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June 13, 2022

Chair Lina M. Khan
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Chair Khan:

As the baby formula shortage continues, families across the nation are desperately scrambling to find formula for their children.¹ Unfortunately, some vendors are taking advantage of the current crisis by either price-gouging formula or scamming desperate families into paying for baby formula that they will never receive.² To address this critical issue, we write to urge the Federal Trade Commission (FTC) to issue a public advisory to encourage online marketplaces such as Facebook, eBay, and Amazon to implement measures to detect and prevent exploitative and deceptive practices by third-party vendors selling formula. We also believe it is important for the FTC to highlight that it will use its authority to enforce federal consumer protection laws in order prevent fraud, deception, and unfair business practices.

We appreciate the FTC's May 24, 2022, announcement that it will open an inquiry into the formula shortage.³ We request that the FTC complement its ongoing efforts by also addressing actions that deceive, exploit, or scam families trying to buy formula on online secondary markets. These online marketplaces and the third-party vendors that use them are a substantial secondary market for formula, and they should not be allowed to fly under the radar. While the steps outlined in the FTC's announcement last month are encouraging, we request that the FTC additionally emphasize that online marketplaces can and should make efforts to protect users from price gougers and scammers. There are common-sense measures that online marketplaces can take to prevent fraud and unfair business practices, and it should not be solely the burden of consumers to uncover such deception.

¹ *A Baby Formula Shortage Leaves Desperate Parents Searching for Food*, New York Times (May 10, 2022).

² *Parents Are Grappling With An 'Impossible' Baby Formula Shortage*, Boston Globe (May 12, 2022); Federal Trade Commission, *Not Enough Baby Formula Means Plenty of Scammers* (May 18, 2022) (press release).

³ Federal Trade Commission, *Federal Trade Commission Launches Inquiry into Infant Formula Crisis* (May 24, 2022) (press release).

Third-party vendors that use online marketplaces often face little to no consequences for deceptive practices and as such, often have little to no incentive to act fairly towards consumers. Recent reporting has indicated, for example, that vendors on eBay are selling formula for almost double the price the formula is sold for in stores⁴ and that vendors on Facebook are selling product that does not exist.⁵ In one egregious example, a consumer paid \$300 for formula and, after receiving payment, the Facebook vendor disappeared without shipping any formula to the consumer.⁶ Vendors must not be allowed to take advantage of this national crisis by selling products at unreasonable prices or, even worse, committing outright scams by taking consumers' money without providing products.

As the formula shortage continues,⁷ it is critically important for online marketplaces to take appropriate, common-sense measures to prevent price-gouging and scamming by vendors. These marketplaces must use all the tools and resources at their disposal to prevent, identify, and eliminate scams and exploitative pricing of formula. The marketplaces should also be strengthening their policies against such harmful behavior and implementing automated tools where appropriate to identify this activity and protect consumers. Then, in instances where vendors violate the law, the FTC should bring swift enforcement actions against those companies.

We believe that online marketplaces' price gouging and anti-fraud policies are clearly inadequate to stop the predatory behavior of some vendors. Therefore, we urge the FTC to encourage online marketplaces to better protect consumers during the formula shortage and to take action against those who violate the law. We also request that the FTC take swift action to show that such abusive tactics will not be tolerated and that online marketplaces must do more to protect consumers, consistent with applicable law and regulation.

We appreciate your continued work on this crisis and hope you will take these additional steps to help protect families across the nation.

Sincerely,



ROBERT C. "BOBBY" SCOTT
Chairman
Committee on Education and Labor



FRANK PALLONE, JR.
Chairman
Committee on Energy and Commerce

⁴ *Baby Formula Shortage Forces Connecticut Mothers to Go To The Extreme*, NBC Connecticut (Apr. 27, 2022).

⁵ *Scammers Taking Advantage of Baby Formula Shortage*, WRBC (May 11, 2022).

⁶ *Id.*

⁷ *A Major Baby Formula Plant Is Reopening. But a Real Solution to the Supply Shortage Is Still Months Away*, Fortune (May 17, 2022).