



Public Questionnaire for the 2018 Evaluation of the Vertical Block Exemption Regulation

Amazon and the growth in online marketplace sales

**Expert Report by James Thomson
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I. Background and Qualifications

1. I, James Thomson, am a partner at Buy Box Experts, a managed services agency with 35 consultants supporting brands selling online. Earlier, I served as the business head of Amazon Services, the division of Amazon responsible for recruiting tens of thousands of sellers, including grey market sellers, annually to the Amazon marketplace. I also served as the first Fulfillment by Amazon (FBA) account manager. Prior to Amazon, I was a management consultant and banker.

2. In 2013, I left Amazon and began working with sellers and brands selling on the Amazon marketplace after seeing the damage caused to brands by grey market sellers on the Amazon marketplace. In 2015, I co-founded the PROPSEER Show, a continuing education conference for large Amazon sellers, and in 2017, I published the book "The Amazon Marketplace Dilemma", designed for brand executives seeking to manage their brands on the Amazon marketplace. I hold a Bachelor of Science from the University of Alberta, an MBA from Vanderbilt University (Owen School), and a Ph.D. in Marketing (B2B Pricing and Distribution) from Northwestern University (Kellogg School). I have guest lectured at more than a dozen top business schools around the world, including Stanford University, University of Michigan, University of Notre Dame, and Manchester University. I have been featured in Wall Street Journal, New York Times, Forbes, Entrepreneur, Inc., CNBC, Bloomberg, Internet Retailer, Globe and Mail, CBC, USA Today, and many more.

3. This report focuses on Amazon's practices, as that marketplace is prevalent in the US and many other countries and is the one I am most familiar with. However, some other online marketplaces have copied Amazon's practices. For example, Walmart.com has many similarities to Amazon's model, in that it puts all sellers on the sale listing and, when Walmart.com takes an inventory position, it typically favors itself over other sellers on the same listing.

II. How the Amazon Marketplace Works

4. The Amazon marketplace creates unique challenges for brands that do not exist in brick-and-mortar or even other online non-marketplace channels. The following discusses key aspects of the Amazon marketplace and how they impact brands.

A. 1P and 3P Sellers

5. The Amazon marketplace is an online sales channel created by Amazon. Amazon operates online marketplaces in many countries, including US, Canada, Mexico, UK, Germany, Spain, Italy, France, Japan, India, and Australia. Products are sold on the Amazon marketplaces in two ways: **1P (first-party)** and **3P (third-party)**.

6. **1P (first-party)** means Amazon owns the product that it offers for sale on the Amazon marketplace to Amazon customers. Brands selling to Amazon 1P use Amazon's **Vendor Central** online interface / portal, which lets them see purchase orders and financial information related to their wholesale sales to Amazon. Amazon likes to force key brands to sell to Amazon 1P, while letting "tail" selection be carried by 3P sellers. Amazon often acquires 1P inventory by buying wholesale from brands, but not always. If a brand refuses to sell products to Amazon 1P, Amazon may attempt to obtain 1P inventory from other sources without the brand's knowledge or consent. Even when Amazon is buying 1P inventory wholesale from a brand, it may acquire additional backup inventory from undisclosed sources (such as through the brand's own distributors or retailers, or grey market sources including reimported products from other countries).

7. **3P (third-party)** means a seller other than Amazon uses the Amazon marketplace to sell to customers. Around the world, over three million sellers have chosen to list for sale their products in the Amazon catalog. While there are some restrictions about what sorts of products can be listed (e.g., guns, hate content, pornography, illicit drugs cannot be listed), the marketplace is basically wide open for anyone to list any product, resulting in over 500 million products being in the Amazon catalog worldwide. 3P sellers use Amazon's **Seller Central** online interface / portal to communicate with Amazon, and see inventory, order, financial, advertising, and catalog information. Each 3P seller's Amazon Seller Central page also displays important seller performance metrics, such as defect rates, order cancellation rates, shipment on-time rates, consumer review scores, and more.

B. Product Listings

8. When a product is set up in the Amazon catalog, Amazon uses the combination of the brand name and the UPC/EAN (Universal Product Code / European Article Number) together to generate an ASIN (Amazon Stock Inventory Number), which is Amazon's own cataloging system for each product. Any seller, including Amazon, can submit content to create a new listing / new ASIN. That ASIN will live forever in the Amazon catalog, regardless of whether there continues to be available inventory, or if the brand manufacturer wants this ASIN to be in the catalog. All sellers for a product are put in the same product listing page and assigned the same ASIN.

9. If an additional seller attempts to create a new listing using the same combination of brand name and UPC/EAN, Amazon’s catalog system will not create a new listing. Instead, Amazon would place the second seller’s offer information on the same listing, and update the Amazon catalog to indicate that there are now multiple sellers offering the same ASIN.

10. Amazon product listings can include written content, images, and video. When a seller creates a new ASIN, and submits content to Amazon, that content becomes perpetual Amazon property. While a trademark owner may be able to get a specific image or video removed if it can show that a) it is the rightful owner of the content and b) it never submitted the content to Amazon, it is very easy for anyone to submit his/her own images or videos to Amazon. Once submitted, that content can be leveraged by any other seller adding its offer to the same listing. Hence, a seller must be prepared that other sellers might use content submitted by the first seller to help any additional sellers actually sell their offers of the same product. We have found that it is not worth the fight for brands to attempt to remove from Amazon’s catalog any of its own trademarked content submitted by other sellers, as the brand must balance whether it wants its products to be represented in a complete, accurate manner (albeit by a seller that the brand may not want to have selling its products on Amazon), or whether the brand wants to protect its trademarked images/video content that can be so easily replaced with less suitable seller-created content that may not meet the brand’s marketing/content standards.

C. Search Placement

11. As there are over 500 million products for sale on Amazon, placement in search results is critical for a brand’s success. Amazon research indicates that over 70% of product searches on Amazon are unbranded (*i.e.*, consumers search for “running shoes” instead of “Nike running shoes”)¹. Moreover, my own research indicates that over 80% of purchases go to products on the first page of search results, meaning that products that are unable to secure a spot on the first page of search results receive few sales on Amazon.

12. The first page of Amazon’s search results will feature a few “sponsored” products, but mostly products that are ranked highly by Amazon’s organic search algorithm. Sponsored products are ads that are purchased by a brand or seller to display when certain keywords are used in search. Brands and sellers bid on particular keywords, and the highest bidder will win the keyword. Unlike Google, Amazon allows sellers to bid on their competitors’ brand names as keywords (*i.e.*, consumers searching for “Nike” may see sponsored ads by Nike’s competitor Adidas). Organic search results are determined by Amazon’s algorithms. These search results strongly favor products that are eligible for Amazon PRIME over ones that are not (PRIME eligibility is discussed below), and favor products sold 1P by Amazon over products that are sold only 3P. Therefore, all else being equal, a product sold 1P by Amazon is likely to be listed higher in Amazon search results than the same product sold by a 3P seller. Organic search results are also affected by other considerations such as product reviews.

¹ Presentation by Amazon executive at the *Resonate* conference, Atlanta, May 2018.

13. Content on Amazon can also affect searches outside Amazon. For example, the Google search engine gives a high priority to Amazon product pages. Amazon product pages periodically rank higher on Google than the brand's own website. Therefore, even customers who do not shop on Amazon may find a product's Amazon page when researching the product. This fact means that poor content or reviews on an Amazon product page can hurt sales of that product on non- Amazon channels.

14. Search placement is becoming even more important today due to the growth of mobile shopping. Today, over half of consumers shop online on mobile devices. Compared to a traditional computer, mobile phones and other devices have smaller screens that display less information and require more scrolling by consumers. The first page of search results on a mobile device will have significantly fewer products than the first page of search results on a computer (by default, Amazon lists between 24-48 products on the first page of search results on a desktop computer, compared to fewer than 20 on many mobile devices). It is also less convenient for mobile consumers to click to the next page of search results.

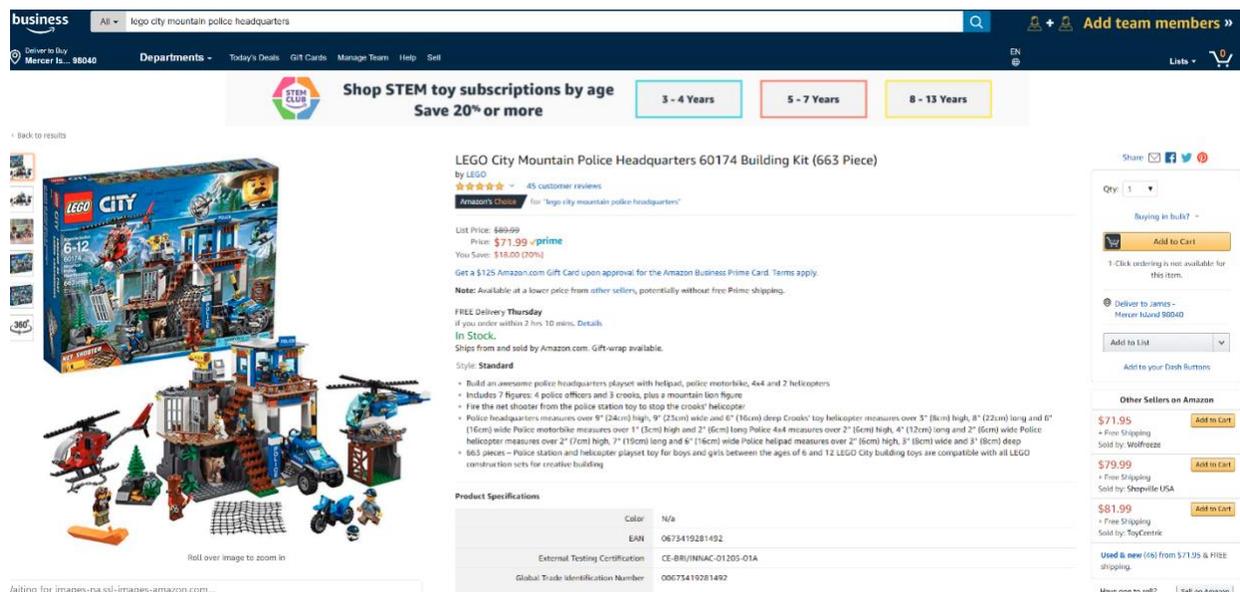
15. Because of the importance of search placement, some Amazon sellers resort to underhanded tactics to boost their own standing in Amazon's algorithms and undermine the standing of competing sellers. Some Amazon sellers employ fake review farms that use people with different IP addresses to write hundreds of fake reviews boosting the seller's product and denigrating those of competing sellers. These fake reviews can create a self-fulfilling prophecy as good reviews cause a seller or product to place higher in search results, causing bona fide consumers to buy the product and leave more reviews, while bad reviews have the opposite effect. Thus, even if these fake reviews are later caught and removed, their impact on competition is irreversible. According to one study recounted in the Boston Globe newspaper, as many as half to two-thirds of Amazon reviews in certain product categories are likely fraudulent: <https://www3.bostonglobe.com/business/2018/04/23/how-merchants-quietly-use-facebook-flood-amazon-with-fake-reviews/L4lLx8fUiC7wLodkEbEw5H/story.html?arc404=true>.

16. While Amazon sometimes takes action against these underhanded tactics, sellers can often circumvent these actions. For example, Amazon in rare situations allows only Verified Purchasers (that is, customers who purchased the product) to leave product reviews. However, in those situations, unscrupulous sellers may use their employees or associates to purchase a competitor's product and leave verified negative reviews.

D. The Buy Box

17. As discussed above, Amazon allows multiple sellers to sell the same product and aggregates all of the sellers' offerings into a single product listing instead of giving each seller its own page. Amazon then places one of these sellers in its **Buy Box**. That seller is said to "win" the Buy Box, such that when the customer clicks on the "Add to Cart" button on a product page, it is that seller's offer that is automatically added to the customer's shopping cart (versus offers from any of the other sellers offering the same item for sale on the same product detail page). When a

seller is in the Buy Box, customers' orders will by default be given to that seller. The following example illustrates the Buy Box:



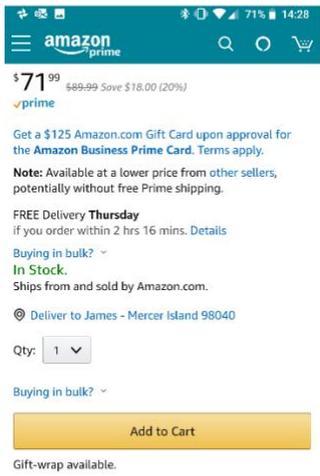
18. In this Lego product example, the Buy Box-winning seller is Amazon, as this product is “ships from and sold by Amazon.com”, making Amazon the seller whose product is added to the cart when the customer clicks on the “Add to Cart” button in the top-right corner. While the customer has the option of clicking on any of the “Other Sellers on Amazon” on the right-side of the page, my own research indicated that over 90% of all sales go to the Buy Box-winning offers on the product listings (note that the proportion is lower for media categories). Hence, if a seller cannot win the Buy Box at least some portion of the time, that seller is very unlikely to sell many units of that product on Amazon.

19. The seller who wins the Buy Box is determined by Amazon’s proprietary Buy Box algorithms. The exact Buy Box algorithm is different for every category, but in general favors sellers who score better on various Amazon performance metrics. The Buy Box algorithm also significantly favors Amazon as 1P seller over 3P sellers, and PRIME-eligible offers. Also, multiple sellers may take turns “winning the buy box”, as Amazon will rotate different sellers’ offers through the buy box, rotating as often as every 15-60 minutes if the different sellers have similar performance metrics and offer the same forms of fulfillment services.

20. As with search placement, the importance of the Buy Box is increasing due to the growth of mobile shopping. In the following example of the same Lego product, except displayed on a mobile device, the Buy Box is even more prominent. No other sellers are named aside from the Buy Box winner, and consumers who want to purchase from a different seller must know to click a discreet link titled “USED & NEW (46) FROM \$71.95 + FREE Shipping”.



EUCLID LAW



USED & NEW (46) FROM \$71.95 + FREE Shipping

SELL ON AMAZON

SHARE

E. Product and Seller Reviews

21. Consumers can leave reviews on either product listings or seller-specific pages. Most consumers leave their reviews on product pages, even where the issue is likely caused by a bad seller. Amazon policy forbids product reviews that mention a particular seller, but this policy is not well-enforced and does not prevent consumers from leaving bad reviews for issues caused by a seller but do not mention a particular seller by name. The following are examples of negative product reviews pointing to issues that were likely caused by a seller:

https://www.amazon.com/product-reviews/B07DDPNBJZ/ref=acr_dpx_hist_1?ie=UTF8&filterByStar=one_star&showViewpoints=0

 Kenia Rivas

★☆☆☆☆ **Don't do it**
November 3, 2018
Color: Black | Size: 2 Pack | Style: 6-Foot | **Verified Purchase**

Dislike...

I Purchased them about a month ago, they just stoped working . They only have a 30 day policy return. This is the second time I've purchased for Amazon certified iPhone chargers the first ones that I purchased about couple months ago, they only worked for 3 months. The only reason I ordered the second time I gave them the benefit of the doubt but now with the second order... never again am I going to order.

316 people found this helpful

| [5 comments](#) | [Report abuse](#)

https://www.amazon.com/Paul-Mitchell-Forever-Blonde-Shampoo/product-reviews/B00LV270PO/ref=cm_cr_dp_d_hist_1?ie=UTF8&filterByStar=one_star&reviewerType=all_reviews#reviews-filter-bar

 Ballbusta B

★☆☆☆☆ **TERRIBLE.. don't buy!**
September 25, 2018
Verified Purchase

This is NOT the deep dark purple PM shampoo I'm used to. Not sure if it's a fake or what, but I got duped for sure. Not to mention, half the bottle was spilled all over the package and the pump doesn't work!

| [Comment](#) | [Report abuse](#)

 RJK

★☆☆☆☆ **Broken pump on shampoo**
December 3, 2018
Verified Purchase

I love the shampoo, however the pump came broken and unable to contact to get one sent to me . Waste more of the shampoo to open up each time I need to use .

| [Comment](#) | [Report abuse](#)

22. Product reviews are very important to brands in two ways. First, product reviews can affect a product's placement in search results. Products with large numbers of positive

reviews are likely to be placed highly, while products with few reviews or negative reviews are likely to be placed poorly. Search results play a critical role in what products consumers buy.

23. Second and more importantly, reviews play a very decisive role in consumer purchasing decisions. Consumers must rely on reviews in the marketplace channel because they cannot touch or see the product before they buy. Thus, even a few negative reviews are frequently enough to deter consumers from buying a product. Consumers often read Amazon reviews when buying products in brick-and-mortar or other online channels as well, so negative Amazon reviews can hurt a brand's sales across all of its channels. Other websites and brick-and-mortar stores do not offer the same un-curated reviews that result in brands receiving negative reviews due to the acts of unauthorized sellers.

24. Compared to product reviews, few consumers review or rely on seller reviews when buying a product. However, seller reviews are still important because sellers with many good reviews are more likely to win the Buy Box.

F. Fulfilment by Amazon and PRIME Eligibility

25. Amazon allows 3P sellers to use a program called **Fulfilment by Amazon (FBA)**, which allows 3P sellers the opportunity to send inventory into the network of Amazon fulfilment centers (Amazon doesn't call them "warehouses"), where Amazon will store the products until such time as the seller gets a sale on Amazon. At that point, Amazon will be responsible for managing the physical packing and shipment of the individual order for this seller from the Amazon fulfilment center to the customer, and the product will show up on the product detail page saying something to the effect of "sold by [3P seller], fulfilled by Amazon". Sellers using FBA are still responsible for shipping their product to the Amazon fulfilment center.

26. Through the FBA program, Amazon essentially acts as a third-party logistics warehouse, where product in its fulfilment centers are available for sale on the Amazon marketplace. Because Amazon holds the FBA inventory, it is able to monitor inventory levels and control shipping, which allows the inventory's seller to minimize issues related to late shipment, and cancelled orders (due to unexpected stockouts) – these two performance issues are among the most important metrics used by Amazon to score each third-party seller, and determine whether the seller remains eligible to sell on the Amazon marketplace. We should note that hazmat products and large, oversized products are rarely put into the FBA program, either due to strict inventory limits set up by Amazon (for hazardous materials), or uncompetitive shipping rates (for large, oversized products). Products owned by Amazon are typically located along side FBA inventory owned by third-party sellers. Each unit is labelled in a manner that helps identify who owns which units of inventory. Sellers must pay FBA fees to Amazon to use the FBA program.

27. Because Amazon handles the storage and fulfilment of FBA products, Amazon makes the products PRIME-eligible, meaning the products will be shipped by Amazon to be delivered to Amazon customers who subscribe to Amazon PRIME within typically 2 business

days. PRIME-eligible products and offers earn many more sales on Amazon because they are favored by Amazon's search and Buy Box algorithms. For the vast majority of sellers, using Amazon FBA is the only way to become PRIME-eligible. Amazon is experimenting with a program called Seller-Fulfilled PRIME or Seller-Fulfilled PRIME, which would allow sellers to use the PRIME designation without FBA, but this program is currently on hold and not open to all sellers.

III. Product Quality Issues on Amazon

28. Customers purchasing products online face a higher risk of receiving a poor quality product and must put more trust in the seller because they cannot see or touch the product before they buy it. Moreover, customers who do receive bad products will typically blame the brand through negative product reviews, harming its reputation and the ability of its authorized resellers to capture future sales on the same product listings. These facts make unmanaged Amazon sales risky for a brand. Although all products face their own specific quality risks, there are two important quality considerations that apply to all products sold on Amazon: fulfillment practices and the risk of counterfeits.

A. Amazon Fulfillment Practices

29. As noted above, sellers generally must use Amazon's FBA service if they want to win the Buy Box and make sales. Despite the importance of FBA, Amazon uses three fulfillment practices that are detrimental to product quality and apply to all FBA sellers unless they opt out.

30. First, Amazon has a **Repackaging Policy**. Under the Repackaging Policy, Amazon is allowed to take a returned product with damaged packaging, repackage the product in generic packaging, and resell the product as "new". The Repackaging Policy automatically applies to 3P sellers using FBA in most product categories unless those sellers affirmatively opt out. The Repackaging Policy is highly damaging to brand image, as consumers receiving a product in unofficial packaging are likely to question the product's quality and authenticity. Returned products are also more likely to be damaged or otherwise of inferior-quality.

31. The resale of returned products also exposes the brand to the risk of customer fraud. Amazon has a very liberal no-questions-asked return policy that applies to FBA products, which customers can abuse by returning the wrong product or returning damaged products. Amazon views this customer abuse as a cost of doing business and does not police it. However, if returned products are then repackaged and resold to future customers, these future customers risk receiving the wrong product or damaged products. Those future customers are then likely to blame the brand and negatively review the brand's product.

32. Second, Amazon has a **Commingling Policy**. Under this policy, when a customer purchases a product from a 3P seller using FBA, Amazon may ship the customer a product from any other 3P seller using FBA. As a result, even if one particular 3P seller takes good care of its products, if commingling is allowed, a customer ordering from that 3P seller could get a poor-

quality or even counterfeit product from a different 3P seller. On occasion, we have also seen Amazon commingling 3P and 1P inventory, although officially this is not supposed to happen. The commingling policy thus significantly increases the risk that consumers will receive poor products, be unable to attribute those products to a particular seller, and blame the brand.

33. The Commingling Policy automatically applies through default settings to all 3P sellers using FBA unless those sellers take affirmative actions to opt out. To opt out, sellers must among other things apply their own Fulfilment Network Stock Keeping Unit (FNSKU) stickers to every one of its products (sellers can also pay Amazon to apply the stickers for approximately 20 cents per unit). Regardless of who applies the stickers to the products, these FNSKU numbers are generated by Amazon. Sellers must also be careful when applying those stickers as Amazon does not double-check the sellers' work and will ship wrong products to customers if the sellers stickered them incorrectly. Amazon often encourages sellers not to opt out of commingling, as commingling allows Amazon to manage its inventory more easily. Nevertheless, opting out of commingling is essential for reasonable quality control on Amazon.

34. Third, when Amazon decides that a product is too damaged to sell, that product will be deemed **Unfillable**, and the seller will have to tell Amazon how to handle the product. Sellers can ask Amazon to return the product or dispose of it. Generally, it is risky for brands to allow unfillable product to be disposed. When product is disposed, it is not necessarily destroyed but is often simply placed in a dumpster or given to a liquidator. Unauthorized sellers can then retrieve product that has been dumped or liquidated and resell it online. In some product categories, such as beauty products, many unauthorized sellers' products are products that were supposed to have been destroyed but were not. The resale of these unfillable products by unauthorized online sellers claiming the products are new is highly damaging to the brand's reputation because these products are very likely to be damaged or otherwise inferior in quality.

35. Generally, the best practice for a seller is to use FBA, but opt out of repackaging, apply their own FNSKU stickers to avoid commingling, and order Amazon to return all unfillable product to the seller or brand.

B. Counterfeits

36. The Amazon marketplace also includes counterfeit goods. While Amazon makes efforts to combat counterfeits, it cannot proactively monitor all sellers and products as there are over 500 million products on Amazon and multiple sellers on each one. Moreover, sellers sometimes make illegitimate allegations of counterfeiting against competing sellers. As a result, Amazon is reactive rather than proactive towards counterfeits, and generally gives sellers the benefit of the doubt. And, if sellers do not opt out of repackaging or commingling, then all it takes is one fraudulent return or counterfeit seller to expose all consumers of a product to the risk of receiving a counterfeit. Given these difficulties, Amazon itself admitted in a recent report to investors that it "may be unable to prevent sellers in our stores or through other stores from selling unlawful, counterfeit, pirated, or stolen goods, selling goods in an unlawful or unethical manner, violating the proprietary rights of others, or otherwise violating our policies".

<https://www.sec.gov/Archives/edgar/data/1018724/000101872419000004/amzn-20181231x10k.htm>.

37. The presence of counterfeits on Amazon causes serious issues for brands and may cause brands to quit the Amazon channel entirely. For example, in 2016, prominent sandals brand Birkenstock announced that it would quit Amazon US due to the uncontrolled proliferation of counterfeiters and other unauthorized sellers. Amazon was willing to help Birkenstock, but only if it agreed to sell its entire catalog to Amazon 1P, which Birkenstock did not want to do. Birkenstock's experience is detailed in the following article: <https://www.cnn.com/2016/07/20/birkenstock-quits-amazon-in-us-after-counterfeit-surge.html>.

38. Ultimately, however, Birkenstock's strategy of leaving Amazon to the counterfeiters and unauthorized sellers is not as effective as obtaining control over the Amazon channel, because consumers are still able to see the poor-quality content and reviews of Birkenstock products on Amazon when shopping in other channels, making them less likely to buy the Birkenstock brand entirely. Brands and consumers are better off when brands are able to manage counterfeit and other quality issues on Amazon by selling on Amazon only through a limited, trusted, and monitored network of authorized 3P sellers.

IV. Brands Benefit From Appointing 3P Sellers On Online Marketplaces

39. Because of the nature of Amazon and similar online marketplaces, brands cannot simply employ the same distribution strategies they use in brick-and-mortar and online non-marketplace channels. Instead, brand success on Amazon depends on a three-legged stool: channel control, optimized catalog, and efficient advertising. The first leg is channel control, without which an optimized catalog and efficient advertising are impossible. But with this channel control, brands can avoid the problems detailed in this report, compete more vigorously with other brands, and improve the consumer experience.

40. While the ideal form of channel control varies by brand, the model that works best for most brands in my experience is to sell products on Amazon exclusively through a single or limited number of authorized 3P sellers, which the brand can then work with closely. For highly involved brands, they may wish to run their exclusive 3P store themselves.

41. This selling model has allowed brands in US to compete more vigorously against other brands, improve their quality control, and avoid the pitfalls of the Amazon marketplace. **Therefore, in my opinion, brands selling on online marketplaces such as Amazon in Europe should be allowed to appoint a single or limited number of authorized 3P sellers for each marketplace and bar other sellers from selling the brand's products on that marketplace.**

A. Inter-brand Competition

42. There are two types of competition—inter-brand competition between different products and intra-brand competition between different sellers. Most competition on Amazon is inter-brand competition. As discussed earlier, most consumers on Amazon make unbranded searches for types of products (like running shoes), not for specific brands (like Nike). Amazon’s search system also makes it easy for consumers to find competing brands for a given product. For example, unlike Google, Amazon allows competitors to bid on advertising for each other’s brands, so when a consumer searches for a given brand, that consumer may see sponsored advertising for the brand’s competitors. This means that consumers are mostly concerned about comparing different brands against each other, and can easily do so on Amazon.

43. On the other hand, intra-brand competition between sellers is inherently weak on Amazon. Most consumers do not take the time to research the particular seller they are buying from, but just default to buying from whichever seller is in Amazon’s Buy Box. Accordingly, intra-brand competition on Amazon is geared towards gaming Amazon’s algorithms to win the Buy Box. These algorithms are designed in Amazon’s interests, not necessarily those of brands or consumers. This kind of intra-brand competition does not create consumer value. Instead, it destroys consumer value by making it more likely that consumers cannot identify who the seller is and who to attribute quality problems to. Intra-brand competition is better promoted by allowing different sellers to sell on their own website, where consumers would immediately know who the seller is and can judge the seller based on the website’s appearance and reputation, rather than on marketplaces such as Amazon.

44. For these reasons, consumer interests are best served on Amazon when brands and their authorized 3P sellers vigorously compete with other brands. However, this vigorous competition requires a lot of work. Among other things, successful brands and their authorized 3P sellers must develop content tailored for Amazon (including product videos, images, and descriptions), invest in keyword advertising, and proactively solicit reviews from customers. These tasks ensure that consumers are exposed to the brand’s product, but they are time-consuming and require expertise. Many companies have developed expertise in these fields and become professional 3P sellers. Other firms such as my own act as consultants for brands and sellers who do not have sufficient resources or expertise in-house. A good consultant or professional 3P seller can significantly increase a brand’s sales on Amazon by effectively promoting the brand’s product and competing with other brands.

45. However, many of these competitive efforts are vulnerable to free-riding. For example, when a seller invests in keyword advertising and other search engine optimization to improve the product listing’s standing in search results, all sellers on that product listing benefit. However, the investing seller would not see any benefits if it does not win the Buy Box, and all the improved product sales go to non-investing sellers instead. Ultimately, if a brand or its authorized sellers are not able to win the Buy Box, they will not be incentivized to invest in competing with other brands.

B. Quality Control

46. Brands can also control the quality of their products better if they have an exclusive 3P seller or sellers. As explained above, marketplaces pose unique quality problems, and these quality problems harm the brand's reputation because consumers typically respond to them by leaving negative reviews on product pages.

47. By selling only through a network of authorized 3P sellers, brands can require those authorized sellers to follow certain quality controls. Some of these quality controls will be specific to the particular product, and other quality controls should be followed by every Amazon seller, such as opting out of repackaging and commingling policies, and requiring Amazon to return unfillable product to the seller or brand itself for destruction. Without these minimum quality controls, it will be very difficult to prevent consumers from receiving low-quality products and blaming the brand.

48. Quality controls are also worth little if the brand does not monitor its sellers and enforce those quality controls. Among other things, best practices for brands include:

- Conducting periodic test buys of products from each authorized 3P seller on Amazon to ensure that all quality controls related to the product are being followed, and that the seller is not selling repackaged or commingled inventory.
- Monitoring new reviews on both the brand's product listing pages and the seller pages of each of its authorized 3P sellers. When a brand's product page receives a negative review relating to quality control, the brand must take steps to improve its quality control processes so that the same issue does not happen again. If the quality problem appears likely to have been caused by a seller, the brand must be able to follow up with the seller to improve the seller's quality controls. This is impossible to do if there are many unknown 3P sellers on Amazon and the brand cannot tell which seller sold the product that led to the negative review.
- Receiving and viewing each 3P seller's Seller Central performance metrics periodically. This data is not publicly available, and brands should require its authorized 3P sellers to provide it.
- Having remedial conversations with 3P sellers who are not following the brand's quality controls and, ultimately, terminating the business relationship with sellers who do not fix the problem.

49. These steps are essential to effectively monitoring authorized sellers and enforcing quality controls. Unfortunately, they are also time-consuming and it is typically impractical for smaller brands to monitor more than a handful of authorized 3P sellers on Amazon. Often, these brands benefit from having only a single authorized 3P seller for the Amazon marketplace that they can then monitor and work closely with. This selling model ensures that brands are able to

enforce their quality controls and are only negatively reviewed for issues within their control. This in turn benefits consumers through higher product quality.

C. Avoiding Amazon Pitfalls

50. Finally, it is important for brands to have an effective 3P strategy in order to deal effectively with Amazon. As discussed above, brands do not really have a choice whether to participate in the Amazon channel. When brands are unable to achieve channel control with authorized 3P sellers, they are often forced into a 1P relationship with Amazon that is not in their best interests, or find the proliferation of unauthorized low-quality 3P sellers unmanageable and quit the Amazon channel entirely.

51. Amazon has been pressuring the most successful brands to move from a 3P model to a 1P model. The 1P model frequently is not in brands' best interests, as Amazon will control that 1P relationship. Amazon will have a stronger bargaining position than the brand in that relationship, and use it to disadvantage the brand. For example, Amazon has sometimes asked for exclusive access to the brand's full catalog, only to stop ordering much of the catalog, leaving the brand without any distribution on those items. Amazon has also made it very difficult for the brand to back out of this 1P distribution relationship: we have seen situations where the Vendor Manager has threatened the brand if it doesn't stay in 1P, either indicating that the brand will never be allowed back onto 1P if it leaves, or punitively reducing the brand's organic search score once it leaves 1P (thereby resulting in a loss of relevance and sales). Amazon also often sells brands' products from US or other countries into Europe without brands' consent (or coerces brands into giving consent), creating havoc as the brand seeks to manage other pre-existing distribution agreements that it has in various countries. In some situations, Amazon has even suppressed 3P sellers' ability to list the product or be seen on the main product detail page to pressure those sellers into a 1P relationship.

52. Managing these pressures from Amazon is hard and requires brands to have a strong 3P strategy. If brands can appoint a single or limited number of authorized 3P sellers, they can work closely with those sellers, and rely on those sellers' expertise dealing with Amazon. However, those authorized 3P relationships won't work if brands face legal risk or lots of unauthorized grey market sellers. If it is too hard for brands to develop a controlled 3P strategy, brands may give up on the 3P model entirely and either begin selling 1P to Amazon or, like Birkenstock, quit the Amazon channel entirely. Ultimately, this results in lost sales and reputation for brands, and diminished product choice and quality for consumers.

James Thomson, Buy Box Experts
www.buyboxexperts.com

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