

U.S. CONSUMER PROTECTION AND PRODUCT SAFETY LEGAL FRAMEWORK OVERVIEW: AN INSIGHT FOR NON-FOOD PRODUCTS IN THE ONLINE MARKET*

Haekal Al Asyari S.H. and Yaries Mahardika Putro S.H.¹

Digital transformation is profoundly impacting our economies and societies, changing the ways in which consumers interact with each other and the online marketplace. Unlike the traditional market, an online market is a convenient way for customers to purchase products without having to leave their home. On the online market, buyers may also shop from the comfort of their computer or tablet, able to make an easier price comparison and also able to take advantage of discounts offered by the digital marketplace to the buyers. Commonly the products that are sold on the internet are non-food products. Non-food products are tangible products, which are – in foreseeable conditions – intended for consumption not as foodstuffs. In the United States, the number of online purchases increases year by year. This study observes that a large number of customers in the United States are at a risk of negative impacts from transactions through the cyber market. Unsafe products are one of the negative facets of customers making transactions online. It shall be noted that in the online market, consumers are generally unable to inspect products thoroughly before purchasing them, also the access to safety information and warnings is more limited compared to the ones in a traditional market. Moreover, for market surveillance authorities, it is difficult to detect and track unsafe products. Therefore, this study tries to highlight the development of U.S consumer protection, product safety and also shows several challenges that the online market presents to the consumer and the government along with the methods that are sought through to tackle the issues at stake.

Introduction

By virtue of developments in information and communications technology in the last decade, opportunities are created for businesses to open an extensive new market on the cyberspace attracting an unlimited source of consumers. Inevitably, balance has to be struck between these opportunities and the challenges that are completely new as opposed to offline commercial transactions (Federal Trade Commission 2001). These challenges have to be appropriately and adequately addressed due to their sensitivity for consumers (Micklitz & Durovic 2017, 10).

Consumer protection in the United States started in response to the pressure against the development of freedom of contract and the principle of *caveat emptor* (Waller 2011). This phenomenon is rooted to the 19th century common law (Saharay 2010, 120–135). The consumer protection authority is a system guaranteeing the private rights of

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¹ *Haekal Al Asyari S.H. and Yaries Mahardika Putro S.H.*, LLM students of the European and International Business Law Program, Faculty of Law, University of Debrecen. The study was made under the scope of the Ministry of Justice's program on strengthening the quality of legal education.

consumers to claim compensation for damages of specific products and illegal practices of a seller. Providing of course, a burden of proof from he/she who consumes (Waller 2011, 20).

Historically, due to the inevitable existence of unsafe products, the need for government regulation was pioneered by the Consumer Bill of Rights by President Kennedy (Presidential papers 1962) and the growth of “Great Society” program of the Johnson Administration (Lyndon B. Johnson [University of Michigan] 1964, 22 May). Progressively, the growth of consumer protection took another significant portion in the 20th century (during Franklin Roosevelt’s era) that gave birth to a large number of federal, state, and local regulatory agencies and laws dealing with consumer protection (Truth in Lending Act 1968, Fair Credit Billing Act 1974, Petroleum Marketing Practices Act 1978, Comprehensive Smokeless Tobacco Health Education Act 1986, Do Not Call Registry Act 2006).

The underlying principle of American consumer protection law could be found in the Federal Trade Commission Act [hereinafter FTC Act] (Free Trade Commission Act 1914). It’s important to shine a light on section 5 highlighting unfair methods of competition (Free Trade Commission Act 1914) which becomes a standard for determining deceptive acts for judicial decisions (Horvath 2009, 1). The FTC Act has jurisdiction over the entire economy, including business and consumer transactions on the internet (Free Trade Commission 2001).

Likewise, the development of technology is followed by the emergence of disruptive innovation. The physical example of this can be seen in the shifting activity from the traditional market to the online market. The significant reason behind the increase in demand of the online market is the active modern lifestyle and economic growth (Sharma 2013, 364–376). The online market is distinguished from the traditional market in many ways such as the product descriptions, gift options, home delivery and payment modes that are easy to access through online shopping nowadays. The online market is a virtual, online space on which buyers and sellers meet to carry out transactions involving goods or services (Corrot & Nussenbaum 2014, 7).

As of today, nine in ten American adults use the internet, which is equal to 90% of the population for the year 2019 (Pew Research Centre 2019). With an ever-increasing number of people accessing the internet, boosted by the development of technology and globalization, the numbers will continue to grow. The internet has made the sales of goods easier, quicker, and more competitive, while at the same time, becoming less susceptible to certain kinds of fraud and misrepresentation (Winn 2006, 24).

One of the underlying arguments of this essay is that the lack of reliability of intangible information is not governed by a unified system of liability for misrepresentations of material fact, which may cause economic or even physical harm (Traynor 2006, 82). Under the European Union, a product safety legal framework (General Product Safety Directive 2001), empowered by an authority network (Commission Notice on the Market Surveillance of Products Sold Online 2017) to survey the market is in existence but should be enhanced in response to the new challenges of online market. To that end, the objective of this essay is to observe the legal framework of the United States, in regards to the consumer protection system in general, alongside its procedures and functions, as well as focusing on the legal

framework and enforcement of product safety in particular, to the extent of addressing challenges to overcome and methods of protecting consumers from unsafe products in the online market.

1. Consumer Protection Framework in the United States

1.1. Federal Level

The models of enforcement of consumer protection in the United States can involve Competition Law Statutes, issued by the Antitrust Division of the United States Department of Justice, and the competence of the independent Federal Agency known as the FTC (Waller 2005, 631). As the subsequent focus of this research will deal with product safety and market surveillance framework, particularly of non-food products in the online market, we will focus on the latter.

a. Mechanisms Under the FTC

The main goals of the FTC are to protect consumers by preventing fraud, deception, and unfair business practices in the marketplace (Free Trade Commission Act 1914). Its jurisdiction is enshrined under the same article. Additionally, to help support the FTC, there are 37 other consumer protection related statutes that represent an extension of the FTC's jurisdiction both in terms of enforcement and administration (Waller 2005, 31). Consumer protection under the structure of the FTC is given its own bureau alongside competition and economic affairs (Free Trade Commission 2019). The bureau of consumer protection enforces consumer protection laws by conducting investigations, litigations, rulemaking proceedings, and business education (Smith 2019).

One of the primary tools for enforcing consumer protection law by the Bureau of Consumer Protection is the Civil Investigative Demand (CID) (Free Trade Commission Act 1914, Sec.20), initiated by an internal research, consumer complaints, court referrals, congressional requests, and by the President himself (Waller 2005, 4). A hearing can only be held in front of an administrative law judge if the FTC have established both a reason to believe, and that the case at hand is in the interest of the public (Free Trade Commission Act 1914, Sec.20). A cease and desist order may then be issued by the judge where a violation of such order will result in civil penalties amounting to \$10,000 per violation (Free Trade Commission Act 1914, Sec.20). Redress for the order may be sought through an appeal, federal appeal, and lastly the Supreme Court (U.S Constitution Amendment 1868, Art.3).

Aside from the CIDs, the FTC has two other jurisdictions which are to create trade regulation rules defining the concept of unfair or deceptive trade practices (U.S Code 1926) and to seek restitution for victimised consumers (U.S Code 1926). However, criminal charges are outside of FTC's jurisdiction and are under that of the U.S. Department of Justice (Department of Justice 2018).

b. Other federal agencies

Aside from the FTC, other federal agencies play an important role in protecting consumers. First, the U.S. consumer product safety commission (CSPC) develops policies in protecting the public against unsafe products alongside its safety standards and enforcement. Second, the Food and Drug Administration (FDA) regulates the manufacture, marketing, and distribution of food. Third, the National Highway Traffic Safety Administration (NHTSA) covers automobile, truck, and motorcycle safety under the Traffic and Motor Vehicle Safety act of 1996, unifying the standards through federal oversight of automobile safety (National Traffic and Motor Vehicle Act 1966). Our focus will be directed towards the CSPC.

1.2. State level

State governments act as both consumer law enforcement agencies and consumer advocates in a decentralized and non-integral system (Waller 2005, 17). The investigation and enforcement of consumer protection is generally the same in most of the 50 states, whereas attorneys general have the authority to enforce the laws (Waller 2005, 37). Attorneys general may file lawsuits and obtain restitution on behalf of consumers, investigate possible violations, issue injunctions to terminate ongoing illegal activity, bring criminal cases when authorized, and make rules to govern trade practices (Waller, 2011). Among the state attorneys general, cooperation is done through an association in order to ensure the effectiveness of consumer protection activity and litigation.

State attorneys general may issue CIDs by requesting documents or oral testimony from specific individuals or companies when there is a possibility of violation with a reason to believe that the violation in question has occurred or will occur, and without a probable cause (U.S Constitution Amendment IV). Criminal investigations may be conducted through a grand jury process (U.S Code 1926) and must be proved beyond reasonable doubt in the appropriate state court. Civil and criminal litigation under the Consumer Protection Branch of the Civil Division (CPB) of the United States Department of Justice is conducted upon appropriate certification by the FTC (Department of Justice 2018).

2. Consumer Product Safety Framework in the United States

2.1. Mandatory Regulations

The United States regulates consumer products, toys, medicines, medical services, motor vehicles, and a wide of array of other products by means of mandatory standards (Winn 2006, 99). These compulsory rules are mostly federal, set by statutes or regulations that define requirements for consumer products (U.S Consumer Product Safety Commission 2017). The responsible federal agency to set these regulations would be the CPSC (Consumer Product Safety Act 1998). The CPSC develops mandatory standards through rulemaking, where staff inputs are taken from consumers,

industries, and other government agencies. These mandatory standards are expressed in the form of performance requirements (Annual Report 2017).

a. Consumer Product Safety Act

In 1972, the Congress of the United States passed the Consumer Product Safety Act with consideration for the growing number of consumer products which present unreasonable risk of injury, the diversity of nature and abilities of consumers in using such products, public interest, and control of the state (Consumer Product Safety Act 1972). All in the aims of protecting the public against reasonable risk of injury, assisting consumers in evaluating the comparative safety of products, and above all to develop a uniform safety standard for consumer products (Consumer Product Safety Act 1972). The Act provides definition, public disclosure information, consumer product safety standards, procedural rules, legal redress, product certification and labelling, inspection and recordkeeping, import and export, as well as civil and criminal penalties (Consumer Product Safety Act 1972). The Act acts as an umbrella statute, establishing the CPSC along with its basic authority (Consumer Product Safety Act 1972).

b. Consumer Product Safety Improvement Act

In response to many high profile product recalls in 2007, the Congress passed the CPSIA (Consumer Product Safety Improvement Act 2008) to establish consumer product safety standards and other safety requirements for children's products and to reauthorize and modernize the CPSC (Williams 2008). The CPSIA contains product safety rules concerning lead content, phthalates, toy safety, durable infant or toddler products, third-party testing and certification, tracking labels, imports, ATVs, civil and criminal penalties (Consumer Product Safety Improvement Act 2008), and a public-search database of reports of harm. The CPSIA also requires domestic manufacturers to issue a General Certificate of Conformity (GCC) to be applied as consumer product safety rule or any similar CPSC rule, ban, standard, or regulation enforced by the commission.

c. Federal Hazardous Substances Act

The FHSA (*Federal Hazardous Substances Act 1960*) requires precautionary labelling on the immediate container of hazardous household products to help consumers safely store and use products provide information on the first aid steps taken in cases of emergency (*Federal Hazardous Substances Act 1960*). The act also allows the CPSC to ban certain products that are highly dangerous or the nature of the safety instructions is not adequate to protect the consumers (*Federal Hazardous Substances Act 1960*).

d. Other mandatory regulations

Under the CPSC, there are other regulations governing specific product safety consumer protection rules such as the Children's Gasoline Burn Prevention Act, (*Children's*

Gasoline Burn Prevention Act 2008) Child Safety Protection Act, Flammable Fabrics Act (*Flammable Fabrics Act 1953*), Poison Prevention Packaging Act (*Poison Prevention Packaging Act 1970*), Refrigerator Safety Act (*Refrigerator Safety Act 1956*), Child Nicotine Poisoning Prevention Act, and the Drywall Safety Act. However, for the focus and interest of our issue, the aforementioned acts will not be discussed.

2.2. Voluntary Standards

Safety standards are a consensus, prescribing a set of rules, conditions, or requirements concerning definitions of product-related terms, classification of components, specification of materials, performance, systems, services, or practices relating to the safety of consumer products used (U.S Consumer Product Safety Commission 2017). These voluntary standards are sufficient when substantial compliance would eliminate or adequately reduce the risk of injury (U.S Consumer Product Safety Commission 2017). There are many voluntary standard organizations such as ASTM, CSA Group, and UL.

3. Consumer Product Safety Agency

3.1. CSPC

Rulemaking by the CSPC is under the Administrative Procedure Act (*Administrative Procedure Act 1946*) involving publication in the federal register of a notice of the proposed rules. This is a two-stage process, which explains the proposed rule, provides opportunity for public comment, includes agency considerations, and then the agency's issuance of the final rule (U.S CPSC 2019).

3.2. National Electronic Injury Surveillance system (NEISS)

NEISS is a database providing statistical estimates of consumer product-related injuries from a probability sample of around 100 hospital emergency rooms (Marker & Lo 1996). It also gathers additional data at either surveillance or investigation level. NEISS collects its data through ongoing routine surveillance of ERs, special emergency department surveillance activities, follow-back telephone interviews with the injured, and on-site investigations with the injured and witnesses (National Electronic Injury Surveillance System 2000, 7). The collected data will identify injuries related to specific consumer products, and enables further study of that particular product. These data will also be used as evidence by the CPSC for product recalls, public awareness campaigns, and product safety standards (*Consumer Product Safety Act 1972*). Furthermore, the CPSC helps the enhancement of user interfaces, expanding data elements, and sources, along with seeking input from other stakeholders such as federal agencies in order to ensure NEISS' data is up-to-date (National Electronic Injury Surveillance System 2000, 8).

4. Procedure of detecting unsafe and hazardous products on the market

4.1. Market Surveillance Programs

a. Import Surveillance Program

The CSPC Office for Import Surveillance works closely with the U.S. Customs and Border Protection by allocating staff alongside the Customs and Border Protection personnel at major ports of entry throughout the United States. The CSPC develops risk assessment methodology to identify shipments having a high risk of containing harmful products (Consumer Product Safety Improvement Act 2008). Additionally, CSPC conducts establishment inspections of manufacturers, importers, retailers, monitors internet and resale markets, responds to industry-generated reports about potentially unsafe products, and tests products for compliance with specific standards and mandatory regulations (U.S Consumer Product Safety Commission 2017, 21).

b. Trusted Trader Program

The Trusted Trader Program was designed to help committed importers in maintaining a high level of product safety compliance and to help prevent import of unsafe products. Importers who are in compliance will enjoy benefits, such as faster and easier access to the market (U.S Customs and Border Protection 2016).

c. Risk Assessment Methodology (RAM) System

This system was developed in 2011 to analyse imported products by using a risk-scoring algorithm to identify shipments that have an increased risk probability of noncompliance or defect (U.S Consumer Product Safety Commission 2017, 28). A shipment will be denied entry into the State if a violation is detected, which prevents it from entering the marketplace.

d. Fast-track product recall program

In implementing this program, a business must be prepared to apply a corrective action plan including a consumer-level recall such as refund, repair and replacement, within 20 working days of submitting a report to the CSPC. This way, it will help consumers by removing potentially hazardous products from the marketplace quickly and efficiently (Federal Register 1997).

e. Regulatory robot

The CSPC developed a regulatory robot to help customers identify which safety regulations may apply to their products by asking questions to provide guidance towards the relevant regulations. This program also helps businesses to identify important

product safety assessments (CSPC Regulatory Robot 2019) before manufacturing and importing products.

5. Challenges and new tools for the better detection of unsafe non-food products on the online market

The expansion of the global market and globalized supply chains triggers concern for product safety, requiring a divergence of regulations and standards (Consumers International 2018). Nowadays, the online market is becoming popular as the most convenient way of shopping, as a result of and influenced by the explosion of the internet which affected the people living in a digital era (Massad & Berardelli 2016, 26–37). Unlike a traditional market, the online market is a convenient way for customers to purchase products without having to leave their home (Huseynov & Yildirim 2016, 452–465). On the online market, buyers may also shop from the comfort of their computer or tablet, able to make an easier price comparison and also able to take advantage of discounts offered by the digital marketplace to the buyers (Jadhav & Khanna 2016, 1–15). Commonly the products that are sold on the internet are non-food products. Non-food products are tangible products, which are – in foreseeable conditions – intended for consumption not as foodstuffs (Tichoniuk 2018, 155). As one of the biggest marketplaces, an online market such as Aliexpress, provides many non-food products. There are several categories to choose from, such as women's and men's fashion, watches, bags and shoes, toys, sports equipment, home improvement and tools and also phone and telecommunications equipment (Yazdanifard & Hunn Li 2014, 33–40).

Advances in communication technologies within the last decade of the twentieth century paved the way for innovations, promoting rapid globalization. The convergence of telecommunications and computer technology has given birth to a new business organizational system called the internet, presenting a revelation of ecological business development (Javalgi et al. 1983, 420–435). Electronic commercial transactions over the internet, known as e-commerce, have rapidly grown until nowadays (Pons et al. 2003, 130–138). The online market as a platform or online space for business-to-consumer and business-to-business transactions has been growing year by year.

The numerous benefits of the online market influence the decision of consumers to shop through it instead of traditional markets. Comparison shopping, better prices and convenience are among the benefits of the online market. With regards to comparison shopping, the consumer may compare prices, models and options more easily and quickly through the online market instead of a traditional market (Gupta, Bansal & Bansal 2013, 1–10). Subsequently, many online marketplaces offer discount coupons and rebates which reduce the prices, increasing the level of interest of customers to shop through the online market (Atcharyachanvvanich, Sonehara & Okada 2008, 101–110). Unlike the traditional market, the online market is offering its convenience to the customer by its continuous availability for 24 hours and 7 days from the customer's computer or smartphone (Khan 2016, 19–22). The customer is able to do transactions from the whole world without any barrier. The customers are no longer restricted to

products, models and the availability of options from local retailers (Khan 2016, 19–22).

Due to these benefits, the number of digital shoppers is always increasing. Recently, *Statista*, one of the most trustworthy statistics companies based in Germany, released the statistics of the number of US online shoppers from 2016 until 2019. In the United States, the amount of online shoppers was 209 million in 2016 and it grew to 224 million people in 2019. It is predicted to be 230 million people in 2021 (Clement 2019).

Nevertheless, the large number of customers in the United States are at risk of suffering a negative impact from transactions through the online market. Lack of product safety is one of the negative impacts for the customer doing online transactions. Despite several benefits that are offered by the online market, lack of safety is the main concern for the customer or even the government to tackle in this regard. In line to that issue, an unsafe product is defined as a product that does not comply with a safety rule issued under the Consumer Product Safety Act (CPSA), or contains a defect which could create a substantial risk of injury to the public or presents an unreasonable risk of serious injury or death (U.S Code 1926).

It shall be noted that on the online market, consumers are generally unable to inspect products before purchasing them, also, their access to safety information and warnings is more limited than in a traditional market. Moreover, while in traditional markets, manufacturers distribute their goods in large number to brick-and-mortar stores, on the online market, products may be distributed through a number of channels such as e-commerce platforms, online retailers' websites, online auction websites and social media, where it is not easy for the consumer to identify who is manufacturing and delivering a product. Also, for market surveillance authorities, it is difficult to detect and track the unsafe products. This does not only apply to new products but also to second-hand products (OECD 2016).

According to the OECD, in different jurisdictions, there are at least three categories of unsafe products that are available online and that have been reported as a potential source of consumer harm, possibly affecting injury, adverse effects on health or even death to the consumer (OECD 2016). The first category is that of banned products, which are prohibited from sale in certain countries, either online or offline, as well as products that have been recalled from the market in a voluntary or mandatory manner. Subsequently, the products which possess inadequate labelling and safety warning are categorized as the second tier of unsafe products. The final (third-tier) category of unsafe products are products that do not meet voluntary or mandatory safety standards.

With regards to the first-tier category, banned product, it is described as unsafe products that are prohibited from sale in one or more jurisdictions. A ban can be limited in time or permanent. In the United States, consumers have been able to buy banned products online despite existing prohibition. For instance, consumers are freely able to purchase small high powered magnets online which had been listed as banned products in the United States (CPSC 2019). The US CPSC also noted that these kinds of magnets are available to be purchased by consumers through e-commerce platforms in the People's Republic of China (New York Times, 2019). It should be noted that the responsibility for ensuring the goods are not banned in the jurisdictions where they are offered for sale to consumers generally lies with the business selling the goods. The US

Customs Border Protection (US CBP) has explained on its website that individuals purchasing goods online from foreign countries are regarded as importers and are responsible for ensuring that the products comply with the US state and federal import regulations, which include the issues of product safety (CBP 2019).

The first-tier category, recalled products, whether the recall was mandatory or voluntary, concerns defective products which raise safety concerns for the consumer. In an e-commerce context, product manufacturers, which often carry out the recalls, can face the challenges in tracking the sale of recalled products which may be available through a wide variety of channels worldwide (Tan 2008, 48–55). In the US, products that have either violated safety standards or present a significant risk of injury to the public are recalled and announced to the public via press release by the CPSC (Kirschman & Smith 2007, 228–231). In the year 2014, the US CPSC and a large consumer electronics supplier announced that 10 different consumer products that had already been recalled in 2012 and 2013 were still on offer online. The products included cameras, televisions, dishwashers, electric ranges, office chairs and toys that could cause hazards such as fire, burn, expelled parts or skin irritation (CPSC 2019a).

The data shows that an estimated 130,000 annual visits to emergency departments in the United States are due to injuries from toys (U.S. Consumer Product Safety Commission 2003). Poorly designed children's products have been associated with suffocation, entrapment, asphyxiation, burns, poisonings, falls, and lacerations (Centre for Disease Control and Prevention 1997, 1185–1189). Recalls on children's products have been found to account for 43% of total recalls announced by the CPSC and account for over 50% of injuries due to recalled products reported (Kids in Danger 2002, 25). In the last decade there have been 60 million units of child products recalled in the US. However, there are many unsafe products sold in large number, with only 16–18% return rates reported for all recalled products (Wentraub 2008). Children's products may have particularly low return rates because they are lower cost items and often do not include product registration cards (U.S. Consumer Product Safety Commission 2003b).

Subsequently, providing consumers with clear, accurate and easily accessible information about goods on offer is key to helping consumers make informed decisions on e-commerce (OECD 2010). Most of the consumers in e-commerce do not always receive proper access to product labelling and safety warning information before purchasing products on the online market, which may cause injury and harm to the consumer. In the US, the 2008 Consumer Product Safety Improvement Act requires that advertising for a product on offer online must cover relevant cautionary statements, in order to prevent the consumer getting injured or harmed (*Consumer Product Safety Improvement Act 2008*).

With regards to the products that do not meet voluntary or mandatory safety standards: based on the survey of consumer usage of domestic e-commerce carried out in 2013 in the US, a relatively small number of consumers complained about problems with goods that did not meet voluntary or mandatory safety standards in force in the US. It was only 4.7% of people in the US who did complain concerning their products not meeting safety standards (METI 2014). However, the low level of complaints did not indicate that there are no problems with the products sold online that do not meet

voluntary or mandatory safety standards. The low level of complaints may be affected by the unawareness of consumers of such problems.

On the other hand, in order to overcome these challenges posed by unsafe products, the US government put their attention to detecting and also combating the existence of unsafe products which are sold on the online market. These methods are conducted under the considerations to protect the consumer's interest. There are at least four main methods that are undertaken by the US Government in order to overcome the challenges of unsafe products which are sold on the online market. The establishment of organizations which are dedicated to e-commerce market surveillance, market surveillance cooperation with customs authorities, cooperation between authorities and e-commerce platforms, international cooperation between authorities and consumer education about online product safety issues are the methods used by the US Government to tackle and detect unsafe products which are sold on online market (OECD 2011).

Online product safety market surveillance plays an important role in detecting unsafe products on the online market. These entities are responsible for surveillance at those brick-and-mortar shops that often use the Internet to sell their products to consumers and are created specifically to detect unsafe products offered on the online market. In 1999, the Consumer Product Safety Commission launched the operation Safe Online Shopping (S.O.S), which aimed to monitor and find banned and recalled products sold online. Also, in the same year CPSC created the "War-Room" to enable its investigators to monitor the internet and detect sales of unsafe products through mystery shopping. These initiatives resulted in 4000 novelty lighters being recalled, because of their lack of a child-resistant mechanism (CPSC 2019c).

In a cross-border e-commerce context, the seizing of products at the border that do not meet the safety regulations of the jurisdiction is one of the most effective ways to prevent unsafe products from being placed on the market. The customs authorities are usually responsible for checking the conformity of products with regulations on product safety. To help prevent unsafe products from reaching consumers through cross-border e-commerce, co-operation between market surveillance and customs authorities is the solution to detect the unsafe products. As one of the methods to strengthen the work of CPSC in detecting unsafe products, the CPSC cooperated with US Customs Authorities. In 2009, the Commercial Targeting and Analysis Centre (CTAC), which is hosted by the Customs and Border Protection, was established for cooperation between agencies to protect consumers in the United States from unsafe products, including those sold via e-commerce (CBP 2019b). Ten agencies partner with CTAC, including US CPSC, US Food and Drugs Administration (US FDA), US Food Safety and Inspection Service (US FSIS), US Environmental Protection Agency (US EPA) (CBP 2019b). In 2013, US CPSC and US CBP seized a shipment originating from China, which contained 70,000 counterfeit consumer products, including razor blades, toys, sunglasses, markers and batteries, with a whole value estimated at \$3.9 million (CBP 2013).

Subsequently, although e-commerce platforms are usually not legally responsible for the safety of the goods supplied by third-party merchants through their platform, they have co-operated with authorities in a number of countries to help protect consumers from unsafe products. In 2015, the US CPSC announced the launching of a consumer

product safety collaboration scheme with *Alibaba*, the largest online and mobile commerce company in the world, based in China. Although the majority of consumers buying products from the platform are located in China, the number of consumers based in foreign countries and purchasing products via *Alibaba*, including consumers in the United States, has been on the increase (Wall Street Journal 2019). The scheme of collaboration is as follows (CPSC 2019d):

- a. The establishment of a direct line enabling contacts between US CPSC and *Alibaba*.
- b. The sharing of a list of recalled products with *Alibaba* by the US CPSC, enabling it to block the sale of illegal and recalled products via its platform to consumers in the US.
- c. The establishment of access points on *Alibaba* business to business platforms that would direct importers of products to the US to compliance with US Safety Standards.

Even though the US government had sufficiently and effectively worked to detect unsafe products in online market, the need for international cooperation cannot be denied. One issue market surveillance authorities are often facing is the difficulty in identifying the supply chain and the economic operator concerned, such as a manufacturer, a retailer, or an e-commerce platform (OECD 2014). Removing unsafe products when the overseas retailers or e-commerce platforms are reluctant to comply with the request to remove them appears to be even more challenging. Therefore, the establishment of international cooperation between states is important to combating this issue. In North America, US CPSC, Health Canada and the Consumer Production Federal Agency of Mexico (PROFECO) established a cooperative engagement framework in order to provide cooperation, promote an exchange of information on unsafe products and experiences of verification. In June 2015, this cooperation issued a joint recall on portable speakers that were sold online and which could overheat and cause fire (Consumer Protection Federal Agency 2015).

On the other side, the US Government also conducted a bilateral agreement with the People's Republic of China to cooperate in combating and detecting unsafe products on the online market. In 2013, the US CBP and the General Administration of Customs of China (GACC) conducted a joint customs operation focusing on counterfeit products. Over 243 000 counterfeit consumer electronics products, including products with logos of well-known brands, were seized as a result of this long operation. The initiative also led to the arrest by local law enforcement authorities in the United States of those businesses that had imported counterfeit products into the country with an aim of selling them online (CBP 2019c).

In spite of the consumer authority market surveillance and law enforcement actions explained above, there is no guarantee that an unsafe product is completely removed from e-commerce. One way to increase consumer awareness about these problems and risks is to provide consumers with relevant information online. Making product recall information easily accessible to consumers is also key to enhancing consumer protection and trust in e-commerce. In the US, the website of the Rapid Alert System for dangerous non-food products can be easily accessed by the consumer to understand the safety of products. Subsequently, since 2007, the Illinois Attorney General has been

publishing a *Safe Shopping Guide* every year to help consumers avoid purchasing unsafe toys and children's products during their holiday shopping for Christmas. The guide includes pictures and descriptions of recalled products by the US CPSC in a way that consumers can easily read (Illinois Attorney General 2014). Through these preventive actions, the existence of unsafe products on the online market can be easily detected and most importantly, the consumer's interests can be protected.

Conclusions

In the recent years of globalisation and technological advancements that it brings, it has changed not just the form and environment of a traditional marketplace, but also the way that products are designed, manufactured, and distributed. Hence, this phenomenon is accompanied by risks. This study has tried to observe and analyse the framework of consumer protection both in general, and particular to the online market, within the sphere of the largest marketplace in the world.

The framework at hand that exists in the United States to protect consumers from fraud, deceptive acts, unfair business practices, and especially from unsafe products, consists of a mixture of national, state, and local governmental regulations. As the substantial pillar of consumer protection in the U.S., the Federal Trade Commission (FTC) is a model for consumer protection. FTC's jurisdiction covers both aspects of legal enforcement and administration. One of the imperative instruments enshrined in the FTC Act is the Civil Investigative Demand (CID). The issuance of such a demand will instigate research and investigation towards a potential violation of consumer rights in the interest of the public. Additionally, attorneys general play an essential role at the state level for the investigation and enforcement of consumer protection through the aforementioned mechanisms.

Product safety is a priority in consumer protection, both for public and private agencies. The enforcement of such regulatory standards must be supported by a broad array of legislative tools. Under the federal authority, this study introduced the Consumer Product Safety Act (CPSA) which authorizes the Consumer Product Safety Commission (CPSC) to develop standards and bans and to pursue recalls under particular circumstances, alongside the administration of related consumer protection acts such as the CPSIA, FHSA, and other mandatory regulations. Moreover, the National Electronic Injury Surveillance System cooperates with hospitals in the United States in detecting consumers who have been injured by certain unsafe products.

There are several procedures for detecting unsafe products on the market under the CPSC such as the import surveillance program, trusted trader program, risk assessment methodology system, fast-track product recall program and the regulatory robot. Due to the previously discussed challenges of the online market, the U.S. has undertaken four approaches to overcome such challenges: these are the establishment of organizations dedicated to e-commerce, market surveillance, cooperation between market surveillance and customs authorities, and authorities with e-commerce platforms, as well as international cooperation between authorities and consumer education. Despite the sophistication of these mechanisms and cooperation, there are still no guarantees for the elimination of the threat posed by unsafe products via their removal from the online

market. Consumer awareness and sufficient relevant information must always be disseminated by the public and private agencies to both an on- and offline population.

References

Books & Journal Publications

- Saharay, H. K. (2010). *Textbook on consumer protection law*. New Delhi, India: Universal Law Publishing Co.
- Traynor, M. (2006). *Information liability and the challenges of law reform: an introductory note*. England: Jane-Winn
- Winn, K. J. (2006). *Consumer protection in the age of the 'Information Economy'*. England: Ashgate Publishing Limited
- Gupta A., Bansal, R. & Bansal, A. (2013). Online shopping: a shining future. *International Journal of Techno-Management Research*, 1 (1) pp. 1–10
- Sharma, A. (2013). A Study on E-Commerce and Online Shopping: Issues and Influences. *International Journal of Computer Engineering & Technology*, 1 (1) pp. 364–376
- Atcharyachanvvanich K., Sonehara, N. & Okada, H. (2008). What are the benefits of continued purchasing through the internet? A study of South Korean Consumers. *Journal of Service Science and Management*, 1 (1) pp. 101–110
- Centers for Disease Control and Prevention (1997). Toy-related injuries among children and teenager. *Morb Mortal Weekly Rep*, 46 (19) pp. 1185–1189
- Huseynov, F. & Yildirim, S.O. (2016). 'Internet Users' Attitude Toward Business-to-Consumer Online Shopping: a survey. *Information Development*, 32 (3) pp. 452–465
- Jadhav, V. & Khanna, M. (2016). Factors Influencing Online Buying Behavior of College Students: A Qualitative Analysis. *The Qualitative Report 2016*, 21 (1) pp. 1–15
- Javalgi, R. G. et al. (1983). The dynamics of global e-commerce: an organization ecology perspective. *International Marketing Review*, 22 (4) pp. 420–435
- Khan, G. A. (2016). Electronic commerce: a study on benefits and challenges in an emerging economy. *Global Journal of Management and Business Research: Economics and Commerce*, 16 (1) pp.19–22
- Kirschman, K. B. & Smith, A. G. (2007). Resale of recalled children's products online: an examination of the world's largest yard sale. *Injury Prevention*, 13 pp. 228–231
- Massad, V. J. & Berardelli, K. (2016). The Roles of Bounded Rationality and Ethical Self-efficacy in Online Shopping Orientation. *Academy of Marketing Studies Journal*, 20 (3) pp. 26–37
- OECD (2010). [Consumer Policy Toolkit](#). [accessed November 3, 2019]

- OECD (2016). [Online Product Safety: Trends and Challenges](#). [accessed November 3, 2019]
- Pons, A. et al. (2003). Global e-commerce: a framework for understanding and overcoming the trust barrier. *Information Management & Computer Security*. 11 (3) pp. 130–138
- Tan, S. C. (2008). Making products safe: process and challenges. *International Commerce Review*, 8 (1) pp. 48–55
- Tichoniuk, M. (2018). Safety and Quality of Non-Food Products. *Poznan University of Economics and Business*, Poznan, p. 155
- Waller, W. S. et al. (2011). Consumer Protection in the United States: An Overview. *European Journal of Consumer Law*, pp. 120–135
- Waller, W. S. (2005). In Search of Economic Justice: Considering Competition and Consumer Protection Law. *Loy. Chi. L. J.* 31 p. 631
- Yazdanifard, R. & Hunn Li, M. T. (2014). The Review of Alibaba’s Online Business Marketing Strategies Which Navigate Them to Present Success. *Global Journal of Management and Business Research: E-Marketing*, 14 (7) pp. 33–40

National Legal Instruments

- Children’s Gasoline Burn Prevention Act, Public Law 1110–278, July 17, 2008
- Comprehensive Smokeless Tobacco Health Education, Public Law 99–252, 1986
- Do Not Call Registry Act, Public law 108–10, 2003
- Fair Credit Billing Act, 1974
- Federal Trade Commission Act, Public Law 111–203, U.S. Statutes at Large 311 (1914), 2010
- Flammable Fabrics Act, Public Law 83–88; 7 Stat 111, June 30, 1953
- Petroleum Marketing Practices Act, Public Law 95–297, 2019
- Poison Prevention Packaging Act, Public Law 91–601, 84 Stat. 1670, December 30, 1970
- Refrigerator Safety Act, Public Law 84–930, 70 Stat 953, 1958
- Truth in Lending Act, Public law 90–321, 1968
- U.S. Telemarketing Rules, Federal Trade Commission, 2015
- U.S. Const. amend. XIV
-

International Legal Instruments

- General Product Safety Directive, 2001/95/EC

Reports

- 2017 Annual Report to the President and Congress, United States Consumer Product Safety Commission, 2017
- U.S. Consumer Product Safety Commission. U.S. Consumer Product Safety Commission 2003

- Annual Report to Congress. Washington DC: U.S. Consumer Product Safety Commission, 2003

Online Sources

- CBP (U.S.). CBP, CPSC Sign Agreement to Promote Consumer Safety. www.cbp.gov/newsroom/national-media-release/2010-04-26-040000/cbp-cpsc-sign-agreement-promote-consumer-safety. [accessed November 4, 2019]
- CBP (U.S.). Internet Purchases: Your Responsibility and Liability. www.cbp.gov/trade/basicimport-export/internet-purchases [accessed November 3, 2019]
- CBP (U.S.). U.S., China Announce Results of First Joint Intellectual Property Operation. www.cbp.gov/newsroom/national-media-release/2013-07-31-040000/us-china-announce-results-first-joint-intellectual [accessed November 4, 2019]
- CPSC (U.S.). Online Commerce Company Alibaba Group and CPSC Working Together on Consumer Safety. www.cpsc.gov/onsafety/2015/01/online-commerce-company-alibaba-group-and-cpsc-working-together-on-consumer-safety/ [accessed November 4, 2019]
- CPSC (U.S.). Port Surveillance News: CPSC Stops More Than 12.5 Million Units of Violative. www.cpsc.gov/en/Newsroom/News-Releases/2014/Port-Surveillance-News-CPSC-Stops-More-Than-125-Million-Units-of-Violative-Products-from-Reaching-Homes-in-Fiscal-Year-2013/ [accessed November 3, 2019]
- CPSC (U.S.). CPSC Announces Initiative to Monitor E-Commerce for Unsafe Products. www.cpsc.gov/en/Newsroom/News-Releases/2000/CPSC-Announces-Initiative-to-Monitor-ECommerce-for-Unsafe-Products/ [accessed November 4, 2019]
- CPSC (U.S.). CPSC Approves Strong Federal Safety Standard for High-Powered Magnet Sets to Protect Children and Teenagers. www.cpsc.gov/en/Newsroom/News-Releases/2014/CPSCApproves-Strong-Federal-Safety-Standard-for-High-Powered-Magnet-Sets-to-Protect-Childrenand-Teenagers [accessed November 4, 2019]
- Federal Hazardous Substances Act Requirements. <https://www.cpsc.gov/Business--Manufacturing/Business-Education/Business-Guidance/FHSA-Requirements> [accessed November 5, 2019]
- Clement, J. United States: Number of Digital Shoppers 2016–2021. <https://www.statista.com/statistics/183755/number-of-us-internet-shoppers-since-2009/> [accessed November 4, 2019]
- Pew Research Center. [Internet/Broadband Fact Sheet](#) [accessed October 30, 2019]
- Products from Reaching Homes in Fiscal Year 2013. www.cpsc.gov/en/Newsroom/News-Releases/2014/Port-Surveillance-News-CPSC-Stops-More-Than-125-Million-Units-of-Violative-Products-from-Reaching-Homes-in-Fiscal-Year-2013/ [accessed November 3, 2019]

- Alibaba Will Help Curb Export of Recalled Items. *The New York Times*. January 13, 2015, www.nytimes.com/2015/01/14/business/international/alibaba-teams-up-with-us-consumer-product-safety-commission.html [accessed November 4, 2019]
- Alibaba to Block Sales of Unsafe Children’s Products in U.S. *The Wall Street Journal*. January 13, 2015, www.wsj.com/articles/alibaba-to-block-sales-of-unsafe-childrens-products-in-u-s-1421144168 [accessed November 4, 2019]

Miscellaneous Sources

- Consumer Protection Federal Agency (PROFECO) (Mexico) (2015), Communication with the OECD
- Consumers International, the challenge of protecting consumers from unsafe products, A global Picture, May 2018, (Not-profit company), England, Wales
- Illinois Attorney General, *2014 Safe Shopping Guide*, Illinois, 2014
- Kids in Danger, *A Minefield of Danger: Children’s Product Recalls in 2002*, KID, 2002
- METI, *Market Survey on E-Commerce Transaction*, Japan, 2014. METI, *Market Survey on E-Commerce Transaction*, Japan, 2014
- OECD (2014), *Market Surveillance in the Field of Consumer Product Safety*, work in progress, [DSTI/CP/CPS(2014)26].
- Prepared Statement of the Federal Trade Commission on “Internet Fraud”, Before the Committee on Finance United States Senate, Washington, D.C. April 5, 2001
- Presidential papers of John F. Kennedy, President's Office Files, Speech Files, “*Special message to Congress on protecting consumer interest*”, 15 March 1962
- U.S. Consumer Product Safety Commission, *Strategic Plan 2018–2022, Keeping Consumers Safe*, 2019
- U.S. Consumer Product Safety Commission, Washington: Summary of Recall Effectiveness Meeting #1, 2003
- U.S. Customs and Border Protection, *Trusted Trader Framework Strategy Draft*, July 2016
- Wentraub, R. (2004). Child Product Safety: Do Current Standards Provide Enough Protection?, Testimony to the US House of Representatives Subcommittee on Commerce, *Trade and Consumer Protection*, 2004
- Williams, S. (2008). Overview – U.S. Consumer Product Safety Framework. Presentation at the Buyers Training, Shanghai and Guangzhou, China, March 13 and 15, 2008