

## Federal Court Issues First-of-its-Kind Ruling Supporting Brands' Approach to Reducing Gray Market Sales on Amazon

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A Colorado federal court has granted partial summary judgment against an unauthorized gray market seller that further strengthens the ability of brands to stop the unauthorized sales of their products on online marketplaces, including Amazon. The ruling is the first of its kind, on evidentiary merits, and again confirms that brands have a viable path for stopping the unauthorized sales of their products.

Vorys, Sater, Seymour and Pease LLP argued the case on behalf of Otter Products, LLC and TreeFrog Developments, Inc. (collectively "Otter"), which manufacture and sell mobile phone accessories under the OtterBox and LifeProof brands. See *Otter Products, LLC v. Triplenet Pricing Inc.*, No. 1:19-cv-00510 (D. Colo.)

The U.S. District Court for Colorado found for Otter on its claims for trademark and unfair competition, false advertising, and the Colorado Consumer Protection Act (CCPA) Deceptive Trade Practices. The Court's ruling is significant for brands trying to stop the unauthorized sales of their products.

"This decision reaffirms what we have known for a long time: brands have the ability to end the Wild West nature of online, third-party marketplaces," said Whitney Gibson, founder and chair of Vorys eControl. "Brands that are serious about cracking down on unauthorized sellers depleting their brand value online – like Otter – can integrate proven strategies with confidence."

The Court's decision made a number of key findings.

- First, the Court held that the defendant was infringing on Otter's trademarks by selling products that are materially different than the product sold by Otter because they are not covered by Otter's warranty. The Court recognized that products sold without a manufacturer's warranty are materially different products, and the defendant's sale of products without Otter's warranty were likely to cause consumer confusion.

- Second, the Court held that the defendant was infringing on Otter’s trademarks and creating consumer confusion by selling products outside of Otter’s quality controls. The Court recognized that Otter has, and abides by, legitimate quality control standards, and that the nonconforming sales by Triplenet are an interference with these standards, which diminish the value of Otter’s trademark.
- Third, the Court held that because the defendant represented that its products are covered by the Otter Warranty when those products are, in fact, not covered by the Otter Warranty, they made false or misleading statements. Furthermore, they held that these material misrepresentations cause confusion and harm Otter.

The Court also granted summary judgement for Otter on all of Triplenet's counterclaims.

The Vorys eControl team arguing the matter was William D. Kloss Jr., Tyler B. Pensyl, Daniel C. Wucherer and Mark C. Zheng.

**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 online sales control solutions to protect brand equity and support long-term brand growth. Vorys eControl created the eControl category and has served more than 500 brands, including some of the world’s largest. Vorys eControl leverages a wide array of tools, services and professionals to deliver unique business value by identifying and neutralizing issues arising from unauthorized sales, channel conflict, MAP violations, brand equity erosion, product diversion and quality control issues, among others. Learn more at <https://www.vorysecontrol.com/>.

**About Otter Products, LLC**

OtterBox creates bold products that empower connection. From our humble beginnings in a Fort Collins, Colo., garage, we’ve leveraged more than 20 years of experience to become the No. 1-selling smartphone case brand in the U.S. We’ve also expanded our portfolio of products to include screen protection, power accessories and business-to-business solutions. At the core of every OtterBox innovation is the goal of giving. Through the OtterCares Foundation, we invest in programs and projects that inspire kids to be entrepreneurs, philanthropists and makers. Now, OtterBox consumers can get in on the giving with us. With every case purchase, consumers can designate \$1 to be donated to one of our nonprofit partners. To learn about our mission of giving, visit [otterbox.com/community-giving](http://otterbox.com/community-giving). Explore more at [otterbox.com](http://otterbox.com).

