



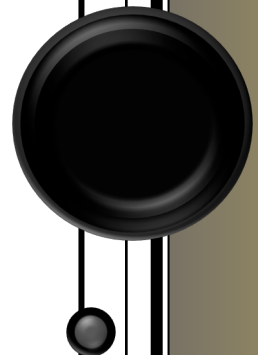
## THE BUY BOX EFFECT

*Amazon's relentless quest to dominate the retail marketplace is harming manufacturers – learn how owning the Buy Box can lessen that harm.*

Most consumers are unaware that when they click on the “Add to Cart” button on Amazon, they have just chosen one of perhaps dozens of sellers offering that product for sale on the company’s website. Competition for that button, known as the Buy Box, is fierce and manufacturers may find themselves competing with unauthorized third-party sellers and Amazon itself for that prime position. Unfortunately, that competitive environment is causing drastic price erosion for popular brands. This article explores the problem and offers strategies for fixing it.

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# The Buy Box Effect

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In 2013, author Brad Stone penned a book entitled, “The Everything Store: Jeff Bezos and the Age of Amazon.” The name is fitting. After two decades in business, Amazon does sell just about everything. It has grown to become the third largest retailer in the world and in the first quarter of 2017 alone, posted \$35.7 billion in revenue. Over the past twenty years, its shares have increased in value by a staggering 51,900%.

Notwithstanding those phenomenal numbers, as of 2016, ECommerce accounted for just 8.3% of retail sales in the United States. Amazon CEO Jeff Bezos is rumored to salivate at this figure as it gives his company the opportunity to conquer more and more of the retail landscape.

To do this, Bezos employs what many consider to be controversial tactics. For example, since 2000, Amazon has invited its own competitors – known as third-party sellers – to offer products for sale in the Amazon.com marketplace. Today, over 40% of the products sold on Amazon are sold through these third-party merchants. In some product categories, that figure is as high as 83%.

Additionally, Amazon is known to operate its retail business on threadlike margins. Since most of the company's *profits* come from Amazon Web Services (on-demand, cloud-computing platforms), Bezos and company can offer consumer goods at extremely low prices, all the while swallowing up a greater piece of the retail pie.

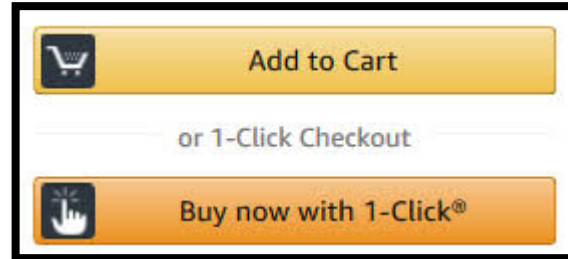
Notwithstanding this winner-takes-all strategy, Amazon maintains that its primary goal is to provide positive consumer experiences. This goal is paramount whether Amazon is making direct sales to consumers or whether third-party sellers are fulfilling consumer demand. Thus, Amazon has set up an incentive program for its third-party merchants that rewards them for things like on-time deliveries, favorable customer reviews, accurate product listings, and low prices.

The crown jewel of this incentive program is known as “winning the Buy Box.” Indeed, a whole industry of consultants has evolved to help third-party sellers win the Buy Box – a process that in many cases requires direct competition with Amazon itself. This paper explores the Buy Box phenomenon, explains how the quest for the almighty Buy Box is harming brands, and provides guidance for how manufacturers can lessen the Buy Box impact.

## WHAT IS THE BUY BOX?

Anyone who has ever purchased an item on Amazon is familiar with the Buy Box, though they may not know it by its industry title. Quite simply, it is the “Add to Cart” button that appears in the upper right-hand corner of every product page. Clicking on this button initiates the sale process on Amazon.

The company has done a relatively good job of hiding its third-party merchant program from consumers. The Buy Box is a perfect example of this.



When a consumer identifies a product on Amazon that she wishes to purchase, dozens of retailers may be offering that product for sale, including Amazon. The consumer, however, will only see one product listing and one Buy Box.

The Buy Box is thus incredibly valuable to Amazon retailers. The Buy Box for each product listing is a default link to only ONE winning retailer, regardless of how many retailers are offering that product for sale through Amazon. Careful consumers will notice that the product page also contains a “More Buying Choices” section. That section, which is inconspicuously placed on the page, provides a list of additional retail options, ranked by their offered landing price (product price + shipping).

Studies have revealed, however, that up to 90% of all purchases made on Amazon are initiated via the Buy Box. In other words, if a retailer “wins the Buy Box” for a particular product, it is much more likely to convert the final sale than other retailers, including those in the “More Buying Choices” section.

## HOW DOES A RETAILER WIN THE BUY BOX?

Given that every Amazon retailer’s goal is to win the Buy Box, Amazon must have published guidelines for how to achieve this coveted prize, right? Wrong. While the company gives general guidelines for improving one’s chances at obtaining the Buy Box, Amazon freely admits that “we do not disclose specific targets needed to qualify for Buy Box eligible status.”

Importantly, the Buy Box winner is not a permanent title. The “Add to Cart” button is continually up for grabs and can change from day to day based on results of Amazon’s intricate algorithms. Moreover, just because a seller wins the Buy Box for one product does not mean it will achieve Buy Box status for any other product in its inventory. Competition is fierce and it is never-ending.

In reality, the process of becoming a Buy Box winner requires a combination of having the right seller status, meeting certain customer service standards, and having the best (*i.e.*, lowest) landing price. Each of these elements is broken down, below.

## **Seller Status**

Amazon has multiple types of sellers operating on its site. Significantly, each category plays by its own set of rules and each has different chances of winning the Buy Box.

### ***Seller Central: Third Party Sellers***

Amazon's Seller Central program was designed to allow third-party retailers to sell products via Amazon.com. Seller Central is made up of two types of third-party sellers: Individuals and Pro Merchants.

#### *Individual Third-Party Sellers*

Individual third-party sellers are small-time sellers on Amazon. They are not required to pay a monthly fee to become a vendor, so long as they sell fewer than 40 products per month. To compensate Amazon for use of its sales platform, individual sellers pay the company a \$0.99 fee (in addition to the regular commission) for every item they sell. Individual third-party sellers are not eligible to compete for the Buy Box.

#### *Pro Merchant Third-Party Sellers & Featured Sellers*

Pro Merchants pay Amazon roughly \$40 per month for a subscription allowing them to sell products on the site. Unlike individual sellers, they do not pay a per-item fee. They also typically sell far greater than 40 items per month. Being a Pro Merchant, in and of itself, does not qualify a third-party seller to win the Buy Box.

In order to achieve Buy Box eligible status, a Pro Merchant must be a "Featured Seller." Featured Sellers are chosen by Amazon based on the following:

- Low rate of returned products;
  - Very few negative consumer reviews;
  - Length of time as a Pro Merchant;
  - Number of sales made;
  - High rate of on-time deliveries; and
  - Use of Amazon's order shipping program, Fulfillment by Amazon ("FBA").
- \*Note: use of FBA enhances a Pro Merchant's chances of being chosen as a Featured Seller, but is not required.

Once a third-party Pro Merchant is granted Featured Seller status, that retailer can compete with Amazon and other qualified third-parties to win the Buy Box for any of the products it sells.

### ***Manufacturers as Sellers***

Of course, there is nothing preventing manufacturers from becoming Pro Merchants (and eventually Featured Sellers) of their own goods. Manufacturers, like other third-party sellers, can set up their own Amazon store front, called a Web Store. This way, they can peddle their products directly to consumers, using Amazon as an intermediary.

The benefits for the manufacturer are obvious. They no longer have to share margins with authorized resellers and they have direct control over the pricing advertised on Amazon.com. They also receive the benefit of Amazon's brand strength and nearly 200 million website visits each month.

On the downside, manufacturer-sellers must still compete for the Buy Box like everyone else. Moreover, just because a manufacturer opens a Web Store does not mean *unauthorized* sellers won't compete for the Buy Box on that manufacturer's product.

### ***Amazon as a Seller***

As noted, Amazon still makes roughly 60% of sales consummated through its websites. In order to do that, the retail giant must obtain products from manufacturers or distributors at wholesale prices.

Amazon's wholesalers are themselves broken down into multiple vendor categories. Those categories are not pertinent to the Buy Box analysis. Suffice it to say that if Amazon is selling a product under the "Shipped and sold by Amazon.com" moniker, that product is favored within the Buy Box winner algorithms, regardless of which vendor type the product was acquired from.

At first blush, it seems obvious that a manufacturer would benefit greatly from an authorized retailer relationship with Amazon. As explained in greater detail below, however, that strategy only works if a brand undertakes vigorous enforcement efforts to eradicate competing third-party sellers from eligibility for the Buy Box.

### **Customer Service Standards**

In light of Amazon's customer-centric business model, winning the Buy Box involves much of the same performance measures that are involved in the Featured Seller

title. Things like on-time deliveries, favorable reviews from consumers, availability of product, and low return rates all factor into the analysis.

Significantly, one of the ways a third-party seller can improve its customer service rankings is by using Amazon's FBA program. To use Fulfillment by Amazon, a merchant ships all of the products it intends to sell on the site to one of Amazon's fulfillment centers. When a product is purchased online, Amazon pulls the product from its warehouse, packs it, and ships it to the customer. Of course, these services come at a cost to the merchant. In other words, Amazon is giving greater Buy Box priority to those merchants who pay more into the company's coffers than the usual 15% commission Amazon takes on each sale.

In fact, according to one study, "Paying Amazon appears to be a sound strategy. Fulfilled by Amazon vendors and Amazon itself were just about the only sellers – 94 percent of the cases we analyzed – that ever won the buy box without having the cheapest product."<sup>1</sup>

## **Landing Price**

As illustrated in the above quote, having the lowest landing price is not always the deciding factor in winning the Buy Box. That said, if all else is equal among sellers, the seller with the lowest price is highly likely to win the day.

In fact, scores of online consultants offer tips for winning the Buy Box and nearly all of them include price-dropping formulae they believe will improve chances. This is not surprising as Amazon has worked very hard to position itself as the leading low-price retailer in the world.

As described in the following section, however, the weight of this factor is causing great harm to manufacturers. This price dropping phenomenon – referred to as the "race to the bottom" – is causing drastic price erosion that threatens to put many manufacturers out of business.

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<sup>1</sup> See *Boxed Out: How Amazon's Pricing Algorithm is Designed to Hurt Consumers*, <http://digg.com/2016/amazon-algorithm-pricing-propublica>

## THE RACE TO THE BOTTOM

From the manufacturer’s point of view, the retail marketplace should operate like it has for decades. The manufacturer makes a product at a certain cost. It then sells that product to a contractually-authorized seller at a set margin. In exchange for the semi-exclusive right to sell that product, the authorized retailer agrees, among other things, to adhere to the manufacturer’s Minimum Advertised Price (“MAP”).

MAP is important to manufacturers for several reasons. First, products are priced at a certain level to preserve a desired brand image. If products are sold too cheap, consumers may come to believe they are of poor quality.

“Indeed, some analysts believe Amazon is overtly antagonistic toward MAP.”

MAP also levels the playing field among retailers, allowing multiple players to offer products through different retail channels (online vs. brick & mortar, for example). As a result, the manufacturer sells more products and everyone in the sales channel realizes a healthy margin.

Unfortunately, Amazon’s business practices are highly injurious to manufacturers because they largely ignore MAP. Indeed, some analysts believe Amazon is overtly antagonistic toward MAP.

### **Amazon’s Unauthorized Seller Problem**

One of the biggest problems manufacturers face with Amazon is the company’s lackluster response to complaints about unauthorized sellers. Unlike their authorized counterparts, illicit sellers have no contractual relationship with the manufacturer and thus are typically unconcerned with MAP.

To the contrary, most unauthorized sellers obtain products through surreptitious means and can sell them in online marketplaces like Amazon far below MAP while still realizing a profit. Some of the worst offenders, in fact, have engaged in cargo theft or have purchased lots of expired or nearly-expired products on fire-sale from an authorized distributor. Given their low-to-no-cost method of obtaining goods, they can sometimes offer products for sale even below the manufacturer’s cost.

Unfortunately, not all of these rogues are small-time operators. Rather, many are Pro Merchants and Featured Sellers – meaning they are competing for the Buy Box!

Every time they win that coveted prize, price erosion has begun and the manufacturer's brand starts to lose value.

To add insult to injury, Amazon offers very little help to manufacturers in policing unauthorized sellers. While the company offers limited platforms for manufacturers to communicate with illegitimate retailers, it all but refuses to intervene in what Amazon views as a private dispute between the manufacturer and the seller.

“One of the biggest problems manufacturers face with Amazon is the company’s lackluster response to complaints about unauthorized sellers.”

After all, Amazon takes in 40% of its retail revenue from third-party sellers – why would it do anything to harm the interest of those retailers?

### **Amazon: The Worst Kind of Authorized Seller**

One logical resolution to Amazon’s unauthorized seller problem would be to make

Amazon itself an authorized retailer. Most authorized sellers must agree to honor the manufacturer’s MAP. Moreover, since Amazon controls the Buy Box algorithm (and never publishes a sure-fire strategy for winning the Buy Box), the company could simply ensure that as an authorized retailer, it always wins the Buy Box and never violates MAP.

Therein lies the problem. As the world’s third-largest retailer, Amazon wields tremendous negotiating power with manufacturers. One term it absolutely refuses to abide by is MAP. As noted, Amazon regularly competes with its third-party sellers for the Buy Box, including unauthorized third-parties who violate MAP. Given this perfect storm of price erosion, how can manufacturers survive without forbidding the sale of their products on Amazon all together?

The answer lies in a proper enforcement strategy.

## **A STRATEGY FOR PRESERVING THE BUY BOX PRICE**

Fortunately for manufacturers, there is a way to greatly improve chances that the winning Buy Box price will be at or above MAP. To understand the strategy, you have to first understand some basic truths about Amazon.



While Amazon is willing to operate on incredibly small margins, it is not in the company's best interest to do so. Notwithstanding the fact that Amazon will not itself agree to comply with MAP, it does not sell products far below that price arbitrarily.

Amazon engages in price dropping to compete for the Buy Box against its third-party sellers. As discussed previously, many of those sellers are unauthorized and are selling products far below the minimum advertised price. If Amazon didn't have to compete with those falsely deflated prices, it would naturally sell products at the highest price the market would bear. That is how a retailer makes money, after all.

Consequently, the best way to ensure the Buy Box price remains palatable for manufacturers is to remove Amazon's illicit competition. In other words, manufacturers should quickly and confidently enact an enforcement strategy aimed halting unauthorized sales.

## E-Enforcement Against Unauthorized Sellers

The vast unauthorized seller problem in online marketplaces led to the creation of a specialized group of enforcement agents. Known for their niche work in the ECommerce realm, E-Enforcement professionals are laser-focused on putting a stop to all sorts of online fraud, including counterfeiting, unauthorized sellers, and sub-MAP sales.

“The most important thing about the E-Enforcement strategy ... is that it works.”

When dealing with unauthorized, sub-MAP sellers on Amazon, E-Enforcement agents have tried-and-true methods for eradicating the problem. The most effective strategy involves three distinct phases: technology, investigation, and legal.

In the *technology* phase, E-Enforcement teams employ automated monitoring tools that alert them any time a sub-MAP seller either offers a product for sale on Amazon or wins the elusive Buy Box.

Identifying that seller is far different from identifying the actual people behind the illegitimate sales, however. Indeed, most unauthorized sellers hide behind fictitious business names or phony online storefronts. This is where the *investigatory* work kicks in.

E-Enforcement professionals have proprietary databases and other tools that allow them to quickly and efficiently identify rogue sellers based on things like product-type, screen names, and *modus operandi*. They also have established relationships with law enforcement agents across the country who similarly target wrongful online sellers.

Identification of real persons is critical to the process. While, as noted above, Amazon provides an electronic platform for manufacturers to communicate with third-party sellers, most communications sent through those portals (including electronic cease and desist demands) go unanswered.

When E-Enforcement professionals send physical cease and desist letters<sup>2</sup> to a seller's home address, on the other hand, they tend to get a timely response. Sometimes, sellers immediately close-up shop. Other times, they may engage in a bit of push-back, but at least a dialogue has started with the offenders.

At this point, E-Enforcement teams will employ *legal* strategies in conjunction with various law firm partners. This may involve having a cease and desist letter sent to the seller directly from an attorney. When faced with the most resistant sellers, the legal team may also have to threaten a lawsuit or even forward a draft of a Federal Court complaint, along with a date certain by which the lawsuit will be filed if illegitimate sales are not stopped.

While many cases do not require this level of enforcement, those that do tend to yield impressive results. For example, to avoid the filing of a lawsuit, many sellers will not only shut down their improper sales efforts, but will also provide information on the source of the products they are selling at rock-bottom prices. This allows E-Enforcement teams to climb up the unauthorized sales chain and, oftentimes, shut down a significant percentage of sub-MAP sales in one fell swoop.

The upshot of these efforts, of course, is that the manufacturer working with E-Enforcement professionals has now exterminated many Buy Box competitors. In the absence of fraudulent sellers driving down prices as part of an attempt to win the Buy Box, Amazon and other legitimate sellers can offer products at realistic prices. While manufacturer-sellers must still compete with Amazon for the Buy Box, neither party has a vested interest in severely eroding prices.

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<sup>2</sup> These cease and desist demands are largely based on trademark infringement theories and require implementation of various business strategies before unauthorized online sellers even become a problem. For a full treatment of pre-dispute tactics aimed at bolstering enforcement efforts, please see our White Paper entitled "Material Differences Matter: Your company's pre-litigation trademark protection analyses must include a material differences strategy."

## **E-Enforcement Results**

The most important thing about the E-Enforcement strategy for controlling the Buy Box price is that it works.

In one recent case study, a popular brand operating as a manufacturer-seller on Amazon saw a 40% increase in its Amazon revenue almost immediately following the start of enforcement efforts. Other brands have had similar results with varying degrees of enforcement pressure. In light of Amazon's fiercely competitive Buy Box environment, controlling unauthorized sellers may be a brand's only way to ensure the Buy Box does not translate into price erosion.

*If you have questions about enforcement against unauthorized sellers and winning the buy box for your products, or would like additional information, contact the E-Enforce™ team at [sales@e-enforce.com](mailto:sales@e-enforce.com), or call us at (800) 892-0450. You can also follow us at [e-enforceCIS@twitter.com](https://twitter.com/e-enforceCIS), via the ECommerce Enforcement Group on LinkedIn, or visit [E-Enforcement.com/services](http://E-Enforcement.com/services).*

## RESOURCES

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