

ONE HUNDRED SEVENTEENTH CONGRESS

Congress of the United States  
House of Representatives

COMMITTEE ON THE JUDICIARY

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October 18, 2021

Mr. Andy Jassy  
President and Chief Executive Officer  
Amazon.com, Inc.  
410 Terry Avenue N. Seattle, WA 98109

Dear Mr. Jassy:

We write in response to recent, credible reporting that directly contradicts the sworn testimony and representations of Amazon's top executives—including former CEO Jeffrey Bezos—to the Committee about their company's business practices during our investigation last Congress. At best, this reporting confirms that Amazon's representatives misled the Committee.<sup>1</sup> At worst, it demonstrates that they may have lied to Congress in possible violation of federal criminal law.

In light of the serious nature of this matter, we are providing you with a final opportunity to provide exculpatory evidence to corroborate the prior testimony and statements on behalf of Amazon to the Committee. We strongly encourage you to make use of this opportunity to correct the record and provide the Committee with sworn, truthful, and accurate responses to this request as we consider whether a referral of this matter to the Department of Justice for criminal investigation is appropriate.

Last Wednesday, *Reuters* reported that Amazon “ran a systematic campaign of creating knockoffs and manipulating search results to boost its own product lines in India, one of the company's

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<sup>1</sup> As part of this investigation, the Committee requested documents and communications related to Amazon's relationships with sellers, including Amazon's use of third-party seller's data. Letter from Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary, Hon. Doug Collins, Ranking Member, H. Comm on the Judiciary, Hon. David N. Cicilline, Chairman, Subcomm. on Antitrust, Commercial and Admin. Law of the H. Comm. on the Judiciary & Hon. F. James Sensenbrenner, Ranking Member, Subcomm. on Antitrust, Commercial and Admin. Law of the H. Comm. on the Judiciary to Jeff Bezos, CEO, Amazon.com, Inc. (Sept. 13, 2019), <https://judiciary.house.gov/sites/democrats.judiciary.house.gov/files/documents/amazon%20rfi%20-%20signed.pdf>; see also Letter from Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary, et al., to Jeff Bezos, CEO, Amazon.com, Inc. (May 1, 2020), [https://judiciary.house.gov/uploadedfiles/2020-05-01\\_letter\\_to\\_amazon\\_ceo\\_bezos.pdf?utm\\_campaign=2719-519](https://judiciary.house.gov/uploadedfiles/2020-05-01_letter_to_amazon_ceo_bezos.pdf?utm_campaign=2719-519).

largest growth markets.”<sup>2</sup> This report was the result of a review of thousands of Amazon’s internal documents, including emails, plans, and strategy papers. As this report notes, these internal documents show a pattern of Amazon “exploiting proprietary data from individual sellers to launch competing products and manipulating search results to increase sales of the company’s own goods.”<sup>3</sup> In one example, Amazon replicated a popular brand of shirts, copied the measurements of the shirt “down to the neck circumference and sleeve length,” and then partnered with the manufacturer of the product to produce a version of similar quality. As Amazon’s internal document noted, “It is difficult to develop this expertise across products and hence, to ensure that we are able to fully match quality with our reference product, we decided to only partner with the manufacturers of our reference product.”<sup>4</sup>

The following day, a new investigation by *The Markup* provided similar evidence that Amazon “places products from its house brands and products exclusive to the site ahead of those from competitors—even competitors with higher customer ratings and more sales, judging from the volume of reviews.”<sup>5</sup> As this investigation found, an analysis of Amazon search results for 3,492 popular products showed that it “gave its brands the top spot, it placed its products above competitors that had both better ratings and more reviews than the Amazon brand or exclusive product.”<sup>6</sup> As one seller noted, this unfair advantage made it more difficult for smaller sellers to compete on Amazon’s marketplace, imposing costs on “entrepreneurs and small businesses that don’t have the means to fight.”<sup>7</sup>

These investigations are consistent with prior reports. On April 23, 2020, *The Wall Street Journal* reported that interviews with more than 20 former employees of Amazon’s private-label business showed that employees pulled data on competitors, including individual sellers, as part of a “standard operating procedure at the company” before Amazon decided to make its own line of copycat products.<sup>8</sup> If they did not have access to this data, “managers sometimes would ask an Amazon business analyst to create reports featuring the information, according to former workers, including one who called the practice ‘going over the fence.’”<sup>9</sup> This report also noted that in some cases, aggregate data “was derived exclusively or almost entirely from one seller, former employees said.”<sup>10</sup> On July 18, 2019, *The Capitol Forum* reported that a former Amazon employee

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<sup>2</sup> Aditya Kalra & Steve Stecklow, *Amazon copied products and rigged search results to promote its own brands, documents show*, REUTERS (Oct. 13, 2021), <https://www.reuters.com/investigates/special-report/amazon-india-rigging/>.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Adrienne Jeffries & Leon Yin, *Amazon Puts Its Own “Brands” First Above Better-Rated Products*, THE MARKUP (Oct. 14, 2021), <https://themarkup.org/amazons-advantage/2021/10/14/amazon-puts-its-own-brands-first-above-better-rated-products>.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Dana Mattioli, *Amazon Scooped Up Data From Its Own Sellers to Launch Competing Products*, WALL ST. J. (Apr. 23, 2020), <https://www.wsj.com/articles/amazon-scooped-up-data-from-its-own-sellers-to-launch-competingproducts-11587650015?>

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

contested claims by Amazon that it does not use individual seller data to compete with third-party merchants. He told the reporter, “I used to pull sellers' data to look at what the best products were when I was there.”<sup>11</sup>

Each of these investigative reports are inconsistent with the sworn testimony and numerous statements made by Amazon’s executives to the Committee during our investigation into Amazon’s business practices last Congress.

On July 16, 2019, Nate Sutton, Amazon’s Associate General Counsel, testified that “we do not use any seller data for – to compete with them,” adding that Amazon does not “use any of that specific seller data in creating our own private brand products.”<sup>12</sup> At the same hearing, Mr. Sutton testified that Amazon’s search rankings are not designed to favor its own products:

Mr. Sutton: Our algorithms, such as the buy box, is aimed to predict what customers want to buy and **we apply the same criteria whether you're a third-party seller or Amazon to that because we want customers to make the right purchase regardless of whether it's a seller or Amazon.**

Mr. Cicilline: But the best purchase to you is an Amazon product?

Mr. Sutton: No, that's not true.

Mr. Cicilline: So you're telling us, sir, under oath that **Amazon does not use any of that data collected** with respect to what is selling, where it's selling, what products to inform the decisions you make or **to change algorithms to direct people to Amazon products and prioritize Amazon and deprioritize competitors?**

Mr. Sutton: **The algorithms are optimized to predict what customers want to buy regardless of the seller. We provide the same criteria.**<sup>13</sup>

In a post-hearing letter, David Zapolsky, Amazon’s General Counsel, wrote on July 26, 2019 that Amazon “prohibit[s] in our private label strategy the use of data related specifically to individual sellers,” and instead uses “aggregated store data on total sales and search volume for categories and products.”<sup>14</sup> In response to a question about whether the same criteria is used by Amazon for its own products and other sellers, Mr. Zapolsky represented that Amazon’s search ranking “does not favor any particular type of offer, rather it seeks to determine which offer to highlight based on a prediction of which offer customers would choose if they were to compare all offers in detail . . .

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<sup>11</sup> *Amazon: Former Employee Challenges Executives' Denial About Company's Use of Sellers' Data*, CAPITOL FORUM (July 18, 2019) (on file with staff).

<sup>12</sup> *Online Platforms and Market Power, Part 2: Innovation and Entrepreneurship: Hearing Before the Subcomm. on Antitrust, Commercial and Admin. Law of the H. Comm. on the Judiciary*, 116th Cong. 38 (2019) (statement of Nate Sutton, Assoc. Gen. Counsel, Competition, Amazon.com, Inc.), <https://judiciary.house.gov/calendar/eventsingle.aspx?EventID=2258>.

<sup>13</sup> *Id.* at 41.

<sup>14</sup> Letter from David Zapolsky, Gen. Counsel, Amazon.com, Inc. to Hon. David N. Cicilline, Chairman, Subcomm. on Antitrust, Commercial and Admin. Law of the H. Comm. on the Judiciary at 3 (July 26, 2019) (on file with Comm.).

that algorithm seeks to highlight the offer a customer would choose based on factors beyond price, including fulfillment speed, delivery speed, Prime eligibility, and seller performance.”<sup>15</sup>

On October 11, 2019, Mr. Sutton said in response to questions for the hearing record that “Amazon prohibits Amazon’s private brand products business from using individual sellers’ data to decide which products to launch, and Amazon prohibits the use of individual sellers’ data to make sourcing, pricing, or inventory decisions for its private brand products.”<sup>16</sup> Mr. Sutton also added that “[a]ggregated data’ is data that is aggregated across **all third-party sellers** and Amazon’s first party sales and is therefore **not specific to an individual seller**,” and that “Amazon prohibits the use of **non-public seller-specific data** to inform development of private brand products.”<sup>17</sup> In response to a request to identify all factors for its search rankings, Mr. Sutton said:

**Amazon designs its shopping and discovery experience to feature the items customers will want to purchase, regardless of whether they are offered by Amazon or one of its selling partners.** Amazon considers many factors when choosing the shopping results featured for customers, including, for example, customer actions (such as how frequently an item was purchased), information about the item (such as title, price, and description), and availability.<sup>18</sup>

On July 29, 2020, Jeff Bezos, then-CEO of Amazon, testified that Amazon enforces a policy against using seller-specific data to develop competing products, but clarified that Amazon considers seller data from more than a single seller to be “aggregate” for purposes of its policy.<sup>19</sup> In response to post-hearing questions for the record, Mr. Bezos claimed that this policy “prohibits the use of anonymized data, if related to a single seller, when making decisions to launch private brand products.”<sup>20</sup>

On October 4, 2020, Brian Huseman, Amazon’s Vice President for Public Policy, provided a summary of some of Amazon’s findings following its own inquiry into reports of Amazon’s abuse of seller data, “Amazon’s policy does not permit private brands employees to look at the number of sales made by a single seller.”<sup>21</sup>

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<sup>15</sup> *Id.* at 5.

<sup>16</sup> *Online Platforms and Market Power, Part 2: Innovation and Entrepreneurship: Hearing Before the Subcomm. on Antitrust, Commercial and Admin. Law of the H. Comm. on the Judiciary*, 116th Cong. at 7 (2019) (response to Questions for the Record of Nate Sutton, Assoc. Gen. Counsel, Competition, Amazon.com, Inc.), <https://judiciary.house.gov/calendar/eventsingle.aspx?EventID=2258>.

<sup>17</sup> *Id.* at 5 (emphasis added)

<sup>18</sup> *Id.* at 2.

<sup>19</sup> *Online Platforms and Market Power, Part 6: Examining the Dominance of Amazon, Apple, Facebook, and Google: Hearing Before the Subcomm. on Antitrust, Commercial and Admin. Law of the H. Comm. on the Judiciary*, 116th Cong. 102 (2020) (statement of Jeff Bezos, CEO, Amazon.com, Inc.).

<sup>20</sup> *Online Platforms and Market Power, Part 6: Examining the Dominance of Amazon, Apple, Facebook, and Google: Hearing Before the Subcomm. on Antitrust, Commercial and Admin. Law of the H. Comm. on the Judiciary*, 116th Cong. at 1 (2020) (responses to Questions for the Record of Jeff Bezos, CEO, Amazon.com, Inc.).

<sup>21</sup> Letter from Brian Huseman, Vice President, Public Policy, Amazon.com, Inc., to Hon. David N. Cicilline, Chairman, Subcomm. on Antitrust, Commercial and Admin. Law of the H. Comm. on the Judiciary at 2 (Oct. 4,

Under 18 U.S.C. § 1001, it is criminally illegal to knowingly and willfully make statements that are materially false, conceal a material fact, or otherwise provide false documentation in response to a congressional investigation.<sup>22</sup> Perjurious statements made under oath before Congress, as well as inducing another person to commit perjury,<sup>23</sup> are also a federal crime.<sup>24</sup>

Accordingly, we ask that you provide the following by no later than November 1, 2021:

1. A sworn response to clarify the record as to how Amazon uses non-public individual seller data to develop and market its own line of products;
2. A sworn response to clarify the record as to how Amazon advantages its own products over products from other sellers in its search rankings, including through sponsored results that are undisclosed;
3. All documents and communications relating to Amazon’s internal inquiry into violations of its Seller Data Protection Policy as detailed in Amazon’s October 4, 2020 letter;<sup>25</sup>
4. All documents referred to in the *Reuters* report entitled “Amazon copied products and rigged search results to promote its own brands, documents show;”<sup>26</sup> and
5. A response to *The Markup* report entitled “Amazon Puts Its Own “Brands” First Above Better-Rated Products,” including an explanation as to why Amazon does not publicly label search results for its brand-product listings as advertisements.<sup>27</sup>

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2019) (on file with Comm.).

<sup>22</sup> 18 U.S.C. § 1001(a), (c)(2); see, e.g., United States v. Boffil-Rivera, 607 F.3d 736, 741 (11th Cir. 2010) (holding that a statement is knowingly and materially false when it was intended to deceive or mislead a decision-making body even where it is ignored or not relied upon).

<sup>23</sup> 18 U.S.C. § 1622.

<sup>24</sup> 18 U.S.C. § 1621.

<sup>25</sup> Letter from Brian Huseman, Vice President, Public Policy, Amazon.com, Inc., to Hon. David N. Cicilline, Chairman, Subcomm. on Antitrust, Commercial and Admin. Law of the H. Comm. on the Judiciary (Oct. 4, 2019) (on file with Comm.).

<sup>26</sup> Aditya Kalra & Steve Stecklow, *Amazon copied products and rigged search results to promote its own brands, documents show*, REUTERS (Oct. 13, 2021), <https://www.reuters.com/investigates/special-report/amazon-india-rigging/>.

<sup>27</sup> Adrienne Jeffries & Leon Yin, *Amazon Puts Its Own “Brands” First Above Better-Rated Products*, THE MARKUP (Oct. 14, 2021), <https://themarkup.org/amazons-advantage/2021/10/14/amazon-puts-its-own-brands-first-above-better-rated-products>.

Sincerely,



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Jerrold Nadler  
Chair  
Committee on the Judiciary



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David N. Cicilline  
Chair  
Subcommittee on Antitrust, Commercial and  
Administrative Law



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Ken Buck  
Ranking Member  
Subcommittee on Antitrust, Commercial  
and Administrative Law



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Pramila Jayapal  
Vice Chair  
Subcommittee on Antitrust, Commercial and  
Administrative Law



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Matt Gaetz  
Member  
Subcommittee on Antitrust, Commercial  
and Administrative Law

CC: The Honorable Jim Jordan, Ranking Member, Committee on the Judiciary