

**EXHIBIT G**  
TO THE  
DECLARATION OF  
JEFFREY R. WANG  
(REDACTED)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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SELLIFY LLC,  
Plaintiff,

v.

AMAZON.COM INC.,  
Defendant.

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EXPERT REPORT AND DISCLOSURE OF  
JULI SAITZ  
FTI CONSULTING, INC.

May 27, 2010

CONFIDENTIAL

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Exhibit 1: Curriculum Vitae

Exhibit 2: Documents Considered

Schedule 1: Sellify Sales March through December 2009 – Summary by Type

Schedule 1.1: Sellify Sales March through December 2009 – Sorted by Type

## SCOPE OF RETENTION

I, Juli Saitz, am a Managing Director in the Forensic and Litigation Consulting Practice in the New York office of FTI Consulting, Inc. (“FTI”). I have advised both corporations and attorneys with respect to economic, accounting and financial issues relating to intellectual property damages in, among other areas, commercial litigation. A complete copy of my current curriculum vitae, which summarizes my qualifications and professional experience, is attached as Exhibit 1.

FTI has been retained by Friedman, Kaplan, Seiler & Adelman LLP, counsel for the Defendant (“Counsel”), in the above-referenced matter to assist in analyzing the damage claim brought by Sellify LLC (“Sellify” or “Plaintiff”) against Amazon.com Inc. (“Amazon” or “Defendant”) as a result of allegations related to false advertising and unfair trade practices. The Amended Complaint in this matter was filed on February 17, 2010.<sup>1</sup>

My opinions are based upon information available to me as of the date of this report. My staff and I have considered certain documents produced to date in this case by the parties. A listing of all documents I considered is attached as Exhibit 2.

I understand that I may be asked to testify regarding my opinions contained herein as well as related matters, including those raised on cross examination, those necessary to rebut matters raised by the Plaintiff’s witnesses who testify concerning certain matters and those otherwise raised at trial by the Plaintiff’s attorneys in relation to matters set forth in this report. My opinions may be modified or supplemented based upon additional facts and materials that may become available to me up to and during trial.

In connection with my anticipated testimony in this action, I may use as exhibits various documents produced in this matter which refer to or relate to the matters discussed in my report. In addition, I may create or assist in the creation of certain demonstrative exhibits to assist me in my testimony.

This report has been prepared in connection with the above referenced matter, is to be used for the specific purposes of this matter and is not to be used for any other purpose without the express written consent of FTI. FTI is being compensated for my time at the rate of \$445 per hour.

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<sup>1</sup> Sellify LLC v. Amazon.com Inc. - First Amended Complaint dated February 17, 2010.

## **BACKGROUND OF THE MATTER**

I understand that Sellify is an online retailer of used electronic equipment through its website OneQuality.com (“OneQuality Website”). I understand that the OneQuality Website was launched in March 2007 by OneQuality LLC.<sup>2</sup> Due to a dispute, Sellify was not responsible for the operation of the OneQuality Website from 2008 to early 2009. Sellify also sells goods on eBay’s online auction website under the store name OneQuality-Store as well as through eBay’s auction pages (collectively “OneQuality eBay Operations”).

Amazon, an online retailer, is a Fortune 500 company that began operations on the web in 1995. Amazon offers a wide range of books and consumer products. Amazon runs an affiliate marketing program known as “Amazon Associates.” This program provides incentives to individuals and businesses operating online for directing web visitors to Amazon. Those signed up with the programs (“Associates” or “Affiliates”) can achieve this through links and banners, widgets and self-contained online stores embedded directly into the Associate’s webpage.<sup>3</sup>

The Plaintiff alleges that an Amazon Associate, Cutting Edge Designs, purchased the advertising keyword “www.onequality.com” and similar terms from Google. Users searching these terms would see sponsored links that said “Beware of Scam Artists” or “Don’t Buy from Scammers” (the “Sponsored Links”), along with the unpaid search results for these terms.

## **DAMAGES CLAIMED BY SELLIFY ARE NOT BASED ON RATIONAL ECONOMIC REASONING**

I have been asked to review and comment on the damage amount calculated by Sellify. I offer no opinion relating to liability or willfulness elements of this matter.

I understand that the Plaintiff submitted a calculation of damages related to the claims in this matter; I have reviewed this document in which the Plaintiff concludes that it suffered economic damages totaling \$2,404,629.<sup>4</sup> This calculation was prepared by Sellify’s President, Christopher Maki.<sup>5</sup>

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<sup>2</sup> Sellify LLC v. Amazon.com Inc. - First Amended Complaint dated February 17, 2010.

<sup>3</sup><https://affiliate-program.amazon.com/>, accessed on April 26, 2010.

<sup>4</sup> S-135.

<sup>5</sup> Deposition of Christopher Maki, May 18, 2010, page 85.

I understand that recovery of damages for false and/or misleading advertisements is governed by §43(a) of the Lanham Act. I understand that for a violation under §43(a) of the Lanham Act, the plaintiff may recover 1) the defendant's profits, 2) any damages the plaintiff sustained, and/or 3) the cost of the action.<sup>6</sup> The plaintiff may recover either the amount of the defendant's profits or the damages the plaintiff sustained, but may not receive both.<sup>7</sup> I understand that the Plaintiff has opted to pursue damages it believes it sustained, which it calculates based on the alleged damage to its goodwill.

Goodwill is the impression in the consumer's mind related to a brand's reputation. A decrease in sales and/or customers of a particular brand would be indicative of goodwill that has been harmed. In order to quantify harm to goodwill, experts will compare the value of the brand immediately before and after an event (in this case, the publishing of Sponsored Links). A critical piece of this analysis is to account for other factors affecting the brand's sales and goodwill so as not to burden the defendant with factors unrelated to the accused act. When calculating damages, liability is assumed by experts, however, the expert (or in this case, the Plaintiff itself) must still show a causal link between the damages claimed and the accused act.

I believe that the Plaintiff has not properly calculated damages that may be attributable to the Sponsored Links or any other actions of Amazon. Based on the information produced in this matter to date, one is unable to make the assertion that any damages have been sustained as a result of the Sponsored Links. Further, the damage claim proffered by Sellify does not incorporate the economic analysis typically employed in damage calculations.

## **OBSERVATIONS ON THE SELLIFY DAMAGE CALCULATION**

As discussed above, the Plaintiff has elected a damage measure that is based upon claimed harm to the OneQuality.com brand. Valuation calculations generally are performed using one of the following three methodologies:

- Income Approach: based on the present value of future economic streams
- Market Approach: based on comparable asset transaction multiples
- Cost Approach: based on the hypothetical cost to replace or purchase an asset.

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<sup>6</sup> 15 U.S.C. § 1117.

<sup>7</sup> Ibid.

Any calculation of diminished brand value or goodwill would involve a calculation of the brand's value immediately prior to or "but for" the alleged act (in this case publishing of the Sponsored Links) as compared to the value after.

Sellify has employed the market approach in its damages calculation and prepared a simplistic calculation that compares profit in 2009 to 2007, and then multiplied by 9, in order to arrive at "damages done by the negative ad campaign."<sup>8</sup> This analysis assumes that the OneQuality.com brand has been damaged in perpetuity and that there is no chance to recover from the harm caused by the Sponsored Links.<sup>9</sup> This analysis also assumes that the decline in sales and profits from 2007 to 2009 is wholly attributable to the Sponsored Links. The following is the Plaintiff's calculation:



There are a number of fundamental problems with Sellify's calculation.

### **2007 Benchmark is Inappropriate**

First, 2007 is not an appropriate starting point. Sellify's calculation expects that the OneQuality.com brand should have performed exactly the same as it did in 2007 but provides no justification as to why this is the case. The appropriate benchmark for quantifying any harm caused by the Sponsored Links would be immediately before the Sponsored Links were published. Mr. Maki made no attempt to analyze the value of the brand when he relaunched the Website in early 2009, despite it being operating at "minimal level" during 2008.<sup>10</sup>

*Q. But, when you first relaunched, you hadn't been in operation for over a year, right?*

*A. Correct, but - -*

*Q. Okay. It was just a yes or no question.*

*A. Sure.*

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<sup>8</sup> S-135.

<sup>9</sup> Christopher Maki stated that the damage was permanent despite the fact that the Sponsored Links did not appear until March 2009 and were removed in August 2009. Deposition of Christopher Maki, May 18, 2010, page 207.

<sup>10</sup> S-135.

*Q. When you relaunched the site in March 2009, did you make an attempt at that very point to value the business?*

*A. When I relaunched. Right at that point - -*

*Q. What was your view at that point - -*

*A. - - of the value of the business there?*

*Q. Yes.*

*A. I didn't value it at that point, but, if you want me to look back and value it now, I can tell you what I think the value is. I didn't like consciously sit down and value it.<sup>11</sup>*

As will be addressed in more detail throughout my report, by using 2007 as a benchmark, Sellify does not account for other crucial factors (e.g., minimal presence of the OneQuality brand on the internet throughout 2008, changes in the marketplace, competition, effect of OneQuality LLC dissolution, capital and management constraints, etc.) that could have impacted the OneQuality Website sales or brand value.

#### **Sellify's Multiple Selection is Arbitrary and Not Based on Research or Analysis**

Second, the multiple used by Sellify in its damage calculation is arbitrary. Sellify's damage submission states "I applied a conservative earnings multiple of 9 times earnings. In comparison Amazon.com is valued at 70 times earnings in the open market."<sup>12</sup> Amazon's size and reach dwarfs that of Sellify. Amazon started on the web in 1995 and offers "Earth's Biggest Selection [of products]" with net sales of \$24.5 billion in 2009.<sup>13</sup> Amazon's U.S. site has 12 broad product categories with items ranging from baby products to printers, websites in Canada, China, France, Germany, Japan and the U.K<sup>14</sup> and approximately 24,300 full and part-time employees.<sup>15</sup> Sellify through its OneQuality.com website and eBay store had sales of [REDACTED],<sup>16</sup> one employee for most of the year and sold only used electronic equipment. While 9 is a number less than Amazon's multiple of 70, that fact is irrelevant, and the comparison is in all events not supported by Sellify. A review of companies with operations more comparable (i.e., size, product offering, brand recognition,

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<sup>11</sup> Deposition of Christopher Maki, May 18, 2010, pages 169 – 170.

<sup>12</sup> S-135.

<sup>13</sup> Amazon.com 2009 Annual Report.

<sup>14</sup> Amazon.com website, accessed on May 20, 2010.

<sup>15</sup> Amazon.com 2009 Annual Report.

<sup>16</sup> S-135.

location, etc.) to Sellify would need to be undertaken to determine a more appropriate multiple. Mr. Maki did not perform any such research prior to selecting a multiple of 9.<sup>17</sup>

### **Sellify Performed its Calculation in a Vacuum, Does Not Consider Other Factors and Attributes all Harm to the Sponsored Links**

Third, Sellify did not consider any other factors that might have influenced the value of the OneQuality.com website. In fact, it appears that the only thing Mr. Maki did was compare 2007 and 2009 income numbers, and then multiply by 9.

*A. ...So we applied the multiple of nine times earnings to OneQuality.com at the end of 2007, and then we applied it to the at the end of one year prior after the defamatory ads to look at what damage had been done to the brand and to quantify it, so we valued the company at the end of 2009, and, if you see below, I did the multiple, multiplied nine times the earnings in 2007 and nine times the estimated earnings in 2009 and looked at the differences, you subtract the differences, and you get the damages value.*

*Q. Anything else you did to calculate your damages?*

*A. I can't think of anything specifically, no.*

*Q. Generally?*

*A. No. I think that is it. Right? I don't think I am missing anything.<sup>18</sup>*

In assessing damages, it is critical to assess the impact of other factors on the business being analyzed so as not to burden a defendant with harm that is not attributable to the defendant's actions. Sellify has made no attempt to perform any analysis in this regard.

### **Sellify Has Not Demonstrated One Quantifiable Instance of Harm**

Sellify has not established any causal link or even demonstrated that there was any harm to the OneQuality.com brand by way of a lost sale. In fact, Mr. Maki could not point to any examples of harm to Sellify.

*Q. Did anybody tell you that they had seen the ads and didn't trust you because of them?*

*A. I don't recall specifically.*

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<sup>17</sup> Deposition of Christopher Maki, May 18, 2010, pages 85-86.

<sup>18</sup> Deposition of Christopher Maki, May 18, 2010, pages 85-86.

*Q. No, I am asking you a yes or no question, which is did anybody tell you that they had seen the ads and didn't trust you because of it?*

*A. I don't recall that, so it would be a no with not remembering that being said.<sup>19</sup>*

### **Sellify Omits the Entire Year 2008 from its Analysis yet Acknowledges the OneQuality Website Continued to Operate**

I understand that during 2008, the OneQuality Website and eBay store were not operated by Sellify, but by Mr. Maki's former partner, Adrian Meli. I also understand that Sellify has produced no information at all about the operations or revenues of either the OneQuality Website or eBay Store during 2008.

Although Mr. Maki ignored it, an analysis of the operations and revenues of the Website and eBay store in 2008 is essential to valuing the business at the time the Sponsored Links appeared in early 2009. Mr. Maki testified that Mr. Meli was operating the business at a "minimal level,"<sup>20</sup> using it primarily to liquidate inventory.<sup>21</sup> The fact that the OneQuality name was associated with such a minimal operation for an entire year would almost certainly have had a profound impact on the brand's recognition and value, but Mr. Maki made no effort to incorporate that fact into his valuation, simply using sales from 2007, when the business was fully operational, as his benchmark. There is no legitimacy to this approach.

I would expect the Website under Sellify's operation would face certain challenges such as management, operational and capital constraints with the transition from three owners in 2007 to one in 2009.<sup>22</sup> I also understand that OneQuality LLC had roughly 5 (and no more than 8) employees in addition to three partners.<sup>23</sup> Conversely, when Sellify took over Christopher Maki ran the OneQuality

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<sup>19</sup> Deposition of Christopher Maki, May 18, 2010, page 125.

<sup>20</sup> S-135.

<sup>21</sup> Deposition of Christopher Maki, May 18, 2010, page 175.

<sup>22</sup> I understand that Adrian Meli was the largest investor in terms of monetary capital. Mr. Maki claims he had capital available to fund 2009 operations but chose not to do so given the Sponsored Links. I have seen no evidence to support this claim or information related to the amount of capital available to fund inventory purchases in 2009. Further, I have not seen information related to how Mr. Maki's available capital compared to capital available in 2007. Deposition of Christopher Maki, May 18, 2010, pages 204 – 205. I also note that in late 2007, OneQuality LLC applied for a loan in anticipation of Adrian Meli taking equity out of the business. Presumably proceeds from the loan would be needed to operate the business at current levels. Deposition of Christopher Maki, May 18, 2010, page 189.

<sup>23</sup> Deposition of Christopher Maki, May 18, 2010, pages 45-46.

Website and eBay operations alone and hired one employee towards the end of 2009.<sup>24</sup> To launch the Website under Sellify's control, Mr. Maki simply "click[ed] a button."<sup>25</sup>

### **Plaintiff Ignores the Fact that the Majority of its Customers Never Viewed the Ads**

A portion of Sellify's sales are made through its eBay operations. I have analyzed the 2009 sales information provided by Sellify and determined that approximately 36% of total transactions were made through eBay in 2009. I understand that the Plaintiff has produced no such data prior to 2008, but understand that OneQuality's sales have historically been primarily through eBay.

The Plaintiff has not provided any evidence that eBay customers (as opposed to visitors to the OneQuality Website) would ever have seen the Sponsored Links which appeared next to Google's search results pointing to the OneQuality Website. Nevertheless, Sellify did not distinguish between any harm caused to its website as opposed to its eBay Operations. Mr. Maki simply looked at the decline in sales across both platforms from 2007 to 2009, applied a multiple, and claimed \$2.4 million in damages.

Many visitors to the OneQuality Website also would not have seen the Sponsored Links. There are several ways in which a customer can get to the OneQuality.com Website, including typing www.onequality.com directly into a web browser, searching for specific products on various search engines, or searching for "OneQuality" in search engines other than Google. None of these would result in a customer seeing the Sponsored Links.<sup>26</sup>

From March 2009 to August 2009, the OneQuality Website had 22,181 total unique visitors<sup>27</sup> and sales of [REDACTED].<sup>28</sup> During that same period, there were 1,069 impressions (views) of the Sponsored Links.<sup>29</sup> This represents only 4.82% of the total unique visitors to the OneQuality.com Website.<sup>30</sup>

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<sup>24</sup> Deposition of Christopher Maki, May 18, 2010, page 120.

<sup>25</sup> Deposition of Christopher Maki, May 18, 2010, pages 127 – 128.

<sup>26</sup> Deposition of Christopher Maki, May 18, 2010, pages 215 – 216 and 220 – 221.

<sup>27</sup> Unique Monthly Visitors to OneQuality.xls, produced by Sellify.

<sup>28</sup> S-124 – 134. See Schedule 1.

<sup>29</sup> Source: Google AdWords Report. I understand that "impressions" refers to the number of times an ad is viewed. Impressions are greater than unique website visitors as the impressions number includes multiple views by the same individual. (As an example, Mr. Maki viewed the Sponsored Links more than one time. Deposition of Christopher Maki, May 18, 2010, pages 165 – 166.) For this reason, there were certainly fewer than 1,069 unique individuals who saw the Sponsored Links.

<sup>30</sup> Calculated as 1,069 (Ad Impressions Mar – Aug 2009) divided by 22,181 (Unique Visitors to OneQuality.com from Mar – Aug 2009) equals 4.82%.

The Plaintiff has not provided information related to the number of unique visitors to its eBay Store, which generated [REDACTED] during the time the Sponsored Links were published.<sup>31</sup> However, assuming the same proportion of unique visits to ultimate purchases as the OneQuality Website, there would have been approximately [REDACTED] unique visits to the eBay Store from March 2009 through August 2009.<sup>32</sup> Including the potential eBay visitors further drives down the percentage of viewers of the Sponsored Links to unique visitors to the OneQuality sites to 3%.<sup>33</sup>

The Plaintiff claims that a large portion of customers on eBay would have gone to Google.com, searched OneQuality.com and seen the Sponsored Links, thus harming the sales enjoyed by the OneQuality eBay Store. Mr. Maki could not provide any evidence to support this claim and instead simply stated:

*Q. I know we have gone through this before, but you think all customers would check you out on Google?*

*A. Do I think all customers would check us out on Google? I think a large percentage would. I know I would. I know it would be prudent before you buy a \$1500 item from them or a thousand dollar item from them.*

*Q. But, other than your sort of gut sense of what you would do, you have no evidence to support what the large percentage of people would do, correct?*

*A. I don't know how many people have gone to search Google. No. I don't have that.<sup>34</sup>*

It is not rational to conclude that approximately 1,000 views of the Sponsored Links over a five month period would cause a drop in profitability for the OneQuality.com Website and eBay operations of [REDACTED] % from 2007 to 2009.

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<sup>31</sup> S-124 – 134. See Schedule 1.

<sup>32</sup> Estimated given the number of unique visitors to purchase transactions for the OneQuality Website. I applied the same ratio on a monthly basis from March to August 2009 to the number of eBay purchase transactions.

<sup>33</sup> Calculated as [REDACTED] Potential Unique Visitors to Website and eBay. [REDACTED] = 3.06%.

<sup>34</sup> Deposition of Christopher Maki, May 18, 2010, pages 265 – 266.

### **Impact of the Ads Would Decrease over Time: Permanent Harm, if any, is Negligible**

The Plaintiff claims that its business has been permanently harmed as a result of the appearance of the Sponsored Links over a five-month period. The amount of “permanent harm” if any, would be minimal. Mr. Maki discussed the seasonal nature of the OneQuality business in his deposition.

*Q. They [returning customers] might come a couple of years later?*

*A. Yes. I would say a three to five [year] replacement cycle for that.*

*Q. So the people who were buying, for example, in 2007 those people on the three to five replacement cycle, they would come back 2010 through 2012?*

*A. The people who bought.*

*Q. In 2007.*

*A. Okay.*

*Q. Their replacement cycle would have them buying new products in 2010, '11, '12?*

*A. Yes, I would think so. That is assuming they are going to continue on. When you look at your retention and everything like that, we don't have the time or resources to track everything. I am sure Amazon they will track retention this and that. Probably, if you looked at it across companies in general, it is a lot lower than you would expect, so it is not like people just sit there and buy from the same place over and over again. People really care about for used it is trust, but price, so it is going to come down to those two factors, and if you lose trust, they are not coming back.*<sup>35</sup>

Thus, even assuming 100% customer retention (which is unlikely), the only permanent harm would be the loss of sales in three to five year cycles from customers that might have purchased products from Sellify had they not viewed the Sponsored Links during the five-month period in 2009. This amount, which I have calculated below, would be a maximum of approximately \$1,300.

Over time I would expect the impact of the Sponsored Links to decrease, because new potential customers searching for OneQuality in Google any time after August 2009 would not see the Sponsored Links. I note that the OneQuality.com Website is currently operating and has experienced a consistent increase in the number of unique visitors and sales since Sellify re-launched the OneQuality.com brand in March 2009. Mr. Maki hired an additional employee toward the end of

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<sup>35</sup> Deposition of Christopher Maki, May 18, 2010, pages 171 – 172.

2009, presumably to assist with his ongoing operations.<sup>36</sup> These facts contradict the notion that the OneQuality brand has been permanently damaged.

### **Sellify's Performance Contradicts its Damage Claim**

Based on Plaintiff's damages claim, I would expect to see a decrease in sales and related profits immediately after the publishing of the Sponsored Links in question. In fact, Sellify's revenues from both the OneQuality Website and eBay Store increased during the period in which the Sponsored Links were published.<sup>37</sup> Unique visitors to the OneQuality Website also increased from March 2009 to March 2010.<sup>38</sup>



### **Plaintiff's Maximum Possible Loss is Minimal**

Based on the foregoing, one cannot draw any conclusion with a reasonable degree of certainty as to lost sales or damages suffered as a result of the Sponsored Links. At most what one can do is calculate the additional sales Sellify could have made assuming that none of the 1,069 individuals that

<sup>36</sup> Deposition of Christopher Maki, May 18, 2010, page 116.

<sup>37</sup> See Schedule 1.

<sup>38</sup> Source of data is Unique Monthly Visitors to OneQuality.xls spreadsheet produced by Sellify. I note the Plaintiff described the decrease in visitors in August 2009 was likely an "aberration." Deposition of Christopher Maki, May 18, 2010, page 257.

viewed the Sponsored Links made a purchase (there is no evidence on this point) and that they would have made purchases from Sellify in the same proportion as other Sellify customers if they had not seen the Sponsored Links. Under this scenario the total lost profits would be approximately \$1,300.<sup>39</sup>



Notes:

All figures subject to rounding.

(1) Source: S - 124 - 134. See Schedule 1.

(2) Calculated as 1,069 (Ad Impressions 3-09 - 8-09) divided by 22,181 (Unique Visitors to OneQuality.com from 3-09 - 8-09) = 4.82%.

(4) Source: S - 135.

To further illustrate the absurdity of Sellify's damages claim, according to Mr. Maki, Sellify would have needed to generate [REDACTED] times its actual revenue during 2009 in order to have no damages associated with the Sponsored Links. It is difficult to comprehend that 1,069 impressions as compared to 45,958 total unique web visitors during 2009 (only 2% of the total visitors, even assuming each impression represented a unique visitor) would have prevented Sellify from generating \$ [REDACTED] in additional sales. Given the short-lived nature of the Sponsored Links, the number of ways traffic can be directed to the OneQuality.com website that do not result in customers viewing the Sponsored Links and the state of the OneQuality.com brand at the beginning of 2009, the Plaintiff's damage claim is particularly speculative.<sup>40</sup>

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<sup>39</sup> By including eBay sales in this analysis, it is conservative. I have seen no evidence to support the claim that eBay customers would have seen the Sponsored Links. It also assumes that 1,069 impressions, which are clearly more than unique visitors, would amount to 1,069 unique visitors to the OneQuality.com Website.

<sup>40</sup> Calculated by [REDACTED]

## CONCLUSION

Based on information produced in this matter, there is no evidence to connect the Plaintiff's alleged damages to the Sponsored Links at issue. It is also improper, for all of the reasons discussed in this report, to use OneQuality LLC's 2007 operations as the benchmark by which to measure Sellify's 2009 value. Further, even if there was any evidence of economic harm resulting from the Sponsored Links at issue, the Plaintiff has not prepared a calculation in accordance with accepted practices by, among other things, failing to analyze other factors, choosing an arbitrary multiple and using an inappropriate benchmark. Finally, the Plaintiff has not provided any evidence that the Sponsored Links seen by a fraction of its total potential customers would have had the negative effect on the Sellify business as a whole that the Plaintiff suggests. Therefore, I do not believe that the Plaintiff has been able to establish any damages at all, let alone quantify those damages in a reasonable manner.

My report, with supporting exhibits, is contained herein, and presents my opinion and the bases and reasons thereof. To the extent any additional information is produced by either party, I reserve the right to incorporate such additional information into my report. This report was prepared solely for the above-captioned matter and should not be used for any other purpose without prior written authorization.

BY: 

Juli Saitz

Dated: May 27, 2010

CONFIDENTIAL

# Juli Saitz, CPA, CFF

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#### Certifications

Certified Public  
Accountant, New York  
Certified in Financial  
Forensics

#### Professional Affiliations

New York State Society of  
Certified Public  
Accountants  
American Institute of  
Certified Public  
Accountants  
Licensing Executives  
Society

#### Education

Bachelor of Science  
Accounting, New York  
University

Juli Saitz is a Managing Director in FTI's Forensic Practice in New York. Ms. Saitz has over twelve years of experience in providing forensic accounting and financial and economic analysis to attorneys in litigation. Her responsibilities include managing all aspects of Forensic engagements, including planning, conducting fieldwork, reporting and contract administration.

Ms. Saitz specializes in Intellectual Property matters and has significant experience providing financial consulting services relating to financial analysis and damage analysis in a variety of industries including financial services, consumer products, manufacturing and entertainment. She has performed financial analyses relating to profit calculations, additional cost claims, incremental profit analysis, licensing and royalty determinations, manufacturing and marketing capacity, fixed and variable cost analysis, allocation of costs, evaluation of forecasts and projections and product line profitability.

#### Testimony Experience & Expert Reports Issued

- Sherry Argov v. Adams Media, a division of F&W Publications Inc., Adams Media Corporation – Arbitration Testimony, January 24, 2009
- M&J Savitt Inc., et al v. Janis Savitt, et al, - Expert Report, March 2009
- Yurman, Cartier, Van Cleef & Arpels, Gucci and Bulgari v. Elena Castaneda and Ejeweler – Expert Report, April 2009
- Moore or Lesh, LLC v. Macy's Inc. – Expert Report, December 2009
- Young America Corporation v. Ohana Companies – Expert Report, February 2010
- Billco International, Inc. v. Charles Products, Inc. - Expert Report, February 2010

#### Presentations & Publications

*Making Trademark and Copyright Litigation Pay for Itself: Proving and Obtaining Monetary Relief –* Presentation to New York State Bar Association Intellectual Property Law Section (October 2009)

*Valuation of Intellectual Property* – Coordinated and instructed CLE program at the New York office of one of country's top tier law firms (May 2006)

*Proving Patent Damages: What is the Best Model for Your Client?* NYSBA Intellectual Property Law Section Newsletter, Bright Ideas (Vol.14 No.3 Winter 2005)

*Introduction to Intellectual Property Damages* – Presentation to New York University's School of Continuing Professional Studies Litigation Support of Forensic Accounting class (October 2003)

*Assessing Damages in Patent, Trademark, Copyright and Trade Secret Cases* – Presentation to the Onondaga County Bar Association (August 2003)

*Introduction to Intellectual Property* – Presentation to participants in Texas A&M participants in the “Aggies on Wall Street” program (May 2003)

**Employment History**

**FTI Consulting**, Forensic and Litigation Practice (2003 to present)

**KPMG LLP**, Dispute Advisory Services Practice (2001 to 2003)

**GetThere Inc. (a Sabre Company)**, Finance Department (2000 to 2001)

**PricewaterhouseCoopers**, Financial Advisory Services Practice (1997 to 1999)

**Documents Considered**

<u>Bates Start</u>	<u>Bates Ends</u>	<u>Description</u>
<b>Documents Provided by Counsel</b>		
S -119	S-123	Sellify 2008 Sales Data
S - 135		Revised Damages Calculation
S-124	S-134	Sellify 2009 Sales Data
S-168	S-169	Defendant's Exhibit 9: Email Correspondence from Christopher Maki to Adrian Meli, dated November 14, 2008 Initial Sellify Damage Calculation Unique Monthly Visitors to OneQuality.xls Google AdWords Report 2006 U.S. Partnership Tax Return for OneQuality LLC 2007 U.S. Partnership Tax Return for OneQuality LLC

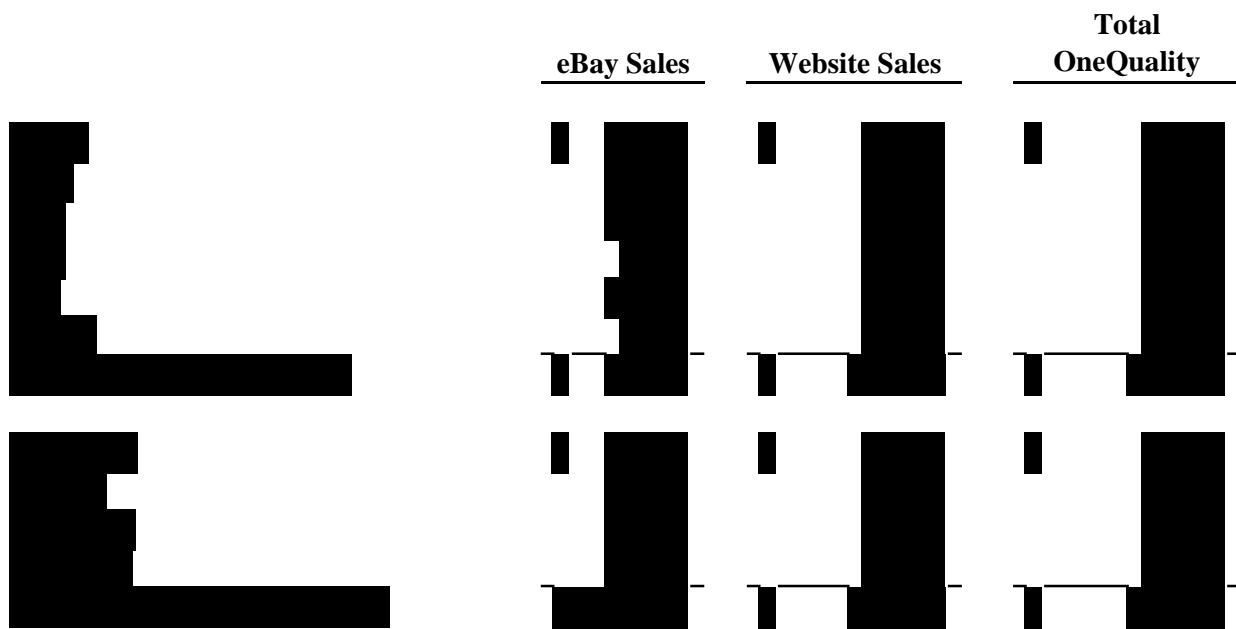
**Pleadings, Deposition Transcript**

Sellify LLC v. Amazon.com Inc. - First Amended Complaint dated February 17, 2010.  
Deposition of Sellify President, Christopher Maki dated May 18, 2010

**Publicly Available Data**

Amazon.com 2009 Annual Report  
<http://www.trafficestimate.com/onequality.com>, accessed April 23, 2010  
<https://affiliate-program.amazon.com/>, accessed April 26, 2010  
[http://www.amazon.com/gp/site-directory/ref=topnav\\_sad](http://www.amazon.com/gp/site-directory/ref=topnav_sad), accessed May 20, 2010  
<http://www.onequality.com>, accessed May 13, 2020

**Sellify Sales March - December 2009**  
**Summary by Type**



Source: Schedule 1.1

## **Sellify Sales March - December 2009 Sorted by Type (Website/eBay)**

A treemap visualization showing the hierarchical structure of transaction data across five main categories: Type, Date, Transaction Type, Sales, and Cost. The categories are arranged in a grid, with the first four columns being the primary categories and the fifth column being a summary or related category. Each category is represented by a large black rectangle, which is further subdivided into smaller black rectangles, indicating a hierarchical breakdown of the data. The 'Type' category is the most granular, with many small sub-segments. The 'Date' category shows a clear temporal structure. The 'Transaction Type' category is relatively uniform. The 'Sales' and 'Cost' categories show a more structured, stepped hierarchy, likely representing different levels of aggregation or specific transaction types.

**Sellify Sales March - December 2009**  
Sorted by Type (Website/eBay)

Type	Date	Transaction Type	Sales	Cost
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

## **Sellify Sales March - December 2009 Sorted by Type (Website/eBay)**

A treemap visualization showing the hierarchical structure of transaction data across five main categories: Type, Date, Transaction Type, Sales, and Cost. The categories are represented by large black rectangles, and their sub-components are shown as smaller black rectangles within them. The sizes of the rectangles indicate the relative proportions of the data at different levels of the hierarchy.

- Type:** This category is represented by a large black rectangle at the top left. It has two sub-components: "Date" and "Transaction Type".
- Date:** This category is represented by a black rectangle within the "Type" category. It has two sub-components: "Sales" and "Cost".
- Transaction Type:** This category is represented by a black rectangle within the "Type" category. It has two sub-components: "Sales" and "Cost".
- Sales:** This category is represented by a black rectangle within the "Date" category. It has two sub-components: "Sales" and "Cost".
- Cost:** This category is represented by a black rectangle within the "Date" category. It has two sub-components: "Sales" and "Cost".

The "Sales" and "Cost" components are present in both the "Date" and "Transaction Type" categories, suggesting a common structure or relationship between these two main types of transactions.

## **Sellify Sales March - December 2009 Sorted by Type (Website/eBay)**

A treemap visualization showing the hierarchical structure of transaction data across five main categories: Type, Date, Transaction Type, Sales, and Cost. The categories are arranged in a grid, with Type, Date, and Transaction Type in the top row and Sales and Cost in the bottom row. Each category is represented by a large black rectangle, which is further subdivided into smaller black rectangles, indicating a hierarchical breakdown of the data. The categories are ordered from left to right as Type, Date, Transaction Type, Sales, and Cost.

**Sellify Sales March - December 2009**  
Sorted by Type (Website/eBay)

Type	Date	Transaction Type	Sales	Cost
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

**Sellify Sales March - December 2009**  
Sorted by Type (Website/eBay)

Type	Date	Transaction Type	Sales	Cost
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

**Sellify Sales March - December 2009**  
Sorted by Type (Website/eBay)

Type	Date	Transaction Type	Sales	Cost
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

**Sellify Sales March - December 2009**  
Sorted by Type (Website/eBay)

Type	Date	Transaction Type	Sales	Cost
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Source:  
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