



December 6, 2019

Rep. Paul Tonko
US House of Representatives
Washington, DC 20515

Sen. Chuck Schumer
US Senate
Washington, DC 20510

Sen. Richard Blumenthal
US Senate
Washington, DC 20510

Sen. Tom Udall
US Senate
Washington, DC 20510

Dear Rep. Tonko, Sen. Blumenthal, Sen. Schumer and Sen. Udall,

Consumer Federation of America, Consumer Reports¹ and National Consumers League strongly support the Stopping Grinch Bots Act (H.R. 5263 and S. 2957), which would protect consumers against the predatory use of “shopping bots.” These automated software programs can submit hundreds of orders for retail inventory in less than a minute, creating retail shortages and potentially driving up the prices of trending products for resale on third-party platforms such as eBay, Amazon or craigslist.

These so-called “Grinch Bots” are especially prevalent during the holiday season, when they have been used by rogue operators to rapidly deplete retail inventories of specific toys, gaming systems and other hot retail items, for resale at inflated prices. They are also reportedly used at other times of the year for trending products in high demand, such as designer athletic shoes, which are made in limited lots and are vulnerable to being targeted by the bots, and resold at premium prices.

In 2017, staffers from Sen. Chuck Schumer’s office checked prices for hot toys that were selling out at retail web sites in late November and early December, and found that:

- Fingerlings, which typically sell for \$14.99, were out of stock online at Toys-”R”-Us, Walmart, and Target. However, the item was available for sale on Amazon and eBay for as much as \$1,000 each.

¹ Consumer Reports is an independent, nonprofit membership organization that works side by side with consumers to create a fairer, safer, and healthier world. For 80 years, CR has provided evidence-based product testing and ratings, rigorous research, hard-hitting investigative journalism, public education, and steadfast policy action on behalf of consumers’ interests. Unconstrained by advertising or other commercial influences, CR has exposed landmark public health and safety issues and strives to be a catalyst for pro-consumer changes in the marketplace. From championing responsible auto safety standards, to winning food and water protections, to enhancing healthcare quality, to fighting back against predatory lenders in the financial markets, Consumer Reports has always been on the front lines, raising the voices of consumers.

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- Super Nintendo entertainment system NES Classic Edition, which sells for \$79.99, was out of stock online at BestBuy, Game Stop, and Target. However, the item was available on Amazon and eBay for as much as \$13,000.
- L.O.L. Surprise! Doll, which sells for \$9.99, was out of stock online at Toys-"R"-Us, Target and Walmart. However, the item was available on Amazon and eBay for as much as \$500.
- Barbie Hello Dreamhouse, which sells for \$300, was out of stock online at Toys-"R"-Us. However, the item was available for sale on Amazon and eBay for as much as \$1,500.²

Grinch Bots are a predatory and unfair scourge in the online marketplace that can cause financial hardship and anxiety for consumers. In particular, Grinch Bots have disappointed many parents and children who could not obtain the toys and gaming systems they wanted to at a reasonable price.

The Stopping Grinch Bots Act would:

1. Prohibit manipulative technical practices that allow bad actors to use bots to circumvent control measures designed to protect real consumers;
2. Make it illegal under the Federal Trade Commission Act to knowingly circumvent a security measure, access control system, or other technological control or measure on an Internet website or online service to maintain the integrity of posted online purchasing order rules for products or services, including toys and other retail products; and further make it illegal to sell or offer to sell any product or service obtained in this manner; and
3. Allow the Federal Trade Commission and state Attorneys General to treat these abusive workarounds as prohibited unfair or deceptive acts or practices, and take legal action against the bad actors.

The Stopping Grinch Bots Act is similar to the Better Online Ticket Sales (BOTS) Act, passed by Congress in 2016 to ban bots used by ticket scalpers to bypass security measures on online ticketing websites, to unfairly outprice individual fans. The bill would apply the structure of the BOTS Act to e-commerce sites, to ban bots bypassing security measures for online retail sales.

How Bots Work

According to experts interviewed by Consumer Reports, bot creators study the web addresses, or URLs, for a given retail site and then use data-scraping techniques to guess the ID for an unreleased product and locate the product page. Because merchants typically launch these

² *With Holiday Shopping Season In Full Swing, Schumer Launches Major Push To Immediately Pass Legislation That Will Thwart Toy Scalpers From Using "Grinch Bots,"* News Release, Sen. Chuck Schumer, November 28, 2018, citing 2017 release, available at: <https://www.schumer.senate.gov/newsroom/press-releases/with-holiday-shopping-season-in-full-swing-schumer-launches-major-push-to-immediately-pass-legislation-that-will-thwart-toy-scalpers-from-using-grinch-bots-across-upstate-ny-to-reap-predatory-profits-on-popular-gifts-says-ny-families-shouldnt-pay-a-kings-ransom-when-buying-presents-for-their-children-and-loved-ones>

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pages hours before the product goes on sale, bots get a jump on consumers before the page goes live. They get another jump by subscribing to Twitter APIs to learn about a manufacturer's sale milliseconds before everyone else. And then they complete the purchase, picking sizes and entering payment details in a fraction of a second, often using servers located less than a millisecond from the merchant's. This allows a bot to finish the deal before the product page even loads for most shoppers.

According to New York's attorney general, some bot operators use 10,000 IP addresses and 500 credit card numbers to bypass retailer purchase limits. In some cases, their software is also trained to read and respond to the bot-fighting CAPTCHA phrases on the checkout page. In other instances, foreign workers are hired on the cheap to type the required info into the security box.³

Conclusion

The Stopping Grinch Bots Act appropriately bans unfair and predatory use of automated software programs to circumvent security and inventory controls on retail e-commerce sites, and empowers the Federal Trade Commission and Attorneys General to enforce consumer protection laws to protect consumers against their use. This legislation is urgently needed to protect consumers all year round, but particularly during the holiday season. We commend you for your leadership in introducing this important consumer protection legislation, and we look forward to working with you to recruit additional cosponsors, and get the bill approved as soon as possible in both houses of Congress. Thank you for addressing this critically important issue for consumers in your states, and across the country.

Sincerely,



Susan Grant
Director of Consumer
Protection and Privacy
Consumer Federation of
America



Charles Bell
Programs Director,
Advocacy
Consumer Reports



John Breyault
Vice President, Public Policy,
Telecommunications and
Fraud
National Consumers League

³ Fowler, Bree. *Hot Holiday Toys, and the Bots that Stole Christmas*, December 5, 2017, Consumer Reports, available at: <https://www.consumerreports.org/online-shopping/hot-holiday-toys-and-the-bots-that-stole-christmas-holiday-shopping/>