

## Publications

### Serving Subpoenas to Identify Unauthorized Online Sellers on eBay

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**AUTHORED ARTICLE** | 8.11.2016

We have published various posts on our blog about implementing an effective enforcement system to stop unauthorized sales, including our recent post featuring a video about our [online seller enforcement program](#). As mentioned in numerous posts, an ideal enforcement program combines technology, legal and investigation tactics.

“Investigation tactics” frequently refers to the techniques utilized by skilled cyber investigators. It also encompasses subpoenas – a legal mechanism of identifying (in this context) targeted unauthorized sellers of products on eBay and other sales platforms.

As a brief refresher, our recommended graduated enforcement system features the following steps:

1. Identifying diverted products;
2. targeting sellers via electronic cease and desist letters sent through the specific websites (e.g. eBay)
3. conducting investigations or serving subpoenas to obtain the actual identities of any sellers who fail to comply with the electronic cease and desist letters;
4. sending physical cease and desist letters to the noncompliant sellers’ physical addresses, based on the information identified through step three; and
5. if necessary, pursuing any sellers who ignore the letters through escalated enforcement actions.

In many instances, identifying unauthorized sellers (as listed in step three above) is often accomplished through the efforts of cyber investigators and effective monitoring programs.

One simple technique that investigators often rely on, and which typically proves effective, is product purchasing. An investigator can simply purchase a product from an offending online seller and obtain the seller’s identity through the information provided from the purchase – for example, a return address on the packaging label and payment processing information.

Of course, it is not always quite so simple.

On eBay sellers might use P.O. boxes, or their shipping labels just might not have accurate information.

In either scenario, a company's legal team can serve a subpoena on eBay Inc. to obtain the unknown sellers' identities. This does, of course, first require filing a lawsuit.

Legal teams should serve eBay subpoenas on its registered agent in California. In other words, the relevant action should either be filed in California or a California-licensed attorney must otherwise issue the subpoena (if a foreign action), following California's version of the Uniform Interstate Depositions and Discovery Act (UIDDA).

A valid subpoena for the production of documents containing personally identifying information about sellers should identify the unauthorized sellers. While some sellers might try to hide their identities from the general public, since they receive payments through eBay, they typically need to provide these companies with accurate information.

Upon obtaining the identifying information, a company seeking to stop unauthorized sales can then send the identified sellers physical cease and desist letters and, to the extent necessary, take additional legal action against them.

*For more information, contact Vorys' Illegal Online Seller Enforcement team at 877.545.6905. Learn more about the practice at [services-648.html](#) and through <https://www.youtube.com/watch?v=FwowersQp1I4>, and follow Whitney on Twitter*