

**Written Comments from the
Footwear Distributors & Retailers of America
To the Federal Trade Commission**

**Competition and Consumer Protection in the 21st Century Hearings
Project Number P181201**

August 20, 2018

On behalf of the Footwear Distributors & Retailers of America (FDRA), we appreciate the opportunity to provide written comments to the Federal Trade Commission (FTC) as it closely examines the state of competition and consumer protection in the 21st century.

FDRA represents nearly 500 footwear companies and brands across the U.S., including the majority of U.S. footwear manufacturers. Leading U.S. footwear executives direct and govern FDRA, and the association has served the footwear industry for almost 75 years. Today, our members include a broad and diverse cross section of the companies that make and sell shoes, from small family-owned businesses to global brands that reach consumers around the world.

U.S. footwear companies and their hundreds of thousands of employees in states across the U.S. work hard to design, produce, and deliver shoes to U.S. consumers. Last year alone, the industry supplied more than 2.3 billion pairs of shoes to the U.S. market, or 7.2 pairs for every man, woman, and child in America. Each of these jobs depends on the ability of companies to compete and meet customer needs – even as we witness broad and rapid changes in the ways in which consumers buy shoes and connect with brands.

Footwear consumers are looking for more diverse product, competitive prices, and availability on a number of platforms both in-store and online. In FDRA's 2018 National Spring Shoe Sales Survey, 35 percent of footwear shoppers stated that they planned to buy shoes online rather than in a brick-and-mortar store.¹ Of those 35 percent, 52 percent planned to purchase their shoes on Amazon's platform and 15 percent on the brand's own e-commerce website. While the continued growth of e-commerce provides new opportunities for companies to reach consumers, it creates unprecedented challenges for companies trying to protect intellectual property (IP) and fight counterfeiting, and it raises important privacy and competition issues.

The role of intellectual property in promoting innovation

Strengthening IP protections and combating the proliferation of counterfeit goods remains a top priority for the industry. Many leading footwear brands are incorporating cutting-edge technologies and innovations into their products, and our members work hard to uphold, promote, and closely safeguard the integrity of their brands. When a consumer buys a pair of shoes, there is much more involved with that purchase than the actual product. A company's

¹ FDRA Spring 2018 National Shoe Sales Survey - <http://fdra.org/wp-content/uploads/2018/04/final-2018-spring-nat-poll-shoes.pdf>

logo and brand name embody the company's reputation, values, quality, product safety standards, chemical safety standards, its workers, and the enduring relationship the brand has built with the consumer. When a bad actor sells a counterfeit good to an unknowing customer, it undermines each of these vitally important areas and risks potential harm to the consumer.

Today's dynamic online retail landscape significantly increases opportunities for bad actors to reach consumers with counterfeit goods, very often on the same platforms used for legitimate merchandise. Consumers generally have little information on third-party sellers online and many may assume the brand has evaluated the product for quality and legitimacy since it is allowed to be sold on a popular e-commerce website. In January 2018, the Government Accountability Office (GAO) released the troubling findings that, of the 47 items the agency purchased from third-party sellers on popular e-commerce platforms, 20 turned out to be counterfeit. In fact, every platform selected for the GAO study yielded at least one counterfeit product.

To address this important issue, FDRA has worked closely with a number of U.S. government agencies, including testifying for the annual Special 301 Review conducted by the United States Trade Representative (USTR) and providing input to the Senate Finance Committee as part of its recent e-commerce investigation. FDRA member companies have also participated in programs internationally to address IP shortfalls, such as the Memorandum of Understanding led by the European Commission, which helps facilitate collaboration between brands and several major selling platforms. Footwear companies work with law enforcement, regularly send cease and desist letters to stop the sale of counterfeit footwear, and support campaigns to increase awareness of counterfeits and the negative impacts these illegal goods have on innovation and consumers.

FDRA believes, however, that there are a number of important steps platforms could take to help better address these challenges. Platforms could share full and detailed data with rights owners, such as listings that have been proactively and reactively removed, account information of sellers that have been suspended or banned from the platform, and account information of repeat infringers. These platforms should also use information they have for the purchase of legitimate goods to proactively identify suspicious listings – information that might include suspiciously low price levels, inordinate shipping times (over 14 business days), multiple products available (different sizes and colorways), negative sellers' history and feedback, lack of pictures (e.g. product pictures, pictures of labels, etc.), and lack of information in the listing description.

When platforms learn illicit items have been sold, they should notify the consumer and use the profits to invest in anti-counterfeiting measures. In addition, platforms can use automated tools to proactively address this problem and prevent future occurrences. For example, platforms can proactively screen listings and use algorithms and machine learning to flag potential illegal content. Platforms can also adapt their existing anti-fraud systems to tackle the problem of online counterfeits.

FDRA greatly appreciates the Commission's efforts to closely examine this issue, because stopping the rise in counterfeit footwear is critical to both protecting footwear consumers and protecting U.S. footwear jobs.

The intersection between privacy, data, and competition

As the Internet has grown and expanded as a key tool for connecting brands and consumers, so have the challenges and responsibilities for brands as they relate to Internet user privacy and data. As mentioned, buying a pair of shoes or visiting a company's website involves more than shopping for or purchasing a pair of shoes; these activities directly impact the relationship between consumer and brand. Central to this relationship is the importance of maintaining and safeguarding consumer trust. In recent years, companies in a range of sectors have become acutely aware of the importance of ensuring that their customers have a high level of trust when it comes to how these companies collect, manage, and share their Internet data and protect their privacy.

At the same time, online users have developed expectations on the convenience, customization, and experience that this data makes possible. It plays a key role in everyday Internet activities that range from receiving shopping recommendations to engaging on social media to tracking the amount of physical activity over time with a fitness app. Much of what makes the Internet so popular and useful today is directly connected to data, and consumers continue to want new, user-friendly, and personalized experiences.

While much of this data may be necessary for these experiences, it is critical that companies provide clear notice that informs consumers about what personal data is collected, how it is used, and with whom it is shared. Companies should work to ensure that data clarifications and notifications adequately address consumer expectations. At the same time, while companies are providing this notice, they should not be required to do so in a way that results in unnecessary and constant notices that negatively impact the user experience.

Many companies now face an additional challenge when it comes to Internet data as a number of state legislatures have put forward proposals to form their own data collection and notification regimes, following high-profile news stories on lack of proper data procedure notifications. As we have seen in other policy areas, a patchwork of state laws creates tremendous uncertainty for companies that are trying to do the right thing when it comes to protecting their customers. It also drives up costs for both businesses and consumers and often fails to adequately address the problem.

As the FTC examines market power and competition, we are interested to see what can be learned about the impact on competition with the emergence of popular online marketplace platforms. Platform operators provide access to FDRA members to reach consumers on their platforms, and platforms facilitate the flow of personal and transactional data moving back and forth as consumers search for and purchase products. The operators of certain marketplace platforms not only host FDRA members and other retailers on their platforms, but they also compete with them, offering branded products and competing private label products to consumers on their platforms. We suggest the FTC review the dual role that platforms may enjoy, as marketplace operators and marketplace participants, and consider how guardrails could ensure healthy competition on these platforms.

FDRA recognizes the importance of developing policy solutions in this area that serve Internet consumers and provide certainty to businesses when it comes to consumer data, privacy, and competition. Such policy solutions should provide clear definitions of data, recognizing that there are different consumer expectations for different types of data (for example, fitness data should not be treated the same as personal health data). It is also critical to ensure that regulations in this area are not overly restrictive and do not impede the use of technology, because this would have the unintended consequence of harming consumers, limiting their online experience, and stifling U.S. innovation.

Conclusion

The retail sector has changed dramatically since the FTC's Global Competition and Innovation hearings in 1995, witnessing both the tremendous opportunities and challenges that come with new technology and innovation. As the FTC explores the state of competition and consumer protection in the 21st century, FDRA looks forward to participating throughout the hearing process, and we stand ready to work with the Commission on efforts to help address these important issues facing U.S. footwear companies and consumers alike.

Sincerely,

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Matt Priest
President & CEO
Footwear Distributors and Retailers of America