

**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

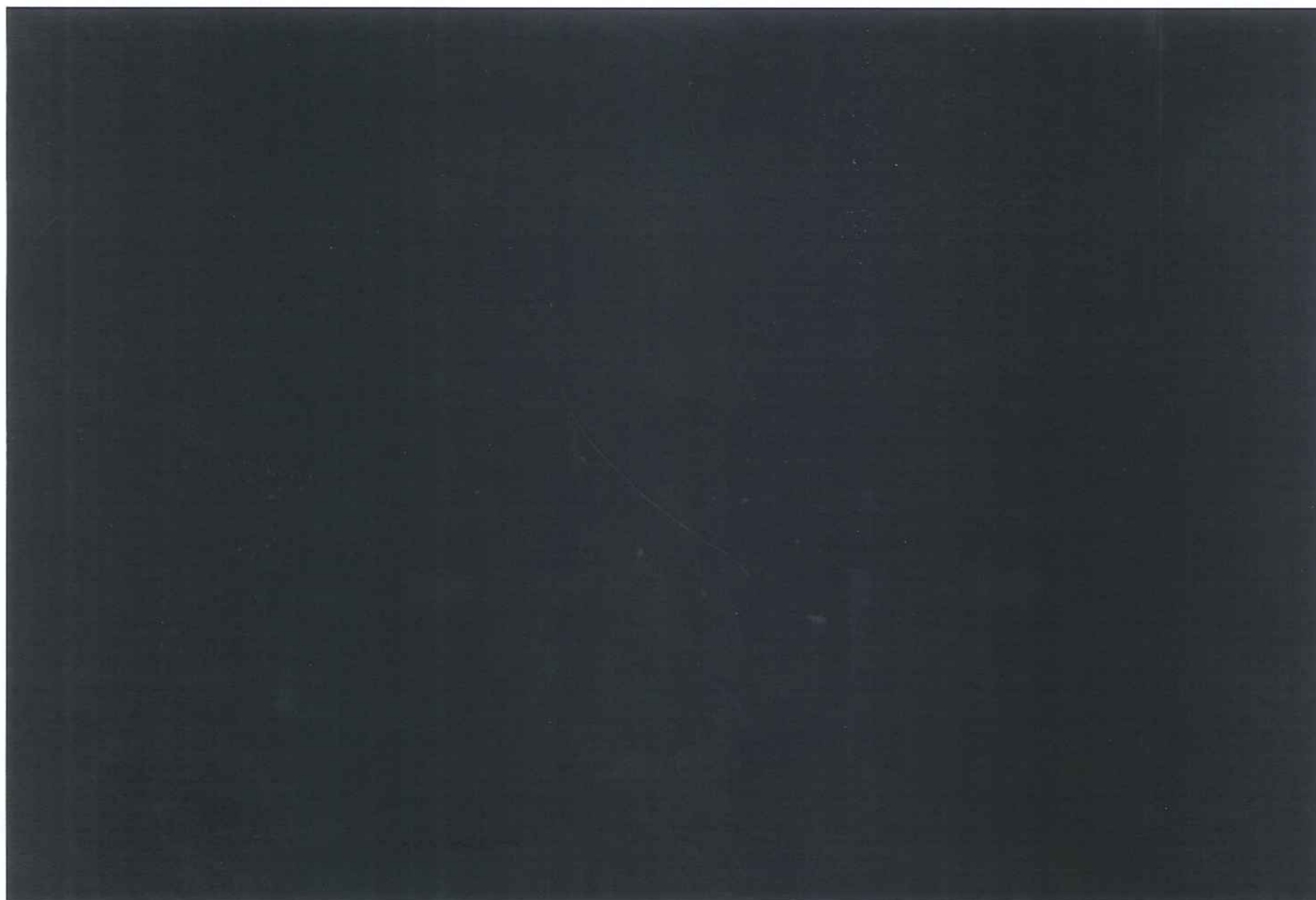
“I think it's clear, given the penetration of ratings and reviews among websites, and that testimony and other documents that I've received, that many customers do view ratings and reviews as an important part of their offering, and one that they would be unlikely to consider giving up.”

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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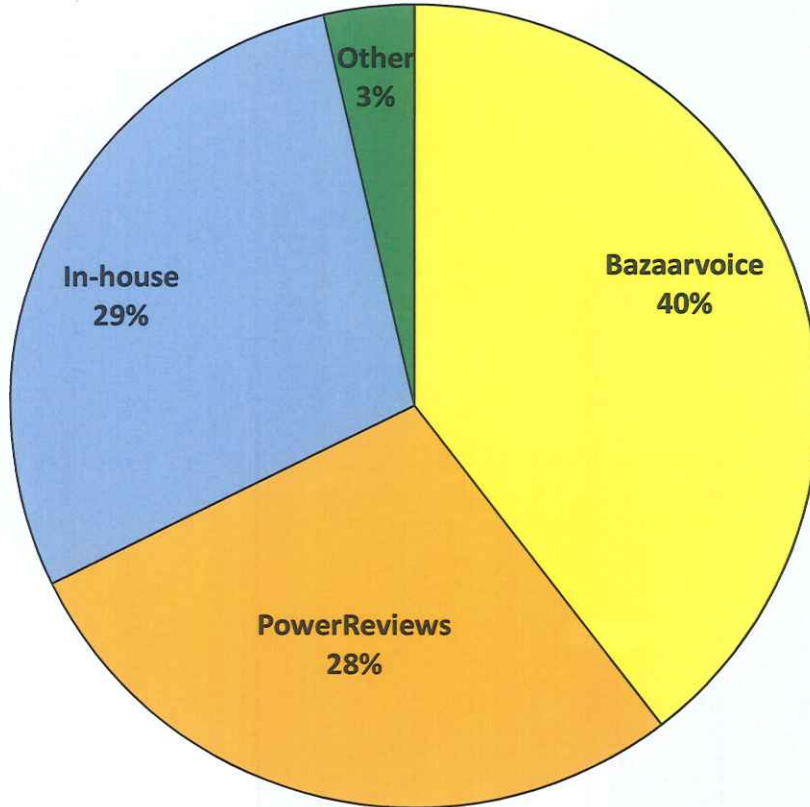


## United States v. Phila. Nat'l Bank 374 U.S. 321, 364 (1963)

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

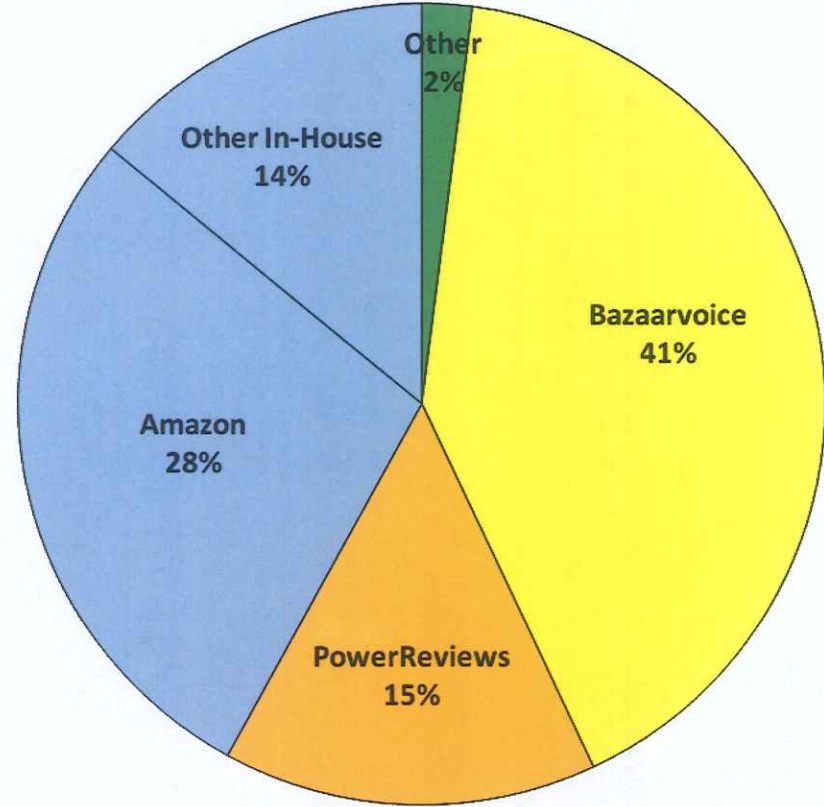
A merger in a concentrated market that created a firm with a 30% market share was *prima facie* illegal.

**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 ”

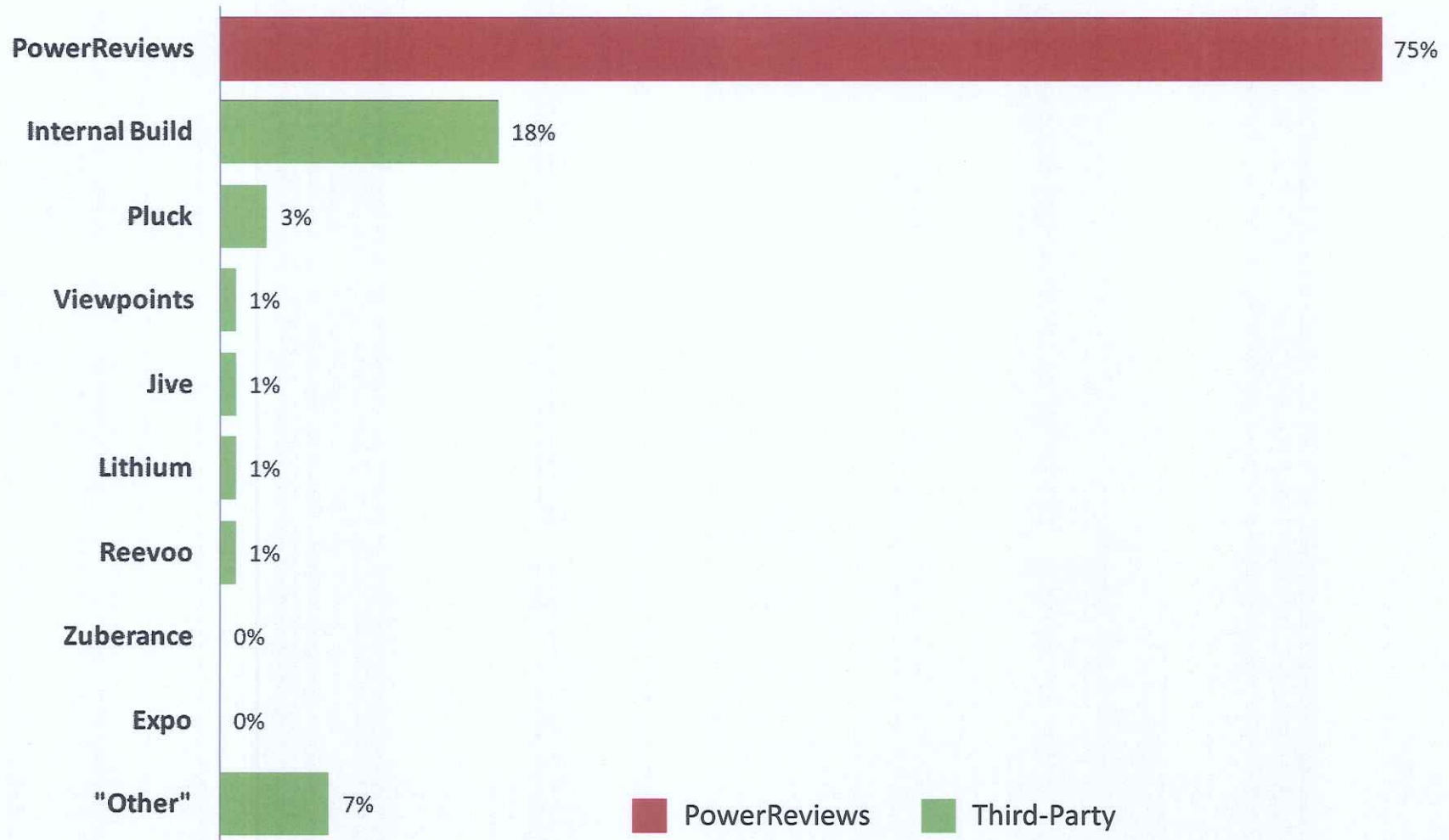




## Antitrust advice

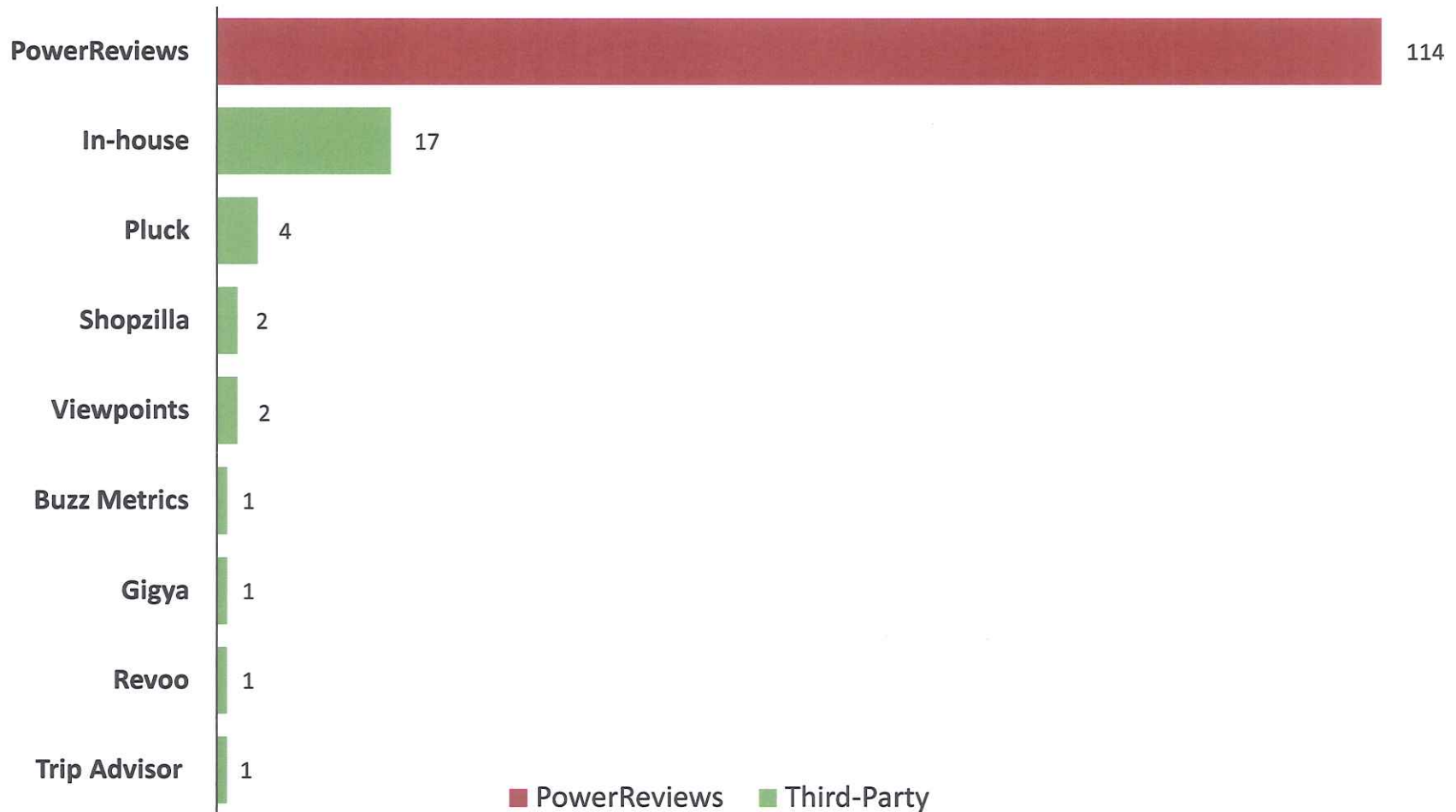
“ . . . a company that argues that it faces vigorous competition from multiple sources will likely face an uphill battle if won/loss data reveals that only one or two other bidders regularly compete for the same accounts.”

# 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-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 Ellnor; 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 A1s 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).

– Matt Curtin, Dec 16, 2011

**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

1

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
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13-CV-0133-WHO  
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BZ-02322164





## Customer leverage

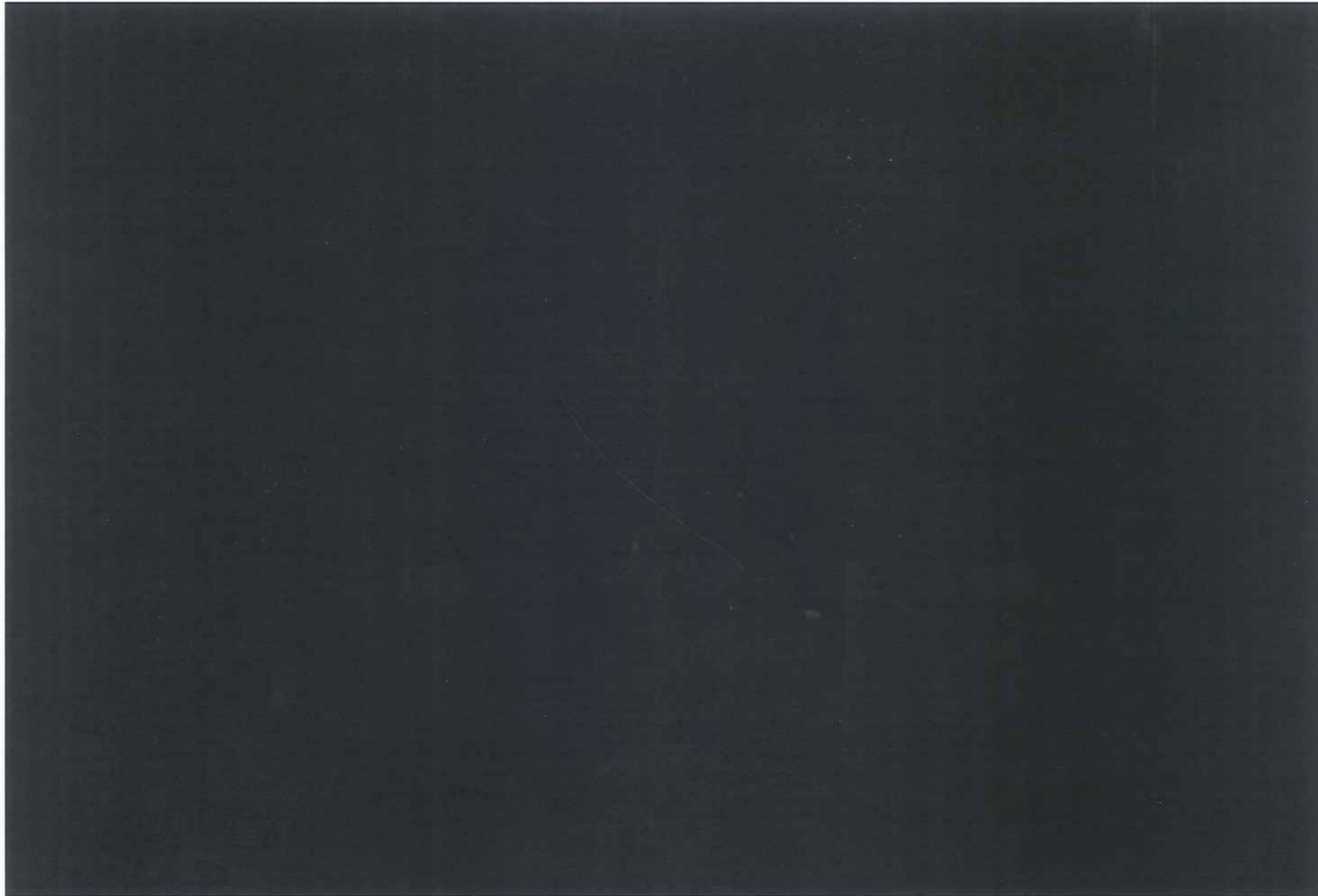
“But I really want to emphasize for the Court, that [switching is] not the good metric of what's going on with competition. The metric is how often are they trying to win each other's customers, bidding, providing leverage for the customers. So that's kind of a key thing to keep in mind here. When Bazaarvoice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



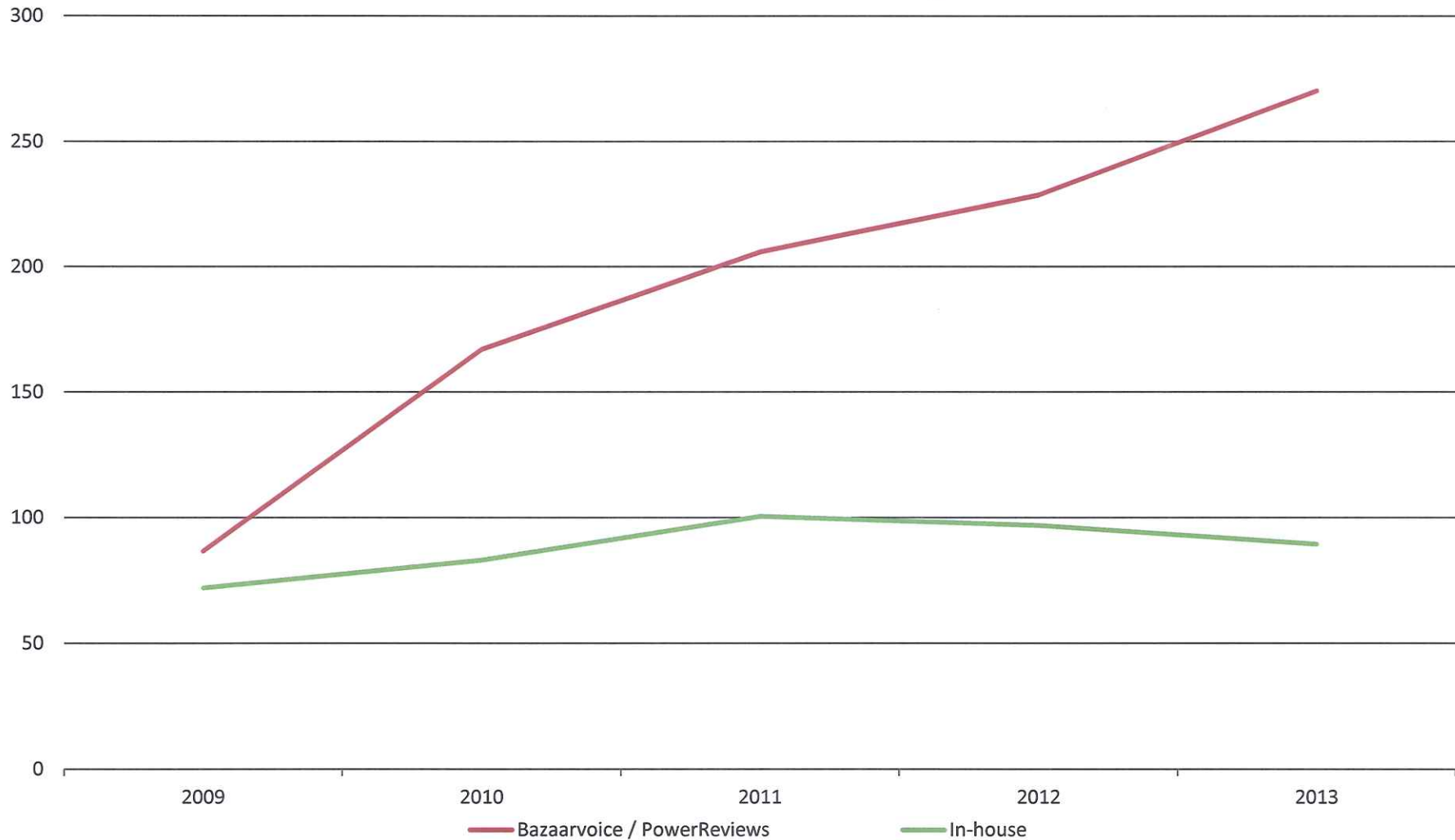


## Magento Cannot Replace PowerReviews

- **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."

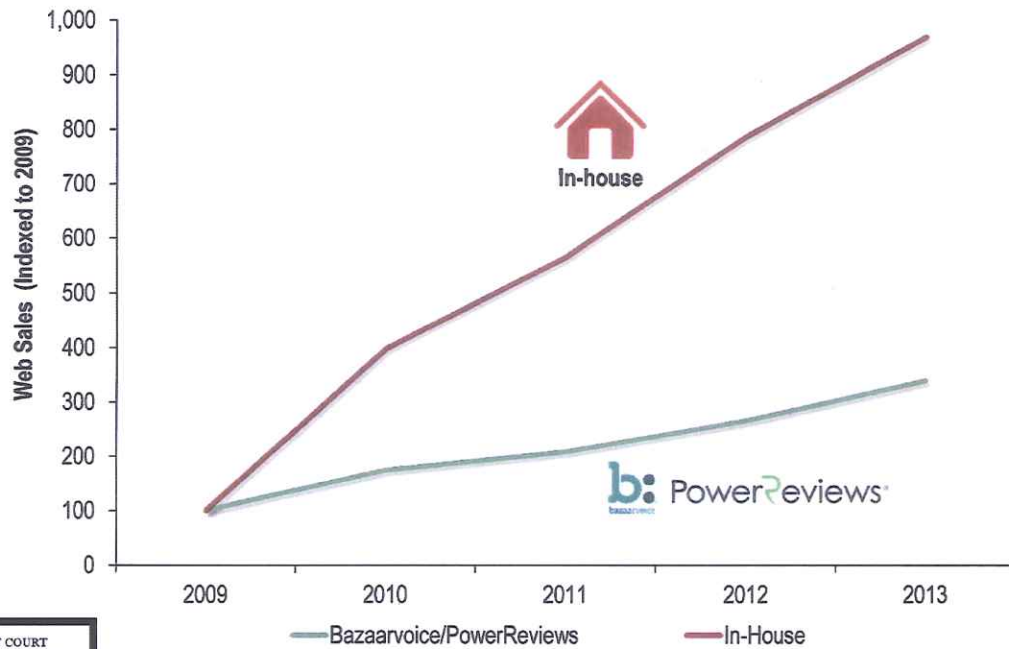


# In house

b:

## In-house Has Grown Far More than Bazaarvoice

### R&R Platform Provision to IR500 Companies



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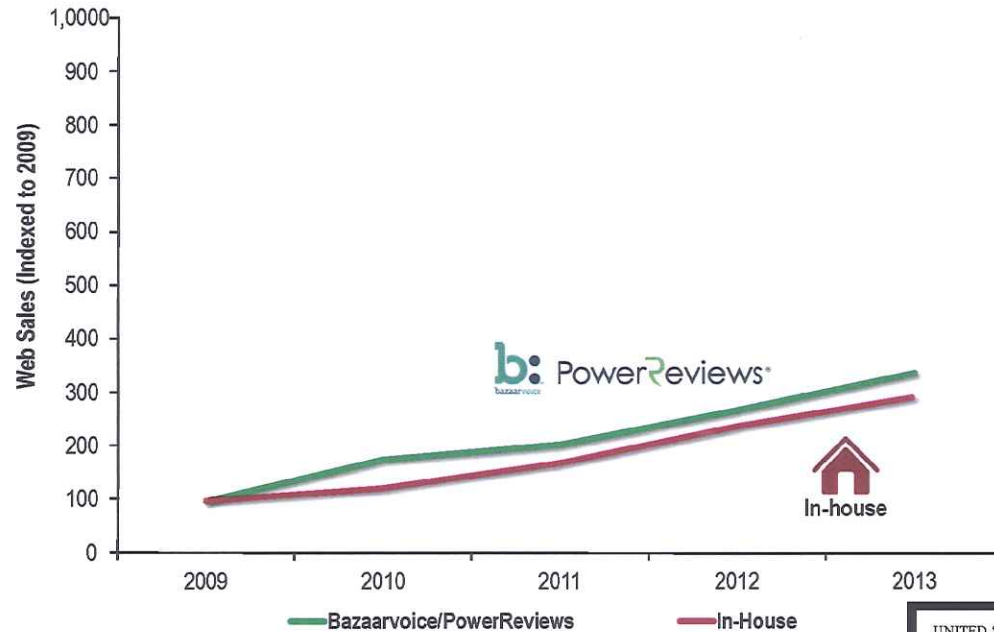


# In house

b

## In-house Has Grown Far More than Bazaarvoice

*R&R Platform Provision to IR500 Companies*



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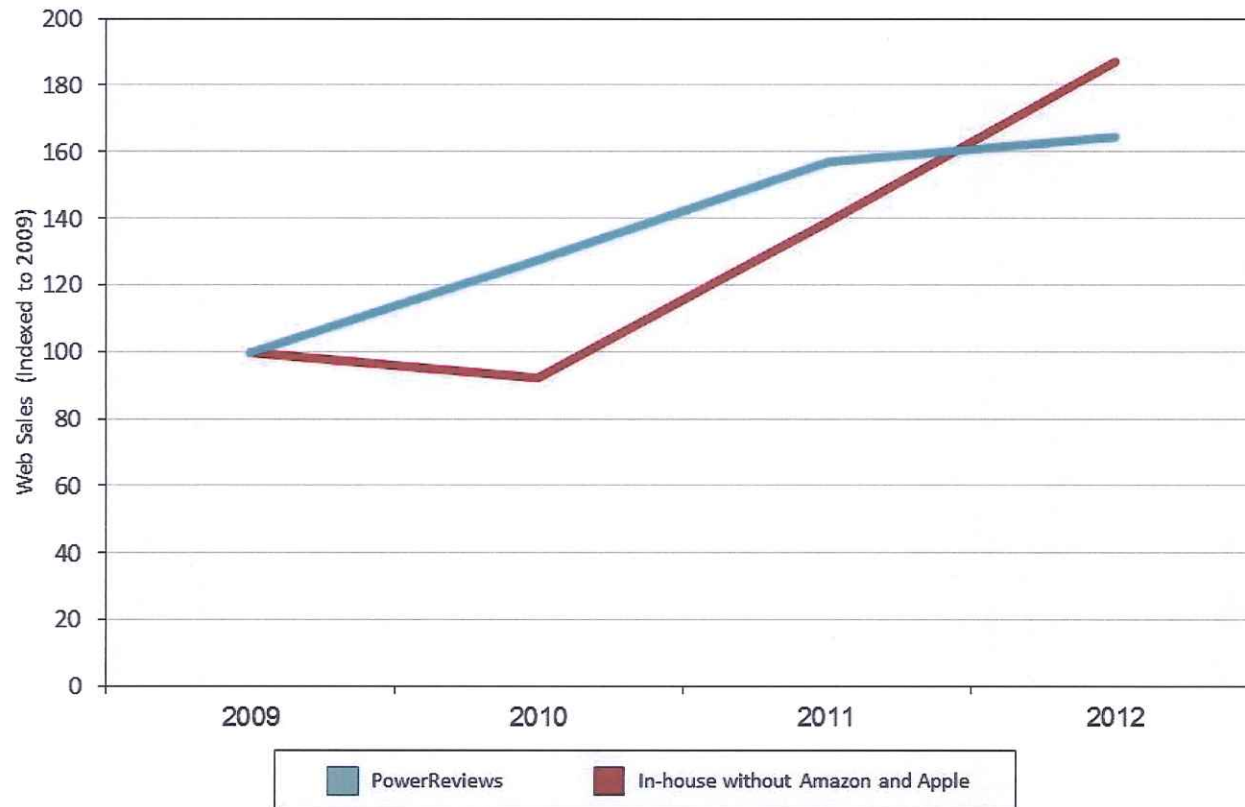




# In house

b:

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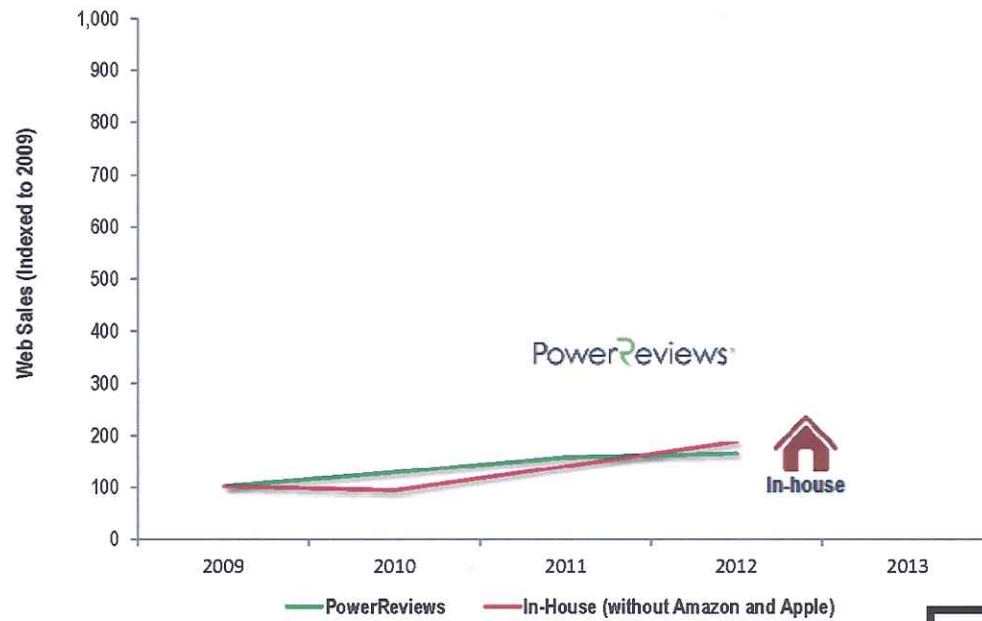


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# In house

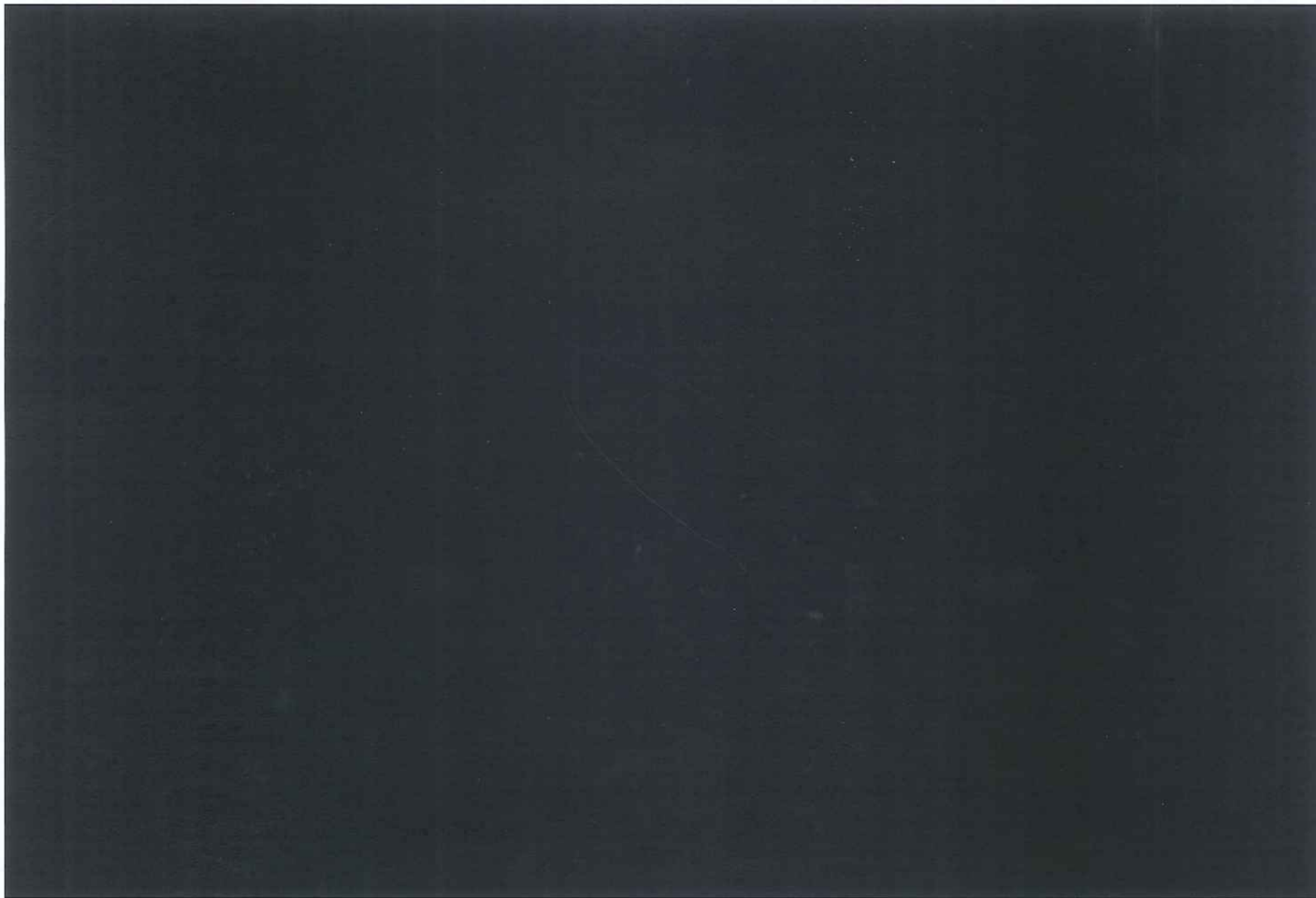
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# Orchard Supply Hardware







# Abercrombie & Fitch

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# Vitamin Shoppe's PowerReviews Contracts

## Old Agreement (12/21/11)

2012-08-20 11:01:01 AM

**PowerReviews**

22 4<sup>th</sup> Street, 6<sup>th</sup> Floor  
San Francisco, CA 94103  
Tel: 800.345.4443  
dcs@powerreviews.com

Name: Quiza for The Vitamin Shoppe VZ  
Service Order Number: 0002733  
Sales Executive: Sheila McNeil  
Valid Until: 11/27/2011

This Service Order (the "Service Order" or "Service Schedule"), together with the PowerReviews Service Agreement (MSA), by and between client (as described below) and PowerReviews, Inc. a Delaware corporation located at 22 4<sup>th</sup> St, San Francisco, CA 94103 ("PowerReviews"), governs the terms under which PowerReviews will make available the Services, and shall be effective as of the date agreed to by PowerReviews ("Effective Date") and Client ("Effective Date").

Client: The Vitamin Shoppe  
2151 18th St  
North Bergen, NJ 07047

Invoice Term: 24 months  
Renewal Term: 24 months  
Auto Renewal: No

Billing Start Date: 08/21/12

Service Order Number: 0002733

Standard PowerReviews Service Bundle

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

Facebook Discovery Service  
Facebook Community Service

Special Terms & Notes:  
The Services Order applies to the Client's...  
Client may terminate...  
PowerReviews will be...  
Social media...  
Billing Terms:  
- Payment Changes begin on the Billing Start Date...  
- All usage fees will be billed upon the...  
- All usage fees will be billed upon the...

PowerReviews Confidential

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TRIAL NUMBER: GX1221  
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By: \_\_\_\_\_ Date: \_\_\_\_\_  
VS-DOJ-0000054

GX 1221

## New Agreement (7/26/13)

Document Evidence ID: 6E2B5C8C-9933-4269-B102-8F4C8E920F34

**PowerReviews**

22 4<sup>th</sup> Street, 6<sup>th</sup> Floor  
San Francisco, CA 94103  
Tel: 800.345.4443  
dcs@powerreviews.com

Name: Quiza for The Vitamin Shoppe Renewal 2014  
Service Order Number: 0002733  
Sales Executive: Dan Freeman  
Valid Until: 5/15/2015

This Service Order (hereinafter referred to as a Schedule of Work or Service Schedule) is issued under and incorporates the Agreement between the parties. "Agreement" means the general terms and conditions of similar agreement governing the purchase of PowerReviews Services as set forth at the end of this document. This document shall be read in conjunction with the Agreement and the MSA. In the event that there is a conflict between the MSA and any other document, the MSA shall prevail. This document shall be read in conjunction with the Agreement and the MSA.

Agreement effective with:  
Signed by: [Signature]  
Billing Start Date:

Client: The Vitamin Shoppe  
2151 18th St  
North Bergen, NJ 07047

Billing Start Date: 08/21/12  
Term: 12 months

Service Order Number: 0002733

1-Term Non-Renewal

Basic Reviews Service:  
- Review Service including SEO  
- Basic Support Plan (Community support)  
- Review Accelerator  
- Social Measurement

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

Facebook Discovery Service  
Facebook Community Service

Special Terms & Notes:  
The Service Order applies to the Client's...  
Client has agreed to...  
Facebook Community Service

Review Accelerator (50k 25k emails/mo)

Facebook Discovery Service  
Facebook Community Service

PowerReviews Confidential

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
TRIAL NUMBER: GX1221  
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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