

Amidst Scrutiny of E-Commerce Platforms, FTC Brings First INFORM Consumers Act Case

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E-commerce platforms offering consumer products should take note of the Federal Trade Commission's (FTC) first action enforcing the Integrity, Notification, and Fairness in Online Retail Marketplaces for Consumers Act (INFORM Consumers Act), announced against Temu on September 5, 2025. The INFORM Consumers Act was enacted in 2022 to deter the sale of counterfeit, stolen, and unsafe products and reduce fraud on e-commerce platforms by requiring "online marketplaces" with "high-volume third-party sellers" to collect, verify, and disclose information about those sellers.

After years of dormancy, it has re-emerged as a bipartisan political priority. On August 20, 2025, Senators Dick Durbin (D-IL) and Bill Cassidy (R-LA) sent a letter to the FTC saying they were "concerned by the apparent lack of action" to enforce the Act. And a week later, the Senators also wrote to 46 companies seeking information about their INFORM Consumers Act compliance efforts.

Given the surge in government interest, e-commerce platforms may timely assess the sufficiency of their INFORM Consumers Act compliance programs. Below, we discuss the Act's basic framework, analyze the FTC's case against Temu, and provide compliance tips. The FTC has traditionally sent signals to the market about its priorities and expectations through settlements, so this first public use of the INFORM Consumers Act is notable.

INFORM Consumers Act Applicability, Requirements, and Enforcement Mechanisms

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Coverage under the INFORM Consumers Act framework turns on two key definitions: online marketplaces and high-volume third-party sellers. The Act covers online marketplaces that: (1) are consumer-directed; (2) have a contractual relationship with consumers who purchase consumer products on that platform; and (3) allow, facilitate, or enable third-party sellers to sell, ship, or deliver consumer products. High-volume sellers are defined as those with 200 or more transactions that generate more than \$5,000 in gross revenue over a 12-month period.

Covered platforms must collect banking, tax identification, and contact information from each seller within 10 days of that seller becoming a high-volume seller. Then, within 10 days of collecting that information, the marketplace must verify it.

For high-volume sellers with annual gross revenues exceeding \$20,000 on the marketplace, that marketplace must disclose the seller's contact information on each of the seller's product listings, order confirmation messages, or account transaction histories. Covered marketplaces must also provide a telephonic and electronic mechanism to report suspicious activity by high-volume third-party sellers.

To enforce the Act, the FTC may seek civil penalties up to \$53,088 per violation, as well as injunctive relief. Notably, the law also authorizes state Attorneys General to enforce the Act – including civil penalty authority matching the that of the FTC.

FTC Allegations Against Temu and Key Settlement Terms

In its complaint against Whaleco, Inc., the operator of online gamified shopping platform Temu, the FTC alleged that Temu failed to provide a mechanism to report suspicious activity and failed to adequately disclose required seller information. The FTC alleged that during certain time periods Temu failed to provide any mechanism for consumers to report suspicious marketplace activity, and that even once it did provide such a mechanism it was not disclosed "clearly and conspicuously."

The FTC alleged Temu failed to clearly and conspicuously disclose high-volume sellers' contact information, because consumers had to "locate a series of small, unobtrusive links, or click numerous links" to locate seller identity information, and because the relevant links were vaguely labeled "See all."

To resolve the matter, Temu agreed to pay a \$2 million civil penalty. Temu also agreed to requirements to disclose the reporting mechanism and high-volume sellers' contact information clearly and conspicuously, including:

- Placing the disclosures at the top of product listings or on the same screen as product descriptions;
- Using font size and contrast to ensure they are visible to reasonable consumers;
- Using language understandable to reasonable consumers;
- Requiring no more than one click to access the reporting mechanisms or contact information;
- Placing the reporting mechanism and contact information in every format through which consumers access the platform; and

- If a reporting mechanism is hyperlinked, using text conveying that clicking the hyperlink enables consumers to report suspicious marketplace activity.

In addition, the settlement requires that the telephonic reporting mechanism must allow consumers to listen back to, re-record, and accept a report before submitting it, and it must have “audible instructions delivered in a volume, speed, and cadence sufficient for reasonable consumers to easily hear and understand.”

Compliance Tips for Online Marketplaces

Any company that provides an online forum for other entities to sell goods and services should consider whether they may be covered by the INFORM Consumers Act. For example, online gaming platforms may be covered if they facilitate the sale of games by third-party sellers. Social commerce platforms that combine social media features with e-commerce capabilities should also determine whether the Act applies to them.

Companies subject to the Act should assess their compliance programs. Implementing automated systems to track when sellers become “high-volume third-party sellers” aids compliance with the short 10-day requirements to obtain and verify bank, tax, and contact information.

The FTC’s settlement with Temu provides insight about practices that – even if not required by the statute – may help provide defenses against enforcement.

- First, companies should make efforts to make telephonic reporting mechanisms and electronic messaging systems reasonably easy for consumers to use and understand.
- Second, companies may consider limiting the number of clicks it takes to reach information, placing important information at the top of product listings, and using text size, color, and contrast to ensure visibility.
- Third, covered marketplaces should review and ensure that required disclosures appear across consumer platforms, including desktop browsers and mobile devices.

Covered platforms should also understand that the INFORM Consumers Act has many complex requirements, and that fashioning clear and conspicuous disclosures is best done in the context of each platform’s user interface.

Wiley’s FTC and Consumer Protection and Privacy, Cyber & Data Governance teams assists clients with a full spectrum of advertising, consumer protection, privacy, cybersecurity, and data governance issues. Please reach out to any of the authors with questions.