



Anti-counterfeiting and Online Brand Enforcement: Global Guide

2023

**How to identify and subvert
counterfeiters in e-commerce
marketplaces**

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Now in its 16th year, *The Anticounterfeiting and Online Brand Enforcement: Global Guide* combines the latest strategic analysis with practical, country-by-country exploration of the best protection around the world, enabling brand owners to stay one step ahead of the counterfeiters.

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How to identify and subvert counterfeiters in e-commerce marketplaces

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E-commerce is big business. Around 60% of the world's population is online – that's around 4.6 billion people – and each spending an average of around seven hours per day online. Overall, the internet economy represents around \$15 trillion – that's around 15% of the total global gross domestic product (GDP) and is a figure that is growing two-and-a-half times faster than GDP itself.

This means that e-commerce is a necessity for brands – enabling them to reach huge online audiences, raising both brand awareness and sales revenue. At the same time, however, e-commerce marketplaces offer similar opportunities to infringers selling counterfeit goods, allowing them to 'set up shop' quickly and at low cost, and to take advantage of the high levels of anonymity afforded by the Internet, directing sales and revenue away from genuine brands.

As well as using their own websites, many brands choose to sell through e-commerce marketplaces. In 2023, the top five e-commerce marketplaces by visits per month are:

- Amazon
- eBay
- Rakuten
- Shopee
- AliExpress

On top of these, social media channels including Facebook and Tiktok also offer marketplaces or in-post shopping, expanding the field even further – but bringing another set of issues for brand owners trying to protect their intellectual property.

It's also been found that increasingly consumers view brand owners as the ones responsible for protecting them from buying counterfeit products. Various studies suggest that they distrust brands that are repeatedly subject to infringement and brand abuse.

TRENDS AND THREATS IN E-COMMERCE MARKETPLACES

The global expansion of e-commerce over the past few years has arguably been driven by the pandemic. The reported increase ranges from 20% to almost 40%, depending on the region or the product.

At CSC we have seen this boom reflected in the number of enforced listings that we have processed – a 70% year-on-year increase in 2022. The infringers have been mobilising at the same pace as the e-commerce expansion. What this data has provided is an indication of the sites being most affected by this increase in infringements.

Other than increased listings, we have also found the following key trends within the e-commerce realm:

- increased environmental concerns leading to the growth of 're-commerce' websites like Vinted, Poshmark, Mercari and OLX;
- the advancement of social media selling, including TikTok live sales;
- more e-commerce platforms using image-based search, especially in their mobile apps; and

- the rise of the hidden link phenomenon.

THE RISE IN RE-COMMERCE SITES

Re-commerce sites are great ways for people to resell their goods second-hand, but also can be a way for infringers to inject new replica or knock-off goods into the market – more common on sites like OLX – or for regular people to sell infringing items a second time, whether wittingly or unwittingly. This can leave brands open to IP infringement and result in further loss of revenue. The low level of information needed to set up an account on such sites can make it more difficult to pinpoint details of users who may be using the sites nefariously.

SOCIAL MEDIA SELLING

Social media has really taken flight as a central platform for e-commerce. It has grown in popularity and many of the social media platforms now have dedicated e-commerce sections along with tools for small businesses to link their profiles to online shops and accept orders. Overall, social media e-commerce is expected to be worth approximately \$1.2 trillion by 2025, which is around three times its current value.

Facebook originally opened its Facebook Marketplace in 2016 for users to buy and sell goods locally, but this market has developed into much more, with the increased popularity and number of social media platforms, and the rise of influencers on sites such as Instagram, TikTok and YouTube. Now, these and other social media platforms have posts and videos highlighting everything from beauty products to apparel, footwear, jewellery and more, driving a demand for in-post and even live sales, as followers want to be able to purchase recommended or featured products at the click of a button (or tap of the screen).

TikTok live sales are particularly challenging from a brand protection perspective if being used by infringers to sell counterfeit goods, as monitoring requires the watching of the live stream to catch them in the act. This is both time-consuming and expensive, not to mention difficult to enforce against, leaving brand owners wondering whether the investment outweighs the results of any takedowns. Additionally, across social media platforms it is increasingly easy to set up multiple accounts with different degrees of privacy – and many accounts are created by bots rather than individuals. This makes it more difficult for brand owners – as one infringing account closes, there may be any number of other accounts created in its place.

IMAGE-BASED SEARCH

The third trend is an increase in platforms using image-based search. Currently, this function is mainly available on marketplaces' mobile apps, as opposed to desktop or mobile sites. While this technological advancement makes it easier for users to find the goods that they need in general, it also makes it easier for those looking for counterfeit or replica goods to find them – or even those not looking for them – increasing the infringer's reach even further.

HIDDEN LINKS

The use of hidden links as a method of selling counterfeit items is something that's become more prevalent in recent years. It is particularly devious as it is essentially a method for infringers to continue to sell fake goods while circumventing the restrictions that marketplaces have put in place to minimise this. Where we see marketplace listings advertising, for example, a replica of a luxury item that includes the brand name, the listing

will quite often be proactively taken down by the marketplace itself. To get around this, infringers have developed the hidden link method. Here, infringers use what is essentially a decoy listing on the marketplace site that doesn't mention the actual (counterfeit) goods being sold. Alongside this they create an external listing on a standalone site on, say, social media, that talks about the branded counterfeit on offer, a link to the decoy listing, and instructions on how to buy it. For example, you may find a listing for a luxury watch replica on social media, but when you click the link that takes you to the e-commerce marketplace, the listing will not relate to watches. It may be, for example, a listing for an unbranded t-shirt. The initial listing will tell you that selecting a particular size and colour combination will mean that you actually want to buy the watch, and this is what will be shipped to you after payment. This means that more sophisticated monitoring methods are required to bring down the referring site listings.

NEW MARKETPLACES MAKE A WIDER PLAYING FIELD FOR INFRINGERS

While discussing e-commerce trends, it is essential to bring up platforms that have become more popular in the past few years – infringers frequently target new platforms the most as they have less mature enforcement procedures in place.

Founded in 2015, Pinduoduo is the fastest growing e-commerce start-up ever in China and appears at number 12 in the list of top marketplaces by visits per month. It sells a variety of goods, including everything from household equipment to basic foodstuffs. Its unique selling point is the 'team buy' approach. Users establish a 'shopping team' to negotiate a reduced price for their purchase by inviting their social media connections to join their group by posting Pinduoduo's product details on social networks like WeChat and QQ.

While this mechanism keeps customers keen with a more dynamic and engaging shopping experience, the site has become renowned for being used heavily by illegal vendors, despite having one of the strictest compensation policies of any e-commerce marketplace. (Any merchant found to be selling counterfeit products is penalised with a fine 10 times the value of the item sold.) Recently, Pinduoduo launched its sister shopping platform, TEMU, in the United States, widening the geographical reach. Brands may wish to add monitoring of these sites to any existing brand protection programme.

Another platform that has experienced fast growth is Shopee. Before expanding into South America in 2019 and trialling a number of European sites in 2022, it first focused on Southeast Asia, and it is still present there in seven countries. The platform has gained its initial popularity in Southeast Asia thanks to the Shopee guarantee escrow service, which can be used to withhold payments from sellers until buyers have received their orders. Its rise in popularity has made it also popular with infringers – nearly a third of all enforcements undertaken in 2022 were against Shopee, making it the number one enforced marketplace for the year.

LEGISLATIVE CHANGES

Above all the aforementioned trends for brands to consider, a number of legislative changes have affected, and will continue to affect, seller behaviours through limits from a legal perspective.

Over the past few years there have been several updates to safety laws in various countries that may affect how platforms yield to the new regulations and what further rights are given to the brand owners to protect their intellectual property. Following US federal registration

legislation such as Section 230, which provided general immunity for the website platforms with respect to third-party content, several newer pieces of additional legislation have since been proposed, which set the scene for increased online safety.

One of them is the US Shop Safe Act, which added standards to make sure that sellers' identities are confirmed, goods are proactively inspected for counterfeit indicators and repeat infringers are suspended, which expanded the burden on marketplaces to stop infringing listings from being published. Also in the US, the INFORM Consumers Act requires regular marketplace verification and disclosure of details, where available, for high-volume sellers.

China also underwent several legal revisions in the past couple of years. The following three may be the most significant.

- Changes to China's Patent Law – creating better design patent protection for brand owners with regards to things like partial design, the patents linking system for pharmaceuticals, punitive damages in patent infringement cases and patent term adjustments. This went into force in June 2021.
- Intellectual Property Protection and Management for e-Commerce Platforms went into force, also in June 2021. It establishes standards and directives for e-commerce platforms to handle IP rights disputes more effectively. While some bigger Chinese platforms (eg, Alibaba Group) already had similar procedures in place, the new law requires smaller platforms to establish compliant takedown procedures.
- Prohibition of the sale of pharmaceutical items on '[Alibaba.com](#)' – '[Alibaba.com](#)' announced a total prohibition on the sale of pharmaceutical items on its platform in April 2021 to reduce the possibility of customers being exposed to illegal or counterfeit goods that may prove hazardous to users' health and safety.

WHAT DOES THIS MEAN FOR BRAND OWNERS?

Put simply, these developments in the e-commerce landscape mean brand protection – including monitoring to identify potentially damaging third-party content, and using enforcement strategies to take down infringing material – is more important now than ever. It is important to have a holistic approach to brand protection covering a range of online channels, not just including e-commerce marketplaces and social media, but also internet content, branded domain names, mobile apps, etc, as these areas are becoming increasingly interlinked, providing different environments where the same kinds of infringements happen.

An effective enforcement programme has several benefits to a brand, including:

- making the brand a less attractive target for criminals in future;
- enabling the reclaim of lost revenue;
- protecting customers and official online partners;
- positively affecting brand reputation and value;
- satisfying regulatory requirements; and
- being prerequisite for retaining IP protection.

WHAT DOES A HOLISTIC BRAND PROTECTION PROGRAMME LOOK LIKE?

We recommend a four-step process for the effective and efficient implementation of a holistic brand protection programme.

STEP 1: EVALUATE THE LANDSCAPE AND ESTABLISH GOALS

The first step is to determine the current landscape so your brand can establish what and where the issues are, and therefore what to focus on. This might include:

- taking an initial brand snapshot or landscape audit across all relevant channels; and
- a marketplace sweep that looks at the numbers of results returned in response to brand-specific searches on key e-commerce marketplaces. Results can be prioritised via threat scoring, clustering technology, web-traffic analysis, sales volume information and so on.

It is also essential to ensure that the focus areas of any programme align with the organisation's business plan and strategic goals (geographic areas where the company has operations or plans to expand, channels where it has online presence, etc). The organisation should review its IP protection portfolio to ensure that relevant brand terms are protected and to make sure that trademarks are registered in the appropriate product classes and geographic jurisdictions. This will eliminate potential pauses to the brand protection efforts along the way.

Finally, you should set out the overall goals of the brand protection initiative to measure its effectiveness. These might include:

- reducing infringements – removing significant numbers of them from the top e-commerce marketplaces and social-media sites;
- cleaning search engine results to eliminate infringements appearing on the first page;
- increases in web traffic to official channels; and
- pre-empting infringement activity against planned new product or brand launches.

STEP 2: MONITOR CRITICAL ONLINE CHANNELS

Once the scope of the programme has been established, the next step is to agree on monitoring parameters, determining which channels and platforms to monitor and assessing which search terms to use.

The minimum requirement is to search for the brand name itself, essentially mirroring customer searches, but for a more comprehensive view, we recommend searching for content featuring brand variants like typos, abbreviations and character replacements. Often infringers deliberately do not use the exact brand name to evade detection. It may also be useful to configure search terms that incorporate other brand terms or industry- or product-specific keywords to help identify relevant material when the brand name itself is a generic term.

Extracting as much rich data as possible from the webpages and listings identified through monitoring allows findings to be prioritised and triaged effectively, then clustered to identify key targets and infringers. Data extraction can include rules-based analysis of page content, scraping to extract relevant data from known locations on a page, or using an API provided by the monitored site. In cases of particular concern, detailed entity investigations can build a fuller picture of a particular seller or organisation's online profile and associated

activities. Counterfeit indicators in product images can also help determine whether a listing is infringing – achieved using a combination of automated image analysis and manual inspection by an analyst.

STEP 3: ENFORCE USING THE MOST IMPACTFUL STRATEGIES

Once infringing content has been identified, the next step is to take enforcement action. To avoid a whack-a-mole approach, identifying and tackling the highest value targets first using the most efficient takedown method – which varies depending on the channel, platform and nature of the infringement – creates the greatest impact.

Certain platforms have specific IP protection programmes to remove brand-damaging content. Some also have good faith programmes where brand owners or their representatives can achieve rapid takedowns by having a low false-positive rate in submitted infringements.

For other internet content, having a toolkit of enforcement approaches is beneficial, allowing brand owners to select the most cost-effective and efficient approach, while reserving other more complex procedures for escalation. These include:

- primary actions – low-cost, low-complexity, rapid actions, for example cease-and-desist notices;
- secondary actions – such as host-level content removals or registrar- or registry-level suspensions; and
- tertiary actions – longer-term, more complex approaches like domain dispute processes and legal actions.

STEP 4: EVALUATE IMPACT AND REALIGN STRATEGIES

As a brand protection programme matures, evaluating its impact ensures that maximum value is being realised. This evaluation can be done using a variety of techniques, many of which measure the financial return-on-investment of the actions taken. This calculation involves the total value of infringing goods removed from e-commerce marketplaces, the total amount of web traffic received by infringing sites, or both. Determining the amount of lost revenue that's reclaimable after successful enforcement is key to demonstrating return on investment. For e-commerce delistings, this considers the conversion rate of customers who would buy a legitimate item when the counterfeit version becomes unavailable.

Brand owners can also directly measure other positive tangible results including:

- increases in web traffic and sales volumes for their official network of sites, resellers, and partners; and
- a clean presence on search engines and other platforms, with no infringing content returned for brand-specific searches.

Remembering our finding from the introduction of this piece – that consumers increasingly view brand owners as the ones responsible for protecting them from online harm – means that knowing how a brand is being referenced online through a monitoring solution has other additional (albeit less tangible) benefits. Intelligence on negative customer comments allows brand owners to make informed decisions on their marketing and product development strategies. Combining a brand protection programme with customer education and the use

of product verification tools, for example, protects the consumer base from exposure to non-legitimate products and content, having a positive impact on trust levels, showing that the brand is taking responsibility for customers' well-being online.

Reviewing the process and realigning strategies in response to observations, trends or changes in business strategy is beneficial. The online landscape is constantly changing – new channels and platforms are frequently emerging; additional takedown techniques may become available, meaning brand owners need to pivot their brand protection strategies swiftly. Infringement patterns may also change over time, as sellers move to different marketplaces or change the way they describe the products. The review process allows brands to introduce new brands and products, change their geographic footprint, or increase their portfolio of protected IP.

Any of the above factors can necessitate changes to how a holistic brand protection programme is executed to keep it focused, relevant and effective. The approach should always be circular and iterative, with brand owners keeping a close eye on activity and trends, and constantly evolving their methods to respond to any changes.



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