

**UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION**

In the Matter of Amazon.com, Inc.,

Respondent.

CPSC Docket No. 21-2

Hon. Carol Fox Foelak
Presiding Officer

AMAZON’S STATEMENT OF UNDISPUTED MATERIAL FACTS

Respondent Amazon.com, Inc. (“Amazon”) sets forth below its statement of undisputed material facts in support of its Motion for Summary Decision.¹

I. THE SUBJECT PRODUCTS & THIRD-PARTY SELLERS

1. As used in this statement of undisputed material facts, “Subject Products” refers to certain (A) children’s sleepwear garments, (B) carbon monoxide detectors, and (C) hair dryers identified in greater detail below.²
2. Specifically, the Subject Products consist of the following:

A. Children’s sleepwear garments:³

Sample Number	Seller/Manufacturer	ASIN ⁴
20-800-1345	HOYMN	B074V558SB
20-800-1726	IDGIRLS	B0S9B7QQ7
20-800-1726	IDGIRLS	B07S66PR4G
20-800-1726	IDGIRLS	B07SCJNMFP
20-800-1726	IDGIRLS	B07S99Y5YP
20-800-1726	IDGIRLS	B07S99R16X
20-800-1726	IDGIRLS	B07SDLKLS4
20-800-1726	IDGIRLS	B07SCJ2HK6

¹ All exhibits cited herein are attached to the Declaration of Joshua González, dated September 23, 2022.

² Dkt. 1 ¶¶ 21, 30, 39, *In re Amazon.com, Inc.*, CPSC Dkt. No. 21-2 (“Complaint”) (July 14, 2021); Dkt. 2 ¶¶ 21, 30, 36, 39, 45, *In re Amazon.com, Inc.*, CPSC Dkt. No. 21-2 (“Answer”) (Aug. 3, 2021); *see also* Dkt. 24, Resp. to ¶ 1, *In re Amazon.com, Inc.*, CPSC Dkt. No. 21-2 (Compl. Counsel’s Resp. to Amazon’s Statement of Undisputed Facts) (Nov. 22, 2021).

³ Compl. ¶ 21; Answer ¶ 21.

⁴ An ASIN is the unique Amazon Standard Identification Number used to identify a particular product.

20-800-1726	IDGIRLS	B07S87FF4G
20-800-1726	IDGIRLS	B07SCJ6FR6
20-800-1726	IDGIRLS	B07S65KQX1
20-800-1727	Home Swee	B07QTGMWPK
20-800-1505	Taiycyxgan	B01HGJY9FO

B. Carbon monoxide detectors:⁵

Sample Number	Seller/Manufacturer	ASIN
20- 800-1419	WJZXTEK	B07HK8JHDV ⁶
20-800-1420	Zhenzhou Winsen Electronics Technology Company, LTD	B07GNKD44L
20-800-1422	Zhenzhou Winsen Electronics Technology Company, LTD	B07C2KM8RB ⁷
20-800-1422	Zhenzhou Winsen Electronics Technology Company, LTD	B07BDJTX8W ⁸
20-800-1837	BQQZHZ	B07MPP42GT ⁹

C. Hair dryers:¹⁰

Sample Number	Seller/Manufacturer	ASIN
21-800-0406	OSEIDOO	B07RRVKPMD
21-800-1213	Aiskki	B0814LSM48
21-800-0556	Raxurt Store	B08LD9S6PB
21-800-0481	LEMOCA	B087JCJ4NC
21-800-1183	Xianming	B087CVZT9V
21-800-0609	BEAUTIKEN	B087TJJ5XP
21-800-0731	VIBOOS	B07T3D3TQR
21-800-0635	VIBOOS	B0878SRBM2
21-800-0756	SARCCH	B0852JWLTP
21-800-0831	Bongtai	B085NNM6NY
21-800-0933	Bvser Store	B07TVX4G4C
21-800-0956	TDYJWELL	B08R87G9KH
21-800-1806	Bownyo	B07TQRVMJF
21-800-1883	Romancelink	B089QDK2VV

⁵ Compl. ¶ 30; Answer ¶¶ 30, 36.

⁶ Excluding two units that were sold by Amazon through its “Amazon Warehouse” program (through which Amazon sells used, pre-owned, or open box products).

⁷ Excluding ten units that were sold by Amazon through its “Amazon Warehouse” program.

⁸ Excluding two units that were sold by Amazon through its “Amazon Warehouse” program.

⁹ Excluding fourteen units that were sold by Amazon through its “Amazon Warehouse” program.

¹⁰ Compl. ¶ 39; Answer ¶¶ 39, 45.

21-800-1983	BZ	B088ZPLZ91
21-800-1317	Techip	B07YS53MKB
21-800-1632	LetsFunny	B07PJ8F941
21-800-1606	SUNBA YOUTH Store / Naisen	B08143HCDC
21-800-1706	OWEILAN	B08QYRL9GC
21-800-1585	Surelang Store	B085RMB16H
21-800-1106	GEPORAY	B07YF7JHKC
21-800-0135	Miserwe	B0888P3PDH
21-800-0081	Techip	B08LD44V8W
21-800-1081	ADTZYLD	B07SH5QZFX
21-800-1006	KIPOZI	B08J7JTW2M
21-800-1131	KENLOR	B07V5WV28 ¹¹
21-800-0981	Shaboo Prints	B08LN4FR4T
21-800-0026	ELECDOLPH	B08PCQ7QFK
21-800-1382	LANIC	B07YXNMXH3
21-800-1398	Songtai	B088GWLNT
21-800-1558	BEAUTIKEN	B0814TCYZM
21-800-1431	tiamo airtrack	B07ZYJCK25
21-800-0334	Ohuhu	B07XDTJZKS
21-800-0281	Nisahok	B08M183SR4
21-800-0231	Dekugaa Store	B07ZYJ92DM
21-800-0186	Admitrack	B0854FGPP7

3. As used in this statement of undisputed material facts, “Third-Party Sellers” refers to the sellers of the Subject Products.

II. AMAZON’S REMEDIAL ACTIONS WITH RESPECT TO THE SUBJECT PRODUCTS

A. Amazon’s Remedial Actions Regarding the Children’s Sleepwear Subject Products.

4. The children’s sleepwear Subject Products, were manufactured and sold by the following four third-party sellers: Taiycyxgan, Home Swee, IDGIRLS, and HOYMN.¹²
5. Prior to the filing of the Complaint in this matter, Amazon had removed the children’s sleepwear Subject Products, as well as additional products Amazon identified as

¹¹ Excluding approximately four units that were sold by Amazon through its “Amazon Warehouse” program.

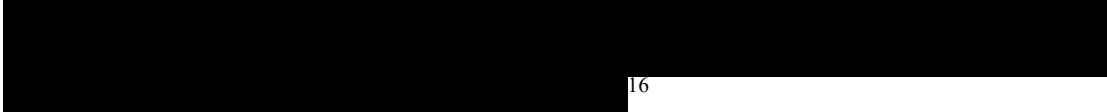
¹² Compl. ¶ 21; Answer ¶ 21; Ex. 1, Compl. Counsel’s Obj. and Resp. to Amazon’s Requests for Admission, No. 1 (Mar. 21, 2022).

potentially posing the same hazard as the Subject Products, from Amazon.com.¹³

6. None of the children’s sleepwear Subject Products, and the additional products Amazon identified as potentially posing the same hazard as the Subject Products, are currently listed or available for purchase on Amazon.com.¹⁴
7. Amazon prohibits Third-Party Sellers, or any other entity, from listing any of the children’s sleepwear Subject Products, or the additional products Amazon identified as potentially posing the same hazard as the Subject Products, on Amazon.com.¹⁵

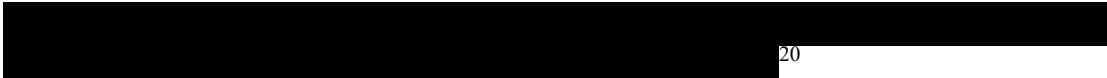
1. Amazon’s Remedial Actions Regarding the Taiycyxgan Subject Products.

- i. *Amazon stopped selling the Taiycyxgan Subject Products and blocked the release of any inventory in its fulfillment centers.*

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9.  ¹⁷

10.  ¹⁸ ¹⁹

11.  ²⁰

¹³ See Ex. 1, Compl. Counsel’s Obj. and Resp. to Amazon’s Request for Admission, No. 7 (Mar. 21, 2022); Ex. 9, Amazon-CPSC-FBA-00001840 (Sleepwear Summary Data Chart).

¹⁴ Dkt. 24, Resp. to ¶ 15 (Compl. Counsel’s Resp. to Amazon’s Statement of Undisputed Facts) (Nov. 22, 2021); Shrem Decl. ¶¶ 12–13.

¹⁵ Ex. 2, Goldberg Dep. 306:19–307:2; Shrem Decl. ¶ 13.

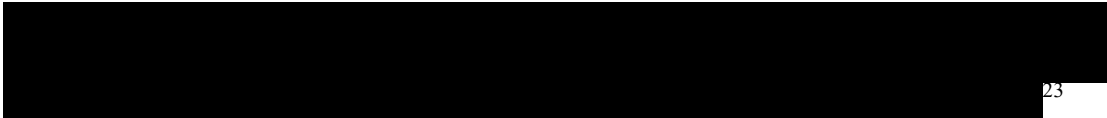

¹⁶ Ex. 3, Amazon-CPSC-FBA-00003695 (CPSC-Amazon Comm. re Contact Info. of Taiycyxgan).

¹⁷ Ex. 4, Amazon-CPSC-FBA-00003696 (CPSC-Amazon Comm. re Stop-Sale, Quarantine, and Destruction of Taiycyxgan); Ex. 5, Amazon-CPSC-FBA-00002388 at 90 (Children’s Sleepwear Chronology); Ex. 6, Amazon-CPSC-FBA-00001674 (CPSC-Amazon Comm. re Update of Stop-Sale, Quarantine, and Destruction of Taiycyxgan Products).

¹⁸ A NOV is issued by the CPSC Office of Compliance when it determines that product violates a mandatory standard. The NOV “advises the company of the violation, and specifies the appropriate corrective action.” See <https://www.cpsc.gov/Recalls/violations>.

¹⁹ Ex. 7, Amazon-CPSC-FBA-00000229 (NOV to seller Taiycyxgan); Ex. 4, Amazon-CPSC-FBA-00003696 (CPSC-Amazon Comm. re Stop-Sale, Quarantine, and Destruction of Taiycyxgan Products).

²⁰ Ex. 4, Amazon-CPSC-FBA-00003696 (CPSC-Amazon Comm. re Stop-Sale, Quarantine, and Destruction of Taiycyxgan Products); Ex. 8, Amazon-CPSC-FBA-00001627 (CPSC-Amazon

12. On or about January 29, 2020, Amazon stopped selling the Taiyicyxgan Subject Products identified in the January 24, 2020 NOV to Taiyicyxgan, as well as 387 additional products Amazon identified as potentially posing the same hazard as the Subject Products, including all of the Taiyicyxgan Subject Products listed in the Complaint.²¹
13. On or about January 29, 2020, Amazon quarantined (that is, blocked their release from fulfillment centers) all units of the Taiyicyxgan Subject Products identified in the January 24, 2020 NOV to Taiyicyxgan, as well as 387 additional products Amazon identified as potentially posing the same hazard as the Subject Products, including all Taiyicyxgan Subject Products listed in the Complaint.²²
14.  ²³
15.  ²⁴
16. By December 8, 2020, Amazon had destroyed all inventory of the Taiyicyxgan Subjects Products, as well as all inventory of the additional products Amazon identified as potentially posing the same hazard as the Subject Products.²⁵
 - ii. *Amazon sent all purchasers of the Taiyicyxgan Subject Products an appropriate direct consumer safety notification email.*
17. Between June 11, 2021 and August 1, 2021, Amazon had sent all consumers who purchased a Taiyicyxgan Subject Product, or the additional products Amazon identified

Comm. re Stop-Sale, Quarantine, and Destruction of Taiyicyxgan Products).

²¹ Ex. 8, Amazon-CPSC-FBA-00001627 (CPSC-Amazon Comm. re Stop-Sale, Quarantine, and Destruction of Taiyicyxgan Products); Ex. 5, Amazon-CPSC-FBA-00002388 at 02390 (Children’s Sleepwear Chronology); Ex. 9, Amazon-CPSC-FBA-00001840 (Sleepwear Summary Data); Dkt. 24, Resp. to ¶ 12 (Compl. Counsel’s Resp. to Amazon’s Statement of Undisputed Facts) (Nov. 22, 2021); *see also* Ex. 2, Goldberg Dep. 99:8–100:5, 182:9–182:15; Shrem Decl. ¶¶ 8, 11 (Sept. 23, 2022).

²² Ex. 8, Amazon-CPSC-FBA-00001627 (CPSC-Amazon Comm. re Stop-Sale, Quarantine, and Destruction of Taiyicyxgan Products); Ex. 9, Amazon-CPSC-FBA-00001840 (Sleepwear Summary Data); *see also* Ex. 2, Goldberg Dep. 99:22–100:5, 182:9–182:15; Shrem Decl. ¶¶ 14–15 (Sept. 23, 2022).

²³ Ex. 8, Amazon-CPSC-FBA-00001627 (CPSC-Amazon Comm. re Stop-Sale, Quarantine, and Destruction of Taiyicyxgan Products).

²⁴ Ex. 10, Amazon-CPSC-FBA-00001682 (CPSC-Amazon Comm. re NOV to Taiyicyxgan); Ex. 11, Amazon-CPSC-FBA-00001683 (NOV to Amazon re Taiyicyxgan).

²⁵ Ex. 12, Amazon-CPSC-FBA-00000255-258 (Amazon Final Resp. to NOV re Taiyicyxgan); Shrem Decl. ¶ 18 (Sept. 23, 2022).

as potentially posing the same hazard as the Subject Products, a direct consumer safety notification by email.²⁶

18. The subject line of Amazon's direct consumer safety notification email regarding the Taiyexgan Subject Products read: "Attention: Important safety notice about your past Amazon order."²⁷
19. The body of Amazon's direct consumer safety notification email said the following:

"Dear Amazon Customer,

We have learned of a potential safety issue that may impact your Amazon purchase(s) below:

Order ID: 111-1024079-4201801

Item: B01HGJYZF8 - Taiyexgan Little Girl's Coral Fleece Bathrobe, Pink Cat, 130:6T

The product listed above is either a product that the U.S. Consumer Product Safety Commission (CPSC) has informed us about, or our Product Safety team has identified, that may fail to meet the federal standard for flammability of children's sleepwear, posing a risk of burn injuries to children.

If you still have this product, we urge you to stop using it immediately and dispose of it. If you purchased this product for someone else, please notify the recipient immediately and let them know they should dispose of it. There is no need for you to return the product.

Amazon is applying a refund in the form of a gift card to Your Account. You can view your available balance and activity here: <https://www.amazon.com/gp/css/gc/balance/>

The safety and satisfaction of our customers is our highest priority. We regret any inconvenience this may cause you.

Thanks for shopping at Amazon."²⁸

20. The direct notification email for the Taiyexgan Subject Products contained the

²⁶ Ex. 13, Amazon-CPSC-FBA-00001841 (Customer Notification Dates Data); Ex. 14, Amazon-CPSC-FBA-00002397 (Consumer Messaging Data); Shrem Decl. ¶ 25 (Sept. 23, 2022).

²⁷ Ex. 15, CPSC_AM0000497 (Amazon Direct Product Safety Notification Email re Taiyexgan Children's Sleepwear Products).

²⁸ Ex. 15, CPSC_AM0000497 (Amazon Direct Product Safety Notification Email re Taiyexgan Children's Sleepwear Products).

information necessary to help the consumer to identify the product, including the Order ID, Amazon Standard Identification Number, and item name.²⁹

21. The direct notification email helped the consumer identify the specific potential risk posed by the Taiycyxgan Subject Products, namely that they “may fail to meet the federal standard for flammability of children’s sleepwear, posing a risk of burn injuries to children.”³⁰
22. The direct notification email helped the consumer understand the steps a consumer should take to mitigate the potential risk posed by the product, namely that they should “stop using it immediately and dispose of it” and “[i]f [they] purchased this product for someone else, please notify the recipient immediately and let them know they should dispose of it.”³¹
23. The direct notification email helped the consumer understand the remedy being provided by Amazon, namely that “Amazon [was] applying a refund in the form of a gift card,” and the consumer could view the “balance and activity [of] here: <https://www.amazon.com/gp/css/gc/balance/>.”³²

24.



³³

iii. *Amazon provided all purchasers of the Taiycyxgan Subject Products a complete refund.*

25. Amazon provided refunds to all consumers who purchased the Taiycyxgan Subject Products, as well as consumers who purchased the additional products Amazon identified as potentially posing the same hazard as the Subject Products.³⁴

iv. *Amazon has not listed for sale and does not intend to list for sale any of the Taiycyxgan Subject Products.*

26. None of the Taiycyxgan Subject Products, or the additional products Amazon identified as potentially posing the same hazard as the Subject Products, have been listed or

²⁹ Ex. 15, CPSC_AM0000497 (Amazon Direct Product Safety Notification Email re Taiycyxgan Children’s Sleepwear Products).

³⁰ Ex. 15, CPSC_AM0000497 (Amazon Direct Product Safety Notification Email re Taiycyxgan Children’s Sleepwear Products).

³¹ Ex. 15, CPSC_AM0000497 (Amazon Direct Product Safety Notification Email re Taiycyxgan Children’s Sleepwear Products).

³² Ex. 15, CPSC_AM0000497 (Amazon Direct Product Safety Notification Email re Taiycyxgan Children’s Sleepwear Products).

³³ Ex. 16, Davis Dep. 145:19–146:22.

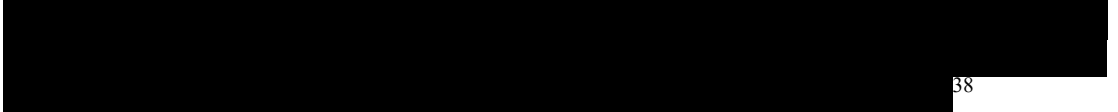
³⁴ Ex. 17, Amazon-CPSC-FBA-00001616 (*cf.* Column H and Column L) (Refund Data re Children’s Sleepwear Products); Shrem Decl. ¶ 28 (Sept. 23, 2022).

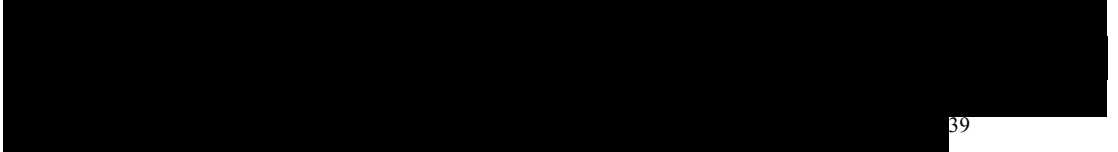
available for purchase on Amazon.com since January 29, 2020.³⁵

27. None of the Taiyxygan Subject Products, or the additional products Amazon identified as potentially posing the same hazard as the Subject Products, are currently listed or available for purchase on Amazon.com.³⁶
28. Amazon prohibits Third-Party Sellers, or any other entity, from listing any of the Taiyxygan Subject Products, or the additional products Amazon identified as potentially posing the same hazard as the Subject Products, on Amazon.com.³⁷

2. Amazon’s Remedial Actions Regarding the Home Swee Subject Products.

- i. *Amazon stopped selling the Home Swee Subject Products and blocked the release of any inventory in its fulfillment centers.*

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30.  ³⁹

31.  ⁴⁰

32. On or about March 31, 2020, Amazon stopped selling from Amazon.com the Home Swee Subject Product identified in the March 17, 2020 NOV to Home Swee, as well as 38 additional products Amazon identified as potentially posing the same hazard as

³⁵ Ex. 9, Amazon-CPSC-FBA-00001840 (Sleepwear Summary Data); Dkt. 24, Resp. to ¶ 12 (Compl. Counsel’s Resp. to Amazon’s Statement of Undisputed Facts) (Nov. 22, 2021).

³⁶ Dkt. 24, Resp. to ¶ 15 (Compl. Counsel’s Resp. to Amazon’s Statement of Undisputed Facts) (Nov. 22, 2021); Shrem Decl. ¶¶ 12–13 (Sept. 23, 2022).

³⁷ Ex. 2, Goldberg Dep. 306:19–307:2; Shrem Decl. ¶ 13 (Sept. 23, 2022).


³⁸ Ex. 18, Amazon-CPSC-FBA-00003694 (CPSC-Amazon Comm. re Contact Info. of Home Swee); Ex. 5, Amazon-CPSC-FBA-00002388 (Children’s Sleepwear Chronology).

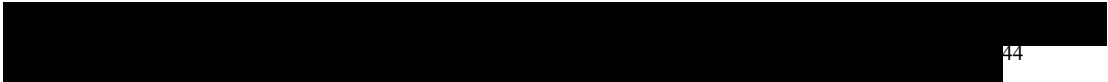
³⁹ Ex. 19, Amazon-CPSC-FBA-00003707 (CPSC-Amazon Comm.re Stop-Sale, Quarantine and Destruction of Home Swee); Ex. 20, Amazon-CPSC-FBA-00003709 (NOV to seller Home Swee).

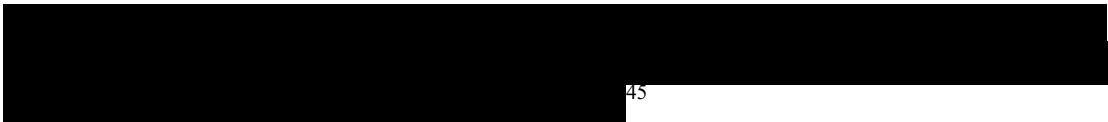
⁴⁰ Ex. 19, Amazon-CPSC-FBA-00003707 (CPSC-Amazon Comm.re Stop-Sale, Quarantine and Destruction of Home Swee); Ex. 21, Amazon-CPSC-FBA-00002017 at 02020-02021 (CPSC-Amazon Comm. re Children Sleepwear Stop-Sale, Quarantine and Destruction).

the Subject Products, including all of the Home Swee Subject Product listed in the Complaint.⁴¹

33. By April 1, 2020, Amazon had quarantined all units of the Home Swee Subject Products identified in the March 17, 2020 NOV to Home Swee, and the additional products Amazon identified as potentially posing the same hazard as the Subject Products, including all of the Subject Products identified in the Complaint.⁴²

34. ⁴³

35. ⁴⁴

36. ⁴⁵

ii. *Amazon sent all purchasers of the Home Swee Subject Products an appropriate direct consumer safety notification email.*

37. By January 21, 2021, Amazon had sent all consumers who purchased a Home Swee Subject Product, or the additional products Amazon identified as potentially posing the same hazard as the Subject Products, a direct consumer safety notification by email.⁴⁶

38. Aside from the date and product identifying information, the notification provided to consumers who purchased a Home Swee Subject Product, or the additional products Amazon identified as potentially posing the same hazard as the Subject Products, was a near verbatim copy of the notification provided to consumers who purchased the other

⁴¹ Ex. 9, Amazon-CPSC-FBA-00001840 (Sleepwear Summary Data); Ex. 5, Amazon-CPSC-FBA-00002388 (Children’s Sleepwear Chronology); Dkt. 24, Resp. to ¶ 12 (Compl. Counsel’s Resp. to Amazon’s Statement of Undisputed Facts) (Nov. 22, 2021); Shrem Decl. ¶¶ 8, 11 (Sept. 23, 2022).

⁴² Ex. 9, Amazon-CPSC-FBA-00001840 (Sleepwear Summary Data); Ex. 21, Amazon-CPSC-FBA-00002017 at 02020 (CPSC-Amazon Comm. re Children Sleepwear Stop-Sale, Quarantine and Destruction); Shrem Decl. ¶¶ 14–15 (Sept. 23, 2022).

⁴³ Ex. 22, Amazon-CPSC-FBA-00001654 (CPSC-Amazon Comm. re Stop-Sale, Quarantine and Destruction of Home Swee); Ex. 21, Amazon-CPSC-FBA-00002017 at 02020 (CPSC-Amazon Comm. re Children Sleepwear Stop-Sale, Quarantine and Destruction).

⁴⁴ Ex. 23, Amazon-CPSC-FBA-00000302 (NOV to Amazon re Home Swee).

⁴⁵ Ex. 107, Amazon-CPSC-FBA-00000219 (Amazon’s Supp. Resp. to NOV from CPSC re Home Swee).

⁴⁶ Ex. 13, Amazon-CPSC-FBA-00001841 (Customer Notification Dates Data); Ex. 14, Amazon-CPSC-FBA-00002397 (Consumer Messaging Data); Shrem Decl. ¶ 25 (Sept. 23, 2022).

children's sleepwear Subject Products.⁴⁷

iii. *Amazon provided all purchasers of the Home Swee Subject Products a complete refund.*

39. Amazon provided refunds to all consumers who purchased the Home Swee Subject Products, as well as consumers who purchased the additional products Amazon identified as potentially posing the same hazard as the Subject Products.⁴⁸

iv. *Amazon has not listed for sale and does not intend to list for sale any of the Home Swee Subject Products.*

40. None of the Home Swee Subject Products, or the additional products Amazon identified as potentially posing the same hazard as the Subject Products, have been listed or available for purchase on Amazon.com since March 31, 2020.⁴⁹

41. None of the Home Swee Subject Products, or the additional products Amazon identified as potentially posing the same hazard as the Subject Products, are currently listed or available for purchase on Amazon.com.⁵⁰

42. Amazon prohibits Third-Party Sellers, or any other entity, from listing any of the Home Swee Subject Products, or the additional products Amazon identified as potentially posing the same hazard as the Subject Products, on Amazon.com.⁵¹

3. Amazon's Remedial Actions Regarding the IDGIRLS Subject Products

i. *Amazon stopped selling the IDGIRLS Subject Products and blocked the release of any inventory in its fulfillment centers.*

43.



44. On or about February 20, 2020, Amazon stopped selling from Amazon.com the IDGIRLS Subject Products, as well as 10 additional products Amazon identified as

⁴⁷ Shrem Decl. ¶ 26 (Sept. 23, 2022).

⁴⁸ Ex. 17, Amazon-CPSC-FBA-00001616 (*cf.* Column H and Column L) (Refund Data re Children's Sleepwear Products); Shrem Decl. ¶ 28 (Sept. 23, 2022).

⁴⁹ Ex. 9, Amazon-CPSC-FBA-00001840 (Sleepwear Summary Data); Dkt. 24, Resp. to ¶ 12 (Compl. Counsel's Resp. to Amazon's Statement of Undisputed Facts) (Nov. 22, 2021); Shrem Decl. ¶¶ 8, 11 (Sept. 23, 2022).

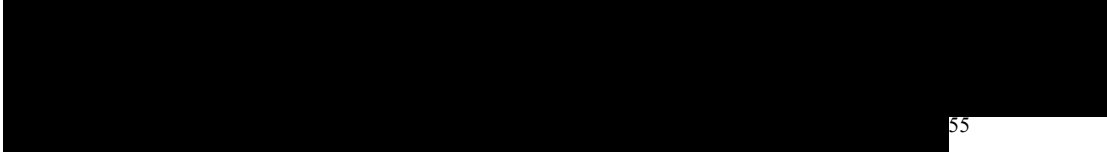
⁵⁰ Dkt. 24, Resp. to ¶ 15 (Compl. Counsel's Resp. to Amazon's Statement of Undisputed Facts) (Nov. 22, 2021); Shrem Decl. ¶¶ 12–13.

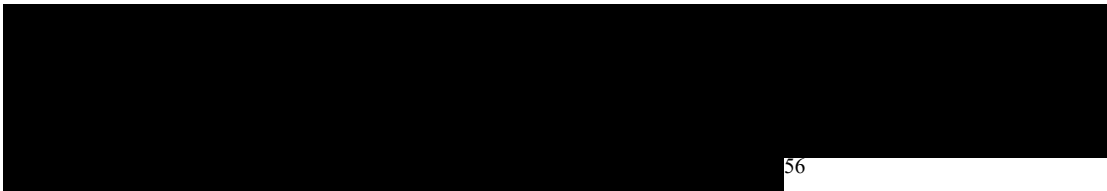
⁵¹ Ex. 2, Goldberg Dep. 306:19–307:2; Shrem Decl. ¶ 13 (Sept. 23, 2022).

⁵² Ex. 24, Amazon-CPSC-FBA-00003699 (CPSC-Amazon Comm. re Contact Info. of IDGIRLS).

potentially posing the same hazard as the Subject Products, including all IDGIRLS Subject Products identified in the Complaint.⁵³

45. On or about February 20, 2020, Amazon quarantined all units of the IDGIRLS Subject Products, and the additional products Amazon identified as potentially posing the same hazard as the Subject Products, including all IDGIRLS Subject Products identified in the Complaint.⁵⁴

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49. By December 8, 2020, Amazon had destroyed all IDGIRLS inventory identified in the November 3, 2020 NOV, as well as all inventory of the additional products Amazon identified as potentially posing the same hazard as the Subject Products.⁵⁸

ii. *Amazon sent all purchasers of the IDGIRLS Subject Products an appropriate direct consumer safety notification email.*

50. By January 21, 2021, Amazon had sent all consumers who purchased an IDGIRLS Subject Product, or the additional products Amazon identified as potentially posing the

⁵³ Ex. 9, Amazon-CPSC-FBA-00001840 (Sleepwear Summary Data); Ex. 5, Amazon-CPSC-FBA-00002388 at 02390 (Children’s Sleepwear Chronology); Dkt. 24, Resp.to ¶ 12 (Compl. Counsel’s Resp. to Amazon’s Statement of Undisputed Facts) (Nov. 22, 2021); Shrem Decl. ¶¶ 8, 11 (Sept. 23, 2022).

⁵⁴ Ex. 9, Amazon-CPSC-FBA-00001840 (Sleepwear Summary Data); Ex. 21, Amazon-CPSC-FBA-00002017 at 02022 (CPSC-Amazon Comm. re Children Sleepwear Stop-Sale, Quarantine and Destruction); Shrem Decl. ¶¶ 14–15 (Sept. 23, 2022).

⁵⁵ Ex. 25, Amazon-CPSC-FBA-00000225 (NOV to seller IDGIRLS).

⁵⁶ Ex. 26, Amazon-CPSC-FBA-00001647–01648 (CPSC-Amazon Comm. re Stop-Sale and Destruction of IDGIRLS); Ex. 21, Amazon-CPSC-FBA-00002017 at 02022 (CPSC-Amazon Comm. re Children Sleepwear Stop-Sale, Quarantine and Destruction).

⁵⁷ Ex. 27, Amazon-CPSC-FBA-00000328 (NOV to Amazon re IDGIRLS).

⁵⁸ Ex. 28, Amazon-CPSC-FBA-00000307–00310 (Amazon Final Resp. to NOV and Cert. of Destruction re IDGIRLS); Shrem Decl. ¶ 18 (Sept. 23, 2022).

same hazard as the Subject Products, a direct consumer safety notification by email.⁵⁹

51. The subject line of Amazon’s direct consumer safety notification email regarding the IDGIRLS Subject Products read: “Important safety notice about your past Amazon order.”⁶⁰
52. The body of Amazon’s direct consumer safety notification said the following:

“Dear Amazon Customer,

We have learned of a potential safety issue that may impact your Amazon purchase(s) below:

Order ID: [redacted]

Item: B07SCJNMFP - IDGIRLS Kids Animal Hooded Soft Plush Flannel Bathrobes for Girls Boys Sleepwear Orange Fox M

The U.S. Consumer Product Safety Commission (CPSC) has informed us that the products listed above failed to meet the federal safety standard for the flammability of children’s sleepwear, posing a risk of burn injuries to children.

If you still have this product, we urge you to stop using it immediately and dispose of it. If you purchased this product for someone else, please notify the recipient immediately and let them know they should dispose of it. There is no need for you to return the product.

Amazon is applying a refund in the form of a gift card to Your Account. You can view your available balance and activity here: <https://www.amazon.com/gp/css/gc/balance/>

The safety and satisfaction of our customers is our highest priority. We regret any inconvenience this may cause you.”⁶¹

53. The direct notification email for the IDGIRLS Subject Products contained the information necessary to help the consumer to identify the product, including the Order

⁵⁹ Ex. 29, Amazon-CPSC-FBA-00000212 (Amazon Direct Product Safety Notification Email re IDGIRLS Children Sleepwear); Ex. 13, Amazon-CPSC-FBA-00001841 (Customer Notification Dates Data); Shrem Decl. ¶ 25 (Sept. 23, 2022).

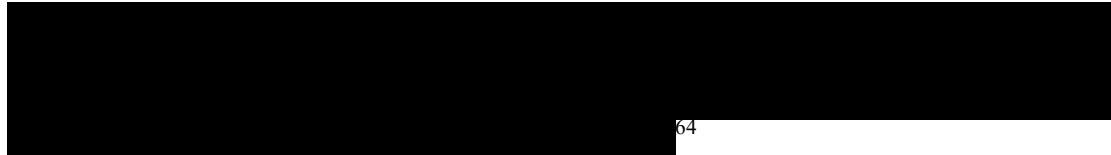
⁶⁰ Ex. 29, Amazon-CPSC-FBA-00000212 (Amazon Direct Product Safety Notification Email re IDGIRLS Children Sleepwear); Ex. 13, Amazon-CPSC-FBA-00001841 (Customer Notification Dates Data).

⁶¹ Ex. 29, Amazon-CPSC-FBA-00000212 (Amazon Direct Product Safety Notification Email re IDGIRLS Children Sleepwear).

ID, Amazon Standard Identification Number, and item name.⁶²

54. The direct notification email helped the consumer identify the specific potential risk posed by the IDGIRLS Subject Products, namely that they “failed to meet the federal safety standard for the flammability of children’s sleepwear, posing a risk of burn injuries to children.”⁶³

55.



56. The direct notification email helped the consumer understand the steps a consumer should take to mitigate the potential risk posed by the product, namely that they should “stop using it immediately and dispose of the item” and “[i]f you purchased this product for someone else, please notify the recipient immediately and let them know they should dispose of the item.”⁶⁵

57. The direct notification email helped the consumer understand the remedy being provided by Amazon, namely that “Amazon is applying a refund in the form of a gift card,” and the consumer could view the “balance and activity here: <https://www.amazon.com/gp/css/gc/balance/>.”⁶⁶

iii. Amazon provided all purchasers of the IDGIRLS Subject Products a complete refund.

58. Amazon provided refunds to all consumers who purchased the IDGIRLS Subject Products, as well as consumers who purchased the additional products Amazon identified as potentially posing the same hazard as the Subject Products, including all IDGIRLS Subject Products identified in the Complaint.⁶⁷

iv. Amazon has not listed for sale and does not intend to list for sale any of the IDGIRLS Subject Products.

59. None of the IDGIRLS Subject Products, or the additional products Amazon identified

⁶² Ex. 29, Amazon-CPSC-FBA-00000212 (Amazon Direct Product Safety Notification Email re IDGIRLS Children Sleepwear).

⁶³ Ex. 29, Amazon-CPSC-FBA-00000212 (Amazon Direct Product Safety Notification Email re IDGIRLS Children Sleepwear).

⁶⁴ Ex. 30, Rose Dep. 155:10–155:18.

⁶⁵ Ex. 29, Amazon-CPSC-FBA-00000212 (Amazon Direct Product Safety Notification Email re IDGIRLS Children Sleepwear).

⁶⁶ Ex. 29, Amazon-CPSC-FBA-00000212 (Amazon Direct Product Safety Notification Email re IDGIRLS Children Sleepwear).

⁶⁷ Ex. 17, Amazon-CPSC-FBA-00001616 (*cf.* Column H and Column L) (Refund Data re Children’s Sleepwear Products); Shrem Decl. ¶ 28 (Sept. 23, 2022).

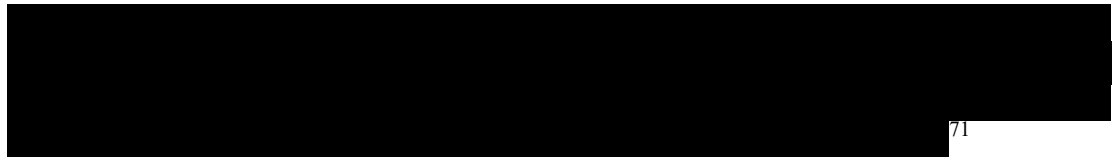
as potentially posing the same hazard as the Subject Products, have been listed or available for purchase on Amazon.com since February 20, 2020.⁶⁸

60. None of the IDGIRLS Subject Products, or the additional products Amazon identified as potentially The Commission has said that recall alerts are appropriate when companies can provide direct notice to 90 percent or more of affected consumers. the Subject Products, listed in the Complaint are currently listed or available for purchase on Amazon.com.⁶⁹
61. Amazon prohibits Third-Party Sellers, or any other entity, from listing any of the IDGIRLS Subject Products, or the additional products Amazon identified as potentially posing the same hazard as the Subject Products, on Amazon.com.⁷⁰

4. Amazon's Remedial Actions Regarding the HOYMN Subject Products

- i. *Amazon stopped selling the HOYMN Subject Products and blocked the release of any inventory in its fulfillment centers.*

62.



63. On or about March 12, 2020, Amazon stopped selling from Amazon.com the HOYMN Subject Products, as well as approximately 706 additional products Amazon identified as potentially posing the same hazard as the Subject Products, including all HOYMN Subject Products identified in the Complaint.⁷²
64. On or about March 12, 2020, Amazon quarantined all units of the HOYMN Subject Products, and the additional products Amazon identified as potentially posing the same hazard as the Subject Products, including all HOYMN Subject Products identified in the Complaint.⁷³

⁶⁸ Ex. 9, Amazon-CPSC-FBA-00001840 (Sleepwear Summary Data); Dkt. 24, Resp. to ¶ 12 (Compl. Counsel's Resp. to Amazon's Statement of Undisputed Facts) (Nov. 22, 2021); Shrem Decl. ¶¶ 8, 11 (Sept. 23, 2022).

⁶⁹ Dkt. 23, Resp. to ¶ 15 (Compl. Counsel's Resp. to Amazon's Statement of Undisputed Facts) (Nov. 22, 2021); Shrem Decl. ¶¶ 12–13 (Sept. 23, 2022).

⁷⁰ Ex. 2, Goldberg Dep. 306:19–307:2; Shrem Decl. ¶ 13 (Sept. 23, 2022).

⁷¹ Ex. 31, Amazon-CPSC-FBA-00001633 (CPSC-Amazon Comm. re Contact Info. and Stop-Sale of HOYMN).

⁷² Ex. 9, Amazon-CPSC-FBA-00001840 (Sleepwear Summary Data); Ex. 31, Amazon-CPSC-FBA-00001633 (CPSC-Amazon Comm. re Contact Info. and Stop-Sale of HOYMN); Ex. 5, Amazon-CPSC-FBA-00002388 at 02389 (Children's Sleepwear Chronology); Dkt. 24, Resp. to ¶ 12 (Compl. Counsel's Resp. to Amazon's Statement of Undisputed Facts) (Nov. 22, 2021); Shrem Decl. ¶¶ 8, 11 (Sept. 23, 2022).

⁷³ Ex. 9, Amazon-CPSC-FBA-00001840 (Sleepwear Summary Data); Ex. 31, Amazon-CPSC-

65.

[REDACTED]

⁷⁴

66.

[REDACTED]

⁷⁵

67.

[REDACTED]

⁷⁶

68.

[REDACTED]

⁷⁷

69. By December 23, 2020, Amazon had destroyed all inventory the HOYMN Subject Products, as well as all inventory of the additional products Amazon identified as potentially posing the same hazard as the Subject Products.⁷⁸

ii. *Amazon sent all purchasers of the HOYMN Subject Products an appropriate direct consumer safety notification email.*

70. By May 18, 2022, Amazon had sent all consumers who purchased a HOYMN Subject Product, or the additional products Amazon identified as potentially posing the same hazard as the Subject Products, a direct consumer safety notification by email with the subject line: “Attention: Important safety notice about your past Amazon order.”⁷⁹

71. The body of Amazon’s direct consumer safety notification said the following:

“Dear Amazon Customer,

FBA-00001633 (CPSC-Amazon Comm. re Contact Info. and Stop-Sale of HOYMN); Shrem Decl. ¶¶ 14–15 (Sept. 23, 2022).

⁷⁴ Ex. 32, Amazon-CPSC-FBA-00000323 (NOV to seller HOYMN).

⁷⁵ Ex. 33, Amazon-CPSC-FBA-00002583 (CPSC-Amazon Comm. re Stop-Sale, Quarantine and Destruction of HOYMN).

⁷⁶ Ex. 34, Amazon-CPSC-FBA-00001651 (Amazon-CPSC Comm. re Stop-Sale, Quarantine and Destruction of HOYMN).

⁷⁷ Ex. 35, Amazon-CPSC-FBA-00000250 (NOV to Amazon re HOYMN).

⁷⁸ Ex. 36, Amazon-CPSC-FBA-00002383 (Amazon Resp. to Req. for Corrective Action re HOYMN and Cert. of Destruction); Shrem Decl. ¶ 18 (Sept. 23, 2022).

⁷⁹ Ex. 37, Amazon-CPSC-FBA-00002419 (Amazon Direct Product Safety Notification Email re HOYMN Children’s Sleepwear); Ex. 13, Amazon-CPSC-FBA-00001841 (Customer Notification Dates Data); Shrem Decl. ¶ 25 (Sept. 23, 2022).

We have learned of a potential safety issue that may impact your Amazon purchase(s) below:

Order ID: 114-8417428-2257849

Item: B0743NKWC - Girls' Lace Nightgowns & Bowknot Sleep Shirts
100 percent Cotton Nightie for Toddler, Purple Lace, 6-7 Years/Tag 140

The product listed above is either a product that the U.S. Consumer Product Safety Commission (CPSC) has informed us, or our Product Safety team has identified, may fail to meet the federal safety standard for the flammability of children's sleepwear, potentially posing a risk of burn injuries to children.

If you still have this product, we urge you to stop using it immediately and dispose of the item. If you purchased this item for someone else, please notify the recipient immediately and let them know they should dispose of the item. There is no need for you to return the product.

Amazon is applying a refund in the form of a gift card to Your Account. You can view your available balance and activity here: <https://www.amazon.com/gp/css/gc/balance/>

The safety and satisfaction of our customers is our highest priority. We regret any inconvenience this may cause you.

Thank you for shopping at Amazon.”⁸⁰

72. The direct notification email for the HOYMN Subject Products contained the information necessary to help the consumer to identify the product, including the Order ID, ASIN, and item name.⁸¹
73. The direct notification email helped the consumer identify the specific potential risk posed by the HOYMN Subject Products, namely that they “may fail to meet the federal safety standard for the flammability of children's sleepwear, potentially posing a risk of burn injuries to children.”⁸²
74. The direct notification email helped the consumer understand the steps a consumer should take to mitigate the potential risk posed by the product, namely that they should

⁸⁰ Ex. 37, Amazon-CPSC-FBA-00002419 (Amazon Direct Product Safety Notification Email re HOYMN Children's Sleepwear).

⁸¹ Ex. 37, Amazon-CPSC-FBA-00002419 (Amazon Direct Product Safety Notification Email re HOYMN Children's Sleepwear).

⁸² Ex. 37, Amazon-CPSC-FBA-00002419 (Amazon Direct Product Safety Notification Email re HOYMN Children's Sleepwear).

“stop using it immediately and dispose of the item” and “[i]f you purchased this item for someone else, please notify the recipient immediately and let them know they should dispose of the item.”⁸³

75. The direct notification email helped the consumer understand the remedy being provided by Amazon, namely that “Amazon is applying a refund in the form of a gift card,” and the consumer could view the “balance and activity here: <https://www.amazon.com/gp/css/gc/balance/>.”⁸⁴

iii. *Amazon provided all purchasers of the HOYMN Subject Products a complete refund.*

76. Amazon provided refunds to all consumers who purchased the HOYMN Subject Products, as well as consumers who purchased the additional products Amazon identified as potentially posing the same hazard as the Subject Products, including all HOYMN subject products identified in the Complaint.⁸⁵

iv. *Amazon has not listed for sale and does not intend to list for sale any of the HOYMN Subject Products.*

77. None of the HOYMN Subject Products, or the additional products Amazon identified as potentially posing the same hazard as the Subject Products, have been listed or available for purchase on Amazon.com since March 12, 2020.⁸⁶

78. None of the HOYMN Subject Products, or the additional products Amazon identified as potentially posing the same hazard as the Subject Products, are currently listed or available for purchase on Amazon.com.⁸⁷

79. Amazon prohibits Third-Party Sellers, or any other entity, from listing any of the HOYMN Subject Products, or the additional products Amazon identified as potentially posing the same hazard as the Subject Products, on Amazon.com.⁸⁸

⁸³ Ex. 37, Amazon-CPSC-FBA-00002419 (Amazon Direct Product Safety Notification Email re HOYMN Children’s Sleepwear).

⁸⁴ Ex. 37, Amazon-CPSC-FBA-00002419 (Amazon Direct Product Safety Notification Email re HOYMN Children’s Sleepwear).

⁸⁵ Ex. 17, Amazon-CPSC-FBA-00001616 (*cf.* Column H and Column L) (Refund Data re Children’s Sleepwear Products); Shrem Decl. ¶ 28 (Sept. 23, 2022).

⁸⁶ Ex. 9, Amazon-CPSC-FBA-00001840 (Sleepwear Summary Data); Ex. 31, Amazon-CPSC-FBA-00001633 (CPSC-Amazon Comm. re Contact Info. and Stop-Sale of HOYMN); Dkt. 23, Resp. to ¶ 12 (Compl. Counsel’s Resp. to Respondent Amazon.com, Inc.’s Statement of Undisputed Facts) (Nov. 22, 2021).

⁸⁷ Dkt. 23, Resp. to ¶ 15 (Compl. Counsel’s Resp. to Amazon’s Statement of Undisputed Facts) (Nov. 22, 2021); Shrem Decl. ¶¶ 12–13 (Sept. 23, 2022); Shrem Decl. ¶¶ 8, 11 (Sept. 23, 2022).

⁸⁸ Ex. 2, Goldberg Dep. 306:19–307:2; Shrem Decl. ¶¶ 8, 11, 13 (Sept. 23, 2022).

B. Amazon’s Remedial Actions Regarding the Hair Dryer Subject Products.

1. *Amazon stopped selling the Hair Dryer Subject Products and blocked the release of any inventory in its fulfillment centers.*

80.

[REDACTED]⁸⁹

81.

[REDACTED]⁹⁰

82.

[REDACTED]⁹¹

83.

[REDACTED]⁹²

84. On or about March 3, 2021, Amazon stopped selling from Amazon.com the hair dryer Subject Products, and the additional products Amazon identified as potentially posing the same hazard as the Subject Products, including all hair dryer models identified in the Complaint.⁹³

85. On or about March 3, 2021, Amazon quarantined all units of the hair dryer Subject Products, and the additional products Amazon identified as potentially posing the same hazard as the Subject Products, including all hair dryer models identified in the Complaint.⁹⁴

2. *Amazon sent all purchasers of the Hair Dryer Subject Products an appropriate direct consumer safety notification email.*

86. Between June 11, 2021 and August 1, 2021, Amazon sent all consumers who purchased the hair dryer Subject Products, and the additional products Amazon identified as potentially posing the same hazard as the Subject Products, including all hair dryer

⁸⁹ Ex. 38, CPSC_AM001813 (Mar. 2, 2021 email from Joseph Williams to Amazon); Ex. 39, Amazon-CPSC-FBA-00000233 (NOV regarding “Various Hair Dryers”).

⁹⁰ See Ex. 40, Williams Dep. 155:12–155:14.

⁹¹ Ex. 40, Williams Dep. 155:5–155:8.

⁹² Ex. 39, Amazon-CPSC-FBA-00000233 at 00236 (NOV regarding “Various Hair Dryers”); see also Ex. 40, Williams Dep. 140:11–140:20, 141:10–141:18.

⁹³ Ex. 41, Amazon-CPSC-FBA-00001617 (Amazon Destruction Data); Shrem Decl. ¶¶ 9, 11 (Sept. 23, 2022).

⁹⁴ Ex. 41, Amazon-CPSC-FBA-00001617 (Amazon Destruction Data); Shrem Decl. ¶¶ 14, 16 (Sept. 23, 2022).

models identified in the Complaint, a direct consumer safety notification by email with the subject line: “Attention: Important safety notice about your past Amazon order.”⁹⁵

87. The body of Amazon’s direct consumer safety notification said the following:

“Dear Amazon Customer,

We have learned of a potential safety issue that may impact your Amazon purchase(s) below:

Order ID: [redacted]

Item: B07TVX4G4C - Hair Dryer Brush and Hot Air Brush, Bvser Air Hair Brush 3 in 1 Electric Hair Dryer Volumizer with Negative Ion Curling Dryer Brush One Styler Step, Hair Straightening Brush, Rotating

The product listed above is either a product that the U.S. Consumer Product Safety Commission (CPSC) has informed us about, or our Product Safety team has identified, that may fail to have mandatory immersion protection, posing a risk of electric shock if the hair dryer comes in contact with water.

If you still have this product, we urge you to stop using it immediately and dispose of it. If you purchased this product for someone else, please notify the recipient immediately and let them know they should dispose of it. There is no need for you to return the product.

Amazon is applying a refund in the form of a gift card to Your Account. You can view your available balance and activity here: <https://www.amazon.com/gp/css/gc/balance/>

The safety and satisfaction of our customers is our highest priority. We regret any inconvenience this may cause you.

Thanks for shopping at Amazon.”⁹⁶

88. The direct notification email for the hair dryer Subject Products contained the information necessary to help the consumer to identify the product, including the Order ID, Amazon Standard Identification Number, and item name.⁹⁷

89. 

⁹⁵ Ex. 13, Amazon-CPSC-FBA-00001841 (Customer Notification Dates Data); Dkt. 24, Resp. ¶ 20 (Compl. Counsel’s Resp. to Amazon’s Statement of Undisputed Facts) (Nov. 22, 2021); Shrem Decl. ¶ 25 (Sept. 23, 2022).

⁹⁶ Ex. 29, Amazon-CPSC-FBA-00000212 at 00213 (Amazon Hair Dryer Safety Notice).

⁹⁷ Ex. 29, Amazon-CPSC-FBA-00000212 at 00213 (Amazon Hair Dryer Safety Notice).

90. The direct notification email helped the consumer identify the specific potential risk posed by the hair dryer Subject Products, namely that they “may fail to have mandatory immersion protection, posing a risk of electric shock if the hair dryer comes in contact with water.”⁹⁹
91. The direct notification email helped the consumer understand the steps a consumer should take to mitigate the potential risk posed by the product, namely that they should “stop using it immediately and dispose of it” and “[i]f you purchased this product for someone else, please notify the recipient immediately and let them know they should dispose of it.”¹⁰⁰
92. The direct notification email helped the consumer understand the remedy being provided by Amazon, namely that “Amazon is applying a refund in the form of a gift card”, and the consumer could view the “balance and activity here: <https://www.amazon.com/gp/css/gc/balance/>.”¹⁰¹
3. *Amazon provided all purchasers of the hair dryer Subject Products a complete refund.*
93. Amazon provided refunds to all consumers who purchased the hair dryer Subject Products, and the additional products Amazon identified as potentially posing the same hazard as the Subject Products, including all hair dryer models identified in the Complaint.¹⁰²
4. *Amazon has not listed for sale and does not intend to list for sale any of the hair dryer Subject Products.*
94. Prior to the filing of the Complaint in this matter, Amazon had removed the hair dryer Subject Products, and the additional products Amazon identified as potentially posing the same hazard as the Subject Products, from Amazon.com.¹⁰³
95. None of the hair dryer Subject Products, or the additional products Amazon identified

⁹⁸ Ex. 40, Williams Dep. 62:15–63:1.

⁹⁹ Ex. 29, Amazon-CPSC-FBA-00000212 at 00213 (Amazon Hair Dryer Safety Notice); Ex. 40, Williams Dep. 63:14–63:19.

¹⁰⁰ Ex. 29, Amazon-CPSC-FBA-00000212 at 00213 (Amazon Hair Dryer Safety Notice); Ex. 40, Williams Dep. 64:18–64:22.

¹⁰¹ Ex. 29, Amazon-CPSC-FBA-00000212 at 00213 (Amazon Hair Dryer Safety Notice); Ex. 40, Williams Dep. 64:11–64:17.

¹⁰² Ex. 42, Amazon-CPSC-FBA-00002377 (Amazon Refund Data re Carbon Monoxide Detectors and Hair Dryers); Shrem Decl. ¶ 28 (Sept. 23, 2022).

¹⁰³ Ex. 1, Compl. Counsel’s Obj. and Resp. to Amazon Request for Admission, No. 9 (Mar. 21, 2022); Ex. 41, Amazon-CPSC-FBA-00001617 (Amazon Destruction Data) Shrem Decl. ¶¶ 9, 11, 13 (Sept. 23, 2022).

as potentially posing the same hazard as the Subject Products, including all hair dryer models listed in the Complaint are currently listed or available for purchase on Amazon.com.¹⁰⁴

96. Amazon prohibits Third-Party Sellers, or any other entity, from listing any of the hair dryer Subject Products, or the additional products Amazon identified as potentially posing the same hazard as the Subject Products, on Amazon.com.¹⁰⁵

C. Amazon’s Remedial Actions Regarding the Carbon Monoxide Subject Products.

1. *Amazon stopped selling the carbon monoxide Subject Products and blocked the release of any inventory in its fulfillment centers.*

97.

[REDACTED]

¹⁰⁶

98. On or about August 13, 2020, Amazon stopped selling from Amazon.com the carbon monoxide Subject Products, and the additional products Amazon identified as potentially posing the same hazard as the Subject Products, including all carbon monoxide detector models identified in the Complaint.¹⁰⁷

99. On or about August 13, 2020, Amazon quarantined all units of the carbon monoxide Subject Products, and the additional products Amazon identified as potentially posing the same hazard as the Subject Products, including all carbon monoxide detector models identified in the Complaint.¹⁰⁸

2. *Amazon sent all purchasers of the carbon monoxide Subject Products an appropriate direct consumer safety notification email.*

100. Between June 11, 2021 and August 1, 2021, Amazon sent all consumers who purchased the carbon monoxide Subject Products, and the additional products Amazon identified as potentially posing the same hazard as the Subject Products, including all carbon monoxide detector models identified in the Complaint, a direct consumer safety notification by email with the subject line: “Attention: Important safety notice about your past Amazon order.”¹⁰⁹

¹⁰⁴ Dkt. 24, Resp. to ¶ 15 (Compl. Counsel’s Resp. to Amazon’s Statement of Undisputed Facts) (Nov. 22, 2021); Shrem Decl. ¶¶ 12–13 (Sept. 23, 2022).

¹⁰⁵ Ex. 2, Goldberg Dep. 306:19–307:2; Shrem Decl. ¶ 13 (Sept. 23, 2022).

¹⁰⁶ Ex. 43, Amazon-CPSC-FBA-00002712 (Aug. 10, 2020 email from CPSC to Amazon).

¹⁰⁷ Ex. 41, Amazon-CPSC-FBA-00001617 (Amazon Destruction Data); Shrem Decl. ¶¶ 10–11 (Sept. 23, 2022).

¹⁰⁸ Ex. 41, Amazon-CPSC-FBA-00001617 (Amazon Destruction Data); Shrem Decl. ¶¶ 14, 17 (Sept. 23, 2022).

¹⁰⁹ Ex. 29, Amazon-CPSC-FBA-00000212 at 00214 (Carbon Monoxide Detector Safety Notice); Dkt. 24, Resp. ¶ 20 (Compl. Counsel’s Resp. to Amazon’s Statement of Undisputed Facts) (Nov.

101. The body of Amazon’s direct consumer safety notification said the following:

“Dear Amazon Customer,

We have learned of a potential safety issue that may impact your Amazon purchase(s) below:

Order ID: [redacted]

Item: B07C2KM8RB - MIXSight Carbon Monoxide Detector CO Alarm Detector with LCD Digital Display Battery Operated, 4-Pack, Battery Included

The product listed above is either a product that the U.S. Consumer Product Safety Commission (CPSC) has informed us about, or our Product Safety team has identified, that may fail to alarm on time, posing a risk of exposure to potentially dangerous levels of Carbon Monoxide.

If you still have this product, we urge you to stop using it immediately and dispose of it. If you purchased this product for someone else, please notify the recipient immediately and let them know they should dispose of it. There is no need for you to return the product.

Amazon is applying a refund in the form of a gift card to Your Account. You can view your available balance and activity here: <https://www.amazon.com/gp/css/gc/balance/>

The safety and satisfaction of our customers is our highest priority. We regret any inconvenience this may cause you.

Thanks for shopping at Amazon.”¹¹⁰

102. The direct notification email for the carbon monoxide Subject Products contained the information necessary to help the consumer to identify the product, including the Order ID, Amazon Standard Identification Number, and item name.¹¹¹

103. The direct notification email helped the consumer identify the specific potential risk posed by the carbon monoxide Subject Products, namely that they “may fail to alarm on time, posing a risk of exposure to potentially dangerous levels of Carbon Monoxide.”¹¹²

22, 2021); Shrem Decl. ¶ 25 (Sept. 23, 2022).

¹¹⁰ Ex. 29, Amazon-CPSC-FBA-00000212 at 00214 (Carbon Monoxide Detector Safety Notice).

¹¹¹ Ex. 29, Amazon-CPSC-FBA-00000212 at 00214 (Carbon Monoxide Detector Safety Notice).

¹¹² Ex. 29, Amazon-CPSC-FBA-00000212 at 00214 (Carbon Monoxide Detector Safety Notice).

104. The direct notification email identified and helped the consumer understand the steps a consumer should take to mitigate the potential risk posed by the product, namely, that they should “stop using it immediately and dispose of it” and “[i]f you purchased this product for someone else, please notify the recipient immediately and let them know they should dispose of it.”¹¹³
105. The direct notification email helped the consumer understand the remedy being provided by Amazon, namely that “Amazon is applying a refund in the form of a gift card,” and the consumer could view the “balance and activity here: <https://www.amazon.com/gp/css/gc/balance/>.”¹¹⁴
3. *Amazon provided all purchasers of the carbon monoxide Subject Products a complete refund.*
106. Amazon provided refunds to all consumers who purchased the carbon monoxide Subject Products, as well as the additional products Amazon identified as potentially posing the same hazard as the Subject Products, including all carbon monoxide Subject Products identified in the Complaint.¹¹⁵
4. *Amazon has not listed for sale and does not intend to list for sale any of the carbon monoxide Subject Products.*
107. Prior to the filing of the Complaint in this matter, Amazon had removed the carbon monoxide Subject Products, and the additional products Amazon identified as potentially posing the same hazard as the Subject Products, from Amazon.com.¹¹⁶
108. None of the carbon monoxide Subject Products, or the additional products Amazon identified as potentially posing the same hazard as the Subject Products, are currently listed or available for purchase on Amazon.com.¹¹⁷
109. Amazon prohibits Third-Party Sellers, or any other entity, from listing any of the carbon monoxide Subject Products, or the additional products Amazon identified as potentially posing the same hazard as the Subject Products, on Amazon.com.¹¹⁸

D. Amazon’s Remedial Actions with Respect to All Subject Products.

110. Amazon retains email address information for purchasers of the Subject Products.

¹¹³ Ex. 29, Amazon-CPSC-FBA-00000212 at 00214 (Carbon Monoxide Detector Safety Notice).

¹¹⁴ Ex. 29, Amazon-CPSC-FBA-00000212 at 00214 (Carbon Monoxide Detector Safety Notice).


¹¹⁵ Ex. 44, Amazon-CPSC-FBA-00003803 (Info. Re Amazon Refunds to Purchasers of Subject Products); Shrem Decl. ¶ 28 (Sept. 23, 2022).

¹¹⁶ Ex. 1, Compl. Counsel’s Obj. and Resp. to Amazon Request for Admission, No. 8 (Mar. 21, 2022); Ex. 41, Amazon-CPSC-FBA-00001617 (Amazon Destruction Data).

¹¹⁷ Dkt. 24, Resp. to ¶ 15 (Compl. Counsel’s Resp. to Amazon’s Statement of Undisputed Facts) (Nov. 22, 2021); Shrem Decl. ¶¶ 12–13 (Sept. 23, 2022).

¹¹⁸ Ex. 2, Goldberg Dep. 306:19–307:2; Shrem Decl. ¶ 13 (Sept. 23, 2022).

After the Commission approached Amazon about the Subject Products, Amazon sent a direct consumer safety notification, via email, to all purchasers of the Subject Products, and the additional products Amazon identified as potentially posing the same hazard as the Subject Products.¹¹⁹

111. The direct consumer safety notifications informed all purchasers of the Subject Products, and the additional products Amazon identified as potentially posing the same hazard as the Subject Products, of the potential product hazard, instructed them to stop using and dispose of the products, and that told them that Amazon had applied a refund of the full purchase price to their account.¹²⁰
112. In total, Amazon refunded over \$20 million to the Subject Product purchasers.¹²¹
113. Prior to the filing of the Complaint in this matter, Amazon had removed the Subject Products, and the additional products Amazon identified as potentially posing the same hazard as the Subject Products, from Amazon.com.¹²²
114. ¹²³
115. None of the Subject Products, or the additional products Amazon identified as potentially posing the same hazard as the Subject Products, are currently listed or available for purchase on Amazon.com.¹²⁴
116. Amazon prohibits Third-Party Sellers, or any other entity, from listing any of the Subject Products, or the additional products Amazon identified as potentially posing the same hazard as the Subject Products, on Amazon.com.¹²⁵

¹¹⁹ Dkt. 23, Resp. to ¶ 19 (Compl. Counsel’s Resp. to Amazon’s Statement of Undisputed Facts) (Nov. 22, 2021); Shrem Decl. ¶ 24 (Sept. 23, 2022); Ex 2, Goldberg Dep. 152:19–152:22, 153:1–153:5; Ex. 40, Williams Dep. 64:6–64:22; Ex. 14, Amazon-CPSC-FBA-00002397 (Consumer Messaging Data).

¹²⁰ Dkt. 24, Resp. to ¶¶ 19, 23 (Compl. Counsel’s Resp. to Amazon’s Statement of Undisputed Facts) (Nov. 22, 2021); Ex. 14, Amazon-CPSC-FBA-00002397 (Consumer Messaging Data); Ex. 29, Amazon-CPSC-FBA-00000212 to 14 (Amazon Direct Product Safety Notification Email re IDGIRLS Children Sleepwear); Ex. 37, Amazon-CPSC-FBA-00002419 (Amazon Direct Product Safety Notification Email re HOYMN Children’s Sleepwear); Shrem Decl. ¶ 28 (Sept. 23, 2022).

¹²¹ Ex. 44, Amazon-CPSC-FBA-00003803 (Info. Re Amazon Refunds to Purchasers of Subject Products).

¹²² Ex. 1, Compl. Counsel’s Obj. and Resp. to Amazon’s Request for Admission, No. 8 (Mar. 21, 2022); Ex. 45, Compl Counsel’s Obj. and Resp. to Amazon Interrogatory, No. 6 (Mar. 21, 2022); Ex. 9, Amazon-CPSC-FBA-00001840 (Sleepwear Summary Data).

¹²³ Ex. 2, Goldberg Dep. 262:13–265:14.

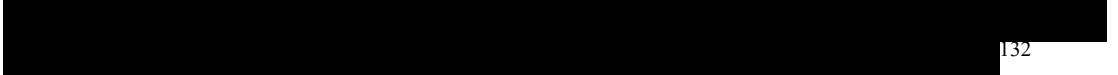
¹²⁴ Dkt. 23, Resp. to ¶ 15 (Compl. Counsel’s Resp. to Amazon’s Statement of Undisputed Facts) (Nov. 22, 2021); Shrem Decl. ¶¶ 12–13 (Sept. 23, 2022).

¹²⁵ Ex. 2, Goldberg Dep. 306:19–307:2; Shrem Decl. ¶¶ 12–13 (Sept. 23, 2022).

117. Amazon's fulfillment centers destroy products in the order they are received.¹²⁶
118. The process of destroying products can take time due to the large number of products that require destruction.¹²⁷
119. Amazon has destroyed 45,785 units of the Subject Products identified in the Complaint.¹²⁸
120. Amazon has destroyed all but 6 units the Subject Products (all of them hair dryers) at its fulfillment centers.¹²⁹
121. All items that are awaiting destruction cannot be sold or shipped to customers.¹³⁰

III. AMAZON REQUESTED THAT ALL THIRD-PARTY SELLERS COOPERATE WITH THE COMMISSION.

122. Amazon notified all Third-Party Sellers of Commission notices regarding the Subject Products that Amazon received.¹³¹

123. ¹³²

124. ¹³³

¹²⁶ Shrem Decl. ¶ 22 (Sept. 23, 2022).

¹²⁷ Shrem Decl. ¶ 22 (Sept. 23, 2022).

¹²⁸ Shrem Decl. ¶ 19 (Sept. 23, 2022).

¹²⁹ Shrem Decl. ¶ 21 (Sept. 23, 2022).

¹³⁰ Shrem Decl. ¶ 23 (Sept. 23, 2022).

¹³¹ Ex. 46, Amazon-CPSC-FBA-00000337 (Amazon-Dolcevida Comms.); Ex. 47, Amazon-CPSC-FBA-00000347 (Amazon-IDGIRLS Comms.); Ex. 48, Amazon-CPSC-FBA-00000342 (Amazon-HOYMN Comms.); Ex. 49, Amazon-CPSC-FBA-00000353 (Amazon-Taicyxgan Comms.); Ex. 50, Amazon-CPSC-FBA-00001615 (Amazon-Third Party Seller Comms.); Ex. 51, Amazon-CPSC-FBA-00001774 (Amazon-Jackshop Comms.); Ex. 52, Amazon-CPSC-FBA-00001776 (Amazon-WangLuoYMX Comms.); Ex. 53, Amazon-CPSC-FBA-00001778 (Amazon-WJZXTEK Direct Comms.); Ex. 54, Amazon-CPSC-FBA-00001780 (Amazon-Bistee US Comms.); Ex. 55, Amazon-CPSC-FBA-00001782 (Amazon-lecoolife Comms.); Ex. 56, Amazon-CPSC-FBA-00001784 (Amazon-Beauty-America SHOP Comms.); Ex. 57, Amazon-CPSC-FBA-00001786 (Amazon-SiDell-US Comms.); Ex. 58, Amazon-CPSC-FBA-00002346 (Amazon-Liu Chongxiao Comms.); Ex. 59, Amazon-CPSC-FBA-00001813 (Amazon- Romancelink Comms.).

¹³² See *supra* FN 131.

¹³³ See *supra* FN 131.

IV. THE REMEDIES AVAILABLE TO THE COMMISSION & MEASURE OF REMEDIAL EFFECTIVENESS

A. The Consumer Product Safety Act Remedies Available to the Commission Are Limited to Repair, Replacement, and Refund.

125. The Commission’s practices, summarized in its handbook, limit “recall” to mean any “repair, replacement, refund, or notice/warning program.”¹³⁴

126. [REDACTED]¹³⁵

B. “Correction Rate” is the Commission’s Standard Metric for Measuring Remedial Effectiveness.

127. A “correction rate” is the Commission’s primary metric for measuring recall effectiveness.¹³⁶

128. A correction rate, represents the proportion of product units recalled that have been refunded, replaced, or repaired.¹³⁷

129. [REDACTED]¹³⁸

130. [REDACTED]¹³⁹

131. Academic research shows that imposing even a “moderate cost” to comply with safety message reduces compliance rate by 94 percent.¹⁴⁰

132. Academic research shows that “in-home” remedies “increase . . . the average recall effectiveness rate” compared to “a remedy that required consumers to return the product.”¹⁴¹

¹³⁴ Ex. 60, 2012 CPSC Recall Handbook at 6; *supra* FN 3.

¹³⁵ Ex. 40, Williams Dep. 67:2–67:8.

¹³⁶ Ex. 61, Amazon-CPSC-FBA-00001566 at 01597 (GAO-21-56 Rep. on CPSC Nov. 2020); Ex. 62, Mohorovic Rep. at 23.

¹³⁷ Ex. 66, CPSC_AM0009637 at 09638 (CPSC Recall Defect Data); Ex. 62, Mohorovic Rep. at 23; Ex. 30, Rose Dep. 88:7–88:14.

¹³⁸ *See* Ex. 62, Mohorovic Rep. at 21–22.

¹³⁹ Ex. 30, Rose Dep. 90:11–90:16, 153:4–154:8, 304:1–305:9.

¹⁴⁰ Ex. 63, Michael S. Wogalter et al, Effectiveness of Warnings, 29 Human Factors 599, 609 (1987).

¹⁴¹ Ex. 94, CPSC_AM0010101 at 10126 (Heiden Associates & XL Associates, *Recall Effectiveness Research: A Review and Summary of the Literature on Consumer Motivation and Behavior*).

133.

[REDACTED]

¹⁴²

134.

[REDACTED]

¹⁴³

135. Based on data analyzed for closed cases that had a Corrective Action Plan¹⁴⁴ between FY 2013 and FY 2016, the Commission’s overall correction rate was 65 percent.¹⁴⁵

C. The Effectiveness of Recall Notices Varies by Type of Notice.

136. The purpose of recall notices is to “help consumers and other persons to: (1) [i]dentify the specific product to which the recall notice pertains; (2) [u]nderstand the product’s actual or potential hazards to which the recall notice pertains, and information relating to such hazards; and (3) [u]nderstand all remedies available to consumers concerning the product to which the recall notice pertains.”¹⁴⁶

137. The Commission’s policy and practice is to issue one of two recall notices: (1) recall alerts and (2) recall press releases. Recall alerts are not disseminated to the media, and are used when the recalling firm can contact all purchasers. A recall press release is distributed to the media and is used when the firm does not have the contact information for most purchasers.¹⁴⁷

138. As of 2017, cases that involved Commission Press Releases had a consumer correction rate of approximately 6 percent.¹⁴⁸

139. As of 2017, the correction rate for consumer products with a retail price under \$19 was approximately 4 percent.¹⁴⁹

¹⁴² See Ex. 64, CPSC_AM0013521 at 13522 (CPSC Section 15 Manual) (instructing staff that they “must comply with CPSC Directive 9010.34”); see Ex. 65, CPSC_AM0014049 at 14091 (Directive Order No. 9010.34).

¹⁴³ Ex. 62, Mohorovic Rep. at 21.

¹⁴⁴ The term “Corrective Action Plan” includes any type of remedial action, and may include multiple actions, taken by a company with respect to a consumer product.

¹⁴⁵ Ex. 66, CPSC_AM0009637 at 0009638–09639 (CPSC Recall Defect Data).

¹⁴⁶ 16 C.F.R. § 1115.23; Ex. 40, Williams Dep. 58:18–59:12; Ex. 67, Carlin Dep. at 121:5–121:11.

¹⁴⁷ Ex. 68, CPSC_AM0009649 at 09652–09653 (2017 CPSC Recall Effectiveness Workshop Presentation on Press Release Goals); Ex. 30, Rose Dep. 43:11–44:13.

¹⁴⁸ Ex. 66, CPSC_AM0009637 at 09646 (CPSC Recall Defect Data); Ex. 69, Amazon-CPSC-FBA-00001348 at 01386–01387 (Tr. Of CPSC Recall Effectiveness Workshop, July 25, 2017) (statement of Ms. Carol Cave, deputy director, Office of Compliance & Field Operations).

¹⁴⁹ Ex. 69, Amazon-CPSC-FBA-00001348 at 01388 (Tr. Of CPSC Recall Effectiveness Workshop, July 25, 2017) (statement of Ms. Carol Cave, deputy director, Office of Compliance &

140. [REDACTED]¹⁵⁰
141. [REDACTED]¹⁵¹
142. [REDACTED]¹⁵²
143. [REDACTED]¹⁵³
144. As of 2017, for cases that involved a Commission Recall Alert, where the recalling firm was able to directly contact at least 95 percent of consumers, the correction rate was approximately 50 percent.¹⁵⁴
145. [REDACTED]¹⁵⁵
146. [REDACTED]¹⁵⁶
147. [REDACTED]¹⁵⁷
148. [REDACTED]¹⁵⁸
149. Empirical research has found that 80 percent of consumers comply with the instructions provided in recall notices.¹⁵⁹

Field Operations).

¹⁵⁰ Ex. 30, Rose Dep. 89:21–90:6.

¹⁵¹ Ex. 16, Davis Dep. 133:6–133:8.

¹⁵² Ex. 68, CPSC AM0009649 at 09653 (2017 CPSC Recall Effectiveness Workshop Presentation on Press Release Goals).

¹⁵³ Ex. 64, CPSC_AM0013521 at 13526 (CPSC Section 15 Manual).

¹⁵⁴ Ex. 66, CPSC_AM0009637 at 09646.

¹⁵⁵ Ex. 30, Rose Dep. 149:20–150:8.

¹⁵⁶ Ex. 70, CPSC_AM0015392 at 15393 (CPSC Reg. Enforcement Div. Procedure); Ex. 30, Rose Dep. 78:13–79:14; Ex. 64, CPSC_AM0013521 at 13526 (CPSC Section 15 Manual).

¹⁵⁷ Ex. 64 CPSC_AM0013521 at 13526 (CPSC Section 15 Manual); Ex. 30, Rose Dep. 73:5–74:14.

¹⁵⁸ Ex. 30, Rose Dep. 98:13–98:20.

¹⁵⁹ Ex. 71, Consumer Product Safety Commission, Staff Statement on Qualtrics, *Consumer*

D. The Content of Amazon’s Recall Notices Was Materially Similar to Notices the Commission-Approved in Other Matters.

150. Amazon’s direct consumer safety notifications listed the date on which they were sent and the identity of the firm providing the notice (Amazon).¹⁶⁰
151. Amazon’s direct consumer safety notifications made reference to the Commission, stating that “[t]he *U.S. Consumer Product Safety Commission (CPSC)* has informed [Amazon] that the products” described in the message pose a safety risk.¹⁶¹
152. A Commission notice from 2022 for a children’s sleepwear product stated: “The children’s robes *fail to meet the federal flammability standards for children’s sleepwear, posing a risk of burn injuries to children.*”¹⁶²
153. A Commission notice from 2020 for a hair dryer product stated: “The hair dryers *do not have an immersion protection device, posing an electrocution or shock hazard if the dryer falls into water when plugged in.*”¹⁶³
154. A Commission notice from 2022 for a carbon monoxide product stated: “The alarms *can fail* to alert consumers to the presence of a hazardous level of carbon monoxide, *posing a risk of carbon monoxide poisoning or death.* Carbon monoxide (CO) is an odorless, colorless, poisonous gas.”¹⁶⁴
155. Empirical research has specifically addressed the question whether the word “*recall*” should be used in notifications, and concluded instead that “*use of different terminology*” is appropriate where the term does not actually describe what action consumers should take with the product.¹⁶⁵
156. The 2012 version of the Commission’s Recall Handbook, which was in effect until September 2021, advised that for recall notifications issued via letter, the phrase “*Important Safety Notice*” should appear at the top of each notice.¹⁶⁶
157. The Commission has approved multiple Press Releases with the language “*Important*

Attitudes and Behaviors Regarding Product Safety at 27.

¹⁶⁰ Ex. 29, Amazon-CPSC-FBA-00000212 at 00214 (Carbon Monoxide Detector Safety Notice).

¹⁶¹ Ex. 29, Amazon-CPSC-FBA-00000212 (emphasis added).

¹⁶² Ex. 83, CPSC Recall No. 20-066 (emphasis added).

¹⁶³ Ex. 72, CPSC Recall No. 20-738 (emphasis added).

¹⁶⁴ Ex. 73, CPSC Recall No. 22-111 (emphasis added).

¹⁶⁵ Ex. 74, Jennifer A. Cowley & Michael S. Wogalter, Analysis of Terms Comprising Potential Names for a Recall Notification Campaign, Proceedings of the Human Factors and Ergonomics Society, 1698, 1702 (2008) (emphasis added) (noting that certain products “cannot be ‘recalled’” because “[r]eturn to the manufacturer cannot be easily accomplished”).

¹⁶⁶ Ex. 60, 2012 CPSC Recall Handbook at 24 (emphasis added).

*Safety Notice.*¹⁶⁷

158. The Commission-approved recall notice for Recall No. 11-711 provides a hazard description stating “[v]ibration from the ignition module *may* cause the trimmer head to loosen and detach.”¹⁶⁸
159. The Commission has approved multiple recall notices with language indicating that a product “*may*” cause a potential hazard.¹⁶⁹
160. The Commission routinely approves recall notices instructing purchasers that they “*should*” take certain actions.¹⁷⁰
161. The Commission routinely approves corrective actions that instruct a consumer to dispose of a product or repair it, but do not require the consumer to verify that they have completed the requested action.¹⁷¹

E. Direct Notice is the Most Effective Form of a Recall Notice.

162. A direct recall notice is the most effective form of a recall notice.¹⁷²

¹⁶⁷ Ex. 75, CPSC Recall No. 17-168; Ex. 76, CPSC Recall No. 18-090; Ex. 77, CPSC Recall No. 22-039 (emphasis added).

¹⁶⁸ Ex. 78, CPSC Recall No. 11-711 (emphasis added).

¹⁶⁹ Ex. 79, CPSC Recall No. 17-102 (“master cylinder may cause unintended brake drag”); Ex. 78, CPSC Recall No. 11-711, (“[v]ibration from the ignition module may cause the trimmer head to loosen and detach”); Ex. 80, CPSC Recall No. 12-021 (“[b]urners on range tops operating on liquified petroleum . . . may fail to ignite or light”); Ex. 81, CPSC Recall No. 15-159 (“[e]lectrical arcing may cause the lamp to overheat”).

¹⁷⁰ Ex 82, CPSC Recall No. 20-163 (“[c]onsumers should immediately stop using the recalled lawn dart sets and destroy and dispose of them to prevent further usage”); Ex 83, CPSC Recall No. 20-066 (“[c]onsumers should immediately stop using the recalled” product and “consumers should destroy the triangle piece”).

¹⁷¹ Ex. 84, CPSC Recall No. 22-022 (consumers should dispose of old exercise equipment in the trash); Ex. 83, CPSC Recall No. 20-066 (consumers should destroy part of a children’s toy); Ex 85, CPSC Recall No. 21-114 (consumers should remove and dispose of youth jacket draw strings to eliminate hazard); Ex. 86, CPSC Recall No. 20-018 (consumers take away sweatshirts from children and remove the drawstring); Ex. 87, CPSC Recall No. 21-705 (consumers should stop using oven liners which present carbon monoxide hazard); Ex. 88, CPSC Recall No. 18-023 (consumers should take away ponchos from children and remove the drawstring or return the poncho to the company).

¹⁷² 16 CFR § 1115.26; Ex. 89, CPSC_AM0011464 at 11481 (2021 CPSC Product Safety Planning, Reporting and Recall Handbook); Ex. 90, CPSC_AM0011459 at 11463 (2018 CPSC Recall Effectiveness Workshop Report); Ex. 30, Rose Dep. 47:2–47:7; Ex. 91, CPSC_AM0009669 at 09680 (Blake Rose, Director, Defect Investigations Division of CPSC, *Review of Recall Process and Standard Notifications*).

163. Direct notice “has a substantial impact on consumer return rates.”¹⁷³
164. Empirical research has “consistently . . . identified” direct notice as “a preferred and effective method of contacting most population segments.”¹⁷⁴
165. The Commission has admitted that “direct notification of a recall to all purchasers of a recalled product is an effective means of publicizing a recall and promoting recall.”¹⁷⁵
166. The Commission admits that “media assistance is not as important” when direct notification to consumers is used.¹⁷⁶

F. Amazon’s Direct Notice Helped Consumers Identify the Product, Hazard, and Remedy Provided.

167. Amazon’s direct notices to consumers regarding the Subject Products helped consumers identify the product.¹⁷⁷
168. Amazon’s direct notices to consumers regarding the Subject Products helped consumers understand the actual or potential hazard posed by the product.¹⁷⁸

¹⁷³ Ex. 90, CPSC_AM0011459 at 11462 (2018 CPSC Recall Effectiveness Workshop Report).

¹⁷⁴ Ex. 92 at 5, U.K. Department for Business, Energy & Industrial Strategy, *Insights into Product Recall Effectiveness* (Sept. 2020).

¹⁷⁵ Ex. 1, Compl. Counsel’s Obj. and Resp. to Amazon Request for Admission, No. 12 (Mar. 21, 2022).

¹⁷⁶ Ex. 68, CPSC_AM0009649 at 09653 (2017 CPSC Recall Effectiveness Workshop Presentation on Press Release Goals); *see also* Ex. 62, Mohorovic Rep. at 10–11 [REDACTED].

¹⁷⁷ Ex. 94, CPSC_AM001814 (Amazon’s Direct Product Safety Notification Email re Hairdryers); Ex. 30, Amazon-CPSC-FBA-00000212 at 00213 (Amazon’s Direct Product Safety Notification Email re Hairdryers); Ex. 41, Williams Dep. 62:15–63:1; Ex. 30, Amazon-CPSC-FBA-00000212 (Amazon’s Direct Product Safety Notification Email re Children Sleepwear (IDGIRLS)); Ex. 38, Amazon-CPSC-FBA-00002419 (Amazon’s Direct Product Safety Notification Email re Children Sleepwear); Ex. 16, CPSC_AM0000497 (Amazon’s Direct Product Safety Notification Email re Children Sleepwear (Taiycyxgan)); Ex. 68, Carlin Dep. 124:12–124:18; Ex. 30, Amazon-CPSC-FBA-00000212 at 00214 (Amazon’s Direct Product Safety Notification Email re Carbon Monoxide Detector); Ex. 63, Mohorovic Rep. at 14.

¹⁷⁸ Ex. 93, CPSC_AM001814 (Amazon’s Direct Product Safety Notification Email re Hairdryers); Ex. 29, Amazon-CPSC-FBA-00000212 at 00213 (Amazon’s Direct Product Safety Notification Email re Hairdryers); Ex. 40, Williams Dep. 63:14–63:19; Ex. 29, Amazon-CPSC-FBA-00000212 (Amazon’s Direct Product Safety Notification Email re Children Sleepwear (IDGIRLS)); Ex. 37, Amazon-CPSC-FBA-00002419 (Amazon’s Direct Product Safety Notification Email re Children Sleepwear); Ex. 15, CPSC_AM0000497 (Amazon’s Direct Product Safety Notification Email re Children Sleepwear (Taiycyxgan)); Ex. 67, Carlin Dep. 124:5–124:11; Ex. 29, Amazon-CPSC-FBA-00000212 at 00214 (Amazon’s Direct Product Safety Notification Email re Carbon Monoxide Detector); Ex. 62, Mohorovic Rep. at 11–13.

169. Amazon’s direct notices to consumers regarding the Subject Products helped the consumers understand the remedy being provided to them.¹⁷⁹
170. Amazon’s direct notices to consumers regarding the Subject Products indicated that consumers should stop using the product “immediately and dispose of it.”¹⁸⁰
171. [REDACTED]¹⁸¹
172. Academic research supports the conclusion that when “consumers . . . throw away the product . . . the recall is effective in alerting the consumer and removing the hazard[.]”¹⁸²
173. [REDACTED]¹⁸³
174. [REDACTED]¹⁸⁴
175. [REDACTED]

¹⁷⁹ Ex. 93, CPSC_AM001814 (Amazon’s Direct Product Safety Notification Email re Hairdryers); Ex. 29, Amazon-CPSC-FBA-00000212 at 00213 (Amazon’s Direct Product Safety Notification Email re Hairdryers); Ex. 40, Williams Dep. 64:11–64:17; Ex. 29, Amazon-CPSC-FBA-00000212 (Amazon’s Direct Product Safety Notification Email re Children Sleepwear (IDGIRLS)); Ex. 37, Amazon-CPSC-FBA-00002419 (Amazon’s Direct Product Safety Notification Email re Children Sleepwear); Ex. 15, CPSC_AM0000497 (Amazon’s Direct Product Safety Notification Email re Children Sleepwear (Taiycyxgan)); Ex. 67, Carlin Dep. 124:19–125:3; Ex. 29, Amazon-CPSC-FBA-00000212 at 00214 (Amazon’s Direct Product Safety Notification Email re Carbon Monoxide Detector); Ex. 62, Mohorovic Rep. at 14.

¹⁸⁰ Ex. 93, CPSC_AM001814 (Amazon’s Direct Product Safety Notification Email re Hairdryers); Ex. 29, Amazon-CPSC-FBA-00000212 at 00213 (Amazon’s Direct Product Safety Notification Email re Hairdryers); Ex. 40, Williams Dep. 64:18–64:22; Ex. 29, Amazon-CPSC-FBA-00000212 (Amazon’s Direct Product Safety Notification Email re Children Sleepwear (IDGIRLS)); Ex. 37, Amazon-CPSC-FBA-00002419 (Amazon’s Direct Product Safety Notification Email re Children Sleepwear); Ex. 15, CPSC_AM0000497 (Amazon’s Direct Product Safety Notification Email re Children Sleepwear (Taiycyxgan)); Ex. 29, Amazon-CPSC-FBA-00000212 at 00214 (Amazon’s Direct Product Safety Notification Email re Carbon Monoxide Detector).

¹⁸¹ Ex. 16, Davis Dep. 146:10–146:22; Ex. 62, Mohorovic Rep. at 14.

¹⁸² Ex. 61, Amazon-CPSC-FBA-00001566 at 01597 at 01597 (GAO-21-56 Rep. on CPSC Nov. 2020).

¹⁸³ Ex. 30, Rose Dep. 144:4–144:9.

¹⁸⁴ Ex. 94, CPSC_AM0010101 at 10104 (Heiden Associates & XL Associates, *Recall Effectiveness Research: A Review and Summary of the Literature on Consumer Motivation and Behavior*).

176. Amazon’s use of the phrase “Important Safety Notice” in the subject line of its direct notices regarding the Subject Products is consistent with applicable Commission policy and practice.¹⁸⁶

V. REPEATED CONSUMER COMMUNICATIONS ADD TO CONSUMER CONFUSION AND RECALL FATIGUE.

177. Recall fatigue is the concept that additional communications to consumers will make them less likely to respond to safety messaging.¹⁸⁷

178. Recall fatigue results in consumers “simply ignor[ing] urgent calls to destroy or return defective goods.”¹⁸⁸

179. Consumers are exposed to thousands of recalls per year.¹⁸⁹

180. Consumers have limited bandwidth to track, process and act on recalls.¹⁹⁰

181. Consumers “tune out the [recall] news because they have been bombarded by repetition.”¹⁹¹

182. [REDACTED]¹⁹²

183. Polls show that more than 60 percent of consumers believe that recalls are “primarily exercises in red tape” and “less about protecting consumers and more about government regulations.”¹⁹³

184. [REDACTED]

¹⁸⁵ Ex. 30, Rose Dep. 239:2–240:21.

¹⁸⁶ Ex. 60, 2012 CPSC Recall Handbook at 24; Ex. 30, Rose Dep. 178:5–178:11.

¹⁸⁷ Ex. 62, Mohorovic Rep. at 25–26; *supra* FN 82.

¹⁸⁸ Ex. 95, Lyndsey Layton, *Officials Worry About Consumers Lost Among the Recalls*, The Washington Post (July 2, 2010).

¹⁸⁹ Ex. 62, Mohorovic Rep. at 26.

¹⁹⁰ Ex. 96, Michael S. Wogalter & William J. Vigilante, Jr., Attention Switch and Maintenance, *in* Handbook of Warnings 245, 245 (M.S. Wogalter ed., 2006) (consumers “have a limited capacity of attention or mental resources to be used for active processing” and “cannot attend to everything around us”).

¹⁹¹ Ex. 97, Anita Bernstein, *Voluntary Recalls*, 1(10) UNIV. CHICAGO LEGAL FORUM 359, 394 (2013).

¹⁹² Ex. 62, Mohorovic Rep. at 26.

¹⁹³ Ex. 98, Stericycle Expert Solutions, *Product Recalls: Big Brother or Caring for One Another?* (June 12, 2018).

184. [REDACTED]¹⁹⁴
185. [REDACTED]¹⁹⁵
186. Other federal agencies are aware and acknowledge that recall fatigue is an issue.¹⁹⁶
187. Research shows that “[c]onsumers are less likely to comply where compliance is inconvenient.”¹⁹⁷
188. [REDACTED]¹⁹⁸

VI. THE COMMISSION HAS NOT DEFINED THE TERM “FUNCTIONALLY EQUIVALENT PRODUCTS.”

189. The term “functionally equivalent products” does not appear in the Consumer Product Safety Act, or its implementing regulations.¹⁹⁹
190. [REDACTED]²⁰⁰
191. The Commission has never ordered remedial action with respect to “functionally equivalent” products.
192. [REDACTED]²⁰¹
193. [REDACTED]

¹⁹⁴ Ex. 16, Davis Dep. 190:17–191:19.

¹⁹⁵ Ex. 16, Davis Dep. 190:17–191:19; Ex. 62, Mohorovic Rep. at 26 (noting “[c]oncerns about recall fatigue are well known at the CPSC” and have grown over time); Ex. 99, Statement by Commissioner Buerkel at the *Consumer Product Safety and the Recall Process*, Hearing Before the Subcomm. on Consumer Protection, Product Safety, Insurance, and Data Security of the Senate Comm. On Commerce, 114th Cong. (Oct. 8, 2015) (“I think on some levels, at least for CPSC, there may be a recall fatigue issue that we really need to address.”).

¹⁹⁶ Ex. 100, *Update on the Recalls of Defective Takata Air Bags and NHTSA’s Vehicle Safety Efforts*, Senate Comm. On Commerce, 114th Cong. at 4 and 72 (June 23, 2015).

¹⁹⁷ Ex. 62, Mohorovic Rep. at 19; *see also* Ex. 63, Michael S. Wogalter et al., Effectiveness of Warnings at 609 *in* Human Factors (1987) (imposing even a “moderate cost” to comply with safety message reduces compliance to only 5.9% of the population sample subject to the study).

¹⁹⁸ *See* Ex. 62, Mohorovic Rep. at 18–20.

¹⁹⁹ Ex. 30, Rose Dep. 335:16–337:19; *see also* 15 U.S.C. §§ 2051–2089; 16 CFR 1000-1799.

²⁰⁰ Ex. 30, Rose Dep. 335:16–337:19.

²⁰¹ *See* Ex. 30, Rose Dep. 334:18–335:4.

- [REDACTED] ²⁰²
194. [REDACTED] ²⁰³
195. [REDACTED] ²⁰⁴
196. [REDACTED] ²⁰⁵
197. [REDACTED] ²⁰⁶
198. [REDACTED] ²⁰⁷
199. [REDACTED] ²⁰⁸
200. [REDACTED] ²⁰⁹
201. [REDACTED] ²¹⁰

VII. THE COMMISSION'S NOTICE REQUIREMENTS

202. [REDACTED] ²¹¹

²⁰² Ex. 30, Rose Dep. 338:17–339:1.

²⁰³ Ex. 30, Rose Dep. 339:12–339:16.

²⁰⁴ Ex. 30, Rose Dep. 342:4–343:17.

²⁰⁵ Ex. 30, Rose Dep. 342:4–342:18.

²⁰⁶ Ex. 30, Rose Dep. 343:1–343:9.

²⁰⁷ Ex. 30, Rose Dep. 342:4–342:18 (children's sleepwear); 343:1–343:9 (carbon monoxide detectors); 343:10–343:17 (hair dryers).

²⁰⁸ Ex. 106, CPSC_AM0014331 at 14331 (CPSC Laboratory Rep.).

²⁰⁹ Ex. 106, CPSC_AM0014331 at 14331 (CPSC Laboratory Rep.).

²¹⁰ Ex. 106, CPSC_AM0014331 at 14331 (CPSC Laboratory Rep.).

²¹¹ Ex. 62, Mohorovic Rep. at 11–13.

203. [REDACTED]²¹²
204. The Commission’s 2012 Recall Handbook states that the term “‘Important Safety Notice’ . . . should appear” in “other forms of notice,” which include email notifications.²¹³
205. [REDACTED]²¹⁴
206. Academic research shows that the reputation of a firm, including whether a brand is well-known and a trusted source of information, increases the likelihood that its consumer messages will be heeded.²¹⁵
207. Empirical research has specifically addressed the question whether the word “recall” should be used in notifications, and concluded instead that “use of different terminology” is appropriate where the term does not actually describe what action consumers should take with the product.²¹⁶
208. The Commission is “not a well-recognized agency.”²¹⁷
209. There is no evidence that consumers are more likely to take additional action because the Commission says to.²¹⁸

VIII. THE COMMISSION’S CURRENT PRACTICES REGARDING RECALL ACTIONS

210. [REDACTED]²¹⁹
211. [REDACTED]²²⁰

²¹² Ex. 62, Mohorovic Rep. at 11–13.

²¹³ Ex. 60, 2012 CPSC Recall Handbook at 23–24.

²¹⁴ Ex. 62, Mohorovic Rep. at 16–18.

²¹⁵ Ex. 62, Mohorovic Rep. at 16–18.

²¹⁶ Ex. 74, Jennifer A. Cowley & Michael S. Wogalter, Analysis of Terms Comprising Potential Names for a Recall Notification Campaign, Proceedings of the Human Factors and Ergonomics Society, 1698, 1702 (2008); Ex. 62, Mohorovic Rep. at 13–14.

²¹⁷ Ex. 102, 2023–2026 CPSC Draft Strategic Plan at 24.

²¹⁸ Ex. 103, Government Accountability Office, *Consumer Product Safety Commission: Awareness, Use, and Usefulness of SaferProducts.gov* at 8 (Mar. 2013).

²¹⁹ Ex. 30, Rose Dep. 290:7–291:4.

²²⁰ Ex. 30, Rose Dep. 194:19–195:16.

212. [REDACTED]²²¹
213. [REDACTED]²²²
214. [REDACTED]²²³

IX. THE COMMISSION’S STATED PUBLIC INTEREST JUSTIFICATIONS

215. Complaint Counsel’s sole identified public interest justification for requesting that Amazon issue an additional CPSC approved direct notice to purchasers is that it would “clarify the hazard presented and promote[] the removal of the hazardous Subject Products from homes and the stream of commerce.”²²⁴
216. Complaint Counsel’s sole identified public interest justification for requesting that Amazon issue a press release regarding the Subject Products is that it would “clarif[y] the hazards presented and promote[] awareness of the hazardous products.”²²⁵
217. Complaint Counsel’s sole identified public interest justification for requesting that Amazon facilitate the return and destruction of the Subject Products is that it would “promote[] the removal of the hazardous Subject Products from homes and the stream of commerce.”²²⁶
218. Complaint Counsel’s sole identified public interest justification for requesting that Amazon submit monthly progress reports reflecting the number of Subject Products located in Amazon’s inventory, returned by consumers, and destroyed is that it would “track[] the return and destruction of the hazardous Subject Products.”²²⁷
219. Complaint Counsel’s sole identified public interest justification for requesting that Amazon submit monthly progress reports identifying all functionally equivalent products removed by Amazon is that it would “facilitate the identification and removal of products posing identical hazards.”²²⁸
220. Complaint Counsel’s sole identified public interest justification for requesting that

²²¹ Ex. 30, Rose Dep. 299:10–299:13.

²²² Ex. 30, Rose Dep. 299:14–299:19

²²³ Ex. 30, Rose Dep. 299:20–300:6.

²²⁴ Ex. 45, Compl. Counsel’s Obj. and Resp. to Amazon’s Interrogatories, No. 14 (Mar. 21, 2022).

²²⁵ Ex. 45, Compl. Counsel’s Obj. and Resp. to Amazon’s Interrogatories, No. 14 (Mar. 21, 2022).

²²⁶ Ex. 45, Compl. Counsel’s Obj. and Resp. to Amazon’s Interrogatories, No. 14 (Mar. 21, 2022).

²²⁷ Ex. 45, Compl. Counsel’s Obj. and Resp. to Amazon’s Interrogatories, No. 14 (Mar. 21, 2022).

²²⁸ Ex. 45, Compl. Counsel’s Obj. and Resp. to Amazon’s Interrogatories, No. 14 (Mar. 21, 2022).

Amazon be prohibited from distributing functionally identical products is that it “subjects [Amazon] to penalties if [Amazon] distributes Subject Products or functionally identical products.”²²⁹

Dated: September 23, 2022

Respectfully submitted,



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²²⁹ Ex. 45, Compl. Counsel’s Obj. and Resp. to Amazon’s Interrogatories, No. 14 (Mar. 21, 2022).

CERTIFICATE OF SERVICE

I hereby certify that on September 23, 2022, a true and correct copy of the foregoing document was, pursuant to the Order Following Prehearing Conference entered by the Presiding Officer on October 19, 2021:

- filed by email to the Secretary of the U.S. Consumer Product Safety Commission, Alberta Mills, at amills@cpsc.gov, with a copy to the Presiding Officer at alj@sec.gov and to all counsel of record; and
- served to Complaint Counsel by email at jeustice@cpsc.gov, lwolf@cpsc.gov, and sanand@cpsc.gov.

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