

UNITED STATES OF AMERICA  
CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of	)	
AMAZON.COM, INC.,	)	CPSC DOCKET NO.: 21-2
	)	
Respondent.	)	

**COMPLAINT COUNSEL’S RESPONSE TO RESPONDENT AMAZON.COM, INC.’S  
NOTICE OF SUPPLEMENTAL INFORMATION**

Complaint Counsel has previously detailed the corrective actions necessary to adequately protect consumers from Amazon’s distribution of over 400,000 undisputedly hazardous consumer products. Amazon’s recent “Notice of Supplemental Information” (Dkt. 152)<sup>1</sup> regarding two “Product Safety Warnings” fails to rebut the need for the previously requested relief. First, although Amazon complains about the agency’s pursuit of administrative litigation and issuance of public safety notices, the agency has lawful discretion to pursue differentiated avenues of enforcement to fulfill its purpose and protect consumers, and these differentiated avenues are often driven by the failure of companies – like Amazon – to recall hazardous products. Second, contrary to Amazon’s argument that the cited safety notices demonstrate the adequacy of Amazon’s prior emails to original purchasers, the notices do not diminish the need for the recall notifications requested by Complaint Counsel, which are supported by statute, regulation, case law, and the record in this matter.

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<sup>1</sup> The Commission’s Rules of Practice for Adjudicative Proceedings, 16 C.F.R. Part 1025, do not provide a vehicle to file a “Notice of Supplemental Information.” To the extent Amazon intends its notice to be seen as a motion renewing its request that the Commission adopt Amazon’s proposed Notification and Action Plan, *see* Amazon Notice at 3, this filing does not meet the requirements of 16 C.F.R. § 1025.23, which stipulates the necessary content of a motion, including “a proposed order setting forth the relief sought.” Furthermore, Amazon’s Notice does not negate the voluminous briefing in the record supporting Complaint Counsel’s proposed notices and remedies.

Amazon first complains that the Commission has “taken divergent paths to address the hazards posed by the products at issue in the Product Safety Warnings and the Subject Products,” Amazon Notice at 2, but “CPSC has administrative discretion to determine its enforcement efforts – and potential remedies – based on the unique circumstances of each case, company, product, and agency resources.” *In re TK Access Solutions Corp.*, CPSC Dkt. No. 21-1, Decision and Order on Otis Elevator Co. Mot. to Quash Subpoena, Dkt. 121 at 7 (April 11, 2022).<sup>2</sup> Indeed, the Consumer Product Safety Act (“CPSA”) empowers the Commission to use this discretion to seek remedial action from various types of entities, including manufacturers, retailers, and distributors as appropriate. *See* 15 U.S.C. § 2064.

Notably, Amazon’s refusal to take legal responsibility for the products it distributes frequently forces the agency to use its lawful discretion to seek corrective action from less sophisticated parties, which regularly fail to provide consumers with an appropriate corrective action, including providing a remedy that incentivizes the removal of hazardous products from consumers’ homes and the stream of commerce, making it unlawful to resell on the secondary market, and providing oversight into the disposition of the products. When companies fail to recall hazardous products, the agency may issue public safety notifications to inform and to help protect consumers. Thus, the lawful use of discretion about which Amazon complains is often

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<sup>2</sup> Federal courts have also long recognized that agency enforcement decisions are discretionary. *See Heckler v. Chaney*, 470 U.S. 821, 831 (1985) (“This Court has recognized on several occasions over many years that an agency’s decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency’s absolute discretion.”) (citing *United States v. Batchelder*, 442 U.S. 114, 123–124 (1979); *United States v. Nixon*, 418 U.S. 683, 693 (1974); *Vaca v. Sipes*, 386 U.S. 171, 182 (1967); *Confiscation Cases*, 7 Wall. 454, 19 L. Ed. 196 (1869)). The court in *Chaney* found the FDA’s decision to not institute enforcement proceedings unreviewable, citing the number of factors that go into an agency’s decision to enforce, including how to allocate limited resources. *Id.* at 831-832.

driven by the refusal of companies, including Amazon, to accept legal responsibility to take corrective action to protect consumers.<sup>3</sup>

Amazon next attempts to cherry pick and critique the language from two recent Product Safety Warnings, asserting that Amazon’s prior emails to original purchasers were comparable to the Product Safety Warnings. A quick comparison of Amazon’s emails to the Product Safety Warnings, however, demonstrates that the language is not equivalent. For example, the Product Safety Warning for children’s robes plainly states that the robes “fail to comply with federal safety regulations for children’s sleepwear,” and the Product Safety Warning for the combination alarms states that the alarms “fail UL 217, the voluntary safety standard for smoke alarms.” Amazon Notice, Exs. A, B.<sup>4</sup> By contrast, as the Commission stated in its July 2024 Order, “Despite conclusive testing that the products were hazardous, Amazon’s messages advised the customer only ‘of a *potential safety issue that may impact your Amazon purchase(s).*’” July 2024 Order at 14 (citing Compl. Counsel’s Resp. to Amazon’s SUMF at ¶¶ 19, 71, 87, 101, Dkt. 87). The Commission has already determined that “because Amazon’s messages were insufficient to protect the public, under Section 15(c)(1) of the CPSA, 15 U.S.C. § 2064(c)(1), direct notice to purchasers, pursuant to 15 U.S.C. § 2064(c)(1)(F), and public notice, pursuant to 15 U.S.C. § 2064(c)(1)(D), are required in order to adequately protect the public from the

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<sup>3</sup> As evidenced by the Subject Products in this administrative litigation, Amazon often refuses to recall products it has distributed. Although Amazon’s refusal frequently results in the need for Product Safety Warnings, the two particular Product Safety Warnings discussed in Amazon’s Notice do not relate to situations in which Amazon refused to conduct a recall. In one case, the product was not sold via Amazon’s Fulfillment by Amazon (“FBA”) program, while in the other, in light of Amazon’s continued refusals, Amazon was not asked to conduct a recall.

<sup>4</sup> The Product Safety Warnings also provide consumers with additional information regarding the hazards presented by the products and by residential fire scenarios.

substantial product hazards presented by the Subject Products.” July 2024 Order at 72.

Amazon’s filing does not undermine the Commission’s ruling.

To the extent that Amazon implies that the cited Product Safety Warning for children’s robes supports not warning consumers of the risk of death for the children’s sleepwear Subject Products, the statute, regulation, case law, and the record support issuance of the notifications requested by Complaint Counsel, as explained in prior briefing. *See* 15 U.S.C. § 2064(i)(2)(D); 16 C.F.R. § 1115.26(a); 16 C.F.R. § 1115.27(f)(2); *see also In the Matter of Zen Magnets, LLC*, 2017 WL 11672451, \*6 (Dec. 8, 2017) (concluding in an administrative litigation that the recall notice language “should state that there is a risk of death, as well as injury,” from the products at issue).<sup>5</sup> As the Commission stated in its July 2024 Order, “[s]erious injuries or death can occur if the garments ignite while being worn by children.” July 2024 Order at 11 (citing Amazon’s Resp. to Compl. Counsel’s SUMF at ¶ 20, Dkt. 92). Although the recent Product Safety Warning for children’s robes should have included this hazard, the Product Safety Warning is not binding on the Commission and does not justify omitting the hazard in Amazon’s recall notifications where the law and the record support the inclusion of the hazard.

In sum, Amazon’s arguments do not justify adopting the “notice and remedy provisions outlined in Amazon’s Proposed Notification and Action Plan,” as Amazon requests. Rather, pursuant to Sections 15(c), (d), and (i) of the CPSA, 15 U.S.C § 2064(c), (d), (i), and the Mandatory Recall Notice Rule, 16 C.F.R. § 1115.23-29, Complaint Counsel continues to request

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<sup>5</sup> Amazon does not appear to protest the inclusion of the risk of death for the carbon monoxide detector Subject Products. As the Commission stated in its July 2024 Order, “[h]uman exposure to CO gas may cause severe injury, including tissue damage and death.” July 2024 Order at 12 (citing Amazon’s Resp. to Compl. Counsel’s SUMF at ¶ 41, Dkt. 92). The recent Product Safety Warning for combination alarms warns consumers “about the risk of serious injury or death” associated with the use of the combination alarms. *See* Amazon Notice, Ex. A.

the relief set forth in Complaint Counsel's Clean Proposed Notification and Action Plan, Dkt.  
150.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 4, 2024, a copy of the foregoing was served upon all parties and participants of record in these proceedings as follows:

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