

[The Licensing Journal, Platform Liability Is Expanding: What Online Marketplaces, Distributors, and E-Commerce Businesses Need to Know, \(Oct. 1, 2026\)](#)

The Licensing Journal

Retail

Naz Etemad and Lauren Kilger

Neusha “Naz” Etemad is an attorney at Buchalter’s San Diego and Orange County offices, focusing her practice on consumer class actions and product liability. She represents digital platforms and prides herself on navigating novel legal issues while establishing favorable precedent. She can be reached at netemad@buchalter.com.

Lauren Kilger is an associate at Buchalter LLP. Her practice focuses on product liability defense and commercial litigation.

The line between a traditional retailer and an online marketplace is becoming increasingly blurred. Courts across the country are grappling with whether e-commerce platforms can be held responsible for injuries caused by products sold by third-party vendors. While the law remains unsettled in many jurisdictions, the trend is clear: courts are increasingly willing to allow claims against platforms to proceed when the platform played a significant role in the transaction.

For businesses that operate online marketplaces, facilitate third-party sales, or serve as intermediaries between sellers and consumers, recent decisions provide important lessons regarding risk management and liability exposure.

The Growing Trend Toward Platform Liability

Historically, online marketplaces have argued that they merely provide a venue for transactions and therefore should not be treated like manufacturers, distributors, or retailers. That argument has enjoyed mixed success.

Recent cases involving Amazon demonstrate that plaintiffs increasingly view online platforms as attractive defendants because they often have deeper pockets than foreign or difficult-to-locate manufacturers. Courts have shown a growing willingness to examine the platform’s actual involvement in the transaction rather than merely accepting the “marketplace” label.

Product-related claims have arisen from a wide variety of situations, including allegedly defective batteries, battery chargers, immersion heaters, laser pointers, hoverboards, and even chemicals sold through online marketplaces. In several of these cases, platforms faced claims for strict liability, negligence, failure to warn, and breach of warranty.

California Continues to Lead the Expansion of Platform Liability

California remains one of the most significant jurisdictions for businesses monitoring platform liability developments. Together, these decisions signal that California courts are focusing on platforms’ practical role in getting a product into a consumer’s hands and how involved the platform is within that process.

In *Bolger v. [Amazon.com, LLC](#)*, which was decided in 2020, the California Court of Appeal reversed the lower court’s decision and held that Amazon could potentially be held strictly liable for injuries caused by a defective laptop battery sold by a third-party seller through Amazon’s marketplace. The court emphasized Amazon’s substantial involvement

in the transaction and rejected the argument that Amazon was merely a passive marketplace.

The following year, in 2021, the court further expanded potential exposure for platforms in *Loomis v. [Amazon.com, LLC](#)* by holding that strict liability could attach under multiple theories when Amazon was “instrumental in the sale of the product” by taking an order for a product, accepting payment, and passing the order up the chain of distribution. The court also permitted negligence claims to proceed, finding that Amazon had not established as a matter of law that it owed no duty of care to consumers.

Other States Are Watching Closely

Outside California, courts continue to wrestle with the issue. Decisions in Minnesota and Washington suggest that courts increasingly view platform liability through traditional negligence principles, focusing on foreseeability, duty, and the platform’s degree of participation in the sales process.

In 2026, the Eighth Circuit certified a question to the Minnesota Supreme Court concerning whether an e-commerce company that facilitates sales and provides fulfillment services may be strictly liable for injuries caused by a defective third-party product. The certification itself highlights the ongoing uncertainty and division among courts nationwide.

Meanwhile, the Washington Supreme Court held in *Scott v. [Amazon.com, Inc.](#)* that negligence claims against Amazon could proceed where plaintiffs alleged Amazon promoted and facilitated the sale of sodium nitrite despite known risks. Significantly, the court rejected the argument that suicide constituted a superseding cause as a matter of law and determined that whether suicide was a foreseeable harm was a question of fact.

Key Takeaways for Online Marketplace Operators

1. Your Level of Involvement in Facilitating the Transaction Matters

The more integrated the platform becomes in the transaction, the more likely a court may view it as part of the chain of distribution. Factors that may increase liability exposure include the following:

- Warehousing inventory.
- Processing payments.
- Providing fulfillment services.
- Controlling product listings.
- Communicating with customers.
- Facilitating returns and refunds.
- Promoting products through recommendation algorithms or targeted advertising.

2. Product Safety Programs Are Critical

Businesses should consider implementing robust procedures for the following:

- Vetting sellers.

- Monitoring product safety reports.
- Reviewing customer complaints.
- Evaluating product recalls.
- Suspending or removing a potentially dangerous listing.

3. Review and Periodically Improve Your Terms of Use and Vet All Insurance Policies

Terms of use, seller agreements, indemnification provisions, and insurance policies should be reviewed by counsel regularly to ensure that they address evolving platform liability risks. It is also recommended to work with counsel to ensure that all Terms of Use are enforceable.

4. Continue Monitoring this Developing Area of Law

Courts across the country are actively addressing the scope of platform liability. Businesses should monitor legal developments and periodically reassess their risk-management practices with counsel.

<https://prod.resource.cch.com/resource/scion/document/default/paa01b4d3694ec4bf493a87aeb1c12e37e92a?cfu=Legal&cpid=WKUS-Legal-Cheetah&uAppCtx=cheetah>