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Client Alert: INFORM Act Aimed to Curb Online Sales of Counterfeit Goods

On December 29, 2022, Congress passed the Integrity, Notification, and Fairness in Online Retail Marketplaces for Consumers Act (the "INFORM Consumers Act"). This Act creates obligations for online marketplaces directed at U.S. consumers to collect, retain and disclose certain information on "high-volume" sellers. The Act is aimed at curbing the pervasive problem of low-quality counterfeit goods sold online, which harm brand owners and consumers alike. The Act better equips the Federal Trade Commission and state governments to enforce requirements designed to address the unique challenges presented by online counterfeit sales. Chief among these challenges is the difficulty of identifying and pursuing counterfeiters who often operate anonymously from outside the United States.

Under the INFORM Consumers Act, subject to data security requirements, online marketplaces must collect and verify identification and bank account information for "High-Volume Sellers"—defined as sellers who complete at least 200 discrete transactions collectively amounting to \$5,000 or more in sales through the marketplace over a twelve-month period. High-Volume Sellers must annually recertify their information to the marketplaces. Online marketplaces are required to suspend any High-Volume Seller who fails to comply with the Act's information and certification requirements within ten days of the marketplace's request. For sellers

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with \$20,000 or more in annual revenue from sales on a particular online marketplace, that marketplace must also disclose the identification information either on the seller's product listing page(s) via hyperlink or directly to a consumer following purchase from the seller. While the Act does not provide for a private right of enforcement, it requires that online marketplaces feature a "clear and conspicuous" consumer reporting mechanism for all High-Volume Sellers. The requirements of the INFORM Consumers Act go into effect June 27, 2023, and online marketplaces must implement the required policies and procedures by that date.

The INFORM Consumers Act was brought about in large part through lobbying efforts of the International Anti-Counterfeiting Coalition (IACC). Neal, Gerber & Eisenberg is a long-time member of and contributor to this organization, and shares in the organization's mission to protect consumers and brand owners from counterfeit goods.

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