

**UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION**

In the Matter of Amazon.com, Inc.,

Respondent.

CPSC Docket No. 21-2

Hon. James E. Grimes
Presiding Officer

PROOF OF SERVICE

PLEASE TAKE NOTICE that Respondent's Subpoena *Duces Tecum* ("Subpoena") to the Government Accountability Office ("GAO") has been served by U.S. Certified Mail in accordance with 16 C.F.R. § 1025.38(e). Pursuant to 16 C.F.R. § 1025.38(f), Respondent's Counsel states as follows:

On March 22, 2022, undersigned counsel caused a copy of the Subpoena and accompanying Commission Order (Doc. No. 33) to be sent via U.S. Certified Mail to the GAO. Pursuant to GAO regulations, *see* 4 C.F.R. § 82.1(a), the Subpoena and accompanying Commission Order were served on the Honorable Gene Dodaro, Comptroller General of the United States, c/o Records Management and Services Officer, Office of Information Systems and Services, Government Accountability Office, 441 G Street NW, Washington, DC 20548. On the same date, undersigned counsel emailed a courtesy copy of the Subpoena and accompanying Commission Order to the GAO's general counsel (*see* Ex. A).

Under the CPSC Rules of Practice for Adjudicative Proceedings, "[t]he date of service" is "the date on which the document is deposited with the United States Postal Service," 16 C.F.R. § 1025.16(f), and "[i]f service is effected by mail, the signed return receipt shall accompany the return of service," *id.* § 1025.38(f). The GAO has instead

acknowledged acceptance of service via email (see Ex. B) and has picked up the physical mailing from the U.S. Postal Service on March 29, 2022 (see Ex. C). Respondent's counsel have not yet received the signed "Return Receipt" green slip from the GAO, likely due to persistent U.S. Postal Service delays.¹

Dated: April 21, 2022

Respectfully submitted,



Sarah L. Wilson
Stephen P. Anthony
Thomas Brugato
Benjamin L. Cavataro
COVINGTON & BURLING LLP
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Washington, DC 20001-4956
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Counsel for Respondent

¹ See, e.g., *Pennsylvania v. DeJoy*, 490 F. Supp. 3d 833 (E.D. Pa. 2020); *New York v. Trump*, 490 F. Supp. 3d 225 (S.D.N.Y. 2020).

CERTIFICATE OF SERVICE

I hereby certify that on April 21, 2022, a true and correct copy of the foregoing Proof of Service was, pursuant to the Order Following Prehearing Conference entered by the Presiding Officer (Doc. No. 13):

- filed by email to the Secretary of the U.S. Consumer Product Safety Commission, Alberta Mills, at amills@cpsc.gov, with a copy to the Presiding Officer at alj@sec.gov and to all counsel of record; and
- served to Complaint Counsel by email at jeustice@cpsc.gov, lwolf@cpsc.gov, and sanand@cpsc.gov.

A handwritten signature in cursive script, reading "Sarah L. Wilson", written in black ink over a horizontal line.

Sarah L. Wilson

Exhibit A

COVINGTON

BEIJING BRUSSELS DUBAI FRANKFURT JOHANNESBURG
LONDON LOS ANGELES NEW YORK PALO ALTO
SAN FRANCISCO SEOUL SHANGHAI WASHINGTON

Sarah L. Wilson

Covington & Burling LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001-4956
T +1 202 662 5397
swilson@cov.com

Via U.S. Certified Mail, Return Receipt Requested

March 22, 2022

The Honorable Gene Dodaro
Comptroller General of the United States
c/o Records Management and Services Officer
Office of Information Systems and Services
Government Accountability Office
441 G Street NW
Washington, DC 20548

Re: *In the Matter of Amazon.com, Inc.* (CPSC Docket No. 21-2)

Dear Mr. Dodaro:

Please find enclosed (1) a subpoena *duces tecum* issued to the Government Accountability Office (“GAO”) in the above-referenced U.S. Consumer Product Safety Commission (“CPSC”) adjudicative proceeding and (2) the order of the CPSC issuing the subpoena.

These documents are being directed to you, and served upon the GAO’s Records Management and Services Officer, in accordance with the GAO’s regulation, 4 C.F.R. § 82.1(a), as well as the CPSC’s Rules of Practice for Adjudicative Proceedings, 16 C.F.R. § 1025.38. As the subpoena states, the GAO’s compliance is required within twenty (20) days of service of the subpoena. Please contact me if you have any questions.

Sincerely,



Sarah L. Wilson

Enclosures

cc (by email): Edda Emmanuelli Perez
General Counsel, GAO
EmmanuelliPerezE@gao.gov

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In the Matter of)	
)	
)	
AMAZON.COM, INC.)	CPSC Docket No: 21-2
)	
Respondent.)	
)	

Section 27(b)(3) of the Consumer Product Safety Act authorizes the Commission “to require by subpoena the attendance and testimony of witnesses and the production of all documentary and physical evidence relating to the execution of its duties.” 15 U.S.C. § 2076(b)(3). The Commission’s Rules of Practice for Adjudicative Proceedings require a subpoena for any person not a party to the proceedings for the purpose of compelling attendance, testimony, and the production of documents. 16 C.F.R. § 1025.38(a).

Under 31 U.S.C. § 716(e)(1), “[t]he Comptroller General shall maintain the same level of confidentiality for a record made available under this section as is required of the head of the agency from which it is obtained.” The records sought by the attached Subpoena and that Commission staff provided to the Government Accountability Office pursuant to 31 U.S.C. § 716(a)(2), may be subject to the disclosure restrictions of section 6 of the Consumer Product Safety Act, 15 U.S.C. § 2055, contain or relate to a trade secret or other matter referred to in 18 U.S.C. § 1905, contain information that is subject to the attorney-client privilege, attorney work-product privilege, and/or the deliberative process privilege, and/or contain personally identifiable information. The disclosure of this or other information may be prohibited under applicable statutory and regulatory requirements.

For the reasons stated in the Application, IT IS HEREBY ORDERED BY THE COMMISSION:

1. That the attached Subpoena to the Government Accountability Office be issued subject to the confidentiality requirements stated above, and
2. That the Secretary of the Commission is authorized to sign and date the Subpoena to the Government Accountability Office as set forth in 16 C.F.R. § 1025.38(d).

SO ISSUED this 18th day of March, 2022.

FOR THE COMMISSION,

Alberta Mills

Alberta E. Mills
Secretary
Consumer Product Safety Commission

**UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION**

In the Matter of Amazon.com, Inc., Respondent.

CPSC Docket No. 21-2

Hon. James E. Grimes
Presiding Officer

TO: The Hon. Gene Dodaro
Comptroller General of the United States
c/o Records Management and Services Officer
Office of Information Systems and Services
Government Accountability Office
441 G Street NW
Washington, DC 20548

SUBPOENA

Amazon.com, Inc. (“Amazon”) is the respondent in the above-captioned adjudicative proceeding brought by Complaint Counsel in the United States Consumer Product Safety Commission (“CPSC” or “Commission”). Complaint Counsel asserts certain claims under the Consumer Product Safety Act (“CPSA”).

Amazon believes that the Government Accountability Office (“GAO”) possesses information or knowledge that is relevant to the claims and defenses of the parties in the above-captioned matter, as set forth below. The Commission has authorized the issuance of this Subpoena in this matter pursuant to Sections 15 and 27(b)(3)-(4) of the CPSA, 15 U.S.C. §§ 2064 and 2076(b)(3)-(4), respectively, and 16 C.F.R. § 1025.38.

The subpoena requires that you produce documents.

I. GENERAL INSTRUCTIONS

- A. The Commission’s rules for adjudications govern this Subpoena. 16 C.F.R. § 1025.38. Title 16 of the Code of Federal Regulations, Section 1025.38 sets forth procedures for motions to quash or modify this Subpoena.
- B. This Subpoena shall be answered by you.
- C. The public disclosure of any information provided to the Commission under this Subpoena shall be governed by the Protective Order entered in this adjudicative proceeding on February 7, 2022. This includes Paragraph 12 of the Protective Order, which states: “Any party seeking the production of material via subpoenas to third parties shall provide the non-requesting party with a

copy of the material produced and provide the non-requesting party with a thirty-day period within which to designate any produced material as Confidential Information in accordance with this order. The party requesting such material shall treat all of the material produced as Confidential Information until the non-requesting party has made its designations or the designation period expires, whichever is earlier.”

- D. Submit documents in response to this Subpoena, and direct any questions regarding this Subpoena, to Sarah L. Wilson (swilson@cov.com) and Stephen P. Anthony (santhony@cov.com) at Covington & Burling LLP.
- E. Documents should be provided electronically in a way that preserves metadata and relationships among attachments, and that includes a native file format and a load file.
- F. Each document production request seeks production of all documents described herein, and any attachments thereto, in your possession, custody, or control, or in the possession, custody, or control of any of your attorneys, employees, agents, or representatives, and all documents and any attachments that you or any of your attorneys, employees, agents, or representatives have the legal right to obtain, or have the ability to obtain from sources under your or their control.
- G. The words “and” and “or” shall be construed conjunctively or disjunctively, as necessary, to make the request inclusive rather than exclusive. The word “including” shall be construed to mean without limitation. The words “any” and “all” shall be construed to make the request inclusive rather than exclusive.
- H. The use of the past tense shall include the present tense, and the use of the present tense shall include the past tense, to make all definitions and discovery requests inclusive rather than exclusive. The singular shall include the plural and vice versa.
- I. To the extent that you withheld, based upon a claim of privilege, any information or documents (including electronic records) that would have been responsive to any information or document production requests contained in the Subpoena, provide the following information for any document withheld, specify the privilege claimed and the factual basis you contend supports the assertion of the privilege, and the date, nature, and subject matter of the document; the author, preparer, addressee/recipient, and custodian of the document; the present location of the document, and the number of pages, attachments, appendices, and exhibits to the document.
- J. In an affidavit accompanying the response to the Subpoena, you must include a statement, signed under oath or affirmation, indicating that a diligent search of all files, records, and databases for responsive information and documents has been made, that the information contained in the responses to the

questions is complete and accurate, and that you have produced true copies of all the documents requested in the Subpoena.

- K. Your obligation to respond to the Subpoena is a continuing one. As additional information becomes available to you that is responsive to the Subpoena, you must submit that information immediately.

II. DEFINITIONS

For the purposes of the Subpoena, the following definitions apply:

1. “GAO” means the Government Accountability Office and any of its current or former employees.
2. “GAO Report” means the report issued by the GAO on or about November 19, 2020, entitled *Consumer Product Safety Commission: Actions Needed to Improve Processes for Addressing Product Defect Cases* (GAO-21-56), and available at <https://www.gao.gov/assets/gao-21-56.pdf>. The report lists Alicia Puente Cackley as the “GAO Contact.”
3. “Person” means any natural person, entity, group, corporation, company, partnership, joint venture, firm, association, proprietorship, agency, board, authority, commission, officer, government agency, or other business or legal entity, whether private or governmental, and whether foreign or domestic.
4. “Document(s)” shall be interpreted as the term is used in Federal Rule of Civil Procedure 34, and includes electronically stored information.
5. “Relating to” or “related to” shall mean consisting of, referring to, describing, discussing, constituting, evidencing, containing, mentioning, concerning, pertaining to, citing, summarizing, analyzing, or bearing any logical or factual connection to the matter discussed.

III. SUBPOENA DUCES TECUM

You are directed to produce electronically, to the email addresses provided in the Instructions above, within twenty (20) days of service of the subpoena, copies of all records in your possession, custody, or control responsive to the following request:

1. Documents or data relating to the GAO Report or to the GAO performance audit that led to the preparation and publication of the GAO Report, including, but not limited to:
 - a. documents or data received, generated, considered, or relied upon by GAO in the preparation of the GAO Report or in the formation of GAO’s findings, conclusions, or recommendations, including interview notes,

data summaries, or compilations generated or prepared by GAO in connection with the performance audit or GAO Report;

- b. communications between GAO and CPSC relating to the GAO Report or performance audit; and
- c. documents or data generated by or provided to the GAO relating to the GAO Report subsequent to the Report's release, such as documents relating to the status of any response to the GAO Report's recommendations.

For the avoidance of doubt, this document request does not seek (a) copies of draft reports; (b) copies of individual Monthly Progress Reports; or (c) individually identifiable manufacturer-specific or product-specific information subject to Section 6 of the CPSA, 15 U.S.C. § 2055.

BY ORDER OF THE COMMISSION

The undersigned, an authorized official of the U.S. Consumer Product Safety Commission, has hereto set her hand and caused the seal of the Commission to be affixed at Bethesda, Maryland, this 18 day of March, 2022.

Alberta Mills

Alberta E. Mills
Secretary
U.S. Consumer Product Safety Commission

Exhibit B

From: Lombardi, Thomas <LombardiT@gao.gov>

Sent: Wednesday, April 13, 2022 11:18 AM

To: Cavaturo, Benjamin <BCavaturo@cov.com>

Cc: Wilson, Sarah <swilson@cov.com>; Anthony, Stephen <santhony@cov.com>; Parady, Justin <JParady@cov.com>; Brugato, Thomas <tbrugato@cov.com>; Irving Brown, Peta-Gay F <IrvingbrownP@gao.gov>

Subject: RE: In the Matter of Amazon.com, Inc. (CPSC Docket No. 21-2) - subpoena to GAO (4/13/2022)

EXTERNAL

Ben,

I will send a zoom.gov appointment for Tuesday, April 19, at 2 PM. Thank you for providing a range of days and times. We also appreciate you clarifying that GAO correspondence with our congressional clients can be taken out of the subpoena's scope.

With respect to service of the subpoena, thank you for sharing the tracking information. As we discussed when we first met, we appreciated receipt of a courtesy copy of the subpoena by email on March 22 and we began taking steps in response from that time. We also understand that under the CPSC's regulations that the date of service of a document is the date the document is deposited with the U.S. Postal Service (USPS), postage prepaid, or is delivered in person. 16 C.F.R. 1025.16(f). In this case, the tracking information confirms the subpoena was deposited with USPS on March 22, and pursuant to the regulations we acknowledge March 22 as the date of service, though as the tracking data shows the subpoena was not delivered and available for pick up by GAO until March 29, 2022.

We'll look forward to our discussion next week.

Regards,

Tom

Exhibit C

Track Another Package +

Tracking Number: 70212720000190995424

Remove X

Your item was picked up at a postal facility at 12:11 pm on March 29, 2022 in WASHINGTON, DC 20548.

USPS Tracking Plus® Available ▾

✓ **Delivered, Individual Picked Up at Postal Facility**

March 29, 2022 at 12:11 pm
WASHINGTON, DC 20548

Feedback

Get Updates ▾

Text & Email Updates



Tracking History



March 29, 2022, 12:11 pm
Delivered, Individual Picked Up at Postal Facility
WASHINGTON, DC 20548
Your item was picked up at a postal facility at 12:11 pm on March 29, 2022 in WASHINGTON, DC 20548.

March 29, 2022, 11:38 am
Available for Pickup
WASHINGTON, DC 20548

March 29, 2022, 8:58 am
Arrived at Post Office
WASHINGTON, DC 20018

March 28, 2022
In Transit to Next Facility

March 25, 2022, 10:52 am
Departed USPS Regional Facility
WASHINGTON DC DISTRIBUTION CENTER

March 24, 2022, 11:55 am
Arrived at USPS Regional Facility
WASHINGTON DC DISTRIBUTION CENTER

March 23, 2022, 5:39 pm
Arrived at USPS Regional Facility
GAITHERSBURG MD DISTRIBUTION CENTER

March 22, 2022, 4:18 pm
USPS in possession of item
WASHINGTON, DC 20004

Feedback

USPS Tracking Plus®



Product Information



See Less

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Go to our FAQs section to find answers to your tracking questions.