Online Arbitrage: Why Amazon Orders Sometimes Come from Walmart
by Brittany Frandsen

Have you ever ordered something from Amazon and received your order in a box shipped from Walmart? If so, you're not the only one. "Arbitrage" is a little known, but increasingly common, practice by ecommerce sellers. Arbitrage is a broad term that encompasses buying products at a low price point and then reselling them for a higher price. A relatively recent fad among ecommerce arbitragers involves offering products for sale over the Internet, and then buying them and having them shipped directly to customers.

Here's how it works. Typical ecommerce arbitragers don't carry any product inventory. Instead, they search for low prices on sites like Walmart.com, Overstock.com, and Homedepot.com, and then offer the products for sale at prices that are higher than the prices listed on the third-party sites. For example, say a jacket is on sale at Walmart for $50. The arbitrager offers the same jacket for sale on Amazon for $75. When a customer places an order with the arbitrager, the arbitrager places an order with Walmart and enters the customer's shipping information so Walmart will ship the jacket directly to the customer. The customer pays the arbitrager $75, and the arbitrager pays Walmart $50 and pockets the difference.

The problem with this practice is that it implicates various intellectual property and privacy concerns. For example, some arbitragers operate websites (often powered by platforms such as Shopify) that they fill with web pages advertising their various products. However, when they create their web pages, they often copy the photos and product descriptions from the source web pages and paste them onto their own web pages. This saves arbitragers the time and expense of creating or licensing their website content, but it infringes the copyrights in the photos and product descriptions and puts the arbitrager at risk of paying thousands of dollars in damages.[1]

Another issue is that many of these arbitragers sell through Amazon, which expressly prohibits this style of arbitrage. Specifically, Amazon's Drop Shipping Policy[2] prohibits "[p]urchasing products from another online retailer and having that retailer ship directly to customers." Sellers who flaunt Amazon's policy by employing the practices described above risk "suspension or removal of [their] selling privileges."

Finally, customers who place orders on websites like Amazon likely do not expect to have their information sent to third parties. Many arbitragers' Amazon seller pages have reviews from customers who are confused when their Amazon order comes from Walmart or Home Depot, and some of these customers complain that they ordered from Amazon specifically because they did not want to buy from the third party retailer. An ecommerce retailer who routinely shares customer information with outside parties is likely to lose customers at best, and risks violating common law and statutory privacy laws at worst.

Despite the tenuous legality of this style of arbitrage, numerous companies market software that automates the arbitrage process, including searching for listings and populating web pages with pirated copyrighted material. These companies usually market their products as an easy way to make some money selling online, but don't explain the legal risks inherent in their products. It is likely only a matter of time before these software companies are curtailed or shut down (à la Napster), which should drive many of these kinds of arbitragers from the market. Until then, customers and brand owners should be aware of the rise of the ecommerce arbitrager, and should take measures to protect their privacy and their intellectual property.

[1] *See* 17 U.S.C. § 504.

[2] Available at https://sellercentral.amazon.com/gp/help/external/201808410?language=en-US&ref=mpbc_201808430_cont_201808410.