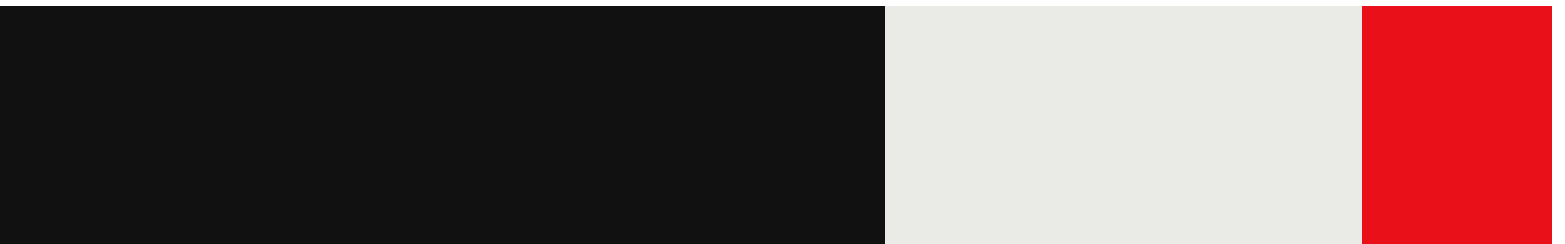


# The Daily: The Amazon monopoly trial, Peloton and Lululemon's deal, and social media burnout is back

Audio



On today's podcast episode, we discuss the Federal Trade Commission's (FTC) case against Amazon, the tech giants' defense, and what is most likely to come of this. "In Other News," we talk about what to make of Peloton and Lululemon striking a deal and why social media burnout is back on the radar. Tune in to the discussion with our analysts Jacob Bourne and Zak Stambor.

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## Episode Transcript:

Marcus Johnson:

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Zak Stambor:

And so however this shakes out, you can undoubtedly see ways in which they will figure out strategies to evolve that align with whatever it is that the outcome of the suit says.

Marcus Johnson:

Hey, gang, it's Monday, October 9th. Zak, Jacob, and listeners, welcome to the Behind the Numbers Daily, an eMarketer Podcast made possible by Intuit Mailchimp. I'm Marcus. Today, I'm joined by two folks. Let's meet them. We start with one of our analysts on our connectivity and tech briefing based out of California, it's Jacob Bourne.

Jacob Bourne:

Hello, Marcus. Hi, Zak. Glad to be here.

Marcus Johnson:

Hey, chap. We're also joined by one of our senior analysts covering everything retail and eCommerce. He's based just above Chicago. You may have heard him hanging out on the Reimagine Retail Show, but we've got him today, it's Zak Stambor.

Zak Stambor:

Hey, Marcus. Hey, Jacob.

Marcus Johnson:

Hey, fella. Today's facts. Do you guys know why we call stuffed toy bears teddy bears?

Zak Stambor:

Yes.

Marcus Johnson:

Go.

Zak Stambor:

It's due to Teddy Roosevelt, right?

Marcus Johnson:

It is.

Zak Stambor:

An ode to Teddy Roosevelt.

Marcus Johnson:

It is indeed. Jacob, you knew this?

Jacob Bourne:

That was what I was going to say as well, yes.

Marcus Johnson:

Oh, so it's just me. Okay. All the listeners might also know this, but I thought this was fascinating. So according to the National Park Service, the teddy bear named after President Theodore Roosevelt, who was often referred to as Teddy as his nickname. So the name originated from an incident on a bear hunting trip in Mississippi in November, 1902 when President Roosevelt refused to shoot a captured black bear on a hunt. Clifford Berryman, political cartoonist, white heartedly satirized the president's refusal to shoot the bear in a Washington Post cartoon. And then two folks, Morris and Rose Michtom, a couple who owned a Brooklyn candy shop and made stuffed animals, they saw the cartoon and decided to create a stuffed toy bear and dedicate it to the president who refused to shoot a bear, and they called it Teddy's Bear. And after receiving Roosevelt's permission to use his name, Michtom mass-produced the toy bears, which were so popular, they soon founded the Ideal Toy Company.

Zak Stambor:

Interesting. Why did he not hunt it or shoot it? Because he was an avid hunter.

Marcus Johnson:

Yes. I think the bear was pretty injured.

Jacob Bourne:

Because it was trapped, right? Because it was already trapped so it's like...

Zak Stambor:

Oh, trapped. Oh. Okay. Fair enough.

Marcus Johnson:

So he said no. Rather, ironically, he hated the nickname Teddy.

Zak Stambor:

Did he?

Marcus Johnson:

Yeah. Did you guys ever have a nickname you hated?

Jacob Bourne:

Well hate's a strong word.

Marcus Johnson:

Not that I knew about. Yeah, to strangers, I'm probably just that Australian guy for the record I'm not from there. Okay America! The number of times. Anyway, today's real topic what's going on with Amazon's monopoly trial.

In today's episode, first in the lead, we'll cover Amazon's monopoly trial. Then for another news, we'll discuss Peloton and Lululemon's new deal and the latest on social media burnout. We start, of course, with the lead. We're talking about Amazon and their Monopoly trial. US regulators have sued Amazon alleging that the internet giant is illegally maintaining monopoly power notes James Clayton and Tom Espiner of the BBC. The Federal Trade Commission, FTC and 17 states have said Amazon uses a set of interlocking, anti-competitive and unfair strategies to push up prices and stifle competition. Amazon says the lawsuit is wrong on the facts and law, and that they look forward to making that case in court. The case also relates to another FTC suit filed in June suggesting that Amazon used deceptive practices to drive consumers to enroll in its Prime membership program. So that's also going on, but we're

focusing more on this new case that has been filed by the FTC. Zak, I'll start with you. You wrote a piece about this recently. Initial reactions to the case.

Zak Stambor:

Yeah, so it's not surprising that this suit came about. It was rather expected FTC chair Lina Khan came to prominence as a law student when she wrote a law review article that argued Amazon's anti competitive and should be broken up. So it isn't unexpected, and it's one piece of a broader puzzle of big tech antitrust reform lawsuits that include Google and Meta.

Marcus Johnson:

Jacob, what came to mind for you?

Jacob Bourne:

Yeah, I mean, I find this to be a particularly polarizing case. I mean, you have these different factions. Zak brought Lina Khan, then there's Elizabeth Warren who really seeing this as a big opportunity, long time in the coming. But then there's others who think that the FTC see has no case at all here. And that really ultimately the consumers are going to lose if there's an unfavorable outcome for Amazon and basically resulting in the loss of those cheaper prices which they want.

Marcus Johnson:

Yeah.

Jacob Bourne:

Then of course you have the tech industry, which is kind of biting their nails. Obviously this is going to take a long time to play out, but this could certainly... It's a giant case and could have major implications for the tech industry and also large businesses in the United States across the board. And then of course, in the mix of all that, there are some very frustrated consumers who aren't that happy with Amazon's practices, despite the fact that they still shop there. So there's a lot going on.

Marcus Johnson:

There is a lot. We're going to dig into both of the prosecution's case against Amazon and also Amazon's defense. But before I get to that, my initial reaction was on the face of it seems like

a pretty open and shut case. If someone said to you, "Do you think Amazon's a monopoly?" You wouldn't blame people for going, "Yeah, it's pretty much the only place I buy things online, not to mention all the other things... parts of my life that they are involved in." And there was an article from Scott Rosenberg, end of 2020... Scott Rosenberg of Axios, and he wrote that the pentopoly's... So he's talking about the major five tech companies. "Pentopoly's power and reach are unparalleled." Saying, "Their products and services reach into every corner of our lives. Google controls access to information. Facebook..." now Meta, "controls access to people. Amazon controls access to goods. Apple leads the high-end device market." They have half of the smartphones in America. "Microsoft still controls the office desktop."

He's saying, "The pentopoly's combined market cap is now roughly \$7 trillion." It was at the time. "Nearly one third of total value of the S&P 500." The S&P has gone up 14% since then, but the big five still account for about a quarter of the value. So on the face of it, if anyone said, "Oh, is Google a monopoly?" They have their own trial going on right now, antitrust trial, you'd probably say, "Yeah, probably. Where else do I go?" Amazon too, you could argue Meta and others, but there's more to it than that. You have to prove that they are in [inaudible 00:07:45]. And so we're going to go through some of the details of the case.

We're going to start with the case against Amazon. And so on the face of it, when it comes to US anti-competition legislation, prosecutors have to show that a company acted in a way that hurts consumers financially. But that's a very simplistic way of looking at antitrust law. Jacob, what do you think are some of the main arguments against Amazon at this point coming from the FTC?

Jacob Bourne:

Yeah. Well, I think first it's important to note that of course monopolies aren't inherently illegal in the United States, which is why we have them, why we have companies like Amazon. So the FTC really needs to show that there's harm done by Amazon's monopoly and that it got there through illegal practices and one of the ways-

Marcus Johnson:

Monopolistic practices so to speak.

Jacob Bourne:



Illegal monopolistic practice. Exactly. So one of the ways that the FTC is trying to argue this is saying that Amazon has been bullying third party sellers on its platform for some time, forcing them to do things like buy pricey ads in order to maintain visibility of their products. The FTC also says that Amazon has been punishing sellers who might list the same products at a lower price on a competitor's platform by downgrading their visibility's. The FTC is also saying that Amazon has been using a secret algorithm to illegal manipulate prices on the platform. So there's about 20 different charges, and those are some of, I guess, probably the ones that are kind of the hottest topics.

Zak Stambor:

There's one other area that I think is really interesting and front of mind, particularly for me, but I think to the case itself, and that's Prime. Prime is such a focal point of the Amazon ecosystem. And Prime has such a hold on the American consumer. Our forecast has 71.3% of US households holding a Prime membership, and it's really incumbent upon sellers to use fulfillment by Amazon to access those consumers to get that badge that what they're selling is Prime eligible. Because if you have Prime membership, you're probably not buying something that isn't prime eligible. And so that goes to what you were saying just a few moments ago, Jacob of Amazon pushing sellers toward using its services.

Marcus Johnson:

Just to list those again, so we've got anti discounting measures, supposedly from Amazon punishing merchants for offering lower prices elsewhere. We've also got sellers on Amazon compelled, to a certain extent, to use their logistic service if you want your goods to appear in Amazon Prime, which one of the huge perks of that is faster shipping times that Zak was just mentioning. You've also got this concern over Amazon operating a third party marketplace whilst operating its own first party retail business and the suit suggesting that third party marketplace pushes sellers to use and pay for the advertising to reach consumers and access the shipping and delivery network.

Jacob Bourne:

And the backdrop of all that is that the FTC says, "Sellers don't really have an option. You have to sell on Amazon if you're going to have any traction in the marketplace." And so that's also an important piece of this.

Marcus Johnson:

Yeah, I mean, we're going to give the counter to this in a second. How much truth is there to this stuff? Amazon's just going to say, "Oh, well, you can go elsewhere. You don't have to advertise if you don't want to." I mean, Zak, how important has advertising on Amazon become to Amazon sellers at this point?

Zak Stambor:

It's incredibly important to sellers. Basically whatever you search for on Amazon, you're going to be bombarded with ads whether you realize it or not. So if you want to reach consumers, you kind of have to pay that toll of the ad.

Marcus Johnson:

Yeah, it seems as though this-

Jacob Bourne:

Pay to play.

Marcus Johnson:

Right. And they've got a nickname for it, they're calling it... part of this, the Amazon tax. The FTC is saying that many sellers pay nearly 50% of their revenue to Amazon. They're calling it an Amazon tax when all their fees are combined and saying that these costs could be passed on to the consumer if folks weren't able to pay so much to play as Jacob said. They're also... the suit alleging Amazon degrades the customer experience by replacing organic search results with paid ads.

Zak Stambor:

So that part I agree with to some extent because obviously what you see when you search is an ad for nearly all the results. You kind of have to scroll really far. That said, what Amazon has been very effective with is still delivering relevancy. And so when you search something, you do get decent results, but that's because everyone has had to pay for ads. So they're able to finely tune what it is they present you to what it is that you're searching for.

Marcus Johnson:

One other component of this, so Sara Morrison of Vox saying the lawsuit also addresses Amazon's Buy Box. She explains that when several sellers offer the same products, Amazon

picks which one gets the sale when a customer clicks to make a purchase, so whether add to cart or buy now, that's the Buy Box, that little area and everyone else is relegated to other sellers section further down the page. Most folks don't even bother to look at that or don't know it. It's there. And so being in the Buy Box is crucial, noting that sellers pretty much have to use Amazon's fulfilled by Amazon logistics and shipping service to be eligible for it. How much credence is there to this argument?

Zak Stambor:

It's absolutely true. How often do you click and look at the other sellers selling the same product? I never do.

Marcus Johnson:

Right. But can Amazon say, "Well, you can. It's there." Or is it a case of dark patterns where it's there, it's there for you to click on something like opt out, but it's in gray and it's in smaller fonts and it's sometimes hidden on the page. And so maybe there's a case of okay, yes, it's there, but it's not as obvious as it should be to folks. The other final part here is just the optics of this. Again, they have to prove in a court of law that this is the case that Amazon, to what Jacob was saying, isn't just a monopoly, but has been engaging in monopolistic practices. Because similar to Google, on the face of it, Amazon's a literal monopoly across multiple... And I think it's going to be hard for the judge to kind of... They're going to have to, but decouple their thinking of Amazon from all the other places that it is also in large part a monopoly. So Amazon accounts were close to-

Zak Stambor:

You keep saying it, but I don't know that that's really true. I mean, it doesn't even account for the majority of retail e-commerce sales in the United States, it's like 37.6%. And so yes, it has a major hold on e-commerce, but it's not a monopoly.

Marcus Johnson:

But the problem is the second place is Walmart and they have 7%, so like six times smaller. So you're right, it's not like it's 80%. It's a good point, and that should be taken into consideration.

Jacob Bourne:

Again, though, it's not so much whether or not it's a monopoly, it's whether it's a harmful monopoly. I think that's really what the FTC really needs to prove here which is going to be much more difficult than proving against monopoly.

Marcus Johnson:

Yes. Yeah, they're great points, because if you look at that space, Zak, you're right, it's about close to 40%, 37%, 38% of the US online shopping market according to our forecasts. But then you've got two thirds of American adults, Prime people according to Consumer Intelligence Research Partners, we have a similar number as well. Amazon's the world's largest cloud computing company, third-largest digital ad player in the US in terms of revenue. They're closing in on second place Meta. They are the top-selling voice assistant in the Echo device. They make the top-selling streaming device in the fire TV. They have over 80% of the ebook market according to codex, and they are quite literally...

I mean, Amazon makes close to 540 billion in annual revenue. That is more than any other public company in the world except Walmart according to data from S&P Global Market intelligence. That said, again, you've got to prove it. This just shows just how big they are in different spaces isn't proven monopolistic, anti-competitive behavior. Let's move to the defense then, Zak. What's Amazon going to come back with when they start the defense of this case?

Zak Stambor:

Well, I think it starts with what I was just saying a moment ago. It's not a monopoly. The majority of online sales in the US aren't on Amazon. And then secondly, I think they can say sellers can decide whether they want to pay for ads. They can decide whether they want to pay for services. They don't have to. They can still reach consumers, and there's a ton of consumers on Amazon, many of whom, which can be a small portion, but it can still be a lot of people who do click, who do scroll and do find these other sellers. And then finally, I think what they are saying is if you take action and you break us up or you cause us to alter our practices or whatever it might be, you're actually going to harm consumers. You're going to see higher prices, you're going to see slower deliveries, and you're going to hurt the small businesses that are the backbone of the Amazon Marketplace.

Marcus Johnson:

How much truth to that do you think there is? Because a lot of this is going to be PR, a fewer products to choose from, higher prices, slow deliveries, less options for small businesses, what they've said. I mean, if you see this playing out and something does happen to Amazon, do you think that's really going to be the case?

Zak Stambor:

Yes and no. I think it really depends how it ultimately shakes out. I think Amazon's an incredibly innovative company that has always looked ahead to the next thing and identified it and pushed ahead toward that, particularly with delivery, particularly with retail and media, but really everywhere. And so however this shakes out, you can undoubtedly see ways in which they will figure out strategies to evolve that align with whatever it is that the outcome of the suit says.

Marcus Johnson:

Yeah. Yeah. Jacob, what do you think? So the argument here is you don't have to go to Amazon, you can go elsewhere. And it seems like that's... I mean, how many competitors does Amazon really have in that regard? Moving to the Google case for a second. Talking about the antitrust case that they're dealing with. Google was paying folks like Apple to be the default. Whereas Amazon, it's like, well, people are choosing to go to Amazon. Google was able to say, "Oh, well there's..." At least they are able to say, "Well, people can go to Amazon." Most people are starting their shopping searches on Amazon. People can go to TikTok. A lot of young people, majority of Gen Z is are starting to look for things on TikTok ChatGPT as well, something me and you talk about a lot. People can go to ChatGPT and find things. So it seems like there are, even though they're not direct competitors in terms of being in the same space search, they are indirect competitors and pretty large. I mean, Amazon, what do you think their main defense is going to be?

Jacob Bourne:

I mean, I think Amazon has a pretty solid defense just with saying, what Zak was saying that it's not a monopoly in terms of not crushing other major e-commerce players. And I think that what it ultimately means is the FTC has an uphill battle in winning this case. I think at the end of the day, it's going to be about the FTC proving that sellers themselves were directly harmed by Amazon's practices versus showing that, for example, that Amazon harms consumers. I mean, the fact of the matter is that people shop on Amazon because they can find cheaper

prices on Amazon. So it's really hard to argue that it's hurting consumers when at least according to Bloomberg in 2022, Amazon's prices were 14% lower than the competitions. I mean, that's a huge margin. So I really think that the burden is actually on the FTC not Amazon here in this case. I think the FTC is going to have to prove that Amazon intentionally hurt sellers to stifle competition. And that would be a concern I think, for regulators, because a lot of these sellers are small businesses.

Marcus Johnson:

Yeah.

Jacob Bourne:

So I don't think it's necessarily the e-commerce monopoly that's going to be the crux of this case.

Zak Stambor:

The one other thing I would say is the FTC can win, even if it doesn't win. If it causes Amazon to alter some of its practices, if it causes it to tweak its behaviors in some sort of ways over the course of the next few years before we see a trial or anything else, then maybe that's a win, even if the actual outcome is an Amazon victory.

Jacob Bourne:

Yeah, I mean, it depends on what we mean by a win. Certainly it would be one of the first major antitrust wins, but I think this case is going to have a lot of public perception elements to it just because of how visible Amazon is in people's lives. And if a settlement were reached and Amazon had to change its business practices and then it resulted in higher prices, and I don't think that that really is a win ultimately for the FTC or the US government.

Zak Stambor:

The higher prices thing is interesting because for the longest time, Amazon was all about low price, but Amazon doesn't always have the low price anymore.

Jacob Bourne:

Not always. It [inaudible 00:20:40].

Zak Stambor:

It's really about convenience. That is the play that Amazon leans into when you click and the thing you bought is on your doorstep a few hours later. That's so convenient. And that's really why and how Amazon keeps people clicking and buying.

Marcus Johnson:

Yeah, I wonder how much of it is ingrained in people's subconscious because there was the place they went for lower prices, now it's more for convenience. But in the back of their head, they're also thinking, "Well, I'm here for convenience, but I'm also probably getting some of the lower prices because I used to."

Jacob Bourne:

I mean, I think the prices, it really varies. I mean, some prices have gone up with inflation. But for other items, I think that they had continued to maintain the cheapest on the market in terms of prices.

Marcus Johnson:

All right. So most likely outcomes and we covered a couple, Scott Rosenberg of Axio saying it's going to be up to the federal judge in Washington state because Amazon was born in Seattle, to decide whether the case and evidence is strong enough to rule that Amazon should be charged. Could be A, liable for damages, fines. B, structural remedies, think limits on its conduct, or even some kind of breakup or C nothing. There's been a lot of expectations since FTC boss Lina Khan took the job. Zak explained why her background as a Yale law student and publishing that paper in 2017, arguing American antitrust laws had failed to stop Amazon from amassing power over its customers, competitors, and suppliers.

She already had two losses. In February, FTC lost an attempt to stop Meta from buying VR company within for \$400 million. And then July FTC lost to attempt to block Microsoft from completing its deal to buy maker of Call of Duty, Activision Blizzard for close to \$70 billion. The case is expected to play out over several years, so don't stay tuned so you can tune out and come back to us at the next World Cup. That's all we've got time for the lead. We'll skip the halftime report. We've talked about it enough. Time for the second half of the show today. In other news, Peloton and Lululemon, strike a deal. And where are we at with social media burnout.

Story one, Zak, you just wrote about Peloton and Lululemon striking a deal that ends the company's connected fitness rivalry. You explained that as part of the deal. Lululemon will stop selling its studio mirror home fitness device this year and will bring Peloton's content to its exercise app. And Peloton who tried to build their own apparel collection will make Lululemon its primary athletic apparel partner. But to you, Zak, what's the most important sentence in your article and why?

Zak Stambor:

I think this deal is just the latest and highest profile sign that the connected fitness bubble has burst mirror, just crashed and fell to pieces. Peloton is really struggling, but the deal ultimately makes a whole lot of sense. I mean, both companies can do what it is that they actually do well and not try to embark on some other business that is wholly distinct from their bread and butter.

Marcus Johnson:

Yeah, yeah. You mentioned the bubble bursting, and you're pointing out some of the numbers we have for the number of American connected fitness users and how it's already peaked reached 41 million folks who were connected fitness users in the US last year. This year, 1 million fewer people will call themselves connected fitness users, and that decline will continue reaching 39 million in just two years time, according to our forecast team. Story two, Jacob, one of your most recent article reads, "Social media users report burnout from viral content culture." Social media users you explain are reporting fatigue and disillusionment with platforms. What to you is the most important sentence in this piece and why?

Jacob Bourne:

Yeah, so here's a quote from 23 year old Walid Mohammed. He says, "I'm honestly just tired of social media. I'm tired of consuming content all the time." And I think this quote is really just a broader symptom of social media malaise. I think tech companies have kind of forgotten to a degree that people are social creatures and they want to interact, they want to have meaningful interactions with regular people. And what's happening is a lot of users are going on these platforms. They're seeing very highly curated content. They're feeling like it's an entertainment space. They might be experiencing some toxicity, and what that's doing is it's driving people to these small private group chats. Now, the problem with that is that small private group chats don't have the kind of ad revenue potential that the main feed of the



platform have. So I think for platforms to kind of get things back on track to attract users to the public sphere, again, I think it really needs... It's going to come down to them giving users more control over the experiences that they have in platforms.

Marcus Johnson:

I really liked your quote, "tech companies are out of touch with what users want more of the social aspects and less of the media just about with recommendation algorithms having eroded their original purpose." And yeah, you had some numbers in there from our remarkable forecasting team showing social media users. Next year, 1 million Americans who are 43 and older will stop using social networks at least once a month.

Jacob Bourne:

Yeah.

Marcus Johnson:

Yeah. So the tide's changing there.

Jacob Bourne:

Red alerts for social media companies, in other words.

Marcus Johnson:

Yes.

Zak Stambor:

That's remarkable.

Marcus Johnson:

Yeah. Younger people, I think Gen Z is still going up slightly. Millennials was pretty much flat, but upper tiny bit, but a million Americans over the age of 43 will stop using social networks at least monthly. That's what we've got time for this episode. Thank you so much, gents, for hanging out today. Thank you to Jacob.

Jacob Bourne:

Marcus, Zak, it's been a pleasure.

Marcus Johnson:

Yes, indeed. Thank you to, Zak.

Zak Stambor:

Yeah. Thanks for having me.

Marcus Johnson:

Of course. Thank you to Victoria who edits the show, and James, who copy edits it. Stuart, who runs the team, and thanks to everyone for listening in. If you want to sign up for the retail briefing that Zak writes for, or the connectivity and tech briefing that Jacob contributes to, you can click the links below in the show notes. We'll hopefully see you tomorrow though, for the Behind the Numbers Daily an eMarketer podcast made possible by Intuit Mailchimp.