



Testimony of Lary Sinewitz  
Executive Vice President, BrandsMart USA  
On behalf of the  
National Retail Federation  
House Judiciary Committee  
Hearing on “Examining the *Wayfair* Decision and its Ramifications for  
Consumers and Small Businesses”  
July 24, 2018

My name is Lary Sinewitz. I am the Executive Vice President of BrandsMart USA (BrandsMart), a 41 year-old family-owned business, headquartered in Ft. Lauderdale, Florida. I am testifying today on behalf of the National Retail Federation (NRF). I am a member of NRF's Policy Council and their Small Business Retail Council. By way of background, the National Retail Federation is the world's largest retail trade association. Based in Washington, D.C., NRF represents discount and department stores, home goods and specialty stores, Main Street merchants, grocers, wholesalers, chain restaurants and internet retailers from the United States and more than 45 countries. Retail is the nation's largest private sector employer, supporting one in four U.S. jobs – 42 million working Americans. Contributing \$2.6 trillion to annual GDP, retail is a daily barometer for the nation's economy.

BrandsMart has 10 stores, located in South Florida and Georgia. We also have internet sales. BrandsMart sells appliances, TV's, electronics, mattresses, furniture and other household items. Approximately, 95 percent of our sales are through our stores. A number of years ago, we invested in our website, primarily as a means of advertising and providing information on our products to our local customers. About 6-7 years ago, we added a shopping cart to our website and began to sell over the internet by participating in some marketplaces and with other third parties that glean the best deals to offer to customers for a small commission from the seller. Today, we have some sales in all of the 48 contiguous states. Together these sales make up less than 5 percent of our overall sales. Although we are hopeful that our internet business will grow, as has been the trend for the overall retail industry, our biggest concern has been protecting sales in our brick and mortar stores.

As an appliance retailer, BrandsMart has experienced a significant loss of sales from customers that come into our stores to "showroom." That is, they come into our stores to learn about products from our experienced sales personnel. As "authorized dealers" for many major brands, our staff has a high level of expertise with respect to the products that we sell. But with the growth of mobile sales, we regularly find that customers will come into our stores to learn about products and then purchase them online in order to save the sales tax. State and local sales taxes in Florida can be 7-8 percent, which can provide a significant savings on a high priced appliance or TV. Sometimes the customer will order the product on the phone right in front of a sales person, who has just invested a significant amount of time in educating that customer. Like other retailers, we will often engage in price matching, but our profit margins are slim and we cannot afford to absorb the cost of the tax that, heretofore, online sellers have not had to collect.

### **Impact of *Wayfair* Decision**

BrandsMart is looking forward to competing in the marketplace in the post-*Wayfair* environment. We believe that when we compete on price and good customer service, without having to overcome a discriminatory tax burden, we will be far more successful.

There are challenges to meeting sales tax collection requirements for remote sellers that had not been collecting sales tax prior to the Court's decision, and BrandsMart is now facing these challenges. In fact, among NRF's members that have only one or two stores, it is rare for them not to have a website on which they may have some number of sales out of state. In discussions at meetings of NRF's Small Business Retail Council, where most of the retailers are smaller than BrandsMart, concern had been raised that if there were not federal legislation that included free software, among other protections, the cost of compliance might be so great that it was not worth selling into certain states where a retailer did not have a sufficiently high

level of sales. However, after becoming educated on the software packages that are available, pricing and services offered, I feel confident that, for a modest fee, BrandsMart can quickly come into compliance with whatever collection requirements may be imposed, and that this will give us the ability to also compete and expand our internet sales.

BrandsMart has been in contact with several software providers that offer sales tax services, and we are currently finalizing a contract with one of these providers. As a starting point to these discussions, the software providers asked us in how many states, other than Florida and Georgia, we have more than 200 sales. Of the 46 states into which we have some remote sales, 34 meet this minimum level of sales. The package that we negotiated whereby they will calculate and remit our sales taxes, file our returns, and be the first point of contact for audit with these 34 states and appropriate localities within those states will cost less than one-tenth of one percent of our remote sales in the first year, because there are start up costs, and will be less in subsequent years. The start up costs include mapping my thousands of products, and they estimate it will take them about two weeks to complete this. One of the complications everyone raises about collecting local taxes is that in some cases locality borders do not match zip codes, but this company's software is mapped house to house within a jurisdiction, and does not rely on zip codes to determine local tax. Most importantly, these software companies are monitoring the day to day changes in state and local taxes and will provide me with the right amount of tax at the time of sale.

Having participated in discussions with several different software companies, I can tell you that there are different ways that the companies priced their services, but it was very clear that they were interested in developing a plan that was economically successful for both the retailer and the software company. There appear to be several companies that have the expertise to provide these services quickly and in a cost efficient manner. So what was once loomed as a potential compliance nightmare, now appears to be an incidental cost of doing business that should not prevent BrandsMart or other remote sellers from expanding their internet presence.

### **Impact on Consumer**

This hearing is also addressing the impact of *Wayfair* on consumers. Any impact of *Wayfair* on consumers is positive. First, when sales taxes are not collected by a retailer, then the consumer is legally obligated to remit the taxes owed themselves. So retail collection relieves law-abiding taxpayers of that compliance burden. However, when there are major tax compliance loopholes, as there have been with sales tax collection, states have to raise the rate of sales taxes to meet the same revenue goals. Higher rates of taxes do impact cost and sales, and it is unfair to charge higher taxes on those that are compliant. In fact several states have already announced that they will use the revenue raised by bringing buyers into compliance to lower other taxes.

### **Conclusion**

BrandsMart is looking forward to competing in the new retail landscape where they can compete on price and service, without having the same product be taxed in a different way if it is ordered over the internet instead of in a store. Our employee families will be much happier and more productive to work in an environment where their knowledge and expertise can lead to a sale by them instead of on the internet.