

# **Coalition Against Organized Retail Crime**

**TESTIMONY**

**COALITION AGAINST ORGANIZED RETAIL CRIME**

**BEFORE**

**HOUSE JUDICIARY SUBCOMMITTEE**

**ON CRIME, TERRORISM AND HOMELAND SECURITY**

**OCTOBER 25, 2007**

**HEARING ON ORGANIZED RETAIL THEFT PREVENTION**

**FOSTERING A COMPREHENSIVE PUBLIC-PRIVATE RESPONSE**



## **INTRODUCTION**

The Coalition Against Organized Retail Crime is pleased to provide written testimony to the House Judiciary Subcommittee on Crime, Terrorism and Homeland Security in response to today's hearing on the subject of Organized Retail Theft, also known as Organized Retail Crime and the appropriate comprehensive response to this problem.

By way of background, the Coalition Against Organized Retail Crime, which has been together now for some six years, is comprised of national manufacturing and retail organizations as well as individual companies from both sectors. In total, there are 32 members. A roster of all Coalition members can be found at the end of this written testimony.

The Coalition wishes to commend Chairman Scott for scheduling today's hearing and for his leadership in this area. As the Chairman knows, the Coalition strongly supports the enactment of federal legislation to address the growing problem of Organized Retail Crime which is victimizing practically every segment of the retail community from supermarkets and retail drug stores, to mass merchandisers, department stores, specialty shops, boutiques, and convenience stores among others. This is the second time that the Coalition has provided testimony to the House Judiciary Crime Subcommittee regarding the need for a federal initiative that would make ORC type crimes a federal felony. That testimony was presented to the Subcommittee on March 17, 2005.

### **ORGANIZED RETAIL CRIME – A \$30 BILLION PROBLEM**

Organized Retail Crime or ORC is clearly the most pressing security problem confronting the retail industry. ORC now accounts for as much as \$30 billion in losses at store level annually according to federal authorities.

What's the difference between shoplifting and Organized Retail Crime? For starters, shoplifting is mostly limited to items that are stolen by an individual for personal use or consumption, whereas criminals engaged in ORC activities work with professional rings for the purpose of stealing large amounts of merchandise with the intention of reselling these ill-gotten goods back into the marketplace through flea markets, swap meets, pawn shops, shady store-front operations, and now stolen merchandise is more frequently being sold over internet auction sites.

ORC rings are highly mobile, moving from community to community, and across state lines stealing large amounts of merchandise from retail stores. ORC rings typically target everyday consumer products. Popular items include infant formula, otc medications, teeth whitening strips, razor blades, batteries, smoking cessation products, franchise cosmetics, gift cards, video games, DVDs and CDs. High end items, such as designer clothes, flat screen televisions, I Pods, Dyson vacuum cleaners and consumer electronics are also highly prized among ORC gangs.

## **CONSUMER HEALTH AND SAFETY RISKS**

Most disturbing is that Organized Retail Crime can put consumer's health and safety at risk. For example, consumers are potentially at risk when ORC rings steal consumable products, such as over-the-counter medications and infant formula. In these situations when these FDA regulated products are stolen and taken out of the normal channels of distribution often times they are not kept under ideal or required storage conditions, and this can threaten the integrity of the product. For example, extreme heat or cold can affect the nutrient content, stability or physical appearance of a product such as infant formula.

It is also not uncommon for ORC rings to modify the labeling of FDA regulated products. For example, when products are near the end of their expiration date, ORC middlemen, commonly called "fences" may change then expiration date or lot numbers to falsely extend the shelf-life of the product and to disguise the fact that the merchandise has been stolen.

### **INFANTS ARE IN HARMS WAY**

Both FDA and the WIC program routinely put out warning advisories that outdated formula may not provide the nutrient levels as required under the Federal Food, Drug and Cosmetic Act. In testimony before the House Appropriations Subcommittee on Agriculture, Rural Development, FDA and Related Agencies on March 1, 2007, the Honorable Phyllis Fong, Inspector General for the Department of Agriculture stated, "When infant formula is stolen, it is taken out of the regulated retail system, there can be no guarantee the formula is safe and wholesome."

Equally insidious is switching the label on a can of infant formula to make the product appear to be a more expensive variety of baby formula. Prices at retail vary from around \$10 per can to as much as \$25 a can depending upon the formulation and whether the product has been enriched or fortified. ORC gangs know the economic advantages of label switching, but unsuspecting mothers will not know they are feeding their babies the wrong formula when a label has been switched.

### **ECONOMIC IMPACT ON CONSUMERS**

ORC results in consumers having to pay higher prices for the products they purchase as retail establishments attempt to cover their losses. This is especially true in the supermarket industry which traditionally operates on the slimmest of margins. Clearly, higher prices adversely affect all consumers, and in particular the neediest in America, such as the elderly on fixed incomes and families that depend upon domestic feeding programs to augment their limited budgets.

Moreover, consumers are often times inconvenienced by this type of criminal activity. Because ORC has become so rampant in certain product categories, such as infant

formula, many retailers are taking these products off the shelves and placing them behind the counter or under lock and key. In some cases, products like razor blades and Crest White Stripes are simply unavailable in retail stores due to high pilferage rates.

### **ECONOMIC IMPACT ON STATE BUDGETS**

Consumers and retailers are not the only ones who are being victimized by ORC rings. State budgets are also adversely affected. The Coalition Against Organized Retail Crime conservatively estimates that of the 46 states that have a state sales tax, these jurisdictions are being deprived of approximately \$1.6 billion each year in lost sales tax revenue as a result ORC activity. States incurring the biggest sales tax revenue losses including California at \$228 million, Texas at \$153 million and Florida with \$106 million. Mr. Chairman, attached to the Coalition's testimony is a chart showing these losses for all 46 states.

Aside from the actual physical theft of products from retail stores, ORC rings utilized other methods in which to illegally acquire merchandise, such as writing bad checks and using stolen credit card numbers. These professional crime rings also traffic in stolen gift cards and they will scan legitimate receipts to make fraudulent returns for either cash or gift cards. These criminal enterprises will also substitute UPC labels and bar codes from less costly items and place them on more expensive merchandise so that the products rings up or scans at the lower price.

Pilfered merchandise doesn't just go out the front entrance of a store, ORC rings use emergency exits or will walk out of a store through the garden center without paying. They'll also use detection-proof shopping bags that are lined with aluminum foil to thwart sensor machines and anti-theft or source tags.

### **ORC RINGS FAVOR INTERNET AUCTION SITES**

While flea markets, swap meets and pawn shops were the primary venues for fencing and reselling stolen products, ORC rings are now turning to the internet to sell stolen or fraudulently obtained merchandise. It's easy, user-friendly, instantaneous and anonymous and ORC rings can reach a global audience. Such transactions, often times referred to as "e-fencing", generate approximately 70 cents on the dollar for stolen merchandise that is sold from an internet auction site. In comparison, stolen products that are sold from pawn shops or at flea markets only realize about 30 cents on the dollar of the product's retail value.

### **MAGNITUDE OF THE INTERNET AUCTION SITE PROBLEM**

The popularity of internet auction sites is clearly evident by the fact that 700,000 individuals list E-Bay as either their primary or secondary source of income when filing their federal income returns. According to E-Bay spokesperson, Catherine England, E-Bay typically lists about 78 million items on its site at any given time and some 6 million new items are posted every day. Approximately, 1.3 transactions occur on a daily basis.

Granted, most sellers utilizing Internet auction sites are honest individuals who are not trafficking in stolen or fraudulently obtained goods, but a significant number of sellers are clearly not reputable. If just a very small percentage of sales from Internet auction sites involve stolen or fraudulently obtained merchandise, that's thousands of illicit transactions each and every day of the year which illustrates the magnitude of this problem.

Brick and mortar retailers have perused certain internet auction sites and routinely find that rather expensive products, such as electronics and home appliances, are being offered for sale at prices much lower than what a Target, Wal-Mart, Safeway or Walgreens can get directly from a manufacturer even with their substantial buying power. Clearly, these products have been either stolen or fraudulently obtained.

Some skeptics may claim that retail store losses are a result of employee theft, and retailers need to stop employee pilfering rather than complaining about ORC gangs and internet auction sites. Retailers acknowledge that stores do experience internal losses resulting from employee theft, and we are aggressively attempting to minimize this type of shrink. Nevertheless, theft whether it is internal, caused by employees, or external resulting from shoplifting and ORC gangs is STILL THEFT, and a considerable amount of these ill-gotten goods are being sold on internet auction sites.

#### **RETAILERS WANT TO PARTNER WITH INTERNET AUCTION SITES**

Retailers have sought to partner with Internet auction sites to discourage and minimize the sale of stolen merchandise, but regrettably internet auction sites have not been responsive to our requests. Coalition members know for a fact if law enforcement makes an inquiry the Internet auction site will cooperate, but they refuse to take action when a retail company makes such a request. And there in lies the problem. Ironically, law enforcement is eager to partner with the retail community. For example, certain Coalition members, such as the National Retail Federation (NRF), Retail Industry Leaders Association (RILA) and the Food Marketing Institute (FMI) have recently partnered with the Federal Bureau of Investigations (FBI) to create a national data base that tracks where ORC crimes are being committed throughout the country.

#### **COALITION SUPPORTS ENACTMENT OF A FEDERAL ORC BILL**

Mr. Chairman, the Coalition Against Organized Retail Crime strongly supports the introduction and passage of a federal initiative that would provide for much needed clarity within Title 18 of the US Criminal Code as to what constitutes ORC criminal activity and to make ORC a federal felony. The Coalition further believes that legislation of this kind would allow federal law enforcement to more efficiently go after and prosecute ORC rings if they choose to do so.

The Coalition would hope that such a bill could be drafted to require for a reasonable degree of accountability and disclosure on the part of internet operators and high volume sellers in an effort to discourage the posting and sale of stolen or fraudulently obtained products on Internet auction sites. We do not see these types of provisions would be burdensome. For example, if a product has a serial number, it must be disclosed by the seller and Internet auction sites would have a rule to require sellers to post such information. E-bay already requires the posting of a bin number for the sale of motor vehicles from their internet site, so imposing a serial number requirement on other product categories such as electronics should not be problematic.

The Coalition would also support language in a federal ORC bill that would require sellers to disclose in their listings if they are offering for sale merchandise that is exclusively available only thru a certain retail source, and internet auction sites would need to have a rule requiring such a disclosure on the part of sellers. Finally, the legislation should include a definition on high volume sellers and require minimal recordkeeping of their transactions, and Internet auction sites ought to be required to maintain records on high volume sellers and their transactions. In view of the magnitude of ORC problem throughout the United States, the Coalition Against Organized Retail Crime firmly believes these types of disclosure and recordkeeping provisions would not be unreasonable and nor burdensome.

In conclusion, the Coalition Against Organized Retail Crime appreciates the opportunity to participate in this hearing and we urge Chairman Scott and the Members of the House Judiciary Crime Subcommittee to consider drafting legislation reflective of our testimony.

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Attachments:  
Coalition Membership Roster  
ORC: Estimated Lost Sales Tax Revenue By State





# Coalition Against Organized Retail Crime

- **Abbott Laboratories**
- **Ahold USA, Inc.**
- **American Council on Regulatory Compliance**
- **Consumer Healthcare Products Association**
- **Cosmetic, Toiletry, and Fragrance Association**
- **CVS/pharmacy**
- **Duane Reade**
- **Eastman Kodak Company**
- **Eckerd Corporation**
- **Food Lion, LLC**
- **Food Marketing Institute**
- **Giant Food LLC**
- **Giant Food Stores LLC**
- **GlaxoSmithKline**
- **Grocery Manufacturers/Food Products Association**
- **International Formula Council**
- **Macy's**
- **National Association of Chain Drug Stores**
- **National Association of Convenience Stores**
- **National Community Pharmacists Association**
- **National Retail Federation**
- **Nestle**
- **Publix Super Markets, Inc.**
- **Retail Alliance**
- **Retail Industry Leaders Association**
- **Rite Aid Corporation**
- **Safeway Inc.**
- **Security Industry Association**
- **The Stop & Shop Supermarket Company**
- **Target Corporation**
- **Tops Markets, LLC**
- **Wal-Mart Stores, Inc.**
- **Walgreen Co.**



## Organized Retail Crime: Estimated Lost Sales Tax Revenue by State

	All Retail Stores Sales (2004) <sup>i</sup>	State Percentage of All Retail Store Sales (2004)	Estimated Amount of Merchandise ORC Gangs Stole by State	State Sales Tax Rates (2004) <sup>ii</sup>	Estimated Lost Sales Tax Revenue by State
<b>United States</b>	\$3,522,753,961,000	---	\$30,000,000,000 <sup>iii</sup>	---	---
<b>Alabama</b>	\$45,858,614,000	1.30%	\$390,000,000	4%	\$15,600,000
<b>Arizona</b>	\$67,908,702,000	1.93%	\$579,000,000	5.60%	\$32,424,000
<b>Arkansas</b>	\$28,925,532,000	0.82%	\$246,000,000	6%	\$14,760,000
<b>California</b>	\$428,851,298,000	12.17%	\$3,651,000,000	6.25%	\$228,187,500
<b>Colorado</b>	\$61,285,050,000	1.74%	\$522,000,000	2.90%	\$15,138,000
<b>Connecticut</b>	\$48,829,210,000	1.39%	\$417,000,000	6%	\$25,020,000
<b>District of Columbia</b>	\$2,783,257,000	0.07%	\$21,000,000	5.75%	\$1,207,500
<b>Florida</b>	\$209,354,732,000	5.94%	\$1,782,000,000	6%	\$106,920,000
<b>Georgia</b>	\$103,516,064,000	2.94%	\$882,000,000	4%	\$35,280,000
<b>Hawaii</b>	\$14,259,850,000	0.40%	\$120,000,000	4%	\$4,800,000
<b>Idaho</b>	\$18,210,683,000	0.52%	\$156,000,000	6%	\$9,360,000
<b>Illinois</b>	\$144,754,914,000	4.11%	\$1,233,000,000	6.25%	\$77,062,500
<b>Indiana</b>	\$72,222,232,000	2.05%	\$615,000,000	6%	\$36,900,000
<b>Iowa</b>	\$37,088,745,000	1.05%	\$315,000,000	5%	\$15,750,000
<b>Kansas</b>	\$34,263,296,000	0.97%	\$291,000,000	5.3%	\$15,423,000
<b>Kentucky</b>	\$41,325,797,000	1.17%	\$351,000,000	6%	\$21,060,000
<b>Louisiana</b>	\$47,384,624,000	1.35%	\$405,000,000	4%	\$16,200,000
<b>Maine</b>	\$19,000,559,000	0.54%	\$162,000,000	5%	\$8,100,000
<b>Maryland</b>	\$69,072,232,000	1.96%	\$588,000,000	5%	\$29,400,000
<b>Massachusetts</b>	\$83,465,275,000	2.37%	\$711,000,000	5%	\$35,550,000
<b>Michigan</b>	\$123,244,027,000	3.50%	\$1,050,000,000	6%	\$63,000,000
<b>Minnesota</b>	\$74,126,788,000	2.10%	\$630,000,000	6.5%	\$40,950,000
<b>Mississippi</b>	\$28,191,708,000	0.80%	\$240,000,000	7%	\$16,800,000
<b>Missouri</b>	\$68,686,660,000	1.95%	\$585,000,000	4.225%	\$24,716,250

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Nebraska	\$21,486,393,000	0.61%	\$183,000,000	5.50%	\$10,065,000
Nevada	\$29,720,833,000	0.84%	\$252,000,000	6.5%	\$16,380,000
New Jersey	\$116,146,739,000	3.30%	\$990,000,000	6%	\$59,400,000
New Mexico	\$20,858,626,000	0.59%	\$177,000,000	5%	\$8,850,000
New York	\$205,164,950,000	5.82%	\$1,746,000,000	4.25%	\$74,205,000
North Carolina	\$94,048,844,000	2.67%	\$801,000,000	4.50%	\$36,045,000
North Dakota	\$8,374,407,000	0.24%	\$72,000,000	5%	\$3,600,000
Ohio	\$139,302,217,000	3.95%	\$1,185,000,000	6%	\$71,100,000
Oklahoma	\$38,292,371,000	1.09%	\$327,000,000	4.5%	\$14,715,000
Pennsylvania	\$140,302,370,000	3.98%	\$1,194,000,000	6%	\$71,640,000
Rhode Island	\$10,989,537,000	0.31%	\$93,000,000	7%	\$6,510,000
South Carolina	\$45,704,569,000	1.30%	\$390,000,000	5%	\$19,500,000
South Dakota	\$15,516,268,000	0.44%	\$132,000,000	4%	\$5,280,000
Tennessee	\$73,919,527,000	2.10%	\$630,000,000	7%	\$44,100,000
Texas	\$288,967,307,000	8.20%	\$2,460,000,000	6.25%	\$153,750,000
Utah	\$27,309,774,000	0.78%	\$234,000,000	4.75%	\$11,115,000
Vermont	\$8,174,758,000	0.23%	\$69,000,000	6%	\$4,140,000
Virginia	\$92,452,684,000	2.62%	\$786,000,000	4%	\$31,440,000
Washington	\$74,935,339,000	2.13%	\$639,000,000	6.5%	\$41,535,000
West Virginia	\$18,125,574,000	0.51%	\$153,000,000	6%	\$9,180,000
Wisconsin	\$74,043,627,000	2.10%	\$630,000,000	5%	\$31,500,000
Wyoming	\$7,109,023,000	0.20%	\$60,000,000	4%	\$2,400,000

Note: States with no state sales tax, AK, DE, MT, NH, and OR, were omitted.

<sup>i</sup> Market Statistics, a division of Claritas Inc., Arlington, VA, The Survey of Buying Power Data Service, "Retail Trade and Food Services--Sales by Type of Store and State," 2004, <http://www.census.gov/compendia/statab/tables/07s1022.xls>.

<sup>ii</sup> Federation of Tax Administrators, "Comparison of State and Local Retail Sales Taxes," July 2004, [http://www.taxadmin.org/FTA/rate/sl\\_sales.pdf](http://www.taxadmin.org/FTA/rate/sl_sales.pdf).

<sup>iii</sup> Chris Swecker, Assistant Director, Criminal Investigative Division, Federal Bureau of Investigation, Testimony before the House Judiciary subcommittee on crime, terrorism and homeland security, March 17, 2005,

[http://commdocs.house.gov/committees/judiciary/hju20018.000/hju20018\\_0.HTM](http://commdocs.house.gov/committees/judiciary/hju20018.000/hju20018_0.HTM).