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Online Platforms and Market Power, Part 5: Competitors in the Digital Economy

I'm David Barnett, the Founder and CEO of PopSockets, a business that I started in 2014 from my garage in Boulder, while I was a philosophy professor at the University of Colorado. Our flagship product, the PopGrip, is a collapsible phone grip and stand. We've sold roughly 165 million PopGrips since starting six years ago. In 2018, Inc Magazine named us the second fastest growing private company in America. We have around 270 employees, and thousands of people around the globe make a living indirectly from the PopSockets business. Six years ago, I could never have imagined this level of success. I feel fortunate to have realized one version of the American Dream, whereby as a philosophy professor with no business experience, I was able to build a successful business by transacting in America's free-market economy with millions of Americans and thousands of companies.

To be sure, our business has faced challenges, including difficulties with manufacturing in our first couple years, waves of counterfeits in the middle years, and—more recently—a significant downturn in part of our eCommerce business due to turbulence in our relationship with Amazon. I would surmise that we are in the fortunate minority of young companies that are capable of surviving such turbulence.

In our first two years of business, we sold an insignificant amount of product directly to consumers on Amazon's third-party platform, Seller Central. In mid 2016, we entered for the first time into a relationship with Amazon's Retail Team, via the Vendor Central platform, who purchases product from brands like ours and sells it to consumers on the Amazon marketplace. Our Amazon business exploded, catapulting Amazon to our top customer in our first five months of business with them, and catapulting us to one of Amazon's more significant brands in the mobile-accessories category. By spring of 2018, the term 'pop socket' had become the third most popular search term on Amazon.com. Our buyer from Amazon reported that he'd never seen such growth before. Our Amazon business was good for us, and it was good for Amazon.

Despite this remarkable success, our relationship with Amazon Retail never felt like a true partnership, and largely for that reason we decided to end it in the fall of 2018. Initially, our challenges centered on swarms of counterfeits (fakes under the "PopSockets" name) and knockoffs (fakes under another name) that infringed our intellectual property, took our sales, harmed our brand, and led to unhappy consumers. For our first year and a half, Amazon was unwilling to require sellers to provide evidence that their alleged PopSockets products were authentic, even though Amazon was aware that large quantities of fakes were being sold every day on their platform. Indeed, on multiple occasions we found that Amazon Retail was itself sourcing counterfeit PopGrips and selling them alongside our authentic products. During this period, Amazon's Brand Registry department seemed to be working with us in earnest, though with limited success, to address the problem of fakes. It was not until December of 2017, in exchange for our commitment to spend nearly two million dollars on retail marketing programs (which our team expected to be ineffective and would otherwise not have pledged), that

Amazon Retail agreed to work with Brand Registry to require sellers of alleged PopGrips to provide evidence, in the form of an invoice, of authenticity. As a result, in early 2018, our problem of counterfeits largely dissolved. (Soon thereafter Brand Registry agreed to enforce our utility patent, resulting in the disappearance of most knockoffs.)

While my team got along personally with their counterparts at Amazon Retail, there was a growing frustration with the lack of genuine partnership. On top of requiring us to pay almost two million in marketing dollars in order to remove illegal product from the Amazon marketplace, the Amazon Retail team frequently lowered their selling price of our product and then “expected” and “needed” us to help pay for the lost margin. There was nothing in our agreement requiring this funding. If any other retail partner of ours had had an interest in our funding something that was not required by our agreement, they would have asked us whether we might be interested in participating in an activity that would require further funding on our part. This is not Amazon’s approach. Rather, they regularly dress up requests as demands, using language that a parent uses with a child, or more generally, that someone in a position of power uses with someone of inferior power. Discussions around sensitive topics like this almost always occurred by phone, presumably to avoid a written record, and almost always felt scripted, as if our buyer was controlled by a robot, rather than a real human being interested in negotiating with a genuine partner.

In August of 2018, we ended our relationship with Amazon Retail, and we cited as one of our reasons that the relationship didn’t feel like a genuine partnership, and that requests were often framed as demands. This was a polite way of saying that we were frustrated by the strong-arming and bullying. Amazon Retail responded by telling us that, in fact, we would not be ending our relationship because they had chosen to buy their product from us and so we had no choice but to continue selling to them. I found this response ironic. Person A says, “I’m breaking up with you because I’m tired of the bullying,” and Person B responds, “No you’re not.” I suspect that Amazon is accustomed to behaving this way because most brands cannot afford to leave Amazon. They evidently have no choice but to endure tactics that would be rejected out of hand in any ordinary relationship whereby the two parties enter into the relationship by preference rather than necessity.

We proceeded down the path of ending our relationship. We told Amazon that our plan was to test a different model, whereby we would sell to distributors, including iServe, who would be authorized to sell our products on Amazon’s third-party marketplace. Amazon responded by citing a new clause in their brand standards policy, according to which if Amazon chooses to source products directly from a brand, then the brand, *as well as its agents, licensees, and other representatives*, are prohibited from selling the brand’s products on Amazon’s marketplace. Amazon Retail told us that iServe qualified under the policy, but they refused to tell us how iServe qualified as our “agent, licensee, or other representative” given that we paid no fees to iServe but merely sold product to them. We proceeded to end our relationship with Amazon Retail, and in response Amazon removed all of iServe’s PopSockets product listings, causing significant financial harm to us and iServe.

During the fall of 2018, Amazon Retail sold down most of their remaining inventory of PopSockets product. In the spring of 2019, we discovered that Amazon Retail had sourced counterfeit PopGrips and was selling them on the marketplace, presumably because their inventory of authentic product had run dry.

It's perhaps worth noting that plenty of authentic PopGrips were sold in 2019 by Amazon, just not through the Amazon Retail group. This is because we had an arrangement with a different group, Merch by Amazon, which sourced blank PopGrips from us and printed, on demand, designs uploaded by its members. We still maintain this relationship.


To no avail, I tried again and again, through a number of different avenues, to get Amazon to clarify their brand standards guidelines so that PopSockets could abide by the guidelines while authorizing resellers to sell on the third-party marketplace. Amazon has repeatedly refused to clarify what qualifies as an "agent" or "representative" of a brand, and they have refused to tell me how an authorized seller of our product could avoid violating the policy. My view as to why they refuse to clarify the policy is that their stated motivation for the policy—that it provides the best customer experience—is not their genuine motivation, which appears to be to prevent selected brands from authorizing resellers to sell on the third-party marketplace. One can only surmise that Amazon makes more money via Amazon Retail, and that when this team decides to work with a brand, they want to be able to pressure the brand into selling to them by closing off all other available avenues. My reason for doubting Amazon's stated motivation for this policy is that the policy has the consequence of limiting the marketplace to unauthorized sellers, whose sales don't come with our warranty, despite representations to the contrary. How could this possibly result in the best customer experience? If Amazon were being transparent about their motivations, they would clarify what does and does not qualify as an "agent" or "representative", and they would state how, consistent with the policy, an authorized seller of a "chosen brand" can sell on the third party marketplace. But they refuse to do either.

After ending our relationship with Amazon Retail, we had open issues with several of their departments around topics such as money that was owed to us due to incorrect chargebacks. At least four different departments refused to communicate with us other than to give the same scripted response: "researching your issue in partnership". My team perceived this behavior as retaliation for our decision to stop selling to Amazon Retail.

In 2019, we lost an estimated \$10,000,000 of revenue as a result of (i) not selling to Amazon Retail and (ii) Amazon's actions against our distribution partner.

In the fall of 2019, a new member of the Amazon Retail team reached out to us to discuss a new relationship. After giving him and his team members frank feedback around the concerns that led us to end our relationship in 2018, and in light of assurances that our concerns would be addressed, we agreed to test selling a limited number of styles to Amazon Retail. While the Amazon Retail team members that we interact with seem to have sincere intentions, I have

reservations as to whether they can overcome what seem to me to be systematic problems with Amazon due the asymmetry in power between Amazon and its partners.

A handwritten signature in black ink, appearing to be "I. [unclear] [unclear]". The signature is stylized and somewhat illegible.