

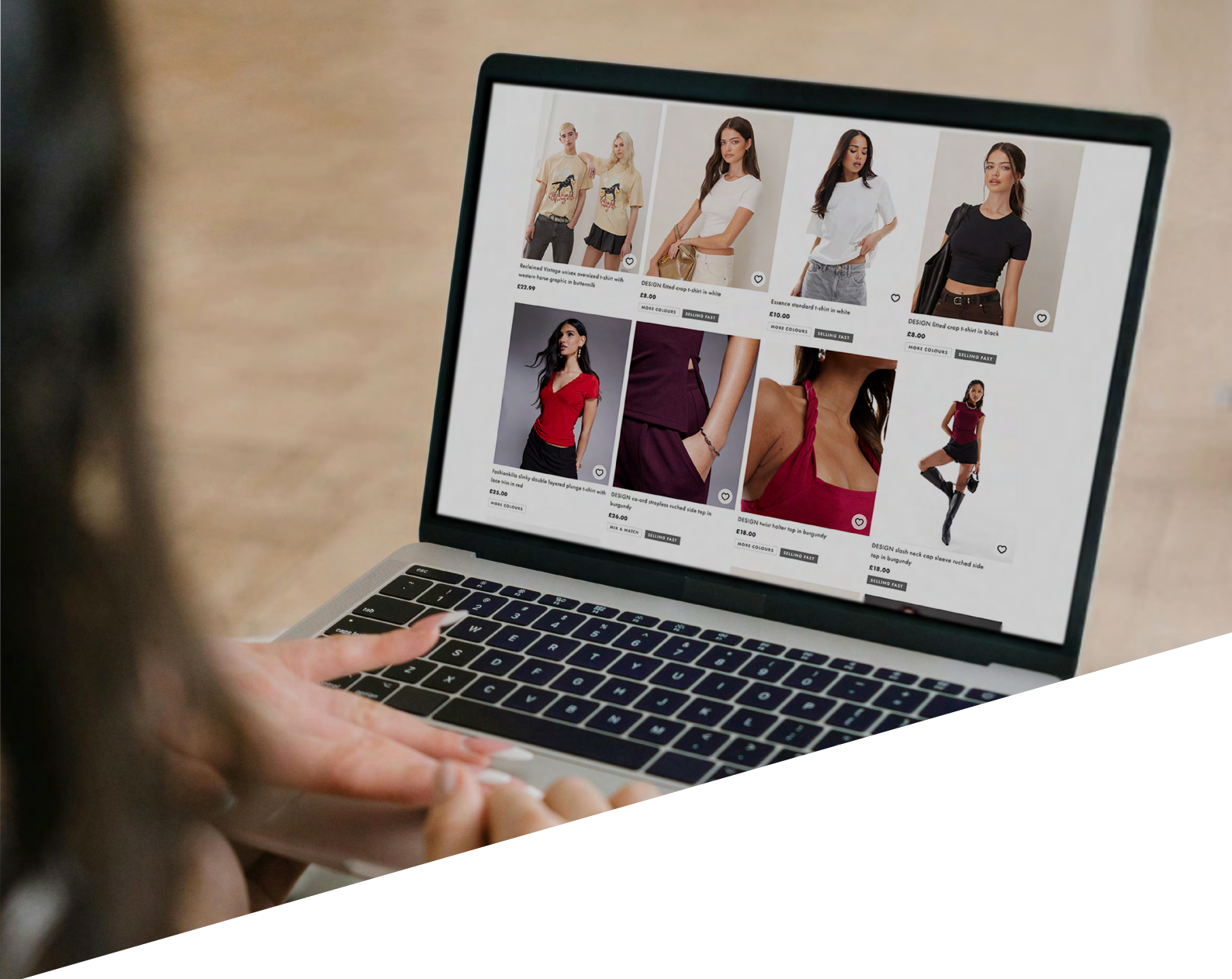


Intellectual
Property



Protecting your IP:

Strategies for sellers to navigate takedown risks on Amazon and other retailers



Introduction: The growing importance of IP on Amazon

With millions of sellers and consumers on the Amazon platform, it has become essential for businesses to protect their intellectual property (IP) to safeguard their brand and maintain competitiveness.

IP-related challenges, including unauthorised resellers, counterfeit products, and disputes over listings, can affect sales and brand reputation. By understanding Amazon's IP enforcement tools and policies, businesses can manage disputes, prevent issues, and protect their rights effectively.

In this paper, we provide practical strategies to help sellers navigate Amazon's IP processes and highlight how businesses can leverage the platform's features to support their growth while maintaining compliance.

This paper is based on intellectual property laws and enforcement mechanisms applicable in the UK. While Amazon operates as a global e-commerce platform, its IP enforcement policies and procedures can vary by region, reflecting differences in local laws and practices. GJE works with a trusted network of attorneys worldwide and can help tailor a strategy to fit your specific circumstances.



Common IP issues on Amazon

Amazon's marketplace connects millions of buyers and sellers, making it a valuable but highly competitive environment. Key challenges for businesses include:

- **IP infringement:** Some listings may infringe one or more IP rights, such as trade marks, patents, or designs, either through the products themselves or the unauthorised use of protected content within the listing.
- **Receiving takedown notices:** Sellers may receive takedown notices alleging infringement, even in cases where they dispute this infringement. These situations can result in the removal of listings and require careful handling to resolve.
- **Manipulation of listings:** Changes to product detail pages by third parties can create confusion and disrupt genuine sellers' listings.

It is important for sellers and rights holders to understand the scope of Amazon's IP policy and to review it in full. Failure to comply with these policies can result in takedowns, account suspensions, or other enforcement actions, underscoring the need for sellers to maintain vigilance over their listings. For example, Amazon permits sellers to list compatible products using specific title formats (e.g. "Compatible with [Brand]") but prohibits misleading statements that could imply direct affiliation with a brand. This distinction is critical for maintaining compliance and avoiding claims of trade mark infringement.



The complaint process

Amazon's IP policy

Amazon provides rights holders with tools to report potential infringements relating to:

- 1. Products:** Unauthorised sales, counterfeits, or goods using protected IP.
- 2. Packaging:** Misuse of protected designs or trade marks.
- 3. Product detail pages:** Content that includes unauthorised branding, imagery, or other IP.

Filing complaints

To report an issue, rights holders must:

- 1.** Identify the relevant ASIN (Amazon Standard Identification Number).
- 2.** Gather evidence, such as registered IP rights.
- 3.** Submit a report via Amazon's infringement reporting tool, specifying the issue clearly.

Amazon reviews complaints to determine the risk of continuing to host the listing. Given the volume of reports, these reviews are often based on the evidence submitted rather than a detailed investigation of the IP's validity. Registered IP rights, such as trade marks, tend to carry significant weight.

Sellers' right to appeal

If a listing is removed, sellers may appeal by providing evidence of non-infringement, which Amazon will review. It is advisable for businesses to seek professional guidance when addressing complex disputes to improve their chances of resolving the issue effectively. Depending on the jurisdiction, region-specific strategies may be available. For example, in the United States, sellers may utilise the Amazon Patent Evaluation Express program for patent disputes, while in the UK, the IPO's opinions service can provide an independent assessment of patent validity or infringement. Through our established network, we can also seek to engage the appropriate local contacts within Amazon to help ensure that the matter is properly considered.



Risks of filing complaints

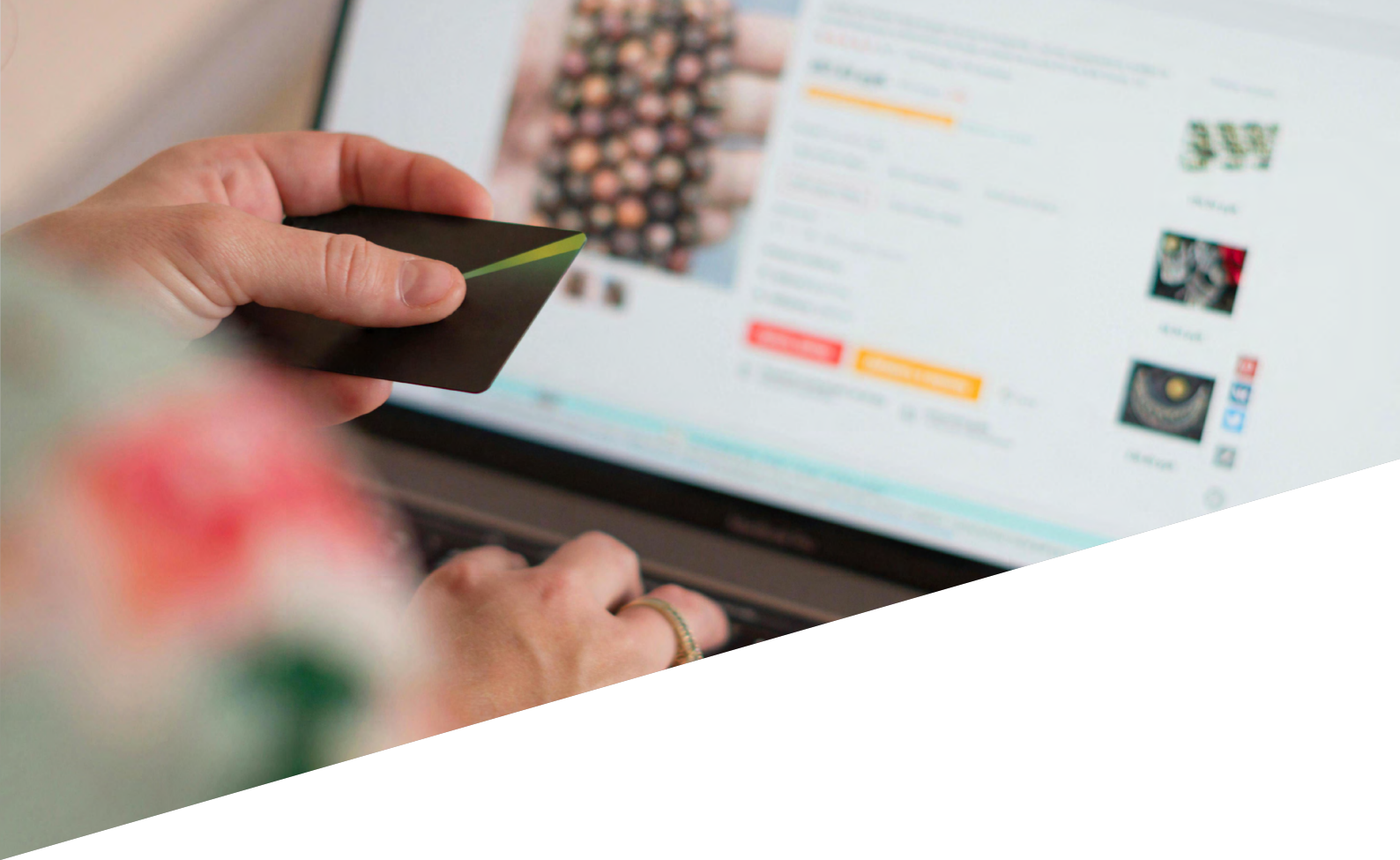
While filing an IP complaint can be a necessary step to protect your rights, businesses should carefully evaluate the potential risks.

If a complaint leads to the removal of a listing that is later found to be non-infringing, it is possible sellers may be able to seek compensation for financial losses, including those resulting from:

- Lost sales.
- Damage to the listing's rank in search results, affecting long-term visibility.
- Loss of the "Buy Now" button, which can significantly impact conversion rates.

In some cases, filing an IP complaint on Amazon may be considered an example of an unjustified threat under the UK's threats provisions in trade mark, patent, and design law, particularly if the complaint is based on invalid or speculative IP rights. Additionally, in certain circumstances, a seller may be able to bring claims under torts such as malicious falsehood or causing loss by unlawful means.

By ensuring complaints are based on valid, enforceable IP rights and supported by credible evidence, businesses can mitigate these risks. Filing frivolous or weak complaints not only exposes rights holders to potential liability but may also damage their reputation with Amazon, making future complaints less likely to succeed.



Preventing and addressing abuses

Register and enforce IP

Companies should take a proactive approach to registering relevant IP and enforcing this where necessary to prevent infringement. Professional advice should be sought here.

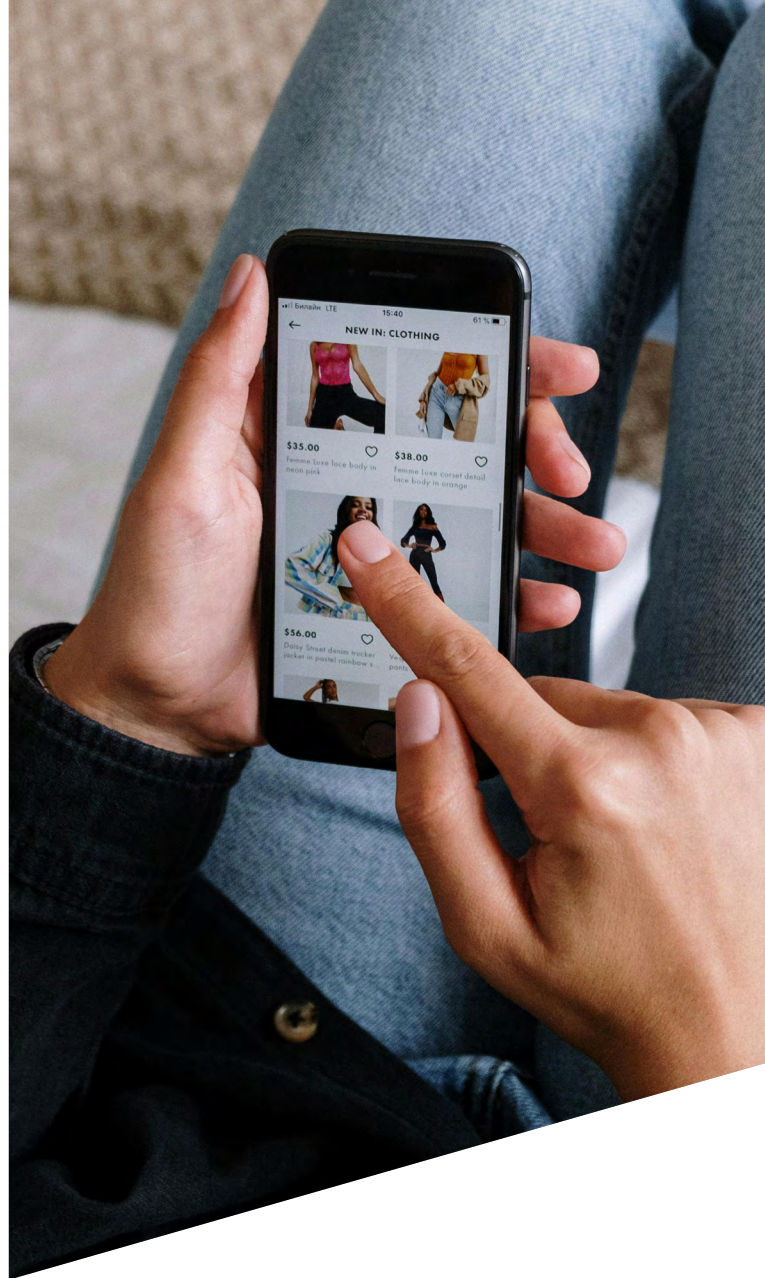
Join Amazon Brand Registry

Amazon Brand Registry offers a powerful suite of tools and protections to help rights holders safeguard their IP and strengthen their presence on the platform.

Key advantages include:

- **Enhanced control over listings:** Brand Registry provides authorised sellers with greater authority over product detail pages. This ensures that product titles, descriptions, images, and other details accurately reflect the brand's identity, and reduces the risk of listing manipulation by unauthorised third parties.
- **Proactive IP protection:** Amazon employs automated protections that leverage information provided by brands to detect and remove suspected infringing or inaccurate content before it reaches customers. These measures help reduce the occurrence of counterfeit listings and unauthorised uses of IP.
- **Report a Violation tool:** This feature enables rights holders to search for and report suspected infringements efficiently. Searches can be conducted using keywords, images or bulk ASIN lists, making it easier to monitor and protect your brand's assets.
- **Transparency programme:** Brands can enrol in Amazon's Transparency Programme, which assigns unique codes to product units. These codes are used to authenticate products and prevent counterfeit goods from reaching customers, ensuring that only genuine items are sold under your brand.

“Businesses facing malicious complaints should adopt an assertive and long-term approach.”



Dealing with nuisance or malicious complaints

Businesses facing malicious complaints should adopt an assertive and long-term approach. This includes acting across all forums, such as trade mark, design, and patent invalidation procedures, as well as domain name and company name complaints. By proactively eliminating opportunities for bad actors, businesses can better safeguard their presence on Amazon and other platforms.

Taking action against persistent infringers

In cases where repeated takedowns fail to stop ongoing infringement, additional enforcement measures may be required. We can work with investigators to identify the source of the infringement. Where necessary, targeted legal action can be pursued to seize digital or physical assets linked to the infringer. These escalated measures provide a more permanent resolution, helping to protect your brand and prevent further unauthorised sales.



Equivalent tools on other platforms

Other tools are available on other e-commerce platforms, such as eBay, AliExpress, and Shopify, to help rights holders monitor and protect their IP. While the specific procedures vary, each platform offers mechanisms to report unauthorised listings and enforce IP rights. Businesses should understand the tools and processes for each platform while maintaining proactive monitoring to protect their assets effectively.

Early detection of potential infringements can help resolve issues quickly. For recurring issues, we can recommend AI tools to automate monitoring and reporting.

Conclusion: Navigating the complexities of IP on Amazon

Amazon provides robust tools to help businesses protect their IP, but navigating its processes requires a thoughtful and informed approach. By leveraging features such as Brand Registry, staying vigilant for potential infringements, and seeking professional advice where needed, businesses can protect their assets and maintain compliance.

For businesses facing challenges or seeking to optimise their presence on e-commerce platforms, tailored strategies and expert guidance can provide the support needed to succeed in this dynamic marketplace. If you would like to discuss your IP needs, please get in touch.

About the authors

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