

Transparency Is the Best Policy: The Inform Consumers Act Offers Verified Unauthorized Third-Party Seller Information

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Anonymous unauthorized third-party sellers are a nagging problem for most brands. While certain online marketplaces have adopted initial measures to create transparency, such as requiring third-party sellers to list business names and address information on seller profiles, many of the most problematic unauthorized resellers simply list UPS drop-box locations, shell entities, false addresses, and other misleading address information in an attempt to maintain anonymity.

However, the recently passed Integrity, Notification, and Fairness in Online Retail Marketplaces for Consumers Act (the INFORM Act) offers another positive step in the fight against unauthorized third-party resellers who hide behind the anonymity afforded by Internet marketplaces. Effective 27 June 2023, online marketplaces will be required to collect and verify the contact information for unauthorized, high-volume sellers listing on the marketplace.

The INFORM Act will not only provide for more *verified* seller contact information on Internet marketplaces, but it will offer another tool for brands to combat third-party sellers who continue to provide misleading, or otherwise fraudulent, contact information in an attempt to avoid repercussions for their unauthorized sales.

SCOPE OF THE INFORM ACT

Application of the INFORM Act

The INFORM Act requires online marketplaces to collect and verify certain information from “high-volume, third-party sellers.” While the INFORM Act does not apply to every seller on Internet marketplaces, it likely applies to most sellers that pose issues for brands. A “high-volume, third-party seller” is defined as a seller who, in any 12 months within the past two years, has made over 200 sales that total \$5,000 or more in gross revenue. There is, however, an exception for sellers who have already made the required information publicly available and have an ongoing contractual relationship with the online marketplace.

Collection and Disclosure of Information

Specifically, the INFORM Act requires high-volume, third-party sellers on online marketplaces to provide the marketplace with the seller's (1) bank account number, (2) contact information, and (3) certain tax identification information within 10 days of becoming a high-volume seller.

Further, once the proper information is collected, the online marketplace must require any high-volume, third-party seller with an aggregate total of \$20,000 or more in annual gross revenue to disclose certain information to consumers either in the product listing page or the order confirmation message. The information that must be provided to consumers includes: the full entity name, a physical address, and other contact information. This is all in an effort to assist parties in being able to get in touch with the sellers.

Verification of Information

Critically, and a big step towards eliminating those frustrating fake or misleading addresses that many brands see today on seller profiles, the marketplace must verify that the information collected is true and accurate within 10 days of receiving it. Further, the online marketplace must annually notify and require sellers to certify that the information is still accurate. If a high-volume, third-party seller does not provide the information or certification required above, the online marketplace must suspend any future sales activity until the seller provides the appropriate information or verification.

WHAT THIS MEANS FOR BRANDS

Although this law was passed with the purpose of protecting consumers, manufacturers will also see the benefits. Brands will now be able to more easily access the contact information of problematic, high-volume, unauthorized third-party sellers on online marketplaces. The availability of an online seller's contact information will help to streamline the enforcement process for authorized reseller programs.

However, the INFORM Act does not mean the end of unauthorized third-party resellers. What it does mean is that brands will have more verified transparency. While brands have previously been forced to resort to costly investigations, mystery buys, and other attempted communications to verify seller contact information, the INFORM Act is intended to make Internet marketplaces verify and provide third-party seller information.

Additionally, the INFORM Act also offers brands another tool to combat and remove unauthorized third-party sellers. Where a seller fails to provide a verifiable address, or does not certify the information is correct as required by the INFORM Act, the Internet marketplace is required to suspend or shut down the seller. Brands who discover false or otherwise misleading seller information can report this to the marketplace as another way to remove anonymous unauthorized resellers.

The INFORM Act is another step in the right direction in the fight against unauthorized third-party resellers.

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