

## Memo **Draft 30.04.2020<sup>1</sup>**

### **Unsafe and dangerous products on AliExpress**

#### **1. Introduction and background:**

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

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

AliExpress has through the Alibaba Group signed the European Commission's voluntary Product Safety Pledge in June 2018<sup>2</sup>. The signatories of the pledge commit themselves to consult RAPEX for information on recalled/dangerous products, and within two days take down dangerous products when advised by Authorities and to take actions to prevent, that the removed products are put for sale again.

Of the 50 products we have bought on the 3 platforms 16 products were purchased on AliExpress<sup>3</sup>. Out of these, 12 have been tested illegal and warned about by authorities. However, products appearing identical to all the 12 products are still available through the same or other third-party sellers. For simplification this memo describes in detail the findings from 3 of our purchases on AliExpress which are used as examples<sup>4</sup>.

#### **Background of the three toys tested dangerous used as examples**

The three toys bought on AliExpress that were tested dangerous are:

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<sup>1</sup> The documentation in this memo has been checked numerous times, but we take reservations for inaccuracies.

<sup>2</sup> [https://ec.europa.eu/malta/news/european-commission-and-four-online-marketplaces-sign-product-safety-pledge-remove-dangerous\\_en](https://ec.europa.eu/malta/news/european-commission-and-four-online-marketplaces-sign-product-safety-pledge-remove-dangerous_en)

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

<sup>4</sup> This study fills into other tests of online marketplaces, the latest from six consumer groups from BEUC published February 24<sup>th</sup> 2020, which revealed that 66 pct. of 250 products bought from online marketplaces failed safety tests: <http://www.beuc.eu/publications/two-thirds-250-products-bought-online-marketplaces-fail-safety-tests-consumer-groups/html>

- A milk squishy toy with small parts easily detaching from the toy. A small child may put one of them in the mouth and choke.

Finger puppets toy with small parts easily detaching from the toy. A small child may put one of them in the mouth and choke

- Cupcake dolls, where the test showed phthalates levels 81 times the threshold.

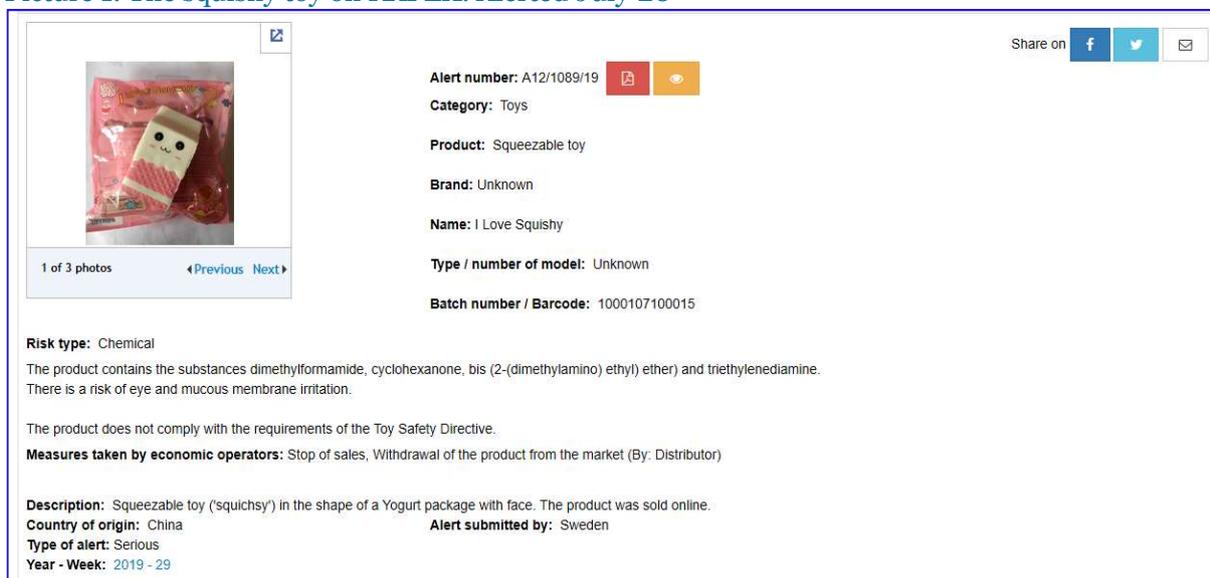
All three toys were purchased in May 2019 tested and found dangerous and illegal. They have therefore been alerted by authorities, as seen on the pictures below.

After we purchased them, they have all been registered on RAPEX, the [EU Safety Gate list](#). The [milk squishy toy](#) was alerted the first time July 20<sup>th</sup>, 2019 submitted by Sweden and again the January 10<sup>th</sup>, 2020 submitted by Denmark. After the first RAPEX alert, we were able to purchase the toy and after the second RAPEX alert we are still able to find toys appearing identical to the milk squishy toy on the platform. The finger puppets have also been on the EU Safety Gate List since January 17<sup>th</sup>, 2020, as well as alerted by the Danish Safety Technology Authority since December 6<sup>th</sup>, 2019. The third toy, the cupcake dolls have been alerted by the Danish Environmental Protection Agency December 6<sup>th</sup>, 2019.

## 2. Warnings on RAPEX – the EU Safety Gate

### The milk squishy toy with small loose parts and illegal chemicals

Picture 1: The squishy toy on RAPEX. Alerted July 20<sup>th</sup>, 2019



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**Alert number:** A12/1089/19  

**Category:** Toys

**Product:** Squeezable toy

**Brand:** Unknown

**Name:** I Love Squishy

**Type / number of model:** Unknown

**Batch number / Barcode:** 1000107100015

**Risk type:** Chemical

The product contains the substances dimethylformamide, cyclohexanone, bis (2-(dimethylamino) ethyl) ether) and triethylenediamine. There is a risk of eye and mucous membrane irritation.

The product does not comply with the requirements of the Toy Safety Directive.

**Measures taken by economic operators:** Stop of sales, Withdrawal of the product from the market (By: Distributor)

**Description:** Squeezable toy ('squishy') in the shape of a Yogurt package with face. The product was sold online.

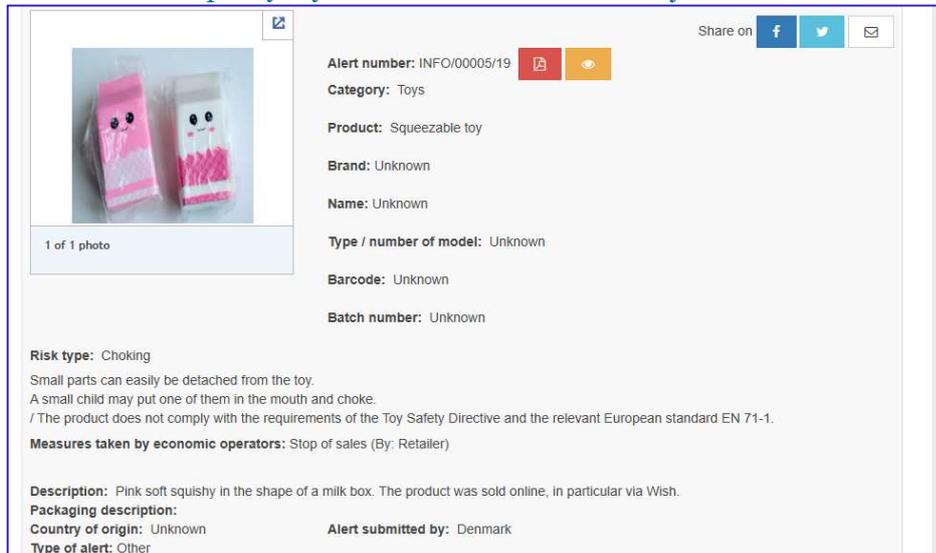
**Country of origin:** China **Alert submitted by:** Sweden

**Type of alert:** Serious

**Year - Week:** 2019 - 29

The milk squishy toy was first put on RAPEX in July 2019 alerted by Sweden. On RAPEX, the alert is labelled “serious” and the risk type is chemical due to the amount of phthalates in the toy exceeding the threshold. The milk squishy toy does not comply with the requirements of the Toy Safety Directive. Therefore, the ‘measures taken by economic operators’ are: ‘stop of sales (By: Retailer) Withdrawal of product from the market.

Picture 2: The squishy toy on RAPEX. Alerted January 10<sup>th</sup>, 2020.



Alert number: INFO/00005/19

Category: Toys

Product: Squeezable toy

Brand: Unknown

Name: Unknown

Type / number of model: Unknown

Barcode: Unknown

Batch number: Unknown

**Risk type:** Choking

Small parts can easily be detached from the toy.  
A small child may put one of them in the mouth and choke.  
/ The product does not comply with the requirements of the Toy Safety Directive and the relevant European standard EN 71-1.

**Measures taken by economic operators:** Stop of sales (By: Retailer)

**Description:** Pink soft squishy in the shape of a milk box. The product was sold online, in particular via Wish.

**Packaging description:**

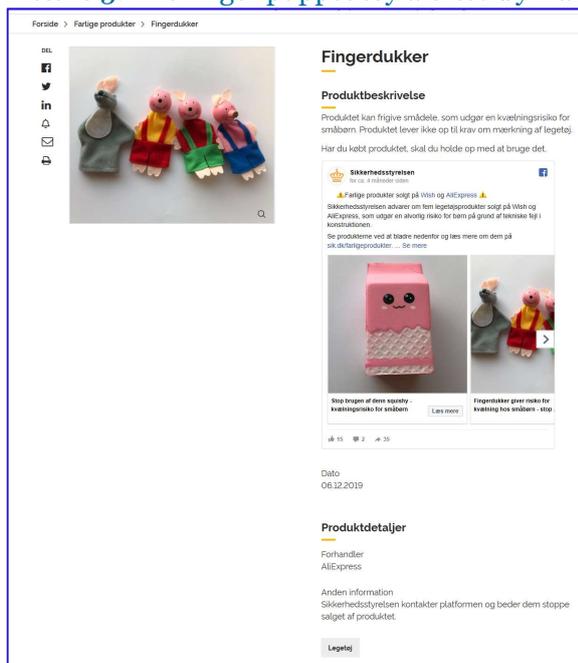
**Country of origin:** Unknown      **Alert submitted by:** Denmark

**Type of alert:** Other

The milk squishy was placed on RAPEX again in January 2020. This alert was submitted by Denmark. Again, the milk squishy does not comply with EU product safety rules. The squishy toy constitutes a choking risk for children as small parts easily detach from the toy. The measures taken are: ‘stop of sales (By: Retailer)’. However, even after this second warning, products appearing identical to the milk squishy toy are still to be found on the platform from other third-party sellers as of March 25<sup>th</sup>, 2020 as will be shown later.

### Finger puppets with small loose parts

Picture 3: The finger puppet toy alerted by Danish Safety Technology. Alerted 6<sup>th</sup> December 2019



Forside > Færdige produkter > Fingerdukker

**Fingerdukker**

**Produktbeskrivelse**

Produktet kan frigive smådele, som udgør en kvælningsskade for småbørn. Produktet lever ikke op til krav om mærkning af legetøj.

Har du købt produktet, skal du holde op med at bruge det.

**Sikkerhedsstyrelsen**  
Stop af færdige produkter

⚠️ Færdige produkter solgt på Wish og AliExpress ⚠️

Sikkerhedsstyrelsen advarer om fem legetøjsprodukter solgt på Wish og AliExpress, som udgør en alvorlig risiko for børn på grund af løsrevne smådele.

Se produktene ved at klikke nedenfor og læs mere om dem på sit. Se flere færdige produkter... Se mere

Stop brugen af disse squishy kvælningsskade for småbørn. Læs mere

Fingerdukker giver risiko for kvæling hos småbørn - stop

15 2 35

Dato  
06.12.2019

**Produkt detaljer**

Forhandler  
AliExpress

Anden information  
Sikkerhedsstyrelsen kontakter platformen og beder dem stoppe salget af produktet.

Legetøj

The finger puppet toy has been alerted by the Danish Safety Technology 6<sup>th</sup> December 2019. The toy is described as dangerous. The alert warns that the toy constitutes a choking risk for children because small parts detach from the toy easily. The toy misses the CE-mark. The consumers are told to stop using the product. The agency states that they will contact the platform and ask them to remove the dangerous product.

Picture 4: The finger puppet toy on RAPEX. Alerted 17<sup>th</sup> January 2020

The screenshot shows a RAPEX alert interface. On the left, there is a photo of three finger puppets (two pigs and one wolf) in their packaging. The main area contains the following details:

- Alert number:** INFO/00001/20
- Category:** Toys
- Product:** Finger Family Puppets
- Brand:** Unknown
- Name:** Unknown
- Type / number of model:** Unknown
- Barcode:** Unknown
- Batch number:** Unknown

**Risk type:** Choking  
 Small parts can detach from the toy. A small child may put them in the mouth and choke. / The product does not comply with requirements of the Toy Safety Directive and the relevant European Standard EN 71-1.

**Measures taken by economic operators:** Stop of sales (By: Retailer)

**Description:** Three pigs and one wolf in soft toy with a head in wood  
**Packaging description:**  
**Country of origin:** Unknown  
**Type of alert:** Other

**Alert submitted by:** Denmark

The finger puppets were placed on RAPEX in January 2020. The risk type is ‘choking’ as small parts can detach from the toy. The toy does not comply with the requirements in the Toy Safety Directive. The measures taken for the finger puppets are “stop of sales (By: Retailer)’. However, products appearing identical to the dangerous finger puppets are still to be found on the platform from the same and other third-party sellers as of March 25<sup>th</sup>, 2020

**Cupcake dolls with illegal chemicals**

Picture 5: The cupcake dolls alerted by Danish Environmental Agency December 6<sup>th</sup>, 2019

The screenshot shows an AliExpress product listing. On the left, the text reads:

1pc Mini Cartoon Lovely Cupcake Doll Transformed Scented Beautiful Cute Cake Doll Toy Girls Surprise Birthday Gift for Children

In the center, there is a photograph of three cupcake dolls (purple, green, and blue) and their corresponding cupcake liners (pink, white, and pink).

On the right, the AliExpress logo is visible.

The Danish Environmental Protection Agency has alerted the platform of the dangerous cupcake dolls December 6<sup>th</sup>, 2019 in an article. In the article, the agency concludes that the cupcake dolls are dangerous due to an excessive amount of phtalates. They advise consumers to throw out the toy. Accordingly, the agency has contacted RAPEX about the dolls. However, it seems that there has not been made a alert on RAPEX. The agency has also contacted the platforms, and they state that they were not able to find the products on the platforms afterwards.<sup>5</sup> However, products appearing identical to the cupcake dolls are still on sale on the platform from the same and other third-party sellers as of March 25<sup>th</sup>, 2020.

### 3. The voluntary EU Product Safety Pledge

Alibaba has on behalf of AliExpress signed the European Commission’s voluntary Product Safety Pledge from June 2018<sup>6</sup>, which “*ultimate goal is to improve the detection of unsafe products marketed in the EU before they are sold to consumers or as soon thereafter as possible*”<sup>7</sup>. Through the pledge, AliExpress commits itself to “*Consult information on recalled/dangerous products available on RAPEX (...). Take appropriate action in respect to products concerned, when they can be identified*”<sup>1</sup>. However, products identical or appearing to be identical to the products, which authorities have asked AliExpress to take down, are still to be found on the platform – sometimes even from the same third-party seller.

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

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

<sup>5</sup> <https://mst.dk/service/nyheder/nyhedsarkiv/2019/dec/skadelige-stoffer-er-fundet-i-legetoejsprodukter-fra-udenlandske-online-butikker/>

<sup>6</sup> [https://ec.europa.eu/malta/news/european-commission-and-four-online-marketplaces-sign-product-safety-pledge-remove-dangerous\\_en](https://ec.europa.eu/malta/news/european-commission-and-four-online-marketplaces-sign-product-safety-pledge-remove-dangerous_en)

<sup>7</sup> [https://ec.europa.eu/info/sites/info/files/voluntary\\_commitment\\_document\\_4signatures3-web.pdf](https://ec.europa.eu/info/sites/info/files/voluntary_commitment_document_4signatures3-web.pdf)

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

## **5. Notifications from AliExpress regarding the dangerous toys**

As consumers, we have received no notification of the warnings of the toys nor have we received any refunds. The voluntary Product Safety Pledge does not oblige the platforms to inform consumers that the products they have purchased has proved to be dangerous and has been warned and requested to be taken down by authorities. Even though this should be easy since the platforms has all contact details and they use it for marketing frequently. Nor have we received any notification from the third-party seller. In fact, all contact has been through AliExpress. In our case we have not received any warnings from the platform directly.

Other platforms inform the consumer indirectly on the order history if the purchased products have been taken down. Our order history on AliExpress does not leave any indication that the products are taken down because it has been requested by authorities. If we click the boxes 'view detail' or 'open dispute', the page does not indicate anywhere that the toys are illegal and dangerous. In sum, AliExpress does neither directly nor indirectly notify the consumer that the products are dangerous and illegal. The following pictures show the documentation of this process.

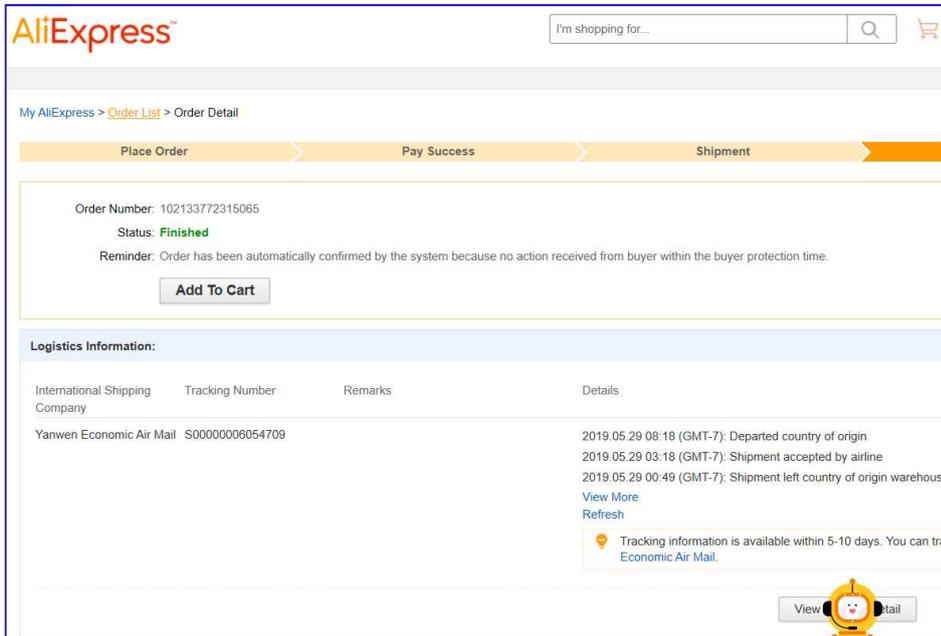
## **6. Order history leaves no indications that the toys are dangerous**

The order history page has no indication that the toys are found illegal and dangerous and therefore has been alerted on RAPEX and by Danish authorities. Nor does the page that the 'View detail' and the 'open disputes' buttons links to, seen on picture 7 and 8 below.

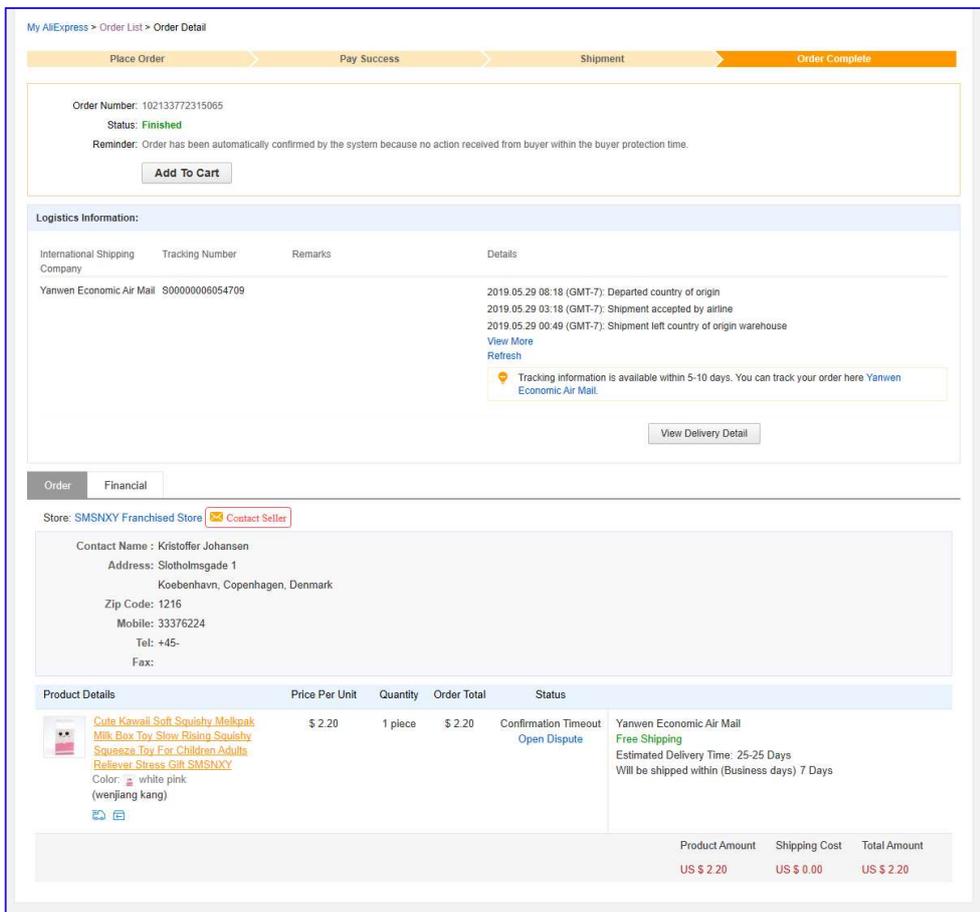
Picture 6: Order history on AliExpress

Order ID: 102133772295065 <a href="#">View Detail</a> Order time: 07:04 May, 23 2019		Store name: QQQQ Store <a href="#">View Store</a>   <a href="#">Contact Seller</a>		Order amount:  <b>\$ 10.88</b>
 <p>                             Baby Toys Animal Family Finger Puppets Wooden                              Cartoon Theater Soft Doll Kids Educational Toys for                              Children Popular Gift Play                              [Transaction Screenshot]                         </p> <p>                             \$ 2.43 X3                              Product properties: Family                         </p>  	Confirmation Timeout <a href="#">Open Dispute</a>	Finished	<input type="button" value="Add to Cart"/>	
Order ID: 102133772305065 <a href="#">View Detail</a> Order time: 07:04 May, 23 2019		Store name: TBJOY Store <a href="#">View Store</a>   <a href="#">Contact Seller</a>		Order amount:  <b>\$ 3.03</b>
 <p>                             1pc Mini Cartoon Lovely Cupcake Doll Transformed                              Scented Beautiful Cute Cake Doll Toy Girls Surprise                              Birthday Gift for Children                              [Transaction Screenshot]                         </p> <p>                             \$ 1.20 X2                         </p>  	Confirmation Timeout <a href="#">Open Dispute</a>	Finished	<input type="button" value="Add to Cart"/>	
Order ID: 102133772315065 <a href="#">View Detail</a> Order time: 07:04 May, 23 2019		Store name: SMSNXY Franchised Store <a href="#">View Store</a>   <a href="#">Contact Seller</a>		Order amount:  <b>\$ 2.20</b>
 <p>                             Cute Kawaii Soft Squishy Meltpak Milk Box Toy Slow                              Rising Squishy Squeeze Toy For Children Adults                              Reliever Stress Gift SMSNXY                              [Transaction Screenshot]                         </p> <p>                             \$ 2.20 X1                              Product properties: white pink                         </p>  	Confirmation Timeout <a href="#">Open Dispute</a>	Finished	<input type="button" value="Add to Cart"/>	

Picture 7: 'View detail' → No indication that the purchased product is dangerous and illegal



Picture 8: Open dispute → No indication of the product being illegal and dangerous



In sum, examining the purchased product on AliExpress leaves no indication that it has been taken down due to the fact that it is illegal and dangerous. We have not received any direct notification hereof by e-mail. The consumers can therefore only be aware of the product being warned about by authorities, if they themselves check both RAPEX and national authorities.

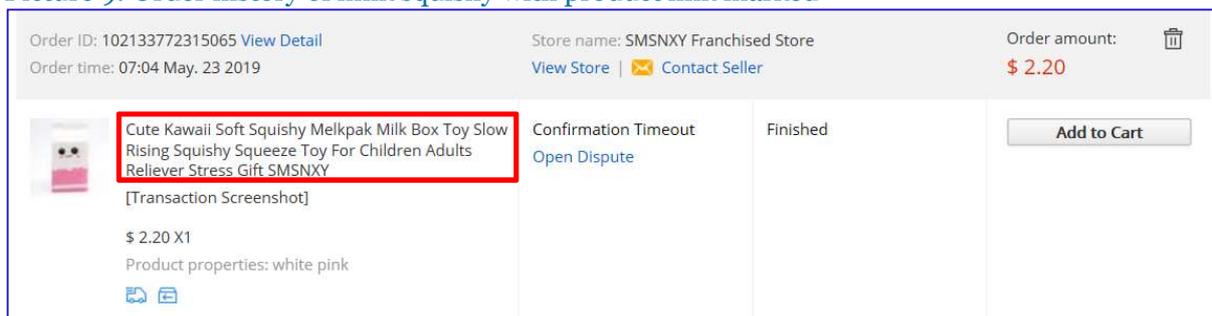
Furthermore, products appearing identical to the products, which authorities have requested a stop of sale of, can still be found on the platform.

### 7. Example 1: Milk squishy toy

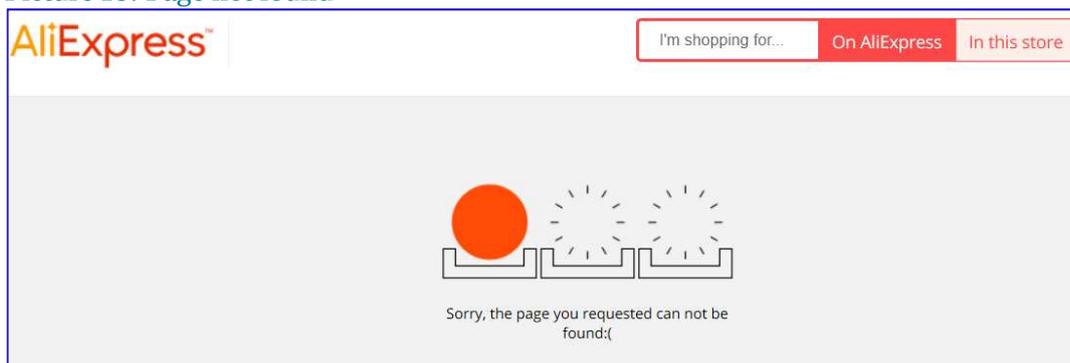
#### Buying the milk squishy toy again via order history

We purchased the Milk Squishy in May 2019. In July 2019 it was put on RAPEX by Sweden and again on January 20<sup>th</sup>, 2020 by Denmark. The following will examine whether the milk squishy is still on sale on the platform after it has been asked by authorities not to be sold. If the consumers are interested in buying the squishy again, they can try through the direct product link on the order history seen below:

Picture 9: Order history of milk squishy with product link marked



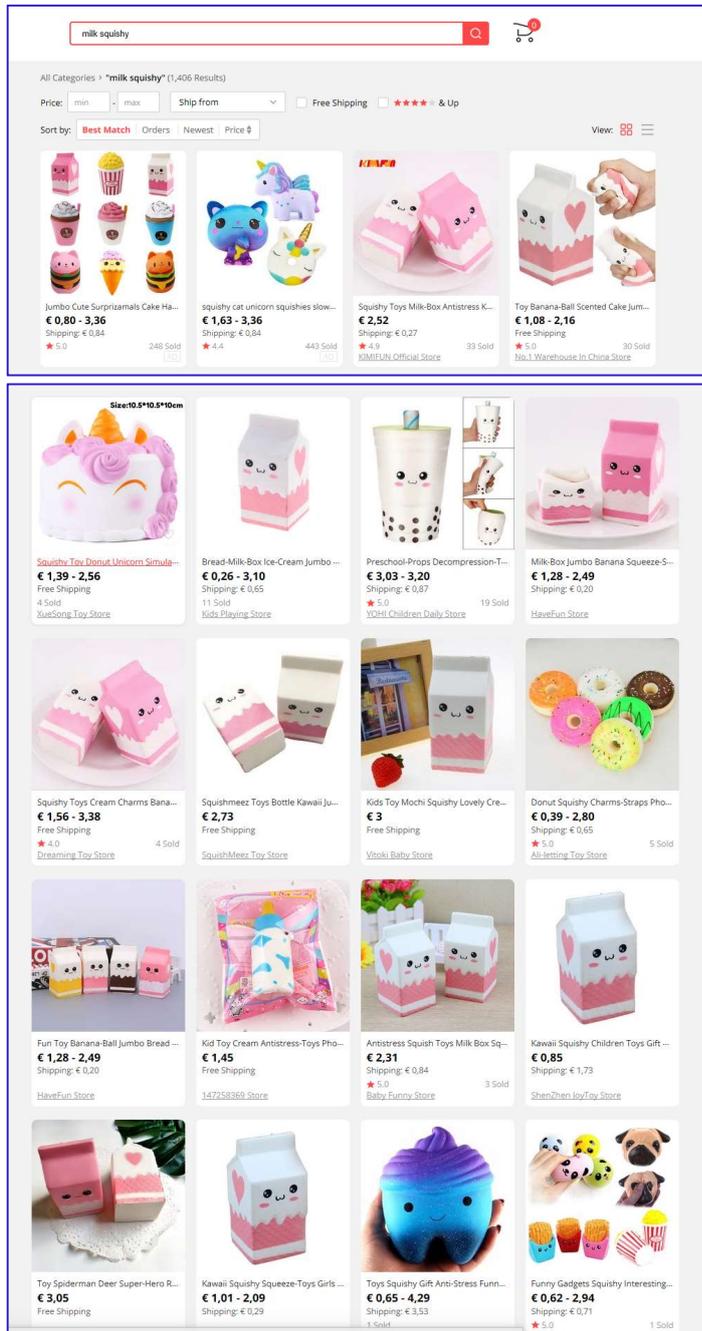
Picture 10: Page not found



Thus, it seems the specific product site has been closed. However, the consumer cannot find any information as to why the site is closed. The consumer has no way of knowing that the purchased squishy toy is illegal and dangerous from the search on the platform. The consumers might still be interested in the toy, leading them to search the platform for other third-party sellers with the product available.

## Milk squishy appearing identical still available on AliExpress

Picture 11+12: Products appearing identical available on the platform through other third-party sellers as of April 7<sup>th</sup>, 2020



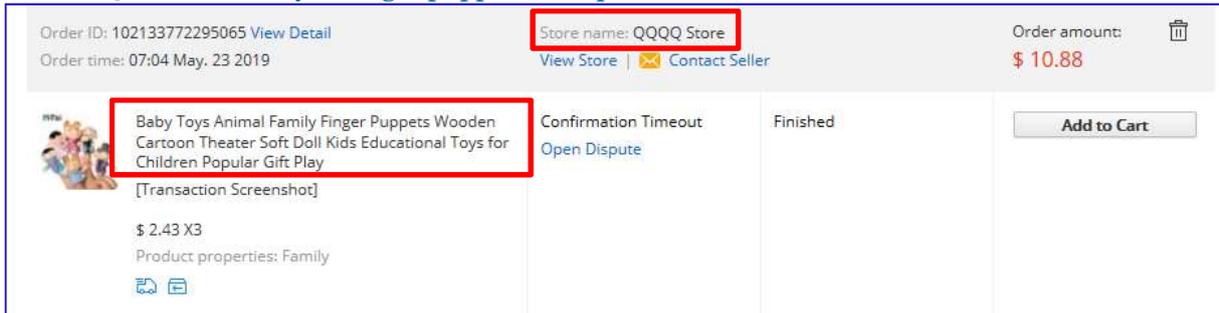
In sum, it seems that the product link of the milk squishy have been taken down, but other third-party sellers still sells products appearing identical to the milk squishy toy.

## 8. Example 2: Finger puppets

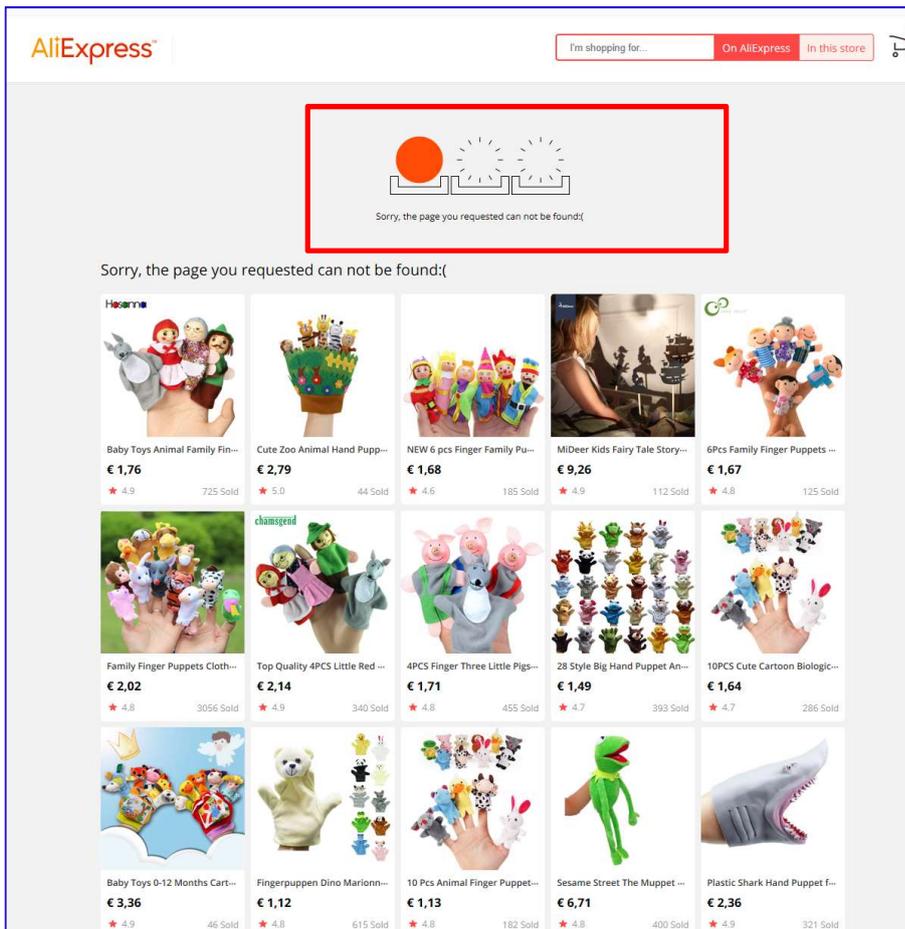
### Buying the finger puppet toys again via order history

The following will examine whether the dangerous finger puppets are still on sale on AliExpress after authorities has asked the platform to stop the sale. If the consumers are interested in buying the puppets again, they can try trough the direct product link on the order history seen below:

Picture 13: Order history of finger puppets with product link and seller marked



Picture 14: Product link leads to page not found, but other buying options are presented April 7<sup>th</sup>, 2020



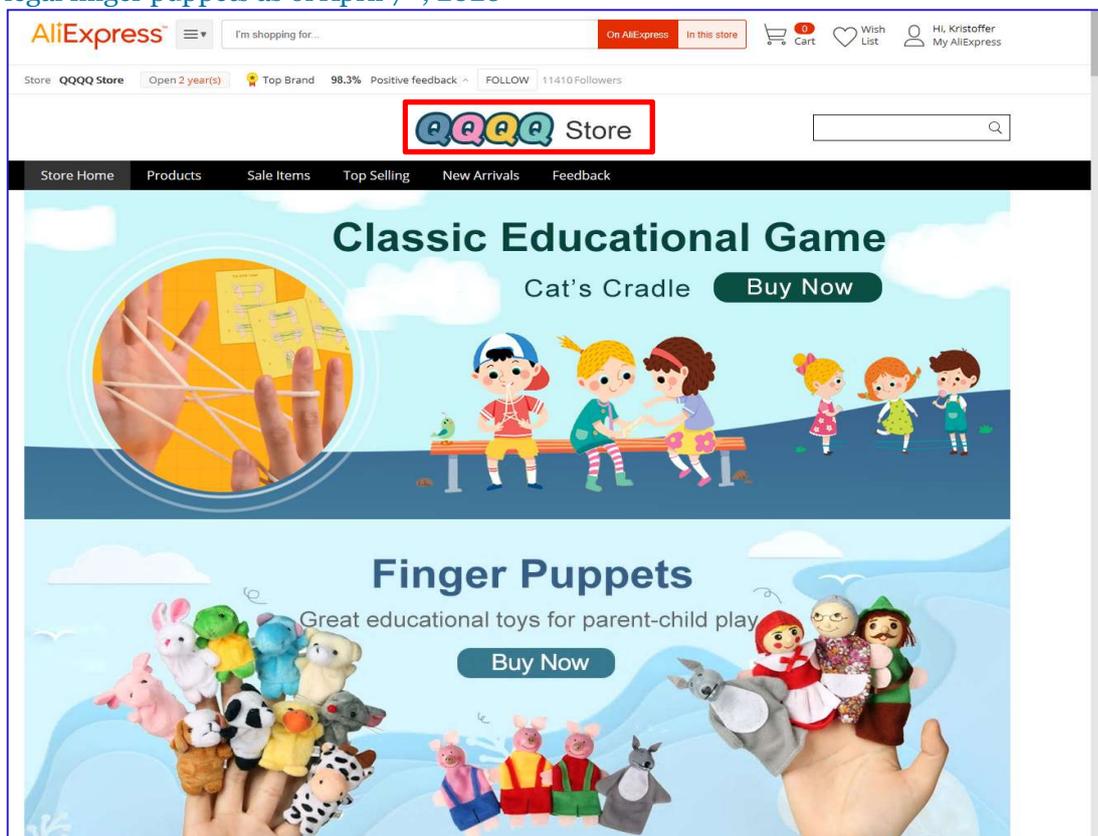
The product link leads to the message ‘Sorry, the page you requested cannot be found’. This suggests that the product link has been taken down from where we have purchased the finger puppets. However, the page also suggests several other buying options of finger puppets that appear identical to the ones taken down.

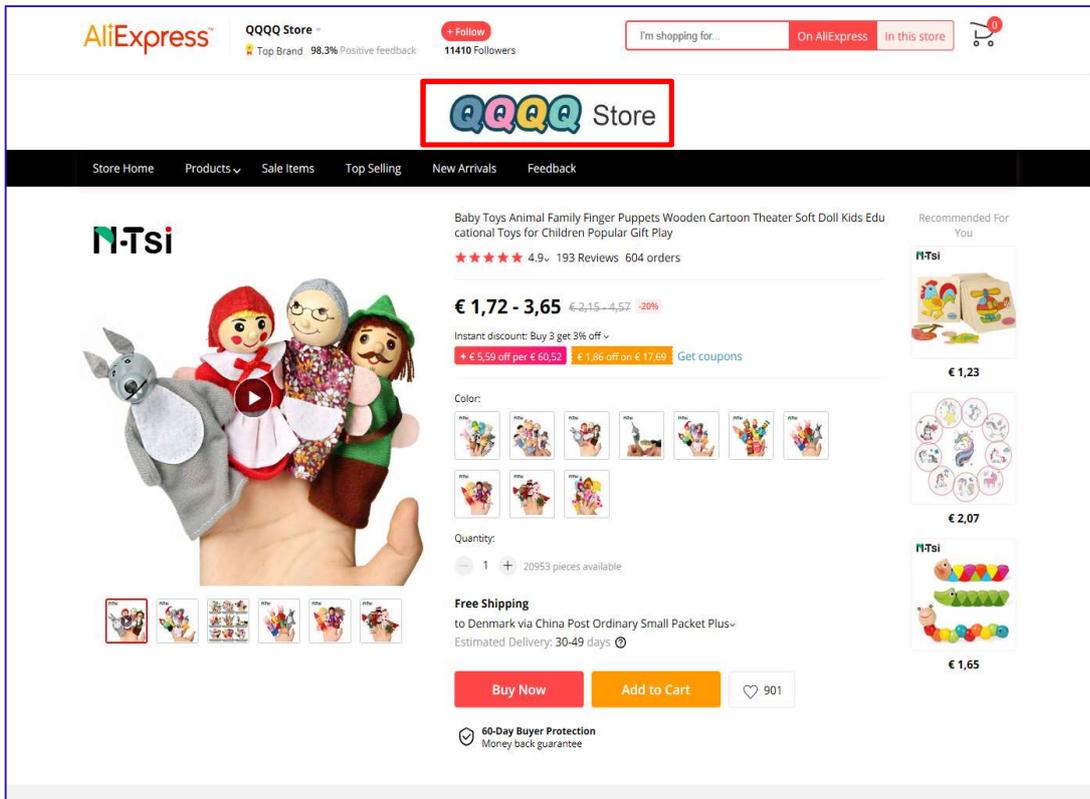
**Finger puppets appearing identical are still available on AliExpress**

The seller of the finger puppets was QQQQ Store. The consumer might visit the QQQQ Store on the platform. In this case, one would find puppets appearing identical to the RAPEX alerted finger puppets still being available from the same seller.

In sum, it seems that the product link of the puppets has been taken down, but the same seller still sells finger puppets appearing identical to the dangerous finger puppets.

Picture 15+16: The seller QQQQ store sells a product appearing identical to the dangerous and illegal finger puppets as of April 7<sup>th</sup>, 2020





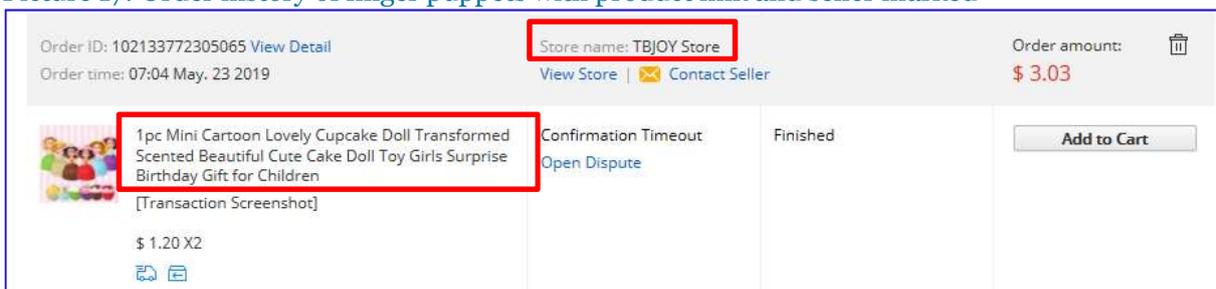
**9. Example 3: Cupcake dolls**

**Buying the Cupcake dolls again via order history**

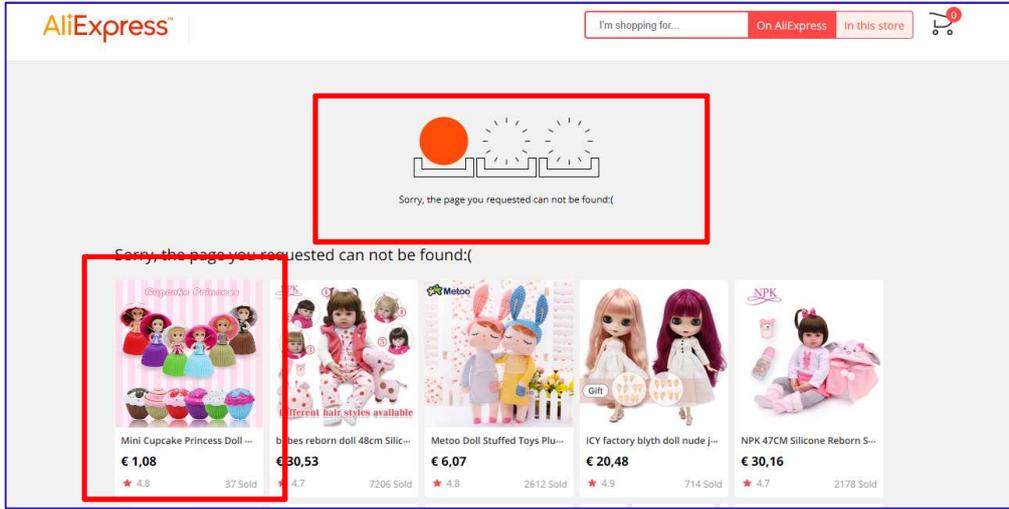
The following will examine whether the dangerous cupcake dolls are still on sale on AliExpress after the platform has been asked by authorities to remove them from the website. If the consumers are interested in buying the dangerous dolls again, they can try through the direct product link on the order history seen below:

The product link leads to the message ‘Sorry, the page you requested cannot be found’. This suggests that the product link has been taken down from where we have purchased the cupcake dolls. However, the page also suggests several other toys that appear identical to the dangerous cupcake dolls. This is documented in the pictures below.

Picture 17: Order history of finger puppets with product link and seller marked



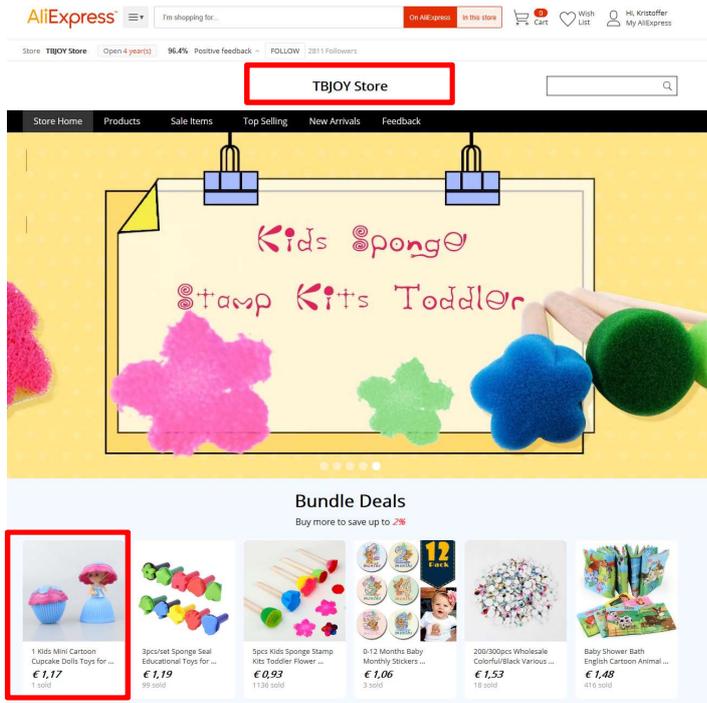
Picture 18: Product link leads to page not found, but other buying options are presented of April 7<sup>th</sup>, 2020



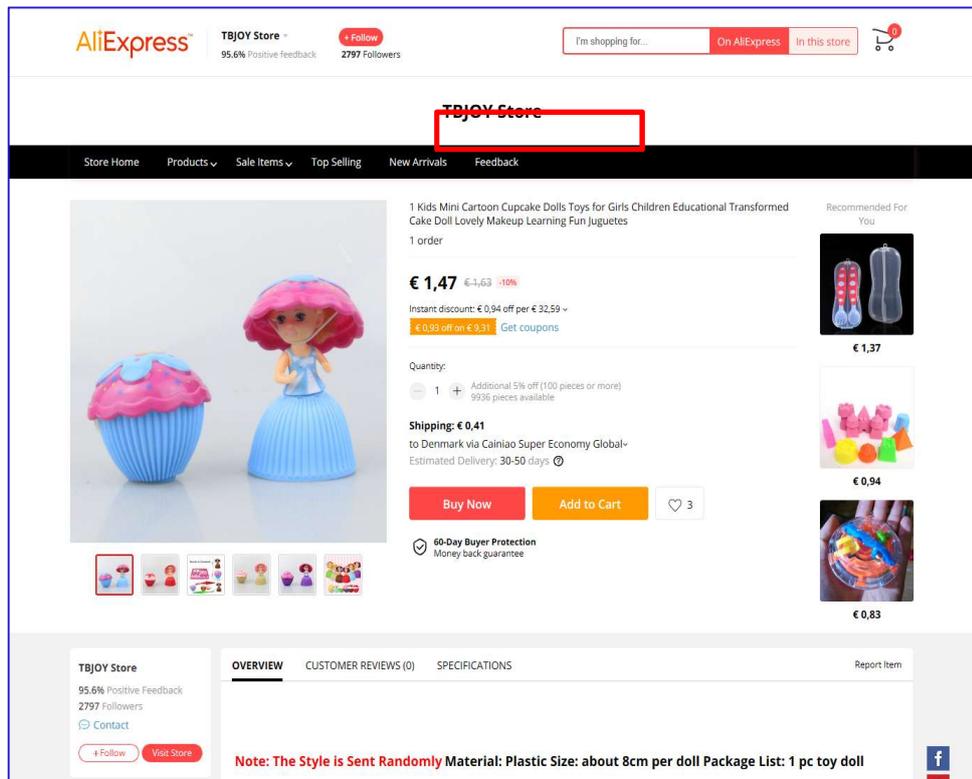
**Cupcake dolls appearing identical still available on AliExpress**

The seller of the finger puppets was TBJOY Store. The consumer might visit the TBJOY Store on AliExpress. If doing so the consumer would find products appearing identical to the cupcake dolls still being available from this same seller. In sum, it seems that the product link of the cupcake dolls has been taken down, but the seller still sells products appearing identical to the cupcake dolls.

Picture 19+20: The seller TBJOY Store sells a product appearing identical to the dangerous and illegal finger puppets

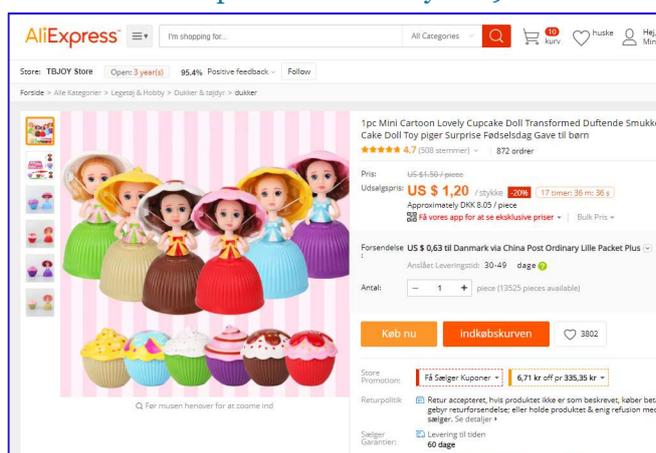


Picture 20

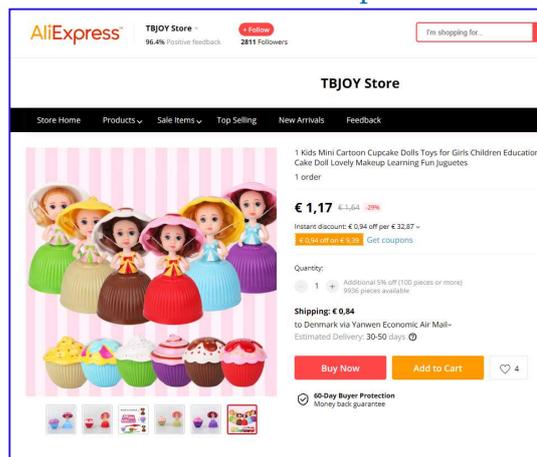


**Comparison between cupcake dolls on sale April 2020 and the dangerous cupcake dolls we purchased May 2019 both sold by TBJOY Store**

Picture 21: Dolls purchased in May 2019



Picture 22: Dolls on sale April 2020



As the pictures above show, the third-party seller “TBJOY Store” sells cupcake dolls that appear identical to the cupcake dolls, we purchased from the same seller. If they are, this indicates that taking down the specific product link is not enough to get rid of dangerous products on the platform, as the third-party sellers can just open a new product link with the same product.

### Marketing e-mails encouraging us to buy the dangerous toys again

As mentioned, AliExpress has not notified us as buyers directly via e-mail nor indirectly via the platform about the warning and removal of products, we have purchased. On the contrary, we have received several marketing e-mails encouraging to buy the products again.

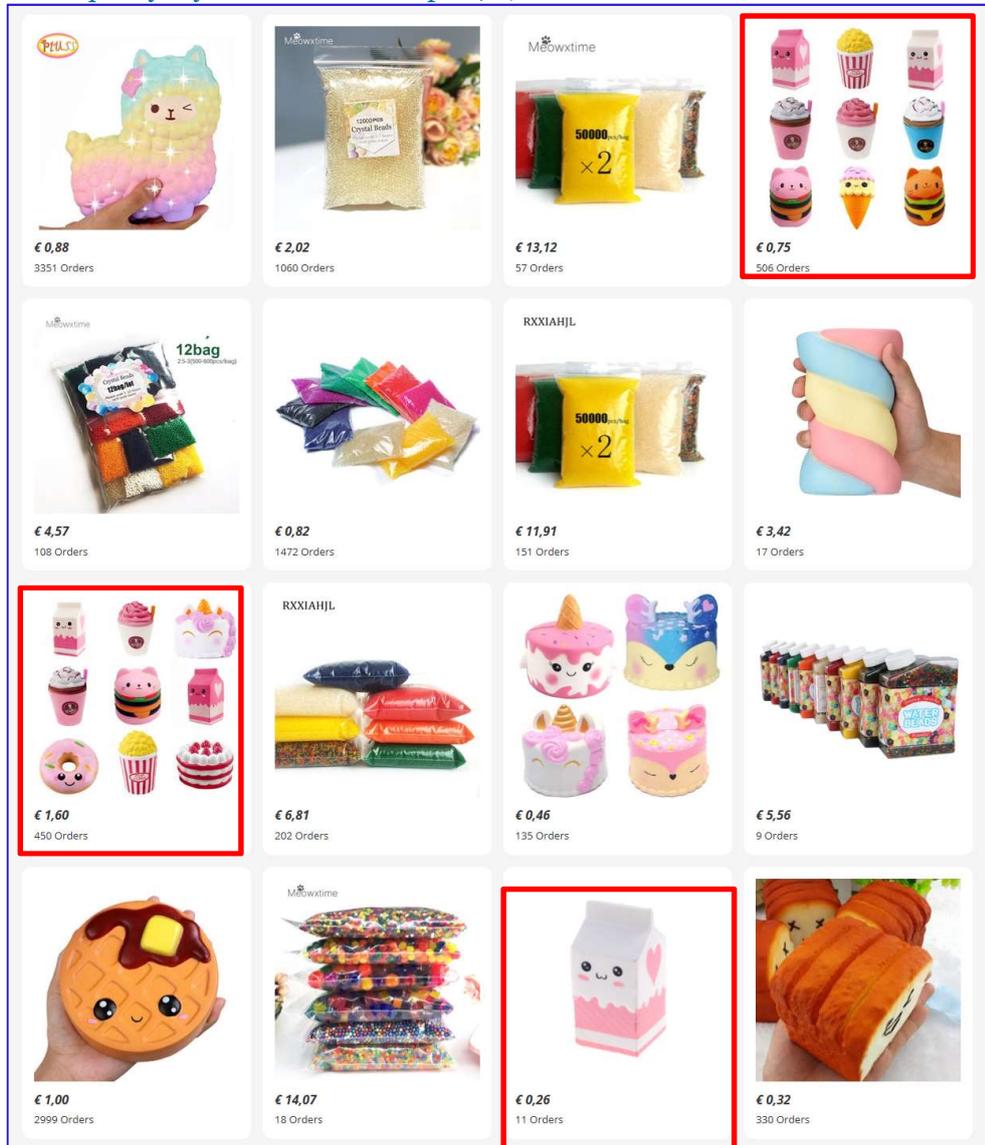
For example, we received an e-mail from AliExpress on March 22<sup>nd</sup>, 2020 seen in the picture below. In the email, we are encouraged to “come grab the items you liked!”. In this case, it is recommending a squishy appearing identical to the dangerous milk squishy toy. As mentioned, the squishy was alerted on RAPEX the first time July 20<sup>th</sup>, 2019 and on January 10<sup>th</sup>, 2020 the second time. Both the alerts were thus prior to this e-mail encouraging us to buy what appears to be an identical squishy toy.

Picture 23: E-mail encouraging to buy milk squishy toy. March 22<sup>nd</sup>, 2020.



Following the ‘Browse more like this’ button marked in the red square leads to the following page:

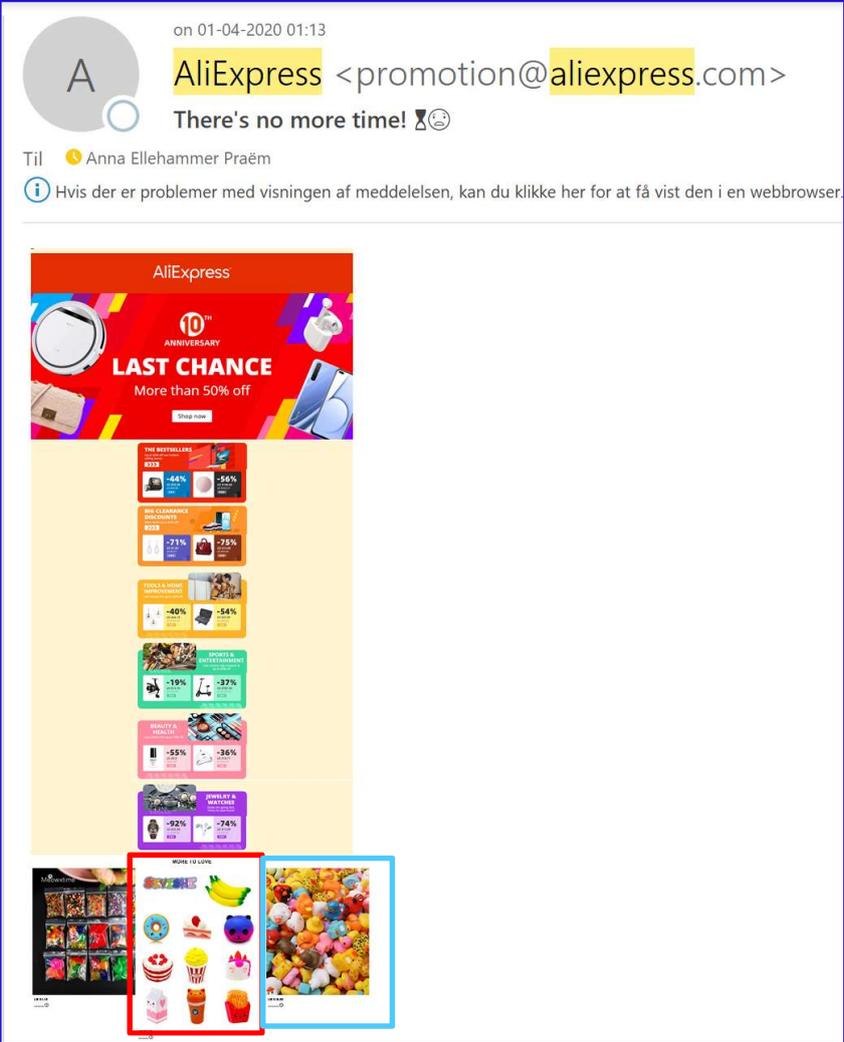
Picture 24: “Browse more like this”-link from marketing e-mail from March 22<sup>nd</sup> shows multiple milk squishy toys available as of April 7<sup>th</sup>, 2020



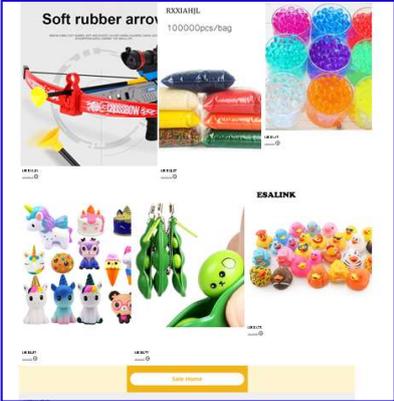
Once again, multiple toys appearing identical to the milk squishy toy is still available on AliExpress, and we are even encouraged directly via e-mail by the platform to buy them again.

This has not happened once, but multiple times. Another example is seen in the pictures below. Here, AliExpress has once again sent us an e-mail, which encourages us to buy toys appearing identical to the milk squishy. This e-mail is even more recent: from April 1<sup>st</sup>, 2020. The e-mail also markets toys appearing identical to other dangerous products not described in this memo, but which we have also purchased. These are marked with a blue square. A summary of each of these purchases can be found in the document “Table overview of test purchases on platforms”.

Picture 25+26: E-mail encouraging to buy milk squishy and other dangerous products.



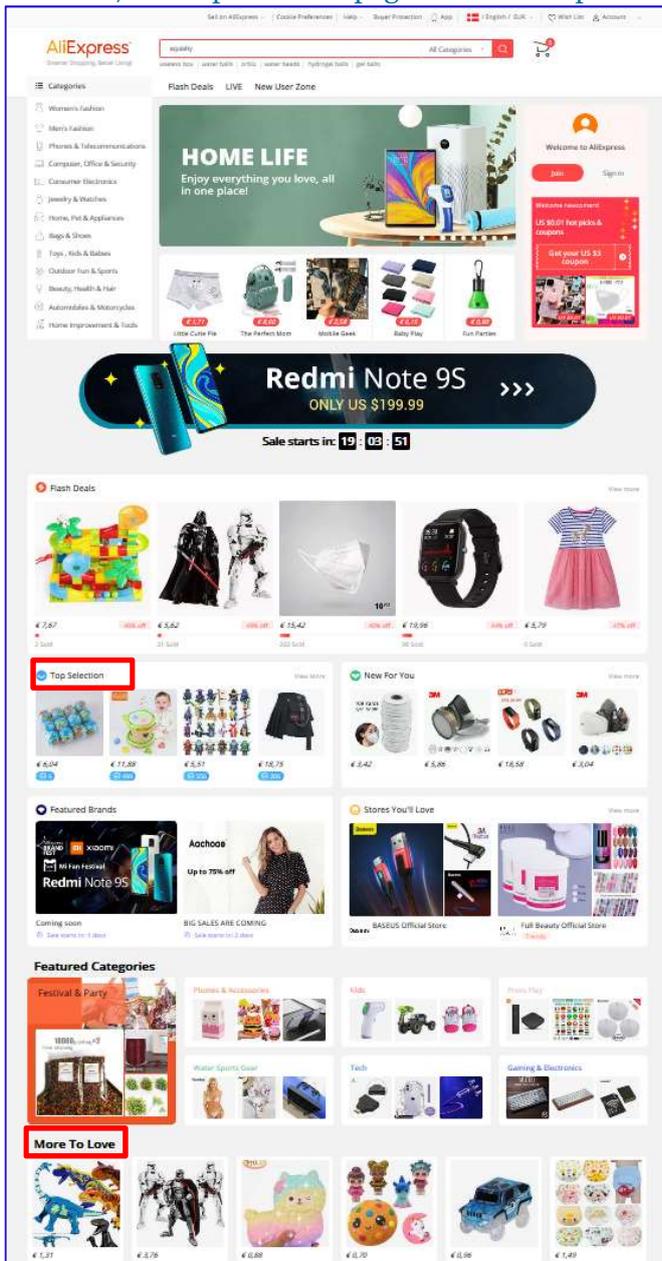
Picture 26



### Consumers encouraged to buy the dangerous products via homepage

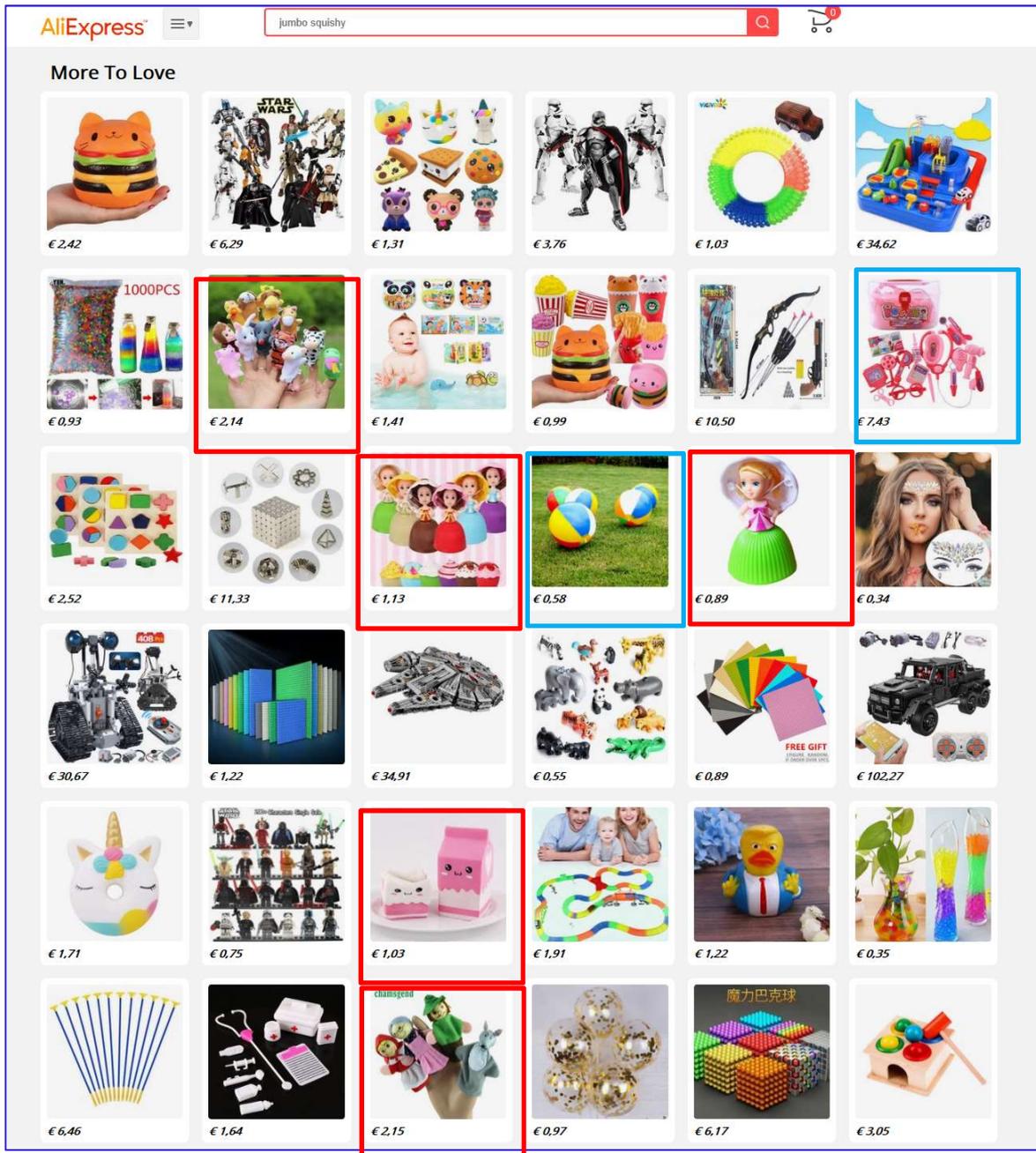
As seen on the picture below, AliExpress offers multiple channels through which products are promoted to the consumer on their homepage on the platform, for example 'Top Selection' and 'More to Love'. If a consumer has shown interest in or bought a product, the algorithm will present similar or identical products. Therefore, if a consumer in good faith has bought a dangerous product, the consumer will not be notified about it and will be encouraged to buy the illegal products again via e-mail and due to the algorithm on the platform.

Picture 27: AliExpress homepage with several promotion channels



In our case, multiple products appearing to be identical to the products that authorities have warned about, are presented. This includes all three toys described in this memo, marked with a red square. It also includes toys appearing identical to other illegal products not described in this memo, but which we have also purchased where tests have shown, that they are non-compliant to EU law and dangerous. These are marked with a blue square. A summary of all purchases can be found in the document “Table overview of 50 test purchases on platforms”.

Picture 28: “More to Love” section on the AliExpress website show multiple products appearing identical to the finger puppets, cupcake dolls, milk squishy toy and other products warned by authorities



The ads of the products do not show the third-party seller, while the AliExpress logo is clear. This might confuse the consumer about who they are trading with.

When a consumer shops on AliExpress, the products are also per default sorted by 'best match'. Thus, the algorithm promotes products similar or identical to the ones, the consumer has shown interest in. Below is an example in the category "Toys & Hobbies". The same conclusions as with picture 28 above can be made: Toys appearing identical to the dangerous squishy are still available on the platform, and consumers are encouraged to buy it due to the algorithm.

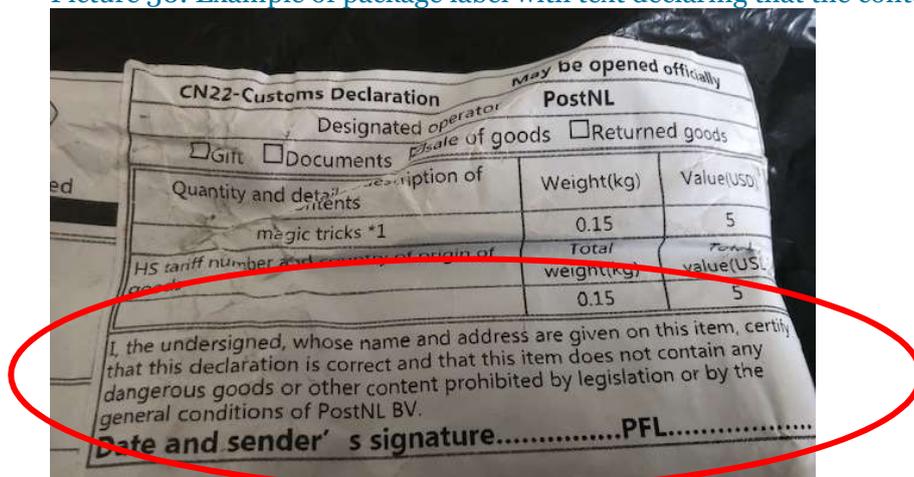
Picture 29: Best match in category 'Toys and Hobbies' show milk squishy toy

The screenshot shows the AliExpress website interface. At the top, there is a search bar with the text "I'm shopping for...". Below the search bar, the page is titled "All Categories > Toys & Hobbies (961,877 Results)". The left sidebar contains various filters: "Related Categories" (Toys & Hobbies, Dolls & Stuffed Toys, Remote Control Toys, etc.), "Brands" (PICKLE, SYMA, etc.), "Color" (Black, Blue, Brown, etc.), "Age Range" (0-12 Months, 13-24 Months, etc.), "Material" (Resin, Other, PVC, Wood, EVA), "Gender" (Girls, Boys, Unisex), "Item Type" (Puppets, Vinyl Doll, Model, Game Collection Card), and "Theme" (Movie & TV, Military, Music). The main content area displays a grid of product listings. Each listing includes a product image, a title, a price, shipping information, and a star rating. Several listings are highlighted with red boxes, showing different styles of milk squishy toys. The highlighted listings include: "Gag Toys Gagster Banana Pudding", "Soft Squishy Toy Biscuits Cheese", "Phone-Shape Biscuits Scented Char...", "Toys Milk-Box Charms Antistress S...", "Gag Toys Gagster Banana Pudding", "Soft Squishy Toy Biscuits Cheese", "Phone-Shape Biscuits Scented Char...", "Toys Milk-Box Charms Antistress S...", "Toys Charm-Key Biscuit-Pie Decomp...", "Toys Hockey-Mask Building-Blocks...", "Rubber-Ball-Toys Play-Ball Beach-P...", "Toys Banana-Ball Scented Cake Jam...", and "Squishy Toy Simulation-Snack Ha...".

### 9. Package labels claims that the products are safe and compliant

Most of the packages we received from AliExpress included a package label with a standard text, where the sender declares, that the package does not contain illegal or dangerous goods. An example of such a label and standard text is seen in picture 30. According to the label the sender declares that: “I, the undersigned, whose name and address are given on this item, certify that this declaration is correct and that this item does not contain any dangerous goods or other content prohibited by legislation or by the general conditions of PostNL BV.”

Picture 30: Example of package label with text declaring that the content is safe and legal



The label or a similar label is used on almost all the packages we have bought on AliExpress. The label does not specify which country’s regulations the sender is thinking of; however, we find it fair to believe, that most consumers will conclude, that the text target their country. In the example above this package has a Dutch designated operator: ‘PostNL’, which indicates the Dutch and EU law applies.

The label help to assure the consumer that there is no need to worry. Nonetheless, a majority of the packages we purchased turned out to contain products that were both dangerous and illegal and thus contradicts the sender’s “certification” from the label. It should also be noted, that the sender in none of our purchases were the same as the seller listed on the website and order form.

The label or similar labels have been on the packages containing the three toys described in this memo.

### 10. Consumer rights

In none of our purchases from AliExpress did we receive the terms & conditions and it is difficult to see, which rules apply for the purchase. In none of our purchases on AliExpress was the name on the seller the same as the name on the package, which makes it confusing to the consumer who he or she is trading with.

On the website AliExpress mentions “Buyer Protection” where the consumer in case of problems is advised to “Go to your order history and select the item. Discuss the issue with the seller and see possible solutions<sup>8</sup>”. If the consumer is unable to come to an amicable agreement after contacting the seller, the consumer “can raise a claim by opening a dispute within 15 days following the delivery of the order or the end of the package receipt confirmation period (as listed in your order details).”

## 11. VAT fraud – undervaluation of the value on the package

Besides the issue of product safety on the platforms is the issue of VAT fraud. Most of the purchases were not VAT-guilty in Denmark due to the price being below the limit of 80 DKK. However, 5 purchases were VAT-guilty. In none on these cases the VAT was paid. The guilty VAT were not paid due to an undervaluation of the price on the packages. This includes the cupcake doll purchases. The price paid for these dolls was 98 DKK, while the value written on the package was only 16 DKK – more than 6 times less than the price paid.

The different names of the seller on the website and the name of the sender of the package might also complicate VAT control.

## 12. Conclusion

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

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

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

However, 12 of the toys we purchased on AliExpress has been tested dangerous and AliExpress has been requested to stop the sales of these by authorities<sup>9</sup>. Products appearing identical to all 12 toys are still for sale on the platform by the same and/or other third-party sellers.

In this memo we have in more detail documented the order history of three purchases of toys, that has turned out to be dangerous and have since all been registered on RAPEX.

In our case as buyers AliExpress has not contacted us in order to inform us, that the toys purchased poses a risk to children and therefore has been warned by authorities.

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<sup>8</sup> [https://sale.aliexpress.com/\\_\\_pc/v8Yr8f629D.htm?spm=2114.best.1000001.6.4258UrieUrie1w](https://sale.aliexpress.com/__pc/v8Yr8f629D.htm?spm=2114.best.1000001.6.4258UrieUrie1w)

<sup>9</sup> See the full list in the Table overview of the purchases on the 3 platforms.

We have received no notification thereof directly nor indirectly. We have neither received any refunds. Toys appearing identical to the three toys described in this memo are still available on the platform as of February 18<sup>th</sup>, 2020. In two of the shown examples, the product link has been taken down, but the same third-party sellers still sell products appearing identical to the cupcake dolls and finger puppets.

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

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

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

The current situation gives consumers no protection when buying products sold by 3<sup>rd</sup> party sellers on AliExpress other similar marketplaces that turns out to be dangerous or non-compliant.

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

### **Legal situation**

There is a common misunderstanding that article 14 in the e-commerce directive gives platforms and online marketplaces an automatic exemption from liability just because they are platforms or online marketplaces. This assumption runs counter to the wordings of the recitals and the relevant articles in the directive and to the jurisprudence of the ECJ<sup>10</sup>.

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<sup>10</sup> See Judgment of 12 July 2011, *L'Oréal SA and Others v eBay International AG and Others*, Case C-324/09, EU:C:2011:474

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

#### Article 14

Hosting

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

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

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

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

#### Article 15

No general obligation to monitor

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

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

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

1. Article 14 of the e-commerce directive is not applicable where the online marketplace is directly liable for the sale of the illegal products.
2. Article 14 of the e-commerce directive is not applicable when the online marketplace plays an active role, such as to give it knowledge of or control over the data relating to the sale of illegal products. Per ECJ jurisprudence, this can include the provision of “assistance”, such as optimizing or promoting the sale of toys or other products.
3. Where the online marketplace is passive but has knowledge or awareness of facts or circumstances from which a diligent economic operator would conclude that illegal toys are being sold, it must act expeditiously to remove the data relating to these toys or other products.
4. Neither Article 14 nor Article 15 of the e-commerce directive prevent online marketplaces from taking proactive measures to address the availability of illegal toys or other products on their services. The imposition of specific, proportionate proactive measures is permitted under Article 15.

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

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

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