



Combatting Counterfeits – The Marketplace Quandry

There is no doubt that online marketplaces have helped define online commerce in the digital era, and have emerged as the de facto destination for price-conscious shoppers around the globe. However, for all the benefits marketplaces bring to vendors wishing to tap into that demand, there is no doubt that there are significant perils for brands that wish to protect their intellectual property.



Online Marketplaces are home to a number of fakes and counterfeiters. Industry leaders such as Amazon, eBay and Alibaba constantly fight to try and minimize the damage to brands by introducing counterfeiting policies, investing in technology, and even hiring hundreds of fraud detectors. Marketplaces have put in place fraud protection programs such as Amazon's Buyer Protection Program and eBay's Verified Rights Owner Program (VeRO). But, it's

an impossible task. With marketplaces offering limited control for brands, there is always a chance of unlicensed vendors flogging fakes on these sites. A report by MarkMonitor claims that 90% of retailers have experienced a 10% loss in revenue due to counterfeit sales on marketplaces. This is of particular interest to those selling branded shoes, clothes and leather goods, which the OECD reported are the most popular items for counterfeiting.

What the Marketplaces Say on the Matter...

The problem has escalated with Chinese companies using marketplaces like Amazon to pedal counterfeit goods. These companies now find it easier than ever to sell directly

to the American market. Amazon has replied to counterfeiting claims. In response to a CNBC article on the matter, Amazon replied to counterfeiting claims, saying:

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Amazon does not allow the sale of counterfeit items on its Marketplace and occurrences of counterfeit products are very rare. Every customer who orders on Amazon is covered by our A-Z guarantee and if they do receive counterfeit goods from a marketplace seller, we will refund or replace that item.



Although this doesn't really serve to help brands who are experiencing brand issues, it's an improvement on the comments of Jack Ma from the Alibaba

Group who has claimed that fakes are better and offer higher quality and lower pricing than the originals. In an interview with Bloomberg Technology he said,

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The problem is that the fake products today, they make better quality, better prices than the real products, the real names. It's not the fake products that destroy them, it's the new business models.

Alibaba is the biggest of the marketplaces, shipping over 12 million packages a day, compared to the 3 million of Amazon, it is the leading global marketplace. They expect

to handle over 423 million online shoppers in 2017, with goals to reach 2 billion consumers by 2036.



A Closer look at the Counterfeiting Cover-up...

Alibaba has a long history with counterfeiting, and has faced the problem since their inception in 1999. Their latest annual report has 30 occurrences of variations of the word counterfeiting. Although, given their CEO's statement, it may not be as big a priority

internally, as they would like retailers to believe. Jack Ma is also vocal on their bid to prevent counterfeiting, although all statements are made with an additional caveat about the impossibility of stopping counterfeiters completely.

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We would love to work with the branded companies, we cannot solve the problem 100 percent because it's fighting against human instinct. But we can solve the problem better than any government, any organizations, any people in the world.



In response to concerns, Alibaba Group Executive Vice Chairman Joe Tsai said,

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The issues of counterfeiting and IP protections are a part of the problem in a growing economy today, whether it is online or offline. We have a zero-tolerance policy towards counterfeits on our platform because the health and integrity of our marketplaces depend on consumer trust.

Similarly, Amazon attempts to maintain its image as a clean marketplace and fails to mention counterfeiting in its latest report and there is only slight mention of the issue in two of its twelve risk factors. Regardless of whether or not Amazon is ready to admit to the issue, counterfeiting is growing, with Amazon's fulfillment option making customers trust that branded goods are legitimate.

However, goods are shipped in from merchants all over the world and distributed from Amazon centers, with no real counterfeiting restrictions put in place. This mixed up inventory means that an authorized seller of a brand may find their goods mingled with those of a counterfeiter, and it's anyone's guess which product lands in the customer's hands.

Are Chinese Sellers the Problem?

Since 2015, sales from Chinese-based sellers have more than doubled, and Amazon's revenue has climbed 20%.

The problem exploded on Amazon after they slashed shipping fees for Chinese merchants, in order to curtail Alibaba making inroads into the US market. The fees were agreed between the U.S. Postal Service and China Post and provided Chinese Merchants with cheap access to the US, for smaller packages.

A number of sources claim the flood of Chinese manufacturers to the marketplace is the main issue, with these sellers no longer having to rely on middlemen, brands and private labels to reach global consumers.



While Amazon does claim to be fighting counterfeiters, they are also introducing cheaper fees such as this, which make it easier for counterfeiters to take advantage

of customers in other markets. Although, the dip in fees only currently applies to smaller items that will fit in an envelope, facilitating cross border traders from China.

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Amazon is making money hand over fist from counterfeiters, and they've done about as little as possible for as long as possible to address the issue. Word is out in the counterfeit community that it's open season on Amazon”

*Chris Johnson, Attorney at Johnson & Pharm LLP
who represents brands like Forever 21, Adobe and Otterbox*

Amazon.com uses key days such as Prime Day to help promote deals to its many subscribers, like a shopping party of sorts. However, this type of promotion only serves to promote Amazon itself, with very

few brands benefitting from the exposure, particularly luxury brands, who cannot offer the sort of slashed prices that are attractive to marketplace deal hounds.

A Counterfeiting Case Study...

One example of an Amazon “success” story, is Jamie Whaley, a licensed nurse, who started a bedding business on Amazon. She patented a product called the BedBand which used a set of chords,

clamps and locks to keep bed sheets in place. The company reached 700,000 USD in annual sales. The BedBand rose through the Amazon rankings, selling almost 200 units per day by 2013. But, climbing the Amazon rankings only drew the wrong sort of attention to her product and by mid-2015, Chinese counterfeiters had produced fake BedBands, undercutting her prices. These knock-offs were labelled as “harmful” by watchdog site fakespot.com. But, more importantly, they damaged Whaley’s brand, and a successful company built on one simple product saw its revenue cut in half. Whaley is currently



trying to leave Amazon, but 90% of her revenue still comes from there, so she is fighting an uphill battle to regain brand

control, attempting to drive consumers to her own website, and partner with other retailers.

But Counterfeiting isn't isolated to one, or even a few brands...

Amazon aims to be the low-cost provider of everything in the world – resulting in the world's largest flea-market – and sellers have set up both Facebook and Whatsapp groups to try to discuss strategy around

the counterfeiting issue. One group has over 600 members whose goods have been offered at slashed prices by counterfeiters. Often sellers actively contact the counterfeiters, but one seller complained,

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They respond and take down the images, but the very same images go up within a week by another new seller, Counterfeiters are selling low-quality knockoffs of other people's artwork

Small sellers may not have the ability to build a brand alone, but certainly bigger retailers and luxury brands might consider leaving marketplaces, as the time and energy spent combatting counterfeiting might be better spent implementing brand strategies that go direct to shoppers.

Amazon puts customers first, but is aware of the growing dissatisfaction of many of its sellers. June 2016 saw an invitation-only event, of Amazon's top 300 marketplace merchants, turn into a live-grilling of the company's senior vice president of seller services, Sebastian Gunningham.



Some Brands are Fighting back...

There's no shortage of brands suffering from counterfeiters on marketplaces. Last year saw Birkenstock leave Amazon over

the problem. In a letter leaked to the press David Kahan, CEO of Birkenstock, claimed,

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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.

The decision highlights the impact of Amazon on luxury brands, with even household names such as Birkenstock

(which has a wealth of resources) struggling to control the impact of counterfeiters. Kahan went on to say,

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By taking this course of action, we are, in effect, leaving the Amazon marketplace to counterfeiters, fake suppliers and unauthorized sellers with whom we have no relationships.

Birkenstock is not the only luxury brand suffering, Michael Kors has a signature tote bag selling for as low as \$101 USD (RRP \$198) from multiple merchants, and Canada Goose's parka with an RRP of \$1,000 USD is available under \$650. Aware of this the brand has taken steps to inform its customers, about the differences between counterfeit jackets and the real thing, with a page on its website dedicated to identifying genuine Canada Goose products and outlining the dangers of buying fake products,



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After analyzing the content of counterfeit jackets, we know that instead of the sanitized, Canadian down used by Canada Goose, counterfeiters often use feather mulch or other fillers. These materials are often coated in bacteria, fungus or mildew, posing significant health risks to unsuspecting consumers. As well, raccoon, dog or other unknown animal hair may be used in place of our functional coyote fur ruff.

Canada Goose Website

It is impossible for marketplaces to determine what is or isn't counterfeit. Often fakes are so precise that it takes close examination by a brand investigator to determine whether they are real.

One brand that combats counterfeiting well, is Otterbox. Director Kevin McPherson claims to have managed to get 84,000 listings taken down from Alibaba,

Amazon and eBay. He takes responsibility, fearing that the marketplaces don't have enough brand knowledge to recognize fakes. This kind of persistence would be hard for any brand to maintain, and luxury brands need to consider whether it's worthwhile monitoring marketplaces or whether they are better removing their brand entirely from sites that potentially pose a threat to brands' reputations.

Media get involved in the fight...

CNBC, in an effort to weed out counterfeiters for an exposé, messaged a number of sellers offering branded goods for incredibly low prices. Using the contact button, they asked sellers how they were able to price the product so low. The response was the same each time, "It is a secret." One investigative journalist bought a Louis Vuitton man's wallet (RRP \$449 USD) for \$216 in an online eBay auction. Suspicious, they took it to a "leather expert" at a local Louis Vuitton store. The expert pointed out telling signs – some frayed stitching, and a thin leather bumper lining. A real wallet would have been less worn, and so the trouble is clear.

Convincing knock-offs not only cut a luxury brand's profits, but they can damage a consumer's relationship with the brand, if they believe their knock-off is the real thing. When asked, eBay contends that it has strict anti-counterfeiting rules in place.



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As a result of our efforts, we're currently seeing an all-time low in fraudulent activity on eBay — with fraud down 50 percent over the last seven years.

eBay spokesman Ryan Moore said in a 2014 statement

One investigation by World Trademark Review outlines the daunting task faced by brands trying to control the marketplaces, claiming that fake sellers constantly use new tactics to get around loopholes in the monitoring of counterfeit goods. The Counterfeit Reporter, a site dedicated to raising awareness and consumer education, believes these sites make it easy for counterfeiters. It claims that they do not

have sufficient checks in place to protect brands. They estimate the cost to the industry is \$1.7 trillion USD, and showed figures from one month, in which they said they sent notifications to the three websites for over 3 million counterfeit products. They further claimed that eBay sold 10,640 fake items in that month, and Ali Express sold 2,804 in the same time frame.

And then there's the legal battles...

This problem is nothing new, Passariello, in her article in the Wall Street Journal reported that the internet was the third biggest market for counterfeit goods as early as 2004. Examples of counterfeiting featured luxury brands, such as Rolex, Tiffany and Louis Vuitton, which had filed law suits against the marketplace eBay. Louis Vuitton successfully won \$63 million USD in damages from eBay for their failure to adequately protect the brand from counterfeiters. However, these cases can go either way, with 2008 seeing a US court failing to uphold a similar case for Tiffany against the marketplace (eBay).

A New York District Court in 2008 sided with eBay, saying the company didn't have the means to police its millions of listings. The Court of Appeals agreed, issuing



a buyer-beware warning that Tiffany's "About Me" page on eBay clearly warns eBay buyers that "[m]ost of the purported 'TIFFANY & CO.' silver jewelry and packaging available on eBay is counterfeit." The problem is such that there are private investigators hired by brands to build cases against marketplaces. Rob Holmes is one of these investigators and counts Gucci, Louis Vuitton and Cartier among his clients.

His investigations have unearthed Gucci bags worth \$1,000 USD being flogged for \$2 USD, with a minimum order of 2,000. His team has purchased hundreds of fake products from sellers who Alibaba have marked as "Gold Suppliers" or "Assessed Suppliers" i.e. sellers Alibaba has physically inspected and approved. Sellers they approached about the fakes, replied with comments such as,

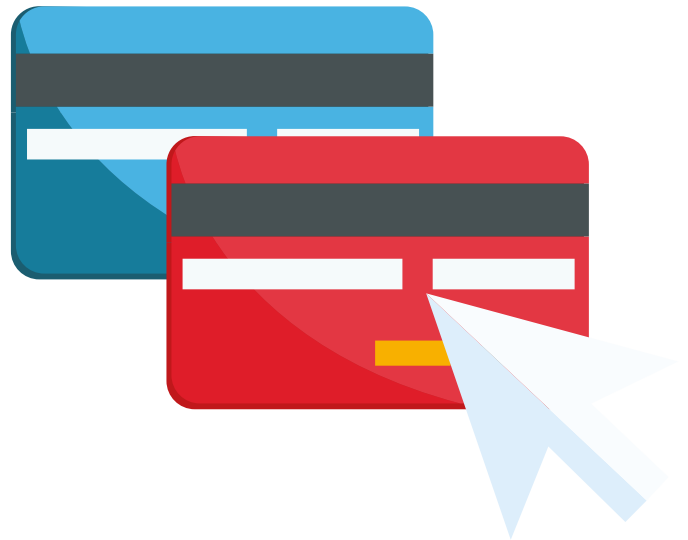
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Are you looking for the Gucci replica watch, right, it happen that our factory have such models as attached picture.

and:

These items are not so good. Instead, they are as good as the original ones, but not as dear as original ones in your country.

Their research allowed Gucci to file a lawsuit, which was withdrawn when Alibaba agreed to cooperate with the brand on fraud prevention. As this victory did not go to court, it does nothing to change the law surrounding marketplaces. The law still works in favor of Amazon, eBay, and Alibaba, placing the onus for tackling counterfeiting on brands. This means other brands will need to fight similarly expensive battles if they are to get these concerns to be taken seriously, and even then there is no guarantee that groups like Alibaba have the ability to address all fake sellers.



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Sometimes one merchant/company might manage hundreds of sellers on one marketplace pushing the same products, often relaunching shut-down sellers hours after they've been removed, under a new name.

And the Lawsuits continue....

One brand that won a landmark case against marketplaces was Lush, which has never allowed its merchandise to be sold on marketplaces. Yet, when searched for on Amazon, Lush generated a list of similar products that were impossible to discern from the actual Lush products.

In this case, Judge Baldwin found the average consumer would generally be unable to ascertain that the goods shown in Amazon's search results were "not the goods of or connected with" Lush. He explained that Amazon's use of the word Lush to generate lists of similar products was damaging to the origin function,

advertising, and investment functions of the Lush trademark. He further went on to say that Amazon has no right to treat the brand name as a means to generate generic lists of goods in which the consumer might have interest.

Luxury brand Kering SA, the owner of brands like Gucci, Yves Saint Laurent, Bottega Veneta, and Balenciaga also filed a suit against Alibaba, only to withdraw it at the promise of cooperation. However, this did not last long with Kering filing a second suit a week later.

But the problem persists....

Even when counterfeiters are shut down, they are re-opened. Sometimes one merchant/company might manage hundreds of sellers on one marketplace pushing the same products, often relaunching shut-down sellers hours after they've been removed, under a new name. Almost making the fight against counterfeiting an impossible battle.



And what do the marketplaces say...

Despite all this, marketplaces continue to try to convince brands of their fight against counterfeiting. Alibaba has drawn scrutiny from investors, government and international brands. Previously, its induction into the International Anti-

Counterfeiting Coalition was suspended, after a number of members of the coalition resigned due to the marketplaces inclusion. Brands involved in the protest included Tiffany, Gucci, and Michael Kors, and their stand forced the IACC to take action.

The Conclusion:

The battle for brands is ongoing, with trade groups trying to fight on their behalf, law suits being filed by leading brands, and luxury brands walking away from the marketplaces. For smaller brands, marketplaces may seem like a viable option as it allows them to build their brand with low investment. However, it's crucial that luxury brands consider moves like that of Birkenstock.

If marketplaces like Alibaba cannot sustainably tackle counterfeiting, then perhaps it is in the interest of brands to pull products, and take back control.

Consumers would be less likely to buy fakes, if they associated marketplaces with fraudulent items. Currently, many shoppers are willing to risk getting a branded item for a low price, and many more simply just don't know the difference.

Fighting counterfeiters is a time-consuming and expensive venture, which might be best avoided by removing authorization from marketplaces and diverting that same time and energy into investment in marketing and technology that engage with new customers directly.





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eShopWorld's innovative software, extensive logistics infrastructure and cross-border expertise empower retailers to efficiently sell into international markets while delivering a seamless, glocalized online shopping experience.

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