

CIS BRAND BRIEFING NO. 6

Which Counterfeiters Should a Brand Go After First?

The largest ones still selling. The law lets a brand recover a counterfeiter's profits, and the profits sit with the sellers who sell the most.

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THE SHORT ANSWER

The largest ones that are still selling. Federal law lets a brand recover a counterfeiter's profits, subject to the court's discretion, and the sellers who sell the most hold the most profit. In my experience they also hold the most money a court can reach. A small or abandoned account may hold almost nothing, however strong the case against it.

Marketplace sales are not spread evenly. On Amazon, about 1.6% of sellers account for half of third-party sales, by one industry estimate. That figure covers all sellers. No one has measured it for counterfeiters alone. Either way, the question that decides what a case is worth comes before the lawsuit. Which sellers should it name? Answering that is intelligence work. This paper sets out why it matters, with the statute and the court record behind each point.

SALES ARE NOT SPREAD EVENLY

Marketplace Pulse, an industry e-commerce analytics firm, estimated in February 2026 that "fewer than 8,000 sellers now generate half of Amazon's estimated \$300 billion in U.S. third-party GMV." GMV is the total value of goods sold. Those 7,760 sellers are "just 1.6% of the active seller base" of about 500,000. Just 111 sellers produce 10% of those sales, and 1,020 sellers produce 25%. The same firm found the top is narrowing. In 2023 it took 15,000 sellers to reach half of third-party sales.¹

These figures cover all sellers, honest and not. No public study measures how concentrated counterfeit sales are on their own, and I will not invent a number. The argument here does not need one. Whatever the shape, the seller who sells the most of your fakes holds the most of the profit the law lets you recover.

Figure 1. A few sellers carry half of all sales

Source: Marketplace Pulse, an industry analytics firm (note 1). These are its own estimates for all third-party sellers on Amazon in the U.S., not counterfeiters alone.

SHARE OF AMAZON U.S. THIRD-PARTY SALES, BY NUMBER OF SELLERS

Largest sellers first, of about 500,000 active sellers

Industry estimate, February 2026



Half of all third-party sales come from fewer than one seller in sixty.

¹ Ben Donovan, Marketplace Pulse, “Top 1.6% of Sellers Drive 50% of Amazon’s 3P GMV,” February 12, 2026. Marketplace Pulse is an industry e-commerce analytics firm, and the figures are its own estimates, not audited or government data. <https://www.marketplacepulse.com/articles/top-16-of-sellers-drive-50-of-amazons-3p-gmv>

WHAT THE LAW LETS YOU RECOVER, AND FROM WHOM

Profits grow with the seller. When a trademark violation is proven, the Lanham Act lets the brand recover, subject to the court’s discretion, “(1) defendant’s profits, (2) any damages sustained by the plaintiff, and (3) the costs of the action.” The statute also says who proves what. “In assessing profits the plaintiff shall be required to prove defendant’s sales only.” The seller must prove its own costs.² A seller that sold ten times as much has far more at stake.

Statutory damages do not. For a counterfeit mark the brand may instead elect statutory damages of \$1,000 to \$200,000 per counterfeit mark per type of goods. If the counterfeiting was willful, the ceiling is \$2,000,000.² That ceiling is the same for a small seller and a large one. It turns on the marks and the goods, not on the seller’s sales. Where an award falls inside that range often depends on evidence of sales.

Courts still want the evidence. In a 2025 Chicago case, a brand asked for \$100,000 per defaulting seller and was awarded \$1,000 each. As a legal blog reported the ruling, the brand gave no information about how long the sellers had infringed, their profits or their sales volume.³ Without evidence of what the sellers sold, the award fell to the statutory minimum.

Some courts tie the freeze to the profits. In New Jersey’s federal court, a freeze is unlikely without evidence the seller is moving assets and a showing that ties the amount frozen to the profits at issue. The court’s order calls those profits “the amount of disgorgement at issue.”⁴

2 15 U.S.C. § 1117(a): the plaintiff may “recover (1) defendant’s profits, (2) any damages sustained by the plaintiff, and (3) the costs of the action,” and “In assessing profits the plaintiff shall be required to prove defendant’s sales only; defendant must prove all elements of cost or deduction claimed.” § 1117(c): statutory damages of “not less than \$1,000 or more than \$200,000 per counterfeit mark per type of goods or services sold, offered for sale, or distributed,” or, if willful, “not more than \$2,000,000 per counterfeit mark per type of goods or services sold, offered for sale, or distributed.”
<https://www.law.cornell.edu/uscode/text/15/1117>

3 *NS, Inc. v. The Partnerships and Unincorporated Associations Identified on Schedule A*, No. 25 CV 00596 (N.D. Ill. Sept. 2, 2025) (Coleman, J.). The court called the request “entirely, and unnecessarily, overbroad.” As reported by Chicago IP Litigation Blog, a law blog, December 2025.
<https://www.chicagoplitigation.com/2025/12/court-limits-statutory-damages-to-1000-per-defendant-in-schedule-a-trademark-case-without-evidence-of-harm/>

4 U.S. District Court for the District of New Jersey, Standing Order 2025-04, September 25, 2025: the court “is also unlikely to grant any TRO motion to freeze online accounts absent some evidence that the defendant has transferred or is transferring assets to avoid judgment in the specific case, and also after a specific showing linking the amount of assets to the amount of disgorgement at issue.”
<https://www.njd.uscourts.gov/sites/njd/files/StandingOrderreScheduleACases.pdf>

WHY THE WRONG TARGET COSTS YOU

Sellers do not wait. We studied 75 public counterfeiting cases. By September 2026, about one in five of the Amazon sellers named in these cases could be confirmed still selling on Amazon. That is a floor, because a third could not be checked.⁵ A seller that is gone holds nothing new to freeze. A seller that loses one storefront can also open another under a new name, as a 2020 DHS report noted.⁶ That is the subject of our paper on why takedowns fail.

The next point is my view from 16 years of this work, not a statistic. Every seller named adds work to document, serve and see through. A judgment against a small or abandoned account is often a piece of paper that collects little or nothing. What pays a brand back is money held where a U.S. court can reach it, and the large, active sellers are the ones holding it.

5 Cyber Investigation Services, count of 5,075 Amazon sellers named in 75 Schedule A trademark cases whose seller lists were free and unsealed on CourtListener, a public archive of federal court records, checked against Amazon listing data on September 28, 2026: 991 (19.5%) had a listing live in the previous 30 days. A third of the named sellers could not be checked, so the share is a floor. Live means any listing seen, not that the seller still sells the counterfeit goods.

6 U.S. Department of Homeland Security, “Combating Trafficking in Counterfeit and Pirated Goods: Report to the President of the United States,” January 24, 2020, p. 22: “counterfeiters can quickly and easily move to a new virtual store if their original third-party marketplace is taken down.”
https://www.dhs.gov/sites/default/files/publications/20_0124_plcy_counterfeit-pirated-goods-report_01.pdf

WHAT THE RIGHT TARGET LOOKS LIKE

In plain terms, the right first target has four traits. It is selling fakes of your product, and counsel can prove it. It sells a lot of them. It is still selling. And its money sits on a marketplace or payment account a U.S. court’s order can reach. The biggest sellers also put the most fakes in customers’ hands.

None of that shows on a single listing. A listing shows a product and a price. It does not show who is behind it, how much they sell or where else they sell. That is what we look at: who sells, how much and where. A brand that names the biggest active sellers first puts the most profit and the most reachable money in front of the court.

The law lets a brand recover a counterfeiter’s profits, and the profits sit with whoever sells the most fakes. Picking those sellers before any case is brought decides what the case can recover. That is the work we do.

PUT YOUR BRAND ON OUR FREE WATCH LIST

If counterfeiters are selling under your brand, you should know it before your customers do. We always watch for free. When fakes put your customers at risk, we warn you and send you a CIS Consumer Safety Review: who is selling, where they ship from, and what it would take to stop them.

We package the intelligence to attract contingency attorneys to take your case. Our fee comes only from the recovery. Many counterfeiting problems can be resolved with no money out of your pocket: the attorney pays the upfront costs and takes them back from what is collected. Put your brand on our free Watch List at cyberinvestigationsservices.com/watch-list.

About the author. Chris Anderson, Ph.D., founded Cyber Investigation Services, a Florida limited liability company, in 2010 and leads it as CEO. CIS is an eCommerce consumer safety and national security intelligence firm. For 16 years Chris has built intelligence on the sellers behind counterfeit marketplace listings.