

Amazon Sellers' Guide To
Avoiding Suspensions &
Obtaining Reinstatement

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Purpose of this Book

We help suspended Amazon Sellers get their Amazon accounts and listings reinstated. Unlike many lawyers, we do not want any of our clients involved in litigation. We help suspended Amazon Sellers obtain reinstatement as quickly as possible.

There are two main goals of this book:

- Educate Amazon Sellers about how to avoid account and listing suspensions, and;
- Teach suspended Amazon Sellers how to get their accounts and listings reinstated as quickly as possible.

Prologue to Sellers: Stop Living in Fear

Stop living in fear! This book was written to empower Amazon sellers like you. Whether you have received or anticipate receiving the dreaded suspension e-mail, use this book to guide you to your quick reinstatement.

Having met tens of thousands of Amazon Sellers around the world, one common thread among Sellers is that they live in fear of having their account or best ASIN (s) suspended. Smaller, more novice Sellers fear not being able to pay their bills or maintain their lifestyles. Larger and more advanced Sellers fear not being able to make payroll and having to lay off staff. Whichever you are, you *can* navigate the challenges of selling on Amazon, and this book will be your guide.

Negative Facts about Selling On Amazon for Third Party Sellers:

- Amazon focuses on their customers, not the Sellers. Sellers are replaceable. Large or small, Amazon is incredibly diversified with millions of Third-Party Sellers. It seems that no account, large or small, is, by itself, important to Amazon.
- All Amazon Sellers are at risk of being suspended at any time, for a variety of reasons, whether valid or baseless.
- Amazon insists that third party Sellers maintain a practically perfect business

performance execution.

Great Facts about Selling on Amazon for Third-Party Sellers:

- You have access to hundreds of millions of consumers.
- At no time in the history of commerce have people and businesses had the opportunities that Amazon provides.
- Even with all the obstacles Sellers face, Amazon provides one of the greatest opportunities in the history of commerce.
- If you have a smartphone and a credit card, you can go into business and compete with household names, globally.

Many people assume that lawyers are only hired for litigation. This is wrong. A business lawyer's job is to help you to do business successfully. I have heard countless Sellers say, "I want to sue Amazon for doing this to me!" However, initiating a lawsuit is the least effective or efficient way to approach most of the challenges Amazon Sellers face. If a lawyer is leading you directly to the courthouse on a business matter, they may be influenced by his or her interest in earning litigation fees. While there are exceptions, business matters are generally best handled by avoiding the courthouse. Litigation generates fees for lawyers, but litigation does not make sense for most businesses.

At our law firm, we handle legal issues, such as [Intellectual Property suspensions](#), brand disputes, and rights owner complaints, (many of which are entirely baseless), usually without any litigation. [We help Amazon Sellers protect your Intellectual Property.](#) However, as a law firm, we are also able to analyze non-legal suspensions extremely well. In fact, the number one suspension issue Amazon Sellers face is the [inauthentic suspension](#), which often results from mere customer complaints, not intellectual property concerns.

No matter the issue, we help Amazon Sellers help themselves. As an Amazon Seller confronted by Amazon, you must use all the documentary evidence you have. This means using your invoices, credit card receipts, emails, and documented relationships with applicable manufacturers and suppliers you do business with to convince Amazon that you

are not a risky seller. Above all, DO NOT USE PHOTOSHOP—there have been an exponential amount of Sellers doctoring their photographs or receipts, etc. to misinform, or due to fear that their original documents were insufficient... do not be one of these Sellers! Amazon has recently been more diligent and proficient at catching these Sellers, whether they are Photoshop experts or not. Forging documents can irreparably damage your account, leaving you in a much worse position than you would have been otherwise. Use what is already in your arsenal only.

After considering both the advantages and disadvantages, if you choose to sell on this platform, Amazon reserves the right to suspend your Amazon seller account without notice, (this should have changed somewhat in August of 2019. You can read about recent changes to Amazon’s Business Solutions Agreement in the chapters to come or click here for [over dozen videos explaining your contract with Amazon](#)), and it often claims the right to hold your inventory and money. Unlike every other landlord in the United States, Amazon feels that it has the authority to evict you at any point in time.

By becoming an Amazon seller, you agreed to their deal. You clicked “I agree to the above terms and conditions.” The agreement states that Amazon can suspend you, kick you out, hold your money, and still tack innumerable fees onto your account. You agreed that Amazon can change the rules whenever it wants. You further agreed that if you have any dispute with their incredibly one-sided agreement, or any other aspect of doing business on the Amazon platform, you will resolve the issues via arbitration and not via the court system. You agreed not to sue Amazon.

CJ’s Update: The contract between Amazon third-party Sellers and Amazon.com is called the Business Solutions Agreement or “BSA.” Despite countless webinars and presentations by supposed experts, the contract between Sellers and Amazon is not the Terms of Service or the Participation Agreement. The contract is so incredibly one-sided in Amazon’s favor that there are significant legal challenges Sellers can raise during disputes with Amazon. Under Washington State law, arbitrators reviewing provisions that are bad for Sellers should be presented statutes and precedent-setting cases that show that the BSA is both “procedurally unconscionable” and “substantively

unconscionable.” If the seller wins on either of these points, the harmful provisions of the BSA can be ignored by the arbitrator during a dispute. [You can watch our videos explaining the individual provisions of the contract by clicking here.](#)

This book is intended to teach you how to work within Amazon’s system to get your listing or your account back online after a suspension.

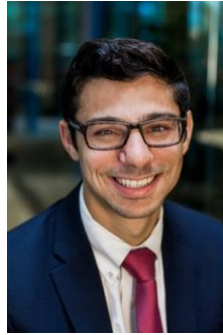
In the chapters to come, we will provide you information about the following:

- Basic Types of Suspensions
- Most Common Reasons for Suspensions
- Basic Method for Reinstatement of Selling Privileges: the POA
- Time Limit for Submitting POA (24-hour, 48-hour, 72-hour)
- Basic Format of POA
- Information on Submitting Your POA to Amazon
- What You Can Expect in Response to Your POA from Amazon
- How to Handle Requests for More Information from Amazon after Submitting Your Initial POA
- Court Orders and TROs
- Arbitration

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Brianna Stanco, Editor, 2019-2020 Edition



Amazon Sellers, around the world, are not alone anymore.

Our firm is the number one entity on earth helping Amazon Sellers. In addition to assisting Amazon Sellers and brands in the United States, we help Amazon Sellers and brands in China, Australia and across Europe. Our staff in Yiwu, China and Shenzhen, China also provide us with a unique ability to help Amazon Sellers and brands with issues they face with their Chinese factories and suppliers.

Our Shenzhen staff keeps us in contact with our Chinese clients, who have the comfort of knowing that they are speaking to attorneys, paralegals, and staff that aren't only overseas anymore; we have a growing staff who help us now provide 24-hour around the clock service to our clients worldwide. Our team demonstrates its' commitment to helping Amazon Sellers around the world through extended travel to China, Australia, India and other countries around the world to maintain our knowledge and to be available to Amazon Sellers wherever you are located.

We successfully help reinstate thousands of suspended Amazon seller accounts and tens of thousands of ASINs each year. Similarly, we obtain thousands of retractions of intellectual property complaints asserted against our Sellers. We regularly resolve issues with Amazon's staff in the United States, India, Ireland, Costa Rica, Germany and the United Kingdom. Our team members speak at Amazon seller events around the world countless times each year. Our partners work with and Amazon's lawyers practically every day. According to Amazon's lawyers, we represent Amazon Sellers in 75% of all of the arbitrations filed against Amazon.

There is no other law firm in the world that comes close to our experience helping Amazon Sellers! Forbes, CNBC, Fox Business, The Wall Street Journal, Bloomberg, The Huffington Post, International Business Times, The Daily Journal, The Seattle Times and hundreds of other media outlets rely on our team for information about Amazon.

Unlike the "Amazon Suspension Consultants" and websites that claim they can help suspended Amazon Sellers, we address more Amazon account suspensions and more Amazon listing suspensions than any entity in the world. Our vast knowledge and experience, showcased in our [six published books](#), is due to our hardworking staff's attention to detail in every case that comes through our doors.

- Every Plan of Action and all documents related to Amazon Sellers are either drafted by a lawyer or reviewed by a lawyer;
- Everyone involved in your suspended Amazon account is a college-educated American; we do not outsource anything pertaining to your Amazon seller's

account to anyone in the Philippines or anywhere else;

- We have a centralized location in our founders' hometown of Long Beach, New York, where we work collaboratively in groups of 4-6 people. We do not use anyone outside of our law firm to work on your account.
- Our collaborative work environment provides us the unique ability to conference every Plan of Action, and make sure that it is discussed amongst a team to make sure that we are making the best arguments for the reinstatement of each suspended Amazon Sellers' account we work on, and;
- Anthony Famularo, Esq., has likely written, read and/or edited more POAs than anyone on earth.

We help Amazon Sellers, not Amazon..

Our belief system and philosophy on helping suspended Amazon Sellers:

- Our job is to get you back to business, back online, and back to making money;
- We are on the Amazon Sellers' *side*: blindly following Amazon's policies is not in our job description; especially ones that are bad for Amazon Sellers!
- Our job is to provide you with advice so that you can make business decisions after assessing risk and reward, and to help you accomplish your goals.
- [We pay it forward by providing more free content, advice and guidance than any entity on earth.](#)

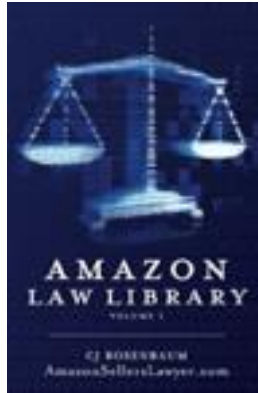


In addition to helping suspended Amazon Sellers, this book also discusses topics that are clearly against Amazon’s policies:

- Maintaining multiple accounts.
- New or “Ghost” accounts for those who cannot obtain reinstatement.
- Buying and selling Amazon accounts without losing rankings and reviews.

If you are an avid reader, or just want more specific information, we currently have several other books available:

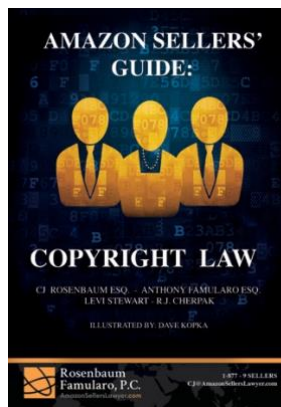
[*Amazon Law Library, Volume 1,*](#)
[a compilation and summary of over 500 hundred lawsuits,](#)
[where Amazon either sued or was sued](#)



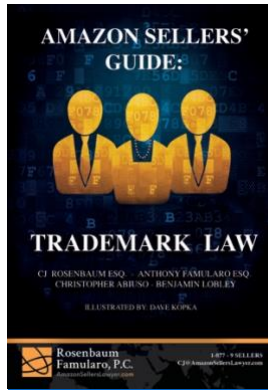
[Your Guide to Selling Fashion on Amazon.](#)



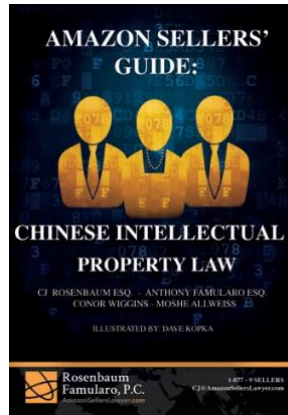
[Amazon Sellers' Guide to Copyright Law](#)



[Amazon Sellers' Guide to Trademark Law](#)



Amazon Sellers' Guide to Chinese Intellectual Property Law



Legal Disclaimer

This book is designed to provide educational information about how to avoid account and listing suspensions and how to recoup your selling privileges if your account or ASIN(s) are suspended. The content of this book is the sole expression and opinion of the authors. The authors and publisher are not offering this book as legal, accounting, or other professional advice. The authors and publisher make no representations or warranties of any kind and assume no liabilities of any kind with respect to the accuracy or completeness of this book's contents. Further, the authors and publisher specifically disclaim any implied warranties of merchantability or fitness of use for a particulate purpose.

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This book is intended to serve solely as a reference — you are responsible for your own choices, actions, and results.

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Chapter 1. Basics on Suspensions and Getting Back Online

Basic Types of Suspensions

There are two basic types of Amazon seller suspensions: [listing suspensions and account suspensions](#). Amazon suspends accounts for the main purpose of avoiding liability for (possible) infringement or various types of potential customer harm.

A listing suspension is when an Amazon seller is prevented from selling a single product, type of product, or brand that other Amazon Sellers are still able to sell. This is different from being blocked from selling brands that have been “gated” or restricted. When an Amazon seller suffers a single or multiple listing suspension, her account may take a hit, but the balance of the Amazon seller’s remains active — the Amazon seller continues selling products and Amazon continues to disburse funds from the sales. Listing suspensions impact Amazon based businesses, but they do not stop the businesses from operating.

When an Amazon Sellers’ account is suspended, Amazon sends the Amazon seller the dreaded e-mail: “Your selling privileges have been removed.” Once this happens, you cannot sell anything to anyone on that Amazon account (yes, many people have multiple accounts, despite Amazon’s prohibition against having more than one account without Amazon’s permission). When an Amazon Sellers’ account is suspended, Amazon often withholds the suspended Amazon seller’s money from sales made from the last distribution prior to the suspension up until the suspension. The Amazon seller gets hit hard: not only are they unable to earn any new money, or recover money already earned, additional costs can also be incurred during the suspension:

- storage fees;
- your note payments due to Amazon for loans you may have accepted are still due;
- your vendors still need to be paid;
- your employees all still need to be paid; and
- if you are using FBA, your products are in Amazon’s warehouses and “removal orders” are costly and your inventory is often returned piecemeal and damaged...if it is returned at all.

Intellectual property disputes are one reason for Amazon listing and Amazon account suspensions. Amazon Sellers receive rights owner complaints from brands and also from other Amazon Sellers. Often, the complainant mistakenly or purposely files baseless complaints. Complaints can be retracted by the rights owner, or sometimes disproved through Amazon's appeal process. In other cases, there may be legitimate infringement that can be amicably resolved.

There are several reasons for intellectual property complaints. The first type of complaint arises when a rights owner believes that a reseller's products are not authentic. Once notified, the accused party may be able to have the complaint retracted by contacting the complainant and providing invoices from his or her supplier proving the legitimacy of the goods. In this case, the complaint(s) are often baseless. However, if the rights owner fails to respond or retract, the Amazon seller may need to persuade Amazon that there was no intellectual property infringement to reinstate their account or listing. There is also a specific body of law in the US pertaining to copyright complaints and what the Digital Millennium Copyright Act defines as a "counter notice" that may also employ to address false complaints of copyright infringement.

A second type of complaint is one which alleges a specific type of infringement, but can be disproven by demonstrating there was no actual infringement. If this type of complaint is made, the Seller should contact the complaining party to ascertain a specific basis for the infringement complaint, and demonstrate that the listing in question does not violate anybody's rights. If the rights owner willingly retracts his or her complaint, then the Amazon seller will likely be able to continue selling products on Amazon. However, if the rights owner is unwilling to retract his or her complaint, it is unlikely that Amazon will reinstate selling privileges for that item unless a solid legal argument is made to persuade Amazon that the specific allegation is baseless.

A third type of case involves legitimate infringement allegations. These must often be resolved directly with the complainant. For example, when there is a legitimate claim for trademark infringement, the owner of the trademark must show that there is "likelihood

of confusion” between his or her trademark and the allegedly infringing mark, or that their trademark has been misused by someone who is not the rights owner. With this example, it is unlikely that Amazon will reinstate selling privileges for the accused listing, unless the dispute with the rights owner is resolved, or the allegedly infringing content is removed.

Most Common Reasons for Suspensions

The most common reasons for suspended Amazon Sellers’ accounts include:

- Inauthentic (this is often different from being accused of selling fake products);
- Used Sold as New;
- Baseless intellectual property right complaints (trademark, copyright, or patent);
- Related accounts (having more than one Amazon Sellers’ account);
- Forged or manipulated documents, and;
- Account metrics exceeding Amazon’s thresholds

CJ Update: There was a noticeable increase in the number of suspensions given to Sellers who participate in Seller Fulfilled Prime (SFP). Seller Fulfilled Prime can be a fantastic program because it allows your products to proudly don the “Prime” badge, which consumers tend to prefer and trust, without paying the extra fees that come along with being a FBA seller. Yet due to the high expectations of selling products with the Prime guarantee of receiving an order within two days, Amazon can be particularly strict with Sellers who participate in SFP. Consequentially, you must guard this privilege if you have it, as Amazon seems to be strict with SFP Sellers.

Basic Method for Reinstatement of Selling Privileges: the POA

In order to get your suspended listing or Amazon Sellers’ account back online, you must submit a “plan of action.” We refer to this formal correspondence as a “POA.” A POA is nothing more than an exercise in persuasive writing. The suspended Amazon seller must persuade the reader at Amazon to reinstate the listing or account. Remember, the Amazon workers who are reviewing your case have quotas of their own, and therefore spend limited time reviewing each POA. We confirmed this via our founding partner, CJ

Rosenbaum's numerous cross-examinations of Amazon's witnesses in multiple [arbitrations](#). In sum, a winning POA must be comprehensive, yet concise. In this book, you will learn how to [draft a POA](#).

There is a basic three-section format for drafting POAs:

1. Root Cause or Root Causes of the Issue at hand... What went wrong?
2. Immediate Corrective Action(s)... What actions have you taken to correct the problem(s)?
3. Long-Term Business Changes to prevent the issue or problem from reoccurring, also called "Systemic Changes to Business" ... What have you done as a seller to make sure the problem will not occur again in the future?

The first step of drafting a POA involves the seller explaining the root cause of the issue. *What went wrong?*

The "root cause" of the issues which resulted in your suspension is the underlying reason a customer, competitor, or rights owner made a complaint, or the reason behind a problem with your account that Amazon identified. Look at the email Amazon sent you informing you of the problem, or the performance notification. If it claims that your products are inauthentic, you need to focus on your sourcing; if your suspension is because of a high ODR (Order Defect Rate), you may need to identify what is causing the dissatisfaction amongst your consumers, late shipments, returns or other aspects of your business. A significant obstacle occurs when Amazon does not identify the problem. Maybe you sell dozens of products with dozens of ASINs, you have not received a complaint, and you simply cannot determine the root cause.

When Amazon fails to identify a reason for your listing or account suspension, the Amazon seller needs to identify her own root cause. Amazon requires suspended Sellers to perform a thorough self-analysis of its operations and/or products. When this occurs, you must take a step back from your business. You need to think deeply about your account and what could possibly be driving consumers to think your products are inauthentic, for

example. Consider everything about your product, including packaging and condition issues that customers may notice and dislike. *Put yourself into the shoes of the consumer.* Amazon refers to your self-analysis as a “deep dive.”

If you truly cannot identify the issue, then you should write a POA that describes what measures you are taking to ensure Amazon that you will not have issues in the future and that you will become better at servicing Amazon’s customers. There is always room for improvement. The submission of a plan on how you intend to improve your business often results in Amazon asking you to expand on a particular aspect of your plan, which often identifies the issue and thereby leads the Amazon Seller to the correct issue to address in the next POA and, ultimately, to the reinstatement of the suspended Amazon listing or suspended Amazon account.

Years ago, suspended Amazon Sellers, and the “consultants” that guided them or provided POAs to suspended Sellers widely believed that suspended Amazon Sellers should always admit to wrongdoing and then promise to remedy the error. Many Sellers and consultants still suggest that suspended Amazon Sellers should admit to some wrongdoing even if they did nothing wrong. We do not agree. We do not believe that suspended Sellers should admit to wrongdoing if they did nothing wrong. We do not believe that Sellers should admit to doing anything wrong unless they had a serious violation of Amazon’s rules, and the suspended Amazon seller is convinced that Amazon’s team is aware of the violation.

Instead of admitting wrongdoing, we suggest that suspended Amazon Sellers provide Amazon with a method of eliminating potential problems and becoming a better Amazon seller. This way, the suspended Amazon seller can target the prevention of specific issues, without creating a false record of offense. The difference is in the verbiage. The importance of not admitting to fault is addressed later in this book. Suspended Amazon Sellers should use Amazon’s fourteen leadership principles as a guide for identifying and implementing areas for improvement.

Next, the suspended Amazon seller has to demonstrate actions taken to correct the problem. The “Immediate Corrective Action” section refers to what you have already done to remedy the particular issue. Maybe you refunded the customer and sent them another product for free (this is highly recommended in almost every situation, as it is better to sacrifice one or two of your products and take that small financial hit rather than risk a prolonged suspension that could cost you thousands). Maybe you hired staff to help prevent the issue from re-occurring. Maybe you hired an attorney to counsel you on identifying the specific reason for any intellectual property issues. You need to provide Amazon with an immediate fix which is intended to rectify the customer’s or the complainant’s concern when they asserted the complaint.

Third,, the suspended Amazon seller should show/say what they have done to make sure the problem will not reoccur. For example, showing updated employee training, new methods of manufacturing, etc. The long-term changes, or systemic changes to your business refer to the alterations made to your entire business operation that will prevent similar issues from arising in the future. This is where you describe to Amazon how you made significant changes to your business to make it better, more efficient, more automated (to avoid human errors) and/or more responsive to Amazon’s customers.

CJ Update: Since the last publication of this book, the first POA that a seller submits seems more important than ever. We see a change in the tide where either a seller will get reinstated after their initial POA, or it takes a substantially greater amount of effort to get Amazon Sellers’ accounts or listings reinstated. We suggest that if you choose to write your first POA on your own, you should be absolutely sure it is exactly what Amazon is asking for, and that all necessary additional documents are sent with your initial POA. Nonetheless, understand that you are taking a risk that if your POA is denied, it may take great efforts to get your listing or account suspension lifted.

Remember to Tailor Your Response to Your Situation

Our firm writes the most persuasive POAs using our tried-and-true format. We know it works. But, to achieve these wins, it is imperative to avoid submitting a formulaic response. You cannot simply pull up a search engine, type in “plan of action template,” submit the first one that pops up on your screen, and expect your account or listing to be reinstated. You must think outside the box. You must say to yourself: *“How can I best demonstrate to Amazon that I am taking their claim seriously, and doing everything in my power to correct the situation?”*

Integral to this effort is the provision of supporting documents. Invoices, contracts, receipts, screenshots, even images directly from your supplier’s website can help prove your case. Suspended Amazon Sellers should submit solutions that fit the particular situation.

So, as a seller, what do you do when the complainant refuses to withdraw their intellectual property infringement complaint? If a complainant refuses to withdraw her complaint, the accused Amazon seller should hire an attorney with intellectual property experience. An attorney with intellectual property experience can take the following actions to have the complaint removed:

1. Draft a POA for the seller to submit to Amazon’s dispute resolutions team stating that the complaint is baseless and should be removed by disproving the infringement allegation, and;
2. Draft a legal opinion letter in support of the POA stating that the products are authentic and demonstrating that the complaint is baseless by again disproving the intellectual property allegation.

CJ's Side Note



A “Plan of Action” is the name of the document or email that you must send to Amazon if your account is suspended or you are prohibited from selling a particular product because of a violation of Amazon’s policies or a complaints about your activities. Plans of Action used to mostly be read by people in Seattle. Now, they are mostly read by people in India in cities called Bangalore, Hyderabad and Mumbai. They are also often read by people in Ireland and Costa Rica and, from time to time, the US and other locations.

CJ Update: Recently, the Amazon legal team has been [responding more often than in prior years](#). If your POAs, appeals, policy teams correspondence and whatever other measures taken fail, the next step that we take as the attorney for the seller is to reach out to Amazon’s legal team and explain why you are not violating intellectual property rights. Historically, Amazon’s lawyers would not respond to many of the attempts made to contact them, but now, it seems as though Amazon is making a greater effort to listen to its Sellers, and establish a better rapport.

BIG Changes to Amazon’s Suspension Policy

In June 2019, Amazon announced sweeping changes to its Business Services Agreement, the contract between Amazon and every Amazon seller. The new agreement, often referred to as the Terms of Service of “TOS” went into effect globally on August 16th, 2019. As previously, Amazon reserves the right to suspend your account at any time, and they are not even required to give you a reason why. However, after receiving thousands of complaints from suspended German third-party Sellers, The

Bundeskartellamt, Germany's antitrust authority launched a seven-month investigation into the matter and decided to finally stand up to Amazon's unfair and Amazon's utterly one-sided policies.

As part of the massive settlement, Amazon has agreed to give all third-party Sellers a 30-day notice before suspending their accounts, and they are supposed to provide a more specific reason for the suspension to the Sellers that are blocked for "alleged legal infringements."

Amazon has provided a redlined version of the new agreement on Seller Central, which is available for you to read. Originally, the exact verbiage of Amazon's grounds for termination in the BSA read, "We may terminate or suspend this Agreement or any Service for any reason at any time by notice to you." Our law firm has reviewed the August 2019 TOS and published detailed videos and articles about the changes to the contract.

The new version reads: "We may terminate your use of any Services or terminate this Agreement for convenience with 30 days' advance notice. We may suspend or terminate your use of any Services immediately if we determine that (a) you have materially breached the Agreement and failed to cure within 7 days of a cure notice unless your breach exposes us to liability toward a third party, in which case we are entitled to reduce, or waive, the aforementioned cure period at our reasonable discretion; (b) your account has been, or our controls identify that it may be used for deceptive or fraudulent, or illegal activity; or (c) your use of the Services has harmed, or our controls identify that it might harm, other Sellers, customers, or Amazon's legitimate interests. We will promptly notify you of any such termination or suspension via email or similar means including Seller Central, indicating the reason and any options to appeal, except where we have reason to believe that providing this information will hinder the investigation or prevention of deceptive, fraudulent, or illegal activity, or will enable you to circumvent our safeguards."

Clearly, this is a huge step in the right direction to preserve the livelihood of Sellers worldwide. Sellers will have more time to prepare and appeal suspensions. Yet unfortunately, this is not the remedy for all that ails Sellers. Even with the 30-day agreement, Amazon will still be able to immediately suspend an account under certain conditions, such as if a seller engages in illegal activity or harmful conduct. If a rival seller lodges a false complaint against you for illegal behavior, Amazon still has an ambiguous power to suspend your account, and they may not take the time or resources to actually look into the allegation that is placed. That again leaves you, the seller, fending to preserve your livelihood, and you are once again in the clutches of Amazon's unjust business practices.

Changes to the Amazon Services Business Solutions Agreement

We are making several changes to the Amazon Services Business Solutions Agreement. These changes will enter into effect in **30 days**, i.e., **August 16**. The changes are based on feedback from our sellers, and the key changes are summarized below:

1. **General Terms "Introduction"**: we are clarifying seller contractual obligations by defining a discrete set of [Program Policies](#).
2. **Section 3 "Term and Termination"**: we are adding more specific information about account suspension and termination and we are providing for a right to appeal such actions in certain circumstances.
3. **Section 4 "License"**: we are narrowing the scope of the limited license sellers give us to their intellectual property.
4. **Section 6 "Indemnification"**: the obligation to indemnify will apply mutually to both parties.
5. **Section 15 "Modification"**: we will provide advance notice when we modify the BSA, except where needed to protect customers.
6. **Section S-3.2 "A-to-z Guarantee"**: we will provide an express right to appeal our A-to-z determinations.
7. **Section F-7 "Returns to You and Disposal"**: we have revised the procedure for refusing, removing, or disposing of FBA inventory.
8. **"Selling Partner API Terms"**: we have streamlined the terms for our selling partner APIs, including Marketplace Web Services (MWS), distinguished the different terms that apply to sellers and developers, and clarified permissible uses of those APIs.

This list doesn't include all of the changes, so please review the updated agreement carefully; a redlined version is available here in [English](#), [Spanish](#), and [Chinese](#). And if you have questions, please reach out to Selling Partner Support. Your continued use of selling services after August 16 constitutes your acceptance of the updated agreement.

As always, our goal is to help you and all our selling partners continue to succeed with Amazon and grow your businesses around the world. Thank you for being an Amazon Selling Partner.



Time Limit for Submitting POA

Amazon’s suspension notices often place a time limit—what lawyers call a Statute of Limitations—on providing Amazon with a POA. We have seen Amazon place time limits on initial POAs ranging from twenty-four (24) hours to seventeen (17) days. Although we have still been able to appeal for the reinstatement of accounts after the statute of limitations or time expired (even years afterward), suspended Amazon Sellers should try send a POA to Amazon within the allocated time. After Amazon’s time limit expires,

the account will usually incur a "harder" block, and the appeals process can become prolonged and more difficult.

For example, if Amazon sends you an email notifying you that a POA is needed within seven days, even if you are planning on no longer listing the ASIN in question, you must respond within the time limit, or you risk losing your selling privileges. If you do not respond to these emails with *something*, even if it is a draft of a POA and a few receipts, you are putting your business in jeopardy. It is better to send in something to be reviewed that will allow you to establish an initial correspondence with Amazon rather than to fail to comply with Amazon's request.

In 2018 and 2019, up to, and including the time of the latest update of this book, Amazon has imposed 24-hour and 72-hour [deadlines](#). These deadlines caused suspended Amazon Sellers to send in poorly drafted POAs and appeals that lacked documentary support that could have been obtained if the suspended Amazon Sellers were allowed more time gathering documentation. These 24-hour and 72-hour [time limits](#) send Sellers into a panic which increases the likelihood of making mistakes when writing POAs. Short time limits also tend to preclude or limit Amazon's Sellers' ability to perform a "deep dive" investigations into the alleged issues.

Recently, a [client of ours](#) received three intellectual property complaints including trademark and counterfeit complaints. He received a 72-hour performance notification asking him to reach out to the rights' owner and send in a plan of action in that time limit. Our first step was to reach out to the rights' owners and see if they will retract the complaints. As we did this, we also wrote a strong notice dispute appeal which included our client's invoices, as Amazon always wants to see proof of authenticity.

The issue with this situation is that a 72-hour deadline might not allow the suspended Amazon seller to receive a response from the rights' owner within the imposed time limit. When this happens, we suggest providing a plan of action for the

notice dispute team stating you reached out and received no response, demonstrating your initiative. Provide screenshots of those emails too. Simply doing this will likely help your case.

If you completely miss the deadline, the good news is that Amazon usually fails to hold suspended Amazon Sellers to the short deadlines. Based on our experience with thousands of Sellers' issues, Amazon Sellers can still successfully send in well written and persuasive POAs after whatever deadline is imposed; as long as they provide accurate receipts, documents, and write an honest and persuasive POA.



Basic Submission of POA to Amazon- How to Submit?

Unless otherwise instructed, suspended Amazon Sellers can generally submit their POAs to Seller Performance through a button on the Amazon seller's dashboard. Suspended Amazon Sellers can also submit their POAs via email to the Amazon department that sent the suspension notice. Most Amazon account suspension notices come from Seller Performance. Most suspensions pertaining to product quality issues come from Amazon's Product Quality ("PQ") or Listings Evaluation teams. Intellectual property

issues are generally handled by the Copyright or Notice Dispute teams.

What You Can Expect in Response to Your POA

In response to your POA, you can expect one of three emails:

1. A request for more information. This is a very common response to an initial POA.
2. An email reinstating your listing or account (this is also very common).
3. An email stating that Amazon is not reinstating your selling privileges (don't despair yet, most Sellers can still submit additional appeals to the Policy Team, the Jeff Bezos' escalation team and, in some circumstances, to the legal department. Also, if Amazon refuses to reinstate your account or refuse to release your money or inventory, you can still file for arbitration against Amazon, and take the decision-making out of Amazon's hands).

How to Handle Requests for More Information

When Amazon requests more information, the notice usually comes in one of two forms: a request for specific information or a mind-boggling and frustrating request for all the information already provided in the initial or prior POAs.

When you receive a request for specific information, you should simply provide the information requested: no more, no less. If Amazon requests invoices or documents pertaining to a specific listing or ASIN, provide those documents and demonstrate that they include the requested information, nothing more.

When you receive a request for the same information you already sent in, the information often just needs to be reworded, reorganized, or better supported by documents. If you rewrite the POA yourself, remember that a Plan of Action is an exercise in persuasive writing. You need to carefully persuade Amazon that you have provided the information they requested, and there is no reason for them to have concern about your performance moving forward.

In some cases, Amazon might request information or documents you do not have readily available. In this case, **do not panic**. There are many ways to demonstrate to Amazon that your product is authentic, or that you have not violated policy. For example, a recent client had his account suspended due to accusations of selling inauthentic products. Although this client is well-respected and very thorough with his business dealings, he made the simple mistake of losing an invoice for one of his products which Amazon insisted be provided. Instead, through creative collaboration between our staff and our client, we were able to explain to Amazon in our POA that although we did not have the single invoice they requested, our client had taken appropriate initiative by discontinuing all relations with the former supplier and had already acquired a new distributor. With the new distributor, our client's account was reinstated and he was able to provide new invoices.

Chapter 2. Why Does Amazon Suspend Accounts

In order to identify why Amazon suspends Sellers, we must understand how Amazon thinks and operates. Amazon created the Fourteen Leadership Principles that are ingrained into their operations and are seemingly drummed into every Amazon employee. Per CJ Rosenbaum's interviews with dozens of Amazon's staff in India, the Leadership Principals are employed at every stage of working at Amazon. The Leadership Principals are discussed during the initial interview process (this information and more is available in our Secret Information from Amazon playlist on YouTube and in over a dozen articles on AmazonSellersLawyer.com). While Sellers should review all of Amazon's Fourteen Leadership Principles, only the specific Leadership Principles that should be cited in plans of action are discussed in this book.

Amazon's Number-One Leadership Principle: *Customer Obsession*

“Leaders start with the customer and work backwards. They work vigorously to earn and keep customer trust. Although leaders pay attention to competitors, they obsess over customers.”

The Customer Obsession leadership principle is the driving force behind Amazon's business model. This principle fueled Amazon's incredible growth. Amazon's customer obsession is behind everything the behemoth does. Every time it suspends a seller, it is under the guise of protecting the customers' future experiences.

CJ's Update: After having the unique opportunity to cross examine witnesses produced by Amazon in numerous arbitrations, it is clear that Amazon has successfully embedded its Customer Obsession leadership principle into its workplace culture. The people that were cross-examined, Mackenzie Smith, Ajeet Pai, Esq., David Amenayro, Heather Rosen, Tom Woodward and others seem to have Amazon's customer obsession embedded in their souls. The testimonies from the people that Amazon produces at arbitrations seem to be almost cult-like in their belief that nothing else matters as long as Amazon's customers are satisfied. I have heard multiple times that Amazon's team does not care about jobs lost, inventory destroyed or third-party Amazon Sellers at all if the consumer can be saved any amount of money. I have listened to a stomach-churning recording where Amazon's staff seemingly and callously disregarded hundreds of jobs being lost over petty perceived offenses to Amazon's theory of how businesses should be operated. The same cult-

like obsession was apparent when interviewing dozens of Amazon's staff in Hyderabad, India (at two different Amazon campuses). Jeff Bezos built an incredible corporate culture where Amazon's staff believes in the corporate mantra of customer obsession.

Customer obsession is why Sellers must be nearly perfect and why Amazon seems to fiercely punish Amazon Sellers who make reasonable mistakes or are accused of errors. If you are perfect or perceived as perfect, the customer obsession is upheld. If you are punished severely for slight infractions or in many cases baseless complaints, other customers will not experience issues and other Sellers will work harder to stay in line.

It is amazing how perfect Amazon Sellers have become over the years. In traditional retail, a 20% return rate was acceptable—this was seen as a cost of doing business. On Amazon, Sellers need to have an ODR rate (“order defect rate”) of 1% or less to avoid suspensions.

CJ's Side Note



If Customers are #1, What Are Sellers?

Since customers are what Amazon obsesses over, what importance do sellers have to Amazon? If you are asking this question, you are likely relatively new to Amazon. Sellers are replaceable. Sellers do not matter because there are 10 or hundred or more sellers to take your place. Sellers, large and small, all seem to know that they are meaningless and valueless to Amazon. Sellers are not customers.

Amazon's customer obsession supports its tendency to take the customers' side against Amazon sellers in just about every dispute. If a customer complains about a product, it's a mark against the Amazon seller—even if there was nothing wrong. If there are reoccurring complaints, Amazon may [suspend](#) the seller's listing or even his or her entire account. When a seller has either a listing suspension or an account suspension, Amazon requires the suspended seller to provide a detailed plan of action addressing the consumer complaints, the perceived errors, or whatever issue Amazon wants addressed. In multiple interviews of Amazon's staff in India, there were statements that Amazon sides with the consumers in all but one out of a thousand issues.

The first thing Amazon Sellers should learn from this book is that once there is a complaint, Amazon sees it as the seller's responsibility to identify what they can do to stop receiving those types of complaints. What can be changed so that Amazon's customers do not report the same issue in the future—even if no issue actually exists. Suspended Amazon Sellers should remember that unanswered buyer complaints lingering on their account health likely prolong the suspension of their account or listing and/or place their account at a greater risk of suspension.

CJ's Side Note



I have heard people speak about customers being held accountable for abusing the returns policy or other conduct, but I have personally never seen or heard of a buyer being suspended....neither have any of the attorneys that work for my law firm, lawyers that I work with that represent big brands or any of my staff, family or friends. Even my father who, despite my requests to stop, regularly buys three sizes of all items with the plan of returning two of them, has never received any notice from Amazon about his excessive returns. Dad – please stop hurting sellers.

CJ Update: Considering that our firm has helped thousands of suspended Amazon Sellers around the world, and we have spoken to hundreds of Amazon consumers, it is shocking that we still have not personally heard of any consumers being banned from Amazon for falsely harming Sellers. When updating this book, I also polled our team of 30+ people. Nobody on our staff has heard of any consumers facing consequences for repeatedly asserting baseless complaints or repeatedly leaving poor feedback against good Sellers with perfect product delivery. Consumers who serially purchase and return products or assert baseless complaints still seemingly do so without any repercussions from Amazon. Amazon continues to suspend Sellers due to complaints from consumers that they know are likely baseless. Also, from the arbitrations we handle for suspended Sellers all over the world, we have seen firsthand that Amazon is aware that certain consumers are clearly pulling scams, yet they will wait until an actual arbitration hearing occurs to withdraw those complaints

against the suspended seller. In one particular case, an Amazon seller was suspended and Amazon refused to release his money because a consumer ordered ten iPhones and then asserted a false complaint against the seller and returned broken iPhones. That was the basis for the suspension. Amazon's witness at the hearing admitted that the iPhone complaint was baseless...although Amazon's lawyer maintained the charade. We won that case; Amazon was compelled to issue a check for over \$50,000.00.

CJ's Side Note



Plans of Action generally need three sections to work: root cause of the issue, immediate fix to the issue and long-term correction to the business to prevent the issue from occurring again. The problem is that when a seller is suspended, he or she will say whatever it takes to get reinstated. This includes creating "root causes" of the problem when the issue had nothing to do with the product and, instead, the "root cause" of the problem was a customer that wants to scam a free product.

Amazon Leadership Principle: *Ownership*

"Leaders are owners. They think long-term and don't sacrifice long-term value for short-term results. They act on behalf of the entire company, beyond just their own team.

They never say, ‘that’s not my job.’”

This “leadership principle” seems to play a role in Amazon seller suspensions because in order to obtain reinstatement, you must accept responsibility for the issue, whether you believe it exists or not. For example, if your account is suspended for “inauthentic” or “used sold as new” or any other category, you need to find the actual reason you were unable to prevent the issue which caused the suspension.

When your listing or account is [suspended](#) for “inauthentic” or “used sold as new,” products, you must take responsibility or “own” the choosing of your suppliers, and submit the invoices that show where you purchased your products. Amazon wants to verify that you can trace the chain of suppliers back to the manufacturer, which indicates that the customer did in fact receive an authentic product in new, manufacturer condition. Once Amazon verifies that your supply chain is legitimate, you will likely need to find some other factor that caused the complaint, like poor packaging that resulted in a customer receiving a damaged product, or changes in manufacturer product appearance, that made the customer perceive the product as “inauthentic” or “used.” Then, instead of admitting to failure, identify a method of improvement to avoid the problem in the future, like improving your packaging, or changing your supplier. Your process, inventory, and/or business model should be described as fundamentally better for the next Amazon customer who receives your goods.

Helpful Amazon Seller Definitions:

Inauthentic. An “inauthentic” Amazon seller suspension does not necessarily mean that Amazon is accusing the suspended seller of selling fake or counterfeit goods. “Inauthentic” means that Amazon wants to verify documents demonstrating where the suspended seller sourced his or her goods.

Sourcing. Sourcing is a trade term that refers to where Amazon Sellers obtain their inventory. Sourcing includes obtaining inventory from brick and mortar stores (“retail arbitrage”), from online retailers (“online arbitrage”), fulfilling orders via other websites

or companies (“drop shipping”), traditional wholesalers or distribution agreements and having products manufactured for yourself.

[Retail Arbitrage](#). Sourcing products from traditional retail stores, usually from discount racks or sales. Countless Amazon Sellers, small and advanced, started and/or continue their Amazon seller businesses by identifying products for sale in traditional retail stores that can be resold on Amazon at a profit. A typical example is leftover and heavily discounted summer goods located in stores in the northeast portion of the United States during the winter that can be sold to consumers in the warmer areas of the country at full price.

Online Arbitrage. Online arbitrage is where Amazon Sellers source or purchase their inventory online. Online arbitrage includes buying from brands’ websites, online liquidators, eBay, Amazon, etc. Sellers should be aware that Amazon frowns upon buying products on Amazon and then reselling the inventory on Amazon.

[Drop Shipping](#). Drop Shipping is where a seller never actually owns the products he or she sells on Amazon.com. The seller lists him or herself on an Amazon listing and then when he or she obtains an order, they go online or otherwise arrange for the product to be shipped to the consumer, directly from the supplier. The Amazon seller only “purchases” the product after an order comes in. While some types of drop shipping are acceptable, Amazon requires Sellers to be the seller of record on all packing slips, invoices, external packaging, and other information included or provided in connection with them. As such, some types of online retail arbitrage that Sellers refer to as “drop shipping” are an Amazon policy violation. Amazon identifies and weeds out drop shipping policy violators via requests for invoices for products that pre-date the customer’s order. If the Amazon seller is not purchasing the product in advance, the dates on the invoices will not pre-date the customer’s purchase, and the Amazon seller will not be the buyer of record on the invoice.

[Distribution Agreements](#). Distribution agreements are contracts between brands or

wholesalers and Sellers. The contracts usually identify the seller as “authorized.” Generally, Amazon does not enforce distribution agreements, and the First Sale Doctrine generally protects Amazon Sellers from claims arising under the existence of distribution agreements (there are some exceptions to the First Sale Doctrine, which are touched upon later in this book, in our books on Trademark Law for Sellers, Copyright Law for Sellers and in dozens of videos and articles on our website and YouTube channel). There are also certain situations where distribution agreements can be enforced against Amazon Sellers. Under a legal theory called “tortious interference with contract,” Sellers can be compelled to stop selling products.

MAP Agreements. MAP stands for “minimum advertised price.” MAP agreements are contracts that limit the signatories to the MAP agreement ability to advertise pricing. In 2007, the United States Supreme Court held in a case involving leather goods that MAP agreements are generally unenforceable unless you actually signed the agreement.

Authorized versus Unauthorized Sellers and the [First Sale Doctrine](#). An “Authorized” seller” is a person, or a company, that has a brand’s written permission to sell its products. An “Unauthorized seller” is an Amazon seller that lacks the brands permission. The First Sale Doctrine is US Law that states that anyone can buy and resell just about any product they want, with or without the brand’s permission as long as the consumer receives products that are not “materially different” than products sold by the brand itself. Since the First Sale Doctrine is solely a US Law, it doesn’t exist in the UK or other countries around the world.

CJR Update: There is a law firm called [VORYS](#) that sends third-party Sellers around the world threatening letters stating that they cannot sell items. This claim is usually nonsense. If ANY reader receives a “VORYS letter,” please contact us. We have addressed dozens of VORYS letters and hundreds, if not thousands, of their baseless claims against Amazon Sellers. Nonetheless, there are some valid claims that VORYS is making that you should be aware of. For example, if the warranty of your product is not intact because the product is being purchased from you instead of an authorized

seller, this may be a basis for VORYS to take legal action against you. Furthermore, VORYS has begun taking default rulings against Sellers who do not respond to their lawsuits, so be wary if you are contacted by them.

VORYS

**Vorys, Sater, Seymour and Pease LLP
Legal Counsel**

Here are some of the baseless claims that VORYS has asserted against Sellers:

- **Product sourcing:** There is no law that forbids you from purchasing items from a department store and reselling them. In fact, this is protected under the First Sale Doctrine.
- **Unauthorized seller/unauthorized to sell on certain sales channels:** Unless outside of the First Sale Doctrine, there is nothing that can stop you from buying a product and selling it without authorization. Generally, Sellers do not need authorization to sell on Amazon, the only instance where this occurs is if the product is brand gated. This also applies to reseller agreements. You don't need a reseller agreement with any brand unless there's something that takes the product outside of the First Sale Doctrine.
- **Company policies and brand confusion:** Company policy is not a legal claim. As long as you are buying and reselling genuine products, there is no confusion or company policy you need to abide by.

Amazon Leadership Principle: *Learn and Be Curious*

“Leaders are never done learning and always seek to improve themselves. They are curious about new possibilities and act to explore them.”

Amazon expects their Sellers to remain up to date on all their new policies. If you fail to maintain your account in compliance with the new policies, you will be at risk for

suspension. It is your job to make sure you know what the rules are and how to follow them. We have often seen Sellers suspended when there were updates to Amazon's policies, and the seller was not aware, or they ignored Amazon's warnings in favor of habit. Pay attention, learn, and be adaptable.

This principle also plays a role in your "Long Term" or "Systemic Changes to Your Business" portion of your plans of action. You should always, as a business practice, be eager to find new ways to improve your business. If you are suspended, this means you must not only follow this principle but also actually demonstrate how you have followed this principle. Show Amazon you have explored new possibilities of improving your business.

*Amazon Leadership Principle: **Hire and Develop the Best***

"Leaders raise the performance bar with every hire and promotion. They recognize exceptional talent, and willingly move them throughout the organization. Leaders develop leaders and take seriously their role in coaching others. We work on behalf of our people to invent mechanisms for development like Career Choice."

This principle comes into play when writing your "Long Term" or "Systemic Changes to Your Business" section within your plan of action. You should demonstrate you are hiring the best people to work within your business. Sometimes, this requires hiring extra personnel to double and triple check invoices and listings to ensure they 100% match the items they describe, or to make sure all the packaging is intact when the product arrives at the customer's door. Show Amazon perfection is a goal your business aims to achieve. **Do as Amazon does: achieve better customer satisfaction by hiring the best people you can find.**

*Amazon Leadership Principle: **Insist on the Highest Standards***

"Leaders have relentlessly high standards—many people may think these standards are unreasonably high. Leaders are continually raising the bar and driving their teams to deliver high quality products, services and processes. Leaders ensure that defects do not get sent

down the line and that problems are fixed so they stay fixed.”

Similar to the “ownership” principle, insisting on higher standards also plays a role in your plans of action and reinstatement. When there is any suspension of a listing or your account, your plan of action must describe how your already well-run business runs even better. If a supplier consistently causes problems, that supplier relationship should be terminated. **You must show Amazon changes, short and long term, that will prevent similar problems from arising in the future.**

Amazon Leadership Principle: *Earn Trust*

“Leaders listen attentively, speak candidly, and treat others respectfully. They are vocally self-critical, even when doing so is awkward or embarrassing. Leaders do not believe their or their team’s body odor smells of perfume. They benchmark themselves and their teams against the best.”

The “Earn Trust” principle seems to be how Amazon’s people read your plans of action. Plans of action should be candid, concise, and persuasive.

- In order to “listen attentively,” listen or, more accurately, read the suspension notice “attentively” and respond to what the notice seeks. Do not provide extraneous information. Just provide what is sought.
- When it comes to your POA, “speak candidly” means you should describe clearly what the problem was within your business. If your staff failed to package your product correctly, say so. If you need more staff to compare your product to the listings or someone to double check your photographs, admit to it and say it concisely.
- “Treating others respectfully,” means your plan of action should not insult or blame anyone, especially the customer. Even if you think the issue is entirely the result of a customer trying to scam free merchandise, don’t express this in your POA. Your POA must match Amazon’s “respect” and “obsession” for each and every customer. This means you are not to blame the customer for anything. Likewise, “treating others respectfully” means you should never write anything bad about

whomever might be reading your POA. For example, you might feel strongly that the people in India earning \$500 per month should not be deciding the fate of your multimillion-dollar Amazon business. It would be very foolish to write anything that reflects those feelings in your POA. Treat the reader of your POA and all customers with respect...whether you mean it or not.

CJ's Side Note



Your POA is nothing more than an exercise in persuasive writing. You are trying to convince the Amazon staff in India, Costa Rica or Ireland to reinstate your account. Do not insult the person who you want to persuade. Do not insult Amazon in your POA. This seems simple but, I cannot count the number of times my law firm was retained after the seller submitted POAs on their own that were insulting or demeaned the reader or Amazon. Remember the goal of your POA: convince the reader at Amazon to reinstate your listing or account. Remember that “you catch more flies with honey than vinegar.” Also, make your POA concise. People from India have confirmed that the staff in India that are reading your POAs have minutes to review your POA and decide to either: reinstate, request more information or deny. You need to convince them to reinstate quickly.

Amazon Leadership Principle: *Dive Deep*

“Leaders operate at all levels, stay connected to the details, audit frequently, and are

skeptical when metrics and anecdote differ. No task is beneath them.”

When it comes to POAs and obtaining reinstatement, “dive deep” means the seller thoroughly investigates whatever issue is brought to the seller’s attention. When you decide what you are going to blame the issue on, state in a few words how you identified the “root cause” of the problem by “diving deep” into your business activities. State to Amazon you followed their principle. Use the words Amazon within the performance notification to convince the reader of your POA that you are responding to exactly what was asked.

Your deep-dive analysis of your own business should also include getting into the nuts and bolts of the business. Amazon’s mantra about there being “no tasks beneath...” anyone is important. The owner of the account should have no problem reviewing the shipping department. If getting into the details is OK for Jeff Bezos, it is OK for you to make sure your packaging is sufficient.

Amazon Leadership Principle: *Deliver Results*

“Leaders focus on the key inputs for their business and deliver them with the right quality and in a timely fashion. Despite setbacks, they rise to the occasion and never settle.”

Work this leadership principle into the verbiage of your POA. It is easy. All you need to do to mimic this ideal is use Amazon’s words. The reader will recognize the key words because these key words and phrases are essential to working at Amazon: they were part of Amazon’s initial interview process, initial training and ongoing training. The Leadership Principles form the basis of promotions within Amazon. Let the reader know the changes you already made to your business changed the “key inputs” of your operation so all customers receive “right quality” products “in a timely fashion.” That “despite the setbacks,” you and your staff are rising to the need of providing better “customer experiences” and that you “will never settle” for anything less than perfect customer experiences. Keep your goal in mind: persuade the reader at Amazon to reinstate your listing or account. To persuade the reader, use the words and principles you know they seek and that will resonate with your reader.

CJ's Side Note



A New Orleans lawyer that had a profound effect on my career told me years ago that “it is easier to ride the horse in the direction that it is going.” This means that you should give the reader of your POA what they want. Write your POA in their direction they are already going. If you want to sell on Amazon’s platform, you need to go with their flow: give the decision makers what they are trained to look for. You don’t have to actually believe in Amazon’s principles, just get yourself back in business.

If you have been suspended and want to [draft your own plan of action](#), you need to know what Amazon’s staff is looking for when they are reading: are you providing the information Amazon wants? Amazon’s staff in the United States, India, Ireland, and Costa Rica are trained on Amazon’s leadership principles. When they read your plan of action, reinforce what they already know.

*Plans of action used to be mostly read by people in Seattle.
Now, they are mostly read by people in India, in cities called*

Bangalore and Hyderabad. They are also often read by people in Ireland and Costa Rica and, from time to time, the United States and other locations.

In addition to the fourteen leadership principles, Sellers must also recognize that Amazon considers all customers to be Amazon's customers. Amazon Sellers, according to Amazon, do not have their own consumers. The consumers belong to Amazon.

As such, when contacting Amazon, recognize Amazon's "ownership" principle and bow to it—do not claim you are doing a great job or service for "your" customers. Amazon trains its staff to believe that the customers are Amazon's, not the third-party seller's customers. This is important to Sellers because practically all suspensions arise from what causes or might cause a problem for Amazon's customers.

CJ's Side Note



If Customers are #1, What Are Sellers?

Since customers are what Amazon obsesses over, what importance do sellers have to Amazon? If you are asking this question, you are likely relatively new to Amazon. Sellers are replaceable. Sellers do not matter because there are 10 or hundred or more sellers to take your place. Sellers, large and small, all seem to know that they are meaningless and valueless to Amazon. Sellers are not customers.

Amazon's obsession with its customers results in Sellers extremely high expectations and requirements for third-party Sellers.

Common Issues in Retail	Traditional Retail	Amazon
Returns	10–20%	Under 10%, varies depending on category
Intellectual Property Issues	If there was any alleged infringement, the complaining party had to go to court and convince a judge that there was some	Upon any complaint, any seller can suffer a suspension of all their selling privileges or be prevented from selling

	infringement before a traditional retailer was directed to stop selling any particular product.	that product. Amazon then compels the retailer to obtain the retraction of the complaint.
Changing Locations	Rent a store from any landlord.	Amazon controls 50% of every dollar spent online in the United States. There is no comparable space from which to conduct business in the United States.

We all start businesses to make money, obtain freedom, and achieve success. To be successful, we need to check our performance regularly and track and correct our errors.

The same issues apply to selling on the Amazon platform. In order to satisfy its customers, keep its business running smoothly, and to help Sellers remain successful, Amazon has set and reset certain goals or “metrics” which it requires Sellers to abide by in order to continue exercising their privilege of selling on the Amazon platform. Amazon created its Seller Performance team for the purpose of evaluating whether Sellers on the platform are meeting the requirements and metrics set by Amazon.

Amazon broadly classifies its goals or metrics for Sellers as follows:

- [Order Defect Rate](#)
- [Late Shipment Rate](#)
- Cancellation Rate
- Policies related to trading through Amazon.com

What is an Order Defect Rate?

When an order has been shipped out from the seller’s inventory to the customer, and the product receives either negative feedback, an A-to-Z Guarantee Claim, or a Service Credit Chargeback, then the product is considered “defective” by Amazon’s standards.

Amazon calculates this metric in terms of the number of orders with a defect

divided by the number of orders received during the time period of interest. This metric holds significant weight with Amazon because it directly correlates to the ability of a seller to provide a positive customer service experience. If the seller's order defect rate exceeds the 1% target, the seller will have to provide a plan of action.

If you are a seller that is getting notifications from Amazon that your ODR is high, do not wait to take action until your account is suspended. Often Amazon will give a seller a few warnings before suspending the account, but you should address the situation as soon as you are made aware. These issues are evidently more common among merchant-fulfilled Sellers, not those who use [FBA](#) (Fulfillment by Amazon). Although FBA is a pricier service, you should consider switching services if you are consistently experiencing issues with your ODR and currently are a merchant-fulfilled seller.

What is Amazon's Late Shipment Rate?

Usually when a customer places an order, there is always some type of shipping method. Each shipping method typically provides an expected shipment date. Consumers are informed when the product should arrive. When Amazon Sellers fail to meet the expected arrival date, these orders fall under the late shipment category.

The late shipment rate is calculated according to the number of seller-fulfilled orders with a ship confirmation which is completed after the expected ship date divided by the number of seller-fulfilled orders processed during the same period of time. Amazon typically requires all Sellers maintain a late shipment rate below 4%. If the seller's late shipment rate exceeds the 4% target, Amazon will request for a plan of action. If you are consistently shipping your products late and are a merchant-fulfilled seller, you should also consider switching to FBA.

What is Amazon's Cancellation Rate?

Amazon creates a listing of the items on its website according to the description of the inventory provided by the items' corresponding seller. Sellers must maintain accurate records of its inventory and fill orders accordingly. Where an order cannot be fulfilled and is cancelled by the seller, their Cancellation Rate increases. Amazon holds cancellations

against Sellers.

Typically, the cancellation rate is calculated by the number of orders canceled by the seller prior to ship-confirmation divided by the number of orders processed during the same time of interest. When computing this metric, Amazon considers all order cancellations initiated by the seller for any reason.

CJ's Top Four Ways to Avoid a Listing/Account Suspension

1. *Do not sell generic products on a branded listing.* This is a huge source of suspensions for Amazon Sellers all over the world. When you sell a generic product on a branded listing, this constitutes ground for suspension because you can threaten the wellbeing of the original brand selling that product. Consumers may not be aware that they are not purchasing directly from that brand, and if issues arise over the product, that company, and not your own business, may face the backlash. “What a brand does is allow you to build a reputation,” says Kerry McDonald, a senior managing paralegal here at Amazon Sellers Lawyer. “Not just for the actual product, but for your service and the overall quality of your business.” Selling a generic product on a branded listing may spring Amazon to action—you will likely be suspended, and it probably won't be just that listing, but instead your entire account.
2. *Source your products from reliable sources.* They say that if you want something done right, do it yourself. Well, that can be difficult if you are overseeing a company that sells thousands of products to consumers around the planet. For this reason, you must trust the people working under you, so that your customers are getting quality products that **exactly** match the detail page. This is especially vital if your products are shipped directly from your source to FBA (Fulfillment by Amazon), or if you do not have the time or resources to check every single shipment. If you are trusting your source to inspect every product for perfection, and to then ship your products directly to FBA, understand that the health of your account lies heavily in the hands of your source.
3. *Confirm that your products, when shipped to the door of the consumer, are*

identical to the product they would receive if they were to purchase it at a brick and mortar store. Many products, especially health and beauty products, often change their packaging from time to time. For example, a customer may see a product in a drugstore which they desire, and instead choose to order it on Amazon from you. If the product is packaged differently or has a slightly different appearance whatsoever, this can arouse suspicion or cause consumers to believe your product is illegitimate, even if it is 100% authentic.

4. Be extra careful when joining a listing that might have outdated photographs or images, even if you did not create that listing. If you join, you may want to alter that listing if you have the capability. We are noticing more suspensions of Sellers, both account and listing suspensions, for jumping on detail pages that are out of date because the packaging has changed, or the description is simply no longer applicable. So, Amazon Sellers: be **extra careful** when getting on someone's listing. Make sure the listing matches exactly what you're going to deliver to that consumer.

Chapter 3. MAP Pricing



A [Minimum Advertised Price](#) (MAP) is an agreement between a manufacturer and a reseller. Manufacturers inform their distributors and retailers of a set price and their retailers may not sell below their set price. However, there are no restrictions on how much higher the seller may set a price. This is done to protect the manufacturer from the product being sold at a lower price than the brand wants. It protects profit margins and hurts retailers and consumers. MAP pricing hurts retailers because they wind up with inventory they cannot sell and harms consumers by inflating costs of goods.

Manufacturers have been told that they should try to impose their price restrictions broadly. In fact, one of the largest groups of corporate lawyers has told manufacturers that MAP pricing imposes extra clicks on customers, like “call for pricing” or “add to cart to see price”. We know though that extra clicks means customers will purchase less overall, and that means less money for Sellers.

In fact, corporate America was told by their lawyers, the American Bar Association,

that “internet and other discounters...” are “free riding”. Believe what you may, but our clients are **not** free riders. Amazon Sellers are the frontiersmen who completely reimagined not only the American consumer experience, but e-commerce worldwide. You keep our economy alive when corporate America provides poor service and prices that are too high for working people.

In a United States Supreme Court case, *Leegin Creative Leather Prods. v. PSKS*, the court found that, “The manufacturer instituted a retail pricing and promotion policy, refusing to sell to retailers that discounted its goods below suggested prices. The United States Supreme Court decided to overrule the per se rule and determined that vertical price restraints were to be judged according to the rule of reason. The rule of reason was the appropriate standard to judge vertical price restraints and vertical minimum resale price maintenance agreements because (1) pro-competitive justifications existed for a manufacturer’s use of resale price maintenance, (2) the primary purpose of the antitrust laws was to protect inter-brand competition, (3) administrative advantages were not sufficient in themselves to justify the creation of per se rules, and (4) stare decisis did not compel the Court’s continued adherence to the per se rule¹.”

¹ *Leegin Creative Leather Prods. v. PSKS, Inc.*, 551 U.S. 877 (June 28, 2007).

CJ's Legalese to English



In the *LeGion* case, the United States Supreme Court stated that MAP agreements were not enforceable except against the people and companies that signed them. There is an exception: if the product is something that is really important and the courts think that price levels should be maintained to promote important innovation, then it might enforce the MAP pricing against people who did not sign it. For example, if a manufacturer has a life saving device, then the court might not let people undercut prices by obtaining grey market goods. However, if you are selling a particular brand of shoes, make up or running shirts, then there is no reason to hold anyone to a contract they never signed.

MAP agreements have been the source of a significant amount of baseless complaints against Amazon Sellers. In fact, Amazon states in its emails to companies who assert MAP complaints it does not enforce these types of agreements.²

So, what do manufacturers and brands do instead? They assert [baseless intellectual property right complaints](#). These are also called “right owner’s” complaints. Although

² “Report Infringement” <https://www.amazon.com/report/infringement>

baseless, a failure to address these complaints may still result in an account suspension, so it is always suggested to tackle the issue as soon as it arises.

Many manufacturers and brand managers seem to be unaware of the extent of damage they cause to Amazon Sellers when they assert baseless complaints. Those who do not sell on Amazon seem to be unaware of how poorly Amazon treats its Sellers. Most manufacturers, their brand managers, and even their lawyers seem to be unaware that when they assert these baseless intellectual property right complaints, they put single moms, veterans, and small and large stores out of business.

When Amazon suspends a seller's account based upon a baseless intellectual property complaint, Amazon requires Sellers to contact the complainant and try to persuade them to withdraw their complaint. When handling these situations, we typically approach a manufacturer, brand manager, or lawyer in three steps:

1. We send an email explaining the magnitude of their allegation and explain why their complaint is baseless under US law. We politely ask the brand to withdraw their baseless complaint. We explain to the complainant that the Amazon seller was not infringing on any intellectual property rights. We provide a point-by-point analysis of intellectual property law which explains there was never any: trademark, patent, trade dress, or copyright violation. Majority of the time, we are able to negotiate with the brand and obtain withdrawals of baseless complaints.
2. When the brand refuses to withdraw their baseless complaint, or ignores our first letter, we then send a second letter. This time, we explain the legal ramifications of their refusal to withdraw their baseless complaint. The brand is politely (maybe not quite as friendly as the first letter but still politely) informed that as the party making a claim, they must show first and foremost they have

obtained a valid trademark, trade dress, copyright, or patent protected under the USPTO. When push comes to shove, the brand must establish certain elements in order to be successful in a claim against an Amazon seller. For example, if the complaining party alleged trade-dress infringement, they must show that the Amazon seller caused a likelihood of customer confusion.

If a brand accuses a seller of selling counterfeit products, and the product is genuine but being obtained through holes in the brand's distribution system, then there is no counterfeiting. Once a complaining party is made aware of their mistake and how they fail to meet the legal elements to have a claim against a seller, they will usually remove their complaint.

3. There are stubborn brands who ignore our letters. They do not care that their complaint is faulty; they do not care that they are putting someone out of business. What do they care about? Making money by thwarting competition. Our third letter to brands who refuse to remove their complaints informs them that the actions they are taking may lead to their own serious implications : we let them know that their heads are on the chopping block. For example, if the brand is selling on Amazon, and we can show that their complaint is merely stopping competition and raising prices for Amazon's consumers, then their Amazon account is at risk. Amazon Sellers are not supposed to assert or maintain bogus complaints. Amazon protects their customers against all, including brand managers. Many of these instances can be classified as "tortious interference with contract". It essentially means that another business or person intentionally interferes with the business practices between two parties, knowing they have no legal basis to do so. Consequentially, that interfering party may have action taken against them. Also, in

our third attempt to persuade the brand to withdraw their baseless complaint, we explain how the brand may be liable for our seller's damages. Brand managers are often unaware they are subjecting their brand to potential litigation and really bad press if they refuse to withdraw their baseless complaint.

4. We also employ certain provisions of United States Federal Law to compel brands to maintain their records because of the possibility that our clients will sue them.
5. We also employ OTHER TACTICS including litigation if it is worth it, press releases to pressure brands, political pressure...our arsenal continues to increase as time goes by and we help more Sellers.

More and more manufacturers are filing complaints they know are baseless, just to kick off Sellers who violate MAP agreements. There is a hole in their distribution, and while they need third-party Sellers, they are still willing to kick them off if they do not follow the MAP agreement. We have seen eyeglass companies go after third-party Sellers regardless of whether these businessmen and women are selling authentic items. Amazon is a tricky marketplace to navigate, but fortunately, most manufacturers who file fake complaints are willing to remove them once they are aware of their offense.

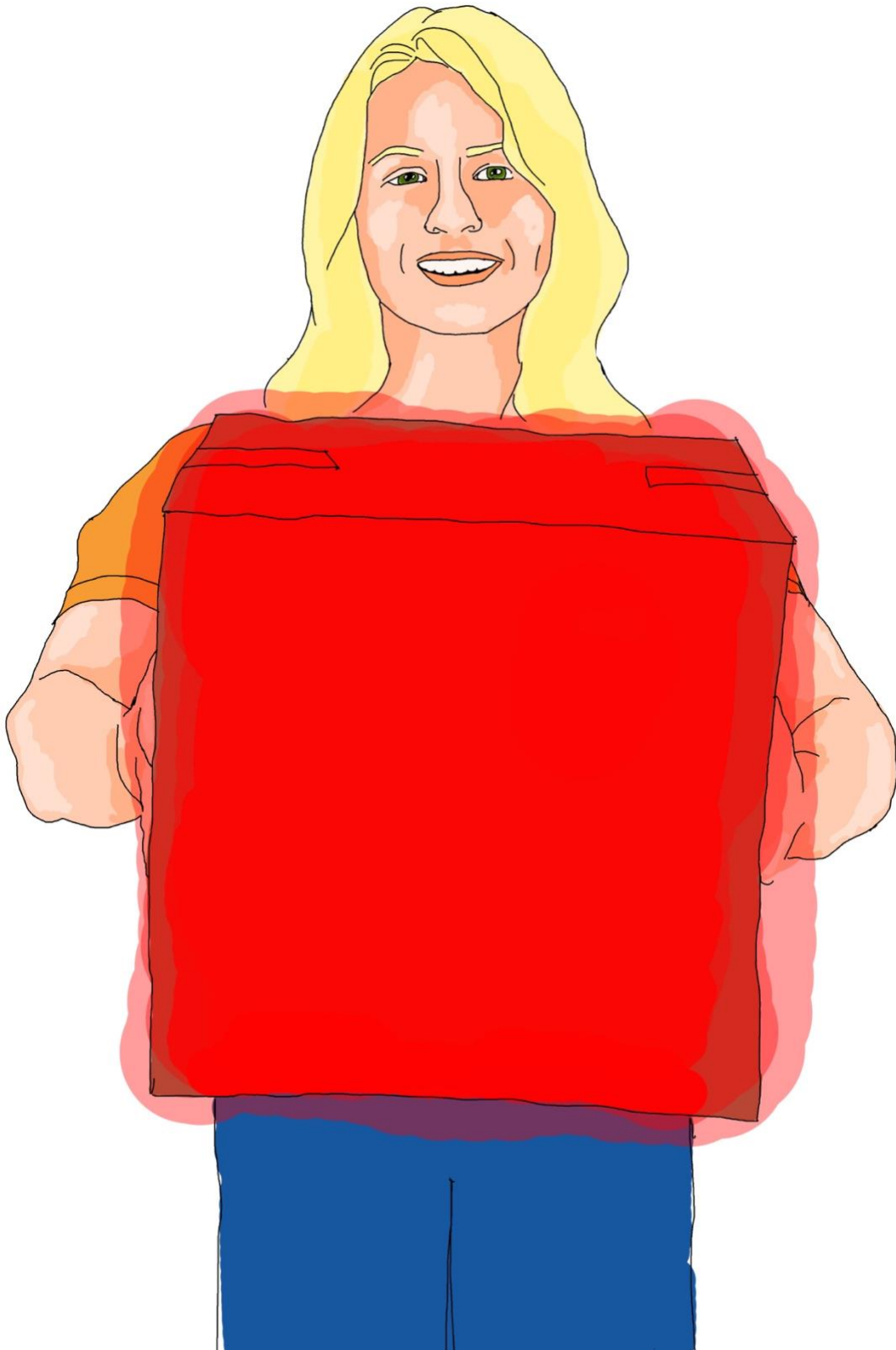
Amazon is even clear that it does not enforce these contracts on its selling platform and it does not enforce violations of private agreements as intellectual property infringement issues. In fact, the following statement appears on their "report infringement" webpage:

***Exclusive or Selective Distribution:** Amazon respects a manufacturer's right to enter into exclusive distribution agreements for its products. However, violations of such agreements do not constitute intellectual property rights infringement. As the enforcement of these agreements is a matter between the manufacturer and the retailers, it would not be appropriate for Amazon to assist in enforcement activities.*

If you decide to sign a MAP agreement, it is important to know you may still be accused of intellectual property violations on Amazon. Fortunately, there is hope. Make

sure you have invoices and documents to first demonstrate you are in the business of selling authentic items. Your next step would be to hire an experienced attorney to handle the legal issues which could arise. Do not try to handle your legal issues alone. Even if you did not break the law, you are still accused of breaking the law, and an attorney will know how to demonstrate to a manufacturer that you have not violated any intellectual property rights. Once a complaint is removed, you will need to show in your plan of action that the complaint was removed, the party has admitted their mistake, and then you will need to prove you only sell authentic products which exactly match their listings.

Chapter 4. Restricted Categories



Amazon does not allow all Sellers to sell all items or in all of Amazon's product categories. Sellers are obligated under their contract with Amazon⁴ to remain up to date on the restricted lists of products and categories which require approval before selling. Sellers are often suspended for assuming the products sold by other Sellers are [not restricted](#) or do not require Amazon's approval. Just because you see another seller doing it, does not mean they are not violating Amazon's policies. This simply means they were not caught yet or they have Amazon's approval to sell the product. Further, many unexpected products fall into Amazon's restricted categories and brands as they become more vulnerable to counterfeiting.

Amazon requires Sellers to submit an application for approval to sell many products. This can be as simple as providing an invoice from one of your suppliers, or as complex as proving multiple years of established sales in the product category. The approval process and requirements vary by product and category. Before listing a product, be absolutely sure you are approved to sell in this category. Additionally, many countries and even some states restrict or require approval for different products, so you should make sure you are aware of the limitations that are specific to your geographic location.

Many product categories also require pre-approval from Amazon. As of October 2019, the following categories are listed on Amazon as requiring approvals:

- Requirements for selling Automotive & Powersports products
- Jewelry
- Holiday Selling Requirements in Toys & Games
- Watches
- Music & DVD

⁴Amazon Sellers generally do not know that the Terms of Service and their Participation Agreement are not the contract they have with Amazon. If you click through the definitions sections, you will be led to the Business Services Agreement ("BSA") that is the contract that Amazon Sellers have with Amazon. Amazon Sellers can easily find the agreement by Googling "Amazon Business Services Agreement."

⁵Categories Requiring Approval:

https://sellercentral.amazon.com/gp/help/help.html?itemID=200333160&language=en-US&ref=mpbc_14113001_cont_200333160

- Join Amazon Handmade
- Sports Collectibles
- Video, DVD, & Blu-ray
- Collectible Coins
- Entertainment Collectibles
- Fine Art
- Services
- Streaming Media Players
- Join Amazon Subscription Boxes

Additionally, the following products according to Amazon are prohibited from FBA:

- Any product that cannot be lawfully sold and distributed in all US jurisdictions
- Alcoholic beverages (including nonalcoholic beer)
- Sky lanterns or floating lanterns
- Vehicle tires
- Gift cards, gift certificates, and other stored value instruments
- Lock picking and theft devices
- Products with unauthorized marketing materials (e.g., pamphlets, price tags, or other non-Amazon stickers). Note: Amazon will not accept pre-priced labels or products
- Products that are larger than 144 inches by 96 inches by 96 inches or weigh more than 150 pounds
- Products that require prep that have not been prepped according to FBA Packaging and Prep Requirements
- Loose packaged batteries
- Damaged or defective units. Note: Used condition products may have damage as long as the product is labeled with the appropriate condition
- Products with labels that were not properly registered with Amazon before shipment or that do not match the product that was registered
- Products that do not comply with any agreement between Amazon and the seller
- Products that have been illegally replicated, reproduced, or manufactured. We reserve

the rights to destroy and to deny removal requests for any inventory identified as counterfeit.

- Products that Amazon otherwise determines are unsuitable.⁷

Unfortunately, the last “catch all” restriction can get Sellers into trouble. Remember, you must be proactive in your business, double check what you are selling is approved and in accordance with Amazon’s policies. Prevention is the best method. Here, it is not best to “do first, ask for forgiveness later.”

CJ Update: Recently, we have observed an increase in calls to our firm from Sellers who are being suspended for selling restricted products. There was a large wave of [suspensions](#) for selling CBD products, as well as for products whose descriptions use language that suggests they have a medical purpose, although many of these products are not explicitly restricted by Amazon.

Amazon restricts the sale of anything illegal, unsafe, or products requiring a prescription. If Amazon catches you selling anything which is restricted, it is best to admit your mistake and move forward. We usually suggest that suspended Sellers do not admit fault because it makes winning cases at arbitration significantly more difficult. However, if a seller has been suspended for selling a restricted product and Amazon is correct, then there is actually little downside to admitting the error and the admission will likely even help the seller get his or her account reinstated. Your POA should not blame anyone else, and should especially not blame Amazon. Don’t bite the hand that feeds you.

STEP ONE:

Dear Product Compliance Team,

I am a principal of (Your Store), and we are writing this to appeal our suspension due to

⁷ *FBA Prohibited Products*, Amazon.com Help: FBA Prohibited Products, <https://www.amazon.com/gp/help/customer/display.html?nodeId=201790610> (last visited Nov. 20, 2018).

mistakenly listing a restricted product for sale on the Amazon platform.

ASIN:

Title:

The Root Cause of the Issue

- **We failed to review Amazon’s policies and restricted-item lists before listing our products. We made an honest mistake and listed a restricted product.**
- **We incorrectly assumed that the item was not restricted because this ASIN already existed on Amazon and other Sellers are active on the listing.**

In this situation, a seller was kicked off even though other Sellers were also selling the same restricted product. Unfortunately, the seller assumed the product was not restricted because they knew the product was being sold on Amazon. Amazon has a system in place to detect those selling restricted products, and if you are detected, you are guilty, even if everyone else is doing it. Your next section in your plan of action should contain your immediate corrective actions. The immediate corrective actions section should include what you did to make the customer happy as soon as you learned of the issue and also what you immediately did to prevent more similar complaints.

STEP TWO:

We understand the responsibility for policy compliance lies with us. As such, we have taken the following actions to correct this issue and ensure it never reoccurs:

Immediate Corrective Actions

- **We have removed all the products at issue from our inventory and are never going to sell this product, or any similar product, on Amazon in the future (our listings are closed/deleted for the ASIN).**
- **We analyzed all our listings against restricted item lists to ensure full compliance.**
- **We now only sell quality items which are in compliance with Amazon’s policies.**

We analyzed our listings against all of Amazon’s policies to eliminate any misleading elements, policy violations, and to otherwise to improve our policies for preventing future issues on Amazon.

For example, Amazon Sellers should generally refund the customer and consider removing the listing or their inventory until they have a chance to perform a thorough review of the product. Remember to incorporate the leadership principles which we discussed earlier; this is where you will incorporate those key words.

Recently, our firm represented an Amazon seller whose account was [suspended](#) after receiving a complaint for selling a restricted product. He had been successfully practicing online retail arbitrage and drop shipping for some time, and used an algorithm to determine which products to list on Amazon. The experienced Amazon seller joined a listing for an over the counter medicine. This product was flagged for being restricted, as different countries restrict different ingredients found in the particular OTC medication.

To resolve this Amazon suspension, we drafted a plan of action stating that the suspended seller was unaware of the restriction and would no longer list the product. We crafted a POA that demonstrated how our client ensured this issue would not reoccur—he reviewed of all the products he had listed to make sure there were no other products that could be considered restricted, and he also worked with the person who developed an algorithm to ensure no medicines or beauty products would be listed again at all. These measures, among others, obtained our client’s reinstatement.

The final step in a plan of action is to show exactly how you are changing your business to prevent the same or similar issues from reoccurring. It is best to phrase the systemic changes in the past tense to show you have already implemented the changes rather than making promises of future change. Suspended Amazon Sellers should show not only the frequent review of Amazon’s policies but also *how* you will ensure that there will be no more failures to follow Amazon’s policies. Include any relevant documents that demonstrate the changes you have made to your business.

STEP THREE:

Systemic Changes to Our Business to Prevent Similar Issues

- **We dedicated a team member to specialize in policy and compliance specifically for the Amazon platform.**
- **We do not sell any restricted items on the Amazon platform. Before listing any new items, we analyze all new items against Amazon’s policies to ensure we do not list any restricted products.**
- **Despite our setbacks, we now check reports, metrics, notifications, e-mails, feedback, and reviews twice daily to identify and prevent issues. A designated employee now immediately responds to all customer concerns and addresses all performance notifications promptly and thoroughly, including those regarding product, listing, and category restrictions.**
- **Where there is any uncertainty, we will consult Amazon’s seller support.**

Your conclusion should state you take full responsibility, and you have taken all actions to correct and prevent this issue from occurring in the future in a timely fashion.

Chapter 5: Related or Multiple Accounts



Many Sellers are suspended because they either maintain or are accused of maintaining “related” or [multiple accounts](#).

Amazon imposes on Sellers one of the worst business practices which exists: a lack of diversification. Basic business common sense is that you should not have all of your eggs in one basket. You should not have all of your money or all of your income originating from one source or a single product. If you do, you are always at a significant risk of losing

your income.

Amazon's insistence that Sellers only have one account and put all their apples in one basket flies in the face of Amazon's incredible and never-ending diversification. There are likely multiple or dozens of Sellers selling the same product as you on Amazon. Amazon is not reliant on you for their business of providing its customers with every imaginable product on earth. It is tremendously unfair that Amazon insists that Sellers maintain only one account. Many Amazon Sellers around the world ignore this rule successfully, many Amazon Sellers who try to maintain more than one account get [caught and suspended](#)

CJ Update: Amazon's Prohibited Seller Activities article states that although maintaining multiple accounts is prohibited, you may apply to open a second account if you have a legitimate business need to do so. While logged onto your account, click "Selling on Amazon", then "Your account", and finally "Other account issues" to apply for approval. The directions to apply are quite clear, and you should receive a response to your request within 2 to 3 business days.

To even be considered for approval to run a second account, you *must* have the following:

- An account in good standing with excellent Customer Metrics;
- A separate email address and bank account for the new account;
- No intention to sell the same products or services in both accounts;
- Intention to sell in entirely different categories
- The inventory sold in each account must be different.

Once you submit your request with all of the above information (assuming you fit the requirements) you may be able to diversify your business with a second or third account.

From what we have seen, Sellers who want to operate more than one Amazon Sellers' account with Amazon's permission consistently tend to be more successful at

obtaining Amazon's permission if:

- They have been a successful Amazon seller for a prolonged period of time before applying for permission to operate more than one Amazon seller account;
- The products that will be sold on the additional Amazon Sellers' accounts are different;
- The products for the multiple Amazon accounts are different branded products, and;
- The applicant for multiple Amazon accounts owns trademarks.

While Amazon imposes a lack of diversity on you, the company has diversified itself and is not reliant on any one mechanism for any of the following:

- Shipping—Amazon uses the United State Postal Office, UPS, its own trucks, planes, and temporary drivers and delivery personnel it pays by the hour as needed. As far as the author is aware, Amazon is either the only or one of few companies who is able to get the USPS to negotiate rates after Amazon slowed down its reliance on the USPS during a dispute over rates.
- Sellers—Not only does Amazon have Sellers lined up behind you if you do not want to sell on its platform, get suspended, or kicked off, but Amazon is believed to use the data from your sales to choose what products it is going to sell itself and compete against you.
- Specific Products:
 - Merchandise By Amazon
 - Amazon has hundreds of half-million-dollar machines to print its own T-shirts. These machines are also used to print and sell designs by third parties under an agreement with Amazon, in competition with Amazon, much like an Amazon marketplace merchant..
 - Fashion
 - Amazon has its own successful line of fashion items and they have become a huge player in the industry.
 - Electronics

- Amazon purchases and sells electronics on its own that compete directly with your products.
- Home Consumables
 - In addition, Amazon has its own line of food and pantry products. If you are selling consumables like laundry detergent, toilet paper, paper towels, deodorant, and many other lines of products, think about whether or not you want to compete directly against Amazon or look for other products.

PLUS, Amazon Retail...Amazon Retail is Amazon directly competing with third party Sellers and brands. In one arbitration out of many, Amazon's staff confirmed that it regularly seeks inventory of branded items that it sees are selling well. Amazon will reach out to its Amazon Vendors to obtain inventory. Amazon will then act as a traditional retailer on its platform. In the particular arbitration, Amazon continued to order and resell products that it knew were counterfeit. Amazon ignored its "Tier 1" agreements with the brands, the Amazon Brand Managers the brands paid to have to be, supposedly, on the brands' side and beat the brands for sales via:

Selling counterfeit products, and;

Not paying for the counterfeit products. Amazon, literally, obtained free inventory.

Business Decision: Account Diversification versus Risk of Suspension or Ban from Amazon

Although it is possible to open a second Amazon account with permission from Amazon, again, the decision is still in Amazon's hands. You must first convince Amazon that you have a "legitimate business reason." According to Amazon's requirements, this essentially means that you must own and run two separate businesses that sell completely different products, and that you cannot feasibly operate both businesses through one Amazon storefront. However, if Amazon is not satisfied that you meet these requirements, you will be denied.

If you are contemplating opening a second account to sell on Amazon without Amazon's permission, you should evaluate the [risk versus the reward](#) just like any other business decision. The risk of opening up a second, third, or fifteenth Amazon account without Amazon's permission is that, if you get caught, Amazon will likely suspend two or more of your accounts. You can be banned from the platform simply for having more than one account without applying. Also, if you are caught, Amazon will likely keep your disbursements on hold indefinitely...Amazon may seize your money and your inventory.

On the other hand, if you only maintain one Amazon account and it gets suspended or closed, your entire Amazon business is guaranteed to stop until you [resolve whatever issue caused the suspension](#).

What is less risky for you? Which provides a better risk versus reward analysis?

Opinions differ amongst our team regarding whether or not maintaining multiple accounts is a good business practice, or a recipe for disaster. Paralegal, Vincent Famularo, suggests you are on the side of caution, stating "Don't do it. Do not open more than one Amazon Sellers' account or you will lose everything." On the other hand, CJ has met countless Amazon Sellers who successfully maintain multiple and often many accounts at the same time. CJ believes that if you are OK with the additional risk in exchange for diversity, if you can keep you two or multiple accounts completely and utterly separate, and you are absolutely sure there will not be a visible link between them, then the benefits can be vast, and it could be in your best interest to maintain multiple accounts.

Maintaining more than one account requires a certain amount of technological savvy, as Amazon is consistently becoming more and more adept at detecting links between seemingly unrelated accounts.

CJ Update: Multiple Amazon seller accounts are very prevalent in certain geographic areas. In Brooklyn, New York, many Amazon Sellers have 5-10 accounts

without Amazon's permission. In Shenzhen, China, many Amazon Sellers have 50-100 multiple accounts. In both areas, there are very high concentrations of Amazon Sellers. In China, Amazon Sellers with multiple accounts without Amazon's approval also benefit from the Great Fire Wall and common addresses because the Chinese government builds and supports e-commerce office parks and other factors that help hide multiple accounts.

If you *are* caught maintaining multiple related accounts, and Amazon refuses to release your money, our firm can help you to try to get your money and inventory back via arbitrations against Amazon. If you violate Amazon's policies, open a second account without Amazon's permission, get suspended and Amazon refuses to release your money, you are not helpless.

When Amazon refuses to resolve any issue with a Seller amicably including refusing to release your money and/or inventory, Amazon Sellers can take Amazon to binding [arbitration](#). Amazon Sellers can seek to settle the case or seek an order from an arbitrator directing Amazon to release your funds. Why should Amazon be able to seize your funds?

Under your contract you gave up your right to take Amazon to court but gained the ability to take them to binding arbitration. If they are trying to keep up to [\\$10,000.00](#), and you win, Amazon will have to pay the costs. If you need to get an order to recover up to \$75,000.00, you can still use the American Arbitration Associations (AAA) "Expedited Program" and the case will be relatively cheap and fast. If you need to get order compelling Amazon to release your funds over \$75,000.00, you can still use AAA—it is not as fast or inexpensive as it should be—*but*, you can get your money back, and sometimes more.

Under Amazon's August 2019 Terms of Service / Business Solutions Agreement, Amazon changed the AAA's rules about its Expedited Arbitration program. Instead of the AAA's Expedited Rules applying to disputes up to \$75,000.00, Amazon's latest TOS

states that you can only employ the Expedited Rules for disputes up to \$50,000.00. Amazon made it more expensive to seek full recovery. The AAA has stated that it will abide by Amazon's change since the TOA / BSA is the contract that lands you in arbitration.

How Amazon Catches People/Companies with Multiple or Related Accounts

First, the following information was compiled through attending Amazon trade shows, like Global Sources' Amazon Summit in Hong Kong, the no longer existing Sellers' Conference for Online Entrepreneurs in Seattle and Philadelphia, Midwest e-Com in Minneapolis, Retail Global in Las Vegas and Gold Coast, Australia, IndiaSourcingTrip.com's annual trip to Delhi to help Amazon Sellers source products from India, Empire Flippers annual Retreat, Seller Fest in Israel, Amafest in the UK, East-Meets-West Cross-Border E-Commerce Summit in Taiwan, the European Seller Conference in Prague, the Independent Retailer Conference in Las Vegas, Internet Merchant Association events and many other Amazon seller events around the world. As well as speaking with countless Sellers and former and current Amazonians around the world each year. None of the information below can be attributed to any specific source.

Through innumerable hours and miles on planes, trains, and cars, I have gathered that Amazon can link multiple accounts to each other through some or all of the following:

- Name(s) of account holders including maiden names and married names
- Addresses of account holders
- Bank account information
- Identical or very similar inventory
- Ownership of domain names and websites
- Hosting of domains and websites
- Cookies
- MAC addresses
- Pixels
- IP addresses used to log onto accounts
- Computers used to log onto accounts

- Smart phones used to log onto accounts
- Email addresses used to log onto accounts
- Names of business or storefronts
- Names of brick-and-mortar stores where Sellers may also sell products
- Spreadsheets used to upload inventory
- Digital tracks in invoices and other documents
- Type of products sold
- UK Accounts and Foreign Accounts
 - Utility bills submitted for account verifications
 - Foreign company identification numbers (Chinese Sellers need to be especially careful when they receive updated business certificates from the Chinese government and make conscious decisions what, if anything, to submit to Amazon.co.uk)
 - Responses to verification requests for information and documents
- Use of outside companies to help set up your Amazon account (generally not needed, and this might create additional risks for you.)
- Former significant others, especially partners with whom you shared an address, and after you separate, each one of you open or maintain Amazon Sellers' accounts
- Spouses with separate businesses on Amazon
- Parents and children with separate businesses on Amazon
- Shared warehouses
- Shared office space
- Tax ID numbers

Amazon has even detected related accounts by sending out e-mails to Sellers simply asking if they have multiple accounts. This is a copy of an e-mail some Sellers received:

“Dear Seller,

As we continue to ensure our marketplace is safe and trustworthy for both buyers and Sellers, we would like your help. Amazon prohibits the use or maintenance of more than one seller account. We understand that in certain circumstances you may need to use multiple accounts or associate one or more accounts to your seller account. In an effort to better understand the business requirements that you may have for multiple or related accounts, we request you to list these accounts in Seller Central along with the reason for relating them to your seller account.

Simply click or copy and paste the link below into your web browser to access your account within Seller Central and provide any and all e-mail addresses and reasons for their use—it’s that easy.

<https://sellercentral.amazon.com/related-accounts>

For more information, see the following Help page:

<https://sellercentral.amazon.com/gp/help/202146190>

**Regards,
Amazon Services”**

This is one way Amazon is able to “catch” those who are maintaining multiple accounts, yet they are unaware of the policy. Unfortunately, those who do not have multiple accounts have also received this letter and they have been ultimately suspended under false accusations of having more than one Amazon account.

[How to Maintain Multiple Accounts](#)

With the list above, you have a basic, but *not a complete* list of issues you must consistently...perfectly, maintain. If you have multiple Amazon accounts or have made the decision to open multiple accounts, you need to be very careful to avoid detection by Amazon. This means you must be flawless in your operation and flawless in maintaining the separate accounts. The measures that should be taken to maintain multiple accounts may seem excessive, but remember, Amazon has advanced algorithms in place to detect these links. It may not be a person who catches your account—it is more likely that a bot will flag your account first.

Simple Advice: You must never, not even once, sign onto both of your accounts from the same computer. Even with different computers, you must never sign onto more than one account from the same IP address. Do not use your smart phone on more than one account. It is suggested that you never log onto any accounts from home because you might make an error, or someone else in your home who shops on Amazon could log onto different accounts from the same computer or IP address.

You may want to treat each account like its own separate brick-and-mortar business. Each account should likely have its own physical address where the staff for the account work and the other account's personnel is located elsewhere.

This next point cannot be stressed enough—to successfully operate more than one account without permission, it is crucial to stay on top of all of your accounts' performance issues. This means your Amazon seller activities cannot be a part-time job, and you must have trustworthy and diligent employees in place. Your products must also be above reproach, meaning you sell no prohibited items, nothing counterfeit, and no low-quality products that may disappoint consumers. This is because once Amazon suspends one of your accounts, they generally perform a specific review to check for any related accounts. If they detect a related account, it will also be suspended.

For this reason, if one of your accounts faces a suspension issue, you will need to address it as swiftly and as thoroughly as possible, before any other accounts are discovered. For example, one of [our clients](#) who maintains multiple accounts recently had one of his bigger accounts suspended for inauthentic complaints. He sells health and beauty products, and he was extremely fearful that his other accounts were going to get shut down as well. We have represented him for years and he called for our help getting reinstated.

While conducting a thorough investigation of his account, we checked to match up order dates with negative feedback, and we found specific buyer complaints relating to a particular shampoo. We went onto that shampoo brand's website and noticed the same

negative feedback on the brand's website.

With this discovery, we were able to write an appeal to Amazon that demonstrated it was not our client who was selling inauthentic health and beauty products, but rather the brand itself was simply poor quality. Once we did so, Amazon accepted our appeal and the account was reinstated. *Amazon never discovered our client was maintaining multiple accounts.*

This is also one example of a major difference in service that you will receive when you acquire the services of an experienced staff of lawyers and paralegals like those at our firm. As a law firm, we are required to keep your information confidential, and we are aware that it is imperative for Sellers who maintain multiple accounts keep this information confidential. If one of your accounts is suspended for inauthenticity, for selling restricted products, or any other reason detailed in this book (other than a related account suspension), it is important that none of the documents or information you submit to Amazon accidentally reveal your other accounts. Our experienced staff members are skilled at navigating these issues.

Further, you must address your Performance Notifications and maintain your metrics more diligently than a seller who maintains one account. One outstanding policy warning or bad metric can lead Amazon's staff to investigate your whole account and detect any related accounts or other problems. You should be especially mindful of the following, which should now be easier to monitor on your account health page:

- Suspected Intellectual Property Violations
- Received Intellectual Property Complaints
- Product Authenticity Customer Complaints
- Product Condition Customer Complaints
- Product Safety Customer Complaints
- Listing Policy Violations
- Restricted Product Policy Violations
- Customer Product Reviews Policy Violations

- Order Defect rate: This is an overall metric of customer service performance. It shifts based on your other customer-facing metrics. Aim for less than 1%.
- Delivery Performance: This is easier to control if you use FBA. Aim for less than 4%.
- Contact Response Time: If you are a third-party seller with thousands of ASINs, a dedicated customer support staff is essential, and you should aim to respond to all messages within 24 hours.

In addition to the overhead cost of diligent account maintenance, you may also choose to forego traditional economies of scale. You might be well advised not to share resources among your multiple accounts because the short-term savings of using the same bookkeeper for each account, for example, may result in that bookkeeper making a mistake and your accounts being linked and shut down. Carelessness is the leading cause of losing that additional account. However, it may be worth the risk to forego the short-term savings for the long-term diversification and profitability of maintaining multiple accounts.

All in all, it is extremely time consuming to maintain multiple accounts, and the risk is very, *very* real. If you want to execute this properly, it can also be expensive. For these reasons, we do not advise a brand new, or inexperienced, Amazon seller to try this. Only Sellers who are already experienced at maintaining an account with great success should attempt to open multiple accounts without Amazon's approval.

However, if you are confident you are able to run multiple accounts successfully, you could be rewarded with multiple revenue sources and a much more stable Amazon business —meaning you won't have to sweat future changes to the Amazon Terms of Service as much. That alone could make it worth it.

Multiple Account Suspension POA

If you are caught violating Amazon's multiple accounts policy, you will need to

create a comprehensive [plan of action](#) which demonstrates to Amazon this was a mistake and it will never happen again. Sometimes Amazon detects multiple accounts in error. If you, or Amazon, did make an honest mistake, do not hesitate to explain what happened. Perhaps you and your spouse maintain separate businesses, but share the same IP address. Whatever your reason, you will need to show to Amazon that you have identified the cause and prove you are not running multiple accounts against policy.

STEP ONE:

Dear Product Compliance Team,

I am a principal of (Your Store), and we are writing this to appeal our suspension due to mistakenly maintaining multiple accounts.

The Cause of This Issue:

- **My spouse and myself maintain two completely separate business accounts, however, we do share the same IP address.**

Once you have discovered why your account was linked to another, you must demonstrate exactly how you corrected the issue to Amazon. Simply stating your spouse has a different business and Amazon is incorrect to label them multiple accounts will not work. You need to move one business to a different IP address; treat it like an entirely separate business.

Your next step within your plan of action is to show how this will never happen again. Sometimes, the issues are not as easy to resolve. You will need to incorporate the business practices to show Amazon this issue will not reoccur. Showing proof of changed documentation is one step which will demonstrate you have taken the issue seriously.

STEP TWO:

We understand the responsibility for policy compliance lies with us. As such, we have taken the following actions to correct this issue and ensure it never reoccurs:

Corrective Actions:

- **We moved one business to a different IP address in a timely fashion**
- **Verified that maintaining the two separate businesses is compliant with Amazon’s policy. Specifically, each store has its own IP address, inventory categories, business information, address, bank information, and manufacturer.**
- **Both accounts are in good standing, and we do not to sell any of the same products or services in the two accounts.**
- **We have provided the attached proof of all documentation to demonstrate these are two entirely separate businesses.**

STEP THREE:

Preventative Measures

- **We made key inputs into our separate businesses and have each dedicated a team member to specialize in policy and compliance specifically for the Amazon platform.**
- **We hired extra staff to ensure no personal or business information overlap between the two separate businesses.**

Your conclusion should mention that despite these setbacks, you have made the appropriate changes and will only continue to sell quality products while abiding by Amazon’s policies.

If you are caught maintaining multiple unapproved accounts and do not have a justification for doing such, do not panic. This isn’t always the end of selling on Amazon completely. We are often able to reopen the first account the seller started with as long as the other account Amazon detected is closed, and all of the seller’s policy violations are addressed.

As our firm expands and continues to gain experience, we are getting accounts reinstated faster and faster. This is partly because our team is experienced with the appeal process, but we also suspect that Amazon increased the number of people working on the reinstatement staff to deal with recent upticks in suspensions and subsequent appeals.

What if You Are Falsely Accused of Having Multiple or “Related” Accounts?

If you are falsely accused of having related accounts and you do not have any idea why, you have a significant problem. It seems when Amazon accuses a seller of having related accounts, Amazon is convinced it is correct. Convincing Amazon’s staff that Amazon made an error is very difficult without evidence. It is tough to prove a negative. However, we have had some success doing so.

The first step in addressing the suspension of your account based upon an unknown false allegation of multiple prohibited accounts is to do a thorough investigation of your business—in Amazon language, a “deep dive.”

A seller suspended after being falsely accused should examine (at least) the following to try and find any possible link between your business account and any other Amazon account:

- Employees:
 - Do any of your employees have their own seller account?
 - Are any of your employees signing into your business’ account from their homes?
 - Are any employees using their phones to sign into your Amazon account?
 - Are any of your employees signing into their personal buying accounts from your office? Is your staff shopping on Amazon from work?
- You / The Business Owner:
 - Are you signing in from home where someone else, a spouse for example, also has a separate Amazon account?
 - Are you signing in from your phone from various locations?
 - Do you have both a business account and a personal buying account?
- Product Line:
 - Did you upload your inventory from a spreadsheet that was created by a vendor or distributor? If you did, that spreadsheet may have been used countless times and may have triggered a related accounts problem.
 - Does your inventory too closely match other stores? If you are working closely with other Amazon Sellers, distributors or manufacturers, your

inventory may trigger a related accounts problem;

- Location
 - If you are in an urban environment, like Brooklyn, New York or Shenzhen, China, there are thousands of Amazon Sellers in your locale. You may have dozens or more Amazon Sellers in your building or, in China, in the e-commerce industrial park.
 - If you are sharing space of shipping your products from shared warehouses, this may trigger a Related Accounts issue.

Plans of Action when Falsely Accused of having Related Accounts

When you are falsely accused of maintaining Related Accounts, we suggest you follow the same format as most Plans of Action: Root Causes of the Accusation; Immediate Corrective Actions; and Long-Term Systemic Changes to Your Business.

When you are falsely accused and your account is suspended, you have to be able to demonstrate that there is no link and also prevent any links from occurring. Whatever you identify as the problem, you must fix it and ensure it does not reoccur.

Travis Stockman, one of our attorneys, explains: “It might be tempting to get out a quick reply to Amazon denying their allegations, but the best thing a suspended Amazon seller can do is take a step back, take a deep breath, and then try to identify the cause of the suspension. If you can do that, this will be a relatively easy problem to fix.”

For your Root Causes, you may want to discuss the results of your “deep dive” investigation into your staff, inventory warehouses, and so on. We suggest creating some sort of checklist or launching your own investigation to try and figure out why you were flagged by Amazon. You may want to discuss that you identified two or more employees who have their own Sellers’ accounts or who were using company computers or their phones through your Wi-Fi to shop. Keep in mind that Amazon will never let you know what led them to believe you have related accounts, they will simply suspend your account.

Sometimes, the cause is obvious: look at your staff, your computer system, where you're working from, and try to figure out the cause. You also need your staff to be honest with you about their work history, where their computers came from, and what they're doing in their off hours. Amazon expects account owners to take care to know their associates well, and to avoid relationships with deceitful or "risky" Amazon Sellers.

Further, you must be extremely careful with the [computers](#) used to conduct your business. Media Access Control (MAC) address identification is difficult to overcome. We suggest that if your account is suspended under the false accusation of maintaining multiple accounts you should take all of your current computers and either donate them or throw them out. Do not allow your employees to bring their own computers to work. You must provide them with computers that must remain in your place of business, and don't let them work from home if you are concerned that a member of your staff might be selling from home, running their own Amazon account, or working with other Sellers.

Your Immediate Corrective Actions should explain how you prohibited employees from selling on Amazon outside of their positions with your company; that you coached your staff on the importance to Amazon that its Sellers only maintain one (1) account; and that you stopped the problem you were able to identify. Long-term changes to your business might include adding to your interview process, investigation and training of employees so that they may not have other Amazon accounts and cannot access their personal accounts from work.

Lastly, a seller should be aware that an appeal can often be a one-shot opportunity. If you tell Amazon there is a problem but don't take the appropriate measures to remedy it, or just send them a quick message outrightly denying the accusations, you will likely get a message from Amazon stating that "you may no longer sell on Amazon," and that they may not respond to any future emails.

So, when you write your plan of action, make sure you take the necessary effort to get it right the first time. It is easy to be impulsive and send a quick email response because

you feel wrongly accused and want to see your account reinstated. However, if you want to see success more quickly, it is important to measure every step and approach the process more slowly.

Chapter 6: Intellectual Property Complaints & Suspensions also called “Rights Owner” Complaints & Suspensions



As an Amazon seller, you should be aware of the [intellectual property \(IP\) issues](#) which regularly arise when selling on Amazon.

First, the basics of intellectual property. Intellectual property for Amazon Sellers involves:

- * Copyright claims
- * Allegations of trademark infringement
- * Trade dress accusations
- * Claims of patent violations (design & utility).

What is Copyright?

Legally, copyright is intended to protect the original expression of an idea in the form of a creative work, but not the idea itself. As it comes into play for Amazon Sellers, Copyright law generally deals with the use of someone else's images or verbiage, marketing materials, and sometimes, copyright protectable product designs. There are three traditional types of copyright infringement: direct, contributory, and vicarious.

1. **Direct** copyright infringement requires the "plaintiff" to show he or she owns the copyright and the defendant personally violated one of the plaintiff's rights enumerated in the Copyright Act. The catch is a third party who does not directly infringe could be held liable for secondary infringement."⁸
2. **Contributory** copyright infringement means "an actor had knowledge of the activity and induces, causes, or materially contributes to the infringing conduct of another."⁹
3. **Vicarious** liability for copyright infringement takes place when the accused "enjoys a direct financial benefit from another's [directly] infringing activity and has the right and ability to supervise the infringing activity," but declines to stop or limit it¹⁰. "It

⁸ Robert Segall, E-Commerce, Amazon, and the DMCA: Fighting Copyright Bullying in the Modern E-Commerce Context.

⁹ *Id.*

¹⁰ *Ellison v. Robertson*, 357 F.3d 1072, 1076 (9th Cir. 2004).

is predominantly secondary infringement that concerns Amazon Sellers because they are often accused of hosting the product listings that are allegedly infringing a copyright.”¹¹

Congress enacted Title II of the Digital Millennium Copyright Act (DMCA) in 1998.¹² The DMCA was created, according to congress, to address “the controversial questions of copyright liability in the online world.¹³”

The DMCA offers safe harbor provisions to provide protections for Internet service providers who may have been held liable for copyright infringement¹⁴. DMCA §512(c) states that “when a service provider receives an official notice of an infringement allegation from a copyright owner, they are required to ‘expeditiously remove or disable access to the infringing material¹⁵.’” The four safe harbors provided by Congress, in the text of Section 512, are:

- (a) Transitory digital network communications
- (b) System caching
- (c) Information residing on systems or networks at the direction of users
- (d) Information location tools¹⁶.

Since the previous publication of this book, there has been a noticeable [increase](#) in the successful reinstatement of Sellers’ accounts whose accounts were suspended due to copyright complaints. They have achieved this by sending in DMCA counter notices. A

¹¹ Segall, *Supra* note 6.

¹² Digital Millennium Copyright Act of 1998, 17 U.S.C. § 512 (2016).

¹³ See *Ellison v. Robertson*, *Supra* note 8.

¹⁴ Weinstein, *supra* note 3.

¹⁵ 17 U.S.C.S. § 512.

¹⁶ *Id.*

DMCA counter notice is a legal document where the accused Amazon seller attests that they believe they did not violate the complainant's intellectual property strongly enough to agree to accept service of a lawsuit from their accuser. The clear risk is that the complainant may in fact file a lawsuit. However, if the complainant does not file a lawsuit within 10 business days, Amazon will remove the complaint from your account and restore the accused listing. This essentially forces the complaining party to prove their claim, and it helps to minimize abuse of copyright infringement reports online.

Additionally, there is the "The Online Copyright Infringement Liability Limitation Act ("OCILLA"). This law protects internet service providers ("ISPs" or "service providers") from liability for monetary relief for direct, vicarious, and contributory infringement and, often, from injunction where infringing or allegedly infringing materials are carried on the system without the knowledge and involvement of the service provider¹⁷." Amazon, along with other e-commerce websites like eBay or Alibaba, are considered ISPs.

What is a Trademark?

A trademark is "any word, name, symbol, or design, or any combination thereof, used in commerce to identify and distinguish the goods of one manufacturer or seller from those of another and to indicate the source of the goods¹⁸."

For example, the Nike swoosh, the M in McDonald's, the way Gucci writes its G's, Apple's picture of an apple with a bite taken out of it—these are all valid trademarks. As soon as you see the Apple, you know who made the product and you expect a certain quality. On the other hand, generic words and pictures of items that occur and exist in nature (like drawings of fruits on the packages of supplements) [cannot be trademark](#)

¹⁷ Debra Weinstein, *Note, Defining Expeditious: Uncharted Territory of The DMCA Safe Harbor Provision: A Survey of What We Know and Do Not Know About the Expeditiousness of Service Provider Responses to Takedown Notifications*, 26 *Cardozo Arts & Ent L.J.* 589 (2008).

¹⁸ 15 U.S.C. § 1127.

protected.

It can take anywhere from six months to a year to register your trademark. Sometimes the process does not go smoothly. We represent many Sellers and brands facing Office actions from the United States Patent and Trademark Office (USPTO). This means the USPTO requires more information to accept the trademark application, or they have rejected the application all together. However, the USPTO does make errors and reject applications for trademarks that could have been approved. If you experience issues applying for trademark rights, we can advise you as to the best next steps to secure your trademark and protect your brand.

In the US, you do not have to register your trademark rights for them to be recognized. Once the trademark is first used in commerce, you legally have trademark rights if you choose to enforce them. However, registration does establish a legal presumption of ownership of the mark and it puts other parties on notice and provides additional protections from [infringement](#).

For example, In China, trademark rights belong to the first person to register the mark with the Chinese government, not the first to use the mark in commerce. However, if you have a US registration, it can be used as a basis to file for a trademark in other countries. As such, even though you already have some protection in the US based merely on use, we always advise to file and register your trademarks for the most protection.

Amazon Sellers should also be aware that Amazon will nearly always side with a registered rights owner above a non-registered rights owner. This is because a trademark registration is considered to be a legal presumption of right ownership, unless that registration is challenged. We have seen Sellers fall prey to malicious attacks on their brand where the attacker has registered an existing trademark that is rightfully someone else's intellectual property.

In these cases, the attacker usually hijacks the brand's product listings on the

Amazon platform. Amazon then sides with the hijacker because they are legally presumed to be the right owner. The true brand owner and creator is now faced with the task of challenging the attacker's trademark registration with the USPTO, which can be time consuming and costly. All the while, the entire problem could have been avoided if the brand had [registered their trademark rights in the first place](#).

If your listing has been hijacked, we suggest that you do a test buy of that product to prove there are differences between your product and the hijacker's product, and that it is in fact counterfeit. However, if you are not the owner of registered trademark rights, it is a lot more difficult to make a successful infringement complaint. It is becoming more and more difficult without to protect your brand online without taking certain protective measures. If you are still operating on Amazon without protections, we suggest that you contact immediately to take steps to start protecting your brand.

CJ's Side Note



Items that occur in nature cannot usually be trademarked. This issue arises for sellers of nutritional supplements where multiple manufacturers employ pictures or drawings of the fruit from the supplement. Similarly, the name of naturally occurring substances cannot be trademarked.

[The Lanham Act](#), a federal statute, “governs trademarks, service marks, and unfair competition. The Lanham act outlines the procedure for federally registering trademarks, states when owners of trademarks may be entitled to federal judicial protection against trademark infringement, and sets forth other guidelines and remedies for trademark owners¹⁹.”

Intellectual property complaints often arise on Amazon when a brand makes a baseless complaint against an Amazon seller who is selling genuine products. This often happens when the IP rights are valid, but the allegation is not. What this means is that the

¹⁹ See *id* § 1051.

brand owns its trademark, but the suspended Amazon seller never actually violated their trademark rights; they were actually selling genuine products. There are instances where Sellers are selling counterfeit products, but the vast majority of Sellers do not sell counterfeit items. Basically, as long as you are not taking somebody's trademark and sticking it on your shirt or hat and then selling it, you are not violating anyone's IP rights.

Even among Amazon Sellers who have received valid counterfeit or trademark infringement complaints, most did not know they bought and resold a counterfeit or infringing item.

CJ Update: There has been a noticeable increase in trademark complaints against Amazon Sellers who are unbundling products. Unbundling is when you buy a product that is 100% genuine, break it down into its individual units, and then you sell those units piece by piece. There is still a large opportunity for profit in this sector of ecommerce, and there are already tens of thousands of Sellers around the world doing this successfully. But if you do choose to unbundle products, be aware that it does expose you to a possibly valid trademark violation because when you unbundle, you are arguably no longer protected under the First Sale Doctrine.

Amazon Sellers almost always want to sell and try to sell genuine products. Since most Sellers *are* selling genuine products, many claims of trademark infringement on Amazon are baseless easily resolved. However, even if you accidentally violate someone's trademark, our firm is usually able to get suspended accounts back up and advise Sellers on how to avoid similar trademark complaints in the future.

Trade Dress

[Trade dress](#) is defined as, "The overall appearance and image in the marketplace of a product or a commercial enterprise. For a product, trade dress typically comprises packaging and labeling. For an enterprise, it typically comprises design and decor. If a

trade dress is distinctive and nonfunctional, it may be protected under trademark law²⁰.”

“The ‘trade dress’ of a product is essentially its total image and overall appearance. It ‘involves the total image of a product and may include features such as size, shape, color or color combinations, texture, graphics, or even particular sales techniques²¹.”

²⁰ TRADE DRESS, *Black’s Law Dictionary* (10th ed. 2014).

²¹ *Two Pesos, Inc. v. Taco Cabana, Inc.*, 505 U.S. 763, 765 n.1, 112 S.Ct. 2755, 2755 n.1 (1992).

CJ's Legalese to English



Trade Dress basically means how a product or its packaging looks. If a product is using a particular font, color scheme, shape and packaging and you mimic all of the things that make the product look different, you are violating their Trade Dress.

Trade dress often comes into play on Amazon when Sellers copy brands' color schemes, packaging, shapes, and other aspects of design when they create their own private label products. When a seller is developing his or her private label, he or she should stay away from mimicking too closely the overall look or "dress" of another company's products. If an Amazon seller copies the same language of a label, colors, and use similar pictures, but use a different brand name, he or she still might be infringing upon another brand's trade dress. A common mistake Sellers often commit is believing their product is

not infringing anyone's intellectual property because the name on the product is different, while the trade dress (colors and appearance) was clearly selected to mimic another popular brand.

While trade dress protections are difficult to establish, it is often worth the investment if you want to set yourself apart from your competitors, especially on Amazon, where Sellers are looking to "piggy-back" or hijack the next hot selling item, and the Amazon website has a global audience. To establish trade dress rights, you must prove that consumers associate with your brand with a specific appearance. Take Coca Cola brand for example. Coke has a very distinctive trade dress that is comprised a combination of a specific red color, a specific text font, and even the shape of the bottle. The color red alone is not protected. However, when all of these factors are combined, the consumer recognizes the brand by their trade dress.

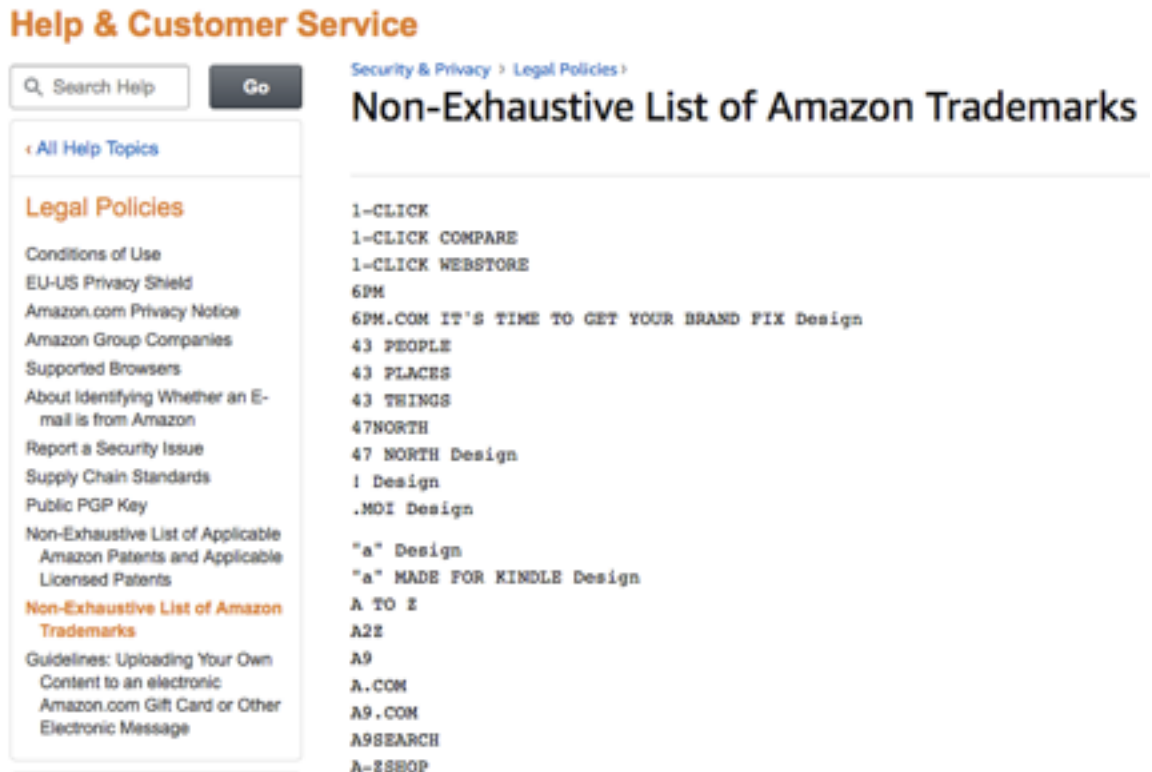
Unlike patent protections (where you receive protection for twenty years) or copyright protections (where you receive protection for seventy years after the death of the author), trade dress protections are technically trademark rights, and they do not have time limits. The trademark protections typically last as long as the mark is used in commerce.²²

Amazon has its own trade dress and they claim protection on their platform. The Amazon webpage reads, "TRADEMARKS: In addition, graphics, logos, page headers, button icons, scripts, and service names included in or made available through any Amazon Service are trademarks *or trade dress* of Amazon in the U.S. and other countries."

Amazon's trademarks and trade dress may not be used in connection with any product or service which is not Amazon's, in any manner that is likely to cause confusion among customers, or in any manner that disparages or discredits Amazon. All other trademarks not owned by Amazon which appear in any Amazon Service are the property

²² *How Long Does Patent, Trademark or Copyright Protection Last?*, stopfakes.gov, <https://www.stopfakes.gov/article?id=How-Long-Does-Patent-Trademark-or-Copyright-Protection-Last> (last visited Aug. 10, 2017).

of their respective owners, who may or may not be affiliated with, connected to, or sponsored by Amazon²³.” Any form of intellectual property infringement against Amazon is a bad idea for Sellers. Amazon provides Sellers with a list on their customer service page showing a comprehensive list of all their trademarks.



Amazon’s trademarks and trade dress rights are published so all other parties may be aware of their protections. It is a businessman or woman’s responsibility to be original when creating a label, logo, or “signature look,” and never copy a design that is already protected. Then, it is also in the best interest of a private label brand on Amazon to put measures in place to develop and protect his or her own trade dress.

²³ *Conditions of Use*, Amazon.com Help: Conditions of Use, https://www.amazon.com/gp/help/customer/display.html/ref=ap_frn_condition_of_use?ie=UTF8&nodeId=508088 (last visited Aug. 10, 2017).

Unfortunately, there are also baseless trade dress accusations that result in the suspension of many Amazon Sellers. Competing Sellers have accused others of violating their trade dress rights due to similarities which are not strong enough to actually constitute trade dress infringement.

For example, selling the same vitamin supplement product and both having “green” bottles, is not a violation of trade dress. We have seen vitamin companies, hair companies, and companies who sell Moroccan oils file complaints against their competition, despite the competition not actually infringing their trade dress. There is a trend of businesses who believe in error that since they received trade dress protections, they have a monopoly over every individual aspect of their trade dress. They do not; they have protection of the overall appearance. We have seen companies attempt to knock Sellers off for using the same fruit or color as their protected trade dress. This is not enough to constitute infringement. It has to be the overall appearance, not one similarity.

“To receive protection, both of the following must be true:

- The trade dress must be inherently distinctive, unless it has acquired secondary meaning.
- The junior use must cause a likelihood of consumer confusion.”²⁵

The courts have required that, for trade dress infringement to exist, it “must be unusual and memorable, conceptually separable from the product, and likely to serve primarily as a designator of origin of the product.”²⁶

In a lawsuit called *Christian Louboutin v. Yves Saint Laurent Am.*, the United States Court of Appeals for the Second Circuit (the federal court in New York) held Christian

²⁵ *What Is Trade Dress?*, Nolo.com, <http://www.nolo.com/legal-encyclopedia/what-trade-dress.html>

²⁶ *Duraco Products Inc. v. Joy Plastic Enterprises Ltd.*, 40 F.3d 1431 (3d Cir. 1994).

Louboutin’s distinctive red sole design was protectable by trademark (trade dress specifically). This 2012 decision established while a color alone cannot serve as a trademark (trade dress), a color that has established a secondary meaning might be protected.²⁷ In this case, the red high-heel sole (red bottom) was decided to be a distinctive symbol of the Louboutin brand. This means when people see red soles on shoes, they immediately know the pair of shoes was designed by the Louboutin brand.

[Trade dress](#) has been viewed by the courts in two ways: the traditional view and the modern view. The traditional view is “referred only to the manner in which a product was ‘dressed up’ to go to market with a label, package display card and similar package elements.”²⁸ The modern view has expanded from the traditional view.²⁹ In *John H. Harland Co. v. Clarke Checks*, the court took a modern approach stating that trade dress should be defined as, “‘total image’ or ‘overall appearance’ and ‘may include features such as size, shape, color or color combinations, texture, graphics or even certain sales techniques.’”³⁰

If you have been accused of trade dress infringement, it is important to speak to a lawyer. Legal issues should not be addressed by nonlawyer “consultants.” Do you think a brand or a brand’s lawyer is going to care what a former Amazonian says about intellectual property law issues?

²⁷ *Christian Louboutin S.A. v. Yves Saint Laurent Am. Holding, Inc.*, 696 F.3d 206 (2d Cir. N.Y. 2012).

²⁸ *Jeffrey Milstein, Inc. v. Greger, Lawlor, Roth, Inc.*, 58 F.3d 27, 31 (2d Cir. 1992).

²⁹ *Trade Dress: The Forgotten Trademark Right*, Findlaw, <http://corporate.findlaw.com/intellectual-property/trade-dress-the-forgotten-trademark-right.html>

³⁰ *John H. Harland Co. v. Clarke Checks, Inc.*, 771 F.2d 966, 980 (11th Cir. 1983), cited with approval in *Two Pesos, Inc. v. Taco Cabana, Inc.*, 505 U.S. 763, 112 S.Ct. 2753 (1992).

Only an attorney can assess:

- *If the accusation against you has any merit
- *Draft a legal opinion letter pointing out the complaint is baseless
- *Point out the legal liabilities should the brand refuse to withdraw its complaint
- *Stand up to another lawyer with any strength

Amazon Sellers should always recall that while Amazon doesn't require the complainant to prove much, ultimately it is the complaining party's legal burden to prove all elements of any alleged infringement. They must first demonstrate they have an item which is inherently distinctive and then they must show your item causes a likelihood of consumer confusion. Without proving these legal elements, there is no infringement.

When you are accused of infringement, it is important to have a legal professional handle your legal issues to assess if what transpired on the Amazon website was actually [intellectual property infringement](#).

What are trade secrets?

Trade secrets are “a formula, process, device, or other business information is kept confidential to maintain an advantage over competitors; information—including a formula, pattern, compilation, program, device, method, technique, or process—that (1) derives independent economic value, actual or potential, from not being generally known or readily ascertainable by others who can obtain economic value from its disclosure or use, and (2) is the subject of reasonable efforts, under the circumstances, to maintain its secrecy.”³¹

Trade secret law generally protects what the lay person would consider to be a “secret recipe”, or whatever it is that makes a product unique enough to stand out in the marketplace. Because the protection of trade secrets can theoretically endure indefinitely, it may be preferable over patent protection and other registered IP rights, which last for a

³¹ Trade Secret, *Black's Law Dictionary* (10th ed. 2014).

specific duration. For example, Coca Cola has protected its secret formula for decades, which is far longer than the 20 years of protection it would have enjoyed under a patent protection.

What is a Patent?

Utility patents protect ideas such as inventions or technological processes. Even Amazon has been in lawsuits relating to patent infringement based on its own behavior, not just due to Sellers' behavior. Amazon has also been listed as a defendant in cases “when a third-party Amazon seller is selling a patented product without the proper license.”³²

Amazon has often used the defense in patent-infringement cases where they argue that the alleged patent is patent ineligible, (*See Appistry, Inc. v. Amazon.com*, where Amazon successfully showed the patents were invalid).³³ Ineligible means the patent should never have been issued by the US government.

When dealing with patent issues arising on Amazon, it is in your best interest to hire an attorney; do not go at it alone. Since Amazon instated its Neutral Patent Evaluation Program, utility patent infringement cases on Amazon are more serious and difficult to navigate than ever. These disputes have the potential to cause suspension, as well as greater harm to your livelihood. Lawsuits are costly, and you want someone with legal experience to assist you during the process.

When a party wins a patent infringement claim, they can recover one hundred percent of all the profits made by the sale of a product that infringed on the patent holder's rights. ONE HUNDRED PERCENT—this potential recovery could even lead the largest seller into bankruptcy.

[Design patents are different from utility patents, and they are handled differently](#)

³² *Id.*

³³ *Appistry, Inc. v. Amazon.com, Inc.*, No. 4:13CV2547, 2015 U.S. Dist. LEXIS 24421 (E.D. Mo. Mar. 2, 2015).

on Amazon. Design patents they only protect the ornamental design of a product, not the functional aspects. As of now, Amazon still allows Sellers to file and appeal design patent complaints through the normal processes, and they use the “Egyptian Goddess Test” to determine whether an accused product is infringing.

Egyptian Goddess v. Swisa was heard in the United States District Court for the Northern District of Texas, and the effects of the case have completely [transformed](#) the way that products are viewed in the eyes of design patent law and how they are evaluated to determine if infringement is evident. Originally, to prove infringement, a “Novelty Test” would be utilized, which looked at individual features or a combination of design features and whether those were seen in prior art, which would determine if infringement was evident. The “Ordinary Observer Test” also was a method to determine infringement, which asks a lay observer to look at both products and determine if the overall aesthetics are the same. Resulting from the case was the “Egyptian Goddess Standard”, an extremely visual test, which essentially asks, *Does the alleged infringing product **look** very similar to the patented product?* This is a problem that often faces specifically private label Sellers who source pre-designed products from a manufacturer.

Selling private label brands on Amazon

If you are an Amazon seller using private label, it is likely you have your own logo. Private labeling is offering a manufactured product for sale under the name of the retailer rather than the manufacturer. This is generally done with the permission of the manufacturer. More and more Sellers are using private labeling to secure their business. This business model is not specific to Amazon.

When a seller places his or her logo and packaging on an otherwise generic product, he or she establishes intellectual property specific to his or her brand. Once a business owner has turned to private labeling, the next step, for many, is to register a trademark for the brand.

If you are an Amazon seller looking to [preserve](#) your own intellectual property rights, you should consider creating a separate company that owns all of your private label IP rights. Through that company, you will hold your own design patents, your own trademarks, and you will be able to license the right to use your trademarks to the business that runs your Amazon account.

Why would you want to do this? Firstly, when you have to make a complaint against a hijacker, you would be doing so from a company that has no contract with Amazon. Your company would not be beholden to Amazon at all. Further, it would allow you to issue authorization letters not only to your own accounts, but to future accounts you may open, as well as to other Sellers who you may allow to sell your products. All in all, it is a smart method to further legitimize your business, keep control out of Amazon's hands, and prevent any others from infringing your rights.

Once your brand is fully established and protected, the private label business model is generally a good way, (although not fail proof), to avoid trademark disputes. However, private label Sellers are still commonly accused of trade dress, copyright and patent infringement. This occurs because private label product manufacturers often sell their products and packaging to multiple private label brands. For example, if one of the other brands registers rights for the product design, or the instruction manual, all other brands selling the product could be subject to infringement complaints. We have also seen cases where a product manufacturer actually copied a product design from a rights owner, claimed it to be their own, then sold it to multiple private label brands. To avoid this problem, it is best to have a good relationship, contract with your manufacturer, and contact an attorney to help you protect your intellectual property rights. Find a manufacturer that is transparent about who designed the product, where the designs came from, and whether or not they are selling the product to other brands without restriction.

Once your rights are protected, you can also contact our firm like to help remove infringers from your private label brand Amazon listings. We go about this by first reaching out to the infringer through Amazon. We send them a cease and desist letter, giving them

the chance to amicably resolve the matter before filing any formal complaints. We do not seek to cut these Sellers' legs off at first contact. Instead, we simply seek to reach out and inform them of the IP rights they are infringing, as many Sellers are not even aware that they are infringing, and they will often remove the listing after our initial contact.

We prefer to give the infringers the chance to amicably resolve the matter and remove their store from your listing on their own because we believe it is good business practice for Sellers. There are too many Sellers attacking one another and it is easy for a competitor that you harmed to have their friends, family, spouses, and neighbors buy your products, return them, and leave you negative reviews. If the disgruntled competitor has a large staff, it is even easier for them to trash your listing if you harm them. *Do not needlessly create animosity with competitors who can trash your listing.*

If an infringer does not respond or refuses comply with our cease and desist letter, our next move is to take the matter up with Amazon and file a report of infringement. There are a few ways to file a complaint on Amazon. One way is the Report Infringement page, which we do not often use because there is a limited word count and you cannot attach any additional documents. Our firm file the most thorough complaints possible, meaning we support our claims with additional information such as invoices, receipts, and other documents of that nature. However, if you are choosing to report infringement yourself, the aforementioned platform is quite simple. You may send a list of ASINs or a seller's profile that you seek to remove, along with a brief explanation, and your registered trademark, copyright, or patent number.

If you are selling a private label brand on Amazon, it is equally important to make sure you do not infringe another seller's trademark. If you are caught using a protected trademark without permission, even accidentally, it could cost you not just your Amazon account but also could result in a lawsuit filed against you. “[O]ften, a manufacturer will sue both the Amazon seller and Amazon.com for trademark infringement; usually in cases where a seller is accused of selling items that are inauthentic, counterfeit, or are sold by an

unauthorized reseller.”³⁵ However, although Amazon is typically not found to be liable for infringement, you may not be as lucky.

Why are so many baseless IP complaints placed against Amazon Sellers?

As a seller, you should always **be aware** of the fact that Amazon is first and foremost going to protect themselves; you are expendable, and Amazon will not hesitate to suspend your account for the slightest infraction to protect itself, even if that infraction has not yet been proven to be true.

Amazon does not monitor their platform for IP infringement, but does allow rights owners to file a complaint based on mere suspicion. Once a complaint is filed, Amazon will remove the listings or suspend the account holder until the matter is resolved, to ensure they cannot be held liable for the supposed infringement.

Eventually, manufacturers and other Sellers began to realize how easy it is to get remove their competitors from their listings and even from the platform by filing infringement complaints. Clearly, Amazon is not concerned with preventing infringement on their platform, but rather with covering their own back. That is why they are so willing to remove a seller or listing with little to no proof of any wrongdoing.

Consequentially, it becomes the responsibility of the accused seller to prove to Amazon their innocence. To do so, the accused seller will need to provide his or her invoices to Amazon to clearly demonstrate that the product already sold were authentic, and that there are no IP violations.

CJ Update: There is an increase in the number of IP complaints asserted against Amazon Sellers. Whenever there is an increase in the number of these complaints, it is usually due to a major brand or seller falsely claiming their IP rights are being violated in an attempt to cull their competition on Amazon. They

³⁵ Amazon Law Library.

purposefully seek to cause Amazon seller account suspensions and listing suspensions to protect their sales. This harms both Sellers and consumers by raising prices, as the quantity available on the market naturally will decrease when there is less competition. At our firm, we often get suspended accounts and listings reinstated by getting the complaints withdrawn. When you stand up to brands asserting baseless IP complaints, and let them know that they are the reason your account or listing was suspended, they may fear for their own liability and withdraw the complaint, knowing you have attorneys on your side who can prove that you have not violated any IP laws.

Authorization to Sell vs. Intellectual Property

Many brands seem unaware, or may even just choose to [overlook](#) the fact that distribution agreements do **not** constitute intellectual property rights violations. If you are a brand manager looking to control distribution of your product, the proper channels to do so are readily available for your utilization, but the IP complaint system is certainly not one of those.

Take a big brand like Apple, for example. If you want to sell their products on Amazon, you must seek approval from them, which means they are **brand gated**. Amazon has decided to protect this particular brand (as well as a select number of other big companies who are also brand gated), so you cannot sell their products without an authorization agreement between Apple and yourself.

However, if a brand is not gated on Amazon, they cannot claim lack of authorization as a valid reason to file an IP complaint. As such, any brand that is not gated on Amazon, that files a copyright or trademark complaint against your authentic product, claiming that you are an unauthorized reseller, has likely asserted a baseless IP complaint. Lack of authorization to sell, on its own, is not a valid basis for a trademark violation claim.

Further, sometimes brand owners create a listing on Amazon, and other Sellers will join that listing because it matches the product they are selling, in accordance with

Amazon's ASIN Creation Policy. Often, these Sellers are simply reselling the exact same product with the same packaging, and they are entitled to do so pursuant to the First Sale Doctrine. However, for some reason, these brand owners believe in error they own the listing and that no one else can join and file a trademark infringement complaint. **This is also an example of a baseless IP complaint.**

It is important to be aware of the cheap shots many un-gated brand managers will take to prevent you from selling their products, especially if you are selling these goods at a lower price than the brand itself is (which you have the legal right to do on Amazon if you do not sign a MAP agreement, which is covered in Chapter 3).

What are Gated Brands and Ungating Services?

As indicated above, gated brands are brands that have qualified for special protections from Amazon. [Ungating services](#) are third-party vendors or consultants that help you achieve approval to sell brands and product categories that you are currently ineligible to sell without approval from Amazon. There are a lot of great services out there that can help you expand your business into new product niches. However, while certain brands have protection agreements in place with Amazon, but there is no official list of those gated brands on Amazon. If you're not sure which brands and categories are restricted, there are extensive lists that are constantly being updated online, but your own seller central account is your best resource.

You should always be diligent about checking for listings and brands that require an application to sell, and be wary of taking advice on this topic from third party services, as Amazon changes their restrictions regularly. If Amazon warns you that a brand, category, or product is restricted, do not try to relist the item without permission. If you make an error and get suspended for listing a brand or category that you are not approved to sell, contact our law firm immediately, as we have a lot of experience resolving this type of suspension.

What You Should Do If an IP Complaint Is Made against You or Your Account

[Intellectual property allegations](#) are an entirely different ballgame than your normal buyer complaint about a late shipment or defective item. This is a legal issue. If the complaint is legitimate, you face far more than just an Amazon suspension; you face a potential lawsuit. This is why it is so important to *only receive advice from lawyers*.

First and foremost, you should not hire anyone who is not a lawyer to help you with these issues. In addition to my law firm, there are a handful of other lawyers around the United States who have some experience with Amazon Sellers. Do not trust your legal issues with a nonlawyer—even if he or she worked at Amazon or had a Sellers’ account on Amazon. No one without a license to practice law in a Federal Court in the United States should give advice about intellectual property issues. In fact, if any non-attorney has taken money from you in exchange for advice about intellectual property issues, he or she likely violated the criminal law in your state and his or her state which prohibits practicing law without a license.

As we stated earlier, *any* allegation of intellectual property infringement will likely result in the suspension of your listing or your entire Sellers’ account by Amazon. This is because it is Amazon’s way of avoiding liability for the infringement. In *Milo & Gabby, LLC v. Amazon.com*, the court held that Amazon could not be held liable when a third party sold infringing goods on the Amazon platform because Amazon itself did not directly offer to sell infringing goods or engage in any other infringing acts.³⁶ The way Amazon avoids being sued is to kick off Sellers at the first sight of an allegation, then they leave the seller to prove they did not infringe on any rights.

When this book was first published in 2017, we noted a trend that Amazon seemed to suspend smaller Sellers for fewer IP complaints, while larger Sellers were able to withstand more IP infringement accusations without being shut down completely. However, since that time, Amazon seems to have begun suspending seller accounts more

³⁶ *Milo & Gabby, LLC v. Amazon.com*, No. C12-1932RSM, 2015 U.S. Dist. LEXIS 149939 (W.D. Wash. Nov. 3, 2015).

and more indiscriminately. While a seller may withstand more than one IP complaint without being suspended right away, it seems that account suspension is now inevitable, regardless of the value of the seller's account. These IP suspensions appear to occur in major waves. It seems that Amazon periodically combs the third-party marketplace for Sellers with one or more unaddressed "Received" IP complaints, and automatically suspends the account, or at least threatens to suspend the seller for not addressing the notices of infringement when they were originally received. Amazon's notice of suspension is not usually very specific, and Sellers are expected to know what warnings were received and not addressed.

Specifically, when your listing is initially suspended due to an intellectual property complaint, Amazon generally provides the rights owner's email address and instructs the seller to resolve the issue with the person or company who filed the complaint. To resolve an IP suspension, you usually still need to contact the seller or company who has made the allegation, even if you previously removed the listing.

Many companies have taken the necessary precautions and have properly registered their IP. Many of these brands with registered their IP often have automated systems in place to monitor for infringement. Sometimes Sellers, or resellers, who are legally selling authentic products get caught in the net. In many cases, the IP rights are valid, but the allegations are totally baseless.

NOTE—In most cases that we have seen, the allegations are baseless—there is no infringement behind most intellectual property complaints asserted against Amazon Sellers.

As an Amazon seller, you should pay careful attention to where your complaints are originating from. Many rights owner complaints are other Amazon Sellers taking advantage of Amazon's system. Competitors try to get your listing or account suspended. False, or "spoof" complaints are usually easy to spot. For example, if an email address ends in *yahoo.com* or *gmail.com*, but the complainant is claiming to represent a major brand that

has its own web domain, it is likely that the complaint did not actually originate from the brand itself. Some brands hire brand protection firms or attorneys to file complaints on their behalf. As such, most legitimate complaints come from the brand's web domain email addresses, or from brand protection firms and attorneys. However, there are some exceptions, and it is always a good idea to try to contact the email address provided.

CJ Update: Notice-Dispute@Amazon.com often suffers slower response times for no apparent reason. If someone asserts a baseless (or even arguably baseless) IP complaint against you, and you try to get a retraction, resulting in either a refusal by the complainant or no response altogether, you can write to Notice Dispute so that the Seller Performance team may review your case and begin the process to reinstate your account. We send dozens of these emails every day for our clients. It normally takes 1-3 days to receive a response from Amazon, but that response time has repeatedly slowed down to a week or more to receive a response. The Bezos escalation team often responds more faster and with more positive feedback to Sellers who decide to take their complaints up the chain of command to the Bezos' team.

Complaints arise when your account is selling a product which may appear similar to others, but those specific similarities are still not sufficient enough to constitute infringement. You may need an attorney to demonstrate to the complaining company that your product is unique, original, and not infringing on anyone's IP rights. If the rights owner does not willingly retract their complaint, it is more difficult to persuade Amazon to reinstate your selling privileges for that specific item.

There are times when the complaints are baseless. Companies and manufacturers do file IP complaints on your account just because you are selling the same product at a lower price, or because you are not an "authorized" seller. These types of complaints are often without merit, frivolous, and an abuse of the Amazon's policy, and even, sometimes, against the law.

Many companies simply allege infringement on Amazon seller accounts due to a

misunderstanding of the law. If this happens, you will need to bring to the complaining party's attention that it is their burden to prove there was an actual infringement. For example, for patent infringement, there is an "All Elements Rule" which requires each claim limitation to be proven by the plaintiff who is alleging the infringement. If the company alleging the infringement cannot prove you have met all the requirements to prove infringement, then there is no infringement, plain and simple. Once it has been established that there was no basis for an infringement claim, the complaining party will usually agree to remove the claim. To have the complaint retracted, you will need to ask the complaining party state to Amazon, in writing, that the claim was filed in error, the issue is resolved and they are writing to withdraw their complaint. When they withdraw their complaint, you should request that the complainant provide Amazon's confirmation of a processed withdrawal. If you do not receive notice that the retraction was processed on your account, a copy of the withdrawal confirmation should be attached to your plan of action along with invoices, proving your item has not infringed on anyone's IP rights or the [dispute has been resolved](#).

When the Intellectual Property Complaint Is Withdrawn

When you are able to obtain the withdrawal of an IP complaint which caused your account to be suspended, your suspension may simply be over. Other times, you may need to take one or several steps to get back to the business of selling on Amazon.

Steps:

1. Make sure Amazon recognizes the withdrawal of the complaint and links it to your suspended Amazon account. In order for the withdrawal to be linked to your account, the withdrawal must come from the same e-mail from which the original complaint was asserted. Also, you may want to provide the person withdrawing the complaint with the following language to use in his or her e-mail to Amazon withdrawing his or her complaint:

"Dear Amazon, we (name of brand that made the complaint) hereby withdraw the intellectual property right complaint previously asserted against _____ (the name of your account or storefront), Seller ID _____ (your seller ID). This complaint was asserted in error."

2. Make sure that you are cc'd on the withdrawal e-mail.

3. Draft a very concise POA explaining the issues in a positive manner.
4. Prepare to e-mail Notice-Dispute@Amazon.com to show that the complaint was withdrawn confirming the dispute has been resolved and your account should be reinstated (include the withdrawal e-mail, and if you are not successful, in your second submission include the letter from the lawyer explaining why there was never an IP infringement).

If Amazon does not immediately remove the already-retracted IP complaint from your account health, or if your account is still suspended, which has been happening with greater frequency lately, you can reach out to Notice Dispute again. Just treat the situation as though your account health requires another plan of action because the situation even occurred. You should emphasize what you have done to resolve the complaint and how you will prevent similar complaints.

Amazon will also often require the retraction to clearly state that the complaint was asserted in error. That statement is often difficult to obtain from complainants.

Intellectual Property POA

Once the complaining party has removed their complaint against you, you will be able to move forward with a more complete plan of action which includes this resolution. However, if the complaint is not removed within the given time frame required to write your [POA](#), you must simply submit a plan of action stating that you have reached out to the rights owner and you are trying to resolve the dispute.

STEP ONE:

Dear Product Compliance Team,

I am a principal of (Your Store), and we are writing this to appeal our suspension due to Intellectual Property–related complaints.

The Cause of This Issue:

- **We sell only 100 percent authentic quality items through our Amazon account; however, a rights owner mistakenly filed a complaint on our account, believing our product was a knock off.**

- **We have reached out to the complainant, and they have since acknowledged their mistake and agreed to remove their complaint.**

Once you have shown why this happened, you will then need to show all the steps you have taken to correct this issue. This includes a letter from the seller acknowledging the error, proof the complaint has been removed, and most importantly, proof your item is being sold legally.

The third step may be frustrating to demonstrate. You did nothing wrong, so how do you show this issue will never happen again? This is when you will incorporate your business practices. Show Amazon you have and will continue to follow their policies. You must demonstrate you have someone reviewing your inventory to show all items are legitimate and are not violating any other rights.

STEP TWO:

We understand the responsibility for policy compliance lies with us. As such, we have taken the following actions to correct this issue and ensure it never reoccurs:

Corrective Actions:

- **Contacted the complaining party immediately to resolve the issue**
 - **Please see attached correspondence demonstrating that the complaining party mistakenly alleged an IP violation.**
- **Contacted our supplier / manufacturer to ensure all our items are 100 percent authentic and not in violation of an IP rights**
 - **Please see attached invoices and letter from the manufacturer.**

STEP THREE:

Preventative Measures

- **We dedicated a team member to specialize in infringement prevention, specifically for the Amazon platform.**
- **All inventory is reviewed upon arrival to ensure they match their listings 100 percent.**

- **We continue to only conduct businesses with manufacturers who can supply documentation to demonstrate that all items are 100 percent authentic and not in violation of any other person’s intellectual property rights.**

Your conclusion should acknowledge you respect Amazon’s customers and it is important to you to maintain their trust. State that you have made key inputs into your business practice to ensure you also follow Amazon’s “customer obsession” motto.

When the Complainant Refuses to Withdraw His or Her Complaint

When the complainant refuses to withdraw his or her complaint, if you have not yet hired a lawyer with intellectual property experience and Amazon experience, you should do so ASAP.

AS a law firm, when we are faced with a brand that refuses to withdraw a [baseless complaint](#), we usually do the following things:

1. We draft a POA for the seller to submit to Notice-Dispute@Amazon.com which states the complaint is baseless and should be ignored.
2. We then attach a copy of our Legal Opinion Letter—the same ones we sent to the brand, as support for your POA.
3. Advise the accused seller on legal remedies available to them.

By hiring a law firm, the seller shows Amazon the complaint is baseless and then backs the position up with the opinion of a lawyer. By consulting a lawyer and providing this information to Amazon, the seller has also demonstrated that they have taken the claim seriously and sought legal advice. This contributes to the corrective actions taken in the seller’s plan of action.

If you are a seller who is selling branded goods, and that brand accuses you of selling counterfeit goods, and you are 100% sure you are selling genuine products, you could have two main avenues of legal recourse—you may be able to accuse the complainant of defamation per se and tortious interference with contract.

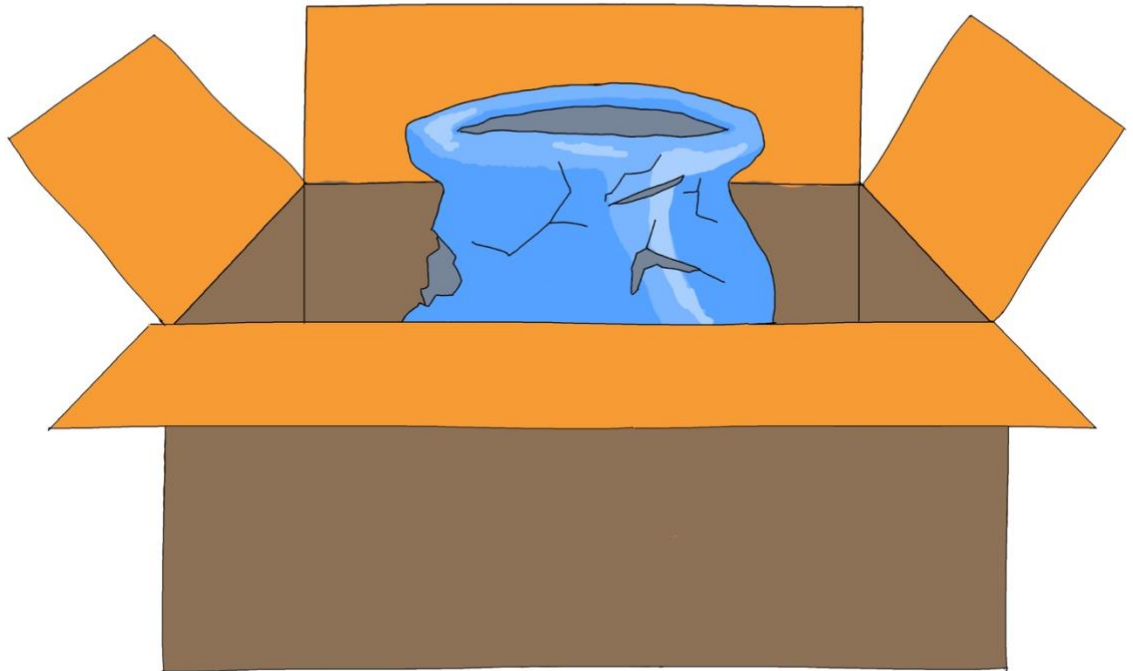
Defamation is proven when there is a false statement published, in writing, to a

third party (in your instance, the complaint is written to Amazon), which causes damages to the seller. One may often find it difficult to actually prove the damages caused by the IP complaint, and this is where a charge of defamation per se comes into play. Defamation per se is used when the published allegation is so inherently damaging, that the damages are clearly presumed to exist, just from the fact that the statement was ever made. For Sellers that participate on the Amazon platform and assert false counterfeit complaints, it is often reasonable to assume that they are likely aware of the potential damage they could cause to the accused seller.

Tortious interference with contract is when one party intentionally damages the business relationship between two other parties, knowing they have no legal base to do so, and in consequence, they cause damages to one or both of the parties already in business together. These are crimes under United States federal law, and if you can prove either of these occurred, you may have a significant claim for damages against the brand that [accused you of violating IP laws.](#)

Xxxxxx

Chapter 7: Inauthentic Item Suspensions



“Inauthentic,” on Amazon, is usually different from what most people believe the word “inauthentic” generally means. “Inauthentic,” on Amazon, does *not* usually actually mean fake or counterfeit. Inauthentic means Amazon wants to know where you sourced or obtained your products, and that those products match the Amazon listing exactly. If you are selling on Amazon, use its’ meaning of the word, not your own.

Inauthentic item suspensions are the most common suspensions for people and companies selling on Amazon. Sellers who complete a few thousand dollars of sales per month, and Sellers who do millions of dollars per month, suffer the same issues: Amazon suddenly wants to know where you source your products.

[An “inauthentic” suspension](#) on Amazon can happen for the following reasons, and more:

- Item does not 100 percent match display picture.
- Item does not 100 percent match listing description.
- There is a missing item.
- There is a missing warranty.
- An item is damaged.
- The packaging for an item does not 100 percent match the display picture.
- The packaging for an item does not 100 percent match the listing description.
- The customer was expecting a different product due to misrepresentation on the product detail page.
- A consumer made baseless complaints because they were dissatisfied
- Other reasons Amazon periodically adds without notice.

Tips to Avoid/Resolve an Inauthentic Suspensions with Invoices

1. Always maintain invoices. Always examine your invoices closely before they are needed for anything on the invoice or missing from the invoice that would cause Amazon's team to question the legitimacy of the document. Maintain flawless invoices so that they can be provided to Amazon quickly if you receive an inauthentic listing or account suspension.
2. Your invoices should be dated within 365 days and predate the sale that caused the inauthentic complaint. If you sent the products to FBA, the invoices should predate the date they arrived at FBA.
3. Ensure your purchase quantities, inventory, and orders make sense in light of the units you sold to Amazon's customers or shipped to FBA.
4. Ensure all of your supplier's information is on the invoice, including a working telephone number and strive to source from suppliers that have an internet presence and where the supplier's products can be traced back to the manufacturer.
5. Ensure that your name, address, phone number and, most importantly, email address, matches the address registered to your Amazon account.
6. Do not redact anything from your invoices even though Amazon permits you to

- redact pricing information.
7. Before sending invoices to Amazon, check the supplier's address on Google Earth to confirm that your supplier's address shows an actual commercial property. Amazon's staff checks the addresses...you should check before they do.
 8. Avoid liquidators or secondhand shops, especially if you are selling product in "New" condition. Invoices from liquidators and other second-hand stores and charities' invoices are often rejected.
 9. The description of the product in your invoice should be as detailed as possible, including product UPC code, size, colors, etc. The information should match the listing details.

There are also times when a seller is faced with an "inauthentic" suspension only to investigate and find out they were actually selling a counterfeit or inauthentic item. The largest online Sellers established brick-and-mortar businesses, and even Amazon, have all sold counterfeit items. No retailer wants to sell counterfeit products. But, even with the best intentions and great systems in place, counterfeit items sometimes end up in your inventory.

If your deep dive investigation reveals that your inventory contained counterfeit products, stop selling the items immediately. Be prepared to demonstrate to Amazon that when you detected counterfeit goods, you corrected the issue and put new systems in place to avoid sourcing counterfeit items in the future. For example, winning arguments when Amazon Sellers unwittingly had counterfeit products in their inventory include future sourcing directly from manufacturers or authorized distributors. Other winning arguments included improving the operation of the business to require sources of goods to provide proof of their supply chain to ensure authenticity.

Gray market goods are often the cause of Amazon's "inauthentic" suspensions. Gray market goods are genuine products that Amazon Sellers obtain outside brands' intended distribution streams. They are the real products. However, gray market goods are resold without the brand's explicit consent. These complaints are sometimes valid, because

unauthorized distribution can result in material differences in what the consumer receives when she buys the product. For example, some products include a factory warranty that is only available to customers that purchase products through an authorized distributor. This type of material difference can lead to inauthentic complaints. A full discussion of “material difference” and the “First Sale Doctrine” is at chapter 2.

Preventing Inauthentic Suspensions for Retail Arbitrage Sellers

[Retail arbitrage Sellers](#) have specific issues that Sellers who buy and resell do not generally face. If you are selling via retail arbitrage, the following pertains to you:

1. Receipts from certain major retail stores, like Walmart, are generally accepted by Amazon because they contain product UPCs. We have been very successful at getting suspended Amazon Sellers’ accounts reinstated after submitting receipts from retail Walmart stores. When you are submitting your receipts, make it easy for Amazon’s staff to identify your products on the receipts. Highlight the product at issue and the price you paid. Demonstrate that the products were genuine based upon the reliability of the source of the product.
2. Do not submit forged or manipulated documents, even if your receipts are insufficient. It is much better to use genuine retail receipts from wherever you purchased your products than to submit created documents. Amazon permanently suspends many retail arbitrage Sellers for submitting forged documents. It is much more difficult to appeal a forged document suspension than an inauthentic suspension. Our advice is to use whatever receipts or other documents you have rather than create additional documents.
3. Take pictures of the goods you are purchasing at the store or the source of the goods. You can use pictures of the products taken when you were sourcing your inventory in your POAs. If you are sourcing at the sale racks at Nordstrom’s, for example, use your cellphone and take a picture of the product with the skewers on it, on the rack, at the store. This type of evidence is persuasive.

4. Do not redact anything from your invoices or receipts. Regardless of the price or the number of units, do not redact anything at all. It simply does not help you in any way. Amazon's witnesses confirmed multiple times that they are trained to hold redactions against Sellers.

Inauthentic Suspensions for Private Label Sellers

When you own your own private label brand, and you're the one designing, sourcing, and manufacturing your own products, receiving an inauthentic suspension is mind-boggling. [How do you prove that your own brand of products is authentic?](#)

Certain documents support POAs for Private Label Amazon Sellers who receive inauthentic suspension notices.

1. First, if you have registered your trademark, have a design patent or copyright, proof of registration is very persuasive. Often times, Amazon will just accept proof of brand ownership along with factory invoices showing a matching product description.
2. Send Amazon your manufacturing agreements and all correspondence with your factory from your inception of the process until the receipt of your order.
3. If you own the factory, send Amazon invoice for the material used to manufacture the products along with product packaging showing the manufacturing address.
4. Send Amazon your emails from the inception of your idea all the way through obtaining your prototype, and all the way through obtaining your actual product. Discuss these emails in your plan of action.
5. If you are a designer, submit your drawings or design prototype files.

Not Functioning as Intended To Inauthentic Suspensions

“Not functioning as intended to” is an inauthentic [complaint](#) in Amazon's dictionary. This allegation applies to any product on Amazon which a customer buys and expects certain functions. This can be a very objective situation and does not necessarily

mean that a customer purchased something from a seller that does not work or is broken. In fact, the product could be fully functional but simply does not meet the standards the customer placed on the product.

This complaint applies to a whole host of products, ranging from machinery, electronics, cosmetics, and even medical type products. For example, a customer may buy a cell phone on Amazon and complain that the service coverage is poor. The customer may report to Amazon that the item “did not function as intended to,” which is an inauthentic complaint that can cause an Amazon account suspension. As with all inauthentic suspensions, Amazon wants to see where you sourced the product.

Next you must take immediate corrective actions, starting with removing the remaining inventory and listings from the Amazon platform. This includes FBA because Amazon thinks that your products are inauthentic. Amazon does not want more customers to purchase your product and complain. The product can be relisted again once the suspension is removed. Further, since Amazon is such a customer-oriented marketplace, you should refund all dissatisfied customers and address it as an immediate corrective action.

Preventative measures are when you focus on preventing the issue from reappearing. For example, an Amazon seller that receives a Used Sold as New complaint from a consumer may implement procedures where its’ staff contacts its’ suppliers and regularly obtains documentation that the products are in the latest packaging. Suspended Amazon Sellers’ preventative measures may include periodically requesting that suppliers provide Quality Control Certificates and Manufacturers Safety Data Sheets with inventory purchases.

Persuasive preventative measures can be difficult to identify as it demands that the seller identify why the product “did not function as intended.” Returning to the cell phone example, the issue that could have caused the phone not to function as someone intended could be outside the seller’s control but the seller could add warnings to his or her listing

that warn consumers that poorly serviced areas may limit the phones usefulness. Over the years, packaging issues often result in the need for specific preventative measures, i.e. the seller changes to more protective packaging. For example, you may line boxes with 2-inch bubble wrap to prevent damage or you might choose to employ additional workers who overlook your packaging department and check each product before and after packaging to ensure no damage will occur during transit.

When appropriate, plans of action may include how you made sure the item was listed properly, that you trained all your employees on Amazon's Guideline Policies, and explain your inventory review process to Amazon's staff. After you have written a proper plan of action, you should also add in details of your supplier, and attach invoices and receipts with your appeal.

Inauthentic Item Plan of Action Broken Down

Each inauthentic issue is unique; however, there is a basic breakdown of how we approach [plans of action](#). First, introduce yourself and your business, and what type of suspension you have, then provide the details of the issue(s) that caused the suspension.

The following example is based on a seller who faced inauthentic complaints even though she was selling genuine products. However, since the seller's business was not reliant on the product, she chose to completely remove the item. The product was unimportant financially to the seller yet caused problems and, ultimately, a temporary loss of their selling privileges.

STEP ONE:

Dear Seller Performance,

I am a principal of, (state your business' name) and we are writing to appeal our suspension due to inauthentic complaints related to the following items:

ASIN:

Title:

Root Cause:

A customer was dissatisfied with the quality of a product they received and believed the item was inauthentic. Specifically, the customer left the following feedback: “this product does not work as described; it must be fake.”

While our products are genuine and purchased from the manufacturers supply chain, we have determined that the customer likely received a product that did not match their expectations.

Your next step in a plan of action is to demonstrate your immediate actions when you first learned there was an issue. You should demonstrate how you corrected your issue and tried to assuage the customer. If you do not have access to your account, state what you will do to correct the issue once you have been granted access.

STEP TWO:

Corrective Actions

- **We have taken the following corrective actions:**
 - **We contacted dissatisfied customers and offered refunds.**
 - **We removed our inventory to inspect each item for any issues that may have led to this complaint.**
 - **We verified our purchase documents and supply chain.**
 - **We have decided to permanently remove the listing from our inventory to prevent further customer dissatisfaction.**
- **We conducted a full audit of our remaining listings:**
 - **We inspected all inventory against detailed product information and listing details to ensure they match 100 percent, including type, color, brand, size, and so on.**
 - **We also inspected each inventory item for quality and condition.**
 - **We inspected each item to ensure all items are properly packaged, authentic, undamaged, have valid, clear product labels, all seals are intact, and they are exactly as described on Amazon.**
 - **We inspected all items against detailed product information to ensure 100 percent match. We tested items to ensure they are in proper working order. Any item showing signs of damage or defect is returned to the manufacturer or manufacturer's facility.**

Then, like other plans of action, discuss all the new business practices you have implemented to ensure this issue will not arise again. There are multiple steps you need to take to protect your business, and let Amazon know what they are.

STEP THREE:

Long-Term Changes to Business to Prevent Future Issues

- **Our account customer service management team is now required to review all of our listings against customer feedback weekly to reduce and prevent complaints:**
 - **If we identify buyer dissatisfaction, we immediately remove the product until we ensure the issue is resolved.**
 - **Where uncertain, we contact Seller Support for guidance.**
- **We now research customer satisfaction rates prior to sourcing new products.**

Finally, admit responsibility for becoming a better seller. While we do not advocate any seller to admit they did anything wrong when they did not do anything wrong, every businessperson can make changes to improve their business. Take responsibility for making your business better.

CONCLUSION:

“We take full responsibility for the satisfaction of Amazon’s customers. My team and I have worked diligently to correct the cause of these complaints and prevent future issues. As such, we respectfully request that Amazon consider our efforts and reinstate our selling privileges. Thank you for working with us to resolve this issue.”

Chapter 8: Safety Issue Suspensions



[Safety issues](#) on Amazon should be taken just as seriously. You do not want to create or offer a product which could harm Amazon's customers. Safety hazards can result in consequences far worse than a suspended account.³⁷ If you receive a safety warning or suspension, you must be sure to address the problem immediately.

³⁷ There have been cases where consumers have sued Amazon for claimed injuries. Amazon requires Sellers to maintain insurance. We strongly recommend that all Sellers

Safety issues and used-sold-as-new complaints often go hand in hand. Having reviewed thousands of safety complaints, we have found that many of the complaining customers simply believe the item they received has been opened, used or tampered with. The misplaced assumption is what seems to solicit these types of complaints. Imagine that you purchased a shampoo bottle, but when you received the bottle, the seal was broken. As a customer, you would be fearful that someone tampered with the product and it may not be safe to use on your hair. In this case, the product the buyer received is “used” by Amazon’s definition, and there is now a safety risk because the product is meant for human consumption, and such products cannot be sold in used condition.

These issues occur time and time again. Some safety issues are due to careless mistakes on behalf of the seller, and some issues are due to manufacturer defects or damage that occurs while the item was in transit or at an FBA warehouse. Some FBA Sellers do not have a procedure in place to review items before they are sent to customer, because the items ship directly from the manufacturer to FBA. As a result, if an item is defective, the seller is not there to catch the mistake, and the customer files a complaint. However, Sellers should be aware that Amazon believes the seller is solely responsible for safety and quality control, no matter why or where the product was damaged. Also, towards the end of 2019, Amazon changed Sellers’ ability to pull returned products out of inventory. This results in consumers returning products and those opened products being sent to other consumers. Amazon takes no responsibility for this well known problem.

We have observed that many Sellers try to blame the manufacturer, FBA, the customer, or the shipping carrier, because they never sell used products. However, Amazon holds the seller responsible. The most successful Amazon Sellers change their

maintain product liability and general liability insurance. The only insurance broker we recommend is Ashlin Haden Insurance in Indiana. Ashlin’s firm focuses on insurance for Amazon Sellers and provides tremendous insight for Sellers at Amazon seller events around the US.

perspective and realize that, with the right measures in place, it is likely within their control to prevent these types of issues or, at the very least, limit their frequency.

In our experience, accounts and listings suspended for safety issues are easier to reinstate than accounts and listings suspended for other reasons. This is likely because there is usually a very specific safety issue or complaint which can be directly addressed. The “root cause” is usually obvious or at least detectable. Look at your business; was the complaint the result of a defect caused by your manufacturer? If so, then you may need to show Amazon you have a system in place to check for defects and ensure those products never make it into customers hands. If the problem is too persistent, you may simply need to find a new manufacturer or change products. Whether you choose to source products from China, Vietnam, India, Thailand, or elsewhere, all Amazon Sellers are responsible for quality control and should consider maintaining independent quality controls.

Vendor Suggestion: For quality control in Asia, we highly recommend Rahul _____ of QIMA. Rahul has been helping Amazon Sellers for years and his company is often a sponsor of Amazon seller events in Hong Kong and throughout Asia.

Manufacturer and supplier relationships can be just as helpful to resolve safety issues as they are for inauthentic and intellectual property issues. For example, one of our clients was suspended for a [customer safety complaint](#) claiming that the product, a bottle of cologne, did not have an expiration date and they feared the product was old or expired. Our client confirmed that this particular cologne did not come with a manufacturer issued expiration date on the product or packaging.

After our team investigated the product online, they discovered that this cologne was a natural fragrance that did not have the same makeup of chemicals usually found in other perfumes and colognes. The product was unique because it was made up of ingredients that do not expire. Further, our client was able to contact the manufacturer for safety and material data to support this fact. Lastly, our client’s manufacturer was able to

provide batch code documentation from the manufacturer that placed the manufacture date for the products sold within the last six months, which is well within the normal expiry time period for similar products.

We drafted a detailed plan of action with supporting documentation explaining that the product's ingredients do not require an expiration date according to the law and do not expire. We further explained that, even if the product did expire, it would not likely be expired according to the expiry date standards for similar products. Amazon immediately reinstated our client's ASIN, and the seller was able to get back to selling. In this particular situation, our team used creative thinking and persuasive writing to get this seller's ASIN back.

Other safety suspensions can be trickier to tackle. This is because it is imperative to accept responsibility in your plan of action to Amazon, but you certainly do not want to create a false record of guilt, especially for a case involving injury.

[Tips to Avoid Safety Suspensions](#)

- Choose your inventory wisely: Some products carry a higher risk of receiving safety claims than others. For example, any products that are ingestible or consumable by humans or pets including: nutritional supplements, foods, or topical creams. These products generally receive a higher number of safety complaints because people's bodies react to substances differently. Electronics carry risks of fire and explosion, and glass or fragile items carry a risk of cutting or harming someone. Use common sense and weigh risk versus reward when you select products to sell.
- Use safety seals and tell the consumer what packaging to expect in the listing. Describe or illustrate on your detail page what the packaging of the product should look like, and tell the consumer exactly what to expect when the package arrives at their door.
- Perform quality inspections: Amazon expects Sellers to carefully inspect the products sold on their platform. You should manually inspect items to ensure all seals are intact, make sure nothing is expired or damaged, and test items to ensure they are in proper working order.

- Perform regular bin checks: Sometimes, Amazon’s FBA employees make mistakes and a returned product that was opened is returned to your inventory. It is best to remove your inventory from Amazon’s warehouse periodically to ensure that nothing was damaged or returned. Some Sellers remove items for inspection each time they receive a return.
- Respond to customers quickly. Sometimes customers leave complaints simply because they are unhappy in that very moment, they want their money back and simply need someone to talk to about the matter. If they do not receive an immediate response, it just becomes more and more likely that they will leave a complaint.
- Leverage negative feedback. If you do receive common negative message or comments from customers, you can use this knowledge to prevent future similar complaints. Include more descriptive information to prevent the consumer from being confused or dissatisfied, and enable them to make a more informed purchase. For example, if you sell shoes, and you notice that people with wide or flat feet tend to return the product and/or leave more negative reviews, update your detail page to say that the shoes might not be suitable for people with flat or wide feet.
- Refund Everyone. You have to make the consumers happy, no matter what; even if the consumer was scamming you, even if the product was absolutely perfect, and even if your detail page was flawless. Amazon’s number one objective is for all customers to be happy. As such, it is better for Sellers to refund a dishonest customer than risk a suspension.

It is important to implement strict quality standards on the Amazon platform. Simply having many successful sales and happy customers often does not make up for just one customer who was injured as a result of carelessness or oversight. When writing your plan of action, it is important to take initiative.

Sample POA:

“One customer reported that he or she was injured as a direct result of using our product. Because most customers report positive experiences related to using our products, we recognize that this particular customer may have received an item that

did not meet our strict quality standards. Because we aim to eliminate all potential for errors, we removed our FBA inventory for inspection to ensure there are no other defective items. We have also implemented a better system to fully inspect all items for defects and all orders for accuracy before shipping to Amazon’s customers. Our business administration has implemented the following measures and practices.”

What should you look for when you receive a safety complaint? You should review your entire business practice to ensure it was not underlying issues within your company which resulted in your suspension. Here is a list of monitoring practices you may wish to implement:

- Inspect your entire on-hand inventory to ensure compliance with Amazon’s high condition, safety, accuracy, and quality standards before they are inventoried, listed, and shipped.
- Inspect each item for condition or safety compromises including manufacturing defects, damage, tamper, and improper storage evidence.
- Verify that each item is correctly labeled and packaged exactly as described on its Amazon listing (including size, quantity, etc.).
- Visually verify that all items match the description on their packaging and boxes (i.e., color, size, shape, etc.)
- Verify that each individual order is complete with consistent quality and it is exactly as described on Amazon.
- Fully test and discard random items from each inventory purchase to ensure to identify and isolate any safety issues.
- If you receive a safety complaint, you must deactivate the listing and remove the entire batch of inventory to check for potential for defects.
- Hold monthly training workshops for all the employees on all of Amazon policies.
- Upgrade to higher quality packaging materials for shipping to ensure safe transit to Amazon customers and prevent damage or breakage.

- Review your packing and shipping practices against carrier guidelines to ensure safe transit to Amazon fulfillment centers and customers.
- Verify all expiration dates are valid and exceed Amazon’s restrictions.
- Review “first in—first out” data regularly and remove older inventory to ensure the quality of all orders.
- Verify the UPC codes, product serial numbers, or other product identifiers against the manufacturer information to ensure that items shipped match the order and listing exactly.

In addition to the business practices you implemented to benefit your company, it is also important to make adjustments that will make a difference to Amazon’s customer. A customer who sees a negative review regarding safety complaints does not know you implemented new procedures, nor do they care. A customer cares about receiving his or her product on time and that the product is not a safety hazard.

- Follow up with all customers after their delivery is confirmed to ensure satisfaction.
- Review and update your listings each month based on product reviews, messages, feedback, and other customer concerns to ensure warnings and details are sufficient to prevent complaints.
- Check all reports, notifications, e-mails, metrics, feedback, and reviews several times daily to identify potential issues and address all customer concerns immediately.
 - Respond to all customers within twenty-four hours – sooner if possible.
 - If you receive an A-to-Z claim, negative feedback, or a negative review, that customer should receive an immediate refund.
 - If any customer leaves a review of three stars or less, you should request for more information regarding his or her complaint
 - If you receive too many complaints about a single product, you may consider no longer selling the item to prevent further issues.

If you are the brand owner and manufacturer of a product that received a safety complaint on Amazon, then it is your responsibility to take safety precautions a step further. Yes, you should still examine all of your listings to ensure they are accurate, but there must be more. You are the manufacturer; you are responsible for designing and creating the product which has injured an Amazon customer. Many Sellers who are also the manufacturer add legal disclaimers and warranties to create a safer environment for all.

Adding a legal disclaimer against improper use of your product is essential because it may be useful to avoid liability in the future. Make sure your warnings and instructions are clear, easy to understand, and alert the customer so as they do not miss the warning. In your follow-up e-mail to your customers, reiterate the warning to avoid the misuse of your product. We have seen it in the news time and time again about companies failing to warn their customers about the risk of a certain product. Even if the product was misused, they can still be found liable for not warning the customer of the risks involved. First and foremost, protect your business by creating safe and quality products, and secondly by taking the time to warn customers of any risks.

For example, we have resolved many safety suspensions for private label nutritional supplements with a plan of action stating that a disclaimer or warning was added to the listing which (1) defines proper use (2) names any known side effects, and (3) instructs the consumer to contact their doctor if they experience discomfort. While disclaimers can certainly help to limit liability, there are still risks and liabilities that can be incurred by Amazon Sellers.

Sellers have been asked during cross examination in arbitration before, “Did you maintain [liability insurance](#)?” Were you aware that your contract with Amazon as a Professional Seller account holder requires you to maintain liability insurance? It is becoming increasingly apparent that Amazon selectively uses the requirement for insurance to justify suspensions. Amazon may start enforcing it’s requirement of maintaining insurance across the board. So, retail arbitrage, online arbitrage, traditional wholesale retail Sellers, whatever you are doing, **get liability coverage**.

If anybody gets hurt using your product or they are injured using somebody else's unit that is attributed to you (if under the commingled system), insurance will likely cover two major costs: providing a lawyer to defend you against the injury claims and the insurance will likely pay any settlement or judgment.

When you have insurance and you get sued or you have insurance and someone makes a claim against you, you may simply pass that claim off to the insurance company and they will assign lawyers to you. That will save you money and time. The fact that insurance provides you with defense lawyers that they directly pay is arguably the most important aspect of having liability insurance.

Safety Issues with Returned Items

When an item is returned, it is your responsibility to review the item entirely. Returned items should be treated as an item which has not been through your multiple-step system of checking for damage, markings, or any inconsistencies between the returned item and Amazon's "new" condition guidelines, which requires the product to be in the same exact condition as it was when it was first manufactured. The previous customer may have broken seals or tampered with the product causing enough damage to result in a safety issue. Not all returned items may be sold as new, even if the product passes a thorough inspection. Most returned items, according to Amazon's policies, must be sold as used. It might be in your best interest to designate a separate area within your warehouse for returned products to ensure that you never resell them as new.

For FBA Sellers, Amazon's 2019 removal of Sellers' ability to remove returned items from inventory is an ongoing problem. It seems very common for Amazon's return center staff members to overlook breakage, damage and that essential product components are completely missing from returns. Since these products are often returned to a seller's inventory in poor condition and the seller then receives buyer safety or condition complaints when the opened and damaged product ends up a second consumer's home.

Safety Issues with the Manufacturer

Once you have proven that you solely sold safe, new items, you may determine that your safety related issue is due to a manufacturer defect. In this case, you must state this in your Plan of Action. However, even though it was the manufacturer's error, it was your responsibility to ensure those defects were not passed along to Amazon's customers. As such, although your plan of action will state the root cause of the issue lies with the manufacturer, you must still take responsibility for taking new steps to protect consumers. Reiterate to Amazon that customers are your number-one priority and you will only offer the best products to their customers. The following is a sample plan of action for a seller whose manufacturer caused the safety issue:

STEP ONE:

The Root Cause of the Complaint

- **After a deep dive investigation, we determined that customers may have received an item with a manufacturer defect due to an oversight in quality control inspections.**
- **However, our products are sourced directly from the manufacturer. Please see the attached documents proving they are new, safe, and authentic:**
 - **See attached authorization letter from the manufacturer granting our company the right to sell these items as an authorized distributor within the United States.**
 - **See attached safety certification proving our manufacturer is authorized to manufacture these types of products.**

STEP TWO:

Immediate Corrective Steps We Have Taken to Resolve the Issue

- **We have removed these products from our inventory for thorough inspection to ensure there are no additional defects.**
- **We have contacted each dissatisfied customer to offer refund and apologies.**
- **We have notified our manufacturer of the defect and requested a thorough factory inspection.**

STEP THREE:

Long-Term Changes to Our Business to Prevent Similar Issues

We implemented monthly workshops for all employees to review Amazon guidelines and restrictions to ensure we are up to date on all policies.

- **Listing/Labeling/Expiration Date—We inspect our entire inventory monthly and increased the frequency of quality-control inspections.**
- **Product Testing—In addition to our normal quality-assurance process, we now randomly select samples from each inventory purchase to fully test and discard those who do not meet Amazon’s standards.**
- **Sourcing—We regularly request assurances from our supplier that all products are new, safe, and manufactured and tested under the strictest standards.**

Finally, at the end of your plan of action, you should have a short conclusion where you take responsibility. Your conclusion should read something to the effect of: “We accept accountability for the safety and satisfaction of Amazon’s customers and aim to provide them with leading product and customer experience. While our business has suffered from this issue, it has given us the opportunity to review our business and become a better seller. We hope our efforts are acceptable enough for Amazon to reinstate our selling privileged for this ASIN. If we can provide any further information about how we have improved our business to prevent further issues, please let me know.”

Chapter 9: Used Sold as New Suspensions

As stated in the previous chapter, safety issues and [used-sold-as-new](#) issues typically intertwine on the Amazon platform. If a product is said to be new, but is actually used, a customer may believe it is the result of the product being defective and therefore, unsafe to use. Many times, a used-sold-as-new complaint is filed not because the item is actually used, but rather, it was merely damaged en route to the customer. Additionally, an item will often be considered used if it was opened or returned. Even if the product was returned unused, it is not considered new in Amazon’s eyes, or the eyes of your customer.

Prior to 2019, new had to mean brand new, never opened before, manufacturer sealed, undamaged packaging—new. If your product did not meet these standards, it was not new and could not be sold as such. However, Amazon has recently updated their condition guidelines, after unrolling the new BSA, to allow a little more leeway with how they define “new” products, as well as significantly updating the other categories. The following is a comparison of Amazon’s old and new “General Condition Guidelines:”

General Condition Guidelines

The following guidelines apply to all product categories unless otherwise indicated in the [Category-Specific Condition Guidelines](#):

Condition	Condition Guidelines Prior to 2019	Condition Guidelines Today³⁸
New:	Just like it sounds. A brand-new, unused, unopened item in its original packaging, with all original packaging materials included. Original protective wrapping, if	Just like it sounds. A brand-new item. Original manufacturer's warranty, if any, still applies, with warranty details included in the listing comments. Original packaging

³⁸Condition guidelines

<https://sellercentral.amazon.com/gp/help/help.html?itemID=200339950>

	any, is intact. Original manufacturer's warranty, if any, still applies, with warranty details included in the listing comments.	is present for most New items but certain items like shoes may be re-boxed.
Renewed	No Policy	Renewed: A pre-owned product that was inspected and tested to work and look like new by an Amazon-qualified supplier (a seller or vendor) or by Amazon. The product has minimal to no signs of wear, no visible cosmetic imperfections when held 12 inches away, and may arrive in a brown or white box with relevant accessories that may be generic. The product comes with a warranty giving you a replacement or refund within 90 days of purchase if the product does not work as expected. A selection of products are eligible for the Amazon Renewed Guarantee. Any exceptions to this condition description will be mentioned on the product detail page.
Rental	No Policy	A product that was inspected and graded by a qualified supplier (a seller, vendor, or by Amazon) in working condition with no structural imperfections that could impact the functionality. The products may be packaged in a generic box and come with relevant accessories as expected for a new product. Any exceptions to this condition description will be mentioned on the product detail page.
Refurbished:	Use only if noted in the Category-Specific Condition Guidelines. A refurbished product has been professionally restored to working order. Typically, this means that the product has been inspected, cleaned, and repaired to meet manufacturer specifications. The item may or may not be in its original packaging. The	No Policy

	<p>manufacturer or refurbisher warranty must apply and should be included in the listing comments. Refurbished items are sometimes referred to as “remanufactured.”</p>	
Used – Like New	<p>Used—Like New: An apparently untouched item in perfect condition. Original protective wrapping may be missing, but the original packaging is intact and pristine. There are absolutely no signs of wear on the item or its packaging. Instructions are included. Item is suitable for presenting as a gift.</p>	<p>Used - Like New or Open Box: An item in perfect working condition. Original protective wrapping may be missing, but the original packaging is intact and in good condition with minor damage possible. Instructions are included.</p>
Used – Very Good	<p>A well-cared-for item that has seen limited use but remains in great condition. The item is complete, unmarked, and undamaged, but may show some limited signs of wear. Item works perfectly.</p>	<p>A well-cared-for item that has seen limited use and remains in good working condition. The item may show some limited signs of wear with small scratches or cosmetic blemishes. Item may arrive with damaged packaging or be repackaged and could be missing some accessories. Missing accessories are clearly defined for each item.</p>
Used - Good	<p>Use only if noted in the Category-Specific Condition Guidelines. The item shows wear from consistent use, but it remains in good condition and works perfectly. It may be marked, have identifying markings on it, or show other signs of previous use.</p>	<p>The item shows wear from consistent use, but it remains in good condition and functions properly. Item may arrive with damaged packaging or be repackaged. It may be marked, have identifying markings on it, or have minor cosmetic damage. It may also be missing some parts or accessories such as screws (in the case of furniture) or an instruction manual.</p>
Used - Acceptable	<p>Use only if noted in the Category-Specific Condition Guidelines. The item is fairly worn but continues to work perfectly. Signs of wear can include aesthetic issues such as scratches, dents, and worn corners. The item may have identifying markings on it or show other signs of previous use.</p>	<p>The item is fairly worn but continues to function properly. Item may arrive with damaged packaging or be repackaged. Signs of wear can include aesthetic issues such as scratches, dents, and worn corners. The item may have identifying markings on it or show other signs of previous use. Item may be missing some parts or accessories such as screws (in the case of furniture) or a</p>

		mouse or USB cable (in the case of a laptop).
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Like Safety suspensions, Used Sold as New suspensions are typically easy to win because the root cause is usually easy to detect. First, examine your business practices. New products should be in nearly perfect manufacturer condition. You have to make sure that your products are not getting dusty, dirty, or being exposed to direct sunlight which could lead to the packaging becoming discolored. Is there a member of your company inspecting each item before it is shipped? Do you perform routine bin checks to ensure all items are intact? If you do not source your items from the manufacturer, then it is important to ensure you can trace the supply chain back to the manufacturer, and that the item is not old or outdated because it has been in storage too long, because only you will face the consequences. Here are some sourcing practices to consider:

Sourcing:

- Only sell new products sourced from manufacturers or their authorized distributors and retain all invoices on file. A manufacturer invoice showing you purchased the item straight from the brand itself is usually the best defense against a used sold as new allegation.
- If you do not buy from an authorized distributor or manufacturer, request written assurances and proof of supply chain from your supplier to prove that all products are new, authentic, and not stored too long before they were sold to you.
- When applicable, have your suppliers provide Quality Control Certificates.
- Compare the items you purchase to the manufacturer’s product information to verify that the manufacturer labels, expiration dates, warnings, products information, and product identifiers match across the listing details, products and their packaging invoices, and detailed manufacturer information. If a product is outdated or some of the manufacturer’s packaging is missing, the item may no longer be considered “new.”
- Verify all items are consistent with Amazon’s authenticity, condition, and quality standards to eliminate any potential confusion.

- Have employees catalogue and verify all manufacturer-issued expiration dates, batch codes, and product identifiers.

Take extra caution when buying products from warehouses, auctions, or liquidators. Any time you buy in bulk from these types of places, there are often damaged products and old or outdated products. These types of sourcing options also often lead to authenticity issues, as there is no way to trace the product back to its origin. If you're unsure if an item is acceptable, it is better to be cautious and not list it.

If your used-sold-as-new issue was a direct result of the supplier you chose, and you believe that you have identified a larger issue with the supplier, it may be best not to conduct business with them any longer. Amazon holds the seller responsible for preventing issues. Sometimes that means finding a new company to source from. You must show you have taken preventative measures to ensure you can choose a better source for your inventory in the future.

Packaging is important! If an item is new, but is not properly packaged, then it could result in a used sold as new complaint, or a damaged product. While this piece of advice may seem obvious, it should be taken seriously. The product you are selling on Amazon must be delivered to the door of the consumer in the exact condition as they would find it in a manufacturer authorized brick and mortar store. For example, if the box encasing a product is sealed in plastic when you buy it directly from the manufacturer, make sure yours is also sealed in plastic.

Further, Amazon expects Sellers to do whatever is necessary, including adding extra padding and protection, to prevent customers from receiving broken items. While it may be tempting to blame the shipping carrier, there are things you can do to prevent damage. On their webpage, Amazon has a detailed list of required guidelines for packaging items to ship to FBA to ensure items reach the customer safely. Poor packaging leads to used-sold-as-new and safety complaints, [which can result in suspensions.](#)

Packaging glass ceramic breakable and fragile units

On this page, you will learn how to properly prep products that are breakable or fragile so that they are protected from breaking throughout the fulfillment process.

Important: Failure to comply with FBA product preparation requirements, safety requirements, and product restrictions may result in the refusal of inventory at the Amazon fulfillment center, disposal or return of inventory, blocking of future shipments to the fulfillment center, or charging for preparation or for noncompliance at the fulfillment center.

How to prep fragile products

Fragile Units should be packaged so they will not break and possibly create a safety hazard during storage, shipment preparation, or shipment to the customer. A fragile Unit must be packaged in either a six solid-sided box, or completely secured in bubble wrap, so the Unit is not exposed in any way.

Watch this brief video for examples of how to prep your products for shipment to and storage in Amazon fulfillment centers.

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In fact, damage due to improper packaging is one of the two most common causes for used sold as new complaints. The other common cause is that a used or returned product was accidentally sent to a customer. The following sample plan of action is for a seller accidentally sent a used product rather than a new product.

STEP ONE:

Dear Seller Performance,

I am a principal of (Your Store). I am writing to appeal the removal of the following listing due to a complaint claiming our product “looks used”:

ASIN:

Title:

Root Cause of the Complaint:

Amazon received a complaint from a customer indicating that the item he or she

40 Packaging and Prep Requirements

https://sellercentral.amazon.com/gp/help/help.html?itemID=200280160&language=en_US&ref=ag_200280160_cont_G200141500

received “looks used.” We investigated the issue and determined that the customer may have received a damaged or opened product as a result of our participation in FBA’s “refurbish unsellable returns” program. We chose to allow Amazon the option to refurbish and resell returned items that are otherwise no longer in new condition. We believe that a customer may have ordered a new item, yet received an item that appeared to the consumer as opened or used.

Your corrective actions should include a refund to the complaining customer, an apology, and a quick adjustment to your business practice. Here, the issue was not having reviewing procedures and not being organized.

STEP TWO:

Immediate Corrective Measures

- **We immediately issued a refund or replacement to any dissatisfied buyers and deactivated the listing in our inventory until this issue is completely resolved.**
- **We have opted out of FBA’s Refurbish Unsellable Customer Returns service to reduce opportunity for error, and otherwise reviewed our shipping and receiving practices.**
- **We removed our remaining stock for this item for inspection to ensure all other items are free of defects.**

You will then need to implement preventative measures to ensure you do not receive similar complaints in the future. For example, do you have someone experienced with shipping and packaging your products to make sure they have adequate protection? Is your packing secure enough? Some Sellers have their shipping staff inspect all inventory before shipment to ensure that no items are already damaged. Many of the measures in the previous chapter can be applied for used-sold-as-new complaints, as well.

CJ's Side Note



I have heard people speak about customers being held accountable for abusing the returns policy or other conduct, but I have personally never seen or heard of a buyer being suspended....neither have any of the attorneys that work for my law firm, lawyers that I work with that represent big brands or any of my staff, family or friends. Even my father who, despite my requests to stop, regularly buys three sizes of all items with the plan of returning two of them, has never received any notice from Amazon about his excessive returns. Dad – please stop hurting sellers.

STEP THREE:

Systemic Changes to Our Business to Prevent Similar Issues:

- **We inspected and perfected the remainder of our entire on-hand inventory and increased the frequency of quality-control inspections.**
- **In addition to our normal quality assurance process, we randomly select samples from each purchase to fully test and discard as follows:**

- **We implemented monthly workshops for all employees to review Amazon guidelines and restrictions to ensure we are up to date on all policies.**
- **We check all reports, notifications, e-mails, metrics, feedback, A-to-Z claims, chargeback claims, and reviews twice daily to identify and correct problems before issues escalate.**
- **If we receive a return or complaint for a particular ASIN, we now remove our remaining stock for inspection to ensure no damaged or opened products were returned to our inventory.**
- **We now separate all returned items to a different department to ensure no used product is accidentally sold as new.**
- **We have implemented a reviewing procedure where all items are inspected upon arrival from the manufacturer, during packaging, and again before shipment to ensure every item is properly labeled, undamaged, and 100 percent matching the product's listing.**

Your conclusion should accept responsibility for doing better in the future and identify how you are improving your business for Amazon's customers. The policy is simple; the procedures to prevent the issue from occurring again are as well. Invest in your business, invest in preventative measures, and take the steps needed to prevent a future suspension.

Chapter 10 : Review Manipulation Suspensions



[Review manipulation](#) is generally when a seller games the system in any way to get more positive reviews, or to harm another seller with fake negative or fake positive reviews. One example is when a customer is offered an incentive in exchange for writing a review. It is against Amazon's policies to manipulate reviews because it skews the authenticity and reliability of Amazon's product review system.

There are services that offer Sellers positive reviews in exchange for payment. While there is a lot of gray area in the topic of manipulated reviews, many Sellers who get suspended for this issue are not aware they are in violation of a policy by using these vendors. Having friends write reviews is also a violation of the policy, as is sending discounted products in exchange for reviews.

Violations to Amazon's Customer Reviews policies include, but are not limited to:

- A seller posts a review of their own product or their competitor's product.
- A seller offers a third party a financial reward, discount, free products, or other compensation in exchange for a review on their product or their competitor's product. This includes using services that sell customer reviews, websites, or social media groups.
- A seller offers to provide a refund or reimbursement after the buyer writes a review (including reimbursement via a non-Amazon payment method). This could be done via buyer-seller messaging on Amazon or directly contacting customers or using 3rd party services, websites, or social media groups.
- A seller uses a third-party service that offers free or discounted products tied to a review (for example, a review club that requires customers to register their Amazon public profile so that Sellers can monitor their reviews).
- A family member or employee of the seller posts a review of the seller's product or a competitor's product.
- A seller asks a reviewer to change or remove their review. They might also offer a refund or other compensation to a reviewer in exchange for doing so.
- A seller diverts negative reviews to be sent to them or to a different feedback mechanism while positive reviews are sent to Amazon.
- A seller creates a variation relationship between products with the aim of manipulating reviews and boosting a product's star rating via review aggregation.
- A seller inserts a request for a positive Amazon review or an incentive in exchange for a review into product packaging or shipping box.
- A seller uses a customer account to write or change a review on his or his competitor's product.

Amazon enforces these rules very harshly and aggressively, and they do not take into account whether the violation occurred with or without the account owner's knowledge. The following are actions Amazon may take against a seller violating this policy:

- Immediate and permanent withdrawal of the seller's selling privileges on Amazon and withholding of funds.
- The removal of all the product's reviews and preventing the product from receiving future reviews or ratings.
- Permanent delisting of the product from Amazon.
- Legal action against the seller, including lawsuits and referral to civil and criminal enforcement authorities.

Disclosing the seller's name and other related information publicly.

How to Get Legitimate, Verified Reviews on Amazon

A review that is verified means that the person writing the review purchased the product on Amazon without a deep discount or incentive. Sellers seek reviews with the "Verified Purchase" badge because reviews on Amazon play an important role in [exposure](#) and visibility of the product, and the algorithm Amazon uses to display products gives greater weight to verified reviews when ranking product pages. Essentially, verified reviews increase the average ranking score of the product, which helps boost exposure and sales for Sellers. It is not the sheer volume of the reviews that matter to Amazon and consumers alike. It is knowing that the reviews are genuine and truthful, so Sellers should aim to get as many verified reviews as possible.

Relying on customers to proactively write a review is a bad idea. Not everyone goes out on their own accord to write a review unless they are extremely satisfied or extremely disappointed with the product. Only about two out of every one hundred satisfied

customers will organically write a review. Customers usually need a little push to write a product review.

Beyond selling good quality products and creating detailed product pages that attract customers, you can generate reviews by becoming a vendor and enrolling in the Vine Program or Amazon Early Reviewer Program. Another highly effective method of increasing your number of verified reviews is sending professional Feedback/Review request emails to the right person at the right time.

When you send these emails to your customers, focus your message on customer satisfaction rather than bluntly asking for reviews, as Amazon monitors these messages for incentivized requests and manipulation. Make sure to use an attractive subject line, and try to keep the message under 60 characters. Personalizing the subject line with the recipient's name can also make them more likely to open the email. In the content of the email, ask whether your products have met the customer's expectations, and how you could help to improve the customer's experience. You should also make your emails visually appealing with graphics and themes.

As your sales increase, it may be difficult to efficiently send out individual emails to each buyer of your product. You may eventually want to consider using an automated email software to help automate customized emails to your customers.

Don't Sabotage Yourself by Retaliating

Unfortunately, some Sellers' attack other Sellers for anti-competitive reasons. You may have been a victim of review manipulation, or maybe your listing or account was hijacked. When this occurs, you should notify Amazon immediately. Sometimes, Amazon fails to respond in a timely manner, or it is simply impossible to prove what you suspect to be true. It is tempting to reach out publicly to let others know a counterfeiter is on the loose. However, as frustrating as this can be, do not write negative reviews or feedback against other Sellers. We have seen a seller who had other buyers with the same IP address write

legitimate negative reviews and then become suspect for review manipulation. If Amazon does not respond to your concerns, try to contact their legal team. Writing reviews is tricky, and you do not want to have reviews misconstrued and Amazon to believe they were manipulated.

While Amazon has little tolerance for review manipulation, we have also seen Amazon wrongfully accuse Sellers in error. We have seen circumstances where customers purchased products from a seller on another ecommerce platform or at their brick and mortar store and then used Amazon's platform to post positive reviews about their product. Amazon then accused the seller of review manipulation, because it appeared as though their listing was receiving positive reviews from people with whom they have a personal association.

Writing a Manipulated Reviews Plan of Action

As Anthony Famularo, Esq. shares, "Amazon may request that suspended Sellers demonstrate that their suspended Amazon Sellers' account is unrelated to the buyer accounts that posted the reviews at issue. A seller should perform a thorough investigation to ensure there are no connections between their business name, email address, physical or shipping address, bank accounts, or credit cards and the buyer accounts. Make sure that your plan of action lists, in detail, the efforts you have already taken to correct and prevent the alleged review manipulation."

The following is a sample plan of action which includes a few potential root causes, including reviews received from discounts on other platforms.

STEP ONE:

Dear Seller Performance,

I am a principal of (Your Store). I am writing to appeal our suspension due to feedback manipulation.

Root Cause of the Issue:

- 1) ***Although we did not specifically request a review on the Amazon platform, we still received a review from a buyer who purchased items at a discounted from us on another ecommerce platform.*** The customer who purchased our products on a different e-commerce platform mistakenly used Amazon's platform to post their reviews.
 - *Even though the reviews are real and related to the products we sell, they were not verified Amazon purchases.*
 - Amazon identified these reviews as manipulation.

- 2) **We sent follow-up e-mails to customers who already provided positive seller feedback to request they also write a product review.**
 - Customers write positive seller feedback of their own accord.
 - We believe Amazon may identify this as review manipulation, but we are merely following up with customers who are already satisfied.
 - We did not manipulate the customer or the review or the positive seller feedback.

- 3) **We send follow-up e-mails to dissatisfied customers requesting the customer "reply to this e-mail directly" to resolve the issue, so as not to use Amazon's customer service.**
 - Since we mistakenly were guiding them around the Amazon customer service team, we believe Amazon may have identified this as manipulation.
 - However, these e-mails were not manipulating the customer for reviews but rather directing them to our store so we could resolve the situation as soon as possible.

After reviewing the community guidelines, we believe we received this notification due to the last point within the Addition Guidelines for Customer Reviews policy. Within this policy, it states "When we find unusually high numbers of reviews for a product posted in a short period of time, we may restrict the number of non-Amazon Verified Purchase reviews on that product." Due to the factors outlined above, we believe this may be the cause of our suspension. We have implemented the following measures to ensure these issues do not reoccur:

Your corrective actions will need to include more than just stating you will not repeat this mistake. You will need to contact anyone you had previously offered the discount to inform them that this discount will discontinue permanently. This policy violation is taken seriously because feedback manipulation taints the customer experience

on Amazon. Amazon customers should be able to trust the reviews they read. Make sure Amazon is aware that you also value the customer experience.

STEP TWO:

We have implemented the following Corrective Measures to immediately ensure there is no review manipulation:

- **Retracted our statement offering discounts on other ecommerce platforms in exchange for reviews.**
- **Contacted customers who purchased our products from other e-commerce platforms and requested they remove their reviews from Amazon. We now provide a link to customers on other platforms directing them to the appropriate venue to write a review.**
- **Terminated our practice by which we send follow-up e-mails to customers who have already provided positive seller feedback for the product they purchased. We only follow up with customers after purchase to ensure they are satisfied with their product and their experience.**
- **Discontinued our discount deal indefinitely.**

Finally, you will need to demonstrate how this issue will never occur in the future. You have acknowledged your mistake and by incorporating business practices that model Amazon's leadership principles, you are taking the correct steps forward into compliance with their policies.

STEP THREE:

Preventative Measures:

- **Informed all members of our business that discounted items in exchange for reviews is against policy and will never exchange anything for a review in the future.**
- **We reviewed all of Amazon's policies, especially guidelines for customer reviews, and retrained our entire staff to ensure we are in full compliance. We**

implemented weekly workshops for all employees on updated Amazon policies to ensure our business is always in full compliance in the future.

Chapter 11: Hacked Accounts & Listings



When this book was first published in 2017, Amazon Sellers across the globe were commonly faced with the threat of Seller Central account hackers.⁴² Third-party Sellers' banking information was changed. Disbursements were sent to Norway, Croatia, the United Kingdom, and other countries. "[A]ttackers changed the bank-deposit information

⁴² *Amazon.com's Third-Party Sellers Hit by Hackers*, Fox Business (2017), <http://www.foxbusiness.com/markets/2017/04/10/amazon-coms-third-party-sellers-hit-by-hackers.html> (last visited Aug. 10, 2017).

on Amazon selling accounts and stole tens of thousands of dollars. However, the issue has become far less prevalent today due to Amazon requiring all Sellers to implement 2-step verification for account login. However, although it is rarer, hackers are still sometimes able to gain [unauthorized entry to seller accounts](#).

Once they take over an unsuspecting seller's account, hackers create listings for products which do not exist, add inventory the Sellers do not maintain, and place long shipping dates, sometimes up to four weeks so they can collect money before anyone becomes aware of the scam. Customers on Amazon see highly discounted items, purchase the items, but the item never arrives. The Amazon seller is then held to be accountable until the issue is resolved. Sometimes, Amazon notifies the seller, and sometimes the seller becomes aware before Amazon. Once Amazon is notified of a hacked account, they typically freeze the account.

The bigger problem? Those whose accounts are stolen are placed in a predicament. They cannot make the necessary changes needed to regain access to their hacked account. They cannot follow Amazon's instructions because they cannot log into their account. Amazon has shut their account down for safety purposes. At this point, contacting Amazon's legal team is necessary. Amazon works with Sellers whose accounts were hacked.

How Was Your Account Hacked?

Perhaps you went onto a website that installed malware and clicked on a link that steals information. Hackers can also obtain your information through emails that have links with hacking software. Some links redirect unsuspecting victims to a login page that looks like Seller Central, but it isn't. You should beware of anything which requires you to re-log into your account and provide your password. This means if you receive an email from an unknown account, you click on the link provided, and this link asked for you to re-log into your account; this may be a hacker. Check the URL. Only provide your account information to the official Amazon website, and never through a secondary website.

In May of 2019, Amazon revealed that about 100 seller's accounts were victim to an extensive hacking⁴⁵, where hackers funneled cash from loans and sales into their own bank accounts. The hack took place from May 2018 to October 2018, and Amazon believes this occurred due to phishing techniques that trick Sellers into giving up their login information. Amazon's counsel in numerous hackings have claimed that the Sellers were at fault for using the same passwords on Amazon that the Sellers use on other websites. The claim is that the other sites were hacked, not Amazon's.

Our law firm has had the privilege of working directly with Amazon's attorneys to [resolve numerous hacked account issues](#) and improper distribution of hundreds of thousands of dollars. One client of ours recently had his [account](#) hacked. The hacker changed all our client's bank account information, and shortly after he received a performance notification that Amazon had suspended his seller's account. To make matters worse, the hacker withdrew all funds remaining in his account. With no money or access to his selling account, the seller sought the help of our firm.

We first drafted a strong plan of action that demonstrated our client's lack of fault in the situation. Within the letter, we made sure to thank Amazon for the opportunity to correct the situation, and we focused the content of our plan of action on corrective measures taken to prevent any hacking going forward.

In addition to the plan of action, we also issued Amazon's legal team a [Demand for Arbitration](#). We wanted to get this seller compensation for his lost funds as soon as possible, and by demanding arbitration, we take the decision-making out of Amazon's hands and the arbitrator makes the final judgement. Given our extensive experience dealing with Seller Performance for countless suspended Amazon Sellers, we believed it would

⁴⁵ Jonathan Browning, *Amazon Hit by Extensive Fraud With Hackers Siphoning Merchant Funds*, Bloomberg.com, <https://www.bloomberg.com/news/articles/2019-05-08/amazon-hit-by-extensive-fraud-as-hackers-siphoned-merchant-funds>, (last visited Jul. 23, 2019).

help to simultaneously follow up with letters to Amazon's legal department and Amazon's outside law firm requesting the immediate attention of our previously submitted plan of action. Shortly after our firm took these actions, our client's hacked account was successfully reinstated. In fact, in every hacking case we have handled including may where Demands for Arbitrations have been drafted and provided to Amazon, 100% of pure clients' funds have been recovered and their accounts reinstated.

If your account is hacked, take these steps immediately:

- Notify Amazon immediately (if you discover the hacking before they do).
- Log in from a different computer if possible (to avoid key logging issues that records your key patterns).
- Change your password with the two-step verification process.
- Change your password on related devices.
- Search your account for any new users who may have been added as a result of your account being hacked. Remove those users.
- Change your WIFI information and passwords.
- Change your settings to "on vacation" until the issue is resolved.
- Cancel and correct all changes to your account, including false ASINs or false sales.
- Inform
 - Amazon of your actions;
 - all of your business members so as to ensure their personal information is not stolen;
 - your bank and ensure all of your information has not been altered. You may need to take this a step further and change your personal bank information to ensure your account is safe
 - your credit card company or any other personal information that has been provided on your account.

Sample Letter to Amazon

Dear Seller Performance,

I am a principal of (Your Store), and we are writing to address unauthorized third-party access to our account.

I received a performance notification stating that my seller account may have been hacked and accessed by an unauthorized party. I was notified that my selling privileges are suspended to protect my account.

Amazon required we take the following steps toward the reinstatement of our account:

As requested, we have verified the following information is accurate:

- **E-mail Address preferences**
- **Business, shipping and returns, and tax information**
- **Active and pending promotion codes**
- **User permissions**
- **Amazon Storefront**
- **Listings and condition notes**

Further, we have completed the following in order to regain control of our Seller Central account:

- **Reset our password with a new, unique password that we do not use for any other account or website.**
- **We also changed our password for every account that had a similar password (including banking, accounting, and e-mail accounts).**
- **We also removed any outdated or unnecessary accounts for our Seller Central User Permissions.**
- **We now also change our password and security questions for our account and all related accounts and devices every ninety days as added protection.**
- **Set up Two-Step Verification in our Advanced Security Settings.**
- **We also updated our virus protection plans.**
- **Sent a confirmation e-mail by clicking the Appeal button next to this message on the Performance Notifications page in Seller Central.**

It is important to be proactive with your account security. The two-step security process is something all Amazon Sellers must implement, but there are a lot of other measures you can take. Regarding hacking, the “stranger danger” ideology should apply. Do not trust strangers e-mailing you for your login, and do not trust strange websites asking for your personal information. Another good business practice to implement is to routinely

check your bank accounts and your account information. Stay up to date on any changes which seem unusual and notify Amazon if anything occurs. Do not use the same passwords on multiple accounts. For example, if the password to your e-mail account is “Cheesedoodle1234,” do not use that same password for your Amazon account.

Hijacked Listings

Despite Amazon’s Brand Registry 2.0 program, competitors are still finding ways to [hijack listings and sales](#). Not only has there been a noticeable increase in hijacked listings lately, but it seems as though hijackers are making a more coordinated effort to take over your listings and steal your sales. First, they will jump onto your listing and start selling knockoffs of your product. Then, they will alter your detail page and make an intellectual property complaint against you. If you catch them early enough, these Sellers can be reported to Amazon for trademark infringement, and Amazon will likely remove the seller. However, it does not stop there. Some hijackers intentionally find successful brands without a registered trademark. Once the hijacker takes control of the brands listing, they register the trademark with the USPTO, making it much more difficult for the true brand owner to regain control of their brand.

To successfully remove these hijackers, you should demonstrate that you are the brand owner, you should document your intellectual property so you can reclaim what is rightfully yours. However, you must have your brand protection measures in place and stay on top of it.

Many Sellers have sought help from our firm to perform “weekly sweeps.” This means that once a week, their trademark protected listings are checked to ensure others are not infringing their rights. Another great way to prevent hijacked listings is to register your products with Amazon Brand Registry 2.0, or provide a warranty with your product that other Sellers cannot provide. For more information on protecting yourself from hijackers, please refer to Chapter 6, which focuses on intellectual property and brand protection.

[Brand Registry 2.0](#)

Amazon created Brand Registry as a tool to protect brands. “Many Sellers encounter problems maintaining their own listings. Once you are registered with brand registry, you obtain the rights to control the content for your private label products and listings within that registered brand.”⁵³

There is a high standard which needs to be met by Sellers to registered for Brand Registry 2.0. Sellers must prove they have a registered trademark. This means Sellers in the United States must file with the USPTO, which may take up to a year. Once you have a registered trademark, you will need to file an application for Brand Registry 2.0. However, it is worth the effort, as registered brands become the sole owners of their listings, and they can much more easily fight off counterfeiters and hijackers.

During 2019, Amazon created its IP Accelerator Program. Under this program, people and companies who are developing their brand can use Amazon’s approved lawyers to apply for their trademark. If you use Amazon’s IP Accelerator Program, Amazon will grant the seller Brand Registry immediately rather than compelling the seller to wait for the trademark to be approved. This is a great program and we encourage Sellers to take advantage of the program.

Sellers approved on Brand Registry 2.0 are able to search by image and brand name to detect if anyone is using their marks or brand name. Sellers have access to a comprehensive list of all the brands which are registered. Additionally, there is a direct link provided to Sellers to report any infringement violations that are discovered and the ability to assign different roles to account users, such as administrator, rights owner, or registered agent. This allows you to delegate brand management tasks if needed, and it allows Sellers to manage their own brand protection. These features are extremely beneficial to the entrepreneurs who wish to have their creative works protected on a platform that is subject to so many intellectual property infringers.

⁵³ C. J. Rosenbaum & Nicole Kulaga, *Your Guide to Selling Fashion on Amazon*.

Chapter 12: Accounts and Sellers Outside of the United States



Amazon Sellers Lawyer has branched out and now has offices across the globe: New York, Shenzhen, Australia and Yiwu. Our efforts to expand our practice have allowed us to provide better and more personalized service to our clients located in all regions of the world. In the United Kingdom, for example, there are different and more stringent intellectual property laws than in the United States. Therefore, if you are an Amazon.co.uk seller, it is important to be aware of the laws which apply to you. In contrast to US law, brand authorization to sell actually does impact UK intellectual property law.

In China, the only way to get trademark protection is to apply with the government. If you don't file, you are not afforded any "common law" [intellectual property rights in China](#). Conversely, in the United States, whoever first used a trademark in commerce gets legal protection. So, the fact that a Chinese seller may register a product in China does not mean anything in the United States, if somebody else was selling it in the US first.

It's quite easy to see how varying international laws and regulations in the USA can create confusion and problems for [Amazon Sellers located in China](#). For more on Chinese intellectual property law, you can check out our book on the subject, which is available for free to you on our [website](#).

Some international Sellers believe that Amazon.com is stricter and harder on them for suspensions than US Sellers. However, from our perspective representing Sellers all over the world, this is a completely false accusation against Amazon and their vetting process. Amazon simply takes the complaint at hand, whether it is a product compliance or intellectual property complaint, and requests to see information regarding these accusations. If you are not able to provide a coherent plan of action as well as documentation to prove the authenticity of the products you have sold, your account is going to remain suspended. To reiterate, Amazon is not biased towards certain Sellers because of the region they are located in. There are simply more challenges for international Sellers, regardless of location and sales platform.

If you are selling in other countries, as we suggest you do since there is lots of opportunity for profit, and you need help translating your listing details, Amazon has its own translation service called Amazon Translate; with this tool you may enter your listings in English and Amazon will do the translations. While the translations may not be very eloquent or accurate, at least you will have the security of knowing that if an issue arises with one of your listing descriptions, you can demonstrate that you used Amazon's own translation service and this fact should help you resolve the issue.

WIPO

The World Intellectual Property Organization’s (WIPO) website states they are the “global forum for intellectual property services, policy, information and cooperation.” Many Sellers are unaware of the World Trade Organization. “The World Trade Organization administers the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which sets forth obligations related to intellectual property rights, including copyright and enforcement measures, in the context of a multilateral trade agreement.”⁵⁴ These agreements are what allow creators across the globe the comfort of protections internationally.

As more Sellers on Amazon create their private labels, their own products, designs, or inventions, Amazon Sellers’ needs to file their own trademarks, copyright, patents, and so on, continues to grow. While many American inventors are familiar with the IP process within the United States, they are not familiar with what is happening in other countries. Amazon reaches a customer base that is worldwide. That means, if you are selling your product on Amazon, it is going to be exposed to customers and infringers around the globe.

At Amazon Sellers Lawyer, we believe it is important that Sellers protect their intellectual property rights overseas. When you file for a copyright, patent, or trademark protection, your intellectual property rights only protect your business in the countries you apply for. When you file for protection in other countries it allows you to bring a lawsuit in that country. This brings the enforcement to the infringer’s home court. Think about it—why would a factory owner in China or Vietnam care about a United States court?

The United States has its own set of intellectual property protections, but they are limited to the United States. If an inventor files and is approved of patent protection, then they are secured with that protection for twenty years. However, some Sellers wish to gain protections on a global level. The International Patent System, Patent Cooperation Treaty

⁵⁴ *International Copyright Relations of the United States*, copyright.gov, <https://www.copyright.gov/circs/circ38a.pdf>

(PCT) has 152 contracting states and is the office that assists other offices granting patents. In order to obtain protection, you would file an international patent application with the PCT. “The IP services that WIPO offers, such as the facilitation of international patent protection under the PCT System, complement services available at the national and/or regional level. It’s important to remember that WIPO does not actually grant patents per se; the grant or refusal of a patent still rests with the relevant national or regional patent office.”⁵⁵

Trademarks are also important to protect when running a business. “At the international level, you have two options: either you can file a trademark application with the trademark office of each country in which you are seeking protection, or you can use WIPO’s Madrid System.”⁵⁶ The Madrid system provided by WIPO provides protection in 114 countries.

⁵⁵ *Frequently Asked Questions: Patents*, WIPO—World Intellectual Property Organization, http://www.wipo.int/patents/en/faq_patents.html

⁵⁶ *Trademarks*, WIPO—World Intellectual Property Organization, <http://www.wipo.int/trademarks/en/>

Chapter 13: Getting Reinstated When Amazon Refuses to Reinststate: Taking the Decision out of Amazon's Hands

CJ's Side Note



Arbitration is a method of resolving disputes without going to court. If you sell on Amazon, you agreed to arbitrate any disputes with Amazon. Arbitration is generally faster and cheaper than litigation. Amazon insists on using the American Arbitration Association.

If you are thinking about suing or filing for [arbitration against Amazon](#), it is suggested that you focus on your goal. Your goal should be getting back to business. Prior to arbitration, look at the built-in options: plans of action (numerous), writing to policy teams, writing to the Bezos Escalation Team, contacting Amazon's legal department, and then, if still no recourse, consider arbitration.

When pursuing the arbitration option, you should use a cost-benefit analysis. Is the cost of filing through arbitration worth the potential reward? If you only lost a small monetary amount, then arbitration may not be the best option.

Lately, there has been an increase in non-suspension-related issues which are worthy of arbitration or at least contacting the legal team. Amazon Sellers are being subject to hacking and lost inventory. One option to resolve these issues is to first contact the legal team. Amazon Sellers Lawyer has been successful in communicating with the Amazon legal team to restore the accounts which have been stolen by hackers. Additionally, if Amazon loses a seller's inventory, it may be best to conduct communications with the legal team before going forward with arbitration.

When contacting the Amazon legal team, it is apparent you show a cohesive timeline of the events which occurred. State specific dates—when was your account suspended, when and how many times have you created plans of action and which teams you have contacted. State you have reached out to Jeff Bezos' team. Hiring an attorney to contact the legal team should only be done after you have exhausted all other appeal options. Our firm been able to successfully reinstate seller's accounts which otherwise would have been stuck in the endless cycle of plans of action. The best way to avoid reaching this point is to create a comprehensive plan of action first. Many times, plans of action are rushed due to their short deadline, and Sellers are forced to send multiple submissions, eventually needing to hire an attorney to contact the Amazon legal team. The best action is to be effective from the beginning.

If arbitration is your last option, there are multiple avenues to getting your claim heard. While you can request arbitration within your state, Amazon also allows telephonic hearings. More and more people are turning to arbitration when they have no option left, but an attorney must handle your claim. The attorney will be able to communicate on your behalf via telephone or videoconference, making arbitration easily accessible when needed. When filing arbitration, you will need an attorney. At Amazon Sellers Lawyer, we cite

Amazon's business solutions agreement (BSA) and file pursuant to this agreement if there has been a breach in the agreement.

Common Reasons for Arbitration

It is a common notion that one should choose his or her battles wisely, and that is exactly what you must do as a seller. There are a few [particular instances](#) when taking Amazon to arbitration is suggested.

One of the most common reasons a seller will take Amazon to arbitration is if her funds are being withheld. Remember, violating Amazon's policies do not amount to illegal activity—they have no right to withhold your funds. Yet, they will do so for a variety of reasons, particularly for allegations of intellectual property violations, allegations of fraudulent or manipulative activity, and related/multiple accounts.

Further, many Amazon Sellers use FBA, where each warehouse stores products from hundreds or even thousands of individual Sellers. In some instances, products can get mixed up and lost. In other situations, Amazon might refuse to return items to a seller for various reasons. Rob Segall, the Managing Attorney of our Arbitration Team states that “Amazon loses significant amounts of our client's inventory, but claim it was never delivered. In some cases, we have seen Amazon tell Sellers their inventory was lost, only to later see Amazon themselves offering the products for sale.”

Clearly a situation such as the one aforementioned is grounds for arbitration. Amazon has no right to hold onto a seller's inventory, even if that seller has had their account suspended. Resolving inventory disputes is one of the most common uses of arbitration for Amazon Sellers.

Lastly, in rare situations, arbitration can help a seller get their suspended account reinstated. Often times, reinstatement goes hand-in-hand with another issue that the client is seeking to resolve through arbitration. If a seller has had their funds frozen, they have

more than certainly also had their account suspended. If arbitration can help prove the seller's innocence, it's possible to get reinstatement along with getting their money back.

Amazon's Dirty Tricks During Arbitration

Amazon's lawyers trying to stop us from calling witnesses during arbitration to support our Sellers' stories. Amazon tries to stop arbitrators from learning the truth about how Amazon treats Sellers, private label brands, and even major brands. They don't want arbitrators to get the full story. Amazon tries to keep arbitrators that it has worked with in the past and tries to keep arbitrators that seem inclined to help David fight Goliath off cases. Amazon routinely refuses to provide required documentation despite orders to do so.

When Amazon received decisions from a case manager that it did not like, Amazon's lawyers secretly sent a 40-page letter to the American Arbitration Association trying to get a case manager removed. **Do not let Amazon bully you.** If you feel as though Amazon is trying to prevent you from a fair arbitration, contact us.

The Arbitration Process

Demand for Arbitration:

If you need to take the decision about reinstating your Amazon Sellers' account out of Amazon's hands, then you draft a document called a [Demand for Arbitration](#). This document is like the initial document in a lawsuit where you identify the claims against Amazon. If you fail to include all of your claims or your Demand for Arbitration is unclear, you could lose the opportunity to argue those issues. Include your entire claim in your Demand for Arbitration.

The Demand for Arbitration must then be provided to Amazon before filing the arbitration. After the document is provided to Amazon, it is filed with the American Arbitration Association and "served" or provided to Amazon. Amazon's copy of the document must go to a specific address which Amazon has indicated for these types of documents.

When our firm takes Amazon to arbitration, as we often do, we first like to sit down with our client and figure out what [exactly](#) goes into their demand for arbitration. We work with the seller, identify what the issues are, and make sure that the arguments we make are persuasive in our demand for arbitration.

If you draft a powerful, concise, and persuasive demand for arbitration, there is a significant possibility that Amazon will eventually settle the case and not require you to go to the hearing. One positive thing we can say about Amazon's lawyers is that they are smart, hardworking people, and when we have a valid argument that is clearly construed, many times they will be willing to settle the issues outside of arbitration. It cannot be guaranteed on any particular case, but from our overall experience, we have noticed that if your argument is sharp and Amazon does not have a viable defense, they will often settle.

Selection of an Arbitrator:

After Amazon responds to your Demand for Arbitration, you will receive a list of arbitrators. You must number your top three choices in numerical order. Amazon's lawyers will receive the same list and they will also number their choices. You will receive the CVs of the arbitrators to help you decide who you want to choose.

When choosing an arbitrator, our firm likes to look at the backgrounds of the candidates to try and choose one that can best understand our client's unique business and hopefully rule in our favor.

Preliminary Conference:

Every case will have a prehearing conference with the arbitrator. During the Preliminary Conference, you will provide the arbitrator with a synopsis of your claims. Amazon's lawyers will do the same. Then, a schedule for the exchange of documents and information will occur.

A [demand for documents](#) is very similar to the discovery process in court. As many Sellers already know, trying to get documents from Amazon containing any substantive information during the regular appeal process is quite difficult. The demand for documents is a rare opportunity for the seller's attorney to ask Amazon's lawyers to present otherwise secret information related to the clients' case so that we can figure out how to best present our arguments and win the arbitrations against Amazon.

The Hearing:

Within about three months of filing, you will have your hearing. About two weeks afterward, you will have your decision. Amazon seems to comply with the decisions whether they agree with them or not.

5 Tools for Your [Amazon Arbitration Plan](#)

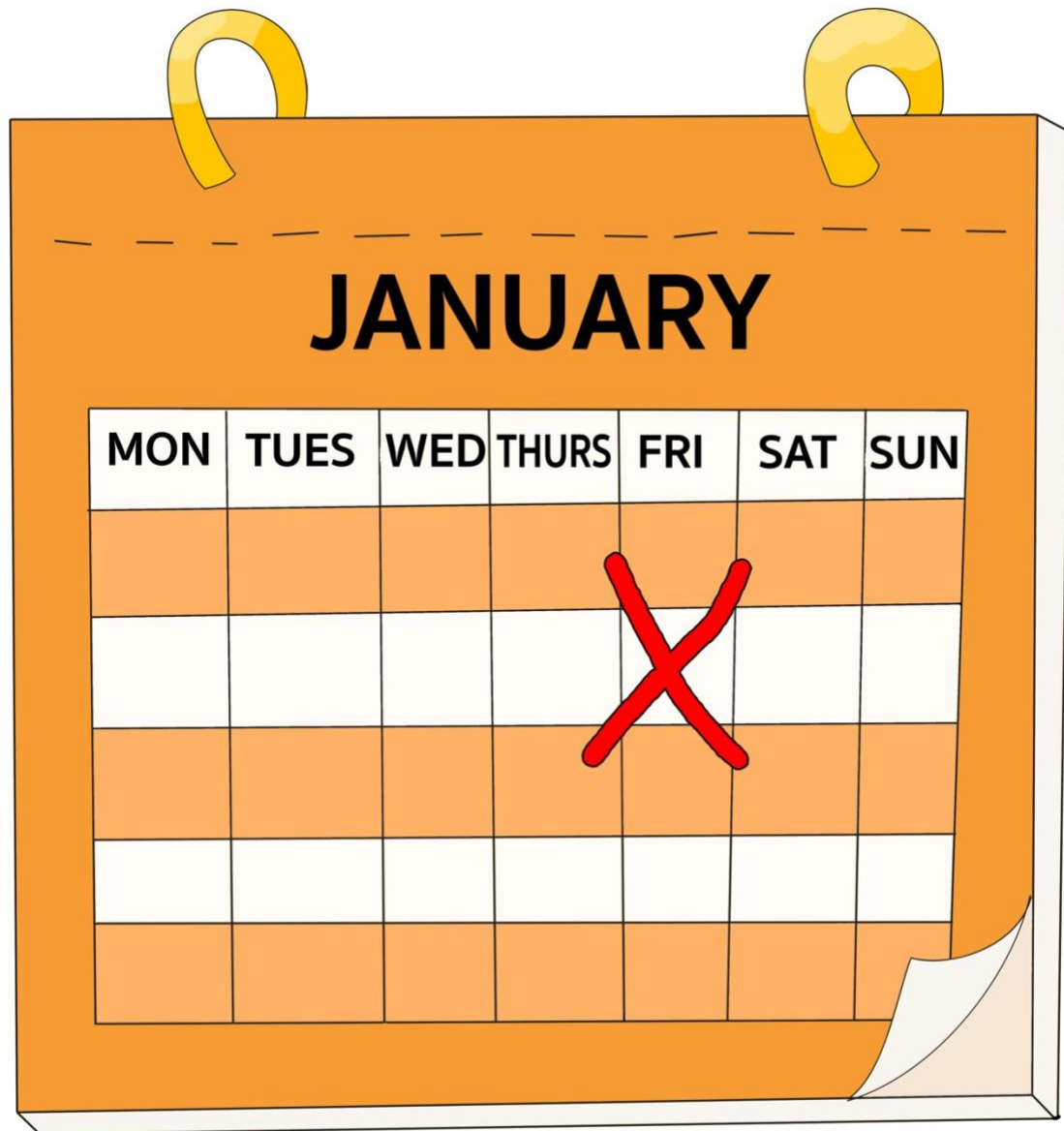
1. You must have a trial lawyer that also knows the inner workings of Amazon if you want to win your arbitration. Never hire a corporate lawyer to represent you in an Amazon arbitration. If you want to win your case, you **must** have a lawyer with extensive trial experience and experience with Amazon. If your lawyer lacks either of these, you have the wrong lawyer.
2. You must have an Amazon arbitration theme. Experienced trial lawyers know what you need to win your arbitration. Firstly, Amazon Sellers need an Amazon arbitration plan. The plans that win have a theme. Your theme will be the overriding reason why the arbitrator should rule in your favor. A great theme to apply in Amazon arbitrations is “**fairness requires reinstatement**”. Everything that you present to the arbitrator can fit into this theme. For example, after months or even years of making Amazon money with your seller's account, with a near flawless Order Defect Rate or feedback and a limited or single policy violation, **fairness requires reinstatement**. Another instance would be that Amazon loaned you the money to buy your inventory only to send it to Amazon's FBA where they charged you interest and storage fees: **fairness requires reinstatement** so that you can sell

- the goods and pay off the debt. Further, if Amazon is unwilling to show how or why they think you have multiple accounts, **fairness requires reinstatement** because nobody should lose their business without proof of wrongdoing.
3. Use storytelling to win your Amazon arbitration. Trial lawyers know that you win cases by telling compelling stories. Storytelling is similar to a theme but it encompasses more. Storytelling fills in the factual basis for the theme to apply. Storytelling is also a tool of persuasion. One Amazon seller's story might be about how she made herself and Amazon money for years by retail arbitrage. Then, Amazon suddenly changed the tide without warning and her receipts (verifying authenticity) were no longer accepted. She was suspended based on Amazon's unilateral decisions and now her mortgage payments are behind. While it might be factually irrelevant, it might be highly persuasive for the arbitrator to know that Amazon also withheld rightfully earned profits during the time when the seller needed them most. When the arbitrator hears her story and has the theme at his or her fingertips, how can the arbitrator not feel empathy for the seller? **Fairness requires reinstatement** of a seller who strictly followed the rules and only suffered because of an unfair unilateral change in policy.
 4. Use confirmation bias. Confirmation bias occurs when you use facts to confirm what people already believe. For example, President Trump (love him or hate him) used confirmation bias to win the election by using the common belief that the olden days were great. "Make America Great Again" was a theme built on the confirmation bias. Conversely, in Amazon arbitrations, the arbitrators are all lawyers. Amazon Sellers can use a confirmation bias that exists in all lawyers to help win their Amazon arbitrations. All lawyers are taught that one sided contracts are unenforceable—it is a basic element of contract law. Every lawyer and judge sat through at least an entire year of contract law. Since every arbitrator has this bias, experienced trial lawyers who also have experience with Amazon know that they can use Amazon's Terms of Service against Amazon at an arbitration. Since we know that every arbitrator is a lawyer or judge, we know that every arbitrator went to law school and already believes one-sided contracts are **unenforceable**. Experienced trial lawyers know that they can use the Terms of Service or Amazon's

one-sided changes in policy against them. While most people fear the Terms of Service, this contract that has harmed you has now become one of your greatest weapons.

5. Win your arbitration through the use of clarity. Clarity refers to how easy it is to understand why you should win your arbitration. For example, if you lost your account because you were accused of having “related accounts”, the clearest argument is that you only had one account. Simple, clear. Clarity in a case regarding “inauthentic” products is equally easy. For example, if Amazon accused you of selling “inauthentic” goods, simply show that the products are genuine. Let Amazon explain its system where “inauthentic” means they want to see your receipts or invoices rather than proof that the items are genuine. Let Amazon argue incoherently that they deem some invoices valid and others invalid...etc. Let Amazon be unclear while you show a simple, easy to understand reason why you should obtain reinstatement—your products are genuine.

Chapter 14: Maintaining Your Business, Why Thinking Ahead Is Essential



Amazon knows it can replace Sellers and Sellers' products. This is why it is essential that suspension prevention becomes a key aspect when running your business. This involves more than just following Amazon's rules. You must predict Amazon's next move and be ready for any type of allegation against your store.

During the Super Bowl of 2016, Amazon increased their rate of suspensions with

their Sellers. Those Amazon Sellers who were in the business of selling NFL items were kicked off the super-store, many times, without good cause. This was done in an effort to reduce the amount of counterfeit and inauthentic NFL items sold through the website. Unfortunately, many of the Sellers who were suspended did not actually sell counterfeit or inauthentic items. They were grouped with those who disobeyed the law simply because of the item they sold. Those who had the invoices to support their defense of selling authentic, legal products were able to have their accounts reinstated. However, those who could not demonstrate that they had obtained their goods from an authorized manufacturer were not so lucky, despite selling authentic items. Why is this? Amazon is very specific as to what invoices they will deem to be adequate. That means your receipts and invoices from stores like Walmart, Marshalls, or any other department store will not suffice.

“While retail arbitrage is not against the rules, it’s can be a dangerous game to play.”

—Kerry McDonald, Senior Managing Paralegal at Amazon Sellers Lawyer.

It is best to purchase your items from the actual manufacturer or an authorized distributor as a safe suit. If Amazon suspends your account, you will need to provide legitimate documentation. Amazon has begun moving toward preventative measures to protect major brands. They suspended people first, asked for proof of authenticity later. The NFL issue could happen again; it could be the next World Cup, or perhaps the next Olympics. As a seller, it is important to be vigilant. Maintaining your business in accordance to Amazon’s rules is sometimes not enough. Make sure you have a backup plan, make sure you have documentation proving authenticity for all of your items which you have sold on the Amazon platform. This is your business, and thinking two steps ahead is essential.

About C.J. Rosenbaum, Rosenbaum Famularo, P.C. and AmazonSellersLawyer.com

C.J. Rosenbaum and Anthony Famularo founded Rosenbaum Famularo, P.C., the law firm behind AmazonSellersLawyer.com. The firm helps Sellers across the globe. Our clients have the opportunity to meet with us, in person, at locations in California, Seattle, New York, London, Ireland, Shenzhen, India, and the United Kingdom. The firm provides Amazon Suspension Services, assistance in obtaining the retraction of intellectual property complaints, consultations for law firms, legal opinions and other services for Amazon Sellers. Each client has his or her own unique needs. Our team has the experience needed to analyze your situation, your business, and work with you to get your Amazon Sellers' account reinstated.

As an Amazon seller, your e-commerce success depends on your cooperation with the rules and regulations set by Amazon. When you are conducting an online business through Amazon, an account suspension brings your entire operation to a halt. Amazon seller suspensions can happen at any time—even with just one complaint from a buyer.

Amazon Sellers don't need to live in fear of policy violations, buyer complaints, and account suspensions any longer. Amazon Sellers now have a lawyer on their side.

Sellers don't need to worry about their private information being revealed: with a law firm helping you with your plans of action and other needs, your information is protected by the attorney-client privilege.

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