



Online Brand Protection: **Strategies to Stop Unauthorized Sellers**

2017

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Introduction

Online retail is propelling the retail industry as a whole forward, accounting for [42%](#) growth in the overall U.S. retail market in 2016. Sales from eCommerce totaled a massive \$394.86 billion in 2016, and there's no end in sight for the impressive growth the sector has seen. Just consider the year-over-year growth rate of 15.6% from 2015 to 2016. That is rivaled only by the 16.5% increase in retail sales the industry saw in 2012. Given these statistics, it's safe to say that online retail will continue its double-digit growth for the foreseeable future.

However, with the online boom comes the danger of those seeking to profiteer or gain illegal advantages. From counterfeiting to brand-jacking, there are a plethora of challenges that brands face online. One such challenge that is quickly becoming an epidemic is the unfortunate growth of unauthorized or "gray market" sellers. Here are some of the reasons why unauthorized sellers hurt your business:

- **Deplete margins of legitimate authorized sellers by causing price wars.** A manufacturer may have a pricing policy such as [MAP \(Minimum Advertised Price\)](#) in place, but gray market sellers will not be aware of them or, if they are, won't abide by them. They have no incentive to comply if they can sell a high volume at a very low price. The differences between authorized and unauthorized sellers are stark: according to a [Kellogg Insight study](#), 15% of authorized sellers violate MAP, and this jumps significantly to 53% when it comes to unauthorized sellers.

- **Harm relationships between brands and their authorized sellers.** If you allow illegitimate sellers, which are hurting your authorized sales, to proliferate, it sends a poor message to your authorized sellers—that you don't care enough to help, despite the disruption to their channels that are forced to comply with MAP. Legitimate sellers and distributors can become frustrated and may threaten to leave if violations are not addressed properly, or they may start violating your pricing policies in an effort to stay competitive. Both of these effect your bottom line and brand image.
- **Damage brand equity by affecting consumer perception of the brand.** Since gray market sellers are not regulated by the manufacturer, they may be selling faulty, expired, or otherwise damaged goods which can leave customers unsatisfied with the manufacturer through no fault of its own.

The first step to putting a stop to unauthorized sellers and protecting your brand is admitting there is a problem. The next is identifying the violators, which can be harder than it sounds. Especially for sellers using third-party eCommerce platforms or selling on marketplaces, there is relative anonymity, making it difficult to dig deeper and contact the appropriate people to send cease and desist letters to. While there is no easy fix, this whitepaper will cover the top strategies that today's industry leaders are using to police their brands across the online landscape.

Types of Unauthorized Sellers

Regardless of the type, these sellers may be harming your brand and violating your pricing policies. Here are the different types of sellers you should be on the lookout for:

By Channel

01 AMAZON

- Nearly half (**43%**) of online retail sales last year happened on Amazon. Alongside that intense growth of the marketplace comes the proliferation of unauthorized sellers who often sell below a brand's MAP.

02 EBAY

- With **167 million active buyers**, eBay brought in \$8.58 billion in revenue from its sales around the world. These numbers sound impressive, but the potential for massive amounts of MAP violations come with the package as well.

03 THIRD-PARTY WEBSITES

- Third-party websites can be hard to monitor because there are so many of them, and they are often “out of sight, out of mind” compared to sellers on the main marketplaces. Nonetheless, they could be violating your MAP at will, if unattended.

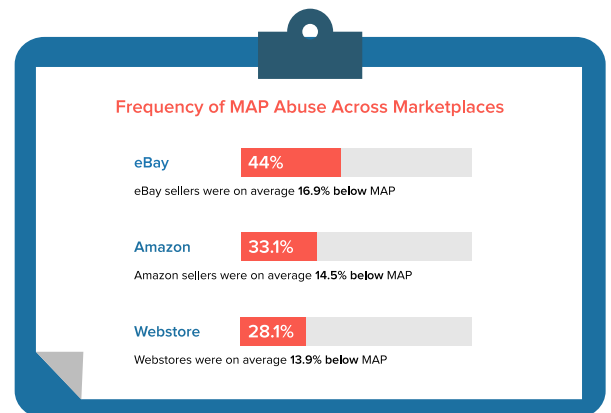
By Size

04 HIGH VOLUME SELLERS

- They have a large supply, and their strategy is to sell products at low prices and at a high volume to generate revenue, with little regard for maximizing margin.

05 MOM-AND-POP SELLERS

- Often, they may just be one-off sellers, but you shouldn't ignore them. Even if they sell below MAP infrequently or at a low volume, they will continue to grow, if violations are not addressed appropriately.



Online Enforcement Strategies

While most brands realize gray market sellers are a growing problem in the industry and that the impact on their business could get out of control, oftentimes they are unsure of how to go about enforcing it. A combination of leveraging legal structure and using technology to put proper tracking in place is key to a successful strategy.

01 IDENTIFY UNAUTHORIZED SELLERS

Do you have as much visibility into your unauthorized seller problem as you think you do? Are you able to identify specific sellers? You must ensure that you know how deep and wide the problem is. If you're relying on a manual process, chances are your accuracy and efficiency of catching illegitimate sellers is not at its full potential. Automating the process can illuminate this eCommerce blind spot by scanning the web 24/7 for matching unique product identifiers (such as UPC, brand and MPN, etc.) or even through visual matching, removing the need for a tedious manual process. Once you've identified the retail sites or marketplace sellers, you may consider getting access to private databases or hiring cyber investigators or other online enforcement companies to help lift the veil and identify each seller's true identity.

02 IDENTIFY ROGUE DISTRIBUTORS

While identifying the actual sellers is an important first step, it's necessary to dig deeper to the root of the problem: the distributors selling to them. These are the people who are directly violating their distributor agreements with you, the manufacturer.

Of course, it won't be easy to get the unauthorized sellers you've identified to betray their source—they are highly motivated to protect their identity. Again, you'll need to employ a combination of legal, technical, and investigative tactics to find the source. By no means is it an easy process, but it is essential to stopping unauthorized sales for a whole network of sellers. Think of the unauthorized sellers as just a symptom; you want to find the cure for the underlying cause.

Keeping this in mind, you'll also want to have a system in place for vetting potential sellers. As you evaluate new distributors to add to your network, review any legal claims made against them in the past, and check for online reviews and any complaints about delivering damaged or defective goods in the past. Past behavior can be a great predictor of future action.

As another preventative measure, you can add a provision to your dealer agreement to support a [tortious interference](#) claim. Basically this provision would state that retailers cannot sell to others for purposes of resale.

Online Enforcement Strategies (continued)

03 ONGOING MONITORING

Once you've identified unauthorized sellers, you aren't done. If they did it once, they'll probably do it again—continuous monitoring of compliance is essential to identifying new sellers that may crop up and existing ones who continue to be egregious violators. Again, automating this process gives you the most comprehensive coverage and allows you to scale easily, which is especially important if you manufacture a very large number of products and rapidly growing product lines.

04 ENFORCEMENT TACTICS

You know who is illegitimately selling your products, so now you must deliver notifications to them. Work with your legal team to carefully craft clear cease and desist letters informing the sellers that they are in violation of your trademark infringement and MAP policies. Once the letters are sent, remember that ongoing monitoring is crucial to determine next steps if the violations continue. Your enforcement process should have different stages, depending on whether or not they comply. Make it clear initially that non-compliance will lead to legal action, and follow through on your pledge if needed.

If it does lead to legal action, make sure you have a solid case. One tactic often used by unauthorized sellers to defend themselves is the first sale doctrine. This doctrine states that if someone buys items they know are copyrighted from the entity that owns the copyright, then the buyer has the right to sell the items, or even dispose of them, all with their own interests in mind.

Most brands are not set up to defeat this doctrine. However, there are two exceptions you should be aware of to combat this defense, as they give you the legal right to enforce trademark infringement of your product under certain cases:

Material Difference Exception

- This means that there is a difference in the product that consumers find significant when making a purchase decision.
- Examples of material differences can include a product warranty or anything related to customer service and repairs, or access to promotions, discounts, and other similar programs.

Online Enforcement Strategies (continued)

Quality Controls Exception

- States that a product is not actually genuine if it isn't manufactured and distributed under the quality controls set by the original manufacturer.
- Examples of quality controls can include policies for retailers to remove or return damaged or defective products, prohibition of anonymous online sales, recall policy, around reporting customer complaints, or proper storage or removal of expired products.

These two exceptions can make or break your case, as they are used by some of the world's biggest brands to enforce compliance and win against unauthorized sellers.

05 TAKE A PUBLIC STAND

It's also important to make it known that your brand is committed to protecting itself against unauthorized sellers. For example, if you've taken legal action against sellers, make it public to send a signal to other unauthorized sellers that this behavior will not be tolerated. Fear can be a powerful safeguard. If your distributors know you're taking a strong stance against this problem, it will be clear to them that you unequivocally mean business, and it will deter others from participating in this illegal conduct.

Conclusion

The internet can seem like a space where anything goes. Almost everyone can sell products online, and this unauthorized seller problem is not going away anytime soon. However, you can equip yourself with the tools and strategies to counter and stop even the most sneaky unauthorized sellers. Remember—keeping your brand protected from unauthorized sellers is an ongoing process that requires you to be diligent and agile to respond to changes in the market.

About Us

Wiser is the leading provider of actionable data for better decisions. Wiser collects and analyzes online and in-store data with unmatched speed, scale and accuracy. The Wiser platform then blends these insights with advanced workflow software to drive business value for brands and retailers, including restaurants. Using a unique combination of data science and human validation, Wiser offers integrated solutions for every aspect of retail, all in one place.

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