



**Senator David Carlucci**

*Chair, NYS Senate Consumer Protection Committee*

# **Rolling the Dice on Recalled Products**

***How Online Shopping is a  
Game of Chance***



**June 2017**

## **Introduction**

Nearly every day, the U.S. Consumer Product Safety Commission (CPSC) issues a recall alert regarding products that could cause property damage, serious injury and/or death, yet few actually reach consumers.

Online websites such as Craigslist and eBay have become a common medium in which recalled products are resold. In 2007, various news articles reported that eBay was selling recalled products.<sup>1</sup> After a random check of a recalled item on its website resulting in 111 listings, eBay stated they “cannot police the millions of new and used items for sale on its site.”<sup>2</sup> However, eBay says that if the CPSC asks them to remove an item, they take the listing down. Similarly, Craigslist states on their website that the sale of recalled items is prohibited, provides a link for users to access a list of recalled items, and notifies users that this type of sale is prohibited; however, the website does not actually prevent the sale. Craigslist said in a statement to ABC News, “it’s up to the site’s users to spot recalled items and that it doesn’t control what is posted on its site.”<sup>3</sup>

In 2009, the CPSC launched a resale roundup campaign with a goal to “protect consumers by getting dangerous recalled products out of resale stores and off the Internet.” The CPSC encouraged re-sellers to check their website to determine if a product has been recalled as well as consult its Handbook for Resale Stores and Product Resellers for a further breakdown of what stores, flea markets, charities and individuals selling used goods in person or online may sell.<sup>4</sup> New federal laws extended product liability for defects to garage sale transactions between private individuals holding such individuals liable for fines of \$100,000 and up to \$15 million for related violations.<sup>5</sup>

Yet, in 2014, ABC News conducted an investigation that found recalled products **still** being sold on Craigslist. In most cases, sellers had no idea the products they were selling had been recalled, and told ABC News that if they were alerted of this, they would have never attempted to sell such products. ABC News attempted to list a recalled version of a Bumbo baby seat on Amazon, eBay and Craigslist- on Amazon, it was immediately blocked, eBay removed the listing the next day, whereas the Craigslist ad remained live until ABC News removed it themselves.<sup>6</sup> While websites like Amazon, eBay and Craigslist have made some efforts to stop the sale of recalled products, it is clear that more must be done.

Kids in Danger (KID), a nonprofit organization dedicated to protecting children by improving product safety is co-founded by a mother whose child died from a previously recalled

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<sup>1</sup> <http://www.cbsnews.com/news/ebay-selling-recalled-products-illegal/>;  
[http://www.nbcnews.com/id/20349669/ns/business-consumer\\_news/t/dangerous-toys-find-second-life-auction-sites/#.WPd0r4jyuUk](http://www.nbcnews.com/id/20349669/ns/business-consumer_news/t/dangerous-toys-find-second-life-auction-sites/#.WPd0r4jyuUk)

<sup>2</sup> <http://www.cbsnews.com/news/ebay-selling-recalled-products-illegal/>

<sup>3</sup> <http://abcnews.go.com/blogs/headlines/2014/11/craigslist-statement-to-abc-news/>

<sup>4</sup> <http://www.cpsc.gov/en/Newsroom/News-Releases/2009/CPSC-Launches-Resale-Round-up-Campaign-to-Keep-Dangerous-Recalled-Products-Out-of-Resale-Stores-and-Off-the-Internet/>

<sup>5</sup> <https://jonathanturley.org/2009/09/18/seller-beware-new-federal-program-allows-for-casual-sellers-to-be-fined-for-up-to-15-million/>

<sup>6</sup> <http://abcnews.go.com/2020/fullpage/recall-roulette-flawed-product-recall-system-27086286>

portable crib collapsing at her son's daycare. A recent KID report card examines the effectiveness of the recalls in removing dangerous products from homes. Important findings from their latest report card published in March 2017 and reporting on recalls from 2016 and the effectiveness of recalls from 2015 were:

- Incidents and injuries reported were both above 2015 levels due to design flaws and failures to pull dangerous products from shelves:
  - There were 819 incidents, 36 injuries and 0 deaths reported before recalls were issued in 2015
  - There were 4,842 incidents, 394 injuries and 7 deaths reported before recalls were issued in 2016
- Only 14% of 2014's recalled children's products were successfully corrected, replaced or returned<sup>7</sup>
- The number of children's product recalls increased 12 percent in 2016 compared to 2015<sup>8</sup>

The U.S. Consumer Product Safety Commission was established and given its authority as an independent agency of the federal government by the Consumer Product Safety Act of 1972. One of the main considerations for passage was the "recognized inability of the individual states to provide effective protection to the consumer from injury due to defective and dangerous products." However, the act provides an outlet for states to carry out its provisions by allowing "for the establishment of a program to promote federal-state cooperation."<sup>9</sup>

Due to jurisdictional boundaries, a state can only legislate the local distribution of products, therefore much of state legislation only regulates the seller and distributor in assumption that manufacturers would be unwilling to produce a product that cannot be marketed and/or sold in a state due to violations. This approach ultimately risks losing manufacturers and their net economic benefit to communities by forcing them to adapt to different and potentially conflicting standards in each state. Therefore, realistic enforcement mechanisms are important to effectuate the goal of these state regulations.<sup>10</sup>

Similar to Kids in Danger, the U.S. Public Interest Research Group Education Fund has conducted an annual survey of toy safety for over thirty years. In their report, *Trouble in Toyland: The 31st Annual Survey of Toy Safety*, they examine toys recalled by the CPSC between January 2015 and October 2016 and look at whether they still appeared to be available for online sale. They found that while CPSC had announced over 40 recalls of toys and children's products totaling over 35 million units, **that over a dozen of these items appeared to be available online.**<sup>11</sup>

As the Chair of the New York State Senate Consumer Protection Committee, Senator David Carlucci, a member of the Independent Democratic Conference (IDC), is determined to research and investigate the reality of online purchasing of recalled children's items and items

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<sup>7</sup> [http://www.kidsindanger.org/docs/research/KID\\_Report\\_Card\\_0316.pdf](http://www.kidsindanger.org/docs/research/KID_Report_Card_0316.pdf)

<sup>8</sup> [http://www.kidsindanger.org/docs/research/KID\\_2017\\_Annual\\_Report\\_040317.pdf](http://www.kidsindanger.org/docs/research/KID_2017_Annual_Report_040317.pdf)

<sup>9</sup> <http://scholarlycommons.law.hofstra.edu/cgi/viewcontent.cgi?article=1069&context=hlr>

<sup>10</sup> Ibid.

<sup>11</sup> <http://www.uspirg.org/sites/pirg/files/reports/USP%20Toyland%20Report%20Nov16%201.1.pdf>

that could be a danger to children online. While New York State does have laws addressing product safety, they do not fully take into account the new way in which the internet is used for commerce. Furthermore, both federal and state law provide limited guidelines regarding the effort required to “get the word out” about such products.

### **New York State Children’s Product Safety and Recall Effectiveness Act of 2008**

New York’s article 28-E of the general business law, known as the Children’s Product Safety and Recall Effectiveness Act of 2008, was signed into law the same year the federal Consumer Product Safety Act was amended to provide CPSC with new regulatory and enforcement tools.

While the article outlines important definitions, labeling standards, enforcement and the promulgation of regulations, the most important sections of law pertaining to the resale of recalled children’s items are manufacturers’ requirements to include product safety owner’s cards, product recall or warning requirements, retailer responsibilities, and non-retail sales responsibilities.

Manufacturers of durable juvenile products, distributed, sold or made available in New York State are required to include a product safety owner’s card with all sales to initial consumers of such products. Information obtained by such cards shall be used only in the event of a product recall or safety alert to the initial consumer. Other sections of law outline the requisite steps commercial dealers, retailer and non-retail sales must take when a product receives a safety alert and/or recall from the CPSC.

Commercial dealers of children’s products or durable juvenile products that have been recalled must discontinue distribution of such product and initiate a specified process within twenty-four hours of issuing or receiving the recall from the CPSC. This process includes contacting in writing any persons that the product was sold to, placing the recall information on their website (if available) and a link to the specific information regarding the recall, giving notice of the recall directly to the initial customer, and providing notification to the department of state of the recall.

When a retailer has knowledge of a recall on a children’s product or durable juvenile product such retailer currently offers for sale or had previously offered for sale, such retailer must initiate a corrective undertaking within one business day of knowledge of the recall notice, such as removing the product from the store and implementing a procedure to prevent the recalled product from being purchased at point of sale. Within one business day of notice of the recall, the retailer must post all recall notices conspicuously at their locations for at least sixty days; if the retailer maintains a website, post on the home page for a period of sixty days a link to recall information; and if contact information was provided at the time of sale, the retailer must contact the initial customer to provide notice of the recall.

Any person or entity who facilitates a competitive bidding process or third party resale, sale or distribution of children’s products must conspicuously post on its homepage advisory



language or existing recall information, to notify buyers or sellers of children's products the importance of checking recall lists before engaging in such transactions.

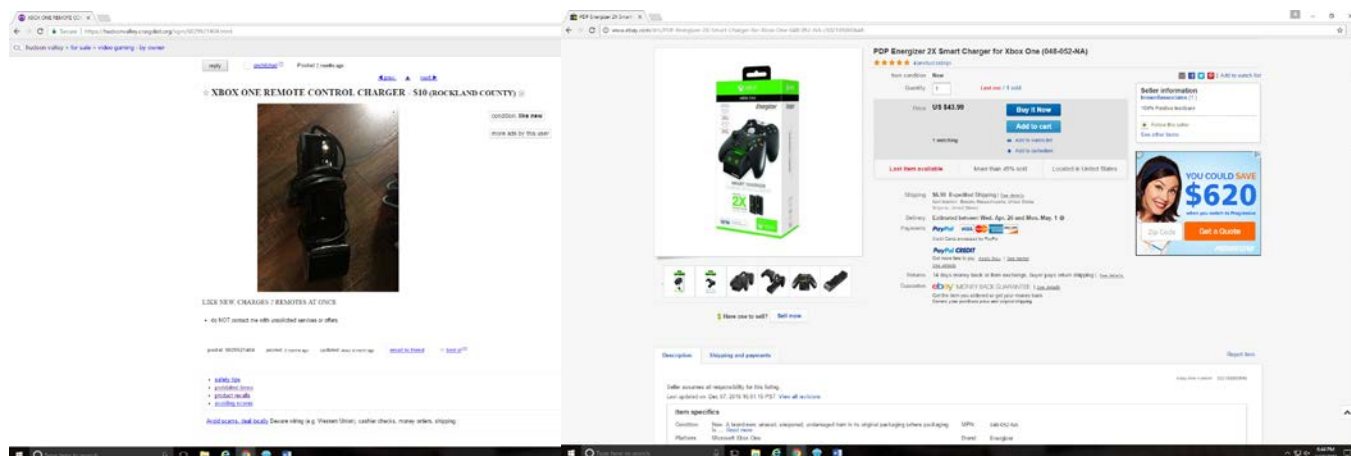
Secondhand dealers who sell children's products shall post a notice instructing consumers on how to obtain recall information and advisory language notifying buyers and sellers of children's products of the importance of checking recall lists before engaging in such transactions. Such notice shall be prominently posted at the point of sale or at the entrance to the premises where the product is offered for sale.

## **Preliminary Investigation**

Using items already flagged by the CPSC website and a timeframe starting on the first of this year, a review of the website indicated which items were most likely "children's items" or items most likely to be a danger to children was conducted. The name of the recalled item, model number as well as any other identifying information and the date of recall were charted for further research. After reviewing Google Shopping, Amazon, Craigslist and eBay specifically, as well as searching key words in Google to buy such items, over one-third of presumably recalled items were found for resale; some items found multiple times.

Most surprising among the findings was that the major online retailer, eBay, seemed to sell the majority of these items. Craigslist was the site the U.S. Consumer Product Safety Commission was most worried about regarding what is commonly referred to as "recall roulette." We were able to find what appears to be one of our recalled items on Craigslist in Rockland County. The reason it cannot always be determined whether a product has been recalled from a listing on an online marketplace website is because the seller often does not post enough identifying information about the product and the online marketplace has loose policies on what information is required to be posted.

Below are some examples of listings for items that appear to have been recalled:



### KEY PRELIMINARY FINDINGS

- ✓ Found 8 out of 21 potentially recalled items posted for resale
- ✓ Found 35 items total
- ✓ Identifying information regarding recalled items is not always different than current items which leads to confusion and difficulty for consumers
- ✓ eBay and other second hand dealers do not require a seller to include all identifying information when listing/posting an item which proves difficult to determine if such item has been recalled

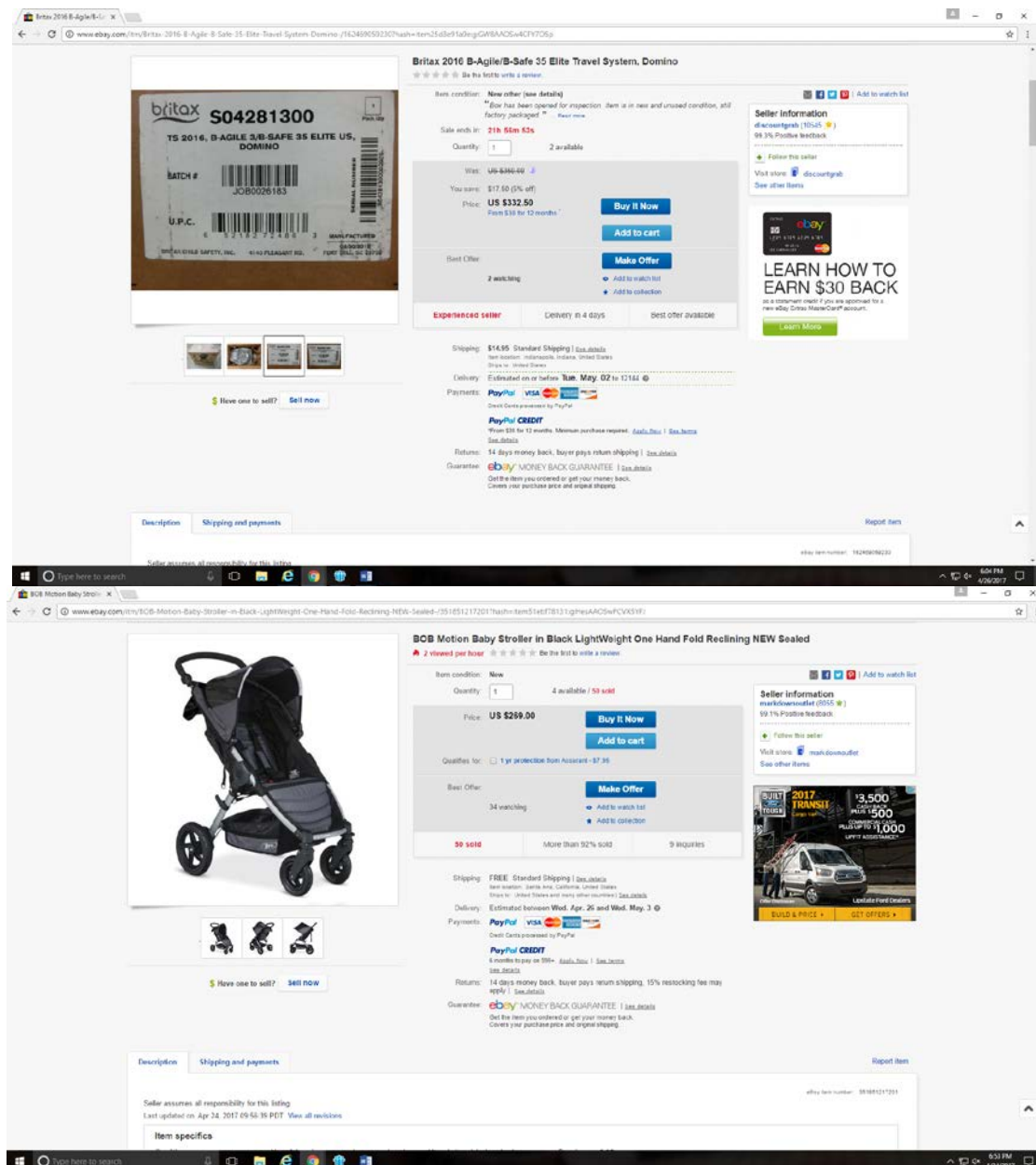
### Investigation & Findings

Based on this preliminary investigation, the IDC ordered items believed to have been recalled based on the information provided on the second hand dealer websites such as eBay and Craigslist to see if the items are truly such recalled items. The items ordered have the potential to pose a danger to children.

Once the items were received, their recalled status was verified with the information provided on the CPSC website. Some products were not recalled, and some were. For example, an **Energizer XBOX One 2X Smart Charger** was recalled in mid-March because **the battery chargers can overheat and damage the controller posing a burn hazard to consumers**. The item was purchased in April and was matched to the item number provided in the recall notice. See the images below:



Two items frequently found during the investigation were the **Britax B-Agile stroller** and the **Bob-Motion stroller**. In February of 2017, close to 150 model numbers were recalled because a damaged receiver mount on the stroller causes the car seat to disengage and fall unexpectedly. According to the CPSC website, Britax had received 33 reports of car seats unexpectedly disconnecting from the strollers and falling to the ground, resulting in 26 reports of injuries to children, including scratches, bruises, cuts and bumps to the head. In addition, Britax is aware of 1,337 reports of strollers with damaged Click & Go receiver mounts. These strollers were sold at major retailers nationwide and online from May 2011 through February 2017.<sup>12</sup>



<sup>12</sup> <https://www.cpsc.gov/Recalls/2017/Britax-Recalls-Strollers>

The IDC purchased one of these strollers in April through eBay and matched it to the model number and manufacturer's date provided in the recall notice.



Country / Pays:			Date of Purchase/Date d'achat		
			year/année / month/mois / day/jour		
Email / Courriel: (optional) / facultatif					
<b>REGISTRATION CARD CARTE D'ENREGISTREMENT</b>					
2016	03	21	B-Agile Stroller - U691879		
yr/año	mo/mois	day/jour	BATCH/LOT/LOTE : P000034262		
			SERIAL/SERIE/SERIE : U691879 310419		
MADE IN/FABRIQUÉ EN/HECHO EN: ZHUHAI, GUANGDONG, CHINA/CHINE					
U.S.A. IMPORTER/IMPORTATEUR/IMPORTADOR					
BRITAX CHILD SAFETY, INC. 4140 PLEASANT ROAD, FORT MILL, SC 29708					
CANADA IMPORTER/IMPORTATEUR/IMPORTADOR					
BRITAX CHILD SAFETY, LTD. P.O. BOX 7289, RPO BRUNSWICK SQUARE, SAINT JOHN NB E2L 9Z9					



While Craigslist and eBay have become a popular choice to sell items quickly, new age phone applications have made selling unwanted items more convenient and potentially more dangerous. The IDC reviewed three phone applications which have companion websites to view items. Letgo, Carousell, and OfferUp all allow a user to take a picture of an item on their cellphone, type in minimal information about said item and sell it without further scrutiny. While Letgo and Carousell explicitly state in their terms of use that recalled items are prohibited from sale, they also absolve themselves of any responsibility from facilitating the sale between seller and buyer.

Similar to policies of eBay and Craigslist, Letgo maintains that it has no control over the items for sale or sold through its platform and does not review the products that users provide through the application<sup>13</sup>. However, if an item is reported as violating its rules Letgo will investigate and take appropriate action. Amazon's product safety policy states that it monitors the products sold on its website for product safety concerns, specifically public recall alerts and recalls from manufacturers and vendors. When they learn of a recall they suspend all impacted product offerings from their website and quarantine any related inventory in their fulfillment centers. Additionally, Amazon states that will reach out to any customers that previously purchased impacted products to inform them about the recall.<sup>14</sup>

Unfortunately, the lack of information a user is required to input regarding an item a user intends to sell makes it unclear if an item is recalled until the item has been purchased., eBay has a recalled items policy that reminds sellers to check the manufacturer's website and the U.S. recall information website to get information on recalled items and recommends they sign up to receive notices about item recalls<sup>15</sup>. The challenge for state-level lawmakers and regulators is to strike a balance between consumer protection and safety while using the Internet to efficiently sell unwanted items.

Despite the national attention "recall roulette" brought to this issue in 2014, not much has been done legally to prevent the sale of recalled items online. Kids in Danger's 2017 annual report card recognized the role social media has played in bringing some awareness to recalls in a similar way companies use it to advertise. After extensive research, they found that the number of companies using Facebook to post about their recalls increased from 2015, while the number of companies using Twitter to announce their recalls decreased.<sup>16</sup>

### **Legislative Solution & Policy Recommendation**

Requiring marketplace websites, which include but are not limited to Amazon, eBay and Craigslist, who make items available to residents of New York, to place a product recall check form on their site prior to a seller authorizing the sale of an item, is a legislative solution Senator Carlucci intends to explore. The CPSC provides a Recalls Retrieval Web Services Programmers Guide to assist web programmers create this form linking sellers directly to the CPSC website to check if the product they are trying to sell has been recalled. If an item has been recalled as

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<sup>13</sup> <https://us.letgo.com/en/terms-and-conditions>

<sup>14</sup> <https://www.amazon.com/gp/help/customer/display.html?nodeId=565166>

<sup>15</sup> <http://pages.ebay.com/help/policies/recalled.html>

<sup>16</sup> [http://www.kidsindanger.org/docs/research/KID\\_2017\\_Annual\\_Report\\_040317.pdf](http://www.kidsindanger.org/docs/research/KID_2017_Annual_Report_040317.pdf)

determined by using the product recall check form, the marketplace would have the option to block the seller from making the post. However, if a seller does not have the requisite information to fill out the product recall check form they would be directed to information regarding product recalls and would not be able to continue with the sale until they acknowledged the understood their responsibilities regarding selling a recalled product. The idea is to prevent recalled items from being sold and educate more individuals about what their liability if they do sell a recalled item.

There is clear evidence that recalled products are still being sold despite the legal prohibition. Requiring online marketplace websites to create product recall check forms and ensuring that sellers know the liabilities they face when selling a recalled product are major steps toward protecting consumers including children, toddlers and infants. The evolution of the digital economy has worked towards the benefit of manufacturers and retailers with the use of technology. That scale can tip back towards consumers by increasing the use of information and ways it is made available to warn consumers of product recalls. The proposed solution will affirm New York State's commitment to protecting consumers as well as some of the most innocent and vulnerable people, our children. Senator Carlucci will be hosting a hearing on this very issue bringing stakeholders together to discuss policy, legislation and how we can close the loophole impeding on consumer protection.