

118TH CONGRESS  
2D SESSION

# H. R. 8684

To amend the Trademark Act of 1946 to provide for contributory liability for certain electronic commerce platforms for use of a counterfeit mark by a third party on such platforms, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 11, 2024

Mr. ISSA (for himself, Mr. NADLER, Mr. CLINE, and Mr. JOHNSON of Georgia) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend the Trademark Act of 1946 to provide for contributory liability for certain electronic commerce platforms for use of a counterfeit mark by a third party on such platforms, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Stopping Harmful Of-  
5 fers on Platforms by Screening Against Fakes in E-com-  
6 merce Act of 2024” or the “SHOP SAFE Act of 2024”.

1 **SEC. 2. CONTRIBUTORY LIABILITY FOR ELECTRONIC COM-**  
2 **MERCE PLATFORMS.**

3 (a) IN GENERAL.—Section 32 of the Act entitled “An  
4 Act to provide for the registration and protection of trade-  
5 marks used in commerce, to carry out the provisions of  
6 certain international conventions, and for other purposes”,  
7 approved July 5, 1946 (commonly known as the “Trade-  
8 mark Act of 1946”) (15 U.S.C. 1114), is amended by add-  
9 ing at the end the following:

10 “(4)(A) Except as provided in subparagraph  
11 (B), an electronic commerce platform shall be  
12 contributorily liable in a civil action under paragraph  
13 (1) for a case in which a third-party seller is shown  
14 to have used in commerce a counterfeit mark in con-  
15 nection with the sale, offering for sale, distribution,  
16 or advertising of a good that implicates health and  
17 safety on the platform.

18 “(B) An electronic commerce platform shall not  
19 be subject to contributory liability under subpara-  
20 graph (A) if the electronic commerce platform dem-  
21 onstrates that the platform took reasonable meas-  
22 ures to implement each of the following steps to pre-  
23 vent infringing use by the applicable third-party sell-  
24 er on the platform before that infringing use:

25 “(i) Determined after an investigation and  
26 periodically confirmed—

1           “(I) that the third-party seller des-  
2           ignated a registered agent in the United  
3           States for service of process; or

4           “(II) in the case of a third-party seller  
5           located in the United States that has not  
6           designated a registered agent under sub-  
7           clause (I), that the third-party seller has  
8           designated a verified address for service of  
9           process in the United States.

10          “(ii) Imposed on the third-party seller as a  
11          condition of participating on the electronic com-  
12          merce platform requirements that the third-  
13          party seller—

14               “(I) consents to the jurisdiction of the  
15               courts of the United States with respect to  
16               claims related to participation by the third-  
17               party seller on the platform; and

18               “(II) uses images on the electronic  
19               commerce platform that accurately depict  
20               the goods sold, offered for sale, distributed,  
21               or advertised on the electronic commerce  
22               platform.

23          “(iii) Provided accessible electronic means  
24          by which a registrant and consumer can notify

1 the electronic commerce platform of suspected  
2 use of a counterfeit mark.

3 “(iv)(I) Implemented at no charge from  
4 the electronic commerce platform to registrants  
5 proactive measures for screening listings for  
6 goods before displaying the goods to the public  
7 to prevent the use by any third-party seller of  
8 a counterfeit mark in connection with the sale,  
9 offering for sale, distribution, or advertising of  
10 goods on the platform.

11 “(II) For purposes of implementing the  
12 proactive measures described in subclause (I)—

13 “(aa) a registrant shall provide the  
14 applicable electronic commerce platform  
15 with a notice of the mark of the registrant  
16 and a point of contact in advance; and

17 “(bb) the applicable electronic com-  
18 merce platform may not require that a reg-  
19 istrant participate in any program specific  
20 to the electronic commerce platform.

21 “(III) An electronic commerce platform  
22 shall not be liable under subparagraph (A) for  
23 failure to comply with subclause (I) if the reg-  
24 istrant has not provided the platform with the  
25 information required under subclause (II) and

1 information relating to the mark is not publicly  
2 available.

3 “(IV) If the screening described in sub-  
4 clause (I) blocks goods from being displayed on  
5 the applicable electronic commerce platform, the  
6 electronic commerce platform shall allow an op-  
7 portunity for the applicable third-party seller to  
8 provide proof that the goods in question are not  
9 counterfeit.

10 “(v)(I) Implemented at no charge from the  
11 electronic commerce platform to registrants a  
12 program to expeditiously disable or remove  
13 from the platform any listing for which the  
14 platform has actual or constructive knowledge  
15 of the use of a counterfeit mark in connection  
16 with the sale, offering for sale, distribution, or  
17 advertising of goods.

18 “(II) For the purposes of subelause (I),  
19 constructive knowledge of the use of a counter-  
20 feit mark may be inferred based on information  
21 gathered by the applicable electronic commerce  
22 platform (including information submitted by  
23 registrants to the electronic commerce plat-  
24 form), including information regarding—

1           “(aa) the use of a counterfeit mark on  
2           the platform;

3           “(bb) the allegedly infringed registra-  
4           tion;

5           “(cc) identifying characteristics of a  
6           particular listing or third-party seller; or

7           “(dd) other circumstances, as appro-  
8           priate.

9           “(III) An electronic commerce platform  
10          may reinstate a listing disabled or removed  
11          under this clause, if, after an investigation initi-  
12          ated by the platform or upon request of the af-  
13          fected third-party seller, the platform reason-  
14          ably determines that a counterfeit mark was  
15          not used in the listing.

16          “(IV) A verified decision to reinstate a list-  
17          ing under subclause (III) shall not be a basis  
18          for finding that the applicable electronic com-  
19          merce platform failed to comply with this  
20          clause.

21          “(vi)(I) Implemented a publicly available,  
22          written policy that requires termination of a  
23          third-party seller that has been determined to  
24          have engaged in repeated use of a counterfeit  
25          mark in connection with the sale, offering for

1 sale, distribution, or advertising of goods on the  
2 electronic commerce platform.

3 “(II) The use of a counterfeit mark by a  
4 third-party seller in 3 separate listings during a  
5 1-year period typically shall be considered re-  
6 peated use for the purposes of subclause (I),  
7 but an electronic commerce platform may allow  
8 a third-party seller to remain active after re-  
9 peated use of a counterfeit mark when miti-  
10 gating circumstances exist.

11 “(III) The determination of whether miti-  
12 gating circumstances exist for the purposes of  
13 subclause (II) shall consider the overall activity  
14 of the applicable third-party seller, efforts the  
15 third-party seller has taken to cure supply-chain  
16 concerns, third-party seller intent, the scope  
17 and nature of the defenses offered by the third-  
18 party seller, efforts the third-party seller takes  
19 to refute or resolve disputes once notified of a  
20 concern, and any other factor considered rel-  
21 evant by a court.

22 “(IV) An electronic commerce platform  
23 may reinstate a third-party seller after termi-  
24 nating the third-party seller under subclause  
25 (I), if, after an investigation initiated by the

1 platform or upon request of the affected third-  
2 party seller, the platform determines that the  
3 third-party seller did not engage in repeated use  
4 of a counterfeit mark or that mitigating cir-  
5 cumstances exist.

6 “(V) A verified decision by an electronic  
7 commerce platform under subclause (IV) to re-  
8 instate a third-party seller shall not be a basis  
9 for finding that the platform failed to comply  
10 with this clause.

11 “(vii) Implemented at no charge from the  
12 electronic commerce platform to registrants  
13 measures for screening third-party sellers to en-  
14 sure that third-party sellers that have been ter-  
15 minated under clause (vi) do not rejoin or re-  
16 main on the platform under a different seller  
17 identity or alias.

18 “(viii) Provided a verified basis, upon re-  
19 quest of a registrant, for the registrant to con-  
20 tact a third-party seller, or the designated  
21 agent of a third-party seller for service of proc-  
22 ess, if the registrant has a bona fide belief that  
23 the third-party seller has used a counterfeit  
24 mark of a mark belonging to the registrant in  
25 connection with the sale, offering for sale, dis-



1           tribution, or advertising of goods that implicate  
2           health and safety on the electronic commerce  
3           platform, except that the platform is not re-  
4           quired to provide information that constitutes  
5           the personal identity of an individual, a residen-  
6           tial street address, or personal contact informa-  
7           tion of an individual (and, in such case, the  
8           platform shall provide an alternative means of  
9           contacting the third-party seller).

10           “(C) The determination of whether the meas-  
11           ures in this paragraph are reasonable shall consider  
12           the size and resources of an electronic commerce  
13           platform, the nature of the goods and services pro-  
14           vided by the platform, available technological and  
15           non-technological solutions, the amount of informa-  
16           tion provided by a registrant to the platform, and  
17           any other factor considered relevant by a court.

18           “(D)(i) This paragraph shall apply to an elec-  
19           tronic commerce platform—

20                   “(I) that has sales on the platform in the  
21                   current or previous calendar year in an amount  
22                   of not less than \$500,000; or

23                   “(II) with less than \$500,000 in sales on  
24                   the platform in the current or previous calendar  
25                   year, beginning on the date that is 180 days

1 after the date on which the platform receives  
2 the tenth notice, in aggregate, that qualifies  
3 under clause (ii).

4 “(ii) To count toward the aggregate 10-notice  
5 threshold under clause (i)(II), a notice shall—

6 “(I) include a reference to this paragraph;

7 “(II) include an explicit notification of the  
8 10-notice threshold and the requirement of the  
9 applicable electronic commerce platform to pub-  
10 lish the information under clause (iii); and

11 “(III) identify a listing on the applicable  
12 electronic commerce platform that reasonably  
13 could be determined to have used a counterfeit  
14 mark in connection with the sale, offering for  
15 sale, distribution, or advertising of goods that  
16 implicate health and safety.

17 “(iii) Not later than 30 days after the date on  
18 which an electronic commerce platform described in  
19 clause (i)(II) receives the first notice under clause  
20 (ii), the platform shall make publicly available an at-  
21 testation that—

22 “(I) the sales of goods on the platform in  
23 the current or previous calendar year were less  
24 than \$500,000; and

1           “(II) includes an aggregate count of the  
2 notices received by the platform that qualify  
3 under clause (ii), which shall be updated upon  
4 receipt of additional notices by the platform.

5           “(E) An electronic commerce platform shall im-  
6 plement and maintain reasonable security procedures  
7 and practices, including administrative, physical, and  
8 technical safeguards, appropriate to the nature of  
9 the data and the purposes for which the data will be  
10 used, to protect the data collected to comply with  
11 the requirements of this paragraph from unauthor-  
12 ized use, disclosure, access, destruction, or modifica-  
13 tion.

14           “(F) This paragraph may not be construed to  
15 limit liability or defenses in contexts other than  
16 those described in this paragraph, including any  
17 cause of action or defenses available under any other  
18 provision of this Act, notwithstanding that the same  
19 facts may give rise to a claim under this paragraph.

20           “(G) With respect to fiscal year 2026, and each  
21 fiscal year thereafter, the amounts in subparagraph  
22 (D) shall be increased by an amount equal to the  
23 percentage increase during the preceding fiscal year,  
24 if any, in the Consumer Price Index for All Urban  
25 Consumers published by the Department of Labor.

1 “(H) In this paragraph:

2 “(i) The term ‘consumer product’ has the  
3 meaning given the term in section 101 of the  
4 Magnuson-Moss Warranty—Federal Trade  
5 Commission Improvement Act (15 U.S.C. 2301)  
6 and section 700.1 of title 16, Code of Federal  
7 Regulations, or any successor regulation.

8 “(ii) The term ‘counterfeit mark’ has the  
9 meaning given the term in section 34(d)(1)(B).

10 “(iii) The term ‘electronic commerce plat-  
11 form’—

12 “(I) means any person or entity that  
13 operates a consumer-directed electronically  
14 based or accessed platform that—

15 “(aa) includes features that allow  
16 for, facilitate, or enable third-party  
17 sellers to engage in the sale or pur-  
18 chase of a consumer product in the  
19 United States; and

20 “(bb) is used by 1 or more third-  
21 party sellers; and

22 “(II) does not include any electroni-  
23 cally-accessed platform that—

24 “(aa) prohibits the sale of goods  
25 by a third-party seller; and

1                   “(bb) takes reasonable steps to  
2                   prevent an unauthorized third-party  
3                   sale or offer for sale.

4                   “(iv) The term ‘good that implicates health  
5                   and safety’ means a consumer product, the use  
6                   of which can lead to illness, disease, injury, se-  
7                   rious adverse event, allergic reaction, or death,  
8                   if the consumer product is produced without  
9                   compliance with all applicable Federal, State,  
10                  and local health and safety regulations and in-  
11                  dustry-designated testing, safety, quality, cer-  
12                  tification, manufacturing, packaging, and label-  
13                  ing standards.

14                  “(v) The term ‘third-party seller’ means  
15                  any seller, independent of an electronic com-  
16                  merce platform, that sells, offers to sell, or con-  
17                  tracts to sell a consumer product in the United  
18                  States through an electronic commerce plat-  
19                  form.”.

20                  (b) EFFECTIVE DATE.—This section, and the amend-  
21                  ments made by this section, shall take effect on the date  
22                  that is 1 year after the date of enactment of this Act.

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