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Amazon and the Counterfeit Problem

BY [JESSICA MAUCERI](#) / ON FEBRUARY 27, 2017

Since opening its doors on the World Wide Web in July of 1995, Amazon.com has become one of the biggest consumer brands in the world. Amazon is the leading e-retailer in the United States, with more than 107 billion U.S. dollars in net sales and 304 million active customer accounts at the end of 2015.^[1] However, in Amazon's quest to be the low cost destination for products of almost every need, the website has morphed into the "world's largest flea market" – a chaotic and lawless bazaar with unlimited inventory.^[2]

More than 40 percent of Amazon's unit sales come from its third party marketplace.^[3] Third party sellers are independent sellers who offer a variety of new, used, refurbished, or collectible merchandise, and you can purchase through the third party seller just as you would a first party seller.^[4] The expansion in the number of third party sellers in recent years has come from Amazon allowing Chinese manufacturers to begin selling on the site. Sales from Chinese-based sellers more than doubled in 2015 in Amazon's marketplaces, while the company's total revenue increased 20 percent.^[5]

As a result of an increase in Chinese manufacturers on Amazon, there is now more access to counterfeit goods. By allowing sellers from the Chinese market to streamline their sales and cut out the import/export middleman, Chinese manufacturers and merchants can sell directly to buyers in the USA, Canada and Europe.^[6] In doing this, Amazon is inviting the country responsible for 60% of the world's knockoffs into their marketplace, without the precautions that were in place when there was a middleman involved.^[7] To an unsuspecting consumer, fake products sold by these sellers can come off as legitimate due to Amazon's new Fulfillment by Amazon program. This program allows third party sellers to list their items on Amazon, and then outsource the product to an Amazon fulfillment center. Third party products then sit within the same inventory as items sold by Amazon itself, often getting mixed between the two.^[8] When a consumer goes to purchase a product and sees "fulfilled by Amazon" on the products display page, this creates an impression that Amazon is verifying the item as legitimate, when it really only means that the product is being shipped by Amazon out of one of its shipment centers.^[9]

It comes as no surprise then as more counterfeits appear on the website, the more incentive companies in the US have had to litigate against Amazon in order to protect their brands. Major lawsuits have been filed against Amazon at an increasing rate. According to a recent lawsuit filed by tech giant Apple in October of 2016, roughly 90% of Apple chargers on Amazon, even when labeled as a genuine article, are fake.^[10] In the suit, Apple describes buying more than 100 "iPhone devices, Apple power products, and Lightning cables sold as

genuine” by other sellers on Amazon.[\[11\]](#) When the products arrived, they were poorly constructed with inferior or missing components, flawed design, and inadequate electrical insulation, which had the potential to catch fire or electrocute users.[\[12\]](#) Another suit filed in December of 2016 pits several brands with control over As Seen On TV products like the Snuggie blanket, Tommy Copper Compression Sleeves and Magic Tracks toy racetracks against Amazon.[\[13\]](#) All of the brands allege that counterfeiters are abusing product images, intellectual property and selling products on Amazon as if they are real, even though they are not.[\[14\]](#) Companies have even gone so far as to completely cut ties with Amazon due to the influx of counterfeits and unauthorized selling on the website.[\[15\]](#) Birkenstock, the popular sandal company, saw countless Chinese sellers promoting its flagship Arizona sandal for \$79.99, which is \$20 below Birkenstock’s retail price.[\[16\]](#) Starting January 1, 2017, the brand is no longer authorizing the sale of their products on Amazon’s website. Birkenstock CEO, David Kahan, cited to a constant stream of unidentifiable, unauthorized sellers on the website and an inability to police this activity by either Amazon or Birkenstock itself.[\[17\]](#)

Even more recently, Amazon itself has begun to fight back and file lawsuits against sellers who list counterfeit goods on their website. Amazon filed two lawsuits in the King County Superior Court in the State of Washington late in 2016. The two lawsuits target knockoff fitness products sold illegally under the TRX brand and heavy lifting equipment sold under the Forearm Forklift brand.[\[18\]](#) Both suits provide a detailed description of the company’s policy on counterfeits. Amazon claims,

Amazon has zero tolerance for counterfeits, and has invested heavily in protecting the integrity of the Amazon marketplace for consumers, sellers, and manufacturers. Amazon’s anti-counterfeiting policy clearly prohibits the sale of counterfeit products ...

Amazon invests tens of millions of dollars annually developing sophisticated technology to detect bad actors and potentially counterfeit products, and it employs dedicated teams of software engineers, research scientists, program managers, and investigators to operate and continually refine its anti-counterfeiting program. Among other things, when sellers register to sell products through Amazon’s Marketplace, Amazon’s automated systems scan information about the sellers for signals that the sellers might be bad actors, and Amazon blocks those sellers during registration before they can offer any products for sale. On an ongoing basis, Amazon’s systems also automatically and continuously scan thousands of variables related to sellers, products, and offers to detect activity that indicates products offered by a seller might be counterfeit. Amazon uses innovative machine learning to improve its automated systems in order to anticipate and stay ahead of bad actors. Numerous Amazon investigators around the world respond quickly to review any listing identified as a potential counterfeit product. These investigators also review notices of claimed infringement from rights owners, who know their products best. When Amazon finds counterfeit products from whatever source, it removes those products immediately. Amazon regularly suspends or

blocks sellers suspected of engaging in illegal behavior or infringing others' intellectual property rights.^[19]

While the policy behind Amazon seems strong, as noted with the lawsuits above, it becomes hard to police and enforce when the volume of counterfeit sales is so massive. Amazon may be one of the largest online retailers, but consumers and companies alike are smartening up to the counterfeit products problem. If Amazon does not change their policy soon to go after counterfeit sellers with more vigor, it might begin to lose its legitimacy in the consumers mind as the go-to marketplace.

Jessica Mauceri is a second year law student at Benjamin N. Cardozo School of Law and a Staff Editor of the Cardozo Arts and Entertainment Law Journal. She is interested in a career in intellectual property, and hopes to work in-house for a fashion company one day.

[1] *Statistics and Facts About Amazon*, Statista <https://www.statista.com/topics/846/amazon/> (last visited Feb. 10, 2017).

[2] Ari Levy, *Amazon's Chinese Counterfeit Problem is Getting Worse*, CNBC (Jul. 8 2016, 9:34 A.M.) <http://www.cnbc.com/2016/07/08/amazons-chinese-counterfeit-problem-is-getting-worse.html>.

[3] *Id.*

[4] About Ordering from a Third-Party Seller, Amazon <https://www.amazon.com/gp/help/customer/display.html?nodeId=537802> (last visited Feb. 11, 2017).

[5] See Levy *supra*, note 2.

[6] Wade Shepard, *Amazon is losing to Chinese Counterfeiters Because Their HR Strategy is Broken*, Forbes (Jan. 12, 2017 9:10 P.M.) <http://www.forbes.com/sites/wadeshepard/2017/01/12/why-amazon-is-losing-its-battle-against-chinese-counterfeiters/#5077354544e8>.

[7] *Id.*

[8] Marcus Wohlsen, *A Rare Peek Inside Amazon's Massive Wish Fulfilling Machine*, Wired (Jun. 16, 2014) <https://www.wired.com/2014/06/inside-amazon-warehouse/>.

[9] *Amazon's Counterfeit Goods Problem*, Brandisty, <http://blog.brandisty.com/brand-management-blog/amazon-s-counterfeit-goods-problem/> (last visited Feb. 11, 2017).

[10] James Vincent, *Apple Lawsuit Says 90 Percent of 'Official' Chargers Sold on Amazon are Fake*, The Verge (Oct. 20, 2016 3:59 A.M.) <http://www.theverge.com/2016/10/20/13343682/fake-apple-chargers-amazon-lawsuit>.

[11] *Id.*

[12] *Id.*

[13] Jonathan Stempel, *Not 'As Seen on TV': Snuggie Maker Sues Amazon.com*, Reuters (Dec. 6, 2016) <http://www.reuters.com/article/us-amazon-com-counterfeit-lawsuit-idUSKBN13V24T>.

[14] *Id.*

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[17] *Id.*

[18] Todd Bishop, *Amazon Files its First-ever Lawsuits Against Alleged Sellers of Counterfeit Goods*, GeekWire (Nov. 14, 2016 2:29 P.M.) <http://www.geekwire.com/2016/amazon-files-first-ever-lawsuits-alleged-sellers-counterfeit-goods/>.

[19] *Id.*