SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Civil Division

DISTRICT OF COLUMBIA, Plaintiff, v. AMAZON.COM, INC., Defendant.	CASE NO.: 2021 CA 001775 B JUDGE: Hiram Puig-Lugo NEXT EVENT: February 11, 2022 EVENT: Initial Scheduling Conference

DEFENDANT AMAZON.COM, INC.'S OPPOSITION TO PLAINTIFF DISTRICT OF COLUMBIA'S MOTION FOR LEAVE TO FILE SUR-REPLY OR, IN THE ALTERNATIVE, MOTION FOR LEAVE TO FILE A RESPONSE TO PLAINTIFF'S SUR-REPLY

Amazon.com, Inc. respectfully submits this response to the District of Columbia's motion for leave to file a sur-reply to Amazon's Motion to Dismiss the Amended Complaint ("AC").[1] The District's proposed sur-reply should not be allowed because it is unwarranted and inappropriate.

First, Amazon's reply raises no new arguments that warrant a sur-reply. The District claims that Amazon raised in its reply the "new argument that the District failed to properly plead

[1] The District contacted Amazon on January 27, 2022 to explain it intended to move for leave to file a sur-reply of unidentified content, and asked whether Amazon would consent to the motion. Ex. A at 4. Without having seen the proposed sur-reply, Amazon stated that it would take no position on the District's motion, provided that the District's motion include the following statement:

> Amazon does not take a position on your request because we are not aware of any arguments in Amazon's reply brief that provide a basis for a sur-reply. And, even if there were, Amazon should have an opportunity to reply to the District's sur-reply. If the District proceeds with the filing of a sur-reply and extends the briefing schedule, it would seem the February 11 conference would have to be moved to a later date, which may be another reason to avoid additional briefing.

Id. at 3. The District refused and filed its motion, including an incomplete statement of Amazon's position to which the District understood Amazon objected: "Amazon takes no position on this motion but maintains that it has not provided new arguments in its reply and reserves its rights to seek leave for a sur-surreply." *Id.* at 2. Having reviewed the District's proposed sur-reply, Amazon submits this response to explain why the District's motion should be rejected.

the application of a *per se* standard of review to the District's restraint of trade claims." District's Mot. 1. That is incorrect.

In the District's initial Complaint, the District expressly pleaded that Amazon's pricing policies constituted "a *per se* violation of D.C. Code § 28-4 502." Compl. ¶ 67. On July 20, 2021, Amazon moved to dismiss the District's initial complaint, including the claim of *per se* illegality. Amazon's 07/20/2021 Mot. to Dismiss 9–11. Instead of responding to that motion and defending the *per se* claim, the District filed the AC and eliminated any allegation of a *per se* violation.

In its Motion to Dismiss the AC, Amazon explained that the District "no longer alleges a *per se* horizontal agreement" and sought dismissal of the claims that were stated in the AC. Mot. Dismiss AC 14. Appearing for the first time in its opposition brief, the District sought to resurrect its *per se* allegation, devoting an entire section of its brief to arguing why its supposed *per se* claim should survive. Opp'n § I.B. The District provided no explanation as to why it withdrew its prior allegation of *per se* illegality in its AC. The District had the advantage of knowing Amazon's arguments for dismissing any *per se* claim from Amazon's Motion to Dismiss the initial Complaint, filed six months earlier. Amazon's reply brief maintained Amazon's opening position that the District had failed to adequately allege a *per se* claim and responded to Section I.B of the District's opposition brief, as Amazon had every right to do. A sur-reply on the *per se* issue is therefore not warranted because there are no new issues to justify a sur-reply.

Second, the remainder of the District's proposed sur-reply—the majority of it—should be disallowed because it has *nothing* to do with the District's *per se* claim or any supposedly new argument in Amazon's reply. *Compare* Sur-reply 1–2 (discussing *per se* claim), *with id.* 3–5 (discussing concerted action and supposed factual disputes). The District does not explain how

these additional arguments relate to any purportedly new argument by Amazon, and they are therefore entirely inappropriate.

For the foregoing reasons, the District's Motion for Leave to File a Sur-reply should be denied. If the Court grants the District's Motion, Amazon respectfully requests leave to file the attached response to the District's sur-reply.

Dated: February 8, 2022

Respectfully submitted,

PAUL, WEISS, RIFKIND, WHARTON & GARRISON, LLP

/s/ Karen L. Dunn
Karen L. Dunn (D.C. Bar No. 1002520)
William A. Isaacson (D.C. Bar No. 414788)
Amy J. Mauser (D.C. Bar No. 424065)
Julia Tarver Mason Wood (D.C. Bar No. 988021)
Martha L. Goodman (D.C. Bar No. 1017071)
Paul D. Brachman (D.C. Bar No. 1048001)
kdunn@paulweiss.com
wisaacson@paulweiss.com
amauser@paulweiss.com
jwood@paulweiss.com
mgoodman@paulweiss.com
pbrachman@paulweiss.com

2001 K Street, NW
Washington, D.C. 20006-1047
Tel: (202) 223-7371
Fax: (202) 379-4077

Attorneys for Defendant Amazon.com, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of February, 2022, a true and correct copy of the foregoing reply statement was served electronically via Case File Xpress to the following:

Kathleen Konopka (D.C. Bar No. 495257)
kathleen.konopka@dc.gov
Catherine A. Jackson
catherine.jackson@dc.gov
Jennifer C. Jones (D.C. Bar No. 1737225)
jen.jones@dc.gov
Office of the Attorney General for the District of Columbia

Swathi Bojedla (D.C. Bar No. 1016411)
sbojedla@hausfeld.com
Paul T. Gallagher (D.C. Bar No. 439701)
pgallagher@hausfeld.com
Hilary K. Scherrer (D.C. Bar No. 481465)
hscherrer@hausfeld.com
Leland Shelton
lshelton@hausfeld.com
Theodore F. DiSalvo (D.C. Bar No. 1655516)
tdisalvo@hausfeld.com
Halli Spraggins (D.C. Bar No. 1671093)
hspraggins@hausfeld.com
HAUSFELD LLP

/s/ Karen L. Dunn
Karen L. Dunn (D.C. Bar No. 1002520)

Exhibit A

From:	Swathi Bojedla
To:	Mauser, Amy; Dunn, Karen L; Isaacson, William A; Brachman, Paul D; Wood, Julia Tarver Mason; Goodman, Martha
Cc:	kathleen.konopka@dc.gov; jen.jones@dc.gov; Durst, Arthur (OAG); Brunfeld, David (OAG); Hausfeld Amazon Attorneys
Subject:	RE: District of Columbia v. Amazon
Date:	Friday, January 28, 2022 2:44:20 PM
Attachments:	image001.png

Amy- Thank you for speaking with me. Just to confirm, the District intends to use the statement in my original email addressing Amazon's position on the motion for leave, and not the remainder of the statement proposed by Amazon, which does not.

Have a nice weekend.

SWATHI BOJEDLA
Partner
sbojedla@hausfeld.com
+1 202-540-7150 direct
Pronouns: she/her/hers

888 16th Street, N.W.
Suite 300
Washington, DC 20006
+1 202 540 7200
hausfeld.com

From: Mauser, Amy <amauser@paulweiss.com>
Sent: Friday, January 28, 2022 1:15 PM
To: Swathi Bojedla <sbojedla@hausfeld.com>; Dunn, Karen L <kdunn@paulweiss.com>; Isaacson, William A <wisaacson@paulweiss.com>; Brachman, Paul D <pbrachman@paulweiss.com>; Wood, Julia Tarver Mason <jwood@paulweiss.com>; Goodman, Martha <mgoodman@paulweiss.com>
Cc: kathleen.konopka@dc.gov; jen.jones@dc.gov; Durst, Arthur (OAG) <arthur.durst@dc.gov>; Brunfeld, David (OAG) <David.Brunfeld@dc.gov>; Hausfeld Amazon Attorneys <HausfeldAmazonAttorneys@hausfeld.com>
Subject: RE: District of Columbia v. Amazon

Swathi,

The statement set forth in your email does not fully reflect Amazon's position; we request that you include the full statement that we provided earlier today.

Specifically, we request that you include in your motion for leave the following:

> When the District asked Amazon if it would consent to the District filing a sur-reply, Amazon responded:
>
> Amazon does not take a position on your request because we are not aware of any arguments in Amazon's reply brief that provide a basis for a sur-reply. And, even if there were, Amazon should have an opportunity to reply to the District's sur-reply. If the District proceeds with the filing of a sur-reply and extends the briefing schedule, it would seem the February 11 conference would have to be moved to a later date, which may be another reason to avoid additional briefing.

Please confirm that you will set forth the above statement in your motion for leave to file.

Thanks,

Amy

Amy J. Mauser | Counsel
Paul, Weiss, Rifkind, Wharton & Garrison LLP
2001 K Street, NW | Washington, DC 20006-1047
202 223 7371 (Direct Phone) | 202 615 6841 (Cell)
202 379 4077 (Direct Fax)
amauser@paulweiss.com | www.paulweiss.com

From: Swathi Bojedla <sbojedla@hausfeld.com>
Sent: Friday, January 28, 2022 12:58 PM
To: Mauser, Amy <amauser@paulweiss.com>; Dunn, Karen L <kdunn@paulweiss.com>; Isaacson, William A <wisaacson@paulweiss.com>; Brachman, Paul D <pbrachman@paulweiss.com>; Wood, Julia Tarver Mason <jwood@paulweiss.com>; Goodman, Martha <mgoodman@paulweiss.com>
Cc: kathleen.konopka@dc.gov; jen.jones@dc.gov; Durst, Arthur (OAG) <arthur.durst@dc.gov>; Brunfeld, David (OAG) <David.Brunfeld@dc.gov>; Hausfeld Amazon Attorneys <HausfeldAmazonAttorneys@hausfeld.com>
Subject: RE: District of Columbia v. Amazon

Amy-

The District agrees to include the statement below in its request for leave, which we will file this evening.

Amazon takes no position on this motion but maintains that it has not provided new arguments in its reply and reserves its rights to seek leave for a sur-surreply.

SWATHI BOJEDLA
Partner

sbojedla@hausfeld.com
+1 202-540-7150 direct
Pronouns: she/her/hers

888 16th Street, N.W.
Suite 300
Washington, DC 20006
+1 202 540 7200
hausfeld.com

From: Mauser, Amy <amauser@paulweiss.com>
Sent: Friday, January 28, 2022 10:12 AM
To: Swathi Bojedla <sbojedla@hausfeld.com>; Dunn, Karen L <kdunn@paulweiss.com>; Isaacson, William A <wisaacson@paulweiss.com>; Brachman, Paul D <pbrachman@paulweiss.com>; Wood, Julia Tarver Mason <jwood@paulweiss.com>; Goodman, Martha <mgoodman@paulweiss.com>
Cc: kathleen.konopka@dc.gov; jen.jones@dc.gov; Durst, Arthur (OAG) <arthur.durst@dc.gov>; Brunfeld, David (OAG) <David.Brunfeld@dc.gov>; Hausfeld Amazon Attorneys <HausfeldAmazonAttorneys@hausfeld.com>
Subject: RE: District of Columbia v. Amazon

Counsel:

Amazon does not take a position on your request because we are not aware of any arguments in Amazon's reply brief that provide a basis for a sur-reply. And, even if there were, Amazon should have an opportunity to reply to the District's sur-reply. If the District proceeds with the filing of a sur-reply and extends the briefing schedule, it would seem the February 11 conference would have to be moved to a later date, which may be another reason to avoid additional briefing.

If the District proceeds with filing a motion for leave to file a sur-reply, we request that you include this statement in your motion for leave to file so that we do not burden the Court with an additional brief.

Amy J. Mauser | Counsel
Paul, Weiss, Rifkind, Wharton & Garrison LLP
2001 K Street, NW | Washington, DC 20006-1047
202 223 7371 (Direct Phone) | 202 615 6841 (Cell)
202 379 4077 (Direct Fax)
amauser@paulweiss.com | www.paulweiss.com

From: Swathi Bojedla <sbojedla@hausfeld.com>
Sent: Thursday, January 27, 2022 12:04 PM
To: Mauser, Amy <amauser@paulweiss.com>; Dunn, Karen L <kdunn@paulweiss.com>; Isaacson, William A <wisaacson@paulweiss.com>; Brachman, Paul D <pbrachman@paulweiss.com>; Wood, Julia Tarver Mason <jwood@paulweiss.com>; Goodman, Martha <mgoodman@paulweiss.com>
Cc: kathleen.konopka@dc.gov; jen.jones@dc.gov; Durst, Arthur (OAG) <arthur.durst@dc.gov>; Brunfeld, David (OAG) <David.Brunfeld@dc.gov>; Hausfeld Amazon Attorneys <HausfeldAmazonAttorneys@hausfeld.com>
Subject: District of Columbia v. Amazon

Counsel-

We intend to file a request for leave to file a surreply brief in opposition to Amazon's Motion to Dismiss on Monday. Please let us know whether you consent to a surreply.

SWATHI BOJEDLA
Partner
sbojedla@hausfeld.com
+1 202-540-7150 direct
Pronouns: she/her/hers

888 16th Street, N.W.
Suite 300
Washington, DC 20006
+1 202 540 7200
hausfeld.com

Exhibit B

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Civil Division

DISTRICT OF COLUMBIA, Plaintiff, v. AMAZON.COM, INC., Defendant.	CASE NO.: 2021 CA 001775 B JUDGE: Hiram Puig-Lugo NEXT EVENT: February 11, 2022 EVENT: Initial Scheduling Conference

DEFENDANT AMAZON.COM, INC.'S RESPONSE TO PLAINTIFF DISTRICT OF COLUMBIA'S SUR-REPLY IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT

The District's proposed sur-reply manufactures issues of fact that do not exist, mischaracterizes Amazon's arguments, and misstates the applicable legal standards. None of the District's arguments can overcome the fundamental pleading defects in the Amended Complaint ("AC") that require dismissal of the District's claims.

A. Dismissal of the District's Supposed *Per Se* Claim Is Appropriate at the Motion to Dismiss Stage.

The Court should not permit the District to proceed on the basis of an allegation that it withdrew from its AC. "In filing successive complaints, each amended complaint fully replaces the last complaint, such that any omitted allegations are withdrawn from the action." *Vt. Mobile Home Owners' Ass'n* v. *Lapierre*, 94 F. Supp. 2d 519, 525 (D. Vt. 2000); *see also Zanders* v. *Baker*, 207 A.3d 1129, 1136 (D.C. 2019) ("amended complaint renders any previous complaints a legal nullity" unless expressly incorporated by reference). The District's attempt to revive its previous *per se* claim that it excluded from its AC violates basic standards of notice pleading.

Neither of the cases the District cites, Sur-reply 1–2 n.2, is analogous to this one, where the District alleged *per se* liability in its initial Complaint and then withdrew that allegation in its AC.[2]

Even if the District could revive its *per se* claim, that claim should nonetheless be dismissed. As an initial matter, the District argues that "the decision whether to apply *per se* or rule of reason should not be made on a motion to dismiss." Sur-reply 1–2. "Whether a plaintiff's alleged facts comprise a *per se* claim is normally a question of legal characterization that can often be resolved by the judge on a motion to dismiss." *Prime Healthcare Servs.* v. *Empls. Int'l Union*, 2012 WL 3778348, at *1 (S.D. Cal. Aug. 30, 2012) (quoting *Stop & Shop Supermkt. Co.* v. *Blue Cross & Blue Shield of R.I.*, 373 F.3d 57 (1st Cir. 2004)).

The District asks this Court to ignore the requirements for *per se* liability. Courts label restraints *per se* unlawful only after developing "considerable experience with the type of restraint at issue" that allows the court to "predict with confidence that it would be invalidated in all or almost all instances under the rule of reason." *Leegin Creative Leather Prods., Inc.* v. *PSKS, Inc.*, 551 U.S. 877, 886–87 (2007); *see also Broad. Music Inc.* v. *CBS Inc.*, 441 U.S. 1, 9–10 (1979). This is because there are "inherent limits on a court's ability to master an entire industry" and "hard-to-see efficiencies attendant to complex business arrangements." *Nat'l Collegiate Athletic Ass'n* v. *Alston*, 141 S. Ct. 2141, 2156 (2021). Cautioning against inappropriate application of the *per se* rule, the Supreme Court recently noted that "it can take economists years, sometimes decades, to understand why certain business practices work [and] determine whether they work because of increased efficiency or exclusion." *Id.* (internal quotation marks and citation omitted).

[2] Whether the *per se* or rule of reason framework applies is different from a standard of review because it impacts the elements that the District must prove for its restraint of trade claim. *In re McCormick & Co., Inc.*, 217 F. Supp. 3d 124, 135, 137 (D.D.C. 2016) (setting forth elements based on framework).

For that reason, vertical restraints are not an area where the courts apply *per se* liability. *Ohio* v. *Am. Express Co.*, 138 S. Ct. 2274, 2284 (2018) (noting that the rule of reason governs "nearly every" vertical restraint).

The relationship between Amazon and third-party sellers is at least partly vertical, thus the rule of reason rather than *per se* liability must therefore apply. Reply 9 (citing cases). The District does not deny that a partly vertical, partly horizontal arrangement is subject to the rule of reason. The District instead argues that it has alleged only a horizontal relationship, but that wholly conclusory allegation conflicts with the AC, which complains of policies Amazon instituted to govern third-party sellers' behavior in its store. AC ¶¶ 5, 9, 20, 21. Regardless of any retail competition between Amazon and third-party sellers, the complained-of allegations stem from Amazon's vertical relationship with third-party sellers, which triggers rule of reason scrutiny in this case. *E.g.*, *In re McCormick & Co.*, 217 F. Supp. 3d 124, 136 (D.D.C. 2016) (concluding on motion to dismiss rule of reason applied because complaint alleged "a relationship that arguably has both horizontal and vertical aspects").

Further, a *per se* claim cannot proceed here because there is no allegation that Amazon and third-party sellers compete against one another in the alleged "Online Marketplace Market"—"the provision to TPSs of access and services to facilitate online sales to customers." Opp'n 14; AC ¶ 39. The District's sur-reply does not save its claim by arguing that Amazon and third-party sellers are horizontal competitors in "each individual retail products market" which are different (and undefined) markets from the access and services market. Sur-reply 2; *see Texaco Inc.* v. *Dagher*, 547 U.S. 1, 5, (2006) (rejecting application of *per se* rule for alleged horizontal price fixing where companies "did not compete with one another in the relevant market" even though they competed in other ones). The District thus cannot maintain a *per se* claim for its purported

market of "access and services to facilitate online sales," and provides no notice or specification of what individual retail markets—from the millions of products sold on Amazon—are at issue for any such claim. Sur-reply 2; *see Bedi* v. *Hewlett–Packard Co.*, Civ. No. 07–12318, 2008 WL 11226235, at *1 (D. Mass. Nov. 17, 2008) (dismissing *per se* claim where "Staples and HP brand [printer] cartridges directly competed with one another," but the "relationship between HP and Staples is primarily a vertical one").

B. Contract Terms and Policies Unilaterally Imposed by Amazon Do Not Constitute Concerted Action.

In arguing that its restraint of trade claims should not be dismissed for failure to allege concerted action, the District asserts that the cases cited by Amazon are irrelevant because they "concern[] allegations of *conspiracy*, whereas the District's claims turn on written *contracts*." Sur-reply 3. The District is incorrect. Each of the cases cited in Amazon's reply brief involved written contracts. *Toscano*, like this case, involved written contracts that incorporated certain rules and regulations imposed by the PGA. *Toscano* v. *Pro. Golfers Ass'n*, 258 F.3d 978, 984–85 (9th Cir. 2001). Like the District, the plaintiff there argued that the contract itself was "direct evidence of concerted action." *Id.* at 985. The court rejected that argument, explaining that the agreements "standing alone" do not "support an inference of antitrust conspiracy," nor "any other evidence . . . of an agreement for concerted action in restraint of trade." *Id.* The other cases cited by Amazon similarly involved written contracts. *E.g.*, *Gulf States Reorg. Grp., Inc.* v. *Nucor Corp.*, 822 F. Supp. 2d 1201, 1221 (N.D. Ala. 2011) (contract for purchase of steel mill assets not evidence of concerted action absent "some showing of [defendant's] objective, separate and apart from . . . entering into the . . . contract"), *aff'd*, 721 F.3d 1281 (11th Cir. 2013); *Procaps S.A.* v. *Patheon, Inc.*, 845 F.3d 1072, 1081 (11th Cir. 2016) (contract, absent more, not sufficient to show concerted

action because it would subject "contractual partners" to antitrust liability for "any future conduct the other party engages in under color of the contract").

C. No Factual Disputes Preclude Dismissal of the District's Claims.

The District does not dispute what Amazon's former Price Parity Provision or current Fair Pricing Policy *say*. Instead, the District argues that supposed factual disputes about the effect of those policies bar the Court from holding that the policies are lawful. But, even accepting the District's allegation that the former Price Parity Provision created and the current Fair Pricing Policy creates a "price floor," those policies remain categorically lawful because their terms—the actual words of the policies about which there is no dispute—require only that third-party sellers offer Amazon shoppers competitive prices. Claims against *per se legal* policies are subject to dismissal, regardless of the District's claimed price effects or price floors, because it is not "unlawful for [an alleged monopolist] to insist that no additional charge be made to [ ] other[s]." *Kartell* v. *Blue Shield of Mass., Inc.*, 749 F.2d 922, 931 (1st Cir. 1984); *see also Tennessean Truckstop, Inc.* v. *NTS, Inc.*, 875 F.2d 86, 90 (6th Cir. 1989) (granting motion to dismiss where credit card company's policy that "merely sought to limit the differential between the prices quoted to its customers and the prices quoted to [other] customers" was "obviously a proconsumer device, and . . . not 'of the type the antitrust laws were intended to prevent'" (citation omitted)); *Ocean State Physicians Health Plan, Inc.* v. *Blue Cross & Blue Shield of R.I.*, 883 F.2d 1101, 1110 (1st Cir. 1989) (upholding "as a matter of law" insurer's policy requiring doctors to charge insurer no more than doctors charged other insurers). As the Supreme Court has explained, condemning low-price policies is "beyond the practical ability of a judicial tribunal to control without courting intolerable risks of chilling legitimate price-cutting." *Brooke Grp.* v. *Brown & Williamson Tobacco Corp.*, 509 U.S. 209, 223 (1993). No discovery or trial regarding the price effects of Amazon's policies can change that basic legal premise.

Moreover, there is no dispute that Amazon's Margin Agreements represent nothing more than part of the bargain between a buyer and seller on price. That conduct is lawful, as the District has conceded. Opp'n 21. The District now attempts to argue that Amazon's conduct is anticompetitive because "Amazon uses the [Margin Agreements] to control pricing on competing online marketplaces." Sur-reply 5 n.3. But that argument fails because nothing in the Margin Agreements specifies the prices Amazon's suppliers must charge competing retailers, and the AC does not plead otherwise. More fundamentally, however, the District fails to explain how its price effect allegations—which it relies on to save its Margin Agreements claims from dismissal—are remotely plausible or consistent with economics. The District's allegation that the Margin Agreements raise prices to consumers shopping at other retailers is only plausible if Amazon's suppliers have the power to cause those other retailers to raise their prices to shoppers. *See* Reply 7. Such an assumption would throw economics out the window or presume that all of Amazon's suppliers have market power to impose price increases that they have not to date enacted. No facts in the AC support that allegation, and the District's sur-reply provides nothing to bridge that gap.

The District is also wrong that factual disputes prevent the Court from concluding that the District has failed to allege a relevant market. "Although courts do not require 'an economically technical recitation of the market boundaries at the pleading stage,' an alleged market 'must bear a rational relation to the methodology courts prescribe to define a market for antitrust purposes.'" *Gross* v. *Wright*, 185 F. Supp. 3d 39, 50 (D.D.C. 2016) (quoting *Todd* v. *Exxon Corp.*, 275 F.3d 191, 200 (2d Cir. 2001)). In connection with this methodology, "no more definite rule can be declared than that commodities reasonably interchangeable by consumers for the same purposes make up that 'part of the trade or commerce,' monopolization of which may be illegal." *United States* v. *E. I. du Pont de Nemours & Co.*, 351 U.S. 377, 395 (1956). A plaintiff's failure to define

a product market by reference to the reasonable interchangeability of products is a basis for dismissal at the pleading stage. *Gross*, 185 F. Supp. 3d at 50 (quotation marks omitted); *Queen City Pizza, Inc.* v. *Domino's Pizza, Inc.*, 124 F.3d 430, 437–41 (3d Cir. 1987) (affirming dismissal where alleged market did not include all reasonably interchangeable products).

Dated: February 8, 2022

Respectfully submitted,

PAUL, WEISS, RIFKIND, WHARTON & GARRISON, LLP

/s/ Karen L. Dunn
Karen L. Dunn (D.C. Bar No. 1002520)
William A. Isaacson (D.C. Bar No. 414788)
Amy J. Mauser (D.C. Bar No. 424065)
Julia Tarver Mason Wood (D.C. Bar No. 988021)
Martha L. Goodman (D.C. Bar No. 1017071)
Paul D. Brachman (D.C. Bar No. 1048001)
kdunn@paulweiss.com
wisaacson@paulweiss.com
amauser@paulweiss.com
jwood@paulweiss.com
mgoodman@paulweiss.com
pbrachman@paulweiss.com

2001 K Street, NW
Washington, D.C. 20006-1047
Tel: (202) 223-7371
Fax: (202) 379-4077

Attorneys for Defendant Amazon.com, Inc.