



Aug. 24, 2017  
Mark Herring  
Attorney General  
202 North Ninth Street  
Richmond, VA 23219

Via email

**Re: Petition for action against Amazon for deceptive pricing**

Dear Mr. Herring:

I am writing on behalf of Consumer Watchdog, a national nonprofit, nonpartisan 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 prices on its website and thus misleading consumers into believing they are buying merchandise at a discount when that is not the case.

In light of the FTC's decision to allow Amazon's acquisition of Whole Foods, your action on this matter is all the more important. Amazon's lawyers have aggressively used their arbitration clause to foil efforts by consumers to hold the company accountable for its deceptive pricing. Attorneys General like you are literally their last resort."

Many items Amazon sells through its website give the selling price as well as a price with a line through it, a reference price. This reference price creates the impression that the consumer is getting a deal because the price being charged 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. Two studies done for Consumer Watchdog found these reference prices frequently to be deceptive, with little basis in reality.

The company's ongoing deceptive practices are a clear violation of Virginia Code Ann. § 59.1-207.41. This law expressly regulates advertising of "former price of goods and services, and bars any "supplier" from advertising a "former price of any goods or services" unless the "former price is the price at or above which substantial sales were made in the recent regular course of business" or otherwise not established "for the purpose of establishing a fictitious higher price on which a deceptive comparison might be based."

Here is a detailed look at what our two studies found:

**FIRST STUDY:** In March, Consumer Watchdog issued a report<sup>1</sup> based on an extensive research analysis of Amazon’s website and a comparison with prices easily available elsewhere. Amazon’s scam worked like this: Many items Amazon was selling gave the selling price as well as a reference price – a higher price with a line through it, sometimes described as a “list” price or “was” price. This reference price created the impression that the consumer was getting a deal because the selling price was substantially lower the one with the line through it.

The catch, our in-depth analysis found, is that the product was actually widely available from many other outlets at prices much lower than the crossed-out reference price. The “straw man” reference price was much higher than the price actually charged in the marketplace, and in many cases, it was a completely fictitious price, charged by no one. In January, Canadian regulators fined Amazon \$1 million for misleading use of list prices.<sup>2</sup>

Our first study found that a majority of Amazon’s list prices were higher than the prevailing market price, no matter what definition was used. When you corrected those list prices, Amazon’s claimed “savings” often disappeared.<sup>3</sup>

Here are the highlights of what was found in the first study:

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

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<sup>1</sup> [http://www.consumerwatchdog.org/resources/atp\\_pricing\\_2.0.pdf](http://www.consumerwatchdog.org/resources/atp_pricing_2.0.pdf)

<sup>2</sup> <https://www.recode.net/2017/1/11/14243250/amazon-canada-fine-list-prices-misleading-pricing>

<sup>3</sup> [https://consumermediallc.files.wordpress.com/2017/03/atp\\_pricing\\_2-0.pdf](https://consumermediallc.files.wordpress.com/2017/03/atp_pricing_2-0.pdf)

**SECOND STUDY:** Amazon disputed findings in our first study, saying it had eliminated list prices when it believed “it isn’t relevant to our customers.” The company added that, in those cases, it had “introduced a ‘Was’ price to provide customers with an alternative reference price when we don’t display List Price.”<sup>4</sup> Consumer Watchdog decided to study Amazon’s pricing policies after that announcement and concluded that, even with this new approach, the online retailer continued to deceive consumers by falsely leading them to believe they were getting larger discounts than was actually the case.

Our second follow-on study<sup>5</sup> of 1,000 products on Amazon.com was conducted in June 2017 to determine if Amazon’s new practices were less deceptive. We found that Amazon’s historical reference prices were at least as deceptive as the list prices they replaced.

Consumer Watchdog’s second study found that:

- Amazon displayed reference prices on 46 percent of the products surveyed—a sharp increase from the similar sample taken in February. They now employed several different kinds of reference price, including “was” prices, “sale” prices and before-sale prices, or simply prices with a line through them (“strikethrough prices”). The evidence suggests they are experimenting with alternatives to the debunked list price that continue to deceive consumers.
- 61 percent of all reference prices were higher than any observed price charged by Amazon in the recent past 90 days. At the same time, 38 percent of all reference prices were higher than any price charged by Amazon in observed history. In other words, in nearly four in ten cases, Amazon *never* appeared to charge the previous price from which it claimed to be discounting. The “price” was entirely fictitious.
- Amazon inflated its reference prices by a significant amount. On average, they exceeded the maximum observed historical price of the product by 70 percent.
- More than 62 percent of Amazon’s “was” prices exceeded the maximum price observed within the previous 90 days. More than 27 percent of “was” prices were higher than any price charged by Amazon in all observed history.
- Before-sale prices were the most misleading type of reference price employed. Amazon’s reference price on sale items exceeded the maximum price observed within the preceding 90 days an astonishing 97 percent of the time. 84 percent of Amazon’s reference prices on sale items were higher than any previous Amazon price for the item in observed history.
- By contrast, strikethrough prices were found to be highly reliable. All prices with just a line through them (and no words suggesting what they referenced)

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<sup>4</sup> <http://time.com/money/4707814/consumer-watchdog-amazon-list-prices-bogus/>

<sup>5</sup> <http://www.consumerwatchdog.org/resources/historicalpricesfinal070617.pdf>

corresponded to actual prices charged by Amazon in the recent past. This suggests that Amazon can accurately represent prior prices if it wishes.

- Overall, Consumer Watchdog's findings suggest that Amazon continues to flout Federal Trade Commission regulations on deceptive pricing, as well as laws in many states where it does business, including yours.

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 can't claim a "was" price when it never existed. It's false advertising violating state law, 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 a long horizontal stroke extending to the right.

John M. Simpson  
Privacy Project Director