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Amazon And Other Online Marketplaces Facilitate Counterfeiting, U.S. Says

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Retail

I cover online marketplaces from a retail brand's perspective.

I recently learned that an acquaintance had purchased eye makeup on Amazon which led to an eye infection. When the shopper escalated the issue and returned the product the brand confirmed that the product was actually counterfeit. So earlier this week I found myself educating friends about how to buy products safely on Amazon - that is, steps to take to ensure they don't buy counterfeit or expired merchandise.

It was an eye-opening conversation for them, and reiterated to me again of the dichotomy of Amazon: shoppers are starting to experience bogus sellers directly, and legitimate brands selling on Amazon are feeling the pain.



LONG BEACH, CA - AUGUST 16: U.S. Customs and Border Protection officer Elizabeth Ortega displays ... [+] GETTY IMA

A 2017 study found that 39% of all unwitting purchases of counterfeit goods were bought through online third-party marketplaces.

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As these experiences become more prevalent, governments and industry groups are responding. The U.S. Department of Homeland Security (DHS) released a document last week, *Combating Trafficking in Counterfeit and Pirated Goods*, which pushes for reform in the e-commerce ecosystem. The report actually goes a step further and calls out “Third Party Marketplaces” as facilitating counterfeiters.

Third-party online marketplaces can quickly and easily establish attractive “store-fronts” to compete with legitimate businesses. On some platforms, little identifying information is necessary to begin selling.

The report points out a pain point for many genuine brands that have been victim to bad actors, that Amazon doesn't act with enough urgency: "There can be diminished intern resistance to adding lower quality sellers," the report says, referring to the fact that marketplaces need to boost the number of both buyers and sellers in order to grow. "As just one incentive, many platforms create "frictionless entry" by reducing the costs for sellers and buyers to join."

Counterfeiting drives away trusted brands

Nike and Birkenstock were two highly visible, public exits from Amazon that were driven primarily by counterfeiting concerns.

"We would get an inordinate number of phone calls from people who got shoes that fell apart or had problems, and sure enough, 99.9% of the time when they were asked where they bought [the shoes] it was on Amazon," Birkenstock CEO David Kahan [said in an interview](#). According to Kahan, once the alarm was sounded with Amazon, the concern was not handled expediently enough to avoid hundreds more customers from receiving fake products. Kahan wanted Amazon to restrict any third party from selling the brand products, but this doesn't work with Amazon's definition of their marketplace.

And that is what goes to the heart of the issue: is Amazon a pure marketplace, or a platform that needs to be accountable for the bad actors that exist there?

As Vox points out in a story this week, [How Amazon escapes liability for the riskiest products on its site](#), Amazon says that it simply providing technology to connect two people — a buyer and a seller — but anything that goes wrong is their responsibility.

But brands that sell on Amazon have a different experience. Firstly, Amazon operates hundreds of its own private label brands. Secondly, Amazon's search algorithms give preference to sellers who have Prime-eligible products, which generally requires the sellers to use their Fulfillment By Amazon service. Amazon's algorithms also control which seller gets control of the the 'Add To Cart' button (known as the Buy Box), which is how the majority of transactions are made. This means that Amazon has a larger hand in transactions than simply connecting buyers and sellers.

The DHS' report suggests 10 key fixes for the problem:

1. Comprehensive "Terms of Service" Agreements
2. Significantly Enhanced Vetting of Third-Party Sellers
3. Limitations on High Risk Products
4. Efficient Notice and Takedown Procedures
5. Enhanced Post-Discovery Actions
6. Indemnity Requirements for Foreign Sellers
7. Clear Transactions Through Banks that Comply with U.S. Enforcement Request
8. Pre-Sale Identification of Third-Party Sellers
9. Establish Marketplace Seller IDs
10. Clearly Identifiable Country of Origin Disclosures

I have discussed one of these potential solutions in a previous post for Forbes, *[The One Change That Would Drastically Reduce Counterfeiting On Amazon's U.S. Marketplac](#)* Only three Amazon markets do not publish identifying information for third party sellers: the U.S., India, and Australia - all other markets publish the identity of third party sellers. I made the argument that while it would not solve all problems, providing shoppers with more transparency into who they are purchasing from would deter some bad actors. It would also provide valuable information for genuine brands to pursue counterfeiters directly.

Amazon has declared that it is serious about counterfeiting

According to a manifesto [on the company's website](#) last year, Amazon supports a requirement for importers to identify themselves as well as harsher penalties for counterfeiters. And the company's Worldwide Consumer CEO Jeff Wilke said recently that the company would be [prepared to spend billions](#) in the future on fighting fraud at counterfeiting.

Is Amazon the only problem? Certainly not. The U.S report only mentions Amazon once, as an example. Instagram, eBay, Wish, Rakuten and Alibaba are all under the spotlight.

But the report does hone in on aspects of Amazon's specific business model without naming exact names. "Certain e-commerce platforms have adopted a business model that relies on North American warehouses to provide space for foreign-made goods, followed by one-at-a-time order fulfillment, at which point the goods are individually packed and shipped to U.S. consumers on much shorter delivery timelines," the report says. This describes Amazon's Fulfilled By Amazon program which provides third party sellers with access to hundreds of fulfillment centers worldwide. Other online marketplaces don't offer this capability.

Not just a US problem

In Europe, an industry group representing luxury brands have pitched regulators to take a tougher line against Amazon and Alibaba on counterfeiting.

The President of the European Cultural and Creative Industries Alliance, which represents over 600 brands and cultural bodies in Europe, [told Reuters this week](#) that online retailing is driven by market power and needs to be regulated. "The existing framework doesn't reflect what is best for our brands. Amazon for example gets information which we are not allowed to give to our distributors. Amazon collects and decides."

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