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April 5, 2021

Karl A. Racine
President, National Association of Attorneys General
1850 M Street NW
12th Floor
Washington, DC 20036

Re: Deceptive Marketing and Sales of Fake COVID Vaccine Cards

Dear General Racine:

We write in response to the letter received from you and your colleagues, including Generals Stein and Slatery, and welcome the opportunity to collaborate with you on COVID-19 matters that have been tragically affecting all of our communities for more than a year. Shopify has been, and will continue to be, a leader in the fight against illegal, fraudulent, or misleading COVID-19 products. Selling fake COVID-19 vaccination cards is a violation of Shopify's terms and conditions, and not aligned with our mission to make commerce better for everyone. We have worked extensively since the start of the pandemic to proactively protect consumers from illegal COVID-19 products. Our efforts continue full-force today and, since February 2021, have included regular monitoring for the sale of fake COVID-19 vaccination cards on Shopify's platform and taking swift action against stores who make such products available for sale.

Consistent with our mission and policy, Shopify already takes all of the actions listed in your letter. We welcome the chance to meet at your earliest convenience to discuss these issues and our shared commitment to countering illegal activity.

Shopify Offers a Commerce Platform for Entrepreneurs and Business Owners

Some context about Shopify is necessary to understand how we stop the sale of illegal products like fake COVID-19 vaccination cards. Shopify provides a commerce platform and business software tools designed to help entrepreneurs around the world start and scale a business and begin selling to consumers in a matter of minutes independent from the large online marketplaces that currently dominate ecommerce.¹ These tools were essential to small businesses throughout the United States during the pandemic, when many mom-and-pop shops were forced, for the first time, to turn to ecommerce to keep their businesses afloat—indeed, Forbes calculated

¹ Additional information about Shopify and our economic impact may be found here:
<https://cdn.shopify.com/static/impact-report/shopify-global-economic-impact-report-summary.pdf>.

that during the early days of the pandemic and related shutdowns, “merchants with Shopify stores recouped 94% of lost in-person sales with online orders. So for every dollar lost to coronavirus, these businesses recovered 94¢ thanks to Shopify.”²

The independent businesses that use Shopify own their relationships with consumers, decide how and where they want to sell or market their products, and decide what payment processing and fulfillment services to use—Shopify simply offers them the tools needed to succeed. Indeed, this is one of the driving reasons businesses use Shopify: unlike when they sell through a consumer-facing marketplace, Shopify’s tools allow them to maintain their relationships with their customers, without the one-sided conditions imposed by some large marketplaces. When a consumer makes a purchase from a store that is built using Shopify software, then, the consumer is interacting directly with the independent business, not with us.

Shopify’s Policies Prohibit the Sale of Fake COVID-19 Vaccination Cards

Every business using Shopify agrees to be bound by various terms and conditions, including Shopify’s Terms of Service,³ Acceptable Use Policy,⁴ and Rules of Engagement for the Sale of COVID-19 Related Products.⁵ These terms and conditions unequivocally prohibit the sale of fake COVID-19 vaccination cards and empower Shopify to monitor and investigate any store that is suspected of selling such a product. Under our Acceptable Use Policy, businesses are informed that they “may not offer goods or services . . . that contravene or that facilitate or promote activities that contravene, the laws of the jurisdictions in which [they] operate or do business.” As your letter accurately points out, fake vaccination cards “are a violation of the laws of many states” and thus may not be sold on Shopify.

Shopify took additional steps to make clear to businesses using our platform that the sale of illegal, fraudulent, or misleading COVID-19 goods will not be tolerated. Through the Rules of Engagement for the Sale of COVID-19 Related Products, we reiterated that such products must be fully compliant “with all applicable laws and other regulatory requirements” “both in [the business’s] jurisdiction and in the jurisdiction of [its] customers.” Although Shopify enthusiastically supports the use of the platform to help combat this unprecedented global health crisis, we put our community of merchants on notice long ago that illegal, fraudulent, and misleading activities will not be permitted under any circumstances.

When a bad actor is identified, Shopify has the unilateral right to remove the violative product or immediately terminate the store, depending on the circumstances. Businesses are told three times—in the Terms of Service, in the Acceptable Use Policy, and in the Rules of Engagement for the Sale of COVID-19 Related Products—that the sale of illegal products (like fake COVID-19 vaccination cards) will result in the product being taken down and may result in

² Stephen McBride, New Data Shows Shopify Was A Godsend For Mom And Pop During Coronavirus, Forbes (June 15, 2020), <https://www.forbes.com/sites/stephenmcbride1/2020/06/15/new-data-shows-shopify-was-a-godsend-for-mom-and-pop-during-coronavirus/>.

³ <https://www.shopify.com/legal/terms>.

⁴ <https://www.shopify.com/legal/aup>.

⁵ <https://www.shopify.com/legal/rules-of-engagement-covid19>.

termination of the store. Anyone using our platform certainly knows that Shopify will deal swiftly with illegal products like those described in your letter—and, as discussed below, Shopify has done just that.

Shopify Continuously Monitors the Platform for Fake COVID-19 Vaccination Cards

Your letter asks Shopify to commit to monitoring its platform for fake (or blank) COVID-19 vaccination cards. Shopify has been proactively monitoring the platform for those illegal products since February 2021, when this new form of fraud emerged. It is challenging to identify a single product type in real-time across the more than 1.7 million merchants we support worldwide, but Shopify has committed extensive resources to combating fake vaccination cards. We intentionally run a broad keyword search to ensure we capture any COVID-19 vaccination cards regardless of how the product is named or described. If our search identifies a potentially prohibited product, our team swiftly reviews the store and product and takes appropriate action.

Shopify Swiftly Removes Fake COVID-19 Vaccination Cards

Your letter asks Shopify to commit to “taking down ads or links” regarding fake (or blank) COVID-19 vaccination cards. Although Shopify does not control “ads or links,” we are pleased to report that Shopify promptly removes such products. To date, we have identified three stores that were selling fake (or blank) vaccination cards or fraudulent stamps related to vaccine manufacturers.⁶ All three stores were swiftly terminated by Shopify.

Shopify Preserves Records Related to Fake COVID-19 Vaccination Cards

Your letter asks Shopify to preserve records related to the businesses that were selling (or attempting to sell) fake COVID-19 vaccination cards. Shopify is happy to continue to preserve those records with the expectation of ongoing collaboration with your offices related to this important issue.⁷ We stand ready to assist you in stopping bad actors taking advantage of a devastating global pandemic.

Conclusion

Shopify takes the scourge of illegal, fraudulent, and misleading COVID-19 products extremely seriously and already does everything requested in your letter with respect to fake vaccination cards. We routinely review our processes for preventing illegal COVID-19 products from being sold on our platform, however, and we would welcome your insight about developing trends in illegal activity that we should be aware of. Your letter suggests a meeting to discuss your

⁶ For example, the store identified by DomainTools and referenced in various news articles was immediately terminated when Shopify learned about the illegal product offering. See <https://www.domaintools.com/resources/blog/evolving-covid-19-challenges-illegitimate-vaccination-cards>; <https://www.vox.com/recode/22268337/vaccine-card-social-media-cdc-fakes-scams> (referencing DomainTools). Shopify consistently refines its monitoring approach to ensure fake COVID-19 vaccination cards are identified as quickly as possible.

⁷ We publish detailed “Guidelines for Legal Requests for Information,” which explain our subpoena response process and are intended to assist you in obtaining relevant information from Shopify: <https://www.shopify.com/legal/gvtaccesspolicy>.

concerns (which we share), and Shopify agrees that closer collaboration is an important next step in countering such illegal activity.

We trust that our response here addresses your immediate concerns. If you have additional questions or concerns about these issues or others, please feel free to reach out directly to Matt McGuire, Senior Legal Counsel, at gov-inquiries@shopify.com. We look forward to meeting with you as soon as possible to discuss how we can work together to ensure that fake vaccination cards (and other illegal COVID-19 products) do not proliferate.

Best,



Vivek Narayananadas
Vice President, Legal