

Recent CPSC Lawsuits Could Have Significant Ramifications for Platforms and for Companies Relying on Third Parties for Product Installation

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Over the course of about a week, the CPSC, an agency that rarely litigates, flexed its litigation muscles not once, but twice, recently filing complaints against Amazon and Thyssenkrupp Access Corp., seeking to force both companies to conduct recalls. Both are administrative complaints.

Fulfilled by Amazon

The CPSC voted 3-1 to file its [complaint](#) against Amazon for allegedly not recalling hazardous third-party products sold on its Fulfilled by Amazon platform. Those hazardous products include flammable children's pajamas, faulty carbon monoxide detectors, and hair dryers without protections against electrocution. Though Amazon has stopped selling some of these potentially harmful products, the CPSC still wants Amazon to issue recalls with the Commission and to destroy any of the goods returned to them.

The CPSC's complaint reflects its ongoing challenge with how to handle massive third-party platforms while still effectively protecting consumers. Under the Fulfilled by Amazon program, merchants can keep their products at an Amazon fulfillment center, and Amazon will pack and ship the products for them for a fee. Those merchants maintain legal titles to their products while Amazon provides its packing and shipping services. CPSC, however, emphasizes that when a consumer returns a Fulfilled by Amazon product, it goes back to Amazon, not the merchant. Amazon then examines the product to see if it can be resold. If an item cannot be resold, then the merchant can have the product mailed back to its own facility.

In its complaint, the CPSC considers Amazon as a "distributor" that may be liable for the safety of the products it packs and ships.

Amazon, like many similar platform providers, does not consider itself a "distributor" of these products. Indeed, the Texas Supreme Court's *Amazon.com, Inc. v. McMillan* ruling this June supports Amazon's stance. The Texas Court found that the company is not considered a "seller" of Fulfilled by Amazon products under the state's product liability law, because the platform does not actually hold title to the products.

Amazon has notified consumers who purchased the products identified in CPSC's complaint about the potential hazards and offered to refund customers with Amazon gift cards, but the CPSC said

those efforts are not enough. The CPSC wants Amazon to recall the defective carbon monoxide detectors, hair dryers and youth garments and facilitate their returns so the retailer may destroy them. And the CPSC has requested documentation proving the items' destruction as well as monthly progress reports on the process. They further ask that Amazon notify those who purchased defective items and issue them full refunds.

The outcome of this case could jeopardize the existence of third party marketplaces or at least require them to completely revamp their current business models. In addition, it could have broader implications for entities that help third parties sell their products.

Thyssenkrupp Access Corp.

The CPSC also voted 3-1 to file the [complaint](#) against Thyssenkrupp Access Corp. ("Thyssenkrupp"), a major elevator company. The complaint alleges Thyssenkrupp's residential elevators contain defects in the elevators' design and installation materials, presenting a substantial product hazard.

The CPSC alleges that the elevators are dangerous due to a narrow gap between the hoistway door and elevator car door. Small children can slip between the doors into that space and become trapped or fall under a moving elevator car.

The lawsuit seeks to require Thyssenkrupp to inspect the elevators installed in customers' homes and offer free installations of space guards in the elevators.

In another example of CPSC's growing willingness to take unilateral action to notify the public of a potential safety issue, Acting CPSC Chairman Adler followed the lawsuit with a [notice to vacation rental platforms](#), including Airbnb and Vrbo, urging them to disable elevators immediately until they have been inspected.

We will continue to watch this case and the ramifications it could have for companies that manufacture or distribute products for a third party's installation.

Summer associate Elizabeth Hamner contributed to this post. Ms. Hamner is not a practicing attorney and is practicing under the supervision of principals of the firm who are members of the D.C. Bar.