



August 14, 2023

Via Electronic Submission (www.Regulations.gov)

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue NW
Suite CC-5610 (Annex R)
Washington DC 20580

Re: **FTC Collaboration Act of 2021 Study (Project No. P238400): Cooperative FTC and State AG Enforcement of INFORM Consumers Act Aligns with Collaboration Act**

Dear FTC Office of the Secretary,

The Retail Industry Leaders Association (RILA) appreciates the opportunity to respond to the Federal Trade Commission's (FTC's) Request for Comments on the study of the FTC's "efforts with State Attorneys General to prevent, publicize, and penalize frauds and scams being perpetrated on individuals in the United States" that the FTC is conducting pursuant to the FTC Collaboration Act of 2021 (the "Collaboration Act") (P.L. 117-187). 88 Fed. Reg. 38510 (June 19, 2022).

RILA is the U.S. trade association for leading retailers. We convene decision-makers, advocate for the industry, and promote operational excellence and innovation. RILA members include more than 200 retailers, product manufacturers, and service suppliers, which together account for more than \$1.5 trillion in annual sales, millions of American jobs, and more than 100,000 stores, manufacturing facilities, and distribution centers domestically and abroad. RILA and its member companies strongly support the mission and goals of the FTC to protect consumers by preventing the sale of counterfeit and stolen goods.

As discussed more fully below, the recently enacted **Integrity, Notification, and Fairness in Online Retail Marketplaces for Consumers Act** ("the INFORM Consumers Act" or "INFORM")¹ provides an important opportunity for the FTC and state officials to work together to protect consumers from unlawful goods sold online as a result of organized criminal activity. We encourage the Commission to take the following measures each discussed below and to highlight them in the Collaboration Act study:

- Affirmatively develop cooperative strategies to enforce INFORM;
- Modify the Sentinel INFORM reporting mechanism to facilitate submission of information about potential INFORM violations from businesses and other non-consumers;
- Add a state field to the Sentinel form and proactively share complaints with state attorneys general (AG's) about consumers that are affected in their states;
- Convene Working Group meetings with state AG's and other stakeholders; and

¹ Congress passed INFORM as part of the 2022 end-of-year Omnibus Appropriations Bill, and the law can be found on pp. 2800-2819 of that bill. See <https://www.appropriations.senate.gov/imo/media/doc/JRQ121922.PDF>.

- Report regularly on INFORM Act enforcement cooperation.

The INFORM Consumers Act Protects Consumers with a New Transparency and Disclosure Paradigm for Online Marketplaces

1. Purpose

As the FTC has stated, the purpose of the INFORM Consumers Act is “to add more transparency to online transactions and to deter criminals from acquiring stolen, counterfeit, or unsafe items and selling them through those marketplaces.”² As a recent report produced by ACAMS and Homeland Security Investigations of US Immigrations & Customs Enforcement underscores,³ criminal organizations can resell stolen goods online with relative anonymity. Indeed, such entities launder nearly \$70 billion of illicit proceeds from organized retail crime annually.⁴ The sale of such items to consumers through online platforms is harmful to consumers and legitimate businesses alike, and unquestionably constitutes a “scam being perpetrated on individuals in the United States” within the meaning of the Collaboration Act.

2. INFORM Requires Online Marketplaces to Act

INFORM imposes new requirements on “online marketplaces”⁵ to collect and “verify”⁶ certain information⁷ about “high-volume third-party sellers”⁸ and to do so quickly. This information must be verified at least annually and online marketplaces must suspend covered sellers whose information cannot be verified.

Online marketplaces must also disclose certain information about high-volume third-party sellers with \$20,000 or more in annual gross revenues through two primary mechanisms. First, basic information about covered third party sellers must be disclosed “in a clear and conspicuous manner” either (1) on

² FTC, “[Informing Businesses about the INFORM Consumers Act](#)” (June 2023).

³ <https://www.acams.org/en/organized-retail-crime>

⁴ Id.

⁵ The Act defines an online marketplace as any person or entity that operates a “consumer-directed” electronically based or accessed platform that (1) includes features enabling third party sellers to engage in the sale, purchase, payment, storage, shipping, or delivery of a “consumer product” in the US; (2) is used by one or more third party sellers for such purposes; and (3) has a contractual or similar relationship with consumers governing their use of the platform to purchase consumer products. § 301(f)(4).

⁶ “Verify” means that an online marketplace must confirm the information that it collects, which may include using one or more methods to reliably determine that the information and documents provided are valid, correspond to the seller or an individual acting on the seller’s behalf, and not misappropriated or falsified. § 301(f)(7).

⁷ The information to be collected and verified, subject to certain variations, is contact information, bank account number, tax identification, and “working” email and phone number. § 301(a).

⁸ The Act defines such sellers to be third parties that, in any continuous 12-month period during the previous 24 months, have entered into 200 or more discrete sales or transactions of *new or unused* consumer products, with aggregate gross revenues of \$5000 or more, and for which payment is processed by the marketplace or its payment processor. To ensure compliance with the Act, online marketplaces must necessarily collect information from all third party sellers to determine whether they meet these statutory thresholds. § 301(f)(3).

the product listing page or (2) in the order confirmation that is sent to a purchaser.⁹ Second, INFORM requires “online marketplace[s]...[to] disclose to consumers in a clear and conspicuous manner on the product listing of any high-volume third-party seller a reporting mechanism that allows for electronic and telephonic reporting of suspicious marketplace activity to the online marketplace.”¹⁰

3. INFORM’s Requirements Protect Consumers

The obligations that INFORM imposes on online marketplaces to learn about third-party sellers and to disclose information to consumers increase seller transparency for consumers and deter criminals from selling unlawful products on the platforms. These requirements are critically important steps to protecting consumers from “frauds and scams being perpetrated on individuals in the United States,” which is the primary focus of the Collaboration Act study.

The “clear and conspicuous” reporting mechanism that INFORM requires online marketplaces to publish also furthers consumer protection and provides a vehicle for both consumers and other members of the public to alert online marketplaces to potential unlawful activity, so that the marketplaces can take appropriate action in response. As discussed more fully below, the reports made to online marketplaces can be shared with federal and state enforcers if the FTC establishes an adequate system for receiving the information.

Congress Directed the FTC To Enforce the INFORM Consumers Act with State AG’s

A law is only as effective as the enforcement behind it and Congress did not leave enforcement of the INFORM Consumers Act to chance. Instead, Congress directed the FTC, state AG’s and “other state officials” to enforce the Act collectively. Indeed, many state AG’s have been combatting organized retail crime for years, including through the formation of dedicated task forces and by passing their own INFORM Acts.¹¹ It is little wonder, then, that Congress provided a clear path for state AG enforcement of INFORM.

In terms of the FTC, INFORM directs the Commission to treat a violation of INFORM as an unfair or deceptive act or practice.¹² Such FTC Act violations are subject to penalties of up to \$50,120 per violation, a statutory amount that is adjusted upwards annually to account for inflation.¹³

⁹ The information to be disclosed is (1) seller’s full name; (2) physical address; (3) contact information to allow for direct, “unhindered” communication between a consumer and the seller, including current “working” phone number, email, or other means of direct electronic messaging; and (4) whether the seller is using a different supplier and, if so, the supplier’s information as above, on request from an “authenticated purchaser. § 301(b)(1)-(2).

¹⁰ §301(b)(3).

¹¹ To date, almost twenty states have passed their own INFORM Acts.

¹² Section 301(c).

¹³ See FTC Publishes Inflation-Adjusted Civil Penalty Amounts for 2023, <https://www.ftc.gov/news-events/news/press-releases/2023/01/ftc-publishes-inflation-adjusted-civil-penalty-amounts-2023#:~:text=The%20maximum%20civil%20penalty%20amount,Energy%20Policy%20and%20Conservation%20Act.>

INFORM authorizes state AG's to enforce the law when violations affect citizens of their states. In such cases, the AG's may bring an action in federal district court to enjoin such violations and obtain civil penalties, damages, restitution, and any other remedies permitted under state law.¹⁴ Notably, state AG's that utilize the INFORM Act may be able to recoup penalties far greater under the federal statute than they would otherwise be able to obtain under their own state statutes.

INFORM requires state attorneys general (AG's) to coordinate enforcement with the FTC if feasible, including by providing prior written notice to the FTC and by authorizing the FTC to intervene in state AG actions.¹⁵ INFORM further authorizes "any other officer of a State who is authorized by the State to do so" to bring a civil action under the statute.¹⁶

Federal congressional direction to the FTC to enforce the INFORM Consumers Act, combined with the statute's express authorization of state AG's and other state official enforcement, demonstrate clear congressional intent to see INFORM fully and cooperatively enforced by both the FTC and state enforcement officials.

Recommendations

The FTC Collaboration Act, which was enacted a year prior to the INFORM Consumers Act, underscores congressional intent that laws such as INFORM should be enforced collaboratively. Thus, the FTC should highlight the INFORM Consumers Act in its Collaboration Act study and enhance and improve enforcement cooperation thru the measures discussed below.

First, given the clear consumer protection benefits that flow from INFORM's directives to online marketplaces for transparency and accountability, federal and state officials should prioritize INFORM Consumers Act enforcement. RILA appreciates the measures that the FTC took prior to INFORM's effective date to notify the public about the statute and its requirements, including through press releases and blogposts,¹⁷ educational materials,¹⁸ and warning letters to online marketplaces.¹⁹ Now that the statute has been in effect for almost two months – well beyond the twenty-day standard for collecting and verifying information as directed by INFORM – enforcement bodies should start to investigate whether INFORM's dictates are being followed.

¹⁴ § 301(d)(1).

¹⁵ §301(d)(2)-(3).

¹⁶ §301(d)(6).

¹⁷ See, e.g., Online marketplaces, take note: INFORM Consumers Act takes effect on June 27th, available at https://www.ftc.gov/business-guidance/blog/2023/06/online-marketplaces-take-note-inform-consumers-act-takes-effect-june-27th?utm_source=govdelivery.

¹⁸ See, e.g., Informing Businesses About the Inform Consumers Act, <https://www.ftc.gov/INFORMAct>.

¹⁹ FTC Puts Online Marketplaces on Notice About Their Responsibilities Under the New INFORM Consumers Act, available at <https://www.ftc.gov/news-events/news/press-releases/2023/06/ftc-puts-online-marketplaces-notice-about-their-responsibilities-under-new-inform-consumers-act>.

Second, the FTC should enhance the ability of members of the public to provide actionable information on suspicious marketplace activity to enforcers in a way that will achieve INFORM’s important consumer protection goals.

Specifically, following INFORM’s enactment, the FTC established and publicized a mechanism (see Fig. 1) for the public to “report a violation of the INFORM Consumers Act” directly to the FTC,²⁰ which we understand feeds into the FTC’s Consumer Sentinel database:

Fig. 1



The format of the FTC’s reporting mechanism is geared toward consumers, and RILA certainly hopes that the consumer portal will yield useful information from the consumer community.

However, the consumer portal does not facilitate INFORM Consumers Act reporting from non-consumer entities (e.g., legitimate businesses that spot suspicious activity) in a way that will facilitate the Commission’s enforcement goals. For example, leading national retailers and manufacturers investigate products that are stolen or counterfeit and sold online in order to protect themselves and the public from unlawful goods. Such private sector investigations may uncover information that can be reported both to online marketplaces (through the INFORM-required “reporting mechanism” discussed above) and to federal and state enforcers.

The FTC consumer portal, however, does not provide a feasible means for retailers and manufacturers to provide this information. Specifically, the reporting format (reproduced in Attachment A) is geared toward actual or would-be purchasers who can use the form to report information about their interaction with a marketplace seller (e.g., “I paid for a product I did not receive” and “Did you pay or send money? How much money did you send?”). While we understand and support the FTC’s desire to enable consumers to provide information to the agency about suspicious activity, we urge the Commission to enhance the current mechanism or develop a separate mechanism so that businesses and other non-consumer members of the public can report information to the FTC to aid in federal and state enforcement activity.²¹

Third, we recommend that the FTC create a clear prompt or field in the current consumer-oriented portal for those submitting complaints to identify the states where the complainant or other affected

²⁰ See, Online marketplaces, take note: INFORM Consumers Act takes effect on June 27th, available at <https://www.ftc.gov/business-guidance/blog/2023/06/online-marketplaces-take-note-inform-consumers-act-takes-effect-june-27th>

²¹ The end of the current form does include a comment box, but that is limited to 3,500 characters – far too little space to accommodate the information that a business may uncover in its investigation.

consumers reside. This will facilitate more productive use of Sentinel by state AG's seeking to identify violations affecting their residents.

Fourth, we urge the FTC to share information proactively with state AG's when there are indications of INFORM violations affecting their residents. Our recommendation above to add a field to the Consumer Sentinel report form on the state in which the reporting consumer is located would assist the FTC in alerting AG's proactively.

Fifth, in order to encourage and facilitate collaboration, we recommend that the FTC and state AG's convene a Working Group on INFORM, whether through a national AG association, national retail association or otherwise, to share information regarding compliance, potential violations, and trends affecting both. The Working Group could convene meetings or calls on a quarterly basis.

Finally, we recommend that the FTC report to the public at least annually on its efforts to coordinate with state AG's on INFORM, potentially on an annual or biannual basis.

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The INFORM Consumers Act is an important tool to protect consumers from "scams being perpetrated on individuals in the United States," but only if it is properly enforced by both the FTC and state AG's as directed by Congress. We encourage the FTC to utilize the opportunity the FTC Collaboration Act presents to develop cooperative strategies to enforce INFORM and to highlight those strategies in the FTC Collaboration Act study. In so doing, the Commission will be better able to carry out its foundational mission to protect consumers, as well as legitimate business interests, from criminal and other bad actors.

We appreciate the FTC's attention to this important matter. We would be happy to answer any questions, provide additional information, or work with the Commission in furtherance of our mutual goals.

Sincerely,

Deborah White
Senior Executive Vice President & General Counsel,
Retail Industry Leaders Association

ATTACHMENT A



FEDERAL TRADE COMMISSION
ReportFraud.ftc.gov

Start

Report details

Please share as much as you know. The details help law enforcement investigations.

Did you experience any of the following
(select all that apply)?

- I paid for a product and did not receive it
- I was not given opportunity to consent to delay or get a refund
- I never received a correct refund
- I responded to a free trial offer
- I received a fake/counterfeit product

Did you pay or send money?

Yes No

How much money did you pay or send?

\$

How did you pay or send the money?

Select

When did you most recently pay or send
money (mm/dd/yyyy)?

How did you first learn about it (the
product, service, offer, or scam)?

Select

Details about the company or individual

Please share as much as you know. The details help law enforcement investigations.

Name of the company

Name of the person you dealt with

Their First Name

Their Last Name

Do you have any other information about them (phone, website, etc.)?

Yes

No

Comments

Describe what happened.

Tell us what happened in your own words. Include specific details you remember.

Do not include any sensitive information, such as SSN, DOB, driver's license numbers, account numbers, medical history, etc.

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