

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA,

Plaintiff,

v.

WHALECO, INC., a corporation,  
d/b/a TEMU,

Defendant.

Case No. 1:25-cv-12466

**STIPULATED [PROPOSED] ORDER FOR PERMANENT INJUNCTION, CIVIL  
PENALTY JUDGMENT, AND OTHER RELIEF**

Plaintiff, the United States of America, acting upon notification from the Federal Trade Commission (“Commission” or “FTC”), filed its Complaint for Permanent Injunction, Civil Penalty Judgment, and Other Relief (“Complaint”), for a permanent injunction, civil penalties, and other relief in this matter, pursuant to Sections 5(m)(1)(A) and 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(m)(1)(A) and 53(b). Defendant has waived service of the summons and the Complaint. Plaintiff and Defendant stipulate to the entry of this Stipulated Order for Permanent Injunction, Civil Penalty Judgment, and Other Relief (“Order”) to resolve all matters in dispute in this action between them.

THEREFORE, IT IS ORDERED as follows:

**FINDINGS**

1. This Court has jurisdiction over this matter.
2. The Complaint charges that Defendant violated the INFORM Consumers Act, 15 U.S.C. § 45f, and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), by failing to: (i) provide a reporting mechanism that allows for telephonic reporting of suspicious marketplace activity to

Defendant; (ii) provide a reporting mechanism that allows for electronic or telephonic reporting of suspicious marketplace activity to Defendant in gamified shopping experiences on Defendant's online marketplace platform; (iii) disclose in a clear and conspicuous manner on product listings a reporting mechanism that allows for electronic and telephonic reporting of suspicious marketplace activity; (iv) disclose the full names and physical addresses of sellers to consumers using Defendant's mobile website or gamified shopping experiences; (v) disclose a means of direct electronic messaging to sellers or other seller contact information to consumers in gamified shopping experiences on Defendant's online marketplace platform; and (vi) disclose in a clear and conspicuous manner the identity information of sellers, including the full names and physical addresses of sellers and the means of direct electronic messaging to sellers that Temu provides.

3. Defendant neither admits nor denies any of the allegations in the Complaint, except as specifically stated in this Order. Only for purposes of this action, Defendant admits the facts necessary to establish jurisdiction.

4. Defendant waives any claim that it may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date of this Order, and agrees to bear its own costs and attorney fees.

5. Defendant and Plaintiff waive all rights to appeal or otherwise challenge or contest the validity of this Order.

### **DEFINITIONS**

For the purpose of this Order, the following definitions apply:

A. **"Defendant"** means Whaleco, Inc., a corporation, also d/b/a Temu, and its successors and assigns.

B. “**The INFORM Consumers Act**” means Div. BB, Title III, § 301 of the Consolidated Appropriations Act of 2023, H.R. 2617, 117th Cong. (2022), codified at 15 U.S.C. § 45f, a copy of which is attached as **Attachment A**.

C. “**Consumer Product**” means any tangible personal property which is distributed in commerce and which is normally used for personal, family, or household purposes (including any such property intended to be attached to or installed in any real property without regard to whether it is so attached or installed).

D. “**Online Marketplace Platform**” means any consumer-directed electronically based or accessed platform that: (1) includes features that allow for, facilitate, or enable Third Party Sellers to engage in the sale, purchase, payment, storage, shipping, or delivery of a Consumer Product in the United States; (2) is used by one or more Third Party Sellers for such purposes; and (3) has a contractual or similar relationship with consumers governing their use of the platform to purchase Consumer Products.

E. “**Seller**” means a person who sells, offers to sell, or contracts to sell a Consumer Product through Defendant’s Online Marketplace Platform.

F. “**Third Party Seller**” means any Seller, independent of Defendant, who sells, offers to sell, or contracts to sell a Consumer Product in the United States through Defendant’s Online Marketplace Platform, except for any Seller that is a business entity that has made available to the general public its name, business address, and working contact information; has an ongoing contractual relationship with Defendant to provide Defendant with the manufacture, distribution, wholesaling, or fulfillment of shipments of Consumer Products; and has provided to Defendant identifying information pursuant to 15 U.S.C. § 45f(a) that has been verified in accordance with that subsection. *See Attachment A*.

G. **“High-Volume Third Party Seller”** means a participant on Defendant’s Online Marketplace Platform who is a Third Party Seller and, in any continuous 12-month period during the previous 24 months, has entered into 200 or more discrete sales or transactions of new or unused Consumer Products and an aggregate total of \$5,000 or more in gross revenues. For purposes of calculating the number of discrete sales or transactions or the aggregate gross revenues for purposes of this definition, Defendant need only count sales or transactions made through Defendant’s Online Marketplace Platform and for which payment was processed by Defendant, either directly or through its payment processor.

H. **“Product Listing(s)”** means any Online Marketplace Platform page that: (1) facilitates the sale of a Consumer Product by providing a link, button, or mechanism to purchase or add the product to a shopping cart; and (2) includes any combination of the product’s: name; description; specifications; feature, color, or size options; reviews; “frequently asked questions” or answers to questions; *provided that* the term “Product Listing(s)” does not encompass pages composed of multiple links, such as pages returned in response to user search queries or category filters, where each link connects to a Product Listing for the corresponding Consumer Product.

I. **“Reporting Mechanism”** means a mechanism, accessible to consumers on the Product Listing of any High-Volume Third Party Seller, that allows for reporting to Defendant of suspicious marketplace activity, including the advertising, marketing, sale, or distribution of potentially stolen, counterfeit, or unsafe goods, on Defendant’s Online Marketplace Platform.

J. **“Seller Contact Mechanism”** means contact information for a Seller to allow for direct, unhindered communication with a High-Volume Third Party Seller by a user of Defendant’s Online Marketplace Platform, including a current working phone number; a current

working email address; or other means of direct electronic messaging (which may be provided to such Seller by Defendant, *provided that* Defendant shall not be prevented from monitoring communications between High-Volume Third Party Sellers and users of Defendant's Online Marketplace Platform for fraud, abuse, or spam).

K. **"Transaction Record"** means (1) an order confirmation message or other document or communication sent to the consumer after a purchase is finalized, in combination with (2) the consumer's account transaction history on the Online Marketplace Platform.

**I. PROHIBITION AGAINST FAILING TO PROVIDE AND  
ADEQUATELY DISCLOSE ELECTRONIC AND TELEPHONIC  
MECHANISMS TO REPORT SUSPICIOUS MARKETPLACE ACTIVITY**

IT IS ORDERED, to address the alleged violations of the INFORM Consumers Act, that Defendant, Defendant's officers, agents, employees, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the operation of any Online Marketplace Platform are permanently restrained and enjoined from failing to:

A. provide a telephonic Reporting Mechanism that affords consumers an opportunity to listen back to, re-record, and accept a report before submitting it, with audible instructions delivered in a volume, speed, and cadence sufficient for reasonable consumers to easily hear and understand; and

B. disclose on the Product Listings of all High-Volume Third Party Sellers Reporting Mechanisms that: (1) allow for reporting of suspicious marketplace activity to Defendant via electronic and telephonic means; (2) are located at the very top of the Product Listings or in the body of the Product Listings on the same screen as either the first description of the product's attributes or a heading regarding product details or the identity of the Seller; (3) stand out, by

their size, contrast, and other characteristics, from any surrounding text or other elements so that they are easily noticed and understood by reasonable consumers; (4) use diction and syntax understandable to reasonable consumers; (5) require no more than one click to access the Reporting Mechanism(s); (6) are present in each medium and interface through which consumers may access Defendant's Online Marketplace Platform; and (7) if hyperlinked, use text that conveys that clicking the hyperlink will enable the consumer to report suspicious marketplace activity relating to any aspect of the Product Listing on which the hyperlink appears.

## **II. PROHIBITION AGAINST FAILING TO ADEQUATELY DISCLOSE HIGH-VOLUME THIRD PARTY SELLER IDENTITY INFORMATION**

IT IS FURTHER ORDERED, to address the alleged violations of the INFORM Consumers Act, that Defendant, Defendant's officers, agents, employees, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the operation of any Online Marketplace Platform are permanently restrained and enjoined, for any High-Volume Third Party Seller with an aggregate total of \$20,000 or more in annual gross revenues on Defendant's Online Marketplace Platform, from failing to disclose the information specified in subsections A and B of this Section, on the Sellers' Product Listings (including via hyperlink) prior to purchase or in Transaction Records, in a manner that (1) requires no more than one click to access information disclosed via hyperlink on Product Listings, except that, for any means of direct electronic messaging provided by Defendant as a Seller Contact Mechanism, one click must enable a consumer to access the Seller Contact Mechanism; (2) is in close proximity to any itemization of the product, for information disclosed in Transaction Records; (3) stands out, by its size, contrast, and other characteristics, from any surrounding text or other elements so that the

disclosure is easily noticed and understood by reasonable consumers; (4) uses diction and syntax understandable to reasonable consumers; and (5) is present in each medium and interface through which consumers may access Defendant's Online Marketplace Platform:

A. Seller full names and physical addresses; *provided that*, upon the request of a High-Volume Third Party Seller, the disclosed physical address may be a physical address for product returns if the Seller certifies to Defendant that it is a business that has a physical address for product returns, or the disclosed physical address may be limited to the country and, if applicable, the state in which such Seller resides, if the Seller certifies to Defendant that the Seller does not have a business address and only has a residential street address, or has a combined business and residential address; and

B. Seller Contact Mechanisms; *provided that*, if a means of direct electronic messaging provided by Defendant is used as a Seller Contact Mechanism, the disclosure is made via hyperlinked text on the Product Listing that conveys that clicking the hyperlink will enable the consumer to send a message to the Third Party Seller of the Consumer Product featured on the Product Listing.

### **III. MONETARY JUDGMENT**

IT IS FURTHER ORDERED that:

A. Judgment in the amount of Two Million Dollars (\$2,000,000) is entered in favor of Plaintiff against Defendant, as a civil penalty.

B. Defendant is ordered to pay to Plaintiff, by making payment to the Treasurer of the United States, \$2,000,000, which, as Defendant stipulates, its undersigned counsel holds in escrow for no purpose other than payment to Plaintiff. Such payment must be made within 7

days of entry of this Order by electronic fund transfer in accordance with instructions to be provided by a representative of Plaintiff upon the Court's issuance of this Order.

#### **IV. ADDITIONAL MONETARY PROVISIONS**

IT IS FURTHER ORDERED that:

- A. Defendant relinquishes dominion and all legal and equitable right, title, and interest in all assets transferred pursuant to this Order and may not seek the return of any assets.
- B. The facts alleged in the Complaint will be taken as true, without further proof, in any subsequent civil litigation by or on behalf of the Commission, including in a proceeding to enforce its rights to any payment or monetary judgment pursuant to this Order.
- C. Defendant acknowledges that Defendant's Employer Identification Number or other Taxpayer Identification Number ("TIN"), including all TINs that Defendant previously provided, may be used by the Commission and Plaintiff for reporting and other lawful purposes, including collecting on any delinquent amount arising out of this Order in accordance with 31 U.S.C. § 7701.

#### **V. ORDER ACKNOWLEDGMENTS**

IT IS FURTHER ORDERED that Defendant obtain acknowledgments of receipt of this Order:

- A. Defendant, within 7 days of entry of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.
- B. For 3 years after entry of this Order, Defendant must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees having managerial responsibilities for conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting. Delivery must occur within 7 days of entry of this Order for current



personnel. For all others, delivery must occur before they assume their responsibilities.

C. From each individual or entity to which Defendant delivered a copy of this Order, Defendant must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

## **VI. COMPLIANCE REPORTING**

IT IS FURTHER ORDERED that Defendant make timely submissions to the Commission:

A. One year after entry of this Order, Defendant must submit a compliance report, sworn under penalty of perjury. Defendant must:

1. identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission and Plaintiff may use to communicate with Defendant;
2. identify all of Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses;
3. describe the activities of each business, including any business that it conducts that relates to Defendant's Online Marketplace Platform;
4. describe in detail whether and how Defendant is in compliance with each Section of this Order; and
5. provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission.

B. For 10 years after entry of this Order, Defendant must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:

1. any designated point of contact; or

2. the structure of Defendant or any entity that Defendant has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.

C. Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against Defendant within 14 days of its filing.

D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: \_\_\_\_\_” and supplying the date, signatory’s full name, title (if applicable), and signature.

E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: FTC v. Whaleco, Inc.

## **VII. RECORDKEEPING**

IT IS FURTHER ORDERED that Defendant must create certain records for 10 years after entry of the Order, and retain each such record for 5 years. Specifically, Defendant, must create and retain the following records:

- A. accounting records showing the revenues from all goods or services sold;

B. personnel records showing, for each person providing services for Defendant's Online Marketplace Platform relating to the disclosure of Seller identity information, any Reporting Mechanism, or compliance with the INFORM Consumers Act (15 U.S.C. § 45f), whether as an employee or otherwise, that person's: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;

C. records of all consumer complaints and refund requests related to Defendant's Online Marketplace Platform regarding the subject matter of this Order, whether received directly or indirectly, such as through a third party, any submissions to any Reporting Mechanism on Defendant's Online Marketplace Platform, and any response to such complaints or submissions; and

D. all records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission.

### **VIII. COMPLIANCE MONITORING**

IT IS FURTHER ORDERED that, for the purpose of monitoring Defendant's compliance with this Order and any failure to transfer any assets as required by this Order:

A. Within 14 days of receipt of a written request from a representative of the Commission or Plaintiff, Defendant must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents for inspection and copying. The Commission and Plaintiff are also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including depositions by remote means), 31, 33, 34, 36, 45, and 69.

B. For matters concerning this Order, the Commission and Plaintiff are authorized to communicate directly with Defendant. Defendant must permit representatives of the

Commission and Plaintiff to interview any employee or other person affiliated with Defendant who has agreed to such an interview. The person interviewed may have counsel present.

C. The Commission and Plaintiff may use all other lawful means, including posing, through its representatives as consumers, suppliers, or other individuals or entities, to Defendant or any individual or entity affiliated with Defendant, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

#### **IX. RETENTION OF JURISDICTION**

IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

**SO ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2025.**

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UNITED STATES DISTRICT JUDGE

**SO STIPULATED AND AGREED:**

**FOR PLAINTIFF:**

THE UNITED STATES OF AMERICA

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JORDAN C. CAMPBELL  
Deputy Assistant Attorney General  
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**FEDERAL TRADE COMMISSION**

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COUNSEL for Whaleco, Inc., also d/b/a Temu

Date: \_\_\_\_\_

**DEFENDANT: WHALECO, INC., ALSO D/B/A TEMU**

  
\_\_\_\_\_

Date: May 15, 2025

QIN SUN  
AS AN OFFICER OF Whaleco, Inc., also d/b/a Temu

**FEDERAL TRADE COMMISSION**

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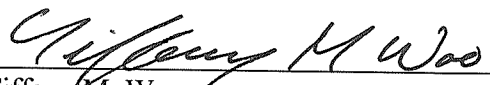
5/15/2025  
Date: \_\_\_\_\_

**DEFENDANT: WHALECO, INC., ALSO D/B/A TEMU**

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AS AN OFFICER OF Whaleco, Inc., also d/b/a Temu

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**FEDERAL TRADE COMMISSION**

  
\_\_\_\_\_  
Tiffany M. Woo

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Date: \_\_\_\_\_

**DEFENDANT: WHALECO, INC., ALSO D/B/A TEMU**

\_\_\_\_\_  
QIN SUN  
AS AN OFFICER OF Whaleco, Inc., also d/b/a Temu

Date: \_\_\_\_\_



# Attachment A

**15 USC 45f: Collection, verification, and disclosure of information by online marketplaces to inform consumers**

Text contains those laws in effect on January 15, 2025

**From Title 15-COMMERCE AND TRADE**

CHAPTER 2-FEDERAL TRADE COMMISSION; PROMOTION OF EXPORT TRADE AND PREVENTION OF UNFAIR METHODS OF COMPETITION

SUBCHAPTER I-FEDERAL TRADE COMMISSION

**Jump To:**

[Source Credit](#)

[Miscellaneous](#)

[References In Text](#)

[Codification](#)

**§45f. Collection, verification, and disclosure of information by online marketplaces to inform consumers**

**(a) Collection and verification of information**

**(1) Collection**

**(A) In general**

An online marketplace shall require any high-volume third party seller on such online marketplace's platform to provide, not later than 10 days after qualifying as a high-volume third party seller on the platform, the following information to the online marketplace:

**(i) Bank account**

**(I) In general**

A bank account number, or, if such seller does not have a bank account, the name of the payee for payments issued by the online marketplace to such seller.

**(II) Provision of information**

The bank account or payee information required under subclause (I) may be provided by the seller in the following ways:

(aa) To the online marketplace.

(bb) To a payment processor or other third party contracted by the online marketplace to maintain such information, provided that the online marketplace ensures that it can obtain such information within 3 business days from such payment processor or other third party.

**(ii) Contact information**

Contact information for such seller as follows:

(I) With respect to a high-volume third party seller that is an individual, the individual's name.

(II) With respect to a high-volume third party seller that is not an individual, one of the following forms of contact information:

(aa) A copy of a valid government-issued identification for an individual acting on behalf of such seller that includes the individual's name.

(bb) A copy of a valid government-issued record or tax document that includes the business name and physical address of such seller.

**(iii) Tax ID**

A business tax identification number, or, if such seller does not have a business tax identification number, a taxpayer identification number.

**(iv) Working email and phone number**

A current working email address and phone number for such seller.

**(B) Notification of change; annual certification**

An online marketplace shall-

(i) periodically, but not less than annually, notify any high-volume third party seller on such online marketplace's platform of the requirement to keep any information collected under subparagraph (A) current; and

(ii) require any high-volume third party seller on such online marketplace's platform to, not later than 10 days after receiving the notice under clause (i), electronically certify that-

(I) the seller has provided any changes to such information to the online marketplace, if any such changes have occurred; or

(II) there have been no changes to such seller's information.

### **(C) Suspension**

In the event that a high-volume third party seller does not provide the information or certification required under this paragraph, the online marketplace shall, after providing the seller with written or electronic notice and an opportunity to provide such information or certification not later than 10 days after the issuance of such notice, suspend any future sales activity of such seller until such seller provides such information or certification.

## **(2) Verification**

### **(A) In general**

An online marketplace shall-

- (i) verify the information collected under paragraph (1)(A) not later than 10 days after such collection; and
- (ii) verify any change to such information not later than 10 days after being notified of such change by a high-volume third party seller under paragraph (1)(B).

### **(B) Presumption of verification**

In the case of a high-volume third party seller that provides a copy of a valid government-issued tax document, any information contained in such document shall be presumed to be verified as of the date of issuance of such document.

## **(3) Data use limitation**

Data collected solely to comply with the requirements of this section may not be used for any other purpose unless required by law.

## **(4) Data security requirement**

An online marketplace shall implement and maintain reasonable security procedures and practices, including administrative, physical, and technical safeguards, appropriate to the nature of the data and the purposes for which the data will be used, to protect the data collected to comply with the requirements of this section from unauthorized use, disclosure, access, destruction, or modification.

## **(b) Disclosure required**

### **(1) Requirement**

#### **(A) In general**

An online marketplace shall-

- (i) require any high-volume third party seller with an aggregate total of \$20,000 or more in annual gross revenues on such online marketplace, and that uses such online marketplace's platform, to provide the information described in subparagraph (B) to the online marketplace; and
- (ii) disclose the information described in subparagraph (B) to consumers in a clear and conspicuous manner-
  - (I) on the product listing page (including via hyperlink); or
  - (II) in the order confirmation message or other document or communication made to the consumer after the purchase is finalized and in the consumer's account transaction history.

#### **(B) Information described**

The information described in this subparagraph is the following:

- (i) Subject to paragraph (2), the identity of the high-volume third party seller, including-
  - (I) the full name of the seller, which may include the seller name or seller's company name, or the name by which the seller or company operates on the online marketplace;
  - (II) the physical address of the seller; and
  - (III) contact information for the seller, to allow for the direct, unhindered communication with high-volume third party sellers by users of the online marketplace, including-
    - (aa) a current working phone number;
    - (bb) a current working email address; or
    - (cc) other means of direct electronic messaging (which may be provided to such seller by the online marketplace), provided that the requirements of this item shall not prevent an online marketplace from monitoring communications between high-volume third party sellers and users of the online marketplace for fraud, abuse, or spam.
- (ii) Whether the high-volume third party seller used a different seller to supply the consumer product to the consumer upon purchase, and, upon the request of an authenticated purchaser, the information described in clause (i) relating to any such seller that supplied the consumer product to the purchaser, if such seller is different than the high-volume third party seller listed on the product listing prior to purchase.

## **(2) Exception**

### **(A) In general**

Subject to subparagraph (B), upon the request of a high-volume third party seller, an online marketplace may provide for partial disclosure of the identity information required under paragraph (1)(B)(i) in the following situations:

(i) If such seller certifies to the online marketplace that the seller does not have a business address and only has a residential street address, or has a combined business and residential address, the online marketplace may-

(I) disclose only the country and, if applicable, the State in which such seller resides; and

(II) inform consumers that there is no business address available for the seller and that consumer inquiries should be submitted to the seller by phone, email, or other means of electronic messaging provided to such seller by the online marketplace.

(ii) If such seller certifies to the online marketplace that the seller is a business that has a physical address for product returns, the online marketplace may disclose the seller's physical address for product returns.

(iii) If such seller certifies to the online marketplace that the seller does not have a phone number other than a personal phone number, the online marketplace shall inform consumers that there is no phone number available for the seller and that consumer inquiries should be submitted to the seller's email address or other means of electronic messaging provided to such seller by the online marketplace.

### **(B) Limitation on exception**

If an online marketplace becomes aware that a high-volume third party seller has made a false representation to the online marketplace in order to justify the provision of a partial disclosure under subparagraph (A) or that a high-volume third party seller who has requested and received a provision for a partial disclosure under subparagraph (A) has not provided responsive answers within a reasonable time frame to consumer inquiries submitted to the seller by phone, email, or other means of electronic messaging provided to such seller by the online marketplace, the online marketplace shall, after providing the seller with written or electronic notice and an opportunity to respond not later than 10 days after the issuance of such notice, suspend any future sales activity of such seller unless such seller consents to the disclosure of the identity information required under paragraph (1)(B)(i).

### **(3) Reporting mechanism**

An online marketplace shall disclose to consumers in a clear and conspicuous manner on the product listing of any high-volume third party seller a reporting mechanism that allows for electronic and telephonic reporting of suspicious marketplace activity to the online marketplace.

### **(4) Compliance**

If a high-volume third party seller does not comply with the requirements to provide and disclose information under this subsection, the online marketplace shall, after providing the seller with written or electronic notice and an opportunity to provide or disclose such information not later than 10 days after the issuance of such notice, suspend any future sales activity of such seller until the seller complies with such requirements.

## **(c) Enforcement by Federal Trade Commission**

### **(1) Unfair and deceptive acts or practices**

A violation of subsection (a) or (b) by an online marketplace shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

### **(2) Powers of the Commission**

#### **(A) In general**

The Commission shall enforce subsections (a) and (b) in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this section.

#### **(B) Privileges and immunities**

Any person that violates subsection (a) or (b) shall be subject to the penalties, and entitled to the privileges and immunities, provided in the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

### **(3) Regulations**

The Commission may promulgate regulations under section 553 of title 5 with respect to the collection, verification, or disclosure of information under this section, provided that such regulations are limited to what is necessary to collect, verify, and disclose such information.

### **(4) Authority preserved**

Nothing in this section shall be construed to limit the authority of the Commission under any other provision of law.

## **(d) Enforcement by State attorneys general**

### **(1) In general**

If the attorney general of a State has reason to believe that any online marketplace has violated or is violating this section or a regulation promulgated under this section that affects one or more residents of that State, the attorney general of the State may bring a civil action in any appropriate district court of the United States, to-

- (A) enjoin further such violation by the defendant;
- (B) enforce compliance with this section or such regulation;
- (C) obtain civil penalties in the amount provided for under subsection (c);
- (D) obtain other remedies permitted under State law; and
- (E) obtain damages, restitution, or other compensation on behalf of residents of the State.

## **(2) Notice**

The attorney general of a State shall provide prior written notice of any action under paragraph (1) to the Commission and provide the Commission with a copy of the complaint in the action, except in any case in which such prior notice is not feasible, in which case the attorney general shall serve such notice immediately upon instituting such action.

## **(3) Intervention by the Commission**

Upon receiving notice under paragraph (2), the Commission shall have the right-

- (A) to intervene in the action;
- (B) upon so intervening, to be heard on all matters arising therein; and
- (C) to file petitions for appeal.

## **(4) Limitation on State action while Federal action is pending**

If the Commission has instituted a civil action for violation of this section or a regulation promulgated under this section, no State attorney general, or official or agency of a State, may bring a separate action under paragraph (1) during the pendency of that action against any defendant named in the complaint of the Commission for any violation of this section or a regulation promulgated under this section that is alleged in the complaint. A State attorney general, or official or agency of a State, may join a civil action for a violation of this section or regulation promulgated under this section filed by the Commission.

## **(5) Rule of construction**

For purposes of bringing a civil action under paragraph (1), nothing in this section shall be construed to prevent the chief law enforcement officer, or official or agency of a State, from exercising the powers conferred on such chief law enforcement officer, or official or agency of a State, by the laws of the State to conduct investigations, administer oaths or affirmations, or compel the attendance of witnesses or the production of documentary and other evidence.

## **(6) Actions by other State officials**

### **(A) In general**

In addition to civil actions brought by attorneys general under paragraph (1), any other officer of a State who is authorized by the State to do so, except for any private person on behalf of the State attorney general, may bring a civil action under paragraph (1), subject to the same requirements and limitations that apply under this subsection to civil actions brought by attorneys general.

### **(B) Savings provision**

Nothing in this subsection may be construed to prohibit an authorized official of a State from initiating or continuing any proceeding in a court of the State for a violation of any civil or criminal law of the State.

## **(e) Severability**

If any provision of this section, or the application thereof to any person or circumstance, is held invalid, the remainder of this section and the application of such provision to other persons not similarly situated or to other circumstances shall not be affected by the invalidation.

## **(f) Definitions**

In this section:

### **(1) Commission**

The term "Commission" means the Federal Trade Commission.

### **(2) Consumer product**

The term "consumer product" has the meaning given such term in section 2301 of this title and section 700.1 of title 16, Code of Federal Regulations.

### **(3) High-volume third party seller**

#### **(A) In general**

The term "high-volume third party seller" means a participant on an online marketplace's platform who is a third party seller and, in any continuous 12-month period during the previous 24 months, has entered into 200 or more discrete sales or transactions of new or unused consumer products and an aggregate total of \$5,000 or more in gross revenues.

**(B) Clarification**

For purposes of calculating the number of discrete sales or transactions or the aggregate gross revenues under subparagraph (A), an online marketplace shall only be required to count sales or transactions made through the online marketplace and for which payment was processed by the online marketplace, either directly or through its payment processor.

**(4) Online marketplace**

The term "online marketplace" means any person or entity that operates a consumer-directed electronically based or accessed platform that-

(A) includes features that allow for, facilitate, or enable third party sellers to engage in the sale, purchase, payment, storage, shipping, or delivery of a consumer product in the United States;

(B) is used by one or more third party sellers for such purposes; and

(C) has a contractual or similar relationship with consumers governing their use of the platform to purchase consumer products.

**(5) Seller**

The term "seller" means a person who sells, offers to sell, or contracts to sell a consumer product through an online marketplace's platform.

**(6) Third party seller****(A) In general**

The term "third party seller" means any seller, independent of an online marketplace, who sells, offers to sell, or contracts to sell a consumer product in the United States through such online marketplace's platform.

**(B) Exclusions**

The term "third party seller" does not include, with respect to an online marketplace-

(i) a seller who operates the online marketplace's platform; or

(ii) a business entity that has-

(I) made available to the general public the entity's name, business address, and working contact information;

(II) an ongoing contractual relationship with the online marketplace to provide the online marketplace with the manufacture, distribution, wholesaling, or fulfillment of shipments of consumer products; and

(III) provided to the online marketplace identifying information, as described in subsection (a), that has been verified in accordance with that subsection.

**(7) Verify**

The term "verify" means to confirm information provided to an online marketplace pursuant to this section, which may include the use of one or more methods that enable the online marketplace to reliably determine that any information and documents provided are valid, corresponding to the seller or an individual acting on the seller's behalf, not misappropriated, and not falsified.

**(g) Relationship to State laws**

No State or political subdivision of a State, or territory of the United States, may establish or continue in effect any law, regulation, rule, requirement, or standard that conflicts with the requirements of this section.

**(h) Effective date**

This section shall take effect 180 days after December 29, 2022.

( Pub. L. 117–328, div. BB, title III, §301, Dec. 29, 2022, 136 Stat. 5555 .)

**EDITORIAL NOTES****REFERENCES IN TEXT**

The Federal Trade Commission Act, referred to in subsec. (c)(2), is act [Sept. 26, 1914, ch. 311](#), 38 Stat. 717 , which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

**CODIFICATION**

Section was enacted as part of the Consolidated Appropriations Act, 2023, and not as part of the Federal Trade Commission Act which comprises this chapter.