

Elon Musk's last two weeks have been a wild ride

Chaos reigns

By Elizabeth Lopatto | @mslopatto | Mar 15, 2019, 8:00am EDT



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This Week in Elon



This Week in Elon was a limited-run newsletter that is occasionally revived when there's Too Much News. You can [subscribe here](#).

I said I'd be back if Elon Musk Eloned again, and here we are. The last two weeks alone have included:

1. SpaceX's Crew Dragon [successfully splashing down](#) in the Atlantic after its first launch
2. A new Boring Company project in Las Vegas, [set to open in time for CES 2021](#)
3. An [even faster Supercharger](#) from Tesla
4. [German regulators telling Tesla to knock it off](#) with the "gas savings" on their pricing
5. A Chicago mayoral race that's [imperiled the future](#) of The Boring Company's plans there
6. Another former Tesla employee [saying the company spied on its workers](#)
7. [Tesla reversing itself](#) on its plan to close stores, and hiking prices on most of its cars
8. Musk accusing the Securities and Exchange Commission of an ["unconstitutional power grab"](#)
9. A Bloomberg story that suggests [Musk personally tried to destroy a whistleblower](#)
10. [The introduction of the Model Y](#)

Friends, this is Too Much News. What is the coherent narrative here? Musk clashes with politicians, employees, and regulators while... also... uh... technology?

Hm, actually though, *chaos reigns* seems like a decent theme. Businesspeople usually like to imagine themselves as Stable Pillars of the Community Who Deserve Public Trust, Please Do Not Look Closely At Their Business Thanks. By comparison, Musk seems to consider himself a [trickster figure](#), Bugs Bunnying his way through the transportation industry. Musk isn't going to behave the way, say, [Tim Apple behaves](#) — if Donald Trump were to rename him Elon Boring Company SpaceX Tesla, you get the sense he would not be placidly nodding along with it.

Trickster figures typically show up in mythology to upend stasis — yes, they create chaos, but they tend to be strongly associated with commerce as well. "Mercurial," meaning unpredictable or impulsive, is derived from the Roman god Mercury, the god of shopkeepers *and* thieves, of travelers, and, yes, *tricksters*. It's *literally right there* in the etymology of the [adjective a lot of reporters pick to describe the guy!](#)

Musk has devoted fans and customers because his companies make things people like. NASA likes his rockets. Many people like driving his cars — though there are some

notable exceptions. Simultaneously, he's been accused of violating labor laws in the Fremont plant that makes the cars, and this week's *Bloomberg* story makes the Gigafactory, an important part of Tesla's future, sound like a real mess, separately from the allegations of hacking, spying, and retaliation. And then there are the stories about the worker complaints: high injury rates in 2017, still more injuries in 2018, and layoffs of some longtime employees.

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If you have a stable thesis about Musk, he is likely to undermine it, especially when it comes to Tesla. Tesla might or might not or be experiencing a drop in Model 3 demand, which may or may not have been the reason for the introduction of the \$35,000 Model 3. Tesla wanted to close its showrooms before it didn't want to close them. Full Self-Driving comes and goes. The Boring Company's transit system was going to feature skates before it featured Teslas; there's the whole political limbo situation in Chicago. SpaceX hasn't had any major policy reversals that I can think of in the last year, which makes it something of an outlier, really! And Neuralink, after a huge spate of initial press, has been pretty much totally silent, Musk's claim on the Joe Rogan show last year that there would be a big announcement "in a few months" notwithstanding. (That was seven months ago, for those of you keeping track at home.)

Anyway, Musk and the SEC are having a slapfight again about Musk's tweets. You may remember that he tweeted about there being "funding secured" for taking Tesla private at \$420 a share, except the funding wasn't secured. At that point, the SEC sued for securities fraud, and then there was this whole settlement deal with the SEC that involved some Twitter oversight, along with a fine and other punitive measures. The dispute involves Tesla Model 3 production numbers and whether Musk's tweet about them was vetted by a lawyer before being sent, and *also* if that vetting is even required by that settlement agreement.

Here's part of the argument Musk is making to the SEC about his tweets: they are "proud and optimistic" restatements of already disclosed information: "Moreover, it is clear from the context of the tweet that it was celebratory and forward-looking—a type of statement that courts have concluded is immaterial as a matter of law."

It is perhaps relevant to this discussion to look at a brief history of Tesla's car manufacturing projections:

- [January 30th SEC filing](#): "In total, we are expecting to deliver 360,000 to 400,000 vehicles in 2019, representing a growth of approximately 45 percent to 65 percent compared to 2018."
- [January 30th earnings call](#): Musk says to expect that [Tesla could maybe make 350,000 to 500,000 "Model 3s alone" in 2019](#).
- [February 19th Musk tweet](#): "Tesla made 0 cars in 2011, but will make around 500k in 2019"
- [February 19th Musk tweet](#): "Meant to say annualized production rate at end of 2019 probably around 500k, ie 10k cars/week. Deliveries for year still estimated to be about 400k."
- [February 28th conference call with reporters](#): Musk says 350,000 to 500,000 Model 3s, plus 70,000 to 100,000 Models S and X.

Which one of those is right? Your guess is as good as mine; Tesla has not responded to repeated requests for comment. But [Matt Levine has suggested another way of looking at Musk's tweets](#), and maybe Tesla as a whole:

If everyone who reads Musk's Twitter feed treats it as a performance-art project, if their reaction to his claims about the future of Tesla—whether about flying cars or production numbers or going-private transactions—is not "wow that's big news, I should buy stock" but rather "huh, what a wacky idea, it'd be cool if that happened, I wonder if it will," then you shouldn't worry about the tweets *misleading investors*. If Musk's Twitter bio said "guy who says crazy things about Tesla, some of which might be true but more or less at random," then maybe everyone would read his tweets for enjoyment and not for material information about a public company.

It's not just his vehicle projections. Musk is so famously late on deadlines that I have [publicly offered to eat one of my shoes](#) if he manages to get his space tourist around the Moon by 2023. Actually, fuck it, [I wrote this in 2016](#) and it's still true:

Longtime SpaceX watchers know that Musk is not very good with deadlines. We'll start with his 2011 promise: [he told Marketplace](#) that he'd put humans in space in three years. It is now [eight] years later, and — it bears repeating — not a single person has flown aboard a SpaceX rocket. That same year, Musk told *The Wall Street Journal* that [his best-case scenario was to put people on Mars by 2021](#) (his worst case scenario was between 2026 and 2031). Earlier this year, he said he was planning to put people on [Mars by 2025](#).

It's not just SpaceX, either. Musk has this whole other company, Tesla, which sells cars. Tesla's Model S was announced in June 2008, and production was planned for 2010. Model S production *actually began* two years later, in 2012. Then there's the Model X — introduced in February 2012, it was initially scheduled for production in early 2014; deliveries started in September 2015.

So you know, when Musk says the Model Y will arrive in the fall of 2020, it seems like only a chump would buy or sell the stock based on it? I don't know, maybe there are a lot of chumps in finance — it wouldn't surprise me. You can preorder one if you want (well, unless you want standard range), but I'm not sure any of us know when the cars will actually show up. That blue is cute though.

I'M NOT SURE ANY OF US KNOW WHEN THE MODEL Y WILL ACTUALLY SHOW UP

Is this a situation that securities law is equipped to handle, though? I mean, Teslas exist and people drive them; the SpaceX rockets also, similarly, exist, and have been delivering supplies to the International Space Station for a few years now. Real human astronauts have been assigned for the SpaceX commercial crew program. Musk does deliver on some of the stuff he says he'll do — but his predictions are, hm, *unreliable*. What... do you do with this if you are the SEC?

The First Amendment issue that Musk raises in his response to the SEC is interesting because a big old fight about it could reshape how the First Amendment functions, says Ira Matetsky, a securities lawyer at Ganfer Shore Leeds & Zauderer. Typically, commercial speech — forward-looking statements, for instance — is more heavily regulated than the speech of, say, an art monster or a political goon. There are “quiet periods” when companies aren't supposed to say anything at all, for instance. And Elon's companies make employees sign NDAs, which are... contractual restrictions on speech.

A big fun fight about the First Amendment's application to commercial speech seems like a dim possibility, though, Matesky says. “If he's arguing that this particular order is a violation of the First Amendment, then the obvious response is, ‘Why did you agree to it?’”

"NOW IT'S JUST REALLY A PISSING MATCH, AN EGO PISSING MATCH BETWEEN THE SEC AND ELON MUSK."

Yes, this seems like an obvious response, but we are dealing with a trickster figure here. (Also, notably, Musk’s lawyers say he didn’t agree to having lawyers read *all* of his Tesla tweets before he sends them: “Musk never consented to and would not consent to such a sweeping gag order.”) Besides, says David Chase, a former SEC prosecutor now in private practice, the SEC’s case against Musk’s February 19th tweet isn’t clear-cut — so it’s unusual for the SEC make a move this aggressive. Musk is arguing, essentially, that the SEC is picking on him. “Now it’s just really a pissing match, an ego pissing match between the SEC and Elon Musk,” Chase says.

I’ve been thinking about the [Homeric Hymn to Hermes](#) lately. Hermes is the Greek version of trickster god Mercury and the son of Zeus. By midday after his birth, he invented and started playing the lyre, which was the guitar of the period. That evening, he stole Apollo’s cattle. Apollo played detective, determined the tricky baby had stolen his cows, and a tribunal was drawn up in front of Zeus. Apollo told the truth; Hermes lied. But Zeus was amused by his newest son’s ingenuity in theft and ordered Hermes to show Apollo where the cows were hidden. Hermes and Apollo reconciled when Hermes played his lyre for Apollo, then gave Apollo the lyre, and promised not to steal any more of Apollo’s shit.

What I mean is: it’s theoretically possible there will be a confrontation that will have some kind of extreme result, getting Musk banned from being an executive officer of a publicly traded company or like totally reshaping the First Amendment as it applies to business. But what seems likelier is that the beef between Musk and the SEC will be settled in a much more amicable fashion. As for the rest of it, the only prediction I feel good about is that Musk will continue being dead wrong about his deadlines — something to keep in mind if you’re thinking about buying a Model Y.

With reporting by Sean O’Kane