To amend the Trademark Act of 1946 to provide for contributory liability for certain electronic commerce platforms for use of a counterfeit mark by a third party on such platforms, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. Nadler introduced the following bill; which was referred to the Committee on ________________________

A BILL

To amend the Trademark Act of 1946 to provide for contributory liability for certain electronic commerce platforms for use of a counterfeit mark by a third party on such platforms, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Stopping Harmful Offers on Platforms by Screening Against Fakes in E-commerce Act of 2020” or the “SHOP SAFE Act of 2020”.

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SEC. 2. CONTRIBUTORY LIABILITY FOR ELECTRONIC COMMERCE PLATFORMS.

Section 32 of the Act entitled “An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes”, approved July 5, 1946 (commonly known as the “Trademark Act of 1946”) (15 U.S.C. 1114) is amended by inserting at the end the following:

“(4)(A) An electronic commerce platform shall be contributorily liable for infringement by a third-party seller participating on the platform for use in commerce of a counterfeit mark in connection with the sale, offering for sale, distribution, or advertising of goods that implicate health and safety, unless the following requirements are met:

“(i) The third-party seller is available for service of process in the United States.

“(ii) Before any alleged infringing act by the third-party seller, the platform demonstrates that the platform took each of the following reasonable steps to prevent such use on the platform:

“(I) Verified through governmental identification and other reliable documentation the identity, principal place of
business, and contact information of the third-party seller.

“(II) Required the third-party seller to verify and attest to the authenticity of goods on or in connection with which a registered mark is used.

“(III) Imposed on the third-party seller as a condition of participating on the platform contractual requirements that—

“(aa) the third-party seller agrees not to use a counterfeit mark in connection with the sale, offering for sale, distribution, or advertising of goods on the platform; and

“(bb) the third-party seller consents to the jurisdiction of United States courts with respect to claims related to the third-party seller’s participation on the platform.

“(IV) Displayed conspicuously on the platform the verified principal place of business, contact information, and identity of the third-party seller, the country of origin and manufacture of the goods, and the
location from which the goods will be shipped.

“(V) Required each third-party seller to use images that the seller owns or has permission to use and that accurately depict the actual goods offered for sale on the platform.

“(VI) Implemented at no cost to the registrant proactive technological measures for screening goods before displaying the goods to the public to prevent any third-party seller’s use of a counterfeit mark in connection with the sale, offering for sale, distribution, or advertising of goods on the platform.

“(VII) Implemented at no cost to the registrant a program to expeditiously disable or remove from the platform a listing by any third-party seller that reasonably could be determined to have used a counterfeit mark in connection with the sale, offering for sale, distribution, or advertising of goods.

“(VIII) Terminated use of the platform by any third-party seller that has en-
gaged in more than three instances of use of a counterfeit mark in connection with the sale, offering for sale, distribution, or advertising of goods on the platform.

“(IX) Implemented at no cost to the registrant technological measures for screening third-party sellers to ensure that sellers who have been terminated do not rejoin or remain on the platform under a different seller identity or alias.

“(X) Provided the information verified under clause (I) of each third-party seller that used a counterfeit mark in connection with the sale, offering for sale, distribution, or advertising of goods on the platform to relevant law enforcement and, upon request, the registrant.

“(B) In this paragraph:

“(i) The term ‘counterfeit mark’ has the meaning given that term in section 34(d)(1)(B).

“(ii) The term ‘electronic commerce platform’ means any electronically accessed platform that includes publicly interactive features that allow for arranging the sale, purchase, payment, or shipping of goods, or that enables
a person other than an operator of such platform to sell or offer to sell physical goods to consumers located in the United States.

“(iii) The term ‘goods that implicate health and safety’ means goods the use of which can lead to illness, disease, injury, serious adverse event, allergic reaction, or death if produced without compliance with all applicable Federal, State, and local health and safety regulations and industry-designated testing, safety, quality, certification, manufacturing, packaging, and labeling standards.

“(iv) The term ‘third-party seller’ means a person other than the electronic commerce platform who uses the platform to arrange for the sale, purchase, payment, or shipping of goods.

“(C) Nothing in this paragraph may be construed to limit liability for direct infringement.”.