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US DISTRICT COURT E.D.N.Y.
* SEPTEMBER 27, 2023 *
BROOKLYN OFFICE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

_____)
UNITED STATES OF AMERICA,)
)
	Plaintiff,)
)
	v.)
)
EBAY INC.)
)
	Defendant.)
_____)

Civil Action No. 23-CV-7173
Judge Orelia E. Merchant
Magistrate Judge Ramon E. Reyes, Jr.

COMPLAINT

The United States of America, by authority of the Attorney General of the United States, acting at the request of the Administrator of the United States Environmental Protection Agency (“EPA”), files this Complaint and alleges as follows:

NATURE OF THE ACTION

1. This is a civil action brought under Sections 203, 204, and 205 of the Clean Air Act (“CAA”), 42 U.S.C. § 7522–7524; Sections 15 and 17 of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. §§ 2614 and 2616; and Sections 12, 13, and 16(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), 7 U.S.C. §§ 136j, 136k, and 136n(c). This action seeks a ruling on civil liability, injunctive relief, and the assessment of civil penalties against eBay Inc. (“eBay”) for violations of the CAA related to its sale and offering for sale of aftermarket products for motor vehicles or motor vehicle engines. This action also seeks a ruling on civil liability and injunctive relief against eBay for violations of (1) TSCA, related to its

distribution in commerce of methylene chloride-containing products for paint and coating removal, and (2) FIFRA, related to its distribution and/or sale of unregistered, misbranded and restricted use pesticides, and ongoing violations of EPA Stop Sale, Use or Removal Orders related to such products.

2. Simply put, eBay unlawfully sells, offers for sale, causes the sale of, distributes, and/or distributes in commerce products in violation of the CAA, TSCA, and FIFRA. Some of these products cause motor vehicles to emit, in the aggregate, massive amounts of air pollution. Others pose an imminent, and in some cases potentially lethal, danger to human beings. eBay has the power, the authority, and the resources to stop the sale of these illegal, harmful products on its website. It has chosen not to; instead, it has chosen to engage in these illegal transactions.

JURISDICTION

3. This Court has jurisdiction over the subject matter of and the parties to this action pursuant to 42 U.S.C. §§ 7523 and 7524, 15 U.S.C. § 2616(a)(2)(A), 7 U.S.C. § 136n(c), and 28 U.S.C. §§ 1331, 1345, and 1355.

4. Venue is proper in the Eastern District of New York pursuant to 28 U.S.C. §§ 1391(b)(2), 1391(c)(2) and 1395(a), as well as 42 U.S.C. § 7524, because it is a judicial district in which the defendant is located, resides, is doing business, and/or in which some of the alleged violations occurred.

THE DEFENDANT

5. eBay Inc. is a retail company incorporated in Delaware and based in San Jose, California. eBay owns, operates, and/or controls the interactive e-commerce store located at the domain address www.ebay.com, on which consumers can shop for and purchase products online

using eBay’s search, promotion, payment-processing, and shipping tools. In 2022, eBay reported nearly \$9.8 billion in revenue (with over \$7 billion in gross profits).

6. eBay offers for sale, sells, distributes, and/or distributes in commerce a vast array of products through its website www.ebay.com. Over one million individuals and businesses list products on eBay’s website for over 134 million buyers.

7. eBay is a “person” within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e); Section 2(s) of FIFRA, 7 U.S.C. § 136(s); and 40 C.F.R. § 751.5.

BACKGROUND

CLEAN AIR ACT REGULATION OF AFTERMARKET DEFEAT PRODUCTS

8. The CAA claims in this action arise under Title II of the CAA, as amended, 42 U.S.C. §§ 7521–7590, and the regulations promulgated thereunder relating to the control of emissions of air pollution from motor vehicles and motor vehicle engines.

A. Statutory and Regulatory Objectives

9. In enacting the CAA, Congress found that “the increasing use of motor vehicles . . . has resulted in mounting dangers to the public health and welfare.” 42 U.S.C. § 7401(a)(2). Congress’s purposes in creating the Act were “to protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of its population” and “to initiate and accelerate a national research and development program to achieve the prevention and control of air pollution.” 42 U.S.C. § 7401(b)(1)-(2).

10. Title II of the CAA and the regulations promulgated thereunder establish stringent standards for the emissions of air pollutants from any class or classes of motor vehicles and motor vehicle engines, and from classes of nonroad vehicles or engines, that “cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or

welfare.” 42 U.S.C. §§ 7521(a), 7547(a)(3). These pollutants include, but are not limited to, particulate matter (“PM”), nitrogen oxides (“NO_x”), non-methane hydrocarbons (“NMHCs”), and carbon monoxide (“CO”). 42 U.S.C. § 7521(a)(3)(A).

11. EPA has established National Ambient Air Quality Standards for certain pollutants, including ozone, NO_x, PM, and CO. *See* 40 C.F.R. §§ 50.1-50.19.

12. PM is a form of air pollution composed of microscopic solids and liquids suspended in air. PM is emitted directly from motor vehicles and is also formed in the atmosphere from the emission of other pollutants, including NO_x and NMHC emitted from motor vehicles.

13. Ozone is a highly reactive gas that is formed in the atmosphere from emissions of other pollutants, including NO_x and NMHC emitted from motor vehicles.

14. Exposure to PM and ozone is linked to respiratory and cardiovascular health effects as well as premature death. Children, older adults, people who are active outdoors (including outdoor workers), and people with heart or lung disease are particularly at risk for health effects related to PM or ozone exposure.

15. CO is a highly toxic gas that can cause headaches, dizziness, vomiting, nausea, loss of consciousness, and death. Long-term exposure to CO has been associated with an increased risk of heart disease.

16. Testing has shown that removing emissions controls from a motor vehicle can substantially increase pollutant emissions. *See* 66 Fed. Reg. 5062 (2001). For example, EPA testing has found that deleting a motor vehicle’s emissions controls can increase tailpipe NO_x by a factor of up to 300 times, tailpipe CO by a factor of approximately 130 times, tailpipe NMHC by a factor of approximately 1,000 times, and tailpipe PM by a factor of up to 37 times.

17. The CAA includes a framework that strictly regulates these harmful motor vehicle emissions. Original equipment manufacturers (“OEMs” or “manufacturers”) must design motor vehicles and motor vehicle engines to conform to established emissions standards for NO_x, CO, NMHC, PM, and other pollutants. 42 U.S.C. § 7525(a)(2); *see* 40 C.F.R. §§ 86.007-30(a)(1)(i), 86.1848-01(a)(1).

B. Acts Prohibited by the Clean Air Act, 42 U.S.C. § 7522(a)(3)(B)

18. Under Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), it is prohibited for “any person to manufacture or sell, or offer to sell, or install any part or component intended for use with, or as a part of, any motor vehicle or motor vehicle engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this subchapter, and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use.”

19. Section 203(a) of the CAA also prohibits “causing” any of the prohibited acts listed in that section. 42 U.S.C. § 7522(a).

20. Each part or component manufactured, sold, offered for sale, or installed in violation of Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), is a separate violation. 42 U.S.C. § 7524(a).

21. Persons violating Section 203(a) of the CAA, 42 U.S.C. § 7522(a), are subject to injunctive relief pursuant to 42 U.S.C. § 7523.

22. Persons violating Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), are subject to civil penalties of up to \$5,580 for each violation occurring after November 2, 2015,

and assessed on or after January 6, 2023, in accordance with Sections 204(a) and 205(a) of the CAA, 42 U.S.C. §§ 7523(a) and 7524(a). 40 C.F.R. § 19.4 (2023).

C. Emission-Related Elements of Design in Motor Vehicles and Motor Vehicle Engines

23. In order to sell or offer to sell motor vehicles and motor vehicle engines, manufacturers must apply for and obtain from EPA a certificate of conformity with EPA's emission standards. 42 U.S.C. §§ 7521, 7522(a)(1), 7525.

24. "Motor vehicle" is defined as "any self-propelled vehicle designed for transporting persons or property on a street or highway." 42 U.S.C. § 7550(2); 40 C.F.R. § 85.1703.

25. To obtain a certificate of conformity, the manufacturer must demonstrate that the motor vehicle or motor vehicle engine will conform to established emissions standards for PM, NO_x, NMHC, CO, and other pollutants during a motor vehicle or motor vehicle engine's useful life. 42 U.S.C. § 7525(a)(2); *see* 40 C.F.R. §§ 86.007-30(a)(1)(i), 86.1848-01(a)(1).

26. The certificate of conformity application must describe, among other things, the emission-related elements of design of the motor vehicle or motor vehicle engine. *See* 40 C.F.R. § 86.094-21(b)(1) ("The application . . . shall include the following: . . . a description of [the vehicle's] . . . emission control system and fuel system components."); *see also* 40 C.F.R. § 86.1844-01(d)-(e).

27. An EPA-issued certificate of conformity only covers those new motor vehicles or motor vehicle engines that conform in all material respects to the specifications provided to EPA in the certificate of conformity application for such vehicles or engines. 40 C.F.R. § 86.1848-01(c)(6).

28. OEMs install a variety of hardware and software elements of design in motor vehicles and motor vehicle engines that control emissions of pollutants to comply with the CAA and obtain certificates of conformity. An “element of design” is “any control system (i.e., computer software, electronic control system, emission control system, computer logic), and/or control system calibrations, and/or the results of systems interactions, and/or hardware items on a motor vehicle or motor vehicle engine.” 40 C.F.R. § 86.1803-01. Elements of design installed to control emissions are hereinafter referred to as “Emission-Related Elements of Design.”

29. Pursuant to 42 U.S.C. § 7521(m), the OEM is required to install an Onboard Diagnostics (“OBD”) System on motor vehicles that must monitor, detect, and record malfunctions of all monitored Emission-Related Elements of Design. 40 C.F.R. §§ 86.007-17, 86.010-18, 86.1806-05.

30. The OBD System monitors and detects malfunctions of Emission-Related Elements of Design through a network of sensors installed throughout the motor vehicle and motor vehicle engine.

31. When the OBD System detects a malfunction of an Emission-Related Element of Design, such as the removal of the Diesel Particulate Filter (“DPF”) system, the OBD system records a diagnostic trouble code that identifies the malfunction or deterioration and illuminates a malfunction indicator light on the dashboard. *See* 40 C.F.R. § 86.1806-05(b)-(e). Depending on the malfunction or deterioration, such as one triggered by the removal of the DPF system, the OBD system may also downgrade vehicle performance.

32. The OBD System is an Emission-Related Element of Design.

33. Exhaust Gas Recirculation (“EGR”) Systems are Emission-Related Elements of Design that reduce NO_x emissions by recirculating exhaust gas through the engine, thereby reducing engine temperature and NO_x emissions.

34. “Aftertreatment” refers collectively to the Emission-Related Elements of Design “mounted downstream of the exhaust valve . . . whose design function is to reduce emissions in the engine exhaust before it is exhausted to the environment.” 40 C.F.R. § 1068.30. DPFs, Diesel Oxidation Catalysts (“DOCs”), Selective Catalytic Reduction (“SCR”) Systems, and NO_x Adsorption Catalysts (“NACs”) are all part of Aftertreatment.

35. Aftertreatment Emission-Related Elements of Design are contained in OEM-installed, stock exhaust pipes.

36. DPFs are Emission-Related Elements of Design that reduce the level of PM pollution contained in engine exhaust gas by filtering it out.

37. DOCs are Emission-Related Elements of Design that reduce CO and NMHC emissions by promoting the conversion of those pollutants into less harmful gases.

38. SCR Systems are Emission-Related Elements of Design that reduce NO_x emissions by chemically converting exhaust gas that contains NO_x into nitrogen and water through the injection of diesel exhaust fluid.

39. NACs are Emission-Related Elements of Design that reduce NO_x emissions by chemically adsorbing NO_x from exhaust gas.

40. OEMs set software parameters, also known as calibrations, that control, among other things, engine combustion and Aftertreatment performance (hereinafter referred to as “Certified Stock Calibrations”). 40 C.F.R. § 86.1803-01.

41. OEMs disclose Certified Stock Calibrations on their application for a certificate of conformity for each vehicle model because they are part of a motor vehicle's overall emissions control strategy. Certified Stock Calibrations that must be included in the certificate of conformity application include "fuel pump flow rate, . . . fuel pressure, . . . EGR exhaust gas flow rate, . . . and basic engine timing." 40 C.F.R. § 86.1844(e)(2); *see also* 40 C.F.R. Part 85 App. VIII (listing vehicle and engine parameters and specifications); 40 C.F.R. Part 86 App. VI (listing vehicle and engine components). Certified Stock Calibrations are Emission-Related Elements of Design.

42. Oxygen Sensors are Emission-Related Elements of Design that detect the ratio of air to fuel during fuel combustion and provide such data to the OBD system. An imbalanced air-to-fuel ratio can result in increases in NO_x or NMHC emissions.

43. Motor vehicles are equipped with Electronic Control Units ("ECUs"), which are computers that monitor and control vehicle operations, including the operation of Emission-Related Elements of Design described in Paragraphs 28-42. OBD Systems and other Emission-Related Elements of Design operate in conjunction with ECUs.

44. Emission-Related Elements of Design are installed in motor vehicles or motor vehicle engines in compliance with Title II of the CAA and the regulations thereunder. *See, e.g.*, 42 U.S.C. § 7521 (setting emission and OBD standards and directing EPA to establish standards by regulation); 40 C.F.R. § 86.007-11 (establishing emission standards for 2007 and later diesel heavy-duty engines and vehicles); 40 C.F.R. § 86.1844-01(d)-(e) (listing information requirements for COC applications, including calibration information); and 40 C.F.R. § 86.004-25(a)(6) (defining "critical emissions-related components").

D. Aftermarket Defeat Products

45. Third party entities develop products that are designed to alter, replace, or disable OEM-installed elements of design, including Emission-Related Elements of Design, which are marketed as products that enhance a vehicle's power, improve a vehicle's fuel economy, or reduce the costs related to operating and maintaining a vehicle's Emission-Related Elements of Design (hereinafter "Aftermarket Defeat Products").

46. A principal effect of Aftermarket Defeat Products is to bypass, defeat, or render inoperative Emission-Related Elements of Design.

47. Aftermarket Defeat Products' effect on vehicle power, vehicle fuel economy, or Emission-Related Elements of Design maintenance costs results directly from their effect of bypassing, defeating, or rendering inoperative Emission-Related Elements of Design.

48. Manufacturers, merchants, and other distributors of Aftermarket Defeat Products use terminology that refers to bypassing, defeating, or rendering inoperative Emission-Related Elements of Design, including the automotive hardware and software that such products target in the product name and marketing materials.

49. Aftermarket Defeat Products can cause motor vehicles to emit hundreds to thousands of times more pollution than a motor vehicle with properly functioning emission controls.

1. Hardware Defeat Devices

50. Some Aftermarket Defeat Products are devices that physically interfere with or replace Emission-Related Elements of Design (hereinafter "Hardware Defeat Devices").

51. Some Hardware Defeat Devices interfere with (including via bypass or removal) exhaust recirculation in the EGR System. These products use blocker/block-off plates,

replacement tubes, or other hardware to interfere with the recirculation of exhaust gas back into the engine combustion chamber, thereby defeating or rendering inoperative the vehicle's EGR System. These Hardware Defeat Devices are hereinafter referred to as "EGR Delete Hardware Defeat Devices."

52. Some Hardware Defeat Devices interfere with (including via bypass or removal) Aftertreatment Emission-Related Elements of Design by, for example, removing the DOCs, DPFs, NACs, OBD Sensors, and/or SCR Systems. Examples include so-called "delete pipes" or "straight pipes." These Hardware Defeat Devices are hereinafter referred to as "Aftertreatment Delete Hardware Defeat Devices."

2. Tunes and Tuners

53. Some Aftermarket Defeat Products are electronic software products (hereinafter "Tunes") that alter or overwrite aspects of a motor vehicle's ECU and/or OBD System.

54. Tunes can be stored and transmitted in numerous ways by other Aftermarket Defeat Products, including electronically through email and through electronic storage devices (hereinafter "Tuners").

55. Some Tunes manipulate the ECU and/or OBD System to bypass, defeat, or render inoperative Emission-Related Elements of Design, including Certified Stock Calibrations, EGR System, DPFs, DOCs, SCR System, and/or other Aftertreatment. Others electronically disable or allow for the full physical removal of Emission-Related Elements of Design, including by working in conjunction with Hardware Defeat Devices to manipulate the monitoring function of the OBD System, so that it will fail to detect the new Hardware Defeat Devices or the removal of one or more of a vehicle's Emission-Related Elements of Design.

TOXIC SUBSTANCES CONTROL ACT

REGULATION OF METHYLENE CHLORIDE

56. Congress enacted TSCA in part to “regulate chemical substances and mixtures which present an unreasonable risk of injury to health or the environment, and to take action with respect to chemical substances and mixtures which are imminent hazards.” 15 U.S.C. § 2601(b)(2).

57. Section 6(a) of TSCA, 15 U.S.C. § 2605(a), provides that if EPA determines that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture presents an unreasonable risk of injury to health or the environment, EPA shall issue a rule establishing requirements to eliminate the unreasonable risk. *See* 15 U.S.C. § 2605(a).

58. Methylene chloride is a chemical substance used as a solvent and as a stripping and thinning agent in paint and coating removal products.

59. Inhalation of methylene chloride poses a risk of acute lethality and neurological impairment.

60. Exposure to relatively small amounts of methylene chloride, such as the amounts found in consumer products for paint and coating removal, has resulted in human fatalities.

61. Methylene chloride is a likely human carcinogen; repeated exposure has been linked to an increased risk for brain cancer, liver cancer, non-Hodgkin lymphoma, and multiple myeloma.

62. Pursuant to Section 6(a) of TSCA, EPA promulgated a rule to address the risk of acute lethality presented by methylene chloride in paint and coating removal consumer products. *See* 40 C.F.R. §§ 751.101 *et seq.* (the “Methylene Chloride Rule”).

63. The Methylene Chloride Rule prohibits “retailers . . . from distributing in commerce methylene chloride, including any methylene chloride-containing products, for paint and coating removal” after November 22, 2019. 40 C.F.R. § 751.105(c).

64. The Methylene Chloride Rule defines “retailer” to mean “a person who distributes in commerce or makes available a chemical substance or mixture to consumer end users, including e-commerce internet sales or distribution. Any distributor with at least one consumer end user customer is considered a retailer. A person who distributes in commerce or makes available a chemical substance or mixture solely to commercial or industrial end users or solely to commercial or industrial businesses is not considered a retailer.” 40 C.F.R. § 751.103.

65. The Methylene Chloride Rule defines “distribute in commerce” to have the same meaning it has in Section 3 of TSCA. 40 C.F.R. § 751.103. The TSCA definition is “to sell, or the sale of, the substance, mixture, or article in commerce; to introduce or deliver for introduction into commerce, or the introduction or delivery for introduction into commerce of, the substance, mixture, or article; or to hold, or the holding of, the substance, mixture, or article after its introduction into commerce.” 15 U.S.C. § 2602(5).

66. Pursuant to Section 15(1) of TSCA, it is unlawful for any person to fail or refuse to comply with any TSCA requirement or rule. 15 U.S.C. § 2614(1).

67. Section 17(a) of TSCA provides district courts with jurisdiction to restrain any violation of 15 U.S.C. § 2614 and to restrain any action prohibited by a rule promulgated pursuant to 15 U.S.C. § 2605. 15 U.S.C. § 2616(a).

68. Section 16(a) of TSCA provides that EPA may assess civil penalties against any person found to have violated 15 U.S.C. § 2614. *See* 15 U.S.C. § 2615(a). Such penalty shall not exceed \$46,989 for each violation. *See id.*; 40 C.F.R. § 19.4 (2023). Each day of such a violation

shall, for purposes of this subsection, constitute a separate violation subject to a civil penalty. 15 U.S.C. § 2615(a)(1).

FEDERAL INSECTICIDE, FUNGICIDE AND RODENTICIDE ACT
REGULATION OF PESTICIDES

69. Congress first prohibited the sale and distribution of certain misbranded or adulterated pesticides in 1910. Insecticide Act, P.L. 61-152, 36 Stat. 331 (April 26, 1910).

70. Amended several times and renamed the Federal Insecticide, Fungicide and Rodenticide Act, the law today authorizes EPA to regulate the distribution, sale, and use of pesticides in the United States “[t]o the extent necessary to prevent unreasonable adverse effects on the environment.” 7 U.S.C. § 136a(a).

71. FIFRA defines the term “pesticide” to include, among other things, “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.” 7 U.S.C. § 136(u).

72. EPA regulates pesticides primarily through the registration procedures established in Section 3 of FIFRA. 7 U.S.C. § 136a(c).

73. Section 3 of FIFRA provides that EPA shall register a pesticide after reviewing, among other things, its composition, claims of efficacy, and labeling; after determining whether the pesticide will perform its intended function without unreasonable adverse effects on the environment; and after considering whether, when used in accordance with widespread and commonly recognized practice, it will not generally cause unreasonable adverse effects on the environment. 7 U.S.C. § 136a(c)(5).

74. EPA shall classify a pesticide for restricted use if it determines that the pesticide, when applied in accordance with its directions for use, warnings, and cautions, may cause

unreasonable adverse effects on the environment, including injury to the applicator, without additional regulatory restrictions. 7 U.S.C. § 136a(d)(1)(C).

75. If EPA classifies a pesticide for restricted use because of a determination that the acute dermal or inhalation toxicity of the pesticide presents a hazard to the applicator or other persons, the pesticide shall be applied only by or under the direct supervision of a certified applicator. 7 U.S.C. § 136a(d)(1)(C)(i).

76. If a pesticide's use is restricted to certified applicators its label must bear the following statement: "For retail sale to and use only by Certified Applicators or persons under their direct supervision and only for those uses covered by the Certified Applicator's certification." 40 C.F.R. § 156.10(j)(2)(i)(B).

77. FIFRA provides that no person may "distribute or sell" any pesticide that has not been registered with EPA. 7 U.S.C. §§ 136a(a), 136j(a)(1)(A).

78. As used in FIFRA, to "distribute or sell" means "to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver." 7 U.S.C. § 136(gg).

79. FIFRA also prohibits the distribution or sale of any adulterated or misbranded pesticide. 7 U.S.C. § 136j(a)(1)(E).

80. A pesticide is "misbranded" in several circumstances, including when it has false, misleading, or incomplete labeling, lacks required packaging, is an imitation of another registered pesticide, or lacks directions for use adequate to protect health and the environment. *See* 7 U.S.C. § 136(q).

81. FIFRA also prohibits any person from distributing or selling, or making available for use, any restricted use pesticide for some or all purposes other than in accordance with Section 3(d) of FIFRA. 7 U.S.C. § 136j(a)(2)(F).

82. EPA may issue a Stop Sale, Use, or Removal Order (“SSURO”) to “any person who owns, controls, or has custody of” a pesticide or pesticidal device whenever EPA has reason to believe that a pesticide or device is in violation of, or has been or is intended to be distributed or sold in violation of, any provision of FIFRA. 7 U.S.C. § 136k.

83. A person who receives a SSURO may not “sell, use, or remove the pesticide or device described in the order except in accordance with the provisions of the order.” 7 U.S.C. § 136k.

84. EPA may assess civil penalties against any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor found to have violated any provision of FIFRA in the amount of \$23,494 for each violation. 7 U.S.C. § 136l(a)(1); 40 C.F.R. § 19.4 (2023).

85. The federal district courts have jurisdiction to “enforce, and to prevent and restrain violations of” FIFRA. 7 U.S.C. § 136n(c).

GENERAL ALLEGATIONS

A. eBay’s Online Store

86. eBay.com is an online store where consumers can browse or search for products listed by third-party merchants and then purchase them.

87. eBay is involved in and controls every stage of a transaction on eBay.com. Some of that involvement is simple and direct. Buyers pay eBay for products sold on eBay.com, and eBay remits a portion of the sales price to the merchant. eBay calculates, collects, and remits sales taxes and other state-imposed fees. eBay prohibits participants in its marketplace from

making offers to buy and sell outside of eBay.com and has other restrictions on how buyers and sellers can communicate. As part of its Money Back Guarantee policy, eBay will refund the purchase price and shipping to the buyer if the merchant fails to deliver the product. Some of eBay's involvement in transactions on its website is complex: eBay utilizes a powerful set of algorithms that analyze data on search and purchase histories to ensure that buyers quickly find items that eBay believes they may ultimately purchase. These algorithms may even point buyers toward items that they had no conscious intention of searching for, but that eBay's algorithms determined they might purchase. Collectively, eBay's involvement in the transaction guides, encourages, and controls every step of the interaction between a buyer and a merchant. In sum, eBay.com is far more than an internet venue that connects purchasers and merchants – it also actively promotes, controls, consummates, and guarantees the transaction.

88. eBay enables and encourages transactions between buyers and merchants who may not otherwise have found each other or transacted business.

89. eBay's control over the shopping experience begins when a merchant sets up an account to list items for sale on eBay.com.

90. To do so, the merchant must accept, or agree to, eBay's User Agreement.

91. eBay's User Agreement is a contract. It sets forth a variety of rules with which a merchant must comply in order to begin and to continue to use eBay.com.

92. Some of the rules forbid a merchant from offering particular products or types of products for sale.

93. The User Agreement also sets forth a variety of steps eBay can take against a merchant if eBay believes that the merchant has failed to follow its rules or live up to its minimum performance standards. Among many other things, to enforce its rules, eBay can:

- a. limit, restrict, or suspend a merchant from using its site;
- b. impose fees on a merchant;
- c. remove a merchant's listing altogether; and
- d. hide or demote a merchant's listing in any buyer's search result to make it less likely that buyers will find and purchase the product.

94. That said, a merchant that follows eBay's rules and wishes to list an item on eBay can expect a great deal of assistance, advice, and encouragement from eBay.

95. eBay will help the merchant create the content for its product listings based on eBay's data concerning the contents, details, and strategies that drive interest from buyers.

96. For instance, a merchant can take advantage of the eBay Catalog, which is a library that eBay maintains with information about products. That information includes, among other things, details about products and images of products. If a merchant uses the eBay Catalog for a particular product, eBay automatically includes in the product listing certain information about the product (e.g., the brand, model number, and photographs). This content provided by eBay makes the listing more professional, detailed, and attractive, thereby substantially increasing the likelihood a buyer will view the offer and complete a transaction.

97. eBay also provides information to merchants about its search algorithms.

98. Merchants can tailor the information on their listings to the factors that the algorithms use to generate the results of a buyer's search.

99. eBay publishes best practices for listing and selling products.

100. eBay suggests that, by following those practices, a merchant can ensure that its products will appear higher in a potential buyer's search results and thus sell more effectively.

101. eBay requires that a merchant enter Uniform Product Codes and/or keywords for each of the products that the merchant lists. eBay uses that information to group similar products together into categories. It then places those similar products on virtual shelves on eBay.com and displays them until they are sold. These shelves help to increase each product's visibility to buyers and encourage buyers to consider and purchase similar products that they may not have been looking for initially.

102. eBay may unilaterally make changes to product listings that it determines violate its policies.

103. Under the User Agreement, eBay can edit any product listing to supplement, remove, or correct information contained in that listing.

104. eBay's help in creating the content of a product listing goes well beyond the initial product listing.

105. For instance, eBay maintains a "Seller Hub."

106. The Seller Hub provides merchants with a vast amount of information, gathered from the data eBay collects and analyzes about all the activity in its store. This information substantially aids merchants in developing effective pricing, marketing, and promotional plans for product listings based on the vast amount of data collected from all of the activity on eBay's site, information that no merchant would otherwise be able to develop and incorporate into the offers.

107. Information on the Seller Hub includes, among other things:

- a. sales metrics that aid merchants in understanding how products perform;
- b. search information that aids merchants in understanding how buyers are searching for and finding a merchant's products, so that merchants can

- include certain content in their listings to optimize exposure to buyers;
- c. data-based product description tools that help merchants create and refine their product listings to attract buyers and maximize sales;
- d. information on competing merchants' product pricing to assist in creating competitive offers; and
- e. marketing and promotion tools tailored to the merchants' products, thereby aiding them in reaching buyers and effectuating sales.

108. Should a buyer choose to purchase an item, the buyer places it in a virtual shopping cart on eBay.com, clicks on the "Go to checkout" button within the shopping cart, provides a form of payment on the "eBay Checkout" webpage, and clicks the "Confirm and pay" button. eBay then effectuates the sale.

109. For most transactions, eBay itself – without any third-party payment processor – controls the sale by processing the credit card (or other) payment. eBay collects its fee and pays the merchant that supplied the product. As part of its control over the transaction, eBay also calculates, collects, and remits sales taxes and other regulatory fees. eBay does so through its Managed Payments program.

110. eBay sends an order confirmation to the purchaser after the product is purchased and a delivery confirmation after it is delivered.

111. Should there be a problem with the transaction, eBay can put a hold on any payment to the merchant. It also handles disputes between merchants and buyers, assisting with returns or refunds as appropriate.

112. eBay has a Money Back Guarantee policy under which it will refund the purchase price and shipping to the buyer if the merchant fails to deliver the product.

113. In short, eBay exercises significant control over every transaction on its site, and it profits accordingly. eBay exercises this control to, among other purposes, substantially aid merchants by providing them with eBay's expertise in advertising and pricing products; helping buyers find products eBay determines they may be interested in purchasing; accepting payment for the product and remitting taxes and fees; and, as a general matter, increasing the overall likelihood of completed transactions on eBay.com, resulting in more profit for eBay.

114. eBay also provides shipping assistance to merchants. A merchant can purchase and print shipping labels on the site from eBay. eBay encourages merchants to use eBay's shipping assistance by providing merchants with discounted postage rates that eBay has negotiated with the United States Postal Service, UPS, and FedEx.

115. Through its Global Shipping Program ("GSP"), eBay encourages merchants to sell products internationally by managing the shipping of those products.

116. eBay receives participating U.S.-based merchants' items intended for sale abroad at its GSP facility at 1850 Airport Exchange Boulevard, Suite 200, Erlanger, Kentucky ("U.S. GSP Center"), assures merchants that it will take care of the necessary customs forms and import fees, and arranges end-to-end international tracking. Per eBay's website, "When you sign up for GSP and an eligible item sells abroad, simply ship it to eBay's US-based Global Shipping Center and the Global Shipping Program will take care of every step until your item reaches the buyer."

117. During a March 20, 2018 inspection of eBay's U.S. GSP Center, EPA observed eBay's receiving, repackaging, and shipping activities, including the labeling of product boxes with eBay stickers like the following, which states "Resealed by the Global Shipping Center":



118. eBay’s GSP also aids U.S.-based customers who wish to purchase products from merchants located outside the United States.

119. Merchants located outside the United States who opt into eBay’s GSP first ship their products to an eBay international GSP facility, like eBay’s shipping center in Lichfield, U.K. According to eBay, “International deliveries made through [eBay’s] GSP include customs clearance so you don’t need to handle any extra paperwork.” eBay then ships the product from its international GSP to United States-based customers (or other foreign locations).

120. In at least some instances, eBay’s GSP facility re-packages products originally sent from merchants located outside the United States prior to shipping them to U.S.-based customers.

121. eBay has numerous policies in place that govern, for instance, the kinds of products it will allow to be sold through its site.

122. eBay policies prohibit, among other things, the sale of products on its site that are unlawful.

123. eBay uses, among other things, an automated filtering tool it calls the Listing Violation Identification System (“LVIS”) to identify products that violate its policies.

124. eBay conducts manual sweeps to search for products that get past its LVIS.

125. Notwithstanding these efforts, unlawful products are listed and sold on eBay.com.

126. eBay employs a “Customer Fraud and Risk Team” that may suspend or restrict third parties who evade or try to evade the LVIS and manual sweeps.

127. eBay can remove items from its site that it determines violate its policies.

128. eBay’s monitoring also identifies merchants that it deems to be high quality. eBay conducts merchant evaluations, based on a number of factors such as whether a merchant efficiently and accurately delivers products to buyers and whether a merchant responds appropriately to a buyer’s questions.

129. eBay confers special status on those merchants who perform the best, in eBay’s eyes, labeling some “Top Rated Sellers” and “Top Rated Plus.” Earning that status provides merchants with valuable benefits, among them an eBay commitment to provide their products greater visibility in any search result, thereby inducing buyers to purchase these items.

130. The manner by which eBay controls the interaction between buyers and merchants is enhanced by the fact that eBay prohibits merchants and buyers from “meeting” off-site to transact a sale.

131. Under the eBay User Agreement, if a merchant and a buyer find each other on eBay.com, any eventual transaction must occur on eBay.com. A merchant cannot give the buyer the opportunity to purchase an item off of eBay’s website by, for instance, providing the buyer

off-site contact information, hosting a catalog for off-site sales, or hosting off-site item descriptions. eBay may penalize a merchant for using eBay services but selling a product off-site. These rules ensure that eBay retains control over all steps of the transaction and ultimately profits from any sale where eBay services are used.

B. eBay Actively Promotes Products and Sales on eBay.com

132. eBay's success as an online store is based in part on its success in helping its customers search for products on eBay.com that they want to purchase.

133. A buyer can search for products by brand, product type, or keyword on the eBay website.

134. eBay's algorithms analyze the product listings on its site to find the products that best match the buyer's search. In fact, eBay calls its search algorithm "Best Match."

135. eBay uses algorithms to produce a list of products that eBay deems to be the most relevant for the buyer.

136. eBay determines the order in which products are listed for a buyer based on a number of factors. These factors include, among other things:

- a. the buyer's particular search query;
- b. the history of the buyer's activity on eBay;
- c. how popular a particular product is;
- d. the quality of the product's listing; and
- e. the merchant's track record based on eBay's evaluation of its performance.

137. In addition to displaying product listings for the buyer, eBay aids buyers via suggestions for related products based on the buyer's particular query. That is, the eBay

algorithms assess what the buyer is searching for and direct the buyer to products he or she otherwise might not have considered.

138. eBay's algorithms go even further. When a buyer views a product listing from a search result, eBay will promote additional products that eBay considers to be similar, highlighting them as "Similar items," "Sponsored items from this seller," or "Sponsored items based on your recent views."

139. eBay will also display similar products that other buyers searched for and viewed.

140. Along with the product listing that a buyer is viewing, eBay will display what it deems to be "related products."

141. eBay's algorithms induce transactions even after a buyer leaves the site.

142. eBay sends targeted emails to buyers, offering them particular products based on their searching, viewing, and/or purchasing history.

143. eBay also encourages sales on its site by sending potential buyers coupons for products they have viewed but not purchased.

144. eBay uses cookies and web beacons to expand its reach beyond its own site to other websites. As a result, potential buyers may see eBay ads targeting them – based on their searching, viewing, and/or purchasing history – on web sites that are unrelated to eBay.

145. In sum, eBay uses its algorithms not only to help buyers find what they know they are looking for, but also to connect buyers to other products eBay predicts they may want to purchase, and eBay uses cookies and web beacons to advertise such products to buyers wherever they may be across the internet.

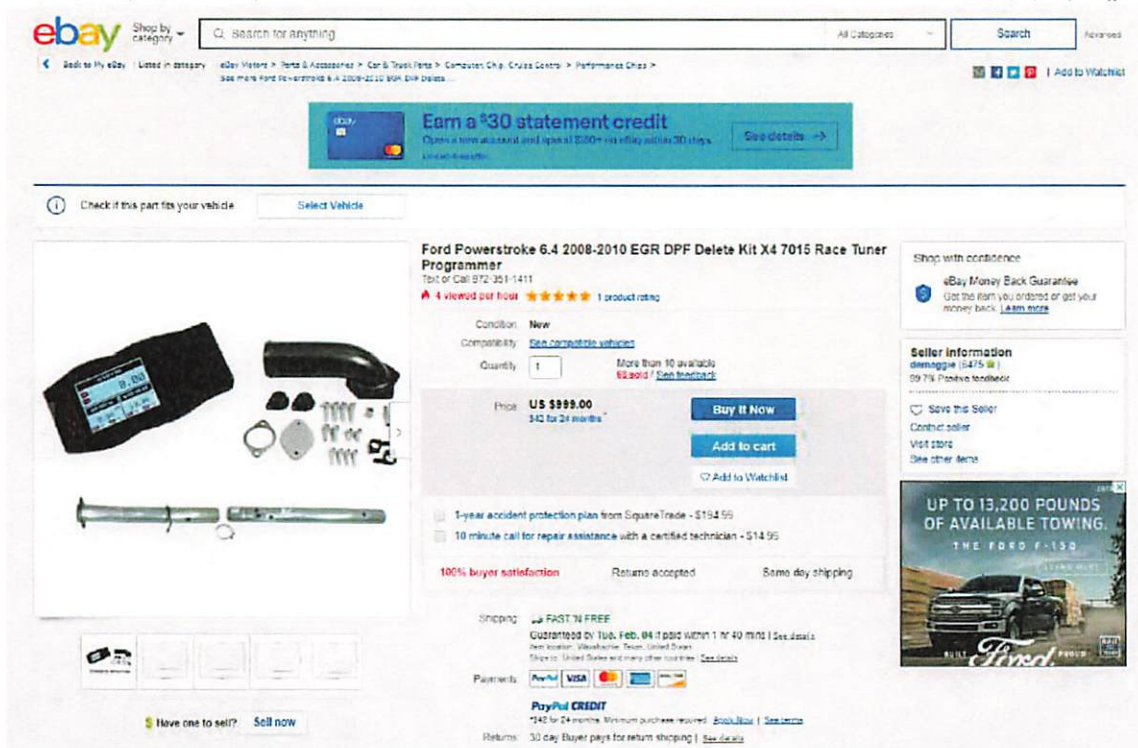
C. The Sale of Aftermarket Defeat Products on eBay.com

146. eBay.com lists for sale products intended for use in “motor vehicles” as that term is defined by the Clean Air Act, 42 U.S.C. § 7550(2), and regulations promulgated thereunder at 40 C.F.R. § 85.1703.

147. A 2019-2020 EPA review of automotive products sold or offered for sale on eBay.com identified at least 39,821 Aftermarket Defeat Products of various types designed for use on motor vehicles with certificates of conformity.

148. For example, on January 29, 2020, a product named “Ford Powerstroke 6.4 2008-2010 EGR DPF Delete Kit X4 7015 Race Tuner Programmer” was offered for sale on eBay.com with eBay item number 143377395302.

149. A screenshot of the offer is set forth below:



150. As its name indicates, the “Ford Powerstroke 6.4 2008-2010 EGR DPF Delete Kit X4 7015 Race Tuner Programmer” is an EGR and DPF delete kit, an Aftermarket Defeat Product designed to defeat or render inoperative the EGR System and DPF of certain Ford vehicles.

151. EPA-certified Ford Powerstroke 6.4L engines for the model years 2008-2010 Ford F250 and F350 diesel pickup trucks include EGR and DPF as Emission-Related Elements of Design.

152. As another example, on December 31, 2019, a product named “2011-2019 Ford 6.7 EGR Delete DPF Delete Kit Package Competition Tuner” was offered for sale on eBay.com.

153. eBay assigned the product “eBay item number” 173233041712.

154. A screenshot of the offer is set forth below:

Hi Janeek
Daily Deals Brand Outlet Help & Contact
Sell Buy Again Watch List My eBay

Shop by Category



All Categories

Back to home page
Listed in category: eBay Motors > Parts & Accessories > Car & Truck Parts > Computer Chip, Cruise Control > Performance Chip
eBay Motors > Parts & Accessories > Car & Truck Parts > Exhaust > Exhaust System

Seize the Stay

Members can save up to 20% on rooms and 30% on suites through Feb. 22, 2020.

[LEARN MORE](#)

AMERICAN MADE PARTS

2011-2019 FORD 6.7 EGR DELETE DPF DELETE KIT PACKAGE COMPETITION TUNER

ITEM DELIVERED IN 2-7 DAYS EBAY ESTIMATE IS INACCURATE

1 viewed per hour

Condition: **New**

Quantity: 4 available | [155,000](#)

Price: **US \$950.00**
\$40 by 24 months

[Buy it Now](#)

[Add to cart](#)

[Add to Watchlist](#)

- 1-year accident protection plan from Squa'sTrade - \$194.99
- 10 minute call for repair assistance with a certified technician - \$14.95

Longtime member No returns 123 watchers

Shipping: **FREE** Standard Shipping | [See details](#)
Item location: Wings, Ontario, United States
Buyer to: United States and many other countries | [See details](#)

Delivery: Estimated on or before Fri, Jan. 10 to 20151

Payments:

PayPal CREDIT
*\$40 to 24 months. Minimum purchase required. [Details](#) | [See terms](#)
[Learn more](#) **Insurance** for people who love cars | [Quick View](#)

Returns: Seller does not accept returns | [See details](#)

Shop with confidence

eBay Money Back Guarantee
Get the item you ordered or get your money back. [Learn more](#)

Seller information
[diesel_race_kits](#) (520)
100% Positive feedback


[Save this Seller](#)
Contact seller
Visit store
See other items

Holiday Shopping Budget

Wishlist	\$177.00
Buy It Now	\$184.00
Total	\$361.00


Have one to sell?
[Sell now](#)

Similar sponsored items 1/2




H&S Mini Maxx DPF Delete Race Tuner Ford, Chevrolet, GM & Do.

\$625.00
Free shipping
New




2011-2019 FORD 6.7 EZ LYNK DPF DELETE EGR DELETE DE

\$1,450.00
Free shipping
Almost gone




2011-2015 Ford 6.7L MBRP 1

\$850.00
Free shipping
Seller 99.9% positive




Ez Lynk Auto Agent 2 - Custom SOTF Delete Tuning-2011-2015

\$1,199.99
Free shipping
Seller 100.0% positive



2017-2019 Ford 6.7 Diesel L&A H&S Mini Maxx Race tuner & R

\$799.00
Free shipping
Seller 100.0% positive



Mini MAXX Tuner Ford Powerstroke 6.4L Diesel 06-10 E

\$899.00
Free shipping
Last one

Description Shipping and payments Report item

Seller assumes all responsibility for this listing
Last updated on: Dec 30, 2019 07:11:52 PST [View all revisions](#)

ebay item number: 173235041712

Item specifics	
Condition	New
Other Part Number	837NE
Brand	CUSTOM TUNER
Non-Domestic Product	No
Modified Item	No
Custom Bundle	No
Interchange Part Number	FLO PRO, SPINSTER, EGR DELETE, DPF DELETE, USA, RACE PIPE, KIT PACKAGE, MBRP
Manufacturer Part Number	CUSTOM 001

2011-2016 FORD 6.7 EGR DELETE DPF DELETE KIT PACKAGE COMPETITION TUNER

CUSTOM TUNED PROGRAMMER

LEVEL 1 TOW +50HP

LEVEL 2 STREET +100HP

LEVEL 3 STREET LVL 2 +150HP

LEVEL 4 RACE + 200HP

EGR DELETE IS 100% AMERICAN MADE STAINLESS STEEL WITH PYROMETER BUNG

DPF DELETE PIPE IS 4 INCH 100% AMERICAN MADE WITH HARDWARE

COMPLETE DELETE PACKAGE WITH ALL PARTS NEEDED TO COMPLETELY DELETE YOUR TRUCK

MESSAGE ME IF YOU IF YOU HAVE ANY QUESTIONS

155. The 2011-2019 Ford 6.7 EGR Delete DPF Delete Kit Package Competition Tuner was advertised on eBay.com as a “COMPLETE DELETE PACKAGE WITH ALL PARTS NEEDED TO COMPLETELY DELETE YOUR TRUCK.”

156. As its name indicates, the 2011-2019 Ford 6.7 EGR Delete DPF Delete Kit Package Competition Tuner is an EGR and DPF delete kit, an Aftermarket Defeat Product designed to defeat or render inoperative the EGR and DPF System of certain Ford vehicles.

157. EPA-certified Ford Powerstroke 6.7L engines for the model years 2011-2019 Ford F250 and F350 diesel pickup trucks include EGR and DPF as Emission-Related Elements of Design.

158. An investigator purchased the 2011-2019 Ford 6.7 EGR Delete Kit Package Competition Tuner on December 31, 2019.

159. eBay assigned the transaction an order number of 18-04351-59237.

160. The investigator paid \$1,007 for the product through PayPal. On December 31, 2019, eBay confirmed the purchase in an email to the investigator.

161. The merchant listing the 2011-2019 Ford 6.7 EGR Delete Kit Package Competition Tuner then sent an email to the purchaser through eBay's message system. The merchant asked the purchaser "What year is your pickup."

162. Upon information and belief, the merchant did so to ensure that the tuner would be calibrated to the correct vehicle model and therefore effectively defeat the vehicle's EGR system as intended.

163. On December 31, 2019, eBay sent an email to the purchaser stating that the "order is being shipped." That is, eBay notified the purchaser that the 2011-2019 Ford 6.7 EGR Delete Kit Package Competition Tuner was being shipped to the address the investigator provided.

164. The investigator received the 2011-2019 Ford 6.7 EGR Delete Kit Package Competition Tuner on January 6, 2020.

165. On September 3, 2020, EPA issued a Notice of Violation to eBay identifying as violations of the Clean Air Act the sale, offer for sale, or causing the sale or offer for sale of 39,821 Aftermarket Defeat Products, including the Ford Powerstroke 6.4 2008-2010 EGR DPF Delete Kit X4 7015 Race Tuner Programmer and the 2011-2019 Ford 6.7 EGR Delete DPF Delete Kit Package Competition Tuner referenced above.

166. On September 3, 2020, EPA issued eBay an information request pursuant to Section 208 of the CAA seeking records of Aftermarket Defeat Product sales that had occurred on eBay.com since January 1, 2017.

167. From October 9 to December 21, 2020, eBay provided a series of formal responses to the information request.

168. EPA's review of eBay's responses to the information request determined that between January 1, 2017, and September 3, 2020, eBay sold, offered for sale, and/or caused the

sale or offer for sale of at least 343,011 Aftermarket Defeat Products designed for use in vehicles manufactured by Ford, General Motors, Nissan, and Dodge, among others, through eBay.com.

169. EPA's review of eBay's responses to the information request determined that the 343,011 Aftermarket Defeat Products had a principal effect of bypassing, defeating, or rendering inoperative devices or Emission-Related Elements of Design.

170. During time periods relevant to this Complaint, Aftermarket Defeat Products sold and offered for sale on eBay.com could be found using keyword searches for commonly used names and references for both Hardware Defeat Devices and Tuners, including keywords such as "DPF Delete," "EGR Delete," "EGR Block Off," "DPF Race Exhaust," "Downpipe back exhaust," "Turbo back exhaust," and "Delete Tuner."

171. Aftermarket Defeat Product listings on eBay.com also included language clearly identifying the deleterious effect of the product on emissions-related elements of design, such as, "This plate eliminates the recirculation of exhaust gas into the intake," "DPF/ERG/DEF delete capable," "DPF Delete Programmer," and "Throttle Valve Delete Kit."

172. eBay has had and continues to have a policy indicating that certain Aftermarket Defeat Products are prohibited from sale on its site.

173. Yet Aftermarket Defeat Products continue to be offered for sale and sold on eBay.com.

174. As recently as July 24, 2023, Aftermarket Defeat Products were offered for sale on eBay.com.

D. The Sale of Methylene Chloride-Containing Products on eBay.com

175. EPA began investigating the availability of methylene chloride and methylene chloride-containing products for paint and coating removal on eBay.com in May 2020.

176. Between May and July 2020, EPA documented the distribution in commerce of approximately 1,000 products containing methylene chloride.

177. On July 24, 2020, EPA issued a Notice of Potential Violation to eBay identifying numerous products containing methylene chloride, offered for paint or coating removal, that were distributed in commerce through eBay.com in violation of the Methylene Chloride Rule.

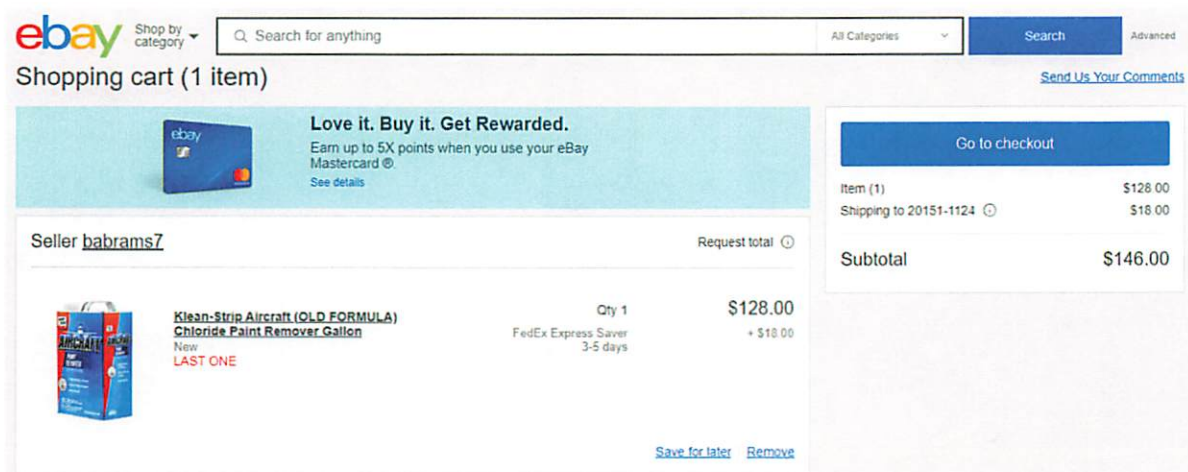
178. On July 24, 2020, EPA issued eBay a subpoena pursuant to Section 11 of TSCA, 15 U.S.C. § 2610, seeking additional records of methylene chloride-containing products for paint and coating removal distributed in commerce through eBay.com after November 22, 2019.

179. From September 7 to December 11, 2020, eBay provided a series of responses to the subpoena.

180. Based on EPA's ongoing investigation and its review of the information eBay provided in response to the July 24, 2020 subpoena, EPA identified at least 5,614 items containing methylene chloride for paint and coating removal that were distributed in commerce by eBay after November 22, 2019, in violation of the Methylene Chloride Rule.

181. On June 30, 2020, Klean-Strip Aircraft (OLD FORMULA) Chloride Paint Remover was offered for sale on eBay.com.

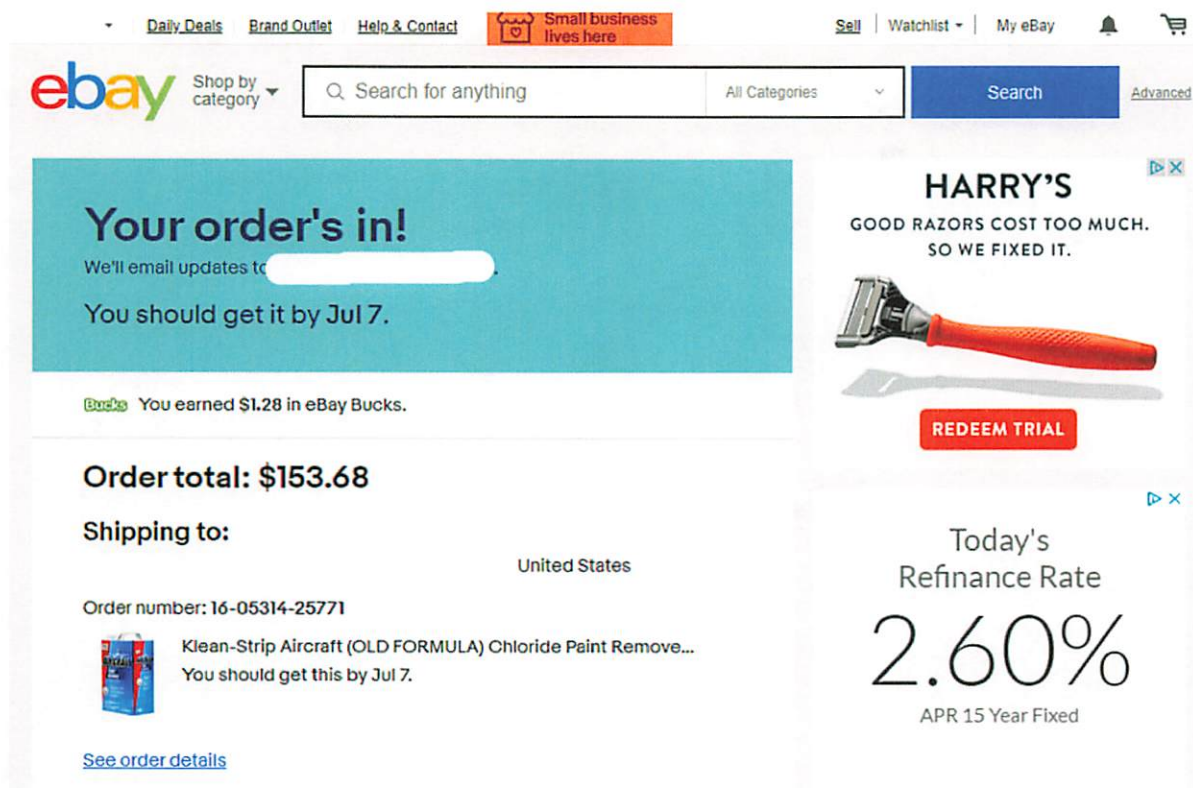
182. A screenshot of the offer is set forth below:



183. On June 30, 2020, an investigator purchased Klean-Strip Aircraft (OLD FORMULA) Chloride Paint Remover on eBay.

184. eBay assigned the transaction Order Number 16-05314-25771.

185. A screenshot of the transaction is set forth below:

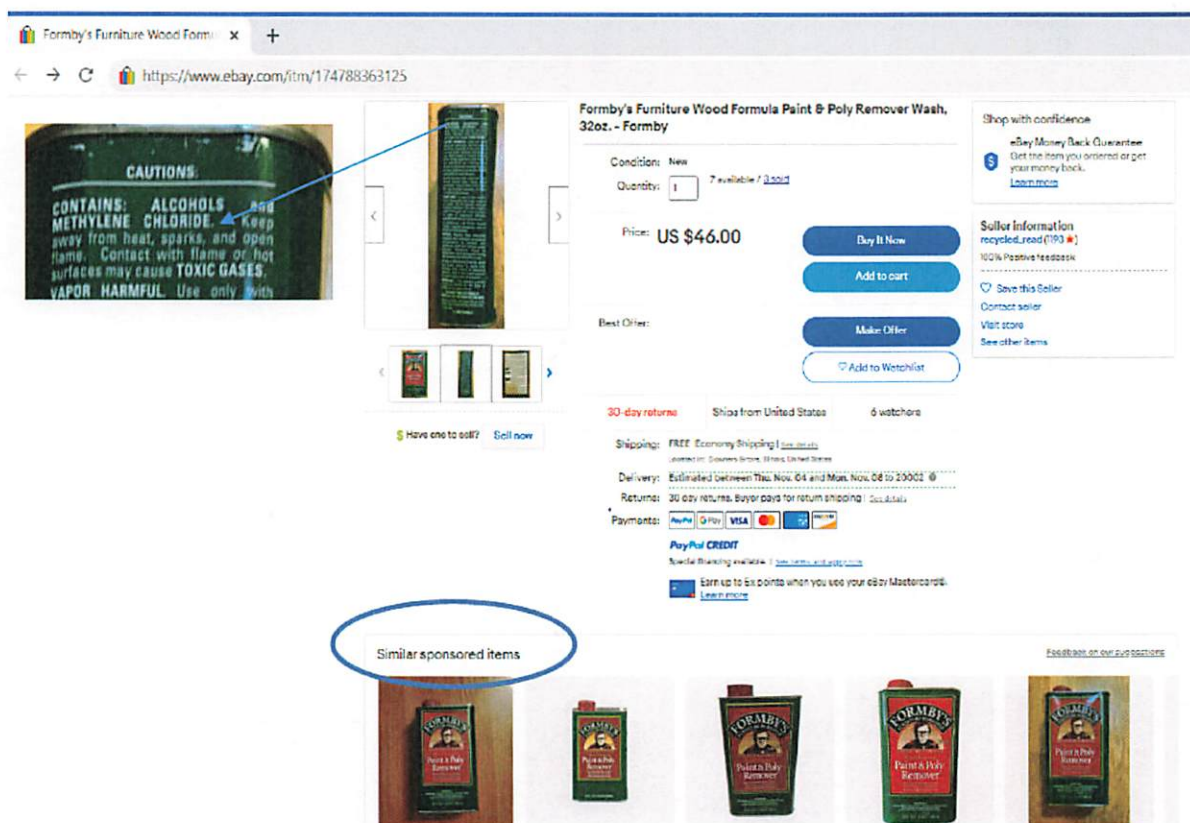


186. On July 28, 2020, the investigator picked up the product from the post office. The shipping label included the phrase “a preferred shipping service on eBay.”

187. Klean-Strip Aircraft (OLD FORMULA) Chloride Paint Remover contains methylene chloride.

188. On October 29, 2021, Formby’s Furniture Wood Formula Paint & Poly Remover was offered for sale on eBay.com.

189. A screenshot of the offer is set forth below (with an enlarged cutout of the caution statement on the product photograph):



190. There is a caution statement on the Formby’s Furniture Wood Formula Paint & Poly Remover product that was offered for sale on eBay.com on October 29, 2021. That statement indicates that the product contains methylene chloride.

191. The methylene chloride-containing products sold on eBay have a methylene chloride content ranging from 30 to 100 percent.

192. As recently as April 2023, eBay has offered for sale products containing methylene chloride for paint and coating removal.

E. The Unlawful Sale of Pesticide Products on eBay.com

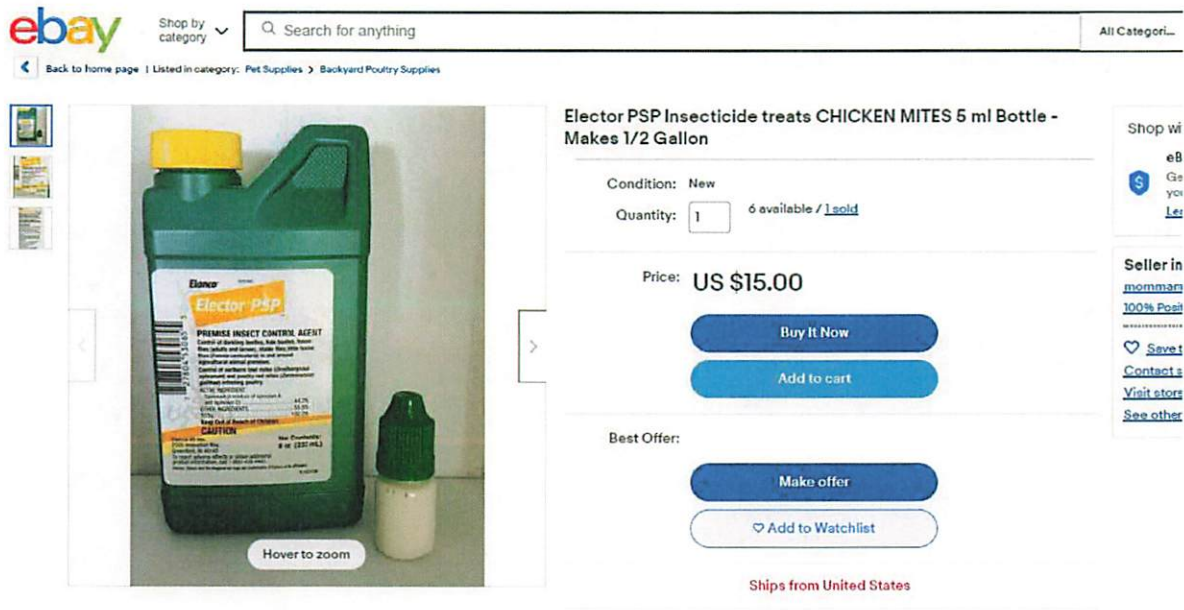
193. In September 2016, EPA began identifying listings of unregistered, misbranded, or restricted use pesticides on eBay.com, and collecting screenshots of such items.

194. On February 14, 2017, EPA issued eBay a letter requesting information about the sale and distribution of these products, and eBay's efforts (if any) to address sales not compliant with FIFRA. On March 9, 2017, eBay responded that it was not subject to FIFRA. eBay did not provide the requested information.

195. EPA has identified, by manual review, hundreds of listings on eBay.com that resulted in the sale and distribution of thousands of unregistered, misbranded, or restricted use pesticides.

196. As an example, on December 7, 2022, a product named "Elector PSP" for killing chicken mites was offered for sale on eBay.com. It was assigned eBay item number 285006259249.

197. A screenshot of the listing for Elector PSP is below:



198. Elector PSP is a registered pesticide assigned EPA Registration No. 72642-2. The product's registration allows it to be sold in an 8 ounce/237 mL container.

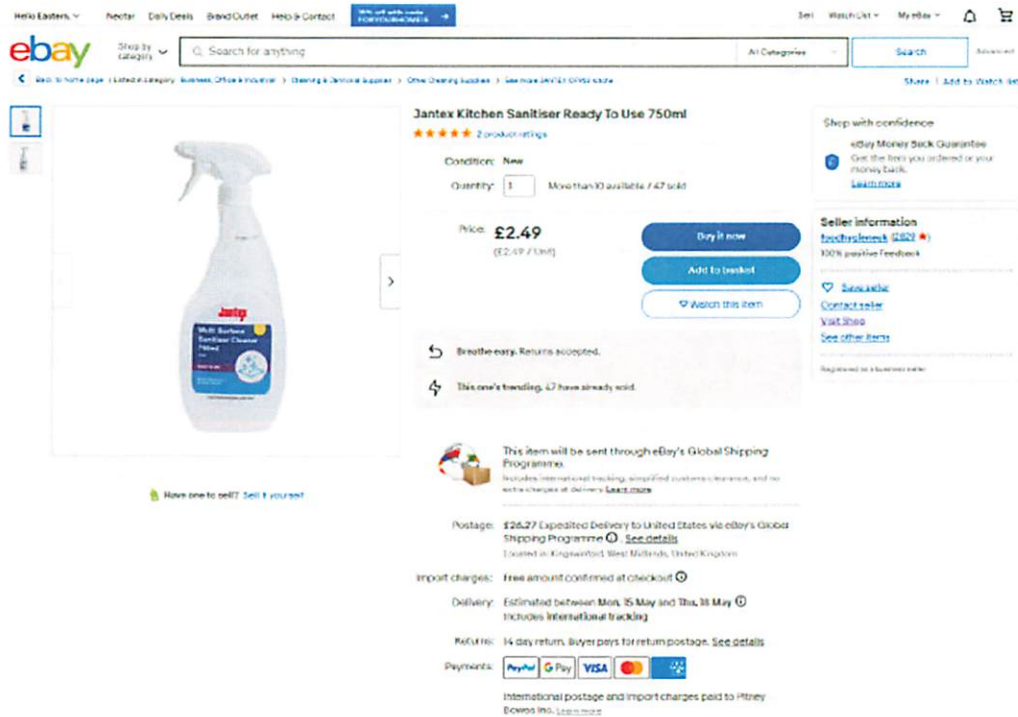
199. The listing for Elector PSP shows the registered pesticide container, alongside what appears to be a small aliquot (portion) of the product. The listing indicates the offer is for that 5 mL aliquot, which does not contain any of the labeling required by EPA Registration No. 72642-2.

200. The listing for Elector PSP indicates that 6 of the products are still available for sale and 1 has been sold.

201. As a further example, on May 10, 2023, a product named "Jantex Multi Surface Sanitiser [sic] Cleaner" was offered for sale on eBay.com.

202. eBay identified the product as Item Number 185299742498.

203. A screenshot of the listing for Jantex Multi Surface Sanitiser Cleaner is below:



204. Jantex Multi Surface Sanitiser Cleaner is not a registered pesticide with EPA.

205. On or around May 10, 2023, an investigator purchased Jantex Multi Surface Sanitiser Cleaner.

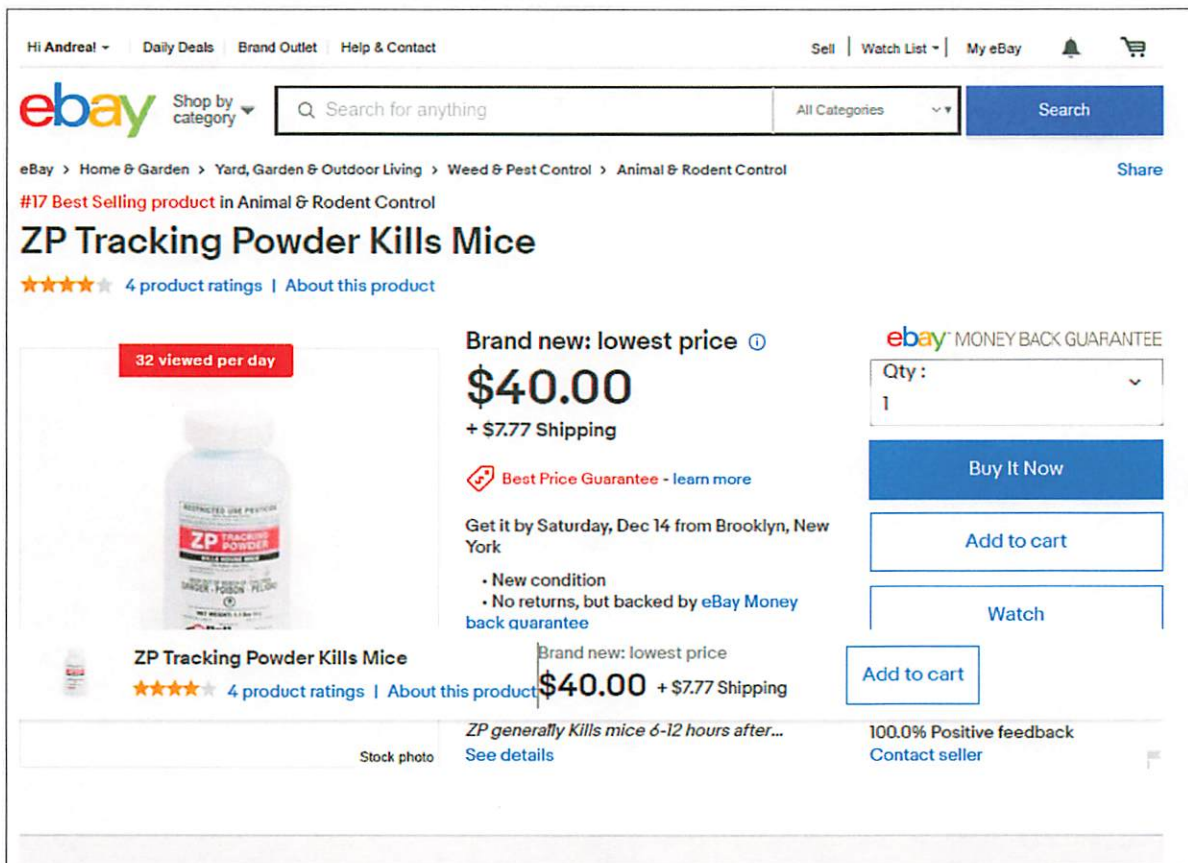
206. The investigator paid eBay \$37.65 at checkout for the Jantex Multi Surface Sanitiser Cleaner.

207. eBay assigned the transaction Order Number 06-09999-09363.

208. On or around May 10, 2023, eBay shipped Jantex Multi Surface Sanitiser Cleaner from eBay's Global Shipping Center in Lichfield, U.K. to the investigator in Chantilly, Virginia.

209. As another example, on December 9, 2019, a product named "ZP Tracking Powder" for killing mice was offered for sale on eBay.com. It was assigned an eBay Product ID number of 16033158243.

210. A screenshot of the offer is below:



211. The picture of the ZP Tracking Powder depicted a bottle with the words “Restricted Use Pesticide” and “Poison” on the label.

212. The listing for ZP Tracking Powder was available generally to anyone visiting eBay.com.

213. An investigator purchased the ZP Tracking Powder on eBay.com on or around December 11, 2019. That purchase was assigned an order number of 24-04278-61210. The investigator paid a total of \$50.17 for the product.

214. The investigator received the ZP Tracking Powder on December 16, 2019, at an address in Chantilly, Virginia. It was shipped via USPS Priority Mail from Brooklyn, N.Y. The shipping label included the phrase “a preferred shipping service on eBay.”

215. Neither eBay nor the merchant that listed the product asked the purchaser of the ZP Tracking Powder to verify that the customer was purchasing the product for application by a certified pesticide applicator.

216. ZP Tracking Powder was at that time, and still is, an actively registered restricted use pesticide.

217. On June 10, 2020, EPA issued a SSURO to eBay pursuant to FIFRA Section 13, 7 U.S.C. § 136k, ordering “eBay to immediately stop the distribution and sale of the pesticides listed in” attachments to the order. The June 10, 2020 SSURO also provided that the products identified in the attachments “shall not be used, sold, offered for sale, held for sale, shipped, delivered for shipment, received, or having so received, shall not be delivered, or offered for delivery.” Section 13(a) Order, Dkt. FIFRA-HQ-2020-5011 ¶¶ 69-70.

218. The pesticides subject to the June 10, 2020 SSURO included products named Virus Shut Out and Miraculous Insecticide Chalk.

219. Virus Shut Out is a chlorine dioxide-based “disinfection card” intended to be worn around users’ necks to protect them from SARS-CoV-2. Virus Shut Out is not registered with EPA.

220. Miraculous Insecticide Chalk is an unregistered pesticide product with unknown ingredients that appears like ordinary blackboard chalk when unpackaged. Samples analyzed have contained the insecticides deltamethrin and cypermethrin, both of which can cause serious harm to those exposed via multiple routes, including by touch (dermal), inhalation, and

ingestion. Children can easily mistake insecticidal chalk for blackboard chalk or put it in their mouths. *See* <https://www.epa.gov/safepestcontrol/avoid-illegal-household-pesticide-products>.

221. EPA review of products on eBay.com after issuance of the June 10, 2020 SSURO determined that eBay continued to list and sell numerous pesticides that were unregistered, misbranded, or classified as restricted use, including products specifically identified in the June 10, 2020 SSURO.

222. On July 16, 2021, EPA issued an amendment to the June 10, 2020 SSURO ordering the company to cease the distribution or sale of additional unregistered, misbranded, or restricted use pesticides, including 20 products that had been previously identified in the June 10, 2020 SSURO but which remained available for sale on eBay.com. The products included in the July 16, 2021 SSURO amendment included Virus Shut Out and Miraculous Insecticide Chalk.

223. The pesticide products subject to the July 16, 2021 SSURO amendment also included Sniper, a product no longer registered in the United States, with the active ingredient dichlorvos (also known as DDVP).

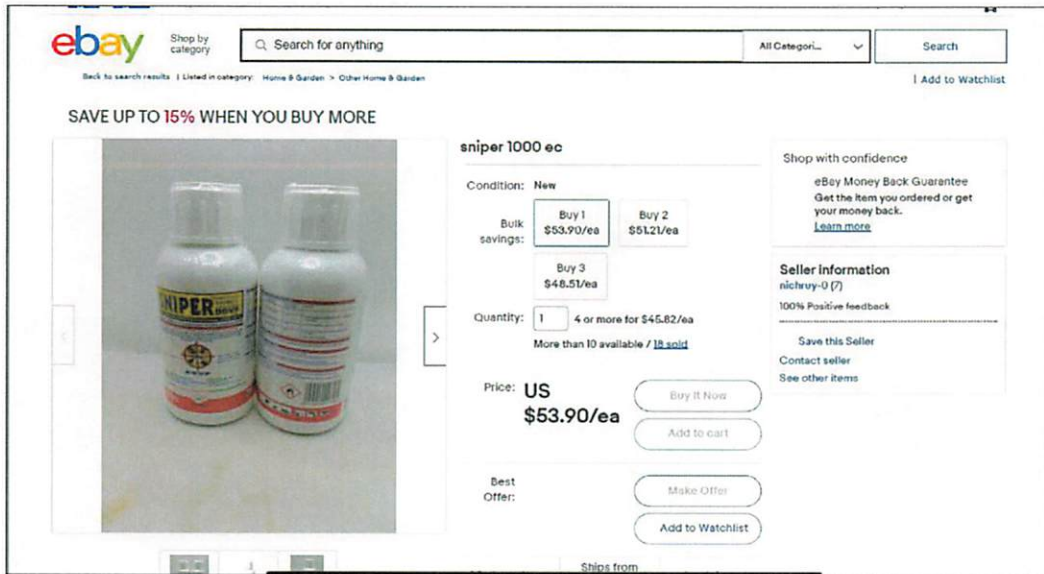
224. DDVP is an organophosphate insecticide subject to significant restrictions in the United States due to the dangers it presents to human health. EPA has issued several alerts to different audiences, including the general public, Customs and Border Patrol agents, and commercial flight crews, in order to make them aware of the risks posed by the illegal distribution of Sniper and other DDVP products. *See* <https://www.epa.gov/pesticides/ddvp-fact-sheets>.

225. An EPA review of products on eBay.com after issuance of the July 16, 2021 SSURO amendment determined that eBay continued to list and sell numerous pesticides that

were unregistered, misbranded, or classified as restricted use, including products specifically identified in the July 16, 2021 SSURO amendment.

226. For example, on September 27, 2021, Sniper was offered for sale on eBay.

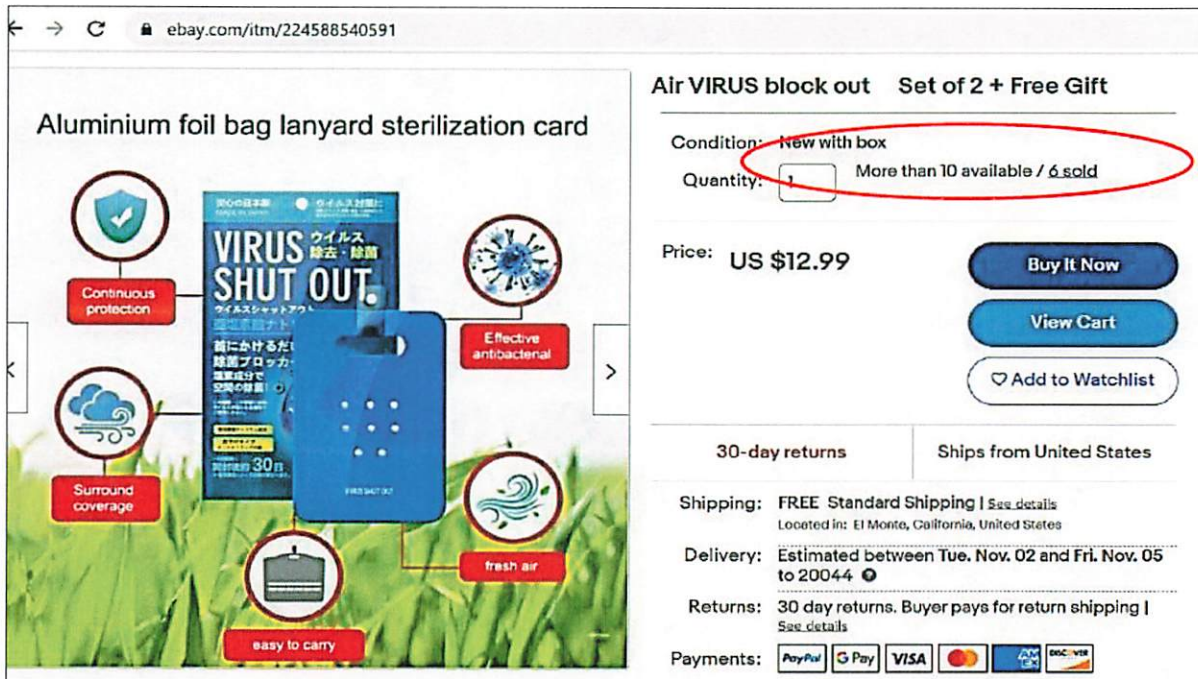
227. A screenshot of the offer is set forth below:



228. The Sniper listing indicates that at that time more than 10 units were still available and 18 had been sold.

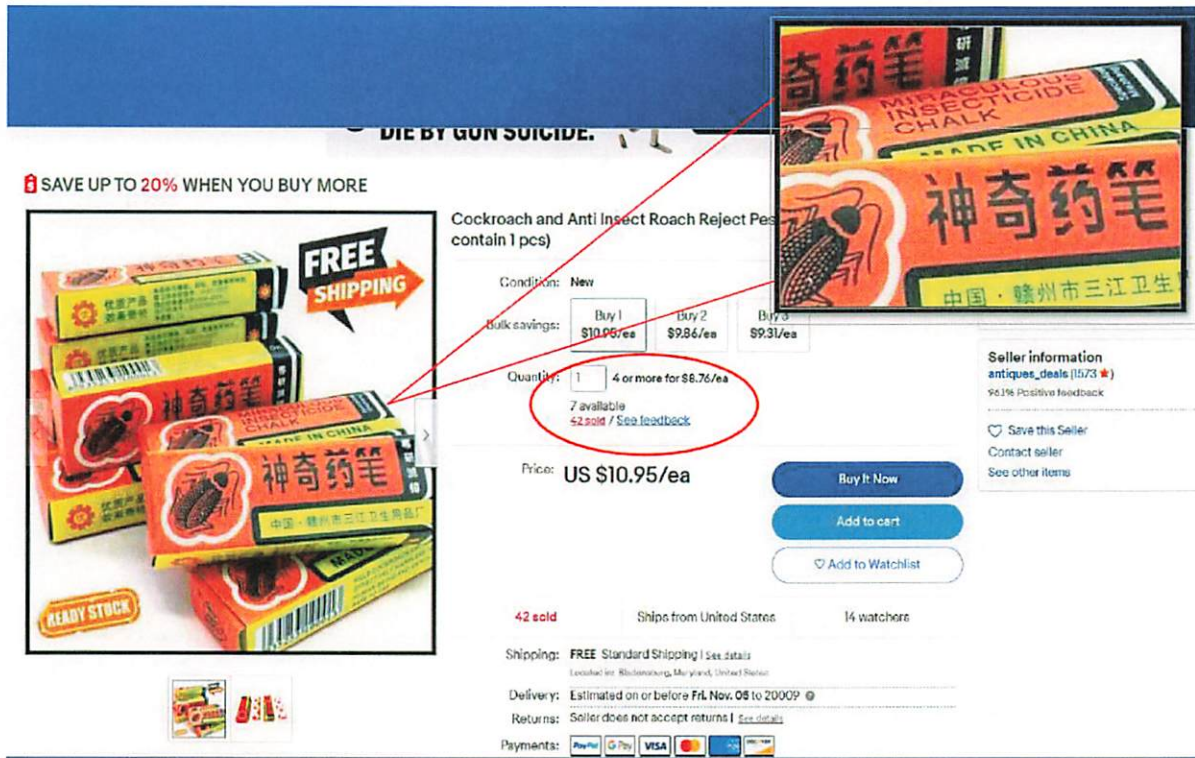
229. On October 26, 2021, Virus Shut Out was offered for sale on eBay.com.

230. A screenshot of the offer is set forth below, with text showing six of the items having been sold and more than 10 items still available circled in red:



231. On October 29, 2021, Miraculous Insecticide Chalk was offered for sale on eBay.com.

232. A screenshot of the offer is set forth below, which includes text indicating that 7 units were still available at that time and 42 had previously been sold:



233. Unregistered, misbranded, and/or restricted use pesticides continue to be sold and offered for sale by eBay.com, including products subject to the July 16, 2021 SSURO amendment. These include products with listings that are searchable by commonly-used terms such as “insecticide,” “pesticide,” and “roach powder.”

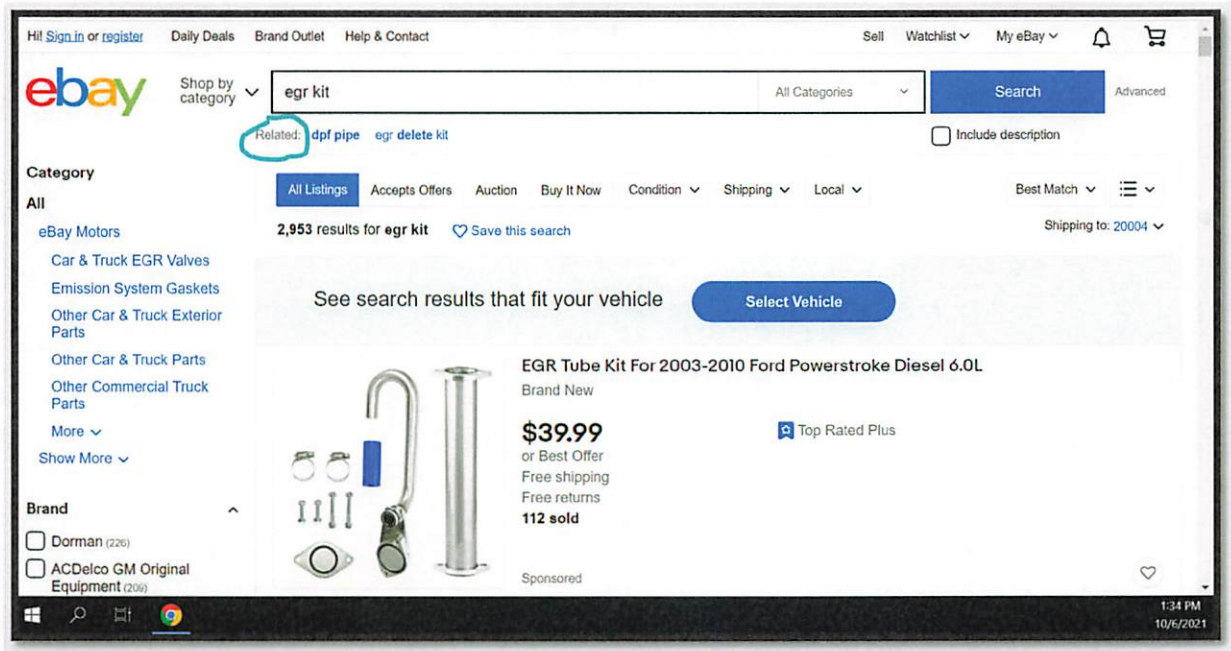
234. As recently as July 28, 2023, unregistered, misbranded, and/or restricted use pesticides were offered for sale on eBay.com.

F. eBay Promotes the Sale of Unlawful Products

235. eBay, through use of its sales algorithms, has promoted, encouraged, and induced the sale of, and on information and belief continues to promote, encourage, and induce the sale of products that may not be sold or distributed in commerce under the CAA, TSCA’s Methylene Chloride Rule, and FIFRA by including unlawful products in its search results and in suggestions of “related” products, “similar sponsored items,” products that “people who viewed this item

also purchased,” and “sponsored items based on your recent views”; sending emails to potential purchasers who have previously viewed unlawful products on the site urging them to return to eBay.com to purchase the item or a similar item that is also unlawful; and by sending potential customers coupons for unlawful products.

236. As one example, in the course of EPA’s investigation into eBay’s sale of unlawful Aftermarket Defeat Products, on October 6, 2021, an investigator searched eBay.com for an “egr kit,” which does not on its face suggest that an unlawful “egr delete kit” is sought. Screen shots of the result are below, with the word “related” circled for emphasis:



Check if this part fits your vehicle [Select Vehicle](#)

EGR Tube Kit For 2003-2010 Ford Powerstroke Diesel 6.0L

▲ 9 sold in last 24 hours

Condition: **New**
Compatibility: [See compatible vehicles](#)
Quantity: More than 10 available / **112 sold**

Price: **US \$39.99**

Best Offer:

2-year protection plan from SquareTrade - \$5.99
 10 minute call for repair assistance with a certified technician - \$14.95

112 sold Free shipping and returns More than 84% sold

Shipping: **FREE** Standard Shipping | [See details](#)
Location: Indiana, Kentucky, United States

Delivery: Estimated on or before **Wed, Oct. 18** to 20004 ©

Returns: Free 30 day returns | [See details](#)

Payments:

PayPal CREDIT
Special financing available. | [See terms and apply now](#)

Shop with confidence

Top Rated Plus
Trusted seller, fast shipping, and easy returns.
[Learn more](#)

eBay Money Back Guarantee
Get the item you ordered or get your money back.
[Learn more](#)

Seller information
Performance (150 #)
93.1% Positive feedback

Save this Seller
Contact seller
See other items

Ads by Google
[Stop seeing this ad](#)
Why this ad? ▶

1:37 PM
10/6/2021

Similar sponsored items

<p>6.0L Powerstroke Diesel EGR Complete Kit For 2003-2007 Ford... New \$50.69 Free shipping</p>	<p>Complete EGR Kit For 03-10 Ford 6.0L Powerstroke Diesel New \$40.99 Free shipping Top Rated Plus 29 sold</p>	<p>Complete EGR Kit For 2003-2010 Ford 6.0L Powerstroke Diesel New \$49.99 Free shipping Top Rated Plus</p>	<p>For 08-10 Ford 6.4L Powerstroke Diesel EGR Valve Cooler Kit Intake Elbow New \$48.69 Free shipping</p>	<p>6.0L Powerstroke Diesel EGR Kit For 2003-2010 Ford New \$43.99 Free shipping Top Rated Plus</p>	<p>6.0L Kit I New \$7 Free Sell</p>
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Sponsored items from this seller

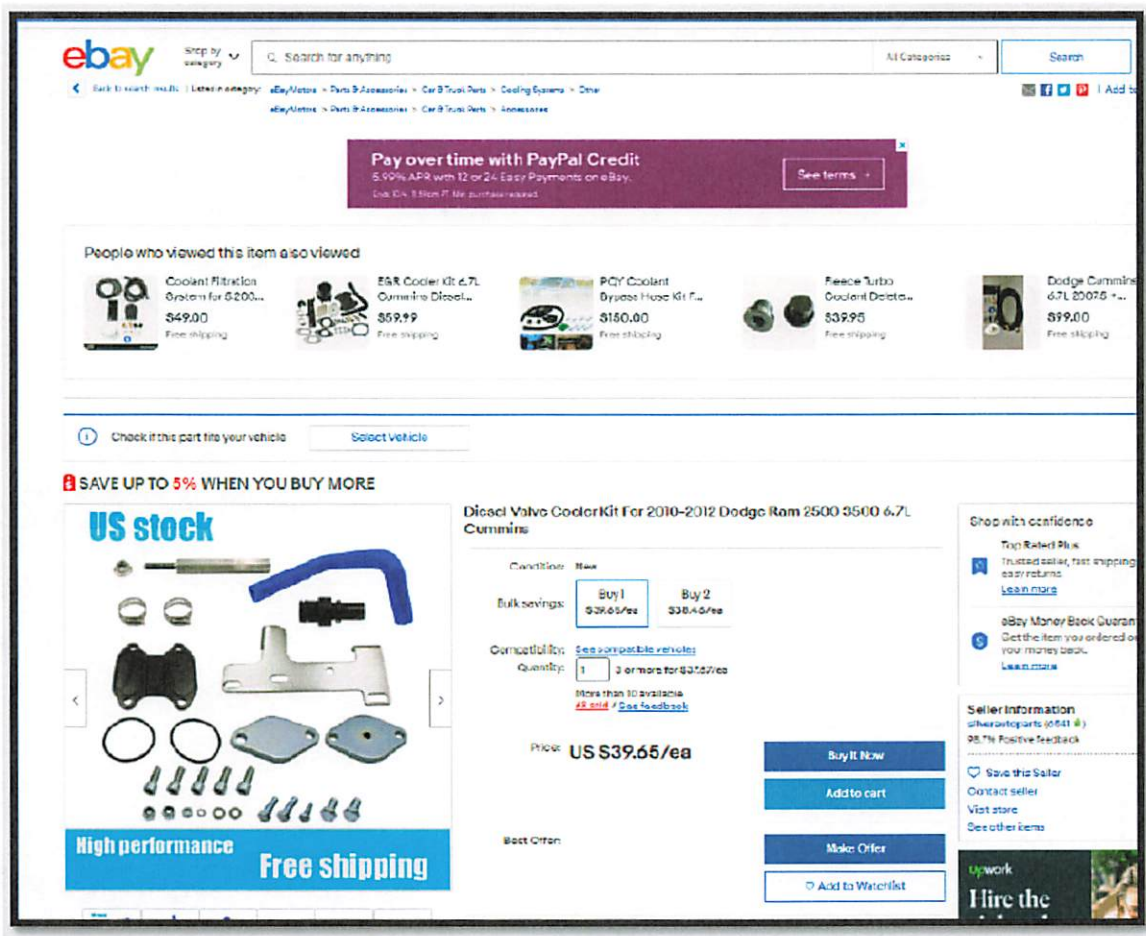
<p>6.0L Powerstroke Diesel EGR Kit For 2003-2010 Ford</p>	<p>Complete EGR Kit For 2003-2010 Ford 6.0L Powerstroke Diesel</p>	<p>Complete EGR Kit For 03-10 Ford 6.0L Powerstroke Diesel</p>	<p>6.0L Powerstroke Diesel Complete EGR Kit For 2003-2010 Ford</p>	<p>For Ford 2011-2019 6.7L Powerstroke Diesel EGR Kit Black</p>	<p>6.7L Kit 201</p>
------------------------------------------------------------------	---------------------------------------------------------------------------	-----------------------------------------------------------------------	---------------------------------------------------------------------------	------------------------------------------------------------------------	----------------------------

1:38 PM
10/6/2021

237. Presented with a search for an “egr kit” shown in the previous paragraph, the eBay algorithm not only returned an unlawful product, but also “understood” that the buyer was

likely searching for an unlawful “egr delete kit,” which it identified as a “related search” for such products. The eBay algorithm also prompted buyers towards “Similar sponsored items” and “Sponsored items from this seller” which included various EGR delete kit products without identifying them as such.

238. On October 4, 2021, in the course of EPA’s investigation into eBay’s sale of unlawful Aftermarket Defeat Products, an investigator viewed a product listing for “Diesel Valve Cooler Kit 2010-2012 Dodge Ram 2500 3500 6.7L Cummins.” A screenshot of the listing is below:



239. Along with the product listing, eBay displayed five additional products under the headline “People who viewed this item also viewed.” Two of these items were unlawful products.

240. eBay also will display and prompt buyers toward “Sponsored items based on your recent views” that contain unlawful products. As an example, in the course of EPA’s investigation into eBay’s sale of unregistered, misbranded, or restricted use pesticides, an investigator viewed a product called an “Air sterilization card.” Along with the product listing itself, eBay displayed six products under the headline “Sponsored items based on your recent views.” Three of the items were unregistered pesticides. A screenshot of this example is below (with the unregistered pesticides circled in red):


eBay item number: 193723044254

Seller assumes all responsibility for this listing.
 Last updated on Jan 08, 2021 10:29:48 PST [View all revisions](#)


Item specifics	
Condition:	New with box: A brand-new, unused, and unworn item (including handmade items) in the original packaging (such as ... Read more)
Brand:	Unbranded
Model:	Sterilization
Type:	Lanyard Protection Card
UPC:	Does not apply

Product name: Air sterilization card
 100 % brand new
 Authentic Japan import
 Suitable for variety of locations such as work, school and public transportation
 Small size, easy to carry (lanyard)
 Stay in power up to 30 days after opening


Sponsored items based on your recent views 1/2




Cleverin Spray 300ml
Removing bacteria Virus...
\$50.00




3X Dettol Multi-Purpose
Disinfectant Spray For...
\$20.99




Sterilization Pouches
Bags Portable Air...
\$12.88



Cleverin Spray 60ml
Removing bacteria Virus...
\$42.00



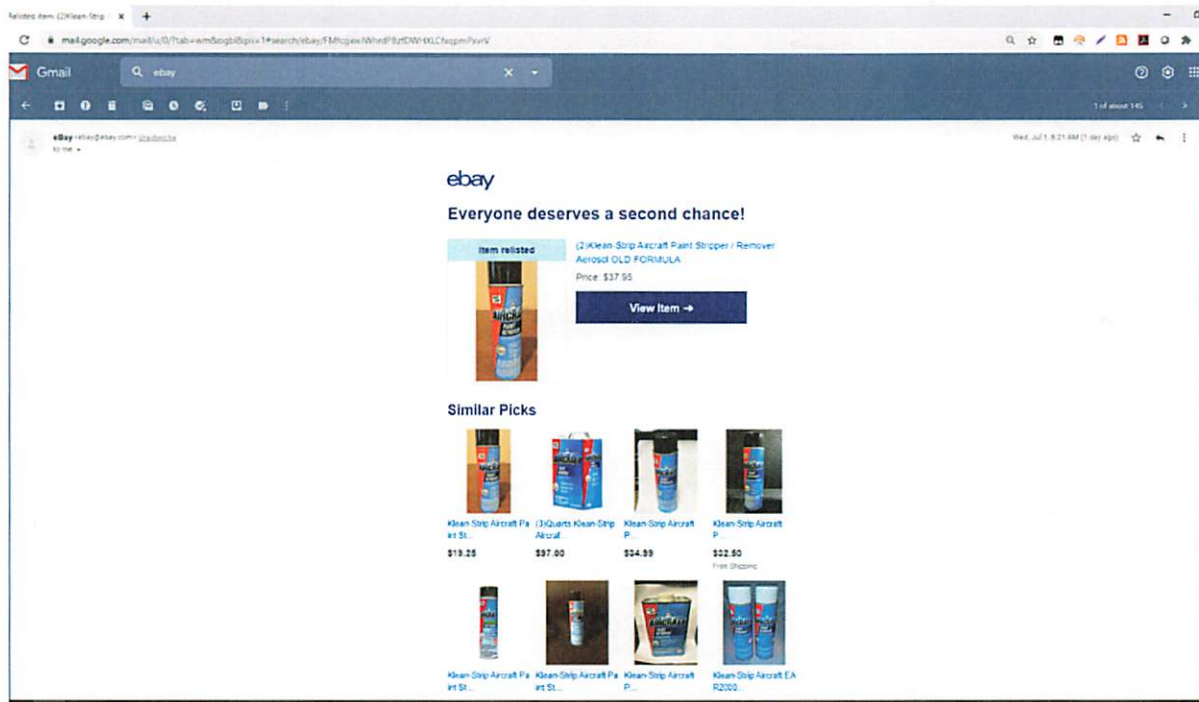
Quickle Joan Spray
300ml+Refill 250ml...
\$55.00



Ortel Safe & Healthy
Powerful UV-C Disinfect...
\$10.00

Feedback on our suggestions

241. eBay sends targeted emails to potential buyers of unlawful products, urging them to purchase such products based on prior searching, viewing, and/or purchasing history. As an example, in the course of EPA’s investigation into eBay’s sale of products containing methylene chloride, an investigator viewed a product listing for “(2) Klean-Strip Aircraft Paint Stripper/Remover Aerosol OLD FORMULA” on eBay.com. Some time after the investigator left the site, eBay sent an email noting that the item was relisted. The email also identified and encouraged the purchase of eight “Similar Picks.” Seven of the “Similar Picks” were products containing methylene chloride. A screenshot of the email is below:



242. As another example, in the course of EPA’s investigation into eBay’s sale of unregistered, misbranded, or restricted use pesticides, an investigator placed several misbranded and/or unregistered pesticide products in an eBay.com shopping cart but did not purchase them.

After the investigator left the site, eBay sent an email, noting that the investigator had “forgot something,” listing the items that were still in the cart, and inviting the investigator to “Go to the cart.” The email went on to identify and suggest “Similar items you may be interested in.” A screenshot of the email is below, with the relevant information in enlarged boxes:



243. eBay also uses coupons to induce the purchase of illegal products on its site. For example, eBay sent the following email with a \$5 eBay coupon to a potential buyer that had previously viewed a 2008-2010 Ford Powerstroke EGR Delete DPF Delete Tuner:

From: eBay <eBay@eBay.com>
Sent: Tuesday, December 10, 2019 4:52 PM
To: [REDACTED]
Subject: \$5.00 coupon: 2008-2010 FORD 6.4 POWERSTROK... is hot. Get it before it sells out.
Brent



This is a must-have! **29 watchers** but only **5 left.**



Use your coupon to get **\$5.00 off!**

Code: YUS1NUCV57ZNDLQM. Ends Dec 14, 2019. [T&Cs apply.](#)*

You recently viewed

2008-2010 FORD 6.4 POWERSTROKE EGR DELETE DPF DELETE TUNER COMPETITION RACE



6.4-6.7 POWERSTROKE PRE-LOADED

[View item](#)

You may also like these



Ford Powerstroke 6.4 2008-201...



Competition Off Road 1 tune w...



Competition Off Road Race Sin...



6.4-6.7 POWERSTROKE PRE-LOADED

2008-2016 FORD 6.4 6.7...

244. After a transaction for an unlawful product is completed, eBay may induce additional sales of unlawful products by offering promotions for other unlawful products on the order confirmation, including 1) a list of other such products in a similar price range, 2) a list of “Related sponsored items,” 3) a list of products “Related to a recent purchase,” and/or 4) a list of “Recently viewed items.”

FIRST CLAIM FOR RELIEF

Violations for Sale of Aftermarket Defeat Products

245. The United States re-alleges Paragraphs 1 - 244 above as fully set forth herein.

246. From at least January 1, 2017 to September 3, 2020, eBay sold, offered for sale, and/or caused the sale or offer for sale of at least 343,011 Aftermarket Defeat Products.

247. Among the Aftermarket Defeat Products that eBay sold, offered for sale, and/or caused the sale or offer for sale of were the Ford Powerstroke 6.4 2008-2010 EGR DPF Delete Kit X4 7015 Race Tuner Programmer referenced in Paragraph 148 and the 2011-2019 Ford 6.7 EGR Delete DPF Delete Kit Package Competition Tuner referenced in Paragraph 152.

248. Each Aftermarket Defeat Product that eBay has sold, offered for sale, and/or caused the sale or offer for sale of, including the Ford Powerstroke 6.4 2008-2010 EGR DPF Delete Kit X4 7015 Race Tuner Programmer referenced in Paragraph 148 and the 2011-2019 Ford 6.7 EGR Delete DPF Delete Kit Package Competition Tuner referenced in Paragraph 152, is intended for use with certified motor vehicles and motor vehicle engines.

249. A principal effect of each Aftermarket Defeat Product eBay has sold, offered for sale, and/or caused the sale or offer for sale of, including the Ford Powerstroke 6.4 2008-2010 EGR DPF Delete Kit X4 7015 Race Tuner Programmer identified in Paragraph 148 and the 2011-2019 Ford 6.7 EGR Delete DPF Delete Kit Package Competition Tuner identified in Paragraph

152, is to disable, defeat, or render inoperative Emission-Related Elements of Design installed on or in motor vehicles or motor vehicle engines in compliance with Title II of the CAA.

250. eBay knew or should have known that the Aftermarket Defeat Products it has sold, offered for sale, and/or caused the sale or offer for sale of, including the Ford Powerstroke 6.4 2008-2010 EGR DPF Delete Kit X4 7015 Race Tuner Programmer referenced in Paragraph 148 and the 2011-2019 Ford 6.7 EGR Delete DPF Delete Kit Package Competition Tuner referenced in Paragraph 152, would be installed for the use or put to the use of bypassing, defeating, or rendering inoperative devices or elements of design that control emissions of regulated air pollutants installed on or in motor vehicles or motor vehicle engines in compliance with Title II of the CAA.

251. Each unit of the Aftermarket Defeat Products that eBay has sold, offered for sale, and/or caused the sale or offer for sale of is a separate violation of Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B). 42 U.S.C. § 7524(a).

252. Unless enjoined, eBay is likely to continue to sell, offer for sale, and/or cause the sale or offer for sale of Aftermarket Defeat Products.

253. eBay is liable to the United States for injunctive relief and civil penalties of up to \$5,580 for each violation of Section 203(a)(3)(B) occurring after November 2, 2015, and assessed on or after January 6, 2023, in accordance with Sections 204(a) and 205(a) of the CAA, 42 U.S.C. §§ 7523(a) and 7524(a). 40 C.F.R. § 19.4 (2022).

SECOND CLAIM FOR RELIEF

Violations of the TSCA Methylene Chloride Rule

254. The United States re-alleges Paragraphs 1 - 253 above as fully set forth herein.

255. eBay is a “retailer” within the meaning of the definition in the Methylene Chloride Rule, 40 C.F.R. § 751.103.

256. From at least November 23, 2019, to the present day, eBay “distributed in commerce” as defined in the Section 3 of TSCA, 15 U.S.C. § 2602, at least 5,614 methylene chloride-containing products for paint and coating removal.

257. Among the methylene chloride-containing products eBay distributed in commerce was Klean-Strip Aircraft (OLD FORMULA) Chloride Paint Remover referenced in Paragraph 181 and Formby’s Furniture Wood Formula Paint & Poly Remover referenced in Paragraph 188 above.

258. Each instance of eBay’s distribution in commerce of methylene chloride-containing products for paint and coating removal constitutes a violation of the Methylene Chloride Rule and Section 15(1) of TSCA, 15 U.S.C. § 2614(1).

259. Unless enjoined, eBay is likely to continue to violate the Methylene Chloride Rule and Section 15(1) of TSCA, 15 U.S.C. § 2614(1).

THIRD CLAIM FOR RELIEF

Violations of FIFRA Related to the Unlawful Sale of Pesticides

260. The United States re-alleges Paragraphs 1 - 259 above as fully set forth herein.

261. Since 2016, eBay “distributed or sold,” as defined in 7 U.S.C. § 136(gg), at least 23,000 unregistered, misbranded, or restricted use pesticides.

262. On information and belief, none of the restricted use pesticides sold during this time period were sold by eBay exclusively for use by a certified applicator or for use by a person under the direct supervision of a certified applicator.

263. Among the unregistered, misbranded, or restricted use pesticides eBay distributed or sold (including offered for sale) are Elector PSG, ZP Tracking Powder, Sniper, Virus Shut Out, and Miraculous Insecticide Chalk, referenced in Paragraphs 196, 209, 226, 229, and 231, respectively.

264. Each instance of eBay's distribution or sale (including offer for sale) of unregistered, misbranded, or restricted use pesticides constitutes a violation of FIFRA. 7 U.S.C. § 136a(a); 7 U.S.C. § 136j(a)(1)(A), (a)(1)(E), (a)(1)(F).

265. eBay continues to distribute or sell (including offer for sale) unregistered, misbranded, or restricted use pesticides in violation of FIFRA.

266. eBay is liable to the United States for injunctive relief to enforce, prevent, or restrain further violations of Sections 12(a)(1)(A), (a)(1)(E), and (a)(2)(F) of FIFRA. 7 U.S.C. § 136n(c).

FOURTH CLAIM FOR RELIEF

Violations of the SSUROs EPA Issued Pursuant to FIFRA

267. The United States re-alleges Paragraphs 1 - 266 above as fully set forth herein.

268. eBay "owns, controls, or has custody of" pesticides that are distributed and sold on its website within the meaning of 7 U.S.C. § 136k.

269. Between June 10, 2020 and the present, eBay distributed or sold (including the offer for sale) unregistered, misbranded, or restricted use pesticides identified in the June 10, 2020 SSURO and/or the July 16, 2021 SSURO amendment on at least 8,074 occasions.

270. Among the unregistered, misbranded, or restricted use pesticides that eBay distributed or sold (including offered for sale) that were identified in the June 10, 2020 SSURO

and/or the July 16, 2021 SSURO amendment were the Virus Shut Out, Miraculous Insecticide Chalk, and Sniper products referenced in Paragraphs 229, 231, and 226.

271. eBay continues to distribute or sell (including offer for sale) unregistered, misbranded, or restricted use pesticides, including products identified in the June 10, 2020 SSURO and/or July 16, 2021 SSURO amendment.

272. Each distribution or sale of a product identified in the June 10, 2020 SSURO or the July 16, 2021 SSURO amendment is a separate violation of Sections 12(a)(2)(I) and 13 of FIFRA, 7 U.S.C. §§ 136j(a)(2)(I), 136k.

273. Pursuant to Section 16n(c) of FIFRA, 7 U.S.C. § 136n(c), eBay is liable to the United States for injunctive relief to enforce, prevent, or restrain further violations of the June 10, 2020 SSURO, the July 16, 2021 SSURO amendment, and Sections 12(a)(2)(I) and 13 of FIFRA.

RELIEF REQUESTED

WHEREFORE, the United States respectfully requests that this Court:

A. Rule that eBay (1) sold, offered to sell, or caused the sale or offer to sell of Automotive Defeat Products in violation of Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), (2) distributed in commerce methylene chloride, including any methylene chloride-containing products, for paint and coating removal in violation of Section 15(1) of TSCA, 15 U.S.C. § 2614(1) and the Methylene Chloride Rule, 40 C.F.R. § 751.105(c), and (3) distributed or sold, including offered for sale, unregistered, misbranded, and restricted use pesticides, including pesticides subject to June 10, 2020 SSURO and the July 16, 2021 SSURO amendment, in violation of 7 U.S.C. §§ 136j and 136k.

B. Assess civil penalties against eBay for its violations of Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), in an amount up to \$5,580 for each violation.

C. Permanently enjoin eBay from (1) selling, offering to sell, or causing the sale or offering for sale of, vehicle parts or components intended for use with a motor vehicle or motor vehicle engine where a principal effect of such part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine to comply with Title II of the CAA; (2) distributing in commerce methylene chloride and methylene chloride-containing products in violation of the TSCA Methylene Chloride Rule; and (3) distributing or selling, including offering for sale, any pesticide that is unregistered or misbranded, and any restricted use pesticide in violation of FIFRA requirements, including pesticides subject to the June 10, 2020 SSURO and the July 16, 2021 SSURO amendment.

D. Order eBay to take other appropriate actions to remedy, mitigate, and offset the harm caused by its CAA, TSCA, and FIFRA violations;

E. Award the United States its costs and disbursements in this action; and

F. Award such other and further relief as the Court may deem just and proper.

Dated: Brooklyn, New York
September 27, 2023

Respectfully submitted,

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