

Dear Senators and Members of Congress:

As consumer packaged goods companies, we are writing to respectfully request your support for a critical amendment to the SHOP SAFE Act.

The Problem: Copycat THC edible products create risks for children and must be stopped.

Children are increasingly threatened by the unscrupulous use of famous brand logos, characters, trademarks and trade dress on THC-laced edible products. While cannabis (and incidental amounts of THC) may be legal in some states, the use of these famous marks, clearly without approval of the brand owners, on food products has created serious health and safety risks for consumers, particularly children, who cannot tell the difference between these brands' true products and copycat THC products that leverage the brand's fame for profit. While law enforcement focuses on addressing illegal sales, this unscrupulous practice has pointed out a gap in existing law – the widespread online sale of packaging that leverages these famous brands.

These are *real* examples of packaging that infringe on famous brands that have been removed from the market. But without Congressional action, they are quickly replaced by other unscrupulous sellers.



The Solution: Congress can address this problem now in existing legislation.

To address these concerns, we propose a simple change to the SHOP SAFE Act. Current language creates liability for electronic commerce platforms for advertising, sale or distribution of goods with counterfeit marks that “implicate health and safety.” Unfortunately, this language does not prohibit sale of the above packaging and products due to the technical definition of

counterfeit marks. **This should be amended to include “famous” marks, a term already defined in U.S. code, to extend this protection and deter the sale of these**

Proposed markup of language currently in SHOP SAFE:

- an electronic commerce platform shall be deemed contributorily liable in a civil action by the registrant for the remedies hereinafter provided for a case in which, without the consent of the registrant, a third-party seller uses in commerce a **famous or** counterfeit mark in connection with the sale, offering for sale, distribution, or advertising of goods that implicate health and safety
- (v) The term “famous” refers to a “famous mark” and has the meaning given that term in section 43(c)(2)(A).

copycat THC items which clearly “implicate health and safety” of children.

This change is critical because it closes a loophole in the existing language to address a critical health and safety issue. We urge your support.

Sincerely,

Consumer Brands Association

American Bakers Association

National Confectioners Association

Policy Center for Public Health and Safety

Digital Citizens Alliance

General Mills, Inc.

Mondelēz International, Inc.

PepsiCo, Inc.

Post Consumer Brands, LLC

Kellogg Company

SNAC International

American Herbal Products Association

Corn Refiners Association

The Association for Dressings & Sauces

Juice Products Association



Addendum

Key Definitions, for reference

Imported definition of “counterfeit” (34(d)(1)(B)):

(B) As used in this subsection the term "counterfeit mark" means—

(i) a counterfeit of a mark that is registered on the principal register in the United States Patent and Trademark Office for such goods or services sold, offered for sale, or distributed and that is in use, whether or not the person against whom relief is sought knew such mark was so registered; or

(ii) a spurious designation that is identical with, or substantially indistinguishable from, a designation as to which the remedies of this chapter are made available by reason of section 220506 of title 36;

Proposed Imported definition of “famous mark” (15 U.S.C.A. § 1125(c)(2)(A)):

(A) For purposes of paragraph (1), a mark is famous if it is widely recognized by the general consuming public of the United States as a designation of source of the goods or services of the mark’s owner.

Definition of “Implicates Health and Safety” in SHOP SAFE Act

(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.