

May 23, 2016

The Honorable Michael Burgess
Chairman, Subcommittee on Commerce,
Manufacturing and Trade
United States House of Representatives
Washington, DC 20515

The Honorable Jan Schakowsky
Ranking Member, Subcommittee on Commerce,
Manufacturing and Trade
United States House of Representatives
Washington, DC 20515

Re: H.R. 4460, Youth Sports Concussion Act

Dear Chairman Burgess and Ranking Member Schakowsky:

On behalf of the undersigned organizations, representing manufacturers, wholesalers, retailers, advertisers and other companies spanning America's product supply chain, we are writing to express our significant concerns with the *Youth Sports Concussion Act* (H.R. 4460) as currently drafted. While we appreciate and support the goal of Subcommittee members who wish to address the important issue of youth sports concussions, we do not believe this bill accomplishes that goal. **Rather, H.R. 4460 would create strict liability for *all* businesses in the chain of commerce and unfairly penalize them through federal and state actions for the deceptive safety claims made by other parties on *any* product for sale, whether related to concussions or not.** The bill also significantly expands the authority of the Federal Trade Commission (FTC) without any guidance or limitation on its power to regulate or fine *every* person in the supply chain who handles products with safety claims.

The scope of H.R. 4460, and the vast array of products to which it would apply, is truly breathtaking. Instead of being focused on youth sports equipment that prevents concussions, as the bill's short title implies, H.R. 4460 would instead apply to *any* claim of safety benefits for *any* item that a manufacturer, importer, wholesaler, retailer or consumer may sell. The sheer breadth of the potential products covered by this broad language would include apparel, footwear, sports drinks, sunscreen, UV-protective sunglasses, children's toys and any other product sold with a safety claim.

Furthermore, H.R. 4460 would hold any of these sellers *liable*, and subject to fines and government action, for the claims made by other parties about the protective capabilities of a product. Businesses that stock and sell products in the chain of commerce are not in a position to determine if the scientific evidence used by a manufacturer to substantiate safety claims on a particular item is reasonable or valid, or would be considered to be so after-the-fact by the Federal Trade Commission or a State attorney general. The bill would saddle these businesses with an unprecedented level of potential legal liability for products with pre-marked packaging that they merely sell, and in which the seller made no separate, affirmative claim on behalf of a manufacturer. As such, the bill would overturn existing and established standards for deceptive claims under U.S. law.

The bill also expands the authority of the FTC by granting unbounded rulemaking authority to establish *any* regulations it considers to be appropriate, even if those regulations exceed the FTC's current doctrines for substantiating product claims. The bill would also go beyond the authority granted under Section 5 of the FTC Act in authorizing the Commission to fine businesses in the first instance, when it makes an after-the-fact determination about a deceptive claim. It is likely that this legal framework would force many sellers to determine that the potential liability and business risk of

selling protective items exceeds the benefit of selling them in the first place, and they would be unable to continue operations in which such products were sold. By potentially reducing the number of concussion-reducing products in the market place, among other items, the bill could actually work against the bill sponsors' interest in promoting safer youth sporting equipment.

Given the breadth and the significance of the potential unintended consequences of this legislation, we urge Subcommittee members to refrain from marking up this bill until it can be revised to narrow the bill's focus to its stated purpose and eliminate the many unintended consequences discussed above. We look forward to working with you and the members of the Subcommittee to produce legislation that promotes the underlying public policy goal of reducing deceptive claims for products designed to reduce concussions for children playing youth sports.

Sincerely,

American Apparel & Footwear Association
Food Marketing Institute
Footwear Distributors and Retailers of America
National Association of Convenience Stores
National Association of Wholesaler-Distributors
National Grocers Association
National Retail Federation
National Sporting Goods Association
Outdoor Industry Association
Society of Independent Gasoline Marketers of America
United States Fashion Industry Association

cc: The Honorable Fred Upton
The Honorable Frank Pallone
Members of the Committee on Energy and Commerce