

Memo Draft version 30.04.2020¹

Unsafe and dangerous products on Amazon.co.uk

1. Introduction

The Danish Chamber of Commerce has purchased 50 products, mainly toys, from third party sellers on the three large online platforms Wish, Alibaba and Amazon. Several of these toys have been tested by certified laboratories. These tests have shown that almost none of the products complied with EU product safety law, including the Toy Safety Directive. Many breeches are serious and dangerous violations and relates to e.g. high concentrations of dangerous chemistry way above the EU threshold, long cords that can strangle a small child, and small pieces that can make a child choke. The violations indicate that the third-party sellers have too little knowledge of the EU product safety regulation.

The non-compliant toys have been reported to the national market surveillance and product safety authorities, who have warned about the items and asked the platforms to recall the items. Some of the tested products are therefore registered on RAPEX, the EU Safety Gate. All three platforms have reportedly promised to take down the products from their website. However, this does not always happen, and we have discovered that even if a product is taken down from one seller, identical or similar items are still available from different third-party sellers.

This memo regards purchases from third party sellers on Amazon.

Amazon has signed the European Commission's voluntary Product Safety Pledge in June 2018². The signatories of the pledge commit themselves to consult RAPEX for information on recalled/dangerous products, and within two days take down dangerous products when advised by Authorities and to take actions to prevent, that the removed products are put for sale again.

Of the 50 products we have bought on the 3 platforms 9 products from third party sellers were purchased on Amazon.co.uk, Amazon.fr and Amazon.com³. Out of these 9 products, 7 have been tested dangerous and non-compliant with EU rules. Products identical to all 7 products are still available through the same or other third-party sellers on the platform.

For simplification this memo describes in detail the findings from 3 of our purchases on Amazon.co.uk that has all been subject to public attention⁴ before our purchase and therefore encouraged us to look more into the matter.

2. Background of the three toys tested dangerous

The three toys bought on Amazon.co.uk used as examples in this memo are:

¹ The documentation in this memo has been checked numerous times, but we take reservations for insaccuracies.

² https://ec.europa.eu/malta/news/european-commission-and-four-online-marketplaces-sign-product-safety-pledge-remove-dangerous_en

³ A summary of each of the purchases can be found in the "Table overview of test purchases on platforms". Note that some products were purchased twice, which is noted as two numbers in the 'No.' column.

⁴ Besides public attention in Denmark a new test from six consumer groups from BEUC published February 24th 2020 revealed that 66 pct. of 250 products bought from online marketplaces failed safety tests: <http://www.beuc.eu/publications/two-thirds-250-products-bought-online-marketplaces-fail-safety-tests-consumer-groups/html>

- Wooden toy fruit figures with cords so long that they can reach around the neck of a small child and pose a risk of strangulation.
- A musical toy rattle with bells that are sharp, loose and smaller than allowed. Small children risk to swallow them, cut themselves and in the worst-case choke.
- 12 of the popular Fortnite figures. These were tested twice. The first test showed 49 times the threshold of DEHP and the second test revealed 210 times the threshold of DEHP phthalates.⁵

Before we purchased them on Amazon.co.uk, all three toys had been tested by the Danish Consumer Council, Forbrugerrådet Tænk⁶, which is publicly founded and carries out reliable product tests in Denmark. Amazon.co.uk is under EU-jurisdiction, and hence, EU product safety rules and EU consumer protection rules therefore apply, including the Toy Safety Directive. The three toys were tested and found non-compliant with EU law and dangerous for children to play with.

The wooden fruit toys and the rattle were purchased and tested by the Danish Consumer Council in December 2017⁷ and the findings were confirmed by the Danish Safety Authority in November 2019. The Fortnite figures were tested by the Danish Consumer Council in June 2019⁸ and again by the Danish Broadcaster DR in November 2019. All three toys are registered on RAPEX and have been warned against by authorities and the Danish Consumer Council, which can be seen in the pictures 1-4.

Like the other platforms in our study, Amazon has not contacted us in order to inform us, that the toys purchased pose a risk to children even though the platform has all contact details.

3. The voluntary EU Product Safety Pledge

Amazon has signed the European Commission's voluntary Product Safety Pledge from June 2018⁹ where 4 platforms (Amazon, Alibaba, e-Bay and Rakuten France)¹⁰ commits themselves to ultimately "improve the detection of unsafe products marketed in the EU before they are sold to consumers or as soon thereafter as possible, and to improve consumer protection". Examples of these commitments are showed in figure 1 and includes a commitment to consult RAPEX for information on recalled/dangerous products, take down dangerous products when advised by Authorities within two days and to take actions to prevent that the removed products are put for sale again.

Despite Amazons commitment to the pledge, we have been able to buy several non-compliant and dangerous toys, and as the following will show, we were not notified, and similar and identical products are still for sale on and promoted by the platform.

⁵ <https://www.dr.dk/nyheder/penge/trods-advarsel-legetoej-med-forbudt-kemi-saelges-stadig-af-populaere-udenlandske>

⁶ The test of the rattle and the wooden apple was carried out in December 2017 and the test of the Fortnite figures in June 2019. We purchased the toys in the period August – October 2019.

⁷ <https://taenk.dk/test-og-forbrugerliv/boern/billigt-legetoej-fra-nettet-er-farligt-dit-barn>

⁸ <https://kemi.taenk.dk/bliv-groennere/test-kemi-i-legetoej-fra-ebay-amazon-og-wish>

⁹ https://ec.europa.eu/malta/news/european-commission-and-four-online-marketplaces-sign-product-safety-pledge-remove-dangerous_en

¹⁰ On 30th January 2020 two more online marketplaces (Allegro and Cdiscount) signed the Product Safety Pledge.

Figure 1: Examples of commitments from the EU Product Safety Pledge from June 2018

1. Consult information on recalled/dangerous products available on RAPEX (2) and also from other sources, such as from enforcement authorities. Take appropriate action (3) in respect to products concerned, when they can be identified.
4. Have an internal mechanism for notice and take-down procedure for dangerous products. This should include commitments from the marketplace's side on the procedure they will follow when notices are given by authorities and other actors.
5. React within two working days to government notices made to the single contact points to remove identified listings offering unsafe products for sale in the EU. Inform the authorities on the action taken (4).
8. Cooperate with EU Member State authorities and sellers to inform consumers (5) about relevant recalls or corrective actions.
10. Put in place measures to act against repeat offenders offering dangerous products in cooperation with authorities.
11. Take measures aimed at preventing the reappearance of dangerous product listings already removed.
12. Explore the potential use of new technologies and innovation to improve the detection of unsafe products

4. Warnings on RAPEX

The wooden apple with the long cord

Picture 1: The wooden apple toy on RAPEX since October 26th, 2018

The screenshot shows the RAPEX alert page for a wooden apple toy. The page is titled "The Rapid Alert System for Non-Food Products (RAPEX)". It includes the following information:

- Alert number:** A12/1568/18
- Product:** Wooden toy
- Category:** Toys
- Name:** Wooden Education Baby Fruit Toys
- Brand:** Unknown
- Batch number / Barcode:** Unknown
- Type / number of model:** Unknown
- Type of alert:** Serious
- Risk type:** Choking, Strangulation
- Description:** The cord attached to the wooden apples is too long, which could lead to strangulation, and a part of the apple detached, generating a small part. A child may put the small part into the mouth and choke.
- Measures taken by economic operators:** Removal of the products from the Wish platform (By: Other)
- Measures ordered by public authorities (to: Other):** Authority warning consumers of the risk
- Description:** Wooden toy apple with a worm attached to a string, used to train motor skills. Packed in a clear plastic bag. The product is sold online (for example on the Wish marketplace).
- Country of origin:** Unknown
- Alert submitted by:** Finland

There are two images at the bottom: one showing a red wooden apple with a green worm and a long string, and another showing the apple in its clear plastic packaging.


The RAPEX alert on the wooden apple toy states that the type of alert is “serious”, and the risk type is” choking and strangulation” due to small parts and a cord, that is so long, that it could lead to strangulation. The product does not comply with the requirements of the Toy Safety Directive.

Nonetheless, toys appearing identical are still to be found on Amazon from other third-party sellers as of April 7th, 2020.

The rattle musical toy with small loose parts

The rattle musical toy was first put on RAPEX in July 2018 by Denmark¹¹ and Malta.

Picture 2: The musical rattle toy on RAPEX since June 20th, 2018



1 of 6 photos < Previous Next >

Alert number: A12/0956/18

Category: Toys

Product: Wooden musical toys

Brand: Delgado Gifts

Name: Unknown

Type / number of model: ref. MU61, MU62, MU64

Batch number / Barcode: 8435221343889, 8435221343902 and 8435221343896

Risk type: Choking

Small parts can easily detach from the toys. Furthermore, the handle of the maracas rattle protrudes. A child could put the small parts or the protruding handle in the mouth, which could block the airways and cause choking.

The product does not comply with the requirements of the Toy Safety Directive and the relevant European standard EN 71-1.

Measures ordered by public authorities (to: Importer): Import rejected at border

Description: Wooden musical toys: Ratchet/football rattle (ref. MU61), maracas with jingle bells (ref. MU62) and rattle (ref. MU64). The products are packed in a transparent plastic bag.

Country of origin: China **Alert submitted by:** Spain

Type of alert: Serious

Year - Week: 2018 - 29

Products were found and measures were taken also in: Denmark, Malta

On RAPEX the alert is labelled “serious” and the risk type is choking due to the small parts that can easily detach and the long handle, that can block the airways and cause choking. The rattle does not comply with the requirements of the Toy Safety Directive.




The rattle was placed on RAPEX again in January 2020 seen on picture 3. On this most recent alert the warning is almost identical with the wording in the warning from 2018. It is repeated, that the product does not comply with the requirements in the Toy Safety Directive and that the rattle constitutes a choke risk for children. RAPEX indicates that the measure taken is “Stop of sales (By: Retailer)”.


The alert also states, that the product was sold on Wish.com. However, we purchased the rattle on Amazon.co.uk where similar rattles appearing identical are still to be found on the platform as March 25.th 2020 - more than 1,5 years after the first alert.

¹¹ In Denmark after a test by the Danish Consumer Council from December 2017: <https://taenk.dk/test-og-forbrugerliv/boern/billigt-legetoej-fra-nettet-er-farligt-dit-barn>

Picture 3: The musical rattle toy alerted on RAPEX again on January 24th, 2020

The Rapid Alert System for Non-Food Products (RAPEX)

Alert number: INFO/00019/20		Share on   	
Product: Rattle toy	Category: Toys		
Name:	Brand:		
Barcode: Unknown	Type / number of model:		
Batch number: Unknown			
Type of alert: Other			
Risk type: Choking Both sides of the product protrude in excess and the bells can easily break generating small parts. / A small child may put the protruding or small parts in the mouth and choke on them. The product does not comply with the requirements of the Toy Safety Directive and relevant European Standard EN 71-1.			
Measures taken by economic operators: Stop of sales (By: Retailer)			
Description: Wooden rattle toy with several jingle bells hanging from it. The product was sold online (in particular via WISH).			
Packaging description:			
Country of origin: Unknown	Alert submitted by: Denmark		



Fortnite action figures with illegal chemicals

The first test of the Fortnite figures from June 2019 showed 49 times the threshold of DEHP and the second test revealed 210 times the threshold of DEHP phthalates¹².

According to the Danish Consumer Council, who carried out the test in June 2019 and who reported it to the Danish Environmental Agency, Amazon promised to take down the action figures with dangerously high levels of phthalates from their website¹³. However, action figures appearing to be identical to the dangerous Fortnite figures were still on sale on the platform – even from the same third-party seller, where we purchased them in September 2019¹⁴.

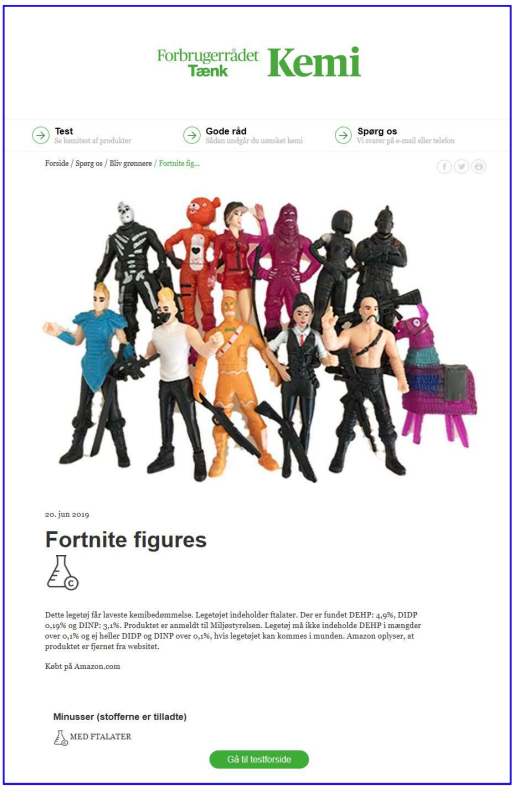
The Fortnite figures was placed on RAPEX by the Swedish Authorities in March 2020. The risk type is chemical, and the measure taken by the economic operator is withdrawal from the market. However, products appearing to be identical to the dangerous Fortnite figures are still on sale on the platform as of April 7th, 2020. RAPEX states that the figures were bought on AliExpress, however we purchased them on Amazon.co.uk.

¹² <https://www.dr.dk/nyheder/penge/trods-advarsel-legetoej-med-forbudt-kemi-saelges-stadig-af-populaere-udenlandske>

¹³ <https://kemi.taenk.dk/bliv-gronnere/test-kemi-i-legetoj-fra-ebay-amazon-og-wish/fornite-figures>

¹⁴ The Danish Consumer Council purchased the Fortnite figures on Amazon.com. We purchased them from the same seller on Amazon.co.uk. However, the American and EU rules regarding phthalates in toys are the same.

Picture 4: Action figures warning by Danish Consumer Council 20th June 2019

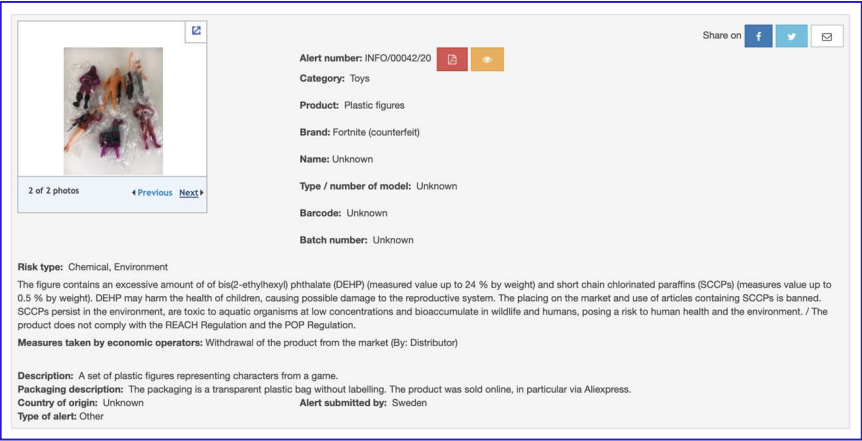


Picture 5: Amazon promised to Danish Consumer Council to take the products down, including the action figures

Amazon:

Amazon svarer Forbrugerrådet Tænk Kemi, at de har fjernet produkterne fra webshoppen efter vores henvendelse.

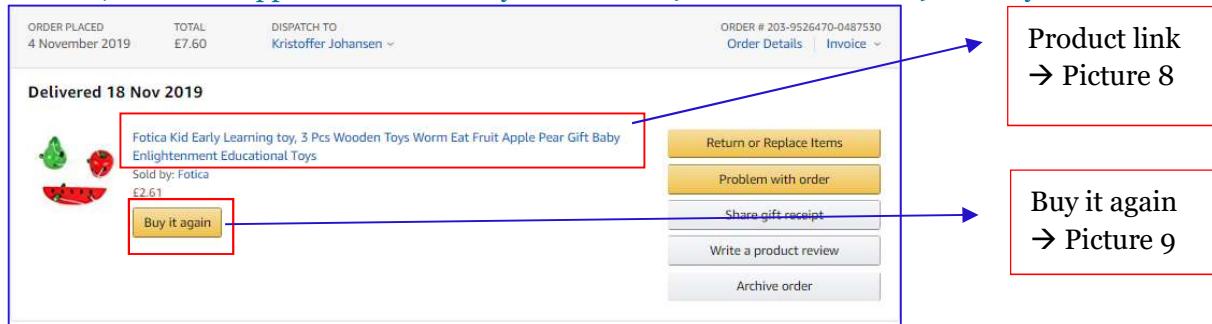
Picture 6: RAPEX alert on Fortnite action figures March 2020



5. Order history of example 1: Wooden apple toy

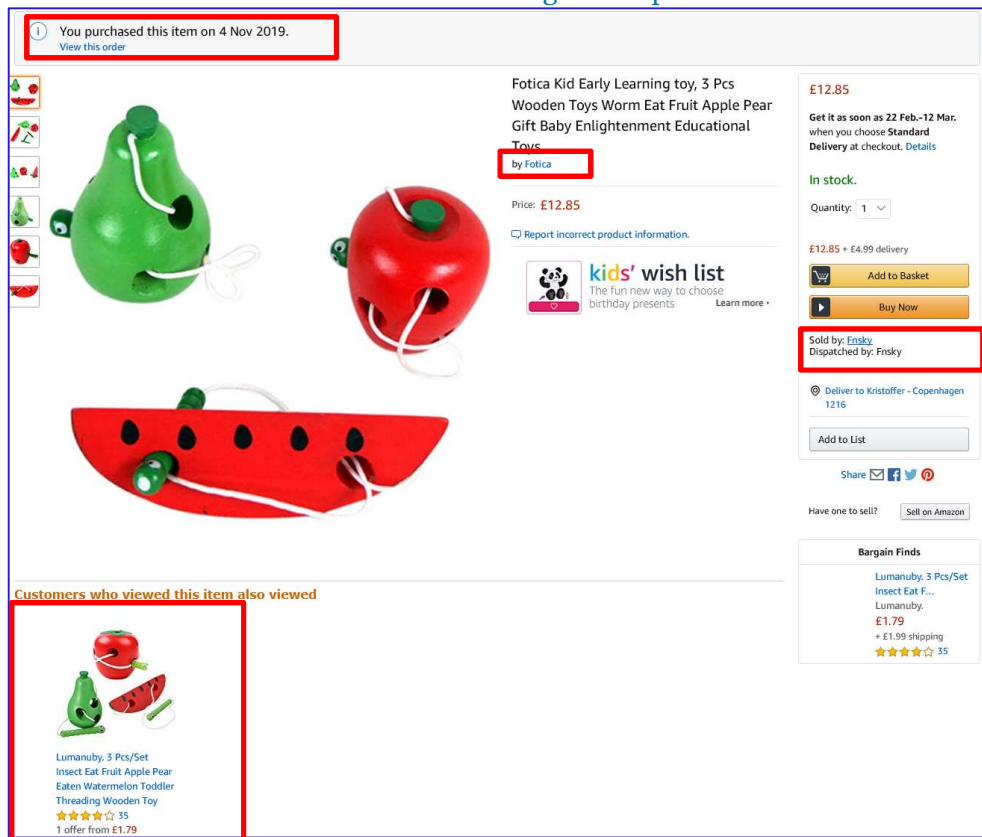
We purchased the toy wooden apple from Amazon.co.uk from the seller Fotica on November 4th, 2019, which is more than a year after it appeared on RAPEX. The Danish Product Safety Authority was interviewed in November 2019 and stated that the toy was dangerous and if a Danish retailer sold them, they would have to recall it.¹⁵

Picture 7: Wooden apple on order history. Purchased 4th of November 2019. Sold by Fotica



When we look at our order history, the wooden apple is still available through the same direct product link but different seller; Fnsky.

Picture 8: Wooden fruit still available through same product link but different seller



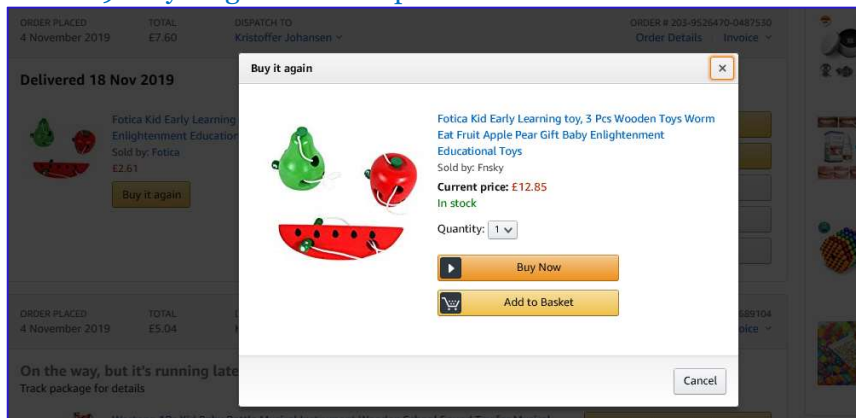
¹⁵ <https://www.dr.dk/nyheder/penge/myndigheder-advarer-legetoej-fra-udenlandske-netbutikker-kan-vaere-farligt-dit-barn>

Even though the seller's name has changed, the page indicates that the products are identical, as it says, *"You purchased this item on 4 Nov 2019"*. The product is still labeled 'by Fotica', but it is sold and dispatched by 'Fnsky'. Fotica has now become a brand, which Fnsky sells. Moreover, the consumer is showed a different buying option by 'Lumanuby' with toys appearing identical. However, the page leaves no information to the consumer that the toy is dangerous.

Buy it again option

The 'Buy it again' button leads to the following page:

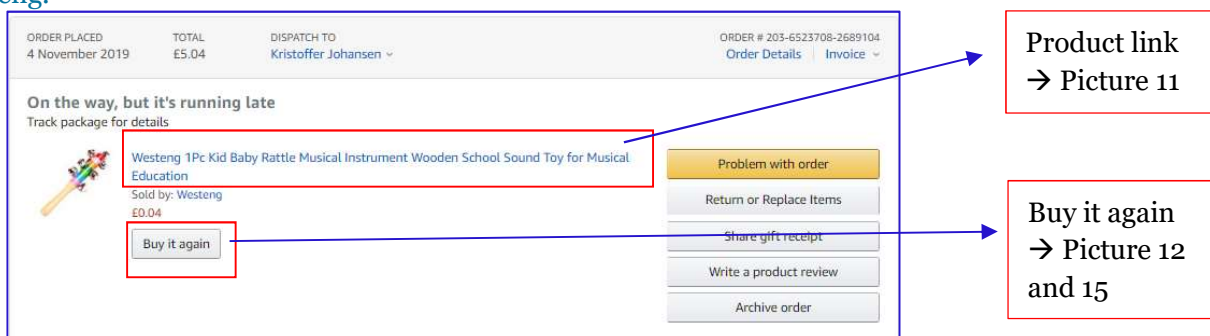
Picture 9: Buy it again → Same product available



Although the product is on RAPEX and requested by authorities to be taken down, the consumer is able to buy the same dangerous toy– and even encouraged to do so.

6. Order history of example 2 - Rattle Musical Toy

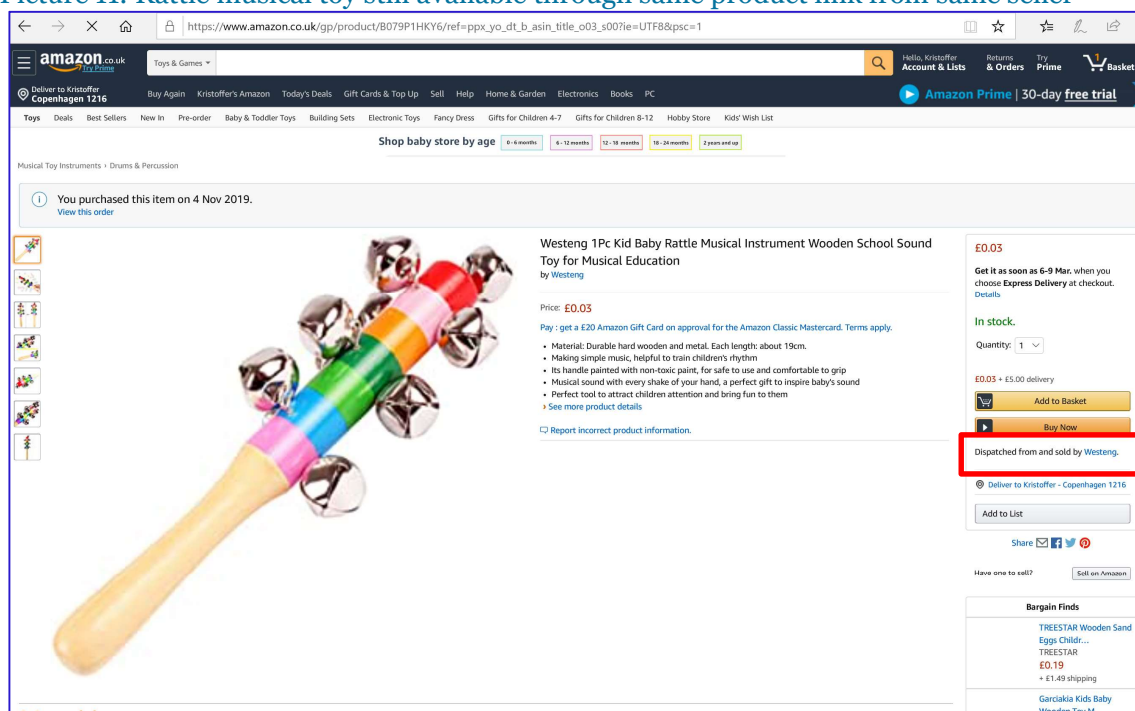
Picture 10: Rattle musical toy on order history. Purchased 4th of November 2019. Sold by Westeng.



We purchased the rattle on Amazon.co.uk November 4th, 2019 from the seller Westeng. The rattle was placed on RAPEX the first time in July 2018 and again in January 2020.

The Danish Product Safety Authority¹⁶ was interviewed in November 2019 and stated that the rattle was dangerous and if a Danish retailer sold them, they would have to recall it.¹⁷ However through our order history, we can see that the rattle is still available through the same direct product link and the same seller as of April 7th, 2020.

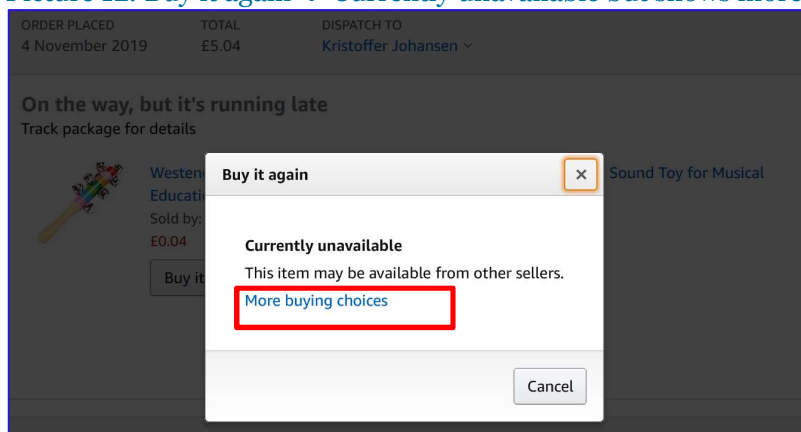
Picture 11: Rattle musical toy still available through same product link from same seller



Buy it again option

Pressing the 'buy it again' button on the rattle musical toy, links to the following message as of February 18th, 2020:

Picture 12: Buy it again → Currently unavailable but shows more buying option.



¹⁶ Sikkerhedsstyrelsen, SIK.dk.

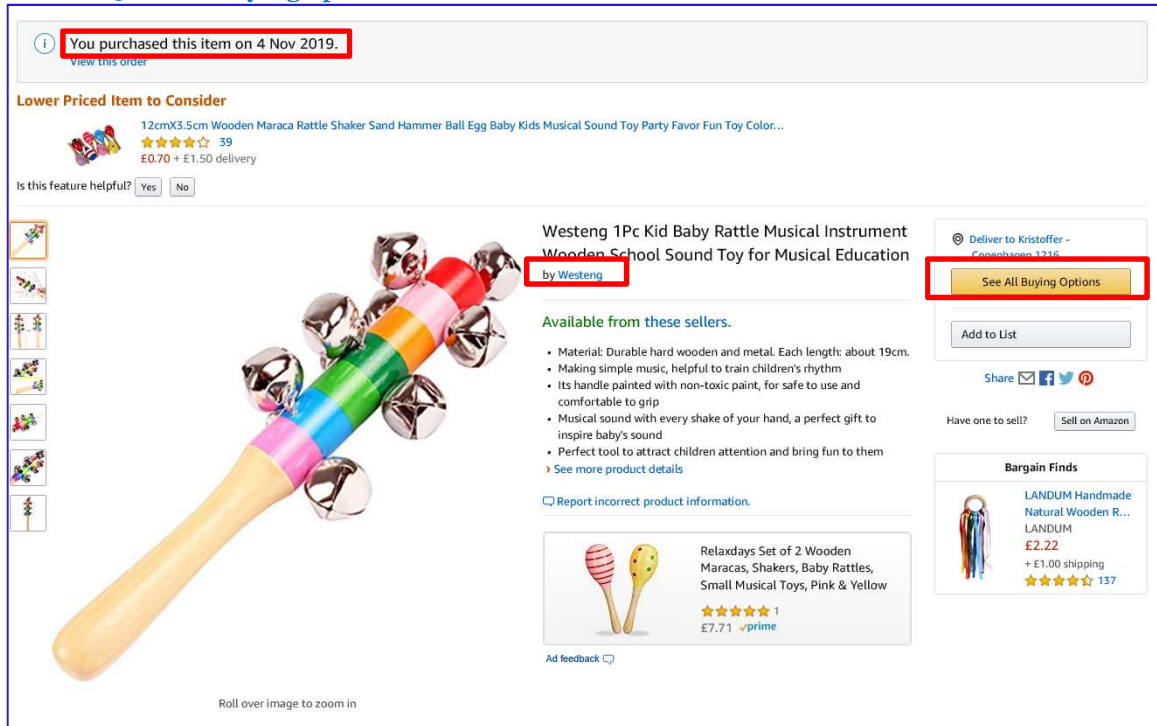
¹⁷ <https://www.dr.dk/nyheder/penge/myndigheder-advarer-legetoej-fra-udenlandske-netbutikker-kan-vaere-farligt-dit-barn>

Again, the notification has no indication that the product has been recalled as it is dangerous and illegal. Instead, it says 'Currently unavailable'. Furthermore, the explanatory note encourages the costumer to look for other sellers and buying options of the illegal and dangerous product.

More buying choices

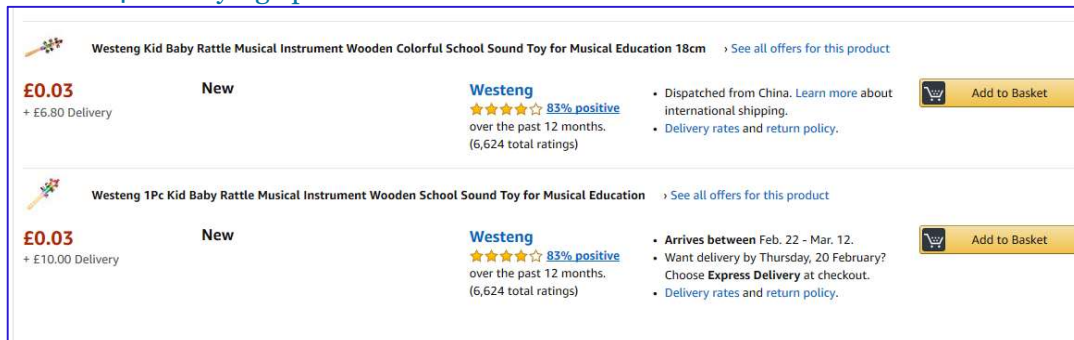
Pressing the link 'More buying choices' leads the costumer to the following page:

Picture 13: More buying options of the rattle



The page indicates that the rattle is identical, as it says, "You purchased this item on 4 Nov 2019". However, the page leaves no information to the consumer that the rattle is dangerous and illegal and that it has been asked by RAPEX to stop the sale. Furthermore, the seller 'Westeng' is the same seller as we bought the illegal toy from in November. Westeng now sells to versions of this dangerous rattle, which can be found through the 'See all Buying Options' button:

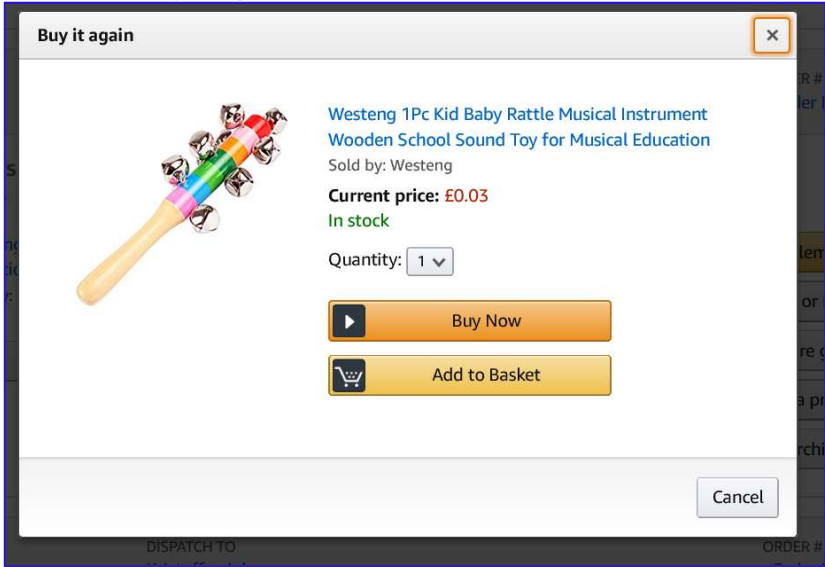
Picture 14: All buying options of the rattle



Buy it again option – 2 weeks later

Pressing the ‘buy it again’ button on the rattle musical toy, linked to the following message as of March 3rd, 2020:

Picture 15: Buy it again, March 3rd, 2020 → Now available

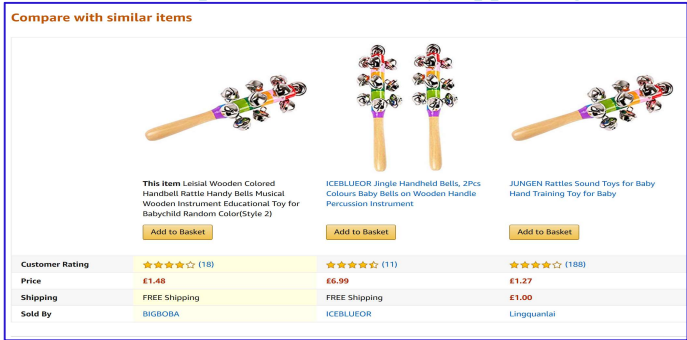


Now, the product is available through the ‘buy it again’ option. It leaves the impression that the rattle was not recalled but had been unavailable due to other reasons.

Rattles appearing identical still available

The algorithm Amazon uses is able to identify rattles appearing identical from other sellers:

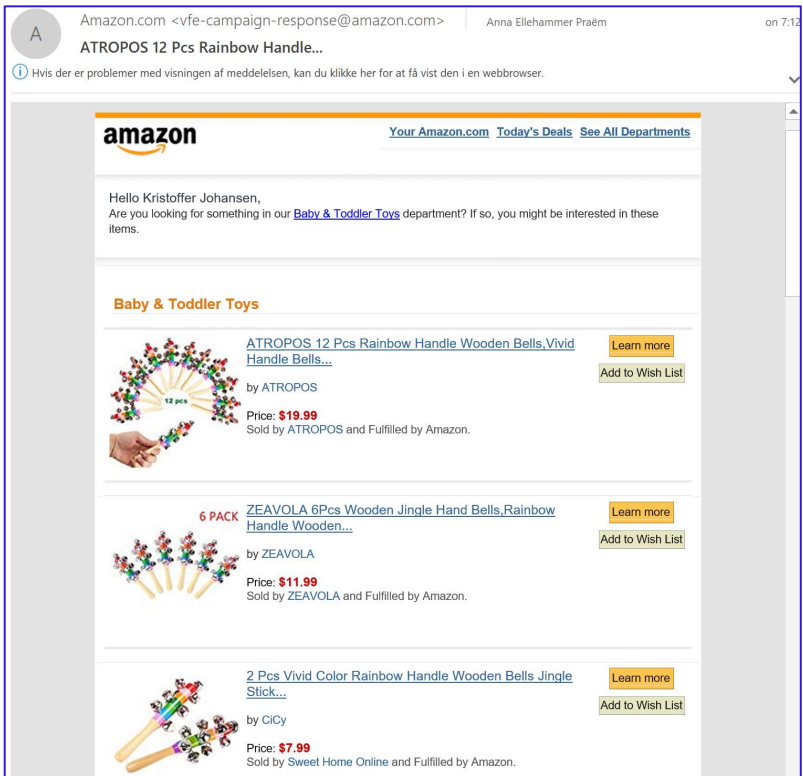
Picture 16: Comparison of rattle toys appearing identical to the dangerous and illegal rattle



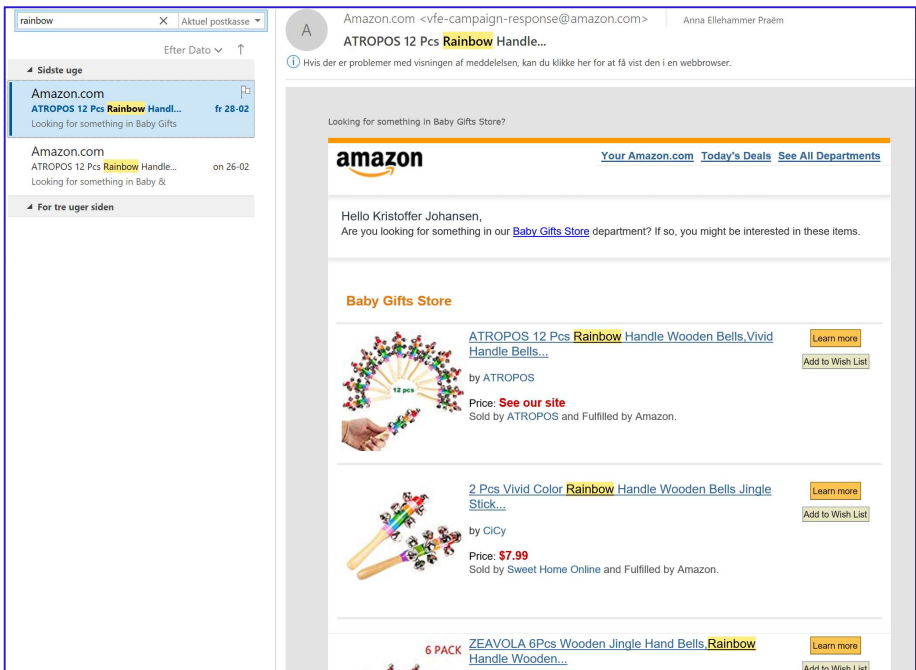
Marketing e-mail encouraging to buy the rattle again

Amazon has not notified us that the rattle, we have purchased, has been found illegal and dangerous. On the contrary, Amazon has sent us an email the 26th of February 2020 suggesting us to buy what appears to be the same dangerous rattle again from other sellers - all fulfilled by Amazon. The platform has done this not once, but twice (26th and 28th of February) as seen on the pictures below:

Picture 17: First E-mail February 26th encouraging us to buy a rattle appearing identical to the dangerous and illegal rattle



Picture 18: Second e-mail February 28th encouraging us to buy the rattle appearing identical to the dangerous and illegal rattle



Amazon Best Sellers promotes unsafe and dangerous products

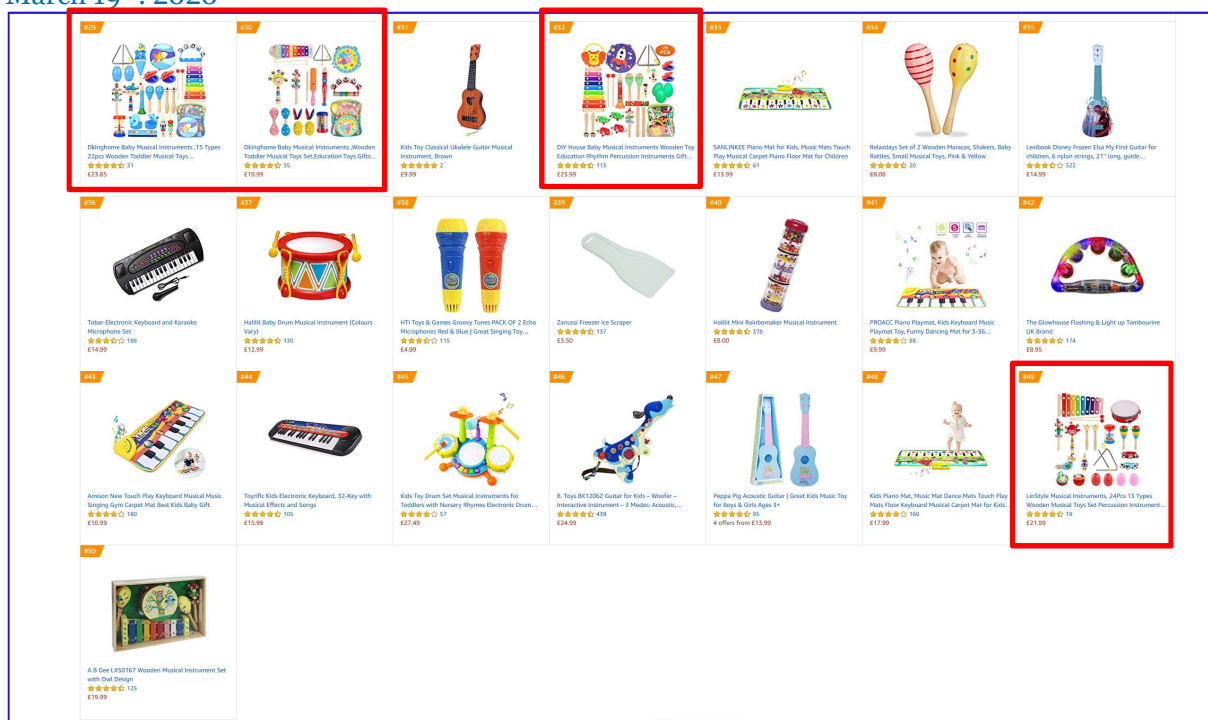
Another way that Amazon market the products is on its list 'Amazon Best Sellers'. On this list, Amazon shows the most popular of their products updated hourly. When checking the list in the category 'Musical Toy Instruments' on March 19th, 2020, toys appearing identical to the rattle is on 8 of the listings, marked with red squares below in picture 19 and 20. On the lists 'Amazon Hot New Releases', 'Amazon Most Wished For' and 'Amazon Gift Ideas' multiple toys appearing identical to the musical rattle tor are to be found. Furthermore, the site says, 'Our most popular products (...)'.

The ads of the products do not show who the seller is. The costumer therefore cannot see, that the seller is not Amazon. Additionally, the site shows that products appearing identical to the illegal and dangerous rattle is very popular on the platform.

Picture 19: Amazon Best Sellers. Our most popular products based on sales. Updated hourly. March 19th, 2020

The screenshot displays the Amazon Best Sellers page for Musical Toy Instruments. The page features a grid of 24 product listings, each with an image, title, price, and rating. A red box highlights the banner at the top that reads "Our most popular products based on sales. Updated hourly". Another red box highlights a product listing for "Yuker Musical Toys Wooden Musical Instruments for Toddlers Musical Set Percussion Instruments" which is marked as a "top up". A third red box highlights a product listing for "Ebor Musical Instruments for Toddlers 12 Types 20 PCS Wooden Musical Toys Set Baby" which is marked as a "Hot New Release". The page also shows sections for "Hot New Releases", "Most Wished For", and "Most Gifted".

Picture 20: Amazon Best Sellers. Our most popular products based on sales. Updated hourly. March 19th, 2020



All the products listed under the “Amazon Best Sellers” are ‘fulfilled by Amazon’.

7. Order history in example 3: Action figures

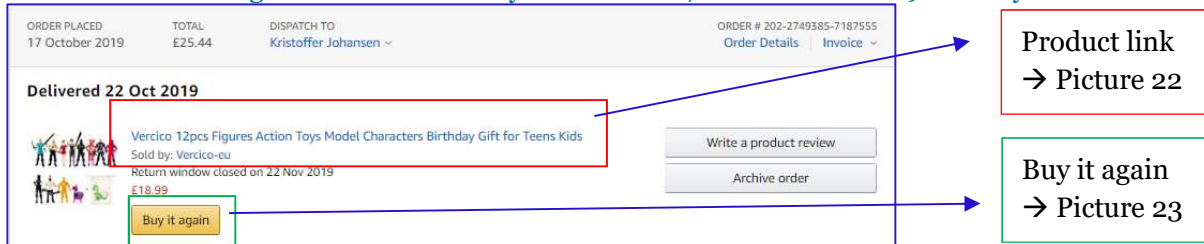
The Danish Chamber of Commerce purchased the action toys in August 2019, which is 2 months after they were tested dangerous and after Amazon had promised the Danish Environmental Agency to remove them from the website¹⁸. In November 2019 the Danish National Broadcast Station bought the Fortnite figures from the same seller on Amazon.co.uk and had them tested again. The test revealed more than 200 times the allowed content of chemicals¹⁹.

After the second test in November Amazon declined to be interviewed. However, we can see that the Fortnite figures from that seller has been removed from the website, but with no explanation as described below. Nevertheless, a product appearing to be identical is still available through a different third-party seller.

¹⁸ <https://kemi.taenk.dk/bliv-groennere/test-kemi-i-legetoej-fra-ebay-amazon-og-wish>

¹⁹ <https://www.dr.dk/nyheder/penge/forbudt-kemi-i-legetoej-fem-ting-du-ikke-skal-laegge-under-juletraet>

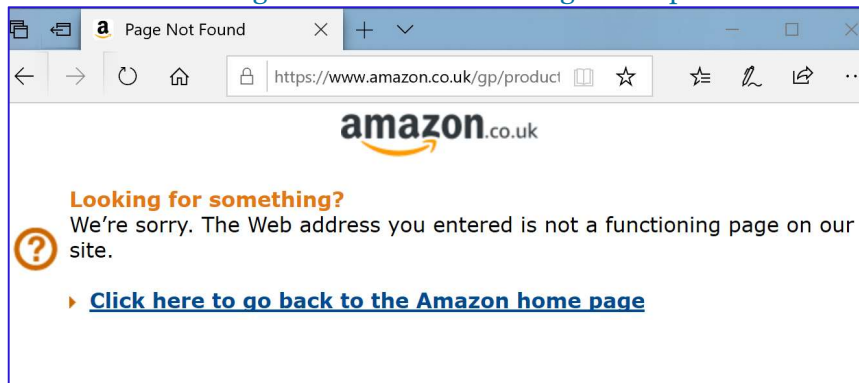
Picture 21: Action figures on order history. Purchased 17th of October 2019. Sold by Vercico-eu.



Closed product link but no information why

Regarding the Fortnite action figures, the specific product link is closed, and leads the consumer to the page seen on picture 22 below. As it shows, there is no information as to why the product site is closed and it leaves no indication that it is due to problems with product safety:

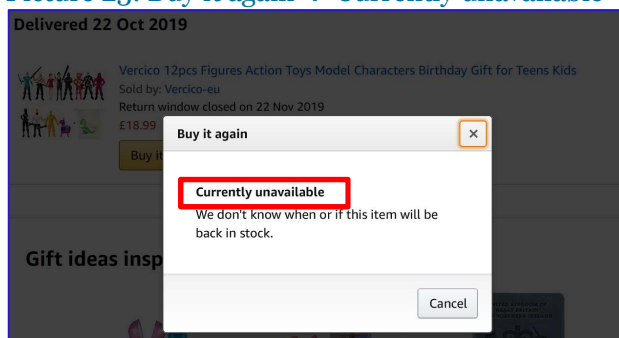
Picture 22: Action figures not available through same product link



Buy it again option

With regards to the action figures, the “Buy it again” link leads to the following page:

Picture 23: Buy it again → Currently unavailable

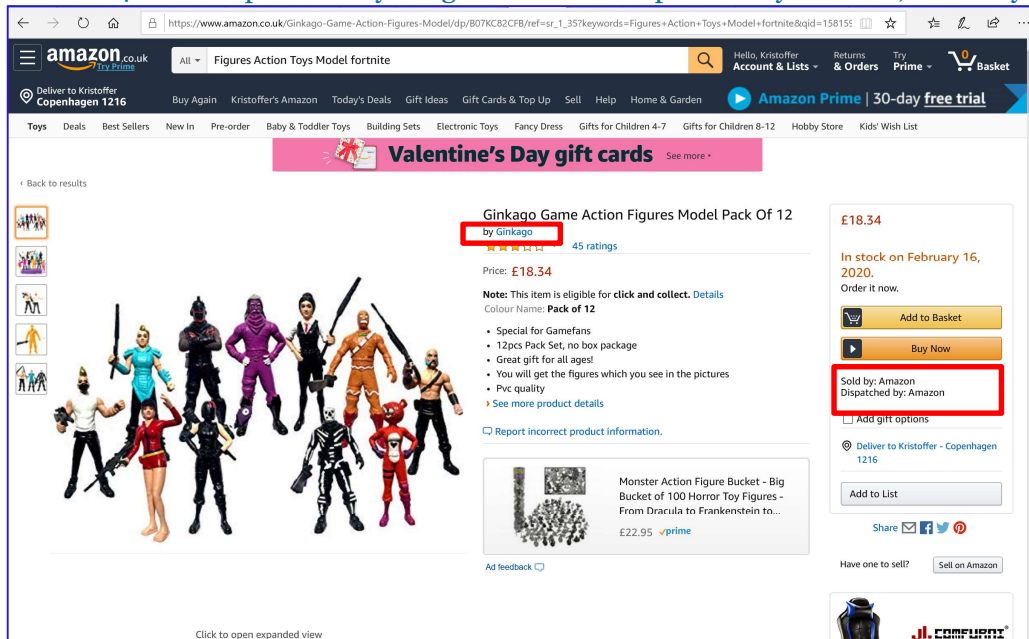


The consumer is not informed that the product is illegal and dangerous. Instead, it is marked as ‘currently unavailable’. Furthermore, the message ‘*We don’t know when or if this item will be back in stock*’ misleads the costumer to believe it is sold out and not taken down.

Similar or identical products

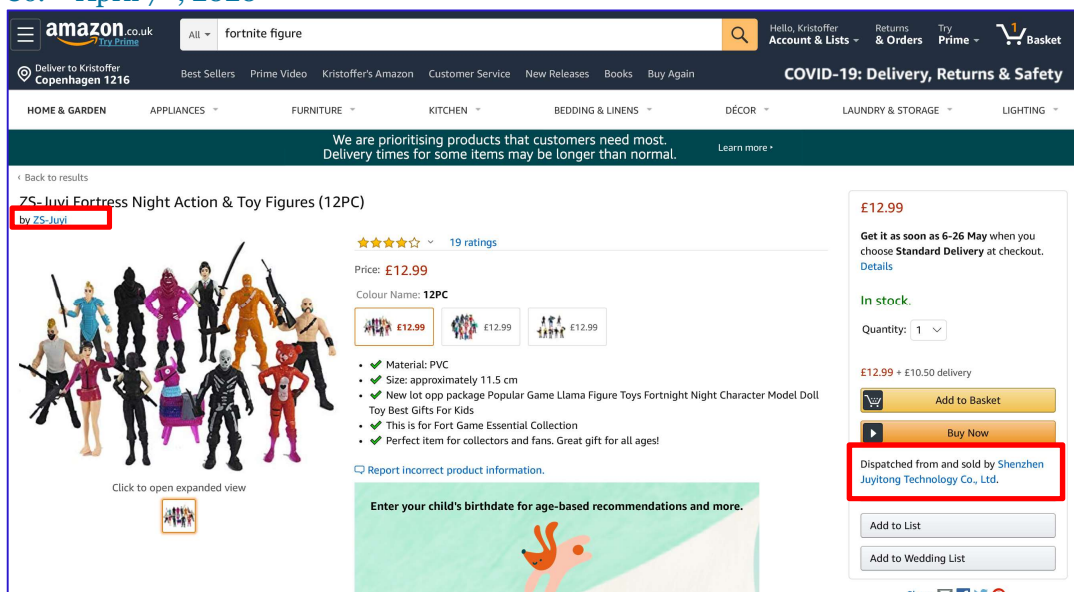
A simple search on Amazon for 'action figures' leads the consumer to a similar product, however by a different seller. The action figures available as of February 18th were sold and dispatched by Amazon, while the brand is 'Ginkago' seen on picture 24.

Picture 24: Similar products by Ginkago sold and dispatched by Amazon, February 18th, 2020



The figures were not found from Ginkago on April 7th. However, the seller 'Shenzhen Juyitong Technology Co., Ltd.' sells action figures appearing to be identical to the dangerous Fortnite figures as of April 7th seen on picture 25.

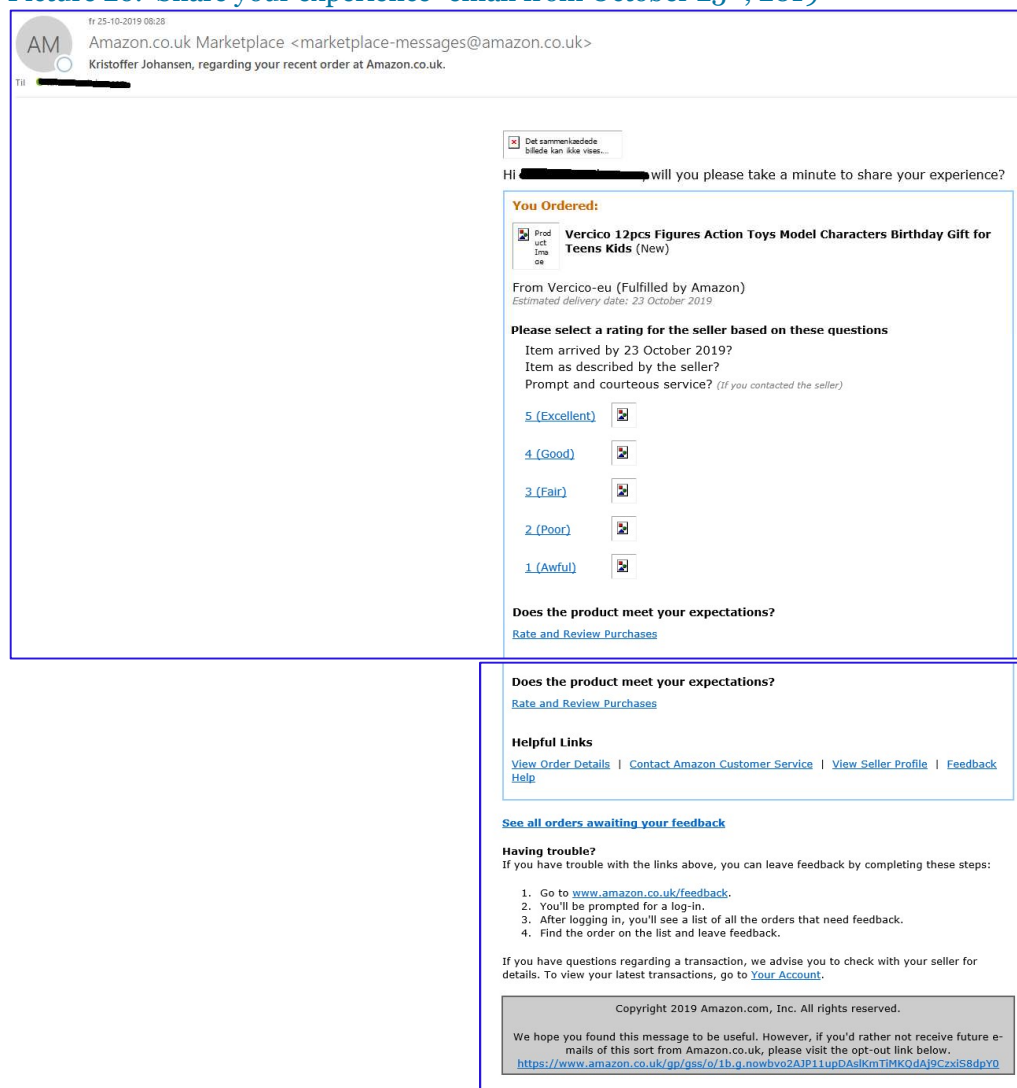
Picture 25: Similar products by ZS-Juyi sold and dispatched by Shenzhen Juyitong Technology Co. – April 7th, 2020



Marketing e-mail: Share your experience

We have not been notified that the Fortnite figures have been tested dangerous. The last e-mail we have received regarding the Fortnite figures is an email from the 25th of October 2019 asking us to share our experience with the figures. This e-mail arrived several months after Amazon had promised the Danish Authorities to remove them from their website.

Picture 26: 'Share your experience'-email from October 25th, 2019



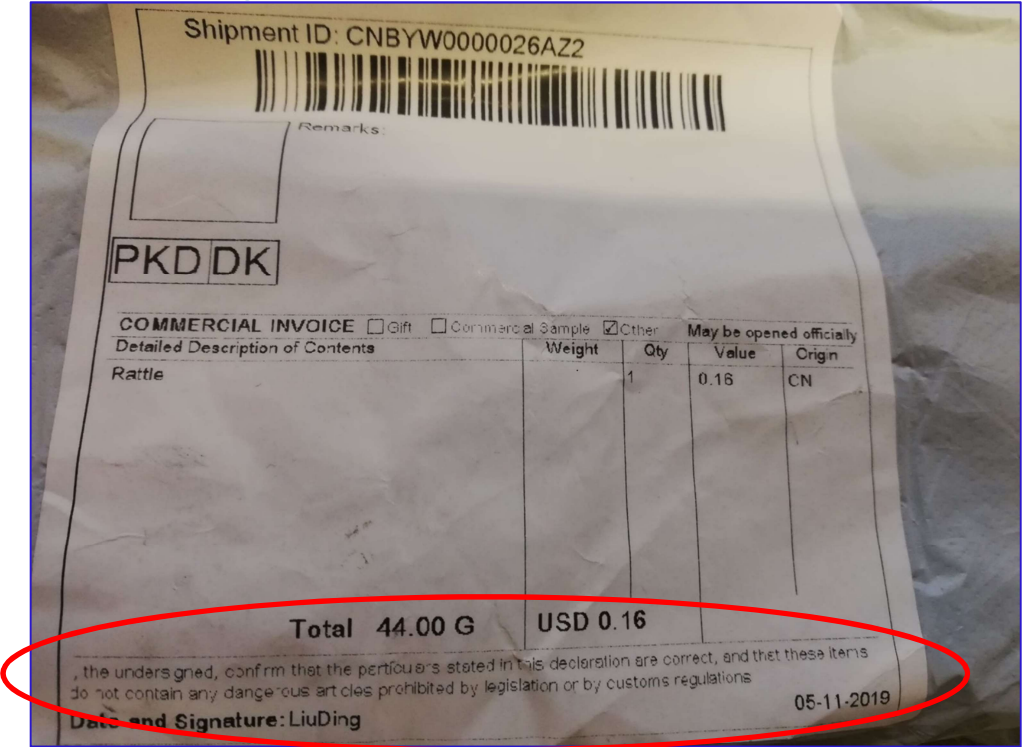
7. No notifications from Amazon.co.uk

We have received no notifications regarding any of the 3 toys described in the 3 examples. The Product Safety Pledge does not obligate the signatories to inform consumers. However, according to point 8 in the Product Safety Pledge, the platforms signing up to the pledge commits themselves to 'Cooperate with EU Member State authorities and sellers to inform consumers (5) about relevant recalls or corrective actions.' The footnote regarding this point states that "This may also include informing sellers and requesting them to contact concerned buyers".

8. Package labels claim that the products are safe and compliant

On some of the packages we received from third party sellers on Amazon.co.uk included a standard text on a label declaring that the content is not illegal nor dangerous. An example of such a label and standard text is seen on picture 27. According to the label, the sender declares that: “[I], the undersigned, confirm that the particulars stated in this declaration are correct, and that these items do not contain any dangerous articles prohibited by legislation or by customs regulations”.

Picture 27: Package label from Amazon.co.uk with standard text declaring that the content is safe



This label and standard text are seen on almost all packages we have bought on Amazon.co.uk that is not fulfilled by Amazon. For example, the label is used on the package, which contained the Musical Rattle Toy seen on picture 27. However, this rattle is both illegal and dangerous, and thus contradicts the confirmation from the label. The label does not specify which country's regulations the sender is thinking of; however, we find it fair to believe that most consumers will conclude that the text targets their country. The label help to assure the consumer that there is no need to worry. Nonetheless, a majority of the packages we purchased have turned out to contain products that were both dangerous and illegal and thus contradicts the “certification” from the label.

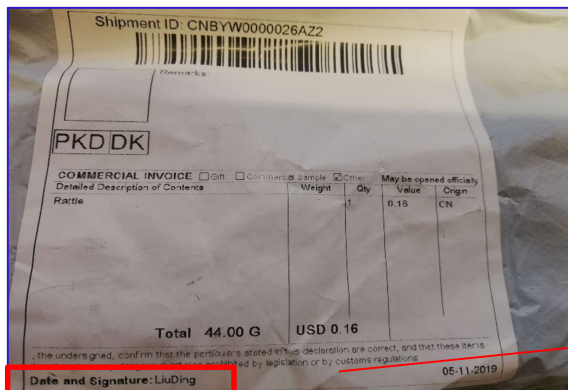
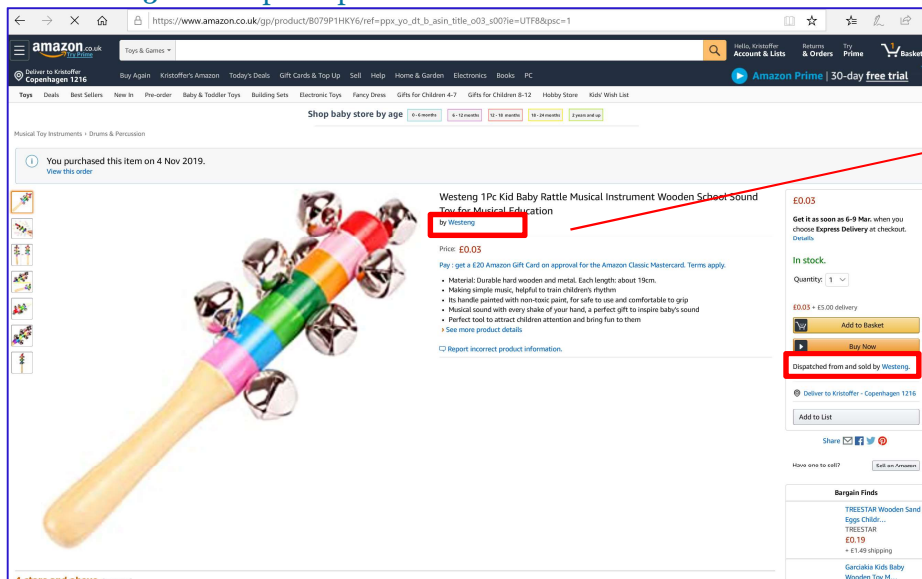
9. VAT fraud – undervaluation of the value or no value on the package

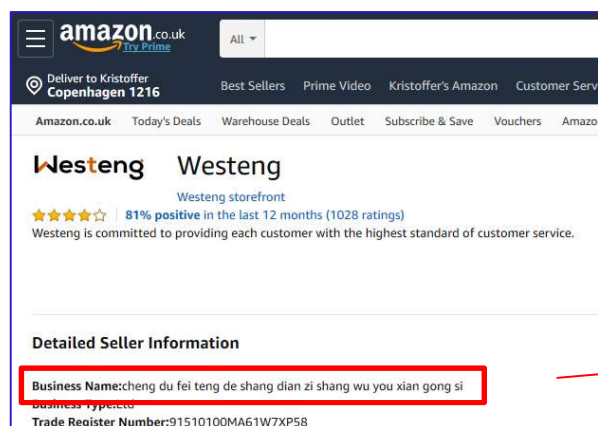
Most of the products we bought from third party sellers on Amazon.co.uk were not VAT-guilty in Denmark due to the price being below the VAT threshold for non-EU sellers of 80 DKK (approx. 10 Euro). However, 4 purchases were VAT-guilty. In none of these cases was the VAT paid. The guilty VAT taxes were not paid due to an undervaluation of the price or no valuation on the package. For example, the price paid for the Fortnite figures were 168 DKK from the seller Vercico-eu. However, it was not valued on the package and therefore did not pay the guilty VAT.

10. Several names for each seller

The third-party sellers on the platform also often appears with several names. In all our purchases on Amazon.co.uk, there was a brand name, a seller name, a dispatcher name, a business name, and a sender name as illustrated below.

Picture 28-30: Example of purchase with various names encountered





Business name:
cheng du fei teng de shang dian zi
shang wu you xian gong si

In this case, the consumer meets three names for just one purchase. Here, the name of the brand, seller and dispatcher is the same. In other of our purchases, all the names are different, and the consumer will then potentially have to encounter 5 different names. This can be very confusing for the individual consumer to comprehend who they are trading with. It might also make VAT-control more difficult.

10. Consumer rights

In none of our purchases Amazon.co.uk did we receive the terms & conditions and it is difficult to see, which rules apply for the purchase. Amazon.co.uk has terms and conditions displayed on its website, but they accordingly only regulate the use of the website. However, Amazon is responsible for the marketing of the products displayed on the website and Amazon plays an active role in the purchases that are “Fulfilled By Amazon”, as described below.

Fulfillment by Amazon

The Amazon Bestsellers and all the products Amazon has promoted directly in the e-mails, we have received, are also fulfilled by Amazon. This also applies for some of our purchases on Amazon, however not the three purchases described in this memo.

The Amazon website describe Fulfillment by Amazon as follows: “Send your products to Amazon’s Fulfilment Centres and let us take care of the rest. From storing and giving your items Prime listing status to final shipping. We also manage order tracking, customer service and handle returns all over Europe”.

Picture 31: Description of Fulfilment by Amazon on the Amazon website²⁰

Fulfilment by Amazon

Features & Benefits Pricing How it Works International Solutions Testimonials VAT Resources FAQ

How Fulfilment by Amazon works

Fulfilment by Amazon (FBA) makes selling across Europe easier than ever before.

Send your products to Amazon's Fulfilment Centres and let us take care of the rest. From storing and giving your items Prime listing status to final shipping. We also manage order tracking, customer service and handle returns all over Europe.

How to start using FBA?
Follow our 5-steps guide to know how it works.

1
Select the 'Fulfilment by Amazon' option when you list products

2
Send your products to an Amazon Fulfilment Centre where we store them

3
All FBA offers are listed as 'Fulfilled by Amazon'. Eligible offers get the Prime badge

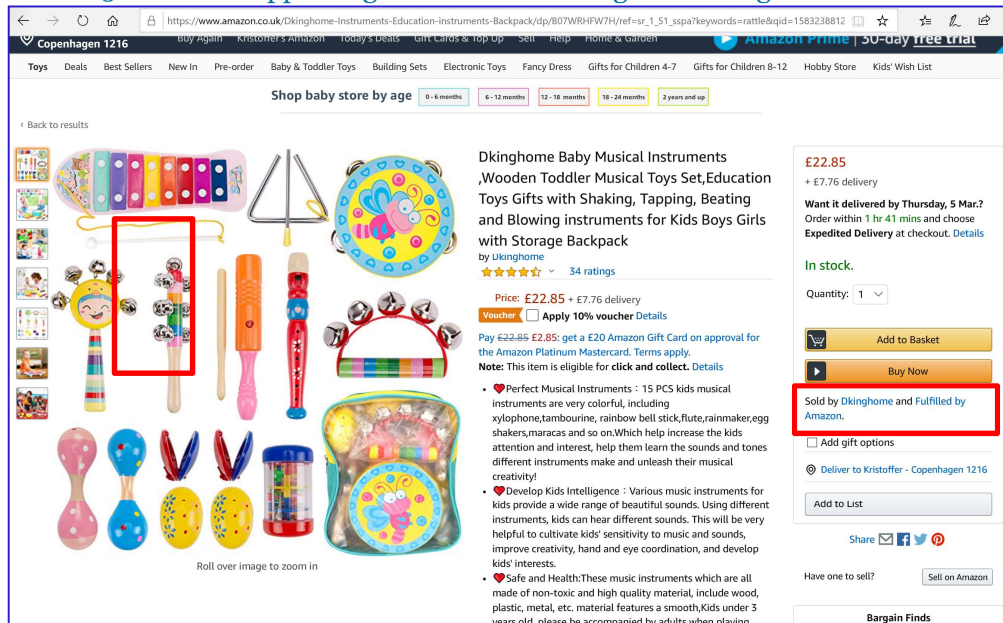
4
We pick, pack & ship your products directly to customers, all over Europe

5
We provide customer service in local language and handle returns

An example of this function is seen below. It is a package of toys including a rattle appearing similar to the musical rattle toy on RAPEX. The package is sold by 'Dkinghome' and 'Fulfilled by Amazon'. This thus raises the question about how much responsibility Amazon has for products, which they fulfil?

²⁰ <https://services.amazon.co.uk/services/fulfilment-by-amazon/how-it-works.html>

Picture 32: Product appearing identical to the illegal and dangerous rattle is fulfilled by Amazon



10. Conclusion

Amazon has signed up to the voluntary EU Product Safety Pledge and has committed itself to consult RAPEX as well as other relevant information from enforcement authorities regarding dangerous products.

The signatories of the pledge also commit themselves to e.g.:

- react within two working days to government notices and remove unsafe products from their website,
- put in place measures to act against repeat offenders offering dangerous products
- take measures aimed at preventing the reappearance of dangerous products listings already removed.

However, 7 of the 9 toys we purchased on Amazon have been tested dangerous and requested to be taken down by authorities. Several were already registered on RAPEX when we purchased them and later, we were encouraged by Amazon to buy more of what appears to be the same dangerous toys. Toys appearing identical to the three dangerous toys were still available on the platform as of April 7th, 2020.

The rattle musical toy has been registered on the EU Safety Gate since July 2018 and the wooden apple toy since October 2018. However, toys appearing identical are still for sale on the platform - both from the same seller, from other sellers and several fulfilled by Amazon. As buyers we have not been notified that the toys are dangerous and registered on the EU Safety Gate List. On the contrary, we have received e-mails encouraging us to buy rattles appearing identical to the ones on RAPEX.

Regarding the Fortnite action figures, Amazon accordingly promised the Danish authorities to take them down from the website in June 2019 (as shown in picture 5). Today the product link from the third-party seller Vercico is taken down. However, this did not happen until the second test in November 2019 also revealed too high content of dangerous chemicals. We have received no information that the product is tested dangerous and illegal. Instead, we are encouraged to share our experience with the product and Fortnite figures appearing identical are still available from different sellers.

It appears like Amazons algorithm is able to identify products appearing identical to the product, we have purchased, since they repeatedly are encouraging us to buy it again. It would seem logic that this algorithm was also used to find the similar dangerous and illegal products in order to remove them from the marketplace.

If a consumer in good faith buys an illegal or dangerous product on Amazon.co.uk, our examples show that consumers should not expect to be notified via e-mail from Amazon nor from the seller that the product has been taken down because it is dangerous. Instead, the consumer must check RAPEX and/or the websites of their national Authorities, or in Denmark the website of the Danish Consumer Organisation Forbrugerrådet Tænk. That runs counter to the commitments Amazon put on themselves by signing the Product Safety Pledge. In our opinion it could also be an individual violation of the product safety regulation, cf. the e-commerce article 14 and 15 (see more below).

Consumers are further misled by the labels on the packages declaring that the content is not dangerous nor illegal. Almost all the packages we have received from third party sellers on Amazon.co.uk that is not fulfilled by Amazon has included a label with a standard text where the seller certify, that the content is not dangerous and compliant with the rules. Thus the label help to assure the consumer that there is no need to worry. Nonetheless, a majority of the packages we purchased have turned out to contain products that were both dangerous and illegal and thus contradicts the certification from the label.

The current situation gives consumers no protection when buying products sold by 3rd party sellers on Amazon.co.uk or other similar marketplaces that turns out to be dangerous, illegal or non-compliant.

The current situation is unacceptable and leads to unsafe consumer conditions and unfair competition seen in connection to European retailers, who comply and have put up systems to be sure to comply with EU law before the products reach the consumers. The problems are severe and call for new legislation.

Legal situation

There is a common misunderstanding that article 14 in the e-commerce directive gives platforms and online marketplaces an automatic exemption from liability just because they are platforms or online marketplaces. This assumption runs counter to the wordings of the recitals and the relevant articles in the directive and to the jurisprudence of the ECJ²¹

Article 14 and 15 of the e-commerce directive (2000/31) has the following wording:

Article 14

Hosting

1. Where an information society service is provided that consists of the storage of information provided by a recipient of the service, Member States shall ensure that the service provider is **not liable for the information stored at the request of a recipient of the service, on condition that:**

(a) the provider does not have actual knowledge of illegal activity or information and, as regards claims for damages, is not aware of facts or circumstances from which the illegal activity or information is apparent; or
(b) the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.

2. Paragraph 1 shall not apply when the recipient of the service is acting under the authority or the control of the provider.

3. This Article shall not affect the possibility for a court or administrative authority, in accordance with Member States' legal systems, of requiring the service provider to terminate or prevent an infringement, nor does it affect the possibility for Member States of establishing procedures governing the removal or disabling of access to information.

Article 15

No general obligation to monitor

1. Member States shall not impose a general obligation on providers, when providing the services covered by Articles 12, 13 and 14, to monitor the information which they transmit or store, nor a general obligation actively to seek facts or circumstances indicating illegal activity.

2. Member States may establish obligations for information society service providers promptly to inform the competent public authorities of alleged illegal activities undertaken or information provided by recipients of their service or obligations to communicate to the competent authorities, at their request, information enabling the identification of recipients of their service with whom they have storage agreements.

As it will appear from the above quotes from the directive and the jurisprudence from the ECJ, the online marketplaces and platforms are not automatically exempted from liability and the following conclusions can be made about platform-liability and the current e-commerce directive:

1. Article 14 of the e-commerce directive is not applicable where the online marketplace is directly liable for the sale of the illegal products.
2. Article 14 of the e-commerce directive is not applicable when the online marketplace plays an active role, such as to give it knowledge of or control over the data relating to the sale of illegal products. Per ECJ jurisprudence, this can include the provision of “assistance”, such as optimizing or promoting the sale of toys or other products.

²¹ See Judgment of 12 July 2011, *L'Oréal SA and Others v eBay International AG and Others*, Case C-324/09, EU:C:2011:474

3. Where the online marketplace is passive but has knowledge or awareness of facts or circumstances from which a diligent economic operator would conclude that illegal toys are being sold, it must act expeditiously to remove the data relating to these toys or other products.

4. Neither Article 14 nor Article 15 of the e-commerce directive prevent online marketplaces from taking proactive measures to address the availability of illegal toys or other products on their services. The imposition of specific, proportionate proactive measures is permitted under Article 15.

As the current situation shows, there is a need for a revision and clarification of the e-commerce directive. New legislation should include setting up criteria for platform liability regarding product compliance, consumer rights and consumer information on the marketplace.

Failing to do this will put consumers in danger and distort competition to the damage of compliant European economic operators such as manufactures, importers, distributors and retailers.

A more in-depth description can be found in the Nordic Position Paper of the revision of the E-commerce directive/ Digital Services Act, which is a joint paper from The Danish Chamber of Commerce together with our Nordic sister organisations in Svensk Handel, Finnish Commerce Federation and Virke in Norway.