logistics service. Disputed that the products were "on Amazon.com via Amazon's FBA program" to the extent that the words "on" and "via" are vague and ambiguous here.

43. Amazon sold approximately 28 units of the carbon monoxide detectors and approximately 4 units of the hair dryers on Amazon.com through the “Amazon Warehouse” program. Answer at Additional and Affirmative Defenses, ¶ 3.

RESPONSE: Undisputed.

AMAZON’S STATEMENT OF UNDISPUTED MATERIAL FACTS

Amazon sets forth below its statement of undisputed material facts as follows:

I. AMAZON’S “FULFILLMENT BY AMAZON” PROGRAM

1. As used in this statement of undisputed material facts, “Third-Party Products” refers to products identified in Paragraphs 21, 30, and 39 of the Complaint, except for approximately 32 units sold through the Amazon Warehouse program (consisting of approximately 28 carbon monoxide (“CO”) detectors and approximately 4 hair dryers). Declaration of Lauren Shrem (“Shrem Decl.”) ¶ 6; Answer ¶¶ 36, 45.
2. As used in this statement of undisputed material facts, “Third-Party Sellers” refers to the sellers of the Third-Party Products. Shrem Decl. ¶ 7.
3. The participation of the Third-Party Sellers in the FBA logistics service is governed by the Business Services Agreement, the Fulfillment By Amazon (“FBA”) Service Terms, and program policies. Respondent Amazon.com, Inc.’s Answer to Complaint (“Answer”) at ¶ 8; Ramirez Decl., ¶ 4, Ex. A.
4. Under the Amazon FBA Service Terms, third-party sellers hold title to their products while the products are in the FBA logistics program. Declaration of Shrem Decl. ¶ 9, Ramirez Decl. ¶ 4, Ex. A (Sections F-3.3, 6.2, and 7.3 of FBA Service Terms).
5. Amazon identifies products, including the Third-Party Products, by Amazon Standard Identification Number (“ASIN”). Shrem Decl. ¶ 12.

II. THE THIRD-PARTY PRODUCTS

6. A total of approximately 418,818 units of the Third-Party Products were sold by Third-Party Sellers on Amazon.com to approximately 376,009 Amazon.com purchaser accounts. Shrem Decl. ¶ 8.
7. Amazon did not manufacture, sell, or hold title to the Third-Party Products. The Third-Party Sellers retained title to the Third-Party Products, subject to Sections F-3.3, 6.2, and 7.3 of the FBA Service Terms. Shrem Decl. ¶ 9; Complaint ¶ 14; Answer ¶¶ 3, 14, 36.

8. Amazon informed customers on its website that the Third-Party Products were “sold by” the Third-Party Seller and “shipped by Amazon.” Shrem Decl. ¶ 11; Renee Morelli-Linen Aff. ¶¶ 5, 7, Ex. A.
9. The Third-Party Sellers, like other participants in the FBA program, had the right to withdraw their products from the FBA logistics service or request return of the units from Amazon. Ramirez Decl. ¶ 4, Ex. A (Sections F-1 and 7.1 of the FBA Service Terms).
10. Amazon provided FBA logistics services to the Third-Party Sellers by picking, packing, shipping, and delivering the Third-Party Products to purchasers. Shrem Decl. ¶ 10; Ramirez Decl. ¶ 4, Ex. A (Sections F-4 and F-5 of the FBA Service Terms).

III. AMAZON’S REMOVAL OF THE THIRD-PARTY PRODUCTS FROM AMAZON.COM.

11. Amazon removed the Third-Party Products from Amazon.com after the staff at the U.S. Consumer Product Safety Commission (“CPSC”) contacted Amazon regarding potential product safety or noncompliance issues with the Third-Party Products. Shrem Decl. ¶ 13; Answer ¶¶ 28, 37, 46.
12. Amazon removed from Amazon.com the children’s sleepwear products identified in the Complaint on or about the following dates: January 29, 2020 (Taiycyxgan), February 20, 2020 (IDGIRLS), March 12, 2020 (HOYMN), and March 31, 2020 (Home Swee). Shrem Decl. ¶ 14; Answer ¶ 28.
13. Amazon removed from Amazon.com the hair dryers identified in the Complaint on or about March 3, 2021. Shrem Decl. ¶ 15; Answer ¶ 43.
14. Amazon removed from Amazon.com CO detectors identified in the Complaint on or about August 13, 2020. Shrem Decl. ¶ 16; Answer ¶ 37.
15. None of the Third-Party Products listed in the Complaint are currently listed or available for purchase on Amazon.com. Shrem Decl. ¶ 17.

IV. AMAZON’S NOTIFICATIONS TO PURCHASERS, REFUNDS TO PURCHASERS, AND OTHER REMEDIAL ACTIONS WITH RESPECT TO THE THIRD-PARTY PRODUCTS.

16. The Third-Party Products in Amazon fulfillment centers have been quarantined, Ramirez Decl., ¶ 4, Ex. E, and have either been destroyed or set aside for future destruction. Shrem Decl. ¶ 18.
17. After the CPSC approached Amazon about the Third-Party Products, Amazon informed the Third-Party Sellers of the CPSC outreach. Shrem Decl. ¶ 19.

18. After the CPSC approached Amazon about the Third-Party Products, Amazon applied a refund of the purchase price of the Third-Party Products to the accounts of purchasers. Shrem Decl. ¶ 20.
19. Amazon retains email address information for purchasers of Third-Party Products on Amazon.com. After the CPSC approached Amazon about the Third-Party Products, Amazon sent a direct consumer safety notification, via email, to all purchasers of the Third-Party Products on Amazon.com. Shrem Decl. ¶ 21.
20. Amazon sent these direct consumer safety notifications to purchasers on or about on or about January 21, 2021 (for the children’s sleepwear products) and June 11, 2021 (for the hair dryers and the CO detectors). Shrem Decl. ¶ 22; Ramirez Decl. ¶¶ 5-7, Ex. B-D.
21. The January 21, 2021 direct consumer safety notifications instructed purchasers: “If you still have this product, we urge you to stop using it immediately and dispose of it. If you purchased this product for someone else, please notify the recipient immediately and let them know they should dispose of it.” The June 11, 2021 direct consumer safety notifications instructed purchasers: “If you still have this product, we urge you to stop using it immediately and dispose of the item. If you purchased this item for someone else, please notify the recipient immediately and let them know they should dispose of the item.” Shrem Decl. ¶ 23; Ramirez Decl. ¶¶ 5-7, Ex. B-D.
22. The direct consumer safety notifications identified the specific potential risk, stating:
 - a. For email notifications to purchasers of the CO detectors: “may fail to alarm on time, posing a risk of exposure to potentially dangerous levels of Carbon Monoxide.” Shrem Decl. ¶ 24(a); Ramirez Decl. ¶ 7, Ex. D.
 - b. For email notifications to purchasers of the hair dryers: “may fail to have mandatory immersion protection, posing a risk of electric shock if the hair dryer comes into contact with water.” Shrem Decl. ¶ 24(b); Ramirez Decl. ¶ 6, Ex. C.
 - c. For email notifications to purchasers of the children’s sleepwear: “failed to meet the federal safety standard for the flammability of children’s sleepwear, posing a risk of burn injuries to children.” Shrem Decl. ¶ 24(c); Ramirez Decl. ¶ 5, Ex. B.
23. The direct consumer safety notifications informed purchasers of the Third-Party Products that Amazon had applied a refund of the purchase price to their account. Shrem Decl. ¶ 25; Ramirez Decl. ¶¶ 5-7, Ex. B-D.

V. CPSC'S PAST PRACTICES AND ACTIONS

24. The CPSC has issued no advance notice of proposed rulemaking, notice of proposed rulemaking, proposed final rule, interim final rule, or final rule regarding the scope, meaning, or interpretation of "third-party logistics provider" as that phrase is defined at 15 U.S.C. § 2052(a)(16).
25. The CPSC Office of General Counsel has issued no advisory opinion regarding the scope, meaning, or interpretation of "third-party logistics provider" as that phrase is defined at 15 U.S.C. § 2052(a)(16).
26. The CPSC has issued no interpretive guidance document regarding the scope, meaning, or interpretation of "third-party logistics provider" as that phrase is defined at 15 U.S.C. § 2052(a)(16).
27. The CPSC has issued no notice of proposed rulemaking, notice of proposed rulemaking, proposed final rule, interim final rule, or final rule regarding the scope, meaning, or interpretation of the CPSA's provision that a third-party logistics provider "shall not, for purposes of [the CPSA], be deemed to be a manufacturer, distributor, or retailer of a consumer product solely by reason of receiving or transporting a consumer product in the ordinary course of its business." 15 U.S.C. § 2052(b).
28. The CPSC Office of General Counsel has issued no advisory opinion regarding the scope, meaning, or interpretation of the CPSA's provision that a third-party logistics provider "shall not, for purposes of [the CPSA], be deemed to be a manufacturer, distributor, or retailer of a consumer product solely by reason of receiving or transporting a consumer product in the ordinary course of its business." 15 U.S.C. § 2052(b).
29. The CPSC has issued no interpretive guidance document regarding the scope, meaning, or interpretation of the CPSA's provision that a third-party logistics provider "shall not, for purposes of [the CPSA], be deemed to be a manufacturer, distributor, or retailer of a consumer product solely by reason of receiving or transporting a consumer product in the ordinary course of its business." 15 U.S.C. § 2052(b).

Dated: November 2, 2021

Respectfully submitted,



Sarah L. Wilson
Stephen P. Anthony
Thomas Brugato
Benjamin L. Cavataro
Covington & Burling LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001-4956
202-662-5397
swilson@cov.com
santhony@cov.com
tbrugato@cov.com
bcavataro@cov.com

Counsel for Respondent

CERTIFICATE OF SERVICE

Pursuant to the Order Following Prehearing Conference entered by the Presiding Officer on October 19, 2021, I hereby certify that on November 2, 2021, a true and correct copy of the foregoing document was:

- 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 jeustice@cpsc.gov, lwolf@cpsc.gov, and sanand@cpsc.gov.



Sarah L. Wilson