

Happy Prime Day: Trump Directs Federal Government to Pursue Legislation Making E-Commerce Platforms Liable for Counterfeit Sales

Minding Your Business Blog on **October 14, 2020**

In a [recent post](#), we summarized recent developments in litigation and legislative activity concerning whether online marketplaces may be directly liable for the sale of defective and counterfeit products on their platforms. Now the executive branch has weighed in, with President Trump issuing (on Prime Day, no less) a [Memorandum on Stopping Counterfeit Trafficking on E-Commerce Platforms Through Fines and Civil Penalties](#).

The Memorandum directs the Attorney General and the Secretary of Homeland Security to consider taking all appropriate action, consistent with applicable law, to:

- (i) seize counterfeit goods imported into the United States in connection with a transaction on an e-commerce platform; and
- (ii) impose the maximum fines and civil penalties permitted by law on any e-commerce platform that directs, assists with, or is in any way concerned in the importation into the United States of counterfeit goods.

In addition, President Trump directed the Secretary of Homeland Security, in coordination with the Attorney General, to develop a legislative proposal to promote the policy objectives of the Memorandum. As we previously discussed, multiple bills on this subject have already been introduced in the [House](#) and [Senate](#) with bipartisan support. Now the President seems to be on board as well.

One other update: We [previously noted](#) that the Pennsylvania Supreme Court had agreed to consider whether Amazon may be held strictly liable for defective products sold by third parties on its website. However, that case recently settled and the plaintiff [dismissed her appeal](#). No word yet on whether the California Supreme Court will accept Amazon's petition for review of the [Bolger v. Amazon](#) decision, in which a California appellate court reversed the trial court's judgment and found Amazon could be held strictly liable for defective products.

We will continue to monitor this area and update readers on any developments in Congress or in court.

[View Original](#)

[Related Professionals](#)

- **Jeff H. Warshafsky**
Partner