



Response for Surveillance Sample FCC ID 2ATEYTIA-B09

To FCC Whom It May Concern:

Huawei Device Co., Ltd (“Huawei”) hereby replies to your most recent email dated March 2, 2022 (“March 2 Email”). That email contains the MAC address and serial number of the above-referenced device (“Device”), along with a message that your office is holding Huawei responsible for the marketing of the “non-compliant” Device.

By way of background, your office sent an email to Huawei on February 22, 2022, stating that surveillance testing of the Device revealed that “that the FCC ID was not available in the regulatory compliance screen” and that an application would not be processed unless the information requested was provided. In response to a reply by Huawei requesting the Device’s MAC address and serial number, your office sent another email dated February 24, 2022, stating: “we randomly purchased this device from Amazon, we believe there are more like devices without proper FCC e-labeling.” Huawei sent another email to your office on March 2, 2022, stating: (a) Huawei has never sold any product without proper FCC e-labeling to U.S. Amazon; and (b) because many retailers sell Huawei products through a very complicated and unknown channel-sales mechanism, Huawei needed the MAC address and serial number to identify the entity who distributed the Device in order to investigate the incident. In response to Huawei’s email, your office sent the March 2 Email to Huawei, which, in addition to providing the MAC address and serial number, further stated: “Please keep in mind that you are still responsible for labeling all devices properly regardless of how complex your retail and distribution processes may be.”

Huawei is not the party responsible for FCC compliance of the subject Device under these circumstances, because it did not market the Device in the U.S. According to FCC Rule 2.803(b), no RF device can be marketed in the U.S. unless it is “properly tested, authorized, and labeled.” 47 C.F.R. § 2.803(b). The FCC defines “marketing” as “sale or lease, or offering for sale or lease, including advertising for sale or lease, or importation, shipment, or distribution for the purpose of selling or leasing or offering for sale or lease.” 47 C.F.R. § 2.803(a). Read in conjunction with FCC Rule 2.803(b), the definition of “marketing” applies to activities conducted in the U.S., or that are applicable to marketing of an RF device within the U.S.

Huawei sold the subject Device and other Smart Watches to a distributor in China, subject to a contract which expressly stipulates that of all the Smart Watches which the

distributor takes delivery (including the Device) are to be sold in Brazil exclusively. *See* attached excerpts from Annex A2 of the Huawei Product Framework Contract (“Contract” executed on September 4, 2019). The Contract also states the distributor promises and guarantees that it “and its affiliates and subordinate distributors will not sell the authorized distribution products to countries or regions outside the authorized distribution area.” *Id.* at ¶ 1.9.

Huawei did nothing that could be considered marketing of the subject device in the U.S. *See* 47 C.F.R. § 2.803(b). Because Huawei did not market the subject device in the U.S., it is not the responsible party in this instance. *See* 47 C.F.R. § 2.803(a). As stated in the Contract, the distributor is responsible for its downstream distributors, one of which marketed the device on Amazon. Once Huawei sold the device to its distributor outside of the U.S., it had no control over what the distributor did with it. Moreover, Huawei made a good faith effort to ensure that the Device would not be sold in the U.S. Huawei made it clear to its distributor that the Device may not be compliant for sale in countries other than Brazil and strictly forbade it and its downstream distributors from selling the Device in any other country. *See* Contract at ¶ 1.9.

Huawei did not directly engage in any marketing or importation of the Product into the U.S. market, Huawei did not authorize its Brazilian distribution to engage in any marketing of the Product into the U.S. market. Furthermore, Huawei has already asked Amazon US to all Huawei remove immediately all Huawei Products without correctly complying US labeling and FCC rules from US Amazon channels in March 2. *See Email [Important] Re. Selling Huawei Products without FCC ID Labeling in Amazon US.* For all the foregoing reasons, Huawei respectfully requests that your office cease its current inquiries of our company.

Position/Title: Regulatory Compliance Manager

Signature: Xue Fugiang

Date: 2022.03.23

Huawei Product Framework Contract （Signed on July 2, 2019）

Party A: Huawei Device Co., Ltd.

Party B: distributor

华为终端产品框架合同	
合同各方：	
甲方：	华为终端有限公司
注册地址：	广东省东莞市松山湖园区新城路2号
法定代表人：	职务：经理
乙方：	
注册地址：	
法定代表人：	职务：业务总监

● **Annex A2: The rights and obligations of the FSD cooperation model**

Party A: Huawei Device Co., Ltd.

Party B: distributor

The contract signing entity is a Chinese distributor, so the contract text is only in Chinese.

The main contents of the contract are translated as follows:



1.2 Authorized distribution area: Under this framework, the distribution area authorized by Party A to Party B is [Brazil], and the channel scope authorized by Party A to Party B is [AliExpress Online Mall].

1.9 乙方明确并知悉，甲方销售给乙方的授权经销产品仅适用于授权经销区域，因其在包装、产品制式、市场准入要求、质量认证、语言、用户使用习惯、维保服务等方面仅能满足授权经销区域有关法律法规的要求。乙方进一步理解并知悉，若将授权经销产品销往授权经销区域以外的其他国家或地区，则可能因产品制式、用户使用习惯等方面的差异使授权经销产品无法在当地正常使用，也无法在当地接受维保服务，甚至可能因授权经销产品不符合当地市场准入要求、质量认证要求等而使甲方或者甲方在当地的关联公司遭受当地主管机关调查、处罚或者遭到消费者投诉、诉讼，因此会在当地给甲方及甲方的关联公司造成极其严重的负面影响及巨大的经济损失。有鉴于此，乙方在此承诺并保证乙方及乙方关联公司、所属的下级经销商不会将授权经销产品销往授权经销区域以外的国家或地区。

1.9 Party B expressly understands and understands that the authorized distribution products sold by Party A to Party B are only applicable to authorized distribution areas, because the packaging, product format, market access requirements, quality certification, language, user habits, maintenance services, etc. It can meet the requirements of relevant laws and regulations in the authorized distribution area. Party B further understands and knows that if the authorized distribution products are sold to other countries or regions outside the authorized distribution area, the authorized distribution products may not be able to be used normally in the local area due to differences in product standards, user habits, etc. Accept maintenance services, and may even cause Party A or its local affiliates to be investigated or punished by local competent authorities, or subject to consumer complaints or lawsuits because the authorized distribution products do not meet local market access requirements, quality certification requirements, etc. Therefore, it will cause extremely serious negative impacts and huge economic losses to Party A and its affiliates locally. In view of this, Party B hereby promises and guarantees that Party B and its affiliates and subordinate distributors will not sell the authorized distribution products to countries or regions outside the authorized distribution area.

● Email [Important] Re. Selling Huawei Products without FCC ID Labeling in Amazon US



2022/3/2 (周二) 20:51

xuefuqiang Xue(Fuqiang)

[Important] Re. Selling Huawei Products without FCC ID Labeling in Amazon US

收件人: "notice@amazon.com"; "copyright@amazon.com"; "jeff@amazon.com"; "seller-performance-policy@amazon.com"; "pq-review@amazon.com"

抄送: Wangkemeng; Zhuangzhendong; zhuyin (E); yili (A)

该邮件的重要性为: 高。

To whom it may concern,

This Letter is served upon you since we learned that as for some of Huawei devices sold in US Amazon e-commerce platform (e.g. Huawei Watch Fit TIA-B09J), the FCC ID was not available in the regulatory compliance screen. This is likely to breach the US labeling and FCC rules and be challenged by FCC. We believe that such sellers who sell this kind of products do not have Huawei's corresponding authorization.

For Huawei this means a highly sensitive matter since Huawei did not authorize the sales or distribution of such products (without FCC ID) in US Amazon channels. We believe that these sellers shall be verified and controlled by Amazon US to avoid selling of Huawei unauthorized devices without FCC ID, especially in US market. For this reason, we kindly request your support to conduct all necessary efforts to recognize and verify these sellers and remove immediately all Huawei Products without correctly complying US labeling and FCC rules from US Amazon channels.

We believe Amazon is a reliable and trusty e-commerce platform for its users. Therefore, we kindly request your support to conduct the investigation and actions to stop the Huawei products without FCC ID labeling sold in Amazon US sales channel.

Please respond this letter within 5 business days after receiving it. Huawei reserves the right to pursue judicial investigation or proceedings as permitted by the applicable laws.

Thank you for your immediate support on this matter.

Huawei Device Co, LTD

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