

OCT 16 2018

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CLERK U.S. DISTRICT COURT
WEST. DIST. OF PENNSYLVANIA

AIRIGAN SOLUTIONS, LLC,

Plaintiff,

v.

BUFUJIUGAN, *et al.*,

Defendants.

Civil Action No.

18-1330

(Judge Fischer)

FILED UNDER SEAL

**DECLARATION OF MARGARET B. TYLER
IN SUPPORT OF PLAINTIFF'S *EX PARTE* MOTION TO AMEND
TEMPORARY RESTRAINING ORDER; ORDER RESTRAINING ASSETS
AND MERCHANT STOREFRONTS; ORDER TO SHOW CAUSE WHY A
PRELIMINARY INJUNCTION SHOULD NOT ISSUE; AND ORDER
AUTHORIZING EXPEDITED DISCOVERY**

I, MARGARET B. TYLER, do hereby declare:

1. I am over eighteen (18) years of age. I have never been convicted of a felony or any criminal offense involving moral turpitude, and I am fully competent to testify to the matters stated herein. I have personal knowledge of every statement made in this Declaration and such statements are true and correct.

2. I am the President and one of the co-founders of Plaintiff, Airigan Solutions, LLC ("Airigan"), a limited liability company organized and existing under the laws of the State of Connecticut.

3. I make this declaration in support of Plaintiff's *Ex Parte* Motion to Amend Temporary Restraining Order; Order Restraining Assets and Merchant Storefronts; Order to

Show Cause Why a Preliminary Injunction Should Not Issue; and Order Authorizing Expedited Discovery.

4. I hereby incorporate by reference the statements made in my Declaration dated October 2, 2018 previously filed in this matter.

Airigan's ASINs for Genuine Product on Amazon.com

5. Products on Amazon are assigned specific codes. These codes are referred to as Amazon Standard Identification Numbers (ASINs). Airigan controls four ASINs -- B01N7SXX0W (black NEGG[®]), B01MT9U0HK (red NEGG[®]), B01NATZUY2 (white NEGG[®]), and B01N235WK4 (yellow NEGG[®]).

6. Attached as Exhibits 1-4 are excerpts of printouts of the Amazon pages for each of these NEGG[®] colors, along with the listing of sellers as of the afternoon of October 14, 2018, and excerpts from Amazon's Brand Registry (as of October 12, 2018) – Exhibit 1 (B01N7SXX0W – black), Exhibit 2 (B01MT9U0HK – red), Exhibit 3 (B01NATZUY2 – white), and Exhibit 4 (B01N235WK4 – yellow). Amazon's Brand Registry, among other things, is how a brand owner controls the title, photos, product description, etc., associated with a brand owner's ASIN.

7. Of the sellers shown in Exhibit 1 (B01N7SXX0W – black), NO9ESHOP and Kelly Babbitt are not authorized re-sellers. The Amazon Brand Registry shows the origin of the product sold by NO9ESHOP is China and the origin of the product sold by Kelly Babbitt is California, US. Based on my experience with the Amazon Brand Registry, I believe this simply indicates that the Kelly Babbitt seller is located in California.

8. Of the sellers shown in Exhibit 2 (B01MT9U0HK – red), Kelly Babbitt, NO9ESHOP, and Nanther are not authorized re-sellers. The Amazon Brand Registry shows the origin of the product sold by NO9ESHOP is China, the origin of the product sold by Nanther is China, and the origin of the product sold by Kelly Babbitt is California, US. Based on my experience with the Amazon Brand Registry, I believe this simply indicates that the Kelly Babbitt seller is located in California.

9. Of the sellers shown in Exhibit 3 (B01NATZUY2 – white), Kelly Babbitt and NO9ESHOP are not authorized resellers. The Amazon Brand Registry shows the origin of the product sold by NO9ESHOP is China and the origin of the product sold by Kelly Babbitt is California, US. Based on my experience with the Amazon Brand Registry, I believe this simply indicates that the Kelly Babbitt seller is located in California.

10. Of the sellers shown in Exhibit 4 (B01N235WK4 – yellow), Kelly Babbitt, Right Tools, and NO9ESHOP are not authorized resellers. The Amazon Brand Registry shows the origin of the product sold by NO9ESHOP is China, the origin of the product sold by Kelly Babbitt is California, US, and the origin of the product sold by Right Tools is Virginia, US. Based on my experience with the Amazon Brand Registry, I believe this simply indicates that the Kelly Babbitt seller is located in California, and the Right Tools seller is located in Virginia.

11. Amazon has recognized the problem facing Airigan (and other brand owners) with unauthorized re-sellers listing product under the brand's ASINs. Amazon has introduced a program referred to as "brand gating" which permits a brand owner to control which sellers are permitted to list product under the brand's ASINs. Attached as Exhibit 5 is September 6, 2017 article entitled "Legal: Protect Against Counterfeit Goods with Amazon Brand Gating".

<https://www.practicalecommerce.com/legal-protect-against-counterfeit-goods-with-amazon-brand-gating> (last visited October 12, 2018).

12. As stated in this article, “[t]here is currently no public-facing means by which a brand can obtain brand gating.” At my request, counsel for Airigan has **twice** requested that Airigan’s ASINs be gated, however, Amazon has not responded to these requests and Airigan’s ASINs are not currently gated.

Counterfeit Product Using Other ASINs

13. Any product currently listed under an ASIN other than one of the four ASINs controlled by Airigan is not authorized product. None of the Defendants listed on **Amended Schedule “A”** are authorized re-sellers, and a number of such Defendants are offering product for sale under ASINs not controlled by Airigan.

Defendants’ Counterfeit Products Are Offered for Sale Through a Fully Interactive Website Accessible in Pennsylvania

14. All Defendants Amazon listed on **Amended Schedule “A”** operate interactive commercial Internet websites and Internet based e-commerce stores (“Online Marketplace Platforms”, hereafter “OMPs”) using the seller identities and store names set forth on **Amended Schedule “A”** to the Amended Complaint. Furthermore, all of the newly added Defendants collect Pennsylvania sales tax in accordance with Amazon’s sales procedures for all sellers.

15. The NEGG[®] brand egg peeler is sold, among other places, through Airigan’s own merchant storefront on Amazon.com. Based on Airigan’s experience with Amazon, I am not aware of any way to exclude selling or shipping to a particular state (such as Pennsylvania). Thus, the OMPs of the Defendants listed on **Amended Schedule “A”** are accessible to any internet user in Pennsylvania and will ship product to Pennsylvania.

16. I have reviewed **Composite Exhibit 2** and the pictured Counterfeit Products and upon my information and belief, the Defendants identified in **Amended Schedule “A”** of the Complaint, were and/are currently manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale and or/selling patent infringing and counterfeit products with Airigan’s NEGG[®] trademark and/or logo and using marking, packaging and trade dress that are confusingly similar and/or identical to those of Airigan to U.S. consumers, including those consumers in Pennsylvania, through their OMP storefronts.

17. None of the identified Defendants are authorized re-sellers of genuine NEGG[®] brand egg peelers. Moreover, none of the identified Defendants are authorized to manufacture, import, export, advertise, offer for sale or sell any NEGG[®] branded egg peelers or any egg peelers that purport to be NEGG[®] egg peelers or any egg peelers that are counterfeits of the NEGG[®] brand egg peelers. Further, Airigan never consented or granted permission to any of the identified Defendants to use Airigan’s artwork, photographs, or any of Airigan’s other intellectual property.

18. Upon information and belief, all of the egg peelers in **Composite Exhibit 2** are counterfeit. This is based upon my visual inspection of the listings, the Amazon Brand Registry information, and the low prices at which the products are offered. Comparison of the genuine NEGG[®] brand egg peeler to the counterfeits in this exhibit reveals that the counterfeit egg peelers, their packaging and their presentation are cheaply produced poor copies of Airigan’s intellectual property. These clearly indicate that they were manufactured in China. Yet, the writing on the packaging is in English. So, they were intentionally manufactured and packaged to be shipped to English speaking countries, like the US. Predictably, Airigan has received multiple

consumer complaints from purchasers actually confused that the substandard, faulty, and leaking counterfeit products were those of Airigan when they were not.

Airigan's Marketing Activity

19. NEGG[®] brand egg peeler have received much favorable press, and have been featured in many articles.¹ A number of these articles (when appearing online) include a link to one of the Amazon ASIN's for the NEGG[®] brand egg peeler. Thus, the marketing and advertising that is undertaken by Airigan drives traffic to Amazon.com. When there is counterfeit product available for sale on Amazon.com, it is the counterfeiters – not Airigan – that benefits from Airigan's marketing and advertising.

20. At substantial cost, Airigan is advertising NEGG[®] brand egg peelers in the October-November issue of *Weight Watchers Magazine*, which is distributed across the United States. This magazine an attractive place to advertise as under the Weight Watchers systems eggs are assigned zero (0) points. The timing of the advertisement is also advantageous.

21. The fourth quarter of the year is typically the highest grossing quarter of the year for sales of NEGG[®] brand egg peelers, given the run up to the holidays and the occurrence of holiday entertaining. In 2017, over 40% of yearly sales of NEGG[®] brand egg peelers occurred in the fourth quarter.

¹ See, e.g., <https://www.today.com/food/amazing-food-finds-gadgets-t114918>, Today, August 10, 2017; <https://whnt.com/2017/07/19/gotta-crack-open-a-hard-boiled-egg-try-the-negg/>, WHNT News 19, Huntsville, Alabama, CBS affiliate; <https://www.nytimes.com/2017/05/22/dining/egg-peeler-gadget-negg.html>, New York Times "Gadget Makes Peeling Eggs a Tad Easier"; <http://www.kwch.com/content/news/DIW-Negg-Peeler-430038723.html>, KWCH12, Wichita, Kansas "DIW: Negg Egg Peeler"(posted June 21, 2017); <https://www.southernliving.com/dairy/eggs/easy-peel-hard-boiled-eggs-amazon>, Southern Living, (no date); <https://www.realsimple.com/food-recipes/tools-products/appliances/miracle-hard-boiled-egg-peeler>, RealSimple "This Miracle Hard-Boiled Egg Peeler Is the Gadget We Never Knew We Needed" (posted January 19, 2018); <https://06880danwoog.com/2018/03/29/egg-citing-news-for-hard-boiled-cooks/>, 06820:Where Westport meets the world "Egg-citing News for Hard-Boiled Cooks" (posted March 29, 2018).

I declare under penalty of perjury that the foregoing is true and correct.

Dated: October 15, 2018
Southport, Connecticut

/s/ Margaret B. Tyler
Margaret B. Tyler

Exhibit 1

36,781 views | Dec 13, 2017, 11:56pm

How To Avoid Dangerous Counterfeits On Amazon This Holiday Season



Wade Shepard Contributor ⓘ



Donna Tumey stocks orders inside of the Amazon.com warehouse Wednesday, Dec. 15, 2004, in Fernley, Nev. The holiday season is the busiest time of year for the company. (AP Photo/ Candice Towell)

If you asked me last year how to safeguard yourself against [counterfeit and otherwise unregulated or hazardous items](#) on Amazon — such as [perfume that contains urine](#), [lash enhancing serum that makes your eyelashes fall out](#), ["Apple" chargers that melt](#), ["Samsung" batteries that can burn your house down](#), [moving straps that tear in half](#), and [solar eclipse glasses that don't really work](#) — I would have told you to avoid the marketplace's unvetted third party

sellers, as it is extremely difficult to ensure the quality or veracity of what you're actually ordering. I would have advised you to stick to Amazon's Prime items, those that are "shipped from and sold by Amazon.com," or to buy directly from the authentic manufacturers.

However, I can no longer give the same advice this Christmas season.

Fulfilled by Amazon can be a smokescreen for counterfeiters

Fulfilled by Amazon (FBA) is a program that Amazon offers third party merchants where Amazon handles all aspects of sale, warehousing, and shipment once a seller sends their products in to their warehouses. This is a program that is built for maximum speed, and all products with the same SKUs get mixed in together, regardless of who the individual sellers who shipped them in are. This means that **counterfeits can be commingled with authentic products**, and not even Amazon (apparently) can easily determine where they came from. This gives an added level of protection to counterfeiters, as the smokescreen between them and the nefarious products they spike Amazon's supply chain with is often incredibly thick.

In terms of negative reviews for counterfeits bought FBA, these often go directly onto the original product listing rather than on the profile of the actual sellers who planted them in Amazon's warehouses, which can do irreparable damage to the reputations of the authentic brands whose items are being knocked-off.



An Amazon Fulfillment center in Peterborough, England. Amazon's warehouses are where many of company's counterfeit problems begin. (Photo by Leon Neal/Getty Images)

YOU MAY ALSO LIKE

Prime is not a safe haven from fakes

Even Amazon Prime is [no defense against counterfeit and other illicit items](#), as we've seen [numerous times](#) throughout the past year:

Recent screenshot of a counterfeit Forearm Forklift on Amazon. Notice the Prime logo. MARK LOPREIATO

“Just because a Prime logo is present doesn't mean it's sold by Amazon. In actuality, any of Amazon's 3 million marketplace sellers can use the Amazon warehouse to house and ship their items and get the so-called "coveted" mark on its products,” Fred Dimyan, the co-founder of Potoo Marketing, [told AOL.com](#).

Chris Hoffman from [howtogeek.com](#) [concurred](#):

“Products that are “fulfilled by Amazon” may have the “Prime” logo that makes them look like they're sold by Amazon—but they aren't. You're still buying a product from a third-party seller. The third-party seller ships that product to Amazon's warehouses and Amazon ships it to you. However, Amazon doesn't necessarily confirm that the product is legitimate before shipping it to you.”

“Ships from and sold by Amazon.com” is not even immune to counterfeits

When giving advice on how to safely shop on Amazon, many sites [recommend](#) exclusively buying from the so-called "real Amazon store," which is demarcated by listings that have the [“ships from and sold by Amazon.com”](#) label:

“ Shipped and sold by Amazon.com means that the product is shipped and sold by Amazon Retail (via Vendor Central or Vendor Express) directly. Basically, the manufacturer sends product to Amazon.com at a set price through a traditional PO process.

However, even “ships from and sold by Amazon.com” products are not immune to counterfeits, as these items too are often [commingled into the general FBA stock](#):

“ All those products often get pooled together by bar code, regardless of whether they come from the brands themselves or other distributors. That way, Amazon can grab whichever product that’s ordered at the nearest warehouse to the customer.

That means even if you buy something that is technically sold by Amazon under the brand’s name, you might end up with a product supplied by a third-party merchant, which may or may not be the real thing.

A report from the Wall Street Journal provided an [example of how this happens](#):

“ Sometimes, fakes can get mixed in. Justin Dunham, a mathematics professor in Kansas City, Mo., said his wife bought him what was supposed to be a Tovolo King Cube Ice Tray from Amazon. A receipt for the \$8.50 purchase shows it was sold by Amazon, not a third-party seller.

The tray was flimsy, water spilled easily and it broke after a few uses, Mr. Dunham said. He later picked up an authentic Tovolo ice tray at a kitchenware store and saw the difference.

At least three recent lawsuits put exclamation points on the fact that counterfeits are not reserved to Amazon's third party marketplace.

Daimler, the parent company of Mercedes-Benz, [filed litigation against Amazon](#) in October for being the direct seller of what they allege to be counterfeit Mercedes-Benz wheel caps. The listings for the offending products were clearly

marked “ships from and sold by Amazon.com.” In the litigation, Daimler expressly mentioned that this was especially disconcerting because of the fact that consumers tend to view the “ships from and sold by Amazon.com” label as a safeguard against counterfeit goods, “believing that items they purchase from Amazon will be vetted by Amazon and authentic.”

Jon Fawcett, founder of the Kickstarter startup [Fuse Chicken](#), had a similar experience as Mercedes-Benz, discovering counterfeits of his products were also being sold on Amazon as “shipped from and sold by Amazon.com.” Like Daimler, he also [filed litigation against the e-commerce giant](#).

Allstar Marketing / Intel / Ideavillage also filed a similar [trademark infringement lawsuit against Amazon](#) at the end of 2016 for, among other infractions, selling counterfeits of their products marked “shipped from and sold by Amazon.com.”

Counterfeits are an important issue for consumers

According to a recent report by [Red Points](#), a European firm dedicated to brand and copyright protection, 2 out of 3 parents they surveyed were aware that fake products can be hazardous, “since they are not regulated for health and safety standards.” 72% of these same parents claimed that they would outright stop buying a product if they became aware that counterfeits of it were in the market and 36% responded that they would switch to a competing brand if there was a reasonable chance they could end up with a fake.

Of the parents surveyed, 83% also claimed that they shop for toys on Amazon and a full 90% felt confident that the e-commerce platform is a safe place to make such purchases. However, after being shown images of real vs. fake products, 61% realized they couldn't distinguish between the two.

So what are shoppers to do?

At root, Amazon is an incredibly innovative, fundamentally disruptive company that provides consumers around the world with a new way to shop and obtain the things they want and need. At this point, it has become extremely difficult to avoid the e-commerce platform in countries like the USA -- where Amazon has a

34% market share of online sales and has just claimed half of all online Black Friday sales. However, what seems to be an appalling lack of internal regulation and a tendency to put low prices, fast shipping times, and big profits over regulatory law has left customers in a bind:

Is convenience and savings worth the risk of getting a potentially hazardous counterfeit product?

Julie Zerbo from the [Fashion Law blog](#) advises customers to “limit their purchases exclusively to products sold by the brands themselves, either by way of them selling on Amazon’s platform directly, via an authorized account, or by way of a partnership with Amazon, as Calvin Klein, for instance, recently began doing.”

Fred Dimyan, the CEO of [Potoo Marketing](#), recommends shoppers to only buy from Amazon Prime, as at least shipping is guaranteed and, in the event that you do receive a fake, the return process is simplified.

While Linnea Catalan of the [Baby Carrier Industry Alliance](#) — a group that has been working to get counterfeit and unsafe childcare products off of Amazon and eBay — advises customers to educate themselves on [what compliant products look like](#), and to “buy reputable brands from authorized retailers, whether in person or online,” stressing that customers “need to understand that if something seems too good to be true price-wise, it probably is.”

My personal recommendation when shopping on Amazon is to always buy directly from the manufacturer -- preferably those who handle their own fulfillment. However, this is not as straight forward as it probably should be. Often, even when you click to buy a product from the authentic brand you need to be careful that the seller doesn’t unexpectedly change during the purchasing process — such as when changing size, color, etc.

Conclusion

When the photos and descriptions of counterfeit and authentic items on Amazon are exactly the same, when knock-offs are sold on the exact same listings as the

products they masquerade as, it is often difficult for shoppers to safeguard themselves from illicit products short of avoiding the e-commerce platform altogether and buying direct from the manufacturer's website or going to brick and mortar establishments — who actually still vet their supply chains to ensure that customers are not receiving dangerous counterfeits ... like in the good old days.

**Update 12/19/17: Headline changed.*

*I'm a perpetually traveling writer who focuses on new cities (ghost cities), the New Silk Road, and international e-commerce as seen from the ground. I am the author of "Ghost Cities of China: The Story of Cities Without People in the World's Most Populated Country," a book ... **MORE***

I'm the author of [Ghost Cities of China](#) and have been traveling perpetually since 1999 -- through 86+ countries. I can often be found in some new city or somewhere along the New Silk Road.

Exhibit 2



How Amazon counterfeits put this man's business on brink of collapse

Ari Levy | @levynews | Published 10:00 AM ET Mon, 24 Oct 2016 | Updated 11:42 AM ET Mon, 24 Oct 2016



Counterfeiters on Amazon are putting this American company in jeopardy

9:49 AM ET Mon, 24 Oct 2016 | 02:47

Mark Lopreiato was thrilled when he was invited to promote his Forearm Forklift on ABC's "Good Morning America" last month. The chance for a small manufacturing business to reach 4.5 million viewers for free doesn't come around often.



Lopreiato appeared on "Buy it and Try It," a segment for hosts to test out popular niche gizmos from infomercials in front of an enthusiastic New York studio audience. The first product they tried was a steel nonstick pan, which smoothly cooked up eggs without the use of oil or butter.

Then it was Forearm Forklift's turn. After viewing a commercial for the product, ABC's Lara Spencer and Gio Benitez pulled the heavy-duty moving straps over their forearms and proceeded to lift up a washing machine and walk with it.

"I was pretty impressed," Spencer said to the crowd.

You'd think such a shout-out from the hugely popular morning show would provide a huge boost for Lopreiato's 18-year-old family business.

But this is [Amazon.com's](#) world, and Forearm Forklift, like so many brands, is uncomfortably inhabiting it.



Jeniece Pettitt | CNBC

Forearm Forklift

Once a thriving product for movers and contractors available at a dozen big-box retailers including [Wal-Mart](#), [Target](#) and [AutoZone](#), Forearm Forklift has been ravaged over the past half-decade by counterfeiters, mostly selling on Amazon. Scores of merchants have copied the patented product, using its name, images and labels and undercutting the real Forearm Forklift on price.

When "Good Morning America" viewers go online to buy a set, which retails between \$20 and \$25, odds are they'll be purchasing someone else's product.

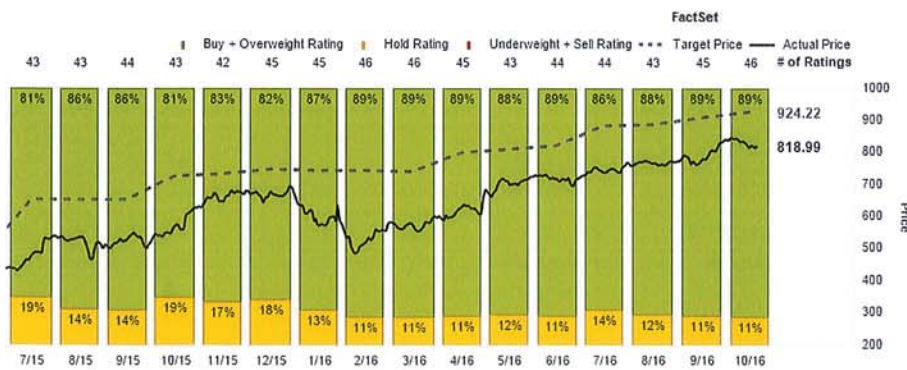
"It just keeps funneling business to the knockoffs," said Lopreiato, 48, whose wife Sophia also works at the company and traveled with him to New York. "It's almost like winning the lottery if they choose our item."

Forearm Forklift is hanging on by a thread. The company is down to 21 full-time employees from 52 at its peak and recorded less than \$500 in profit last year. Annual revenue in 2008 topped \$4 million and has since plunged 30 percent. Retailers stopped placing orders because they were finding what appeared to be the same thing online for much cheaper.

Lopreiato has diversified his product line, adding a harness for the shoulders, a strap that goes over a single shoulder and straps for carrying boxes. But nothing has come close to replicating the success of his flagship Forearm Forklift.

Meanwhile, Lopreiato bears the costs of workers' compensation, product quality control, commercial insurance, mortgage payments and patent management fees all so counterfeiters can act as freeloaders.

Amazon price targets



"We're competing with people who are stealing our brand, stealing our pictures and stealing our intellectual property," Lopreiato said in an interview last week from his 20,000-square foot warehouse in Baldwin Park, about 20 miles east of Los Angeles.

Amazon's growing dominance in commerce brings with it plenty of collateral damage. The counterfeit problem, in particular, goes largely undiscussed by CEO Jeff Bezos and ignored by investors and analysts.

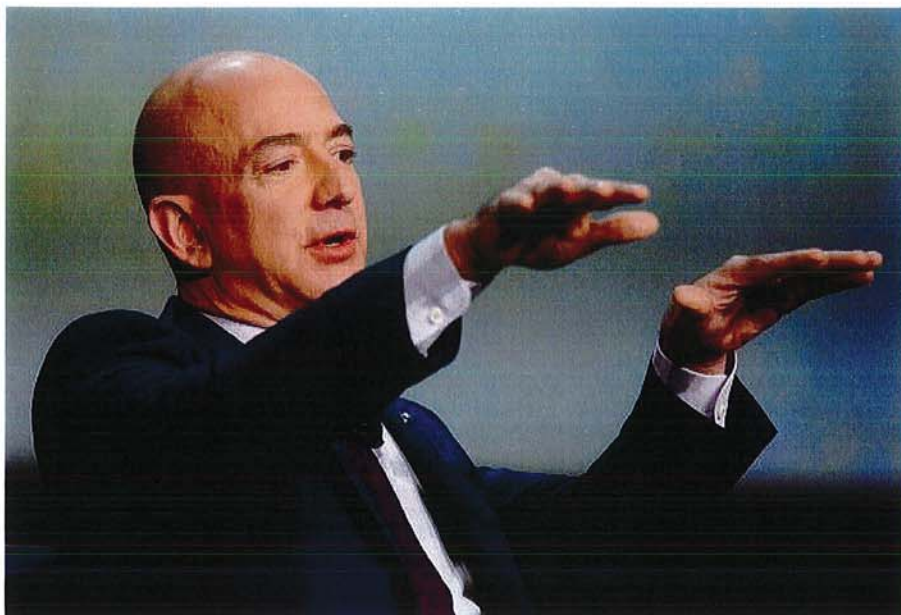
The stock has climbed 37 percent over the last 12 months making Amazon the world's fourth-most valuable company, and 89 percent of analysts tracked by FactSet say shareholders should buy more.

Heading into the Seattle-based company's third-quarter earnings report Thursday, investor focus is on Amazon Web Services, Prime membership growth and additional investments in supply chain and fulfillment. Analysts at Pacific Crest Securities, in their earnings preview, called Amazon "one of the most disruptive forces in retail and technology today."

Conversations with merchants elicit a very different reaction. Since CNBC.com [began reporting](#) on Amazon's budding counterfeit issue in May, we've spoken with dozens of merchants that have narratives similar to Lopreiato's, but very few are willing to speak on the record out of fear of retribution from Amazon.

Lopreiato, an Army veteran and father of two middle-school daughters, said he felt compelled to tell his story.

"If Jeff Bezos knew exactly what was happening to us, he'd do the right thing," he said. "It's not that he's a bad guy. It's that there is, in my opinion, a lot of pressure put on folks at Amazon to increase sales, increase sales, increase sales. That's wonderful. That's the American way. But do it right."



Brent Lewis | The Denver Post | Getty Images

Jeff Bezos

Amazon's obsessive focus on pleasing consumers with discounts and service has come at the expense of brands like Forearm Forklift. In trying to provide the lowest-cost option for virtually every product on the planet, the company [opened the doors](#) to merchants from across the globe with little respect for intellectual property, despite an [anti-counterfeiting policy](#) that prohibits the sale of inauthentic items.

That's enabled manufacturers largely from China to take advantage of cheaper production and labor costs to compete on the Amazon market.

Some big brands have voiced their concerns.

[Birkenstock](#) said in July that it's no longer authorizing sales on Amazon starting in 2017. Last week [Apple](#) sued a distributor named Mobile Star for selling counterfeit power adapters and charging cables on the site, claiming the products "pose an immediate threat to consumer safety."

Amazon has taken steps to crack down of late by forcing new sellers of major brands like [Nike](#), [Hasbro](#) and Cuisinart to show invoices proving the items

are legitimate and then pay a fee. Third-party sellers are getting [suspended](#) in droves for activity that Amazon deems suspicious or for complaints from buyers, sparking outrage from merchants who say they're being punished for Amazon's inability to control counterfeiting.

"Amazon has zero tolerance for the sale of counterfeits," a company spokesperson said in an e-mailed statement. "We are working closely with manufacturers and brands to identify offenders, and removing fraudulent items from our catalog. We are also taking action and aggressively pursuing bad actors in this space."

The company didn't offer a comment on Forearm Forklift's situation.

Until now, Forearm Forklift has been forced to self-police the site and take action to get unauthorized listings removed. See an infringer? Send a cease-and-desist letter. Suspicious of a counterfeit? Buy it, and prove to Amazon through a formal complaint that the listing should be taken down.

Repeat, repeat, repeat. And pray it works.



Jeniece Pettitt | CNBC



MARKETS



BUSINESS NEWS



CNBC TV



MENU

On the second floor of Forearm Forklift's warehouse, Lopreiato opens a closet filled floor-to-ceiling with cardboard boxes from Amazon purchases. Inside each, supposedly, is a version of his product.

There's no subtlety. The packaging includes not only his name and label but images of his family members and co-workers moving washing machines, armoires and exercise equipment. Open a box and find orange straps that are either too thin, too short, have loose stitching or are made of entirely different and weaker material.

Lopreiato said he's submitted more than 100 cease-and-desist letters to third-party sellers and takedown notices to Amazon. But go to Amazon today, and infringers are easy to spot. One [listing](#) for furniture moving straps

contains an image that looks like a couple of seat belts. Among the attached photos is one of Mark's wife moving a mattress.

In a July 2015 e-mail to Amazon's patent team, Marty Proops, an Amazon marketplace expert who previously worked with Forearm Forklift on its account, said he and Lopreiato had identified 53 separate sellers offering infringing products over the past year.

Buyers who assume they're getting the real thing are dismayed when the product can't possibly help them move a 300-pound refrigerator. Thus, Forearm Forklift has one-star [reviews](#) from customers calling it a "cheap knockoff (don't purchase)" and "very obvious counterfeit."

"That posts on our offer page on Amazon so a lot of people think we're offering fakes," Lopreiato said.



Four things you should know about
Amazon before shopping the prime sale

10:20 AM ET Mon, 24 Oct 2016 | 02:07

He never expected this to be easy. He developed the original contraption while working as a mover and dealing with clients who didn't want dollies rolling across new wooden floors. Carrying items by hand meant bending down with 200-pound appliances to get through doorways.

Lopreiato got started renting a small warehouse in 1998 and had so little money that he lived in the office. He had an evening gig at a law firm doing clerical work and waited tables on weekends.

For 12 years, Lopreiato built the business by attending trade shows and networking with distributors and buyers. He forged deals with companies ranging from U-Haul and [Home Depot](#) to [Ross Stores](#) and [Canadian Tire](#).

He was on [QVC](#) every two months or so starting in 2003, selling more than 20,000 Forearm Forklifts per live show at the peak. He started selling to Amazon as a vendor that same year, but it was never a big part of his business, representing under 2 percent of revenue in 2008.

Lopreiato was fully prepared for competition, knowing that patent protection only goes so far. But he never expected a counterfeiting onslaught.



The slide started in 2010. He got a call from an Amazon employee, saying that other sellers were offering his product at a much lower price and he needed to cut his rate to keep the business.

Lopreiato investigated and quickly found the rival products were fakes. He told Amazon that he would aggressively defend his intellectual property but that he couldn't compete with those prices and still make money. Amazon was unhappy with that response, and within weeks there were more than 100 knockoffs on the site, Lopreiato said.

"Since that date, it's just been absolutely downhill," he said.

"Amazon's responses are very erratic."

-C.J. Rosenbaum, Amazon Sellers Lawyer

Over the past six years, Lopreiato has seen vendor managers come and go without fixing the problem or notifying him that they're leaving.

He forwarded a number of e-mails from the past two years, where he and Proops showed explicit infringement and asked for help. In addition to jeopardizing Forearm Forklift's business, Proops wrote in June 2015, "Sooner or later an Amazon customer is going to be seriously injured by one of these cheap knockoffs!"

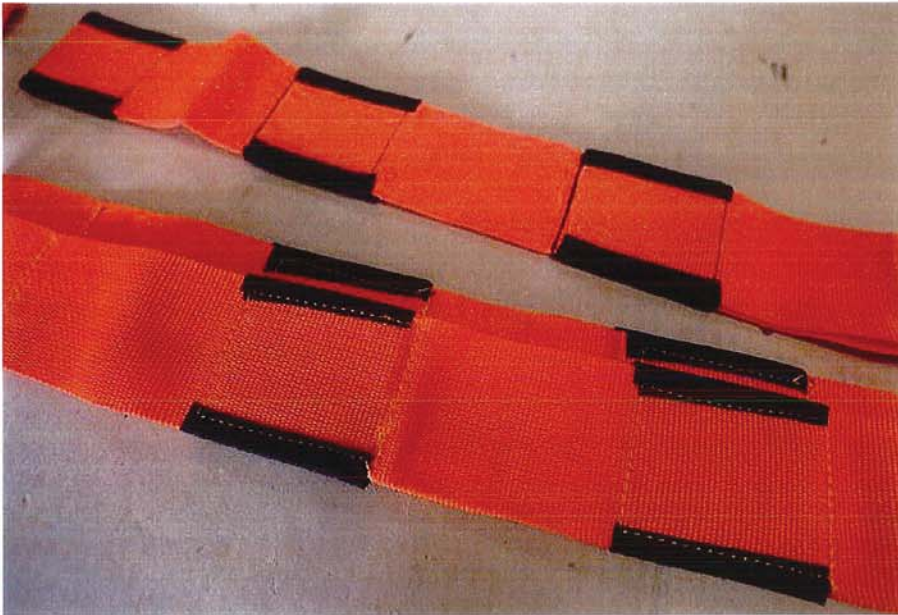
Responses ranged from terse to deflecting. Amazon told Proops to send complaints to generic e-mail addresses copyright@amazon.com and patents@amazon.com. Other e-mails suggested that the company was looking into the matter, but then the account would move to another representative.

In July 2015, an Amazon lawyer told Proops by e-mail that Forearm Forklift should take up infringement matters directly with the third-party sellers. "At this time we consider this matter closed and we will take no further action," he wrote.

C.J. Rosenbaum, a lawyer who represents Amazon sellers, said the rapid turnover in vendor managers and inconsistency in how they treat issues is a constant source of frustration.

"Amazon's responses are very erratic," said Rosenbaum, who recently published the "[Amazon Law Library](#)," a book compiling the legal issues surrounding the company and platform. "You can send in one complaint through the system about an IP violation and they take down the listing, and submit the same exact thing again and just fail."





Jeniece Pettitt | CNBC

Forearm Forklift

For Lopreiato, legal action presents an expensive option with little upside. Individually going after infringers, who he'd first have to track down, would require more time and money than he's got in the bank. He filed one case in 2013 against a domestic company and was awarded a settlement before trial.

Taking on Amazon directly has been a nonstarter for the three intellectual property lawyers Lopreiato has contacted.

More than anything, he needs Amazon's help. With traditional retailers sinking fast and more retail and wholesale activity shifting to Amazon, Forearm Forklift now counts on the site for about 12 percent of revenue, a number that's growing despite the flood of counterfeits.

A tiny number of additional orders rolled in after the "Good Morning America" appearance, even though Lopreiato is certain that far more went to the knockoffs.



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Similarly, a Facebook page called [Impressive Things](#) posted Forearm Forklift's commercial earlier this month, generating 909,000 views and counting. Again, more revenue for the fakes.

On Friday morning, Lopreiato received a particularly discouraging call.

[Aafes](#), a retailer targeting military communities, had been planning to buy Forearm Forklift for 120 of its stores. The representative handling the deal was calling Lopreiato because an Aafes executive had discovered lookalikes on Amazon for a much lower price.

He e-mailed a screenshot showing two different sellers using Forearm Forklift's photos (including the one below) to promote their products, one for \$8.09 and the other for \$11.24.



PDR 2X Practical Lifting and Moving Straps Move Rope Belt For Lifting Furniture, Tv, Beds, Sofa, Heavy, Bulky Items, Refrigerator Without Back Pain

by PDR
Be the first to review this item

Price: 642.99
Sale: \$8.00 & FREE Shipping
You Save: \$5.99 (42%)

Note: Not eligible for Amazon Prime

In Stock
Estimated Delivery Date: Nov 17 - Dec 6 when you choose Standard at checkout
Ships from and sold by PDRTUOL

- Materials Heavy-duty nylon, Maximum weight per item - 700 pounds(317 kg)
- Straps encourage proper lifting techniques. Reduce the weight of item being carried by 66 %.
- Two adjustable, leverage straps Approx Nine feet long, 1.78" wide. The adjustable length is Up to 48"
- Eliminates the possibility of scratching wood and tile floors. Reduces strain on arms and hands when lifting objects.
- Great for carrying small, medium, large, and extra-large pieces
- › See more product details

Lopreiato is all too familiar with this routine. He replied with a lengthy apology and offered assurance that the cheaper products are fakes. He gave his standard "buyer beware" pitch, explaining that the knockoffs are low quality, unsafe and uninsured.

He's not at all confident that it will be enough. In a text message on Friday afternoon, Lopreiato wrote, "Another prospect will probably be lost."



Ari Levy
Senior Tech Reporter



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Exhibit 3

32,513 views | Jan 14, 2018, 09:52pm

Fuse Chicken Vs. Amazon Is The David Vs. Goliath Lawsuit To Watch In 2018



Wade Shepard Contributor ⓘ



Amazon CEO Jeff Bezos arrives for the premiere of 'The Post' on December 14, 2017, in Washington, DC. / MANDEL NGAN/AFP/Getty Images

Jon Fawcett, the founder and CEO of [Fuse Chicken](#), an Ohio-based Kickstarter-funded startup that makes innovative phone charging accessories, received a big surprise when he had one of his products sent to the New York Times to be reviewed. What should have been a pinnacle moment for his company unravelled

into a nightmare that has become indicative of the 21st century American entrepreneurial experience.

The story goes that the NYT reviewer emailed Fawcett a few days after receiving the sample, wondering if he had received the right product. Fawcett looked over the attached photos of what was supposed to have been a **Bobine Auto**, one of Fuse Chicken's premier products, something which he designed himself, but he couldn't identify what they were of.

"It looked like some sort of wiring harness," Fawcett recollected, "like what would be under the dashboard of a car or something like that, and it had an Amazon sticker on it that said 'Bobine Auto.' This was something that doesn't even look like our product."

It turned out that the NYT reviewer received a shoddy Chinese counterfeit of what should have been an innovative and high-quality American product.

How could this happen?

Fawcett elected to have Amazon fulfill the order, not imagining that anything other than one of his genuine products would be sent from the e-commerce giant's warehouses. He assumed too much.

YOU MAY ALSO LIKE

The "accidental startup"



Jon Fawcett, the founder and CEO of Fuse Chicken. JON FAWCETT

Jon Fawcett has the quintessential American dream story. After running a design firm for 20 years, where he devised products for other companies, he decided to give his own brand a go. Confident in his ability to design high-quality, well-sought products but a little insecure in his skills at marketing them, he attempted to tip-toe into brand creation via Kickstarter. In 2012, he threw a design out there with hopes of raising \$10,000. What came next was a complete shock:

“Fast forward a month and we're on almost a quarter of a million dollars, scrambling to do everything from filing business registrations to opening new bank accounts and all kinds of stuff,” Fawcett told me with a laugh.

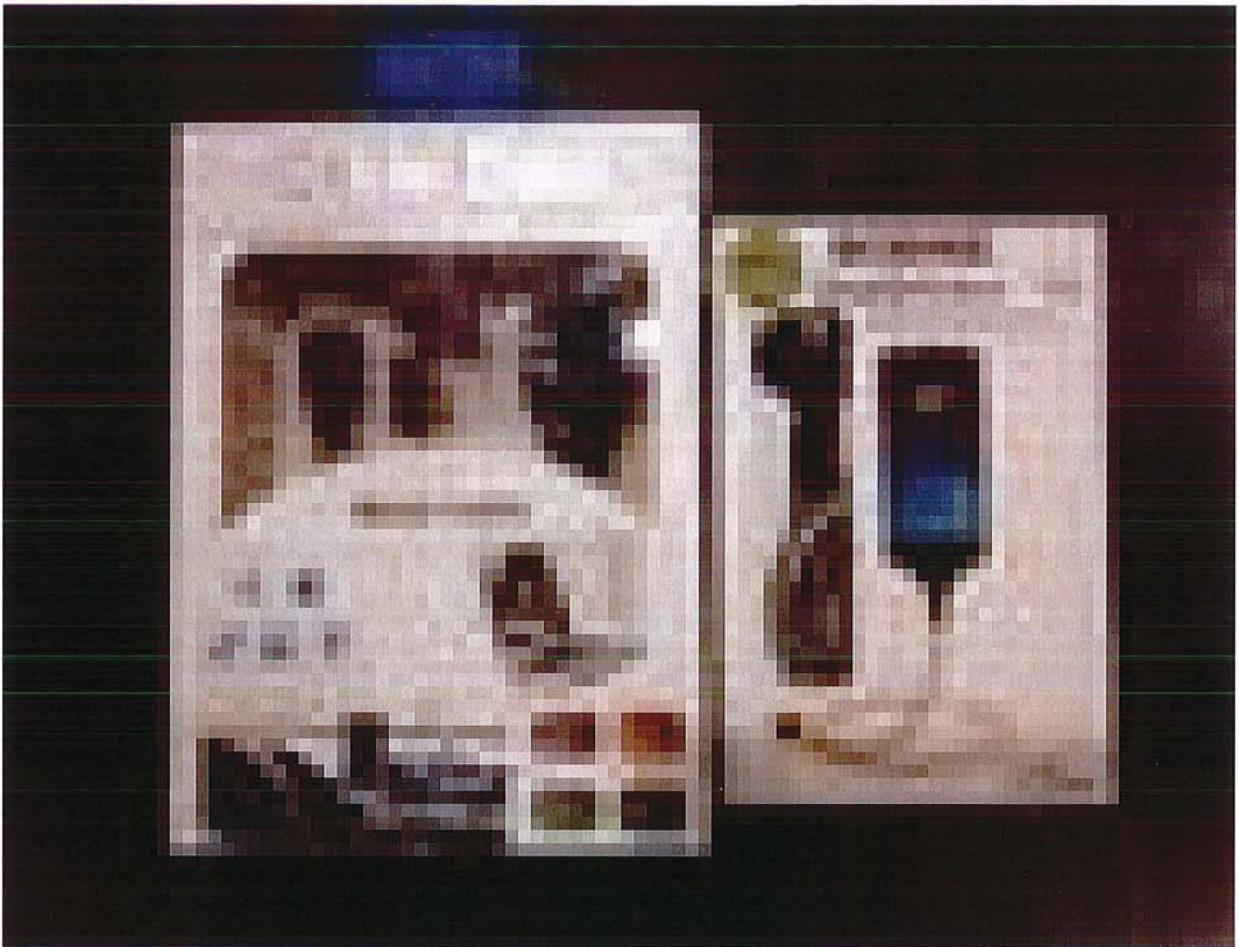
Fast forward five years and Fuse Chicken is ranked #172 on the [Inc. 5000 fastest growing companies in the USA](#). Over the past three years the “accidental start-up,” as Fawcett likes to refer to his company, has seen exponential growth, with annual sales increasing 200%, 300%, and 400%, respectively.

Fawcett and Fuse Chicken appeared to have “made it” — a homegrown company from small-town Ohio who made good in the big world of tech — and began reeling in the well-deserved rewards.

Then Amazon happened.

Or, more precisely, Chinese counterfeiters using Amazon as a conduit for sales and distribution happened.

Counterfeits on Amazon push company to ruins



A counterfeit BOBINE charger cable that's sold on Amazon next to an authentic one. JON FAWCETT

In October of 2016, Fawcett's sales on Amazon topped \$30,000, and he got ready for a big holiday season, logically expecting to generate at least \$60,000 from the marketplace in November. But that didn't happen. Rather than a rise of sales on Amazon, Fuse Chicken watched as their numbers "went off a cliff," Fawcett lamented. The month's sales did not even add up to \$10,000.

By that time, low quality knock-offs of Fuse Chicken's full line had infiltrated Amazon's listings and warehouses, as sales for legitimate products declined and negative reviews from angry customers — many of whom didn't know they received fakes — piled up. Authentic Fuse Chicken charger cables sell for \$35; the Chinese counterfeits, \$3. Buyers tend to gravitate towards lower prices, often unaware that [Amazon is now chock full of fakes](#).

It was at this point that Fuse Chicken realized that they needed to do something. Following Amazon's protocols for having counterfeits removed simply wasn't working, and even though Fawcett alerted Amazon's vendor agents and

administrators about the problem on numerous occasions and tried to work with the company on the issue for nearly a year, the situation only grew worse: sales continued to be diverted to counterfeiters and the Ohio startup's bottom line and reputation tanked.

“You know, the four or five stars were like 75% of the reviews, and from November 1st [2016] on the one and two stars were 75% of the reviews. So it was a full reversal on reviews going out on Amazon,” Fawcett exclaimed in frustration. “It has been a global disaster for our company. You know, Amazon is the gold standard for every comparison out there, and when your reviews tank on Amazon that affects your global sales.”

This is precisely why brands like Birkenstock have [sworn off the Amazon marketplace entirely](#).

“The whole time, Amazon's giving us the run around,” Fawcett explained. “You know, they're basically saying, ‘Well, you need to contact the seller and get information from them, and then you need to use that information to file the copyright or trademark infringement.’ We're like, ‘Don't you get it? These are counterfeit sellers direct from China. They don't reply to a message from the guy who they're ripping off.’”

Fuse Chicken's designs are all fully patented, and the company is trademarked in the U.S., E.U., China, Korea (pending), and the Philippines (pending). When a company goes to these lengths to secure their IP they shouldn't need to worry about counterfeits — at least not in countries with robust legal systems like the USA. But this, unfortunately, isn't the case for small entrepreneurs in the age of international e-commerce. Jon Fawcett was having the exact same problem as [Mark Lopreiato](#) in California, Don Myers in Florida, [Matthew Snow](#), and [Tiffany Pond](#). American entrepreneurs with good ideas are having their companies decimated en masse due to Amazon's ineffectual anti-counterfeit protocols and the [U.S. government's inept enforcement](#) of their own IP, consumer safety, and customs laws.

The cross-border loophole

If a product is coming into the USA via e-commerce sales, hands-on immigration inspections and seizures are rare — only 1% of counterfeits are estimated to be caught at the border — and foreign sellers are beyond the jurisdiction of U.S. law. On top of that, legal precedent has been established which determined that sites like Amazon and eBay are **not responsible for what what third party merchants sell on their platforms**. This has resulted in a situation where e-commerce has become a legal free for all: if a product crosses an international frontier, the USA's safeguards to protect American consumers and businesses from counterfeits and dangerous goods are rendered moot.

This international e-commerce loophole is well-known, and countries like China have **already made moves to close it**. However, this doesn't seem to be a pressing issue for U.S. policy makers at this time.

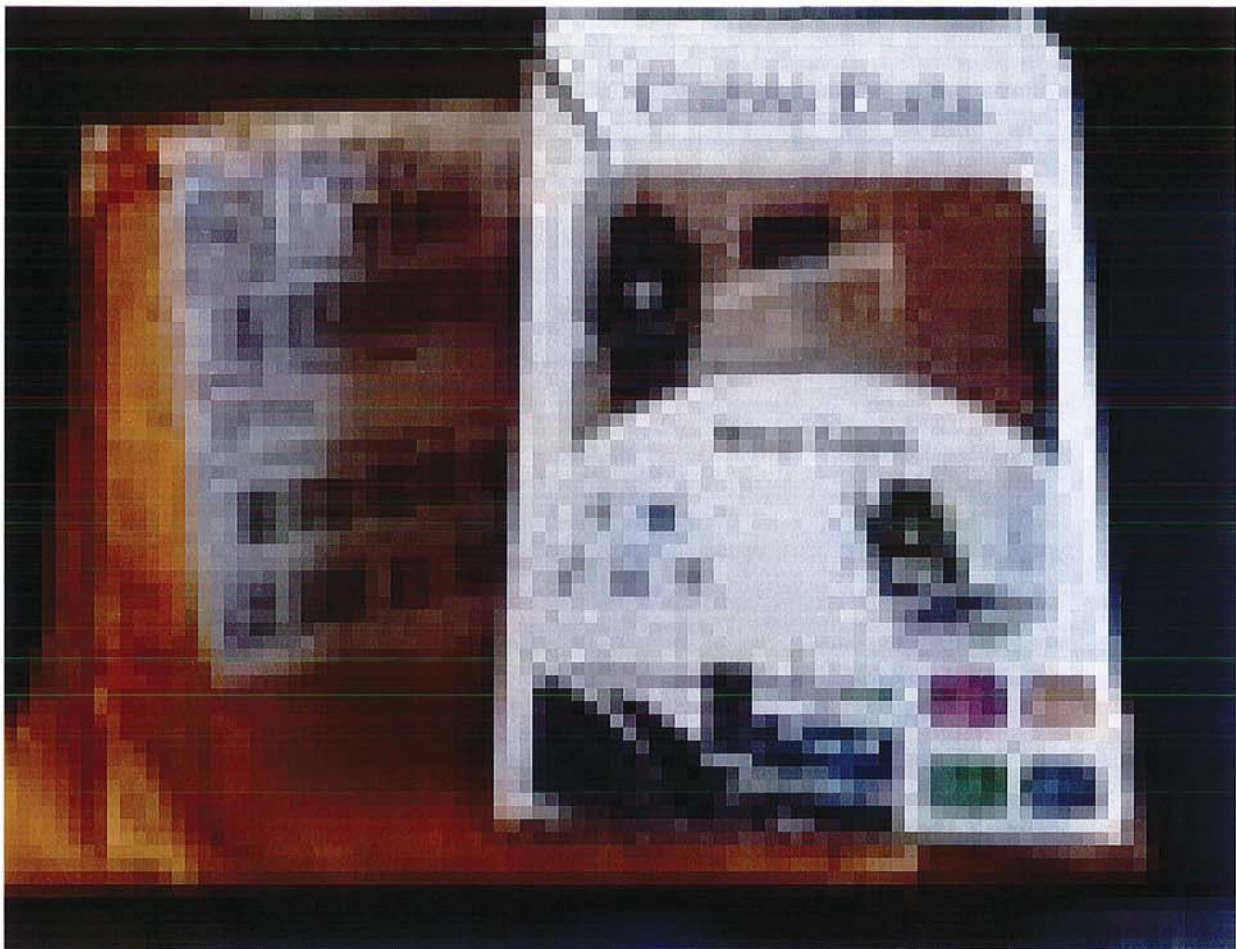
The cost of counterfeits

Not including legal fees, Fawcett estimates that his company has dumped upwards of \$200,000 fighting counterfeits on Amazon. He has one staff member solely devoted to IP protection, and he himself generally puts 20% of his work day into trying to stem the flow of fakes. This is all time and money that could otherwise be put into developing and marketing new products.

Stepping into the ring

“So everything culminated, and what led us to the actual lawsuit was I received a vendor return that was a fake,” Fawcett explained.

A customer bought what they believed to be an authentic Fuse Chicken product directly from Amazon on a listing that was labeled “ships from and sold by Amazon.com” and, finding it inadequate, returned it for a refund. This return was subsequently forwarded back to Fawcett, who quickly identified it as an obvious counterfeit.



The vendor return of the copycat product purchased on Amazon that caused Fawcett to file litigation. JON FAWCETT

“It gave us hard proof in my hand that there were counterfeits, rather than a photo and loads of circumstantial evidence,” Fawcett declared. “It showed that not only are there counterfeits, [but that] Amazon themselves were buying counterfeits and reselling them.”

Like Mercedes-Benz, Jon Fawcett caught Amazon red handed as the direct seller of counterfeit products. This suddenly became not another case of mere “bad actors” in Amazon’s third party marketplace selling fakes, but Amazon themselves buying and selling illegal counterfeits on product listings marked with the “ships from and sold by Amazon.com” label. Legally speaking, [this distinction means everything](#):

“ The founders of Milo & Gabby initially thought that a lawsuit against Amazon would be a slam dunk: counterfeits of their trademarked products were clearly being advertised and sold on Amazon, the e-commerce giant was taking a commission from each sale, storing the illegal items in their

warehouses, and distributing them via their Fulfillment by Amazon program. In a country that is packed with laws to prevent things like this from happening, how could they lose?

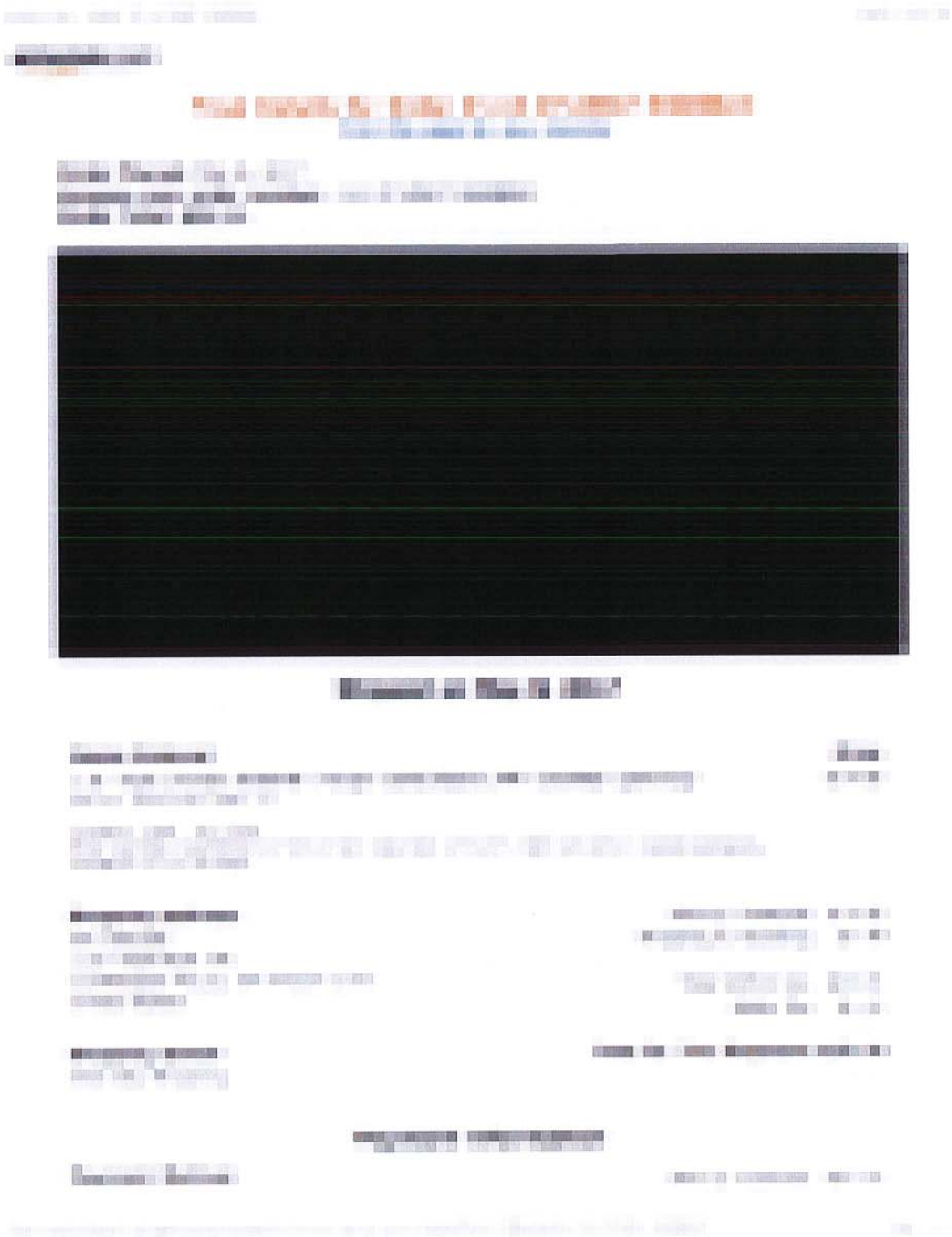
However, they were very, very mistaken. After a legal battle that dragged on for two years, a nine-member jury decided in favor of Amazon on all counts, **ruling that** “the company was not behind the counterfeit content listed on its site, and had technically not made an 'offer to sell' — the legal requirement to hold Amazon liable for the counterfeit goods.”

“It shows that either Amazon was directly buying from counterfeiters and reselling or they were commingling and shipping out counterfeits as ours,” Fawcett determined.

After this happened, Fawcett began looking closer at what was being sold under his brand’s name on Amazon. This led him to purchasing what was supposed to have been one of his products from Amazon Warehouse Deals. It ended up being a counterfeit.



The counterfeit cable that Fawcett purchased from Amazon Warehouse Deals. JON FAWCETT



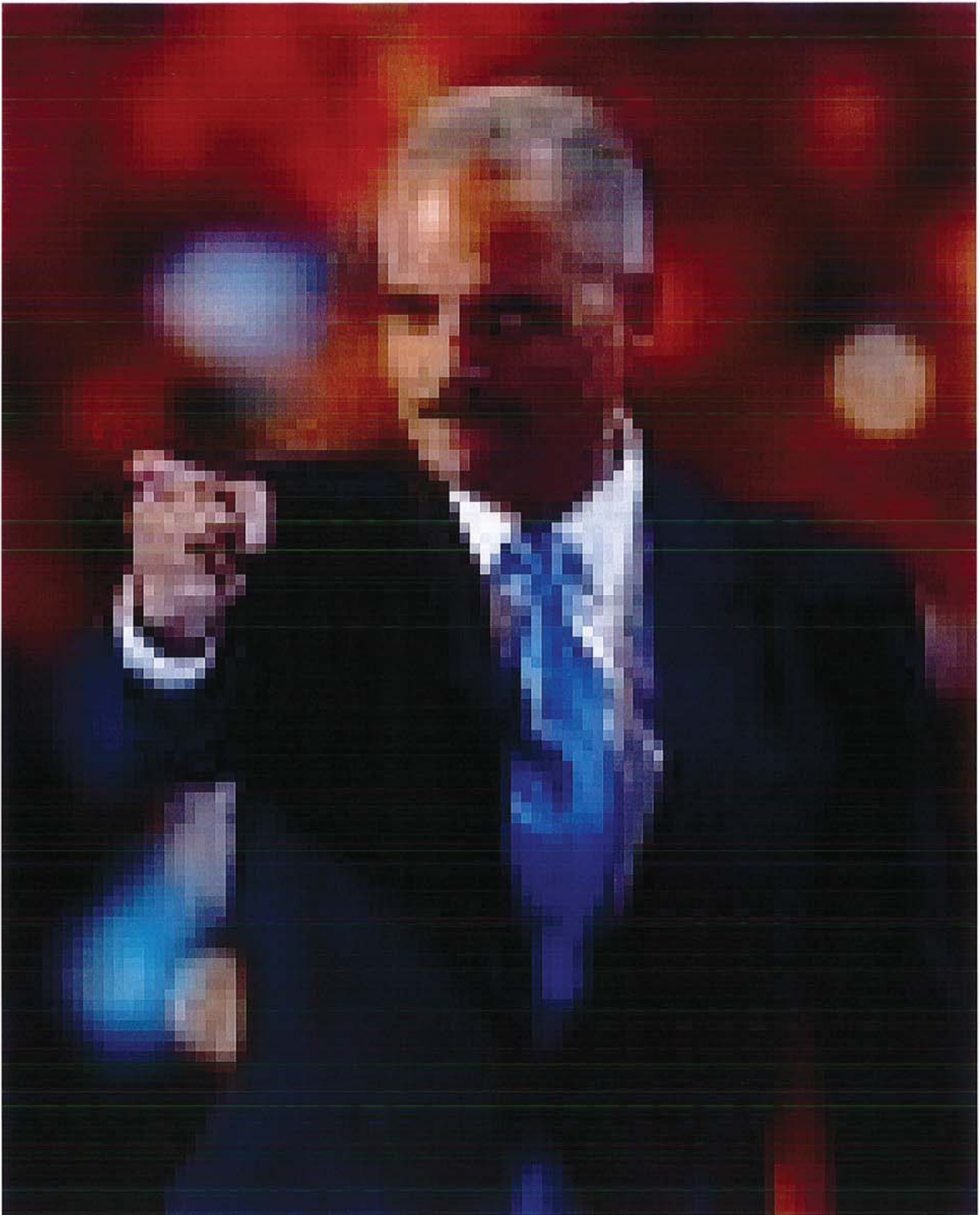
The Amazon order receipt from Fawcett's test buy of a counterfeit from Amazon Warehouse Deals. Notice how it clearly says "Fuse Chicken BOBINE Charge Cable." JON FAWCETT

In May of last year, Fuse Chicken sent out a ten-page cease and desist notice to Amazon. The e-commerce giant failed to respond and fake Fuse Chicken products continued being sold in their marketplace. Finding no other recourse, Fawcett [filed litigation in July](#), joining the diverse ranks of Mercedes-Benz, Milo & Gabby,

Wow Virtual Reality, the maker of the “Snuggie blanket,” and the rap group Run-DMC to step into the legal ring against Amazon over the counterfeit issue.

To battle against the small Kickstarter-funded startup from Cuyahoga Falls, Ohio, Amazon brought in the big guns: [Covington & Burling](#), one of the most powerful law firms in the world. Yes, this is the same law firm that consulted Philip Morris during the \$280 billion U.S. federal lawsuit in 1993, represented Chiquita International Brands in 2007 against the relatives of people killed in Colombia by the paramilitary (a.k.a. designated terrorist) organization they hired for protection, took a contract to lobby the U.S. government on behalf of Blackwater, and successfully defended the Southern Peru Copper Corporation against Peruvian citizens claiming that the company was polluting their environment and causing health problems. This is the same Covington & Burling that currently ranks #16 in [Vault.com’s top 100 law firms](#), employs a former U.S. Treasury deputy secretary, White House aides from multiple administrations, former Congressman Michael Barnes, and, to top it off, has former U.S. Attorney General Eric Holder [as a partner](#).

“Amazon has called in a multinational law firm to go up against a small start-up that tried for a full year to work with them to have them stop counterfeits,” Fawcett declared. “[But] we have no intentions of backing down. You can throw big names out there, but they’re definitely not doing the right thing.”



Former Attorney General Eric Holder takes the stage during the second day of the Democratic National Convention in Philadelphia, Tuesday, July 26, 2016. (AP Photo/Paul Sancya)

Conclusion

Amazon opened Pandora's box when they blazed a lucrative trail directly connecting Chinese sellers — who have the carte blanc to violate any and all U.S. patent, trademark, and consumer safety laws — to American customers, who

generally have no idea they risk buying counterfeits each time they shop on Amazon.

When viewed in this light, e-commerce platforms like Amazon have essentially become colossal donation boxes for American entrepreneurs to give away their intellectual property to Chinese parasites, who latch on to it at will, extracting a quick profit and draining the host of life. Some, like Fawcett and Mercedes-Benz will try to fight against this, but most others do not have the resources. I receive emails like the following on a daily basis:

“ I enjoyed reading your article from Dec 5th regarding Mercedes and Amazon. Like Milo and Gabby, the same is happening to my company, Wee Urban, but I simply don't have the means to file against Amazon, but have loads of proof.

The biggest fear here is that grassroots America will stop innovating altogether. How can small American companies expect to compete when they need to bear the expenses to comply with their country's laws while their foreign competitors do not? What's the point of entrepreneurship when the bright light at the end of the dark tunnel of product ideation, development, and marketing is the sparkle off of some Chinese guy's Rolex who stole your designs, trademarks, and customers with complete impunity, aided and abetted by one of the most powerful companies in the world?

Amazon takes a 6% to 20% commission on the sale of each counterfeit item. Jeff Bezos is currently [the third richest man in the world](#).

Amazon declined to comment for this story.

**Correction, 01/15/18- Fuse Chicken's October and November sales record on Amazon were \$30,000 and \$10,000, not the number of sales.*

*I'm a perpetually traveling writer who focuses on new cities (ghost cities), the New Silk Road, and international e-commerce as seen from the ground. I am the author of "Ghost Cities of China: The Story of Cities Without People in the World's Most Populated Country," a book ... **MORE***

I'm the author of [Ghost Cities of China](#) and have been traveling perpetually since 1999 -- through 86+ countries. I can often be found in some new city or somewhere along the New Silk Road.

Exhibit 4

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Shop the Halloween Store

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DEPARTMENTS

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Amazon Home

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Save on professional dish soap | amazonbasics

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THE NEGG BOILED EGG PEELER BLACK

by NEGG

539 customer reviews

16 answered questions

Choice for "boiled egg peeler"

List Price: \$17.95

Price: **\$13.90**

FREE Shipping on orders over \$25—or get FREE Two-Day Shipping with Amazon Prime

You Save: **\$4.05 (23%)**

Color: Black



- Add 1/4 cup (Negg capful) of water to the Negg. Add your hard-boiled egg and snap on the top cap.
- Now you're ready to slip the egg out of its shell. SHAKE the Negg up and down with enough force so that the egg strikes the caps. Remember to take it a little easy, or you will end up with a slushy mess complete with shells.
- Shake until you feel the shell begin to "soften" - approximately 4 to 12 times. Timing will vary. The body is clear so you can watch the progress.
- When you see the white of the egg appear, you're done. Mission Accomplished. The egg will then slip out of its shell.
- If the egg is a reluctant sheller you may have to break the membrane after shaking to get the shell to release. This can happen with extremely fresh eggs, and is not the norm.

Compare with similar items

New (11) from \$13.90 & FREE shipping on orders over \$25.00. Details

Ad feedback

Share

40+ Shares

\$13.90

FREE Shipping on orders over \$25—or get FREE Two-Day Shipping with Amazon Prime

Want it tomorrow, Oct. 16? Order within 2 hrs 35 mins and choose One-Day Shipping at checkout. Details

Only 6 left in stock - order soon.

Sold by Artisan Owl and Fulfilled by Amazon. Gift-wrap available.

Qty: 1

Yes, I want FREE Two-Day Shipping with Amazon Prime

Add to Cart

Turn on 1-Click ordering for this browser

Deliver to Coraopolis 15108

Add to List

Add to Wedding Registry

Other Sellers on Amazon

\$13.90 & FREE Shipping on eligible orders. Details
Sold by: NO9ESHOP

Add to Cart

See price in cart & FREE Shipping on eligible orders. Details
Sold by: etailz

Add to Cart

\$17.90 & FREE Shipping on eligible orders. Details
Sold by: Glitzy Gift Shop

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Ad feedback

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539 customer reviews Share

Color: Black



Lowest offer for each

Refine by Clear all

Shipping

- Free shipping

Condition

- New

Price + Shipping

\$13.90

& FREE Shipping on orders over \$25.00 shipped by Amazon. [Details](#)

Condition (Learn more)

New

Delivery

FULFILLMENT BY AMAZON

- Want it delivered Tuesday, October 16? Order it in the next 2 hours and 44 minutes, and choose **One-Day Shipping** at checkout. [See details](#)
- [Shipping rates and return policy.](#)

Seller Information

Artisan Owl

99%

[positive](#) over the past 12 months. (43,635 total ratings)

Buying Options

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\$13.90

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NO9ESHOP

88%

[positive](#) over the past 12 months. (8 total ratings)

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Add to cart to see product details.

New

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etailz

99%

[positive](#) over the past 12 months. (628,090 total ratings)

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\$17.90

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New

FULFILLMENT BY AMAZON

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River Colony Trading

99%

[positive](#) over the past 12 months. (992,474 total ratings)

Add to cart

\$17.90

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Glitzy Gift Shop

99%

[positive](#) over the past 12 months. (4,662 total ratings)

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Net Savings

100%

[positive](#) over the past 12 months. (6,416 total ratings)

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WANTS THAT!

100%

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Cascade Sales Group

98%

[positive](#) over the past 12 months. (2,426 total ratings)

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Dainty Baby

99%

[positive](#) over the past 12 months. (34,374 total ratings)

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\$17.95

New

FULFILLMENT BY AMAZON

& FREE Shipping on orders over \$25.00 shipped by Amazon. [Details](#)

- Want it delivered Tuesday, October 16? Order it in the next 2 hours and 44 minutes, and choose **One-Day Shipping** at checkout. [See details](#)
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Merchant Roads

99%

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Departments Your Amazon.com

EN

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NEGG

539 customer reviews Share

Color: Black



Lowest offer for each



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Shipping

- Free shipping

Condition

- New

Price + Shipping

\$17.95

& FREE Shipping

Condition (Learn more)

New

Delivery

- Arrives between October 19-23.
- Want it delivered Wednesday, October 17? Choose **Two-Day Shipping** at checkout.
- Shipping rates and return policy.

Seller Information

**THE NEGG™
MAKER**

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\$19.00



OXO Good Grips 3-in-1 Avocado Slicer, Green

\$9.99



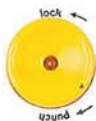
Kuhn Rikon 3-Set Original Swiss Peeler, Red/Green/Yellow

\$8.59



Silicone Egg Poaching Cups - Poaches Eggs To Perfection Without the Stress or Mess - Set of 4...

\$9.95



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https://brandregistry.amazon.com/brand/report-a-violation?

<input type="checkbox"/>	etailz	New	WA, US	\$15.99	+	\$0.00
<input type="checkbox"/>	NO9ESHOP	New	CN	\$15.90	+	\$0.00
<input type="checkbox"/>	Kelly Babbitt	New	CA, US	\$15.90	+	\$0.00

THE NEGG BOILED EGG PEELER BLACK

▶ Show all images

▼ Hide offers



B01N75XX0W

NEGG

★★★

<input type="checkbox"/>	River Colony Trading	New	CT, US	\$17.90	+	\$0.00
<input type="checkbox"/>	Kelly Babbitt	New	CA, US	\$15.95	+	\$0.00
<input type="checkbox"/>	Artisan Owl	New	MA, US	\$14.99	+	\$0.00
<input type="checkbox"/>	etailz	New	WA, US	\$13.99	+	\$0.00
<input type="checkbox"/>	NO9ESHOP	New	CN	\$13.90	+	\$0.00

THE NEGG BOILED EGG PEELER YELLOW

▶ Show all images

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B01N235WK4

NEGG

★★★

Exhibit 5

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Amazon Home Shop by Room Scout | Style Explorer Shop by Style Home Décor Furniture Kitchen & Dining Bed & Bath Garden & Outdoor Home I



Save on professional dish soap | amazonbasics

◀ Back to search results for "negg"



Roll over image to zoom in

THE NEGG BOILED EGG PEELER RED

by NEGG

539 customer reviews

| 16 answered questions

Choice for "negg"

Price: [See price in cart](#)

FREE Shipping on orders over \$25. [Details](#)

Note: Available at a lower price from other sellers that may not offer free Prime shipping.

Color: Red



- Add 1/4 cup (Negg capful) of water to the Negg. Add your hard-boiled egg and snap on the top cap.
- Now you're ready to slip the egg out of its shell. SHAKE the Negg up and down with enough force so that the egg strikes the caps. Remember to take it a little easy, or you will end up with a slushy mess complete with shells.
- Shake until you feel the shell begin to "soften" - approximately 4 to 12 times. Timing will vary. The body is clear so you can watch the progress.
- When you see the white of the egg appear, you're done. Mission Accomplished. The egg will then slip out of its shell.
- If the egg is a reluctant sheller you may have to break the membrane after shaking to get the shell to release. This can happen with extremely fresh eggs, and is not the norm.

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88%

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etailz

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positive over the past 12 months. (628,091 total ratings)

Nanther

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100%
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by NEGG

[539 customer reviews](#)

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Price: [See price in cart](#)

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Color: **White**



- Add 1/4 cup (Negg capful) of water to the Negg. Add your hard-boiled egg and snap on the top cap.
- Now you're ready to slip the egg out of its shell. SHAKE the Negg up and down with enough force so that the egg strikes the caps. Remember to take it a little easy, or you will end up with a slushy mess complete with shells.
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NEGG

539 customer reviews [Share](#)

Color: White



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Condition

- New

Price + Shipping

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etailz

99%

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Glitzy Gift Shop

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by NEGG

539 customer reviews

| 16 answered questions

List Price: ~~\$17.95~~

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Color: **Yellow**



- Add 1/4 cup (Negg capful) of water to the Negg. Add your hard-boiled egg and snap on the top cap.
- Now you're ready to slip the egg out of its shell. SHAKE the Negg up and down with enough force so that the egg strikes the caps. Remember to take it a little easy, or you will end up with a slushy mess complete with shells.
- Shake until you feel the shell begin to "soften" - approximately 4 to 12 times. Timing will vary. The body is clear so you can watch the progress.
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Condition

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Exhibit 8

AMAZON & MARKETPLACES

Legal: Protect Against Counterfeit Goods with Amazon Brand Gating

SEPTEMBER 6, 2017 • JOHN DI GIACOMO

There is no question that service providers like Amazon must constantly be on guard against nefarious third party sellers who might use their service for unlawful means. In order to build and maintain trust with its sellers and brands, Amazon must ensure that brand owners can stop the sale of counterfeit goods on its services. In recent years, Amazon has adopted new programs to protect this trust, one of which is brand gating.

Brand Gating Defined

What is brand gating? Brand gating is a means by which a brand owner may convince Amazon to exclude unauthorized third parties from selling the brand's products on Amazon. By brand gating, a brand can control the resellers of products bearing the brand's Amazon Standard Identification Numbers (ASINs), which prevents unauthorized sellers from listing the brand's goods on the service. Brands can charge a fee, in some cases \$1,500, for any new seller of the brand, which adds an additional barrier to entry to would-be counterfeiters. However, some brands have do not charge a fee.

Tips to Benefit from Brand Gating

To take advantage of brand gating, we typically recommend that brand owners file for trademark registration of their brands with the United States Patent and Trademark Office. Once trademark registration has been obtained, we then advise brand owners to participate in the Amazon Brand Registry. By participating in the Brand Registry, brands can take advantage of Amazon's promise to deal with counterfeiting claims within four hours. Additionally, by participating in the Brand Registry, brands no longer have to perform a test buy before submitting a counterfeiting claim.

Once all of this is done, the next steps can be ambiguous at best. There is currently no public-facing means by which a brand can obtain brand gating. Experience, however, shows that brand gating is often open to larger sellers with extensive counterfeiting problems. It is not, however, exclusive to large sellers. Smaller sellers can also obtain brand gating by providing the right information.

There is currently no public-facing means by which a brand can obtain brand gating.

To aid Amazon in determining whether a brand should be gated, sellers should produce and be prepared to provide a list of ASINs to be gated. Brands should also be prepared to tell a compelling story about how counterfeiting has had an effect on their brand and provide specific examples of counterfeiting to support that story. It may take 4-5 weeks to have your brand accepted into the brand gating program. A brand can determine if it has been accepted by searching for one of its products and by clicking on the "Sell on Amazon" button. If a pop-up says selling requires approval, you've successfully been gated.

What Does All of This Mean for Sellers?

For third-party sellers, meaning sellers that are not a brand, it means that they may need to either acquire direct approval to sell a brand's goods on Amazon or pay a fee to sell products from a gated brand. For third-party sellers that buy their products at retail, it may also mean that they can no longer sell on Amazon because they cannot prove that they have the brand-owner's approval to sell a gated product. To prove that a third-party seller is authorized, it may need to submit information, such as invoices showing direct purchases from a brand or a letter from the brand owner.

Though the cost of compliance may be high, third-party sellers face significant risk, such as an outright ban, if they do not comply. Gated brand notifications can be sent at any time, and Amazon appears to be scaling these changes, so more may be on their way. Third-party sellers are advised to not attempt to get around brand gating by listing items as used or by bundling restricted brands with non-restricted brands. Obtaining authorization is far easier than attempting to recover a blocked account through arbitration.

As always, if you have questions about brand gating, speak with an attorney.





John Di Giacomo