



COMPETITION COMMISSION OF INDIA

Suo Motu Case No. 04 of 2021

In Re: Allegations pertaining to private label brands related to Amazon sold on Amazon India marketplace

CORAM

Mr. Ashok Kumar Gupta
Chairperson

Ms. Sangeeta Verma
Member

Mr. Bhagwant Singh Bishnoi
Member

ORDER

1. The present matter has emanated from Reuters special report dated 13.10.2021, titled '*Amazon copied products and rigged search results to promote its own brands, documents show*' ('**Reuters Report**'), wherein it was *inter alia* stated that the data pertaining to individual sellers on Amazon India marketplace ('**Amazon Seller Services Pvt. Ltd./ASSPL**') is/has been used by Amazon to run '*a systematic campaign of creating knockoffs and manipulating search results to boost its own product lines in India.*'
2. Having considered the Reuters Report, the Commission, *vide* order dated 21.10.2021, decided to take *suo motu* cognisance of the matter and directed ASSPL to file certain information/documents as sought therein, duly supported by an affidavit within four weeks of receipt of the order and subsequently, on the request of ASSPL, the time for submission was extended up to 11.01.2022.
3. Accordingly, ASSPL filed confidential and non-confidential versions of the information/documents on 12.01.2022 and 20.01.2022, respectively. However, the same



was not supported by an affidavit, as was directed. Subsequently, ASSPL filed the supporting affidavit on 31.01.2022.

4. In its response on affidavit, ASSPL has submitted that the Reuters Report, relied upon by the Commission to initiate *suo motu* action, contained fundamental factual errors and inaccurate conclusions, which are based on a misplaced understanding of ASSPL's business.
5. ASSPL *inter alia* stated that Amazon has a unique business model in India which is different from the business model followed by Amazon in other jurisdictions such as the European Union (EU) and the United States of America (USA) where it follows a hybrid model. In India, ASSPL (which operates amazon.in), which is a wholly owned subsidiary of Amazon.com, Inc (Amazon/ACI), operates purely as an online marketplace. The third-party sellers (including Amazon Retail India Pvt. Ltd./ARIPL- an indirect wholly owned subsidiary of ACI) acquire goods from wholesalers and suppliers, set retail prices and offer for sale the same on the ASSPL's platform.
6. ASSPL further claimed that it neither owns nor sells any product, including products of Amazon brands, on amazon.in and it is the sellers that offer all products including Amazon brands to customers for sale on amazon.in. Further, it was stated that none of ACI group entities is engaged in business of manufacturing of Amazon branded products. ASSPL also stated that ACI did not and does not have direct or indirect shareholding in any of the third-party sellers of Amazon branded products (in terms of FDI policy) except ARIPL, which has received prior approval of from DIPP for engaging in retail business of food products manufactured and produced in India.
7. ASSPL stated that two wholly owned subsidiaries of ACI own intellectual property rights in relation to Amazon brands. They license these brands through other group entities to third-party sellers in India (*i.e.*, licensees). It is the Sellers (*i.e.* the licensees) who either manufacture themselves or engage third parties to manufacture/procure/import Amazon branded products for sale on amazon.in or other such channels as authorised by licensors from time to time and offer other services. Being licensees, these sellers ensure product quality, performance, determine prices and provide after sales services on Amazon Branded products. ASSPL also stated that any interested seller is eligible to sell Amazon branded



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products on amazon.in. Further, ASSPL stated that any seller can choose to become a seller of the Amazon branded products. Presently, more number of sellers are being pitched to sell the Amazon branded products as there is lack of awareness about this option amongst the Sellers. Today ASSPL has about 60 sellers which are dealing in Amazon branded products.

8. ASSPL stated that it is a multi-product and multi-category marketplace. ASSPL further stated that as of FY 2020-21, the gross merchandise sales arising from sale of Amazon branded products was 1.26% of total sales on amazon.in which is miniscule.
9. ASSPL does not have an incentive to give preferential treatment to Amazon brands over competing products as the success of amazon.in is intrinsically linked to availability of wide selection of third-party sellers' products on its marketplace since amazon.in is a multi-brand/multi product marketplace and Amazon branded product constitute only a miniscule portion. ASSPL stated that the observations contained in the Reuters Report are incorrect in terms of economic theory and in practice.
10. ASSPL also stated that its search listing/ranking criteria on Amazon.in do not favour Amazon branded products and such search listing/ranking criteria apply uniformly to all products listed on amazon.in. Algorithm for listing of products on the search results page is based on several factors which work together to generate results to feature items that customers will want to purchase. Amazon.in also offers optional paid advertising services which are offered to all the third-party sellers or brands who wish to promote brands on amazon.in. Such display carries a conspicuous sponsored tag and customers can clearly identify the 'sponsored' results. Sponsored products ads solution is available for use by all sellers and brands on marketplace including sellers of private brands. No search terms or keywords are reserved exclusively for Amazon branded products. The process of ad matching ranking and auction is completely automated and is seller agnostic.
11. Commenting on its Seller Data Protection Policy, ASSPL has stated that such policy applies to all Amazon employees in respect of protecting sellers' data and the observations made in the Reuters Report are based on incorrect assumption regarding collection and use of non-public seller specific data. ASSPL stated that its Seller Data Protection Policy distinguishes between non-public, seller-specific information such as inventory and sales



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data, sourcing information, *etc.* (“Seller Specific Data”) and aggregated data, which comprises data that is aggregated across multiple sellers and is, therefore, not specific to an individual seller (“Aggregated Seller Data”). The policy restricts use of seller specific data which is non-public (confidential) and is disclosed only in complete adherence to policy; while permitting use of Aggregated Seller data. Seller Specific data can be used only to provide support services to that seller on a need-to-know basis, prevent fraud and protect brand owners from poor quality products sold by a seller, to make strategic business decisions at the category level or above and to derive aggregate seller data. Further, the Policy permits the use of Aggregated Seller Data for legitimate internal business purposes. ASSPL also claimed that no violation of its Seller Data Protection Policy has been detected between 01.01.2015 to 30.09.2021.

12. Furthermore, ASSPL stated that the sale of Amazon brands neither causes nor is likely to cause an appreciable adverse effect on competition in India. Rather, the sale of such Amazon brands enhances competition by improving selection which are incremental offers to present collection. Competing products are widely available on amazon.in.
13. The Commission considered the aforesaid response and documents filed by ASSPL on affidavit in the ordinary meeting held on 15.02.2022 and decided to pass an appropriate order in due course. The Commission, thereafter, *vide* its order dated 07.03.2022, decided not to proceed in the matter, the details of which are adumbrated herein.
14. The Commission, based on the submissions received by ASSPL on affidavit, wherein it has categorically denied the allegations contained in the Reuters Report, has decided not to pursue this inquiry at this stage. The Commission makes it abundantly clear that should the conduct of ASSPL or any of its related entities be found not to be in consonance with the provisions of the Competition Act, 2002 (‘Act’) or should the submissions made by ASSPL in its affidavit (made by Director-Private Brands Category of ASSPL) be found to be incorrect, this order shall not come in the way, in any manner, in examining the conduct of ASSPL or any of its related entities either past, present or future, as may be warranted, in accordance with law.



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15. Further, notwithstanding the above, the Commission emphasises that the observations made in this order may not be construed as expressing any opinion on the merits of the case, in any manner, in respect of any other ongoing proceedings against ASSPL or any other entity, before the Commission or in any other forum/tribunal/court.
16. As regards the confidentiality request of ASSPL, the Commission notes that certain excerpts, to the limited extent, from its response have been relied upon for the purposes of this order and such excerpts have not been granted confidentiality. The rest of the request as regards confidentiality which has been sought by ASSPL is granted for a period of 3 years from the date of this order, subject to provisions of Section 57 of the Act.
17. The Secretary is directed to forward a copy of this order to ASSPL, accordingly.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(Sangeeta Verma)
Member

Sd/-
(Bhagwant Singh Bishnoi)
Member

New Delhi
Date: 11.03.2022