

WRITTEN STATEMENT OF AARON MUDERICK, FOUNDER & PRESIDENT  
CRAZY AARON'S PUTTYWORLD

SENATE COMMITTEE ON JUDICIARY  
"CLEANING UP ONLINE MARKETPLACES: PROTECTING AGAINST STOLEN,  
COUNTERFEIT AND UNSAFE GOODS"

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Good Morning. My name is Aaron Muderick. I am the Founder and President of Crazy Aaron's Puttyworld, a toy manufacturer based in Norristown, PA. Thank you for the opportunity to testify today on the problem of counterfeit and unsafe goods being sold through online marketplaces. Chairman Durbin and Ranking Member Grassley, I applaud your commitment to protecting consumers from unsafe, unreliable, and unregulated products sold through these channels.

Curbing the flow of counterfeit and unsafe goods in e-commerce is critically important to me as a U.S. toy manufacturer and small business owner. After a lot of experimenting, I founded Crazy Aaron's Puttyworld in 1998 and my first batch of Thinking Putty® was born. Our company mission is to create toys that inspire a sense of wonder and creativity. I quickly realized that this product was so unique and the creation process so sensitive to confidentiality, I was going to have to build my own factory to make it. So that's just what I did. Today, our headquarters in Norristown, PA, where Thinking Putty® is proudly made in the USA, employs over 100 people. Additionally, for over 18 years, with the support of our customers, we have provided meaningful daily work to hundreds of individuals with intellectual and physical disabilities in the Philadelphia area.

While my business has seen growth and success since the days of experimenting in my parent's basement, it has come with unanticipated challenges. As our Thinking Putty® became more popular, I discovered a tidal wave of intellectual property infringing versions of our products being sold online through third-party sellers. We have spent years and significant time and resources policing these infringing products one-by-one. I have submitted to this committee a list of hundreds of third party sellers, many based outside the United States, across numerous marketplaces, whom we identified as infringing our marks. Today I appreciate the opportunity to share three serious concerns:

First, the enormous resources required from a small business to endlessly police these marketplaces for bad actors which places an undue burden on us and negatively impacts the backbone of this country's economy. Second, that due to many of these bad actors being outside the jurisdiction of the United States, our recourse to protect our intellectual property and reclaim damages is severely limited and, in many cases, is nonexistent. Third, and most importantly, these bad actors often sell unsafe goods which do not meet the stringent federal safety standards required of legitimate producers. These violations of safety standards range from labeling requirements, product containing illegal levels of regulated chemicals, and mechanical hazards which can cause acute physical harm. Consumers visit online marketplaces assuming that products they see are vetted to meet all required safety standards. As you will see, in the example I am about to provide, this is not the case.

As background, legitimate toy manufacturers like myself and brick-and-mortar retailers of children's products must obtain safety certifications from independent third-party laboratories and comply with over 100 federal safety standards. Online marketplaces are not held to these same standards under current law. In today's world, these marketplaces often create an environment in which sellers are able to be anonymous and remain outside the reach of US jurisdiction. Opportunities are abundant, and

risks are few, to take advantage of consumer faith by selling counterfeit or unsafe products that may not comply with federal safety standards. When harm occurs, there is almost no recourse for consumers.

I created the world's first magnetic putty. It is a putty toy that crawls over to a magnet as if it was alive! It was a tremendous commercial success and differentiated us from competitors. They say imitation is the finest form of flattery, but I became extremely concerned as counterfeiters, infringers, and knock-offs flooded the marketplace. Around 2017 I noticed that magnetic putty sales began to decline precipitously coinciding with the appearance of many infringing and knock-off products offered in online marketplaces. In addition to my concern over lost sales, and my scramble to dedicate resources to beating back infringers of our trademarks and copyrights, I became increasingly concerned that almost every one of the competing products did not comply with mandatory federal safety standards.

After many years and significant resources expended, the number of products infringing our marks dropped significantly but not the sale of non-compliant similar products. The producers of competing products had learned a path of least resistance: sell products that don't infringe on our intellectual property but remain in violation of federal safety standards. While the number of illicit products in the marketplace did not change, we no longer had recourse against them as online marketplace systems are designed to focus on rights-holder issues but not issues related to non-compliance with safety standards.

Today, I have brought with me products I purchased last week from two of the largest online marketplaces in the United States. I also brought independent third-party laboratory results showing their non-compliance with mandatory federal safety standards. Our company has done this testing at our own expense, communicated this non-compliance to online marketplaces numerous times, and followed up with them repeatedly. Nonetheless, these products remain available for sale. They are purchased in the hundreds of thousands by unsuspecting consumers. Buying them online, for speedy delivery in time for this hearing, was no problem at all.

Our compliant product was developed through extensive investment in R&D. It contains a magnet of low strength considered safe by federal standards. The non-compliant products contain loose, as received, high-strength hazardous magnets which are not legal to sell in products for children below the age of 14. You will note that the product packaging and the online listings for these products, which I have provided to the committee, use language such as 'Safe for Ages 3+' or 'Safety tested'. The listings include photos of children as young as toddlers playing with the products.

Why you may ask are these magnets not considered safe? One reason is that accidental ingestion of these types of magnets causes serious internal injuries in many children, debilitating lifelong disability in others, and, unfortunately, numerous fatalities have been documented. Another hazard is that their magnetic strength is so high, they destroy themselves when drawn to each other. You can see in the photo and video I have provided that two of these magnets not only shatter into razor sharp shards when they collide, but due to the nature of their materials, will spark and have the capability to start a fire.

If my words, or my demonstration here, backed up by third-party laboratory results aren't enough, you need only look at the consumer reviews of these products which are publicly available in the online marketplaces. I have taken screenshots and submitted many of these to the committee.

An example: "The magnet broke while i was showing this off to a friend as he was pulling them apart! Sliced open his finger. I do not recommend this to anyone."

This is the story of one product, amongst a sea of millions, available in online marketplaces. I encourage my colleagues in all industries to share with the committee their own stories of counterfeit, infringing, and non-compliant products. These dangerous goods exist, not only across children's products, but also across the entire universe of consumer goods.

Unfortunately, consumers remain largely unaware of the scope of counterfeit and non-compliant product being sold through some online marketplaces and are unknowingly bringing these unsafe items into their homes. Counterfeiters have become increasingly adept at blending in and hiding on these sites making it difficult for consumers to differentiate between counterfeit and legitimate products. They use tactics such as categorizing the product under a rights holder's brand name, piggybacking on legitimate listings, using keywords, paid advertising, and pricing at the same or even higher than legitimate products.

This creates a situation where the true source of the product is not what the consumer is led to believe. When that consumer receives a non-compliant or counterfeit putty believing it is legitimate Crazy Aaron's Thinking Putty® and that counterfeit product does not meet their expectations for quality and safety, the disappointed consumer may never buy from my company again based on that experience. Our customer service reports these incidents regularly but we will never know the true cost of this misappropriation because the vast majority of consumers do not reach out to us directly to express their disappointment.

Currently, online marketplaces lack an effective, proactive, transparent process for screening sellers or products that are offered by sellers. Instead, the burden of enforcement disproportionately relies on rights holders like me and consumers to police and report infringement or regulatory safety concerns. The current system places no responsibility on the foreign seller or the marketplace and instead requires that rights holders scour online marketplaces and investigate, report, and prove infringement to the marketplace selling platforms before illicit items are removed. This causes delay, allows sales of illicit goods to unsuspecting consumers, and puts the responsibility and expense on brand owners. If my team, organized and operating for years on a single product have had no success, what chance does a lone consumer have? It feels like a never-ending game of whack-a-mole – as soon as one listing is taken down, the seller pops back up under a different listing. This problem is compounded because marketplace processes vary, forcing rights holders to constantly navigate different, and often changing, marketplace enforcement procedures. This process removes the initial burden from the seller and without basis further gives the sellers the benefit of the doubt, to the detriment of rights holders and consumers.

Proactive procedures must be the first line of defense to protect consumers and businesses like mine from these illicit third-party sellers. Verifying the identity of sellers and disclosing basic seller information to consumers are good first steps in addressing this issue. Verification and disclosure make it easier to track and suspend bad actors and makes it easier for consumers to actually be able to contact them if they receive a product that does not meet their expectations or even worse, causes harm. If there is no verified contact information, there is no ability for a rights holder, consumer, or law enforcement to trace and enforce at the source.

Some opponents have argued that requiring sellers to provide information to verify their identity would be burdensome and impede their business growth. From my perspective, it would be much less burdensome to provide basic information like my government ID, address, and tax ID than spending countless hours and expending valuable resources to track down bad actors to protect my brand reputation from counterfeit versions. If I need to provide this information to the bank where the money

from my product sale is deposited, why is it so burdensome to share this information with the marketplace itself?

As it stands today, legitimate toy brands such as mine are playing by one set of rules and anonymous third-party sellers that exploit marketplaces are playing by another set of rules or are not playing by the rules at all. This harms both consumers and toy businesses large and small who are trying to bring safe, fun, and educational toys to market. More needs to be done to ensure that illicit third-party sellers are not able to take advantage of the current online marketplace environment and sell products that can pose serious health and safety risks.

Thank you for opportunity to share my experiences and perspective with you. I look forward to answering any questions.