No. 12-2209

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

COMPANY DOE,
Plaintiff – Appellee,

v.

PUBLIC CITIZEN; CONSUMER FEDERATION OF AMERICA; and **CONSUMERS UNION,**
Parties-in-Interest – Appellants.

On Appeal from the U.S. District Court for the District of Maryland
(Hon. Alexander Williams, Jr., U.S. District Judge)

AMICI CURIAE BRIEF OF THE NATIONAL ASSOCIATION OF MANUFACTURERS, AMERICAN COATINGS ASSOCIATION, ASSOCIATION OF HOME APPLIANCE MANUFACTURERS, MANUFACTURERS ALLIANCE FOR PRODUCTIVITY AND INNOVATION, RECREATIONAL OFF-HIGHWAY VEHICLE ASSOCIATION, AND SPECIALTY VEHICLE INSTITUTE OF AMERICA IN SUPPORT OF PLAINTIFF-APPELLEE AND AFFIRMANCE

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1 and 29(c)(1) and Cir. R. 26.1, *Amici Curiae,* National Association of Manufacturers, American Coatings Association, Association of Home Appliance Manufacturers, Manufacturers Alliance for Productivity and Innovation, Recreational Off-Highway Vehicle Association, and Specialty Vehicle Institute of America state that no *amicus* is owned by a parent corporation, and there is no publicly held corporation that owns 10% of more of any *Amicus*.

Amici know of no publicly held corporation that has a direct financial interest in the outcome of the litigation by reason of a franchise, lease, other profit-sharing agreement, insurance, or indemnity agreement.

Amici know of no publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding. *Amici* are not pursing the claims of any member in a representative capacity.

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STATEMENT OF IDENTITY, INTEREST, AND AUTHORITY TO FILE[1]

The National Association of Manufacturers, American Coatings Association, Association of Home Appliance Manufacturers, Manufacturers Alliance for Productivity and Innovation, Recreational Off-Highway Vehicle Association, and Specialty Vehicle Institute of America (collectively, "Amici") are national organizations representing the interests of manufacturers and private labelers of consumer products throughout the United States, and promoting the safe use of such products. Their members make and sell products subject to the jurisdiction of the Consumer Product Safety Commission ("CPSC" or "Commission") and for which reports may be submitted to the CPSC's Publicly Available Consumer Product Safety Information Database, saferproducts.gov (hereinafter "database").

Amici have a substantial interest in this case. It is important to Amici that their members can effectively respond when the CPSC intends to publish a report in a government-sponsored database that includes information that is false or likely to mislead reasonable consumers into believing that a safe product presents a danger to the public. The district court permitted a company to proceed through use of a pseudonym, sealed certain court documents, and redacted its decision to preserve the company's practical and meaningful ability to seek an injunction

[1] Pursuant to Federal Rule of Appellate Procedure 29(c)(5), Amici state that no party's counsel authored this brief in whole or in part, and that no party or person other than Amici and their members contributed money toward the preparation or filing of this brief.

necessary to stop the CPSC from publishing a materially inaccurate report. Public Citizen, Consumer Federation of America, and Consumers Union (Intervenors-Appellants) (hereinafter "Advocacy Groups") argue that the district court's use of this approach impermissibly prevented public access to court records. If their view is accepted, a manufacturer that files an action to enjoin the Commission from publishing false information would be forced to immediately place on the public record its identity and the same material that it sought to preclude the CPSC from posting on a government website. Such a result would create much of the harm that the lawsuit attempts to prevent and effectively strip Amici's members of the ability to stop dissemination of false or misleading information about the safety of their products.

Amici have filed a motion for leave to participate as *amici curiae* concurrently with this brief. All parties have consented to this motion.

INTRODUCTION AND SUMMARY OF ARGUMENT

The CPSC's database, saferproducts.gov, is intended to quickly provide the public with information on complaints about allegedly unsafe products. Virtually anyone may file a report online with just a few mouse clicks and keystrokes. Firsthand knowledge of what led to an injury is not required. A submitter only needs to provide minimal information on the product and what occurred for the CPSC to post the report online. While providing fast access to product safety information generally benefits the public, such a system comes with a significant risk that some submitted reports will contain erroneous or misleading information. For this reason, the ability of a manufacturer or private labeler to challenge materially inaccurate information,[2] and to seek an injunction from a court, if necessary, is critical to the integrity of the database. At issue in this case is whether a business that is faced with an erroneous report asserting that its product presents a danger to consumers must disclose its identity and place on the public record the very accusations that it has legitimately sought to keep from appearing in the database.

[2] CPSC regulations define "materially misleading information" as "information that is false or misleading, and which is so substantial and important as to affect a reasonable consumer's decision making about the product, including: (i) The identification of a consumer product; (ii) The identification of a manufacturer or private labeler; (iii) The harm or risk of harm related to use of the consumer product; or (iv) The date, or approximate date on which the incident occurred." 16 C.F.R. 1102.26(a)(1).

In this instance, the Commission itself found the report, which was submitted by an unidentified local government agency, materially inaccurate not once, but three times. Dkt. 11-cv-2958, Doc. No. 74, at 53. The CPSC's own experts found a lack of association between the risk of harm alleged in the report and the product at issue. *Id*. at 5. The agency's independent epidemiological investigation confirmed the inaccuracy of the report. *Id*. at 11. Nevertheless, after five rounds of the manufacturer asserting and reasserting that the report was baseless and inflammatory, and redactions by the Commission in an ineffective, futile attempt to make the report suitable for publication, the CSPC declared that the manufacturer had failed to meet its burden of proof that the information in the report was inaccurate. *See id.* 6-14.

A manufacturer in this situation faces a ticking clock. The Consumer Product Safety Improvement Act of 2008 ("CPSIA"), as amended, requires the CPSC to publish the report within ten business days of the Commission providing notice of the report to the product manufacturer and allows no more than five additional days to address a business's claim that information included in the report is materially inaccurate. 15 U.S.C. § 2055a(c)(3)(A), (c)(4)(A). As this time expires, a manufacturer's only means to stop the Commission from publishing a harmful, false report on a government database of dangerous products is to seek an injunction in court. As the district court recognized, if a business, by filing suit

to protect its reputation, must disclose its identity and repeat the details of the inaccurate report in the public record, then it "would sacrifice the same right it sought to safeguard by filing suit." Dkt. 11-cv-2958, Doc. No. 74, at 68. For this reason, the district court granted Company Doe's motion to proceed under a pseudonym and partially granted Company Doe's motion to seal the case. *Id.* at 73.

The district court ultimately issued a redacted opinion that, while not disclosing the identity of the manufacturer or product at issue, clearly informed the public of the legal reasoning supporting its decision that the Commission's action violated the Administrative Procedure Act (APA). *See id.* at 44-50. In sum, the district court found that the CPSC may not publish a report where the nexus between the product and the alleged harm is no more than coincidence, based on speculation, and the chance that the product caused the harm is "significantly lower than a coin flip." *See id.* at 39-43.

The Appellant Advocacy Groups argue that the district court's decision to allow the company to proceed under a pseudonym, seal certain court documents, and issue a redacted opinion violates the right of the public to access court documents. Their challenge discounts other compelling interests favoring limited confidentiality, including a business's ability to petition the court for redress without loss of a right provided by Congress. A manufacturer would have no

reason to invest the effort and expense of going to court to enjoin the CPSC from publishing an erroneous report if exercising its legal rights required publicizing the very information that it sought to keep out of the CPSC's public database. In such a situation, a company might be better off allowing the false report to go online—buried in the mounds of less than meaningful reports cluttering the database—submitting comments, and hoping to contain the damage. If Congress's prohibition on inclusion of materially inaccurate information is unenforceable in practice, then the database it created is in jeopardy of losing any potential value as a reliable source of product safety information for the public. That is not the outcome Congress intended. The district court's decision should be affirmed.

ARGUMENT

I. THE CPSC DATABASE IS SUSCEPTIBLE TO ERRORS AND ABUSE; IT IS CRITICAL THAT MANUFACTURERS HAVE THE ABILITY TO ADDRESS INACCURATE INFORMATION.

In enacting the CPSIA, Congress required the CPSC to establish and maintain a publicly-available consumer product safety database. Pub. L. No. 110-314, § 212, 122 Stat. 3016, 3048 (2008) (codified at 15 U.S.C. § 2055a) (hereinafter "database"). Congress intended that this database "provide consumers with potentially life-saving information, in an organized and timely fashion, which would better equip them to assess product safety risks and hazards." 154 Cong. Rec. S7868 (daily ed. July 31, 2008) (Statement of Sen. Inouye). Congress

envisioned a "user-friendly database on deaths and serious injuries caused by consumer products." *Id.* at S7870 (Statement of Sen. Levin). Congress charged the CPSC with "remov[ing] inaccurate material and redact[ing] confidential information" when necessary. *Id.* (Statement of Sen. Sununu). The database went live on March 11, 2011. *See* U.S. Consumer Prod. Safety Comm'n, News Release, *CPSC Launches New Consumer Product Safety Information Database Today Saferproducts.Gov Database Delivered on Time, on Budget for the Public*, Mar. 11, 2011, *at* http://www.cpsc.gov/en/Newsroom/News-Releases/2011/CPSC-Launches-New-Consumer-Product-Safety-Information-Database-Today--Safer Productsgov-database-delivered-on-time-on-budget-for-the-public/.

Several aspects of the database make it prone to errors. Individuals and entities that post reports on the database are not required to have firsthand knowledge of an injury or potential hazard. Congress provided that "(i) consumers; (ii) local, State, or Federal government agencies; (iii) health care professionals; (iv) child service providers; and (v) public safety entities" may submit reports of harm. 15 U.S.C. § 2055a(b)(1)(A). In its regulations, the CPSC interprets these terms broadly. The Commission defines a "consumer" not only as one who purchased or used the product in question and their immediate family, but also "friends, attorneys, investigators, professional engineers, agents of a user of a consumer product, and observers of the consumer products being used." 16 C.F.R.

§ 1102.10(a)(1).[3] The CPSC also defines "public safety entities" in a manner that allows groups with limited knowledge of the alleged harm or risk of harm to file reports. Under the regulations, "public safety entities" include not only law enforcement or medical professionals that assist a person harmed by a product, but also consumer advocates or individuals who work for nongovernmental organizations, consumer advocacy organizations, and trade associations, so long as they have a public safety purpose." *Id*. § 1102.10(a)(5).

The broad eligibility for who may submit a report also opens the door to misuse of the database. For example, advocacy organizations, such as Appellants, may file reports based on their own regulatory agenda or interests. Plaintiffs' lawyers may file reports with an eye toward current or future litigation. Disgruntled employees or customers, or competitors, may file reports to tarnish a company's reputation. Although an individual or organization that submits a report must provide its identity to the CPSC, such information is not disclosed to the public. *Id*. § 1102.10(d)(6), (f)(1).

[3] Given the expansive definition of consumer, it is unsurprising that approximately 97% of reports submitted to saferproducts.gov fall under this classification. *See* U.S. Gen. Accounting Office, Consumer Product Safety Commission: Awareness, Use, and Usefulness of SaferProducts.gov, at 16, GAO-13-306 (Mar. 2013), *at* http://www.gao.gov/assets/660/652916.pdf. While about forty percent of those who submitted reports identified themselves as the victim of the harm, and another twenty-one percent as an immediate family member, more than one third of those who submitted reports did not identify their relationship to the person who experienced a product-related injury or threat of harm. *Id*. at 17.

Reports submitted to the database often provide insufficient information to gauge their accuracy. Congress required that reports include certain minimum elements before they are included in the database, *see* 15 U.S.C. § 2055a(b)(2)(B), but the Commission interprets these requirements in a manner that favors publication. For instance, to fulfill Congress's requirement that a report must include "a description of the consumer product . . . concerned," *id.* § 2055a(b)(2)(B)(i), the CPSC provides that such a description need only "include a word or phrase sufficient to distinguish the product as a consumer product." 16 C.F.R. § 1102.10(d)(1). Under the CPSC's regulations, an individual or organization that submits a report may include the brand name, model, serial number, and the date and location of purchase, but is not required to do so. *See id.* Given that the CPSC has jurisdiction "over thousands of types of consumer products used in and around the home, outdoors, in the workplace, and in schools—including everything from children's toys to portable gas generators and toasters," *see* U.S. Consumer Prod. Safety Comm'n, 2011-2016 Strategic Plan 3 (2010), *at* http://www.cpsc.gov//PageFiles/123374/2011strategic.pdf, inaccurate information and errors in submitted reports are not only likely, but unavoidable.

For these reasons, Congress obligated the CPSC to consider the responses of manufacturers and not to publish materially inaccurate information. This responsibility is critical. Without at least basic, minimum safeguards over the

accuracy of submitted information, saferproducts.gov would lose its value to consumers. Libelous information would be published on a federally-funded and maintained website, damaging the reputation of businesses and their products with no value to enhancing consumer safety.

The rights that Congress provided to manufacturers and private labelers to respond to reports are, however, quite limited and therefore their exercise all the more precious. After receiving a report, the Commission must, to the extent practicable, transmit it to the identified manufacturer or product labeler within five days. 15 U.S.C. § 2055a(c)(1). The business has only a few days to designate information as confidential and request redaction before it is posted online. *See id.* § 2055a(c)(2)(C). The business may also respond to the report with comments, which, if received prior to publication of the report, will appear concurrently when posted. *See id.* § 2055a(c)(3)(B). Finally, if the business finds that the submitted report is materially inaccurate, it may bring this information to the attention of the CPSC. The agency is then tasked to review this submission and make a reasoned determination. When the CPSC finds that the information in the report is materially inaccurate, Congress required that the agency "(i) decline to add the materially inaccurate information to the database; (ii) correct the materially inaccurate information in the report or comment and add the report or comment to the database; or (iii) add information to correct inaccurate information in the

database." *Id.* § 2055a(c)(4)(A). Unless the Commission finds information in the report is materially inaccurate, the CPSIA requires it to post the report online no later than the tenth business day from when the Commission transmits the report to the manufacturer or private labeler. *Id.* § 2055a(c)(3)(A).

Soon after the database went online, Congress showed its concern that the Commission's implementation of the database did not sufficiently balance the value of promptness with the importance of accuracy. On August 12, 2011, President Barack Obama signed into law H.R. 2715, which among other changes to the CPSIA, amended the database requirements in two ways. *See* Pub. L. No. 112-28, § 7, 125 Stat. 273, 281-82 (2011). First, Congress required the CPSC to at least seek the model or serial number of the consumer product, or a photograph of the product if the model or serial number are not available, from the individual or entity that submits a report. *Id.* (codified at 15 U.S.C. § 2055a(c)(5)). When this information is not available, however, the report may still appear in the database. Second, Congress provided that when the Commission receives notice that a report is materially inaccurate, it must stay inclusion of the report in the database for up to five days to investigate. *See id.* (amending 15 U.S.C. § 2055a(c)(4)(A)). Overall, this system emphasizes quick disclosure of information to the public, while providing limited, but essential, safeguards for its accuracy.

There is no evidence that manufacturers are abusing this process. *See* Dkt. 11-cv-2958, Doc. No. 74, at 52-53 (finding the Commission's "doomsday argument" and predicted "apocalypse" lacked credibility). A GAO study found that, between launch of the database in March 2011 and July 2011, businesses asserted just 223 claims of material inaccuracy out of 5,464 submitted reports of harm, 1,847 of which included the minimum information required for publication. *See* U.S. Gen. Accounting Office, Consumer Product Safety Commission: Action Needed to Strengthen Identification of Potentially Unsafe Products, GAO-12-30, at 14 (Oct. 2011), *at* http://www.gao.gov/assets/590/585725.pdf. The CPSC quickly and fully agreed with the manufacturer in two-thirds of the challenges and partially agreed with respect to an additional eight-percent of the materially inaccurate claims. *Id*. at 14-15. Many of these cases involved situations in which the named manufacturer did not make the product at issue. *Id*. at 15. Others involved reports that did not involve a risk of harm, misidentified the source of the problem, or involved a product outside the scope of the CPSC's jurisdiction. *Id*. Nearly all of the 43 claims of materially inaccurate information rejected by the CPSC were on the basis that the manufacturer provided insufficient information to prove the report was incorrect, not that the report was indeed accurate. *Id*.

Individuals and entities have now filed at least 13,500 reports on saferproducts.gov. *See* CPSC Accomplishments from 2009-2012, Apr. 16, 2013,

at http://www.cpsc.gov/en/About-CPSC/Agency-Reports/CPSC-Accomplishments-from-2009-2012/. This is the first instance of a consumer product manufacturer seeking an injunction through litigation. *See* Dina ElBoghdady, *CPSC Database Faces First Legal Challenge*, Wash. Post, Oct. 18, 2011, *at* http://www.washingtonpost.com/business/economy/cpsc-database-faces-first-legal-challenge/2011/10/18/gIQAtpKivL_story.html. If a company must sacrifice the very right it seeks to exercise— preventing publication of a misleading, erroneous, or blatantly false report about the safety of one of its product—immediately upon filing suit, then Company Doe may be the first and last manufacturer to take such action.

II. REQUIRING DISCLOSURE OF A BUSINESS'S IDENTITY AND THE FALSE OR MISLEADING REPORT UPON SEEKING RELIEF WOULD RENDER THE OBLIGATION IMPOSED ON THE CPSC NOT TO POST MATERIALLY INACCURATE INFORMATION MEANINGLESS AND UNENFORCEABLE.

Manufacturers and private labelers have a strong interest in ensuring that false information regarding their products is not posted on a government-sponsored website purporting to identify products that pose safety hazards. They need to protect their brand and reputation. A single or handful of negative reports can have significant consequences for a manufacturer, including adverse publicity, impacts on retailer relations, and loss of business. They could spark a government

investigation. They may also prompt lawyers to consider filing class actions or seek clients to file personal injury lawsuits.

The Appellant Advocacy Groups and *amici* supporting their position, however, mischaracterize these significant and legitimate interests as purely reputational in nature. Permitting the Appellee to seek an injunction through use of a pseudonym and the district court's redaction of its decision serves other compelling government interests. Unless the court treats a manufacturer's request for an injunction in this manner, manufacturers would not be able to stop the CPSC from posting inaccurate reports without publically disclosing the very information that should not be made public. As a result, the Congressional mandate that the CPSC not post materially inaccurate information on saferproducts.gov would become unenforceable.

Company Doe provides the Court with ample authority demonstrating that the common law and First Amendment right of the public to inspect and copy judicial records is not absolute. *See* Response Brief at 25-45. While the law favors public access to legal proceedings, a court must balance this principle with other values, including the private interests of the litigants. There are many instances in which sealing of court records or use of a pseudonym are necessary to protect rights of litigants. For example, businesses rely on such sealing of documents and redaction of opinions to protect trade secrets disclosed in litigation. Court

decisions are redacted to maintain state secrets. Juveniles rely on pseudonyms to protect their privacy. Government informants similarly are not identified in court documents. Such decisions are made based on the facts and circumstances of each case in the trial court's discretion. *See, e.g., United States v. Appelbaum,* 707 F.3d 283, 291-94 (4th Cir. 2013) (finding that the First Amendment does not provide a tradition of access to a proceeding stemming from a statutory action and that the common law presumption of access may be outweighed by a significant countervailing interest, such as the need to avoid tipping off additional suspects of an investigation); *James v. Jacobson*, 6 F.3d 233, 238 (4th Cir. 1993) (considering factors relevant to the particular factual circumstances in determining the need for a party to proceed under a pseudonym).

In this case, the district court found that if it were to unseal the case, "Plaintiff would sacrifice the same right it sought to safeguard by filing suit." Dkt. 11-cv-2958, Doc. No. 74, at 68. On the other hand, the Defendant agency, the CPSC, had full knowledge of the facts of the suit and the public's interest in a report of an injury that had "no sensible relation" to the product to which it was attributed, had no public safety value. *Id.* at 69. For these reasons, the district court granted Company Doe's motion to proceed under a pseudonym and partially granted Company Doe's motion to seal the case. *Id.* at 73. Recognizing that the public has an interest in knowing how the court construed the CPSIA, the district

court published a redacted version of the opinion, which is quite useful in understanding the court's reasoning and to guide the CPSC and the public about compliance with the law.

The opinion's legal reasoning and holding are clear despite the redactions that are narrowly tailored to protect the company's legitimate ability to seek relief: The CPSC may not post a report of harm unless there is a "sensible relation," to the product at issue. *See id*. at 69. The CPSC must show a nexus between the product and the alleged harm beyond pure speculation and post-hoc rationalization. *See id*. at 39-43. When the chance of a connection between the product and the injury may be no more than a "coincidence" and the odds that the product was involved in the harm alleged were "significantly lower than a coin flip," there is no such relationship. *See id.* at 43. In other words, it must be more likely than not that the reported injury stemmed from the product. The CPSC's heavy redaction of a report of harm to address a manufacturer's concern that a report is materially inaccurate because it lacks this connection will not cure such a deficiency. This is particularly true when the manufacturer has presented significant, undisputed evidence in support of its position. *See id.* at 4-14. Considering that the CPSC had decided not to publish reports in other instances where the evidence did not show the product was the source of the problem, the agency acted arbitrarily and

capriciously, in violation of the Administrative Procedures Act, in seeking to publish the challenged report. *See id.* at 44-50.

Since the district court provided the public with the reasoning supporting its decision, disclosing the identity of the company and all of the "facts" underlying the report (i.e. information that was found inaccurate three times by the CPSC and discredited by the district court) would serve no purpose other than to cause harm and effectively eliminate a manufacturer's ability to obtain relief when the CPSC plans on posting a false, misleading, or otherwise inaccurate report.

III. WITHOUT EFFECTIVE SAFEGUARDS OVER THE ACCURACY OF INFORMATION APPEARING ON SAFERPRODUCTS.GOV, THE DATABASE WOULD LOSE ITS VALUE.

The CPSC database should have higher reliability than the numerous internet forums that already provide an unfettered opportunity for consumers to rate and comment on their product experiences. Some of these websites may have value in helping consumers make purchasing decisions, but their purpose, unregulated nature, and the type and quality of information they provide are significantly different from saferproducts.gov.

First, postings on internet websites, such as Amazon.com, may address any issue related to a product, including its general quality of workmanship, consumer satisfaction, discussion of features, comparisons to alternative models or competing products, and value. By way of contrast, saferproducts.gov focuses

exclusively on statutorily-defined harms or risk of harm related to a product. It is especially important that America's consumers are not given misleading information on a product's safety on a government website. False information about a product's safety creates unnecessary concern among the public, harms the reputation of those who make or sell the product, and potentially prompts expensive and unnecessary litigation.

Second, consumers recognize that postings on non-government websites or social media must be taken with a grain of salt. Such postings are typically subject to minimal monitoring or verification. Website reviews and social media posts may contain information that has little to do with the product at issue, including incendiary rants or creative attempts at humor. *See, e.g.*, Fidel Martinez, *10 Amazon Products with Hilarious Reviews*, The Daily Dot, Jan. 24, 2013, *at* http://www.dailydot.com/entertainment/funniest-amazon-reviews-pens-uranium-wolf-shirt/. In addition, websites offering product reviews may be hijacked by "trolls," anonymous individuals who post multiple reviews, often under different user names, solely for the purpose of promoting, or harming, a product or company. *See, e.g.*, Karen Weise, *A Lie Detector Test for Online Reviewers*, Bus. Week, Sept. 29, 2011, *at* http:// www.businessweek.com/magazine/a-lie-detector-

test-for-online-reviewers-09292011.html (noting that experts estimate that up to thirty percent of online reviews are fake).[4]

The public expects more than an unmonitored free-for-all on a government-sponsored database, particularly one maintained by a federal agency that issues product recalls that may involve significant harm or death. *See* Dkt. 11-cv-2958, Doc. No. 74, at 47 ("[E]ven though an unnamed local agency originally submitted it, the report bears the Government's stamp of approval through its publication on an official website that, by its terms, is a repository of reports regarding 'unsafe product[s].'"). Indeed, saferproducts.gov presents recall announcements alongside incident reports submitted by the public. *See* 16 C.F.R. § 1102.14; *see also* http://www.saferproducts.gov (providing a default search function that includes both recalls and reports).[5] Moreover, as *amici* supporting the Appellant Advocacy

[4] For this very reason, the few websites that provide some safeguards over submission of reviews are popular with consumers. *See, e.g.*, Ron Lieber, *At Angie's List, the Reviews Are Real (So Is Angie)*, N.Y. Times, Mar. 2, 2012, *at* http://www.nytimes.com/2012/03/03/your-money/at-angies-list-the-reviews-are-real.html (attributing the rapid expansion of Angie's List to its requiring reviewers to register using their real names, use of algorithms and human intervention to detect questionable reviews, and other actions to avoid manipulation).

[5] Although a boilerplate disclaimer on the bottom of saferproducts.gov states that the "CPSC does not guarantee the accuracy, completeness, or adequacy of the contents," as the district court recognized, this statement is likely to be overlooked or ignored and is "insufficient to counterbalance the website's inexorable import of serving as a sanctuary for reports relating to unsafe consumer products." Dkt. 11-cv-2958, Doc. No. 74, at 48-49. In fact, users of the CPSC database are greeted by a prominent tab in the upper left-hand corner and a large button on the top right-hand corner of the website inviting them to "report an unsafe product." *See* http://

Groups recognize, the public views government-maintained databases of consumer complaints as containing more accurate and reliable information than ratings on social media. *See* Brief *Amicus Curiae* of AARP at 27-28 (Dkt #42-1). CPSC Commissioner Nancy Nord has cautioned that the database will not serve its purpose if it is "a 'garbage in/garbage out' grab bag of unsubstantiated complaints from any source." Nancy Nord, *A Wrong Way and A Right Way—Which Will We Choose?*, Conversations with Consumers, Nov. 9, 2010, *at* http://nancynord.net/2010/11/09/a-wrong-way-and-a-right-way%E2%80%94which-will-we-choose/. Ensuring that manufacturers have a viable means to prevent the CPSC from posting information that could lead a reasonable consumer to believe that a safe product poses a danger is critical to maintaining the integrity and credibility of the database for the public.

CONCLUSION

Amici respectfully request that this Court find that a business may seek an injunction precluding the CPSC from posting an inaccurate report of a product hazard on a public database without publically disclosing that very information, effectively nullifying its relief, through an open court filing. For the foregoing reasons, this Court should affirm the decision below.

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www.saferproducts.gov (last visited Apr. 25, 2013). Such content is likely to negate any impact of the disclaimer.

Respectfully submitted,

/s/ Cary Silverman

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April 29, 2013

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 4,591 words, as determined by the word-count function of Microsoft Word 2007, excluding the parts of the brief exempt by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally-spaced typeface using Microsoft Word 2007 in 14-point Times New Roman font.

/s/ Cary Silverman
Counsel for Amici Curiae

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of April, 2013, I electronically filed the foregoing *Amici Curiae* Brief through the Court's CM/ECF system. Service on all counsel of record will be accomplished by operation of the Court's CM/ECF system.

/s/ Cary Silverman