

United States of America
v.
Bazaarvoice, Inc.





Elimination of Competition in the Product Ratings and Reviews Platform Market

- **Bazaarvoice and PowerReviews were each other's closest rivals**
- **Bazaarvoice acquired PowerReviews to end the rivalry and insulate itself from future competition**
- **No other firm has replaced, or is likely to replace, the lost competition**



The Merger Violated Section 7 of the Clayton Act

- The relevant market is . . .
 - product ratings and reviews platforms
 - used by retailers and manufacturers with U.S.-facing websites
- The merger greatly increased concentration in an already concentrated market and is presumed illegal
- The merger eliminated price and innovation competition
- Entry or repositioning has not happened and is unlikely



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Clayton Act Section 7 Standard

“It is well established that a section 7 violation is proven upon a showing of reasonable probability of anticompetitive effect.”

FTC v. Warner Communications, Inc., 742 F.2d 1156 (9th Cir. 1984)



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Clayton Act Section 7 Standard

“Congress used the words ‘*may be* substantially to lessen competition’ ... to indicate that its concern was with probabilities, not certainties.”

Brown Shoe Co. v. United States, 370 U.S. 294, 323 (1962)

“[D]oubts are to be resolved against the transaction.”

FTC v. Elders Grain, Inc., 868 F.2d 901, 906 (7th Cir. 1989)



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Customers Won't Substitute Away From Product Ratings and Reviews

- **“its critical for any modern eCommerce or even branded site. You need some form of ratings and reviews.”** World Kitchen, Trial Tr. 1303:14-16.
- **“it [is] industry standard.”** Bed, Bath & Beyond, Trial Tr. 568:17-18.
- **“I think its kind of expected.”** Astral Brands, Trial Tr. 1353:23.



Customers Won't Substitute Away From Product Ratings and Reviews

Q. And, so given that, in the event that the price of ratings and reviews went up 5 percent, you wouldn't drop ratings and reviews from your Web site entirely would you?

A. No.

Build.com, Trial Tr. 1195:17-20.



Customers Won't Substitute Away From Product Ratings and Reviews

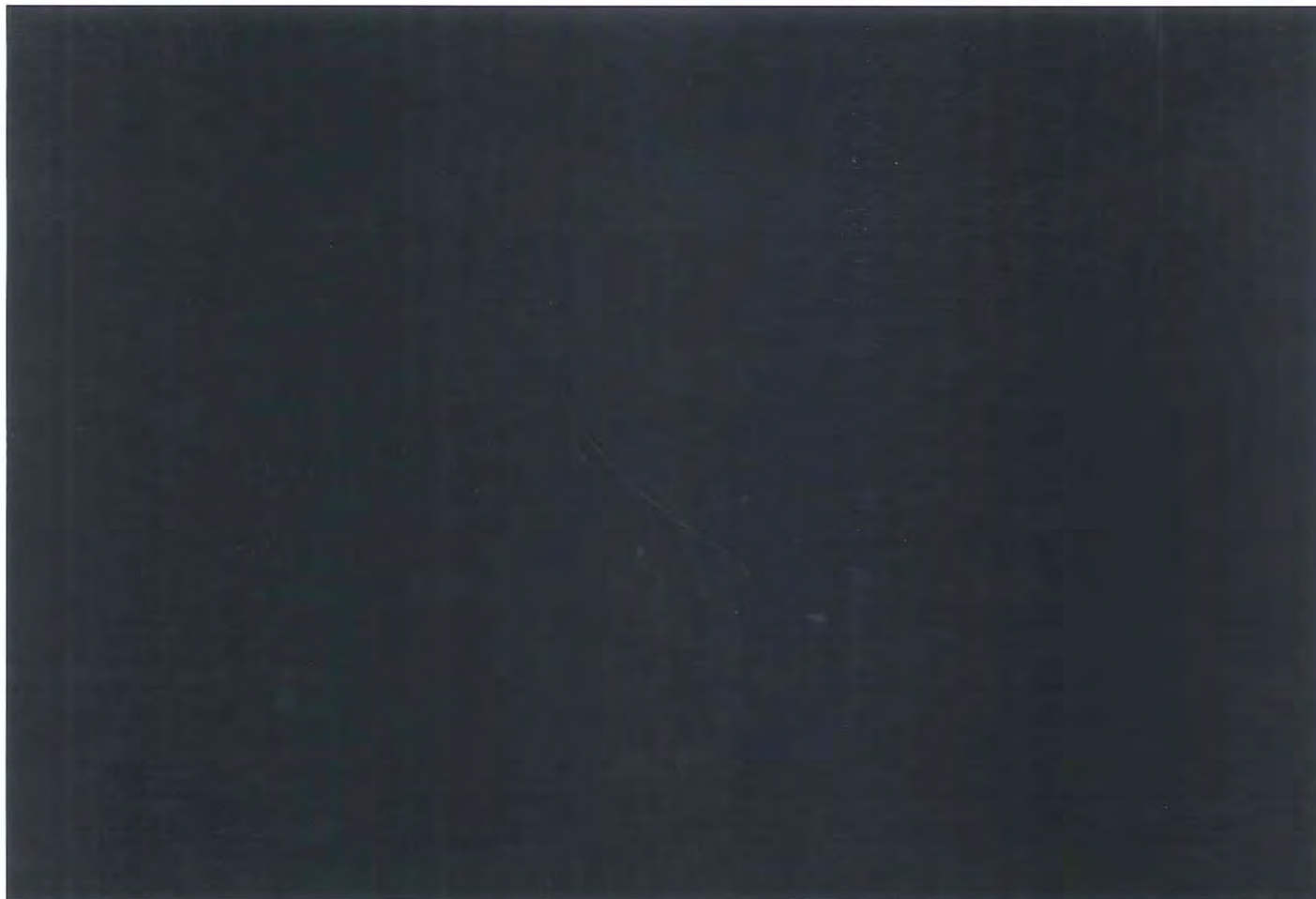
“I think it's clear, given the penetration of ratings and reviews among websites, and that testimony and other documents that I've received, that many customers do view ratings and reviews as an important part of their offering, and one that they would be unlikely to consider giving up.”

Dr. Shehadeh, Trial Tr. 1195:17 – 20

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U.S. market for ratings and reviews



U.S. market for ratings and reviews

Brett Hurt trial testimony:

- A. "Yes, for the U.S. market for ratings and reviews . . ."
- A. "In the U.S. market for ratings and reviews, yes."
- A. "I agreed with that for the U.S. retail market for ratings and reviews."
- A. "We had a competitor Reevoo in Europe, which has since entered the U.S. market."

Trial Tr. 130:11; 131:1; 131:19; 193:13



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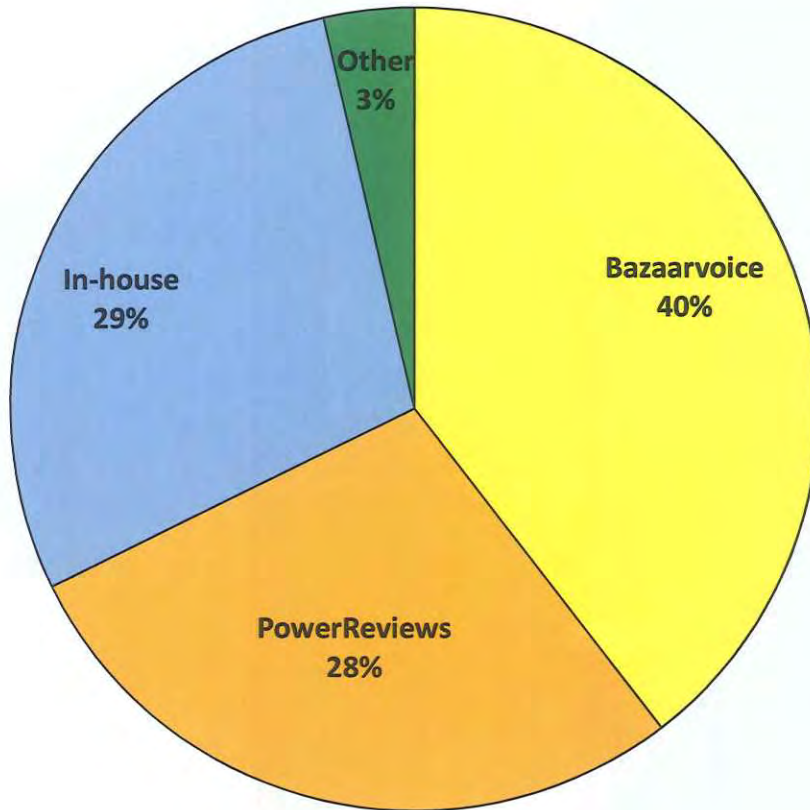


United States v. Phila. Nat'l Bank 374 U.S. 321, 364 (1963)

Mergers that increase concentration substantially in a concentrated market are presumptively illegal.

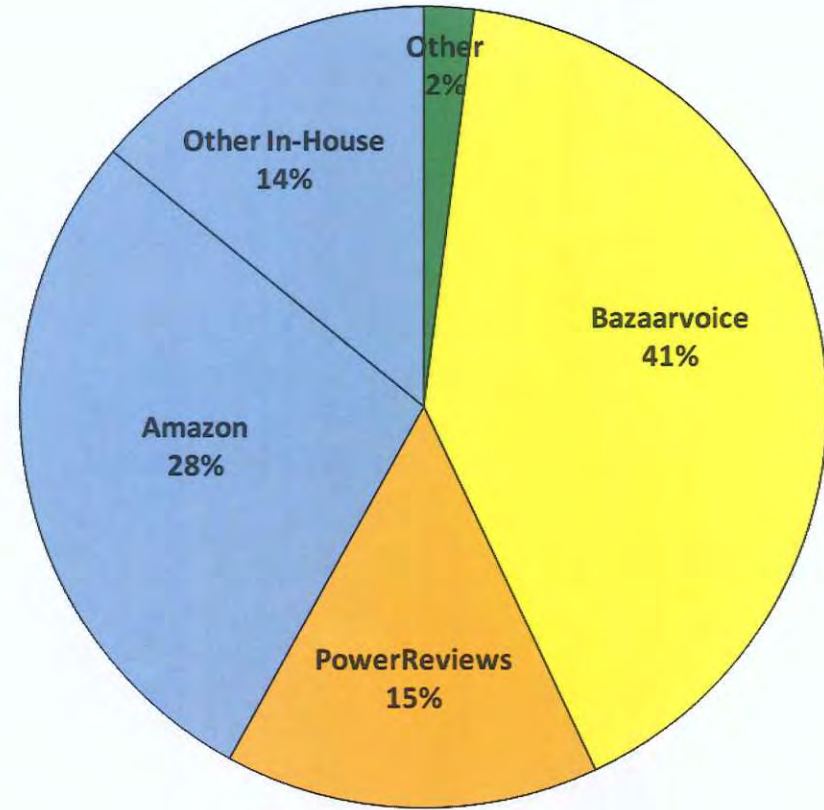
A merger in a concentrated market that created a firm with a 30% market share was *prima facie* illegal.

PRR Market Shares by Customer Count
For IR500 Customers, 2012



See Notes and Sources to GX1062 for further detail.

PRR Market Shares by Revenue
For IR500 Customers, 2012



See Notes and Sources to GX1063 for further detail.



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Bazaarvoice Intended to Reduce Competition

“[E]vidence indicating the purpose of the merging parties, where available, is an aid in predicting the probable future conduct of the parties and thus the probable effects of the merger.”

Brown Shoe, 370 U.S. at 329 n.48



Antitrust advice

DOCUMENTS KILL: THE IMPORTANCE OF EVERYDAY DOCUMENTS IN THE ANTITRUST MERGER REVIEW PROCESS

INTERNAL DOCUMENTS DISCUSSING NEARLY ANY ASPECT OF A MERGER'S MARKETPLACE BENEFITS MAY BECOME CRITICAL EVIDENCE IN GOVERNMENT ANTITRUST INVESTIGATION

By Scott A. Sher

The Merger & Acquisition Advisor, Feb. 2002



Antitrust advice

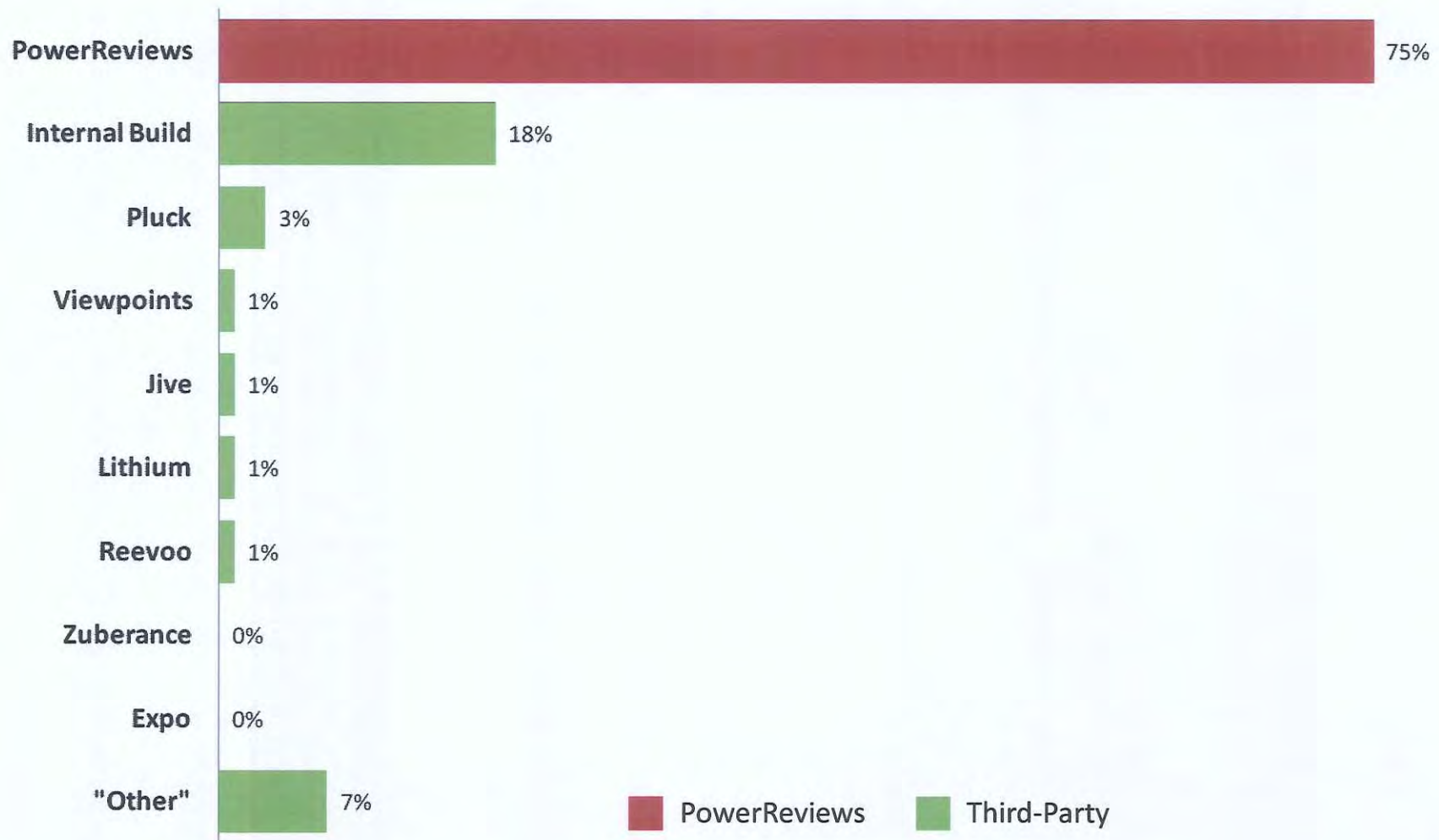
“ . . . it is becoming increasingly important to involve antitrust counsel . . . in the early stages of consideration of a strategic transaction to help shape the creation of important documents with an eye towards antitrust scrutiny ”



Antitrust advice

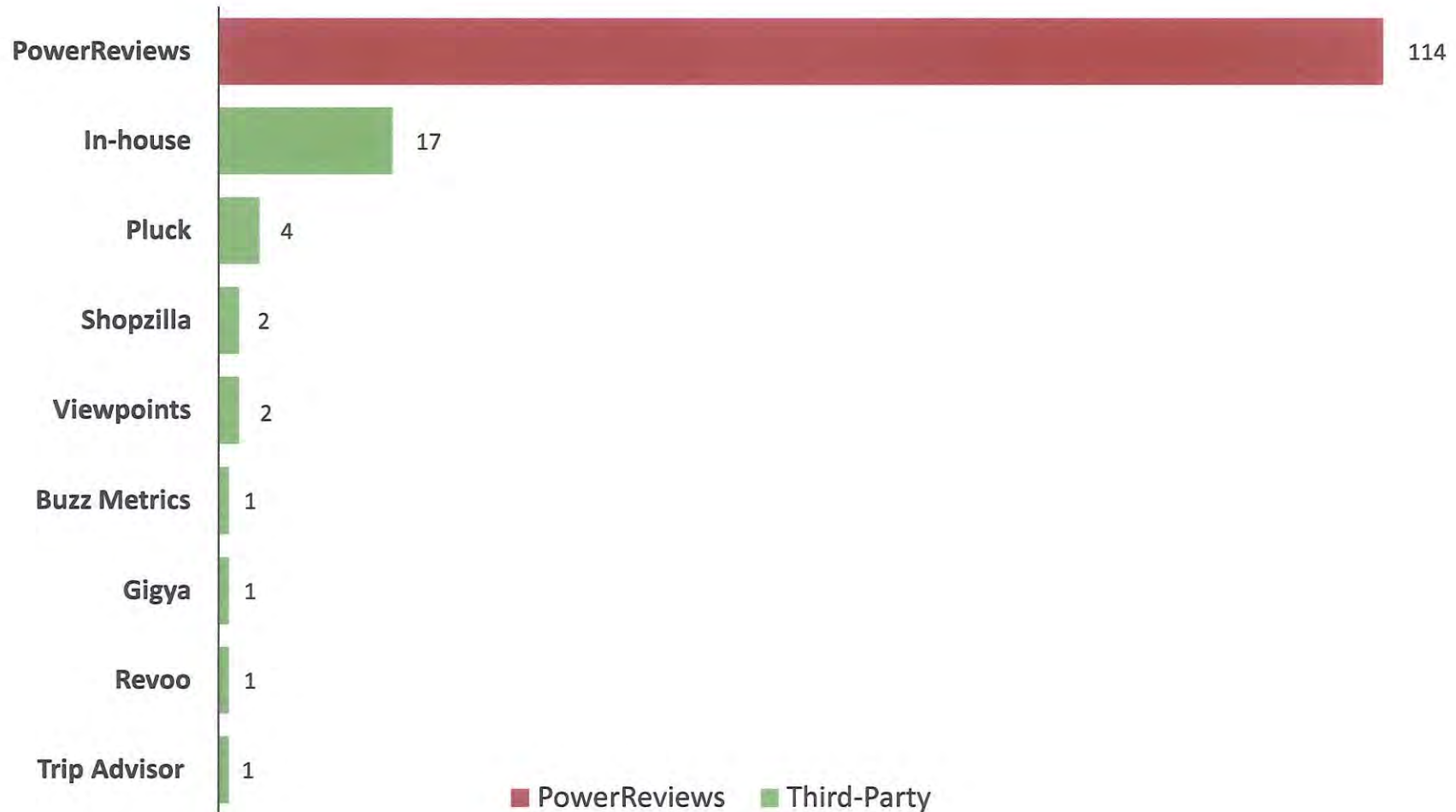
“... a company that argues that it faces vigorous competition from multiple sources will likely face an uphill battle if won/loss data reveals that only one or two other bidders regularly compete for the same accounts.”

Frequency of Competitors in Bazaarvoice Win/Loss Opportunities *Core R&R Products Only*



Source: GX1044

Competitor Count in Bazaarvoice “How the Deal was Done” Documents *Ratings and Reviews Deals Only*



Source: GX1048



Feature Competition

Q. And Bazaarvoice competed with PowerReviews with respect to their moderation capabilities?

A. Yes.

Brett Hurt, Trial Tr. 112:15 - 17

Q. And search engine optimization was a competitive battleground between PowerReviews and Bazaarvoice, correct?

A. It was one of many factors that were considered by clients.

Brett Hurt, Trial Tr. 114:22-25



Feature Competition

Q. And is [analytics] something that Bazaarvoice marketed to its potential clients?

A. Yes.

Q. And it's something that you competed with PowerReviews on, correct?

A. Yes.

Brett Hurt, Trial Tr. 115:25



PowerReviews Pricing Pressure GX-477

From: Lawson Ellnor
Sent: Sunday, July 10, 2011 7:21 AM
To: Michael Osborne; Heather Brunner
Subject: RE: PR Pricing Analysis/ Recommendation

Great and will do!

MRO / Heather...I read thru the analysis and there are some areas where I need Paul to do his voice-over to make sure I understand his analysis. In the spirit of fierce conversations, I wanted to offer up some additional thoughts / actions to consider as we develop a strategy / response to this Power Reviews pricing topic. This is a great opportunity for us to proactively or reactively or read

First, fundamentally role and impact our hear / see a danger is effectively elevate HTDWD's, Forecast "Whew, this is PR or translate with customer topic is pretty emotive evident in Friday's different posture re:

So one of our first I really believe our making and message that better frames the right wins for the test in HTDWD attached build from and include

Second, beyond our that are in addition to

- Prepare a d (via Dave M) products, po facts. And 2 addresses if customer or
- Complete ir fact base to analysis... IC at risk; PR, v loss rates, e
- Complete P the position important to willing to ma

HIGHLY CONFIDENTIAL

From:
Sent:
To:
Subject:
Follow Up Flag:
Flag Status:

From: Shawn Gaide
Sent: Wednesday, June 22, 2011 1:11 PM
To: Paul Dodd; Bill Farnell
Subject: FW: HTDWD - e

Retail Gents,

See some feedback below

From: Matt Curtin
Sent: Tuesday, June 21, 2011 8:34 PM
To: Shawn Gaide; Bill Glass; Matt Thompson; Nils Marchand
Subject: RE: HTDWD - Clarks Shoes

Shawn,

Point well taken! I think we do need to stand taller and dismiss the idea that we actually biter that causes price pressure in deals. That's about it. We need to talk about them

From: Shawn Gaide
Sent: Tuesday, June 21, 2011 3:25 PM
To: Matt Curtin; Bill Glass; Matt Thompson; Nils Marchand
Subject: FW: HTDWD - Clarks Shoes

Great brand name to add here - congrats Bill.

One thing I'd like to float by you guys - I'd love for us to stop messaging that "this deal was highly Power Reviews competitive." We haven't lost a significant deal to Power Reviews in a long time, meaning that PR's place in this deal was mainly a lever to knock us down on price...as it is in many of our deals.

Seeing this in every HTDWD makes us seem small in the grand scheme of things, and I think it's bad for our brand internally. We don't compete with PR...we compete against a rapidly-growing social wallet that includes a ton of social vendors, and we're actually in the best position to serve as the social integration platform of record. We need to talk and act that way...

Thoughts?

From: Joel Pearson
Sent: Tuesday, June 21, 2011 3:17 PM
To: HTDWD
Subject: HTDWD - Clarks Shoes

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BZ-00045466

PR's place in this deal was mainly a lever to knock us down on price....as it is in many of our deals.

— Shawn Gaide, Jun 21, 2011



PowerReviews Pricing Pressure GX-1104

From: Paul Dodd
Sent: Friday, December 16, 2011 4:43 PM
To: Tony Capasso; Bill Fanning
Subject: Fw: PowerReviews info in SFDC

Would you guys like to give some color commentary?

Cheers,
Paul Dodd
Vice President of Retail
Bazaarvoice
o 512.551.6540
m 512.413.1183

From: Matt Curtin
Sent: Friday, December 16, 2011 09:48 AM
To: Lawson Ellinor; Paul Dodd; Greg Brown
Subject: Re: PowerReviews info in SFDC

Lawson,

In MANU we really only see PR when it comes to negotiating the deal. They are brought in as a price-pressure lever (especially for the larger accounts). For AIs they are likely a more credible threat. I do not believe that we flag anywhere in SFDC today any competitive pressure from PR. It is more anecdotal account by account. I know if you need more.

MC

Matt Curtin

b:

In MANU we really only see PR when it comes to negotiating the deal. They are brought in as a price-pressure lever (especially for the larger accounts).

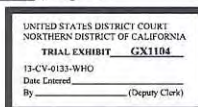
From: Lawson
Date: Fri, 16
To: Paul Dodd
<Greg.Brown@bazaarvoice.com>
Subject: Re:

Paul...thanks

From: Paul D
Date: Fri, 16
To: Lawson E
<Greg.Brown@bazaarvoice.com>
Subject: RE: PowerReviews info in SFDC

Lawson

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BZ-02322164

— Matt Curtin, Dec 16, 2011



Customer leverage

“But I really want to emphasize for the Court, that [switching is] not the good metric of what's going on with competition. The metric is how often are they trying to win each other's customers, bidding, providing leverage for the customers. So that's kind of a key thing to keep in mind here. When Bazaarvoice is trying to win a PowerReviews customer, they're giving that customer leverage.”

Professor Shapiro, Trial Tr. 988:20-989:1



Big Fish Games Deposition





Gigya Cannot Replace PowerReviews

- Ratings and reviews is a small fraction of what Gigya does.
- Gigya does not have a network.
- Gigya does not offer syndication.
- Gigya has a simplistic ratings and reviews product that does not allow ratings on specific product attributes.
- Gigya's ratings and reviews product is not fully customizable.
- Gigya does not generally see Bazaarvoice as a competitor.

Trial Tr. 606:3-4; 605:9; 603:4-15; 1208:15-; 1301:3-8



Pluck Cannot Replace PowerReviews

- Q. And in your reports you do not describe any change by Pluck in their strategy for product ratings and reviews that would make them more competitive against Bazaarvoice; do you?
- A. **Certainly, I've seen more activity from them at conferences and stuff, but I don't think I [cited] anything specifically at my report that goes to that, no.**

Shehadeh Trial Tr. 1945:7-12

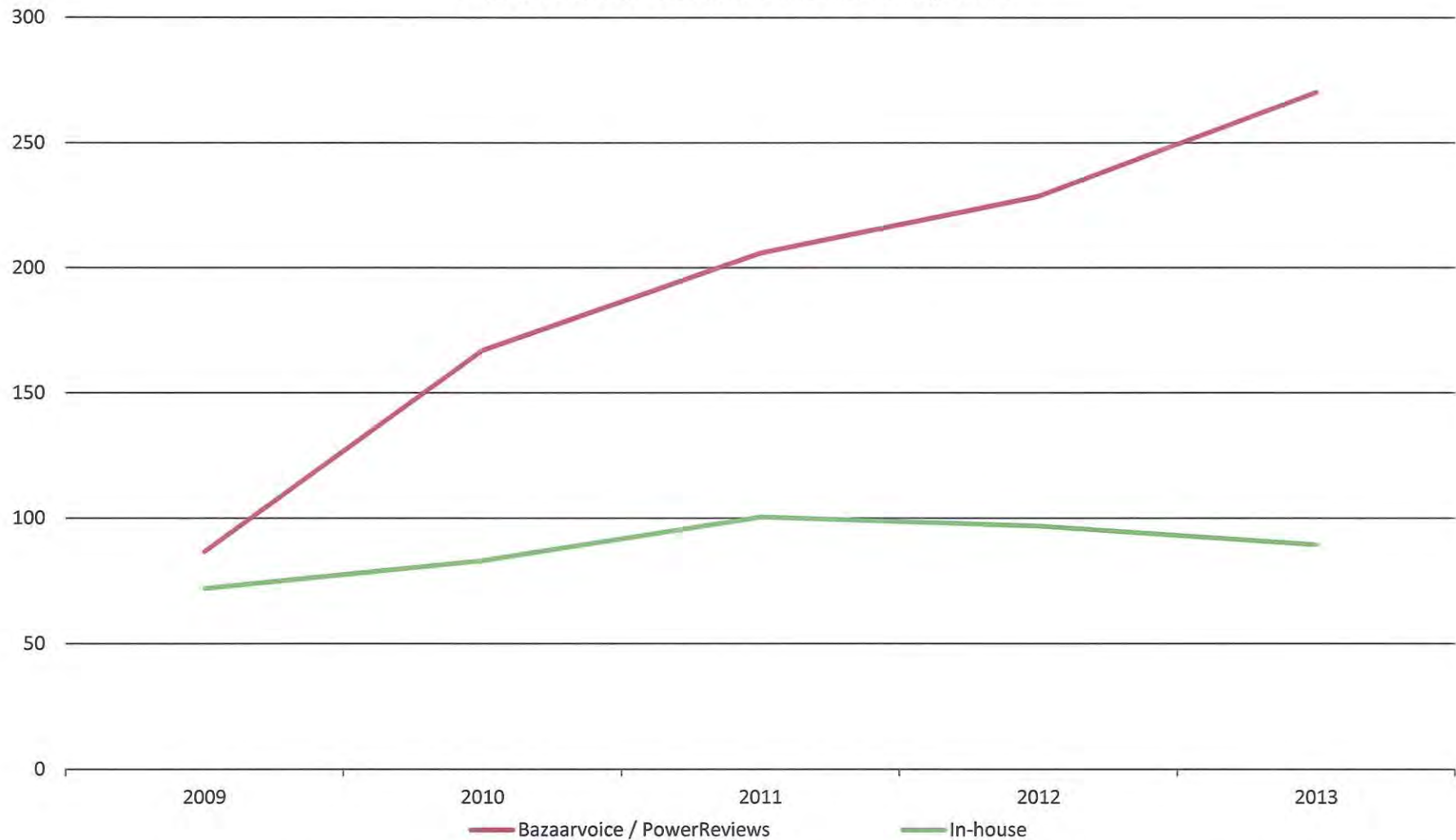


Magento Cannot Replace PowerReviews

- **Magento's ratings and reviews module is not available to clients using other eCommerce platforms.**
- **Magento does not have moderation.**
- **Magento does not offer syndication.**
- **Magento has a simplistic ratings and reviews product that lacks full functionality.**
- **Magento has no fraud detection.**
- **Magento has no analytics tool.**

Trial Tr. 884:7-15, 1956:3-1957:9; Lovesac Dep. Tr. 41:8-43:1

PRR Platform Provision to IR500 Companies



Notes: IR500 retailers who list a provider that does not offer product ratings and reviews under Customer Reviews & Forums are counted as "Firms not using PRR." In general, providers are considered to offer PRR if their online content indicates they offer PRR services. When IR500 retailers list multiple providers, their counts are apportioned to each provider equally. Systemax reports ProfitCenter Software as its Customer Reviews & Forums vendor though ProfitCenter Software is a former subsidiary of Systemax and is thus counted as "In-house."

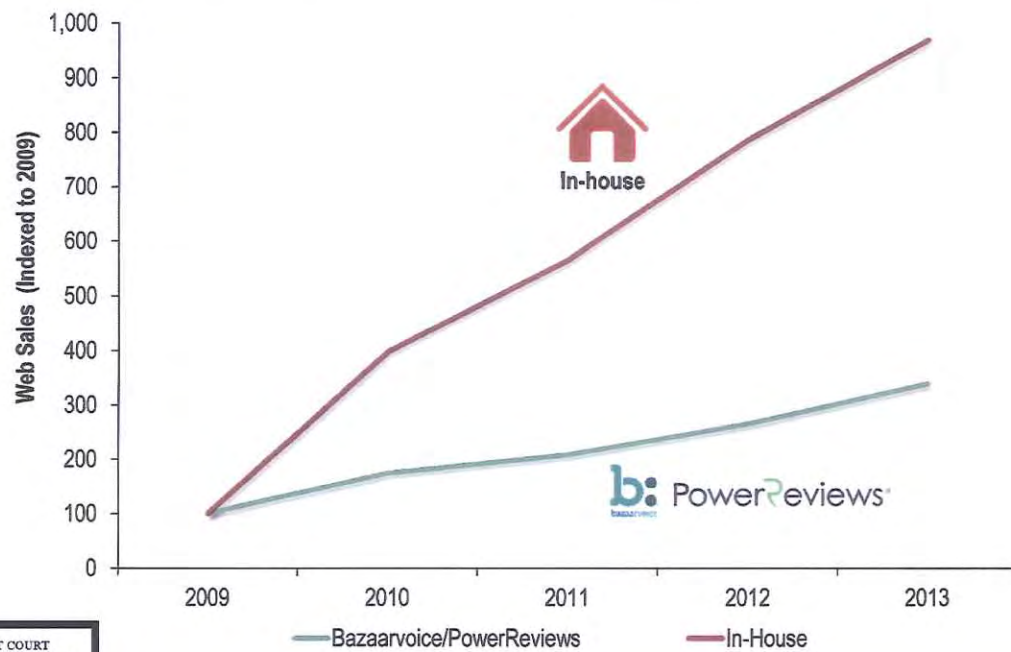


In house

b

In-house Has Grown Far More than Bazaarvoice

R&R Platform Provision to IR500 Companies



UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
TRIAL EXHIBIT GX1253
13-CV-0133-WHO
Date Entered _____
By _____ (Deputy Clerk)

16

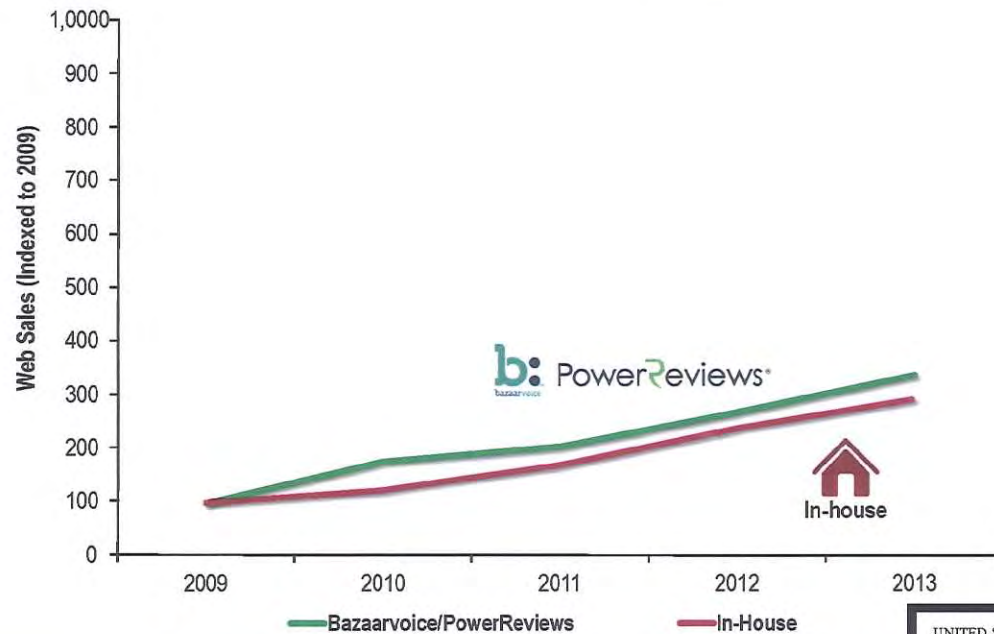


In house

b

In-house Has Grown Far More than Bazaarvoice

R&R Platform Provision to IR500 Companies



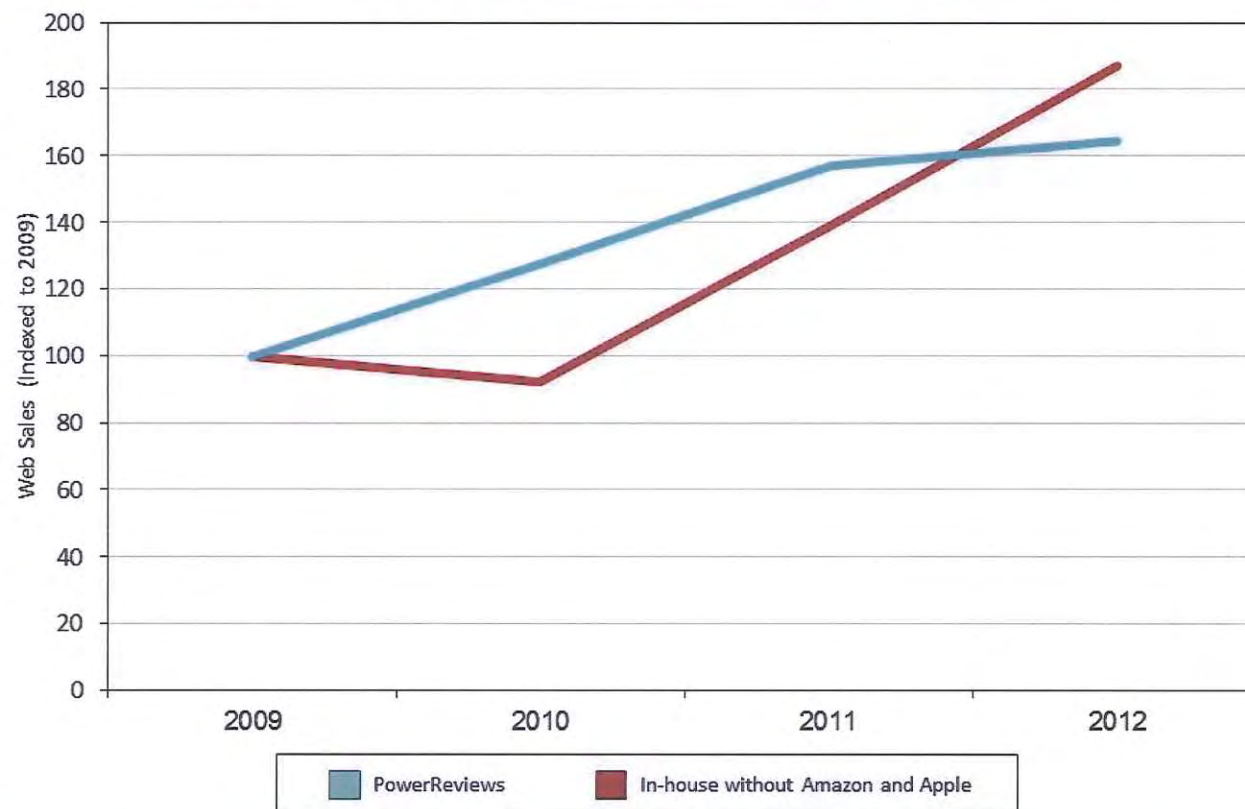
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
TRIAL EXHIBIT GX1254
13-CV-0133-WHO
Date Entered _____
By _____ (Deputy Clerk)



In house

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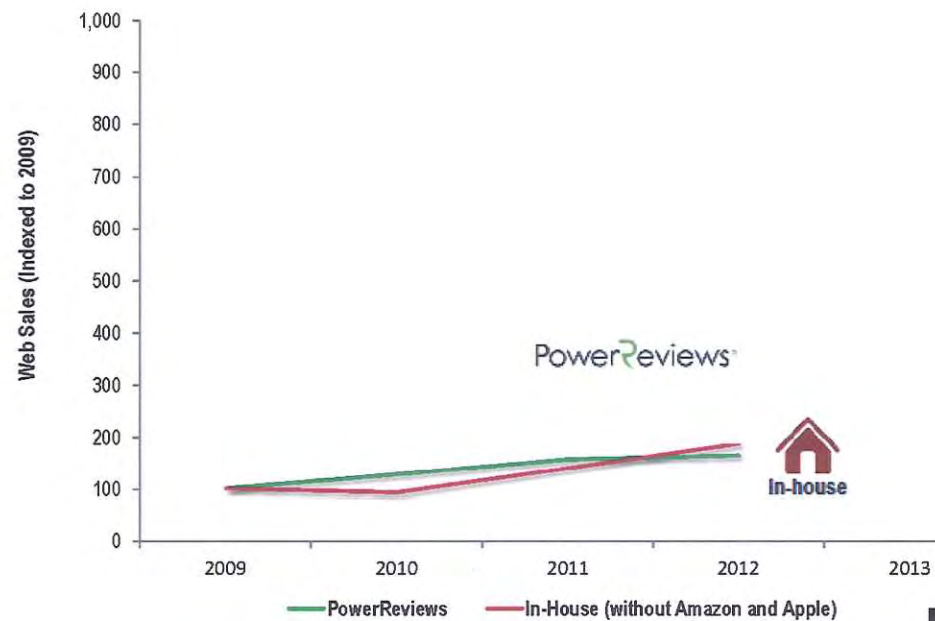
R&R Platform Provision to IR500 Companies





In house

b



UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
TRIAL EXHIBIT GX 1268
13-CV-0133-WHO
Date Entered _____
By _____ (Deputy Clerk)



Orchard Supply Hardware





Abercrombie & Fitch

Confidential



Vitamin Shoppe's PowerReviews Contracts

Old Agreement (12/21/11)

PowerReviews

22 4th Street, 6th Floor
San Francisco, CA 94103
Tel: 855.346.1451
sales@powerreviews.com

Name: Quora for The Vitamin Shoppe VZ
Service Order Number: Q002827
Sales Executive: Chelsa McNeil
Valid Until: 12/27/2011

The Service Order (the "Service Order") is hereby submitted to the PowerReviews Service Agreement, 7/15/11, by and between client (as defined below) and PowerReviews, Inc., a Delaware corporation located at 22 4th Street, San Francisco, CA 94103 (PowerReviews), governing the terms under which PowerReviews will make available the Services, and shall be effective as of the date agreed below by PowerReviews ("Effective Date") and Client.

Client:
The Vitamin Shoppe
2151 16th St
North Bergen, NJ 07047

Standard PowerReviews Service Bundle

Standard Support Plan

- Client Success Manager
- 1 day tech response
- 2 day moderation SLA
- 2 hrs Pro-Services/mo

5k moderations/mo

Review Accelerator (50k emails/mo)

Facebook Discovery Service

Facebook Community Service

Special Terms & Notes:

This Service Order applies to the Client's use of the Services. The Client agrees to the terms and conditions of the Service Order, which may be amended from time to time. The Client agrees to the terms and conditions of the Service Order, which may be amended from time to time. The Client agrees to the terms and conditions of the Service Order, which may be amended from time to time.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
TRIAL NUMBER: GX1221
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Date Received: _____
By: _____ (Signature/Stamp)

Page 1

VS-DOJ-0000054

GX 1221

New Agreement (7/26/13)

PowerReviews

22 4th Street, 6th Floor
San Francisco, CA 94103
Tel: 855.346.1451
sales@powerreviews.com

Name: Quora for The Vitamin Shoppe Renewal 2014
Service Order Number: D002703
Sales Executive: Dan Freeman
Valid Until: 07/15/2015

The Service Order (hereinafter referred to as a "Service Order") is issued under and incorporates the Agreement between the parties. "Agreement" means the general terms and conditions of service agreement governing the purchase of PowerReviews Services as set forth at 22 4th Street, San Francisco, CA 94103, and any amendments thereto, including the "PowerReviews Services Agreement" dated 7/15/11. In the event that there is a conflict between the Agreement and any other document, the Agreement shall prevail.

Client:
The Vitamin Shoppe
2151 16th St
North Bergen, NJ 07047

Standard PowerReviews Service Bundle Basic Reviews Service

Standard Support Plan - Basic Support Plan

- Client Success Manager Community support
- 1 day - 2 day tech response
- 2 day - 3 day moderation SLA
- 2 hrs Pro-Services/mo
- Social Measurement

5k 2k moderation/mo

Review Accelerator (50k 25k emails/mo)

Facebook Discovery Service

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
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By: _____ (Signature/Stamp)

Page 1

VS-DOJ-0000054

DX 1796



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Entry is not easy

“Bazaarvoice paid \$168 million for PowerReviews. Well, if somebody could just do that overnight and have the same set of assets, they sure wasted a lot of money, it seems to me, and I'm not going to assume that.”

Professor Shapiro, Trial Tr. 2066:7-10