

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

## Unsafe and dangerous products on Wish.com

### 1. Introduction

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

The non-compliant toys have been reported to the national market surveillance and product safety authorities, who have warned about the toys. Some of the tested products are therefore also to be found on RAPEX, the EU Safety Gate list. The authorities have asked the platforms to take appropriate action towards it. Most often, this includes stops of sale. All 3 platforms have reportedly promised to take the products down 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 under different seller-names.

This memo only describes our purchases on Wish.com. Of the 50 products we have bought from 3<sup>rd</sup> party sellers on the 3 platforms in our study 27 products was purchased on Wish.com<sup>2</sup>. Out of these, 23 have been warned by authorities. However, products appearing identical to 21 of these products are still available through other third-party sellers on the platform as of March 2020. In this memo we describe the findings 3 of our purchases on Wish.com in more detail. The 3 have been subject to public attention<sup>3</sup> in Denmark which encouraged us to look more into the matter.

### 2. Background of the three toys tested dangerous used as examples in this memo

The three toys bought on Wish that were tested dangerous according to the EU legislation are:

- A musical toy rattle with bells that are sharp, loose and smaller than allowed. Small children risk to swallow them, cut themselves and in the worst-case choke.
- Wooden fruit figures with cords so long, that they can reach around the neck of a small child, and poses a risk of strangulation

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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> 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.

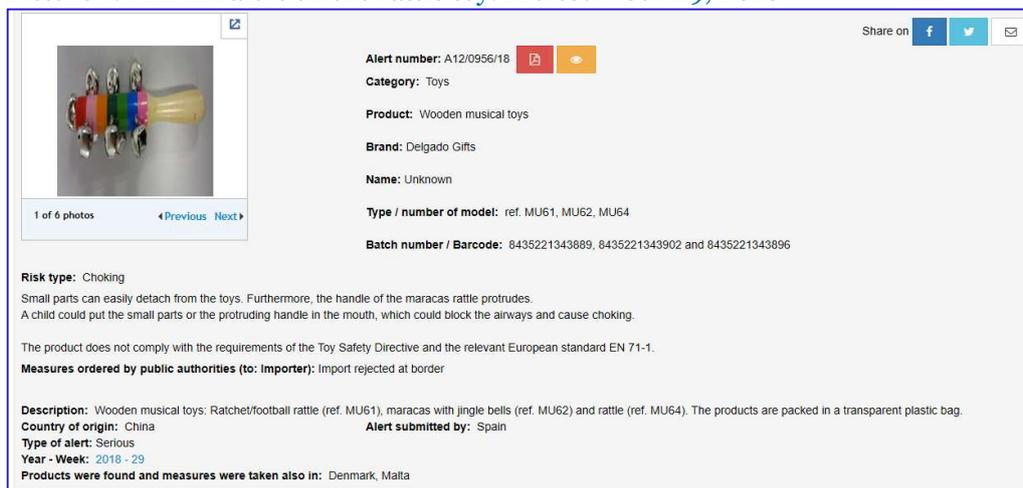
<sup>3</sup> Besides public attention in Denmark a new test from six consumer groups from BEUC published February 24<sup>th</sup> 2020 revealed that 66 pct. of 250 products bought from online marketplaces failed safety tests: <http://www.beuc.eu/publications/two-thirds-250-products-bought-online-marketplaces-fail-safety-tests-consumer-groups/html>

- Disney Princess figures, that were tested twice. The first test showed phthalates levels way above the thresholds: 56 times the allowed amount of DEHP, as well as too high levels of DIDP and DINP<sup>4</sup>. The second test revealed 67 times the threshold of DEHP.<sup>5</sup>

All three toys were tested and found non-compliant with EU law and dangerous by the Danish Consumer Council (which is publicly funded and carries out reliable product tests in Denmark) before we purchased them. The musical toy has also been alerted on RAPEX the 20<sup>th</sup> of July 2018 and again the 24<sup>th</sup> of January 2020. The wooden apple toy has been alerted on RAPEX since the 26<sup>th</sup> of October 2018. Regarding the Disney Princess figures the Danish Consumer Council alerted the Danish Environmental Protection Agency on the 20<sup>th</sup> of June 2019, where after the agency warned consumers in public and requested Wish.com to remove the figurines, which Wish.com promised to do. These alerts can be seen on the pictures below.

### The rattle musical toy with small loose parts

Picture 1: RAPEX alert on the rattle toy. Alerted week 29, 2018



Share on   

**Alert number:** A12/0956/18  

**Category:** Toys

**Product:** Wooden musical toys

**Brand:** Delgado Gifts

**Name:** Unknown

**Type / number of model:** ref. MU61, MU62, MU64

**Batch number / Barcode:** 8435221343889, 8435221343902 and 8435221343896

**Risk type:** Choking

Small parts can easily detach from the toys. Furthermore, the handle of the maracas rattle protrudes. A child could put the small parts or the protruding handle in the mouth, which could block the airways and cause choking.

The product does not comply with the requirements of the Toy Safety Directive and the relevant European standard EN 71-1.

**Measures ordered by public authorities (to: Importer):** Import rejected at border

**Description:** Wooden musical toys: Ratchet/football rattle (ref. MU61), maracas with jingle bells (ref. MU62) and rattle (ref. MU64). The products are packed in a transparent plastic bag.

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

**Type of alert:** Serious

**Year - Week:** 2018 - 29

**Products were found and measures were taken also in:** Denmark, Malta

The rattle musical toy was first put on RAPEX in July 2018 by Denmark<sup>6</sup> and Malta. On RAPEX the alert is labelled “serious” and the risk type is choking due to the small parts that can easily detach and the long handle, that can block the airways and cause choking. The rattle does not comply with the requirements of the Toy Safety Directive.

<sup>4</sup> <https://kemi.taenk.dk/bliv-gronnere/test-kemi-i-legetoj-fra-ebay-amazon-og-wish/princess-toys-elsa-anna-ariel>

<sup>5</sup> <https://www.dr.dk/nyheder/penge/trods-advarsel-legetoej-med-forbudt-kemi-saelges-stadig-af-populaere-udenlandske>

<sup>6</sup> In Denmark after a test by the Danish Consumer Council from December 2017: <https://taenk.dk/test-og-forbrugerliv/boern/billigt-legetoej-fra-nettet-er-farligt-dit-barn>

Picture 2: Second RAPEX alert on the rattle toy. Alerted week 4, 2020

**Alert number:** INFO/00019/20

**Category:** Toys

**Product:** Rattle toy

**Brand:** Unknown

**Name:** Unknown

**Type / number of model:** Unknown

**Barcode:** Unknown

**Batch number:** Unknown

**Risk type:** Choking

Both sides of the product protrude in excess and the bells can easily break generating small parts. / A small child may put the protruding or small parts in the mouth and choke on them.

The product does not comply with the requirements of the Toy Safety Directive and relevant European Standard EN 71-1.

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

**Description:** Wooden rattle toy with several jingle bells hanging from it. The product was sold online (in particular via WISH).

**Packaging description:**

**Country of origin:** Unknown

**Type of alert:** Other

**Year - Week:** 2020 - 4

**Alert submitted by:** Denmark

The rattle was placed on RAPEX again in January 2020. On this most recent alert the warning is almost identical with the wording in the warning from 2018. It is repeated, that the product does not comply with the requirements in the Toy Safety Directive and that the rattle constitutes a choke risk for children. RAPEX indicates that the measure taken is “Stop of sales (By: Retailer)”.

The alert also states, that the product was sold on Wish.com. However, similar rattles appearing identical are still to be found on the Wish.com from other third-party sellers as of March 25.th 2020 - more than 1,5 years after the first alert.

### The wooden apple with the long cord

Picture 3: RAPEX alert on the wooden apple toy on. Alerted week 26<sup>th</sup> of October 2018

**Alert number:** A12/1568/18

**Product:** Wooden toy

**Category:** Toys

**Name:** Wooden Education Baby Fruit Toys

**Brand:** Unknown

**Batch number / Barcode:** Unknown

**Type / number of model:** Unknown

**Type of alert:** Serious

**Risk type:** Choking, Strangulation

The cord attached to the wooden apples is too long, which could lead to strangulation, and a part of the apple detached, generating a small part. A child may put the small part into 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:** Removal of the products from the Wish platform (By: Other)

**Measures ordered by public authorities (to: Other):** Authority warning consumers of the risk

**Description:** Wooden toy apple with a worm attached to a string, used to train motor skills. Packed in a clear plastic bag. The product is sold online (for example on the Wish marketplace).

**Country of origin:** Unknown

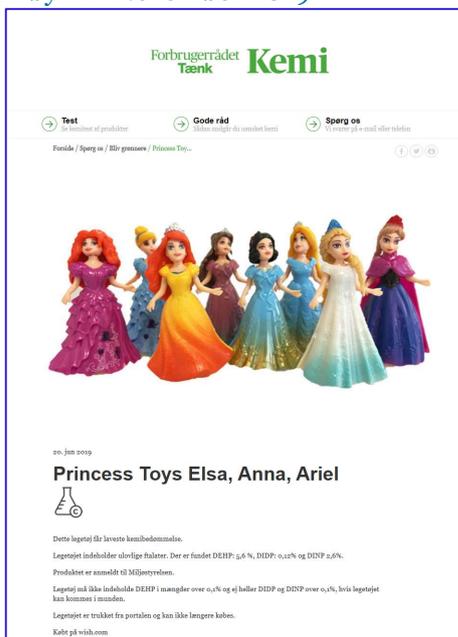
**Alert submitted by:** Finland

The RAPEX alert on the wooden apple toy states that the type of alert is “serious”, and the risk type is” choking and strangulation” due to small parts and a cord, that is so long, that it could lead to strangulation. The product does not comply with the requirements of the Toy Safety Directive. Wish.com has been required to take the products down from the platform and Authorities has warned consumers.

Accordingly, the Finnish Authorities have had the toy removed from Wish.com<sup>7</sup>. Nonetheless, products appearing identical are still to be found on Wish.com from other third-party sellers as of March 25<sup>th</sup>, 2020.

## Disney Princess figures with illegal chemicals

Picture 4: Alert and test of Disney Princess Figures by Danish Consumer Council June 2019 and again by DR November 2019



The Danish Consumer Council carried out a test of 29 toys bought on Wish.com, Amazon and eBay in June 2019. The test<sup>8</sup> revealed illegal chemistry in 9 of the toys, including these Disney Princess figures bought on Wish.com. The test showed phthalates levels way above the thresholds: 56 times the allowed amount of DEHP, as well as too high levels of DIDP and DINP<sup>9</sup>.

According to the Danish Consumer Council, Wish promised the Danish Environmental Agency to take down the Disney Princess figures with dangerously high levels of phthalates as of the 24<sup>th</sup> of June 2019<sup>10</sup>.

<sup>7</sup> <https://taenk.dk/test-og-forbrugerliv/boern/billigt-legetoj-fra-nettet-er-farligt-dit-barn>

<sup>8</sup> <https://kemi.taenk.dk/bliv-groennere/test-kemi-i-legetoj-fra-ebay-amazon-og-wish>

<sup>9</sup> <https://kemi.taenk.dk/bliv-groennere/test-kemi-i-legetoj-fra-ebay-amazon-og-wish/princess-toys-elsa-anna-ariel>

<sup>10</sup> <https://kemi.taenk.dk/bliv-groennere/test-kemi-i-legetoj-fra-ebay-amazon-og-wish/fortnite-figures>

However, the Disney Princess figures were still for sale on the platform and the Danish Broadcaster DR purchased them and had them tested again in November 2019. The second test revealed 67 times the threshold of DEHP.<sup>11</sup>

Toys appearing to be identical to the Disney Princess figures and the other toys from the test of June 2019 was still on sale on the platform from other third-party seller as of March 26<sup>th</sup>, 2020.

### 3. Notifications from Wish.com regarding the dangerous toys

Wish.com has our e-mail but in none of the purchases of dangerous toys have we received an email notifying us, that the toys have been tested dangerous and that Wish.com has been asked by authorities to take them down. However, looking actively in our order history (which we expect few consumers feel they have a reason to do), we can see, that Wish states that the product has been refunded. However, no reason for this is given. If we click on the box “product information” it is stated, that the product is dangerous / illegal. Here it is written that the refund is in “Wish-cash”, which it turns out does not reply to Denmark.

### 4. Example 1: rattle musical toy

We purchased the rattle toy the 5th of August 2019, which is after the first RAPEX alert from week 29 in 2018. However, if we look at our order history, the product has been refunded the 12<sup>th</sup> of November 2019:

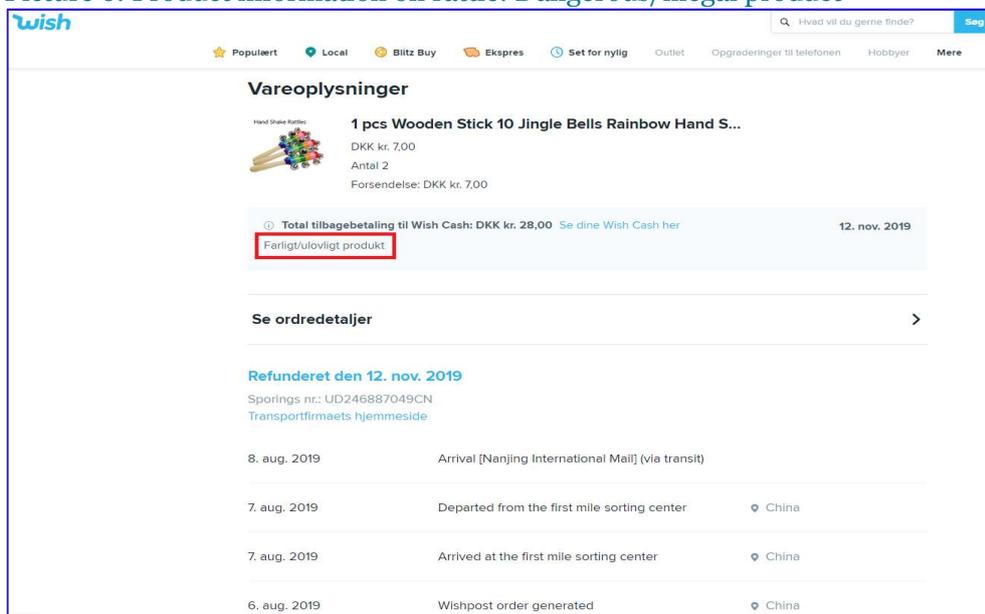
Picture 5: Order history

The screenshot shows the Wish.com order history interface. At the top, there is a search bar and navigation tabs like 'Populært', 'Local', 'Blitz Buy', 'Ekspres', 'Set for nylig', 'Outlet', 'Opgraderinger til telefonen', 'Hobbyer', and 'Mere'. The main content area lists several orders. The third order is highlighted with a black box and labeled 'Refunderet den 12. nov. 2019'. The product details for this order are: 'Hand Shake Rattles', 'Sidste placering: China', 'Lager: ZHIHAN', '1 pcs Wooden Stick 10 Jingle Bells Rainbow Hand Shake Bell Rat...', and 'Antal 2'. To the right of this order, the 'Vareoplysninger' button is highlighted with a red box. Other orders include '2.5ml Teeth Whitening Pen Gel Home Tooth Bleaching Pen Dazz...' (Antal 1), 'Ankommer inden 26. dec. 2019' (Bath Toys not contact lenses, 8 Pcs-Lot, Antal 1), and 'Ankommer inden 21. dec. 2019' (Baby Children Fingers Flexible Twist Insects Wooden Blocks Cat..., Antal 1).

<sup>11</sup> <https://www.dr.dk/nyheder/penge/trods-advarsel-legetoej-med-forbudt-kemi-saelges-stadig-af-populaere-udenlandske>

The order history itself does not leave any indication that the product is illegal and dangerous. However, by clicking on the red square to see the product description, it will lead you to the following page:

Picture 6: Product information on rattle: Dangerous/illegal product



In the red square the description says “Dangerous/illegal product”, which thus is the reason for the refund. However, the consumer is not directly notified of the product being alerted on RAPEX as it is illegal and dangerous. The responsibility of realizing this is put on the consumer either by checking their order history for refunded products or checking RAPEX.

### 5. “Refund” in Wish Cash

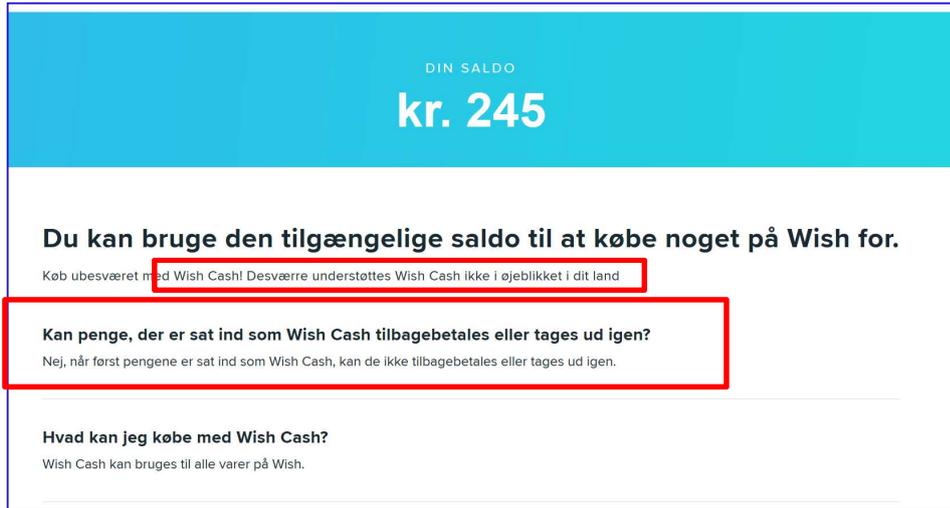
It turns out, that the refund is not a refund of the amount paid for the rattle. The refund is in so called “Wish Cash” as seen on the picture below.

Picture 7: Refund of rattle toy. “Dangerous/illegal product”



As seen in the box, the toy was taken down because it was found dangerous/illegal, and the price of 28 DKR was refunded to the Wish Cash account. As it says in picture 5 below, this money can only be used to buy other products from Wish and cannot be withdrawn. Altogether we have 245 DKK on our Wish Cash account, but as seen in picture 8, this function does not work in Denmark.

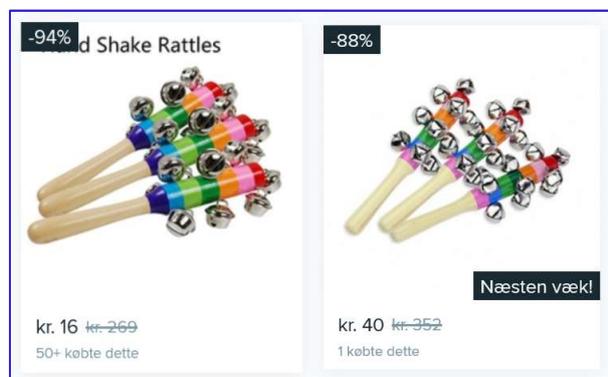
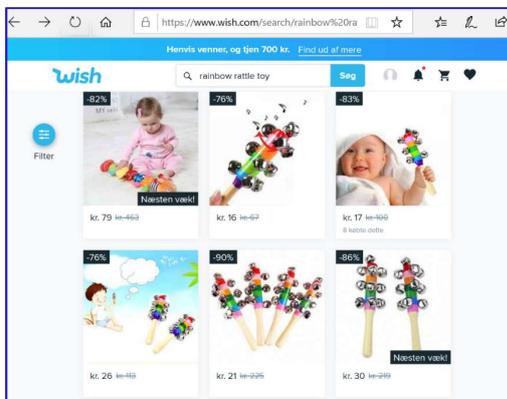
Picture 8: Wish Cash account conditions. 245 DKK to be used only on Wish.com but not functioning in Denmark



### 6. Rattles appearing identical still available on Wish.com

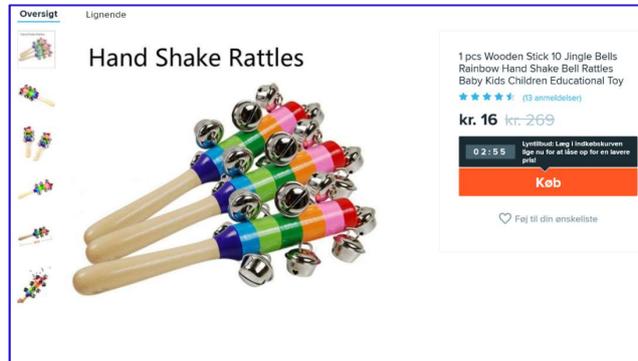
The following will examine whether the rattle is still on sale on the platform after it has been asked by authorities not to be sold. As mentioned, the rattle was available on the platform after the first warning. A simple search as of the 18<sup>th</sup> of February 2020 on Wish.com shows that rattles appearing to be identical with dangerous/illegal rattle are still being sold on the platform by various sellers. This includes marketing with babies, who could risk suffocation from the rattle, if it is identical to the one, we have purchased.

Picture 9 +10: Rattles appearing identical to the reported rattle are still available on the platform. All rattles have at least a price reduction of at least 76%.



A comparison between the rattle, we bought that were “refunded” because it was illegal/dangerous, shows that the pictures look identical:

Picture 11: Product currently available on Wish.com



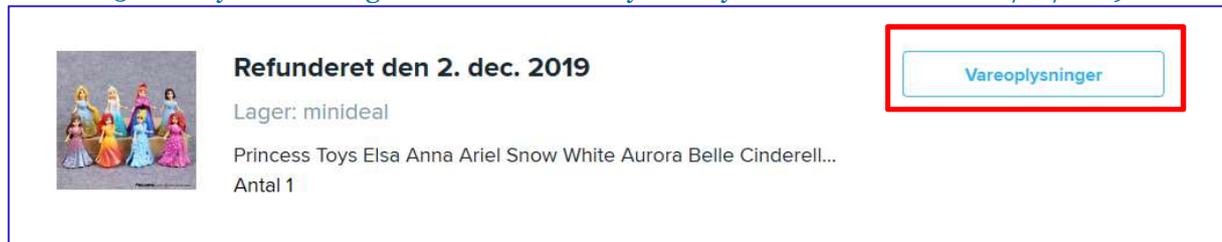
Picture 12: Dangerous/illegal product not available



### 7. Example 2: Disney Princess figures

We purchased the Disney Princess figures the 5th of August 2019, which is after the first promise the platform made to take the product down to the Danish Consumer Council and the Danish Authorities the 24th of June 2019. We did not receive an e-mail informing us about the problems with the figures. However, if we actively look at our order history, it shows that the Disney Princess figures has been “refunded” the 12th of November 2019:

Picture 13: Disney Princess figures on order history sold by minideal refunded 02/12/2019



Again, the order history itself does not leave any indication that the product is illegal and dangerous. However, by clicking on the red square to see the product description, it will lead you to the following page:

Picture 14: Product information on Disney Princess figures: Dangerous/illegal product

### Vareoplysninger



**Princess Toys Elsa Anna Ariel Snow White Aurora Belle Cinderella PVC Figure Toys 8pcs/set DSFG302**

DKK kr. 113,00

Antal 1

Forsendelse: DKK kr. 65,00

🕒 Total tilbagebetaling til Wish Cash: DKK kr. 178,00 [Se dine Wish Cash her](#) 2. dec. 2019

Farligt/ulovligt produkt

In the red square the description says “Dangerous/illegal product”, which thus is the reason for the refund. However, the consumer is not directly notified of the product being warned by authorities as it is illegal and dangerous. The responsibility of realizing this is put on the consumer either by checking their order history for refunded products or checking RAPEX.

### Disney Princess figures appearing identical still available on Wish.com

The following will examine whether the Disney Princess figures are still on sale on the platform after they has been asked by authorities not to be sold. A simple search on Wish shows that products appearing to be the identical dolls are still being sold on the platform by other sellers as of the 18<sup>th</sup> of February 2020.

Picture 15 + 16: Figurines appearing identical still available on the platform with an 82% price reduction offered by other sellers of February 18<sup>th</sup>, 2020



kr. 97 ~~kr. 553~~

10+ købte dette

Oversigt
Lignende



8pcs Princesses Aurora Belle Cinderella Ariel PVC Dress Up Dolls Action Figure Toys Gift Anime Cartoon

★★★★★ (3 anmeldelser)

**kr. 97** ~~kr. 553~~

Køb

[Føj til din ønskeliste](#)

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**Standard levering** kr. 59  
apr. 4 - maj 3  
Varen er solgt og sendt af PrinceGW

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**Kunde anmeldelser** [Vis mere](#)

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**Beskrivelse** [Vis flere](#)

Material: High quality PVC, classic.  
Height: Approx 10cm(4 inch), not all of them have the same size, tiny size, for reference only.

**Package:** 8 pieces with opp bag. No box, well packed.

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**Solgt af** [Gem anmeldelse](#)

 PrinceGW  
4.4 ★★★★★ (278)

### 8. Example 3: Wooden apple toy

We purchased the wooden apple toy twice: both the 5th of August 2019 and the 4<sup>th</sup> of November 2019. Both purchases were therefore placed after the RAPEX alert from 26<sup>th</sup> of October 2018. We have not received any notifications that the toy is dangerous. However, if we look at our order history, one of the purchases of the wooden apple toy has been “refunded” the 12<sup>th</sup> of November 2019:

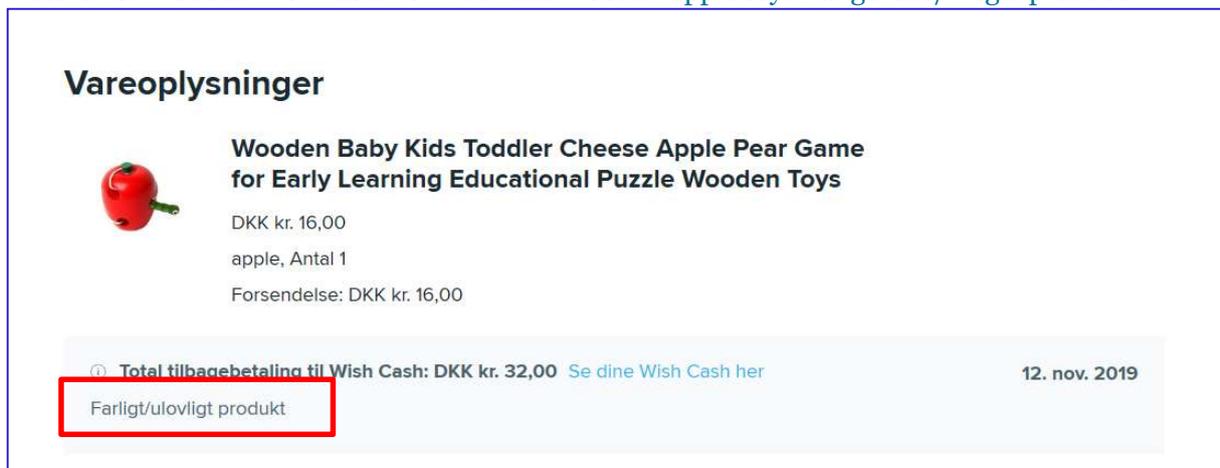
Picture 17: Wooden apple toy on order history sold by Arashi refunded 12/11/2019



The screenshot shows an order history entry. On the left is a red apple icon. To its right, the text reads: "Refunderet den 12. nov. 2019", "Lager: Arashi", and "Wooden Baby Kids Toddler Cheese Apple Pear Game for Early L... apple, Antal 1". A red square highlights a button labeled "Vareoplysninger" in the top right corner.

The order history itself still does not leave any indication that the product is illegal and dangerous. However, by clicking on the red square to see the product description, it will lead you to the following page:

Picture 18: Product information on refunded wooden apple toy: Dangerous/illegal product

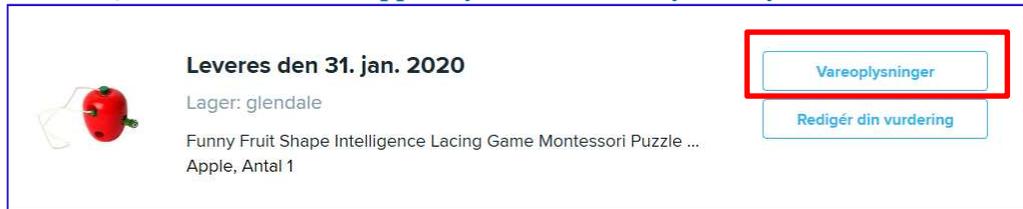


The screenshot shows the product information page. At the top left is the title "Vareoplysninger". Below it is a red apple icon and the product name: "Wooden Baby Kids Toddler Cheese Apple Pear Game for Early Learning Educational Puzzle Wooden Toys". The price is listed as "DKK kr. 16,00" and the quantity as "apple, Antal 1". Shipping is "Forsendelse: DKK kr. 16,00". At the bottom, a light blue box contains the text "Total tilbagebetaling til Wish Cash: DKK kr. 32,00" and "Se dine Wish Cash her" with a date "12. nov. 2019". A red square highlights the text "Farligt/ulovligt produkt" below this box.

In the red square the description says “Dangerous/illegal product”, which thus is the reason for the refund. However, the consumer is not directly notified of the product being warned by authorities as it is illegal and dangerous. The responsibility of realizing this is put on the consumer either by checking their order history for refunded products or checking RAPEX.

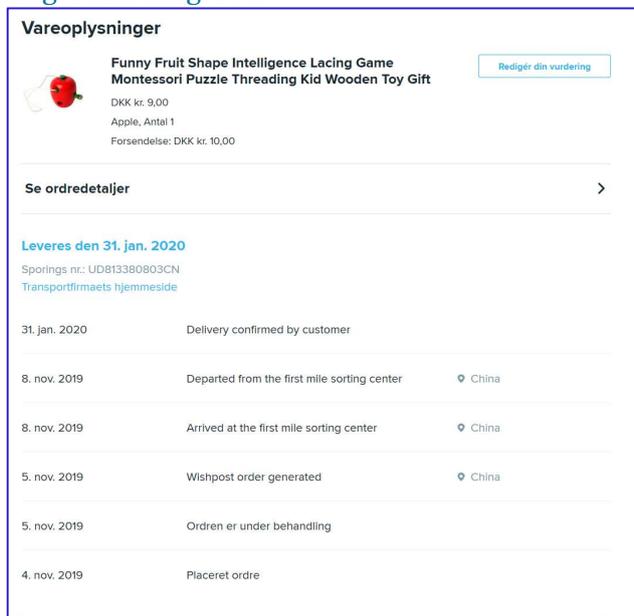
Furthermore, we also purchased the toy from a different third-party seller. This identical toy has **not** been refunded.

Picture 19: Identical wooden apple toy on order history sold by Glendale not refunded



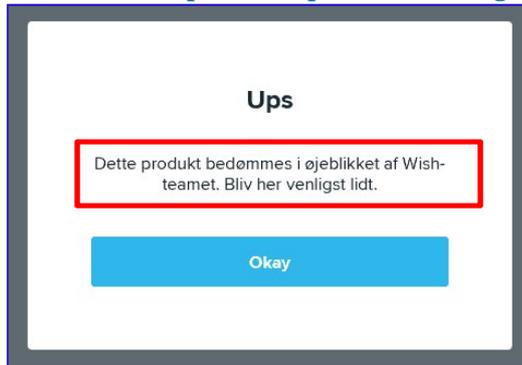
This wooden apple toy constitutes the same dangers as the refunded apple toy, as the cords were longer than allowed and it contains of smaller parts than allowed in toys. This constitutes a suffocation risk of children. Yet, it has not been refunded. If now pressing the red square for product information, the following page appears:

Picture 20: Product information of the identical wooden apple toy not “refunded” despite it being illegal and dangerous



With the refunded toys including the other wooden apple, the product information has shown that the products are illegal/dangerous. However, this identical apple toy does not show any indication of such. But, if the consumer tries to buy the product again from the same seller, it leads to the following page:

Picture 21: ‘Oops – This product is being assessed by the Wish-Team



Thus, the consumer is not able to buy the product again from the same seller directly from the order history.

### Identical wooden toys still available on Wish.com

The following will examine whether the wooden apple toy is still on sale on the platform after it has been asked by authorities not to be sold. As mentioned, the apple toy was available on the platform after the first warning. A simple search as of the 18<sup>th</sup> of February 2020 on Wish shows that products appearing to be the identical wooden apple toy are still being sold on the platform by various sellers.

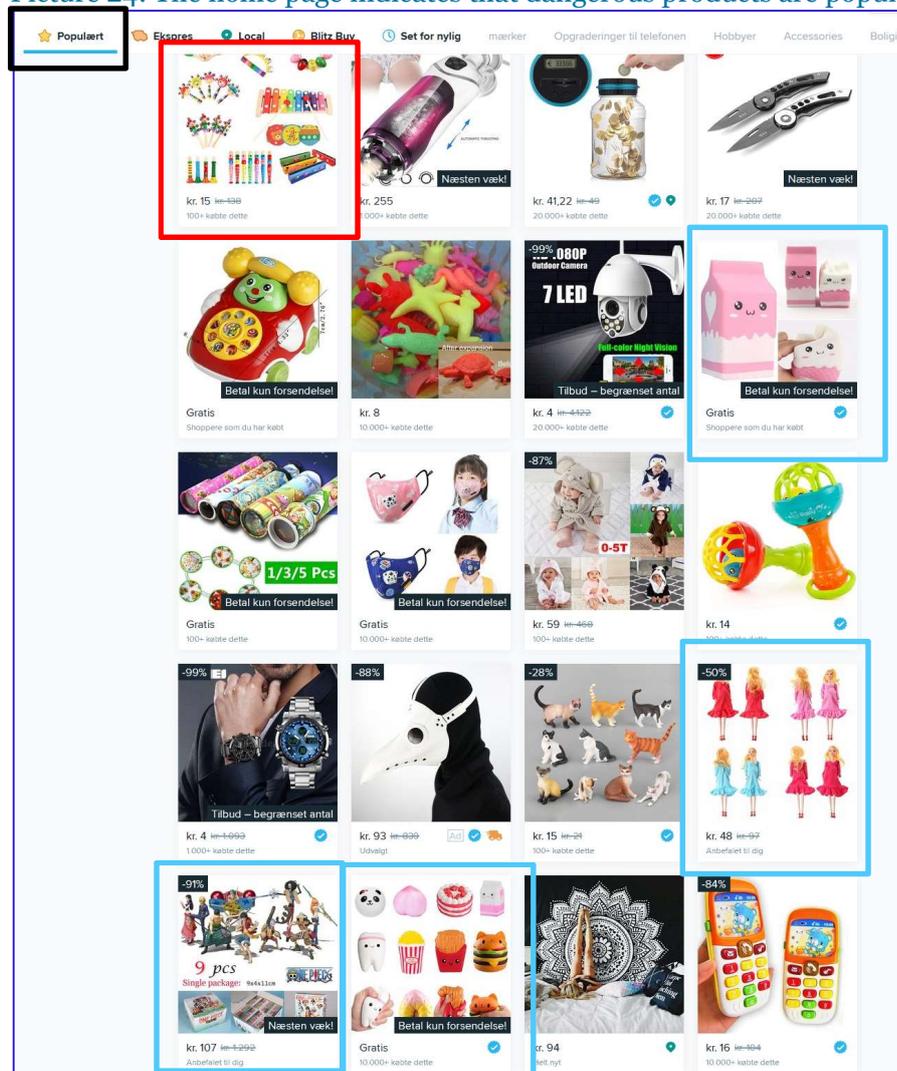
Picture 22+23: Wooden toys appearing identical are still available on Wish.com with up to a 75% price reduction, and one toy is even free



### 9. Dangerous products appear on the “popular” product page

On the Wish.com website popular products are listed. On the list of popular items rattles appearing identical to rattle, that has been tested dangerous, is shown as illustrated in picture 24.

Picture 24: The home page indicates that dangerous products are popular



In the black square, it says ‘popular’. Besides the rattle we have also marked other toys, which appears identical to other non-compliant and dangerous products not described in this memo, but which we have also purchased<sup>12</sup>. These are marked with a blue square. A summary of all purchases can be found in the document “Table overview of test purchases on platforms”. Although the page is called ‘popular’, it should be noted that the homepage is based on an algorithm. Therefore, the page is more likely to show products the consumer has purchased or shown interest in.

<sup>12</sup> The milk squishy is described in more details in the memo regarding unsafe products found on AliExpress and the other marked products are mentioned in the table overview of our 50 test purchases on 3 platforms.

However, it might also be due to the product being very popular on the platform. Under the listings, it is explained why the algorithm has chosen the listing. For example, under the package with the musical rattle it states that 100+ costumers have bought the listing. Under the squishy package, which includes a product appearing to be the milk squishy which is registered on RAPEX, it states that 10.000+ has bought it. The fact that products appearing identical to dangerous products are so popular emphasizes the importance of taking down these products.

**10. Package labels claims that the products are safe and compliant**

Most of the packages we received from third party sellers on Wish.com most included a standard text on the label declaring that the content is not illegal nor dangerous. An example of such a label and standard text is seen in picture 25. According to the label the sender declares that: *“I certify that the particulars given in this declaration are correct and this item does not contain any dangerous articles prohibited by legislation or by postal or customers regulations”*.

Picture 25: Package label from Wish.com with standard text declaring that the content is safe



This label and standard text are seen on almost all the packages we have bought on Wish.com. 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. 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 “certification” from the label.

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

Wish.com displays all prices without VAT regardless of them being under or over the VAT exemption for small consignments for non-EU sellers, which is 80 DKK or approx. 10 Euro. 6 of our 25 orders on Wish.com were VAT guilty. However, all VAT guilty purchases had a false value below the VAT-threshold indicated on the package. This allowed all packages to enter the Customs in Denmark without paying VAT. For example, the price of the Disney Princess Figures was 113 DKK which is above the threshold but on the package, the value was stated as 61 DKK which is below the threshold and 53 % of the actual price paid.

### 12. No match between seller and sender

In none of the purchases on Wish.com did the name of the seller listed on the platform match the name of the sender of the package. This is confusing and makes us doubt who we are trading with. This might also make VAT control difficult.

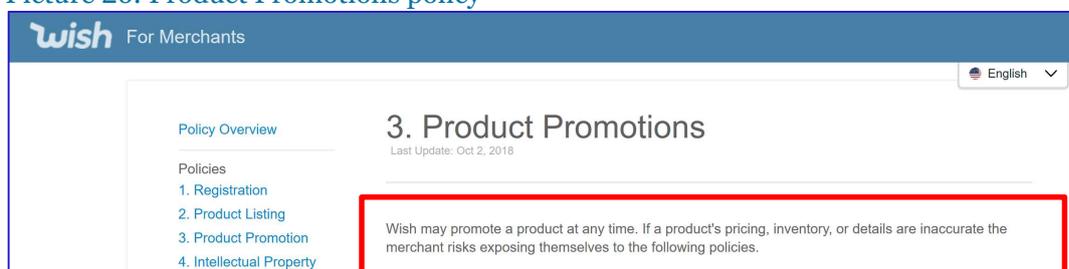
### 13. Consumer rights

In none of our purchases from Wish.com did we receive the terms & conditions and it is difficult to see, which rules apply for the purchase. Wish.com has a long set of terms and conditions on its website, but that accordingly only regulates the use of the website. According to these Wish.com does not take any responsibility for the purchase despite that the newest version of the terms and conditions from March 2020 in paragraph 3.3 states, that *“Although we are not a party to the contract formed between you and a Merchant when you make a purchase, we may assist with payment processing, returns, refunds, and other customer service”*<sup>13</sup>.

Another issue is the price marketing on the website. Almost all products are sold with very high price reductions, often above 90 pct. It appears that very few products are sold without huge savings, and that the “normal” price never appears. It is our experience, that the price reductions do not seem realistic nor trustworthy.

Wish accordingly takes an active role promoting the products. As shown in picture 26 and 27 in the information for Merchants “Wish may promote a product at any time”. These promotions are not bought or chosen by the seller. Instead, it is Wish.com that chooses which products that get promoted and when.

Picture 26: Product Promotions policy<sup>14</sup>



<sup>13</sup> <https://www.wish.com/eu-terms#section-4>. The quote is taken from the terms and conditions March 30, 2020.

<sup>14</sup> <https://merchant.wish.com/policy/promotion>

Picture 27: Promoted products function explained <sup>15</sup>**What are promoted products?**

Wish regularly runs promotional campaigns to drive additional traffic to products in our app. Products which have been selling well on Wish may be selected for promotion in our promoted products program. These products are programmatically chosen by Wish due to their relevant audience, conversion, and popularity.

The product information given to consumers on the website is also often limited, and it impossible for consumers to see, whether a product complies with EU product safety law.

**14. Conclusion**

Wish.com has not signed the voluntary EU Product Safety Pledge<sup>16</sup> where 4 platforms (Amazon, Alibaba, eBay and Rakuten France) commits themselves to take actions against unsafe products sold by third parties on their marketplaces. Wish.com has openly declared in the Danish press, that they cannot take responsibility for the safety of the products sold on their marketplace (see quote later).

23 of the toys we purchased on Wish.com has been tested dangerous and alerted by authorities. Several is registered on RAPEX.

In this memo we have for exemplification documented three examples of dangerous toys. In our case as buyers Wish has not contacted us in order to inform us, that the toys purchased pose a risk to children and therefore has been warned by authorities. These authorities have asked the platforms to take down the toys. We have not received any notification thereof directly. Toys appearing identical to the rattle, the wooden apple toy and Disney Princess figures are still available on the platform as of February 18<sup>th</sup>, 2020.

If a consumer in good faith buys an illegal or dangerous product on Wish.com, the only way they can find out that it is dangerous is by regularly go through their order history and notice if they get a “refund” on one of their orders, and then click the product description on this order. Our examples show that consumers should not expect to be notified via e-mail from Wish.com nor from the seller.

There has been no contact with the seller throughout the entire transaction in any of our 27 purchases from third party sellers on Wish.com. All contact has been going through Wish.com.

<sup>15</sup> <https://merchantfaq.wish.com/hc/en-us/articles/205212507-Promoted-Products>

<sup>16</sup> [https://ec.europa.eu/info/sites/info/files/voluntary\\_commitment\\_document\\_2020\\_2signatures\\_v2\\_003.pdf](https://ec.europa.eu/info/sites/info/files/voluntary_commitment_document_2020_2signatures_v2_003.pdf)

The products, which are alerted on RAPEX and by Danish Consumer Council and Danish Safety Agency, has sometimes been “refunded” to “Wish Cash”. This currency could only be used on the platform and it did not work our country. Furthermore, products appearing identical are still to be found on the platform as of the 18<sup>th</sup> of February 2020. This includes marketing of the dangerous toys with pictures of babies, even though babies’ risk to suffocate playing with the toys.

It appears like Wish.com’s algorithm is able to identify products appearing identical to the product, we have purchased, since they appear in our list of “popular” products. 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.

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 Wish.com 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 have purchased on Wish.com have turned out to contain products that were both dangerous and illegal and thus contradicts the certification from the label.

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

How problematic this lack of platform responsibility or liability is can be illustrated by Wish.com’s response to the Danish broadcaster TV2 the 24<sup>th</sup> of June 2019<sup>17</sup> when the test of phthalates in toys was covered in the medias, here translated to English:

*” Wish writes in a mail to TV2 that they were not aware that the products were illegal:*

*“With more than two billion products we have faith in the help of the society to make sure that our products live up to the standard, our customers demand, writes Wish.*

*We are grateful that TV2 and The Consumer Council Tænk has chosen to inform us”.*”

The present situation is unacceptable and leads to unsafe consumer conditions and unfair competition seen in connection to European retailers who obey 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.

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

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<sup>17</sup> <https://nyheder.tv2.dk/samfund/2019-06-24-advarer-mod-forbudte-stoffer-fundet-i-legetoej-koebt-paa-nettet>

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>18</sup>

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.

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<sup>18</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

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.