

## **EXHIBIT B**

Redactions in green concern portions of the deposition transcript that were not entered into evidence

Redactions in black concern deposition transcript designations that were entered into evidence

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, et )  
al., )

Plaintiffs, )

vs. )

GOOGLE LLC, )

Defendant. )

STATE OF COLORADO, et al., )

Plaintiffs, )

vs. )

GOOGLE LLC, )

Defendant. )

)Case No.  
)1:20-cv-03010-APM

)Case No.  
)1:20-cv-03715-APM

HIGHLY CONFIDENTIAL

REMOTE VIDEOTAPED DEPOSITION OF

MIKE JAMES

THURSDAY, FEBRUARY 10, 2022

Reported in Stenotype by:

Cody R. Knacke, RPR, CSR No. 13691

Job No.: 830846

1           1           REMOTE VIDEOTAPED DEPOSITION OF MIKE JAMES,  
2           2           taken before Cody R. Knacke, RPR, CSR No. 13691, a  
3           3           Certified Shorthand Reporter for the State of  
4           4           California, commencing on Thursday,  
5           5           February 10, 2022, at 8:03 a.m., Pacific time.

6           6  
7           7           (All Appearances Via Videoconference.)

8           8           APPEARANCES OF COUNSEL:

9           9           For the United States of America:

10          10           UNITED STATES DEPARTMENT OF JUSTICE  
11          11           ANTITRUST DIVISION  
12          12           BY: CLAIRE MADDOX, ESQ.  
13          13           MICHAEL BLAISDELL, ESQ.  
14          14           JOHN P. FOLEY, ESQ.  
15          15           SARA GRAY, ESQ.  
16          16           MATTHEW HAMMOND, ESQ.  
17          17           MICHAEL MCLELLAN, ESQ.  
18          18           950 Pennsylvania Avenue  
19          19           Washington, D.C. 20530  
20          20           202.514.2000

21          21           For the State of Colorado:

22          22           OFFICE OF THE ATTORNEY GENERAL  
23          23           BY: JONATHAN SALLET, ESQ.  
24          24           ERICA FRUITERMAN, ESQ.  
25          25           1300 Broadway  
26          26           7th Floor  
27          27           Denver, Colorado 80203  
28          28           720.508.6000

29          29           For the State of Nebraska:

30          30           OFFICE OF THE ATTORNEY GENERAL  
31          31           BY: JOSEPH CONRAD, ESQ.  
32          32           2115 State Capitol  
33          33           Lincoln, Nebraska 68509  
34          34           402.471.2683

1           1     APPEARANCES OF COUNSEL: (Continued)

2           2           For Google LLC:

3           3           WILSON SONSINI GOODRICH & ROSATI  
4           4           BY: WENDY HUANG WASZMER, ESQ.  
5           5           FRANKLIN RUBINSTEIN, ESQ.  
6           6           FAIZA KAUKAB, ESQ.  
7           7           1301 Avenue of the Americas  
8           8           40th Floor  
9           9           New York, New York 10019  
10          10          212.497.7702  
11          11          wwaszmer@wsgr.com  
12          12          frubinstein@wsgr.com  
13          13          fkaukab@wsgr.com

14          14          For Amazon and the Deponent:

15          15          GIBSON, DUNN & CRUTCHER  
16          16          BY: JOSHUA LIPTON, ESQ.  
17          17          ARIEL FISHMAN, ESQ.  
18          18          POOJA PATEL, ESQ.  
19          19          MATTHEW PARROTT, ESQ.  
20          20          1050 Connecticut Avenue, N.W.  
21          21          Washington, D.C. 20036  
22          22          202.955.8226  
23          23          jlipton@gibsondunn.com  
24          24          afishman@gibsondunn.com  
25          25          ppatel@gibsondunn.com  
                mparrott@gibsondunn.com

                Also Present:

                Ryan LaFond, Videographer  
                Lauren Ison, Department of Justice  
                Dimitry Mezhvinsky, Department of Justice  
                Aaron Ross, Esq., Amazon



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1 1 THURSDAY, FEBRUARY 10, 2022

2 2 8:03 A.M.

3 THE VIDEOGRAPHER: Okay. Good morning. We  
4 are now on the record. Today's date is February 10,  
5 08:03 2022. The time on the record is 8:03 a.m. Pacific  
6 Time. This is the video deposition of Mike James in  
7 the matter of the Google Search Litigation filed in  
8 the United States District Court for the District of  
9 Columbia. The case number  
10 08:03 1:20-cv-03010-APM, as well as case number  
11 1:20-cv-3715-APM.

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13 13 Q. Which of the positions listed on your  
14 LinkedIn profile do you currently hold?  
15 08:09 15 A. Director of software development.  
16 16 Q. So is this the first listing that's called  
17 software development manager?  
18 18 A. In the document in front of me under  
19 "Experience" --  
20 08:10 20 Q. Yes.  
21 21 A. -- it states "Director" of "Software  
22 Development." That's the position I currently hold.  
23 23 Q. Is that the only position at Amazon you  
24 currently hold?  
25 08:10 25 A. That is correct, yes.

1 1 Q. Could you tell us your responsibilities in  
2 2 the position you hold?

3 3 A. So as a director for software development  
4 4 for Amazon, I lead an organization responsible for  
5 08:10 5 the demand side advertising on search platforms or  
6 6 search products, as well as social media.

7 7 Q. So that includes the responsibility for the  
8 8 purchase of search advertising from Google; is that  
9 9 correct?

10 08:11 10 A. That is correct, yes.

11 11 Q. Are there any other aspects of Google's  
12 12 operations for which you have responsibility?

13 13 MR. LIPTON: Objection to form.

14 14 THE WITNESS: The -- in the responsibility  
15 08:11 15 of, you know, managing the search-based advertising  
16 16 program, I also am responsible for search engine  
17 17 optimization, which is effectively the metadata and  
18 18 pages that we create in order to allow the Google  
19 19 robots to actually crawl our web pages.

20 08:11 20 BY MR. SALLET:

21 21 Q. And is that linked to the appearance of  
22 22 unpaid listings on a Google search results page?

23 23 A. That's correct, yes.

24 [REDACTED]

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14 14 MR. SALLET: I would like to have marked  
15 08:13 15 Exhibit 2.  
16 16 (Exhibit 2 was marked for identification by  
17 17 the Certified Shorthand Reporter, and a  
18 18 copy is attached hereto.)  
19 19 BY MR. SALLET:  
20 08:13 20 Q. And again, Mr. James, if you have any  
21 21 difficulty downloading or seeing this, please let us  
22 22 know. Let me just say, Mr. James, what I'm about to  
23 23 show you are a few examples of some search results  
24 24 pages that we've done by conducting searches,  
25 08:13 25 desktop searches, excuse me, on Google.

1 [REDACTED]

2 Q. So the first is what we call a search  
3 results page; is that correct?

4 A. That is correct, yes.

08:13 5 Q. And it is what appears after a user enters  
6 a search query in, for example, google.com; is that  
7 correct?

8 A. That's correct, yes.

9 Q. On the right, there are some ads. You see  
10 08:14 10 that it says "Ads" and "Shop furniture"?

11 A. I do see that, yes.

12 Q. Yes. Thank you. I apologize for  
13 interrupting.

14 What do you call that feature on the  
15 08:14 15 right-hand side of the page?

16 A. Those would be Google Shopping ads.

17 Q. And, Mr. James, are you familiar with the  
18 term "Merchant Center" on Google?

19 A. I am, yes.

08:14 20 Q. What is the Merchant Center?

21 A. The Google Merchant Center is the  
22 management console for managing the Google Shopping  
23 ads.

24 [REDACTED]

08:15 25 page?

1 [REDACTED]

2 2 Q. Are Shopping ads also sometimes referred to  
3 as product listing ads, or PLAs?

4 4 A. That is true. Historically, yes.

5 08:15 5 Q. Yes. So the search results page that we  
6 are looking at shows Shopping ads on the right-hand  
7 side of the page. In your experience, can Shopping  
8 ads appear in various parts of the search results  
9 page?

10 08:15 10 A. Yes, they can.

11 [REDACTED]

13 13 THE WITNESS: Yes. They -- yes, Shopping  
14 ads can appear in other places on the search results  
15 08:15 15 page.

16 16 BY MR. SALLET:

17 17 Q. For example, sometimes at the top of a  
18 page?

19 19 A. That is correct, yes.

20 08:15 20 Q. And then on the left-hand side there are a  
21 set of ads, for example, for Wayfair. And are those  
22 text ads?

23 23 A. That's what we would refer to as text ads,  
24 yes.

25 08:16 25 Q. Yes. And at the top of the page there are

1 1 some words, one of which is "Shopping."

2 2 Do you see that?

3 3 A. I do, yes.

4 4 Q. And that is called the Shopping tab?

5 08:16 5 A. That is referred to as either the Shopping

6 6 tab or the Google Shopping property.

7 7 Q. And if a user clicked on that, one would be

8 8 taken to the Google Shopping property?

9 9 A. That is correct, yes.

10 [REDACTED]

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1 1 Q. So could we now go to the second page.

2 2 This shows what happens if one were to click on the

3 3 Shopping tab at the top of the search results page.

4 4 So, Mr. James, there are a set of ads at

08:18 5 the top of that page, a row of ads. Are those also

6 6 Shopping ads?

7 7 A. Those would be a component of the Shopping

8 8 ads, to my knowledge, yes.

9 9 Q. And are the Shopping ads on this page

08:18 10 purchased separately from the Shopping ads that we

11 11 saw on the previous page?

12 12 A. To my knowledge, no. They are one and the

13 13 same.

14 14 Q. And they are purchased by Amazon or other

08:18 15 companies through an auction; correct?

16 16 A. That is correct, yes.

17 17 Q. And the payment is a cost-per-click

18 18 payment?

19 19 A. That is correct, yes.

08:18 20 Q. Underneath that row of ads there is a set

21 21 of listings that we understand to be unpaid

22 22 listings.

23 23 Do you see that row?

24 24 A. I do see it, yes.

08:19 25 Q. Are those listings called free product

1 1 listings?

2 2 A. I believe that is the case here, yes.

3 3 Q. If a company wishes to appear in a free  
4 4 product listing, what does it need to do to make its  
5 08:19 5 presence available for this purpose?

6 6 A. In order for a company to participate in  
7 7 free product listings, the company needs to upload  
8 8 some or all of its catalog through the Google  
9 9 Merchant Center and enable it for display in free  
10 08:19 10 product listings.

11 11 Q. And does the company that does that then  
12 12 have control over which parts of its catalog that  
13 13 have been uploaded are shown?

14 14 A. When a company uploads its catalog for use  
15 08:20 15 in free product listings, Google makes a  
16 16 determination which products may be displayed and  
17 17 where they would display them.

18 [REDACTED]

[REDACTED]

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[REDACTED]

08:22 5 Q. Does Amazon participate in free product listings?  
6

7 A. To date, Amazon has made the decision not  
8 to participate in free product listings.

[REDACTED]

18 Q. Am I correct that Amazon purchases both  
19 forms of search advertising that we've identified in  
20 the last few minutes, namely text ads and Shopping  
21 ads?  
22

22 A. That is correct.

23 Q. Are there any other forms of search  
24 advertising that Amazon purchases from Google?

08:23 25 A. Those are the two forms of advertising we

1 1 purchase through Google.

2 2 Q. Why does Amazon purchase text ads?

3 3 A. Text ads are a good opportunity for us to  
4 4 make Amazon's selection, convenience known to online  
5 08:24 5 shoppers when they're, you know, searching for, you  
6 6 know, products as part of their purchase behaviors.

7 7 Q. Why does Amazon purchase Shopping ads?

8 8 A. Similar to the previous answer, Shopping  
9 9 ads are a way for Amazon to display that we have,  
10 08:24 10 you know, products, selection, price, where  
11 11 customers are engaged in shopping research.

12 12 Q. In your experience, can there be a search  
13 13 results page that would contain both an  
14 14 Amazon-purchased text ad and an Amazon-purchased  
15 08:24 15 Shopping ad?

16 16 A. Yes, there would -- there can be a search  
17 17 results page that includes both forms of ads.

18 18 Q. Why does Amazon buy both kinds of ads?

19 19 A. Each ad has its own specific customer  
20 08:25 20 intent that is satisfied. They're not distinct.  
21 21 But engaging in both of those allows us to  
22 22 demonstrate different features to the potential  
23 23 customer, as well as taking up more pixels, more  
24 24 impressions, if you will, leads to, you know, higher  
25 08:25 25 volume of click-through, which ultimately leads to a

1 higher number of purchases.

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 Q. Mr. James, I understood that you said, and  
8 please correct me if I have this wrong, that there  
9 was different specific customer intent associated  
10 08:26 10 with text ads than with Shopping ads.

11 Did I understand that correctly?

12 A. That's correct, yes.

13 Q. So I'm asking if you could now identify the  
14 specific customer intent associated with text ads.

15 08:26 15 A. So we viewed text ads as having what we  
16 would refer to as a more of an upper-funnel customer  
17 intent, shopping intent. Upper funnel in this  
18 definition meaning that a customer may be more  
19 engaged in sort of early research activities where  
20 08:26 20 product listing ads or Shopping ads are generally  
21 considered lower funnel, meaning the person may be  
22 looking for a specific product or a specific product  
23 family and is more -- is more likely to click on an  
24 individual product and then purchase that product.

25 08:26 25 Q. So am I understanding correctly that when

1 1 viewed together Shopping ads are lower funnel than  
2 2 text ads?

3 3 A. That is our general perception, yes.

4 4 Q. Is the ability to appear on the Google  
5 08:27 5 Search results page important to Amazon?

6 6 A. Our appearance in the Google Search  
7 7 experience from an advertising perspective is  
8 8 important in its ability to drive customer awareness  
9 9 of our products, leading to conversions. So it is  
10 08:27 10 accretive to our revenue and profitability.

11 11 Q. Is it of particular importance to Amazon to  
12 12 appear in a prominent place on the Google Search  
13 13 results page?

14 14 A. The prominence is less important to us than  
15 08:28 15 the return on investment, the financial return for  
16 16 our marketing expense.

17 17 Q. Have you done any analysis on -- strike  
18 18 that.

19 19 Have you done any analysis to look at any  
20 08:28 20 relationship between return on investment and the  
21 21 place on a search results page that an ad would  
22 22 appear?

23 23 A. We have done some analysis, yes.

24 24 Q. And what does that show?

25 08:28 25 A. It's a complicated story, but, you know,

1 1 we -- the analysis that we have done is in looking

2 2 at, you know, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] our return on

6 6 investment.

7 7 Q. Is that part of what's been called [REDACTED]

[REDACTED]

9 9 A. That is not specifically related to [REDACTED]

[REDACTED] no.

11 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

3 Q. Does Amazon have a preference for appearing

4 on a Google Search results page as opposed to

08:30 5 another Google property like Google Images?

6 A. We don't have a specific preference for

7 showing up on the Google Search results page versus

8 Google Images. That decision or preference is,

9 again, driven by a return on investment objective.

08:30 10 Q. And have you analyzed any differences

11 between return on investment when an ad appears on a

12 search results pages as opposed to Google Images?

13 A. We have not done analysis there, as the

14 data that would support that is not available to us.

08:31 15 Q. And that's because Google does not supply

16 you the data; is that correct?

17 A. That is correct. The data that we would

18 need to do that is not made available to us.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



1

[REDACTED]

2

[REDACTED]

3

[REDACTED]

4

4 Q. Do you have a general understanding of how

5

08:32 5 much annually Amazon spends on Google Search

6

6 advertising?

7

7 A. Yes, I do.

8

8 Q. And what is that?

9

9 A. In 2021 we spent somewhere in excess of

10

08:32 10 \$ billion on Google Search ads worldwide.

11

11 Q. And as you made plans for 2022, do you

12

12 expect any material different number to result from

13

13 purchases?

14

14 A. Our plan for 2022 indicates that we will

15

08:32 15 see a further increase in our spend on Google Search

16

16 ads.

17

17 Q. And is that linked at all to any analysis

18

18 of where you expect the Amazon organic results to

19

19 appear in relationship to those ads?

20

08:33 20 A. The decision on our investment in Google

21

21 Search ads is driven by the efficiency of the

22

22 program. It is inclusive of the -- what we would

23

23 refer to as total search return. So it does take

24

24 into account the potential substitution of free

25

08:33 25 search results for paid search listings.



1 Q. In your experience on an average  
2 cost-per-click basis, are Google Shopping ads  
3 generally more expensive than Google text ads?

4 A. I'm afraid I don't have the latest  
5 information on that, so I can't speak with  
6 confidence.

7 Q. Do you have any historical information?

8 A. If I recall correctly, when last I looked  
9 at this, the Shopping ads were a higher cost per  
10 click than text ads.

11 MR. SALLET: Mr. James, I'd like to show  
12 you what I believe is Exhibit 3, which will be an  
13 e-mail.

14 (Exhibit 3 was marked for identification by  
15 the Certified Shorthand Reporter, and a  
16 copy is attached hereto.)

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 Q. Mr. James, do you mind quick -- you wrote  
21 this on March 17, 2021; is that correct?

22 A. That is what the e-mail timestamp implies,  
23 yes.

24 [REDACTED]

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11

[REDACTED]

2 Q. The first words of the body of the text  
3 say, "Ahead of our meeting with Google."  
4 Do you recall having met with Google in the  
08:35 5 spring of 2021 about the topics that are included in  
6 this e-mail?

7 A. I do recall having a meeting with Google in  
8 the spring of 2021. I do not recall what of these  
9 specific items mentioned in the e-mail were  
10 08:36 10 addressed or covered in that meeting.

[REDACTED]

1 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

6 6 Q. And this sentence reads, "We like Shopping  
7 7 Ads (graphic ads at the top of the search results  
8 8 page) but to be there Google requires that we  
9 9 participate in the Google Shopping tab (Shopping  
10 08:37 10 Property)."

11 11 Is that correct?

12 12 A. That is correct, yes.

13 13 Q. Did Google ever give you a rationale for  
14 14 the requirement that you describe in this sentence?

15 08:37 15 A. Google has never explained the  
16 16 justification for the need to participate in the  
17 17 Google Shopping property to be part of Google  
18 18 Shopping ads beyond saying that it's the  
19 19 participation with the Google Shopping property that  
20 08:38 20 allows for Shopping ads to be shown.

21 21 Q. Do I take it that you would prefer if that  
22 22 requirement were not in place?

23 23 A. That is correct, yes.

24 24 Q. And can you tell us why?

25 08:38 25 A. The Google Shopping ads -- let me start

1 [REDACTED] 1 over.

2 [REDACTED] 2 Amazon has a store, looks to participate in

3 [REDACTED] 3 marketing activities in order to make our customers

4 [REDACTED] 4 or future customers aware of the products and

5 08:38 [REDACTED] 5 services that we sell. Shopping ads are a good way

6 [REDACTED] 6 for us to make them aware of the products that we

7 [REDACTED] 7 sell.

8 [REDACTED] 8 We enjoy the benefits of that, but dislike,

9 [REDACTED] 9 as any store would, the notion that our investment

10 08:39 [REDACTED] 10 in marketing to make our customers aware of those

11 [REDACTED] 11 offers would then create, you know, traffic that

12 [REDACTED] 12 would go to another store.

13 [REDACTED] 13 Q. Have you ever asked Google for the right to

14 [REDACTED] 14 buy Shopping ads without participating in the Google

15 08:39 [REDACTED] 15 Shopping tab?

16 [REDACTED] 16 A. We have, yes.

17 [REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

21 [REDACTED] 21 Q. And when you have asked for that ability,

22 [REDACTED] 22 what has Google said in response?

23 [REDACTED] 23 A. We've asked on numerous occasions and we've

24 [REDACTED] 24 gotten a variety of different answers. The most

25 08:40 [REDACTED] 25 common answer is that they will take it under

1 1 advisement but they have no plans to change the  
2 2 dependence.

3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]

7 7 Q. And to the extent you recall any oral  
8 8 communications, do you recall who at Google made  
9 9 that representation?

10 08:40 10 A. We certainly had this conversation with  
11 11 Aaron Rova, a person I mentioned earlier.

12 12 Q. Yes.

13 13 A. We've also met with the product ads --  
14 14 Google Shopping and product ads team in Zurich.

15 08:41 15 This is the product management team responsible for  
16 16 this experience. And we have asked the leaders  
17 17 there the same.

18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]

22 22 Q. The last underlined language on this page  
23 23 starts with the words "We want control."

24 24 Do you see that?

25 08:41 25 A. I do see that, yes.

1 1 Q. And that says, "We want control for where  
2 2 we do and where we do not show our ads."

3 3 Is that correct?

4 4 A. That is correct, yes.

5 08:42 5 Q. How does Google prevent Amazon from  
6 6 controlling where it does and where it does not show  
7 7 its ads?

8 8 A. So as this document describes, Google has  
9 9 made the decision to put Shopping ads on Google  
10 08:42 10 Images. We lack the control to determine whether  
11 11 those ads would be present on Google Images. And I  
12 12 think as we've mentioned earlier, we lack visibility  
13 13 into when they are displayed on Google Images.

14 14 Q. And what do you regard as the disadvantage  
15 08:42 15 to Amazon of not being able to control where they  
16 16 are placed?

17 17 A. This ties back to the comments on return on  
18 18 investments and are optimizing for that return on  
19 19 investment. When Google chooses to take one of our  
20 08:43 20 ads and put it on any number of different surfaces,  
21 21 we lack the ability to optimize for that placement.

22 22 If our ads show up on Google Images and  
23 23 those have, for example, a high click-through rate  
24 24 and a low conversion rate, that will cost us from an  
25 08:43 25 efficiency perspective. That may cause us to bid

1 1 less for the overall Shopping ads program resulting  
 2 2 in a lower volume in areas where we would see  
 3 3 benefit at a reduction in total return on  
 4 4 investment.

5 08:43 5 Q. The sentence after the one we just looked  
 6 6 at reads, "Aligned with Google putting our Shopping  
 7 7 Ads on Google Images, and the lack of data, we don't  
 8 8 have the option to be there, or to change our bids  
 9 9 for the placement."

10 08:44 10 Directing your attention to the last  
 11 11 phrase, "or to change our bids for the placement,"  
 12 12 what does that -- what does that mean?

13 13 A. So where, for example, Shopping ads -- our  
 14 14 Shopping ads are showing up -- let me rephrase that.

15 08:44 15 Where, for example, our products are being  
 16 16 placed in Google Images, we have no ability to  
 17 17 change the bids for that placement. So as  
 18 18 referenced earlier, if those have a different  
 19 19 conversion rate, if the economics in that placement

20 08:44 20 are different, whether they be better or worse, we  
 21 21 don't have the opportunity to invest differentially  
 22 22 there in order to capitalize on the opportunity.

23 [REDACTED]

[REDACTED]

[REDACTED]



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9 On what basis do you buy Shopping ads?

10

08:45 10 A. We buy Shopping ads bidding against the

11

11 products that we include in the Shopping ads feed,

12

12 the product catalog that we participate with

13

13 Shopping ads in.

14

14 Q. So if you were able to bid separately for

15

08:45 15 Shopping ads on search results page than on Images,

16

16 you might submit different bids depending on the

17

17 conversion rate on one versus the other; is that

18

18 correct?

19

19 A. It is correct to say that we may bid

20

08:46 20 differently based off of the return on investment

21

21 that we would receive for a product being shown on

22

22 Google Images versus a product being shown on Google

23

23 Search.

24

24 Q. Are there other search ads that Amazon

25

08:46 25 purchases from Google where Amazon does not control



1 1 the placement?

2 2 A. Not to my knowledge, no.

3 3 Q. Is there any issue about Amazon's control  
4 4 of the placement of text ads that it purchases?

5 08:46 5 A. To date, we haven't seen examples, not to  
6 6 my recollection -- we haven't seen examples of text  
7 7 ads being placed in, you know, broad locations or  
8 8 areas that are not, you know, intentional or known  
9 9 to us.

10 08:46 10 Q. Do you believe the -- that the lack of  
11 11 control and the ability to determine the placement  
12 12 of the Shopping ads impedes Amazon's ability to  
13 13 optimize your advertising to attract customers?

14 14 A. It's my belief that our inability to  
15 08:47 15 control and measure the placement of our ads leads  
16 16 to inefficiencies, so, therefore, we cannot optimize  
17 17 to the best of our ability.

18 18 Q. So in the second to the last paragraph of  
19 19 this e-mail there's a sentence that begins -- well,  
20 08:47 20 actually, a phrase that begins "1)."

21 21 Do you see that? It starts with the words  
22 22 "in 2019"?

23 23 A. I see that sentence, yes.

24 24 Q. And this reads -- these words read, "In  
25 08:48 25 2019 they started placing our Shopping Ads on Google

1 1 Images, however through redirects they are hiding

2 2 the source of traffic."

3 3 Is that correct?

4 4 A. That is correct, yes.

5 08:48 5 Q. And could you explain how Google is hiding

6 6 the source of traffic?

7 7 A. One of the ways that we're able to measure

8 8 the placement of our ads is in the HTTP headers that

9 9 we receive when a transit is loaded or when a click

10 08:48 10 occurs and the user's browser, customer's browser

11 11 initiates the request to Amazon. The HTTP refer

12 12 heading indicates what page initiated the click to

13 13 Amazon or to the advertiser.

14 14 Google uses redirects in their click

15 08:49 15 handling which removes -- strips the original HTTP

16 16 refer -- sorry -- the refer from the heading, which

17 17 makes it impossible for us to determine exactly

18 18 where that placement occurred.

19 19 Q. And what does the term "redirect" mean in

20 08:49 20 this context?

21 21 A. So redirect is a practice in web traffic

22 22 and HTTP where a request is made to one endpoint,

23 23 one server, if you will, where it -- that server

24 24 that receives the request then makes a subsequent

25 08:49 25 request on -- as a redirection, if you will.

1 1 Q. And has Amazon objected to this practice?

2 2 A. We have requested that Google give us

3 3 insight into the source of the traffic in a number

4 4 of different ways, this being one of them, yes.

5 08:50 5 Q. And what response have you received from

6 6 Google?

7 7 A. We have received the response that they

8 8 will take it under advisement or consider it, but

9 9 ultimately have no plans to change that behavior.

10 08:50 10 Q. Does Google provide any data to Amazon

11 11 broken down by Google property?

12 12 A. They do, yes.

13 13 Q. Can you just help us with a description of

14 14 what data Google does provide?

15 08:50 15 A. So there are a number of different ways in

16 16 which we receive data regarding our ad performance.

17 17 We have access to the Google Merchant Center

18 18 console, Google Ads user console, as well as

19 19 programmatic access through APIs with Google Ads and

20 08:51 20 Google Merchant Center, and we periodically receive

21 21 reports from Google in the form of documents as part

22 22 of business reviews that we hold together.

23 23 Q. You're familiar with the term "Google

24 24 surface"; is that correct?

25 08:51 25 A. I am familiar with the term, yes.



1 1 Q. And what do you understand a surface to be  
2 2 in that context?

3 3 A. My understanding of a surface is that it is  
4 4 any number of places where Google chooses to, you  
5 08:51 5 know, present content.

6 6 Q. Could you give an example?

7 7 A. Google Search would be considered a  
8 8 surface, Google Images would be considered a  
9 9 surface.

10 08:51 10 Q. And does Google provide any data to you  
11 11 about the performance of advertisements broken down  
12 12 by Google surface?

13 13 A. To my knowledge, no. It may be that they  
14 14 have given us some high-level aggregate indications  
15 08:52 15 on performance in part of our -- as part of the --  
16 16 our business reviews, but I can't recall  
17 17 specifically.

18 18 Q. If you look at the remainder of this  
19 19 sentence, there's an Arabic 2 and then a half  
20 08:52 20 parentheses.

21 21 Do you see that?

22 22 A. I see that, yes.

23 23 Q. And it says, "they are continually reducing  
24 24 the quality of reporting data we are getting."

25 08:52 25 Is that correct?

1 1 A. That is correct, yes.

2 2 Q. Can you give an example of what this refers  
3 3 to?

4 4 A. So an example of where we've seen a  
5 08:52 5 reduction in the reporting quality is in the API  
6 6 data that we have access to on text ads performance,  
7 7 where, in recent years, Google has removed the page  
8 8 rank, the actual ranking data associated with our  
9 9 text ads results.

10 08:53 10 Q. And what does that -- what, if anything,  
11 11 does that prevent you from knowing that you would  
12 12 like to know?

13 13 A. When we think about the optimization of our  
14 14 ads, if we think about an individual text ad and  
15 08:53 15 where it is placed on the page, their -- that  
16 16 information can help to inform us as to whether or  
17 17 not we are bidding at a sufficient level to show on  
18 18 the first page of the search results, but similarly  
19 19 to know that we have bid at a high enough level that  
20 08:53 20 we are now consistently showing up toward the top of  
21 21 the page results.

22 22 Q. And is -- and the value of the ad to Amazon  
23 23 can differ depending on where it appears; is that  
24 24 correct?

25 08:54 25 A. That is correct, yes.

1 1 Q. The next sentence in this paragraph says,  
2 2 "I am continually arguing with them to give us  
3 3 visibility to the metrics that allow for us to  
4 4 understand our business drivers."

5 08:54 5 Is that correct?

6 6 A. That's correct, yes.

7 7 Q. When you use the term "business drivers,"  
8 8 to what do you refer?

9 9 A. Business drivers in this context references  
10 08:54 10 any of the data signals that we might use in our  
11 11 optimization systems to allow us to improve our ROI.

12 12 Q. You say you were continually arguing.

13 13 Do you recall any specific communications  
14 14 with Google on this point, either written or oral?

15 08:55 15 A. I can recall having the conversation on  
16 16 many occasions. I can't specifically recall  
17 17 individual instances of the discussion.

18 18 Q. And what is Google's response to the extent  
19 19 you recall when you offered your view on this?

20 08:55 20 A. Google's response has historically been  
21 21 that they have acknowledged the concern but have no  
22 22 intention of changing the practice.

23 23 Q. You purchase search advertising from  
24 24 sellers other than Google; is that correct?

25 08:55 25 A. That is correct, yes.



1 1 Q. And that includes Bing; is that correct?

2 2 A. That is -- Microsoft ads, Microsoft Search  
3 ads, which are formally known as Bing, yes.

4 4 Q. Yes, Microsoft Search ads.

5 08:56 5 For purposes of the United States only, are  
6 there only other outlets from which you've purchased  
7 search advertising?

8 8 A. Not in the form that we would consider  
9 search ads, such as Google Search or Microsoft

10 08:56 10 Search, no.

11 11 Q. No, sorry.

12 12 The concerns that you've raised in this  
13 e-mail, do they bear any relevance to your dealings  
14 with Microsoft in the purchase of Bing search  
15 08:56 15 advertising?

16 16 A. They do not to the same degree, no. We  
17 have more information, richer reporting information  
18 that we get from Bing relative to what we see from  
19 Google.

20 08:56 20 Q. And do you have any greater ability to  
21 control the placement of the advertisements?

22 22 A. We haven't had the same degree of  
23 challenges with Microsoft with respect to Shopping  
24 ads, but I would also state that Microsoft hasn't,  
25 08:57 25 you know, had the same, you know -- has shown the

1 1 same interest in actually displaying those in a  
2 2 broad variety of locations.

3 3 Q. I'm sorry. I might not have heard  
4 4 correctly. That it does have the same interest or  
5 08:57 5 does not have the same interest?

6 6 A. It has not demonstrated -- it has not  
7 7 demonstrated the same interest in showing those in  
8 8 various places.

9 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

16 16 Q. Can I just ask you for the record what does  
17 17 ACIN stand for?

18 18 A. Apologies. ACIN I'm not familiar with.

19 19 Q. I'm saying it wrong. I'm making a mistake.  
20 08:58 20 I'm getting my S sounds confused, so I apologize.

21 21 ASIN.

22 22 A. Yes. ASIN references a unique product  
23 23 within Amazon's shopping experience.

24 24 Q. Do you recall a time when there were  
25 08:59 25 conversations with Bing and Bing was willing to be



1 1 more flexible in the placement of ads than Google?

2 2 A. Yes.

3 3 Q. And could you tell us about that?

4 4 A. The -- prime-exclusive ASINs is a good

5 08:59 5 example of that, where we have requested with Google

6 6 that we allow for -- and it's not specifically, you

7 7 know, Prime-exclusive ASINs, but Prime-eligible

8 8 ASINs. We have asked Google to support an

9 9 attribution, tagging, of those products within

10 08:59 10 Shopping ads to reference that they are

11 11 Prime-eligible, putting a Prime badge on those

12 12 products. Google has rejected that, where, in our

13 13 discussions with Microsoft, they have been willing

14 14 to support that.

15 09:00 15 Q. And does Bing support that?

16 16 A. We haven't engaged -- to my knowledge, we

17 17 haven't gone beyond, you know, some cursory

18 18 exploration of that. We don't use that at scale.

19 19 Q. And just for the record, a Prime-eligible

20 09:00 20 purchase would be if I were a Prime customer, went

21 21 on Amazon, saw the products that were eligible for

22 22 free shipping because I'm a Prime customer, those

23 23 products would be the Prime-eligible ASINs to which

24 24 you refer; is that correct?

25 09:00 25 A. That is correct, yes.

1

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

20

09:02 20 MR. SALLET: I'd like to mark the next

21

21 exhibit, please, Exhibit 4.

22

22 (Exhibit 4 was marked for identification by

23

23 the Certified Shorthand Reporter, and a

24

24 copy is attached hereto.)

25

09:02 25 [REDACTED]

1

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

12

12 Q. Mr. James, do you see the document that's

13

13 been marked as Exhibit 4?

14

14 A. I do see the document, yes.

15

09:03 15 Q. And it's entitled [REDACTED]

17

17 Is that correct?

18

18 A. That is correct, yes.

19

19 Q. And dated April 1, 2021; yes?

20

09:03 20 A. That is correct, yes.

21

[REDACTED] [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED] [REDACTED]

1

[REDACTED]

1

[REDACTED]

2

[REDACTED].

3

3 Does Amazon participate in the Merchant

4

4 Carousel?

5

09:06 5 A. So through our participation in Shopping

6

6 ads, our Shopping ads would show up, could show up

7

7 in the Merchant Carousel.

8

[REDACTED]

9

[REDACTED]

10

[REDACTED]

11

[REDACTED]

12

[REDACTED]

13

[REDACTED]

14

[REDACTED]

15

[REDACTED]

16

[REDACTED]

17

17 Q. So on line 42 -- I'm sorry -- on line 41

18

18 there's a sentence that begins "The Merchant

19

19 Carousel."

20

09:08 20 Do you see that?

21

21 A. I see that, yes.

22

22 Q. And the sentence reads, "The Merchant

23

23 Carousel Format will be charged on a CPC basis and

24

24 draw inventory (estimated at [REDACTED]) from across

25

09:08 25 Amazon's Google Shopping Ads campaigns, which

1 1 further reduces our ability to target specific ad

2 2 formats and locations."

3 3 Is that correct?

4 4 A. That is correct, yeah.

5 09:08 5 Q. And when you say -- when this document, in

6 6 that sentence says "ad formats," to what does it

7 7 refer?

8 8 A. The ad format referenced here is the

9 9 Merchant Carousel ad format.

10 09:09 10 Q. Oh. So am I understanding the sentence

11 11 correctly to say that this practice, as described in

12 12 the sentence, limits Amazon's ability to decide

13 13 whether its ads will appear in the Merchant

14 14 Carousel?

15 09:09 15 A. That is correct, yes.

16 16 Q. And why is that an issue for Amazon?

17 17 A. The -- similar to previous statements

18 18 regarding our ability to maximize our return on

19 19 investment, we lack the ability to -- lack

20 09:10 20 visibility into when our product ads are showing up

21 21 in the Merchant Carousel format, nor do we have the

22 22 ability to control the bids that we would place

23 23 against those ads.

24 24 Q. And is this similar in terms -- strike

25 09:10 25 that.

1 1 Does this present the similar issues that  
2 2 you previously described in ads that are placed on  
3 3 both Google Search and Google Images without your  
4 4 ability to control bids separately?

5 09:10 5 A. That is similar, yes.

6 6 Q. Am I correct that if you had the ability to  
7 7 determine whether ads would appear on the Merchant  
8 8 Carousel, therefore you might bid differently than  
9 9 you do under the current practice?

10 09:10 10 A. That is correct, yes.

11 11 Q. Have you seen this practice in other  
12 12 providers of search advertising to you?

13 13 A. Not to my knowledge.

14 ■ ■ [Redacted]  
■ [Redacted] [Redacted]  
■ ■ [Redacted] [Redacted]  
■ ■ [Redacted]  
■ ■ [Redacted]  
■ ■ ■ [Redacted]  
■ [Redacted] [Redacted] [Redacted]  
■ ■ [Redacted]  
■ ■ ■ [Redacted]  
■ ■ [Redacted]  
■ [Redacted] [Redacted]

1

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

7

7 Q. If you'd look at the sentence that begins

8

8 on line 43, Mr. James, there's a sentence that

9

9 begins with the word "Google" that says, "Google has

10

09:12 10 also expressed that ad format level targeting and

11

11 reporting will not be available, which will not

12

12 allow us to precisely measure the impact of this new

13

13 ad format."

14

14 What is the issue with this practice that

15

09:12 15 Amazon has?

16

16 A. So this is another example of where our

17

17 inability to see the performance for a given ad unit

18

18 impacts our visibility, our ability to understand,

19

19 you know, how the ROI for our advertising dollars

20

09:13 20 manifested.

21

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

19

19 Q. And the paragraph -- strike that.

20

09:14 20 The sentence, excuse me, says, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1 1 Is that correct?

2 2 A. That is correct.

3 3 Q. And what does the abbreviation CX stand for  
4 in this sentence?

09:15 5 A. CX stands for customer experience.

6 6 Q. And do you have any information as to --  
7 strike that.

8 8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 13 A. Can you qualify the statement basis?

14 14 Q. Sure.

09:15 15 The document says "We" -- and this document  
16 was written by your team; is that correct?

17 17 A. It was written by my team, yes.

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 21 This suggests that your team thought that

22 22 [REDACTED]

23 [REDACTED]

24 [REDACTED]; is

09:16 25 that correct?

1 1 A. That is correct, yes.

2 2 Q. I'm just asking if you have any additional  
3 3 information that supports that description.

4 4 A. So what is stated here is my team's  
5 09:16 5 hypothesis in terms of [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 9 Q. Well, later in the paragraph you'll see a  
10 09:17 10 discussion, for example, on lines 69 to 72 of

11 11 [REDACTED], and then on line 75 to roughly 77, [REDACTED]

12 [REDACTED] Please take a moment to look at that. I  
13 13 don't want to rush you, Mr. James.

14 14 A. One moment. Okay. I'm ready.

15 09:18 15 Q. [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 18 MS. WASZMER: Objection to form.

19 19 THE WITNESS: Those observations by my team

20 09:18 20 are what are leading to the hypothesis that is

21 21 stated above, yes.

22 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

■ [REDACTED]

- [REDACTED]

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[REDACTED]

7 MR. SALLET: So I'd like to show you now  
8 the e-mail that I believe is going to be marked as  
9 Exhibit 5.

09:35 10 (Exhibit 5 was marked for identification by  
11 the Certified Shorthand Reporter, and a  
12 copy is attached hereto.)

13 BY MR. SALLET:

14 Q. And just please take all the time you need,  
09:35 15 Mr. James, but my question to you is going to only  
16 deal with the second e-mail, which appears on the  
17 first page.

18 A. I'm ready.

19 Q. Looking at the second paragraph, there's a  
09:36 20 paragraph that begins with the words "While we are  
21 planning," in an e-mail from you on July 7, 2020.

22 Do you see that?

23 A. I do see that, yes.

24 Q. And then on the third line of that  
09:37 25 paragraph there's a sentence that begins "Opting

1 in."

2 Do you see that?

3 A. I see that, yes.

4 Q. And the sentence reads, "Opting in to

09:37 5 Google Surfaces gives Google incremental permission

6 to use the product data we share to experiment on

7 Google's retail product innovation."

8 Do you see those words?

9 A. I see that, yes.

10 09:37 10 Q. What did you have in mind in terms of what

11 Google's retail product innovation would be?

12 A. So the notion captured in this e-mail is

13 that by opting in to Google surfaces, Amazon

14 provides product information that Google can use in

15 09:37 15 any number of different user experiences where we

16 have a lack of visibility or a lack of ability to

17 control, you know, where and how those might show

18 up.

19 The breadth or variety of different areas

20 09:38 20 where that may show up are not known to me.

21 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1           1           Q.   And then the sentence continues "with no  
 2           2           programmatically able to track where that innovation  
 3           3           occurs."

4           4           Do you see that, Mr. James?

5   09:38 5           A.   I do see that, yes.

6           6           Q.   Does that mean that you aren't able to  
 7           7           trace the use of your data?

8           8           A.   This statement means that, without the  
 9           9           ability to understand at the time of a click taking  
 10          10          place on one of those placements, that that  
 11          11          placement is different from previous placements and  
 12          12          to be able to track it back to the user experience,  
 13          13          that we wouldn't know where that product information  
 14          14          was being used on Google's search results.

15   09: [REDACTED] [REDACTED]  
 [REDACTED] [REDACTED] [REDACTED]  
 [REDACTED] [REDACTED] [REDACTED]  
 [REDACTED] [REDACTED] [REDACTED]  
 [REDACTED] [REDACTED] [REDACTED]  
 [REDACTED] [REDACTED] [REDACTED]  
 [REDACTED] [REDACTED] [REDACTED]  
 [REDACTED] [REDACTED] [REDACTED]  
 [REDACTED] [REDACTED] [REDACTED]  
 [REDACTED] [REDACTED] [REDACTED]

24          24          Q.   And then it goes on to say, "no requirement  
 25          25          that they inform us when they do so, and no ability



1 1 for choosing where that data may not be used."

2 2 So what is the issue for Amazon, the fact

3 3 that Google need not inform you of the -- of when

4 4 they use Amazon data?

5 09:40 5 MR. LIPTON: Objection to form.

6 6 THE WITNESS: Can you -- I'm sorry. Can

7 7 you restate the question?

8 [REDACTED]

[REDACTED]

10 09:40 10 What is the issue for Amazon that's

11 11 captured in the words "no requirement that they

12 12 inform us when they do so"?

13 13 A. Without knowledge of where our product

14 14 information shared with this intent is being used or

15 09:40 15 displayed, we would have no understanding of, you

16 16 know, how that customer experience may be formulated

17 17 and what that data may be used for.

18 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

10

09:47 10 So, Mr. James, I'd like to -- we're going

11

11 to put into the chat, so it will take a second, what

12

12 has been previously marked as Exhibit 4, the

13

13 April 2021 [REDACTED], but the way the chat

14

14 works, it needs to be reloaded for you to have

15

09:47 15 access to it.

16

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

24

24 Q. Let's just make sure it's the same

25

09:48 25 document. Is it the document [REDACTED]

1 [redacted] " dated April 1, 2021?

2 A. Yes, it is.

3 Q. Okay. So we've talked a little bit about  
4 this document before, but I'd just like to make sure  
09:48 5 we understand a bit more about its background.

6 Mr. James, looking at page 1, line 3, the  
7 first sentence.

8 Do you see that, Mr. James?

9 A. I see it, yes.

09:49 10 Q. And the sentence reads, [redacted]  
[redacted]  
[redacted]  
[redacted]  
[redacted]  
[redacted]  
[redacted]

16 Do you see that?

17 A. I do see that, yes.

18 [redacted]  
[redacted]  
[redacted]  
[redacted]  
[redacted]  
[redacted]  
[redacted]  
[redacted]  
[redacted]

1 1 [REDACTED]

2 2 What are the business purposes for which  
3 3 this document was created and these analyses  
4 4 undertaken?

5 09:50 5 A. So as an advertiser, Amazon spends a large  
6 6 amount of money with Google, and we see that a  
7 7 significant portion of our revenue is delivered  
8 8 based off of the success of the advertising program,  
9 9 our ability to drive clicks through either Google  
10 09:50 10 paid or free placements for search.

11 11 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

16 16 Q. So the analysis and hypotheses in this  
17 17 document are designed to inform the decision you've  
18 18 just described; is that right?

19 19 A. That is correct, yes.

20 09:51 20 Q. [REDACTED]  
[REDACTED]

22 22 A. That is correct, yes.

23 23 Q. And why is that?

24 24 A. As previously stated, the level of  
25 09:51 25 investment that we have in Google from a marketing



1 1 expense, as well as the amount of traffic that we  
 2 2 receive from Google and the incremental effects that  
 3 3 have on our revenue, lead us to want to inspect that  
 4 4 as it is a large portion of that traffic.

5 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
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 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]

16 16 A. Sorry. I missed the first part of the  
 17 17 question.

18 18 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]

22 [REDACTED]  
 [REDACTED]  
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1 [REDACTED]

2 Q. So do I understand that Amazon conducted  
3 what it calls an incrementality test in August and  
4 September of 2020?

09:53 5 A. Yes. As stated in the document, we did an  
6 incrementality test through the period of  
7 August 14th through September the 11th.

8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
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[REDACTED]

[REDACTED]

3 Q. Right. And just one more -- just on that  
4 same language, Mr. James, just so we understand, OPS  
09:56 5 stands for what?

6 A. OPS stands for order product sales.

7 Q. And that's a revenue measure; yes?

8 A. That is a revenue measure, yes.

9 Q. And iOPS stands for incremental portion of  
10 OPS; is that correct?

11 A. That is correct, yes.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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19

19 Q. I'm going to say it back to Mr. James, and

20

09:59 20 please tell me if I've got it right. Is the point

21

21 in some sense that if someone enters Amazon, they're

22

22 interested in Amazon, but the marketing efforts are

23

23 designed to capture the attention of somebody who

24

24 types in the name of a product, say brown shoes.

25

09:59 25 Does that capture the distinction?

1 1 A. It does, between navigational and

2 2 non-navigational, yes.

3 3 Q. Yes, yes, yes.

4 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

18 18 Line 32 uses the acronym N2A. Is that new

19 19 to Amazon?

20 10:00 20 A. N2A is new to Amazon, yes.

21 21 Q. And line 38 is N2GL. What does that stand

22 22 for?

23 23 A. So that is new to GL for a customer's first

24 24 purchase in one of our GLs, our categories.

25 10:01 25 Q. So just help me, what's the difference

1 1 between N2A and N2GL?

2 2 A. N2A would represent the first purchase for

3 3 a customer on Amazon, period.

4 4 Q. I see.

5 10:01 5 A. New to GL may be a customer that has made

6 6 many purchases in Amazon, but has made their first

7 7 purchase in soft lines.

8 8 Q. Before we go on to other aspects of this

9 9 other analysis, just let me ask, has Amazon created

10 10:01 10 more recent [REDACTED] since this data that's

11 11 included in the [REDACTED]?

12 12 A. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

18 [REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

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4 Q. The sentence that begins near the end of  
10:05 5 line 414 says, "The PS channel could be highly  
6 incremental for early lifecycle customers, e.g., New  
7 to Amazon and Non-Prime customers."

8 Do you see that?

9 A. I do see that, yes.

10:06 10 Q. Why is that? Why could the paid search  
11 channel be highly incremental for early lifecycle  
12 customers?

13 A. So the analysis demonstrates that the  
14 experiment we ran shows that new to Amazon is  
10:06 15 incremental. The reasoning behind it is subject to  
16 speculation.

17 Q. So when you say "shows," you mean, for  
18 example, in Table 2 below, the column that reads --  
19 that's headed "Test Incrementality"?

10:07 20 A. That is correct, yes.

21 Q. How would you respond if someone said to  
22 you, Amazon has lots of customers. Why is it  
23 important to keep attracting new customers?

24 MR. LIPTON: Objection to form.

10:07 25 THE WITNESS: The -- you know, the --

1 1 there's always new customers who are, you know,  
2 2 emerging in any given country. So we have younger  
3 3 demographics who are becoming older who are starting  
4 4 to become, you know, purchasing their own products.  
5 10:07 5 There is also -- there is also, you know, people who  
6 6 are less accustomed to shopping online and therefore  
7 7 have yet to make a purchase on Amazon.  
8 8 And so we view it as our -- part of our  
9 9 objective to make everyone aware of the products and  
10 10:08 10 conveniences of our store.

11 [REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED] [REDACTED]  
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19

19 Q. It indicates that (As Read:) "Paid search

20

10:15 20 incrementality for Mobile App is defined as the %

21

21 change in OPS from orders placed on Mobile App, when

22

22 the paid search channel was shut down."

23

23 Is that correct?

24

24 A. That is correct.

25

10:15 25 Q. And in the Table 4 that appears below, the

1 1 test incrementality for mobile applications is

2 2 [REDACTED]; correct?

3 3 A. That is correct.

4 4 Q. Is there any understanding in Amazon as to

5 10:16 5 why the cessation of paid search on Google affects

6 6 sales made through the mobile app?

7 [REDACTED]

8 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] On a mobile device, the Shopping ads and

13 13 the text ads have a more prominent position -- when

14 14 I say prominent position, they take up more of the

15 10:16 15 surface that you can actually see. And the organic

16 16 results show up further below, and often we refer to

17 17 it as below the fold, off the immediate results you

18 18 see.

19 19 So the hypothesis is that as a result of

20 10:17 20 that, [REDACTED]

[REDACTED]

[REDACTED]

23 [REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

4 I just want to make sure I understand what  
10:17 5 the relationship is between using the free results  
6 to which you have just referred and purchase on the  
7 mobile app, which is reflected in this table.

8 A. So both the free results and the paid  
9 results will take a customer from a Google search  
10:18 10 results page into the mobile app.

[REDACTED]



1

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4

4 Q. On line 436 there's a sentence, "Though" --

5

10:20 5 I'll give you a second. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

9

9 Do you see that?

10

10:20 10 A. Yes.

11

11 Q. What does that mean?

12

12 A. So using Pinnacle Prime customers as an

13

13 example, which is the example used within this

14

14 paragraph, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

20

10:21 20 Q. And there's -- is there any reasoning

21

21 available to Amazon as to why that might be true?

22

22 A. The notion is that where we have, you know,

23

23 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]

6 Mr. James, during the period of the  
7 pandemic, particularly in 2020, there were times  
8 when Amazon ceased advertising -- ceased purchasing  
9 search advertising on Google; is that correct?

10:22 10 A. That is correct, yes.

11 Q. And those were certainly not planned  
12 experiments of the type we've been discussing;  
13 correct?

14 A. That's correct.

10:22 15 Q. Did Amazon reach any conclusions from those  
16 experiences related to the pandemic that reflect on  
17 its reliance on Google?

18 MR. LIPTON: Objection to form.

19 THE WITNESS: As we were restarting our  
10:23 20 paid search activities following the pandemic  
21 shutdown in 2020, we did look at our willingness to  
22 restart advertising on Google in the United States.

23 [REDACTED]  
[REDACTED]  
[REDACTED]

1 BY MR. SALLET:

2 Q. And why -- what was the basis for that

3 conclusion?

4 A. The basis for that conclusion is the

5 10:23 5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 10:24 10 Q. Mr. James, we have been talking about

11 11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 16 Q. I asked you a question a few minutes ago

17 17 and you referred to free search. So let me go back

18 18 to that, if I might.

19 19 In your judgment, could Amazon use free

20 10:24 20 search on Google and forego purchasing Search ads on

21 21 Google?

22 22 A. We could rely on free search exclusively

23 23 and not purchase ads on Google. We've made the

24 24 decision to continue to purchase ads on Google based

25 10:24 25 off of the business fundamentals, the return on

1 1 investment that we see through the advertising

2 2 program.

3 [REDACTED]

6 6 Q. So you'll see on line 495 there's a -- the

7 7 words "Free Search Recovery."

8 8 A. Okay.

9 9 Q. And on line 497 there's a sentence that

10:26 10 begins at the end of the line, referring to free

11 11 search recovery, it says, (As Read:) "It measures

12 12 the percentage of the lost paid search converting

13 13 transits picked up by the free search channel."

14 14 Is that correct?

10:26 15 A. That is correct, yes.

16 [REDACTED]

22 22 On line 508, a sentence begins near the end

23 23 of the line, [REDACTED]

[REDACTED]

10:27 25 Do you see that?

1 1 A. I do, yes.

2 2 Q. And the next sentence, (As Read:) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

6 6 Do you see that?

7 7 A. I do, yes.

8 8 Q. What is the import of this [REDACTED]

9 9 recovery number to Amazon?

10:27 10 A. So the implication of what is stated in

11 11 this document is that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

10:27 15 The implications here are that we need to

16 16 think about the return on investment at a combined

17 17 total search level to account for the fact that

18 18 we're paying for some volume of traffic and transits

19 19 that we could otherwise get for free.

10:28 [REDACTED]

[REDACTED]

[REDACTED]

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21

21 You do purchase -- Amazon does purchase

22

22 Bing search advertising; is that correct?

23

23 A. That is correct, yes.

24

[REDACTED]

[REDACTED]



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[REDACTED]

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17 Q. Can you imagine that Amazon would decide to

18

18 purchase all of its search advertising from Bing

19

19 only?

[REDACTED]

[REDACTED]

21

21 THE WITNESS: Given our strategic approach,

22

22 our strategy for marketing investments, we would

23

23 invest in any marketing channel where we see that it

24

24 actually meets our return on investment objective.

25

10:35 25 So we would not, under the current circumstances,

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1 exclusively purchase our ads from Bing.

[REDACTED]

17 When Amazon purchases Google Search ads,  
18 does it use an advertising tool like SA 360 or  
19 Kenshoo or Marin?

10:36 20 A. We do not, no.

[REDACTED]

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17 Q. Do -- in your experience do other retailers

18

18 bid on Amazon's brand keyword?

19

19 A. In my history we have seen examples where

20

10:41 20 other retailers have bid on the Amazon brand, yes.

21

21 Q. And do you have any hypothesis as to why

22

22 those advertisers are buying ads when someone enters

23

23 the Amazon brand as a search?

24

24 MR. LIPTON: Objection to form.

25

10:41 25 Foundation.

1 THE WITNESS: I can't speak to the specific  
 2 motives of advertisers bidding on the Amazon brand  
 3 in the circumstances that I have witnessed. There  
 4 is a practice in marketing referred to as  
 10:41 5 conquering, which is effectively doing exactly  
 6 that. It is looking to try and capitalize on the  
 7 knowledge of one retailer in order to bring traffic  
 8 to your own store.

9 BY MR. SALLET:

10:41 10 Q. And is the hypothesis that even though a  
 11 user has entered in the retailer brand, the user  
 12 might nonetheless navigate to a different retailer?

13 MR. LIPTON: Objection to form.

14 THE WITNESS: So in the practice of  
 10:42 15 conquering, that is the intent.

16 [REDACTED]  
 17 [REDACTED]  
 18 We talked about cost per click I believe in  
 19 terms of text ads earlier. On what basis does  
 10:42 20 Amazon purchase Shopping ads?

21 A. Shopping ads are still charged based off of  
 22 a cost per click.

23 [REDACTED]  
 [REDACTED]  
 [REDACTED]

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[REDACTED]

7 Q. We've talked about your team a little bit,  
8 and I just want to ask a question here. Is there a  
9 specific team that focuses within your unit on just  
10:43 10 search advertising as we've discussed it?

11 A. So within my organization there is a team  
12 referred to as search marketing that is responsible  
13 for both the paid search, as well as the free search  
14 activities.

10:43 [REDACTED]

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[Redacted text block containing multiple lines of blacked-out content]



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[REDACTED]

[REDACTED]

3 Q. Mr. James, you said earlier that there were  
4 no plans to conduct another [REDACTED].

10:57 5 Do I have that right?

6 A. That is correct, yes.

7 Q. Is there any particular reason why that is  
8 the current state of affairs?

9 A. There's no specific reason. I think we've  
10:58 10 done the [REDACTED] for a few years  
11 now, a number of years now, and I think we've gotten  
12 to a place where we feel like -- when I say "we,"  
13 you know, my leadership team feels that we have it  
14 well in hand and they have less of a need to do  
15:58 15 repeated inspections.

16 Q. Thank you.

17 So I'd like to talk about some of the  
18 different places on Google or Amazon that we have  
19 referred to before. We talked about the Google  
20:58 20 Shopping property, if you recall. Am I correct that  
21 the Google Shopping property shows a variety of  
22 retailers from which a user can make a purchase? Is  
23 that correct?

24 A. That is correct, yes.

10:58 25 Q. So, for example, Walmart or Wayfair or

1 1 Home Depot, those kinds of retailers could show up

2 2 in the Google Shopping property?

3 3 A. That is correct, yes.

4 4 Q. So in some sense the Goggle Shopping

5 10:59 5 property offers a chance to choose from among

6 6 retailers; is that fair?

7 7 A. That is correct, yes.

8 8 Q. Is it fair to think that being on the

9 9 Amazon Marketplace, however, is like walking down

10 10:59 10 the aisles of a particular retail store?

11 11 MR. LIPTON: Objection to form.

12 12 THE WITNESS: In some sense, the

13 13 multi-offer buy box experience at a detail page on

14 14 Amazon represents a single offer for a given product

15 10:59 15 available by one seller; however, there are features

16 16 available within the detail page to allow a shopper

17 17 to look at multiple offers from various retailers --

18 18 or various sellers.

19 [REDACTED]

[REDACTED]

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11:01 20 Q. Would Walmart show up as among one of those

21

21 sellers on an Amazon page?

22

22 A. To my knowledge today Walmart is not a

23

23 seller on amazon.com.

24

24 Q. Would Home Depot?

25

11:01 25 A. I don't believe Home Depot would show up in

1 1 Amazon as a seller.

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 9 Q. If one is in a Google Shopping property and  
10 11:02 10 there are multiple retailers, and one clicks on the  
11 11 retailer, then one goes to a site operated by the  
12 12 retailer; is that correct?

13 13 A. That is one of the experiences, yes.

14 14 Q. If one is on Amazon and I click on one of a  
15 11:02 15 couple different offers on brown shoes, I don't go  
16 16 to an external page, I go to an Amazon page, the  
17 17 kind of detail page to which you just referred; is  
18 18 that correct?

19 19 A. That is correct, yes.

20 11:02 20 Q. When a user enters a search query on Google  
21 21 and comes to the search results page, the user has  
22 22 to take an additional step to reach the Google  
23 23 Shopping property; is that correct? For example,  
24 24 clicking on the Google Shopping tab?

25 11:02 25 A. That is correct, yes.

1 1 Q. And when that -- if I were to go into the  
2 2 Google Shopping property, there would be an option  
3 3 to buy on Google for some products; is that correct?

4 4 A. That is my understanding today, yes.

5 11:03 5 Q. And if I wanted to do that, I have to take  
6 6 one additional step to find the products that are  
7 7 eligible to buy on Google; is that correct?

8 8 A. I can't say with confidence what the  
9 9 current user experience is on Google that allows for  
10 11:03 10 a purchase to occur on Google Shopping property.

11 11 Q. So if Amazon buys a text ad on Google and a  
12 12 user clicks on the text ad, the user goes to an  
13 13 Amazon site; is that correct?

14 14 A. That is correct, yes.

15 11:03 15 Q. And is that known in the industry as a  
16 16 click-out ad?

17 17 A. I don't actually know how the industry  
18 18 would define that.

19 19 Q. Okay. In your experience, clicking on a  
20 11:04 20 Google text ad takes one to a third-party website;  
21 21 is that correct?

22 22 A. Clicking on -- clicking on a Google text ad  
23 23 would take the user to the advertiser's website.

24 24 Q. Is that also true for a Google Shopping ad?

25 11:04 25 A. So that is true for Shopping ads -- to my



1 1 knowledge, that is true for Shopping ads where they  
2 2 are not integrated with a Google Checkout  
3 3 experience.

4 4 Q. And when -- to your knowledge, if a user is  
5 11:04 5 on Amazon and clicks on an Amazon-sponsored products  
6 6 ad, the user would not go to an external website; is  
7 7 that correct?

8 8 A. To my knowledge, that's correct.

9 9 Q. In your experience is it correct that  
10 11:05 10 there's no particular eligibility requirement for  
11 11 buying a Google Search text ad?

12 12 A. Can you define what you mean by eligibility  
13 13 requirement?

14 14 Q. Sure.

15 11:05 15 On Amazon, to buy an Amazon-sponsored  
16 16 product ad, does a business have to be selling on  
17 17 Amazon?

18 18 A. So I'm not an expert on the Amazon Ads  
19 19 experience and the requirements there, but to my  
20 11:05 20 knowledge, an Amazon-sponsored product ad would  
21 21 require the seller to be selling -- or the  
22 22 advertiser, pardon me, to be selling that product on  
23 23 Amazon.

24 24 Q. To your knowledge, to buy a Google Search  
25 11:05 25 text ad must it have engaged in any other

1 1 relationship with Google having to do with the sale

2 2 of its products on Google?

3 3 A. No, there is no further requirement.

4 4 Q. In terms of the kind of searches that are

5 11:06 5 conducted, is it your understanding that when a user

6 6 conducts a search query on Amazon, the user's intent

7 7 is focused on commercial transactions?

8 8 MR. LIPTON: Objection to form.

9 9 THE WITNESS: My expectation is that when a

10 11:06 10 person is shopping on Amazon and conducts a search

11 11 on Amazon, that they are more interested in making a

12 12 retail purchase on the Amazon store and therefore

13 13 their query would be more formulated towards

14 14 purchase intent.

15 11:07 15 BY MR. SALLET:

16 16 Q. And are the responses restricted to

17 17 merchants that are selling on Amazon?

18 18 A. Are the responses to the queries that

19 19 they're -- yes. The -- so when a user does a search

20 11:07 20 on Amazon, the results that they see will be

21 21 restricted to the -- the product results they see

22 22 will be restricted to the products that are

23 23 available for sale on Amazon.

24 24 Q. Does Amazon crawl and index the Worldwide

25 11:07 25 Web to be able to answer queries on its site?

1 1 A. To my knowledge we do not have a -- as part  
2 2 of the amazon.com retail store have any crawling of  
3 3 the broader Worldwide Web.

4 4 Q. We talked before about the fact that Amazon  
5 11:07 5 buys text ads and Shopping ads. Are there -- do you  
6 6 have experience with Amazon text ads appearing on a  
7 7 Google results page when the Shopping ads do not  
8 8 appear?

9 9 A. There are -- if -- yes, there are  
10 11:08 10 circumstances in which a search query on Google  
11 11 results in a text ad being displayed where no Amazon  
12 12 Shopping ad is displayed.

13 13 Q. And can you give an example of why that  
14 14 might be the case? Excuse me.  
15 11:08 15 Can you example of when that might be the  
16 16 case?

17 17 A. If a user conducted a search for a product  
18 18 that we didn't include, or a product family that we  
19 19 didn't include in our participation in Shopping ads,  
20 11:08 20 Google may deem that the search query is not  
21 21 relevant for any of the products that we would offer  
22 22 as within our ad catalog and therefore only show a  
23 23 text ad.

24 24 Q. Could that occur if someone, for example,  
25 11:09 25 entered in a search on Google looking for a weather



1           1    forecast, might Google serve up an ad for umbrellas,

2           2    for example?

3           3    A.   That is a possible use case, yes.

4           [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

18          18    Q.   In general, when you look at auctions do

19          19    you see you're competing against companies like

20          11:10 20    Target or Walmart or Best Buy? Do you have some

21          21    sense of what companies tend to bid on these

22          22    commercial keywords?

23          23    A.   Anecdotally, but when I have done, you

24          24    know, example queries on my own, I have certainly

25          11:10 25    seen, you know, other large U.S. retailers showing

1 up prominently in the search results.

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 Q. When Amazon purchases a Google text ad, how  
7 are the terms of sale created?

8 A. I'm sorry. I'm not under -- I don't  
9 understand the definition of "terms of sale" here.

10 11:11 10 Q. Sure.

11 There are mechanisms by which you -- I'm  
12 going to just use text as an example. You explained  
13 before that the bidding is different for Shopping,  
14 but you submit a bid, there's an auction run, there  
15 11:11 15 is a process, for example, the second highest bid  
16 plus one penny might be deemed the winning bid.

17 Do you negotiate with Google about the  
18 terms of those auctions?

19 A. We don't negotiate with Google with respect  
20 11:11 20 to the terms of the auction, no.

21 Q. So would it be fair to say that Google sets  
22 the terms for the sale of its search advertising, in  
23 your experience?

24 A. In my experience, the terms of the auction  
25 11:12 25 and the terms of the -- you know, the relevance of

1 1 the ads are consistent across advertisers, and that

2 2 Google would be in control of setting those terms.

3 3 Q. And that would be true for both Shopping

4 4 ads and Search text ads?

5 11:12 5 A. That is correct, yes.

6 [REDACTED]

[REDACTED]

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7 7 Q. So, Mr. James, one of the things that you  
8 8 had mentioned previously, you were asked about the  
9 9 organization of your team, and you said that within  
10 11:15 10 the search marketing division it's divided into paid  
11 11 search and free search.

12 12 Do you remember that?

13 13 A. Yes.

14 14 Q. Within paid search are there different --  
15 11:16 15 are there subgroups or teams that focus on different  
16 16 types of paid search?

17 17 A. In the paid search organization we have  
18 18 certain product managers and subteams of software  
19 19 engineers that are responsible for specific areas of  
20 11:16 20 the paid search activity.

21 21 In other areas we have teams that are  
22 22 responsible for what I would refer to as shared  
23 23 services that support both text ads and Shopping  
24 24 ads.

25 11:16 25 Q. Okay. Within paid search can you tell me

1 1 about the different subgroups that -- you said that  
2 2 were responsible for different types? Could you  
3 3 identify those?

4 4 A. So within the paid search organization we  
5 11:16 5 have an organization that is an applied science  
6 6 organization that's probably [REDACTED]  
7 [REDACTED] that are responsible for thinking about  
8 8 our optimization strategy, and that is using [REDACTED]  
9 [REDACTED] and other statistical models to help drive  
10 11:17 10 either the optimization or our methods for  
11 11 experimentation.

12 12 We have a group that is responsible for the  
13 13 text ad program. And that is the, you know,  
14 14 sourcing of information, from pulling in inputs from  
15 11:17 15 the retail website in order to create new text ads,  
16 16 and to then, you know, create all of the necessary  
17 17 entities that would be -- that would be synced or  
18 18 called by the APIs in order to create those objects  
19 19 on the Google ads -- within Google ads for  
20 11:17 20 targeting.

21 21 We have a team that is responsible for  
22 22 bidding, so software engineering team, that  
23 23 leverages the models that are generated from the  
24 24 applied science team in order to apply, you know,  
25 11:18 25 different bids to optimize for bids both in text and



1 1 Shopping for the shared organization.

2 2 We have an organization -- when I say

3 3 organization, pardon me -- a team of software

4 4 engineers that is responsible for the Shopping ads

5 11:18 5 component of our business, which is about, you know,

6 6 pulling the right information, the attributes of our

7 7 products, determining what subset of our catalog

8 8 would be advertised on in Shopping ads with Google,

9 9 and making sure that the proper APIs are called to

10 11:18 10 keep that information up to date.

11 11 Without an org chart in front of me, I

12 12 think I've covered them. I may have missed

13 13 something.

14 [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

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1 1 Does Amazon buy text ads from both Google  
 2 2 and Bing? I believe I know the answer based on your  
 3 3 testimony so far, but just to confirm.

4 4 A. Yes, Amazon buys text ads from both Google  
 5 11:19 5 and from Microsoft ads.

6 6 Q. Does Amazon buy text ads from any other  
 7 7 search engines?

8 8 A. We buy text ads with Yahoo! JAP in Japan.

9 9 Q. Okay. Any others?

10 11:20 10 A. That's the extent of it.

11 11 Q. What about Shopping ads? I understand from  
 12 12 your testimony that Amazon buys Shopping ads from  
 13 13 Google and from Bing; is that right?

14 14 A. That is correct, yes.

15 11:20 15 Q. Does Amazon buy Shopping ads from any other  
 16 16 search engine?

17 17 A. We do not, no.

18 [REDACTED]

[REDACTED]

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1 [REDACTED]

2 Q. With respect to spending on search ads, do

3 you know what Amazon's relative spend is as between,

4 let's say, search ads and social ads?

11:21 5 A. I don't have the specific data in front of

6 me to answer that with clarity.

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

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21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

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3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 7 Q. And why do you see the efficiency as being

8 8 lower on social -- for social ads such as on

9 9 Facebook?

10 11:23 10 A. I can't say with certainty exactly what

11 11 drives that behavior.

12 12 Q. Do you have -- even if it's not with

13 13 certainty, do you have a sense of what the factors

14 14 may be?

15 11:23 15 A. There is a number of different possible

16 16 driving factors. One of those is that on Facebook

17 17 the targeting is done in a different way. That is,

18 18 it is more creating an ad which is really more

19 19 focused around the graphic nature of the products

20 11:23 20 and that it is determined by Facebook as to whether

21 21 or not that ad is relevant for the user. But it is

22 22 not driven by a query, per se.

23 23 Q. Okay.

24 24 A. So we -- the other -- another factor would

25 11:23 25 be that there is what is referred to as view-through

1 1 effects that are difficult for us to measure.  
2 2 Meaning that a user who is on Facebook might see a  
3 3 Facebook ad but may not be inclined to click on it,  
4 4 but it may actually trigger some form of purchase  
5 11:24 5 consideration or brand awareness with Amazon that  
6 6 causes them to make a purchase with Amazon at a  
7 7 later date, which makes it difficult for us to  
8 8 measure the effects of the advertising program which  
9 9 subsequently may drive down our perceived efficiency  
10 11:24 10 of those relative to Google.

11 11 Q. All right. With respect to -- I had asked  
12 12 about the relative spend between search ads and  
13 13 social ads. How about the relative spend between  
14 14 text ads and Shopping ads?

15 [REDACTED]  
[REDACTED]  
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8 [REDACTED]

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[REDACTED]

[REDACTED]

15 11:26 15 Q. You were mentioning about -- so if you look

16 16 at the ROI that Amazon may get on text ads versus

17 17 the ROI that Amazon may get on Shopping ads, has

18 18 Amazon ever made decisions on -- with respect to its

19 19 ad spend based on those relative ROIs? For example,

20 11:26 20 to spend more on one and less on the other or vice

21 21 versa.

22 22 A. So we have not made decisions on, you know,

23 23 basing spend on text ads in order to support spend

24 24 on Shopping ads or vice versa.

25 11:27 25 [REDACTED]

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]

11 11 You had referenced earlier about intent in  
12 12 advertising. Would it be fair to say that search  
13 13 intent is the most powerful signal, advertising  
14 14 signal?

15 11:27 15 A. I would not -- I don't know for a fact that  
16 16 search intent is the most powerful signal in  
17 17 advertising.

18 18 Q. Do you view intent as an important signal  
19 19 in advertising?

20 11:28 20 A. With respect to the search ads program,  
21 21 text ads and Shopping ads, intent is an important  
22 22 signal in terms of what that would lead to from a  
23 23 conversion perspective. A user who is searching for  
24 24 the Dyson DC65 vacuum is probably very interested in  
25 11:28 25 purchasing that specific model of vacuum. So, yes,



1 1 it is an important signal in terms of the conversion  
2 2 probability.

3 3 Q. Are there other signals that you think  
4 4 are -- how is -- how important is intent relative to  
5 11:28 5 other advertising signals?

6 6 A. I don't actually have metrics or statistics  
7 7 that I can offer in terms of giving that relative  
8 8 importance.

9 9 Q. Is it correct to say or am I understanding  
10 11:29 10 you correctly to say that search is an important  
11 11 advertising signal -- I'm sorry -- search intent is  
12 12 an important advertising signal?

13 13 A. I believe that in the context of search  
14 14 advertising that the intent of the user at the time  
15 11:29 15 of the search is important in terms of the ad  
16 16 performance, yes.

17 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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2

[REDACTED]

3

3 Q. Would there be [REDACTED]

4

[REDACTED]

5

[REDACTED]

6

[REDACTED]

7

[REDACTED]

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[REDACTED]

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[REDACTED]

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17

[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

23

23 Q. Do you have a sense of -- are you able to

24

24 quantify those consequences at all or do you know of

25

11:31 25 a document that would -- that does quantify those



1

1 consequences?

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25

11:34 25 Q. All right. I'm going to ask you a very

1 1 similar question with respect to text ads now.

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 6 Q. Okay.

7 7 A. It is about, you know, the return on

8 8 investment, the revenue, profitability and, you

9 9 know, customer -- long-term customer benefits.

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 13 How feasible would it be for Amazon to

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 17 THE WITNESS: Can you clarify what you mean

18 18 by "feasible"?

19 19 BY MS. MADDOX:

20 11:35 20 Q. Sure.

21 21 How -- I'm trying to get a sense of is that

22 22 a -- for lack of a better phrasing, how -- what

23 23 would be the appetite for something like that? Is

24 24 it something where the negative consequences that

25 11:36 25 you've identified, is that something where it leads

1 to, from a business perspective, that's a hard no?

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 14 The decision as to whether we would, you

15 11:36 15 know, make a decision to stop or not today is

16 16 entirely hinged on that return on investment. If

17 17 that strategy were to change, then perhaps the

18 18 answer would be different.

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 22 Do you consider purchasing search

23 23 advertising on Google to be a must-have for Amazon?

24 [REDACTED]

25 11:37 25 THE WITNESS: I don't believe that there is

1 1 any -- let me restate.

2 2 I -- there is no requirement that we buy

3 3 ads on Google. There is commercial benefit in us

4 4 buying ads on Google. So there is no necessity in

11:38 5 5 us to continue to do that.

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 12 Looking at social ads versus search ads, so

13 13 am I correct that on search ads you're bidding on

14 14 search queries as opposed to customers?

11:39 15 15 A. In text ads we bid on search queries, yes,

16 16 versus customers.

17 17 Q. Okay. And then I believe you said when it

18 18 comes to social ads that it's not a bidding process,

19 19 it's more Facebook is deciding who that it

11:39 20 20 targets -- who it targets the social ad to.

21 [REDACTED]

22 22 THE WITNESS: So with Facebook ads there is

23 23 still a bid. We're bidding at the ad campaign

24 24 level. And the place with the targeting is

11:39 25 25 determined largely by Facebook.

1           1           We can have some influence over that by

2           2           determining which customers -- when I say

3           3           "customers," customer interests that customer may --

4           4           you know, the user may be interested in, but we

5           11:39 5          don't bid on specific searches.

6           [REDACTED]

7           [REDACTED]

8           [REDACTED]

9           [REDACTED]

10          [REDACTED]

11          [REDACTED]

12          [REDACTED]

13          [REDACTED]

14          [REDACTED]

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10 12:20 10 So I wanted to talk a little bit about the  
11 11 differences between text ads and Shopping ads. I  
12 12 know we've touched on various aspects of that  
13 13 already today. I wanted to get into some more  
14 14 particulars.

15 12:20 15 In a Shopping ad, is Amazon able to include  
16 16 information such as pricing and shipping  
17 17 information, shipping cost?

18 18 A. Yes.

19 19 Q. Is Amazon able to automatically update the  
20 12:20 20 price that is shown in a Shopping ad for a given  
21 21 product?

22 22 A. So the way in which we update the price for  
23 23 a product on a given Shopping ad is through an API  
24 24 call that we make to the Google Merchant Center. In  
25 12:21 25 terms of the, quote, unquote, realtime nature of

1 [REDACTED] 1 that, it is all dependent upon, you know, the

2 [REDACTED] 2 latencies within the various systems that are

3 [REDACTED] 3 integrated there.

4 [REDACTED] 4 Q. Okay. So is it correct to understand that

5 [REDACTED] 5 if say you have a product, we'll just say the widget

6 [REDACTED] 6 that you have a Shopping ad for, and there's a price

7 [REDACTED] 7 associated with it, if Amazon wants to update the

8 [REDACTED] 8 price for that widget in a Shopping ad, you can do

9 [REDACTED] 9 so -- you go into the API or use the API to send

10 [REDACTED] 10 that information to Google, and then it works its

11 [REDACTED] 11 way through the system and updates in the actual ad

12 [REDACTED] 12 itself?

13 [REDACTED] 13 A. That's correct, yes.

14 [REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

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12:25 15 Q. Okay. How about for shipping cost? Is

16

16 there a similar mechanism or does it work similarly

17

17 for updating the shipping cost?

18

18 A. There is a similar mechanism whereby we

19

19 call an API in order to update the shipping cost for

20

12:26 20 a given product, yes.

21

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

25

12:26 25 Mr. James just wanted to correct one answer

1 1 from earlier today. So, Mr. James, please go ahead.

2 2 THE WITNESS: When we were reviewing and

3 3 discussing the [REDACTED]

4 4 document, a question was asked around the definition

5 12:26 5 of the Merchant Carousel. I had stated at the time

6 6 that it was the shopping ads listings at the top of

7 7 the search results page. I just wanted to correct

8 8 that statement.

9 9 That was thinking of the shopping ads

10 12:26 10 Carousel, not the actual Merchant Carousel. The

11 11 Merchant Carousel itself is actually an ad format,

12 12 as is documented in this paragraph.

13 [REDACTED]

24 24 Q. With regard to text ads, is Amazon also

25 12:27 25 able to include pricing and shipping cost

1 information in a text ad?

2 A. No. Actually, let me clarify. Within text

3 ads we have fields that we can introduce into the

4 content of the ad itself. There's a title, the

12:28 5 description and other fields. There's no specific

6 field for shipping cost or pricing, and therefore we

7 don't introduce that to those -- to those ad views.

8 [REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

4 With respect to shopping ads, do those  
12:29 5 allow a user to compare the prices of different  
6 products?  
7 A. So through our use of shopping ads we are  
8 participating in the Google Shopping property. On  
9 the Google Shopping property there is the  
12:30 10 opportunity for users on Google to see a number of  
11 different products that would be relevant for their  
12 search query that may then have, you know, similar  
13 products side by side with different pricing  
14 available -- pricing on those items which then would  
12:30 15 allow for them to do some comparison shopping.  
16 On the search results page, similarly, if  
17 the products that are displayed are similar enough  
18 in nature, then the customer, even within the Google  
19 Search experience, could look at those products and  
12:30 20 do some price comparison, yes.  
21 Q. How about with respect to text ads? Are  
22 customers able to look at text ads and perform a  
23 similar comparison?  
24 A. I would argue that they cannot. Text ads  
12:31 25 are really more descriptive links. There's no

1 pricing information that is generally included  
2 there, so I wouldn't think of that as a great place  
3 to compare different products or different offers.

4 Q. Is there -- I'd like to talk about the  
5 number of ads that are permitted on a page per  
6 advertiser, because we were talking about how you  
7 can have multiple shopping ads or Amazon could have  
8 multiple shopping ads. Is there -- how does that  
9 compare with respect to text ads? Is Amazon able to  
10 have multiple text ads on a search result page?

11 A. Unless Google's policies have changed  
12 recently, no. I mean, a single advertiser is able  
13 to have a single text ad in the -- in any given  
14 search query.

15 Q. Is there -- and I take it there's no  
16 similar limit with respect to shopping ads?

17 A. To my knowledge there is no predefined  
18 limit in terms of the number of shopping ads that  
19 could be introduced by an advertiser into the  
20 shopping ads Carousel, the results. I think it  
21 would be capped based off of the total number of  
22 offers that are -- that are returned as a result of  
23 the query.

24 [REDACTED]



1 MS. MADDOX: Of course.

2 And while you're doing that, I'll state for

3 the record that Exhibit 6 is the document at the top

4 titled [REDACTED] bearing a date

12:33 5 of [REDACTED]

6 BY MS. MADDOX:

7 Q. And to the extent it's helpful, Mr. James,

8 I'm going to be focusing on the first paragraph of

9 the first page.

10 12:34 10 A. Okay.

11 Q. All right. Focusing on, as I said, the

12 first paragraph of the first page, lines 10 to 11,

13 there's a sentence there, "Google increasingly uses

14 shopping ads to enable customers' shopping journey,

15 12:35 15 [REDACTED]

16 [REDACTED] [REDACTED] [REDACTED]

17 Do you see that?

18 A. I do, yes.

19 Q. Yes. And I'm going to back up for a

20 12:35 20 moment.

21 Do you recognize this document?

22 A. I do recognize this document, yes.

23 Q. And how do you recognize this document?

24 A. This document would have been produced by

25 12:35 25 my team with my participation and leadership [REDACTED]

1

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4

4 Q. And going back to lines 10 to 11 where it

5

12:36 5 starts, the sentence, "Google increasingly uses

6

6 shopping ads," [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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12:38 20 Q. Can you give some examples of when you  
21 might purchase text ads over shopping ads for a  
22 given product?  
23 A. So we don't choose to purchase text ads  
24 over shopping ads for a given product. We don't buy  
12:38 25 text ads with -- you know, with a specific product

1 1 in mind. In general, our systems are looking to try  
2 2 and identify queries that we believe have retail  
3 3 intent through our monitoring of, you know, searches  
4 4 that are taking place on Amazon to understand, you  
5 12:39 5 know, what search query from a product perspective  
6 6 is leading to a conversion.

7 7 So I'm not sure that I can answer that  
8 8 question the way it's been asked.

9 9 Q. Okay. So am I understanding that it sounds  
10 12:39 10 like whereas for product listing ads, you've  
11 11 identified product categories for which you would --  
12 12 my apologies, shopping ads.

13 13 You've identified particular products,  
14 14 product categories for which you would purchase  
15 12:39 15 shopping ads, but you're not necessarily looking at  
16 16 buying text ads for particular products or product  
17 17 categories?

18 18 A. The nature of how we actually select the  
19 19 products that are included in our shopping ads goes  
20 12:40 20 beyond specifically a product category; however, in  
21 21 general, yes, our use of text ads is not  
22 22 specifically targeted to a given category.

23 23 Q. Is it possible that there are some queries  
24 24 for which both an Amazon text ad and an Amazon  
25 12:40 25 shopping ad would show?

1 1 A. Yes.

2 2 Q. And it sounds like from your testimony that  
3 3 the ads would -- do they serve different purposes?

4 4 A. So there is an intersection of the purposes  
5 12:40 5 that they serve. I'll give you an example. If a  
6 6 user was on Google and performed the search "robotic  
7 7 vacuum," Amazon's text ad might trigger for that  
8 8 query when the text ad is targeting vacuums. So  
9 9 that text ad may be more broadly focused.

10 12:41 10 Whereas the shopping ad may trigger only  
11 11 for, let's use, "Roomba robotic vacuums" due to the  
12 12 specificity of the product and the relevance to the  
13 13 individual query.

14 14 If Amazon didn't have that text ad or if  
15 12:41 15 the query was such that it was not relevant or  
16 16 targeted to the query that was entered, it's still  
17 17 possible that a shopping ad -- a product might be  
18 18 relevant for that product and therefore be  
19 19 triggered.

20 12:41 20 Q. Is it fair to say in your example that the  
21 21 text ad and the product ad -- or shopping ad  
22 22 complement one another?

23 [REDACTED]  
24 24 THE WITNESS: Can you just define what you  
25 12:41 25 mean by "complement" in this case?

1 BY MS. MADDOX:

2 Q. The way you had described them, they  
 3 were -- it sounded like they were serving different  
 4 purposes but complementary purposes.

5 12:42 5 A. I think that's a fair statement, yes.

6 Q. I would like to talk a little bit, shift  
 7 gears here a little bit, and talk about some of the  
 8 [REDACTED] that you've referenced today,  
 9 and specifically some of the bidding system tools.

10 12: [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
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 [REDACTED]  
 [REDACTED]

20 12:43 20 A. That's correct, yeah.

21 MS. MADDOX: I'd like to mark the next  
 22 exhibit. And for the record this is going to be  
 23 Bates numbered AMZN-SEARCH-000089805. And this'll  
 24 be Exhibit 7.  
 25 ///

1 [REDACTED] 1 (Exhibit 7 was marked for identification by  
 2 [REDACTED] 2 the Certified Shorthand Reporter, and a  
 3 [REDACTED] 3 copy is attached hereto.)

4 [REDACTED]  
 [REDACTED]  
 [REDACTED]

7 [REDACTED] 7 MS. MADDUX: And while you take a look at  
 8 [REDACTED] 8 that, I'll just note for the record, this document  
 9 [REDACTED] 9 here, Exhibit 7, at the top has a heading March 21  
 10 12:43 10 "MBR: Search & Social Marketing," and is dated --  
 11 [REDACTED] 11 or shows a date April 28, 2021.

12 [REDACTED]  
 [REDACTED]  
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20 12:45 [REDACTED]  
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1 1 So what's referenced here is that following

2 2 the initial launch in 2017, we moved very quickly.

3 3 And in order to move quickly, we used a legacy

4 4 bidding system. That legacy bidding system was --

5 12:47 5 did not have a lot of the benefits that we had even

6 6 built out for our core text ad program through [REDACTED]

7 [REDACTED]

8 [REDACTED] And so it was very much

9 9 old and needed replacement even at the time of

10 12:47 10 launch.

11 11 Beyond that, the text ads bidding is

12 12 leveraged -- doesn't have access to -- let me use it

13 13 in a different way.

14 14 You know, text ads don't have the

15 12:48 15 attributes that you would think of with respect to

16 16 product. So a bidder that is, for example,

17 17 leveraging information to come up to derive -- to

18 18 predict the value that we were likely to see on a

19 19 shopping ads bid is going to benefit from its

20 12:48 20 knowledge of the category, the product relationship

21 21 to other products, for example, variants of that

22 22 product and how those products may have converted.

23 23 As a result, the sparsity of information

24 24 that is within the text ad bidder versus what could

25 12:48 25 be made available through the shopping ads bidder

1 [REDACTED] 1 gave us the perception, the belief that investing in  
2 [REDACTED] 2 a bespoke bidding solution for shopping ads would  
3 [REDACTED] 3 pay dividends.

4 [REDACTED] 4 Q. It sounds like the -- there were sufficient  
5 12:49 [REDACTED] 5 differences between what you -- the inputs for a  
6 [REDACTED] 6 text ad versus the inputs for a shopping ad that it  
7 [REDACTED] 7 warranted having two systems, each of which could be  
8 [REDACTED] 8 tailored to the respective ad. Is that fair?

9 [REDACTED] 9 A. That was one of the motivating factors,  
10 12:49 [REDACTED] 10 yes.

11 [REDACTED] 11 Q. What were the other -- what were some of  
12 [REDACTED] 12 the other motivating factors?

13 [REDACTED] 13 A. Well, as I indicated, [REDACTED]  
14 [REDACTED] [REDACTED], it was -- our bidding was being done off of  
15 12:49 [REDACTED] 15 a very old bidding solution that needed to be  
16 [REDACTED] 16 replaced.

17 [REDACTED] 17 Q. Understood. All right. And we can go  
18 [REDACTED] 18 ahead and set that document aside.

19 [REDACTED] 19 I'd like to talk a little bit now about  
20 12:49 [REDACTED] 20 the -- Google's ad auction for text ads. In your  
21 [REDACTED] 21 understanding, how does Google's text ad auction  
22 [REDACTED] 22 work?

23 [REDACTED] 23 A. So my understanding is that the Google text  
24 [REDACTED] 24 ad auction is a modified second-price auction. The  
25 12:50 [REDACTED] 25 auction itself, it contemplates -- it looks at the



1           1    various ads that a given advertiser has within their  
2           2    ad portfolio to determine which ads, which text ads  
3           3    are relevant for a given query. That takes  
4           4    dimensions such as geographic targeting, the query  
5 12:50 5    relevance based off of the text ad targeting itself,  
6           6    and some other features that allow for some  
7           7    constraints to be applied.

8           8            It then selects the one it believes would  
9           9    be the most relevant from that advertiser and then  
10 12:50 10   enters that ad into the auction. Only a single ad  
11           11   would be entered into the auction for text ads.

12           12           When it evaluates the value -- sorry --  
13           13   where -- what position to give that text ad or to  
14           14   include it at all, it looks at the ad history of  
15 12:51 15   that ad, where it then determines, you know, what  
16           16   the probability is that that ad would be clicked on  
17           17   and how the bid then would, you know, factor into  
18           18   the ranking of that ad along with that probability.

19           19           It's with those sort of combined -- the  
20 12:51 20   combined set of metrics or inputs that it then  
21           21   determines the ad rank, and that ad and the rank  
22           22   effectively determines, like, the order in which the  
23           23   ads would actually be displayed on the page and  
24           24   which page they would be present on.

25 12:51 25           And I just want to caveat this by saying

1           1    that the bidding system itself, the black box, we  
2           2    don't have concrete knowledge in terms of how it  
3           3    functions. This is, you know, my understanding  
4           4    based off of what is published and my conversations  
5 12:52 5    with people at Google.

6           6           Q. With respect to -- so you refer to it as a  
7           7    modified second-price auction. Is the -- does the  
8           8    modified piece come in from these other aspects you  
9           9    talked about, the history, the probability of a  
10 12:52 10   click, those factors?

11          11           A. Yes.

12          12           Q. So I think I know the answer based on  
13          13    your -- based on what you said already, but to ask,  
14          14    in your understanding, does the highest bid always  
15 12:52 15   win in the auction?

16          16           A. In my understanding, that is not true.

17          17           Q. Is it -- is there some other -- do you know  
18          18    is there some other quantitative -- a number or  
19          19    anything that determines what gets first versus  
20 12:52 20   second or third?

21          21           A. So I -- again, I don't know specifically as  
22          22    this is a proprietary technology that Google owns  
23          23    and so it is a black box.

24          24           Q. Okay. If you wanted to know the details  
25 12:53 25   about how -- about the text ad auction rules, where

1 1 would you look?

2 2 A. I would start with Google's developer docs

3 3 to look to see, you know, what they, themselves,

4 4 have described. And then beyond that I would be

5 12:53 5 looking to any industry documents that may be

6 6 published around, you know, how search auctions work

7 7 in general. And then the final source of

8 8 information on this is to sit down and have

9 9 conversations with the Google team themselves to ask

10 12:53 10 more detailed questions about how it functions.

11 11 Q. And have you done that, or has Amazon done

12 12 that, to your knowledge?

13 13 A. We have had conversations with the Google

14 14 team and we have looked at the documentation in

15 12:54 15 terms of how it functions, yes.

16 16 Q. And what did you learn from speaking with

17 17 the Google team and looking at the documentation?

18 18 A. I think the sum of my knowledge is

19 19 effectively what I imparted in terms of the history

20 12:54 20 being important in terms of the quality score, if

21 21 you will, that's applied and how, you know, that

22 22 then, along with the bid, determines the ad ranking.

23 23 That's -- that would be the summary of it.

24 24 Q. From your perspective as an advertiser, is

25 12:54 25 there additional information about the text ad

1 1 auction rules that would be helpful to know for

2 2 purposes of optimizing your ad spend?

3 3 A. I think the short answer on this is yes,

4 4 but in terms of the variance of the information that

5 12:55 5 I would like to have, you know, in order to help

6 6 from an optimization perspective, I would need more

7 7 time to think on a detailed answer.

8 8 Q. All right. Is there anything that leaps to

9 9 the top of your mind?

10 12:55 10 A. We discussed earlier around some of the

11 11 metrics, the information that we don't get from

12 12 Google from a reporting perspective. The average

13 13 page rank was a metric that we once upon a time did

14 14 get that is no longer available to us. Those --

15 12:55 15 that as a metric would be helpful for us to continue

16 16 to understand how we're actually, you know,

17 17 positioned in the results in order to think about

18 18 how that can feed into -- feed in as an input into

19 19 our bidding optimization.

20 12:56 20 Q. The metrics regarding average page rank,

21 21 you said it's information you used to get, but no

22 22 longer do. Do you have an understanding of why that

23 23 information is no longer provided?

24 24 A. The -- I don't recall exactly what the

25 12:56 25 justification is that we were given for removal of



1 1 that.

2 2 Q. Did you or to your knowledge did someone  
3 3 else at Amazon request that information continue to  
4 4 be provided?

5 12:56 5 A. It's my understanding that my team was  
6 6 pushing Google back when that decision was being  
7 7 made to continue to retain that.

8 8 Q. Do you know what the response was?

9 9 A. If I recall correctly, the Google team said  
10 12:56 10 that they were replacing that with the absolute top  
11 11 impression metric that they believed was, you know,  
12 12 more beneficial, but we would argue that's not the  
13 13 case.

14 14 Q. Why in your view is it not the case? Is  
15 12:57 15 there something you were able to do before that  
16 16 you're not able to do with this information?

17 17 A. Having the average page rank for an  
18 18 individual ad allows us to understand how, relative  
19 19 to other ads, a given ad is showing up in the search  
20 12:57 20 results and how that trends over time. That would  
21 21 allow us to model out the impacts that our bidding  
22 22 changes have over time on how an ad might score and  
23 23 rank so that we could understand as, for example, an  
24 24 ad moves from position one to position two in the  
25 12:57 25 search results, if we see a higher ROI in position

1 1 two, which is entirely possible, versus being in  
2 2 position one.

3 3 But with the absolute top impression share,  
4 4 we end up with a relative metric in terms of how  
5 12:58 5 often our ad was showing up in the top position, but  
6 6 doesn't give us a strong signal in terms of where it  
7 7 might be otherwise on the page at the time.

8 8 Q. All right. And I take it from what you  
9 9 said just now and before that that has -- that  
10 12:58 10 impacts your ability to optimize. Is that accurate?

11 11 A. That's accurate. Having -- having the  
12 12 average page rank for a given ad can be used as an  
13 13 input into the bidding signals.

14 14 Q. Let's switch a little bit to talk about the  
15 12:58 15 auction for shopping ads. What is your  
16 16 understanding of how the Google auction for shopping  
17 17 ads works?

18 18 A. So my understanding of the shopping ads  
19 19 auction is that it is -- it's very similar to the  
20 12:59 20 text ads auction. The primary difference between  
21 21 the text ads and the shopping ads auction is that  
22 22 the targeting is determined not by the keyword that  
23 23 we supply and the relevance of the keyword and  
24 24 keyword that is the text of the keyword in the query  
25 12:59 25 entered by the user, but rather it is the --

1 1 Google's determination of the query entered and its  
2 2 relevance to the product itself. And how that's  
3 3 done is opaque to us. We don't know.

4 4 Secondly, the -- there is no -- as we  
5 12:59 5 discussed, we're not limited to one ad in shopping  
6 6 ads, which means that any number of products that we  
7 7 put into our shopping ads feed could be relevant  
8 8 based on Google's determination for presentation in  
9 9 the results side.

10 12:59 10 And then the ranking aspects of things to  
11 11 my knowledge follows a similar pattern to the text  
12 12 ads. It looks at the ad history, it looks at the  
13 13 bid, the probability that the ad is going to be  
14 14 clicked on, to -- has inputs into the ranking, the  
15 01:00 15 score that is given from a ranking perspective which  
16 16 determines the ultimate layout.

17 17 Q. You used the word "opaque" to describe, and  
18 18 I know you referenced the text ad auction as being a  
19 19 black box. Is that also true for the shopping ads,  
20 01:00 20 that it's kind of a black box with respect to how it  
21 21 all shakes out?

22 22 A. Yes, I would refer to both auctions as  
23 23 being black boxes to it.

24 24 Q. Are you familiar with the term "quality  
25 01:00 25 score"?



1 1 A. I am familiar with quality score, yes.

2 2 Q. And what is your understanding of quality  
3 3 score?

4 4 A. So quality score is a metric that is  
5 01:00 5 computed by Google and is assigned to an ad. It's a  
6 6 relative score, and it is -- I would call it a loose  
7 7 interpretation of how Google deems the quality of  
8 8 the ad to be. That quality is effectively -- I  
9 9 don't want to call it synonymous, but it is similar  
10 01:01 10 to the history that I was describing.

11 11 Q. With respect to -- have you ever asked  
12 12 Google for additional information on how the quality  
13 13 score is actually calculated?

14 14 A. We've had some conversations with Google  
15 01:01 15 regarding how quality score is calculated. And the  
16 16 result of that conversation is that it's -- you  
17 17 know, they have some special -- they have a  
18 18 mechanism by which they calculate it and they won't  
19 19 share the details with us.

20 01:01 20 Q. It sounds like it's another black box. Is  
21 21 that fair to say?

22 22 A. It is not known to us, yes.

23 23 Q. All right. I'd like to go back and,  
24 24 actually, we're going to go back in time a little  
25 01:02 25 bit to Exhibit 4. And I know it takes a moment to



1 1 load here in the chat.

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

12 12 Q. Mr. James, I'd like to direct your

13 13 attention to page 3 of Exhibit 4. And specifically

14 14 to lines 100 to 102. And the parenthetical here

15 01:03 15 that reads, (As Read:) "In September 2020, Google

16 16 made an abrupt change in the search query reports

17 17 which resulted in the number of unique search

18 18 queries with only [REDACTED]

19 [REDACTED] of the clicks are

20 01:03 20 now being reported as an aggregate, which obfuscates

21 21 the data."

22 22 Do you see that?

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

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[REDACTED]

[REDACTED]

3 THE WITNESS: Okay.

4 BY MS. MADDOX:

01:04 5 Q. I'd like to focus on the first part of that  
6 parenthetical relating to the search query reports.

7 Can you explain a little bit further about what  
8 happened in September 2020 with regard to a change  
9 in the search query reports?

01:05 10 A. So just for context, this content was  
11 provided by my team. And while I do have some  
12 detail, I don't know -- it was not firsthand  
13 knowledge in terms of the changes that were made.

14 But my understanding is that Google made  
01:05 15 changes to a report called the search query report  
16 back in September of 2020 that changed the quantity  
17 and, if you will, quality of the results that they  
18 give us related to queries that are taking place  
19 within the auction.

01:05 20 Q. And you mentioned that this information was  
21 reported to you. Was this reported to you as part  
22 of the ordinary course of business of your team; you  
23 supervising your team and they report up to you?

24 A. Yes, correct.

01:05 25 Q. And then what was the impact on Amazon as

1 [redacted] 1 an advertiser of Google withholding this information

2 [redacted] 2 on queries?

3 [redacted]

4 THE WITNESS: So when the search query

01:06 5 report changes were made, it limits the amount of

6 information that we can have related to the number

7 of unique search queries that occur for a given --

8 given term and the number of keywords that are in

9 our auction that would have triggered as a result of

01:06 10 that.

11 This information is leveraged when we think

12 about the keywords that we would generate and the --

13 you know, being able to actually think about gaps

14 that we have in our ad portfolio for text ads. So

01:06 15 limiting that information, it just -- it results in

16 less fidelity, less information that can be used for

17 us to think about areas where we are not doing a

18 sufficient job of targeting.

19 BY MS. MADDOX:

01:07 20 Q. Does it have -- does this change in the

21 information provided on the search query reports,

22 did that have an impact on Amazon's ability to

23 identify and reduce ad spend -- ad spend where it

24 was inefficient?

01:07 [redacted]

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]

7 7 Q. Okay. Does it impact optimization?

8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]

13 13 Q. Does Amazon use the search query reports to

14 14 identify negative keywords?

15 01:08 15 A. Not to my knowledge.

16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

1 1 Q. What is the impact on Amazon as an  
 2 2 advertiser of the data being obfuscated, as is noted  
 3 3 here?

4 4 A. As mentioned previously, the lack of  
 5 01:09 5 detailed information regarding where queries are  
 6 6 taking place, and we don't have keywords that are  
 7 7 targeting those queries, it leads to potential holes  
 8 8 in our text ad program where we're not doing a  
 9 9 sufficient job of covering retail queries that are  
 10 01:09 10 being performed.

11 [REDACTED]

[REDACTED]

[REDACTED]

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18 18 Q. Okay. Let's turn to page 11 of Exhibit 4.  
 19 19 And I'll tell you the paragraph I'm going  
 20 01:10 20 to be focusing on here is the paragraph headed "Slow  
 21 21 erosion of channel control," and that's lines 314 to  
 22 22 321. And I'll give you a moment to read that  
 23 23 paragraph, but we will take it in chunks.

24 24 A. Okay.

25 01:11 25 Q. The first sentence here, where it

1 1 references, "In recent years we have seen Google  
2 2 release a number of products and push changes to  
3 3 existing products (shopping ads for Google images,  
4 4 FPL, change in definition of 'exact' to 'close  
01:11 5 5 variant', and more) for which Google has  
6 6 intentionally built in the inability for advertisers  
7 7 tracking" -- and there's a parenthetical -- "URL  
8 8 redirects, etc."

9 9 Can you talk a little bit more about, to  
10 01:11 10 the extent we haven't covered it already, what's  
11 11 being referred to here, the types of products --  
12 12 product changes and pushes for new products that  
13 13 are -- where this inability for tracking has been --  
14 14 Amazon believes it's been intentionally built in?

15 [REDACTED] [REDACTED] [REDACTED]  
16 16 THE WITNESS: So we've discussed much of  
17 17 this previously, so I'll try not to duplicate some  
18 18 of the content. We mentioned or discussed, you  
19 19 know, shopping ads being used in other surfaces of  
20 01:12 20 Google Images. We've -- I guess, you know, perhaps  
21 21 an incremental piece of information or example of it  
22 22 would be when Google Search launched showcase ads,  
23 23 they moved to incorporate shopping ads dynamically  
24 24 into the showcase ad format. They did that without  
25 01:13 25 us having control in terms of, you know, when we



1 1 would or could participate in those ad units. And

2 2 so it was pulled in.

3 3 The other would be, you know, as part of

4 4 that they released engagement-based pricing, which

5 01:13 5 meant we moved away from a CPC-based model where we

6 6 lacked visibility into the events that actually

7 7 drove the cost associated with the ads.

8 8 I can't think of other examples that aren't

9 9 listed here that we haven't already discussed.

10 01:13 10 BY MS. MADDOX:

11 11 Q. All right. And there's a similar question

12 12 in the next sentence here in the paragraph. "In

13 13 addition, Google has removed and reduced the

14 14 granularity of reporting data they make available,"

15 01:14 15 and then in parentheses, "position indicators,

16 16 reduction in quality of SQR data, etc."

17 17 Is there anything being referred to here in

18 18 this sentence that we haven't already discussed?

19 19 A. I can't think off the top of my head of

20 01:14 20 others that we've missed.

21 [REDACTED]

[REDACTED]

[REDACTED]

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[Redacted text block consisting of approximately 24 lines of content. Most lines are obscured by black redaction bars. Some lines have blue highlights. The bottom three lines of the redacted block have green highlights. Each line begins with a small black square marker.

1 [REDACTED]

2 [REDACTED]

3 3 A. The decision to not share conversion rate

4 4 data is one that we review fairly regularly. And

5 01:18 5 the reason for that is because we are told by Google

6 6 that participation in conversion optimization using

7 7 their automated bidding tools has for other

8 8 advertisers led to significant increases in their

9 9 program value.

10 01:18 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 13 Q. Do I understand correctly that at this time

14 14 Amazon is not sharing conversion data with Google?

15 01:18 15 A. Today we do not share conversion rate of

16 16 data -- conversion data with Google.

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

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19

19 Does Google also make available tools to

20

01:31 20 its advertisers, analytical tools that can be used

21

21 to evaluate search ad performance or spend?

22

22 A. So Google does have, you know, a variety of

23

23 different reports that can be run through the

24

24 Google Ads interface that advertisers can leverage

25

01:31 25 to understand the performance of their advertising.

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4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]

7 7 Q. Is it -- I take from your answer, then, if  
8 8 there were greater query volume on Bing or  
9 9 Microsoft -- Microsoft in these other countries,  
10 01:44 10 then Amazon would look to purchase more search ads  
11 11 in those countries?

12 12 A. It's a combination of, yes, the query  
13 13 volume, if there were a larger query volume, then it  
14 14 would likely have a higher financial impact on us,  
15 01:45 15 which would then tip the balance in terms of  
16 16 prioritizing that over some other product  
17 17 enhancement or initiative.

18 18 Q. And you said it would likely have a  
19 19 financial impact. What are you -- what is the basis  
20 01:45 20 for that belief?

21 21 A. If we think about the average value  
22 22 associated with a given click, then as you increase  
23 23 the total number of impressions, the queries that  
24 24 are taking place in a given country, then we -- you  
25 01:45 25 know, all things being equal, meaning the average

1 value per click in that country is going to --

2 driven by the volume, is going to have a larger

3 revenue impact to the business.

4 Q. And just to clarify, I want to clarify what

01:46 5 you meant by prioritize. Would Amazon buy ads on

6 Bing instead of Google if Bing were better?

7 A. No. Our decision to buy ads is driven by

8 the return on investment. I guess the circumstance

9 under which that would be true is where we were

01:46 10 looking at launching in a country where Bing had a

11 much higher search volume than Google did and the

12 priorities being stacked equivalently, you know,

13 would have had us launching Bing ahead of Google,

14 and potentially ahead of other initiatives that we

01:46 15 might otherwise invest in.

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[REDACTED]

9 Q. I think you previously testified at the  
02:01 10 beginning of the deposition that your current title  
11 is director of software development. Is that  
12 accurate?

13 A. That's correct, yes.

14 Q. And is it accurate that prior to your  
02:01 15 current position that you previously served as a  
16 senior manager, software development for Paid  
17 Search?

18 A. That's correct, yes.

19 Q. And is it fair to say that from  
02:02 20 approximately 2016 to 2019 that the senior manager  
21 was your role?

22 A. That's correct.

23 Q. Was your role and responsibility in that  
24 senior manager job any different from what your  
02:02 25 current role is?



1 1 A. There were differences, yes.

2 2 Q. Okay. What differences?

3 3 A. So as a senior manager of software

4 4 development, my responsibility was to lead the

02:02 5 software engineering team for Paid Search

6 6 exclusively. In my current role, I lead the

7 7 business, the product strategy, as well as the

8 8 engineering for not only Paid Search, but Paid

9 9 Search, Free Search, and Social Marketing.

10 [REDACTED]

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17

17 I think you've mentioned this a few times,

18

18 but just to level set, is it accurate that at Amazon

19

19 the term "search advertising" includes both text and

20

02:05 20 shopping ads?

21

[REDACTED]

22

22 THE WITNESS: We would use -- most commonly

23

23 we would use paid search to refer to text ads and

24

24 shopping ads. Search advertising is -- would

25

02:06 25 probably be more inconsistently used.

1 BY MS. WASZMER:

2 Q. That's fair. Just to go back on some of  
3 the morning's topics.

4 So in -- beyond paid search, is it accurate  
5 02:06 5 that Amazon buys other types of ads? Social, I  
6 believe you've mentioned, display, video. Is that  
7 fair?

8 A. Yes, that's fair.

9 Q. Who is responsible for -- at Amazon for  
10 02:06 10 display and video advertising?

11 A. To the best of my knowledge, Steve Anderson  
12 [phonetic] would be responsible for display and  
13 Tom Wilson would be responsible for video.

14 Q. I think you've testified previously, and  
15 02:07 15 actually multiple occasions today, that your and  
16 Amazon's decision to invest in certain types of  
17 advertising is based on return on investment and  
18 efficiency. Is that fair?

19 A. That's fair.

20 02:07 20 Q. And I believe that at some point in my  
21 colleagues' questions you had indicated that  
22 currently Amazon is at the right level of investment  
23 and return with Google Ads. Is that accurate?

24 A. That is always under review, but I would  
25 02:07 25 say today, yes.

1 MS. WASZMER: So let's -- I'm going to ask  
2 my colleague to put up the first exhibit, which  
3 we've marked Tab C, but I believe is Exhibit 9, into  
4 the chat.

02:07 5 And just for the record, the document that  
6 we're putting into the chat is AMZN-SEARCH-324725.

7 While that loads -- let me just also put on  
8 the record, for once it comes up and Mr. James has a  
9 chance to look at it, that the title of the document  
02:08 10 is WW Marketing Investment Roll-Up 2021, dated  
11 June 1, 2021.

12 (Exhibit 9 was marked for identification by  
13 the Certified Shorthand Reporter, and a  
14 copy is attached hereto.)

15 [REDACTED]

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[Redacted text block containing multiple lines of obscured content]

1 [REDACTED]  
2 [REDACTED]

3 3 So going back to the topic of ROI, what are  
4 4 the types of metrics that Amazon considers when you  
5 02:18 5 evaluate ROI from types of advertising?

6 6 A. We optimize for what we refer to as GCCP,  
7 7 and you'll see it in this document we just  
8 8 discussed. So GCCP is a -- and, I'm sorry. Let me  
9 9 take a step back. We optimize for net GCCP. That  
10 02:19 10 is GCCP net marketing expense. So it's GCCP minus  
11 11 our marketing expense.

12 12 GCCP stands for gross adjusted composite  
13 13 CP. Gross adjusted composite CP is a measure of a  
14 14 combination of immediate profitability, the  
15 02:19 15 projected profits that we might receive within [REDACTED]  
16 [REDACTED] of an action being taken, as well as  
17 17 some additional longer-term factors that are built  
18 18 in to try and postulate as to what may come in the  
19 19 future.

20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]

24 24 Q. And does Amazon -- do you and Amazon use  
25 02:20 25 the GCCP concept or analysis with regard to both

1 1 paid search and paid social?

2 2 A. We do, yes.

3 3 Q. Why does that same analysis apply to both

4 4 paid search and paid social?

5 02:20 5 A. So our hypothesis is the GCCP -- our

6 6 approach is that GCCP is the most reliable measure

7 7 that we have for the value that our actions will

8 8 take, such that if we maximize for those values that

9 9 we are -- we're getting the highest possible return

10 02:20 10 on investment.

11 11 There is -- when we think about investing

12 12 in social marketing, especially when we're talking

13 13 about mature programs that are operating at scale,

14 14 we operate best when we are maximizing for that net

15 02:21 15 GCCP.

16 16 Q. And let me ask, on a yearly basis with the

17 17 spend that you manage, do you have a set budget for

18 18 the advertising spend?

19 19 A. So in a general case, no, we don't operate

20 02:21 20 in a budget-constrained world. There are times when

21 21 we are given what we refer to as a spend challenge,

22 22 which puts us in a position of being budget-capped.

23 23 Those -- typically those periods are short-lived and

24 24 they are point-in-time investment strategies.

25 02:21 25 Q. So is it accurate in the general instance



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4 Q. Looking at that last sentence, is it fair

02:24 5 to say that Amazon is focusing on return on

6 investment, but also invests in marketing that may

7 not be measurably efficient at launch but may be

8 valuable in the future?

9 A. That is true, yes.

02:24 10 Q. Okay. Are TikTok and Snapchat referenced

11 here examples of such advertising investments?

12 A. At the time this document was written, yes,

13 TikTok and Snapchat were similar -- were such

14 investments, yes.

02:24 15 Q. Let me refer back to a term that I think

16 you used earlier today, the funnel. Do you recall

17 that?

18 A. I do, yeah.

19 Q. At Amazon do you consider paid search and

02:24 20 paid social and affiliates as lower funnel

21 opportunities?

22 A. I think the answer to that question depends

23 on who you ask. I believe in this document we do

24 reference them as being lower funnel activities. I

02:25 25 do think that there is some loose caveats put in

1 1 there with respect to the fact that they are, in  
2 2 fact, driving purchases across arguably all aspects  
3 3 of the funnel, whether they be upper or lower funnel  
4 4 with respect to conversion readiness.

5 [REDACTED]

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16 MS. WASZMER: Okay. Let's move to the next

17

17 exhibit, which is Bates-stamped AMZN-SEARCH-61378.

18

18 And I believe this will be Exhibit 12. It's titled

19

19 2021 Consumer Automated Marketing OPI.

20

02:33 20 (Exhibit 12 was marked for identification

21

21 by the Certified Shorthand Reporter, and a

22

22 copy is attached hereto.)

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16 Is Amazon's app a way that Amazon receives

17

17 traffic to its store?

18

18 A. The -- yes. I mean, the Amazon mobile app

19

19 is a way in which we can help facilitate purchases

20

02:37 20 within Amazon's store.

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5

02:39 5 In your experience at Amazon, are apps like

6

6 TikTok, Snap, and Pinterest more effective than

7

7 other channels in reaching younger customers?

8

8 A. In my experience, the demographic of the

9

9 user that is engaged with the social media app is a

10

02:40 10 strong indication of the type of traffic that we

11

11 will get from that app. In these circumstances,

12

12 these apps, specifically TikTok and Snap, attract

13

13 younger audiences.

14

14 Q. To your knowledge, has Amazon done any

15

02:40 15 analyses comparing search engines to apps like

16

16 TikTok, Snap, and Pinterest in the ability to engage

17

17 new and younger users?

18

18 A. I don't have -- I don't believe I've ever

19

19 seen a comparative analysis between those two forms

20

02:40 20 of channels, so I don't -- I don't know.

21

[REDACTED]

[REDACTED]

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Q. Let's go to the next page, which is page 6

15

02:53

15

Bates stamp at the end 383. And there's -- in the

16

16

middle of the page there's an Objective 3. And I'm

17

17

going to ask you only about one -- actually, I'm

18

18

going to ask you about ██████████ bidder improvements"

19

19

and "Substitution-Aware Bidding." So go ahead and

20

02:53

20

look at that and then just let me know when

21

21

you're...

22

22

A. Okay.

23

23

Q. Next to Objective 3 there's a name. Is

24

24

that Mike you?

25

02:54

25

A. That is me, yes.

1 1 Q. And just for the record, Objective 3 states

2 2 "Grow GCCP through improvements in program

3 3 efficiencies, generating high value actions, and

4 4 personalizing messaging & content."

5 02:54 5 Let me refer you to the paragraph that

6 6 starts with "[REDACTED] bidder improvements."

7 7 Do you see that?

8 8 A. I do, yes.

9 9 Q. Explain what [REDACTED] is.

10 02:55 10 A. [REDACTED]

11 11 bidder that we have developed for paid search.

12 12 Q. And there's a parens in the second sentence

13 13 of that paragraph that says "[REDACTED]." What is the

14 14 relationship of [REDACTED]?

15 02:55 15 A. [REDACTED]

16 16 bidder that we have developed for the shopping ads

17 17 portion of the paid search program. [REDACTED] is now a

18 18 label that gets used for the text ads bidder

19 19 exclusively.

20 02:55 20 Q. I believe my colleagues with the government

21 21 had asked you previously about whether Amazon used

22 22 Google's or other external platforms to engage in

23 23 bidding and ad buying.

24 24 Do you recall that?

25 02:55 25 A. Yes.

1 1 Q. And I believe that your answer was that you  
2 2 do not. Is that the case?

3 3 A. So my organization does not use any tools  
4 4 outside of the products that we develop to perform  
5 02:56 5 automated ad buying.

6 6 Q. Since you've been at Amazon in your  
7 7 organization, have you ever had occasion to consider  
8 8 search advertising tools like Marin, Kenshoo, Adobe,  
9 9 Google Search Ads 360?

10 02:56 10 A. There have been occasions, yes.

11 11 Q. What types of consideration have you  
12 12 engaged in with regard to those tools?

13 13 A. We've looked at Marin. We've actually had  
14 14 a presentation by Marin on the Marin products in  
15 02:56 15 relation to helping some of our internal teams that  
16 16 are not within my organization to think about how  
17 17 they may be able to -- you know, to engage in sort  
18 18 of finer grained advertising activities.

19 19 Q. To your understanding, does a tool -- do  
20 02:57 20 Marin's products allow advertisers to purchase both  
21 21 search advertising and social advertising on the  
22 22 same platform?

23 23 A. To my knowledge they, depending on the  
24 24 tool, yes, there are tools that offer, you know,  
25 02:57 25 support for both search and for social.

1 1 Q. And I believe you stated your team had a

2 2 presentation. Did you ultimately determine --

3 3 scratch that. Let me ask a better question.

4 4 Is it accurate that you ultimately

02:57 5 5 determined not to use Marin's tool at this time?

6 6 A. At the time we decided that we would not

7 7 use Marin, correct.

8 8 Q. Do you recall the reasons why you decided

9 9 not to use Marin?

02:57 10 10 A. I don't recall the specific details beyond

11 11 the decision that we felt that our automated program

12 12 was sufficient to support our business needs.

13 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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03:00 25 MS. WASZMER: And my colleague has put the





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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4

4 Q. There is an underlined sentence in the

5

03:03 5 e-mail that states "Slow Advertising Experiment on

6

6 Social Channels."

7

7 Do you see that?

8

8 A. I do, yes.

9

9 Q. And right after that, there's a sentence

10

03:03 10 that refers to, "In 2021 we implemented a cultural

11

11 shift to how we experiment and measure our success

12

12 in Social Advertising on lesser developed Social

13

13 Media Apps (SMAs), [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

17

17 To the best of your recollection, what was

18

18 the cultural shift that is referred to here?

19

19 A. Prior to 2021, we -- social marketing team

20

03:04 20 was very much committed to [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

10 03:05 10 Q. And just to correct for the record, I

11 believe I said page 3. It's page 2 of the e-mail.

12 Apologies for that.

13 [REDACTED]

[REDACTED]

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[REDACTED]

4 Do you recall Mr. Sallet asking you  
03:06 5 questions about Amazon wanting to decide the  
6 placement of ads and the data that would be  
7 available to Google? I believe this was Exhibit 3.

8 A. Yes.

9 Q. I think you were asked -- let me take these  
10 03:06 10 kind of in part.

11 Are you aware -- with regard to the data  
12 that Amazon would seek from Google, and I think HTTP  
13 redirects were an example; is that correct?

14 A. Correct, yeah.

15 03:06 15 Q. Are you aware of any privacy or security  
16 implications if a company, whether it's Google or  
17 anyone else, provides that information to Amazon?

18 A. I'm not aware of privacy implications.

19 Q. I'm not asking you to describe any legal  
20 03:07 20 advice, just your own experience, not legal advice.  
21 Is that part of your job at all, to be evaluating  
22 whether there are privacy or security implications  
23 if you receive data from Google?

24 MR. LIPTON: I don't know if this

25 03:07 25 implicates legal advice, but please don't --

1 BY MS. WASZMER:

2 Q. Yeah, if it does, I'm not -- I'm asking you  
3 only about whether it's part of your role to  
4 evaluate that.

03:07 5 A. It would be part of my organization's role  
6 to, you know, consider how an exchange of data may  
7 be a concern with respect to privacy and/or legal.

8 Q. I believe you referenced discussions with  
9 Google about data that Amazon would like to have --  
03:07 10 receive from Google. Do you -- at any point in  
11 those conversations with Google have privacy or  
12 security issues come up?

13 A. Not to my recollection.

14 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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23 Q. And I believe that with regard to Exhibit 3

24

24 and then in response to other questions, you

25

03:11 25 indicated that you and Amazon wanted greater control



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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

9

[REDACTED]

10

03:13 10 In your experience buying advertising from

11

11 Google, has Google engaged in experimentation and

12

12 innovation with regard to its ad units and ad

13

13 placement?

14

14 A. Yes. In my experience with Google, they

15

03:13 15 are regularly trying different types of ad products

16

16 to see how they may, you know, impact Google Search

17

17 experiences.

18

18 Q. I believe that you testified earlier that

19

19 you'd had -- you and Amazon had had discussions with

20

03:14 20 Bing about greater control over placement of ads and

21

21 data being available to Amazon. Is that fair?

22

22 A. Yes.

23

23 Q. Okay. What was the outcome of those

24

24 conversations with Bing?

25

03:14 25 A. So we spoke with Bing about the ability to







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[REDACTED]

03:17 5 Given Amazon's current decision not to  
6 provide conversion data to Google, what, if any,  
7 concerns do you have about that decision?

8 A. The first -- you know, the most fundamental  
9 concern is that by providing conversion data to  
10 Google, we're telling Google what customers are  
11 doing on the Amazon store. And that to us is a  
12 nonstarter. That is, we won't share information  
13 about our customer -- our customers', you know,  
14 personally identifiable information or their  
15 interactions with the Amazon store, you know, with  
16 advertisers.

17 Q. And does that same concern apply to  
18 providing conversion data to Bing?

19 A. It does, yes.

20 Q. And let me try to be accurate. I believe  
21 that you also testified that there were concerns  
22 over whether there's performance -- there would be a  
23 better performance if conversion data were to be  
24 provided to Google. Is that accurate?

25 A. My concerns with respect to conversion data



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[REDACTED]

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24

24 Okay. I believe from your prior testimony

25

03:21 25 that you have concluded that currently, subject to

1 1 future assessment, that investing in Google Ads is  
 2 2 efficient from an ROI perspective. Is that  
 3 3 accurate?

4 4 A. We -- it is my position that based off of  
 5 03:21 5 our current optimization strategy, that is  
 6 6 maximizing net GCCP, that we are happy with our  
 7 7 current rate of investment with Google and the  
 8 8 return we get for that investment.

9 9 Q. So is it fair to say that with these -- the  
 10 03:21 10 concerns or the asks that you have had about  
 11 11 controlling ad placement to a greater extent, that  
 12 12 what you believe to be the impact of that is just  
 13 13 the results would be even better than they currently  
 14 14 are for Amazon?

15 03:22 15 MR. LIPTON: Objection to form.

16 16 THE WITNESS: I believe that with greater  
 17 17 control over where we place our ads and how we bid  
 18 18 on those ads, that there would be an opportunity for  
 19 19 us to increase that net GCCP, the long-term free  
 20 03:22 20 cash flow, that is our objective function.

21 [REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

4 Q. And I believe that you have -- that you  
03:22 5 testified that Amazon has made a decision to  
6 purchase ads based on business fundamentals because  
7 of the return on investment that it sees in the  
8 advertising program. Is that accurate?

9 A. That is correct, yes.

10 03:23 10 Q. In the time that you've been in your  
11 11 current position, does Amazon evaluate this issue on  
12 12 a regular or periodic basis?

13 13 A. We do on a regular basis. We've developed  
14 14 tools which you may see referenced as the  
15 03:23 15 elasticity-based bidding platform or bidding  
16 16 product, which allow for us to measure various  
17 17 levels of investment and understand where, at those  
18 18 levels of investment, we receive the greatest net  
19 19 GCCP, the greatest return. That's inclusive of free  
20 03:23 20 search.

21 21 So if our elasticity-based test product  
22 22 indicated that we would be better off continuing to  
23 23 bid down on paid placements until such time as we  
24 24 turned it off, then we would follow that output to  
25 03:24 25 that conclusion.

1 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
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[REDACTED]  
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[REDACTED]

9 9 Q. And I believe that you testified at one  
10 03:24 10 point and used the term that there is an  
11 11 intersection of purpose between text ads and  
12 12 shopping ads. What does that mean? And I believe  
13 13 that you used a Roomba example. So I just want to  
14 14 understand, what did you mean by there's an  
15 03:24 15 intersection of purpose with text ads and shopping  
16 16 ads?

17 17 A. So the intersection of purpose that I  
18 18 referenced there is that a shopping ad can fulfill  
19 19 the same customer's need when they are querying --  
20 03:24 20 when they are submitting a query as a text ad.

21 21 Conversely, a text ad could also fulfill,  
22 22 you know, the same need as the shopper -- as the  
23 23 shopping ad might. However, there are going to be  
24 24 distinct advantages in one ad format over another  
25 03:25 25 where we may not -- it may not be able to satisfy





1 question. What do you mean by "compare"?

2 Q. For example, do you have a sense of what  
3 the percentage is sitting here today? And if not, I  
4 don't want you to speculate. If you actually don't  
5 know, just say you don't know.

6 A. So the -- in the United States, rough  
7 approximation based off of the last time I looked at  
8 the data, was that the -- you know, [REDACTED]

[REDACTED]

[REDACTED]

17 Have you considered increasing the spend on  
18 Bing and reducing the spend on Google paid search?

19 A. As I previously testified, we operate to  
20 maximize the return on investment, the net GCCP.  
21 We're not budget-constrained or budget-capped, so  
22 there's no need for us to move money from one  
23 advertiser -- pardon me -- from one advertising  
24 product to another. We simply follow that  
25 maximization strategy within a given marketing

1 1 channel, in this case, Bing or Google,

2 2 independently.

3 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

13 13 Q. And what's your recollection of how, when

14 14 you did look at it, how Bing spend and Google spend

15 03:29 15 compared?

16 16 A. Again, going back in terms of the metrics

17 17 that I've looked at, the -- if I recall correctly,

18 18 the expense as a percent of the OPS, which is the

19 19 revenue, [REDACTED]

[REDACTED]. And the total

21 21 volume that we're getting, total volume of OPS,

22 22 is -- you know, Bing represents approximately

23 23 [REDACTED] And the --

24 24 and the spend that we would have is somewhere in the

25 03:29 25 same -- same region, [REDACTED]. But again,



1

[REDACTED]

[REDACTED]

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[REDACTED]

3 MS. WASZMER: Okay. I think we can put

4 this one to the side.

03:35 5 And I've put the next document in the chat,

6 which I think we're going to label Exhibit 15. And

7 this document is entitled "Microsoft Program

8 Management and Vendor Funded Agreements," and is

9 Bates-labeled AMZN-SEARCH-590457.

03:36 10 (Exhibit 15 was marked for identification

11 by the Certified Shorthand Reporter, and a

12 copy is attached hereto.)

13 BY MS. WASZMER:

14 Q. And, Mr. James, to refer you to document --

03:36 15 to pages I'm going to ask you about, I'm going to

16 primarily focus on the first page, so you can take a

17 look at that. That will be the -- my area of focus.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

22 THE WITNESS: Okay.

23 BY MS. WASZMER:

24 Q. Have you seen this document before?

03:37 25 A. I have seen this document, yes.

1 1 Q. This document is referring to funding  
2 2 agreements with third-party vendors to allow Paid  
3 3 Search team to achieve feature parity. Can you  
4 4 describe what the purpose of those funding  
5 03:37 5 agreements is, to the best of your knowledge?

6 6 A. So the Microsoft funding agreement that's  
7 7 described in this document is an agreement that we  
8 8 forged with the Microsoft advertising team to have  
9 9 them effectively fund head count on our team in  
10 03:38 10 order to accelerate some of the initiatives that  
11 11 would otherwise be below the line as we think about  
12 12 our product development.

13 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

21 21 Q. So in the first paragraph of this document  
22 22 there's a reference to the fact that deliverables  
23 23 aren't met. Is that accurate?

24 24 A. That is correct, yes.

25 03:39 25 Q. And there's a reference here to an



1 1 assumption (As Read:) "that Bing API implementation  
2 2 would mirror Google settings, and that  
3 3 Microsoft-funded projects would be easily slotted  
4 4 into our roadmap even though they had not been  
5 03:39 5 accounted for in our 2018 OP2."

6 6 Do you see that?

7 7 A. I do, yes.

8 8 Q. What is that referring to when the language  
9 9 refers -- states that there had been an assumption  
10 03:39 10 that Bing API implementation would mirror Google  
11 11 settings?

12 12 A. My understanding at the time of reading  
13 13 this document was that the Bing API that they were  
14 14 at that time delivering would have similar behaviors  
15 03:39 15 in terms of how the campaigns were structured and  
16 16 how we would manage those campaigns as --  
17 17 architecturally, technically and architecturally, to  
18 18 what we have with Google.

19 19 Q. And is it accurate that it turns out that  
20 03:40 20 that wasn't true?

21 21 A. Right. So as stated in this document, the  
22 22 expectation was that it would be true and that  
23 23 turned out not to be the case, which broke the  
24 24 assumption when it came to our effort estimation.

25 03:40 25 Q. Okay. And do you know in the funding

1 agreement what exactly were the resources that  
 2 Microsoft provided to Amazon? Was it head count?  
 3 Was it dollars? Something else?  
 4 A. Microsoft, in this agreement they  
 5 03:40 contributed dollars. Those dollars were to be  
 6 applied and were applied to head count that we hired  
 7 in (audio difficulties).

8 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]

13 13 And let me direct you to the last bullet on  
 14 the page, which has the header "No resources to  
 15 03:41 15 support other automation work for Bing."

16 16 A. Okay.

17 17 Q. Okay. Does this refer to Bing projects  
 18 that Amazon was not able to provide resources for  
 19 during this time period?

20 03:41 20 A. I'm sorry. Can you restate the question?

21 21 Q. Yes.

22 22 Does this paragraph refer to Bing projects  
 23 that Amazon was not able to provide resources for?

24 24 A. That is correct, yes.

25 03:42 25 Q. Do you know ultimately whether Amazon at











1

[REDACTED]

23

23 There's another part of that sentence, just

24

24 to go back on; the statement that Amazon's

25

04:04 25 marketplace growth is outpacing Google's retail



1 1 query demand.

2 2 Is that accurate, as far as you know?

3 3 A. So in the Q1 2021 period I believe that

4 4 this statement was correct, that we saw Amazon

5 04:04 5 relative to Google queries growing at a higher rate.

6 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

19 19 Q. And what if any initiatives or projects

20 04:06 20 does Amazon have to increase traffic that is Free

21 21 Social traffic?

22 22 A. So Free Social is outside of my area of

23 23 ownership and I'm not familiar with the initiatives

24 24 that we have on the Free Social side.

25 [REDACTED]

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[REDACTED]

8 8 Are you aware of whether Amazon engages in  
9 9 benchmarking analyses comparing Amazon to Google  
10 04:07 10 Shopping?

11 11 A. I am familiar with studies that have been  
12 12 done on benchmarking studies, yes.

13 13 Q. To the extent you know, what is the purpose  
14 14 of benchmarking studies comparing Amazon to Google  
15 04:07 15 Shopping?

16 16 A. So my recollection of those studies was to  
17 17 look at the customer experience and the seller  
18 18 experience on Google Shopping and how we may, you  
19 19 know, drive some inspiration by looking at what is  
20 04:07 20 done well on Google Shopping relative to Amazon, and  
21 21 also to see where we are continuing to do well to  
22 22 ensure that we continue to invest in those areas.

23 23 MS. WASZMER: I just put Tab O into the  
24 24 chat box, which I believe is Exhibit 17. And that  
25 04:08 25 is AMZN-SEARCH-149770. It is a document titled

1 1 2020 Google Shopping Appendix, Final.

2 2 (Exhibit 17 was marked for identification

3 3 by the Certified Shorthand Reporter, and a

4 4 copy is attached hereto.)

5 04:08 5 BY MS. WASZMER:

6 6 Q. And, Mr. James, I'll give you time to have

7 7 a look at it, but the page I'm going to ask you

8 8 about is the 27th page. So I'm not going to ask

9 9 about the entire thing.

10 04:08 10 A. Still waiting on the download.

11 11 I have the document. So the 27th page?

12 12 Q. Yeah. Just feel free to take a look at it,

13 13 but then the page I'm going to go to is the 27th

14 14 page, which has the Bates stamp ending in 796. And

15 04:09 15 the part I'm going to ask you about is "Continuous

16 16 Consumer Benchmarking (CCB)."

17 17 A. Okay.

18 18 Q. Okay. What is CCB, if you know?

19 19 A. I know that it stands for continuous

20 04:10 20 consumer benchmarking. And the extent of what I

21 21 know is what's written here.

22 [Redacted]

[Redacted]

[Redacted]

[Redacted]

1 [REDACTED]

2 [REDACTED]

3 3 Q. Let me refer you -- just to see if you have

4 4 any knowledge -- to the third sentence of this

04:11 5 paragraph. And it says, "Competitors in scope are

6 6 Walmart, Target, BestBuy, eBay and Google Shopping

7 7 for the US."

8 8 Do you know whether Walmart, Target,

9 9 Best Buy, eBay, and Google Shopping are considered

04:11 10 competitors of Amazon for the purpose of

11 11 benchmarking?

12 12 MR. LIPTON: Objection to form.

13 13 THE WITNESS: The -- I don't know the full

14 14 context of how the term "competitors" is intended

04:11 15 here, but it appears by the nature of the document

16 16 and what's in it that, you know, competitors are --

17 17 Walmart, Target, Best Buy, eBay, and Google Shopping

18 18 are labeled here as competitors.

19 19 BY MS. WASZMER:

04:12 20 Q. But is it fair to say you don't know one

21 21 way or the other if that's accurate based on this

22 22 document?

23 23 A. I don't know.

24 [REDACTED]

[REDACTED]

1

[REDACTED]

[REDACTED]

[REDACTED]

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22

22 I recall that you were asked, I think by

23

23 Ms. Maddox, whether you and Amazon had sought out

24

24 information, further information about the search

25

04:13 25 auction process.

1 1 Do you recall that?

2 2 A. Yes.

3 3 Q. And I believe that you testified that there  
4 4 were developer pages to review and that you'd had  
5 04:13 5 conversations with Google about the process. Is  
6 6 that accurate?

7 7 A. Yes.

8 8 Q. In light of the review of developer pages  
9 9 and conversations with Google, what information is  
10 04:13 10 Amazon seeking about the search auction process that  
11 11 it currently doesn't have?

12 12 A. So an example of information that would be  
13 13 helpful for us is an indication of ad history. So  
14 14 the auction, to our knowledge, is the quality of the  
15 04:14 15 ad and the history associated with that ad, and then  
16 16 the bid that we place on it is effectively what  
17 17 influences the ad rank.

18 18 What we don't know is what amount of  
19 19 information from a history perspective is needed for  
20 04:14 20 the auction to, I'll call it stabilize, but to get  
21 21 to a point where we are maximizing the opportunity  
22 22 for a given ad.

23 23 So if we had access to the -- to history  
24 24 information around, you know, when an ad has  
25 04:14 25 achieved we'll call it the -- reached the point of

1 1 diminishing returns on ad history, then we would

2 2 know better how to actually bid on an ad.

3 3 Q. And is there any particular person at

4 4 Google to whom you or your Amazon colleagues have

5 04:15 5 made the request for that information?

6 6 A. There's been, you know, members of the

7 7 account management team under Aaron Rova that we've

8 8 talked to about the limited signals.

9 9 Q. Is there currently any other platform from

10 04:15 10 which Amazon buys ads that provides you with that

11 11 information that you are -- that you would like from

12 12 Google?

13 13 A. Not to my knowledge.

14 14 Q. Let me go to the quality score. I believe

15 04:15 15 you referred to the quality score as a black box

16 16 also.

17 17 Do you recall that?

18 18 A. I may have referred to it as black box,

19 19 yes.

20 [REDACTED]

[REDACTED]

[REDACTED]

23 23 Are you aware of Google's public-facing

24 24 pages on quality score?

25 04:16 25 A. I have no recollection of having read the

1 quality score pages.

2 Q. Is there any specific information --

3 similar to my question about the ad auction process.

4 Is there any specific information that you and your

04:16 5 Amazon colleagues are seeking from Google about the

6 quality score?

7 A. I don't have any outstanding requests in

8 terms of information on the quality score. What I

9 have been told by our Google account reps is that

04:16 10 the quality score is a collection of different

11 metrics and therefore it makes it hard for us to

12 understand how we might interpret quality score or

13 use it to our advantage.

14 Q. So let me just make sure I heard you. You

04:17 15 don't have any current open requests to Google about

16 that topic. Is that accurate?

17 A. Not to my knowledge.

18 [Redacted text block]



1

[REDACTED]

[REDACTED]

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13 MS. WASZMER: We're on Exhibit 4. And this

14

14 was page 3 of the exhibit, lines 100 and 102.

15

04:18 15 BY MS. WASZMER:

16

16 Q. So, Mr. James, let me just have you look at

17

17 that and I'll repeat my question once you've had a

18

18 chance to look at it.

19

19 A. Yes. Okay. Yep. I recall that.

20

04:19 20 Q. Do you recall how you were asked about

21

21 obfuscated data?

22

22 A. Yes.

23

23 Q. Do you -- have you ever had any discussions

24

24 within Amazon or with Google about -- and, once

25

04:19 25 again, I'm not seeking legal advice -- about privacy

1 1 issues with regard to query data?

2 2 A. I have not had conversations with respect

3 3 to query data and privacy concerns in the context of

4 4 the search queries.

5 04:19 5 Q. Is there someone on your team who is

6 6 responsible for that issue? For -- let me say what

7 7 that issue is -- privacy issues with regard to that

8 8 use or sharing of query data?

9 9 A. If -- there's no one who has specific

10 04:20 10 responsibility for that, but I would expect that a

11 11 member of my business team for Paid Search would

12 12 possibly have the knowledge.

13 13 Q. So let me make sure that I asked you a

14 14 clear question. Let me go back about the

15 04:20 15 conversations with Google.

16 16 Have you -- do you recall any conversations

17 17 with Google about whether there are privacy issues

18 18 with regard to the data that you referred to as

19 19 obfuscated in Exhibit 4?

20 04:20 20 A. I have no recollection of conversations

21 21 regarding privacy concerns in the search query

22 22 report data prior to this change.

23 [REDACTED]

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[REDACTED]



1           1           Q.    Yes.  And you said, I think, and please  
 2           2           correct me if I'm wrong, that whereas you had first  
 3           3           thought it referred to a top-of-the-page carousel,  
 4           4           in fact, it refers to a different ad format; is that  
 5   04:32  5           correct?

6           6           A.    So just to add some additional  
 7           7           clarification there --

8           8           Q.    Please.

9           9           A.    -- my original response was that the  
 10   04:33  10          Merchant Carousel referred to the shopping ads that  
 11           11          are aligned to the top of the search results page.  
 12           12          That was incorrect.  I was thinking of the shopping  
 13           13          ads carousel, where Merchant Carousel refers to an  
 14           14          ad format that Google launched to replace the  
 15   04:33  15          shopping -- sorry -- the showcase ad format.  It  
 16           16          still shows in the upper position that -- where we  
 17           17          would see -- otherwise see shopping ads.

18           18          Q.    Upper position on the search results page?

19           19          A.    That's correct.  On the search results  
 20   04:33  20          page, it shows up as a horizontal stripe at the top  
 21           21          of the page, replacing shopping ads when Merchant  
 22           22          Carousel format is triggered.

23           [REDACTED]

[REDACTED]

[REDACTED]



1 1 Google Search results page, for example?

2 2 A. They show up in the -- so there's -- one

3 3 placement that I am familiar with is a format, a

4 4 presentation of a product that shows up in the

04:36 5 5 search results page that is -- formerly was a Google

6 6 Shopping placement. It's a fairly large format, but

7 7 I can't remember the exact name of the actual

8 8 placement itself.

9 9 Q. Is it sometimes referred to as a knowledge

10 04:36 10 10 graph?

11 11 A. It may be referred to as a knowledge graph.

12 12 Q. And what information has to be supplied, if

13 13 you know, for an entity to appear in the free

14 14 product listings?

04:36 15 15 A. My understanding is that it's a product

16 16 attribute, similar to what we would supply for

17 17 shopping ads, including the price and availability.

18 18 And I can't say for certain which attributes might

19 19 be required.

04:36 20 20 Q. And do you happen to know -- this is the

21 21 last question -- whether an entity that participates

22 22 in free product listing can determine which Google

23 23 surface its free product listings would appear upon?

24 24 A. In my last conversation with Google on this

04:37 25 25 topic, the answer to that question was, no, an



1 1 entity can't determine where -- which free product

2 2 listing placements they would show in.

3 [REDACTED]

4 4 I'd like to show one more document, one

5 04:37 5 last exhibit, if we could put that into the chat.

6 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

18 18 THE STENOGRAPHER: Exhibit 18 for Tab 9.

19 19 MR. SALLET: Yes, thank you.

20 04:38 20 And this is a document entitled "Automated

21 21 Marketing Inspection," and dated June 7, 2021.

22 22 (Exhibit 18 was marked for identification

23 23 by the Certified Shorthand Reporter, and a

24 24 copy is attached hereto.)

25 04:39 25 THE WITNESS: Okay. I'm ready.

1 BY MR. SALLET:

2 Q. Other than any documents that your lawyers  
3 may have shown you, I mean excluding anything that a  
4 lawyer showed you, have you seen this document  
04:39 5 before?

6 A. I have seen this document before, yes.

7 Q. Was it created by your team?

8 A. This document was created by a number of  
9 different teams within Amazon. Myself and my team  
04:39 10 were responsible for contributing to it.

11 Q. And was the portion entitled "What is  
12 Automated Marketing's investment objective" within  
13 the scope of work of your team on this document?

14 A. It was, yes.

04:39 15 Q. Yes. And what was the purpose for which  
16 this document was used?

17 A. This document was used as part of -- excuse  
18 me -- was used as part of a review of our marketing,  
19 Amazon's total marketing across the company.

04:40 20 Specifically, this delved into our variable  
21 marketing channels and our investments within those  
22 channels.

23 [REDACTED]

[REDACTED]

[REDACTED]



1 1 advertising, it would be more of a lower-funnel  
2 2 engagement channel, but it's also fair to say that  
3 3 search advertising, you know, can be used as an  
4 4 upper-funnel engagement strategy where people are  
5 04:42 5 becoming aware of Amazon for the first time, for  
6 6 example, in a country where Amazon's store has just  
7 7 launched.

8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]

14 14 I just want to ask a couple of questions.  
15 04:42 15 And following up on a conversation that you had with  
16 16 Ms. Waszmer about -- I believe she was asking you  
17 17 whether certain platforms require Amazon to provide  
18 18 conversion data if Amazon wants to participate in  
19 19 that platform's auto bidding program.

20 04:43 20 Do you recall that part of the discussion?

21 21 A. I do recall that, yes.

22 22 Q. And I understand that, from our prior  
23 23 conversation, that that's true of Google; is that  
24 24 right?

25 04:43 25 A. My understanding is that for us to

1 1 participate in Google's automated bidding products

2 2 we would need to share conversion data, yes.

3 3 Q. And I know that counsel asked you about

4 4 other bidding platforms, but I just wanted to

5 04:43 5 clarify what the responses were to those.

6 6 Is that also true of Bing?

7 7 A. To my knowledge, for us to participate in

8 8 Bing's automated bidding products, we do need to

9 9 share conversion data. I will caveat that by saying

10 04:43 10 that we can opt into different -- what would be

11 11 referred to as automated bidding strategies;

12 12 however, they have no effect unless you've actually

13 13 shared conversion data.

14 14 Q. Okay. So to clarify, on Bing, even if

15 04:44 15 you -- even if the advertiser does not provide

16 16 conversion data, there are still auto bidding

17 17 strategies that are available?

18 18 A. To be clear, you can -- my understanding is

19 19 that we can opt our ads into a -- what would be

20 04:44 20 considered an automated bidding strategy, but

21 21 without the conversion data, those automated bidding

22 22 strategies don't have any effect. There's no --

23 23 there's no signal for those automated bidding

24 24 strategies to leverage in order to have any

25 04:44 25 beneficial effects.



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[REDACTED]

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DECLARATION UNDER PENALTY OF PERJURY

I hereby declare under penalty of perjury  
that the foregoing is my deposition under oath; that  
I have read same; and that I have made the  
corrections, additions, or changes to my answers  
that I deem necessary.

In witness thereof, I hereby subscribe my  
name this            day of            , 2022.

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MIKE JAMES

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DEPOSITION OFFICER'S CERTIFICATE

COUNTY OF LOS ANGELES, )  
STATE OF CALIFORNIA, )

I, Cody R. Knacke, hereby certify:

I am a duly-qualified Registered Professional Reporter and Certified Shorthand Reporter in and for the State of California, holder of Certificate Number CSR 13691, issued by the Court Reporters Board of California and which is in full force and effect. (Fed. R. Civ. P. 28(a)).

I am authorized to administer oaths or affirmations pursuant to California Code of Civil Procedure, Section 2093(b) and prior to being examined, the witness was first duly sworn by me. (Fed. R. Civ. P. 28(a), 30(f)(1)).

I am not a relative or employee or attorney or counsel of any of the parties, nor am I a relative or employee of such attorney or counsel, nor am I financially interested in this action. (Fed. R. Civ. P. 28).

I am the deposition officer that stenographically recorded the testimony in the foregoing deposition and the foregoing transcript is

1           1    a true record of the testimony given by the witness.

2           2    (Fed. R. Civ. P. 30(f)(1)).

3           3            Before the completion of the deposition,  
4           4    review of the transcript [ X ] was [ ] was not  
5           5    requested. If requested, any changes made by the  
6           6    deponent (and provided to the reporter) during the  
7           7    period allowed, are appended hereto. (Fed. R. Civ.  
8           8    P. 30(e)).

9           9            In witness whereof, I have hereunto set my  
10          10   hand this day: \_\_\_\_\_, 2022.

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CODY R. KNACKE, RPR, CSR No. 13691

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READ/SIGN DEPOSITION OF: Mike James  
DATE OF DEPOSITION: 2/10/22  
IN THE MATTER OF: United States vs. Google LLC

DO NOT WRITE ON THE DEPOSITION ITSELF

Page Line Changes or corrections and reason



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I have inspected and read my deposition and have listed all changes and corrections above, along with my reason therefor.

DATE: 2022-03-22 SIGNATURE: *m James*