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Counterfeits - Amazon, Etsy, eBay, Instagram, And Others Duping Consumers And Damaging Innovation



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Yellow warning tapes with black text COUNTERFEIT PRODUCTS. Isolated. 3D Illustration photo credit: Getty GETTY

Online e-commerce marketplaces are enabling and proliferating sales of counterfeit and knockoff goods by facilitating selling by third-party unvetted vendors from all over the world. Availability of counterfeit goods has shifted from underground grey markets such as sidewalk vendors and flea markets to mainstream e-commerce marketplaces.

Effortless account and storefront setups at marketplaces such as Amazon, Etsy, eBay, Instagram, and others are giving the counterfeiters legitimacy and access to millions of consumers. Counterfeiting has become an attractive business proposition for many perpetrators. Innocent consumers are getting deceived into buying counterfeit goods. Legitimate product vendors are getting infringed upon and are finding it impossible to police and protect their Intellectual Property (IP) rights (Patents, Trademarks, and Copyrights), from the millions of fleeting online storefronts and their unscrupulous vendors.

Counterfeits are imitation products that are illegally sold while infringing upon legitimate owners' IP rights. A knockoff is an imitation product marketed and sold without infringing upon any rightful owners' IP rights. In the US, knowingly [buying counterfeit](#) products is legal. However, [selling counterfeits](#) is illegal, with significant penalties and prison times. Designing and manufacturing knockoffs are not illegal but can be legally challenged by the infringed upon IP rights owner.

Consumers can buy a counterfeit in underground grey markets for a mere fraction of the price of an authentic product; such as a \$3000 fake Rolex watch can be purchased for under \$100. However, on most popular e-commerce marketplaces, consumers presume that they are buying authentic products at almost full price, but instead, are duped into purchasing counterfeit goods.

According to a 2018 study done by the [US Government Accountability Office](#), about 40 percent of a sample of goods bought on popular e-commerce websites were fake. The study also states that counterfeiting is not just limited to luxury watches and handbags, it spreads across a broad range of products such as automobile parts, consumer electronics, pharmaceuticals, sports-related merchandise, semiconductor devices, furniture, and hoverboards, etc. Ms. Kimberly Gianopoulos, Director, International Affairs and Trade, US Government Accountability Office, states, "e-commerce platforms' lure of millions of consumers is incentivizing worldwide rogue sellers to push counterfeits."

E-commerce marketplace operators are the big winners. They are collecting monthly subscription as rent and a piece of the seller revenue as toll, without the customary goods curation and inventory risks. This almost risk-free revenue generation model is possibly causing the misbehaviors of marketplace operators to encourage and entice an ever-increasing number of unvetted sellers to join the platform, without enforcing the necessary compliance oversights of the sellers and their supply-chains.

Consumers and innovators with product IP rights are the losers. While consumers are being offered a vast selection of products at competitive prices, many of these products are possibly noncompliant with federal, state and local laws, and potentially are counterfeit goods as well. Unbeknownst to consumers, they could be getting conned into buying counterfeit goods, at the same time the legitimate product owners with IP rights are being compelled to police and compete with unfair and deceitful sellers.

Such a pernicious commerce environment can stifle innovation and impede the progress towards improving the living standards of consumers.

The misbehavior of e-commerce marketplace operators to indiscriminately recruit sellers is partly made possible by the 1998 United States [Digital Millennium Copyright Act \(DMCA\)](#), which provides safe-harbor protection to e-commerce companies from copyright infringement liabilities stemming from the actions of their market participants. To receive these safe-harbor protections, marketplace providers must be a mere "intermediary" linking buyers and sellers. They must also comply with the "notice and takedown" procedures which allow quick and easy removal of allegedly infringing content. These provisions of the law have emboldened the marketplace operators to engage in swift, hands-off listing and de-listings of disputed IP rights accounts.

The allure of online access to millions of consumers and the safe-harbor protection provided by the DMCA to the marketplace providers is catalyzing an unhealthy and unfair e-commerce environment; hurting both the duped consumers and the robbed IP rights product owners.

Amazon, the biggest market place operator, presents goods from its over six million mostly unvetted sellers to its hundreds of millions of buyers. Fulfillment by Amazon (FBA), its golden goose service offering, allows the company to collect roughly 20% of seller revenue while giving a false appearance of authenticity to counterfeits. Even though Amazon administers almost the entirety of the transactions, the company operates under the legal shield against liabilities for purportedly acting as a mere intermediary between buyers and sellers.

Judge Ricardo S. Martinez presided over a lawsuit brought by the founders of [Milo and Gaby against Amazon and was troubled](#) by the jury outcome in favor of Amazon. [Judge Martinez, wrote](#), "There is no doubt that we now live in a time where the law lags behind technology. This case illustrates that point." He called on Congress to address the problem.

In the US, the onus of policing and protecting against infringements lies with the owners of the IP rights. IP rights owners find it extraordinarily difficult to invest and police against potential infringements by millions of online storefronts. While marketplace operators can quickly shut down infracting storefronts, it does not deter the same perpetrators from hoodwinking the operators by opening new storefronts. Most entrepreneurs and small business entities do not have the war-chest of resources to fight rogue IP rights infringing online storefronts, who many a time turn out to be online spooks; thanks to the provisioning of unvetted suppliers and unverified goods by the marketplace operators.

Raj Jana, the founder of [Java Press](#), lost over a [million- dollars](#) in sales, opportunities, time, and legal fees fighting counterfeits on Amazon. In his experience, "the responses to and enforcement of IP violations at the platform are slow and inadequate unless you're directly connected with a representative at the company." [Joshua Hudson](#), an internet entrepreneur, states, "counterfeit selling problem is getting worse and not better at Amazon." Cody Neer is a direct response eCommerce seller, a partner-in-charge of the entire

e-commerce business of [Income Store](#) and offers a [training platform](#). He states, "Amazon and Etsy marketplaces make it very easy to sell counterfeit goods thanks to the ease of opening an account and listing items."

[Amy B. Goldsmith](#), Partner and Co-Chair of the Intellectual Property Group at [Tarter Krinsky & Drogin LLP](#), states, "It's essential for business owners who are being damaged by counterfeits, infringements, or false reviews to be able to notify an e-commerce platform of these facts easily. Today, the complaint reporting process on some of the e-commerce platforms is cumbersome, and not necessarily transparent. Does a human review the complaint or is it the purview of Artificial Intelligence? Most business owners also are unaware that the alleged counterfeiter can file a counter-notice against a DMCA takedown request, and the content will go back up unless the owner files a lawsuit in a federal court."

Ms. Goldsmith further states that, first and foremost, one needs to acquire the IP rights; next, monitor for infringements/counterfeits, and third, submit the takedown notice. She highlights the fact that without registered IP rights (copyright and trademark registrations and issued patents), most e-commerce platforms (Etsy, Instagram, Amazon, etc.) typically don't respond favorably to takedown requests. Even though the US trademark law recognizes trade dress rights, e-commerce platforms most often act on registered rights, not common law rights.

While the online e-commerce environment provides sellers with vast opportunities and easy access to millions of potential customers, the marketplace operators are engaging in a self-serving manner. Currently, the sellers are damaged by being not well informed about: the terms and conditions of engagement; the factors influencing product rankings; the reasons and lack of redress for account suspensions and product de-listings, and the opaque cumbersome processes to resolve disputes.

Marketplace operators need to take concrete steps to vet the supply chains, the suppliers and the authenticity of their products. Policy and procedures should

be reviewed and revised to minimize IP rights infringements. Dispute resolutions should be transparent and resolved expeditiously.

The laws need to provide a fair and predictable regulatory environment that is not asymmetrically favoring the marketplace operators. The safe-harbor protection provided to marketplace operators by the DMCA needs to be reviewed and adjusted as well. The immunity in the current form is allowing marketplace operators to shirk their responsibility towards vetting the suppliers, supply chains and products.

Counterfeits goods hurt innovative businesses and consumers. Companies and sellers who engage in commerce the right way, are unfairly compelled to compete against counterfeiters who are playing a rigged game. Consumers should not be cheated into buying counterfeit goods.



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I have over 20 years of professional experience with technology industry and hedge fund industry on Wall Street. I was intimately involved in the Galleon Group insider t...

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