

Hearing on
H.R. 6491, The Organized Retail Crime Act and
H.R. 6713, The E-Fencing Enforcement Act

Before the House Judiciary Committee
Subcommittee on Crime, Terrorism
And Homeland Security

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INTRODUCTION

Chairman Scott, Ranking Member Gohmert, and members of the Subcommittee, good afternoon. Thank you for the opportunity to testify before you today on the growing problem of organized retail crime. My name is Joseph LaRocca and I am the Vice President of Loss Prevention with the National Retail Federation. Based in Washington D.C., our membership comprises all retail formats and channels of distribution. As the industry umbrella group, NRF also represents more than 100 state, national and international retail associations. I work closely with retail organizations, as well federal, state, and local law enforcement officials across the country. Prior to joining the Federation in 2005, I spent 18 years working in retail loss prevention witnessing these crimes and their impact first hand. I am here today testifying on behalf of the National Retail Federation and the larger Coalition Against Organized Retail Crime in support of H.R. 6713, the “E-fencing Enforcement Act of 2008” and H.R. 6491, the “Organized Retail Crime Act of 2008.”

As we have heard, Organized Retail Crime refers to the growing problem of professional shoplifters who engage in illegally obtaining retail merchandise or gift cards through both theft and fraud in substantial quantities and as part of a criminal commercial enterprise. Some of the more sophisticated criminals even engage in changing the UPC bar codes on merchandise so they ring up differently at check-out. This is commonly called “ticket switching.” Others use stolen or cloned credit cards and gift cards to obtain merchandise. Yet others steal merchandise with the express intent of returning it to stores for cash or credit (most often in the form of gift cards). Stolen merchandise is resold through illegal street vendors, pawn shops, flea markets, the Internet, and even large scale distribution networks. Due to these black-market operations, state and local sales tax is not collected and, in the case of returns fraud, can actually diminish general fund holdings.

HIGH-PROFILE CASES ILLUSTRATE THE SERIOUS NATURE OF ORC

In 2005, Operation Blackbird, as Texas investigators dubbed their multi-state baby-formula investigation, led to felony charges against more than 40 suspects; about half of those were illegal immigrants. Authorities seized some \$2.7 million in stolen assets, including \$1 million worth of formula.

Sherriff Grady Judd from Polk County Florida will discuss his case, announced in January, in which \$60-100 million in product was stolen from retailers and resold, primarily through the Internet.

This May (2008) in New Jersey, one of the highest-ranking officers in the Gambino crime family was arrested and indicted along with 23 reputed crime family members and associates. A 30-count indictment that was unsealed in Newark alleges a variety of schemes, including forging bar codes to obtain electronics equipment from big box stores at extremely low prices, and making those purchases with credit cards obtained using stolen identities.

In June, a joint task force of federal agents and the San Jose Police Department conducted a series of raids and arrested 17 members of two crime families they say employed hundreds of shoplifters to steal from stores, including Safeway, Wal-Mart, Walgreens, Longs Drugs, Save-Mart and Target. The stolen loot was resold for millions of dollars from homes, store fronts and flea markets, authorities said.

These important investigations rely upon the ongoing partnership between law enforcement and the retail sector. The successful take down and prosecution of these theft rings is a positive development, but more needs to be done on the federal level because the problem is growing and these theft rings are becoming more aggressive and violent in their behavior. In fact, in the Texas case, hits were put out on the federal investigators involved in the infiltration of that gang. To bring it to an even more troubling conclusion, the proceeds from the crime were eventually traced back to the terrorist group Hamas. To put it

succinctly, baby formula theft was funding assassination plots and international terrorism.

These are just a few extreme examples. However according to NRF's National ORC Survey released on June 4, 85 percent of retailers surveyed report being victims of ORC and 66 percent saw increases in ORC activity last year. Precise measurements of the true scope of this problem are difficult to determine given the inherently secretive nature of these criminal operators. However, according to one prominent study, industry-wide retail fraud and theft losses amount to over \$30 billion a year. When compared to other property crimes across the country, according to the FBI's Uniform Crime Report in 2006, retail losses are *double* those from robbery, burglary, larceny, and auto thefts *combined* (\$16.9 billion) nationwide.

Most disturbing is the fact this type of criminal activity can put consumer's health and safety at risk. For example, consumers are potentially at risk when professional shoplifting rings steal consumable products, such as over-the-counter medications and infant formula. Pilfered products may not be kept under ideal or required storage conditions which can threaten the product's integrity. And often times these organized thieves will repackage and re-label stolen products to falsely extend the product's expiration date or to disguise the fact that the merchandise has been stolen.

THE INCREASED USE OF INTERNET AUCTIONS TO DISPOSE OF STOLEN GOODS

Dishonest people have quickly learned the Internet presents a low risk way to sell stolen goods, primarily due to its anonymous nature. They are surfing the web and learning about the limitless opportunities offered by auction sites. Criminals are even setting up their own sites and enabling "secure" customer payments through tools offered by companies such as PayPal and Yahoo! Checkout. In the past, these same people were selling at flea markets

and pawnshops, but not in 2008. Online marketplaces are being used as the Internet equivalent of pawnshops, but, unlike pawnshops, they are largely unregulated. More disturbing, however, is the fact that the Internet seems to be contributing to the creation of a brand new type of retail thief -- people who have never stolen before, but are lured in by the convenience and anonymity of the Internet.

Sophisticated “professionals” or not, what all of these thieves have in common is that they often are – or become -- *career* criminals. They have “shopping lists,” if you will. Some target luxury clothing, accessories, and perfume, while others focus on baby formula and expensive over-the-counter medications or beauty aids. Gift cards and electronics are other popular targets. Believe it or not, these criminals are even stealing vacuum cleaners and power tools. Whatever is new; whatever is hot; that’s what the criminals want. The Internet not only makes it easier for ORC “rings” to unload merchandise at near retail prices, it also enables sophisticated single-operators to realize a huge profit off of their crimes as well.

In videotaped admissions of people who have stolen from retail stores and resold the product on e-Bay, for example, thieves often tell the same disturbing story: they begin legitimately selling product on e-Bay and then become “hooked” by its addictive qualities, the anonymity it provides, and the ease with which they gain exposure to millions of customers. When they run out of “legitimate merchandise,” they begin to steal intermittently, many times for the first time in their life, so they can continue selling online. The thefts then begin to spiral out of control and, before they know it, they quit their jobs, are recruiting accomplices (some are even hiring “boosters”), and are crossing state lines to steal – all so they can support and perpetuate their online selling habit. At least one major retailer has reported that 80 percent of thieves interviewed in their e-Bay theft cases admit that selling stolen property on e-Bay is their *sole* source of income. In fact, many of the e-Bay sellers have used those proceeds to obtain mortgages, new cars, and even boats.

To give you a clear example of the high-dollar figures involved, in February of this year the Kansas City Police Department, FBI and U.S. Postal Inspection Service, charged 7 suspects with \$1.2 million of theft and resale of stolen items online. According to court records, boosters were hired to steal merchandise and then paid a percentage of the booty and given gas cards for their expenses. The ring leader sold the product on e-Bay and used part of the money to bail the boosters out of jail when they were arrested!

As a Loss Prevention professional a question I am often asked is why we don't just catch the thieves in stores before the thieves have the opportunity to sell the product online. In meetings, we have also heard from folks representing the Internet auction sites who have taken the tack here on Capitol Hill to blame retailers for security lapses in order to justify, or obviate scrutiny of, the conduct of the sellers on their site. Mr. Chairman, retailers take loss prevention very, very seriously. Our industry relies heavily on external theft controls such electronic article surveillance (EAS), external theft training, and closed circuit television systems (CCTV) in many stores. You may also have noticed that more and more retail product is being placed under lock and key in your neighborhood pharmacy, department stores and other specialty retailers – at great inconvenience to honest customers. But, as we have learned, these controls are no match for professional or habitual shoplifters determined to steal. As you have heard today and in previous hearings, committed criminals will *a/ways* find a way to get the product out of retail stores. Some of these thieves are masters at fraud or concealment, others are bold and brazen and potentially put employees and consumers at risk.

THE CHALLENGES OF LAW ENFORCEMENT AND FAILURE OF ONLINE MARKETPLACES TO ADEQUATELY ASSIST RETAILERS

One of the biggest obstacles in investigating and apprehending the thieves who steal and resell through online marketplaces is the lack of resources available to local, state, and even federal law enforcement to investigate these crimes and the lack of cooperation offered by Internet auction providers themselves.

e-Bay, for example, will only provide assistance and information on a case-by-case basis, and only when requested by law enforcement. However, law enforcement, due to lack of manpower and resources, will typically not undertake a suspected Internet fraud case unless there is irrefutable evidence or a written statement of theft. Even then, most state and local police departments run into “jurisdictional” issues since, in most online cases, the thefts encompass multiple stores, in multiple states, in multiple jurisdictions. Further, even when retailers provide law enforcement with a written statement and videotaped admission, they are reluctant to take the case because the company investigator did not observe the actual theft, nor provide proof that a specific item came from a unique store.

Recently, e-Bay unveiled a new program called PROACT. Although on the surface it may seem like a good start, it still requires retailers to investigate, identify, and determine that the product being sold online may be stolen. Thus the burden is still placed on retailers to identify each discrete seller that may be selling stolen product on their site. That is why the vast majority of retailers that they approached with the program declined to participate. With over a million auctions on any given day, we need to proactively try to change criminal behavior in partnership with the Internet auction companies. Mr. Chairman, we can’t keep

addressing this issue by investigating and apprehending one seller at a time; we need a new approach to this problem.

Mr. Chairman, we need to have responsible Internet auction sites make modest changes to their businesses to help reduce the sale of stolen property in the first place. In other words, we need to create affirmative deterrents to this illicit behavior. Thieves need to know that if they try to fence their wares on a site like e-Bay, for example, they will be taking a huge risk and will likely be caught. We can do this by applying traditional models of stolen property regulation to the Internet and inject some much-needed transparency to these transactions. These are the type of approaches taken in the bills we are discussing today.

H.R. 6491 imposes specific obligations on online marketplaces. Specifically, the requirement that an online marketplace investigate certain goods when a retailer provides “credible evidence” that the goods are stolen is essential. Such an obligation does not exist today. Similarly, if after investigation the online marketplace determines that in fact the goods are stolen, the marketplace would be required to remove them from sale from the marketplace. This is common sense. Goods that are known by an online marketplace to be stolen should no longer be sold on the site and, if they are, the marketplace should be liable for such behavior.

The bill would also require that information about merchandise that is otherwise only offered for sale *exclusively* by a retail source be posted conspicuously. There are many instances where goods that are known to only be sold by a particular retailer are available for sale by third parties in large quantities on an online marketplace. Many times these sales warrant additional investigation by retailers due to the exclusive nature of the product. Finally, we strongly support the provision that would require high-volume sellers to make contact information available online. Retailers have difficulty obtaining seller contact information from the online marketplaces even though that information is vital to conduct a preliminary investigation. Oftentimes, the identity of the seller

leads to a quick confirmation that the sales are in fact legitimate and the investigation can be closed.

The second of the two bills, H.R. 6713, the “E-fencing Enforcement Act,” focuses exclusively on the E-fencing problem just described. We thank the Chairman for his recognition that this is a problem that is getting worse, not better. We believe that the status quo will not solve the problem and that this bill takes the appropriate approach to limiting e-fencing. Like H.R. 6491, this bill would require that certain information about high volume sellers be available to retailers. Similarly, an online marketplace would be required to take down goods where there is good reason to know that they were not acquired lawfully.

NRF feels strongly that companies like e-Bay should also no longer be able to hide behind the assertion that they are “merely a platform” with little responsibility to supervise sellers on their site when they earn listing fees and commissions from each and every sale on their site. That is a fee for both *stolen* and legitimate goods. In the case of e-Bay these fees and commissions have earned them billions of dollars in profits and made them one of the fastest growing companies in American history. Isn’t there some greater responsibility here to take some simple, and quite frankly, commonsense steps like those outlined in H.R. 6713, H.R. 6491, and S. 3434? It seems like a no-brainer to me.

CONCLUSION

While retailers will continue to invest billions of dollars in trying to prevent organized retail crime and apprehend and prosecute the perpetrators, it is clear that the problem cannot be solved by fighting these cases one-by-one and only in the shopping aisles. Without new Federal laws in place, such crimes are far too often treated as petty theft or a misdemeanor. As a result, organized retail crime cases are rarely appropriately prosecuted, and when they are, individuals who

are convicted usually see limited jail time or are placed on probation if they have no prior arrests.

Organized Retail Crime is a serious priority for large and small retailers nationwide. Locking everything behind glass may reduce sales, dramatically impacting the revenue for businesses and tax revenues for states. Expenditures against retail theft have become part of construction budgets, merchandising budgets and information technology and staffing budgets. This is an enormously important and expensive effort for the retail industry. The continuing growth of retail crime and the damage it causes to communities dictates something needs to be done to control the theft and resale market for stolen goods. Further, at the rate the Internet is growing and the constantly and rapidly escalating scale at which any criminal is now able to operate, it is clear that there is an immediate need to update the law to cover these 21st century criminal operations.

I wish to commend Chairman Scott and Ranking Member Gohmert for scheduling today's hearing. The focus on this very serious issue is a timely and appropriate response to the problem of organized retail crime and Internet auction fraud that is victimizing practically every segment of the retail community. Thank you for your time and attention.