



Xavier Becerra
Attorney General
California Department of Justice
P.O. Box 944255
Sacramento, CA 94244-2550

March 20, 2017

Re: Petition for action against Amazon on use of false reference prices

Dear Attorney General Becerra:

I am writing to you on behalf of Consumer Watchdog, a nonpartisan, nonprofit public interest group to petition you to investigate and take action against the online retailing giant, Amazon, and its Chief Executive Officer Jeff Bezos, for wrongfully using phony reference or “list” prices on its website and misleading consumers into believing they are buying merchandise at a discount when that is not the case.

Here is the violation as revealed by a detailed study conducted by a data researcher. Many items Amazon is selling through its website give the selling price as well as a price with a line through it, a reference price, sometimes described as a “list” price or “was” price. This reference price creates the impression that the consumer is getting a deal because the price paid is substantially lower the one with the line through it. The catch is that the product is actually widely available from many other outlets at prices much lower than the crossed-out reference price on the Amazon site.

Amazon’s abusive practice clearly violates provisions California law protecting against false advertising:

“For the purpose of this article the worth or value of any thing advertised is the prevailing market price, wholesale if the offer is at wholesale, retail if the offer is at retail, at the time of publication of such advertisement in the locality wherein the advertisement is published.

“No price shall be advertised as a former price of any advertised thing, unless the alleged former price was the prevailing market price as above defined within three months next immediately preceding the publication of the advertisement or unless the date when the alleged former price did prevail is clearly, exactly and conspicuously stated in the advertisement.”¹

The study documented Amazon’s abuses. An examination of Amazon’s website from Feb. 3 – Feb. 6 of more than 4,000 products found Amazon published reference prices with a line through them on more than a quarter of its listings, and that the majority of these crossed-out prices exceeded—sometimes by large margins—any plausible definition of the “prevailing market

¹ California Business and Professional Code, Article 1, Sec. 17501

price.” In other words, the reference prices were an entirely bogus notional price that created the false impression that customers were getting a deal when they were not. When correcting the inflated list prices, the fictitious discounts often vanished, the study found. Amazon’s practices also flout Federal Trade Commission standards, which provide:

If the list price is significantly in excess of the highest price at which substantial sales in the trade area are made, there is a clear and serious danger of the consumer being misled by an advertised reduction from this price.²

To the FTC consumer perceptions are key:

Many members of the purchasing public believe that a manufacturer's list price, or suggested retail price, is the price at which an article is generally sold. Therefore, if a reduction from this price is advertised, many people will believe that they are being offered a genuine bargain. To the extent that list or suggested retail prices do not in fact correspond to prices at which a substantial number of sales of the article in question are made, the advertisement of a reduction may mislead the consumer.³

There is clear precedent that Amazon’s predatory behavior violates the law. In 2014 a California Superior Court ruled that Overstock.com’s use of the term “list price” on its website served to “mislead customers who viewed that term as reflecting a ‘regular/average price,’ and thus one may infer that the use of formulas to set high ARPs [advertised retail prices] had the capacity to mislead and did mislead customers.”⁴ Overstock was fined \$6.8 million. In January, Canadian regulators fined Amazon \$1 million CAD for failing to verify the accuracy of its list prices.⁵

I am enclosing a copy of our study of Amazon’s use of reference prices on its website as well as a description of the study’s methodology. Here are the highlights of what was found:

- Amazon includes reference (crossed-out) prices on more than a quarter of its stock
- A majority Amazon’s crossed-out prices are greater than the prevailing market price, regardless of how the prevailing price is defined (between half and three-quarters, depending on measure used)
- About 40 percent of Amazon’s crossed-out prices are greater than the highest price charged by any known competitor
- On average, Amazon’s reference prices overstate the median market prices by \$22, or about 20 percent

² 16 CFR 233.3 (d)

³ 16 CFR 233.3(a)

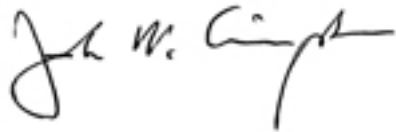
⁴ People of the State of California vs. Overstock.com, Inc.

⁵ <https://www.wsj.com/articles/amazon-to-pay-fine-related-to-pricing-practices-in-canada-1484161028>

- Amazon Marketplace vendors also post reference prices in excess of the prevailing market price, but they do so less frequently and to a lesser degree than Amazon itself
- Amazon appears to be in breach of its own List Price policy, and its practices appear to violate federal regulations governing deceptive pricing and California law.

Consumer Watchdog believes Amazon and its executives are cynically flouting the law to increase sales and profits. A company cannot claim it's discounting something from a certain price when virtually nobody charges that amount. It's false advertising violating the California Business and Professional Code, as well as an unfair and deceptive practice violating the Federal Trade Commission Act. We call upon you to take immediate action to hold Amazon and its CEO Jeff Bezos accountable for this outrageous abuse.

Sincerely,

A handwritten signature in black ink, appearing to read "John M. Simpson". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

John M. Simpson
Privacy Project Director

Cc: Michael Elisofon, Supervising Deputy Assistant Attorney General; Niklas Akers, Senior Assistant Attorney General; Maureen Ohlhausen, FTC Chairman; Terrell McSweeney, FTC Commissioner

Enc: 1. Study of Amazon's website
2. Methodology of study