UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of Amazon.com, Inc.,
CPSC Docket No. 21-2

Respondent.

Hon. Carol Fox Foelak
Presiding Officer

AMAZON’S STATEMENT OF UNDISPUTED MATERIAL FACTS

Respondent Amazon.com, Inc. (“Amazon”) sets forth below its statement of undisputed material facts in support of its Motion for Summary Decision.¹

I. THE SUBJECT PRODUCTS & THIRD-PARTY SELLERS

1. As used in this statement of undisputed material facts, “Subject Products” refers to certain (A) children’s sleepwear garments, (B) carbon monoxide detectors, and (C) hair dryers identified in greater detail below.²

2. Specifically, the Subject Products consist of the following:

   A. Children’s sleepwear garments:³

<table>
<thead>
<tr>
<th>Sample Number</th>
<th>Seller/Manufacturer</th>
<th>ASIN⁴</th>
</tr>
</thead>
<tbody>
<tr>
<td>20-800-1345</td>
<td>HOYMN</td>
<td>B074V558SB</td>
</tr>
<tr>
<td>20-800-1726</td>
<td>IDGIRLS</td>
<td>B089B7QQ7</td>
</tr>
<tr>
<td>20-800-1726</td>
<td>IDGIRLS</td>
<td>B07S66PR4G</td>
</tr>
<tr>
<td>20-800-1726</td>
<td>IDGIRLS</td>
<td>B07SCJNMFP</td>
</tr>
<tr>
<td>20-800-1726</td>
<td>IDGIRLS</td>
<td>B07S99Y5YP</td>
</tr>
<tr>
<td>20-800-1726</td>
<td>IDGIRLS</td>
<td>B07S99R16X</td>
</tr>
<tr>
<td>20-800-1726</td>
<td>IDGIRLS</td>
<td>B07SDLKLS4</td>
</tr>
<tr>
<td>20-800-1726</td>
<td>IDGIRLS</td>
<td>B07SCJ2HK6</td>
</tr>
</tbody>
</table>

¹ All exhibits cited herein are attached to the Declaration of Joshua González, dated September 23, 2022.
³ Compl. ¶ 21; Answer ¶ 21.
⁴ An ASIN is the unique Amazon Standard Identification Number used to identify a particular product.
B. Carbon monoxide detectors:5

<table>
<thead>
<tr>
<th>Sample Number</th>
<th>Seller/Manufacturer</th>
<th>ASIN</th>
</tr>
</thead>
<tbody>
<tr>
<td>20-800-1419</td>
<td>WJZXTEK</td>
<td>B07HK8JHDV6</td>
</tr>
<tr>
<td>20-800-1420</td>
<td>Zhenzhou Winsen Electronics Technology Company, LTD</td>
<td>B07GNKD44L</td>
</tr>
<tr>
<td>20-800-1422</td>
<td>Zhenzhou Winsen Electronics Technology Company, LTD</td>
<td>B07C2KM8RB7</td>
</tr>
<tr>
<td>20-800-1422</td>
<td>Zhenzhou Winsen Electronics Technology Company, LTD</td>
<td>B07BDJTX8W8</td>
</tr>
<tr>
<td>20-800-1837</td>
<td>BQQZHZ</td>
<td>B07MPP42GT9</td>
</tr>
</tbody>
</table>

C. Hair dryers:10

<table>
<thead>
<tr>
<th>Sample Number</th>
<th>Seller/Manufacturer</th>
<th>ASIN</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-800-0406</td>
<td>OSEIDOO</td>
<td>B07RRVKPMD</td>
</tr>
<tr>
<td>21-800-1213</td>
<td>Aiskki</td>
<td>B0814LSM48</td>
</tr>
<tr>
<td>21-800-0556</td>
<td>Raxurt Store</td>
<td>B08LD9S6PB</td>
</tr>
<tr>
<td>21-800-0481</td>
<td>LEMOCA</td>
<td>B087JC14NC</td>
</tr>
<tr>
<td>21-800-1183</td>
<td>Xiannming</td>
<td>B087CVZT9V</td>
</tr>
<tr>
<td>21-800-0609</td>
<td>BEAUTIKEN</td>
<td>B087TJJ5XP</td>
</tr>
<tr>
<td>21-800-0731</td>
<td>VIBOOS</td>
<td>B07T3D3TQR</td>
</tr>
<tr>
<td>21-800-0635</td>
<td>VIBOOS</td>
<td>B0878SRBM2</td>
</tr>
<tr>
<td>21-800-0756</td>
<td>SARCCH</td>
<td>B0852JWLTP</td>
</tr>
<tr>
<td>21-800-0831</td>
<td>Bontgai</td>
<td>B085NNM6NY</td>
</tr>
<tr>
<td>21-800-0933</td>
<td>Byser Store</td>
<td>B07TVX4G4C</td>
</tr>
<tr>
<td>21-800-0956</td>
<td>TDYJWELL</td>
<td>B088R87G9KH</td>
</tr>
<tr>
<td>21-800-1806</td>
<td>Bownyo</td>
<td>B07TQRVMJF</td>
</tr>
<tr>
<td>21-800-1883</td>
<td>Romancelink</td>
<td>B089QDK2VV</td>
</tr>
</tbody>
</table>

---

5 Compl. ¶ 30; Answer ¶¶ 30, 36.
6 Excluding two units that were sold by Amazon through its “Amazon Warehouse” program (through which Amazon sells used, pre-owned, or open box products).
7 Excluding ten units that were sold by Amazon through its “Amazon Warehouse” program.
8 Excluding two units that were sold by Amazon through its “Amazon Warehouse” program.
9 Excluding fourteen units that were sold by Amazon through its “Amazon Warehouse” program.
10 Compl. ¶ 39; Answer ¶¶ 39, 45.
<table>
<thead>
<tr>
<th>Seller ID</th>
<th>Seller Name</th>
<th>ASIN</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-800-1983</td>
<td>BZ</td>
<td>B088ZPLZ91</td>
</tr>
<tr>
<td>21-800-1317</td>
<td>Techip</td>
<td>B07YS53MKB</td>
</tr>
<tr>
<td>21-800-1632</td>
<td>LetsFunny</td>
<td>B07PJ8F941</td>
</tr>
<tr>
<td>21-800-1606</td>
<td>SUNBA YOUTH Store / Naisen</td>
<td>B08143HCDC</td>
</tr>
<tr>
<td>21-800-1706</td>
<td>OWEILAN</td>
<td>B08QYRL9GC</td>
</tr>
<tr>
<td>21-800-1585</td>
<td>Surelang Store</td>
<td>B085RMB16H</td>
</tr>
<tr>
<td>21-800-1106</td>
<td>GEPORAY</td>
<td>B07YF7JHKC</td>
</tr>
<tr>
<td>21-800-0135</td>
<td>Miserwe</td>
<td>B0888P3PDH</td>
</tr>
<tr>
<td>21-800-0081</td>
<td>Techip</td>
<td>B08LD44V8W</td>
</tr>
<tr>
<td>21-800-1081</td>
<td>ADTZYLJF</td>
<td>B07SH5QZFX</td>
</tr>
<tr>
<td>21-800-1006</td>
<td>KIPOZI</td>
<td>B08J7JTW2M</td>
</tr>
<tr>
<td>21-800-1131</td>
<td>KENLOR</td>
<td>B07V5WFV28</td>
</tr>
<tr>
<td>21-800-0981</td>
<td>Shaboo Prints</td>
<td>B08LN4FR4T</td>
</tr>
<tr>
<td>21-800-0026</td>
<td>ELECDOLPH</td>
<td>B08PCQ7QFK</td>
</tr>
<tr>
<td>21-800-1382</td>
<td>LANIC</td>
<td>B07YXNMXH3</td>
</tr>
<tr>
<td>21-800-1398</td>
<td>Songtai</td>
<td>B088GWXLTNT</td>
</tr>
<tr>
<td>21-800-1558</td>
<td>BEAUTIKEN</td>
<td>B0814TCYZM</td>
</tr>
<tr>
<td>21-800-1431</td>
<td>tiamo airtrack</td>
<td>B07ZYJCK25</td>
</tr>
<tr>
<td>21-800-0334</td>
<td>Ohuhu</td>
<td>B07XDTIZK5</td>
</tr>
<tr>
<td>21-800-0281</td>
<td>Nisahok</td>
<td>B088183SR4</td>
</tr>
<tr>
<td>21-800-0231</td>
<td>Dekugaa Store</td>
<td>B07ZYJ92DM</td>
</tr>
<tr>
<td>21-800-0186</td>
<td>Admitrack</td>
<td>B0854FGPP7</td>
</tr>
</tbody>
</table>

3. As used in this statement of undisputed material facts, “Third-Party Sellers” refers to the sellers of the Subject Products.

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

A. Amazon’s Remedial Actions Regarding the Children’s Sleepwear Subject Products.

4. The children’s sleepwear Subject Products, were manufactured and sold by the following four third-party sellers: Taiycyxgan, Home Swee, IDGIRLS, and HOYMN.\(^\text{12}\)

5. Prior to the filing of the Complaint in this matter, Amazon had removed the children’s sleepwear Subject Products, as well as additional products Amazon identified as

---

\(^\text{11}\) Excluding approximately four units that were sold by Amazon through its “Amazon Warehouse” program.

\(^\text{12}\) Compl. ¶ 21; Answer ¶ 21; Ex. 1, Compl. Counsel’s Obj. and Resp. to Amazon’s Requests for Admission, No. 1 (Mar. 21, 2022).
potentially posing the same hazard as the Subject Products, from Amazon.com.\(^\text{13}\)

6. None of the children’s sleepwear Subject Products, and the additional products Amazon identified as potentially posing the same hazard as the Subject Products, are currently listed or available for purchase on Amazon.com.\(^\text{14}\)

7. Amazon prohibits Third-Party Sellers, or any other entity, from listing any of the children’s sleepwear Subject Products, or the additional products Amazon identified as potentially posing the same hazard as the Subject Products, on Amazon.com.\(^\text{15}\)

1. Amazon’s Remedial Actions Regarding the Taiycyxgan Subject Products.

i. *Amazon stopped selling the Taiycyxgan Subject Products and blocked the release of any inventory in its fulfillment centers.*

8. \(^\text{16}\)

9. \(^\text{17}\)

10. \(^\text{18}\)

11. \(^\text{19}\)

12. \(^\text{20}\)

\(^\text{13}\) See Ex. 1, Compl. Counsel’s Obj.and Resp. to Amazon’s Request for Admission, No. 7 (Mar. 21, 2022); Ex. 9, Amazon-CPSC-FBA-00001840 (Sleepwear Summary Data Chart).

\(^\text{14}\) Dkt. 24, Resp. to ¶ 15 (Compl. Counsel’s Resp. to Amazon’s Statement of Undisputed Facts) (Nov. 22, 2021); Shrem Decl. ¶¶ 12–13.

\(^\text{15}\) Ex. 2, Goldberg Dep. 306:19–307:2; Shrem Decl. ¶ 13.

\(^\text{16}\) Ex. 3, Amazon-CPSC-FBA-00003695 (CPSC-Amazon Comm. re Contact Info. of Taiycyxgan).

\(^\text{17}\) Ex. 4, Amazon-CPSC-FBA-00003696 (CPSC-Amazon Comm. re Stop-Sale, Quarantine, and Destruction of Taiycyxgan); Ex. 5, Amazon-CPSC-FBA-00002388 at 90 (Children’s Sleepwear Chronology); Ex. 6, Amazon-CPSC-FBA-00001674 (CPSC-Amazon Comm. re Update of Stop-Sale, Quarantine, and Destruction of Taiycyxgan Products).

\(^\text{18}\) A NOV is issued by the CPSC Office of Compliance when it determines that product violates a mandatory standard. The NOV “advises the company of the violation, and specifies the appropriate corrective action.” See https://www.cpsc.gov/Recalls/violations.

\(^\text{19}\) Ex. 7, Amazon-CPSC-FBA-00000229 (NOV to seller Taiycyxgan); Ex. 4, Amazon-CPSC-FBA-00003696 (CPSC-Amazon Comm. re Stop-Sale, Quarantine, and Destruction of Taiycyxgan Products).

\(^\text{20}\) Ex. 4, Amazon-CPSC-FBA-00003696 (CPSC-Amazon Comm. re Stop-Sale, Quarantine, and Destruction of Taiycyxgan Products); Ex. 8, Amazon-CPSC-FBA-00001627 (CPSC-Amazon
12. On or about January 29, 2020, Amazon stopped selling the Taiycyxgan Subject Products identified in the January 24, 2020 NOV to Taiycyxgan, as well as 387 additional products Amazon identified as potentially posing the same hazard as the Subject Products, including all of the Taiycyxgan Subject Products listed in the Complaint.\textsuperscript{21}

13. On or about January 29, 2020, Amazon quarantined (that is, blocked their release from fulfillment centers) all units of the Taiycyxgan Subject Products identified in the January 24, 2020 NOV to Taiycyxgan, as well as 387 additional products Amazon identified as potentially posing the same hazard as the Subject Products, including all Taiycyxgan Subject Products listed in the Complaint.\textsuperscript{22}

14. \[ ... \]

15. \[ ... \]

16. By December 8, 2020, Amazon had destroyed all inventory of the Taiycyxgan Subject Products, as well as all inventory of the additional products Amazon identified as potentially posing the same hazard as the Subject Products.\textsuperscript{25}

   ii. \textit{Amazon sent all purchasers of the Taiycyxgan Subject Products an appropriate direct consumer safety notification email.}

17. Between June 11, 2021 and August 1, 2021, Amazon had sent all consumers who purchased a Taiycyxgan Subject Product, or the additional products Amazon identified

---

\textsuperscript{21} Ex. 8, Amazon-CPSC-FBA-00001627 (CPSC-Amzon Comm. re Stop-Sale, Quarantine, and Destruction of Taiycyxgan Products); Ex. 5, Amazon-CPSC-FBA-00002388 at 02390 (Children’s Sleepwear Chronology); Ex. 9, Amazon-CPSC-FBA-00001840 (Sleepwear Summary Data); Dkt. 24, Resp. to ¶ 12 (Compl. Counsel’s Resp. to Amazon’s Statement of Undisputed Facts) (Nov. 22, 2021); see also Ex. 2, Goldberg Dep. 99:8–100:5, 182:9–182:15; Shrem Decl. ¶¶ 8, 11 (Sept. 23, 2022).

\textsuperscript{22} Ex. 8, Amazon-CPSC-FBA-00001627 (CPSC-Amzon Comm. re Stop-Sale, Quarantine, and Destruction of Taiycyxgan Products); Ex. 9, Amazon-CPSC-FBA-00001840 (Sleepwear Summary Data); see also Ex. 2, Goldberg Dep. 99:22–100:5, 182:9–182:15; Shrem Decl. ¶¶ 14–15 (Sept. 23, 2022).

\textsuperscript{23} Ex. 8, Amazon-CPSC-FBA-00001627 (CPSC-Amzon Comm. re Stop-Sale, Quarantine, and Destruction of Taiycyxgan Products).

\textsuperscript{24} Ex. 10, Amazon-CPSC-FBA-00001682 (CPSC-Amzon Comm. re NOV to Taiycyxgan); Ex. 11, Amazon-CPSC-FBA-00001683 (NOV to Amazon re Taiycyxgan).

\textsuperscript{25} Ex. 12, Amazon-CPSC-FBA-00000255-258 (Amazon Final Resp. to NOV re Taiycyxgan); Shrem Decl. ¶ 18 (Sept. 23, 2022).
as potentially posing the same hazard as the Subject Products, a direct consumer safety notification by email.  

18. The subject line of Amazon’s direct consumer safety notification email regarding the Taiycyxgan Subject Products read: “Attention: Important safety notice about your past Amazon order.”

19. The body of Amazon’s direct consumer safety notification email said the following:

“Dear Amazon Customer,

We have learned of a potential safety issue that may impact your Amazon purchase(s) below:

Order ID: 111-1024079-4201801

Item: B01HGJYZF8 - Taiycyxgan Little Girl’s Coral Fleece Bathrobe, Pink Cat, 130:6T

The product listed above is either a product that the U.S. Consumer Product Safety Commission (CPSC) has informed us about, or our Product Safety team has identified, that may fail to meet the federal standard for flammability of children’s sleepwear, posing a risk of burn injuries to children.

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. There is no need for you to return the product.

Amazon is applying a refund in the form of a gift card to Your Account. You can view your available balance and activity here: https://www.amazon.com/gp/css/gc/balance/

The safety and satisfaction of our customers is our highest priority. We regret any inconvenience this may cause you.

Thanks for shopping at Amazon.”

20. The direct notification email for the Taiycyxgan Subject Products contained the

26 Ex. 13, Amazon-CPSC-FBA-00001841 (Customer Notification Dates Data); Ex. 14, Amazon-CPSC-FBA-00002397 (Consumer Messaging Data); Shrem Decl. ¶ 25 (Sept. 23, 2022).
27 Ex. 15, CPSC_AM0000497 (Amazon Direct Product Safety Notification Email re Taiycyxgan Children’s Sleepwear Products).
28 Ex. 15, CPSC_AM0000497 (Amazon Direct Product Safety Notification Email re Taiycyxgan Children’s Sleepwear Products).
information necessary to help the consumer to identify the product, including the Order ID, Amazon Standard Identification Number, and item name. 

21. The direct notification email helped the consumer identify the specific potential risk posed by the Taiyicyxgan Subject Products, namely that they “may fail to meet the federal standard for flammability of children’s sleepwear, posing a risk of burn injuries to children.”

22. The direct notification email helped the consumer understand the steps a consumer should take to mitigate the potential risk posed by the product, namely that they should “stop using it immediately and dispose of it” and “[i]f [they] purchased this product for someone else, please notify the recipient immediately and let them know they should dispose of it.”

23. The direct notification email helped the consumer understand the remedy being provided by Amazon, namely that “Amazon [was] applying a refund in the form of a gift card,” and the consumer could view the “balance and activity [of] here: https://www.amazon.com/gp/css/gc/balance/.”

24. iii. Amazon provided all purchasers of the Taiyicyxgan Subject Products a complete refund.

25. Amazon provided refunds to all consumers who purchased the Taiyicyxgan Subject Products, as well as consumers who purchased the additional products Amazon identified as potentially posing the same hazard as the Subject Products.

26. None of the Taiyicyxgan Subject Products, or the additional products Amazon identified as potentially posing the same hazard as the Subject Products, have been listed or

---

29 Ex. 15, CPSC_AM0000497 (Amazon Direct Product Safety Notification Email re Taiyicyxgan Children’s Sleepwear Products).
30 Ex. 15, CPSC_AM0000497 (Amazon Direct Product Safety Notification Email re Taiyicyxgan Children’s Sleepwear Products).
31 Ex. 15, CPSC_AM0000497 (Amazon Direct Product Safety Notification Email re Taiyicyxgan Children’s Sleepwear Products).
32 Ex. 15, CPSC_AM0000497 (Amazon Direct Product Safety Notification Email re Taiyicyxgan Children’s Sleepwear Products).
33 Ex. 16, Davis Dep. 145:19–146:22.
34 Ex. 17, Amazon-CPSC-FBA-00001616 (cf. Column H and Column L) (Refund Data re Children’s Sleepwear Products); Shrem Decl. ¶ 28 (Sept. 23, 2022).
available for purchase on Amazon.com since January 29, 2020.\(^{35}\)

27. None of the Taiycyxgan Subject Products, or the additional products Amazon identified as potentially posing the same hazard as the Subject Products, are currently listed or available for purchase on Amazon.com.\(^{36}\)

28. Amazon prohibits Third-Party Sellers, or any other entity, from listing any of the Taiycyxgan Subject Products, or the additional products Amazon identified as potentially posing the same hazard as the Subject Products, on Amazon.com.\(^{37}\)

2. Amazon’s Remedial Actions Regarding the Home Swee Subject Products.

i. *Amazon stopped selling the Home Swee Subject Products and blocked the release of any inventory in its fulfillment centers.*

29. \(^{38}\)

30. \(^{39}\)

31. \(^{40}\)

32. On or about March 31, 2020, Amazon stopped selling from Amazon.com the Home Swee Subject Product identified in the March 17, 2020 NOV to Home Swee, as well as 38 additional products Amazon identified as potentially posing the same hazard as

\(^{35}\) Ex. 9, Amazon-CPSC-FBA-00001840 (Sleepwear Summary Data); Dkt. 24, Resp. to ¶ 12 (Compl. Counsel’s Resp. to Amazon’s Statement of Undisputed Facts) (Nov. 22, 2021).

\(^{36}\) Dkt. 24, Resp. to ¶ 15 (Compl. Counsel’s Resp. to Amazon’s Statement of Undisputed Facts) (Nov. 22, 2021); Shrem Decl. ¶¶ 12–13 (Sept. 23, 2022).


\(^{38}\) Ex. 18, Amazon-CPSC-FBA-00003694 (CPSC-Arazon Comm. re Contact Info. of Home Swee); Ex. 5, Amazon-CPSC-FBA-00002388 (Children’s Sleepwear Chronology).

\(^{39}\) Ex. 19, Amazon-CPSC-FBA-00003707 (CPSC-Arazon Comm. re Stop-Sale, Quarantine and Destruction of Home Swee); Ex. 20, Amazon-CPSC-FBA-00003709 (NOV to seller Home Swee).

\(^{40}\) Ex. 19, Amazon-CPSC-FBA-00003707 (CPSC-Arazon Comm. re Stop-Sale, Quarantine and Destruction of Home Swee); Ex. 21, Amazon-CPSC-FBA-00002017 at 02020-02021 (CPSC-Arazon Comm. re Children Sleepwear Stop-Sale, Quarantine and Destruction).
the Subject Products, including all of the Home Swee Subject Product listed in the Complaint.  

33. By April 1, 2020, Amazon had quarantined all units of the Home Swee Subject Products identified in the March 17, 2020 NOV to Home Swee, and the additional products Amazon identified as potentially posing the same hazard as the Subject Products, including all of the Subject Products identified in the Complaint.

34. 

35. 

36. 

ii. Amazon sent all purchasers of the Home Swee Subject Products an appropriate direct consumer safety notification email.

37. By January 21, 2021, Amazon had sent all consumers who purchased a Home Swee Subject Product, or the additional products Amazon identified as potentially posing the same hazard as the Subject Products, a direct consumer safety notification by email.

38. Aside from the date and product identifying information, the notification provided to consumers who purchased a Home Swee Subject Product, or the additional products Amazon identified as potentially posing the same hazard as the Subject Products, was a near verbatim copy of the notification provided to consumers who purchased the other

---

41 Ex. 9, Amazon-CPSC-FBA-00001840 (Sleepwear Summary Data); Ex. 5, Amazon-CPSC-FBA-00002388 (Children’s Sleepwear Chronology); Dkt. 24, Resp. to ¶ 12 (Compl. Counsel’s Resp. to Amazon’s Statement of Undisputed Facts) (Nov. 22, 2021); Shrem Decl. ¶¶ 8, 11 (Sept. 23, 2022).
42 Ex. 9, Amazon-CPSC-FBA-00001840 (Sleepwear Summary Data); Ex. 21, Amazon-CPSC-FBA-00002017 at 02020 (CPSC-Amazon Comm. re Children Sleepwear Stop-Sale, Quarantine and Destruction); Shrem Decl. ¶¶ 14–15 (Sept. 23, 2022).
43 Ex. 22, Amazon-CPSC-FBA-00001654 (CPSC-Amazon Comm. re Stop-Sale, Quarantine and Destruction of Home Swee); Ex. 21, Amazon-CPSC-FBA-00002017 at 02020 (CPSC-Amazon Comm. re Children Sleepwear Stop-Sale, Quarantine and Destruction).
44 Ex. 23, Amazon-CPSC-FBA-00000302 (NOV to Amazon re Home Swee).
45 Ex. 107, Amazon-CPSC-FBA-00000219 (Amazon’s Supp. Resp. to NOV from CPSC re Home Swee).
46 Ex. 13, Amazon-CPSC-FBA-00001841 (Customer Notification Dates Data); Ex. 14, Amazon-CPSC-FBA-00002397 (Consumer Messaging Data); Shrem Decl. ¶ 25 (Sept. 23, 2022).
children’s sleepwear Subject Products.\(^47\)

iii. *Amazon provided all purchasers of the Home Swee Subject Products a complete refund.*

39. Amazon provided refunds to all consumers who purchased the Home Swee Subject Products, as well as consumers who purchased the additional products Amazon identified as potentially posing the same hazard as the Subject Products.\(^48\)

iv. *Amazon has not listed for sale and does not intend to list for sale any of the Home Swee Subject Products.*

40. None of the Home Swee Subject Products, or the additional products Amazon identified as potentially posing the same hazard as the Subject Products, have been listed or available for purchase on Amazon.com since March 31, 2020.\(^49\)

41. None of the Home Swee Subject Products, or the additional products Amazon identified as potentially posing the same hazard as the Subject Products, are currently listed or available for purchase on Amazon.com.\(^50\)

42. Amazon prohibits Third-Party Sellers, or any other entity, from listing any of the Home Swee Subject Products, or the additional products Amazon identified as potentially posing the same hazard as the Subject Products, on Amazon.com.\(^51\)

3. **Amazon’s Remedial Actions Regarding the IDGIRLS Subject Products**

   i. *Amazon stopped selling the IDGIRLS Subject Products and blocked the release of any inventory in its fulfillment centers.*

43. On or about February 20, 2020, Amazon stopped selling from Amazon.com the IDGIRLS Subject Products, as well as 10 additional products Amazon identified as

\(^{47}\) Shrem Decl. ¶ 26 (Sept. 23, 2022).
\(^{48}\) Ex. 17, Amazon-CPSC-FBA-00001616 (cf. Column H and Column L) (Refund Data re Children’s Sleepwear Products); Shrem Decl. ¶ 28 (Sept. 23, 2022).
\(^{49}\) Ex. 9, Amazon-CPSC-FBA-00001840 (Sleepwear Summary Data); Dkt. 24, Resp. to ¶ 12 (Compl. Counsel’s Resp. to Amazon’s Statement of Undisputed Facts) (Nov. 22, 2021); Shrem Decl. ¶¶ 8, 11 (Sept. 23, 2022).
\(^{50}\) Dkt. 24, Resp. to ¶ 15 (Compl. Counsel’s Resp. to Amazon’s Statement of Undisputed Facts) (Nov. 22, 2021); Shrem Decl. ¶¶ 12–13.
\(^{51}\) Ex. 2, Goldberg Dep. 306:19–307:2; Shrem Decl. ¶ 13 (Sept. 23, 2022).
\(^{52}\) Ex. 24, Amazon-CPSC-FBA-00003699 (CPSC-Amazon Comm. re Contact Info. of IDGIRLS).
potentially posing the same hazard as the Subject Products, including all IDGIRLS Subject Products identified in the Complaint.  

45. On or about February 20, 2020, Amazon quarantined all units of the IDGIRLS Subject Products, and the additional products Amazon identified as potentially posing the same hazard as the Subject Products, including all IDGIRLS Subject Products identified in the Complaint.  

46.  

47.  

48.  

49. By December 8, 2020, Amazon had destroyed all IDGIRLS inventory identified in the November 3, 2020 NOV, as well as all inventory of the additional products Amazon identified as potentially posing the same hazard as the Subject Products.  

ii. Amazon sent all purchasers of the IDGIRLS Subject Products an appropriate direct consumer safety notification email. 

50. By January 21, 2021, Amazon had sent all consumers who purchased an IDGIRLS Subject Product, or the additional products Amazon identified as potentially posing the

---

53 Ex. 9, Amazon-CPSC-FBA-00001840 (Sleepwear Summary Data); Ex. 5, Amazon-CPSC-FBA-00002388 at 02390 (Children’s Sleepwear Chronology); Dkt. 24, Resp.to ¶ 12 (Compl. Counsel’s Resp. to Amazon’s Statement of Undisputed Facts) (Nov. 22, 2021); Shrem Decl. ¶¶ 8, 11 (Sept. 23, 2022).

54 Ex. 9, Amazon-CPSC-FBA-00001840 (Sleepwear Summary Data); Ex. 21, Amazon-CPSC-FBA-00002017 at 02022 (CPSC-Amazon Comm. re Children Sleepwear Stop-Sale, Quarantine and Destruction); Shrem Decl. ¶¶ 14–15 (Sept. 23, 2022).

55 Ex. 25, Amazon-CPSC-FBA-00000225 (NOV to seller IDGIRLS).

56 Ex. 26, Amazon-CPSC-FBA-00001647–01648 (CPSC-Amazon Comm. re Stop-Sale and Destruction of IDGIRLS); Ex. 21, Amazon-CPSC-FBA-00002017 at 02022 (CPSC-Amazon Comm. re Children Sleepwear Stop-Sale, Quarantine and Destruction).

57 Ex. 27, Amazon-CPSC-FBA-00000328 (NOV to Amazon re IDGIRLS).

58 Ex. 28, Amazon-CPSC-FBA-00000307–00310 (Amazon Final Resp. to NOV and Cert. of Destruction re IDGIRLS); Shrem Decl. ¶ 18 (Sept. 23, 2022).
same hazard as the Subject Products, a direct consumer safety notification by email.59

51. The subject line of Amazon’s direct consumer safety notification email regarding the IDGIRLS Subject Products read: “Important safety notice about your past Amazon order.”60

52. The body of Amazon’s direct consumer safety notification said the following:

“Dear Amazon Customer,

We have learned of a potential safety issue that may impact your Amazon purchase(s) below:

Order ID: [redacted]

Item: B07SCJNMFP - IDGIRLS Kids Animal Hooded Soft Plush Flannel Bathrobes for Girls Boys Sleepwear Orange Fox M

The U.S. Consumer Product Safety Commission (CPSC) has informed us that the products listed above failed to meet the federal safety standard for the flammability of children’s sleepwear, posing a risk of burn injuries to children.

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. There is no need for you to return the product.

Amazon is applying a refund in the form of a gift card to Your Account. You can view your available balance and activity here: https://www.amazon.com/gp/css/gc/balance/

The safety and satisfaction of our customers is our highest priority. We regret any inconvenience this may cause you.”61

53. The direct notification email for the IDGIRLS Subject Products contained the information necessary to help the consumer to identify the product, including the Order


59 Ex. 29, Amazon-CPSC-FBA-00000212 (Amazon Direct Product Safety Notification Email re IDGIRLS Children Sleepwear); Ex. 13, Amazon-CPSC-FBA-00001841 (Customer Notification Dates Data); Shrem Decl. ¶ 25 (Sept. 23, 2022).
60 Ex. 29, Amazon-CPSC-FBA-00000212 (Amazon Direct Product Safety Notification Email re IDGIRLS Children Sleepwear); Ex. 13, Amazon-CPSC-FBA-00001841 (Customer Notification Dates Data).
61 Ex. 29, Amazon-CPSC-FBA-00000212 (Amazon Direct Product Safety Notification Email re IDGIRLS Children Sleepwear).
ID, Amazon Standard Identification Number, and item name.\(^{62}\)

54. The direct notification email helped the consumer identify the specific potential risk posed by the IDGIRLS Subject Products, namely that they “failed to meet the federal safety standard for the flammability of children’s sleepwear, posing a risk of burn injuries to children.”\(^{63}\)

55. The direct notification email helped the consumer understand the steps a consumer should take to mitigate the potential risk posed by the product, namely that they should “stop using it immediately and dispose of the item” and “[i]f you purchased this product for someone else, please notify the recipient immediately and let them know they should dispose of the item.”\(^{65}\)

56. The direct notification email helped the consumer understand the remedy being provided by Amazon, namely that “Amazon is applying a refund in the form of a gift card,” and the consumer could view the “balance and activity here: https://www.amazon.com/gp/css/gc/balance/.”\(^{66}\)

iii. Amazon provided all purchasers of the IDGIRLS Subject Products a complete refund.

57. Amazon provided refunds to all consumers who purchased the IDGIRLS Subject Products, as well as consumers who purchased the additional products Amazon identified as potentially posing the same hazard as the Subject Products, including all IDGIRLS Subject Products identified in the Complaint.\(^{67}\)

iv. Amazon has not listed for sale and does not intend to list for sale any of the IDGIRLS Subject Products.

59. None of the IDGIRLS Subject Products, or the additional products Amazon identified

\(^{62}\) Ex. 29, Amazon-CPSC-FBA-00000212 (Amazon Direct Product Safety Notification Email re IDGIRLS Children Sleepwear).

\(^{63}\) Ex. 29, Amazon-CPSC-FBA-00000212 (Amazon Direct Product Safety Notification Email re IDGIRLS Children Sleepwear).

\(^{64}\) Ex. 30, Rose Dep. 155:10–155:18.

\(^{65}\) Ex. 29, Amazon-CPSC-FBA-00000212 (Amazon Direct Product Safety Notification Email re IDGIRLS Children Sleepwear).

\(^{66}\) Ex. 29, Amazon-CPSC-FBA-00000212 (Amazon Direct Product Safety Notification Email re IDGIRLS Children Sleepwear).

\(^{67}\) Ex. 17, Amazon-CPSC-FBA-00001616 (cf. Column H and Column L) (Refund Data re Children’s Sleepwear Products); Shrem Decl. ¶ 28 (Sept. 23, 2022).
as potentially posing the same hazard as the Subject Products, have been listed or available for purchase on Amazon.com since February 20, 2020.\(^{68}\)

60. None of the IDGIRLS Subject Products, or the additional products Amazon identified as potentially The Commission has said that recall alerts are appropriate when companies can provide direct notice to 90 percent or more of affected consumers. the Subject Products, listed in the Complaint are currently listed or available for purchase on Amazon.com.\(^{69}\)

61. Amazon prohibits Third-Party Sellers, or any other entity, from listing any of the IDGIRLS Subject Products, or the additional products Amazon identified as potentially posing the same hazard as the Subject Products, on Amazon.com.\(^{70}\)

4. Amazon’s Remedial Actions Regarding the HOYMN Subject Products

i. *Amazon stopped selling the HOYMN Subject Products and blocked the release of any inventory in its fulfillment centers.*

62. On or about March 12, 2020, Amazon stopped selling from Amazon.com the HOYMN Subject Products, as well as approximately 706 additional products Amazon identified as potentially posing the same hazard as the Subject Products, including all HOYMN Subject Products identified in the Complaint.\(^{72}\)

63. On or about March 12, 2020, Amazon quarantined all units of the HOYMN Subject Products, and the additional products Amazon identified as potentially posing the same hazard as the Subject Products, including all HOYMN Subject Products identified in the Complaint.\(^{73}\)

\(^{68}\) Ex. 9, Amazon-CPSC-FBA-00001840 (Sleepwear Summary Data); Dkt. 24, Resp. to ¶ 12 (Compl. Counsel’s Resp. to Amazon’s Statement of Undisputed Facts) (Nov. 22, 2021); Shrem Decl. ¶¶ 8, 11 (Sept. 23, 2022).

\(^{69}\) Dkt. 23, Resp. to ¶ 15 (Compl. Counsel’s Resp. to Amazon’s Statement of Undisputed Facts) (Nov. 22, 2021); Shrem Decl. ¶¶ 12–13 (Sept. 23, 2022).

\(^{70}\) Ex. 2, Goldberg Dep. 306:19–307:2; Shrem Decl. ¶ 13 (Sept. 23, 2022).

\(^{71}\) Ex. 31, Amazon-CPSC-FBA-00001633 (CPSC-Amazon Comm. re Contact Info. and Stop-Sale of HOYMN).

\(^{72}\) Ex. 9, Amazon-CPSC-FBA-00001840 (Sleepwear Summary Data); Ex. 31, Amazon-CPSC-FBA-00001633 (CPSC-Amazon Comm. re Contact Info. and Stop-Sale of HOYMN); Ex. 5, Amazon-CPSC-FBA-00002388 at 02389 (Children’s Sleepwear Chronology); Dkt. 24, Resp. to ¶ 12 (Compl. Counsel’s Resp. to Amazon’s Statement of Undisputed Facts) (Nov. 22, 2021); Shrem Decl. ¶¶ 8, 11 (Sept. 23, 2022).

\(^{73}\) Ex. 9, Amazon-CPSC-FBA-00001840 (Sleepwear Summary Data); Ex. 31, Amazon-CPSC-
By December 23, 2020, Amazon had destroyed all inventory the HOYMN Subject Products, as well as all inventory of the additional products Amazon identified as potentially posing the same hazard as the Subject Products.  

ii. Amazon sent all purchasers of the HOYMN Subject Products an appropriate direct consumer safety notification email.

By May 18, 2022, Amazon had sent all consumers who purchased a HOYMN Subject Product, or the additional products Amazon identified as potentially posing the same hazard as the Subject Products, a direct consumer safety notification by email with the subject line: “Attention: Important safety notice about your past Amazon order.”

The body of Amazon’s direct consumer safety notification said the following:

“Dear Amazon Customer,

FBA-00001633 (CPSC-Amazion Comm. re Contact Info. and Stop-Sale of HOYMN); Shrem Decl. ¶¶ 14–15 (Sept. 23, 2022).
74 Ex. 32, Amazon-CPSC-FBA-00000323 (NOV to seller HOYMN).
75 Ex. 33, Amazon-CPSC-FBA-00002583 (CPSC-Amazion Comm. re Stop-Sale, Quarantine and Destruction of HOYMN).
76 Ex. 34, Amazon-CPSC-FBA-00001651 (Amazon-CPSC Comm. re Stop-Sale, Quarantine and Destruction of HOYMN).
77 Ex. 35, Amazon-CPSC-FBA-00000250 (NOV to Amazon re HOYMN).
78 Ex. 36, Amazon-CPSC-FBA-00002383 (Amazon Resp. to Req. for Corrective Action re HOYMN and Cert. of Destruction); Shrem Decl. ¶ 18 (Sept. 23, 2022).
79 Ex. 37, Amazon-CPSC-FBA-00002419 (Amazon Direct Product Safety Notification Email re HOYMN Children’s Sleepwear); Ex. 13, Amazon-CPSC-FBA-00001841 (Customer Notification Dates Data); Shrem Decl. ¶ 25 (Sept. 23, 2022).
We have learned of a potential safety issue that may impact your Amazon purchase(s) below:

Order ID: 114-8417428-2257849

Item: B0743NKWC - Girls’ Lace Nightgowns & Bowknot Sleep Shirts
100 percent Cotton Nightie for Toddler, Purple Lace, 6-7 Years/Tag 140

The product listed above is either a product that the U.S. Consumer Product Safety Commission (CPSC) has informed us, or our Product Safety team has identified, may fail to meet the federal safety standard for the flammability of children’s sleepwear, potentially posing a risk of burn injuries to children.

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. There is no need for you to return the product.

Amazon is applying a refund in the form of a gift card to Your Account. You can view your available balance and activity here: https://www.amazon.com/gp/css/gc/balance/

The safety and satisfaction of our customers is our highest priority. We regret any inconvenience this may cause you.

Thank you for shopping at Amazon.”

72. The direct notification email for the HOYMN Subject Products contained the information necessary to help the consumer to identify the product, including the Order ID, ASIN, and item name. 81

73. The direct notification email helped the consumer identify the specific potential risk posed by the HOYMN Subject Products, namely that they “may fail to meet the federal safety standard for the flammability of children’s sleepwear, potentially posing a risk of burn injuries to children.” 82

74. The direct notification email helped the consumer understand the steps a consumer should take to mitigate the potential risk posed by the product, namely that they should

---

80 Ex. 37, Amazon-CPSC-FBA-00002419 (Amazon Direct Product Safety Notification Email re HOYMN Children’s Sleepwear).
81 Ex. 37, Amazon-CPSC-FBA-00002419 (Amazon Direct Product Safety Notification Email re HOYMN Children’s Sleepwear).
82 Ex. 37, Amazon-CPSC-FBA-00002419 (Amazon Direct Product Safety Notification Email re HOYMN Children’s Sleepwear).
“stop using it immediately and dispose of the item” and “[i]f you purchased this item for someone else, please notify the recipient immediately and let them know they should dispose of the item.”

75. The direct notification email helped the consumer understand the remedy being provided by Amazon, namely that “Amazon is applying a refund in the form of a gift card,” and the consumer could view the “balance and activity here: https://www.amazon.com/gp/css/gc/balance/.”

iii. Amazon provided all purchasers of the HOYMN Subject Products a complete refund.

76. Amazon provided refunds to all consumers who purchased the HOYMN Subject Products, as well as consumers who purchased the additional products Amazon identified as potentially posing the same hazard as the Subject Products, including all HOYMN subject products identified in the Complaint.

iv. Amazon has not listed for sale and does not intend to list for sale any of the HOYMN Subject Products.

77. None of the HOYMN Subject Products, or the additional products Amazon identified as potentially posing the same hazard as the Subject Products, have been listed or available for purchase on Amazon.com since March 12, 2020.

78. None of the HOYMN Subject Products, or the additional products Amazon identified as potentially posing the same hazard as the Subject Products, are currently listed or available for purchase on Amazon.com.

79. Amazon prohibits Third-Party Sellers, or any other entity, from listing any of the HOYMN Subject Products, or the additional products Amazon identified as potentially posing the same hazard as the Subject Products, on Amazon.com.

83 Ex. 37, Amazon-CPSC-FBA-00002419 (Amazon Direct Product Safety Notification Email re HOYMN Children’s Sleepwear).
84 Ex. 37, Amazon-CPSC-FBA-00002419 (Amazon Direct Product Safety Notification Email re HOYMN Children’s Sleepwear).
85 Ex. 17, Amazon-CPSC-FBA-00001616 (cf. Column H and Column L) (Refund Data re Children’s Sleepwear Products); Shrem Decl. ¶ 28 (Sept. 23, 2022).
86 Ex. 9, Amazon-CPSC-FBA-00001840 (Sleepwear Summary Data); Ex. 31, Amazon-CPSC-FBA-00001633 (CPSC-Amazon Comm. re Contact Info. and Stop-Sale of HOYMN); Dkt. 23, Resp. to ¶ 12 (Compl. Counsel’s Resp. to Respondent Amazon.com, Inc.’s Statement of Undisputed Facts) (Nov. 22, 2021).
87 Dkt. 23, Resp. to ¶ 15 (Compl. Counsel’s Resp. to Amazon’s Statement of Undisputed Facts) (Nov. 22, 2021); Shrem Decl. ¶¶ 12–13 (Sept. 23, 2022); Shrem Decl. ¶¶ 8, 11 (Sept. 23, 2022).
88 Ex. 2, Goldberg Dep. 306:19–307:2; Shrem Decl. ¶¶ 8, 11, 13 (Sept. 23, 2022).
B. **Amazon’s Remedial Actions Regarding the Hair Dryer Subject Products.**

1. *Amazon stopped selling the Hair Dryer Subject Products and blocked the release of any inventory in its fulfillment centers.*

80.  
81.  
82.  
83.  
84. On or about March 3, 2021, Amazon stopped selling from Amazon.com the hair dryer Subject Products, and the additional products Amazon identified as potentially posing the same hazard as the Subject Products, including all hair dryer models identified in the Complaint.⁹³

85. On or about March 3, 2021, Amazon quarantined all units of the hair dryer Subject Products, and the additional products Amazon identified as potentially posing the same hazard as the Subject Products, including all hair dryer models identified in the Complaint.⁹⁴

2. *Amazon sent all purchasers of the Hair Dryer Subject Products an appropriate direct consumer safety notification email.*

86. Between June 11, 2021 and August 1, 2021, Amazon sent all consumers who purchased the hair dryer Subject Products, and the additional products Amazon identified as potentially posing the same hazard as the Subject Products, including all hair dryer

---

⁹⁹ Ex. 38, CPSC_AM001813 (Mar. 2, 2021 email from Joseph Williams to Amazon); Ex. 39, Amazon-CPSC-FBA-00000233 (NOV regarding “Various Hair Dryers”).
⁹³ Ex. 41, Amazon-CPSC-FBA-00001617 (Amazon Destruction Data); Shrem Decl. ¶¶ 9, 11 (Sept. 23, 2022).
⁹⁴ Ex. 41, Amazon-CPSC-FBA-00001617 (Amazon Destruction Data); Shrem Decl. ¶¶ 14, 16 (Sept. 23, 2022).
models identified in the Complaint, a direct consumer safety notification by email with the subject line: “Attention: Important safety notice about your past Amazon order.”

87. The body of Amazon’s direct consumer safety notification said the following:

“Dear Amazon Customer,

We have learned of a potential safety issue that may impact your Amazon purchase(s) below:

Order ID: [redacted]

Item: B07TVX4G4C - Hair Dryer Brush and Hot Air Brush, Bvser Air Hair Brush 3 in 1 Electric Hair Dryer Volumizer with Negative Ion Curling Dryer Brush One Styler Step, Hair Straightening Brush, Rotating

The product listed above is either a product that the U.S. Consumer Product Safety Commission (CPSC) has informed us about, or our Product Safety team has identified, that may fail to have mandatory immersion protection, posing a risk of electric shock if the hair dryer comes in contact with water.

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. There is no need for you to return the product.

Amazon is applying a refund in the form of a gift card to Your Account. You can view your available balance and activity here: https://www.amazon.com/gp/css/gc/balance/

The safety and satisfaction of our customers is our highest priority. We regret any inconvenience this may cause you.

Thanks for shopping at Amazon.”

88. The direct notification email for the hair dryer Subject Products contained the information necessary to help the consumer to identify the product, including the Order ID, Amazon Standard Identification Number, and item name.

89. 

95 Ex. 13, Amazon-CPSC-FBA-00001841 (Customer Notification Dates Data); Dkt. 24, Resp. ¶ 20 (Compl. Counsel’s Resp. to Amazon’s Statement of Undisputed Facts) (Nov. 22, 2021); Shrem Decl. ¶ 25 (Sept. 23, 2022).

96 Ex. 29, Amazon-CPSC-FBA-00000212 at 00213 (Amazon Hair Dryer Safety Notice).

97 Ex. 29, Amazon-CPSC-FBA-00000212 at 00213 (Amazon Hair Dryer Safety Notice).
90. The direct notification email helped the consumer identify the specific potential risk posed by the hair dryer Subject Products, namely that they “may fail to have mandatory immersion protection, posing a risk of electric shock if the hair dryer comes in contact with water.”

91. The direct notification email helped the consumer understand the steps a consumer should take to mitigate the potential risk posed by the product, namely that they should “stop using it immediately and dispose of it” and “[i]f you purchased this product for someone else, please notify the recipient immediately and let them know they should dispose of it.”

92. The direct notification email helped the consumer understand the remedy being provided by Amazon, namely that “Amazon is applying a refund in the form of a gift card”, and the consumer could view the “balance and activity here: https://www.amazon.com/gp/css/gc/balance/.”

3. Amazon provided all purchasers of the hair dryer Subject Products a complete refund.

93. Amazon provided refunds to all consumers who purchased the hair dryer Subject Products, and the additional products Amazon identified as potentially posing the same hazard as the Subject Products, including all hair dryer models identified in the Complaint.

4. Amazon has not listed for sale and does not intend to list for sale any of the hair dryer Subject Products.

94. Prior to the filing of the Complaint in this matter, Amazon had removed the hair dryer Subject Products, and the additional products Amazon identified as potentially posing the same hazard as the Subject Products, from Amazon.com.

95. None of the hair dryer Subject Products, or the additional products Amazon identified

---

100 Ex. 29, Amazon-CPSC-FBA-00000212 at 00213 (Amazon Hair Dryer Safety Notice); Ex. 40, Williams Dep. 64:18–64:22.
101 Ex. 29, Amazon-CPSC-FBA-00000212 at 00213 (Amazon Hair Dryer Safety Notice); Ex. 40, Williams Dep. 64:11–64:17.
102 Ex. 42, Amazon-CPSC-FBA-00002377 (Amazon Refund Data re Carbon Monoxide Detectors and Hair Dryers); Shrem Decl. ¶ 28 (Sept. 23, 2022).
103 Ex. 1, Compl. Counsel’s Obj. and Resp. to Amazon Request for Admission, No. 9 (Mar. 21, 2022); Ex. 41, Amazon-CPSC-FBA-00001617 (Amazon Destruction Data) Shrem Decl. ¶¶ 9, 11, 13 (Sept. 23, 2022).
as potentially posing the same hazard as the Subject Products, including all hair dryer models listed in the Complaint are currently listed or available for purchase on Amazon.com.\textsuperscript{104}

96. Amazon prohibits Third-Party Sellers, or any other entity, from listing any of the hair dryer Subject Products, or the additional products Amazon identified as potentially posing the same hazard as the Subject Products, on Amazon.com.\textsuperscript{105}

C. \textbf{Amazon’s Remedial Actions Regarding the Carbon Monoxide Subject Products.}

1. \textit{Amazon stopped selling the carbon monoxide Subject Products and blocked the release of any inventory in its fulfillment centers.}

97. On or about August 13, 2020, Amazon stopped selling from Amazon.com the carbon monoxide Subject Products, and the additional products Amazon identified as potentially posing the same hazard as the Subject Products, including all carbon monoxide detector models identified in the Complaint.\textsuperscript{107}

98. On or about August 13, 2020, Amazon quarantined all units of the carbon monoxide Subject Products, and the additional products Amazon identified as potentially posing the same hazard as the Subject Products, including all carbon monoxide detector models identified in the Complaint.\textsuperscript{108}

2. \textit{Amazon sent all purchasers of the carbon monoxide Subject Products an appropriate direct consumer safety notification email.}

100. Between June 11, 2021 and August 1, 2021, Amazon sent all consumers who purchased the carbon monoxide Subject Products, and the additional products Amazon identified as potentially posing the same hazard as the Subject Products, including all carbon monoxide detector models identified in the Complaint, a direct consumer safety notification by email with the subject line: “Attention: Important safety notice about your past Amazon order.”\textsuperscript{109}

\textsuperscript{104} Dkt. 24, Resp. to ¶ 15 (Compl. Counsel’s Resp. to Amazon’s Statement of Undisputed Facts) (Nov. 22, 2021); Shrem Decl. ¶¶ 12–13 (Sept. 23, 2022).

\textsuperscript{105} Ex. 2, Goldberg Dep. 306:19–307:2; Shrem Decl. ¶ 13 (Sept. 23, 2022).

\textsuperscript{106} Ex. 43, Amazon-CPSC-FBA-00002712 (Aug. 10, 2020 email from CPSC to Amazon).

\textsuperscript{107} Ex. 41, Amazon-CPSC-FBA-00001617 (Amazon Destruction Data); Shrem Decl. ¶¶ 10–11 (Sept. 23, 2022).

\textsuperscript{108} Ex. 41, Amazon-CPSC-FBA-00001617 (Amazon Destruction Data); Shrem Decl. ¶¶ 14, 17 (Sept. 23, 2022).

\textsuperscript{109} Ex. 29, Amazon-CPSC-FBA-0000212 at 00214 (Carbon Monoxide Detector Safety Notice); Dkt. 24, Resp. ¶ 20 (Compl. Counsel’s Resp. to Amazon’s Statement of Undisputed Facts) (Nov. 22, 2021).
101. The body of Amazon’s direct consumer safety notification said the following:

“Dear Amazon Customer,

We have learned of a potential safety issue that may impact your Amazon purchase(s) below:

Order ID: [redacted]

Item: B07C2KM8RB - MIXSight Carbon Monoxide Detector CO Alarm Detector with LCD Digital Display Battery Operated, 4-Pack, Battery Included

The product listed above is either a product that the U.S. Consumer Product Safety Commission (CPSC) has informed us 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.

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. There is no need for you to return the product.

Amazon is applying a refund in the form of a gift card to Your Account. You can view your available balance and activity here: https://www.amazon.com/gp/css/gc/balance/

The safety and satisfaction of our customers is our highest priority. We regret any inconvenience this may cause you.

Thanks for shopping at Amazon.”

102. The direct notification email for the carbon monoxide Subject Products contained the information necessary to help the consumer to identify the product, including the Order ID, Amazon Standard Identification Number, and item name.

103. The direct notification email helped the consumer identify the specific potential risk posed by the carbon monoxide Subject Products, namely that they “may fail to alarm on time, posing a risk of exposure to potentially dangerous levels of Carbon Monoxide.”

---

22, 2021); Shrem Decl. ¶ 25 (Sept. 23, 2022).
110 Ex. 29, Amazon-CPSC-FBA-00000212 at 00214 (Carbon Monoxide Detector Safety Notice).
111 Ex. 29, Amazon-CPSC-FBA-00000212 at 00214 (Carbon Monoxide Detector Safety Notice).
112 Ex. 29, Amazon-CPSC-FBA-00000212 at 00214 (Carbon Monoxide Detector Safety Notice).
104. The direct notification email identified and helped the consumer understand the steps a consumer should take to mitigate the potential risk posed by the product, namely, that they should “stop using it immediately and dispose of it” and “[i]f you purchased this product for someone else, please notify the recipient immediately and let them know they should dispose of it.”

105. The direct notification email helped the consumer understand the remedy being provided by Amazon, namely that “Amazon is applying a refund in the form of a gift card,” and the consumer could view the “balance and activity here: https://www.amazon.com/gp/css/gc/balance/.”

3. Amazon provided all purchasers of the carbon monoxide Subject Products a complete refund.

106. Amazon provided refunds to all consumers who purchased the carbon monoxide Subject Products, as well as the additional products Amazon identified as potentially posing the same hazard as the Subject Products, including all carbon monoxide Subject Products identified in the Complaint.

4. Amazon has not listed for sale and does not intend to list for sale any of the carbon monoxide Subject Products.

107. Prior to the filing of the Complaint in this matter, Amazon had removed the carbon monoxide Subject Products, and the additional products Amazon identified as potentially posing the same hazard as the Subject Products, from Amazon.com.

108. None of the carbon monoxide Subject Products, or the additional products Amazon identified as potentially posing the same hazard as the Subject Products, are currently listed or available for purchase on Amazon.com.

109. Amazon prohibits Third-Party Sellers, or any other entity, from listing any of the carbon monoxide Subject Products, or the additional products Amazon identified as potentially posing the same hazard as the Subject Products, on Amazon.com.

D. Amazon’s Remedial Actions with Respect to All Subject Products.

110. Amazon retains email address information for purchasers of the Subject Products.

113 Ex. 29, Amazon-CPSC-FBA-00000212 at 00214 (Carbon Monoxide Detector Safety Notice).
114 Ex. 29, Amazon-CPSC-FBA-00000212 at 00214 (Carbon Monoxide Detector Safety Notice).
115 Ex. 44, Amazon-CPSC-FBA-00003803 (Info. Re Amazon Refunds to Purchasers of Subject Products); Shrem Decl. ¶ 28 (Sept. 23, 2022).
116 Ex. 1, Compl. Counsel’s Obj. and Resp. to Amazon Request for Admission, No. 8 (Mar. 21, 2022); Ex. 41, Amazon-CPSC-FBA-00001617 (Amazon Destruction Data).
117 Dkt. 24, Resp. to ¶ 15 (Compl. Counsel’s Resp. to Amazon’s Statement of Undisputed Facts) (Nov. 22, 2021); Shrem Decl. ¶¶ 12–13 (Sept. 23, 2022).
After the Commission approached Amazon about the Subject Products, Amazon sent a direct consumer safety notification, via email, to all purchasers of the Subject Products, and the additional products Amazon identified as potentially posing the same hazard as the Subject Products.\textsuperscript{119}

111. The direct consumer safety notifications informed all purchasers of the Subject Products, and the additional products Amazon identified as potentially posing the same hazard as the Subject Products, of the potential product hazard, instructed them to stop using and dispose of the products, and that told them that Amazon had applied a refund of the full purchase price to their account.\textsuperscript{120}

112. In total, Amazon refunded over $20 million to the Subject Product purchasers.\textsuperscript{121}

113. Prior to the filing of the Complaint in this matter, Amazon had removed the Subject Products, and the additional products Amazon identified as potentially posing the same hazard as the Subject Products, from Amazon.com.\textsuperscript{122}

114. None of the Subject Products, or the additional products Amazon identified as potentially posing the same hazard as the Subject Products, are currently listed or available for purchase on Amazon.com.\textsuperscript{123}

115. None of the Subject Products, or the additional products Amazon identified as potentially posing the same hazard as the Subject Products, are currently listed or available for purchase on Amazon.com.\textsuperscript{124}

116. Amazon prohibits Third-Party Sellers, or any other entity, from listing any of the Subject Products, or the additional products Amazon identified as potentially posing the same hazard as the Subject Products, on Amazon.com.\textsuperscript{125}


\textsuperscript{120} Dkt. 24, Resp. to ¶¶ 19, 23 (Compl. Counsel’s Resp. to Amazon’s Statement of Undisputed Facts) (Nov. 22, 2021); Ex. 14, Amazon-CPSC-FBA-00002397 (Consumer Messaging Data); Ex. 29, Amazon-CPSC-FBA-0000212 to 14 (Amazon Direct Product Safety Notification Email re IDGIRLS Children Sleepwear); Ex. 37, Amazon-CPSC-FBA-00002419 (Amazon Direct Product Safety Notification Email re HOYMN Children’s Sleepwear); Shrem Decl. ¶ 28 (Sept. 23, 2022).

\textsuperscript{121} Ex. 44, Amazon-CPSC-FBA-00003803 (Info. Re Amazon Refunds to Purchasers of Subject Products).

\textsuperscript{122} Ex. 1, Compl. Counsel’s Obj. and Resp. to Amazon’s Request for Admission, No. 8 (Mar. 21, 2022); Ex. 45, Compl Counsel’s Obj. and Resp. to Amazon Interrogatory, No. 6 (Mar. 21, 2022); Ex. 9, Amazon-CPSC-FBA-00001840 (Sleepwear Summary Data).

\textsuperscript{123} Ex. 2, Goldberg Dep. 262:13–265:14.

\textsuperscript{124} Dkt. 23, Resp. to ¶ 15 (Compl. Counsel’s Resp. to Amazon’s Statement of Undisputed Facts) (Nov. 22, 2021); Shrem Decl. ¶¶ 12–13 (Sept. 23, 2022).

\textsuperscript{125} Ex. 2, Goldberg Dep. 306:19–307:2; Shrem Decl. ¶¶ 12–13 (Sept. 23, 2022).
117. Amazon’s fulfillment centers destroy products in the order they are received.\textsuperscript{126}

118. The process of destroying products can take time due to the large number of products that require destruction.\textsuperscript{127}

119. Amazon has destroyed 45,785 units of the Subject Products identified in the Complaint.\textsuperscript{128}

120. Amazon has destroyed all but 6 units the Subject Products (all of them hair dryers) at its fulfillment centers.\textsuperscript{129}

121. All items that are awaiting destruction cannot be sold or shipped to customers.\textsuperscript{130}

III. AMAZON REQUESTED THAT ALL THIRD-PARTY SELLERS COOPERATE WITH THE COMMISSION.

122. Amazon notified all Third-Party Sellers of Commission notices regarding the Subject Products that Amazon received.\textsuperscript{131}

\textsuperscript{126} Shrem Decl. ¶ 22 (Sept. 23, 2022).

\textsuperscript{127} Shrem Decl. ¶ 22 (Sept. 23, 2022).

\textsuperscript{128} Shrem Decl. ¶ 19 (Sept. 23, 2022).

\textsuperscript{129} Shrem Decl. ¶ 21 (Sept. 23, 2022).

\textsuperscript{130} Shrem Decl. ¶ 23 (Sept. 23, 2022).


\textsuperscript{132} See supra FN 131.

\textsuperscript{133} See supra FN 131.
IV. THE REMEDIES AVAILABLE TO THE COMMISSION & MEASURE OF REMEDIAL EFFECTIVENESS


125. The Commission’s practices, summarized in its handbook, limit “recall” to mean any “repair, replacement, refund, or notice/warning program.”

126. [Ex. 60, 2012 CPSC Recall Handbook at 6; supra FN 3.]

B. “Correction Rate” is the Commission’s Standard Metric for Measuring Remedial Effectiveness.

127. A “correction rate” is the Commission’s primary metric for measuring recall effectiveness.

128. A correction rate, represents the proportion of product units recalled that have been refunded, replaced, or repaired.

129. [Ex. 61, Amazon-CPSC-FBA-00001566 at 01597 (GAO-21-56 Rep. on CPSC Nov. 2020); Ex. 62, Mohorovic Rep. at 23; Ex. 30, Rose Dep. 88:7–88:14.]

130. [See Ex. 62, Mohorovic Rep. at 21–22.]

131. Academic research shows that imposing even a “moderate cost” to comply with safety message reduces compliance rate by 94 percent.

132. Academic research shows that “in-home” remedies “increase . . . the average recall effectiveness rate” compared to “a remedy that required consumers to return the product.”

134 Ex. 60, 2012 CPSC Recall Handbook at 6; supra FN 3.
136 Ex. 61, Amazon-CPSC-FBA-00001566 at 01597 (GAO-21-56 Rep. on CPSC Nov. 2020); Ex. 62, Mohorovic Rep. at 23.
137 Ex. 66, CPSC_AM0009637 at 09638 (CPSC Recall Defect Data); Ex. 62, Mohorovic Rep. at 23; Ex. 30, Rose Dep. 88:7–88:14.
Based on data analyzed for closed cases that had a Corrective Action Plan between FY 2013 and FY 2016, the Commission’s overall correction rate was 65 percent.

C. The Effectiveness of Recall Notices Varies by Type of Notice.

The purpose of recall notices is to “help consumers and other persons to: (1) [i]dentify the specific product to which the recall notice pertains; (2) [u]nderstand the product’s actual or potential hazards to which the recall notice pertains, and information relating to such hazards; and (3) [u]nderstand all remedies available to consumers concerning the product to which the recall notice pertains.”

The Commission’s policy and practice is to issue one of two recall notices: (1) recall alerts and (2) recall press releases. Recall alerts are not disseminated to the media, and are used when the recalling firm can contact all purchasers. A recall press release is distributed to the media and is used when the firm does not have the contact information for most purchasers.

As of 2017, cases that involved Commission Press Releases had a consumer correction rate of approximately 6 percent.

As of 2017, the correction rate for consumer products with a retail price under $19 was approximately 4 percent.

---

132. See Ex. 64, CPSC_AM0013521 at 13522 (CPSC Section 15 Manual) (instructing staff that they “must comply with CPSC Directive 9010.34”); see Ex. 65, CPSC_AM0014049 at 14091 (Directive Order No. 9010.34).
134. The term “Corrective Action Plan” includes any type of remedial action, and may include multiple actions, taken by a company with respect to a consumer product.
135. Ex. 66, CPSC_AM0009637 at 0009638–09639 (CPSC Recall Defect Data).
139. Ex. 69, Amazon-CPSC-FBA-00001348 at 01388 (Tr. Of CPSC Recall Effectiveness Workshop, July 25, 2017) (statement of Ms. Carol Cave, deputy director, Office of Compliance &
As of 2017, for cases that involved a Commission Recall Alert, where the recalling firm was able to directly contact at least 95 percent of consumers, the correction rate was approximately 50 percent.\textsuperscript{154}

Empirical research has found that 80 percent of consumers comply with the instructions provided in recall notices.\textsuperscript{159}
D. The Content of Amazon’s Recall Notices Was Materially Similar to Notices
the Commission-Approved in Other Matters.

150. Amazon’s direct consumer safety notifications listed the date on which they were sent and the identity of the firm providing the notice (Amazon).160

151. Amazon’s direct consumer safety notifications made reference to the Commission, stating that “[t]he U.S. Consumer Product Safety Commission (CPSC) has informed [Amazon] that the products” described in the message pose a safety risk.161


153. A Commission notice from 2020 for a hair dryer product stated: “The hair dryers do not have an immersion protection device, posing an electrocution or shock hazard if the dryer falls into water when plugged in.”163

154. A Commission notice from 2022 for a carbon monoxide product stated: “The alarms can fail to alert consumers to the presence of a hazardous level of carbon monoxide, posing a risk of carbon monoxide poisoning or death. Carbon monoxide (CO) is an odorless, colorless, poisonous gas.”164

155. Empirical research has specifically addressed the question whether the word “recall” should be used in notifications, and concluded instead that “use of different terminology” is appropriate where the term does not actually describe what action consumers should take with the product.165

156. The 2012 version of the Commission’s Recall Handbook, which was in effect until September 2021, advised that for recall notifications issued via letter, the phrase “Important Safety Notice” should appear at the top of each notice.166

157. The Commission has approved multiple Press Releases with the language “Important

Attitudes and Behaviors Regarding Product Safety at 27.

160 Ex. 29, Amazon-CPSC-FBA-00000212 at 00214 (Carbon Monoxide Detector Safety Notice).
161 Ex. 29, Amazon-CPSC-FBA-00000212 at 00214 (emphasis added).
162 Ex. 83, CPSC Recall No. 20-066 (emphasis added).
163 Ex. 72, CPSC Recall No. 20-738 (emphasis added).
164 Ex. 73, CPSC Recall No. 22-111 (emphasis added).
166 Ex. 60, 2012 CPSC Recall Handbook at 24 (emphasis added).
Safety Notice.”

158. The Commission-approved recall notice for Recall No. 11-711 provides a hazard description stating “[v]ibration from the ignition module may cause the trimmer head to loosen and detach.”

159. The Commission has approved multiple recall notices with language indicating that a product “may” cause a potential hazard.

160. The Commission routinely approves recall notices instructing purchasers that they “should” take certain actions.

161. The Commission routinely approves corrective actions that instruct a consumer to dispose of a product or repair it, but do not require the consumer to verify that they have completed the requested action.

E. Direct Notice is the Most Effective Form of a Recall Notice.

162. A direct recall notice is the most effective form of a recall notice.

---

167 Ex. 75, CPSC Recall No. 17-168; Ex. 76, CPSC Recall No. 18-090; Ex. 77, CPSC Recall No. 22-039 (emphasis added).
168 Ex. 78, CPSC Recall No. 11-711 (emphasis added).
169 Ex. 79, CPSC Recall No. 17-102 (“master cylinder may cause unintended brake drag”); Ex. 78, CPSC Recall No. 11-711, (“[v]ibration from the ignition module may cause the trimmer head to loosen and detach”); Ex. 80, CPSC Recall No. 12-021 (“[b]urners on range tops operating on liquified petroleum . . . may fail to ignite or light”); Ex. 81, CPSC Recall No. 15-159 (“[e]lectrical arcing may cause the lamp to overheat”).
170 Ex 82, CPSC Recall No. 20-163 (“[c]onsumers should immediately stop using the recalled lawn dart sets and destroy and dispose of them to prevent further usage”); Ex 83, CPSC Recall No. 20-066 (“[c]onsumers should immediately stop using the recalled” product and “consumers should destroy the triangle piece”).
171 Ex. 84, CPSC Recall No. 22-022 (consumers should dispose of old exercise equipment in the trash); Ex. 83, CPSC Recall No. 20-066 (consumers should destroy part of a children’s toy); Ex 85, CPSC Recall No. 21-114 (consumers should remove and dispose of youth jacket draw strings to eliminate hazard); Ex. 86, CPSC Recall No. 20-018 (consumers take away sweatshirts from children and remove the drawstring); Ex. 87, CPSC Recall No. 21-705 (consumers should stop using oven liners which present carbon monoxide hazard); Ex. 88, CPSC Recall No. 18-023 (consumers should take away ponchos from children and remove the drawstring or return the poncho to the company).
172 16 CFR § 1115.26; Ex. 89, CPSC_AM0011464 at 11481 (2021 CPSC Product Safety Planning, Reporting and Recall Handbook); Ex. 90, CPSC_AM0011459 at 11463 (2018 CPSC Recall Effectiveness Workshop Report); Ex. 30, Rose Dep. 47:2–47:7; Ex. 91, CPSC_AM0009669 at 09680 (Blake Rose, Director, Defect Investigations Division of CPSC, Review of Recall Process and Standard Notifications).
163. Direct notice “has a substantial impact on consumer return rates.”

164. Empirical research has “consistently . . . identified” direct notice as “a preferred and effective method of contacting most population segments.”

165. The Commission has admitted that “direct notification of a recall to all purchasers of a recalled product is an effective means of publicizing a recall and promoting recall.”

166. The Commission admits that “media assistance is not as important” when direct notification to consumers is used.

F. Amazon’s Direct Notice Helped Consumers Identify the Product, Hazard, and Remedy Provided.

167. Amazon’s direct notices to consumers regarding the Subject Products helped consumers identify the product.

168. Amazon’s direct notices to consumers regarding the Subject Products helped consumers understand the actual or potential hazard posed by the product.

---

173 Ex. 90, CPSC_AM0011459 at 11462 (2018 CPSC Recall Effectiveness Workshop Report).
175 Ex. 1, Compl. Counsel’s Obj. and Resp. to Amazon Request for Admission, No. 12 (Mar. 21, 2022).
176 Ex. 68, CPSC_AM0009649 at 09653 (2017 CPSC Recall Effectiveness Workshop Presentation on Press Release Goals); see also Ex. 62, Mohorovic Rep. at 10–11.
177 Ex. 94, CPSC_AM001814 (Amazon’s Direct Product Safety Notification Email re Hairdryers); Ex. 30, Amazon-CPSC-FBA-00000212 at 00213 (Amazon’s Direct Product Safety Notification Email re Hairdryers); Ex. 41, Williams Dep. 62:15–63:1; Ex. 30, Amazon-CPSC-FBA-00000212 (Amazon’s Direct Product Safety Notification Email re Children Sleepwear (IDGIRLS)); Ex. 38, Amazon-CPSC-FBA-00002419 (Amazon’s Direct Product Safety Notification Email re Children Sleepwear); Ex. 16, CPSC_AM0000497 (Amazon’s Direct Product Safety Notification Email re Children Sleepwear (Taiycyxgan)); Ex. 68, Carlin Dep. 124:12–124:18; Ex. 30, Amazon-CPSC-FBA-00000212 at 00214 (Amazon’s Direct Product Safety Notification Email re Carbon Monoxide Detector); Ex. 63, Mohorovic Rep. at 14.
178 Ex. 93, CPSC_AM001814 (Amazon’s Direct Product Safety Notification Email re Hairdryers); Ex. 29, Amazon-CPSC-FBA-00000212 at 00213 (Amazon’s Direct Product Safety Notification Email re Hairdryers); Ex. 40, Williams Dep. 63:14–63:19; Ex. 29, Amazon-CPSC-FBA-00000212 (Amazon’s Direct Product Safety Notification Email re Children Sleepwear (IDGIRLS)); Ex. 37, Amazon-CPSC-FBA-00002419 (Amazon’s Direct Product Safety Notification Email re Children Sleepwear); Ex. 15, CPSC_AM0000497 (Amazon’s Direct Product Safety Notification Email re Children Sleepwear (Taiycyxgan)); Ex. 67, Carlin Dep. 124:5–124:11; Ex. 29, Amazon-CPSC-FBA-00000212 at 00214 (Amazon’s Direct Product Safety Notification Email re Carbon Monoxide Detector); Ex. 62, Mohorovic Rep. at 11–13.
169. Amazon’s direct notices to consumers regarding the Subject Products helped the consumers understand the remedy being provided to them.\textsuperscript{179}

170. Amazon’s direct notices to consumers regarding the Subject Products indicated that consumers should stop using the product “immediately and dispose of it.”\textsuperscript{180}

171. Academic research supports the conclusion that when “consumers . . . throw away the product . . . the recall is effective in alerting the consumer and removing the hazard.”\textsuperscript{181}

172. Ex. 93, CPSC_AM001814 (Amazon’s Direct Product Safety Notification Email re Hairdryers); Ex. 29, Amazon-CPSC-FBA-00000212 at 00213 (Amazon’s Direct Product Safety Notification Email re Hairdryers); Ex. 40, Williams Dep. 64:11–64:17; Ex. 29, Amazon-CPSC-FBA-00000212 (Amazon’s Direct Product Safety Notification Email re Children Sleepwear (IDGIRLS)); Ex. 37, Amazon-CPSC-FBA-00002419 (Amazon’s Direct Product Safety Notification Email re Children Sleepwear); Ex. 15, CPSC_AM0000497 (Amazon’s Direct Product Safety Notification Email re Children Sleepwear (Taiyceyxgan)); Ex. 67, Carlin Dep. 124:19–125:3; Ex. 29, Amazon-CPSC-FBA-00000212 at 00214 (Amazon’s Direct Product Safety Notification Email re Carbon Monoxide Detector).


\textsuperscript{179} Ex. 93, CPSC_AM001814 (Amazon’s Direct Product Safety Notification Email re Hairdryers); Ex. 29, Amazon-CPSC-FBA-00000212 at 00213 (Amazon’s Direct Product Safety Notification Email re Hairdryers); Ex. 40, Williams Dep. 64:11–64:17; Ex. 29, Amazon-CPSC-FBA-00000212 (Amazon’s Direct Product Safety Notification Email re Children Sleepwear (IDGIRLS)); Ex. 37, Amazon-CPSC-FBA-00002419 (Amazon’s Direct Product Safety Notification Email re Children Sleepwear); Ex. 15, CPSC_AM0000497 (Amazon’s Direct Product Safety Notification Email re Children Sleepwear (Taiyceyxgan)); Ex. 67, Carlin Dep. 124:19–125:3; Ex. 29, Amazon-CPSC-FBA-00000212 at 00214 (Amazon’s Direct Product Safety Notification Email re Carbon Monoxide Detector).

\textsuperscript{180} Ex. 93, CPSC_AM001814 (Amazon’s Direct Product Safety Notification Email re Hairdryers); Ex. 29, Amazon-CPSC-FBA-00000212 at 00213 (Amazon’s Direct Product Safety Notification Email re Hairdryers); Ex. 40, Williams Dep. 64:18–64:22; Ex. 29, Amazon-CPSC-FBA-00000212 (Amazon’s Direct Product Safety Notification Email re Children Sleepwear (IDGIRLS)); Ex. 37, Amazon-CPSC-FBA-00002419 (Amazon’s Direct Product Safety Notification Email re Children Sleepwear); Ex. 15, CPSC_AM0000497 (Amazon’s Direct Product Safety Notification Email re Children Sleepwear (Taiyceyxgan)); Ex. 29, Amazon-CPSC-FBA-00000212 at 00214 (Amazon’s Direct Product Safety Notification Email re Carbon Monoxide Detector).

\textsuperscript{181} Ex. 16, Davis Dep. 146:10–146:22; Ex. 62, Mohorovic Rep. at 14.

\textsuperscript{182} Ex. 61, Amazon-CPSC-FBA-00001566 at 01597 at 01597 (GAO-21-56 Rep. on CPSC Nov. 2020).

\textsuperscript{183} Ex. 30, Rose Dep. 144:4–144:9.

\textsuperscript{184} Ex. 94, CPSC_AM0010101 at 10104 (Heiden Associates & XL Associates, \textit{Recall Effectiveness Research: A Review and Summary of the Literature on Consumer Motivation and Behavior}).
176. Amazon’s use of the phrase “Important Safety Notice” in the subject line of its direct notices regarding the Subject Products is consistent with applicable Commission policy and practice.  

V. REPEATED CONSUMER COMMUNICATIONS ADD TO CONSUMER CONFUSION AND RECALL FATIGUE.

177. Recall fatigue is the concept that additional communications to consumers will make them less likely to respond to safety messaging.  

178. Recall fatigue results in consumers “simply ignor[ing] urgent calls to destroy or return defective goods.”

179. Consumers are exposed to thousands of recalls per year.

180. Consumers have limited bandwidth to track, process and act on recalls.

181. Consumers “tune out the [recall] news because they have been bombarded by repetition.”

182. Polls show that more than 60 percent of consumers believe that recalls are “primarily exercises in red tape” and “less about protecting consumers and more about government regulations.”


186. Ex. 95, Lyndsey Layton, Officials Worry About Consumers Lost Among the Recalls, The Washington Post (July 2, 2010).

187. Ex. 96, Michael S. Wogalter & William J. Vigilante, Jr., Attention Switch and Maintenance, in Handbook of Warnings 245, 245 (M.S. Wogalter ed., 2006) (consumers “have a limited capacity of attention or mental resources to be used for active processing” and “cannot attend to everything around us”).

188. Ex. 97, Anita Bernstein, Voluntary Recalls, 1(10) UNIV. CHICAGO LEGAL FORUM 359, 394 (2013).

189. Ex. 98, Stericycle Expert Solutions, Product Recalls: Big Brother or Caring for One Another? (June 12, 2018).
185. Other federal agencies are aware and acknowledge that recall fatigue is an issue.\textsuperscript{196}

186. Research shows that “[c]onsumers are less likely to comply where compliance is inconvenient.”\textsuperscript{197}

187. The term “functionally equivalent products” does not appear in the Consumer Product Safety Act, or its implementing regulations.\textsuperscript{199}

188. The Commission has never ordered remedial action with respect to “functionally equivalent” products.

VI. THE COMMISSION HAS NOT DEFINED THE TERM “FUNCTIONALLY EQUIVALENT PRODUCTS.”

189. The term “functionally equivalent products” does not appear in the Consumer Product Safety Act, or its implementing regulations.\textsuperscript{199}

190. The Commission has never ordered remedial action with respect to “functionally equivalent” products.

191. The Commission has never ordered remedial action with respect to “functionally equivalent” products.


\textsuperscript{194} Ex. 16, Davis Dep. 190:17–191:19.
\textsuperscript{195} Ex. 16, Davis Dep. 190:17–191:19; Ex. 62, Mohorovic Rep. at 26 (noting “[c]oncerns about recall fatigue are well known at the CPSC” and have grown over time); Ex. 99, Statement by Commissioner Buerkel at the \textit{Consumer Product Safety and the Recall Process}, Hearing Before the Subcomm. on Consumer Protection, Product Safety, Insurance, and Data Security of the Senate Comm. On Commerce, 114th Cong. (Oct. 8, 2015) (“I think on some levels, at least for CPSC, there may be a recall fatigue issue that we really need to address.”).
\textsuperscript{196} Ex. 100, \textit{Update on the Recalls of Defective Takata Air Bags and NHTSA’s Vehicle Safety Efforts}, Senate Comm. On Commerce, 114th Cong. at 4 and 72 (June 23, 2015).
\textsuperscript{197} Ex. 62, Mohorovic Rep. at 19; \textit{see also} Ex. 63, Michael S. Wogalter et al., Effectiveness of Warnings at 609 in \textit{Human Factors} (1987) (imposing even a “moderate cost” to comply with safety message reduces compliance to only 5.9% of the population sample subject to the study).
\textsuperscript{198} \textit{See} Ex. 62, Mohorovic Rep. at 18–20.
\textsuperscript{200} Ex. 30, Rose Dep. 335:16–337:19.
\textsuperscript{201} \textit{See} Ex. 30, Rose Dep. 334:18–335:4.
VII.  THE COMMISSION’S NOTICE REQUIREMENTS

---

208. Ex. 106, CPSC_AM0014331 at 14331 (CPSC Laboratory Rep.).
209. Ex. 106, CPSC_AM0014331 at 14331 (CPSC Laboratory Rep.).
210. Ex. 106, CPSC_AM0014331 at 14331 (CPSC Laboratory Rep.).
The Commission’s 2012 Recall Handbook states that the term “‘Important Safety Notice’ . . . should appear” in “other forms of notice,” which include email notifications.\textsuperscript{213}

Academic research shows that the reputation of a firm, including whether a brand is well-known and a trusted source of information, increases the likelihood that its consumer messages will be heeded.\textsuperscript{215}

Empirical research has specifically addressed the question whether the word “recall” should be used in notifications, and concluded instead that “use of different terminology” is appropriate where the term does not actually describe what action consumers should take with the product.\textsuperscript{216}

The Commission is “not a well-recognized agency.”\textsuperscript{217}

There is no evidence that consumers are more likely to take additional action because the Commission says to.\textsuperscript{218}

\textbf{VIII. THE COMMISSION’S CURRENT PRACTICES REGARDING RECALL ACTIONS}

\textsuperscript{212} Ex. 62, Mohorovic Rep. at 11–13.
\textsuperscript{213} Ex. 60, 2012 CPSC Recall Handbook at 23–24.
\textsuperscript{214} Ex. 62, Mohorovic Rep. at 16–18.
\textsuperscript{215} Ex. 62, Mohorovic Rep. at 16–18.
\textsuperscript{217} Ex. 102, 2023–2026 CPSC Draft Strategic Plan at 24.
\textsuperscript{219} Ex. 30, Rose Dep. 290:7–291:4.
\textsuperscript{220} Ex. 30, Rose Dep. 194:19–195:16.
IX. THE COMMISSION’S STATED PUBLIC INTEREST JUSTIFICATIONS

215. Complaint Counsel’s sole identified public interest justification for requesting that Amazon issue an additional CPSC approved direct notice to purchasers is that it would “clear the hazard presented and promote[] the removal of the hazardous Subject Products from homes and the stream of commerce.”

216. Complaint Counsel’s sole identified public interest justification for requesting that Amazon issue a press release regarding the Subject Products is that it would “clear[ly] the hazards presented and promote[] awareness of the hazardous products.”

217. Complaint Counsel’s sole identified public interest justification for requesting that Amazon facilitate the return and destruction of the Subject Products is that it would “promote[] the removal of the hazardous Subject Products from homes and the stream of commerce.”

218. Complaint Counsel’s sole identified public interest justification for requesting that Amazon submit monthly progress reports reflecting the number of Subject Products located in Amazon’s inventory, returned by consumers, and destroyed is that it would “track[] the return and destruction of the hazardous Subject Products.”

219. Complaint Counsel’s sole identified public interest justification for requesting that Amazon submit monthly progress reports identifying all functionally equivalent products removed by Amazon is that it would “facilitate the identification and removal of products posing identical hazards.”

220. Complaint Counsel’s sole identified public interest justification for requesting that

---

222 Ex. 30, Rose Dep. 299:14–299:19
224 Ex. 45, Compl. Counsel’s Obj. and Resp. to Amazon’s Interrogatories, No. 14 (Mar. 21, 2022).
225 Ex. 45, Compl. Counsel’s Obj. and Resp. to Amazon’s Interrogatories, No. 14 (Mar. 21, 2022).
226 Ex. 45, Compl. Counsel’s Obj. and Resp. to Amazon’s Interrogatories, No. 14 (Mar. 21, 2022).
227 Ex. 45, Compl. Counsel’s Obj. and Resp. to Amazon’s Interrogatories, No. 14 (Mar. 21, 2022).
228 Ex. 45, Compl. Counsel’s Obj. and Resp. to Amazon’s Interrogatories, No. 14 (Mar. 21, 2022).
Amazon be prohibited from distributing functionally identical products is that it “subjects [Amazon] to penalties if [Amazon] distributes Subject Products or functionally identical products.”

Dated: September 23, 2022

Respectfully submitted,

______________________________
Sarah L. Wilson
Stephen P. Anthony
Rukesh A. Korde
Thomas Brugato
Joshua A. González
Nicholas Griepsma
Covington & Burling LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001-4956
202-662-5397
swilson@cov.com
santhony@cov.com
rkorde@cov.com
tbrugato@cov.com
jgonzalez@cov.com
ngriepsma@cov.com

Counsel for Respondent

---

229 Ex. 45, Compl. Counsel’s Obj. and Resp. to Amazon’s Interrogatories, No. 14 (Mar. 21, 2022).
CERTIFICATE OF SERVICE

I hereby certify that on September 23, 2022, 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 jeustice@cpsc.gov, lwolf@cpsc.gov, and sanand@cpsc.gov.

Nicholas Griebsma

Nicholas Griebsma