



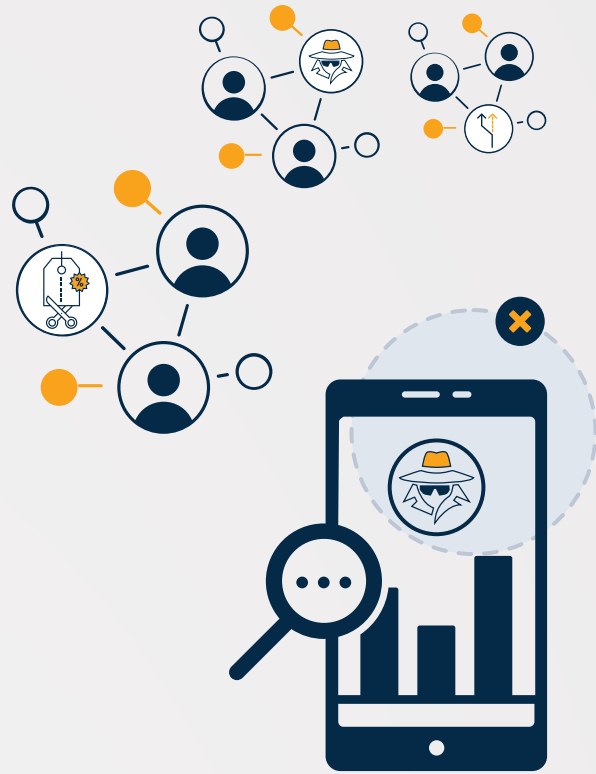
Root Cause Analysis & Corrective Actions

Stop Unauthorized Sales at the Source,
Reduce Enforcement 'Whack-A-Mole',
and Realize a Cleaner, Healthier
Online Marketplace



VORYSeCONTROL

www.vorysecontrol.com



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Overview: Brand Harms Caused by Uncontrolled Online Marketplaces

Commerce has been fundamentally transformed by online marketplaces, particularly Amazon.com. Third-party (3P) sellers often engage in product diversion, reselling products outside authorized channels. While product diversion is not new, its prevalence has increased with the growth of online marketplaces. Numerous resources now exist to educate potential 3P sellers on profitable reselling strategies.

Unauthorized third-party (3P) marketplace sellers harm brands by eroding brand value, causing margin chargebacks, and reducing profitability. Brands with their own 3P strategy face sales erosion and marketing fund freeriding. Poor-quality products from unauthorized sellers lead to negative reviews and further damage the brand's reputation and profitability.

Brick-and-mortar retailers suffer when bad online reviews deter in-store purchases. "Showrooming" further harms them as consumers inspect products in-store but buy from unauthorized online sellers at lower prices. Unauthorized sellers, who invest nothing in the brand, undercut invested retailers. eBay has even highlighted this issue in a promotional [video](#).

<https://www.ispot.tv/ad/os0w/ebay-when-youre-over-overpaying>



Brick-and-mortar retailers are adopting price-match policies and chargebacks and may reduce shelf space or drop brands that don't control online sales. Brands must take control to succeed; unfortunately, there is a great deal of confusion over how best to do so.



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Fragmented Approaches Result in “Whack-a-Mole” Because They Do Not Address the Root Cause.

Controlling online sales is now crucial for success in B2B and B2C sectors. Brands often try MAP policies and price monitoring software, but unauthorized sellers and Amazon don't comply. This forces brands to decide whether to terminate long-standing customers who lower prices to compete with unauthorized resellers.

Some brands use technology vendors to send automated warning letters to unauthorized sellers, but these tactics often fail. Without a solid legal foundation, such letters are ignored by experienced resellers. Vendors may claim success in removing sellers, but they don't address new sellers or the major resellers causing significant disruption.

Some brands use vendors who claim to remove unauthorized sellers through vague marketplace “tricks,” often involving outreach to these sellers. These methods are typically ineffective.

Vendors often ask unauthorized sellers to disclose product sources. If there's no response, they file complaints claiming the products are counterfeit, leading to listing removals. Sellers have sued vendors and brands for unlawful interference, asserting their products were not counterfeit.

Finally, Brands often spend significant resources on cease and desist letters or lawsuits against individual resellers, which are largely ineffective. These fragmented approaches lead to frustration and a never-ending game of whack-a-mole.

The takeaway is this: **brands cannot control marketplace sales through fragmented approaches.** They need a comprehensive eControl program integrating business, legal, and technology systems to optimize distribution, control online sales, protect brand equity, and enhance sales and margins. This paper will focus on root cause diagnostics and corrective actions.



The online marketplace explosion has brought with it swarms of anonymous third-party (“3P”) marketplace sellers who are **neither loyal nor accountable** to the brands they purport to represent.

The Critical Role of Root Cause Diagnostics in Achieving Online Sales Control – Where Is It All Coming from?

Legal enforcement is essential in any eControl program, especially during the initial cleanup phase. Despite tight distribution controls, unauthorized products will appear online. Brands need a solid legal foundation and enforcement capability. To avoid a never-ending “whack-a-mole” scenario, companies must also take preventive steps to protect brand equity, eliminate channel conflict, and optimize distribution.


In **Vorys eControl's** experience, successful companies establish a legal foundation for enforcement, diagnose the root cause of unauthorized sales, and take corrective actions to prevent recurrence.

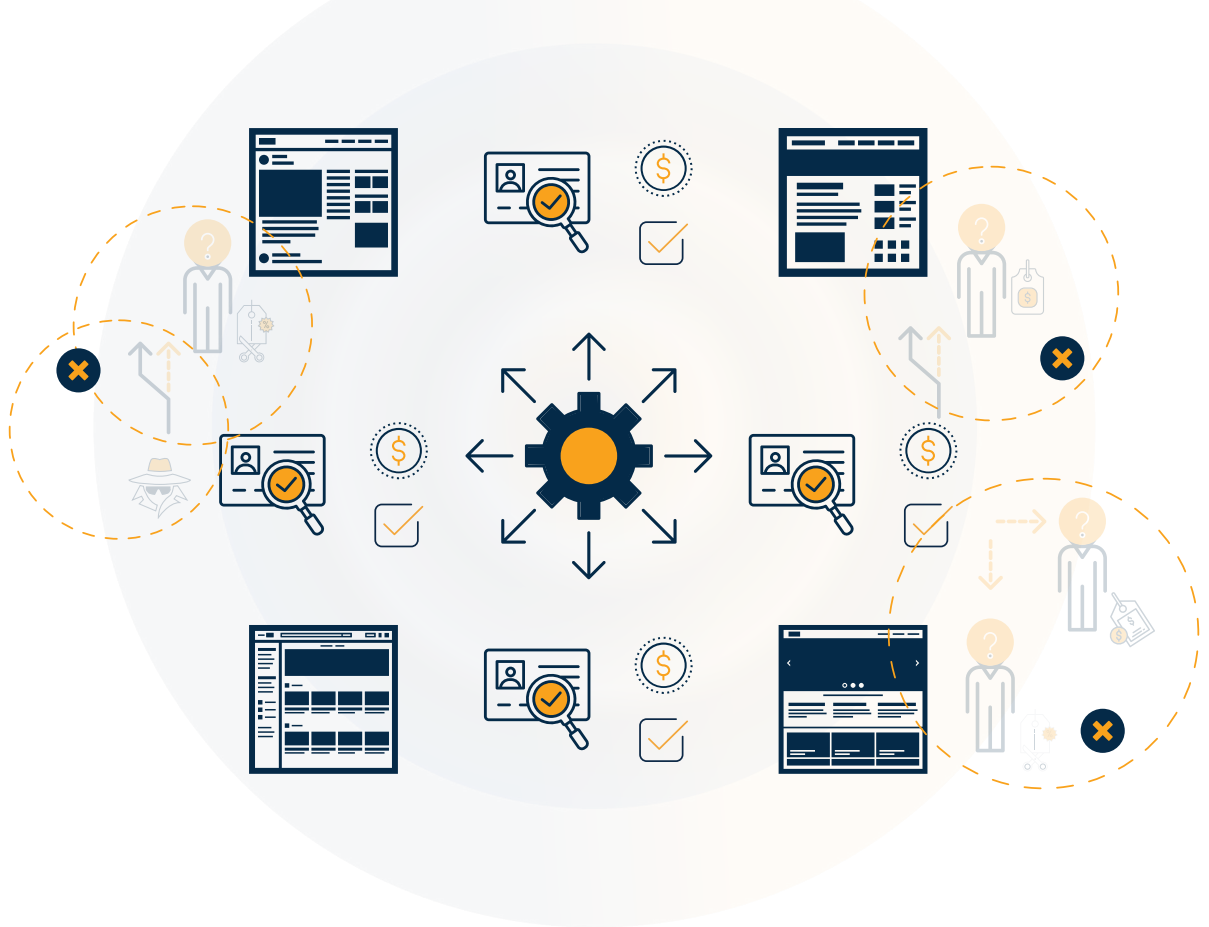
The process starts by identifying unauthorized sellers and their product sources. **Vorys eControl** uses advanced investigation techniques and legal tools to uncover these identities. Our team then analyzes the sellers' profiles and activities to diagnose the root cause.

After identifying unauthorized sellers, the next step is to review customer lists, transactional data, order volumes, invoices, and other relevant information. This data is analyzed using proprietary sources and marketplace intelligence to identify patterns and pinpoint diversion sources within authorized channels.

After identifying unauthorized sales sources, our team works with brands to assess the root causes, such as bulk buying from promotions, distributor volume discounts, or trade management practices. Addressing these root causes through corrective action is essential for achieving online sales control and its commercial benefits.

It is common for brands attempting to achieve control over online sales **to first attempt various half-measures** that quickly prove incapable of solving the problem.






Corrective Action – What Can Be Done to Stop Diversion Sources?

After identifying diversion sources, companies should engage authorized customers directly. Explain the impact of diversion and warn that their authorized status is at risk. Many customers will comply, often unaware they were contributing to the problem.

If a customer won't comply or the company wants to end the relationship, revoke their authorized status and cut them off, assuming no legal constraints. This approach effectively stops diversion and allows focus on committed channel customers.

Some companies find that a specific business practice enables profitable diversion and unauthorized selling. They must weigh the economic and relational impacts of changing this practice against the benefits of reducing diversion and brand harm. Some may accept ongoing marketplace enforcement as a core component of their eControl program, while others may evolve their practices to minimize future diversion. Corrective actions in these areas can significantly mitigate diversion and help achieve control.

Gone are the days of sales teams being able to look the other way when selling to certain distributors they know will be offloading product quantities to diversion outlets, as these diverted products will **quickly find their way to online marketplaces and wreak commercial havoc for the brand.**



Outdated Channel Strategy

Brands must evolve their channel strategy to align with current market dynamics. This includes a clear go-to-market strategy, setting reseller expectations, and disciplining non-compliant customers. Sales teams must stop ignoring distributors who offload products to diversion outlets, as these products quickly reach online marketplaces and cause disruption.

- + **Online Marketplaces (i.e., Amazon):** Brands need a well-defined online marketplace strategy aligned with their overall business strategy and aggressively enforced. Without it, they risk a chaotic reseller environment, poor consumer experience, harmful intrabrand competition, and disincentives for channel investment, leading to suboptimal sales growth, brand erosion, and channel conflict.
- + **Authorized Sellers in Remaining Channels:** Brands must also have a strategy for managing authorized sellers, who often contribute to product diversion. Strengthen and communicate policies on where and to whom authorized sellers may sell. Explain the issues caused by diversion and assist resellers with best practices to detect and stop it.
- + **Monitoring and Business Enforcement:** While many authorized sellers will comply, some may not. Brands should monitor channels to identify diversion sources and take action against violators, such as limiting supply, reducing trade allowances, or terminating relationships.


Outdated Pricing and Promotional Practices

Brands' management and incentives can promote diversion and harm brand equity. Critically assess each component to determine if traditional practices are now harmful. Consult legal counsel before adjusting pricing and promotions to ensure compliance. Common harmful practices include:

- + **Pricing Differentials:** Pricing differentials between markets or channels can lead to product diversion. Brands may unintentionally support resellers, causing harm, especially in international sales. Scrutinize markets for legal and diversion risks and consider alternative structures.

- + **Excessive Retail Margins:** Brands should pay their authorized sellers fairly for the work they do, but must be careful to avoid overpaying. When retail margins are too high, especially when the brand lacks sufficient control over its other channels, unauthorized sellers are often able to acquire product and resell it on marketplaces. Because these sellers make no investment whatsoever in the brand, they are content to trade at margins far below those at which invested channel partners are able to compete. Brands can mitigate these issues by adjusting channel pricing, trade spend and/or incentive stacks; lowering MSRP or MAP; or in some instances even implementing maximum resale prices, particularly on aging products.
- + **Volume Discounts and Incentives:** Brands often overcompensate distributors with volume-based discounts and growth rebates, leading to overstock and diversion. Distributors can “dump” excess inventory for profit, especially larger ones with less scrutiny. Some even set up their own storefronts on marketplaces, causing disruption. Brands should scrutinize these programs and use them as incentives or penalties, contingent on verified sell-through data, which also aids in diversion diagnostics.
- + **Promotions:** Promotions often cause product diversion, especially with unlimited quantities or compounded couponing. Brands should scrutinize promotions during design and be aware of other ongoing promotions to avoid unnecessary incentives. Tailor promotional programs to the target audience and ensure two-tier channel promotions are well-directed towards the appropriate retail or dealer sales channel and that guardrails are in place for subsequent resale on marketplaces. Further, to mitigate these issues, brands should (i) ensure that consumer promotions have quantity purchase limits; (ii) have a deliberate strategy regarding compounded couponing; and (iii) only pay sales channels for the promotion based on proof of sale.
- + **Liquidation:** Liquidation often leads to product diversion. Previously sold in clearance stores, liquidated products now appear on Amazon as new items. Brands should closely oversee liquidation outlets, use trusted partners, and consider return or destroy-infield protocols.

Once the sources and root causes of diversion are identified, companies must next decide **the best strategy for stopping them.**



Supply Chain Practices and Oversight

Unauthorized sellers are frequently able to obtain products through supply chain opportunities. Common supply chain issues that fuel diversion include:

- + **International re-routing:** Brands often sell products to international distributors at lower prices, leading to arbitrage opportunities where products end up on Amazon. Brands should monitor international distributors to ensure proper sales. Consider regional product segmentation, customs enforcement, and making incentives contingent on export confirmation and sell-through reporting.
- + **Theft:** Unauthorized sellers may obtain products through theft, sometimes with employee cooperation. Brands should regularly audit their supply chains to detect and address any theft-related anomalies.

Internal Misalignment

Many online sales control issues stem from internal misalignment. Sales teams may sell to known diverters while the eCommerce team enforces against unauthorized sellers. Cooperative sales teams are crucial. Brands should evaluate if current sales incentives promote diversion and consider corrective options.

- + Basing sales incentives on sales to authorized channels only
- + Penalizing sales teams if products are later resold in unauthorized channels
- + Rewarding sales teams for complying with do-not-sell lists
- + Requiring sales teams to identify suspicious transactions for higher-level review
- + Hiring an empowered leader familiar with diversion issues to develop and manage governance guidelines and processes regarding sales team pricing, promotions and incentive authority and activities
- + Training sales teams on the problems of product diversion
- + Basing incentives for both eCommerce and traditional sales teams in part on the health of the Amazon channel

Customer service and marketing teams should educate customers on the harms of unauthorized sales and the benefits of buying from authorized sellers, such


as quality controls and warranties. Order processing and finance teams should vet new accounts and flag order deviations. C-suite buy-in for anti-diversion and eControl efforts is crucial for success.

Lack of Diversion Impact Knowledge

Efforts to control sales and stop diversion succeed when internal champions measure key metrics tied to business success. Track quantifiable metrics like the percentage of marketplace sales by authorized vs. unauthorized sellers, MAP/MSRP compliance, price erosion, buy box share, margin chargebacks, suppressed listings, and overall sales volumes. Monitoring these metrics helps evaluate and adjust programs for greater effectiveness.

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For some companies,
however, their root cause
diagnostic effort will reveal
that **a particular business
practice is creating the
economic environment
for profitable diversion
and unauthorized
online selling.**



Vorys eControl's Root Cause Diagnostics and Corrective Action Team

Working with Brands to Solve Their Channel and Business Management Challenges and Position Them for Success through Control in Today's Market.

Vorys eControl's mission is to provide comprehensive control solutions for brands to maximize revenues and profits in the eCommerce era. To achieve this, we have established a Root Cause Diagnostic and Corrective Action Team, led by Denise Zmuda, a veteran in channel strategy. This team, supported by investigators and data analysts, focuses on identifying and stopping product diversion and unauthorized sales.

Our extensive experience with hundreds of companies across various product verticals allows us to understand market strategies and pinpoint likely diversion sources. The Root Cause Diagnostics and Corrective Action Team enhances our approach to online sales control, combining legal foundation, enforcement, diagnostics, and corrective actions.

We are ready to collaborate with your internal team to uncover and address diversion sources as part of your comprehensive eControl program.

If you would like further information on how our **Root Cause Diagnostic and Corrective Action Team** can help your company, please contact us at econtrol@vorys.com.

About the Authors



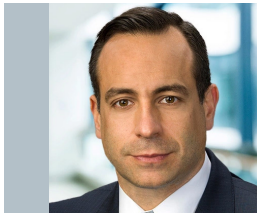
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Whitney is a partner and chair of the nationally recognized **Vorys eControl** group. He and the firm's team have developed cutting-edge, yet costeffective, solutions to help brands control their sales in the digital age. Whitney has developed custom programs for companies confronting unauthorized sales, grey market sales, counterfeit sales, Minimum Advertised Price (MAP) violators and other illegal sales on the internet. The team combines legal, technological and investigative tools and services.



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Daren is a partner in the **Vorys eControl** group and dedicates his practice to the development and implementation, both domestically and internationally, of strategies and enforcement systems designed to protect brand value in the digital world. Daren has developed custom, end-to-end solutions for more than 200 brands and manufacturers confronting unauthorized sellers, MAP violators, channel conflict and other online sales challenges. Daren also regularly leads litigation matters against grey market sellers disrupting brand value for **Vorys'** clients.



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