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A SELLER'S GUIDE TO NAVIGATING INTELLECTUAL PROPERTY LAW ON AMAZON

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A basic understanding of Intellectual Property (IP) law is essential to managing an Amazon storefront, as IP issues can be a minefield for the uninformed. Amazon sellers must understand the major forms of intellectual property –patents, trademarks, and copyrights–and the common pitfalls associated with each form to avoid infringement allegations, storefront disruptions or closures, and even lawsuits. Furthermore, understanding Amazon's IP enforcement tools permits sellers to efficiently combat infringing competitor listings, often without entering expensive and time-consuming formal court proceedings.

Patents

A patent permits the owner to exclude others from making, using, offering to sell, selling, or importing the invention of the patent. There are two types of patents that Amazon sellers should be familiar with, utility patents and design patents. Utility patents protect functional aspects of a product, and design patents protect the appearance of a product.

Sellers need to be aware of competitor patents before introducing a product to the market. Conducting a search for competitor patents prior to committing to a substantial investment in a product can minimize wasted time and money associated with product takedown proceedings and lawsuits by providing the seller an opportunity to design around identified patents.

When possible, sellers should build a patent portfolio around their product to ward off competitor listings of infringing products. In the United States, patent applications associated with a seller's product ideally should be filed before or, at the latest, within one year of listing the product for sale (e.g., on Amazon or elsewhere) or otherwise publicizing the product. These rules vary from country to country; thus, an attorney should be consulted before selling or promoting a product if international patent protection may be desired. Once a patent is granted, Amazon offers several useful tools for combating infringing competitor products.

Trademarks

Trademarks are words or symbols used to identify the source of a product. The purpose of a trademark is to prevent consumer confusion about the source of the corresponding product.

Examples include the word "Coca-Cola" and their signature script Coca-Cola logo. "Trade dress" is a subsection of trademark law and protects the design and shape of a product or its packaging, again to identify the source of the product. An example is the shape of the classic Coca-Cola glass bottle.

Before selecting a brand name or logo for a product, sellers need to conduct a search to ensure that another party is not already using the same or similar brand name or logo. As with patents, a search for competitor trademark rights can help the seller avoid infringement allegations by permitting the seller to select a trademark that is distinguishable from an identified competitor trademark before taking the product to the market.

A mistake commonly made by Amazon sellers is putting the seller's trademark on a product that was originally made by a third party without ensuring proper authorization was obtained from the third party to do so. This can lead to expensive "false marketing" litigation. To legally put their own trademark on a product originally made by a third party, the seller should first obtain permission from the third party in writing.

Registering trademarks with the U.S. Patent and Trademark Office (USPTO) provides numerous benefits to Amazon sellers, including the ability to enforce the trademark in federal court as well as via several Amazon tools.

Sellers should mark uses of their trademarks with the "TM" or "®" symbol to inform the public of their trademark rights. More particularly, the TM symbol can be used in the absence of registration, while the registration symbol should be used after registration issues.

Copyrights

Copyrights protect expressions of ideas, but not the underlying ideas. Examples of copyright-protected materials commonly used on Amazon listings include aspects of the products listed, images (e.g., photographs or product renderings) on listings, product packaging, advertising materials, and instruction manuals.

The key for Amazon sellers to avoid copyright infringement issues is to utilize only original content with all aspects of their products. A common pitfall for Amazon sellers is copying and pasting content from other websites or products (e.g., pictures or descriptions) for use on their own materials. This should be avoided at all costs, as it can lead to product takedowns and expensive copyright infringement lawsuits.

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While not required, sellers should mark their copyright-protected materials with the “©” symbol to inform the public of their rights. More particularly, instances of copyright-protected content should be accompanied by: 1) the copyright symbol “©,” 2) the year of publication of the material, and 3) the copyright owner’s name (e.g., “© 2023, Example Company”).

Registering copyrights with the U.S. Copyright Office provides several benefits, including entitling the owner to pursue statutory damages, enforcing the copyright in court and utilizing certain Amazon IP enforcement tools.

Amazon IP Enforcement Tools

Once IP registrations have been secured, Amazon offers many tools for combating infringing competitor listings. These tools typically lead to a resolution in a faster and less costly manner than enforcing the IP right in court. Of course, these tools only apply to the Amazon market – they cannot be used to combat infringing uses in other markets. The following is an overview of Amazon’s primary IP enforcement tools:

- **Report Infringement Form** – A request to Amazon’s legal team to evaluate whether a product infringes a registered IP right and to remove the product’s listing if infringement is found. This tool requires the IP owner to submit basic information about the IP registration, the alleged infringing product, and why the product is believed to violate the IP right. This tool is available for all three major forms of IP. Once a request is submitted to Amazon, this tool provides little opportunity for the IP owner or seller to be involved in the proceeding.
- **Report a Violation (RAV) Tool** – This tool is similar to the Report Infringement Tool but streamlines the infringement reporting process by providing the IP owner access to a dedicated Amazon team for processing infringement claims. The RAV tool requires the IP owner to create a brand registry associated with their products, which requires a pending or registered trademark associated with the product. The RAV tool is available for all three major forms of IP. Like the Report Infringement Form, the RAV tool provides little opportunity for the parties to be involved in the proceeding once the infringement notice is submitted.
- **Patent Evaluation Express (APEX) Program** – As its name suggests, the APEX program is only available for patents. The APEX program facilitates a mini-trial between the patent owner and the alleged infringing seller to determine whether

the product infringes a patent and, thus, should be delisted from Amazon. A neutral evaluator assigned by Amazon administers the trial. Unlike the Report Infringement Form and RAV tool, the APEX program provides significant involvement from both parties. Specifically, both parties can submit detailed arguments supporting their positions to the neutral evaluator in the form of briefs. This process is relatively fast and inexpensive, especially compared to a patent litigation proceeding in court. Indeed, a decision is rendered in about three months, and both parties are only required to pay a \$4,000 evaluator fee, with the winning party’s fee returned. The APEX program is essentially a streamlined version of Amazon’s [Utility Patent Neutral Evaluation Process \(UPNEP\)](#), with the added benefit of allowing sellers to add registered patents to their brand registry and quickly initiate the APEX process via the RAV tool.

Conclusion

Conducting due diligence about competitor intellectual property rights prior to introducing products to the Amazon market can minimize expensive product takedown disputes and lawsuits. Furthermore, building a wall of IP rights around listed products and using Amazon’s inexpensive tools can be beneficial in keeping competitors at bay. For more information on navigating these aspects of an Amazon business, contact one of our skilled [Intellectual Property attorneys](#).

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