

**Open Meeting of the Federal Trade Commission  
November 18, 2021**

**Public Submissions**

1. Joseph Aquilina
2. Emily Brill
3. Tinee Carraker
4. Jeff Chester
5. Theresa Ginder
6. Scott Johnson
7. Chris Jones
8. Keith Miller
9. Doug Kantor
10. Gerry Kettler
11. Meghan Long
12. Tin Muang
13. Mike McShane
14. Lilian Pedroso Hernandez
15. Aurelien Portuese
16. Duane Pozza
17. Robert Purvin
18. Steve Ramirez
19. Daniel Rangel
20. Gary Redner
21. Aisa Showery
22. Cheryl Sommer
23. Michael Steger
24. Matt Stoller
25. Rohaan Syed
26. Carl Szabo
27. Robert Tobiassen
28. Jon Wickizer
29. Katelyn Wickizer
30. Tera Wickizer
31. Jimmy Wright

**From:** Aquilina, Joseph <[REDACTED]>

**Sent:** Monday, November 15, 2021 4:31 PM

**To:** OpenMeeting <openmeetings@ftc.gov>

**Subject:** Consumer Brands Association Comment Re. 6(b) Study on Supply Chain Disruptions

Please find attached Consumer Brands Association's Comment related to the November 18, 2021, Open Commission Meeting and specifically on the agenda item for 6(b) Study on Supply Chain Disruptions.

Respectfully submitted,

**Joseph Aquilina**  
Director and Counsel  
Consumer Brands Association  
[REDACTED]

CPG demand is up 8.7%, creating new pressure on the industry. [Learn more](#).



November 15, 2021

Lina M. Khan, Chair  
Noah J. Phillips, Commissioner  
Rebecca K. Slaughter, Commissioner  
Christine S. Wilson, Commissioner  
Federal Trade Commission

*RE: Public Comment to Open Commission Meeting - November 18, 2021*

Dear Chair and Commissioners,

The Consumer Brands Association champions the industry whose products Americans depend on every day, representing more than 1,700 iconic brands. The household, personal care, food and beverage products manufactured by the consumer packaged goods (CPG) industry contribute \$2 trillion to the U.S. economy and support more than 20 million American jobs. As a provider of a variety of goods to consumers and accounting for one-fifth of all freight shipping in the United States, the CPG industry is a vital stakeholder and expert on the supply chain ecosystem with members that work to remove barriers in providing American consumers the affordable products they rely on every day.

Consumer Brands appreciates the opportunity to provide comment to the Federal Trade Commission as it considers a study to better understand the impact on competition of ongoing supply chain disruptions and gather information from other suppliers and retailers. Should such a study move forward, Consumer Brands believes it is essential to have the perspective of the CPG industry as it ascertains the comprehensive impact to consumers on supply chain disruptions.

COVID-19 dramatically underscored the role of essential consumer products during times of national emergency. Our industries worked diligently to meet demand for products indispensable to pandemic response like food, beverages, disinfectants, cleansers, hand sanitizer, toilet paper and more. These essential items are critically important to the ability of all Americans to stay safe and at home, sustainability of our nation's health care facilities, and vital to the commercial and community services necessary for critical infrastructure. Importantly, these products are necessary in the execution of effective vaccination campaigns and are all but required among those occupations in all essential sectors where there is an unavoidable risk of exposures. COVID-19 taught us that CPG products are essential to a future pandemic response.

As a willing partner and representing the CPG industries, we look forward to working together should the study move forward. Thank you very much for your consideration.

Respectfully submitted,

A handwritten signature in black ink that reads 'Joseph T. Aquilina'.

Joseph Aquilina  
Director and Counsel

**Consumer Brands Association**  
1001 19<sup>th</sup> Street North, 7<sup>th</sup> Floor  
Arlington, VA 22209

**Powering every day.**

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>  
Sent: Sunday, November 14, 2021 8:28 PM  
To: OpenMeeting <openmeetings@ftc.gov>  
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for November 18, 2021 Open Commission Meeting

Submitted on Sunday, November 14, 2021 - 20:28 Submitted by anonymous user: [REDACTED] Submitted values are:

First Name: Emily

Last Name: Brill

Affiliation: Executive Editor and Founder, The Canine Review Full Email Address: [REDACTED] Confirm Email Address:

[REDACTED]

Telephone: + [REDACTED]

FTC-Related Topic: Consumer Protection

Register to speak during meeting: Yes

Link to web video statement:

Submit written comment: Good evening. What is the status of the notices you announced on Oct. 13 and can you explain why the notices are not available on the website even though they're public documents? What is the FTC doing specifically, if anything, about news businesses like Forbes and Money that appear to be engaging in full-scale "pay to play" online sales of everything from "Best Pet Insurance" rankings to "custom profiles"? Forbes is so unabashed about the practice, the pricing menu is published on its website here <https://i.forbesimg.com/assets/pdf/Premium-Profile-CTA.pdf> What are regulators doing about this?

The results of this submission may be viewed at:

<https://www.ftc.gov/node/1591350/submission/31>

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>  
Sent: Tuesday, November 16, 2021 6:05 AM  
To: OpenMeeting <openmeetings@ftc.gov>  
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for November 18, 2021 Open Commission Meeting

Submitted on Tuesday, November 16, 2021 - 06:05 Submitted by anonymous user [REDACTED]

Submitted values are:

First Name: Tinee

Last Name: Carraker

Affiliation: member of the public

Full Email Address: [REDACTED]

Telephone: [REDACTED]

FTC-Related Topic: Consumer Protection

Register to speak during meeting: No

Link to web video statement:

Submit written comment:

FTC the danger the CFPB has put the United States economy in must be addressed & corrected. I documented the CFPB chosing not to do its job. As a result the US Courts were dishonored & the United States continues to be stolen from.

My corporations are unique. They are designed after the US Constitution in order to enrich the United States.

They voluntary have the House & Senate as their accountability & oversight.

The IRS has access as well.

This is to close off the tax loopholes to OTP.

I like looking at United States rules & laws for the most unorthodox way to say Thank You to my country.

Anyone can form a company and make themselves rich.

Forming a company or several that enrich the United States is very unorthodox.

Have to follow United States rules & laws anyway, saw no reason not to do this.

FTC how are consumers supposed to believe the CFPB will fight for them? The public can see the CFPB sided with & protected parties that were stealing from the United States.

The results of this submission may be viewed at:

<https://www.ftc.gov/node/1591350/submission/3>

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>

Sent: Wednesday, November 10, 2021 1:26 PM

To: OpenMeeting <openmeetings@ftc.gov>

Subject: Form submission from: Speaker Registration and Public Comment Submission Form for November 18, 2021 Open Commission Meeting

Submitted on Wednesday, November 10, 2021 - 13:25 Submitted by anonymous user: [REDACTED]

Submitted values are:

First Name: Jeff

Last Name: Chester

Affiliation: Center for Digital Democracy Full Email Address [REDACTED]

Telephone: [REDACTED]

FTC-Related Topic:

- Competition
- Consumer Protection
- FTC Operations

Register to speak during meeting: Yes

Link to web video statement:

Submit written comment:

The results of this submission may be viewed at:

<https://www.ftc.gov/node/1591350/submission/7>

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>

Sent: Sunday, November 14, 2021 2:29 PM

To: OpenMeeting <openmeetings@ftc.gov>

Subject: Form submission from: Speaker Registration and Public Comment Submission Form for November 18, 2021 Open Commission Meeting

Submitted on Sunday, November 14, 2021 - 14:28 Submitted by anonymous user: [REDACTED]

Submitted values are:

First Name: Theresa

Last Name: Ginder

Affiliation: Worked in healthcare medical offices my entire life concerned social media is grossly affecting our younger population Full Email Address:

[REDACTED]

Telephone: [REDACTED]

FTC-Related Topic:

- Competition
- Consumer Protection
- FTC Operations

Register to speak during meeting: Yes

Link to web video statement:

Submit written comment:

The results of this submission may be viewed at:

<https://www.ftc.gov/node/1591350/submission/27>

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>

Sent: Monday, November 15, 2021 7:24 PM

To: OpenMeeting <openmeetings@ftc.gov>

Subject: Form submission from: Speaker Registration and Public Comment Submission Form for November 18, 2021 Open Commission Meeting

Submitted on Monday, November 15, 2021 - 19:24 Submitted by anonymous user: [REDACTED]

Submitted values are:

First Name: Scott

Last Name: Johnson

Affiliation: Johnson Enterprises

Full Email Address [REDACTED]

Telephone: [REDACTED]

FTC-Related Topic:

- Competition
- Consumer Protection
- FTC Operations

Register to speak during meeting: No

Link to web video statement:

<https://www.buildingfortunesradio.com/scott-johnson-peter-mingils/bf-3990>

Submit written comment:

The results of this submission may be viewed at:

<https://www.ftc.gov/node/1591350/submission/23>



From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>

Sent: Sunday, November 14, 2021 12:37 PM

To: OpenMeeting <openmeetings@ftc.gov>

Subject: Form submission from: Speaker Registration and Public Comment Submission Form for November 18, 2021 Open Commission Meeting

Submitted on Sunday, November 14, 2021 - 12:36 Submitted by anonymous user [REDACTED]

Submitted values are:

First Name: Chris

Last Name: Jones

Affiliation: National Grocers Association Full Email Address: [REDACTED]

Telephone: + [REDACTED]

FTC-Related Topic: Competition

Register to speak during meeting: Yes

Link to web video statement:

Submit written comment:

The results of this submission may be viewed at:

<https://www.ftc.gov/node/1591350/submission/19>

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>

Sent: Wednesday, November 10, 2021 5:04 PM

To: OpenMeeting <openmeetings@ftc.gov>

Subject: Form submission from: Speaker Registration and Public Comment Submission Form for November 18, 2021 Open Commission Meeting

Submitted on Wednesday, November 10, 2021 - 17:03 Submitted by anonymous user [REDACTED] Submitted values are:

First Name: Keith

Last Name: Miller

Affiliation: Franchisee Advocacy Consulting Full Email Address [REDACTED] Confirm Email Address:

[REDACTED]

Telephone: [REDACTED]

FTC-Related Topic: Consumer Protection

Register to speak during meeting: Yes

Link to web video statement:

Submit written comment:

The results of this submission may be viewed at:

<https://www.ftc.gov/node/1591350/submission/23>

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>

Sent: Monday, November 15, 2021 5:14 PM

To: OpenMeeting <openmeetings@ftc.gov>

Subject: Form submission from: Speaker Registration and Public Comment Submission Form for November 18, 2021 Open Commission Meeting

Submitted on Monday, November 15, 2021 - 17:13 Submitted by anonymous user: [REDACTED] Submitted values are:

First Name: Doug

Last Name: Kantor

Affiliation: NACS

Full Email Address: [REDACTED]

Telephone: +[REDACTED]

FTC-Related Topic: Competition

Register to speak during meeting: Yes

Link to web video statement: VA

Submit written comment:

The results of this submission may be viewed at:

<https://www.ftc.gov/node/1591350/submission/19>

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>

Sent: Sunday, November 14, 2021 12:21 PM

To: OpenMeeting <openmeetings@ftc.gov>

Subject: Form submission from: Speaker Registration and Public Comment Submission Form for November 18, 2021 Open Commission Meeting

Submitted on Sunday, November 14, 2021 - 12:20 Submitted by anonymous user [REDACTED]

Submitted values are:

First Name: Gerry

Last Name: Kettler

Affiliation: Niemann Foods, Inc.

Full Email Address [REDACTED] Confirm Email Address: [REDACTED]

Telephone: [REDACTED]

FTC-Related Topic: Competition

Register to speak during meeting: Yes

Link to web video statement:

Submit written comment:

The results of this submission may be viewed at:

<https://www.ftc.gov/node/1591350/submission/7>

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>

Sent: Thursday, November 11, 2021 2:51 PM

To: OpenMeeting <openmeetings@ftc.gov>

Subject: Form submission from: Speaker Registration and Public Comment Submission Form for November 18, 2021 Open Commission Meeting

Submitted on Thursday, November 11, 2021 - 14:50 Submitted by anonymous user: [REDACTED]

Submitted values are:

First Name: Meghan

Last Name: Long

Affiliation: Student Loan Borrower's Defense to Repayment application Full Email Address: [REDACTED] Confirm Email Address:

[REDACTED]

Telephone: [REDACTED]

FTC-Related Topic: Consumer Protection

Register to speak during meeting: No

Link to web video statement:

Submit written comment: What can you and/or the DOJ do about these Borrower's Defense to Repayment applications? I submitted mine over a year ago and it's still in review. It's for discharging my loans that Wright Career College - Wichita Kansas took out without my applying for and signing for and Wright Career College did not provide any of the services they agreed to provide in their student handbook. Wright Career College was already involved in a class action lawsuit and it's insurance company paid out a settlement some years ago. This was after Wright Career College abruptly closed after filing

bankruptcy. I'm having a hard time disputing some of the loans for Wright

Career College with the Credit Bureaus for fraud while some have been confirmed fraudulent and removed from my Transunion credit report.

The results of this submission may be viewed at:

<https://www.ftc.gov/node/1591350/submission/7>

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>

Sent: Saturday, November 13, 2021 10:50 AM

To: OpenMeeting <openmeetings@ftc.gov>

Subject: Form submission from: Speaker Registration and Public Comment Submission Form for November 18, 2021 Open Commission Meeting

Submitted on Saturday, November 13, 2021 - 10:49 Submitted by anonymous user: [REDACTED] Submitted values are:

First Name: TIN

Last Name: MAUNG

Affiliation: MR

Full Email Address: [REDACTED]

Confirm Email Address: [REDACTED]

Telephone: [REDACTED]

FTC-Related Topic: FTC Operations

Register to speak during meeting: No

Link to web video statement: Myanmar

Submit written comment: Good

The results of this submission may be viewed at:

<https://www.ftc.gov/node/1591350/submission/7>

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>

Sent: Monday, November 15, 2021 12:20 PM

To: OpenMeeting <openmeetings@ftc.gov>

Subject: Form submission from: Speaker Registration and Public Comment Submission Form for November 18, 2021 Open Commission Meeting

Submitted on Monday, November 15, 2021 - 12:19 Submitted by anonymous user [REDACTED] Submitted values are:

First Name: Mike

Last Name: McShane

Affiliation: URM Stores Inc.

Full Email Address: [REDACTED]

Telephone: [REDACTED]

FTC-Related Topic: Competition

Register to speak during meeting: Yes

Link to web video statement:

Submit written comment:

The results of this submission may be viewed at:

<https://www.ftc.gov/node/1591350/submission/7>

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>

Sent: Wednesday, November 10, 2021 3:18 PM

To: OpenMeeting <openmeetings@ftc.gov>

Subject: Form submission from: Speaker Registration and Public Comment Submission Form for November 18, 2021 Open Commission Meeting

Submitted on Wednesday, November 10, 2021 - 15:18 Submitted by anonymous user: [REDACTED]

Submitted values are:

First Name: Lilian

Last Name: Pedroso Hernandez

Affiliation: OMB

Full Email Address [REDACTED] Confirm Email Address [REDACTED]

Telephone: [REDACTED]

FTC-Related Topic:

- Competition
- Consumer Protection
- FTC Operations

Register to speak during meeting: No

Link to web video statement: Florida

Submit written comment:

The results of this submission may be viewed at:

<https://www.ftc.gov/node/1591350/submission/19>



From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>

Sent: Monday, November 15, 2021 9:14 AM

To: OpenMeeting <openmeetings@ftc.gov>

Subject: Form submission from: Speaker Registration and Public Comment Submission Form for November 18, 2021 Open Commission Meeting

Submitted on Monday, November 15, 2021 - 09:13 Submitted by anonymous user: [REDACTED] Submitted values are:

First Name: Aurelien

Last Name: Portuese

Affiliation: The Schumpeter Project on Competition Policy at ITIF Full Email Address: [REDACTED]

Telephone: +[REDACTED]

FTC-Related Topic: Competition

Register to speak during meeting: Yes

Link to web video statement:

Submit written comment:

The results of this submission may be viewed at:

<https://www.ftc.gov/node/1591350/submission/3>

**From:** Pozza, Duane <[REDACTED]>  
**Sent:** Monday, November 15, 2021 2:16 PM  
**To:** OpenMeeting <openmeetings@ftc.gov>  
**Subject:** Consumer Technology Association comment in regards to November 18, 2021 open meeting

Please see attached comment regarding the November 18, 2021 Open Commission Meeting, submitted by the Consumer Technology Association.

Regards,



Duane C. Pozza  
Attorney at Law  
[REDACTED]

Wiley Rein LLP

NOTICE: This message (including any attachments) from Wiley Rein LLP may constitute an attorney-client communication and may contain information that is PRIVILEGED and CONFIDENTIAL and/or ATTORNEY WORK PRODUCT. If you are not an intended recipient, you are hereby notified that any dissemination of this message is strictly prohibited. If you have received this message in error, please do not read, copy or forward this message. Please permanently delete all copies and any attachments and notify the sender immediately by sending an e-mail to [Information@wiley.law](mailto:Information@wiley.law)

November 15, 2021

Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

**Re: Comment on Agenda Item for November 18 Open Meeting: Proposal to Issue Section 6(b) Orders Related to the Supply Chain**

Dear Chair Khan and Commissioners Phillips, Slaughter, and Wilson:

The Consumer Technology Association (CTA) submits this comment in advance of the Commission's November 18, 2021 open meeting.<sup>1</sup> CTA is North America's largest technology trade association. Our members are the world's leading innovators—from startups to global brands—helping support more than 18 million American jobs. CTA owns and produces CES®—the most influential tech event in the world. CTA members operate in a competitive marketplace to produce innovative products that provide enormous benefits to consumers and power the economy.

CTA writes to address the November 18 open meeting agenda item regarding a vote on whether to initiate a study under Section 6(b) of the FTC Act concerning the impact of supply chain disruptions on competition.<sup>2</sup> Should the Commission move forward with this proposal, CTA encourages the Commission to ensure that competition issues posed by the global shipping industry are within the purview of this study. Ocean carriers currently enjoy—and exploit—a statutory antitrust exemption, enabling them to engage in conduct that has exacerbated supply chain disruptions caused by the pandemic and other global challenges, leading to higher prices for American importers, exporters, and consumers. The FTC's Section 6(b) study could help to inform future legislative and regulatory actions in this area, including addressing the antitrust exemption for the shipping industry.

As the nation's largest technology trade association, CTA understands the importance of robust and resilient supply chains to American technology, economic success, and global competitiveness. CTA has supported ongoing efforts across the federal government to address supply chain challenges facing the United States, including President Biden's comprehensive approach to reviewing the U.S. supply chain

---

<sup>1</sup> "FTC Announces Tentative Agenda for November 18 Open Commission Meeting" Nov. 10, 2021, <https://www.ftc.gov/news-events/press-releases/2021/11/ftc-announces-tentative-agenda-november-18-open-commission>.

<sup>2</sup> *Id.*

initiated earlier this year.<sup>3</sup> The association also has engaged in its own studies and analyses to help policymakers and industry stakeholders understand how companies and consumers rely on global supply chains and what can be done to solve these problems.<sup>4</sup>

The experiences of CTA's members make clear that, while manufacturers, distributors, and retailers in the United States are working around the clock to rebound from the pandemic and ensure the availability of goods for their customers at reasonable prices, the global shipping industry has been stalling this progress by exploiting supply chain challenges for a profit. As we have recently explained, this "tiny but powerful group has seized on the crisis as a chance to cash in ... using the port slowdowns to impose exploitative prices and surcharges on U.S. importers and exporters."<sup>5</sup> Shippers have, for example, significantly raised prices for global shipping, and have capitalized on port delays by imposing exorbitant fees for time that containers spend waiting to be unloaded, even when those containers cannot yet access the port.<sup>6</sup> A container that pre-pandemic cost \$2,500 to ship can now cost \$25,000 or more.<sup>7</sup>

Moreover, the ocean shipping industry has consolidated significantly over the past 20 years, with the ten largest carriers—all of which are foreign-owned—now controlling more than 80 percent of the market.<sup>8</sup> And although the Biden Administration has recognized the problems caused by today's shipping industry,<sup>9</sup> the Administration lacks an important tool to address these issues because the shipping industry currently enjoys the "oldest surviving U.S. statutory antitrust exemption."<sup>10</sup> While this exemption dates to 1916, the U.S. Department of Justice (DOJ) has repeatedly called for its elimination over the past 20 years.<sup>11</sup>

---

<sup>3</sup> Press Release, "CTA Supports Administration's Supply Chain Review," CTA (Feb. 24, 2021), <https://cta.tech/Resources/Newsroom/Media-Releases/2021/February/TA-Supports-Administration-Supply-Chain-Review>.

<sup>4</sup> See, e.g., CTA White Paper, "Coping with Crisis: SME Supply Chain Issues in the Pandemic Era" (Sept. 2021), <https://shop.cta.tech/collections/research/products/coping-with-crisis-sme-supply-chain-issues-in-the-pandemic-era>; Laura M. Baughman and Dr. Joseph F. Francois, "Imports Work for American Workers," Trade Partnership Worldwide LLC (May 2021), <https://tradepartnership.com/wp-content/uploads/2021/05/ImportStudy2021FINAL.pdf>; Gary Arlen, "Protecting the Retail Supply Chain," It Is Innovation Magazine (Jan. 4, 2021), <https://www.cta.tech/Resources/i3-Magazine/i3-Issues/2021/January-February/Protecting-the-Retail-Supply-Chain>.

<sup>5</sup> Gary Shapiro, "Put the brakes on the shipping antitrust exemption," Washington Examiner (Oct. 18, 2021), <https://www.washingtonexaminer.com/opinion/op-eds/put-the-brakes-on-the-shipping-antitrust-exemption>.

<sup>6</sup> See, e.g., *id.*; Press Release, "Fact Sheet: Executive Order on Promoting Competition in the American Economy," The White House (Jul. 9, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/09/fact-sheet-executive-order-on-promoting-competition-in-the-american-economy/> ("White House July 9 Fact Sheet").

<sup>7</sup> See Roslan Khasawneh and Muyu Xu, "China-U.S. container shipping rates sail past \$20,000 to record," Reuters (Aug. 5, 2021), <https://www.reuters.com/business/china-us-container-shipping-rates-sail-past-20000-record-2021-08-05/>.

<sup>8</sup> See White House July 9 Fact Sheet.

<sup>9</sup> See *id.*; "Executive Order on Promoting Competition in the American Economy," §§ 1, 5(o) (Jul. 9, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/>.

<sup>10</sup> "Competition Issues in Liner Shipping," Contribution from the United States to Working Party No. 2 on Competition and Regulation, OECD, at 2 (May 26, 2015), [https://www.ftc.gov/system/files/attachments/us-submissions-oecd-2010-present-other-international-competition-fora/liner\\_shipping\\_us.pdf](https://www.ftc.gov/system/files/attachments/us-submissions-oecd-2010-present-other-international-competition-fora/liner_shipping_us.pdf).

<sup>11</sup> See, e.g., *id.* at 4; "Competition Enforcement and Regulatory Alternatives," Contribution from the United States to Working Party No. 2 on Competition and Regulation, OECD, at 5 (May 27, 2021), [https://www.ftc.gov/system/files/attachments/us-submissions-oecd-2010-present-other-international-competition-fora/competition\\_enforcement\\_and\\_regulatory\\_alternatives\\_us\\_submission.pdf](https://www.ftc.gov/system/files/attachments/us-submissions-oecd-2010-present-other-international-competition-fora/competition_enforcement_and_regulatory_alternatives_us_submission.pdf).

To the extent that the Commission moves forward with its proposal to commence a Section 6(b) study on supply chain disruptions, CTA urges the Commission to bring shipping industry market dynamics within the purview of that study. The valuable information that the FTC gathers through this process will be helpful as the U.S. government considers how best to respond to supply chain challenges facing the United States, including Congress's consideration of the bipartisan Ocean Shipping Reform Act of 2021, which attempts to limit the ability of the shipping industry to charge exploitative prices.<sup>12</sup>

CTA appreciates the Commission's attention to critical supply chain issues and looks forward to continuing to work with the U.S. government to promote American leadership in technology and innovation.

Sincerely,

CONSUMER TECHNOLOGY ASSOCIATION

/s/ Gary Shapiro

Gary Shapiro

President and CEO

/s/ Michael Petricone

Michael Petricone

Sr. VP, Government and Regulatory Affairs

/s/ Rachel S. Nemeth

Rachel S. Nemeth

Senior Director, Regulatory Affairs

---

<sup>12</sup> See Ocean Shipping Reform Act of 2021, H.R. 4996, 117th Cong (introduced Aug. 10, 2021).

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>

Sent: Sunday, November 14, 2021 12:47 AM

To: OpenMeeting <openmeetings@ftc.gov>

Subject: Form submission from: Speaker Registration and Public Comment Submission Form for November 18, 2021 Open Commission Meeting

Submitted on Sunday, November 14, 2021 - 00:46 Submitted by anonymous user [REDACTED] Submitted values are:

First Name: Robert

Last Name: Purvin

Affiliation: Chairman, American Association of Franchisees and Dealers Full Email Address [REDACTED] Confirm Email Address [REDACTED]

Telephone: + [REDACTED]

FTC-Related Topic:

- Consumer Protection
- FTC Operations

Register to speak during meeting: Yes

Link to web video statement:

Submit written comment:

The AAFD has urged the FTC to broaden its scope of oversight of the franchising industry beyond presale disclosures under the authority of Section 5 of the Federal Trade Act to address all forms of unfair trade practices.

In particular, franchisors generally represent that group purchasing provides an economic advantage to owning a franchise, but too often franchisors wield their ability to dictate suppliers to the economic benefit of the franchisor and the knowing detriment to the franchisee. Rather than use the system's purchasing power to drive down the cost of doing business, many franchisors are willing to authorize a higher price in exchange for commissions and rebates to the franchisor, and often with little or no regard to the quality of the required product. Such practices would amount to both price fixing, monopolization, and illegal tying practices in other industries, and justify a deep investigation by the FTC and action where appropriate.

The results of this submission may be viewed at:

<https://www.ftc.gov/node/1591350/submission/3>

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>

Sent: Wednesday, November 10, 2021 2:25 PM

To: OpenMeeting <openmeetings@ftc.gov>

Subject: Form submission from: Speaker Registration and Public Comment Submission Form for November 18, 2021 Open Commission Meeting

Submitted on Wednesday, November 10, 2021 - 14:24 Submitted by anonymous user: [REDACTED] Submitted values are:

First Name: Steve

Last Name: Ramirez

Affiliation: Protecting the consumer under the Congress Act Full Email Address: [REDACTED] Confirm Email Address:

[REDACTED]

Telephone: [REDACTED]

FTC-Related Topic: FTC Operations

Register to speak during meeting: No

Link to web video statement:

Submit written comment: Helping to protect the consumer under the Congress Act Washington D.C. I would like to the thank all the Government Agency who were involved, Helping to do so. It was a learning experience that I wouldn't anyone would have to experience personally. They took a big role in my situation considering the circumstances. I would like to personally thank all of them for there hard work & dedication. I appreciate it a lot.

The results of this submission may be viewed at:

<https://www.ftc.gov/node/1591350/submission/15>

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>

Sent: Thursday, November 11, 2021 10:16 AM

To: OpenMeeting <openmeetings@ftc.gov>

Subject: Form submission from: Speaker Registration and Public Comment Submission Form for November 18, 2021 Open Commission Meeting

Submitted on Thursday, November 11, 2021 - 10:15 Submitted by anonymous user [REDACTED] Submitted values are:

First Name: Daniel

Last Name: Rangel

Affiliation: Public Citizen's Global Trade Watch Full Email Address: [REDACTED] Confirm Email Address: [REDACTED]

Telephone: [REDACTED]

FTC-Related Topic: Competition

Register to speak during meeting: Yes

Link to web video statement:

Submit written comment:

The results of this submission may be viewed at:

<https://www.ftc.gov/node/1591350/submission/3>



From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>

Sent: Sunday, November 14, 2021 12:35 PM

To: OpenMeeting <openmeetings@ftc.gov>

Subject: Form submission from: Speaker Registration and Public Comment Submission Form for November 18, 2021 Open Commission Meeting

Submitted on Sunday, November 14, 2021 - 12:34 Submitted by anonymous user: [REDACTED]

Submitted values are:

First Name: Gary

Last Name: Redner

Affiliation: Redners Markets

Full Email Address [REDACTED]

Telephone: [REDACTED]

FTC-Related Topic: Competition

Register to speak during meeting: Yes

Link to web video statement:

Submit written comment:

The results of this submission may be viewed at:

<https://www.ftc.gov/node/1591350/submission/15>

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>

Sent: Wednesday, November 10, 2021 1:32 PM

To: OpenMeeting <openmeetings@ftc.gov>

Subject: Form submission from: Speaker Registration and Public Comment Submission Form for November 18, 2021 Open Commission Meeting

Submitted on Wednesday, November 10, 2021 - 13:31 Submitted by anonymous user: [REDACTED]

Submitted values are:

First Name: Aisa

Last Name: Showery

Affiliation: State DOT

Full Email Address: [REDACTED] Confirm Email Address: [REDACTED]

Telephone: [REDACTED]

FTC-Related Topic: FTC Operations

Register to speak during meeting: No

Link to web video statement:

Submit written comment:

The results of this submission may be viewed at:

<https://www.ftc.gov/node/1591350/submission/11>

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>

Sent: Sunday, November 14, 2021 12:27 PM

To: OpenMeeting <openmeetings@ftc.gov>

Subject: Form submission from: Speaker Registration and Public Comment Submission Form for November 18, 2021 Open Commission Meeting

Submitted on Sunday, November 14, 2021 - 12:26 Submitted by anonymous user [REDACTED]

Submitted values are:

First Name: Cheryl

Last Name: Sommer

Affiliation: Kaune's Neighborhood Market Full Email Address: [REDACTED] Confirm Email Address: [REDACTED]

Telephone: [REDACTED]

FTC-Related Topic: Competition

Register to speak during meeting: Yes

Link to web video statement:

Submit written comment:

The results of this submission may be viewed at:

<https://www.ftc.gov/node/1591350/submission/11>

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>

Sent: Sunday, November 14, 2021 9:05 PM

To: OpenMeeting <openmeetings@ftc.gov>

Subject: Form submission from: Speaker Registration and Public Comment Submission Form for November 18, 2021 Open Commission Meeting

Submitted on Sunday, November 14, 2021 - 21:05 Submitted by anonymous user [REDACTED] Submitted values are:

First Name: Michael

Last Name: Steger

Affiliation: Michigan

Full Email Address: [REDACTED]

Telephone: +[REDACTED]

FTC-Related Topic: FTC Operations

Register to speak during meeting: Yes

Link to web video statement:

Submit written comment:

The results of this submission may be viewed at:

<https://www.ftc.gov/node/1591350/submission/35>

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>

Sent: Thursday, November 11, 2021 3:03 PM

To: OpenMeeting <openmeetings@ftc.gov>

Subject: Form submission from: Speaker Registration and Public Comment Submission Form for November 18, 2021 Open Commission Meeting

Submitted on Thursday, November 11, 2021 - 15:03 Submitted by anonymous user: [REDACTED] Submitted values are:

First Name: Matt

Last Name: Stoller

Affiliation: American Economic Liberties Project Full Email Address: [REDACTED] Confirm Email Address:

[REDACTED]

Telephone: [REDACTED]

FTC-Related Topic: Competition

Register to speak during meeting: Yes

Link to web video statement: DC

Submit written comment: Yes

The results of this submission may be viewed at:

<https://www.ftc.gov/node/1591350/submission/11>

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>

Sent: Thursday, November 11, 2021 5:43 PM

To: OpenMeeting <openmeetings@ftc.gov>

Subject: Form submission from: Speaker Registration and Public Comment Submission Form for November 18, 2021 Open Commission Meeting

Submitted on Thursday, November 11, 2021 - 17:43 Submitted by anonymous user: [REDACTED]

Submitted values are:

First Name: Rohaan

Last Name: Syed

Affiliation: Hotel Owner

Full Email Address: [REDACTED] Confirm Email Address: [REDACTED]

Telephone: +[REDACTED]

FTC-Related Topic:

- Competition
- Consumer Protection
- FTC Operations

Register to speak during meeting: No

Link to web video statement:

Submit written comment:

The results of this submission may be viewed at:

<https://www.ftc.gov/node/1591350/submission/15>

**From:** Carl M. Szabo <[REDACTED]>

**Sent:** Sunday, November 14, 2021 9:58 AM

**To:** OpenMeeting <openmeetings@ftc.gov>

**Cc:** Chris Marchese <[REDACTED]>; Zach Lilly <[REDACTED]>; Robert Winterton <[REDACTED]>; Steve DelBianco <[REDACTED]>; Jennifer Huddleston <[REDACTED]>

**Subject:** NetChoice Public Comment Submission for November 18, 2021 Open Commission Meeting

Please find attached the NetChoice public comment submission of NetChoice for November 18, 2021 Open Commission Meeting.

Thank you,

-Carl

-----  
[Carl Szabo | NetChoice](#)

Vice President and General Counsel  
[REDACTED]

# **NetChoice Comment for the Record: FTC Open Meeting, November 18, 2021**

NetChoice<sup>1</sup> is a trade association of leading internet businesses that promotes the value, convenience, and choice internet business models provide American consumers. Our mission is to make the internet safe for free enterprise and for free expression. We also work to promote the integrity and availability of the internet on a global stage, and are engaged on issues in the states, in Washington, D.C., and in international internet governance organizations.

## **Introduction**

We welcome the opportunity to provide the Federal Trade Commission (FTC) with feedback about the important issues it will consider at its open meeting on November 18th, 2021.

Attached is a report that NetChoice recently conducted highlighting the vigorous competition that is currently underway within the retail sector. In it, we discuss how retail is an ever-evolving industry where competition occurs across multiple channels between a variety of companies with diverse business models.

This helps make clear that retail is not binary - online or offline - and to think in such limited terms does not match reality. As we show in the attached report, and as we experience in our own lives, retail is everywhere - and we seamlessly move from an online experience to an offline and vice-versa without seeing or experiencing a difference and without barriers. Note, that we historically did not treat catalog retail differently from brick and mortar, and neither should we do so with online retailers.

Key findings from the report's consumer survey include:

- 68% prefer to shop at a business that offers both online and in-person shopping;
- More than two thirds conduct either online or offline research in 2-3 places before making a purchase;
- 77% of consumers feel it is important or somewhat important that a retailer offer a physical location;

---

<sup>1</sup> NetChoice is a trade association of e-Commerce and online businesses, at [www.netchoice.org](http://www.netchoice.org). The views expressed here do not necessarily represent the views of every NetChoice member.



- Overwhelming majority feel that shopping is more convenient than ever as retailers offer more fulfillment options; and
- 80% of consumers believe retailers should be treated equally

In the attached report we show how retail businesses continue to change to incorporate multiple avenues of sales. Consider Best Buy which started as brick and mortar only but has grown to sell significantly via BestBuy.com with brick and click experiences. Likewise consider Casper mattresses which started exclusively online but now offer brick and mortar avenues for sales. Or LL Bean which started as a catalog only, then incorporated brick and mortar stores, and now also includes LLBean.com. Finally, and on a personal note, there is Walmart's Bonobos brand, which allows for sales online and in-store, however, the stores only operate as a showroom for the online marketplace.

As shown in the attached report, the difference between online and offline sales is a distinction without a difference.

We also further explain the broader considerations of retail at:  
[NetChoice.org/Retail-is-Everywhere](http://NetChoice.org/Retail-is-Everywhere)

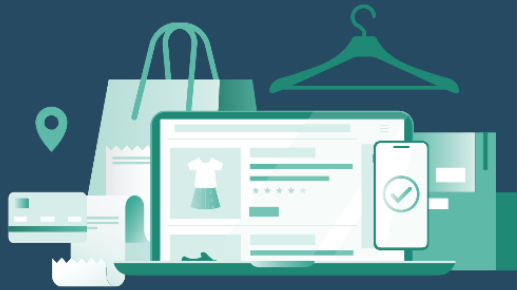
As the Commission moves forward with investigations of the retail marketplace, we urge it to consider the attached report which makes clear that any such investigation must look at the retail marketplace in its totality, not by arbitrary and anachronistic distinctions.

We appreciate the Commission's consideration of our views, and welcome the opportunity to provide any additional information or answer any questions. As always, we stand ready to work with the Commission to achieve beneficial outcomes that promote the interests of the United States and benefit American consumers and innovation.

Sincerely,

Carl Szabo, Vice President & General Counsel  
Chris Marchese, Counsel

**NetChoice**



# Retail is Everywhere

By **NetChoice**

## A look into the current state of retail

By Zach Lilly

# Executive Summary

News reports often warn of a “retail apocalypse” whenever a storefront closes or downsizes. Is this accurate? Are small businesses and brick-and-mortar retailers dying? Are large, online businesses the only ones succeeding? These are questions that some in Washington, both lawmakers and regulators, seem to be grappling with. NetChoice wanted to dive into the retail landscape and how consumers feel about it.

We found that innovation continues to drive the sector, and opportunity abounds for retailers of all sizes. Research indicates that a one-size-fits all approach of doing business has never worked in retail,<sup>1</sup> and retailers are working to meet customers where they are by offering them numerous ways to shop and receive products. Choice in retail continues to expand for both the consumer and the retailer. The typical small and medium-sized business today uses at least five different sales channels, blending both online and offline methods to sell products.<sup>2</sup> Consumers believe shopping is more convenient than ever, prefer retailers that offer both online and in-person shopping, and feel they have many options to choose from when looking to shop based on new NetChoice polling data. Smart retailers - regardless of size - that respond to consistently evolving consumer preferences are reaping the rewards.

Retail is robust and far from being a concentrated market. The vast majority of retail sales in the United States occur outside the largest retailers. In fact, the top five U.S. retailers account for only a quarter of retail sales.<sup>3</sup> And while significant attention is paid to digital technologies, online sales account for only 15% of all retail sales.<sup>4</sup> In reality, the role of physical stores will continue to play an important part of the retail experience. For example, many retailers are leveraging their physical footprint to support and fulfill online sales. Research also shows that online marketplaces are helping the industry grow, particularly small and medium-sized businesses.

Put simply, Americans know what some well-intentioned regulators and policymakers are ignoring: retail is working. As policy discussions mature, and hopefully become more nuanced, interested parties would do well to ground their analysis in an accurate representation of retail.



<sup>1</sup> Deloitte, The Future of Retail Stores, 2021; <https://www2.deloitte.com/us/en/pages/consulting/articles/future-of-retail-stores.html>

<sup>2</sup> Data Catalyst, Super Selling: Most Small Businesses Use Multiple Sales Methods, Oct 2021; <https://datacatalyst.org/wp-content/uploads/2021/10/DCI-Super-Sellers-FINAL-Oct-2021-1.pdf>

<sup>3</sup> National Retail Federation, Top 100 Retailers 2021; <https://nrf.com/blog/2021-top-100-retailers>

<sup>4</sup> National Retail Federation, The State of Retail 2021; <https://nrf.com/topics/economy/state-retail>



# Introduction

In today's landscape we see retail happening everywhere. Retail occurs "when a business sells a product or service to an individual consumer for his or her own use." This is taking place in both online and offline channels including physical stores, social media apps, online marketplaces, and business-owned websites, to name a few. Far from buckling under the combined pressure of a global pandemic and ever shifting consumer habits, retail led the way in business creation growth last year.<sup>5</sup>

Retail isn't just growing, it is expanding, and retailers know there isn't one avenue to retail success. Retailers often pursue every medium available in order to reach shoppers and give them what they want. Retailers are innovating to either meet the existing needs and preferences of shoppers, or to anticipate future ones.

Free market critics and special interest groups in Washington have been quick to peg online sales as the sole reason for retail's continued success. In reality, 80% of all shopping still happens in stores.<sup>6</sup>

In reality, 80% of all shopping still happens in stores.



Indeed, as their narrative goes, retail is a largely stagnant industry that is being swallowed whole by large online retailers that are smashing small businesses. This view, while unsupported by data, has gained traction amongst some Washington lawmakers and led to proposals that would restrict common retail practices and successful business models such as online marketplaces that unite first-party and third-party business.<sup>7</sup> Importantly, our recent survey found that 80% of consumers believe retailers should be treated equally.<sup>8</sup>

In retail, the consumer is at the center of the shopping experience and enjoys an enormous amount of power. Consumers ultimately decide who to reward with a purchase. Consumers are enjoying more convenience and choice as they use a mix of both online and offline channels to conduct research, compare prices, and select the fulfillment option that is most convenient to them. These are some of the findings from a NetChoice/Savanta survey that helps us better understand the current state of retail from the consumer's point of view.

<sup>5</sup> National Public Radio, The COVID Small Business Boom, July 15, 2021; <https://www.npr.org/2021/07/15/1016628762/the-covid-small-business-boom>

<sup>6</sup> National Retail Federation, The State of Retail 2021

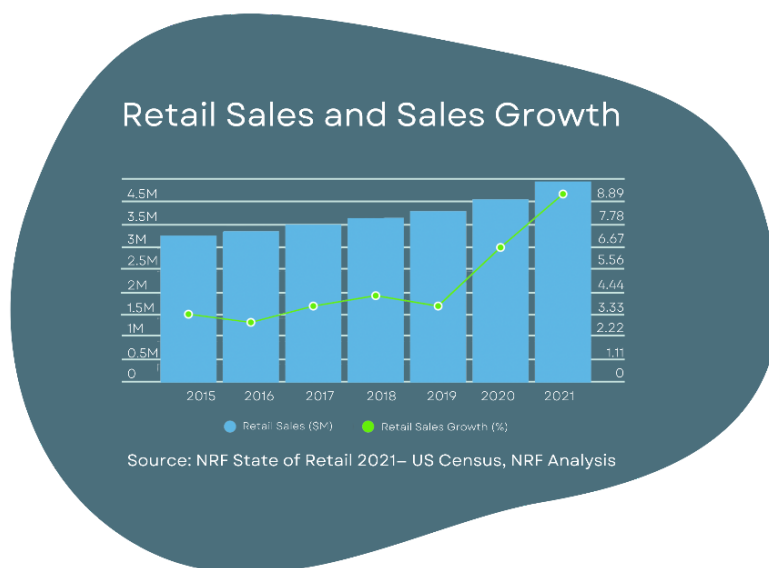
<sup>7</sup> Disruptive Competition Project, August 3, 2021; <https://www.project-disco.org/competition/080321-what-smes-stand-to-lose-from-overregulation/>

<sup>8</sup> NetChoice/Savanta polling 2021; <https://netchoice.org/wp-content/uploads/2021/11/Retail-Is-Everywhere-Polling.xlsx-Sheet2.pdf>



## Retail is Growing

\$4.44 trillion: the level that the U.S. retail sector is expected to grow to by the end of 2021. This represents a 6.7% growth rate, a level that hasn't been seen in the past decade and a half.<sup>9</sup> According to the U.S. Bureau of Labor Statistics, as of Q3 2020, there were 1.04 million retail businesses in the United States, up 4,801 versus Q2 2020, marking a record in the last decade.<sup>10</sup>



There has never been more ways to launch a small business and entrepreneurs are responding. Small business creation has exploded in the past two years.<sup>11</sup> In the past, entrepreneurs faced a myriad of challenges when starting a business, including identifying affordable commercial real estate, applying and receiving financing, and pinpointing a consumer base that was likely confined by geography and demography.

Today, you don't even need to leave your couch to launch a retail business. Creating a retail website with Shopify, building a brand and following on Instagram, partnering with online marketplaces like Etsy, Amazon, or OfferUp, and plugging into a worldwide audience can all be done so much faster, easier, and cheaper. Online marketplaces are helping retail grow, particularly small and medium-sized businesses.

<sup>9</sup> National Retail Federation, The State of Retail 2021

<sup>10</sup> U.S. Bureau of Labor Statistics, September 2021; <https://www.bls.gov/iag/tgs/iag44-45.htm>

<sup>11</sup> U.S. Census data, Business Formation Statistics, September 9, 2021; [https://www.census.gov/econ/bfs/pdf/bfs\\_current.pdf](https://www.census.gov/econ/bfs/pdf/bfs_current.pdf)



## Retail is Both Digital and Physical

The dichotomy between digital and physical retail is a false one. Consumers don't view their shopping experience this way. Instead consumers want the choice to shop online, offline, or a mix of both. Our new consumer survey found that 68% of shoppers prefer retailers that offer both online and in-person shopping.<sup>12</sup>

68% of shoppers prefer retailers that offer both  
online and in-person shopping.



Yet it is clear that many consumers still prefer physical retail with 77% saying it is important or somewhat important that a retailer offer a physical location.<sup>13</sup> Retailers are embracing these preferences and offering consumers a variety of ways to shop including in-store or online via a web store, social media, app, and online marketplaces, to name a few. Retailers are also offering various ways to fulfill online orders including same-day delivery, curbside, and in-store pickup. This is commonly referred to as the omnichannel retail experience.

While the term omnichannel may sound a bit like industry jargon, it is effective in describing the variety of choices that exists right now for both retailers and shoppers. Retail isn't online or offline, it's both.

Recent survey data from U.S. small and medium-sized businesses found the typical seller uses five different sales methods. This could be a combination of brick and mortar stores, wholesales, business websites, online marketplaces, offline marketplaces, app stores, click-to-buy social, and on-demand delivery.<sup>14</sup> A retailer no longer has to place all their bets on one method. It can, and does, move seamlessly between and within many sales methods, scaling and editing as necessary to meet the evolving needs of consumers. As mentioned above, retailers are also innovating to give shoppers an omnichannel experience when it comes to shipping and fulfillment options. Retailers with physical stores are able to leverage their footprint to fulfill online orders with curbside or in-store pick up. In fact, 83% of consumers expect flexible shipping and fulfillment options including buy online, pick up in store (BOPIS) and curbside in the post-vaccine era.<sup>15</sup>

83% of consumers expect flexible shipping and  
fulfillment options.



<sup>12</sup> NetChoice/Savanta polling data, 2021

<sup>13</sup> Ibid

<sup>14</sup> Data Catalyst, Super Selling: Most Small Businesses Use Multiple Sales Methods, Oct 2021

<sup>15</sup> Deloitte, The Future of Retail Stores, 2021



Omnichannel is also useful because it doesn't just define how retailers operate, it also accurately describes how shoppers interact with retailers. It would be challenging to find a shopper today who limits their retail experience to just one way of shopping. For a rapidly growing majority of consumers - 73% - their shopping is done across channels.<sup>16</sup> When a shopper makes a purchase online, they often first research and engage with the brand on social media.<sup>17</sup> Similarly, when shoppers make an in-store purchase, they may still consult their smart device to compare prices or to double check options to ensure they are getting the best deal possible.<sup>18</sup> In each instance, we call these shoppers omnichannel shoppers. Omnichannel shoppers are far more likely to develop a sense of brand loyalty to retailers that make it easy to shop across channels, and they spend more money on average than non-omnichannel shoppers do.<sup>19</sup>

Now that we have a general sense of what retail is, it is worth outlining what retail is not. Some of the most prevalent and inaccurate narratives include, (1) that online platforms and marketplaces are squeezing smaller retailers, (2) small retailers have no choice but to engage large online platforms and marketplaces, and (3) that retail is a stagnant industry, providing diminishing returns for consumers and in need of regulatory overhaul. None of these claims stand up to even minimal examination.

## Retail Means Choices

A major misconception of retail is that large, online retailers are killing smaller ones. Similarly, another claim is that small retailers have no choice but to do business with large online retailers. These views are currently being used to justify several pieces of antitrust legislation<sup>20</sup> in Congress that target select companies largely based on their size. Little attention, however, has been paid to whether the underlying premise is true. Are small retailers being swallowed by larger ones?

Recent research analyzing how 2,000 U.S. small and medium sized businesses sell demonstrate choice and opportunity abound.<sup>21</sup> The study found the typical seller used at least 5 different sales methods and within sales methods, sellers frequently use more than one competitive vendor.<sup>22</sup>

The typical seller uses at least 5 different  
sales methods



<sup>16</sup> Harvard Business Review, A Study of 46,000 Shoppers Shows That Omnichannel Retailing Works 2017; <https://hbr.org/2017/01/a-study-of-46000-shoppers-shows-that-omnichannel-retailing-works>

<sup>17</sup> Bloomreach, The State of Commerce Experience 2021; <https://visit.bloomreach.com/state-of-commerce-experience>

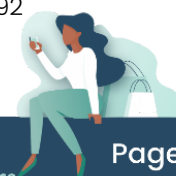
<sup>18</sup> Bloomreach, The State of Commerce Experience 2021;

<sup>19</sup> Harvard Business Review A Study of 46,000 Shoppers Shows That Omnichannel Retailing Works, 2017

<sup>20</sup> HJC Antitrust package; <https://buck.house.gov/media-center/press-releases/rep-buck-applauds-house-judiciary-committee-passage-bills-taking-big>; and Senate legislation; <https://www.govtrack.us/congress/bills/117/s2992>

<sup>21</sup> Data Catalyst, Super Selling: Most Small Businesses Use Multiple Sales Methods, Oct 2021;

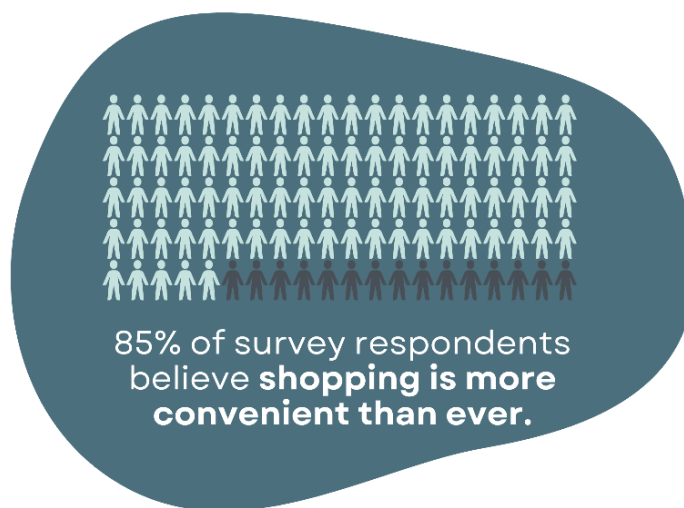
<sup>22</sup> Ibid



For example, 87% of sellers on Amazon's marketplace also sell on at least one other online marketplace, including 54% also selling on Walmart's marketplace, and 50% also selling on eBay.<sup>23</sup> Further, 83% of sellers on Amazon's marketplace use five or more different sales methods.<sup>24</sup>

Another helpful entry point into these retail misconceptions is to analyze the American consumer. How do they shop and do they feel that their access to small and independent retailers is being unfairly curtailed, or curtailed at all? We recently surveyed consumers across the country with this question and found that the answer is no.

85% of respondents believe shopping is more convenient than ever with retailers offering more fulfillment options.<sup>25</sup> Consumers also believe they have a lot of choices when it comes to shopping. American consumers don't share the same pessimistic view of some lawmakers and regulators in Washington.



Marketplaces play a role in providing choice for consumers and enables an extraordinarily symbiotic relationship to exist between retailers of different sizes. Online platforms and marketplaces like Amazon, Ebay, and Etsy exist, in part, to connect smaller retailers with a broader audience. When polled, 30% of shoppers prefer to do business with small sellers creating artisan or handmade goods.<sup>26</sup>

Take Etsy as an example. 97% of businesses selling on Etsy are run out of the owners' home.<sup>27</sup> These independent businesses use Etsy's investments and infrastructure to reach millions of consumers and grow their own business. With access to online marketplaces and digital tools, entrepreneurs now have the ability to take their dreams to the next level. This includes small businesses like ceramics makers, painters, toy makers, and other artisans that launched their businesses in the last year.<sup>28</sup>

---

<sup>23</sup> Ibid

<sup>24</sup> Ibid

<sup>25</sup> NetChoice/Savanta polling data, 2021

<sup>26</sup> Ibid

<sup>27</sup> Small Business Trends, The Second Most Popular Online Marketplace May Surprise You, August 30, 2021; <https://smallbiztrends.com/2021/08/etsy-second-most-popular-online-marketplace.html>

<sup>28</sup> Etsy, 11 Standout Etsy Shops That Got Their Start This Year, December 16, 2020; <https://www.etsy.com/blog/best-etsy-shops>





Etsy saw the number of sellers on its platform grow by 4 million, an increase of 41.7% in 2020.<sup>29</sup> This is a perfect example of how online marketplaces and smaller retailers mutually benefit. Sales grew from \$5 billion in 2019 to \$10.3 billion in 2020.<sup>30</sup> Both the marketplace and the small seller are succeeding at the same time within the same channel. In fact, they have created a partnership by which one's success means the other succeeds too.

The same can be said for businesses that sell on the Amazon Marketplace. Small and medium-sized retailers make up close to 60% of the physical merchandise moved across Amazon's marketplace and have hiring growth twice the rate of similarly sized businesses that don't use Amazon's platform.<sup>31</sup> Amazon seller exports grew from \$1.5 billion in sales to \$2.2 billion over the past year.<sup>32</sup>

Smaller retailers also benefit from the relationship they have with online marketplaces because it means saving on costs associated with infrastructure and logistics. Another important factor is privacy and security when shopping online. Americans limit their internet use due to privacy and security concerns.<sup>33</sup> When a small business is able to harness the security infrastructure of a larger player, consumers can shop with confidence and small retailers are able to earn trust with new customers. The same is true when small businesses are able to take advantage of the larger retailer's scale to store inventory, ship goods quickly, manage returns and provide customer service. Smaller sellers can take advantage of the economies of scale offered by packing and shipping services of large companies, and shoppers can choose from a broad selection of products without having to compromise on their expectations for delivery.

## Retail is Constantly Innovating

Another misconception about retail is that it is stagnant. This simply isn't true. Even in the most mundane spaces, retail has proven to be able to innovate business models, products, and services that benefit consumers.

A major innovation story has been in the direct to consumer (DTC) space, a sales strategy where a business sells directly to customers. A product as common as the mattress has been totally transformed with an explosion of brands offering different types of sleepers, at different price points, delivered directly to homes, and in the process expanding the ways that millions of Americans buy a mattress. In decades past, the consumer would be required to travel to the store, try out dozens of options under fluorescent lights, and take their purchase home with them. Even with a delivery option, many shoppers clearly felt that this process was inconvenient, or simply didn't meet their needs. The DTC model enabled Casper to offer home delivery and 100-day trial runs. Casper, knowing there are many consumers who still prefer to try before they buy, is expanding its offerings to physical locations to continue growing.

---

<sup>29</sup> Etsy 2021 Stockholder and Proxy Statement, August 2020; [https://s22.q4cdn.com/941741262/files/doc\\_financials/2020/ar/2021-Proxy-Statement\\_Final.pdf](https://s22.q4cdn.com/941741262/files/doc_financials/2020/ar/2021-Proxy-Statement_Final.pdf)

<sup>30</sup> Ibid

<sup>31</sup> Amazon, Zero to 60: The acceleration of independent sellers in our store blog, June 2020; <https://www.aboutamazon.com/news/how-amazon-works/zero-to-60-the-acceleration-of-independent-sellers-in-our-store>

<sup>32</sup> Amazon Small Business Empowerment Report 2021; <https://assets.aboutamazon.com/9b/84/05cb2f6c14da18e4574a5132f675a/amazon-smb-report-2021.pdf>

<sup>33</sup> Internet Use Survey Data, NTIA, 2019; <https://ntia.gov/data/digital-nation-data-explorer#sel=privSecMainReason&disp=map>



Casper has transformed itself from an in-debt start-up to a billion dollar company.<sup>34</sup> While this transformation is stark, it didn't happen overnight, and it didn't happen without the shifting preferences

of shoppers. Virtually half of shoppers prefer a combination of on and offline shopping, and an overwhelming 68% of shoppers prefer a business model that offers both on and offline shopping and multiple fulfillment options.<sup>35</sup> Consumers ranked convenience high on their list of priorities when shopping.<sup>36</sup> To put it another way, these consumer preferences gave space for the mattress market to change.



Take grocery stores, for example. Food delivery platforms like InstaCart became widely popular just as the Covid-19 pandemic hit the U.S., expanding beyond the company's early testing sites. InstaCart's popularity skyrocketed and the company's valuation doubled in ten months to \$18 billion.<sup>37</sup> In the early days of the pandemic, many Americans had the ability to order their groceries directly to their doorstep, helping to ensure their health and safety.

Legacy grocery retailers like Kroger were not shut out of this moment. While InstaCart is popularly understood as a tech company, legacy retailers like Kroger make significant investments in technology and talent to compete. Kroger's profits rose 90% during the first two months of the pandemic, offering its own services that allowed Americans to keep their retail experience contactless.<sup>38</sup> While that level of growth is largely tied to particular public health circumstances, it was able to attain such a significant number in part because of its ability to launch into a new mode of selling to its consumers.

Kroger launched a partnership with Instacart in September 2021 called Kroger Delivery Now and the creation of the Convenience Hub on the Instacart marketplace.<sup>39</sup> This will allow the grocery retailer to

<sup>34</sup> CNBC, How Casper's founders went from \$100,000 in debt to building a billion-dollar mattress start-up, April 5, 2019; <https://www.cnbc.com/2019/04/05/how-caspers-founders-built-a-billion-dollar-mattress-start-up.html>

<sup>35</sup> NetChoice/Savanta polling data, 2021

<sup>36</sup> Ibid

<sup>37</sup> Forbes, Instacart Survived Covid Chaos, January 27, 2021; <https://www.forbes.com/sites/chloesorvino/2021/01/27/instacart-survived-covid-chaos---but-can-it-keep-delivering-after-the-pandemic/?sh=63caa950bfaf>

<sup>38</sup> The Brookings Institution, Windfall profits and deadly risks, November, 2020; <https://www.brookings.edu/essay/windfall-profits-and-deadly-risks/>

<sup>39</sup> Kroger press release, September 14, 2021; <https://ir.kroger.com/CorporateProfile/press-releases/press-release/2021/Kroger-and-Instacart-Launch-Kroger-Delivery-Now-Nationwide-to-Provide-30-Minute-Delivery-Enabled-by-First-of-its-kind-Virtual-Convenience-Store/default.aspx>

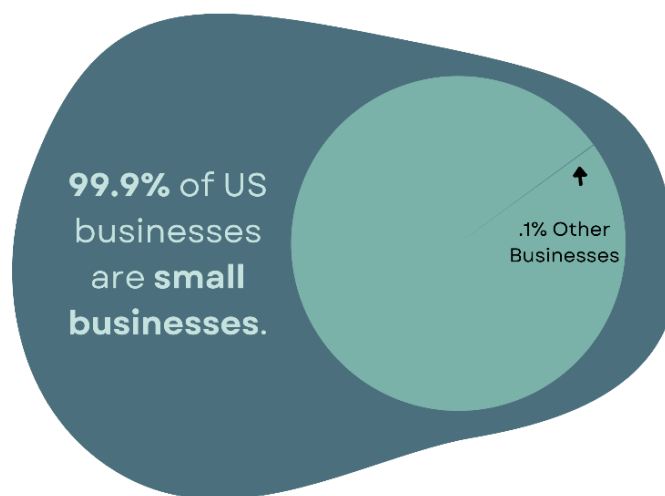


facilitate quick deliveries and focus particularly on “convenience products” that will be available 24/7.<sup>40</sup> We see plainly that big vs. small and online vs. in-store retail is wrong. Instead, smaller retailers are partnering with large ones and leveraging their economies of scale. Additionally, many retailers utilize both on and offline channels to provide the best shopping experience for customers.

The benefit to shoppers here is obvious. The actions taken by retailers will likely force competitors to bring similar services to consumers or to continue pushing the envelope on what is possible in retail. Innovations help drive down costs, improve the quality of existing services, and further expand the way shoppers believe it is possible to shop.

## Conclusion

Retail is so much more competitive and dynamic than it gets credit for. The overwhelming majority of businesses in the United States are small and medium sized businesses,<sup>41</sup> and the five major U.S. retailers only account for 25% of the market. Additionally, while digital growth receives a lot of attention, they still only account for 15% of overall retail sales.<sup>42</sup> The retail landscape is always evolving, opportunity and growth continue to be possible, and one way of doing business has not pushed out another, because shoppers aren’t a monolith. Current congressional proposals would jeopardize the dynamism inherent in retail and should be reconsidered by lawmakers.



*Zach Lilly is the Policy Manager at NetChoice. Zach joined NetChoice after working for the U.S. Department of Commerce’s National Telecommunications and Information Administration (NTIA). At NTIA he led the agency’s digital media efforts through the Office of Public Affairs and worked on Internet policy related to the International Telecommunications Union through the Office of International Affairs. Zach holds a MA in Political Theory from the University of Chicago and a BA in Political Science and Classical Civilization from Gonzaga University.*



<sup>40</sup> Ibid

<sup>41</sup> US Small Business Administration, 2019 Small Business Profile; <https://cdn.advocacy.sba.gov/wp-content/uploads/2019/04/23142719/2019-Small-Business-Profiles-US.pdf>

<sup>42</sup> National Retail Federation, State of Retail 2021



From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>  
Sent: Monday, November 15, 2021 5:01 PM  
To: OpenMeeting <openmeetings@ftc.gov>  
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for November 18, 2021 Open Commission Meeting

Submitted on Monday, November 15, 2021 - 17:00 Submitted by anonymous user: [REDACTED] Submitted values are:

First Name: Robert

Last Name: Tobiasen

Affiliation: National Association of Beverage Importers (NABI), Washington, DC Full Email Address: [REDACTED] Confirm Email

Address: [REDACTED]

Telephone: [REDACTED]

FTC-Related Topic: Competition

Register to speak during meeting: No

Link to web video statement: VA

Submit written comment:

Dear Madam Chair and Commissioners,

Thank you for the opportunity to submit comments. The National Association of Beverage Importers (NABI), Washington, DC has advocated for importers of wine, beer, and distilled spirits, since 1935. For more than the past year, NABI Member importers have confronted serious business disruptions from the supply chain meltdown and, in particular, the port congestion hindering them from the timely removal of their containers from Terminal Operators. Many NABI Members are small and medium sized enterprises and cannot deal with the uncertainty of deliveries or absorb the large demurrage fees arising from delays at the ports of entry.

We are concerned about reports that large retailers may be exacerbating the supply chain congestion by using some ports as long-term free storage, up to 60 days. It is our understanding that some Terminal Operations may be granting additional time for containers of certain large retailers to sit at the Port — up to 60 days according to reports we've received, compared to the customary wait time of 5-9 days for containers to be removed. The concern is that large retailers may be frontloading orders for 2022, and using their leverage as importing recurring customers to secure free warehousing at the Ports from the Terminal Operators.

If these reports are accurate, the number of containers stored at the Ports would be sizable enough to disrupt the abilities of smaller importers to find their containers and access them for removal. Meanwhile, small importers are incurring huge demurrage fees. One importer has faced a liability of over \$14,000 in demurrage fees for a container that the Terminal Operator had been unable to locate since September 22. It was finally located last week after intervention by the Executive Director of the Port Authority. This is not an isolated unable to locate container situation. Accordingly, as the Commission considers issuing the order to large retailers and consumer goods importers, NABI urges the Commission and other relevant agencies to examine whether Terminal Operators and large retailers are harming competition and hurting small and medium size importers who do not have the market power over Terminal Operators and are suffering the consequences of the free warehousing given to large retail importers by the Terminal Operators. Please let me know if you have any questions. Thank you.

The results of this submission may be viewed at:

<https://www.ftc.gov/node/1591350/submission/15>

**From:** Jon Wickizer [REDACTED] >  
**Sent:** Saturday, November 13, 2021 8:39 AM  
**To:** OpenMeeting <openmeetings@ftc.gov>; Khan, Lina <[REDACTED]>  
**Subject:** Recorded public comment...link

Link to recorded public comment.

[https://www.linkedin.com/posts/jon-wickizer-942b44224\\_the-world-what-if-it-only-takes-a-few-activity-6865281109110923264-lWHx](https://www.linkedin.com/posts/jon-wickizer-942b44224_the-world-what-if-it-only-takes-a-few-activity-6865281109110923264-lWHx)

Sent from ProtonMail for iOS

**From:** Jon Wickizer <[REDACTED]>  
**Sent:** Saturday, November 13, 2021 8:42 AM  
**To:** OpenMeeting <openmeetings@ftc.gov>; Khan, Lina <[REDACTED]>  
**Subject:** Link to recorded public comment

Link to recorded public comment.

October 21, 2021

[https://youtu.be/bCg\\_m97ZVcM](https://youtu.be/bCg_m97ZVcM)

Sent from ProtonMail for iOS

**From:** Jon Wickizer <[REDACTED]>  
**Sent:** Saturday, November 13, 2021 8:41 AM  
**To:** OpenMeeting <openmeetings@ftc.gov>; Khan, Lina <[REDACTED]>  
**Subject:** Link to recorded public comment

Link to recorded public comment

September 15, 2021  
<https://youtu.be/zv32jSSC1uA>

Sent from ProtonMail for iOS

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>

Sent: Thursday, November 11, 2021 9:29 PM

To: OpenMeeting <openmeetings@ftc.gov>

Subject: Form submission from: Speaker Registration and Public Comment Submission Form for November 18, 2021 Open Commission Meeting

Submitted on Thursday, November 11, 2021 - 21:29 Submitted by anonymous user: [REDACTED]

Submitted values are:

First Name: Jon

Last Name: Wickizer

Affiliation: APWI (Average person with an idea) Full Email Address [REDACTED]

Confirm Email Address [REDACTED]

Telephone: [REDACTED]

FTC-Related Topic:

- Competition
- Consumer Protection
- FTC Operations

Register to speak during meeting: Yes

Link to web video statement:

Submit written comment:

The results of this submission may be viewed at:

<https://www.ftc.gov/node/1591350/submission/19>



**From:** Katelyn Wickizer <[REDACTED]>  
**Sent:** Saturday, November 13, 2021 10:27 AM  
**To:** OpenMeeting <openmeetings@ftc.gov>  
**Subject:** recorded messages

Is this recorded message too long in duration?

[REDACTED]

Thanks,

Katelyn

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>

Sent: Saturday, November 13, 2021 10:30 AM

To: OpenMeeting <openmeetings@ftc.gov>

Subject: Form submission from: Speaker Registration and Public Comment Submission Form for November 18, 2021 Open Commission Meeting

Submitted on Saturday, November 13, 2021 - 10:29 Submitted by anonymous user: [REDACTED]

Submitted values are:

First Name: Katelyn

Last Name: Wickizer

Affiliation: A Daughter

Full Email Address [REDACTED]

Telephone: +[REDACTED]

FTC-Related Topic:

- Competition
- Consumer Protection
- FTC Operations

Register to speak during meeting: No

Link to web video statement: <https://vimeo.com/645553652> Submit written comment: Is this video too long in length?

The results of this submission may be viewed at:

<https://www.ftc.gov/node/1591350/submission/3>

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>

Sent: Saturday, November 13, 2021 10:50 AM

To: OpenMeeting <openmeetings@ftc.gov>

Subject: Form submission from: Speaker Registration and Public Comment Submission Form for November 18, 2021 Open Commission Meeting

Submitted on Saturday, November 13, 2021 - 10:49 Submitted by anonymous user [REDACTED]

Submitted values are:

First Name: Katelyn

Last Name: Wickizer

Affiliation: Daughter

Full Email Address [REDACTED] Confirm Email Address [REDACTED]

Telephone: [REDACTED]

FTC-Related Topic:

- Competition
- Consumer Protection
- FTC Operations

Register to speak during meeting: No

Link to web video statement: [REDACTED]

Submit written comment: Sorry the last video web link did not work. I hope it is not too long.

The results of this submission may be viewed at:

<https://www.ftc.gov/node/1591350/submission/11>

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>  
Sent: Friday, November 12, 2021 11:41 AM  
To: OpenMeeting <openmeetings@ftc.gov>  
Subject: Form submission from: Speaker Registration and Public Comment Submission Form for November 18, 2021 Open Commission Meeting

Submitted on Friday, November 12, 2021 - 11:40 Submitted by anonymous user: [REDACTED]

Submitted values are:

First Name: Tera

Last Name: Wickizer

Affiliation: APWI (average person with an idea, mother and wife) Full Email Address: [REDACTED] Confirm Email Address:

[REDACTED]

Telephone: [REDACTED]

FTC-Related Topic:

- Consumer Protection
- FTC Operations

Register to speak during meeting: No

Link to web video statement:

Submit written comment:

I am reaching out to you, the FTC for help. My husbands ([REDACTED]) intellectual property, [REDACTED] has been stolen by companies inside and outside of Utah, where we live. This has affected our livelihood as well as our safety. We live in [REDACTED] Utah and have reached out to Davis County Law Enforcement, the Davis County District Attorney, the State office of professional conduct, the Utah Supreme Court office of Discipline, and the Local FBI field office as well as the USPTO, We have received little to no help. We have provided to the groups above many documents and proof that this has happened. Attached are two anonymous emails that we received that make me very concerned for my families safety.

The FTC has been the only help we have gotten. I know your busy, but any help you can give us would be greatly appreciated.

Thank you,

Tera Wickizer

From: [REDACTED]  
Date: May 26, 2021 at 10:31:50 PM MDT  
To: [REDACTED]  
Subject: IMPORTANT AND CONFIDENTIAL: Regarding your patent

Jon, for reasons which may later be revealed to you, I cannot share my identity. It is too dangerous given the powers that I am around.

If I were to reveal myself, you might assume I am your enemy. But I assure you that I am not. I do not want to hurt you in any way.

Over the last few months, I have learned many details about your app, how you built it, the patent you received, and who is infringing on your patent.

You have people close to you, who you think are your friends, but they are not. They are actively working to steal the ideas in your patent without you even knowing it. They have funding commitments from their employer to build an app that is stealing your IP. I know this directly.

I thought for very long whether I should share this information with you...because I am revealing confidential information. But, I cannot remove the fact that you should be aware of people trying to hurt you.

Specifically, someone you have worked closely with is, right now, working to steal your patent and build technology that infringes without you even knowing.

For obvious reasons, I cannot say their name, reveal their identity, or share their employer in email—but you know them.

All I can say right now is that it is someone you have known in your profession for many years—and the two of you have crossed paths many times. You have both even interviewed for the same job, at least once that I know of.

This person has acted like your friend, but they have lied to and manipulated you to get information from you, so they can use it against you by stealing your patent and technology. I am ashamed to say that I have listened to this first hand. It felt wrong then, and I am sorry I didn't reach out to you sooner.

We may need to arrange a private meeting so I can reveal to you what is happening. But you should know about it. What you do with the information is up to you, but I have a moral obligation to make you aware of it. And, if you want to keep your patent, you have to move to protect it and stop the theft of your patent idea.

I am sorry to be sharing such shocking information, that someone you thought is your friend is in fact stabbing you in the back.

Please respond and let's arrange to meet.

Sincerely,

S

From: [REDACTED]

Date: May 27, 2021 at 8:20:33 PM MDT

To: [REDACTED]

Subject: Re: IMPORTANT AND CONFIDENTIAL: Regarding your patent

You have a good heart, I can tell.

I have to be very careful as my position restricts what I can say and I could put myself and my family at risk if I reveal more than I am legally able.

Here is what I can share at this time....this individual has encouraged you to go after one of the world's largest tech companies for infringement of your patent. This is a very misguided strategy. I spent many years of my career at a very large tech company and I can assure you they will spend hundreds of thousands of dollars to destroy your patent before they agree to license anything. Your patent has to be absolutely bullet proof to win this kind of battle, and you have to be prepared to spend an equal sum of money.

This individual wants you to do this, so that the tech company will destroy your patent and then this individual is going to have his employer build software that leverages the ideas in your patent. His employer is an insurance brokerage—one of the largest in the country. I am probably revealing too much, but you need to know.

His employer likely does not know about your patent, and it would probably scare them.

You may not agree with my assessment, but I have been involved in IP, patents, and litigation for over 20 years. I know what I am talking about, although I am not a lawyer.

Sincerely,

S

The results of this submission may be viewed at:

<https://www.ftc.gov/node/1591350/submission/3>

From: Federal Trade Commission via Federal Trade Commission <[REDACTED]>

Sent: Sunday, November 14, 2021 12:39 PM

To: OpenMeeting <openmeetings@ftc.gov>

Subject: Form submission from: Speaker Registration and Public Comment Submission Form for November 18, 2021 Open Commission Meeting

Submitted on Sunday, November 14, 2021 - 12:39 Submitted by anonymous user: [REDACTED]

Submitted values are:

First Name: Jimmy

Last Name: Wright

Affiliation: Wright's Market

Full Email Address: [REDACTED]

Telephone: [REDACTED]

FTC-Related Topic: Competition

Register to speak during meeting: Yes

Link to web video statement:

Submit written comment:

The results of this submission may be viewed at:

<https://www.ftc.gov/node/1591350/submission/23>