



amazon and its



DIRTY LITTLE
SECRETS

Why Amazon's brand protection tools are nothing but smoke and mirrors

TABLE OF CONTENTS

Introduction	1
Part I: The unauthorized seller problem on Amazon	1
The havoc caused by unauthorized sellers	2
Amazon to the rescue with brand registry services?	3
Part II: Amazon’s Dirty Little Secrets	5
Dirty Little Secret #1	5
Dirty Little Secret #2	5
Dirty Little Secret #3	6
Dirty Little Secret #4	6
Dirty Little Secret #5	7
Dirty Little Secret #6	7
Part III: Brand Enforcement in the 2.0 Era	8
Preventative measures	8
Proactive measures	10
About E-Enforce™	12

INTRODUCTION

Nearly 25 years after its modest beginnings as an online bookstore, Amazon has become the ubiquitous leader in offering the lowest prices on nearly any item you could ever wish to purchase. In fact, the company currently offers over 562 million different products on its website, ranging from clothing to power tools to fine art.ⁱ

Amazon is said to generate over 2 billion site visits each month.ⁱⁱ And, impressively, Amazon sold an estimated 100 million products during its July 2018 Prime Day alone (an annual, one-day event where Amazon offers extra savings to its Prime members).ⁱⁱⁱ This, despite the fact that technical glitches shut down the site for a portion of that day. In fact, Prime Day has historically been such a hit that other major retailers have suffered upwards of 30% fewer sales on the day of the event.^{iv}

Given this level of success and popularity, you would think major brands would be clamoring to have their products sold on Amazon. To the contrary, however, we receive calls every day from companies that desperately want to get their products off the site. How can this be?

PART I: THE UNAUTHORIZED SELLER PROBLEM ON AMAZON

The problem lies in Amazon's enormous third-party seller program. As brands and consumers are finding out, over 50% of the products sold via amazon.com are not sold by Amazon. Instead, they are sold by a vast army of third-party retailers (TPRs) who use the Amazon platform as a means of setting up virtual storefronts to sell their wares.^v

Before we explain this paradigm further, let's explore for a moment just how enormous the TRP program is for Amazon. To date, the company has recruited over 2 million third-party retailers.^{vi} 3,000 new TPRs are said to join the program every single day.^{vii} And it's no wonder Amazon pursues this program so aggressively. In 2017, TPRs generated a staggering \$10 billion in sales for the mega-retailer.^{viii}

The TPR program, in and of itself, is not a problem for the brands who contact us. Their problem lies with a specific subset of TPRs – unauthorized sellers. Amazon is a virtual breeding ground for these wrongdoers.

Repel Umbrella
 Repel Windproof Travel Umbrella with Teflon Coating
 ★★★★★ 4,911 customer reviews | 469 answered questions
 Price: \$22.95 ✓prime | FREE One-Day
 Amazon Save an extra \$2.00 when you apply this coupon. Details
 Your cost could be \$12.95. Eligible customers get a \$10 bonus when reloading \$100.
 Get FREE delivery **Tomorrow** if you order \$35 of qualifying items within 1 hr 30 mins and choose this date at checkout. Details

- AUTOMATIC, COMPACT, AND LIGHTWEIGHT - Auto open/close function allows for easy one-handed operation. Measuring just 11.5" long and weighing less than 1lb the folding handheld umbrella is extremely packable in purses, briefcases, backpacks, luggage and more.
- WIND-DEFYING 9-RIB CONSTRUCTION - Most small or mini umbrellas are made of 6 or 8 aluminum ribs but Repel is fortified with 9 resin-reinforced fiberglass ribs that flex slightly to withstand powerful gusts without turning inside out
- SUPERIOR WATER-REPELLENCY - Put the technology of Teflon to work for you. Waterproof, weatherproof and instantly dry, the foldable and durable Repel Travel Umbrella defends against the elements like nothing else.
- QUALITY WORKMANSHIP - Designed with a three-fold chrome plated black metal shaft, and strong metal frame to allow for greater stability in high winds. The ergonomic, slip-proof, and rubberized grip handle with wrist strap allow for easy carrying. A protective travel sleeve is included. Perfect for men, women, teens and kids.
- LIFETIME REPLACEMENT GUARANTEE - You are protected for life from the rain, sleet and snow, through our lifetime replacement guarantee program. If anything at all goes wrong with your umbrella, we will send you a replacement with no charge or return required.

New (1) from \$22.95 ✓prime
 Report incorrect product information.

Share 1K+ Shares
 \$22.95
 ✓prime | FREE One-Day
 Get FREE delivery **Tomorrow** if you order \$35 of qualifying items within 1 hr 30 mins and choose this date at checkout. Details
In Stock.
 Sold by Upper Echelon Products and Fulfilled by Amazon.
 Add to Cart

 Turn on 1-Click ordering for this browser

This product is sold on Amazon by a third-party seller. Note that the seller name is a fictitious business name – “Upper Echelon Products” – and that the name is inconspicuously placed on the product page. Most consumers won't even notice that they are purchasing from someone other than Amazon.

The reasons for this are simple. The barriers to entry into the TPR program are very low. Initial costs are typically under \$40, plus a minimal per-transaction fee.^{ix} The application process also moves quickly. In most instances, new sellers are approved in less than a week.^x

Perhaps more importantly for unauthorized sellers, however, is that fact that TPRs are allowed to remain completely anonymous to consumers. Accounts are set up using “fictitious” storefront names and sellers are never required to reveal their personal identities to customers. Moreover, TPR names are so inconspicuously placed on product pages that consumers rarely realize that they are buying a product from someone other than Amazon itself.

Additionally, Amazon vigorously protects the identity of its TPRs. In fact, the company has set up dedicated communication portals on its website as the sole means for consumers to make inquiries to sellers. That way, sellers are never forced to disclose a personal name or email address to the customer. We’ll come back to this salient point later.

The havoc caused by unauthorized sellers

By the time a manufacturer contacts us about an unauthorized seller problem, its brand is typically being harmed in three distinct ways: price erosion, brand dilution, and harmed relationships with authorized retailers.

Each of these symptoms is a result of the same harsh reality – unauthorized sellers are obtaining products through illicit sales channels and reselling them on Amazon at prices far below the manufacturer’s minimum advertised price (“MAP”). [For more on *how* unauthorized sellers are obtaining these products, please see our recent white paper entitled “[Stopping Unauthorized Sellers for Good](#)”.]

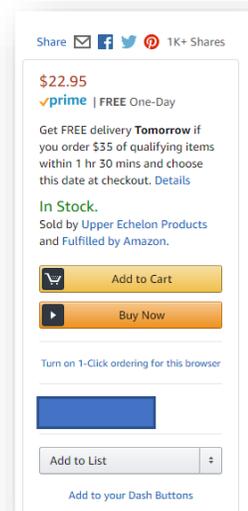
Price erosion

Hundreds of TPRs may be selling the same product via Amazon at any given time. Interestingly, Amazon itself might also be competing to sell that product. Because consumers would never wade through all of those offerings on one product, Amazon has set up an incentive program for TPRs that rewards them for offering the lowest prices and other consumer conveniences.

The crown jewel of this incentive program is known as “winning the Buy Box.” Anyone who has ever purchased an item on Amazon is familiar with the Buy Box. 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 Buy Box is incredibly valuable to TPRs as it is essentially a default link to only ONE winning retailer, regardless of how many retailers are offering that product for sale. Studies reveal that up to 90% of all purchases made on Amazon are initiated via the Buy Box.

Because price is such a strong determinant for winning the Buy Box, sophisticated TPRs (and a whole industry of consultants who serve them) have developed algorithms that detect any time a competitor offers a lower





price on any given product. These programs will then automatically lower that TPR's price by some nominal amount to make that TPR a more likely Buy Box winner.

Unfortunately, these programs are in use by thousands of TPRs, as well as Amazon itself. Consequently, a popular product listing on Amazon can suffer rapid-fire price erosion that has come to be known as "the race to the bottom."

Brand dilution

As prices plummet, so too may consumer confidence in the underlying products. Shoppers aren't always looking for the best price. Sometimes, they are more concerned with perceived quality and status symbols. This is especially true for brands that have had historic reputations as premium products.

To make matters worse, unauthorized TPRs rarely honor money-back guarantees or provide customer service at the same level as the original brand. Given that most consumers who purchase products through TPRs on Amazon have no idea that they're buying from someone other than Amazon, they will often misplace their ire over a poor purchase experience squarely on the brand, rather than the TPR who created the problem in the first place.

Harmed relationships with authorized retailers

Price erosion and brand dilution have their own cascading effects. For example, several brands still have numerous brick & mortar retailers in their authorized sales network. Many of those businesses have price matching policies intended to allow them to compete with online retailers like Amazon.

The problem with price matching is that it erodes an authorized retailer's price margin. That retailer, in turn, may request a wholesale discount from the manufacturer. Yet, both the manufacturer and the authorized retailer can only lower prices so far before profits are eradicated.

In extreme cases, ever-shrinking margins can overshadow the benefit to authorized retailers of carrying even the best-selling brands. Eventually, they come to see their authorized seller status as a burden that forces them out of contention for coveted consumer dollars. Over time, these competitive forces can completely decimate a brand's authorized retailer network.

Amazon to the rescue with brand registry services?

As unauthorized sellers and counterfeiters proliferated on Amazon, some major brands announced very public splits with the online retailer. Birkenstock, for example, sent a letter to its vast network of

authorized retailers in 2016 prohibiting them from further selling on Amazon.^{xi} The letter ended up all over the national news. As explained by the popular shoe maker's CEO:

The Amazon marketplace, which operates as an 'open market,' creates an environment where we experience unacceptable business practices which we believe jeopardize our brand. Policing this activity internally and in partnership with Amazon.com has proven impossible.

In some respects, this public exposé of Amazon's dirty TPR program forced the company's hand. It had to do something to clean up its TPR pool or face a public relations nightmare that could have had a devastating impact on sales. That is not a risk Amazon was willing to take.

Consequently, Amazon began offering manufacturers a service referred to as "Brand Registry." Amazon touts this program as "Proactive Brand Protection," and claims that its "automated protections use information about your brand to proactively remove suspected infringing or inaccurate content."^{xii} The company confidently claims that "Amazon Brand Registry helps you protect your intellectual property."^{xiii}

Initial reviews of Brand Registry were mixed, but most manufacturers found themselves disappointed with the program's limitations. Thus, in May 2017, Amazon rolled out what it referred to as Brand Registry 2.0.

Brand Registry 2.0 is reported to include several enhanced features to assist brands, including:

- ❖ Greater control over content listings^{xiv}
- ❖ Internal investigations of counterfeiting claims within four hours of the initial report^{xv}
- ❖ Counterfeit investigations without prior product purchases^{xvi}
- ❖ A dedicated user interface for registered brands (apart from Seller Central)^{xvii}



These improvements seem like a reason for manufacturers and brands to celebrate, right? Not so fast.

Part II of this paper will explore Amazon's "Dirty Little Secrets" behind Brand Registry 2.0 and will explain why brands and enforcement consultants who rely on the program will fail to stop unauthorized sellers from multiplying online.

Part III will examine both the preventative and enforcement measures brands can take to stop unauthorized sellers notwithstanding the vast shortcomings of Brand Registry 2.0.

PART II: AMAZON'S DIRTY LITTLE SECRETS

In this Part, we'll expose six Dirty Little Secrets that Amazon hides from manufacturers about the inadequacies of Brand Registry 2.0. While each is startling in its own right, they collectively add up to one unforgiving reality: Amazon has no interest in eradicating unauthorized sellers from its site.

While Brand Registry 2.0 may offer some enforcement capabilities against counterfeiters, the revamped program is relatively new. The jury is still out as to whether the company's internal investigation forces will show any true muscle when it comes to combatting the massive counterfeiting problem that exists on the site. For now, however, let's focus on Amazon's outright failure to address unauthorized sellers.



Dirty Little Secret #1: Brand Registry 2.0 is for locking down content, not stopping illicit sellers^{xviii}

At its core, Brand Registry 2.0 is a program that allows manufacturers to “to take control of [their] product listings and verify that the most accurate and up-to-date information is listed and available.”^{xix} Indeed, Amazon itself lists the principle purpose of the program as follows: “Brand Registry gives you greater influence and control over your brand’s product listings on Amazon.”

While improper listings from TPRs are certainly problematic for manufacturers, they are not the primary cause for the price erosion that is so devastating to brands. As noted, that problem stems from unauthorized sellers who engage in the never-ending race to the bottom in order to win the Buy Box.

There is an important side note to this Dirty Little Secret. Brands are required have a *registered* trademark to take advantage of the program. Currently in the United States, it can take up to 10 months to obtain a trademark registration. Thus, if you have a new, hot product that is trademarked (but not yet *registered* by the United States Patent & Trademark Office), you can't participate in Brand Registry 2.0 at all.

Unfortunately, it is precisely the newest, hottest products unauthorized sellers and counterfeiters seek to exploit.

Dirty Little Secret #2: Brand Registry 2.0 does not stop MAP violators

We know that unauthorized sellers on Amazon are a major predicate for sub-MAP sales and price erosion. In fact, one study revealed that the company's TPR platform causes at least 13% price erosion off of brands' minimum advertised prices.^{xx} Given this significant impact on manufacturers and brands, you would think Amazon would do something to put a stop to this problem. Not so.

To the contrary, Amazon is quite transparent about its lack of concern for what it sees as a simple sales channel issue. In fact, on the page where Amazon offers information for brands about reporting infringement, the company says:

Amazon respects a manufacturer's right to enter into exclusive distribution agreements for its products. However, violations of such agreements do not

constitute intellectual property rights infringement. As the enforcement of these agreements is a matter between the manufacturer and the retailers, it would not be appropriate for Amazon to assist in enforcement activities.^{xxi}

In other words, Amazon is taking the hard and fast position that unauthorized sales do not violate a brand's trademark rights. Amazon does not provide the reasoning behind its legal conclusion that unauthorized sales "do not constitute intellectual property rights infringement." Presumably, it is relying on the First Sale Doctrine. If that is the case, however, the company also presumably fails to understand the critical "Material Differences" exception to that doctrine. More on that in Part III.

Dirty Little Secret #3: Reliance on Brand Registry 2.0 infringement reporting can get a *brand* blocked from Amazon

One common misperception about Brand Registry 2.0 is that it is intended solely to protect brands as opposed to TPRs. That couldn't be further from the truth. In fact, our clients tell us that when they (or their prior enforcement consultants) have relied too heavily on reporting alleged infringement via Brand Registry 2.0, *they* ended up getting blocked by Amazon rather than the TPRs who were peddling their products without authorization!

This flies in the face of Amazon's claim that Brand Registry 2.0 is "Proactive *Brand* Protection." As James Thomson, an industry insider (and former Fulfilled-by-Amazon Account Manager) reports: "Amazon frowns on this use of the brand registry and has been known to remove a seller from brand registry if [the program] is *abused* to control distribution."^{xxii}



Recall the last Dirty Little Secret ... Amazon explicitly *does not care* about sub-MAP sales. Not only that, it is actually hostile toward brands who try to report such sales as a form of infringement. Indeed, several clients have contacted E-Enforce™ after having been blocked or suspended by Amazon for complaining one too many times about these threats to their business.

Suspension is no small penalty. In fact, Amazon suspension specialist Cynthia Stiles reports that suspension can cost a brand upwards of \$55,000 per day.^{xxiii} Accordingly, if an enforcement consultant tries to tell you that Brand Registry 2.0 is the path to stopping unauthorized sellers, run far and fast in the opposition direction.

Dirty Little Secret #4: Unauthorized TPRs who tweak your Brand Registry 2.0 application could get your legitimate seller account blocked from Amazon

When your brand applies for Brand Registry 2.0, you are asked to fill out a lengthy form requiring over 40 different fields of information.^{xxiv} While it can be tempting to skip some of these steps, any omission is a trap for the unwary.

This is because someone foreign to your brand could access your account and fill in those blanks for you.^{xxv} In doing so, they might tweak your product name or logo ever so slightly. If this happens, you

could later find that the illicit actor is trying to kick you off of Amazon. Worse yet, he might actually triumph.

This could also happen if you fail to apply for brand registry all together. Again, if someone tweaks a first-in-time application just enough so as to register something closely akin to your trademark – but not quite your trademark – they may later succeed in kicking your legitimate brand off the site.

At the end of the day, while we don't believe Brand Registry 2.0 is a good *enforcement* tool, registration through the program may be a necessary evil for preventing others from exploiting your mark in that venue.

Dirty Little Secret #5: Brand Registry 2.0 does not prevent your ASIN from being hijacked

If you've sold products via Amazon, you know that ASIN stands for "Amazon Standard Identification Number." An ASIN is a 10-character number that helps Amazon organize and catalog the products that are sold via its website.^{xxvi} The ASIN also stimulates severe competition amongst sellers (legitimate and not) that want to sell a particular product.

An ASIN threat reportedly ignored by Amazon:
"You think because I am in China that I can't hurt you? I have friends who will gladly slit your throat."

Given the high dollars at stake on Amazon, sellers sometimes make serious threats against each other in an attempt to control a specific ASIN. In fact, in some cases, those threats have risen to the level of physical violence. In perhaps the most glaring example, one ASIN seller made

the following threat: "You think because I am in China that I can't hurt you? I have friends who will gladly slit your throat."^{xxvii}

Shockingly, though that threat was reported to Amazon, the offending seller's listing was not removed.^{xxviii} While Amazon does sometimes remove hostile sellers, the fact that a threat of this magnitude did not warrant suspension is a good indication of how much the company will let its TPRs get away with.

In another serious (yet less scary) instance, an illicit seller listed a product using the original manufacturer's ASIN yet changed the manufacturer name on its own listing page. When the original manufacturer sought justice from Amazon, it was told that Amazon does not interfere in private relationships between manufacturers and sellers.^{xxix} Sound familiar?

Dirty Little Secret #6: Amazon is fickle

You may have already figured out that Amazon speaks out of both sides of its mouth when it comes to protecting brands as opposed to TPRs. As noted, Amazon claims Brand Registry 2.0 is "Proactive *Brand* Protection." Yet, when it comes to stopping the number one threat to brands on its website (*i.e.*, unauthorized sellers), Amazon outright refuses to step in and protect against price erosion and other serious problems that result from unauthorized sales.

In fact, while this paper was being written, E-Enforce™ learned of Amazon's latest move that favors TPRs and is hostile to brands. Specifically, our internal investigations revealed that Amazon has now started

filtering the messages that can be sent to a TPR via its seller communications portal. You will recall that this is the only public-facing way in which an outsider can communicate with an Amazon TPR.

Shockingly, Amazon appears to be filtering out and blocking attachments to those communications such as .PDFs and .JPEGs that contain manufacturer cease and desist notices. It also appears to be blocking direct communications that contain certain keywords such as trademark, unauthorized, copyright, and infringement.

It doesn't seem to matter if a manufacturer is participating in Brand Registry 2.0 or not – Amazon is simply shutting down all legal threats against its sellers. Again, TPRs generate \$10 billion and 50% of sales for Amazon each year. No single manufacturer wields that kind of power. Thus, if Amazon has to take sides as between TPRs and manufacturers, perhaps it isn't surprising that TPRs garner the company's loyalty.

The only question remaining, of course, is what is a brand supposed to do about all this? Part III seeks to answer this critical question.

PART III: BRAND ENFORCEMENT IN THE 2.0 ERA

As discussed above, Amazon unabashedly refuses to protect brands from unauthorized sales occurring on its site. Brand Registry 2.0 offers no greater level of protection from these illicit sales than Amazon provided before this program was instituted. So, what can a company do to battle these detrimental transactions from taking place via the world's largest online retailer?



Preventative measures: building the case for trademark infringement against unauthorized TPRs

The largest sword a brand can wield against unauthorized sellers is an enforceable trademark.¹ This is because the Federal Lanham Act affords trademark owners important rights when it comes to placing products into the stream of commerce.

For instance, the owner of a registered trademark has the right to have its product sold to the public in precisely the manner the owner intended. If someone tries to sell a registered product in a different manner – particularly in a manner that confuses the public as to the origin or source of that product – the owner may have a claim for trademark infringement.

Because of this right, most enforcement efforts against unauthorized sellers begin with a letter informing that seller that: (1) they are not selling the product as the manufacturer intended; and (2) as such, the seller must cease and desist from making infringing sales.

¹ E-Enforce™ is not a law firm and this paper is not intended to provide legal advice. This section of the paper is based on our experiences in interacting with unauthorized sellers, as well as our interactions with the various law firms our clients work with to handle the legal portions of enforcement operations. If you have specific questions about trademark law, we encourage you to speak with a licensed attorney. If you need a referral, we have qualified law firm partners across the United States.

Sophisticated sellers will raise the First Sale Doctrine

While such communications may persuade Mom & Pop sellers to close up shop, they will typically do nothing to dissuade professional sellers from making continuing sales. Rather, pro sellers will respond to a trademark infringement notification letter by raising the “First Sale Doctrine.”

The First Sale Doctrine is a defense to infringement cases. The basic premise is that once a manufacturer places a product into the stream of commerce (in other words, makes the “first sale”), the manufacturer no longer has a right to control where or how that product is resold.

In the abstract, that assertion is correct. The moment a manufacturer sells a product to a distributor or a retailer, the manufacturer has forfeited later control over that product. That downstream seller’s rights are not absolute, however. Retailers do not have an unencumbered right to sell the trademarked product in a manner that will confuse the public.

Material differences can overcome the First Sale Doctrine

Trademark owners can overcome the First Sale Doctrine if they can prove the product at issue was sold in a way that was likely to confuse consumers. In legal terms, the owner must show that the product sold by the retailer was *materially different* than the product they intended to be sold to the public. Material differences are the key to overcoming the First Sale Doctrine.

Let’s briefly look at what sorts of things constitute “material differences” in this context. In the case of sales happening on Amazon, rarely is the offending product somehow physically different from the original.

That’s not fatal to the material differences analysis, however. Indeed, courts have determined that material differences do *not* have to be physical differences. Instead, intangible things like product warranties, money-back guarantees, and promised levels of customer service have been found to be integral to a product’s identity. Consequently, the failure to offer these things in the same manner as the manufacturer intended can render the product materially different from the original. Such differences have proven sufficient to overcome the First Sale Doctrine.

Brands must be forward thinking about material differences

Thus, the first part of any preventative strategy against unauthorized sellers must begin with a focused attempt to build material differences into each product. Here’s how it is done:

Assuming the brand has enforceable trademarks in place, it must also attach things like product warranties, money-back guarantees, and exacting customer service standards to its products. Recognize, however, that what turns those policies into effective material differences is how the brand owner implements them.

One effective strategy is to make such policies part and parcel with the obligations required of sellers in your authorized retailer network. You can also require things like quality control, product inspection



“It is by subtle differences that consumers are most easily confused.”

United States Court of Appeals for the 1st District, *Societe Des Produits Nestle, S.A. v. Casa Helvetia, Inc.*

requirements, and defined methods for handling product recalls. The more you can distinguish these authorized retailer obligations from the way illicit retailers handle the product, the stronger your case for establishing material differences.

Next, be sure such policies are well publicized with your products. List the policies on your website, include them within product packaging, and include them in any training materials provided to authorized retailers.

While these steps may seem excessive absent an unauthorized seller problem, you'll be glad you took them should such an issue ever plague your brand.

Proactive measures: taking down individual offenders

Notwithstanding the best preventative measures, unauthorized sellers will penetrate nearly any brand that enjoys impressive online sales. Indeed, the more popular the product, the more likely it will make its way into the Amazon storefronts of illicit sellers. So, what can brands do to stop the tidal wave of destruction that typically follows an unauthorized seller problem? Read on.

Effective monitoring & marketplace analysis

Extensive marketplace monitoring is critical for assessing the extent of a brand's unauthorized TPR problems. At E-Enforce™, we deploy our proprietary software and pricing algorithms to find unauthorized sellers on Amazon (and wherever else they are operating online). Some of the things our programs look for are products sold far below MAP, phony reviews, and other proprietary indicia of illicit sales. We can also scan the internet for specific SKUs/ASINs.



These searches typically yield a surprisingly long list of Amazon sellers making unauthorized sales. Recall, however, that Amazon sellers operate under fictitious business names. Amazon never requires them to reveal their true identities to the public. This is where our proprietary databases and industry knowledge set us apart from other players in the industry.

E-Enforce™ takes the list of unauthorized sellers and compares their online IDs to our in-house database of over 100,000 known offenders. This provides us with a real-time view of the scope and complexity of each brand's problem.

Typically, initial reports reveal scores of unauthorized TPRs that range from the smallest of Mom & Pop sellers to the largest and most sophisticated of professional sellers.

From there, we analyze our clients' overall unauthorized seller landscape. While we may have found dozens of unauthorized sellers, we often find that a subset of those sellers are causing the greatest harm to our clients. In these situations, we advise our clients to let our automated systems attempt to scare off the Mom & Pop sellers, while we deploy more intense enforcement efforts against professionals.

Identifying the people behind the storefronts

E-Enforce™ is not deterred by the fact that Amazon TPRs operate using fictitious names. We don't care that Amazon has effectively cut off our ability to initiate enforcement efforts through the seller

communication portal. We're prepared for the fact that once a seller suspects it is being monitored, it might shut down one online storefront just to pop up days later using a different storefront name. We have automated systems in place to track all that.

The reason we are undeterred by all of these factors (which many enforcement consultants see as roadblocks) is that we have developed the ability to identify the real people behind the fictitious storefront names. In fact, within a relatively short time of generating our first report, we can access the offending sellers' true names, addresses, email addresses, phone numbers, and social security numbers.

At that point, all enforcement efforts are levied against the individuals – and they can't hide as easily as their fictitious identities can.

Escalated enforcement without reliance on Brand Registry 2.0

Once we've identified the real people behind the unauthorized sales, E-Enforce™ quickly escalates its enforcement efforts. We don't waste our time making reports via Brand Registry 2.0 – Amazon has been very clear that they don't care about unauthorized sellers and we don't want to risk getting the brands we represent blocked from Amazon for making such reports.

Instead, we arrange to have physical cease and desist demands sent directly to sellers in the physical location of their homes and businesses. We warn sellers that they have a very short period of time to stop making offending sales before more drastic measures are taken.

Additionally, our experience has taught us that the professional sellers we contact are typically part of a much larger operation. Consequently, these initial communications might offer an individual seller some leniency if they will identify bigger players in the unauthorized sales scheme. This may include distributors who are leaking products, crime rings that are obtaining products through cargo theft, or any number of bad actors who flood Amazon with products that end up being sold far below MAP.

Should they choose not to cooperate, these individuals are notified that they will be sued for trademark infringement and any other claim our law firm partners deem appropriate for the situation. To make our point crystal clear, those attorneys send a final cease and desist letter that attaches a draft federal court complaint. This time, the individuals are given an even shorter window for compliance.

Even among professional sellers, this measure usually brings unauthorized sales to a grinding halt. There are not many individuals who have the resources or the desire to battle a popular brand in court.

If there's one thing our experience has taught us, it's that sellers are constantly talking to one another. That means the brands we represent quickly earn a reputation for identifying the real people behind unauthorized sales. They become known as a company that is not afraid to sue trademark infringers. Ultimately, our goal is to make it so uncomfortable to make unauthorized sales of our clients' products, that sellers simply move on to other brands.

Our track record shows that we're meeting that goal.

ABOUT E-ENFORCE™

E-Enforce is a division of an internationally recognized investigation firm, Cyber Investigation Services. We have been providing litigation support and investigations for high profile cases and top law firms since 2010.

In 2012, we began combatting unauthorized sellers at the request of our client, Zo Skin Health. When we began that process, the company was overwhelmed with unauthorized retailers in online marketplaces. Today, they have virtually zero. They have also enjoyed exponential growth in that time. In February 2017, we made our proprietary E-Enforcement system available commercially.

Today, E-Enforce™ employs a dedicated team of engineers, software developers, data analysts, product purchasing specialists, licensed cyber investigators, and seasoned former law enforcement officers. We dedicate our time and attention to helping our clients deal with this rapidly evolving problem of unauthorized sellers, counterfeiters, and grey market sellers. In addition to our in-house team, we regularly partner with legal professionals around the world who are specialized in the many aspects of fighting cyber-crime.

E-Enforce™ is committed to assisting clients with unauthorized sellers who are determined to erode our clients' hard-earned margins and brand reputation.

We currently work with over 50 brands, including global companies, mid-sized operations, and small-but-growing manufacturers to thwart unauthorized sellers and counterfeiters alike. Our clients represent the following industries:

- Cosmetics
- Direct sales
- Paper products
- Home repair
- Clothing
- Women's accessories
- Food supplements
- Pet products
- Sunglasses & accessories
- Consumer electronics
- Vacuum cleaners
- Purses and bags
- Radar detectors
- Cutlery
- Skin care & hair products
- Health products
- Vitamins



If you have questions about stopping unauthorized sellers or would like additional information, contact the E-Enforce™ team at sales@e-enforce.com, or call us at (800) 892-0450.

Endnotes

- i <https://www.scrapehero.com/many-products-amazon-sell-january-2018/>
- ii <https://www.marketplacepulse.com/articles/amazon-is-the-new-canal-street>
- iii <https://nypost.com/2018/07/18/amazon-sold-100-million-products-during-prime-day/>
- iv <https://www.forbes.com/sites/johnkoetsier/2017/07/28/retailpocalypse-amazon-prime-day-caused-32-drop-in-store-visits-by-amazon-app-users/#63c44c6c390f>
- v <https://www.sec.gov/Archives/edgar/data/1018724/000119312518121161/d456916dex991.htm>
- vi <https://www.sellerlabs.com/blog/walmart-marketplace-differs-amazon/>
- vii <https://www.feedbackexpress.com/amazon-1029528-new-sellers-year-plus-stats/>
- viii <https://www.cnbc.com/2018/04/26/amazon-25-percent-of-third-party-sales-came-from-global-sellers.html>
- ix <https://services.amazon.com/selling/benefits.html>
- x <https://sellercentral.amazon.com/forums/t/how-long-does-it-take-to-get-approved-to-start-selling/320821>
- xi <https://www.cnbc.com/2016/07/20/birkenstock-quits-amazon-in-us-after-counterfeit-surge.html>
- xii <https://brandservices.amazon.com>
- xiii *Id.*
- xiv <https://www.webretailer.com/lean-commerce/amazon-brand-registry-transparency/>
- xv <https://www.sellerlift.com/amazon-rolls-out-brand-registry-2-0-sellers-happy-with-protection-and-added-features-it-offers-them-2/>
- xvi <https://www.business.com/articles/amazon-brand-registry/>
- xvii <https://www.junglescout.com/blog/new-amazon-brand-registry/>
- xviii <http://sellersessions.com/brand-registry-gating-trademarking-and-transparency/>
- xix <https://www.marketplacesellercourses.com/amazon-brand-registry/>
- xx <https://esellercafe.com/amazon-to-blame-for-price-brand-value-erosion/>
- xxi <https://www.amazon.com/report/infringement>
- xxii <http://sellersessions.com/brand-registry-gating-trademarking-and-transparency/> Emphasis added.
- xxiii <https://www.junglescout.com/blog/amazon-seller-account-suspension/>

^{xxiv} <http://sellersessions.com/brand-registry-gating-trademarking-and-transparency/>

^{xxv} *Id.*

^{xxvi} <https://www.nchannel.com/blog/amazon-asin-what-is-an-asin-number/>

^{xxvii} <https://www.ecommercebytes.com/C/abblog/blog.pl?pl/2018/3/1522354353.html>

^{xxviii} *Id.*

^{xxix} <https://sellercentral.amazon.com/forums/t/what-a-registered-brand-could-do-against-amazon-as-hijacker-of-a-listing/330175/4>