

Data-Driven Precision Enforcement

**AN ENFORCEMENT METHODOLOGY FOR
BETTER BUSINESS OUTCOMES**



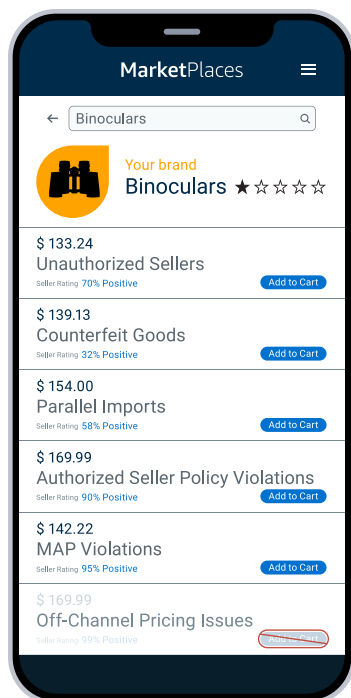
With online marketplaces constantly expanding and the ever-growing importance of channel control and brand protection, many brands try using single-point tools, tantamount to “junk mail,” against unauthorized sellers. The brands hire vendors that send copious, baseless boilerplate messages in an attempt to scare sellers into removing their unauthorized listings, but cannot do anything when the sellers refuse. Others submit takedown requests to marketplaces, claiming products are counterfeits (without verifying that they truly are), leading to the brand getting sued. Meanwhile, some services send numerous MAP “violation” notices but have no ability to deal with disruptive unauthorized sellers advertising far below MAP. In each of these scenarios, the brand spends money and time, but nothing changes.

In working with more than 1,000 brands, Vorys eControl discovered early on that these single-point approaches are too narrow and fundamentally ineffective at addressing the wide range of issues brands face on marketplaces. More concerning, they often create increased legal risk. As a result, Vorys eControl has identified and developed a more effective and efficient approach: Data-Driven Precision Enforcement.

Data-Driven Precision Enforcement is a methodology that uses advanced KPI, prioritization, and unauthorized seller analytics and insights to determine the enforcement action best suited for each violating seller. This approach is specifically designed to achieve meaningful business KPIs rather than vanity metrics like “takedowns” or number of violation notices sent.

We then use a flexible platform with a comprehensive suite of enforcement capabilities to efficiently execute the identified precision tactics for each seller segment. Just as personalized advertising transformed marketing effectiveness compared to traditional junk mail, Data-Driven Precision Enforcement delivers superior results and ROI for brands seeking strategic control and measurable growth of their sales channels.

The following sections outline the core components of Data-Driven Precision Enforcement and how this approach can produce higher ROI by efficiently and effectively addressing the unique challenges brands face in online marketplaces.

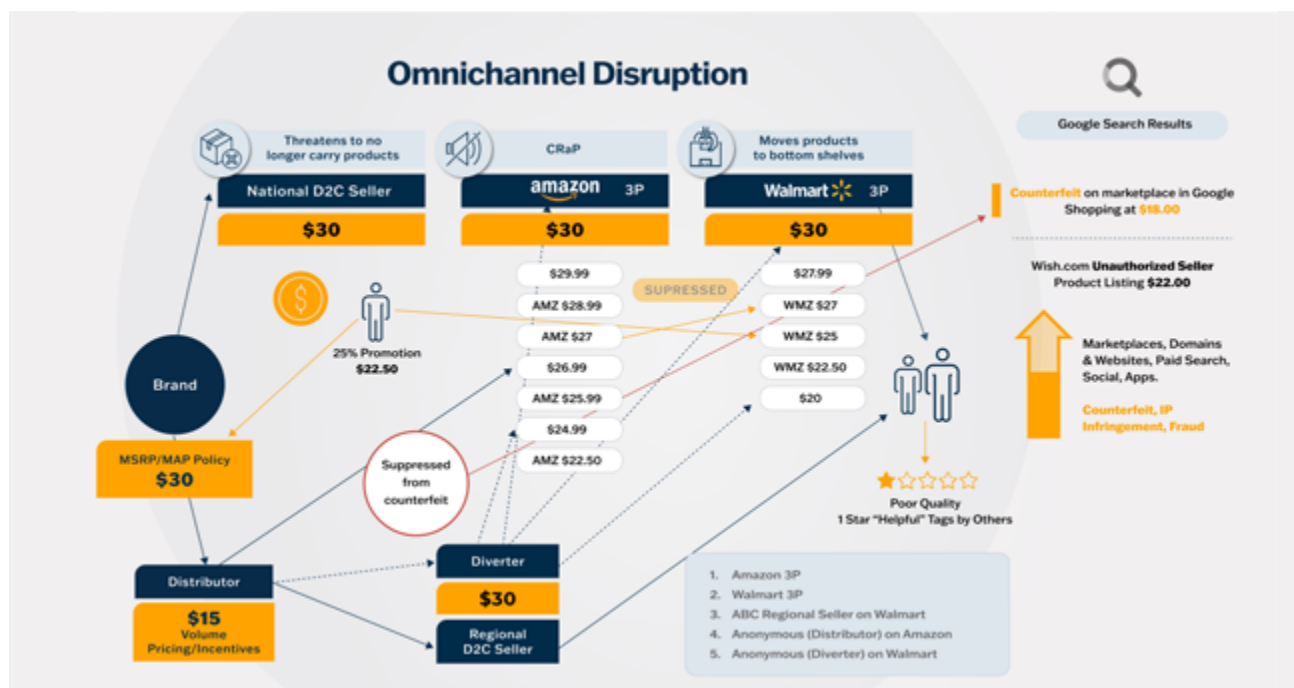


Online Marketplaces Present Numerous, Constantly Varied Challenges For Brands

There Is No One-Size-Fits-All Tool That Works

To better appreciate why a Data-Driven Precision Enforcement approach is necessary, brand leaders must understand the unique challenges posed by online marketplaces. In particular, marketplace brand protection is difficult because there are many different things that can disrupt your brand's sales, pricing, reputation, product quality, marketing return, and more. And, these disruptions can change daily. One day unauthorized third-party sellers may be causing problems; the next, a distributor in another country selling on US marketplaces; then Amazon selling products purchased from one of the brand's distributors; later, a new counterfeiter appears; followed by a seller from China infringing the brand's patent and capturing large sales volumes; and so on, with brands often facing a combination of some or all of these issues.

Complicating matters more, online marketplaces are not only disrupted by activity occurring on the platform, they are also impacted by off-channel activity. For example, as the chart below illustrates, the brand's authorized distributors and resellers will violate brand policies by selling to professional diverters, selling themselves on marketplaces, or violating their pricing policies—all of which can cause serious disruption on marketplaces and across other channels of trade.



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Given these realities, brands cannot possibly protect their reputation or control their sales with boilerplate threatening letters to marketplace sellers or trying to bootstrap marketplace policies to achieve seller takedowns. These tactics simply are not effective, drain budgets, and often, leave the brand worse off than they were before. Instead, brands need the ability to quickly identify the specific seller violations disrupting their channels, prioritize which violating sellers to address given budgets and desired KPIs, and then efficiently apply the best enforcement tactic based on the violation type, seller attributes, and other variables.

The Data-Driven Precision Enforcement Methodology Roadmap

To address these marketplace complexities, Vorys eControl developed the Data-Driven Precision Enforcement methodology, offering a strategic alternative to the ineffective junk mail practices promoted by so many vendors in today's market. The core components of the methodology are described below:

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STEP 1 – ESTABLISH KPIS

The first step is to establish the KPIs most indicative of progress towards the desired commercial outcome. For some brands, it might be the percentage of sales captured by their authorized seller; for others, MAP compliance; some focus on improving review scores and sentiment; then others, some combination of the foregoing. Using advanced data technology, Vorys eControl's dedicated team aggregates information from multiple sources, then applies analytics and algorithms to establish and track the business KPIs driven through our enforcement. Alignment with business objectives is critical to informing the precise targets and actions that will drive the maximum ROI, measuring the business impact, and ensuring that the enforcement team does not waste time and resources on meaningless sellers and actions that do not impact established KPIs.

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STEP 2 – SEGMENT OFFENDING SELLERS BY VIOLATION TYPE

Next, offending sellers must be segmented by the type of violation. This is an often-overlooked step that is critical to ensuring the right enforcement tactics are applied against the right sellers. Each type of violation requires a different enforcement foundation and approach. For example, counterfeits must be handled differently than grey market sales, MAP violations differently still, and reseller policy violations differently again, to name a few. The chart below illustrates some common types of seller segments that disrupt brand KPIs, each requiring a distinct approach. Brands should not waste time and money applying the wrong tactics to the wrong segments of



sellers—there is no one-size-fits-all approach. Efficient and accurate seller segmentation enables brands to ensure, from the outset, that the right tactics are applied to the right types of sellers.

Reseller Policy Violation	MAP Violation	Unauthorized Seller	Counterfeit
Marketplace Policy Violation	Quality Control Violation	Patent Infringement	Copyright Violation
Trademark Violation	False Advertisement	Low-Volume Grey Market Seller	High-Volume Grey Market Seller
Non-Impactful Sellers	Known Source Diversion	Violating Distributor	Parallel Importer

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STEP 3 – DETERMINE MARKETPLACE DISRUPTION SCORE

The next step in our methodology is to assign each unauthorized seller a proprietary marketplace disruption score, which allows us to effectively prioritize sellers for enforcement based on the quantity of business harm they cause. Vorys eControl's data science and analytics team works with brands to conform our algorithms and scoring models to their desired KPIs. We then leverage our Advanced Prioritization Application and scoring models to determine which sellers have the biggest impact on the established metrics. This allows us to queue enforcement against the sellers that are most disruptive, avoiding wasted resources on sellers and methods that will have no meaningful impact on the business' desired KPIs.

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STEP 4 – USE ADVANCED SELLER INSIGHTS APPLICATION TO DETERMINE PRECISE ENFORCEMENT APPROACH

Once sellers have been segmented and prioritized by disruptiveness, the next step is analysis of seller-specific data to determine the optimal enforcement action that should be taken against them. Vorys' Seller Intelligence Database includes information on over 330,000 marketplace sellers across dozens of international markets. It contains specific attributes for many sellers, such as known product sources, results of prior enforcement actions against them, previous storefronts, known affiliations, and more. We aggregate inputs from this database and other brand-specific data to surface unique insights that inform the precise enforcement approach for each selected seller.

For example: Is this a seller likely to cease operations in response to a letter? Would enforcement resources be better spent locating and shutting down their supply? Might they be willing to negotiate a quick settlement? Or will they require some form of escalated action? These seller-specific insights further refine what the most accurate, effective, and lowest-cost approach to be taken is for each prioritized seller.

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STEP 5 – TAKE PRECISION ENFORCEMENT ACTION

Next, it is time to apply the Precision Enforcement tactic determined by the above methodology. To enable the efficient execution of the various tactics, Vorys eControl has developed a suite of data solutions, tools, and services, including a technology-powered, in-house enforcement center. This platform of capabilities enables our team and clients to efficiently execute a wide range of enforcement tactics for each of the different seller segments described above, as well as to flexibly change tactics as new and emerging challenges arise. Some of these tactics include:

- + **Legal C&D Letter**
- + **MAP Enforcement**
- + **Enhanced Seller Investigations**
- + **Product Test Buys**
- + **Reseller Policy Enforcement**
- + **Marketplace Policy Violation Takedowns**
- + **Removal from Marketplaces Based on IP Violations**
- + **Diversions Diagnostics and Root Cause Determinations**
- + **Counterfeit Enforcement**
- + **Marketplace Patent Enforcement**
- + **Escalated Legal Enforcement**



With instant access to this comprehensive ecosystem of resources, Vorys eControl can quickly implement precise actions for each segment against the specific sellers at issue, avoiding ineffective single-tool, junk-mail methods.

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STEP 6 – MEASURE AND REPORT KPI IMPACT

The final step is to measure and report the KPI impact of enforcement actions taken. This allows us to continuously ensure enforcement is driving established commercial KPIs, while any tactics failing to deliver those metrics can be abandoned. As a result, tactics can be properly flexed and iterated to drive better commercial results in an ever-changing environment. This is the final, critical component in ensuring optimized ROI for our clients.

100+

eControl Attorneys
and Professionals



Channel Strategists
and Data Analysts



Investigative and
Enforcement Experts

The Benefits of Data-Driven Precision Enforcement To Your Brand

Getting The Most Out Of Your Enforcement Budget

In our experience, brands can often achieve far more ROI within existing enforcement budgets when they pivot to our Data-Driven Precision Enforcement methodology. By leveraging data to uncover important insights that determine the precise strategy for maximum impact on brand KPIs, and efficiently applying the right tactics against the right seller at the right time, we can often drive higher returns with the same or a similar investment. Below are several additional reasons why the Data-Driven Precision Enforcement approach provides more value for brands.

Brands can often achieve far more ROI within existing enforcement budgets when they pivot to our Data-Driven Precision Enforcement methodology.

- + **Allows Vorys eControl and clients to tailor enforcement activities more closely to the brand's particular KPIs and nuances associated with each seller.**
- + **Can increase a brand's chances of success by determining and applying the approaches that work best for each of the seller segments impacting the brand's business.**
- + **Saves resources for the brand by not wasting time and money pursuing sellers and utilizing measures that do not impact business KPIs.**
- + **Mitigates legal risk by applying the right tactics with an appropriate legal basis to the specific seller's violation, rather than sending baseless junk mail.**
- + **Allows brand representative to achieve and demonstrate business ROI to internal stakeholders, instead of creating reports with meaningless takedown numbers and other vanity metrics that have little-to-no commercial significance.**

To discuss how your brand can benefit from a Data-Driven Precision Enforcement strategy, contact Daren Garcia at dsgarcia@vorys.com.

About Vorys eControl

Vorys eControl is an interdisciplinary team of lawyers, executive-level business practitioners, investigators, technologists, and data analysts that designs, implements, and executes digital channel control solutions to protect and support long-term brand value and growth. Since creating the eControl category, Vorys eControl has served over 1,000 brands, including some of the world's largest, developing innovative solutions to challenges involved in controlling sales across online and in brick-and-mortar channels.



Whitney Gibson is the chair and a partner of nationally recognized Vorys eControl. He and the firm's team have developed cutting-edge, yet cost-effective, solutions to help brands control their sales in the digital age. Whitney has developed custom programs for companies confronting unauthorized sales, grey market and counterfeit sales, MAP violators, and other illegal sales on the internet. In addition to helping build eControl's enforcement team, Whitney is co-author of the book *Controlling Your Brand in the Age of Amazon: The Brand Executive's Playbook for Winning Online*.



Daren Garcia is the managing partner of the Vorys London office where he leads eControl's international program. Daren dedicates his practice to the development and implementation of strategies and enforcement systems designed to protect brand value in the omnichannel world. He has counseled many hundreds of brands and manufacturers addressing unauthorized sellers, channel conflict, and other activities disruptive to brand revenues and value. Daren has also led litigation matters against significant grey market sellers disrupting brand value for Vorys' clients.



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This document is intended to serve as a general discussion for brand leaders on sales channel control. This document is not a substitute for individual legal advice appropriate for your brand and does not establish an attorney-client relationship or an attorney-prospective client relationship with Vorys, Sater, Seymour and Pease LLP. Results vary and every company's situation is different.