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# Harmful Products/Section 230 of the Communications Decency Act: U.S. District Judge Dismisses U.S. Department of Justice Environmental Enforcement Action Against eBay

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WebProNews reported in an October 1st article that United States District Judge Orelia E. Merchant dismissed a United States Department of Justice (“DOJ”) environmental enforcement action that had been filed against eBay, Inc. (“eBay”).

Judge Merchant cited Section 230 of the Communications Decency Act (“CDA”) in dismissing the action.

DOJ filed in September 2023 a Complaint in the United States District Court (Eastern District, New York) on behalf of the United States Environmental Protection Agency (“EPA”) against eBay. The Complaint alleged unlawful selling, offering for sale, causing the sale of, and distributing hundreds of thousands of products in violation of the:

- Clean Air Act.
- Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”).
- Toxic Substances Control Act (“TSCA”).

In regard to the referenced federal environmental statutes, the specific alleged violations involved:

- Clean Air Act
- ...sold, offered for sale, or caused the sale of more than 343,000 such parts... (referencing the alleged sale, offering for sale, or causing offer of aftermarket parts that defeat motor vehicle emission controls in violation of the Clean Air Act).
- FIFRA
- ...unlawfully distributed or sold at least 23,000 such products (referencing the alleged unlawful distribution or sale of unregistered, misbranded, and restricted use pesticides, including some which were in direct violation of an EPA Stop Sale Order issued to eBay in 2020 and amended in 2021).
- TSCA
- ...distributed over 5,600 items in violation of TSCA’s Methylene Chloride Rule, including illicit paint and coating removal products (violating the prohibition of retailers distributing in commerce products containing methylene chloride for paint and paint coating removal).

The Complaint sought injunctive relief as well as civil penalties.

WebProNews notes in its October 1st article that eBay argued in response that it was protected by Section 230 of the CDA.

Section 230 of the CDA provides limited immunity from legal liability to providers and users of “interactive computer services”. Pursuant to Section 230(c)(1) providers and users may not be treated as the publisher or speaker of any information provided by another information content provider.

WebProNews notes that eBay contended that it did not actually “sell” any item listed on its platform. It asserted that the ordinary meaning of “sell” requires ownership or possession over an item. Therefore, it contended that because DOJ’s Complaint failed to allege that eBay owned, held in its possession, or transferred any item covered by the Clean Air Act in exchange for value, it failed to allege that “eBay sold any product that violates the Clean Air Act”.

WebProNews cites Judge Merchant’s decision in which she agreed that eBay did not directly sell the goods in question. She is quoted in stating in part:

...the provision of neutral, automatic email prompts and messages, and of payment processing software does not materially contribute to the alleged products’ “alleged unlawfulness”. Under Section 230, an “information content provider” is “any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the internet or any other interactive computer service.” ...this means that “[a]n interactive computer service will be immune for content on its platform under Section 230 unless ‘it assisted in the development of what made the content unlawful,’ thus becoming an information content provider...the administrative and technical support eBay provides to sellers does not ‘materially contribut[e] to [the content’s] alleged unlawfulness.”

Judge Merchant dismisses DOJ’s Complaint.