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Client Alert: Attention Online Retailers! The New INFORM Consumer Act is Now in Effect

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On June 27, 2023, the Integrity, Notification, and Fairness in Online Retail Marketplaces for Consumers Act^[1] (the INFORM Act) took full effect. The INFORM Act aims to add more transparency to online transactions and to prevent organized retail theft from having access to online selling platforms.

Retail theft has become increasingly problematic for brick-and-mortar business in the past few years, and retail giants such as Walmart, Best Buy, Home Depot, and Lowe's have become increasingly concerned about the impact on their bottom line. Retailers have been noticing that on a year-over-year basis, retail theft has been growing at a "double-digit rate."^[2] The rapid increase in retail theft rates has been attributed to the ease of reselling stolen merchandise on online marketplaces.^[3] It is estimated that over \$500 billion in stolen or counterfeit products were sold in 2022 across online marketplaces such as Amazon, Craigslist, eBay, and Facebook Marketplace.^[4] The combination of retail theft and online marketplaces has sadly taken on an organized crime component. For example, in 2022, a Tulsa-area woman pleaded guilty to leading an organized retail theft operation that resulted in more than \$10 million in losses to retailers across several states.^[5]

The INFORM Act has a series of requirements for "online marketplaces," which are defined as "any person or entity that operates a consumer-directed electronically based or accessed platform that (a) includes features that allow for, facilitate, or enable third-party sellers to engage in the sale . . . of a consumer product in the United States; (b) is used by one or more third-party sellers for such purposes; and (c) has a contractual or similar relationship with consumers governing their use of the platform to purchase consumer products."^[6] The broad definition of "online marketplaces" will obviously impact a wide range of businesses of all sizes, which now have new affirmative obligations with which they must comply. These obligations include collecting financial and identifying information such as the seller's name, address, contact information, and more.

Adding to the ease of reselling stolen merchandise is the ability for sellers to have complete anonymity with fake screen names and false addresses. Prior to the INFORM Act, there were no requirements for online marketplaces to verify sellers' identities, which naturally emboldened criminals and their use of online selling platforms. The INFORM Act requires not only the collection of identification details, but also the verification of the information.

Fortunately, online marketplaces do not have to compile this information for every seller on their platform as the INFORM Act only applies to “high-volume third-party seller[s],” defined as sellers that, in any continuous 12-month period during the previous 24 months, have entered into 200 or more discrete sales or transactions with an aggregate total of \$5,000 or more in gross revenue. The INFORM Act also requires that consumers be given their own mechanism to report suspicious conduct.

Online marketplaces are subject to serious ramifications for failure to comply with the INFORM Act. The Federal Trade Commission will share enforcement authority of the Act with State Attorneys General and other officials authorized by the States. Online marketplaces found to have violated the INFORM Act may face civil penalties of over \$50,000 per violation. Liability could range well beyond that amount, as SAttorneys General and other state officials can also file actions in federal court that may lead to additional penalties and/or money damages under various state laws.

Online marketplaces interested in ensuring compliance with the various requirements of the INFORM Act are strongly encouraged to consult with a qualified attorney.

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^[1] 15 U.S.C. 45f.

^[2] Gabrielle Fonrouge, et Al., America’s biggest companies say retail crime is an epidemic, but just how big of a problem is it?, CNBC, Mar. 18, 2023, <https://www.cnbc.com/2023/03/18/organized-retail-crime-debate.html#:~:text=Over%20the%20last%20several%20years,the%20goods%20on%20online%20marketplaces>.

^[3] Katie Tarasov, Stolen goods sold on Amazon, eBay and Facebook are causing havoc for major retailers, CNBC, June 17, 2022, <https://www.cnbc.com/2022/06/17/the-fight-against-stolen-products-on-amazon-and-facebook-marketplace.html>.

^[4] Jacob Zinkula, You could be buying shoplifted stuff on Amazon, eBay, or Facebook Marketplace, Business Insider, Jan. 24, 2023, <https://www.businessinsider.com/selling-buying-shoplifted-stolen-products-online-efencing-facebook-ebay-2023-1>.

^[5] Woman Pleads Guilty for Leading a Retail Theft Organization that Netted \$4.5 Million, U.S. Attorney’s Office, Northern District of Oklahoma, July 14, 2022, <https://www.justice.gov/usao-ndok/pr/woman-pleads-guilty-leading-retail-theft-organization-netted-45-million>.

^[6] 15 U.S.C. 45f(f)(4).

