

## PRACTICE CONTACT

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# ONLINE SELLER ENFORCEMENT

Our Online Seller Enforcement team is one of the oldest and largest in the country. Our award-winning group has represented nearly 200 brands, several of which are billion-dollar, consumer-product companies. Our approach is to combine several legal disciplines with technology and thoughtful strategies to help companies protect their brands and grow their businesses.

We regularly provide strategy consultations to help businesses develop *comprehensive* approaches to achieve their goals. We are confident in our ability to customize strategies and approaches to remove unauthorized third-party sellers from online marketplaces, implement MAP programs and protect brand equity. We have seen firsthand what works and what doesn't.

## Why Seller Enforcement?

Many companies today do not have control over who may sell their products, where they may sell them, the advertisements of those products, or the quality of the products reaching the consumer. This lack of control creates several problems in the digital age, including the following:

**Brand Erosion Caused By Massive Intra-brand Competition.** With no control over who may sell online, a brand will have a myriad of people and entities selling its products as third-party sellers on online marketplaces. In an effort to win the “buy box,” these sellers continually erode your brand by competing with other sellers of your product rather than positioning your brand to compete against your competitors. This erodes brand equity and causes customers to devalue your products. Developing and enforcing a Minimum Advertised Price policy helps manufacturers position their brand to compete against other companies' brands and promotes brand value.

**Harm To E-Commerce Sales Growth.** Third-party marketplace sellers interfere with the ability of sales teams to drive authorized ecommerce growth with SEO, marketing and advertising. This occurs because third-party unauthorized sellers use cheap, pay-per-click advertising to win sales while also free riding off the company's efforts to promote their brands. Based on our experience, companies struggling with third-party sellers are not incentivized to employ the best tactics to grow their sales online and build their brand equity online.

**Inability To Operate A Viable MAP Program.** Companies that do not control online sales usually cannot maintain a successful Minimum Advertised Price program. When intra-brand sellers on marketplaces compete for the buy box, the temptation to break MAP is great and, when one seller lowers its advertised price, other sellers follow suit. The effects of advertising below MAP extend far beyond online marketplaces, causing cascading MAP violations in other channels, eroding the value of the brand, and making a successful MAP program impossible.

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### **Quality Issues Leading To Bad Online Reviews And Erosion Of Brand Value.**

Anonymous third-party sellers do not follow a brand's quality controls for their products. They often sell damaged, expired, repackaged, returned, tempered, or otherwise poor-quality products to unwitting consumers. Confused consumers receiving these products do not know who to blame, which invariably results in consumers leaving a large number of negative online product reviews. Negative reviews cause significant harm by influencing SEO, purchasing decisions, and perceived brand value.

**Upset Distributors/Dealers/Sellers.** Many companies that sell through professionals, distributors, or direct sales consultants routinely face angry authorized sellers because the same products they are selling are found online for drastically lower prices. Their clients and customers complain that they are being ripped off, or they simply "window shop" with the sales force and buy the products elsewhere online. Some authorized sellers drop brands because of these problems.

## What Makes Vorys' Online Seller Enforcement Group Unique?

### **Strategic Innovation**

- Our innovation team focuses relentlessly on developing cutting edge strategies, systems, and approaches to help businesses control online sales and protect and grow their brands.
- These innovations enable successful MAP programs, promoting inter-brand competition that promotes brand equity, and grow e-commerce sales.
- We received a 2017 innovation award from the College of Law Practice Management for creating a unique and effective approach that combines technology, investigation and law to address brands' online sales challenges.

### **Industry Leading Experience**

- We have counseled nearly 200 companies seeking to gain control over their online sales.
- We work daily with executives in ecommerce, sales, and legal departments at the world's largest brands to structure authorized seller programs, remove unauthorized sellers, and implement MAP strategies and other initiatives to protect their brands and grow their business.
- Our representation of globally recognized brands allows us to see firsthand what works and what does not. Our clients reap significant benefit from our ability to share this experience.

### **Dedicated Multi-Disciplinary Team**

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- Achieving online-sales control requires the coordination of experience, understanding and capabilities. We combine all necessary disciplines to create comprehensive strategies and solutions for our clients.
- Our multi-disciplinary team is comprised of attorneys and professionals with years of experience in areas such as:
  - Distribution strategy, policies, agreements and related law
  - Antitrust law
  - MAP-related policies
  - Intellectual property law
  - Technology, investigation, and enforcement tactics

### Services We Provide to Control Your Product Sales

Controlling sales in the digital age requires a comprehensive strategy that includes distribution, policies, agreements, procedures and enforcement. Vorys provides a truly comprehensive approach to control the online sales of your products, including strategy development, foundational policies, investigation, and efficient and effective enforcement.

- **Strategy Development.** Vorys provides strategy consultations to help businesses develop comprehensive approaches that achieve business goals. By working with many nationally recognized brands on strategies to remove unauthorized third-party sellers from online marketplaces, implement MAP programs, and protect their brand equity, we have seen firsthand what works and what doesn't. We understand what companies must do to be best positioned to control their ecommerce channels, stop unauthorized sellers, or run a successful MAP program. We have helped companies develop ecommerce strategies from scratch, and we have helped fix faulty or ineffective strategies for some of the world's largest brands.
- **Policies, Agreements, Procedures.** We prepare and implement foundational policies, agreements and/or procedures that allow brands to pursue and control not just authorized sellers who are selling in unauthorized channels online or advertising below MAP, but also third-party unauthorized sellers. We have years of experience developing and implementing policies that do not disrupt our clients' businesses or create channel conflict, but still provide the foundation necessary to control our clients' sales.
- **Enforcement.** We also help companies develop and operate enforcement strategies that best align with their goals and budget. If a company has a program in place, we help them improve its efficiency and effectiveness. We can design comprehensive workflows and apply years of experience working with numerous technology companies and conducting investigation and enforcement to drive results for our clients.

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