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HIDDEN HOLIDAY HAZARDS: PRODUCT SAFETY DURING THE HOLIDAY SEASON

HEARING

BEFORE THE

SUBCOMMITTEE ON CONSUMER PROTECTION,
PRODUCT SAFETY, AND DATA SECURITY

OF THE

COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE

ONE HUNDRED SEVENTEENTH CONGRESS

FIRST SESSION

NOVEMBER 30, 2021

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED SEVENTEENTH CONGRESS

FIRST SESSION

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HIDDEN HOLIDAY HAZARDS: PRODUCT SAFETY DURING THE HOLIDAY SEASON

TUESDAY, NOVEMBER 30, 2021

U.S. SENATE,
SUBCOMMITTEE ON CONSUMER PROTECTION, PRODUCT
SAFETY, AND DATA SECURITY,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Committee met, pursuant to notice, at 10:09 a.m., in room SR-253, Russell Senate Office Building, Hon. Richard Blumenthal, Chairman of the Subcommittee, presiding.

Present: Senators Blumenthal [presiding], Cantwell, Markey, Luján, and Blackburn.

OPENING STATEMENT OF HON. RICHARD BLUMENTHAL, U.S. SENATOR FROM CONNECTICUT

Senator BLUMENTHAL. Thank you to my colleagues for joining us this morning and most especially to Senator Blackburn, who has been a tremendous ally in this work and a partner. We have worked in a very collegial way on a number of hearings so far, including this one on Hidden Holiday Hazards.

And we have really an extraordinarily distinguished and able panel joining us this morning, beginning with Trista Hamsmith, who will tell us her personal story of tragedy that she has turned into a positive. And I really want to thank you, Trista, for being here today, in the memory of your daughter Reese. And as we will announce today—Senator Blackburn and I—we are introducing a bill that, in fact, will seek to protect against exactly the kind of tragedy that you experienced. And I want to welcome you and I understand your mom is here, as well. Thank you for joining us today.

This issue is an extraordinarily serious one. And I want to thank the United States Public Interest Research Group for the constant work that you have done over so many years. I have worked in cooperation with the Connecticut PIR now, for probably 25 years or more every year, to publicize the dangers that come from toys. And the report that you do every year, “Trouble in Toyland”, is really a model of public service and public education. And yet, year after year, we find, again and again, that these tragedies are repeated, unfortunately, and so grievously for the families affected.

The holidays ought to be a time of really unsurpassed joy and celebration. But all too often, they culminate in trips to emergency rooms, because of dangers that result from toys and décor that is involved in the holidays. And we all, if we think about it, have

some experience with these kinds of mishaps, accidents, whatever they may be called. They are principally the result of either carelessness or bad manufacturing or lack of standards in those toys that children use. And they are joyful about receiving them, until those tragedies result.

We are going to talk today about some of the most common culprits. If we were to rename this hearing, it might be called “Swallowing Bad Stuff”. Swallowing bad stuff—it results in choking or digestive failure or poisoning. What we know is that the repeated culprits are magnets, button cell batteries, small parts in ordinary toys, balloons. And we are going to go through them in this hearing, but I have examples. For example, the button cell batteries that are found in these kinds of lights come out easily, can be swallowed—they are very small—by an 18-month-old child, as happened in your case, Trista, with Reese, or by pets or older people.

These button cell batteries are a—button cell batteries are a menace and every year—literally, every year thousands cause emergency room visits. In 2020 alone, there were 3500 reported button battery ingestions. That number is likely an undercount. The estimate is that only about 11 percent of these kinds of ingestions are actually reported. In Connecticut, since 2016, there have been 70 reported battery ingestions, 24 of them resulted in hospital admissions.

And very alarmingly, button batteries have become more common and between March and September 2020 alone—March and September 2020, there were an increase of 93 percent in injuries among children, resulting from them. We are going to explore a little bit about what the reasons might have been. Perhaps they were, in fact, the fact that the pandemic caused people to be at home with toys; they were used more often. We can speculate, but the main point is, these kinds of injuries are preventable and that is the reason that we have introduced—Senator Blackburn and I are introducing Reese’s Law, in honor of Reese Hamsmith and her loss of life. I think it is going to inspire us to do more and do it better.

The other major culprit, magnets, which obviously can be pulled apart, can be swallowed. They are small, easily ingested, but they have a magnetic force that can pull together different sections of the digestive tract, blocking, perforating, damaging intestines, stomachs, especially in the smallest of children. And each of these little magnets can be pulled apart, can be found on the floor, can be ingested, and they have resulted, also, in thousands, over the last 10 years, of injuries and trips to the emergency room.

In total—here is the statistic that I hope folks will remember, 150,000 toy related injuries were reported in 2020 alone, and nine deaths. One hundred fifty thousand injuries resulting from toys, like the ones that I have shown, and nine deaths. And some of them result from counterfeit, where lesser materials or poor workmanship were involved. Counterfeiters can, with relative ease, sell knock off toys, or other goods, at a cheap price to unwitting holiday shoppers.

Counterfeit toys may be dangerous because of their use of cheap materials and lack of compliance with product safety standards.

But they also may fail to display accurate warning labels, which could mislead or confuse consumers.

And I want to mention, in the category of choking, balloons, which are, once again, very innocent looking and, in fact, are wonderful playthings, as long as they remain inflated. If they are broken, the bits and pieces, or uninflated balloons can be swallowed by children. And again, one of the most common causes of choking and asphyxiation are balloons, which are left on the floor where small children, crawling around or running around, can ingest them.

And holiday décor, Christmas trees, this kind of automatic light for the Christmas tree—you can press this if it is linked to a plug, can overheat, or the tree itself can ignite if candles are used. Different materials, unsafe materials in menorahs, as well as Christmas trees, can cause fires. And in fact, from 2016 to 2018, there were about 100 Christmas tree fires and about 1,100 candle fires resulting in 30 deaths and 180 injuries.

There is a lot of work to do in educating the public. But in addition to education, enforcement is also important—enforcement by the Consumer Product Safety Commission, which needs more resources. It has been, unfortunately, underfunded and it faces roadblocks in conducting recalls, leaving consumers in the dark about what products may be dangerous to their families.

The CPSC is required to go through an extraordinarily burdensome rulemaking process that slows down many needed product standards, preventing action from being taken on well established dangers. So, we need to fortify the CPSC with additional resources, sufficient to do enforcement, and also, more adapted resources, so they can do their job more effectively. They are the main watchdog and warning system for consumers, so that these kinds of tragedies can be prevented.

And that is the key word, prevented. These kinds of accidents, injuries, deaths can be prevented if we take action to stop the hidden problems in many of these toys. Hidden in plain sight, warnings will help caregivers and parents before they buy or after someone provides a gift, to make sure that holidays are really a time of joy, not tragedy.

With that, I will turn to the Ranking Member.

**STATEMENT OF HON. MARSHA BLACKBURN,
U.S. SENATOR FROM TENNESSEE**

Senator BLACKBURN. Thank you, Mr. Chairman, and I want to say welcome to our witnesses, and we also have two witnesses that are joining us remotely today. So, we thank you all for being here. And we thank our staffs, who have worked to bring this hearing together and to have this happen for us today.

We have had some really insightful hearings this year on consumer products. Now, we have spent a lot of time looking at the online space. And we have had TikTok and Snapchat and Facebook and Instagram and all of your platforms that, unfortunately, are adversely impacting children and families. And so, it is appropriate that, today, we look at the physical space and how important it is that, at this time of year, we look at what is happening in that space of toys and the excitement that comes with holiday décor and

making certain that the supply chain is a safe one for products that are going to be put on the shelves. And we are hearing a lot about supply chains these days. So, what is getting through, let us make certain that it is safe.

Now, as a mom and a grandmother, I am especially attuned to all of this. And the issue about the button batteries, which we have discussed, is one that I have looked at and have firsthand experience with. My little 15-month-old granddaughter has a dancing, light up, singing octopus that she absolutely loves. And she taps it on something and it, you know, springs into action. And it has—she ran the batteries out on it. So, my husband had to change the batteries. So, he opens the back, and it is the button battery. I sent him to the garage, to the trash can, to empty the batteries, and then, to get the replacement batteries, so that it would work. But that is the kind of thing that becomes a hazard and you do not expect that to be a hazard. But we know that it does. So, we thank you, Ms. Hamsmith, for being here, for sharing your story, and for the awareness that you bring to the issue.

And today, we are also going to hear about the voluntary steps that retailers can and should be taking, as they look at product safety. A big part of this is standards development. And many times, people will say, “Well, why do you think it is so important that we keep standard setting in the U.S. and not let China get into the business of standard setting?” And one of the reasons that this is so important is because, when you look at the supply chain, you look at innovation, you look at the products that are getting in there, we have a certain set of guidelines that are vitally important to us, in order to protect what, eventually, gets through that supply chain and makes it to the shelves in our stores and, thereby, what people have access to and what they are taking into their homes.

We are very concerned about what we see happening with some of the infiltration of counterfeit products, things that are infringed on copyrights and are sold online and people end up with this in their home. We—a few years ago, when I was in the House, we had a Tennessee family who had purchased a hoverboard online. And this is when hoverboards were the big gift item that year, and they found one online. And, of course, it caught on fire and their house burned.

So, these are the things that we watch out for, to make certain that the supply chain is going to be safe. And as more consumers are buying from third-party platforms, that they are going to have the insight into where these products are coming from and why these products might be unsafe. And this is an area that the Chairman and I have discussed, where section 230 comes into play with needed reforms that would make certain that products that are on these third-party platforms are going to be as advertised.

Now, we know that the CPSC, as the Chairman said, has a role to play in all of this. They have a new Chairman that has just taken the role over there, and we are looking forward to what they are going to bring forward, as far as doing their due diligence. But to all of our witnesses today, the Toy Association, looking at the health of children, looking at these supply chains, it is important

that everyone do their due diligence to make certain that products that are placed, in the marketplace, are safe.

So, Mr. Chairman, thank you for this. Thank you, again, to our witnesses, and look forward to today's hearing.

Senator BLUMENTHAL. Thank you, Senator Blackburn, and again, thanks for your cooperation.

Our witnesses today are a really great panel. Trista Hamsmith is a parent advocate and founder of Reese's Purpose. Ms. Hamsmith's daughter, Reese, passed away at 18 months old from injuries that she suffered after ingesting a button battery in December 2020. Since then, Ms. Hamsmith has testified before the Consumer Product Safety Commission. She has created a National Button Battery Awareness Day. She founded a non-profit, Reese's Purpose, which advocates for legislation that would create national standards for consumer products with button batteries.

Hannah Rhodes, Consumer Watchdog Associate, United States PIRG. Hannah is the author of a recent United States Public Interest Group report entitled, as it has been for 36 years, "Trouble in Toyland". Before her work at U.S. PIRG, she worked for Kids in Danger, also known as KID, as a product safety intern. She is a graduate, B.A. summa cum laude in Political Science and German, from DePaul University.

Joining us remotely, Ben Hoffman, who is Chairman of the American Academy of Pediatrics Council on Injury, Violence, Poison Prevention, Executive Committee. Dr. Hoffman is a pediatrician and nationally recognized expert in child injury prevention and education. He currently serves as Director of the Tom Sargent Safety Center at Doernbecher Children's Hospital and as Director of the Oregon Center of Children and Youth with Special Needs.

And we are joined remotely, as well, by Joan Lawrence, Senior Vice President for Standards and Regulatory Affairs at the Toy Association—Toy Industry Association. Ms. Lawrence manages the Toy Industry Association's product safety programs, encompassing the development of safety standards and consumer and industry safety education. Ms. Lawrence chairs the ASTM Subcommittee on Toy Safety, which is responsible for the continuing development of toy safety standard ASTM F963.

So, we will hear first from Ms. Hamsmith and then from Ms. Rhodes, Dr. Hoffman, and Ms. Lawrence, separately. Ms. Hamsmith, the floor is yours.

Ms. HAMSMITH. Can we start the video please?

Senator BLUMENTHAL. And I understand you have a video. OK. Apparently we do not have the audio part of—we will make sure it is in the record though.

[The information referred to can be found on the following website: <https://vimeo.com/522470572?ref=em-share>]

STATEMENT OF TRISTA HAMSMITH, MOTHER, PARENT ADVOCATE, AND FOUNDER, REESE'S PURPOSE

Ms. HAMSMITH. Good morning. My name is Trista Hamsmith, and I am here to share why enacting legislation to make consumer products that use button batteries safer is so important and impress on you why time is of the essence, especially now as families prepare for another holiday gift-giving season. Button batteries are

a hidden hazard every day, but the risk exponentially rises during the holiday season given how many toys, decorative items, and gifts require the use of button batteries.

Reese Elizabeth Hamsmith, known affectionately to those closest to her as ReRe, was born into this world a spunky, sassy, full-of-life little girl on June 13, 2019. At only 16 months old, Reese took the attention of an entire room the moment she walked in with her spirited demeanor, inquisitive attitude. She lived life in a way that most will never know. She loved hard, she played hard, and she fought harder.

One morning, we noticed that Reese was snotty, stuffy, and not her usual self. So, we took her to the doctor. She was diagnosed with croup and given a steroid shot. We were sent on our way. The following day, we noticed a button battery missing in our home. We rushed to the hospital and a quick x-ray confirmed that she had, in fact, swallowed that battery. Reese had emergency surgery to remove it and spent a few days in ICU.

I remember being so scared when we were finally able to go home, as we were no longer allowed to give her solid foods. The plan was liquid foods only for four to six weeks and then, we would rescope. I took a deep breath and went to the store to stock up on every possible thing that might satisfy her.

It was such a great few days back home with Reese. One of those days we went to Target, where she saw this little dinosaur. She looked at it and bravely roared for all of Target to hear. It is probably one of my favorite, and one of my last good memories of her.

Reese was still very raspy, so that Friday I decided to err on the side of caution, and we went back to the doctor. They were worried that a hole might have been created. Once these batteries are removed from emergency surgery, they actually can continue to burn, and hers did. A hole was burned through her esophagus and through her trachea, creating a fistula, which acts as a tunnel connecting the two. We now had our liquid food going where it did not need to be, and we had air going where it did not need to be. The following morning, they took her back to surgery. She came back sedated and on a vent, and she also got a tube button so that we could administer nutrition straight to her tummy.

This was the start of our last 40 days. Over those 40 days, Reese endured dozens of scopes, x-rays, multiple collapsed lungs, a 12 1/2-hour surgery, withdrawal from being addicted to the medications, and multiple codes. She was going to be put on a trach, which was going to put us on the road to recovery and the path back home, and we were just about a week away from that. I was almost numb, at this point, to the many procedures that they asked us to do.

This morning, they asked for a scope—a bedside scope. We had done it plenty of times. They said it needed to be done, and so we did. This one was different, though. The entire team was bedside, doing their thing, and the nightmare began. The beeping, the yelling, the flashing lights, no pulse, no pulse, again and again.

I paced. I pressed my hands on the glass and I cried, yet I was in shock, at the same time. This time, she did not come back. That is right. I watched my baby die more than once. I got to hold her that day, but it was a week too soon and she was blue, and she

was lifeless. And it seemed like the life had been taken out of me, too.

Unfortunately, I am not the first, nor will I be the last parent to have to live this nightmare. Early on, when Reese was still fighting her battle, I knew I wanted to spread awareness. At the time, I imagined it would be with Reese by my side. But I guess my plan was not the plan.

Her earthly battle may be over, but her true battle, her true plan, and her true purpose has just begun. Button battery ingestion is a growing threat to children. There were 3,500 button battery ingestions reported in 2020. However, it is estimated, from the American Academy of Pediatrics, that only 11 percent of cases are reported, meaning this is happening to over 30,000 annually, in the U.S. alone. There was a 93 percent increase in ER-related button battery ingestions in 2020.

Once ingested, these batteries can cause severe tissue burns in as little as 2 hours, and as I said before, will continue to burn even after removed. 61.8 percent of ingestions come from the product. They are not coming from our trash can. They are not coming from our junk drawers. They are coming from products that are failing to securely close these batteries in.

I am asking for your support to mandate guidelines to make all consumer products safer. Button batteries are the fastest growing and highest margin segment in the battery market. With double digit industry growth projected for production of and products using button batteries, these incidents will only continue to rise and pose a bigger threat for children.

It has been estimated that a child swallows a button battery every 3 hours. Think about that. In the time this committee meets today, at least one child, possibly more will have swallowed an unsecured battery and face a lifetime of health issues, or worse, end up dying. Children often obtain loose or unsecured batteries and ingestions usually go unseen, making the critical window for survival absent, by the time they are discovered.

Last Christmas, our family gathered but it was not to exchange gifts and sing carols. It was to celebrate Reese's life. With the holidays upon us again, who knows how many unsecured and unsafe items will be given as a gift with the best intentions and love, and to make it into unsuspecting families' homes.

We never knew about the dangers of battery ingestion. I hear from families all over the country, on a daily basis, that they did not either. They share with me their story, their heartache, sometimes their near miss, and their long roads to recovery. It is a club that I never wanted to be in, and I wish I was not standing here alone, because that would mean Reese would be by my side.

Please do not let the death of my daughter, Reese, and her purpose be in vain. Children's safety is a non-partisan issue. We all have children that we love, and we want to protect, whether it is our own children or other children in our lives. Help me protect all children of the United States, so that we never have to hear a story like Reese's again. Thank you for your time.

[The prepared statement of Ms. Hamsmith follows:]

PREPARED STATEMENT OF TRISTA HAMSMITH, MOTHER, PARENT ADVOCATE,
AND FOUNDER OF REESE'S PURPOSE

Good morning Chairwoman Cantwell, Subcommittee Chair Blumenthal, Ranking Member Blackburn, and members of the committee, thank you for inviting me here today. My name is Trista Hamsmith and I am here to share why enacting legislation to make consumer products that use button batteries safer is so important and impress upon you why time is of the essence, especially now as families prepare for another holiday and gift-giving season. Button batteries are a hidden hazard to young children, the elderly and pets every day but the risk exponentially rises during the holiday season given how many toys, decorative items and gifts require the use of button batteries. I'm here today to implore you to protect families from what mine suffered through just a year ago.

My daughter, Reese Elizabeth Hamsmith, known affectionately to those closest to her as ReRe, was born into this world as a spunky, sassy, full-of-life little girl on June 13, 2019. At an early age, Reese took the attention of an entire room the moment she walked in with her spirited demeanor and inquisitive attitude. She lived life in a way that most will never know. She loved hard, played hard, and fought harder. Reese swallowed a button battery in October 2020 and lost her fight on December 17, 2020, at just over eighteen months old. Reese was an example for us all. This is her story.

Reese seemed sick. Not her spunky self. We took her to the pediatrician, and she was diagnosed with croup. Croup is a common misdiagnosis for button battery ingestion, as the early symptoms can be similar. After returning home we noticed a button battery missing from a device. We tore the house apart but couldn't find it. A quick Google search had us rushing to the emergency room. An x-ray confirmed that she had ingested the battery and doctors performed emergency surgery to remove the battery. We stayed in the PICU a few days, and doctors released Reese on a liquid-only diet.

At her next visit, the pediatrician diagnosed her with stridor and Reese was readmitted. A scan revealed a hole in both her esophagus and her trachea. The two holes created a passage, known as a fistula. The fistula acted like a tunnel between the esophagus and trachea, allowing air into her stomach and food and liquid into her lungs.

We learned that the fistula was only one centimeter above the carina, a ridge of cartilage where the trachea divides and heads toward the lungs. This location made it extremely difficult to place a breathing tube. Any movement she made could cause the tube to move too high and send air to her stomach through the fistula or too low and collapse a lung. The plan was to keep her sedated and let her rest for a week, that was the last time we saw our daughter as herself. Monday evening, Reese went into respiratory code and the decision was made to move Reese to Texas Children's Hospital given their expertise and equipment to treat Reese. For us, it was lots of waiting. Reese spent her time showing her spunky self by fighting the sedation. I think every doctor and nurse there learned her personality through her sedation battles.

On December 1, 2020, a few weeks after Reese swallowed the button battery, surgeons would attempt to close the holes in her esophagus and trachea. The surgery was an all-day event, and the doctors successfully repaired the fistula. A week passed, and they took Reese off the ventilator. I left the room to grab dinner, and when I returned, I walked into a nightmare. I remember hearing someone say, "Starting compressions!" I was then looking at my lifeless child as the nurses and doctors tried to save her. I had never prayed that hard in my life. Fortunately, we were able to get her back.

Reese was reintubated, the doctors wanted to give her some more time to heal before again removing the breathing tube. On December 14, we tried again. It was shortly after removing the breathing tube that the doctors and I decided she wasn't strong enough. The look in her eyes and face was heartbreaking, telling me without words, "Mommy, do something." We reintubated her again. Doctors began to discuss more seriously performing a tracheostomy.

I had been so terrified of the tracheostomy. However, after two unsuccessful attempts by Reese to breathe without intubation, I was welcoming it. Our path was getting harder, but she was still with us. Two long days went by before they performed the procedure. Around 6:30 pm, doctors inserted the tracheostomy tube. She would need another week on sedation for healing.

We were ready to move on to our new normal, and we were excited Reese hit that next mark in getting closer to going home. I went to sleep that night, excited that in one week I would see her awake again. Around 2:30 am I woke up to a full room. Our head ENT was there among the crowd, and I knew this was a bad sign. Reese's

numbers on the vent didn't look right. They wanted to take her back to surgery to place a different tracheostomy tube that would be a better fit. After a couple of hours, Reese got back to the room with yet another surgery complete.

At 8:30 am, the room was full of noise again. Her numbers were not looking right. Doctors started a bedside scope to determine what was going on. My real nightmare began here. Shortly after beginning, the beeping started. I looked up at the screen and watched all of Reese's numbers drop. The last number I saw was "six" before my head fell, and I began to pray. When I looked back up, I saw "zero". They immediately started compressions. There I was again, watching them try to bring life back to my baby. It went on for thirty or forty minutes. They couldn't get her back.

Early on, when Reese was still fighting her battle, I knew that I wanted to spread awareness about the danger of button batteries. At the time, I imagined it would be with Reese by my side. I guess my plan wasn't *the* plan. In Reese's hospital room sat a plaque that read, "He has a plan, and I have a purpose." We always knew Reese would do big things in this world. Her Earthly battle may be over, but her true battle, her true plan, and her true purpose had just begun.

Button battery ingestion is a growing threat to children:

- There were 4000 button battery ingestions reported in 2020¹
- However, it is estimated that only 11 percent of all cases are reported, meaning this is happening to 36,000 children annually and any one of these incidences could prove deadly²
- The CPSC released data on injuries during COVID that shows a 93 percent increase in ER-treated injuries related to button batteries during the study period³
- 61.8 percent of ingestions under the age of 6 are coming from the product. Not the trash can or junk drawer but from products that are not properly securing the closure of these batteries⁴
- Once ingested, button batteries can cause severe tissue burns in as little as 2 hours and can cause lifelong injuries and death

From 1977, when the U.S. began tracking button battery ingestion deaths, through mid-2018, 59 children had lost their lives. That doesn't even begin to count the near misses and injuries, both minor and severe. In December 2020 alone, we know of two toddlers who were lost after accidental button battery ingestion—my Reese and another little boy from North Carolina. How many more children and families have to needlessly suffer before we do better to protect our children? Australia recently passed mandatory industry standards after three children died and numerous others were consistently injured from accidental button battery ingestion. The United States needs to do better. I am asking for your support to mandate guidelines to make all consumer products safer.

Button batteries are the fastest growing and highest margin segment in the battery market. With double-digit industry growth projected for production of and products using button batteries, these incidents will only continue to rise and pose a bigger threat for children. Everyday items that use button batteries include watches, scales, and key fobs. Items attracting children and pets, such as LED light remotes, flashing jewelry, clothing and shoes, and musical cards and ornaments are part of a very long list that pose increased danger during the holiday season.

On September 21, 2021, Congresswoman Robin Kelly (D) from IL, my Congressman Jodie Arrington (R) from Texas and Ted Liu (D) from CA, introduced *Reese's Law—H.R. 5313*⁵ to the House of Representatives. In the wake of this rising threat I ask this committee and governing body to prioritize protecting our children from the danger of button batteries by passing a companion bill to Reese's Law, H.R. 5313 and getting this made into a law *immediately*.

It has been estimated a child swallows a button battery every 3 hours. Think about that. In the time this committee meets today, at least one child (possibly more) will have swallowed an unsecured battery and face a lifetime of health issues or worse, end up dying. Children often obtain loose or unsecured batteries and in-

¹ Texas Poison Control

² Estimate from Dr. Kris R. Jatana, MD, FACS, FAAP, Director of Pediatric Otolaryngology Quality Improvement at Nationwide Children's Hospital. Member of National Button Battery Task Force

³ Effect of Novel Coronavirus Pandemic on Preliminary NEISS Estimates, Consumer Products Safety Commission Report

⁴ Litovitz T, Whitaker N, Clark L. Preventing battery ingestions: an analysis of 8648 cases. *Pediatrics*. 2010 Jun;125(6):1178–83. doi: 10.1542/peds.2009–3038. Epub 2010 May 24. PMID: 20498172.

⁵ <https://www.congress.gov/117/bills/hr5313/BILLS-117hr5313ih.xml>

gestions usually go unseen, making the critical window for survival absent by the time they are discovered.

Last Christmas our family gathered, but it wasn't to exchange gifts and sing carols, it was to celebrate Reese's life. With the holidays upon us again, who knows how many unsafe items will be given as a gift with the best intentions and love and make it into unsuspecting families' homes. We never knew about the dangers of battery ingestion. I hear from families all over the country on a daily basis that they did not either. They share with me their story, their heartache, their near miss, and long road to recovery. It is a club that I never wanted to be in. I wish I wasn't standing here in front of you alone because that would mean my baby girl would still be here.

Please don't let the death of my daughter Reese—and her purpose—be in vain. Children's safety is a nonpartisan issue. We all have children that we love and want to protect, whether it's our own children or children in our lives. Help me protect all children of the United States so we never have to hear a story like Reese's again. Thank you for your time.

For an extended overview of Reese's story please watch this linked video.

<https://vimeo.com/522470572?ref=em-share>



www.reesespurpose.org



X-ray of Reese Hamsmith showing the button battery lodged in her trachea



Reese Hamsmith being transported to Texas Children's Hospital.



Reese Hamsmith under sedation at Texas Children's Hospital.



"He has a plan and I have a purpose" plaque from Reese Hamsmith's hospital room"

Senator BLUMENTHAL. Thank you so much, Ms. Hamsmith. We will not have questions for you, as I mentioned to you when we spoke before your testimony. Your story is so compelling I do not think there is a need for questions. But in a certain sense, because a picture is worth a thousand words, that photograph of Reese, I think, says it all. And this tiny battery which, as you say, causes 30,000 injuries every year, we have no precise or accurate measurements because they do not need to be reported. There is no requirement that they be recorded or reported.

And so, you are also right that the cause of child safety ought to be bipartisan and the best example of it is what Senator Blackburn and I are doing, in Reese's memory, Reese's Law, which will require warnings and it will require a sufficient compartment fastening of this battery within this kind of device, wherever it is. And these devices are very common. They are found throughout homes in all kinds of common items, but they need to be screwed in. They need to be fastened so that they do not pop out. And that is also a standard that will be imposed by Reese's Law.

So, my hope is that we will find bipartisan support throughout the Senate and the Congress for this law, and we could not be more grateful to you for being here today. Thank you so much.

We will go now to Ms. Rhodes who is with us here.

**STATEMENT OF HANNAH RHODES, CONSUMER WATCHDOG
ASSOCIATE, U.S. PUBLIC INTEREST RESEARCH GROUP**

Ms. RHODES. Good morning Chairman Blumenthal, Ranking Member Blackburn and members of the subcommittee. My name is Hannah Rhodes, and I am a Consumer Watchdog Associate with the U.S. Public Interest Research Group. I appreciate the opportunity to participate in this important hearing on holiday hazards.

U.S. PIRG is an independent, non-partisan group that works for consumers and the public interest. For 36 years, U.S. PIRG has released the "Trouble in Toyland" report, looking at trends to determine the potential dangers facing our children each holiday season. Our annual report has led to 150 recalls of unsafe toys and other important regulatory action.

For our report this year, our primary focuses were counterfeit, knockoff, and mislabeled toys. Toys have strict safety standards, including tests for toxic chemicals, small parts, and what happens when they are used and abused, as kids do. It is alarming that a child could get their hands on a toy that has not been tested for safety.

In October, U.S. Customs and Border Protection officials in Baltimore said they seized a shipment of toys from China that contained toxic chemicals. Lab tests conducted by the CPSC showed the coatings of the toys exceeded safe levels of lead, cadmium, and barium. Toxic chemicals in toys are just one example of the dangers counterfeit toys can pose to children. Toxic chemicals are especially dangerous because while an adult may be able to detect other quality issues, consumers cannot see toxic chemicals.

Potentially unsafe counterfeits are not unique to toys. Earlier this month, CBP officials at the Los Angeles/Long Beach Seaport said they identified and seized a record-breaking number of counterfeit and other prohibited merchandise during Fiscal Year 2021.

The products were appraised at more than \$760 million. Given how common this problem is, this holiday season, consumers should be on the lookout for counterfeits when shopping for any product, especially if they are opting to shop online. When purchasing an artificial tree, it is important to identify that it has a label saying it is fire resistant. When purchasing decorative lights, consumers need to look for a label from an independent test laboratory to confirm they have been tested for safety.

Our advice for consumers on how to identify counterfeit products online includes reading through each entire product listing to identify mislabelings and misspellings, researching the seller, being wary of reviews, and being skeptical of very low prices.

In offering consumers advice about how to protect themselves this holiday season, we also highlight the problems that we are confronted with as consumers. Unfortunately, the burden is on the consumers to identify counterfeit, knockoff and mislabeled products? which can be difficult for those who are unfamiliar with lab testing certification, age warning labels and what the manufacturer's brand logo looks like.

Small metal objects are among the most dangerous small parts. They can harm both children and adults. High-powered magnets, button cell and coin cell batteries have different components, but share the same risk. If someone swallows them they can cause serious injury that requires invasive procedures to fix, and they can even kill the person who swallows them. In October, new data released showed that from 2010 to 2020, hospitals reported to the CPSC 1,072 cases of ingested magnets. Not every hospital reports to the CPSC, so those numbers may be much higher.

For our annual report, we purchased from Amazon this G-WACK magnet set that I have here with me today. Advertised as a magnet set with non-magnetic steel balls and a magnetic base, we found that the smallest steel balls in the set were magnetic. Whether that is an error in the manufacturer's distribution or what was listed on Amazon does not really matter. What matters is a child could swallow the magnets, especially if the parents do not believe that the balls in the set are not magnetic.

The National Capital Poison Center reported that children 5 years old or younger ingested 1,843 button cell batteries in 2019, with 1,502 of those cases requiring medical treatment. Another children's accessory I brought with me today also exemplifies the risk of coin cell batteries in consumer products. K & M International recalled 42 models of the Wild Republic Slap Watches in May. This slap watch was purchased through eBay last week, 6 months later. The Wild Republic Slap Watches were recalled because the coin cell battery could fall out and be ingested by children.

What the slap watches also exemplify is another issue confronting consumers this holiday season—the ability to purchase recalled products online. Consumers are able to learn about recalled products on Saferproducts.gov. But the burden is still on the consumer, who may not be aware that it is illegal for any resale seller to sell a product that they know, or should know, has been recalled. It is important that host sites monitor listings for dangerous products and remove them. For recalling companies, they should pro-

mote the recall to the same extent as they do for promoting and marketing the product to begin with.

U.S. PIRG supports the INFORM Act to help prevent counterfeit and other dangerous items from ending up in Americans' homes. We support Reese's law and the CPS rules to require child-resistant closures on consumer products that use button cell and coin cell batteries. We support the CPSC using strong enforcement action to prevent high-powered magnets from continuing to be sold and we encourage the CPSC to consider a more protective small parts test.

As a leader in protecting children from dangerous toys since the mid-1980s, we are happy to work with the committee. We all want to keep our youngest Americans safe. Thank you again for the opportunity to appear before you today. I look forward to answering your questions.

[The prepared statement of Ms. Rhodes follows:]

PREPARED STATEMENT OF HANNAH RHODES, CONSUMER WATCHDOG ASSOCIATE,
U.S. PUBLIC INTEREST RESEARCH GROUP

Good morning Chairman Blumenthal, Ranking Member Blackburn and members of the Subcommittee on Consumer Protection, Product Safety, and Data Security. My name is Hannah Rhodes and I am a Consumer Watchdog Associate with the U.S. Public Interest Research Group (PIRG). I appreciate the opportunity to participate in this important hearing on holiday hazards that Americans may experience in these upcoming weeks.

U.S. PIRG is an independent, non-partisan group that works for consumers and the public interest. Through research, public education and outreach, we serve as counterweights to the influence of powerful special interests that threaten our health, safety or well-being.

For 36 years, U.S. PIRG has released the Trouble in Toyland report, looking at trends to determine the potential dangers facing our children each holiday season.¹ Our annual report has led to more than 150 recalls of unsafe toys and other important regulatory action.

1. Counterfeits, Knockoffs and Mislabeled Products

For our report this year, one of our primary focuses was counterfeit, knockoff and mislabeled toys. Toys have strict safety standards, including tests for toxic chemicals, small parts, and what happens when they are used and abused, as kids do.² It is alarming that a child could get their hands on a toy that has not been tested for safety given the hard work done by elected officials, consumer advocates and the U.S. Consumer Product Safety Commission (CPSC), all of whom have helped create and enforce modern safety standards.

In October, U.S. Customs and Border Protection (CBP) officials in Baltimore announced that they seized a shipment of toys from China that contained toxic chemicals.³ A shipment of seven boxes that had been detained for investigation included 295 packages of Lagori 7 Stones, a children's game. Lab tests conducted by the CPSC showed the coatings of the toys exceeded safe levels of lead, cadmium and barium.

Toxic chemicals in toys are just one example of the dangers counterfeit toys can pose to children. They are especially dangerous because while an adult may be able to detect other quality issues, consumers can't see toxic chemicals, so they can go undetected unless subjected to lab testing.

Counterfeits are not unique to the toy industry. Earlier this month, CBP officials at the Los Angeles/Long Beach Seaport said they identified and seized a record-

¹ U.S. PIRG, "Trouble in Toyland: 36th Annual Toy Safety Report" (Nov. 11, 2021) (online at: https://uspirg.org/sites/pirg/files/reports/Trouble-In-Toyland_2021/PIRG_Trouble-In-Toyland_2021.pdf).

² CPSC, "Toy Safety Business Guidance & Small Entity Compliance Guide" (online at: <https://www.cpsc.gov/Business—Manufacturing/Business-Education/Toy-Safety-Business-Guidance-and-Small-Entity-Compliance-Guide>).

³ CBP, "Baltimore CBP, CPSC Seizes Children's Toys Excessively Coated in Dangerous Chemicals" (Oct. 21, 2021) (online at: <https://www.cbp.gov/newsroom/local-media-release/baltimore-cbp-cpsc-seizes-children-s-toys-excessively-coated-dangerous>).

breaking number of high-value contraband, counterfeit goods and other prohibited merchandise during Fiscal Year 2021.⁴ The products were appraised at more than \$760 million using Manufacturer's Suggested Retail Price (MSRP).

Given how common this problem is, this holiday season, consumers should be on the lookout for counterfeits when shopping for any product, especially if they are opting to shop online. When purchasing an artificial tree, it's important to identify that it has a label saying it is "fire resistant."⁵ When shopping for decorative lights, consumers need to look for a label from an independent test laboratory to confirm they've been tested for safety.⁶

In addition to our Toyland Report, we posted a guide for consumers on how to identify counterfeit products when shopping online.⁷ Our advice for consumers includes:

- reading through each entire product listing to identify mislabeling and misspelling
- researching the seller
- being wary of reviews
- and being skeptical of very low prices when shopping online.

In offering consumers advice about how to protect themselves this holiday season, we also highlight the problems that we are confronted with as consumers. Unfortunately, the burden is on the consumers to identify counterfeit, knockoff and mislabeled products—which can be difficult for those who are not familiar with lab testing certification, age warning labels and what the manufacturer's brand logo looks like.

2. Small Metal Objects

Small metal objects are among the most dangerous small parts. They can harm both children and adults. High-powered magnets, button cell and coin cell batteries all have different components, but share the same risk—if someone swallows them they can cause serious injury that requires invasive procedures to fix, or they can even kill the person who swallows them.⁸

In October, new data released showed that from 2010 to 2020, hospitals reported to the CPSC 1,072 cases of ingested magnets.⁹ Not every hospital reports to the CPSC, so the numbers may be much higher.

When conducting our annual report, we purchased from Amazon this G-WACK magnet set that I have here with me today.¹⁰ Advertised as a magnet set with non-magnetic steel balls and a magnetic base, upon purchasing one, we found that the smallest steel balls in the set were magnetic. There is no information on the strength of these small magnets on the toy listing or the packaging. Whether that's an error in the manufacturer's distribution or what was listed on Amazon doesn't really matter. What matters is a child could swallow the magnets, especially if the parents are lax because they believe the balls in the set are not magnetic.

The National Capital Poison Center (NCPC) reported that children 5 years old or younger ingested 1,843 button cell batteries in 2019, with 1,502 of those cases requiring medical treatment.¹¹ And it's not just a problem for children too young for elementary school. When comparing the estimated injuries related to batteries for

⁴ CBP, "CBP at the LA/Long Beach Seaport Reports Record-Breaking Year for Seizures of Counterfeit and Prohibited Merchandise" (Nov. 12, 2021) (online at: <https://www.cbp.gov/newsroom/local-media-release/cbp-lalong-beach-seaport-reports-record-breaking-year-seizures>).

⁵ CPSC, "Making a List, Checking it Twice: Tips for Celebrating Safely this Holiday Season" (Nov. 18, 2021) (online at: <https://www.cpsc.gov/Newsroom/News-Releases/2022/Making-a-List-Checking-it-Twice-Tips-for-Celebrating-Safely-this-Holiday-Season>).

⁶ CPSC, "Holiday Decoration Safety Tips" (online at: <https://www.cpsc.gov/s3fs-public/611.pdf>).

⁷ U.S. PIRG, "Tips to Spot Counterfeit Toys Before You Buy Them" (Nov. 11, 2021) (online at: <https://uspirg.org/feature/usf/tips-spot-counterfeit-toys-you-buy-them>).

⁸ AAP, "Children's Ingestion of Tiny Magnets, Button Batteries Increased Significantly During Pandemic, New Research Shows" (Oct. 7, 2021) (online at: <https://www.aap.org/en/news-room/news-releases/aap/2021/childrens-ingestion-of-tiny-magnets-button-batteries-increased-significantly-during-pandemic-new-research-shows>).

⁹ CPSC, "Proposed Rule: Safety Standards for Magnet" (Oct. 6, 2021) (online at: <https://www.cpsc.gov/s3fs-public/Proposed-Rule-Safety-Standard-for-Magnets.pdf?VersionId=2Xizl5izY1OvQRVazWpkqdJHXg5vzRY>).

¹⁰ U.S. PIRG, "Trouble in Toyland: 36th Annual Toy Safety Report" (Nov. 11, 2021) (online at: https://uspirg.org/sites/pirg/files/reports/Trouble-In-Toyland_2021/PIRG_Trouble-In-Toyland_2021.pdf).

¹¹ NCPC, "Button Battery Ingestion Statistics" (online at: <https://www.poison.org/battery/stats#table2>).

March through September of 2019 and 2020 the CPSC found injuries rose 93 percent for children aged 5 to 9 years old.¹²

Another children's accessory I brought with me also exemplifies the risk of coin cell batteries in consumer products. K & M International recalled 42 models of the Wild Republic Slap Watches on May 12, 2021.¹³ This Wild Republic Slap Watch was purchased through eBay on Monday, Nov. 22, 2021.

The Wild Republic Slap Watches were recalled because the coin cell battery could fall out and be ingested by children.¹⁴ The ability for the coin cell battery to "slip out" reinforces the need for mandatory child-resistant closures on consumer products that use button cell or coin cell batteries, given the potentially fatal dangers that these batteries can cause when ingested.

3. Recalled Products

The Wild Republic Slap Watches also exemplify another issue confronting consumers this holiday season: the ability to purchase recalled products online.

While it is illegal for any resale seller to sell a product they know or should know has been recalled—unless the safety issue has been fixed—these products are still being sold.¹⁵

Consumers are able to learn about recalled products on *Saferproducts.gov*. But the burden is still on the consumer, who may not be aware of resale regulations.

It is important that host sites monitor listings for dangerous products and remove them. For recalling companies, they should promote the recall to the same extent as they do for promoting and marketing the product to begin with.

4. Recommendations

U.S. PIRG is in support of The Integrity, Notification, and Fairness in Online Retail Marketplaces (INFORM) Act to help prevent counterfeit and other dangerous items from ending up in Americans' homes.

We support Reese's law and the CPSC using the rulemaking process to require child-resistant closures on consumer products that use button cell and coin cell batteries.

We support the CPSC using strong enforcement action to prevent high-powered magnets from continuing to be sold on the market and encourage the CPSC to consider a more protective small parts test.

And as a leader in protecting children from dangerous toys since the mid-1980s, we're happy to work with the committee. We all want to keep our youngest Americans safe.

Thank you again for the opportunity to appear before you today. I look forward to answering your questions.

¹²CPSC, "Effects of Novel Coronavirus Pandemic on 2020 Preliminary NEISS Estimates (March–September 2020)" (Jan. 11, 2021) (online at: <https://www.cpsc.gov/s3fs-public/Effect%20of%20Novel%20Coronavirus%20Pandemic%20on%202020%20Preliminary%20NEISS%20Estimates%20%28March%20%E2%80%93September%202020%29.pdf?eBqDdRMGIEQtp.VG-9IdBCjlFk262hu>).

¹³CPSC, "K & M International Recalls Slap Watches Due to Coin Cell Battery Ingestion and Choking Hazards" (May 12, 2021) (online at: <https://www.cpsc.gov/Recalls/2021/K-M-International-Recalls-Slap-Watches-Due-to-Coin-Cell-Battery-Ingestion-and-Choking-Hazards>).

¹⁴CPSC, "K & M International Recalls Slap Watches Due to Coin Cell Battery Ingestion and Choking Hazards" (May 12, 2021) (online at: <https://www.cpsc.gov/Recalls/2021/K-M-International-Recalls-Slap-Watches-Due-to-Coin-Cell-Battery-Ingestion-and-Choking-Hazards>).

¹⁵CPSC, "Resellers Guide to Selling Safer Products" (online at: <https://www.cpsc.gov/s3fs-public/ResellersGuide.pdf>).

Appendix 1: “Trouble in Toyland: 36th Annual Toy Safety Report”



ITROUBLE IN TOYLAND

36th Annual Toy Safety Report

Counterfeit toys evade safety rules, endanger children

U.S. PIRG | Education
Fund

TROUBLE IN TOYLAND

36th Annual Toy Safety Report
Counterfeit toys evade safety rules, endanger children



WRITTEN BY:

HANNAH RHODES
U.S. PIRG EDUCATION FUND

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I EXECUTIVE SUMMARY

THE HOLIDAYS are right around the corner again. As millions of Americans purchase toys before the year ends, they can take comfort in the improvement of toy safety in recent years thanks to hard work from consumer advocates, elected officials, the U.S. Consumer Product Safety Commission (CPSC) and the industry itself.

But, even with the advances in toy safety, dangerous toys still can and do end up on the market, largely because of counterfeits and recalled toys still available. So far in 2021, 13 toys have been recalled by the CPSC.¹ The recalled toys posed risks including high levels of lead, potential foreign-body ingestion by a child and choking because of small parts from easily broken toys. In addition, PIRG Education Fund researchers found two additional recalled products — a hoverboard and a children's watch accessory — that many would consider toys.²

These days, toys with safety risks are less likely to be found at traditional retail stores, which stock toys from importers and manufacturers that are required to have a Children's Product Certificate (CPC).³ The CPC designates that the toy follows all applicable federal safety standards for children.

But when shopping on websites that act as the middleman between the customer and the seller, consumers can encounter hidden hazards. The middlemen do not consider themselves to be traditional retailers and therefore often do not follow the same rules that a traditional retailer would. Whereas the retailers must receive a certificate of compliance from a manufacturer before

selling a toy, not every toy sold online may be covered by a CPC.⁴

Further, what is described in the website listing might not be the toy that arrives at your door. The toys could even contain toxics, and most parents don't have access to labs that could test for harmful substances. In this report, we share our best tips on how to identify potentially unsafe toys sold online and in stores.

Bad actors have found success selling fake goods on websites that consumers know and trust.

The CPSC estimated that there were 198,000 toy-related injuries treated at emergency-rooms in 2020.⁵ This is a notable decrease from toy-related injuries reported from 2013 to 2019, when injury reports ranged from 224,200 to 251,700 per year.

With many Americans staying at home more during 2020, the increased supervision could account for this drop in toy-related injuries. The best way to keep a child safe from injury from a toy is to keep an eye on them, look out for any broken toys and to ensure the toys are age appropriate.

Our 36th annual Trouble in Toyland report calls attention to seven toy safety issues, along with tips to minimize the risk in your home.

I KNOCKOFF TOYS

WHEN WE THINK of a knockoff, we often think of the purses and other high-end, designer goods that are sold by a corner grocery store. A cheap copy. For a long time, that's what knockoffs, or fakes, appeared as. Now, unsuspecting consumers can find knockoffs and counterfeits online of many types of goods.

Counterfeits are identical copies that infringe on trademarks; knockoffs are products that are nearly identical to another product. For the purpose of this report, both counterfeit and knockoff toys will mean toys that are misrepresentations to the consumer. Whether a cheap copy or blatant counterfeit, they represent the same hazards to the consumer if not properly tested for safety.

Bad actors have always been around, but they have found success in selling fake goods on websites that consumers know and trust. Well-known websites such as Amazon and Walmart Marketplace act as a third party for billions of dollars of sales.⁶ And of course, eBay was designed exclusively for third-party sellers.⁷ They are the middleman, connecting the customer to the seller. With legitimate sellers who follow the rules, this is a great system. It allows businesses to grow and consumers to have more options. But when it comes to toys, which have stricter safety regulations, a bad actor could do a lot of damage.

A counterfeiter can produce a toy for much cheaper than a legitimate manufacturer. They can use faulty materials, not participate in any safety testing and then market the toy with images that look similar to the brand that consumers already know. If they get caught, it's not a big deal to the bad actor.

They can simply create a new listing under a new seller name.⁸ Jeff Myers, senior director for Intellectual Property at Apple, testified to Congress last year that the problem is "a game of whack-a-mole" for websites that monitor counterfeit listings.⁹

A report by the Office of the United States Trade Representative (USTR) says that when customers purchase items on familiar websites, it gives the products more authenticity.¹⁰

The imposters can be difficult to spot too. The USTR found that, "One fast, easy, inexpensive and common tactic is to set up accounts on social media platforms and use posts or targeted ad campaigns to advertise counterfeit and pirated goods." Using marketing similar to well-known brands, counterfeiters will try to deceive consumers into believing that the product is a legitimate item that was bought in bulk and ask for payment through an online payment service. If the marketing looks legitimate, why would a customer doubt it?

In October 2020, Red Points, a brand intelligence platform, surveyed 1,000 consumers who had purchased games and toys online during the past holiday season.¹¹ More than half of respondents, 53.8 percent, believed they had purchased a counterfeit toy or game, with an additional 7.8 percent being unsure. Red Points also found that 52 percent of toys and games brands reported an increase of counterfeits online.¹²

Counterfeit products aimed at holiday shoppers, including some toys that pose safety risks, are such a big problem that U.S. Immigration and Customs Enforcement officials started conducting Operation

Holiday Hoax in 2009.¹³ The coordinated effort to find and seize counterfeit or pirated goods also involves the CPSC, the U.S. Postal Inspection Service and other offices. Government officials say “the production and trafficking of counterfeit goods poses a significant health and safety threat to consumers.”¹⁴

To add to the complexity of online shopping, supply chain issues have affected manufacturing and distribution for the upcoming holiday season.¹⁵ Consumers can expect to have more difficulties shopping for the perfect toy this year, especially from the genuine, original manufacturer.

When it comes to fake toys, there are significant safety concerns. Primarily, knockoff products aren’t as likely to adhere to strict toy safety laws. Reputable brands have to be tested for compliance with more than 100 safety standards required by law.¹⁶

Other safety concerns include toxics, where a knock-off toy may have lead or other added chemicals that can be dangerous to a child’s health. Safety testing for small parts, toxics, and use and abuse is important because we know how children use toys. They put them in and around their face or throw them at the ground. Without adequate safety testing, a parent cannot be assured that their child’s health is not at risk. Counterfeit toys could flaunt any of the existing safety standards, but we found evidence of safety problems with counterfeit items in several of the traditional categories of hazards, including: toxic chemicals, fire and small parts.

Toxics

Just last month, U.S. Customs and Border Protection (CBP) officials in Baltimore said

they seized a shipment of toys from China that contained toxics.¹⁷ The shipment of seven boxes that had previously been detained pending investigation included 295 packages of Lagori 7 Stones, a popular children’s game that involves children throwing a ball at seven stacked square stones. CBP sent nine samples for lab analysis.

The CPSC analysis showed the toys were coated in lead, cadmium and barium that exceeded safe levels for consumer products. CBP said the toys were headed for Virginia.

Lead, cadmium and barium -- all heavy metals -- are sometimes improperly used in toys such as blocks, figurines and jewelry items that are either yellow, red or black.¹⁸

Lead exposure can be dangerous to anyone, but for children, lead can impair their brain and nervous system, delay development and cause learning and behavior problems.¹⁹ Cadmium is a known carcinogen and also can affect brain development in children.²⁰ Barium is also toxic and can cause difficulty breathing and issues with blood pressure, numbness and muscle paralysis.²¹

There are several other cases of toxic counterfeit toys seized in the last few years:

- In November 2019, government agencies and law enforcement again teamed up for Operation Holiday Hoax, a sting operation conducted in conjunction with international partners to prevent counterfeit goods from entering the market.²² After searching a shipment of toys from China, they found 155,000 suspected counterfeit toys. The valued retail cost would be over \$5.4 million

dollars if they were the real version of the toys, showing the incentive to bad actors.

Some of the counterfeit toys seized tested positive for lead content, a safety hazard that would go unnoticed by consumers. Genuine toys must undergo safety testing to prevent toys that exceed federal lead limits from being sold.^{23 24}

- U.S. Customs and Border Protection Office of Field Operations officers working at the International Falls, Minn., Port of Entry in 2018 seized counterfeit toys and other products that were suspected of containing lead. Lab tests showed the toys contained excessive levels of lead and officials seized 2,459 carrying cases for diecast toy cars.²⁵
- Counterfeit toys can also include other unsafe chemicals. Phthalates are a group of chemicals often used as additives to soften plastics or make plastics flexible but are dangerous to children.²⁶ Last year, the European Commission issued safety alerts about counterfeit L.O.L. Surprise! dolls shipped from China that were seized in different cases by officials in the United Kingdom and Czech Republic. The dolls contained phthalates.²⁷

In April 2018, the CPSC ruled that children's toys with more than 0.1 percent of any of eight different types of phthalates are banned from being sold after assessing possible health risks to children.²⁸ The National Institute of Environmental Health Sciences (NIH) lists phthalates as a common "endocrine disruptor," with

the potential to cause problems with development, the reproductive system, the brain and the immune system.²⁹

- In the United Kingdom in 2020, the Warwickshire County Council Trading Standards warned parents about counterfeit Disney Frozen II dolls after testing the seized dolls and finding phthalates.³⁰

Most parents and caregivers do not have access to lab testing. Even when purchasing toys that are not counterfeit, toxics are a particular challenge for consumers, especially because toxics cannot be identified by looking at the toy or the packaging.

Consumers are reliant on the safety regulations that aim to prevent hazardous toys from making it into their shopping carts. The fact that counterfeit toys come with no guarantee that they meet those safety standards is why they represent a unique threat, especially for hazards like toxic chemicals that a consumer can't identify themselves.

Fire Hazards

Hoverboards have also been the subject of dangerous counterfeits. In 2016, the U.S. Customs and Border Protection Chicago field office seized more than 16,000 counterfeit hoverboards.³¹ With an estimated retail value of more than \$6 million, some of the counterfeit hoverboards had false trademark logos and seals of approval from a lab that tests and certifies products for safety.³² Counterfeit hoverboards, powered by lithium-ion batteries, had been suspected of catching fire while being used and being charged.³³

When shopping for hoverboards, and other products that are powered by lithium-ion batteries, it is important to look at labels, packaging and contents.³⁴ Underwriters Laboratories — a safety certification company — advises consumers to inspect hoverboards for signs of poor quality, to compare battery information with what is available from the original manufacturer and to look for inappropriate certification labels on batteries.³⁵

Small Parts

Counterfeit toys can be made out of faulty materials that can rip and break. This can create small parts, a known choking hazard. Without undergoing safety tests, a counterfeit toy may not be strong enough to withstand a child playing with it.

A popular toy this holiday season is the Go Pop!, originally sold by FoxMind.³⁶ The Go Pop! is a rubber push pop toy that is made out of silicone. The popularity of this toy has led to hundreds of less expensive knockoff options, found online or in retail stores. With so many options, it can be confusing for consumers to know which are being sold by reputable sellers whose products have undergone safety testing.

The GoPop! toy's packaging has a label saying "WARNING: CHOKING HAZARD! Not suitable for children under 3 years." PIRG toy researchers found a listing called 2 Packs Pop Fidget Sensory Toys that does not include an age warning on the listing or the packaging.³⁷



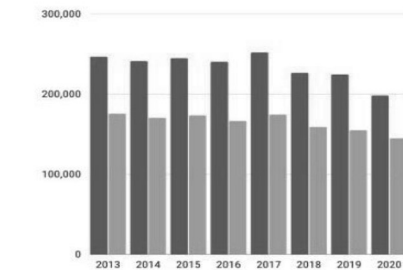
FoxMind's GoPop! has led to numerous knockoff toys.

On the Amazon listing, the product description shows an image of a baby with the push pop toy in its hand and shows other children who could be under the age of 3. If a version of the push pop toy had not been tested for safety ripped, it could create small parts and be a choking hazard for young children. The 2 Packs Pop Fidget Sensory Toys had several reviews describing a flimsy material, with one review saying that, "Fun thing for the kids, but one of the "bubbles" tore the first day."³⁸

A toy doesn't have to break to be dangerous to young children. Counterfeit toys sometimes don't carry warning labels for small parts. Parents can test for small parts by using a toilet paper tube in their home. It is larger than the CPSC's testing cylinder for small parts, but it can help parent's judge the safety of a toy before giving it to a child.³⁹

TAKEAWAYS:

- A website listing can offer clues that the product may be a counterfeit. When looking at a toy's product description, watch out for misspellings, mislabelings and low-quality pictures.
- When on a website that acts as a middleman between the seller and buyer, shoppers should look at the seller information. Clicking on the seller's information can tell you what other items they sell, where the business is located and feedback on its products.
- Consumers can do an internet search on the seller. If the seller has a website or has listings on other websites that operate as the middleman, you can compare the toy listings to see any discernible differences.
- Prices can tell a lot about the product listing. If a toy seems significantly less expensive than similar items, it could be a fake.⁴⁰
- Look at the reviews. Consumers often think that if a listing has five stars, it can be a good find. But sellers can purchase reviews. If a review sounds too good to be true, it probably is.
- If a toy listing looks suspicious, consumers can reach out to the seller about the authenticity of the product. If the seller does not respond, or if the answers don't leave parents confident about the toy's safety, it's best not to purchase the toy.

Toy-Related Injuries Treated in ERs, 2013 to 2020

Red is all injuries. Gray is 12 years or younger.

Source: National Electronic Injury Surveillance System (NEISS)

I SECOND-HAND TOYS

ANOTHER SAFETY CONCERN in the online marketplace is toys that were previously recalled. When these are listed on well-known websites such as eBay or Facebook Marketplace, prospective buyers may not know about any recalls.

It is illegal for any resale seller to sell a product they know or should know has been recalled, unless the safety issue has been fixed.⁴¹ If the product has met the requirements of the remedy, then it is legal to sell again. For example, say a toy is recalled for a faulty battery. But under the remedy section of the recall, it says that the customer can contact the company for a battery replacement. If the battery is replaced, the toy can be sold again.

But with toys being resold online, there is no way for customers to verify whether a recalled toy has been fixed. Website listings generally don't even indicate the toy was once recalled.

Here's a recent example: the CPSC recalled Clip Clop Infant Activity rattles on April 14, 2021, because the plastic handle could come loose, allowing small beads to come off. The beads present a choking hazard.⁴²

PIRG researchers found a listing for the same rattle on eBay on Sept. 10.⁴³ In the recall, customers could contact Playgro for a free replacement rattle. The pictures from the recall and the pictures from eBay are identical. On the eBay listing, there's no indication that batches of the rattle were recalled months earlier. There's also no way for the potential purchaser to know whether the rattle was the replacement from Playgro.



PIRG identified another potential problem on eBay on Sept. 16.⁴⁴ The eBay listing for the Janod Confetti Live Musical Set states that the toy set is imported from France and is "near impossible to find in the US!"

On Jan. 13, 2021, Janod Toy Confetti Trumpets were recalled because small plastic parts in the toy trumpets could become loose and be swallowed by a child, posing a choking risk.⁴⁵ Similar to the Playgro rattle, the toy trumpet in the recall is identical to the toy trumpet shown in the eBay listing and there is no mention of the recall that took place earlier in the year.



The toy trumpets did not have a remedy that would fix the product and customers were informed to dispose of the toy.⁴⁶ No other toy musical item in the Janod musical set was recalled other than the trumpet.

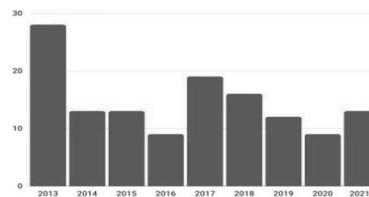
Another problem with second-hand toys: toy safety standards with toxics have evolved a lot in the past decade. Under the Consumer Product Safety Improvement Act (CPSIA), lead levels for toys had to be 100 ppm (parts per million) or less by August 2011.⁴⁷ The CPSIA also prohibited three different types of phthalates (often added to soften plastics in children's toys) if the level exceeded 0.1 percent. Five more types of phthalates were added to the banned list in 2018.

This means that toys made before August 2011 may have higher levels of toxic chemicals. Established resale shop owners may be more aware of these rules than the average seller on Facebook Marketplace or Craigslist who are looking to sell things from their home. But buyers generally are not.

TAKEAWAYS

- Online shoppers can be proactive by searching what year the toy was manufactured and finding out more information about the toy through an online search before purchasing.
- When shopping online for second-hand toys, check out [saferproducts.gov](https://www.saferproducts.gov) to find out about any past recalls. If a toy has been recalled in the past, consumers can ask sellers what the model number is for the toy and use the recall information to ask about distinguishing marks between recalled toys and new versions of the toy. Unless the seller can give information about the model number or a remedy completed on a recalled toy, it's not a safe purchase.
- The CPSC should continue to research the health effects of phthalates and to strengthen current standards in accordance with the results.

Toys recalled by the CPSC, 2013 to 2018



Source: U.S. Consumer Product Safety Commission
 * 2021 data is as of Oct. 21

I INGESTION RISKS

RESEARCH RELEASED in October by the American Academy of Pediatrics (AAP) found that the rate of ingestion for magnets and disc batteries has increased since the start of 2017, while the rate of foreign-body ingestions overall remained consistent.⁴⁸

In August 2021, the CPSC recalled about 10 million units of Zen Magnets and Neoball magnets.⁴⁹ This large recall took place after Zen Magnets LLC and the CPSC were informed about two children who ingested Zen Magnets and required extensive surgery for their removal. A 9-year-old girl had to spend six days in the hospital recovering after surgery to repair holes made in her intestines.⁵⁰

Magnets similar to the Zen Magnets are still sold and marketed as toys. High-powered magnets, also referred to as “rare earth” magnets, have a much stronger magnetic force than ordinary magnets. They pose a serious danger if more than one high-powered magnet is ingested.

Two or more magnets can attach to parts of the digestive tracts and cause life-threatening holes to organs. The CPSC said one toddler died and there were 19 cases of children ages 10 months to 11 years who had surgery after swallowing magnets.⁵¹ New data released in October 2021 showed there were 1,072 cases of magnets ingested from 2010 to 2020 that were reported by hospitals, but not every hospital reports to the CPSC.⁵² Of those 1,072 cases:

- 110 cases were associated with magnet toys.
- 11 cases were associated with magnet toys that fell under the American Society of Testing and

Materials (ASTM) F963 safety standards.

- 58 cases were associated with magnet sets.
- 793 cases were unidentified magnet ingestions.

The National Electronic Injury Surveillance System (NEISS) estimated that societal costs were \$47.6 million for magnet sets, magnet toys and jewelry ingested from 2017 through 2020.⁵³ Depending on the necessary treatment, the average case ranged from \$13,000 for injuries treated in physician’s offices, clinic and other non-hospital settings to \$166,000 for injuries that required treatment in the hospital. This estimate does not include unidentified products types involved with magnet ingestions, with the NEISS speculating that the total societal cost could be more than \$150 million from 2017 through 2020.⁵⁴

Young children are not the only group affected. Teenagers have also ingested magnets after trying to replicate piercings on their nose or mouth.⁵⁵ The risk that magnets pose to the body remains the same no matter what age a child is.

While the Zen Magnet recall is an important step forward, PIRG toy researchers found other listings for high-powered magnets advertised as desk toys. Buckyballs and Buckycubes, originally sold by Maxfield and Oberton Holdings, LLC before the company dissolved, were recalled in April of 2013.⁵⁶ After a 10th Circuit Court of Appeals reversed a CPSC ban recalling high-powered magnets, Buckyballs could be sold again.⁵⁷ PIRG toy researchers found both Buckyballs and Bucky cubes sold on two websites advertised as the Buckyballstore

and BuckyballsCube.⁵⁸

PIRG researchers also found magnet toys listed on Amazon. The G-WACK Stress Relief Desk Toy was purchased for \$15.99.⁵⁹ The toy set comes with a magnet base and several sizes of magnetic and metallic balls ranging from 0.2 to 0.55 inches. In the product description, it says, “The magnetic base transmits attractive force, the steel ball is not magnetic.”

PIRG Education Fund found that the steel balls measuring at 0.2 inches — smaller than a dime — are magnetic. The other balls in the set that are larger in size are not magnetic.⁶⁰

The packaging for the magnet set says it’s aimed at ages 14 or older, but the description under product information on Amazon says that the manufacturer recommended age is 14 *months* and up.⁶¹ There is no information on the strength of the magnets on the toy listing or on the packaging the toy arrives in.

No matter whether there is an error on Amazon’s website involving the description of the toy and the age recommendation, it can be misleading to parents who may buy it for their children. If a small child were to find this toy in the household, the magnets could be easily swallowed, especially if parents believe all the balls in the set are steel and not magnetic.

Batteries are another safety risk for foreign-body ingestion in children. Coin batteries contain lithium and button batteries do not, but both have a similar small disc shape and can cause the same health risks if ingested.⁶² The batteries can cause burns inside the body if swallowed.⁶³ Both types of batteries can be found in a range of toys.

The National Capital Poison Center (NCPC) reported there were 1,843 button battery ingestions in children 6 years or younger in 2019, with 1,502 of those cases requiring medical treatment.⁶⁴ When comparing the estimated injuries related to batteries for March through September of 2019 and 2020 the CPSC found injuries rose 93 percent for children aged 5 to 9 years old.⁶⁵

Earlier this year, K&M International recalled its Wild Republic Slap Watches because the coin cell battery could fall out and be ingested by children.⁶⁶ With toys and children’s accessories, it’s important that batteries are secured. If they can slip out easily or if the toy has been broken, keep it away from children.

TAKEAWAYS

- **The CPSC should take strong enforcement action to prevent high-powered magnets from being sold on the market.**
- **The CPSC should use the rulemaking process to strengthen product standards to prevent button and coin battery ingestion. PIRG Education Fund supports Reese’s Law, introduced in September. It would require the CPSC to enact a rule enforcing child-resistant closures on consumer products that use such batteries.**
- **The AAP recommends households with small children not have high-powered magnets.⁶⁷ With toys that have button or coin batteries, check that the battery compartment has a screw and is child proof. If a battery can slip out, the toy is not safe for a child to play with.**

I CHOKING HAZARDS

FOR YOUNG CHILDREN, one of the biggest toy dangers are small parts that are choking hazards. According to the CPSC, a small part is an object that fits completely in a test cylinder that is 2.25 inches long and 1.25 inches wide.⁶⁸ The testing cylinder replicates the size of a fully expanded throat of a child under 3 years old. Small parts can include toys, but also game pieces and other fragments found in toys.

A toy that is meant for children ages 3 to 6 is required to have a warning label if it includes small parts. Toys meant for children under age of 3 cannot include small parts.⁶⁹ It has become more rare to find toys with small parts that are not properly labelled at a traditional brick-and-mortar store. When shopping online, a consumer can experience more difficulty sorting through listings that may be advertised for a certain age, but when reading the fine print, has a different age recommendation.

If you type in “toys for children age 2” when shopping online, the results can include toys that are meant for children older than 2. We searched “toys for children age 2” on Amazon. The page was sorted by “Featured.” Ten out of the first 20 listings had conflicting age descriptions.

- Six of the toy listings had a warning label on the product page on Amazon saying “CHOKING HAZARD --Small parts. Not for children under age 3.”
- Five of the toys listings had the manufacturer age recommendation as “3 years and up” under the product description.
- One of the toy listings had a manufacturer age recommendation

as “6 years and up” with no mention that the toy could be used by a child under the age of 3.

When shopping online, a general search can include toy listings with mislabeled age recommendations. Age recommendations from the seller may not be consistent with what is first described about the toy and what the manufacturer recommended age is. If there is a choking hazard warning on the toy listing, a parent should not purchase it for a child under the age of 3. With products with conflicting age descriptions, parents can use their best judgement to decide whether it is a worthwhile purchase and inspect the toy before giving it to a young child.

In a report earlier this year, the CPSC said an 8-month-old boy died in 2020 after swallowing a nail-shaped plastic toy.⁷⁰ The CPSC did not release what toy the child had swallowed, but parents should be wary of toys that could be near-small parts. In 2006, Playskool recalled its Team Talkin’ Tool Bench toys after the plastic toy nails were associated with two deaths of children, who were both under the age of 3.⁷¹ The Team Talkin’ plastic toy nails were not considered a small part under the safety standard test, which is still the same test used today.

Parents and caregivers should use discretion when allowing their children to play with toys that could be too small to be safe. One way that parents can test small parts in their home is by using a toilet paper tube. A toilet paper tube is bigger than the CPSC test cylinder and can be easily accessible in the home instead of purchasing a replica test cylinder online. Any part that fits in the tube

could be dangerous for children under the age of 3.

The majority of toy recalls in 2021 were because of small parts, with many being recalled because the toy could break into small parts or release small parts. A teether ring sold by Hallmark was recalled because the wooden ring could split into small parts.⁷² Another toy, a wooden tray puzzle, was recalled because it had several puzzle pieces that could break into small parts.⁷³ Parents should check to see whether toys are broken, especially if they will be used by or be around a child under the age of 3.

Other choking hazards in the home can be items that appear harmless but should not be used by young children. Some plastic and rubber balls fall in this category. Not all plastic balls are marketed for children specifically ages 3 to 6 and the packaging may not include a warning label. Rubber bouncy balls are typically labelled for children 3 and older and will include a warning label when sold by a reputable seller. But the label helps only so much: a 4-year-old girl died last year after a rubber bouncy ball was lodged in her throat.⁷⁴ Parents should use discretion when looking at toy sizes and should be aware that small parts are not only a risk for children under the age of 3.

Latex balloons are also a choking hazard for children under the age of 8 years old.⁷⁵ In the CPSC report, the agency reported three children's deaths in 2020 related to balloons obstructing a child's ability to breathe.⁷⁶ Balloons have been the leading cause of suffocation death in children and should be kept away from children unless under adult supervision.

TAKEAWAYS

- **The CPSC should consider a more protective small parts test. Children under the age of 3 have died from toys that were bigger than the small parts test and children older than 3 have died from toys considered safe for their age demographic.⁷⁷**
- **Parents should evaluate toys and any pieces based on how their child will interact with it, and check whether toys are broken, especially if they will be used by or be around a child under the age of 3.**

I NOISY TOYS

PARENTS OFTEN don't make the mistake of buying an obnoxiously noisy toy for their children more than once. Kids never seem to tire of the annoying beeps, whistles and bad carnival music, but the noises can be headache-inducing for adults.

Some of these noisy toys can also be harmful to a child's hearing.

We may think of our teens playing their music too loud, especially with headphones or earbuds. But innocent-looking toys for children as young as 1 year old can be a threat to their hearing.

We tested five toys that we suspected may register at potentially unsafe noise levels, based on online reviews. We used two different decibel meters, made by different manufacturers. Four of the five showed reason for concern. Toys with noises that hit 80 decibels or more can damage a child's hearing if the exposure lasts too long.⁷⁸ Normal conversation is about 60 decibels; a lawn mower is about 90 decibels.

"It really does matter where the toy is held," Dr. Tricia Ashby-Scabis, director of audiology practices for the American Speech-Language-Hearing Association (ASHA), told PIRG Education Fund.⁷⁹

"For a child's ear – I would be incredibly concerned about 80 decibels, and even more so with toys reaching 100 decibels," she said.

It's important to remember that most of us are exposed to varying degrees of sound much of our days; household noise can be 50 to 80 decibels.⁸⁰

"If you look at the [World Health Organization-ITU standard](#)," Ashby-Scabis added, "you will see guidance that a child should not have more than eight hours of exposure a day to a 75-decibel sound, which then drops to less than four hours a day to a 77-decibel sound, then less than two hours a day to an 80-decibel sound, and so on."

For toys specifically, she said: "I would like a child's toy to be below 80 decibels," she said. "Repeated noise exposure can cause damage. Noisy toys over the long run can have a long-term impact on that child's hearing health, even as they move into adulthood."

Toys are required to meet American Society of Testing and Materials (ASTM) standards, which set the maximum allowed sound-pressure level at 85 decibels, as measured at 50 centimeters (about 20 inches, which is longer than the typical adult's arm) away from the toy. But the [Sight and Hearing Association](#) says toys should be tested based on how a child may interact with it. In many cases, the toy would be right next to the child's face.⁸¹

This certainly would seem to be the case with two of the toys we tested -- toy cell phones. Of course, a child will at times mimic adults by holding the toy cell phone right next to their ear. We tested the toy cell phones touching the decibel meters, as well as the music-playing TV remote and car remote. The sale listings show photos of all of the products touching the children's faces, except for the car remote.

The Elf Lab Baby Cell Phone Toy, which we bought for \$15.99, was tested four times on each decibel meter with the option that

sings the A, B, Cs.⁸² It registered from 93.4 to 95.4 decibels on one meter and 101 to 106.6 decibels on the other meter. The readings vary in part because of fluctuations in the song.

The other cell phone, by Click N' Play, registered 86.2 to 87.2 decibels on one decibel meter and 99 to 100.1 decibels on the other meter. This was part of a set of three toys that sold for \$13.29.⁸³

Another toy, the Kicko Toy Gun, which we bought for \$11.99, registered from 101.7 to 107.2 decibels on one meter and 104.1 to 113.2 decibels on the other meter.⁸⁴ We also tested this about two inches from the decibel meter.

The Click N' Play set came with two other toys. We also tested them touching the decibel meter. The product listing shows the TV remote against the child's ear and the car remote opener a few inches away. A TV remote registered from 79.2 to 80.5 decibels on one meter and 83 to 85.7 decibels on the second meter. A car remote opener registered at levels less than 80 decibels.

TAKEAWAYS

- **ASHA has some commonsense advice for caregivers: If a toy you're considering buying sounds loud, don't buy it. If you already have a noisy toy at home that you're concerned may be too loud, you can take the batteries out so it doesn't make noise or put duct tape over the speaker to stifle the**

sound. Or you could always choose to get rid of the toy.⁸⁵

- **Most parents don't test their children's toys with decibel meters. But they still can be mindful of the risks.**
- **"Parents should be concerned about their child's noise exposure," said Ashby-Scabis of ASHA. "Noise exposure is cumulative, and it slowly degrades hearing acuity over time. Toys that have greater sound output are impacting children in real time, and certainly their future hearing health."**

I SMART TOYS

SMART TOYS can be a hot item on a children's holiday list. They can speak with a child, play music and help them learn as they grow. Smart toys also increase security risks, like data being collected on a child, a hacker gaining access through a Bluetooth connection or children being exposed to inappropriate content.

Not all smart toys are bad. Under the Children's Online Privacy Protection Act (COPPA), if a toy collects personal information from a child less than 13 years old, the toy company is supposed to tell parents about its privacy practices, ask for parental consent and give parents the right to have their child's personal information deleted.⁸⁶

But even the slightest risk to a child's privacy is concerning. We've seen several high-profile cases of creepy toys that collected recordings of underage children.⁸⁷ Now, in addition to recording children themselves, some toys have the ability to record information about your home and family.

A newer toy that hit the market is the Mario Kart Live Home Circuit, an augmented reality toy.⁸⁸ It uses a camera to capture an image of the room the game is being played in to turn it into a virtual race course. The game prevents the user from taking screenshots or video, but already people have found means to livestream and record what is displayed on the Nintendo Switch screen.⁸⁹ PIRG researchers found that the Mario Kart's camera picked up everything in the room, including the layout, expensive items and other things that could reveal the user's identity or location. It's a scary thought that information about what the

inside of your home looks like could be revealed if a child were to upload images without realizing the consequences or if the game system is hacked.

Toys that can connect to Bluetooth present safety concerns at a different level. The Singing Machine, a Bluetooth karaoke microphone, doesn't require a pin code or other verification to connect to the device via Bluetooth.⁹⁰ This means anyone within a 10-meter connection radius could pair their phone to the toy and start playing audio out of the speaker when the device is turned on. PIRG toy researchers were able to connect to the Singing Machine from outside of their home at about 30 feet away. A bad actor could connect to the device and play anything from an explicit song to a voice recording telling a child to come outside.⁹¹

A darker plot could involve hackers using the toy to talk to other smart devices like Amazon Alexa.⁹² The Singing Machine is one example of Bluetooth-connected toys. There are other Bluetooth karaoke microphones sold on Amazon that could present the same problem if not protected by a verification before a device is connected with Bluetooth.⁹³

Smart toys work on three levels. Design flaws or privacy shortcomings at any of these levels can pose risks for a child's privacy.⁹⁴ First, there's the actual toy that a child interacts with. Cameras and other recording devices are what to look out for here. Then there can be a mobile app, which connects the toy to the Internet. This Internet connection could expose kids to inappropriate content. Lastly, there may be a personalized online account that stores data specific to the toy and its user. In the case of

hacking, this personal information could get leaked. Here are some examples of smart toys that present risks at each of these levels.

A previous Trouble in Toyland report highlighted My Friend Cayla dolls that raised alarms because the doll was easy to hack.⁹⁵ The dolls use recordings and artificial intelligence to “get to know” a child. Germany banned the toys from sale, urging parents to destroy the doll.⁹⁶

Cloud Pets are another well-known story of a smart toy turned recording device. The toys work like walkie-talkies, allowing kids and long-distance loved ones to send voice recordings back and forth. In a huge data breach scandal in 2017, an open database of more than 2 million voice recordings was hacked.⁹⁷ Many of the recordings were from children and the dataset was even held for ransom. In 2018, the Mozilla Foundation — a non-profit that works to keep the Internet an open global resource — found that the data issues revealed the year before had never been fixed.⁹⁸ The Cloud Pets still directed customers to an unsecure website. Major toy retailers stopped selling Cloud Pets by June 2018 — including eBay — but PIRG Education Fund researchers found Cloud Pets are still for sale on eBay.⁹⁹

App-controlled or connected toys can also be risky if they allow children to download content that is created by other users, rather than the manufacturer itself. Through these apps, children can interact with content that may not have been screened to make sure it’s age appropriate.

Experts from the NCC Group — a global cyber ware and security assurance firm — investigated app-connected toys for security loopholes.¹⁰⁰ The Mattel Bloxels Build Your Own Video Game works by putting together “blocks” of code to make a video game.¹⁰¹

Kids can use blocks that are preprogrammed by the toy’s manufacturers or they can use blocks that are created and uploaded by other users. Researchers uploaded a block with inappropriate language to the Bloxels arcade where it could be accessed by any other child using the app. While this specific toy was discontinued by the manufacturer, it is still sold on Amazon.¹⁰² For any “learn to code” types of toys, it is important that parents are present when additional information is downloaded from apps or websites. The best safety feature for a “learn to code” toy would be one that requires a parental password before a child could download content from sources other than the manufacturer.

App-connected toys sometimes require an online account or profile. Security failure at this level could mean exposing personal information about your child and family. A tale of warning is the case of VTech. In 2018, VTech came under fire from the FTC because the company was collecting data on more than 600,000 children through its Kid Connect app.¹⁰³ This was a violation of COPPA, which requires that a company tell parents when they’re collecting data on kids under 13 years old.

TAKEAWAYS

- **Even if companies tell parents about the data they’re collecting and get their consent, the online profile where this data is stored could be hacked if a company were to allow companion accounts to use weak passwords that leave data open to bad actors.**
- **Before buying a smart toy, read its description to understand what technology it uses and how your**

child will interact with it. It's a good idea to search the toy's name and the manufacturer online to see if either have sparked any privacy concerns. Look for COPPA approval, too.

- For toys that require some sort of online account registration, it is important that adults are present to set it up with a strong password. Only submit the minimal amount of personal data needed to make the account. You should also read the company's terms and conditions to see how your data will be stored, who has access to it, what happens if the company is hit by a cyberattack and whether the company will notify you of any problems found with the toy.

I GAME CONSOLES

GAME CONSOLES are always a popular item for children around the holidays. Before purchasing, parents should try to make sure the video game consoles will not expose their children to inappropriate content or online strangers by seeing whether the game console has parental controls for family accounts.

Major game consoles — Nintendo, PlayStation, Xbox — have these controls.¹⁰⁴ Parental controls exist on various gaming consoles and can allow complete control over access to online games, access to online chats and how much money can be spent.

Parental controls can also limit verbal communication between a child and online players. Each game console has different abilities. With game systems that require a headset for verbal communication, like Xbox, a parent does not have to buy the headset.¹⁰⁵ Other systems, such as the PS5 do not require a headset for verbal communication.¹⁰⁶ Nintendo systems require an app for communication.¹⁰⁷

monitor. If a game system supports verbal conversations without a headset, parents would have more opportunities to casually or intentionally supervise who's talking with their children and what's being said.

TAKEAWAYS

- **Parents should research game console systems to help them prevent communication they would not want their child exposed to.**
- **If a game console needs a headset for verbal communication, you don't have to buy it. Without the headset, a child could use a chat forum that, with the right game system, a parent would be able to**

I CONCLUSION

EFFORTS TO MAKE toys safer should never stop. And parents and caregivers should remain vigilant about the products they allow children to play with, particularly making sure young children aren't exposed to products they might use in a way to cause harm.

Recommendations:

- Congress should pass the INFORM Act. The Integrity, Notification, and Fairness in Online Retail Marketplaces Act, introduced in March, would require online merchants to collect, verify and disclose certain information from high-volume, third-party sellers. The goal of the bill is to thwart sales of stolen, counterfeit or dangerous consumer products -- toys and other kinds of merchandise.
- The CPSC should continue to research the health effects of phthalates and to strengthen current standards in accordance with the results.
- The CPSC should take strong enforcement action to prevent high-powered magnets from continuing to be sold on the market.
- The CPSC should use the rulemaking process to strengthen product standards to prevent button and coin battery ingestion.
- Congress should pass Reese's Law, introduced in September, which would require child-resistant closures on consumer products that use such batteries.
- The CPSC should consider a more protective small parts test. Children under the age of 3 have died from toys that were bigger than the small parts test and children over the age of 3 have died from toys considered safe for their age demographic.

I METHODOLOGY

Online shopping for “toys for children age 2”

We searched for “toys for children age 2” on Amazon under the “Featured” page. To see what first results would be suggested, we did not select any categories to sort the listings. We went through the first 20 listings and selected each to see what the age recommendation would be in the product listing.

For ten of the 20 listings, the toys did not conflict with the age recommendation of 2 years old. Six of the toy listings had a warning label on the product page saying “CHOKING HAZARD -- Small parts. Not for children under age 3.” Five of the toy listings had a manufacturer age recommendation labelled as “3 years and up” under the product description. One of the toy listings had a manufacturer age recommendation for “6 years and up.”

Sound testing

We selected three toys that we thought, based on online reviews, could be rather noisy. Two were cellphones that children would presumably hold close to their ears. The third was a laser gun.

All of the toys were ordered through Amazon and delivered the week ending Oct. 2, 2021.

We used two newly purchased decibel meters to measure the sound output of the toys: The first is RisePro Mini Sound Level Meter, model HT-80A. The second is V-RESOURCING, model VLT111. Both said they measure sound levels 30 to 130 dB. We tested each toy four times on each meter -- two tests each day on consecutive days. The testing was done in the same room. The windows were closed and there was no interior noise.

The Elf Lab Baby Cell Phone Toy, which we bought for \$15.99, was tested with the option that sings the A, B, Cs. We tested this toy with it touching the foam of the decibel meter, mimicking the way a child might interact with the toy if they were imitating an adult on a cell phone. A photo on the sale listing shows a baby with the phone up against her mouth or chin. The four measurements with each meter registered from 93.4 to 95.4 decibels on

one meter and 101 to 106.6 decibels on the other meter. The readings vary in part because of fluctuations in the song.

The other cell phone, by Click N' Play, registered 86.2 to 87.2 decibels during four tests on one decibel meter and 99 to 100.1 decibels during four tests on the other meter. We also tested this toy with it touching the foam of the decibel meter, mimicking the way a child might interact with the toy if they were imitating an adult on a cell phone. Photos with the sale listing show a young child with the phone up against her ear. This was part of a set of three toys that sold for \$13.29.

Another toy, the Kicko Toy Gun, which we bought for \$11.99, registered from 101.7 to 107.2 decibels on one meter during the four tests and 104.1 to 113.2 decibels during the four tests on the other meter. We tested this about two inches from the decibel meter.

The Click N' Play set came with two other toys as part of the set. A TV remote that plays music registered from 79.2 to 80.5 during the four tests on one meter and 83 to 85.7 during the four tests on the second meter. We tested this toy touching the foam of the decibel meter; photos in the sale listing show the toy right up against two young children's ears. A car remote opener/ remote start registered at levels less than 80 decibels. We tested this toy two inches from the meter.

Singing Machine Testing

We selected the Singing Machine Kids Mood LED Glowing Bluetooth Sing-Along Speaker to test its Bluetooth connection after viewing an article online. We bought the toy for \$39.99.

The toy was ordered through Amazon on Oct. 28 and arrived on Oct. 29.

We used a Stanley 33-730 tape measure that can measure up to 30 feet to test the distance of how far a person can be away from the Singing Machine and still connect to the device.

For the first test, we connected an iPhone to the Singing Machine using Bluetooth. After the Singing Machine was powered on, we were able to connect to the Singing Machine with no other verifications, such as a pin code. The Singing Machine does have a Bluetooth "pair" button. We did not have to push the button in order to connect to Bluetooth. The light above the "pair" button began to blink as soon as the Singing Machine was turned on.

Before the second test, we went to "Settings" on the iPhone, selected "Bluetooth" and then selected "Forget this device" for the Singing Machine. For the second test, we measured approximately 30 feet from the room the Singing Machine was located in to outside on the sidewalk. The distance between the Singing Machine and the sidewalk where the iPhone user stood had three doorways, with two doors closed and was down a flight of stairs. The iPhone user was able to connect to the Singing Machine through Bluetooth at a distance of about 30 feet from outside on the sidewalk.

To confirm the 30-foot distance, we conducted a third test. Before the third test, we selected "Forget this device" again for the Singing Machine on the iPhone. We measured out 30 feet from the room where the Singing Machine was located straight towards the back of the house. To have a complete 30 feet of the distance, the iPhone user had to be outside of the back door on the sun porch. The iPhone user was able to connect to the Singing Machine at this distance of 30 feet.

I APPENDIX

TOYS RECALLED BY CPSC, 2013-2021

Year	Toys Recalled	Time Period
2013	28	1/1/13 to 12/31/13
2014	13	1/1/14 to 12/31/14
2015	13	1/1/15 to 12/31/15
2016	9	1/1/16 to 12/31/16
2017	19	1/1/17 to 12/31/17
2018	15	1/1/18 to 12/31/18
2019	12	1/1/19 to 12/31/19
2020	9	1/1/20 to 12/31/20
2021*	12	1/1/21 to 10/18/21

*THROUGH OCT. 18

EMERGENCY ROOM TOY INJURIES TRACKED BY CPSC, 2013-2020

Year	Estimated Number of Toy-Related Emergency Department Treated Injuries (All Ages)	Estimated Number of Toy-Related Emergency Department Treated Injuries (12 Years of Age or Younger)
2013	246,300	175,500
2014	240,900	170,300
2015	244,400	173,200
2016	240,000	166,300
2017	251,700	174,300
2018	226,100	158,800
2019	224,200	154,700
2020	198,000	144,700

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Appendix 2: “Tips to Spot Counterfeit Toys Before You Buy Them”*Nov. 11, 2021**By Hannah Rhodes, Consumer Watchdog Associate*

You’ve probably experienced supply chain disruptions this autumn, for example a dearth of your favorite food at your local grocery store. So, as the holidays draw near, people are worrying that they need to send gifts very early -- or as quickly as possible. Since many of us have experienced efficient delivery from online vendors, you may be tempted to buy from a website and use its shipping options. If you do, be on the lookout for counterfeit products.

When shopping for children, counterfeit toys can be very dangerous. Consumer advocates and government agencies have worked hard to ensure toys undergo thorough safety testing. If that safety testing is not done, children can be exposed to choking hazards, toxic chemicals or sharp parts that could injure them.

If you’ve looked high and low for a toy that’s sold out, you can’t necessarily trust the toy that pops up in its place online. A great deal isn’t always the safest deal.

Spotting counterfeits can be difficult for anyone. Here is a breakdown of what to look for when shopping online for toys:

Clues within the website listing that can tell you a lot. When looking at a toy’s product description, watch out for misspellings or mislabelings. Website listings with low-quality pictures of toys can also indicate a counterfeit.

Age recommendations. Age recommendations for toys can be listed differently throughout a website listing. The age in the title may not be the same as the manufacturer’s recommended age. If there isn’t a clear age range, it’s best to avoid buying the toy.

Seller information. When shopping on websites that host third-party sellers, you can access the seller’s information:

- On Amazon, you can select the seller’s name under [“Buy Now.”](#)
- On eBay, you can click the seller’s name under [“Seller Information.”](#)
- On Walmart, a product sold by a third-party has the seller name listed next to [“Sold and shipped by.”](#)

Clicking on the seller’s information can tell you what other items they sell, where the business is located and feedback on its products. If they sell a hodgepodge of other products in addition to toys, it may not be a reputable toy seller.

What the seller has to say. If you have questions about the authenticity of the product, you can reach out to the seller with questions. If they don’t respond, it’s a good indicator the toy listing was for a counterfeit product, or that you just may not want to do business with them.

Suspiciously low prices. The U.S. Chamber of Commerce (USCC) and the U.S. Consumer Product Safety Commission (CPSC) [caution consumers](#) to watch out for unusually cheap products compared to other items in the same category. When using a website that has third-party sellers, comparing listings for similar toys can be a good way to identify what the average price should be. Low prices don't necessarily equal a good deal.

Where else the seller lists products. Do an internet search on the seller. If the seller has a website, check it out. You can also see if a seller has listings on other websites that have third-party sellers and compare the listings to see any discernible differences.

Social media posts that are suspicious. Consumers should be wary of posts or targeted ad campaigns on social media. A [report](#) by the United States Trade Representative (USTR) says that posts and ad campaigns can be a “fast, easy, inexpensive and common tactic” that are used to fool customers into buying counterfeit and pirated products.

Reviews that aren't trustworthy. PIRG Education Fund [lists tips](#) on the best way to differentiate between fake and real reviews.

Can you shop from the real store? If there is a question about a toy's authenticity, shop from the brand's website. Major toy manufacturers and brands — Hasbro Gaming, LEGO, Barbie — have verified accounts with Amazon that can help determine the toy's credibility.

If you buy the product, take a look at the packaging. The USCC and CPSC [recommend](#) scrutinizing the labels, packaging and contents. If the packaging has anything suspicious, such as a broken safety seal, it could be a counterfeit product. While a counterfeit toy may be difficult to spot online, there could be differences in quality that are more visible when you get the toy in the mail.

Other tips:

Report any bad experiences. If you believe you've purchased a counterfeit toy, or any knockoff product, you can report it to www.saferproducts.gov or call the CPSC at 800-638-2772.

Help out loved ones. If family and friends who are not as tech-savvy plan to shop online for holiday gifts, teach them how to identify listings that could be counterfeit. Go through listings together and show them what to look for to identify a counterfeit.

Senator BLUMENTHAL. Thank you very, very much, Ms. Rhodes. And now, Dr. Ben Hoffman.

STATEMENT OF BEN HOFFMAN, MD, FAAP, CPST-I, CHAIR, AAP COUNCIL ON INJURY, VIOLENCE AND POISON PREVENTION EXECUTIVE COMMITTEE, ON BEHALF OF THE AMERICAN ACADEMY OF PEDIATRICS

Dr. HOFFMAN. Good Morning Chair Blumenthal, Ranking Member Blackburn, Chair Cantwell, Ranking Member Wicker, and distinguished members of the Subcommittee. My name is Dr. Ben Hoffman, and I am here today on behalf of the American Academy of Pediatrics, where I serve as Chair of the Council on Injury, Violence, and Poison Prevention Executive Committee.

I want to specifically thank Ms. Hamsmith for her very stirring testimony, extend my condolences for her loss, and just say that part of the greatest opportunity I have had in the last several years is to partner with families as a pediatrician and as an injury prevention advocate to work together on causes like this.

As Senator Blumenthal mentioned, the holiday season is a special time for kids and for families, with the thrill of new toys and festive decorations. I myself, as a father, I have long treasured the joy of seeing my now grown children enjoying the holiday season. But as a pediatrician and expert on injury prevention, I know that our annual celebrations can place children at risk, which necessitates thoughtful policy to prevent injuries from toys, decorations, and other hazards in the home.

Pediatricians routinely counsel families on the best ways to stay safe over the holidays. The AAP's parent-facing website healthychildren.org has helpful tips for parents on how to buy safe toys, how to decorate for the holidays in a safe way, and it included some key recommendations that pediatricians often give, in my written testimony.

We also know that the holidays can be a very busy and overwhelming time for parents and our safety messages are not sufficient to protect children. Parents and caregivers often incorrectly assume that toys and products that they have seen on store shelves or websites, have been tested and proven to be safe for their kids. But many hazardous products make it to market with no demonstration of safety for children. The U.S. Consumer Product Safety Commission and Congress both have critical roles in protecting children from these risks.

The AAP thanks Senators Blumenthal and Blackburn for your bipartisan leadership in co-sponsoring Reese's Law. Button batteries are ubiquitous, as we have heard, found in common products including remote controls, watches, cameras, toys. The batteries are tremendously dangerous if swallowed, as we heard, and contact with the child's airway or esophagus immediately causes the battery to discharge electricity, which results in burns which are immediate, and a life-threatening emergency. I have seen children who have suffered life-altering burns to their esophagus, or a food tube, after ingesting a button battery that was undetected by parents for less than an hour. The AAP has strongly endorsed Reese's Law and urges its expeditious enactment.

Another ingesting hazard we expect to see over the holidays come from these high-powered magnets that Ms. Rhodes mentioned. When two or more magnets are swallowed, the attractive force allows them to find each other across different sections of the digestive tract, which leads to intestinal injury, rupture, or even death.

During a three-week period in 2019, after the previous ban had been vacated, my institutions had three kids admitted in a 3-week period—sorry, in a 3-week period, where surgeons removed a total of 36 tiny magnets from their intestines. I personally worked with a 5-year-old boy who swallowed five of these magnets and narrowly averted requiring a colostomy, as the magnets found each other across multiple loops of bowel and cutoff the blood supply. The AAP has endorsed the Magnet Injury Prevention Act and we also support the CPSC's efforts to address this hazard through a recent mandatory recall and through a new safety standard.

In this season of giving, it is crucial for parents and policymakers to be aware of other products that can pose hazards for children. The AAP continues to urge Congress and the CPSC to protect children from inclined infant sleep products, crib bumpers, and other sleep products that can lead to suffocation and other infant sleep-related deaths. Holiday parties with children running around the house also highlight the risk of furniture tip overs and the importance of passing the bipartisan STURDY Act, which we urge the full committee to markup and advance.

In closing, I want to note that a strong and fully functioning CPSC is critical to keep children safe over the holidays and throughout the year. Congress should ensure the Agency has the funding, personnel, and statutory authorities necessary to proactively address risk to children, before they lead to significant injuries and fatalities and to effectively recall dangerous products.

The AAP is grateful to the subcommittee for its focus on children's product safety during the holiday season and we look forward to continuing to work with you, so that families can safely celebrate the holidays and purchase, with greater confidence, products that are safe for their children.

Thank you and I look forward to your questions.

[The prepared statement of Dr. Hoffman follows:]

PREPARED STATEMENT OF BEN HOFFMAN, MD, FAAP, CPST-I, CHAIR, AAP COUNCIL ON INJURY, VIOLENCE AND POISON PREVENTION EXECUTIVE COMMITTEE, ON BEHALF OF THE AMERICAN ACADEMY OF PEDIATRICS

Good Morning Chair Blumenthal, Ranking Member Blackburn, Chair Cantwell, Ranking Member Wicker, and distinguished members of the Subcommittee:

My name is Dr. Ben Hoffman. I'm here today on behalf of the American Academy of Pediatrics (AAP), a non-profit professional organization of 67,000 primary care pediatricians, pediatric medical subspecialists, and pediatric surgical specialists dedicated to the health, safety and well-being of infants, children, adolescents, and young adults. I currently serve as Chair of the AAP Council on Injury, Violence, and Poison Prevention Executive Committee, leading the Academy's work developing our evidence-based policy statements on issues related to product safety, our education of pediatricians and parents about injury risks, and our advocacy at every level of government for policies to keep children safe from injuries.

In addition to my role with the AAP, I am also a Professor of Pediatrics at Oregon Health and Science University and OHSU Doernbecher Children's Hospital. I also serve as the Vice-Chair for Community Health and Advocacy, as Director of the Or-

egon Center for Children and Youth with Special Health Care Needs, and as Medical Director of the Doernbecher Child Injury Prevention Program.

I would like to extend our gratitude to the Subcommittee for holding this critical hearing. Children's product safety is a vital child health priority, and I am grateful for the opportunity to testify today about holiday hazards.

The holiday season is a special time of year for children, and often comes with the thrill of new toys and the splendor of festive decorations. As a father myself, I have long treasured the joy of seeing my now grown children enjoying the holiday season. And as a pediatrician and expert on injury prevention, I also know that our annual celebrations can place children at risk, necessitating thoughtful policy to prevent injuries from toys, decorations, and other hazards around the home.

Pediatricians always counsel families on the best ways to stay safe, and the holidays are no different. The AAP's parent-facing website *healthychildren.org* has helpful tips for parents and caregivers on how to select and buy safe toys and how to decorate for the holidays in a way that enlivens a family's celebration while keeping everyone safe.

Pediatrician Recommendations for Holiday Safety

Holiday decorations can help children feel connected to family traditions and be a fun family activity. To help make sure these decorations are safe the AAP offers parents and caregivers the following recommendations:

- When purchasing a live tree, check for freshness. The needles should be hard to pull off, and should not break when you bend them.
- If you have an artificial tree, make sure it's labeled "Fire Resistant."
- When setting up a tree at home, place it away from fireplaces, radiators or portable heaters. Place the tree out of the way of traffic and do not block doorways.
- Check all lights before hanging them on a tree or in your home, even if you have just purchased them. Make sure all the bulbs work and that there are no frayed wires, broken sockets or loose connections.
- Remove all wrapping papers, bags, paper, ribbons and bows from tree and fireplace areas after gifts are opened. These items can pose suffocation and choking hazards to a small child, or can cause a fire if near flame.

Every year, thousands of children are injured by toys. While most of these injuries are minor, toys that are hazardous can cause serious injury or even death. The CPSC reports that last year, there were nearly 150,000 toy-related, emergency department-treated injuries and nine deaths among children ages 14 and younger.ⁱ The AAP offers the following advice to help families and loved ones choose safe and appropriate toys for children:

- Read all warning labels. Warning labels give important information about how to use a toy and what ages the toy is considered safe for. However, every child is different, so parents should consider their unique circumstances. Be sure to show children how to use the toy the right way and provide appropriate supervision.
- Make sure all toys and parts are larger than your child's mouth to prevent choking.
- Follow age recommendations on toys, which offer guidelines on the safety of the toy and the ability of a child to play with and enjoy the toy.
- Be careful when buying crib toys. Soft objects, loose bedding, or any objects that could increase the risk of entrapment, suffocation, or strangulation should never be in a crib. Any hanging crib toy (mobiles, crib gyms) should be out of your baby's reach and must be removed when your baby first begins to push up on their hands and knees or when the baby is 5 months old, whichever occurs first. These toys can strangle a baby.
- Track recalls from the CPSC and remove any recalled toys immediately.
- Avoid counterfeit products by purchasing from stores and online retailers you know and trust.

While pediatricians offer these recommendations in our public education and clinical messaging, we also know that this can be a very busy and overwhelming time for parents, and our safety messages are not enough to protect children. Parents often assume that the toys and products they see on store shelves or online have

ⁱQin A. Toy-Related Deaths and Injuries Calendar Year 2020. U.S. Consumer Product Safety Commission, 2021. Accessed at <https://www.cpsc.gov/s3fs-public/Toy-Related-Deaths-and-Injuries-2020.pdf>.

been tested and proven to be safe for their kids, but this is sadly not the case. Product-related hazards cause far too many injuries and deaths that could be prevented through strong safety standards.

The U.S. Consumer Product Safety Commission and Congress have critical roles in protecting children from these risks. This Subcommittee has a tremendous opportunity to ensure the holiday season is safer for children, both through its oversight of CPSC to ensure its work is maximally protective of children, and through consideration and enactment of strong and child-protective bipartisan legislation that is currently before Congress.

Button Batteries

Button batteries are ubiquitous and useful; powering many toys, tools, and consumer products that we all use on a daily basis. Children face potentially deadly ingestion hazards from button batteries when they come out of common household products, such as small remote controls, garage door openers, bathroom scales, cell phones, flameless candles, watches, cameras, and digital thermometers. These batteries can be tremendously dangerous if swallowed, as the contact with a child's airway or esophagus immediately causes the battery to immediately discharge electricity, resulting in burns which are an immediate, life-threatening emergency. I have seen children who suffered life altering burns to their esophagus, or food tube, after ingesting a button battery that was undetected by parents for less than an hour.

A recent report from the CPSC showed an alarming 93 percent increase in emergency-room treated injuries related to button batteries among children ages 5–9 from March through September 2020. Education alone cannot protect children from button battery ingestion; Federal action is necessary. The AAP supports a mandatory safety standard that would require manufacturers to securely enclose all button cell batteries and to sell such batteries in child-resistant packaging. Manufacturers should also work in support of design changes that would eliminate this serious health hazard, even if batteries are ingested.

The AAP supports *Reese's Law*, which would protect children against the hazardous ingestion of button cell or coin batteries. This bipartisan bill would require the CPSC to promulgate a safety standard for consumer products containing button cell or coin battery compartments. This standard would require these products to secure the batteries in a manner that prevents children from accessing the hazardous batteries. The bill would also improve warning label requirements to communicate the hazard of ingestion and require button cell or coin batteries to be sold using child-resistant packaging. These measures would help prevent children from accessing button batteries in the first place, which would save lives.

High-Powered Magnet Sets

Another ingestion hazard that we expect to effect children over the holidays comes from dangerous high-powered magnets that are marketed as toys. When two or more high-powered magnets are swallowed, their attractive force (flux) allows them to find each other, even if it is across or between different segments of the digestive system. For example, a magnet in the stomach will be pulled to a magnet in the small intestine, as it will to another in colon, or across loops of bowel. These magnet connections can lead to necrosis of the intestinal tissue, which can lead to intestinal injury, rupture, and even death.

Recognizing these serious risks, the CPSC took action to eliminate dangerous high-powered magnets from the marketplace. And these steps were initially successful; research shows that the CPSC and Health Canada efforts to ban high-powered magnet sets were working to protect children. Researchers studied the impact of Canada's recall by comparing data on magnet ingestion at Toronto's Hospital for Sick Children during the two years before the recall (2011 and 2012) and two years after the recall (2014 and 2015).ⁱⁱ In the initial two years, there were 22 multiple magnet ingestions, six operations and nine endoscopic procedures. In the two years after the recall, there were five ingestions, one operation and four endoscopic procedures.

Unfortunately, the courts vacated the CPSC standard and recall in 2015, putting children at risk again from these dangerous products. And we have seen the problem return, both in the data and what we are seeing in the emergency room. New Federal protections are urgently needed. During a 3 week period in 2019, we had 3 children admitted for magnet ingestions, and surgeons removed a total of 36 tiny

ⁱⁱRosenfield D, Strickland M, Hepburn CM. After the Recall: Reexamining Multiple Magnet Ingestion at a Large Pediatric Hospital. *J Pediatr*. 2017 Jul;186:78–81. doi: 10.1016/j.jpeds.2017.02.002. Epub 2017 Mar 10. PMID: 28291530.

magnets from their intestines. I personally met a 5-year-old boy who swallowed 5 magnets, and narrowly averted requiring a colostomy as the magnets found each other across multiple loops of bowel and cut off blood supply.

The AAP has endorsed the *Magnet Injury Prevention Act*, which would create strong safety standards again so that dangerous magnet sets are no longer on the marketplace. AAP also supports the CPSC's latest efforts to address this hazard through a recent mandatory recall and through a new proposed safety standard. Families need clear protections so that they don't have to worry that the well-intentioned toy in their child's stocking could pose a risk to them or a younger sibling.

Other Product Hazards

In this season of giving, it is important for parents and policymakers to be aware of other products that can pose hazards for children. The AAP continues to call attention to the importance of safe sleep environments for infants and urges Congress and the CPSC to protect children from inclined infant sleep products, crib bumpers, and other sleep products that can lead to suffocation and other infant sleep-related deaths. The AAP thanks the Commerce Committee for advancing the bipartisan Safe Cribs Act (S. 1259), which would ban padded crib bumpers. We also strongly support the Safe Sleep Act, which would protect children from infant inclined sleep products like the now-recalled Fisher-Price Rock 'n Play Sleeper. Both of these policies passed the U.S. House in June, and we urge the Senate to pass them expeditiously. Enactment of these policies, and continued progress on CPSC's proposals to remove inclined sleepers and padded crib bumpers from the marketplace, would be a welcome improvement and ensure that any sleep-related gifts from well-meaning friends and relatives are safe.

Holiday gatherings and parties often mean children running around and exploring the house, including climbing on furniture. This highlights the risk of furniture tip-overs and the importance of passing the bipartisan STURDY Act, which would create a stronger safety standard to prevent furniture from tipping over on and crushing young children. We urge the full Committee to mark up and advance this bill.

CPSC Effectiveness

In closing, I want to note that a strong and fully-functioning CPSC is critical to keep children safe over the holidays and throughout the year. Congress should ensure the agency has the funding, staff, and statutory authorities needed to carry out its mission. This includes the ability to transparently and proactively address risks to children before they lead to significant injuries and fatalities. The AAP supports the Sunshine in Product Safety Act, which would repeal Section 6(b) of the Consumer Product Safety Act, an outdated provision creating unnecessary barriers to disclosing information about a consumer product that identifies a manufacturer. Section 6(b) delays the release of specific and critical safety information, putting children at risk of injury and death. For example, there could be a deadly hazard associated with a product being given as a gift this holiday season that the agency is not allowed to transparently warn consumers about. Strengthening CPSC's authorities and increasing its funding would help the agency better protect children and save lives.

Conclusion

The AAP is grateful to the Subcommittee for its focus on children's product safety during this holiday season, and we look forward to continuing to work with you so that families can safely celebrate the holidays. Thank you for the opportunity to testify, and I look forward to your questions.

Senator BLUMENTHAL. Thanks a lot, Dr. Hoffman. And now, Joan Lawrence.

STATEMENT OF JOAN LAWRENCE, SENIOR VICE PRESIDENT, STANDARDS AND REGULATORY AFFAIRS, THE TOY ASSOCIATION

Ms. LAWRENCE. I just want to make sure you can hear me. Good morning, my name is Joan Lawrence, and I am the Senior Vice President, Standards and Regulatory Affairs for The Toy Association. Thank you for the opportunity to testify today on this important topic, Chairman Blumenthal and Ranking Member Blackburn.

Product safety is the top priority for the toy industry and, in fact, my role at the Toy Association includes promoting toy safety and

safe play year-round. Accordingly, I also serve as the Chairperson of the Multi-Stakeholder Expert Subcommittee on Toy Safety under ASTM International, responsible for the ASTM F963 Toy Safety Standard.

The Toy Association is a not-for-profit trade association whose members includes more than 950 businesses, all involved in bringing safe, fun toys and games to children. The Toy Association and its members have served as leaders in globally toy safety efforts. In the 1970s, we helped create the world's first comprehensive toy safety standard. The ASTM F963 Toy Safety Standard, as it is now known, has been recognized as a gold standard for toy safety, and its subcommittee of experts, including government, medical and child development experts, industry, engineers and inventors, toy safety testing labs, and consumer representatives continually reviews the standard to keep pace with product innovation, incorporating the latest intelligence on product safety and children's behavior and has led the world in this regard. In fact, in 2008, the U.S. Congress passed the Consumer Product Safety Improvement Act which, among its other provisions, made ASTM F963 a mandatory Consumer Product Safety rule for all toys sold in the U.S. And it requires testing and certification of compliance to the standard.

In effect, Congress also endorsed the work of the ASTM Expert Toy Safety Subcommittee and its process for continual review. In all, there are over 100 different safety standards and tests for toy safety required of all toys sold in this country and these standards have been used as a model for other jurisdictions. Among the requirements are strict standards for the use of magnets and batteries in children's toys.

For magnets, the use of certain powerful, rare-Earth magnets that are small parts and could be swallowed, is not allowed in children's toys. Despite this, there remain concerns and confusion over adult magnetic products, still available in the marketplace, that are small parts and do not comply with our toy standard. These products are not children's toys and are not safe for children.

Batteries that are small parts also pose a unique threat to young children, particularly those under 3 years of age, who may still mouth objects. Since the 1990s, the Toy Safety Standard has addressed batteries used in children's toys, requiring a locking mechanism on the battery compartment to prevent children's access to the batteries. These requirements apply to all batteries and toys intended for children under 3 years of age, and batteries that are small parts, such as coin and button cells, in all toys.

Following a report regarding battery ingestion from various consumer products, the ASTM Subcommittee on Toy Safety revisited the standard for batteries and found that it was providing effective protection, preventing children from accessing batteries in a toy. However, consumers were largely unaware of the hazard that small batteries could pose if ingested. While there was not evidence the toy battery compartment locks were failing, there were cases of children ingesting batteries that may have been purchased for use in the toy and left where a child could access them and that even some used or spent batteries can still pose a risk.

Accordingly, in 2016, requirements were added to the toy standard, so that toys that use coin cell batteries include labeling to

alert consumers to the danger and the importance of keeping batteries away from young children. Additionally, since many non-toy products common in our homes and in a child's environment do not have the same safeguards, the Toy Association began recommending that the example of the toy standard for batteries be adopted by other product categories, as well, to reduce the hazard that these products may pose.

We have also incorporated messaging as part of our year-round consumer awareness campaign on the importance of keeping children away from batteries from any product. And they are closely following the development of several protective technologies for the batteries themselves that may offer enhanced protection of children in the future.

As you can see, the safety of toys is a high priority and toys are highly regulated in this country. However, I would be remiss in not mentioning the concern about counterfeit toys being sold in the online marketplaces. The Toy Association has continued to raise the concern over the increase in counterfeit toys. While all toys are required to comply with safety standards, counterfeits, while also skirting intellectual property law, may not comply with the range of standards to which toys are subject, putting unsuspecting consumers, children, and families at risk. Any business selling toys in the U.S. must be held to the same high safety standards. Accordingly, the Toy Association supports both the INFORM Consumers Act and the Shop Safe Act to require more transparency and create new accountability to help reduce the presence of counterfeits and unsafe products sold online.

As an industry, we recognize the trust that families place in us and in the safety of toys. We take that responsibility very seriously and pride ourselves on the effectiveness of the toy standard and in its process for revision, seeks to continually keep pace with innovation and new information. ASTM F963 serves as a model for other countries looking to protect the health and safety of their youngest citizens, and for other product categories looking to emulate its protected standards for children.

Thank you for the opportunity to speak today and I look forward to addressing any questions you may have.

[The prepared statement of Ms. Lawrence follows:]

PREPARED STATEMENT OF JOAN LAWRENCE, SENIOR VICE PRESIDENT, STANDARDS
AND REGULATORY AFFAIRS, THE TOY ASSOCIATION

Good morning. My name is Joan Lawrence, and I am the Senior Vice President, Standards and Regulatory Affairs for The Toy Association. Thank you for the opportunity to testify today on the subject of Product Safety During the Holiday Season. While I was asked to specifically talk today about the topic of batteries used in toys, the broader topic for this hearing—*Product Safety*—is of utmost importance to the toy industry and, in fact, my role at The Toy Association includes promoting toy safety and safe play year-round. In that effort, I also serve as the chairperson of the multi-stakeholder expert subcommittee on toy safety under ASTM International, responsible for the ASTM F963 toy safety standard which comprises the bulk of U.S. toy safety requirements.

The Toy Association is a not-for-profit trade association whose membership includes more than 950 businesses—from inventors and designers of toys to toy manufacturers and importers, retailers and safety testing labs—all involved in bringing safe, fun toys and games to children. The U.S. toy market is \$27 billion annually, with an annual U.S. economic impact of \$98.2 billion. Our members manufacture

and sell approximately 90 percent of the three billion toys sold in the U.S. each year.

Toy safety is the top priority for The Toy Association and its members. Since the 1930s, the Association and its members have served as leaders in global toy safety efforts; in the 1970s we helped to create the world's first comprehensive toy safety standard, which was later adopted under the auspices of ASTM International as ASTM F963. The ASTM F963 Toy Safety Standard has been recognized as a “gold standard” for toy safety. Its subcommittee of experts includes government, medical and child development experts, industry, engineers and inventors, toy safety testing labs, and consumer representatives. The group continually reviews the standard to keep pace with product innovation, incorporating the latest intelligence on product safety and children's behavior—and has led the world in this regard. In fact, in 2008 the U.S. Congress passed the Consumer Product Safety Improvement Act (CPSIA) which, among other provisions, made ASTM F963 a mandatory consumer product safety rule for all toys sold in the U.S.—and requires testing and certification of compliance to all applicable provisions of the ASTM toy safety standard. In effect, Congress also endorsed the work of the ASTM expert toy safety subcommittee—and its process for continual review.

In all, there are over 100 different safety standards and tests for toy safety, required of all toys sold in this country and these standards have been used a model for other jurisdictions. Among the requirements, are strict standards for the use of magnets and batteries in children's toys.

For magnets, the toy standard does not allow the use of certain powerful rare earth magnets in children's toys and toy components that are small parts and could be swallowed. Despite this, there remain concerns and confusion over *adult* magnetic products, still in the marketplace, that do not comply with the toy standard. These products are not children's toys and are not safe for children. This is a key point in our year-round messaging to consumers.¹

Regarding batteries, the use of battery technology in some toys can enhance the educational and developmental benefits of play—incorporating lights, colors, sounds, motion—and fostering motor skills, problem solving, language development, learning cause and effect, and more.² However, batteries that are small parts pose a unique threat to young children, particularly those under three (3) years of age who may still mouth objects; certain ingested batteries can begin to burn internal tissue in as little as two hours. Importantly, to prevent this, since the 1990s the ASTM toy safety standard has addressed batteries used in children's toys, requiring a locking mechanism on the battery compartment to prevent children's access to batteries. These requirements apply to all batteries in toys for ages under three years, and batteries that are small parts (coin and button cells, for example) regardless of intended age of the user.³

When data emerged several years ago from the National Poison Center related to battery ingestion, describing incidents related to batteries from numerous types of consumer products, the ASTM Subcommittee on Toy Safety revisited the ASTM requirement for batteries—and found that it was providing effective protection preventing children from accessing batteries in a toy. In contrast, however, many of the non-toy products common in our homes and in a child's environment, do not have the same safeguards to prevent children's access to batteries. As such, The Toy Association began recommending that the toy standard for batteries—be adopted by other product categories as well. Common consumer products such as hearing aids, remote controls, battery-operated watches and clocks, and even musical greeting cards have been associated with tragic incidents—and should consider immediate action to reduce the hazard they pose.

What we did find in our review of the incidents was that while the toy standard's requirement for a locked battery compartment was working, consumers were largely unaware of the hazard that small batteries could pose if ingested. While there was not evidence that battery compartment locks were failing, there were cases of children accessing batteries that may have been purchased for use in a toy and left where a child could access them, and that even some used/spent batteries accessed by children can still pose a risk to them. (In some cases, even batteries discarded in the garbage have been found by an inquisitive toddler.) Accordingly, in 2016 we revised the ASTM toy safety standard to reaffirm the requirement for a locking mechanism on the battery compartment—and add requirements that toys that use

¹See www.PlaySafe.org.

²Resources: U.S. Consumer Product Safety Commission *Age Determination Guidelines: Relating Consumer Product Characteristics to the Skills, Play Behaviors, and Interests of Children, January 2020*. And The Genius of Play: <https://thegeniusofplay.org>

³See ASTM F963: *Reading Room—Products & Services* (astm.org)

coin cell batteries also include labeling to alert consumers to the danger of these batteries if ingested and the importance of keeping batteries away from young children. Additionally, The Toy Association has incorporated messaging as part of our year-round consumer awareness campaign on the importance of keeping children away from batteries from *any* product.⁴ We are also closely following the development of several protective technologies for the batteries themselves, should they offer enhanced protection of children from the hazard.

As you can see, the safety of toys is a high priority—and toys are highly regulated in this country. Seen as an effective safety standard, ASTM F963 serves as a model for other countries looking to protect the health and safety of their citizens—and for other product categories looking to emulate its protective standards for children.

It is also important to keep in mind that, under current law, the third-party online marketplace system is not necessarily held to the same strict safety regulations. This has created an ecommerce environment where third-party sellers can operate anonymously online and bypass U.S. safety and testing regulations.

Every day, there are examples of unsafe and non-compliant toys being offered and sold in online marketplaces. Listings frequently include toys marketed to children under the age of three that pose choking hazards, toys without required labeling, and products with battery compartments without a locking mechanism. These products sidestep regulations, yet are offered on popular mainstream online marketplaces and marketed as appropriate for children. Any business selling toys in the U.S. must be held to the same high safety standards that apply in the brick and mortar world and which consumers have come to know and trust.

The Toy Association urges Congress to pass both the INFORM Consumers Act and the SHOP SAFE Act to require more transparency and create new accountability to help reduce the presence of counterfeits and unsafe products sold online.

As an industry we recognize the trust that families place in us and in the safety of toys. We take that responsibility very seriously and pride ourselves on the effectiveness of the toy standard and in its process for revision that seeks to continually keep pace with innovation and new information. As you consider legislation to address battery safety in consumer products, we urge you to consider what we have learned and how we have led in the toy sector—so that the protections we have instituted may apply to all consumer products.

Attachments:

- Taking Counterfeits Offline (2020)
- Press Release: Toy Association Warns Holiday Shoppers about Counterfeit Toys Sold Online (November 1, 2021)
- Toy Safety Shopping Guide, published by The Toy Association

⁴ www.PlaySafe.org

Taking Fake Toys Offline:

**A 2020 Focus on Proactive Measures to
Reduce Counterfeits and Unsafe Toys
Sold on Online Marketplaces**



*This report has been prepared by Meaghan H. Kent of Venable LLP working with and on behalf of The Toy Association and the members of its IP Steering Committee.

TAKING FAKE TOYS OFFLINE:

A 2020 Focus on Proactive Measures to Reduce Counterfeits and Unsafe Toys Sold on Online Marketplaces

EXECUTIVE SUMMARY

Counterfeit and non-compliant toys sold through online marketplaces continue to threaten consumer health and safety. In 2020, Toy Industries of Europe (TIE) and the British Toy & Hobby Association (BTHA) published toy safety reports. TIE assessed 193 non-branded toys for compliance with the EU toy safety standard. Of these, 97 percent were non-compliant and thus illegal in the European market despite being purchased across seven EU member nations on four major platforms.¹ Similarly, for its latest toy safety study, BHTA purchased 100 randomly-selected toys from well-known online marketplaces and found that 60% were unsafe for children and that 86% of the toys were illegal to sell in the UK.²

International counterfeit trade has increased³, and online shopping has a widespread risk of counterfeits. In the U.S., the "growth in e-commerce has contributed to a shift in the sale of counterfeit goods in the United States, with consumers increasingly purchasing goods online and counterfeiters producing a wider variety of goods that may be sold on websites alongside authentic products. For example, 20 of 47 items [the Government Accountability Office] purchased from third-party sellers on popular consumer websites were counterfeit, according to testing by the products' rights holders, highlighting potential risks to consumers."⁴



Consumers, however, are largely unaware of this growing problem. The Toy Association conducted a study of 1,000 toy-buying parents in 2019 and found that nearly 1 in 3 incorrectly believed counterfeit toys are not sold on major online marketplaces, representing a blind spot through which non-compliant toys can slip into households.⁵

Consumers are shifting to online shopping at an accelerated rate. More than nine in 10 shoppers chose their retailer based on convenience, driving the consumer shift to online shopping⁶ and the events of this year have hastened the online shopping trend. The U.S. Census Bureau estimated that retail e-commerce sales during the second quarter were \$211.5 billion, representing a 44.5% increase from the same quarter a year ago.⁷ Indeed, U.S. toy sales experienced double-digit monthly growth from March through June 2020, despite lockdown restrictions, thanks in large part to the strength of the online channel during that time.⁸

In 2019, the Toy Association issued its White Paper, *The Real Threat of Fake Toys*,⁹ which discussed the three contributing factors and various potential solutions to this increasingly pervasive problem. While there has been some good progress in the last year, much more remains to be done to decrease unsafe and counterfeit toys online. This 2020 paper reviews the three factors contributing to counterfeit toys sold online and expands on the proposed solutions:

1. There remains a low hurdle to sellers due to the lack of seller or product verification. At a minimum, online marketplaces should collect and verify seller information through government identification and other official documents. Online marketplaces should also be required to implement proactive systems to verify whether product offered on their sites meets applicable regulations such as labeling requirements and consumer product safety regulations. Furthermore, online marketplaces should aggressively use and enhance their available proactive tools and filtering capabilities to prevent counterfeit product from being offered on their sites.
2. Enforcement of counterfeits is a reactive process and the burden is disproportionately placed on rights holders and consumers. More proactive procedures must be the first line of defense. Additionally, the reporting process must be streamlined, and the presumption shifted to rights holders.
3. Consumers must be provided with information so they can make informed purchasing decisions. It has become increasingly difficult to differentiate between legitimate and counterfeit product on marketplaces because counterfeiters are adept at blending in on the sites. Marketplaces must be more transparent with verified seller and product information to enable consumers to make informed purchasing decisions and avoid falling victim to counterfeit products. Consumers and brands should be notified when counterfeit products are identified on marketplace platforms.

These issues and proposed solutions continue to evolve as online shopping changes. Increased reliance on online shopping, the proliferation of social media marketplaces, targeted advertisements, and the growth of fake reviews and fake storefronts are new concerns that Association members have identified for future review. While some of the solutions identified may resolve some of these emerging trends, we anticipate an ongoing adaptive approach will be needed to fully address the prevalence of counterfeit toys sold online.



TOY ASSOCIATION AND ITS EFFORTS TO PREVENT COUNTERFEIT AND UNSAFE TOYS

1. About The Toy Association

Founded in 1916, The Toy Association, Inc. is the trade association representing businesses that design, produce, license, and deliver toys and youth entertainment products. With over 1,000 members, the organization has a long history of propelling the health and growth of the toy industry. The Toy Association's members drive the annual \$27 billion U.S. domestic toy market, which has an annual U.S. economic impact of \$98.2 billion. The toy industry supports an estimated 627,110 jobs (FTE) generating more than \$31.1 billion in wages for US workers. The toy industry generates \$13.2 billion in tax revenue each year.

The Toy Association advocates on behalf of its members, and for more than 40 years has been a global leader in toy safety. It helped develop the first toy safety standard and remains committed to working with medical experts, government, consumers, and industry on ongoing safety programs and outreach. The Toy Association is also the industry's voice on the developmental benefits of play, promoting play's positive impact on childhood development.

2. The Real Threat of Fake Toys

A significant and serious issue facing consumers and The Toy Association's members is the growing phenomenon of counterfeit and non-compliant products being sold online.



In 2019, The Toy Association issued a White Paper, *The Real Threat of Fake Toys*, which discussed contributing factors and potential solutions to this increasingly pervasive problem. Namely, the 2019 White Paper articulated three categories of contributing factors to this steady growth of infringing products online, particularly as it relates to online marketplaces:

- E-commerce creates a low hurdle to sellers;
- The burden of enforcement is disproportionately reactive and on the rights holder; and
- Consumers are largely unaware of the scope of infringing product offered on online marketplaces

This framework remains suitable for analyzing the continuing problem of counterfeit and non-compliant products sold on online marketplaces.

The 2019 White Paper articulated potential solutions to combat each of these factors.

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To neutralize the low hurdle to sellers, The Toy Association proposed that online marketplaces proactively screen and collect verified contact information for sellers, and proactively screen products, requiring that sellers demonstrate legitimacy of the products and provide Children's Product Certificates (CPC) to ensure safety.
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To more appropriately balance the burden of enforcement, The Toy Association proposed that online marketplaces work collaboratively with industry organizations to create programs that give the presumption to rights holders, provide more streamlined removal processes, provide direct points of contact for the industry, provide trainings to industry groups on best practices, and provide more transparency to stop bad actors.
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To facilitate consumer awareness and education, The Toy Association proposed that online marketplaces better identify legitimate or verified products and sellers.

3. Toy Association Engagement and Advocacy

The Toy Association has been engaged with online marketplaces, including Amazon, Alibaba, Walmart, eBay and others, to work collaboratively on behalf of its members and consumers. The Toy Association has held meetings and calls connecting rights owners and e-commerce marketplaces to address specific and technical concerns. Amazon and Walmart are both Toy Association members and are on The Toy Association's IP Committee. The above-mentioned marketplaces have worked collaboratively with The Toy Association and its members during this process.

The Toy Association has also been engaged in extensive advocacy, including testifying before Congress, meeting with Administration officials, participating in roundtables, conducting regular meetings with legislators, and engagement in proposed legislation.



Since the 2019 White Paper, the Toy Association's engagement and advocacy has contributed to some important progress, including:

- Introduction of three bills that would implement requirements on marketplaces and sellers to address many of the problems identified by Toy Association members;
- Publication of the Department of Homeland Security Report, *Combating Trafficking in Counterfeit and Pirated Goods*, that echoed many of The Toy Association's proposed solutions;
- Most major online marketplaces have provided or committed to providing points of contact to help address Toy Association members' specific concerns and questions, and have increased resources to provide brand owners with additional tools to identify and remove counterfeits;
- Some marketplaces have begun to publicly share basic seller identifying information such as the seller's location;
- Some marketplaces have implemented or are considering the implementation of additional safety measures, such as requiring Children's Product Certifications for some toys sold on their respective marketplaces; and
- Amazon has committed to stop, for children's products, the shipping practice whereby it ships product from the warehouse closest to the consumer, regardless of whether that product is from the seller from which the consumer ordered the product.

CONTINUED PROLIFERATION OF COUNTERFEIT, NON-COMPLIANT AND UNSAFE TOYS

1. Safety of Toys Sold Online Continues to be a Growing Public Concern

Despite work by The Toy Association, heightened engagement by government, increased awareness by consumers, and somewhat improved removal procedures on many online marketplaces, there are still numerous examples of unsafe and non-compliant toys being sold through online marketplaces. While some of these products are counterfeit and others are knockoffs or infringe on other aspects of registered intellectual property, some are simply non-compliant. These offerings reflect what has become a manufacturing industry that seeks to fill consumer demand wherever it arises. Given the unregulated nature of online marketplaces and the lack of enforcement of products sold online, opportunities are abundant and risks are few for sellers who do not know how to comply with international toy safety standards or who see compliance with international toy safety standards as an unnecessary cost. The examples of non-compliant product are pervasive.

In 2020, Toy Industries of Europe (TIE) and the British Toy & Hobby Association (BTHA) published toy safety reports. TIE assessed 193 non-branded toys for compliance with the EU toy safety standard. Of these, 97 percent were non-compliant and thus illegal in the European market despite being purchased across seven EU member nations on four major platforms.¹⁰ Similarly, for its latest toy safety study, BHTA purchased 100 randomly-selected toys from well-known online marketplaces and found that 60% were unsafe for children and that 86% of the toys were illegal to sell in the UK.¹¹

More broadly, in August 2019, the *Wall Street Journal* presented an in-depth review of the counterfeit products sold on online marketplaces.¹² The investigation and article focused on Amazon, but the premise and outcome are applicable to most online marketplaces. The article states, “In practice, Amazon has increasingly evolved like a flea market. It exercises limited oversight over items listed by millions of third-party sellers, many of them anonymous, many in China, some offering scant information.” The article explained that its investigation uncovered over 4,000 items for sale on Amazon that had been declared unsafe by federal agencies, many of which were toys and other children’s products. This included items that had been specifically banned by the FDA as being unsafe for children.

Every day, there are examples of listings for unsafe and non-compliant toys being offered and sold on online marketplaces. Listings frequently include products with battery compartments without a locking mechanism, toys marketed to children under the age of three that pose choking hazards, or toys without small parts warning labels. On their face, these products blatantly violate safety regulations, yet they are ubiquitously offered on popular mainstream online marketplaces and marketed as intended for children. These products are not third-party tested and certified compliant as required by the Consumer Product Safety Improvement Act (CPSIA). Unlike legitimate toy brands that ensure the safety of their toys before they reach the market, without testing and certification, no such assurances exists and there is no way for a consumer to know whether the products are safe.

A recent example involves dangerous magnets being marketed to children. Federal toy safety standards prohibit the use of certain powerful magnets, known as rare earth magnets, in any toy part that is small enough to be swallowed and is intended for children under 14 years old. Rare earth magnets pose a serious risk to children if they are swallowed and they should never be given to young children, especially those under the age of three. However, many online listings for “toys” promote products to children that include rare earth magnets, increasing the likelihood of a child swallowing and being severely injured by these very powerful magnets.¹³ Below are examples from a search run in October 2020 on three mainstream e-commerce platforms, Alibaba, Amazon and Walmart, for “magnet putty.” Notably, each of the listings from a third-party seller show a rare earth magnet on the face of the listing and each listing indicates that it is a children’s toy, with one even suggesting an age range of “4 months and up.”

Another recent example involves 3D printing pens marketed to children that reach temperatures that cause a burn risk. One Toy Association member produces the 3Doodler Pen, which provides complaint product that maintains a lower temperature to ensure it does not pose a burn risk to children. However, with the popularity of these pens, there are now numerous listings on popular online marketplaces for pens that heat and melt filaments made of the plastics ABS and PLA, which melt at temperatures of 190-230°C. To melt those plastics, the tip of those devices get as hot as 180-200°C, which could easily burn a child and is not suitable for children under the relevant safety regulations.



A compliance testing lab provided the following feedback on toys purchased through a popular online marketplace. All these products were still available online at the time of drafting:

- **Wooden Jigsaw Puzzle FAIL.** Item is being marketed as appropriate for children ages 1 year and older. There were small parts as received, which is not allowed in toys for children under 3 years of age.
- **Kanga Roo Flashing LED Light Up Toys FAIL.** During tension testing, the rings ripped open and exposed the battery compartment within. For all toys, batteries that are small parts cannot be accessible within the battery compartment without the use of a coin, screwdriver, or other common household tool.
- **Pull Back Trucks FAIL.** Components of the car released during use and abuse testing (specifically the torque test). These components revealed sharp points. The tire and axle released from the sample during tension testing. This resulted in sharp points on the axle, as well as a projection point (sharp point on axle still attached to one tire, with that tire acting as a sturdy base).
- **Black Magnetic Putty Slime FAIL.** Magnet toys such as this are typically appropriate for children at ages 8 years and older. This is being marketed as appropriate for all ages. The magnet is a small part as received, and has a flux reading of greater than 50 kG²mm² (617.2 kG²mm²), deeming it a hazardous magnet.

In the most tragic examples, these non-compliant products can result in severe injury and risk of death. In December 2018, a four-year-old boy broke knock-off Magformers magnetic building blocks and swallowed several loose magnets. As the magnets tried to connect to each other within his body, they caused significant intestinal damage and the incident resulted in hospitalization and surgery to repair and remove his damaged intestine.¹⁴ The genuine Magformers toys are subjected to regular safety testing to ensure the small magnets are encapsulated safely and will not come loose even with a reasonable level of abuse during play. This is not the case with the non-compliant products, which led to this tragic example.

2. The Criminal Connection to Counterfeit Products

In addition to the safety concerns raised by counterfeit products, numerous reports link counterfeit activity to criminal enterprises, including terrorist activity. The Department of Homeland Security highlighted this link in its 2019 report, *Strategic Framework for Countering Terrorism and Targeted Violence*, explaining that law enforcement efforts have identified links between terrorist groups and the sale of counterfeit goods and illicit material in e-commerce.¹⁵ The United Nations Security Council also identified the connection between organized crime, including counterfeiting, and terrorist activities.¹⁶



One study from Michigan State University aptly explained: "Despite its outward appearance, product counterfeiting is far from being a stand-alone crime, and the large financial returns to be gained likely attract a host of illicit actors ... counterfeiting will likely be a supplementary criminal activity intended to generate a consistent flow of cash through relatively low-profile, yet, highly profitable activities."¹⁷

Indeed, officials report that many terrorist organizations and their activities are directly funded in part by sales of counterfeit product. In analyzing the funding of al Qaeda, the National Commission on Terrorist Attacks Upon the United States explained that the "list of purported al Qaeda funding sources is legion: counterfeit trademarked goods, consumer coupon fraud, drug trafficking, insider trading, support from Gulf-area governments, and conflict diamonds are the most common."¹⁸ A 2016 report prepared by the Union des Fabricants (UNIFAB) detailed this connection, specifically identifying terrorist organizations that have been shown to have funded their organizations by selling counterfeit product, including the IRA in Ireland, the Basque separatist group ETA, the Colombian guerilla group FARC, as well as Hezbollah, Hamas, al Qaeda, and others.¹⁹ The group responsible for the 2004 Madrid train bombings was also reported to have been funded in part by sales of pirated CDs and Hezbollah was reported to be funded in part by counterfeit Viagra.²⁰ It is reported that terrorists who attacked the French magazine Charlie Hebdo in 2015 financed their weapons partly by selling fake Nike sneakers.²¹

THE FACTORS CONTRIBUTING TO THE CONTINUING PROLIFERATION OF COUNTERFEIT AND NON-COMPLIANT PRODUCTS AND POTENTIAL SOLUTIONS

1. The Criminal Connection to Counterfeit Products

a. First Contributing Factor: Low Hurdle to Sellers

While e-commerce and online marketplaces continue to grow and provide significant benefits to legitimate companies looking to more easily reach consumers, these same marketplaces allow bad actors and sellers to prosper. Initial entry to online marketplaces can be as simple as creating a seller account with a unique email address, creating a low hurdle to entry and a high hurdle for stopping bad actors and sellers at the source. In order to neutralize the low hurdle to sellers that allows bad actors to thrive, The Toy Association proposed in its 2019 White Paper that online marketplaces proactively screen sellers.

i. There Remains Inadequate Seller Information Gathering and Verification

While some marketplaces require additional credentials, often these credentials are inaccurate, incomplete, and unverified. Based on seller information provided by some marketplaces, it is apparent that there is an inconsistent collection and verification of seller data. As a result, sellers can provide online marketplaces with inaccurate or fake information, making it impossible for online marketplaces to track and suspend bad actors, or for rights holders, law enforcement, or consumers, to enforce their rights. Indeed, if there is no verified contact information, there is no ability for a rights holder, consumer, or law enforcement to trace and enforce at the source.

Proactively screening sellers requires more than simply collecting more information from sellers. Seller information must also be verified prior to allowing an account, just as any other retailer would require, and marketplaces must improve their vetting of sellers, suppliers, and products by implementing more stringent requirements that validate seller credentials.

At a minimum, prior to allowing a seller account, online marketplaces should collect and verify through government identification and other official documents, the seller's contact information and banking information. This should include at a minimum: name, physical address, email address, phone number, business registration, bank account information, and W9 form or tax EIN, or another applicable unique government-issued identifier.

Admittedly, government identification and other official documentation can also be falsified, but that does not mean that marketplaces should not at least attempt to meet the threshold requirement to verify using the best means possible. Since verification and authentication are a moving target, continued evaluation of the best methods is encouraged.

Some online marketplaces have invested in verifying sellers through machine learning tools and innovative pilot programs, like picture and video conference verification. However, some have also argued that thorough verification is not possible because of the volume of sellers on their marketplaces. This volume of sellers is not inevitable though; rather, it is a business decision that online marketplaces themselves make. If a marketplace is unable to verify the identity of its sellers because a high volume of sellers are permitted into that marketplace, that is a result of its own creation.

Consumers and rights holders alike would benefit from a collective effort of all online marketplaces to expand the practice of collecting and verifying information. In addition to stopping the counterfeiters from providing non-compliant products to consumers in the first place, obtaining verified contact and banking information would allow the online marketplace to better track, triangulate, and decrease the reappearance of the same bad actors under new accounts.

Once seller information is appropriately gathered and verified, online marketplaces should also make certain information easily available to consumers and rights holders, as discussed in more detail below. Without transparency, counterfeits will only continue to increase.

II. Marketplaces Do Not Proactively Screen Products

Currently, most online marketplaces lack an effective, proactive process for screening products that are offered by sellers. All marketplaces play a direct role in providing and selling products to consumers, regardless of whether the online marketplace obtains physical control over the product being sold through fulfillment services or only connects a buyer and a seller. While marketplaces do not act as traditional brick-and-mortar retailers that curate goods to sell to consumers, this should not absolve the online marketplace from all responsibility for the goods from which they profit.

Online marketplaces should be required to implement a proactive system meant to verify whether a product being sold on its website is counterfeit and whether it meets regulations such as labeling requirements and consumer product safety regulations. In its 2019 White Paper, The Toy Association proposed that sellers should be required to demonstrate the legitimacy and safety of their products, and that a process should be instituted to improve tracking of products to sellers. However, it does not appear that there have been sufficient strides in increasing the seller burden to verify the source of products, or to authenticate or confirm the safety of products being sold. Because brick-and-mortar retailers are liable for the products sold in their stores, this level of due diligence is standard practice for them.

The 2019 White Paper proposed that online marketplaces should collect Children's Product Certificates (CPC) from sellers offering children's products. Marketplaces have indicated they can request the CPC from sellers, but to date, this has not been required of all sellers, contrary to what brick-and-mortar retailers require of their sellers. Instead, some online marketplaces have implemented proactive approaches, but only for those products that the marketplace deems riskier, such as those that pose a higher risk of non-compliance, are subject to more counterfeiting, or could pose a higher risk to health and safety.



Online marketplaces, like brick-and-mortar retailers, should collect and authenticate CPCs for all children's products to ensure the safety of the toys offered through their marketplaces. In addition, we propose the following best practices for CPC collection:

- Certification requests should be limited to just the certification and should not include the test reports, unless there is a reasonable suspicion that the certificate is invalid or has been altered or forged.
- Requesting test reports may also be a part of a periodic audit of certifications conducted by the marketplace.
- No amount of certification or testing can replace a vigorous screening program for sellers and products before the products are available for purchase online.
- For those products that have been verified compliant to the applicable safety requirements, we suggest the listing have a "verified seller" or "verified product" distinction. Any products that are recommended or promoted by the marketplace should be "verified."
- The product should be compliant with the product safety requirements that apply to the jurisdiction in which the consumer is located.
- The marketplace should conduct periodic test buys to ensure that the certification information correlates with the product that is being certified.
- Products manufactured outside of the mandatory certification document retention period do not need to have certification. The seller is required to prove that the product was manufactured out of the scope.
- Certification requests should be limited to and align with requirements in 16 CFR Parts 1107, 1109 and 1110. This includes allowing for certifications to be based on component part tests.
- A point of contact should be provided for safety concerns, whether with the product listing itself or with the description of the product, regardless of affiliation with the seller.
- Manufacturers and brands will provide certification only to the original purchaser; subsequent sale of that product (e.g. closeouts, overstocks, etc.) does not obligate the manufacturer to certify product to someone to whom they did not sell it and with which they have no business relationship or ability to verify the product identity.

- At the outset, certification asks should be done in phases over an extended period, focusing on product categories that pose the most risk.

Incorporating these best practices would allow for assurances about the regulatory compliance of the seller and the product offered and would provide extensive information about the product if there were claims of infringement or regulatory violations and safety concerns. At a minimum, online marketplaces should implement these practices when sellers hit a volume of sales that indicates the seller is a commercial seller, and for products that could present a greater safety risk to children if there is a violation, such as those products marketed to children under the age of three.

III. There is Inconsistent Application of Proactive Measures

Online marketplaces have touted the ability to implement different filters and rule systems to proactively block counterfeits. This includes rules that are set by price point, seller location, and brand name, or other markers that allow the marketplace to identify known or likely counterfeits. Using these filters, marketplaces can automatically block items and prevent counterfeit product from being offered on their sites.

Despite the apparent availability of these tools, they are not used with regularity or consistency. For example, certain tools are only made available to brands that have registered for particular marketplace enforcement programs that may have onerous terms; some are only available at a cost to the brand owner; and some may only be available to accepted brands after application to the marketplace. As a result, marketplaces are inconsistently filtering out counterfeit products.

Online marketplaces should use their proactive tools and filtering capabilities widely to block non-compliant items and prevent counterfeit product from being offered on their sites. The online marketplaces are developing sophisticated filtering and AI technology, and this technology can offer a clear benefit to consumers: identifying and eliminating counterfeit and non-compliant product. Once developed, that technology should be widely used by marketplaces to prevent counterfeit product and sellers from appearing on their sites.

b. Second Contributing Factor: The Burden of Enforcement is Disproportionately Reactive and Placed on the Rights Holder

I. The Process Remains Reactive, Disproportionately Relying on Enforcement by Rights Holders and Consumers

The burden of enforcement disproportionately relies on rights holders and consumers to police and report infringement. Rights holders are required to scour online marketplaces and investigate, report, and prove infringement to the marketplace before counterfeit items are removed. This problem is compounded by the fact that each marketplace has different processes and procedures in place for handling infringement claims, forcing rights holders to

constantly navigate different, and often changing, marketplace enforcement procedures. This process removes the initial burden from the seller and further gives the sellers the benefit of the doubt.

At the core, it is evident that reactive measures will never keep up with bad actors and more proactive measures are required. Indeed, proactive procedures must be the first line of defense. If the focus is on reactive efforts rather than proactive approaches, bad actors will continue to flourish. Importantly, there is no amount of resources rights holders can expend to adequately neutralize bad actors if marketplace approaches are disproportionately reactive in nature.

II. Brand Protection Programs That Shift the Presumption and Streamline Removal are Inconsistent

While some online marketplaces have begun offering new and more robust collaborative programs for rights holders to more easily report and submit enforcement claims, Toy Association member experience is that these measures are inconsistently implemented, with certain brand owners receiving preferential treatment depending on existing business relationships with the marketplace. Further, they are not uniform across marketplaces, forcing rights holders to navigate the different, and often changing, marketplace policies and procedures. Finally, many of these programs are highly burdensome, either requiring payment from the rights holder or sharing extensive amounts of data by the rights holder with the marketplaces.

A process that instead gives the presumption to rights holders and delists a product (even temporarily) upon notification of infringement would appropriately place the burden on the seller. As proposed in The Toy Association's 2019 White Paper, a solution that would allow a registered rights holder to submit a simple and streamlined "challenge" as to a seller or listing (rather than requiring that the rights holder prove the infringement in response to such a challenge) would more appropriately balance the burden of enforcement. Effectively, a product listing would be removed until the seller demonstrated that the product was legitimate, such as through a chain of title, license, or other documentation allowing sale of the product.

III. Fulfillment Methods Should Have Transparency

Marketplaces vary on their inventory and warehouse practices. Some take a "hands off" approach and do not at any point take possession of or facilitate the transfer of goods from the marketplace seller to the consumer. In other cases, marketplaces play a more involved role in shipping, warehousing, or transferring ownership of the goods. In the latter example, in order to speed shipping and reduce environmental impact, at least one marketplace that fulfills third party orders will ship product from the warehouse closest to the consumer, regardless of whether it is the seller from which the consumer ordered. This practice means that a consumer may purchase from one seller but receive product from a different seller.

While this practice may increase speed and efficiency in shipping, making it an attractive option for marketplaces to consider, it presents numerous problems for consumer protection as it allows for another layer of obfuscation by hindering seller identification, investigation, verification, and enforcement. For those investigating potential infringing products, it undermines the integrity of test buys that are critical to enforcement investigations. Purchasers have no idea whether they are receiving inventory from the target of their test buy and investigation, making it near impossible to track and identify bad actors. Any policies that add an additional layer of uncertainty in terms of identifying the sellers behind products is a step in the wrong direction and only serves to create additional burdens for rights holders.

To date, Amazon is the only marketplace that members are aware of that has used this process. Alongside the ongoing engagement with The Toy Association, Amazon has stated that it no longer conducts this practice for toy products sold worldwide. This was an important development and The Toy Association urges other marketplaces to exercise caution should they consider doing the same and also encourages Amazon to cease the practice for all products or, at the very least, ensure that the purchaser be conspicuously notified at the time of purchase that they will receive product from a different seller than the seller from whom they are purchasing.

IV. Transparency to Seller Identity and Contact Information Remains Inadequate

Transparency of seller information is inadequate, resulting in a lack of information available to consumers making purchasing decisions, and to rights holders and law enforcement attempting to track and enforce against counterfeiters.

Some online marketplaces are beginning to increase access to seller information, such as through brand owner programs. However, access is often inconsistent across marketplaces, providing a variety of different information depending on the program. Further, even when marketplaces do offer such information that is necessary for subsequent enforcement actions, it is often incomplete or incorrect due to inadequate preliminary verification.



Without complete or verified information, rights holders cannot take the necessary next steps and are often forced to expend time and valuable resources chasing dead ends. Unverified information and the existence of fake email addresses or physical addresses can also lead to stolen identity problems, which result in rights holders acting against the wrong individual or entity. Not only does this harm those who have mistakenly been tagged as bad actors, but any delay in the enforcement process benefits unscrupulous actors.

Marketplaces must improve transparency and information sharing regarding the seller. To start, marketplaces should collect, verify, and provide conspicuous identity, contact information, and location for all sellers on the face of the listing. This allows consumers to make more informed purchasing decisions and allows consumers to easily contact those sellers if any problem or question arises. It also eases enforcement by rights holders and law enforcement.

Additional seller information, such as an IP address, bank information and sales data, should be shared with rights holders and law enforcement. Information sharing about bad actors with law enforcement, U.S. Customs and Border Control, Homeland Security Investigation, brand owners, or other stakeholders is necessary to ensure that counterfeits are stopped at the source. Total sales information also allows rights holders and law enforcement to be better able to determine the more egregious infringers and where to focus time and resources when targeting the source of counterfeit products. Sales data should be made transparent for all sellers, with additional seller information to be provided to a rights holder following a successful take down notice. Marketplaces should make this information sharing part of their terms of service to which sellers agree to be bound.

Transparency should also be extended to the take-down appeals process. During the appeal of takedowns, marketplaces often shield correspondence with sellers, meaning that bad actors can correspond with the marketplace arguing why their products are not counterfeit without any input from rights holders or law enforcement. This allows for misrepresentations to go unchecked and frequently leads to counterfeit product being relisted. Further, some marketplaces withhold seller identity from rights owners during the appeal process, which can lead to enforcement delays.

Information sharing among marketplaces can also be extremely beneficial, allowing rights holders and law enforcement to act more proactively and target the source. The Intellectual Property Rights Center (IPR Center) has made great efforts and strides with information sharing and collaboration among marketplaces and such collaborative activity should continue and grow.

V. A Point of Contact with Specialized Knowledge of an Industry will Continue to Improve Consistency, Transparency, and Collaboration

In response to the 2019 White Paper, many online marketplaces now provide a point of contact to assist rights holders, which has improved the takedown experience. Expanding this practice whereby marketplaces employ personnel who are focused on an industry, such as the toy industry, would be beneficial not only for creating specialized knowledge and

spotting patterns of bad actors, but for strengthening partnerships between rights holders and online marketplaces.

c. **Third Contributing Factor: Consumers Remain Largely Unaware of the Scope of Infringing Product Offered on Online Marketplaces**

Online marketplaces are ubiquitous, and many have an established and trusted brand image equal to brick-and-mortar retailers due to their high volume of sales and extensive consumer exposure. As a result, consumers have developed a comfort with and trust in online marketplaces, just as they trust brick-and-mortar retailers. Consumers remain largely unaware of the scope of counterfeit or non-compliant product available on online marketplaces, which can result in consumers unknowingly providing children with non-compliant and potentially unsafe toys.

It has also become increasingly difficult to differentiate between compliant and non-compliant product on the marketplaces because counterfeiters are adept at blending in and hiding on the sites, including by categorizing the product under a rights holder's brand name, piggybacking on legitimate listings, using keywords, and pricing at the same or even higher than legitimate products. Some of these practices may be assisted by marketplace algorithms, search results, and other practices. Identifying counterfeit toys is particularly challenging as the purchaser is not the end user child and therefore may not have as much engagement with the product or brand.



Marketplaces must better educate consumers to enable them to make sound purchasing decisions and avoid falling victim to counterfeit products. Consumer education can be accomplished by transparency and honest communication about products and sellers, including conspicuous identification of the sellers, such as location and contact information.

Further, marketplaces should notify consumers who have or may have received counterfeit product. Once a marketplace is aware that a seller has sold counterfeit product, the marketplace should inform all consumers who have purchased that product from the seller that they may have received counterfeit and unsafe product. The marketplace should also investigate other products sold by that seller as part of their proactive measures, and if they are determined to also be counterfeit, notify consumers of those counterfeit products as well.

PROPOSED LEGISLATIVE AND GOVERNMENT-LED SOLUTIONS

There was an uptick in government involvement in 2019 to identify potential solutions to the problem of counterfeits sold online. Perhaps most significantly, at the direction of the White House, the Department of Homeland Security released a new report, “Combating Trafficking in Counterfeit and Pirated Goods,” calling for “prompt attention to illicit trade that erodes U.S. economic competitiveness and catalyzes compounding threats to national security and public safety.”²² The report concludes that current government enforcement efforts and private sector actions have thus far been insufficient to stem the flow of counterfeit products sold to U.S. consumers. It further identifies strengthened regulatory, legislative, and enforcement efforts, and marketplace best practices, echoing many of The Toy Association’s concerns and solutions raised in the 2019 White Paper and in comments submitted to the Department of Commerce.

While several bills have been introduced in the past targeting counterfeit enforcement efforts at ports of entry, at the end of 2019 and beginning of 2020, legislative proposals were introduced at the federal and state levels to attempt to address counterfeit products offered specifically on online marketplaces. Each includes one or more solutions also proposed by The Toy Association’s 2019 White Paper.

The Toy Association endorses all these bills as likely to reduce the number of counterfeits sold online.



a. H.R. 6058 – SHOP SAFE Act

The Stopping Harmful Offers on Platforms by Screening Against Fakes in E-Commerce (“SHOP SAFE”) Act was introduced by Rep. Jerry Nadler (D-NY) on March 3, 2020 to the House Judiciary Committee. The bill is cosponsored by Rep. Doug Collins (R-GA), Rep. Henry “Hank” Johnson, Jr. (D-GA), Rep. Martha Roby (R-AL), Rep. Theodore Deutch (D-FL), Rep. Ben Cline (R-VA), Rep. Greg Stanton (D-AZ), and Rep. W. Gregory Steube (R-FL). The bill would amend the Trademark Act of 1946 to provide for contributory liability for certain e-commerce platforms for use of a counterfeit mark by a third party on such platforms, and for other purposes.

This bill seeks to combat the proliferation of unsafe counterfeit goods for sale on e-commerce websites by incentivizing platforms to engage in a set of best practices for vetting sellers and goods, punishing repeat offenders, and ensuring that consumers have the best, most accurate information available to them when making purchases online. SHOP SAFE applies to goods with a health and/or safety impact, as counterfeit goods in this category pose the most serious consequences for consumers. Online retail platforms that follow SHOP SAFE's best practices may be immunized from contributory liability for trademark infringement.

b. S. 3073 – SANTA Act

Senator Bill Cassidy (R-LA), together with cosponsors Senator Thom Tillis (R-NC), Senator Robert Menendez (D-NJ), and Senator Dick Durbin (D-IL) introduced the Stopping All Nefarious Toys in America ("SANTA") Act on December 17, 2019. This bipartisan bill requires online marketplaces to verify and disclose the identity of a seller of children's products to consumers. An online marketplace must obtain a seller's bank account information, a government-issued photo identification, and business contact information. Online marketplaces must then disclose each seller's name, business address, phone number, and email address to consumers. Marketplaces must also disclose if they are shipping from a seller that is different from whom the consumer purchased.

c. S. 3431 – INFORM Consumers Act

The INFORM Consumers Act requires online marketplaces to disclose certain verified information regarding high-volume third-party sellers of consumer products. The bill was introduced by Senators Cassidy (R-LA), Durbin (D-IL), Perdue (R-GA), and Hirono (D-HI) on March 10, 2020. The bill will require certain disclosures from third parties that sell their goods on e-commerce platforms. In addition to providing increased transparency for consumers, the INFORM Consumers Act will allow law enforcement to better identify high-frequency sellers suspected of trafficking stolen and counterfeit goods. Consumers will be also provided information regarding whether a given seller is a manufacturer, retailer, importer, or reseller of consumer products. With greater volume of available information on online sellers provided under this scheme, informed consumers can better avoid purchasing goods from unscrupulous and criminal actors in the online marketplace and combat Organized Retail Crime (ORC).

CONCLUSION AND ADDITIONAL ISSUES

In addition to the concerns raised above, The Toy Association and its members are watching and aware of other ongoing and developing issues and encourage preemptive consideration of these issues as anti-counterfeiting policies are developed:

The increased reliance on online shopping in the age of COVID-19. As a result of stay-at-home orders, consumers' already growing reliance on online shopping has increased exponentially. This change in consumer buying behavior is not likely to be undone, particularly given the strain it has placed on traditional brick-and-mortar retailers, many of which have shuttered or transitioned to increased online sales.

The proliferation of social media marketplaces. As part of the growth and evolution of e-commerce, social media marketplaces are gaining in popularity. Social media marketplaces connect sellers and consumers from all over the world and allow counterfeiters direct access to unsuspecting consumers. From 2016 to 2019, counterfeit-goods listings on social media sites increased by about 171%.²³ These marketplaces are even more challenging to monitor than typical e-commerce marketplaces given the lack of vetting, the direct peer-to-peer connections and communications, and the prevalence of private groups on those platforms.

The increased availability of counterfeits through search engines. According to an INCOPRO study, when inputting a product name as a search term, up to 60 percent of the returned sites are either counterfeit or infringe upon intellectual property. The study reports that three in nine search results for a brand name baby teether included potentially harmful products that misuse the trademark.²⁴ Counterfeiters are using fake storefronts and the multitude of online marketplaces to compete with legitimate brands and put consumers in danger.

The increase of targeted advertisements. Targeted advertising is focused on certain traits so that the consumers who are likely to have a strong preference for a product will receive the message instead of those who have no interest and whose preferences do not match a product's attribute. These traits can be demographic (e.g., gender, economic status, age, education, or income level), psychographic (e.g., values, interests, lifestyle, personality), or behavioral (e.g., browser history, purchase history, and other recent activity). This allows counterfeiters to specifically target consumers with preference for the legitimate product or to target consumers more likely to be unsuspecting or susceptible to falsification.

The rise of fake reviews. Fake reviews are becoming more prevalent as sellers connect with individuals and offer them free product or other benefits for posting fake reviews. There are reports that there is now a vast black market of sellers offering free products, and in some cases commission, in exchange for fake five-star reviews.²⁵ Often the sellers use private social media groups to solicit potential reviewers with free product offers. This practice makes it even more challenging for consumers to vet the sellers from which they are purchasing.

The significant and serious issue of counterfeit and non-compliant products offered online seems only to be growing, thereby harming consumers, legitimate companies, and the American economy, while also encouraging criminal enterprise and funding terrorism. Despite the many challenges, The Toy Association has identified numerous potential solutions to combat each of these factors if stakeholders work collaboratively. The Toy Association looks forward to continuing its work with online marketplaces, legislators, its members, and consumers to combat this detrimental phenomenon.

*This report has been prepared by Meaghan H. Kent of Venable LLP working with and on behalf of The Toy Association and the members of its IP Steering Committee.

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Toy Association Warns Holiday Shoppers about Counterfeit Toys Sold Online

Shipping Crisis & Toy Shortages Could Put Safety at Heightened Risk

NEW YORK, NY | November 1, 2021 – A recent survey has revealed that most U.S. parents would purchase a knock-off/counterfeit toy if their first choice was unavailable (65%) or if it was cheaper than the original item (63%). These statistics are troubling, since many counterfeit toys don't comply with federal toy safety laws, posing a danger to children everywhere. The Toy Association is sounding the alarm on this safety issue, and other potential hazards, throughout November as part of its first-ever Toy Safety Awareness Month.

"We know the global shipping crisis and associated product shortages are making it difficult for parents to find certain toys their kids have their hearts set on, but as families start checking off their holiday shopping lists, we urge them to put safety first," said Steve Pasierb, president & CEO of The Toy Association. "Illicit online sellers are out there, duping consumers into thinking they are buying the real thing or enticing them with much lower prices or the promise of getting a 'hot toy' of the holiday season. In fact, their fake, noncompliant products have the potential to be dangerous and should be avoided at all costs. When shopping online, families need to carefully scrutinize listings, and purchase only from reputable sellers and known brands, whose legitimate toys comply with the more than 100 different safety standards and tests required by law."

The survey, conducted by OnePoll on behalf of The Toy Association, uncovered that more than half of parents (54%) previously and knowingly purchased a knock-off/counterfeit toy for their child. And although two in three would feel guilty about buying a knock-off/counterfeit version of the toy their child wanted this holiday season (67%), 44% would consider that option anyway.

As families get ready for a fun-filled holiday, it's critical that they follow these important safety tips to avoid buying counterfeit toys – and play safe all year long:

- **Shop only from reputable brands and sellers.** Their toys have been tested for compliance with over 100 different safety standards and tests required by law.
- **When shopping online, your best bet is to visit the toy brand's website** and either purchase directly from the site or follow links to an official retailer to purchase. Can't find a website? That may be a red flag that you are dealing with an illicit seller.
- **Check product reviews and images.** If a product's reviews are negative, or if there aren't many, it's a clue it could be a fake. Poorly photoshopped pictures, typos, or spelling mistakes in the online description or packaging are other clues that the product could be illegitimate, and therefore unsafe.
- **Inspect the product and packaging** when it arrives to not only make sure it meets expectations, but also check for broken or damaged parts that may break off and pose choking hazards. If you still aren't sure, contact the original brand's customer service. They will gladly help ensure that you have the real thing!
- **Can't find a toy on your child's wish list?** Wait for a trusted retailer to restock the product. Buying fake or cheaper alternatives is just not worth the risk.

Generally, 73% of parents do prefer purchasing products from reputable brands because of their quality or the variety they offer, and 76% make sure they thoroughly read age recommendations on the packaging or in online descriptions before putting items in their shopping carts.

But nearly seven in 10 say they would give their child a toy recommended for older children (68%) because they think they're mature enough to play with a "more challenging toy" and because they think it's safe since they always keep an eye on them.

"Following the age label on toy packaging can protect a child from preventable injury," added Pasierb. "Contrary to what some might think, age labels on toys are not mere suggestions. They are established by experts who take many factors into account to ensure children's safety. Toys labeled 3+ might contain small parts that are a choking hazard for children under 3 or those who still mouth toys. Trust the experts. Read and follow all labels and instructions – always!"

For more toy safety tips and information, visit [PlaySafe.org](https://www.play-safe.org), The Toy Association's trusted resource for parents and caregivers. Following this simple safety advice can go a long way toward preventing unnecessary accidents and injuries.

The Toy Association and its members take toy safety extremely seriously. In addition to educating parents and caregivers about safe play year-round, the Association works with government agencies and leading e-commerce platforms to combat illicit sellers and has a long history of leadership in toy safety, having developed the first comprehensive toy safety standard more than 40 years ago.

Follow The Toy Association on [LinkedIn](#), [Facebook](#), and [Twitter](#) to share play safety posts throughout November in honor of Toy Safety Awareness Month ([#ToySafetyAwarenessMonth](#), [#PlaySafe.org](#)).

About The Toy Association www.toyassociation.org/ www.thegeniusofplay.org/ www.play-safe.org
Founded in 1916, The Toy Association™, Inc. is the not-for-profit trade association representing all businesses involved in creating and delivering toys and youth entertainment products for kids of all ages. The Toy Association leads the health and growth of the U.S. toy industry, which has an annual U.S. economic impact of \$98.2 billion, and its roughly 900 members drive the annual \$32 billion U.S. domestic toy market. The Toy Association serves as the industry's voice on the developmental benefits of play and promotes play's positive impact on childhood development to consumers and media. The organization has a long history of leadership in toy safety, having helped develop the first comprehensive toy safety standard more than 40 years ago, and remains committed to working with medical experts, government, consumers, and industry on ongoing programs to ensure safe and fun play.

As a global leader, The Toy Association produces the world-renowned Toy Fair New York and Toy Fair Dallas; advocates on behalf of members around the world; sustains the Canadian Toy Association; acts as secretariat for the International Council of Toy Industries and International Toy Industry CEO Roundtable; and chairs the committee that reviews and revises America's widely emulated ASTM F963 toy safety standard.

About the Survey

OnePoll, a market research company, conducted the random double-opt-in survey of 2,000 parents of children 0-12, which was commissioned by The Toy Association between August 24 and August 30, 2021. OnePoll's team members are members of the Market Research Society and have corporate membership to the American Association for Public Opinion Research (AAPOR) and the European Society for Opinion and Marketing Research (ESOMAR).

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Toy Safety Shopping Guide from the Toy Association

The global shipping crisis, ongoing effects of the pandemic, and rising consumer demand for toys has created a “perfect storm,” leading to unprecedented toy shortages this holiday season. As families scramble to check off their holiday shopping lists, they might be tempted to purchase counterfeit toys online, but these noncompliant products have the potential to be dangerous! And while parents, grandparents, and other gift-givers will be eager to find all the toys their kids have their hearts set on, they should always put safety first by following these important tips:

- **Don't put off your shopping this year** – experts warn that toy shortages will grow as the holidays get closer. Traditional Black Friday and December sales might not happen because there might not be enough products to go around. Shop now for the toys your kids want and stash them away until Christmas or Hannukah to avoid disappointment.
- **Before purchasing a toy, whether online or in stores, be sure to check and follow the age grading on the packaging or in the online description.** Age labels aren't about how smart your child is—it's safety guidance that's based on the developmental skills and abilities of children at a given age, and the specific features of a toy. Pay special attention to toys labeled 3+, since they may contain small parts that can be a choking hazard for children under 3, or those who still mouth toys.
- **Whether shopping online or in stores, be sure to purchase only from reputable sellers and known brands,** whose legitimate toys comply with more than 100 different safety standards and tests required by federal law. Counterfeit/knock-off toys sold by illicit sellers have the potential to be unsafe, because these bad actors are unlikely to comply with strict toy safety laws.
- **When shopping online, your best bet is to visit the toy brand's website** and either purchase directly from the site or follow links to an official retailer to purchase. Can't find a website? That may be a red flag that you are dealing with an illicit seller.
- **Check product reviews and images.** If a product's reviews are negative, or if there aren't many, it's a clue it could be a fake. Poorly photoshopped pictures, typos, or spelling mistakes in the online description or packaging are other clues that the product could be illegitimate, and therefore unsafe.
- **Be vigilant when buying from international sellers.** For products shipped directly from international sellers, check seller ratings. You can generally identify international shipments based on how long it takes for a product to get to you.
- **If you do receive a product that you believe is fake, contact your credit card company.** Not only will you get a refund, if there are numerous complaints, the fraudulent seller can be identified by the credit card company who will in turn stop working with them.
- **Inspect the product and packaging when it arrives** to not only make sure it meets expectations, but also to check for broken or damaged parts that may break off and pose choking hazards. If you still aren't sure, contact the original brand's customer service. They will gladly help ensure that you have the real thing!
- **Can't find a toy on your child's wish list?** Wait for a trusted retailer to restock the product. Buying fake

or cheaper alternatives is just not worth the risk.

- **Ahead of playtime, parents should always read the instructions for assembly and use.** For children that are too young to read, demonstrating how to play with a toy is the best way to make sure they understand how to safely enjoy it.

For more helpful tips, safety insights, and more visit [PlaySafe.org](https://www.play-safe.org), The Toy Association's trusted resource for parents and caregivers.

Senator BLUMENTHAL. Thank you so much, Ms. Lawrence. We are very appreciative that we have been joined by the Chairman of the Committee, Senator Cantwell. I am going to turn to her for any statements or questions that she may have.

**STATEMENT OF HON. MARIA CANTWELL,
U.S. SENATOR FROM WASHINGTON**

The CHAIRWOMAN. Thank you, Mr. Chairman. I certainly want to thank you, Senator Blumenthal, and Senator Blackburn for your leadership on this issue and having a hearing at this important time. As we enter the holiday season, consumers are purchasing these gifts and presents at record numbers, and we need to make sure that our safety is at the utmost level of scrutiny.

I am deeply concerned about how well our current system protects consumers, particularly children, from unsafe products. We need to do better, as the hearing already has pointed out from our witnesses.

Recalls are important but they are not always adequate. Too often, product recalls are not effective at getting dangerous products out of circulation. Four and a half years ago, the CPSC held a recall effectiveness workshop, which highlighted the low effectiveness of recalls. This was then corroborated by a GAO report that issued a statement about faulting CPSC, for not consistently assigning more recall checks to these high-risk recalls.

So, today, I am sending a letter to the CPSC, asking for them to improve their recall efficiency and making sure that they take steps to improve the process, asking for relevant information to show that we need to do a better job at this. The importance of this work is underscored by the CPSC's current own estimates about emergency rooms treated—198,000 toy-related injuries in 2020. So, in 2021, 13 toy products have been recalled by the CPSC, so far, due to high lead levels, risks of children choking on small parts, and other avoidable risks.

So, I wanted to ask you, Dr. Hoffman, what policy recommendations would you recommend to improve the CPSC's ability to ensure corrective actions? Ms. Rhodes, would you support requiring retailers or manufacturers of recalled goods to use information collected through the course of sale to directly notify consumers and buyers of these known hazards?

Ms. RHODES. Yes, we do support recalling companies using information that was gathered during the transaction to notify customers of recall.

The CHAIRWOMAN. And how well do you think we are doing on that?

Ms. RHODES. I think certain companies have actually enacted that. A good example is Amazon, sometimes, will reach out to customers because they have the means to do so. But, typically, with recall effectiveness, we have low rates, as you suggested, and there is a lack of accountability in the recall effectiveness, with recalling companies.

The CHAIRWOMAN. Dr. Hoffman, how effective are we if we are not getting the message out?

Dr. HOFFMAN. Thank you, Senator Cantwell. I think if we do not get the message out, we cannot be effective. And I think that we

need to think about the recalls from the standpoint of the families and consumers and do everything we can to make it as friendly for them as possible. I think an example where we have had some success, is in child passenger safety around car seats. There is, you know, with every car seat that is sold, an opportunity to register it with the manufacturer—register the owner with the manufacturer with the owner so that they can proactively reach out. I think that it has some benefit, although, there are still some barriers to getting those completed.

I think this also goes back to the need to have a fully staffed and fully functioning Consumer Product Safety Commission that can work to meet the needs of families and consumers.

The CHAIRWOMAN. So, getting Ms. Boyle appointed so we that we can have an active and an aggressive Commission.

I am reminded—I think this committee dealt with this issue once before, as it related to used cars and the process of notifying people on how to notify individuals when these cars were defaulted and defective. And I think the committee did good work, so I am asking the Ranking Member and the subcommittee Chair here to—maybe you can look at that as a model and let us see what information we get back from the CPSC. But let us take action on this. You guys are providing great leadership. Thank you.

Senator BLUMENTHAL. Thank you very, very much, Chairman Cantwell. Excellent point and we will follow up on it and very much appreciate your leadership on this issue, as you were involved in the used car recall issue, as well. Thank you so much.

And I want to just take the point that Senator Cantwell made so well. I have introduced S. 1355 which is the Sunshine in Product Safety Act that strikes a section of the current law, section 6B, the section that restricts the disclosure of information—it actually restricts the disclosure of information by the CPSC related to product hazards. It permits a manufacturer to challenge the disclosure of information in Federal court, if the manufacturer believes the disclosure is not “fair in the circumstances”, which is an extraordinarily vague standard. Changes to 6B would improve recall efficiency and give the CPSC more of the teeth that it needs to be a real tiger, not a paper watchdog.

Ms. Rhodes, can you comment on that potential change in the Sunshine in Product Safety Act?

Ms. RHODES. Absolutely. We see with recalls that, once the recall is disclosed, consumers can learn about it. But there is this whole hidden process with recalling companies and CPSC where they can be discussing an unsafe products for weeks, or even months, before consumers are even informed. Removal of 6B will allow consumers to get information immediately, which is especially important when we are talking about products that can seriously injure and also kill people.

Senator BLUMENTHAL. Dr. Hoffman, would you favor that kind of change in the law that would permit greater disclosure, and more promptly, about hazards in toys?

Dr. HOFFMAN. Absolutely. And I think, for many juvenile products, that is an issue. We saw that very specifically in the issue of incline sleepers when, on April 5th of 2019, it was disclosed by the Consumer Product Safety Commission that there were 10 deaths

associated with those products, and a report by *Consumer Reports*, that came out three days later, revealed there actually were 32.

The fact that products can be identified as hazardous, without—and have no—and they are—with a lack of any requirement to notify the public around the specific product, I think, leads to significant increased risk of injury and death for kids.

Senator BLUMENTHAL. Thank you. Ms. Lawrence, would you favor—will you support that change in section 6B of the Act?

Ms. LAWRENCE. Well, prefacing my response by the fact that I am not a lawyer, I do understand that 6B is in place, in part, because early information in the investigation and decisions regarding a recall is often inaccurate, and thus, you know, if information was released prematurely, it could be misleading to consumers and unfair to the company, you know. But I am happy to provide a response from the Toy Association on this issue, should you be interested in that, following the hearing.

Senator BLUMENTHAL. I am not only interested, but I would request that you provide that response. I hope that the Toy Industry Association will support it, because it would simply remove time consuming and costly roadblocks to disclosure of information to consumers. It permits, in effect, manufacturers to block and conceal very severe hazards in toys for lengthy periods of time. And I am hopeful that the Toy Industry Association will support the Sunshine in Product Safety Act that would remove this kind of impediment. So, I will welcome and ask you to provide that information.

In this first round of questioning, let me turn to you, Ms. Rhodes, because you brought with you the Wild Republic Slap Watch toy, or it is actually an accessory. It is a watch, as I understand it. And you held it up briefly, could you hold it up again, please? I know it is still in the package, but I gather that that watch has a lithium battery that can pop out. Is that correct?

Ms. RHODES. Yes. It is tucked in behind here, if you can see the back of the watch.

Senator BLUMENTHAL. And a child who has that watch could easily pop out the battery?

Ms. RHODES. Yes. That is why it was recalled.

Senator BLUMENTHAL. The battery would look something like this. And the battery, in effect, has an acid that eats through the lining of the trachea or esophagus in a child who swallows it. It is, I guess, the acid that does the damage. But this kind of small, button cell battery is found in a wide variety of items. Could you list a few of them that are commonly found in households?

Ms. RHODES. Yes. They can be found in TV remotes; garage doors will sometimes have—that clicker will have button cell or coin cell batteries. We do find them in children's toys, of course. So, objects that are just around the house that you may not think of, especially when it comes to TV remotes that may just be placed on the table.

Senator BLUMENTHAL. They are powerful batteries. They are useful. They perform an important function. But if they are unsafely secured in those common household items, they can be swallowed by children, correct?

Ms. RHODES. Correct.

Senator BLUMENTHAL. Dr. Hoffman, could you tell us what happens to the esophagus of a child who swallows one of these batteries, if it is lodged in the throat?

Dr. HOFFMAN. Absolutely. So, those batteries function—there is a positive side and a negative side. So, the top is one and the bottom is the other. If there is contact between the two, and there is contact on the positive side and the negative side at the same time, it starts to discharge electricity. The acid is in the battery and that is what leads to the electric charge.

In the esophagus, which is a food tube of a child, the top part of the battery and the bottom part of the battery will be contacted by the tissue. And that contact with the tissue will allow electricity to begin flowing. And so, it is not actually a chemical burn, but it is an electrical burn that happens, and it happens immediately, at the first contact between a child's tissue and the top and bottom of the battery.

So, the damage is instantaneous, and the degree of damage is a function then of the strength of the battery and the duration of time that it is in contact with human tissue. So, we can see injury with, you know, within an hour or less. And as Ms. Hamsmith's experience tragically showed, you know, within a couple of hours that damage can be irreversible and potentially fatal.

Senator BLUMENTHAL. Dr. Hoffman, does the damage continue, potentially, after the battery is removed?

Dr. HOFFMAN. In the same way that any burn continues to cause tissue damage after the source of the burn, the heat source, is removed, yes. And especially with electrical burns that is true.

Senator BLUMENTHAL. Is the burn treatable? It would seem like the throat is a difficult part of the body to reach, if there is a burn in the esophagus.

Dr. HOFFMAN. Absolutely. While the gastrointestinal tract, the digestive tract, has a significant blood supply, it does tend to heal fairly well. But these burns are severe enough that they can cause lifelong damage. And if they are deep enough and causes, as tragically happened in Reese's case, perforation or rupture, it can lead to even longer-term issues, as the experience with the Hamsmiths shows.

Senator BLUMENTHAL. There is no requirement now, Dr. Hoffman, as I understand it, that hospitals specifically report these kinds of injuries, correct?

Dr. HOFFMAN. Not as far as I am aware, no.

Senator BLUMENTHAL. So, the number that we have, which itself is absolutely appalling and horrifying, could well be only a fraction of the total number. In fact, it has been estimated that it is only 11 percent, that 350,000 number.

Dr. HOFFMAN. Absolutely. Absolutely.

Senator BLUMENTHAL. And let me ask you—I know that this is more an educated guess on your part than actual documented, scientific data, but what could explain the uptick in ingestions in 2020? An increase of 93 percent between March and September of that year.

Dr. HOFFMAN. Yes, I think, Senator, you eluded to this in your opening remarks. I think a lot of it has to do with just exposure. You know, a child who is not—who is—who lives in an environ-

ment where there are no button or coin batteries is going to have a zero percent chance of accessing one and, potentially, ingesting it.

You know, the period of time we are talking about, we were still looking at kids who were home during the day; parents were, you know, out of their—broken away from their routine and forced to be teachers and workers and babysitters. And, you know, while we know that parental supervision and the supervision of caregivers is absolutely essential to help prevent injuries for children, it is completely insufficient. And having kids around products with button and coin batteries for longer periods of time with that potentially distracted supervision, I think, goes a long way toward explaining this tragic increase.

Senator BLUMENTHAL. Right. And some battery manufacturers actually have developed a coating, with a very bitter taste—a bitter coating for the batteries, to help signal to kids, or others, that they should spit it out. Should we still push for some kind of mandatory product safety standard that will secure the batteries within whatever the items are?

Dr. HOFFMAN. Absolutely, Senator. I think so much of what we try to do in injury prevention is install layers of protection. I think the bittering agent, there is no data yet to support that. I think there is some promise in it. But we do not have any hard data to show that it is at all effective. And I think, you know, short of eliminating these from an environment, doing everything we can to put barriers to access in place, which would include making it as hard as possible for a battery to be removed, inadvertently, from a product by a child who is not supposed to have access to it would be a huge step forward.

Senator BLUMENTHAL. And I know that the American Academy of Pediatrics has done a lot to educate parents. Would you say that parents are generally unaware or aware of the dangers of these batteries?

Dr. HOFFMAN. I think it is tremendously variable. You know, clearly, Academy policy and everything we have that is designed for families, including our healthychildren.org resources, talk about this. But there are so—you know, there are so many hazards around and these batteries are so ubiquitous, I think it is a little bit challenging to get people's attention, and certainly to get people's attention to the degree that I think the problem warrants.

Senator BLUMENTHAL. Thank you. I have a number of additional questions, but I am going to turn to the Ranking Member and come back whenever she finishes.

Senator BLACKBURN. Thank you, Mr. Chairman. Thank you all for your testimony. Ms. Rhodes, I want to come to you first. You mentioned, in your testimony, CBP apprehending the shipment in Baltimore that had the toxic chemicals. And I think it was barium, cadmium, let us see, lead. So, how can we help ensure that these counterfeit items never get into the supply chain? That they are stopped before they come in? And then, likewise, CPSC had removed—recently removed some of their inspectors from the ports. Talk about those two things very quickly, please.

Ms. RHODES. I will say that the ports are a little bit outside of my general expertise.

Senator BLACKBURN. Yes.

Ms. RHODES. But when it comes to the——

Senator BLACKBURN. But the effect is not.

Ms. RHODES. Yes, the effect is not.

Senator BLACKBURN. Yes.

Ms. RHODES. When it comes to these products, a lot of them do come into the ports, but a lot of them are sold online. And one of the ways we can stop that is by having hosting platforms give customers as much information as they can about who is selling the product, as well as making sure that they are monitoring for dangerous listings, so American consumers are not purchasing counterfeit products online and then, having them shipped into the United States.

Senator BLACKBURN. Right. And that would get into the section 230 reforms that I mentioned earlier, that would allow for that transparency and information share.

Ms. LAWRENCE, let us go back to what you all at the Toy Association can do and how you are sharing information with customers. And Chairman Cantwell mentioned what we had passed, when I was over in the House that dealt with information to purchasers of used cars and maybe using that as a model. But talk a little bit about what you all are proactively doing to share information with consumers about the dangers of certain toys. And I know, at one point, you all had done work on resell of toys, things that would show up in flea markets and different sales that people would have.

Ms. LAWRENCE. Yes, thank you for the question. We have great concerns about counterfeit products in particular, because we know that these products are skirting copyright law and, likely, not complying with our tough toy safety standards, as well. So, we have, a couple of years ago, issued a white paper on this issue—on the issue of counterfeit toys and their increased occurrence in the marketplace and what could be done. We revised that white paper again in 2020 and found that the—that with the increase in online sales, the issue continues to increase.

We are—you know, every day you see numerous products being sold on online marketplaces that would violate our top toy safety standards. So, we are working to communicate with the industry, with policymakers, and with consumers. For consumers, we provide information on how to shop the online marketplaces more safely, what to look for, what red flags to avoid when you are buying toys in an online forum. And more generally, we work year-round to educate consumers on how they can choose age-appropriate toys and toys that are appropriate for their families, their home environment, and also, how to supervise play. We have a website, playsafe.org, that provides this year-round messaging for consumers, so that they can understand, you know, what goes into toy safety——

Senator BLACKBURN. Ms. Lawrence, can I—let me interrupt you right there. And you can do this for the record. I would like to know what organizations you all are partnering with to get this information out. Do you partner with, like, AARP or some of these organizations, to educate grandparents who may think buying online is the way to do it. And oh, you know, it populates the screen

and you have got four different options, which look like the same toy. And three of them are counterfeit but they are at the lower cost. So, why don't you give me a list of the organizations that are—you are partnering with. And, likewise, Playsafe, how many unique users do you have to that website every year? This will help us to understand how broadly the information is getting into the community.

I also—Ms. Rhodes, I am going to come back to you first on this. CBP apprehended nearly 3/4 of a billion dollars' worth of goods at Long Beach alone, coming in through the port, of counterfeit goods. And that does not even touch what is there online. So, we know what is coming in through the port. But do you all have any way of quantifying counterfeit product that is coming into the marketplace online?

Ms. RHODES. No, we have no way—

Senator BLACKBURN. You do not?

Ms. RHODES.—of quantifying.

Senator BLACKBURN. OK. Ms. Lawrence, do you all have any numbers that would quantify what is coming in illicitly?

Ms. LAWRENCE. We would rely on the U.S. Consumer Product Safety Commission who, as you mentioned, has inspectors at the ports, as well as CBP, to get an estimate of the number of products that are arriving in our U.S. ports.

Senator BLACKBURN. OK, but you have—all right, but you have nothing that quantifies what is being done online?

Ms. LAWRENCE. It is very difficult to quantify what is being done online because, while 1 day a product may be found to be violative, the next day that same seller could remake itself under a new name and sell that same product again.

Senator BLACKBURN. Right, and we have seen that many times. I have got innovators in Tennessee who hold patent and they are manufacturing in China. And 1 day, in either an e-mail or in their mailbox, they get a flyer for the product that they have had the company making for them, at a lesser price. They have been ripped off.

I want to—Ms. Lawrence, I am going to stay with you for a second on standards. And talk about the importance of these protocols around setting standards for the toy—for the marketplace and what you all do, in that regard, to set these standards.

Ms. LAWRENCE. Well, our Expert Toy Safety Committee, which is the ASTM Toy Safety Committee, continually is looking at—when there is new innovation and products, they look at data, they look at incidents—information regarding incidents. They look at how children's behavior is changing over time. And all of these pieces of information and resources come together to drive and identify where emerging hazards may exist, where standards may need revision or new standards created.

I would also mention that listening to recent—Trista's story today, from a personal note that is the kind of story that keeps someone in the standards setting world up at night. And it is the very kind of story that motivates us, our every day. It is those kinds of stories that drive us to continually look at those standards and revise them as needed, to address issues in the marketplace.

Senator BLACKBURN. Well, and we thank you all for your testimony and for the good work that you are doing. Mr. Chairman, I yield back my time.

Senator BLUMENTHAL. Thanks very, very much, Senator Blackburn. I am going to turn to Senator Luján.

**STATEMENT OF HON. BEN RAY LUJÁN,
U.S. SENATOR FROM NEW MEXICO**

Senator LUJÁN. Thank you, Mr. Chairman. I want to thank you and the Ranking Member for today's important hearing, and for all of the witnesses to be here, especially the powerful testimony, Ms. Hamsmith. The story needs to be heard more and more. And I know that other outlets have done their due diligence to make sure parents and families are aware. But just thank you for continuing to be an advocate and the courage and the strength to be with us today. Thank you.

Mr. Chairman, as the holidays are upon us, and we are always reminded that it is supposed to be a time to come together and to celebrate family and community. This hearing is really important because, as we heard with the powerful testimony today, often times these toys are given with the best of intentions and without, maybe, even the proper warning of what should be on there, which is what the advocacy is.

And that is only made worse with counterfeit products. Because, if you have products that we know that are being manufactured under the guidelines and the regulatory environment, and they are still missing the mark, what happens when a product is counterfeit.

In addition to that, we also know that there is price gouging taking place. And I was proud to join Senator Blumenthal, our Chairman, in introducing a piece of legislation called Stopping the Grinch Bots Act, which is contributing to that. And when there are fewer, in this case, gaming devices that are out on the market, then there are more counterfeits that enter, and then, more dangers that result from that. Parents deserve fair pricing and safe products, not just for this time of year, but for all parts of the year.

Ms. Rhodes, you outlined, in your testimony, the availability of counterfeit goods online is a problem year-round. So, in my home state, one of the other areas that we have concerns with with counterfeit products are Native American art, crafts, which have caused local artists millions and millions of dollars. Most of the imitations are created overseas, imported, and then, sold here in the United States as genuine. It is a violation of Federal law and needs to stop. And it is just, every time I get a chance to talk about it, I remind everyone that you are going to go to jail if you are doing this, once you are caught. And you will get caught.

What is more, counterfeit safety gear can also cause people's lives. Last year, in the Energy and Commerce Committee hearing, when I was a member of the House, there was a counterfeit bike that was brought in, a counterfeit bicycle helmet that was brought in, and they asked if I would stand on that bicycle helmet. I told them, well, I might crush it under normal circumstances. But they assured me, by standing on one that I would wear regularly when I am out riding my bike that it would not crush the way that this

on did. I stood on it, gave it a little bit of pressure, like an eggshell. And earlier that year, myself, I had had a pretty serious fall where I went over the handlebars. My helmet stopped me from doing additional damage, because I went into a bunch of rocks.

So, these counterfeit goods, in addition to the lack of safety standards, could very well cost people their lives. So, the question that I have for the panel is, yes or no, do counterfeit products online pose a threat to the health and safety of consumers? Ms. Rhodes?

Ms. RHODES. Yes.

Senator LUJÁN. Dr. Hoffman?

Dr. HOFFMAN. Absolutely.

Senator LUJÁN. And Ms. Lawrence?

Ms. LAWRENCE. Yes, they do.

Senator LUJÁN. And Ms. Rhodes, what steps should online platforms take to eliminate the presence of counterfeit goods?

Ms. RHODES. Online platforms should inform the consumers as of much information as they can about who they are purchasing goods from. They can also—apologies. They can also use their platform to navigate what are dangerous listings and make sure they are removing them immediately.

Senator LUJÁN. So, according to PIRG's Annual Toy Safety Report for 2021, your organization also found multiple examples of recalled products available for sale online. So, what more should these platforms do to ensure that dangerous recall products are not available on their sites?

Ms. RHODES. For hosting sites, they should make sure that they are reviewing for recalling products. But for recalling companies, there needs to be more accountability in the system. One way could be the CPSC releasing an annual report looking at recall participation rates. We can also have recalling companies promote the recall the same extent that they would promote the product to begin with.

Senator LUJÁN. So, recently the CPSC also took action to recall more than 10 million magnets that also pose serious death concerns, if people were to swallow those rare Earth magnets, as well. This year, less than 1/3 of recalled products are actually corrected or destroyed. So, there is still an uphill battle, even with the current standards of the CPSC. So, my question is, how do we improve those numbers and how can Congress and CPSC improve the effectiveness of product recalls?

Ms. RHODES. Absolutely. And that goes to the recalling companies' promoting and marketing, which they could do through a bunch of means. This could be through targeted social media ads. Just actually promoting the recall on their social media pages. They can even use the influencers that they pay to promote the product to also talk about the product recall.

The most important thing is getting awareness into the public. And while consumers can learn about recalls and even report bad incidents on *saferproducts.gov*, most consumers are not aware that that database exists. So, it is important to also market *saferproduct.gov* and have the CPSC really highlight how important that database is and how it can be used by consumers.

Senator LUJÁN. I appreciate that. Mr. Chairman, I do have a few other questions. I will submit them to the record. But again, I want to thank the witnesses. And Ms. Hamsmith, I am sorry that you have to be here today, but I am grateful that you are. Thank you again, Mr. Chairman.

Senator BLUMENTHAL. Thanks, Senator Luján. Senator Markey.

**STATEMENT OF HON. EDWARD MARKEY,
U.S. SENATOR FROM MASSACHUSETTS**

Senator MARKEY. Thank you so much, Mr. Chairman. This is just such an incredibly important hearing.

When parents put a Christmas gift under the Christmas tree, they assume it is safe. They assume nothing can go wrong. They think that they are making their child happy. They want their children to look up at them with big smiles, as they are unwrapping all of these presents under the Christmas tree. And the Consumer Product Safety Commission's job is to make sure that the smile stays on the faces of those children and parents.

And we know that, historically, because of unscrupulous manufacturers of goods, that counterfeit products, that mislabeled items, that recalled products, just to name a few of the categories that exist, make their way under Christmas trees, all across our country. And children are the victims. And the Consumer Product Safety Commission is supposed to be the cop on the beat to make sure that those children are not harmed in our country.

So, the examples are just so many that it is hard to focus on all of them, but children are especially vulnerable to toxic substances. And a minor flaw that would only be an inconvenience to an adult, could have serious short- and long-term consequences for a child. We know that.

So, from my perspective, this is a very important hearing. And what I would ask from you, Ms. Rhodes, is do we need a fifth Consumer Product Safety Commission Commissioner, so that they can act and put the right kinds of safeguards in place?

Ms. RHODES. Yes, we absolutely do.

Senator MARKEY. And do you agree with that, Ms. Hamsmith? Yes, and Dr. Rhodes, do you agree with that? I mean—I am sorry, Dr. Hoffman. I am sorry. Dr. Hoffman.

Dr. HOFFMAN. Yes. Thank you, Senator Markey. Absolutely. The American Academy of Pediatrics believes that a fully functioning and adequately resourced Consumer Product Safety Commission is absolutely essential.

Senator MARKEY. Yes, thank you. And Ms. Rhodes, is there a particular group of products that are of most concern to you?

Ms. RHODES. For counterfeit products?

Senator MARKEY. Yes.

Ms. RHODES. Yes. I think children's toys falls in that category because we know children throw toys at the wall, they put them in their mouths. So, if there are toxic chemicals or they can be causing small parts, those are known hazards. Other goods that are particularly concerning are medicine or cosmetics, things that are going on our body or in, or we swallow them.

Senator MARKEY. Yes, thank you. So, yes, this—so, this is a very important area. And here is what I will say. All I want for Christ-

mas is a fifth Consumer Product Safety Commissioner to be put in place. And then, families across the country can rely upon the Federal Government to ensure that these bad companies—these bad actors do not endanger their children.

So, let us just work very hard, here in the Commerce Committee and in the U.S. Senate, to get that Commissioner on the job, to make sure that all of the children in our country are protected proactively. That the Commission is working hard to make sure these toys, these products are never on the shelves in the first place.

So, I thank all of you for being willing to testify today. And hopefully, it will be the spur for us to telescope the timeframe, which it takes for us to get that fifth commissioner—to get Mary Boyle on the floor of the Senate for full consideration.

Thank you, Mr. Chairman.

Senator BLUMENTHAL. Thanks, Senator Markey. I was going to make the same point about the fifth Consumer Protection—CPSC Commissioner. Well made, much better than I could.

Let me ask our other witness, Ms. Lawrence, on behalf of the Toy Industry Association, assuming that you support toy safety, is it not important they have a fifth Commissioner confirmed?

Ms. LAWRENCE. Absolutely. The CPSC is a small agency with a big mission. And we would support all resources to help them see through that mission for all consumer products, including the addition of the Commissioner.

Senator BLUMENTHAL. I really welcome and appreciate your support for additional resources. I assume, Ms. Rhodes, you agree that additional resources are important for the CPSC?

Ms. RHODES. Yes, they are needed for the CPSC to do their job and protect consumers.

Senator BLUMENTHAL. And Dr. Hoffman, would you agree?

Dr. HOFFMAN. I absolutely agree.

Senator BLUMENTHAL. You know, for this agency to be more than, as I mentioned earlier, a paper tiger, it has to have resources to investigate, to take evidence, to build the case. And in addition to eliminating section 6B and the impediments it poses to effective education and disclosure, the resources are necessary to uncover the hazards in the first place. Would you agree, Ms. Rhodes?

Ms. RHODES. Yes, they are needed.

Senator BLUMENTHAL. You know, Ms. Hamsmith, I think, mentioned in her written testimony that Australia is one nation that has implemented a mandatory product standard to require warning labels and child resistant closures on battery-operated devices, including toys. These requirements are set to go in effect, I believe, in 2022. What do you believe, Ms. Rhodes that that kind of requirement would have on toy safety in this country? In effect, it is Reese's Law.

Ms. RHODES. Yes. I believe it is critical that Reese's Law is passed. When speaking to a pediatrician from University Hospital, children—rainbow babies and Children's Hospital, we learned that button battery ingestions can start to burn holes within the first 30 minutes. It is critical that we have these safeguards to protect children's health.

Senator BLUMENTHAL. Dr. Hoffman, you have mentioned that you support Reese's Law. Ms. Lawrence, would you agree that we should approve Reese's Law?

Ms. LAWRENCE. Yes. In fact, the Toy Association applauds the work you are doing to help keep children, excuse me—pardon me—to help keep children safe from battery ingestion. And we recommend that you use the example that has been set in our U.S. Toy Safety Standard as a model for what you are seeking to do for other product categories.

Senator BLUMENTHAL. And as you mentioned in your testimony, Ms. Lawrence, toys or objects with a play value are required to adhere to ASTM F963, which has a set of toy safety standards. Would you comment on what effect those standards have had on the toy industry?

Ms. LAWRENCE. Are you asking regarding batteries, or in general?

Senator BLUMENTHAL. Both. In general, and specifically, with respect to toy batteries.

Ms. LAWRENCE. OK. Well, those standards are required, by law, and companies must demonstrate compliance with third party, independent testing by an accredited laboratory and be certified that they comply with the standards. We have noticed, since this has been made mandatory in the CPSIA Act of 2008, that we have seen a decrease in the number of recalls. We have also seen a significant decrease in the number of incidents related to toys. So, we do see that making these requirements mandatory for all products sold in the U.S. has had an impact.

Regarding batteries, that standard was implemented as part of the toy standard in the 1990s. And we, when, you know battery ingestion data came out about 10 years ago, we started to go through that data and look at what are the scenarios and examples where toys were involved somehow. And we found it was from situations where batteries were left within a child's reach—whether it was a spent battery, or a new battery intended to go in a toy. That is how children were getting the batteries.

But the locking mechanism that we have required in our toy standard, was upheld because we found that it was working. Children were not—that locking mechanism was not failing and allowing children to get the batteries that way. But what it did tell us was that we needed to put labeling on toys, so that consumers really understood how serious a hazard this is for children to access batteries from any source. And so, in 2016, we implemented that addition to the toy standard, and we have found that this has made an impact. In general, most of the incidents are not related to toys. And when they are, it is because the batteries have been left within a child's reach or a child found them in the garbage can.

Senator BLUMENTHAL. So, I really hope that the Toy Association will back Reese's Law. And that when you get back to us with that position, that it will be to support Reese's Law because it would, in effect, extend or incorporate warnings and the compartments or securing, locking, whatever you call it, of the batteries within a device, so that they would not pop out or be easily accessible to children.

Dr. Hoffman, let me go back to something that is, sort of, a pet peeve of mine. I highlight it every year—balloons. I am holding up a couple of examples. If we were not in the U.S. Senate, I would do what I normally do in the press conferences we have with Conn PIRG in Connecticut, which is to blow up one of these balloons and then, pop it and show how the remnants of that deflated balloon are so easily swallowed. Can you comment on how important a choking hazard balloons can be, if they are not properly supervised?

Dr. HOFFMAN. Absolutely, Senator. I remember very vividly as a—when I was in training in residency, caring for an 18-month-old child who, on his—at a birthday party, had been holding a balloon and an adult came up behind the child and tickled them to startle them, which caused the balloon to pop. The child inhaled and the balloon lodged itself in the child's airway. He, sadly, died as a result of that and that has forever impacted me.

The issue of rubber and latex balloons, especially, it has been estimated that it is around 15 children a year die as a result of aspiration or ingestion, of either balloons or parts of balloons. This is another thing that is completely preventable. And I appreciate that people like balloons. They are fun. But they are also—they are—they need to be considered a hazard.

We do not see the same risk associated with the mylar balloons, which I think are a reasonable alternative for somebody who absolutely, positively, had to have a balloon. But I think in 2021, it is hard to come up with an argument why we need—why we still need latex or rubber balloons, especially around kids.

I think one of the things that needs to be highlighted—you know, we spend a lot of time talking about toys. Kids do not decide—kids do not care if something is labeled a toy or not labeled a toy. If you give a child your car keys and that fob has button batteries in it, that child is going to explore it and play with it in a way they would play with anything else, including, especially for younger kids, putting it in their mouth. And so, I think we need to be looking at this from the perspective of kids recognizing that everything is a toy and, developmentally, they are built to explore. And a lot of that exploration involves putting things in their mouth, especially for younger kids. And the safest thing we can possibly do is ensure that kids do not have access to those products.

Senator BLUMENTHAL. I think that is a really excellent explanation. Not only do kids not know whether something is a toy or not, they do not really care or know whether a balloon is made of one substance or another—mylar versus any other substance. And so, mylar balloons are a pretty good choice. Would you agree?

Dr. HOFFMAN. I think they are a much safer choice. They are not without hazard, but they are a much safer choice.

Senator BLUMENTHAL. But parental supervision is important because asphyxiation can be caused in a matter of minutes, correct?

Dr. HOFFMAN. Yes. I think parental supervision—you know, I mentioned earlier this idea about layers of protection. Parental supervision is an absolutely essential layer, but it is completely insufficient because nobody's supervision can be perfect. And I mentioned earlier, I have had the privilege of working with a number of families who have lost children to unintentional injury and help-

ing elevate their stories and bring their voices to the advocacy work. And one parent—I do not know if Senator Blackburn is still there, but a parent who has become very close—a very close friend from Tennessee, always talks about everybody expects they are going to find the loophole. That it is never going to happen to them. But the fact of the matter is, it does happen to people. It happens to real people who love their kids, who care, who are doing the best they possibly can. And all it takes is a second of distraction. And nobody can provide the perfect level of supervision.

So, we need those multiple layers and that includes, you know, things like closures on battery—closures to ensure that batteries cannot be released and removing potential hazards from the home and making sure that things do not get to market that are fundamentally dangerous. I think that the magnets that you mentioned earlier are a really good example of something that, you know, to a child, does not matter whether it is called a toy or marketed as a toy. To a child, you know, rare Earth magnets are a toy, and they end up in the mouth and then, they end up in the gut and then, that ends badly.

Senator BLUMENTHAL. And I am holding up some examples of those magnets, Dr. Hoffman, rare Earth magnets. They are very, very powerful. They are used on people's desks. They are, kind of, playthings for adults. While they are on the phone they can fiddle with them. But as you say, a child who walks into a parent's home office does not know that they are for the parent to fiddle with or play with, not for the child. And they are really difficult to separate, but they are composed of a lot of these tiny beads. Could you tell us—I tried a little bit earlier, what happens exactly to, or can happen to, a child's digestive system if they swallow some of these magnets?

Dr. HOFFMAN. So, thank you, Senator. If a child—ingesting one would not be a problem. Ingesting more than one, those magnets are so strong that they are going to find each other across the bowel. And if they are inches apart, they will be drawn to each other. And what happens is, they squeeze the bowel tissue, the gastrointestinal tissue, between them and that causes a loss of blood supply, and the bowel dies.

And so, injury there can happen, also, you know, within a matter of a very short period of time, in as short of time as an hour. It can lead to perforation of the intestine, which is a very serious, life-threatening condition. And as happens with button and coin cell ingestions, they often—they can be hard to detect, and they can often go undetected until they have caused serious injury.

Senator BLUMENTHAL. Thank you. A number of pieces of legislation have been mentioned—the STURDY Act, which is led by Senator Casey, that requires the CPSC to provide safety standards for free standing clothing storage units, such as dressers, bureaus, or chests of drawers. And a second version of the STURDY Act, we just reintroduced, with consensus agreement among a number of the manufacturers. There are other pieces of legislation that have been introduced and hope that we can move them forward.

Ms. Rhodes, do you support this legislation?

Ms. RHODES. The STURDY Act? U.S. PIRG does not have a position on the STURDY Act.

Senator BLUMENTHAL. And Ms. Lawrence, I think you mentioned that you do. I do not know whether, Dr. Hoffman, you are familiar with the STURDY Act?

Dr. HOFFMAN. Absolutely and the American Academy of Pediatrics supports it very strongly.

Senator BLUMENTHAL. I want to just close by, again, thanking our—all of our panelists, our witnesses, this morning. You have provided a really powerful record for passing Reese's Law. I know that Ms. Lawrence will be providing us her position on behalf of the Toy Industry Association. But again, to Trista Hamsmith, you have really made this cause a national issue and I am very proud to be introducing Reese's Law today with Senator Blackburn. We hope it will be approved promptly. The sooner it is passed, the more children we can protect and the more injuries we can prevent.

So, I want to thank all of our witnesses and my colleagues. The record will remain open for 2 weeks in case there are any written questions from my colleagues, or additional answers in response to questions from our witnesses.

And with that, the hearing is adjourned. Thank you.

[Whereupon, at 11:48 a.m., the hearing was adjourned.]

A P P E N D I X

UNITED STATES CONSUMER PRODUCT SAFETY COMMISSION
Bethesda, MD, December 14, 2021

Hon. RICHARD BLUMENTHAL,
Chair,
Subcommittee on Consumer Protection,
Product Safety, and Data Security,
Washington, DC.

Hon. MARSHA BLACKBURN,
Ranking Member,
Subcommittee on Consumer Protection,
Product Safety, and Data Security,
Washington, DC.

VIA ELECTRONIC MAIL

RE: Comments for the Record for the Subcommittee on Consumer Protection, Product Safety and Data Security Hearing Entitled “Hidden Holiday Hazards: Product Safety During the Holiday Season”

Dear Chair Blumenthal and Ranking Member Blackburn:

Thank you for holding the Subcommittee on Consumer Protection, Product Safety, and Data Security hearing, entitled “Hidden Holiday Hazards: Product Safety During the Holiday Season.” This hearing discussed a number of important consumer safety issues including ingestion and choking hazards from items such as button cell batteries, toys, and balloons. Such hazards can result in tragedy if not addressed properly. The hearing also included testimony about how the Consumer Product Safety Commission (CPSC) must improve its effectiveness at both traditional ports and those facilitating e-commerce. I agree.

I am thankful for the attention this hearing brought to these critical aspects of CPSC’s mission. I write to you, and for the hearing record, to share my views and recent efforts regarding small parts enforcement, and improving CPSC effectiveness at the ports.

I. The CPSC Small Parts Rule Must Be Enforced

Choking hazards are dangerous for consumers of any age, but are particularly serious for young children. Toys that obstruct children’s airways were a leading cause of toy-related fatalities in 2020. CPSC is aware of at least nine toy-related deaths in 2020 for children 12 years of age or younger, six of which were associated with airway obstruction hazards.¹ Another fatality was associated with an aspiration hazard involving a nail shaped plastic toy.² Due to delays in death certificate reporting, fatality information is not yet complete for 2020.³ Accordingly, these fatality statistics will likely increase once reporting is complete. In any event, these fatalities are too high, particularly considering the Commission’s existing regulation banning small parts in toys and other articles intended for children under three.⁴ I want to assure the Committee that protecting children from choking hazards by fully enforcing the Small Parts Rule is one of my highest priorities as a CPSC Commissioner.

For the past several years, I have made my views clear.⁵ CPSC staff’s interpretation of the Small Parts Rule is incorrect, particularly with respect to flocked toys,

¹ U.S. CONSUMER PROD. SAFETY COMM’N, TOY-RELATED DEATHS AND INJURIES CALENDAR YEAR 2020 (2021) at 6, <https://cpsc-d8-media-prod.s3.amazonaws.com/s3fs-public/Toy-Related-Deaths-and-Injuries-2020.pdf?VersionId=XOEWLpoHSpcMtio3Ccab6gn4umXCso.7>.

² *Id.* at 7.

³ *Id.*

⁴ See 16 C.F.R. § 1501.2 (“Small Parts Rule”).

⁵ See e.g., Press Release, Statement of Commissioner Peter A. Feldman on Flocked Toys (May 6, 2021), <https://www.cpsc.gov/s3fs-public/COPF%20Statement%20on%20Flocked%20Toys%20FINAL.pdf>; and see, e.g., CPSC Public Hearing on Commission Agenda and Priorities for Fiscal Year 2022 (Apr. 7, 2021) (Statement of Comm’r Peter A. Feldman) (“it’s my understanding that CPSC compliance staff still allow dangerous small parts to be sold as is or as toy accessories, if they believe that the toy itself is appropriately age graded for 3 years or older.

Continued

but also “stuffed, plush . . . and other figures,” as explained in the regulation.⁶ The current interpretation excludes certain toys that should be treated as *per se* violative, thereby impeding full enforcement. In November 2020, I sent a letter to then-Acting Chairman Robert Adler raising this issue.⁷ Specifically, I made clear that, in my opinion, CPSC has been misapplying the agency’s method for identifying toys that fall *per se* within the scope of the small parts rule.⁸ A copy of this letter is attached.

These products have known fatalities and at least one near miss,⁹ and were previously listed on the U.S. Public Interest Research Group’s Trouble in Toyland list of dangerous toys.¹⁰

Earlier this year, the U.S. District Court of New Mexico appeared to agree with my position, concluding that these toys and their accessories are banned hazardous substances as a matter of law.¹¹ Given this ruling, I am frustrated that, to date, CPSC has still yet to act.

In October, I met with representatives of the Toy Industry Association (TIA) to discuss this issue. It is clear that a difference of opinion exists as to the proper enforcement standard. I am also attaching an October 11, 2021, media report summarizing this meeting with TIA, which I believe accurately describes the industry group’s position.¹² Ultimately, it will fall to the Commission to address the enforcement policy.

Rest assured, I will continue my efforts within the Commission to apply the proper safety standard to these toys. I remain hopeful that with a newly-constituted Commission, we may now be in a position to correct future enforcement and keep children safe from these known hazards. If progress towards full enforcement of the Small Parts Rule does not occur, additional oversight and direction from Congress may become necessary.

II. CPSC Must Focus and Increase Resources at Ports of Entry

As witnesses testified during the hearing, interdicting dangerous products at the ports must remain one of CPSC’s top priorities. Following the passage of the Consumer Product Safety Improvement Act of 2008,¹³ CPSC enhanced its safety mission by expanding its presence at high-volume ports of entry to conduct screenings and seizures of dangerous products. Among other things, CPSC port inspectors routinely screen for toys with obvious small parts violations and latex balloons that do not include the required warning labels.¹⁴

For nearly six months at the start of the pandemic, then-Acting Chairman Adler and his executive leadership team withdrew the agency’s frontline inspectors from their duty stations, over the concerns of some Commissioners and without full transparency to Congress or American consumers.¹⁵ While the initial pullback may have been necessary to establish health and safety protocols for our inspectors and other relevant inspection and testing personnel, the extended absence could and should have been avoided. In an October 2021 report to Congress, CPSC Inspector General (IG) Christopher W. Dentel pointed out that the lack of a suitable Enterprise Risk

I personally believe that this is inconsistent with both the regulation and the official policy referenced in the regulation, I also believe frankly that it’s dangerous. . .”).

⁶See Small Parts Rule, *supra* note 4.

⁷Letter from Peter A. Feldman, Comm’r, U.S. Consumer Prod. Safety Comm’n, to Robert S. Adler, Acting Chairman, U.S. Consumer Prod. Safety Comm’n (Nov. 25, 2020) (attached).

⁸See *Id.*

⁹Mark Saal, *Farmington Mom, 911 Dispatcher Hailed for Saving Choking Toddler*, STANDARD-EXAMINER (July 4, 2013), <https://www.standard.net/police-fire/2013/jul/04/farmington-mom-dispatcher-hailed-for-saving-choking-toddler>.

¹⁰U.S. PUB. INTEREST RESEARCH GROUP, TROUBLE IN TOYLAND 2020 (Nov. 2020), https://uspirg.org/sites/pirg/files/reports/Trouble-In-Toyland_2020/USP_Toyland-Report_Nov20_web.pdf (last accessed Dec. 3, 2021).

¹¹*Schmidt v. Int’l Playthings LLC*, No. 1:2019 Civ. 00933, Doc. 172 at 99–101 (D.N.M. 2021) (relying on CPSC’s own guidance to reach its conclusion), <https://law.justia.com/cases/federal/district-courts/new-mexico/nmdce/1:2019cv00933/432865/172/>.

¹²Sean Oberle, *No Room to Interpret Small Parts on Flocked Toys, Feldman Tells TA*, PROD. SAFETY LTR. (Oct. 11, 2021) (attached).

¹³The Consumer Product Safety Improvement Act of 2008, Pub. L. 110–314, 122 Stat. 3016 (Aug. 14, 2008).

¹⁴See 16 C.F.R. 1500.19 (requiring latex balloons to include the cautionary statement: “WARNING: CHOKING HAZARD—Children under 8 yrs. can choke or suffocate on uninflated or broken balloons. Adult Supervision required”).

¹⁵Letitia Stein and Tricia Nadolny, *Hazardous goods found for sale after consumer protection inspectors were pulled from ports during COVID-19*, USA TODAY, July 14, 2021, <https://www.usatoday.com/story/news/investigations/2021/07/14/consumer-product-safety-risk-after-covid-port-screening-lapse/7938830002/>.

Management (ERM) program contributed to our absence from the ports.¹⁶ Specifically, IG Dentel found that:

[p]erhaps nowhere was the CPSC's deficits in integrating ERM into its operations clearer than in its decision to remove inspectors from the Nation's ports for a prolonged period at the beginning of the pandemic. A mature ERM process would have allowed for a more nuanced approach which would have better balanced the risks to inspectors against the safety of American consumers.¹⁷

It is worth noting that other agencies, including U.S. Customs and Border Protection, never pulled back from the ports during the pandemic. I remain concerned that the full effect of this lapse will never be known, in part because CPSC never conducted a serious remedial screening of products that entered the country during this period. While CPSC staff did submit a report to Congress as required under Pub. L. No. 116–260, I fear the nature of this review lacked the depth and detail necessary to account fully for our time away from the ports.¹⁸ The decision to withdraw inspectors placed consumers at risk. The failure to conduct comprehensive inspections of product inventory continues this risk.

The good news is that CPSC returned its inspectors to the ports after the months-long absence.¹⁹ Although our inspectors are back at work, more needs to be done. In particular, it continues to be my position that we must increase the number of inspectors at traditional high-volume ports and to grow our fledgling e-commerce inspection program. CPSC will always face challenges in denying bad actors access to our markets and interdicting dangerous products. Our first and best line of defense is to stop these products from entering American commerce before they get to physical or digital store shelves.

As part of the 2022 Operating Plan, the Commission added 27 new port inspectors at traditional high-volume and e-commerce ports of entry and increased resources for our compliance staff in the field. I am proud to have supported this plan.²⁰ Given the supply-chain issues facing many of our largest ports, I believe it is imperative that these busy hubs of commerce have a robust CPSC presence. Moreover, I support increasing our presence at non-traditional ports to address the emerging challenges e-commerce presents. Commerce is not conducted the same way as it was in 1972, when the agency was created. To function properly, and to keep American consumers safe, CPSC must adapt to modern modes of transportation and distribution.

III. Conclusion

Although CPSC cannot prevent every death, we must work to minimize injuries and hazards to the American public. This starts with properly enforcing our law and regulations and creating a robust and modern port inspection team. I will continue to advocate for these priorities and stand ready to work with the U.S. Senate Committee on Commerce, Science, and Transportation to improve CPSC's ability to fulfill its mission.

Thank you again for holding this important hearing, and all your work protecting American consumers from dangerous products. Please do not hesitate to contact me with any questions.

Sincerely,

PETER A. FELDMAN,
Commissioner.

Enclosures

cc: The Honorable Maria Cantwell, Chair, U.S. Senate Committee on Commerce, Science, and Transportation

¹⁶ OFF. OF INSPECTOR GEN., U.S. CONSUMER PROD. SAFETY COMM'N, TOP MANAGEMENT AND PERFORMANCE CHALLENGES FISCAL YEAR 2022, at 6 (OCT. 21, 2021), <https://www.oversight.gov/sites/default/files/oig-reports/CPSC/Top-Management-and-Performance-Challenges-Fiscal-Year-2022-Final.pdf>.

¹⁷ *Id.*

¹⁸ Staff Report to Congress Pursuant to Title XX, Section 2001 of the Consolidated Appropriations Act, 2021 (Pub. L. No. 116–260) Port Surveillance (June 25, 2021), <https://www.cpsc.gov/s3fs-public/CPSC-Report-to-Congress-Consolidated-Appropriations-Act-Port-Surveillance.pdf?iYwRkt8RXocIVYSMoXm5uiL7VjltQIIZ>.

¹⁹ See USA TODAY, *supra* note 15.

²⁰ Press Release, Dana Baiocco and Peter A. Feldman, Comm'rs, U.S. Consumer Prod. Safety Comm'n, Joint Statement of Commissioners Dana Baiocco and Peter A. Feldman on the Passage of the Fiscal year 2022 Operating Plan (Sept. 28, 2021), <https://www.cpsc.gov/s3fs-public/FY22OpPlanJointStatement.pdf?VersionId=vYdSOfbkYTyZ.Xpl9UOof1AACeGW3evJ>.

The Honorable Roger F. Wicker, Ranking Member, U.S. Senate Committee on Commerce, Science, and Transportation

ENCLOSURE A



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814
COMMISSIONER PETER A. FELDMAN

November 25, 2020

The Honorable Robert Adler
Acting Chairman
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Dear Acting Chairman Adler:

During this holiday season, consumer groups are doing their part to alert the public to dangerous toys, in an attempt to protect children. I share their concern that the rate of recalled products has slowed during your tenure as acting chairman. Nevertheless, it remains my hope that you will exercise your authority as the agency's principal executive officer to conduct a thorough review of the alleged violations discussed below and bring enforcement actions, where appropriate, as soon as possible.

This week, World Against Toys Causing Harm, Inc., released its "10 Worst Toys" list for 2020.¹ Earlier this month, the U.S. Public Interest Research Group released its annual "Trouble in Toyland" report.² Of particular concern is a flocked animal toy ("Calico Critters" miniature animal figures), which appears on both lists. This product is associated with the death of a child in New Mexico and a near-death incident in Utah, and therefore merits special scrutiny.³

As you are aware, toys that present a choking hazard because of small parts are classified as banned hazardous substances if they are intended for use by children under 3 years of age.⁴ While I have not examined the Calico Critters toy independently, it appears to present (and the Commission has reasonable cause to find) a violation of the CPSC small parts rule, 16 C.F.R. 1500.18(a)(9), based on its size, accessories, and flocking. Still, agency enforcement staff under your direction has yet to issue a notice of violation in connection with this product or pursue any corrective action.

¹ Press Release, World Against Toys Causing Harm, Inc., W.A.T.C.H. Reveals Its 2020 Nominees for the "10 Worst Toys" This Holiday Season (Nov. 23, 2020), <https://toysafety.org/wp-content/uploads/2020/11/2020-Ten-Worst-Toys-Press-Release-With-Nominees.pdf> (last accessed Nov. 25, 2020).

² U.S. PUB. INTEREST RESEARCH GROUP, TROUBLE IN TOYLAND 2020 (Nov. 2020), https://uspirg.org/sites/pirg/files/reports/Trouble-In-Toyland_2020/USP_Toyland-Report_Nov20_web.pdf (last accessed Nov. 25, 2020).

³ *Id.* at 9.

⁴ See 16 C.F.R. 1500.18(a)(9).

Hon. Robert Adler
Nov. 25, 2020
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I am concerned that CPSC staff is misapplying the agency's method for identifying toys within the scope of the Small Parts Rule. Because the rule is explicit that flocked animals are "intended for use by children under 3 years old," such figures are per se subject to its size requirements.⁵ The rule's scope is unambiguous.⁶ But staff informs me that it has determined the product to be non-violative, despite its small parts, because it believes, based on other age-grading criteria, that this toy is intended for use by children between 4 and 5 years of age. When asked whether the toy's flocking factored into the age grading, staff informed me that the surface texture was irrelevant to its determination.⁷ This analysis is flawed, and I encourage you to direct staff to reevaluate its position.

Children under 3, whom the CPSC Small Parts Rule is intended to protect, are among the most vulnerable American consumers. For this reason, the Commission's enforcement efforts against the toys banned under the Small Parts Rule deserve particular attention. I look forward to working with you to ensure the enforcement of CPSC's statutes and regulations to keep children safe this holiday season.

Sincerely,

Peter A. Feldman
Commissioner

Cc: The Honorable Dana Baiocco, Commissioner
The Honorable Elliot Kaye, Commissioner

⁵ See 16 C.F.R. § 1501.2(a) ("This regulation...applies to all toys and other articles intended for use by children under 3 years of age. Such articles include, but are not limited to ... stuffed, plush, *and flocked animals* and other figures") (emphasis added).

⁶ See 44 Fed. Reg. 34461, 34897 (June 15, 1979) ("The Commission made a special effort to define clearly the scope of the small parts proposed regulation. The scope section (1501.2) included a lengthy list of the types of products that are *definitely covered*." (emphasis added)).

⁷ COPF Staff, Notes from OEX Weekly (Nov. 18, 2020) (on file with COPF) ("Feldman: [I]s the fact that this involves a flocked toy relevant at all to the analysis? Staff: No.").

ENCLOSURE B

12/14/21, 2:37 PM

No Room to Interpret Small Parts on Flocked Toys, Feldman Tells TA

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Monday October 11, 2021

No Room to Interpret Small Parts on Flocked Toys, Feldman Tells TA

Plain text versus years of CPSC practice were at the core of an October 5 disagreement between Commissioner Peter Feldman and representatives of the Toy Association. The group – joined by former agency staffers Carol Pollack-Nelson and Mary Toro – told Feldman they desire a commission clarification related to age grading, small parts, and flocked toys. Also on the call were the association's Alan Kaufman and Joan Lawrence plus Feldman's staff.

The impetus is a New Mexico U.S. district court ruling that prompted Acting Chairman Robert Adler soon after (*PSL*, 5/10/21) to seek a review of differences between 16 CFR § 1501.2(a), which includes a non-exhaustive list of toys that cannot have violative small parts, and § 1501.2(b), which involves three-criteria (manufacturer intent, promotion, and common understanding) for such determinations.

The Toy Association favors the latter to allow for flocking on toys unlikely to be usable or interesting to small children. Feldman heard from the callers that such an approach has become honed over the decades, including at CPSC. It was used in industry evaluation of the toy in the case. Not using the three-criteria test would upend what the industry has become used to and would affect existing products.

Feldman asserted that the list explicitly includes "stuffed, plush, and flocked animals and other figures," suggesting there is no room for interpretation.

He additionally pointed to CPSC's related June 1979 test method and January 1990 enforcement policy. Both explicitly mention flocked toys. Indeed, the latter has a sample enforcement letter stating that "stuffed, plush, and flocked" items are subject to the small parts ban, so 3+ age labeling on the hypothetical bear toy would not confer exemption.

Feldman rejected an assertion that 1994 updates to CPSC law changed whether the 1990 guide is still in effect.

He also pointed to his own statement, concurrent with Adler's request for a review, calling for "robust enforcement" of such products. He further noted that his visits in August with Arapaho and Shoshone tribal groups featured discussions of the matter – the court case involved a child who died on Jicarilla Apache Nation territory.

Flocking is a way to create texture on fabric. Among concerns Feldman heard was whether the list properly bunches it with stuffing. Similarly, he heard that the list conflates items always meant for children under 3 with those that might be. The underlying court decision is at bit.ly/33i3Bjh.

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RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. AMY KLOBUCHAR TO
HANNAH RHODES

Products Sold Online. I am concerned about safety when consumers buy products online. In July, the Consumer Product Safety Commission (CPSC) filed suit against Amazon to recall hazardous products sold on Amazon.com, including 24,000 defective carbon monoxide detectors that fail to alarm, numerous flammable children's sleepwear garments, and nearly 400,000 hair dryers sold without the required devices that protect against shock and electrocution.

Question. In 2020, online sales represented more than 21 percent of total retail sales for the year—up 44 percent from 2019. What action needs to be taken to further protect consumers, particularly from dangers online?

Answer. U.S. PIRG supports the language of *The Integrity, Notification, and Fairness in Online Retail Marketplaces for Consumers (INFORM) Act* to help prevent counterfeit and other dangerous goods from ending up in American's homes.¹ We also support ensuring that online platforms that host third-party sellers verify that the consumer products being sold have undergone the proper safety testing and have the appropriate certifications.²

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. BEN RAY LUJÁN TO
HANNAH RHODES

Flocked Toys and Small Parts. I recognize that PIRG's 2020 Trouble in Toyland report advocated for the recall of flocked toys with small parts such as the Calico Critters Yellow Labrador Twins. I am deeply concerned by potentially hazardous products remaining available, especially given reports concerning the death of a young child in New Mexico and a near-death incident for a boy in Utah.

Question. What steps should the CPSC take concerning these products?

Answer. U.S. PIRG continues to advocate that the Calico Critters flocked toys and accessories be recalled by the U.S. Consumer Product Safety Commission (CPSC) and that these products pose a dangerous choking hazard.³

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. AMY KLOBUCHAR TO
DR. BEN HOFFMAN

STURDY Act. After Ted McGee, a 22-month old from Apple Valley, Minnesota was killed by a falling IKEA Malm dresser, I worked with the Consumer Product Safety Commission (CPSC) and IKEA to recall these dangerous products. I also joined Senators Casey and Blumenthal in reintroducing the STURDY Act earlier this month to protect children from injuries and deaths related to furniture tip-overs. The bill directs the CPSC to create safety standards for dressers and other storage units.

Question. You highlighted this bill in your testimony. How will legislation like this be critical in helping address dangers in the home?

Answer.

Dear Senator Klobuchar:

Thank you for submitting this question for the record for the American Academy of Pediatrics (AAP), and thank you for your work to protect children from injuries and deaths related to furniture tip-overs. The AAP strongly supports the STURDY Act and urges the Senate to advance this bipartisan legislation expeditiously. According to the CPSC, a child is sent to the emergency department every 60 minutes following a furniture tip-over incident, and one to two children die every month. These tragedies can and must be prevented, and the best solution is to design a safer dresser that will not tip over and harm children. I care for families with young children who live in rental properties with a landlord who has prohibited installation of wall anchors for furniture. For these families, the only way to protect their children from furniture tip-overs would be ensuring the furniture itself was not a risk.

¹ Congress.gov, "S.963—INFORM Consumers ACT" (online at: <https://www.congress.gov/bill/117th-congress/senate-bill/936/text>).

² CPSC, "Testing & Certification" (online at: <https://www.cpsc.gov/Business—Manufacturing/Testing-Certification>).

³ U.S. PIRG, "Trouble in Toyland: 35th Annual Toy Safety Report" (Nov. 12, 2020) (online at: https://uspirg.org/sites/pirg/files/reports/Trouble-In-Toyland_2020/USP_Toyland-Report_Nov_20_web.pdf).

The STURDY Act would require the CPSC to create a mandatory safety standard for dressers and other clothing storage units to prevent child fatalities and injuries. The new standard would require testing to simulate the weights of children up to 72 months old; require testing measures to account for scenarios involving carpeting, drawers with items in them, multiple open drawers, and the dynamic forces of a climbing child; and mandate strong warning requirements. These provisions would significantly improve on the current voluntary standard by better representing the real-world risks children face from furniture tip-overs. Parents and caregivers need a strong mandatory standard to protect children from furniture tip-overs, and the STURDY Act would direct the CPSC to implement one quickly. Thank you again for your bipartisan leadership of this important legislation.

RESPONSES SUBMITTED ON BEHALF OF THE TOY ASSOCIATION BY ALAN KAUFMAN,
DUE TO J. LAWRENCE ILLNESS

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. RICHARD BLUMENTHAL TO
JOAN LAWRENCE

Product Safety Information. Please provide the Toy Industry Association's position on S.1355, the Sunshine in Product Safety Act, and whether the Toy Industry Association supports a change Section 6(b) of the Consumer Product Safety Act, which creates roadblocks and unnecessary delays to the disclosure of product safety information to consumers.

Answer. There has been from time to time a push by certain special interests to repeal section 6(b) of the Consumer Product Safety Act (15 U.S.C. 2064(b)), arguing that this section of the CPSA prevents the public from knowing about product safety problems in a timely manner, but this argument does not hold water on closer analysis. They also argue that this clause is unique among regulatory agencies, but neglect to mention that so is section 15(b) of the CPSA.

Section 6(b) of the Act was intended by Congress as a counterbalance of sorts to section 15(b) of the same act, which requires manufacturers and importers to *immediately* notify the CPSC of any information that would suggest the existence of a substantial product hazard or a noncompliance to a consumer product safety rule. Given that the agency has interpreted "immediately" to mean within 24 hours, and penalties for late or non-reporting are potentially significant, companies typically initially report without sufficient time to complete an investigation, determine the accuracy of such information, or identify key details or circumstances for the initial 15(b) report. This is the information 6(b) initially "protects"—and which those who seek to repeal 6(b) want access to. However, this initial information is often wrong, is revised later based on more thorough investigation, and in many cases further investigation determines that no defect or hazard actually exists. Releasing the information, prior to review and investigation, would flood consumers with misleading and frightening information—and further confuse consumers if a retraction has to be issued later. At the same time, it would unfairly tar perfectly safe products based on premature release of incorrect information.

Section 6(b) is actually a requirement which ultimately works to the benefit of consumers. Here is what CPSC says about it in their 6(b) fact sheet:

"Section 6(b) prohibits the Commission from disclosing information about a consumer product that identifies a manufacturer or private labeler unless the Commission has taken "reasonable steps" to assure 1) that the information is accurate, 2) that disclosure of the information is fair in the circumstances, and 3) that disclosure of the information is reasonably related to effectuating the purposes of the CPSA and of the other laws administered by the Commission. Before disclosure of such information, the Commission must provide the manufacturer or private labeler with an opportunity to comment on the accuracy of the information. The Commission may not disclose such information for at least 15 days after sending it to the company for comment."

So, the CPSC currently can release this information with only a 15-day delay, even over manufacturer objections, if it is accurate and fair. We are of the opinion that section 6(b) provides a minimal and reasonable check on CPSC to be certain that product- or manufacturer-specific information must be reviewed by the agency for accuracy and fairness prior to release, and that manufacturers have an opportunity to comment on the accuracy and fairness as well. While 6(b) may delay the release of preliminary, *inaccurate*, and *misleading* information, it does not in any way delay CPSC from releasing information that is necessary to carry out its mission.

“Eliminating 6(b) to improve consumer access to vital information” sounds like a laudable goal, but, in reality and as described here, 6(b) avoids bombarding consumers with useless, incorrect information on the safety of consumer products. Further, eliminating 6(b) would strip even minimal manufacturer protections from the law.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. AMY KLOBUCHAR TO
JOAN LAWRENCE

Hazardous Toy Imports. In June 2021, Customs and Border Protection agents, working with the Consumer Product Safety Commission (CPSC) inspectors, intercepted nearly 400 children’s toys containing hazardous chemicals and unsafe design posing a significant hazard to children at the Houston Seaport.

Question. What more should be done to ensure that imported consumer products are safe, particularly for our children?

Answer. Thank you for asking this, Senator. The Toy Association has long supported CPSC’s Port Operations as one of the most effective and efficient ways to interdict non-complying product before it enters U.S. commerce. Further, all toys entering and sold in the U.S. must comply with mandatory toy safety standards and be certified as compliant with all relevant safety testing.

We believe that additional enhancements can be made to improve the effectiveness of port operations and oversight—and ensure that imported products are safe. Among the improvements that could be made are the following: greater funding and more personnel for the agency’s port operations arm; an increase in CPSC’s testing laboratory capacity to reduce the current 28-day turnaround to release compliant product (*e.g.*, this could be achieved by the CPSC using agency-approved independent laboratories—or labs of partner government agencies such as FDA’s).

Additionally, it is important to note that with the increase in online sales, there is also an increase in counterfeit and knock-off products being sold online—and growing concern about the safety of these products that may not comply with mandatory standards and testing. As such, to ensure that children’s toys are safe, increased attention by the CPSC to counterfeit and knock-off products being sold to consumers via online sites is called for, including increased surveillance of online platforms and enhanced efforts to work with the Postal Service and parcel delivery companies to inspect the many direct-to-consumer packages that are sold on e-commerce sites (and fall below the \$800 *de minimis* value requiring formal entry).

I should add that The Toy Association is fully supportive of the INFORM Act, which will begin to address some of these issues, and urge all Senators to support it as well.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. BEN RAY LUJÁN TO
JOAN LAWRENCE

Labeling Requirements. According to the Toy Association, up to ninety-six percent of parents don’t rely on age grading for toys, even though these labels are often in place to ensure child safety.

Question. How should product labels be updated to ensure they are providing parents the critical information they need to ensure child safety?

Answer. Thank you, Senator, for your question. We believe that choosing age-appropriate toys is critical to ensuring safe and fun playtime, while enhancing the developmental benefits that play provides. As such, much of our outreach to consumers includes advice to follow the recommended age when selecting toys for children. Age recommendations (“age grading”) on toys are intended as safety guidance and incorporate the developmental features of children at a given age—and the specific features of the toy. Such age grading typically follows the authoritative guidance of the U.S. Consumer Product Safety Commission on this topic (See *CPSC Age Determination Guidelines* for reference).

Our year-round messaging to consumers includes guidance on the importance of reading and following age grading on toys. We know that consumers may be tempted to “age up” on toys when they think that their child is more advanced than average; our messages emphasize the importance of following the recommended age nonetheless (“*It’s not about how smart a child may be, it’s safety guidance and should be followed.*”). See also www.PlaySafe.org.

In addition to the manufacturers’ recommended age on most toys, toys that contain certain design features (*e.g.*, small parts, small balls, marbles, or certain other features called out in mandatory toy safety standards) are also required, by law, to

carry specific warning labels that describe the hazard and specify a minimum appropriate age requirement for the toy.¹ In some cases, the age prescribed for the mandatory warning label may be different (lower) than the toy's overall recommended age; this may be confusing to consumers.

The Toy Association is currently exploring, with outside experts and CPSC Human Factors staff, whether any changes to current industry practice can be proposed that will reduce confusion and improve consumer adherence to age labels.



¹ Child Safety Protection Act (CSPA).