

EXHIBIT D
TO THE
DECLARATION OF
ROBERT D. KAPLAN

(MAKI DEPOSITION
TRANSCRIPT EXCERPTS)
(REDACTED)

C O N F I D E N T I A L

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SELLIFY LLC,

Plaintiff,

-against-

No. 09 CV
10268 (JSR)

AMAZON.COM, INC.,

Defendant.

May 18, 2010
1:22 p.m.

Videotaped deposition of CHRISTOPHER MAKI, taken by Defendant, pursuant to Notice, held at the offices of Friedman Kaplan Seiler & Adelman LLP, 1633 Broadway, New York, New York, before Joseph R. Danyo, a Shorthand Reporter and Notary Public within and for the State of New York.

HUDSON REPORTING & VIDEO, INC.

124 West 30th Street, 2nd Fl.

New York, New York 10001

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1
2 APPEARANCES:
3
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9
10 By: FRANCIS X. DEHN, ESQ.
11
12 FRIEDMAN KAPLAN SEILER & ADELMAN LLP
13 Attorneys for Defendant
14 1633 Broadway
15 New York, New York 10019-6708
16 By: JEFFREY WANG, ESQ.
17 ROBERT KAPLAN, ESQ.
18
19 Also Present:
20 TOM BALSEWICH,
21 Videographer
22
23 oOo
24
25

1 Maki - Confidential
2 THE VIDEOGRAPHER: We are now on the
3 video record. Today's date is May 18,
4 2010. The time on the monitor is 1:22
5 p.m. We're here at 1633 Broadway,
6 forty-sixth floor, New York, New York for
7 the purpose of taking the videotaped
8 deposition of Christopher Maki in the
9 matter of Sellify LLC versus Amazon.com,
10 Inc., case number 09 CV 10268 (JSR), which
11 is filed in the United States District
12 Court, Southern District of New York.
13 The court reporter is Joseph Danyo,
14 the videographer is Tom Balsewich, both
15 representing Hudson Reporting & Video.
16 Will counsel state their appearances
17 for the record.
18 MR. WANG: Jeffrey Wang of Friedman
19 Kaplan Seiler & Adelman for defendant
20 Amazon.com, Inc. With me is Robert
21 Kaplan.
22 MR. DEHN: Frank Dehn, for the
23 plaintiff, Smith Dehn LLP.
24 CHRISTOPHER MAKI, having been
25 first duly sworn by Joseph R. Danyo, a Notary

1
2 IT IS HEREBY STIPULATED AND AGREED, by and
3 between the attorneys for the respective parties
4 hereto, that the sealing and filing of the within
5 deposition be, and the same hereby are, waived;
6 and that the transcript may be signed before any
7 Notary Public with the same force and effect as
8 if signed before the Court.
9 IT IS FURTHER STIPULATED AND AGREED that
10 all objections, except as to the form of the
11 question, shall be reserved to the time of trial.
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1 Maki - Confidential
2 Public for the State of New York, was examined
3 and testified as follows:
4 EXAMINATION BY MR. WANG:
5 Q. Good afternoon, Mr. Maki.
6 A. How are you doing?
7 Q. We met briefly off the record before
8 the deposition. My name again is Jeffrey Wang.
9 My firm Friedman Kaplan Seiler & Adelman
10 represents the defendant, Amazon.com, Inc., and I
11 will be taking your deposition today. During
12 this deposition, I will be asking you questions.
13 My questions, as you see, will be recorded by the
14 court reporter. We need to take turns, so I
15 would ask if you could wait until I finish asking
16 my question to begin answering. I in turn will
17 try and wait until you finish answering to begin
18 asking my follow-up question.
19 A. Sure.
20 Q. Also, you appear to be answering
21 verbally, but try to answer with words as opposed
22 to a nod. The court reporter can't take down a
23 nod of your head.
24 A. Okay.
25 Q. On occasion, I may ask a question

1 Maki - Confidential
 2 that is confusing in some way. If you don't
 3 understand the question, you should ask me to
 4 repeat it or rephrase it. Explain to me what is
 5 your understanding. If you do answer the
 6 question, I will assume that you have understood
 7 it. Do you understand that?
 8 A. Yes.
 9 Q. Obviously, if you want a break at any
 10 point, just let me know. We can ordinarily
 11 accommodate that except in the case of a question
 12 pending, but, if you want water or coffee or
 13 something, just let me know, and we can take a
 14 break.
 15 A. Great.
 16 Q. It also sometimes happens that I will
 17 ask you a question and you will answer the
 18 question, and it will occur to you later on that
 19 perhaps there was something else that you forgot
 20 to add. In that case, just let me know later,
 21 and we can supplement your answer.
 22 A. Sure.
 23 Q. Are you taking any medication or
 24 drugs of any kind that would interfere with your
 25 being able to understand or answer my questions?

1 Maki - Confidential
 2 Q. Well, Defendant's Exhibit 1 is a
 3 notice of 30(b)(6) deposition which is for the
 4 plaintiff Sellify, and number 2 is for your
 5 individual deposition. Have you seen either of
 6 these two documents before?
 7 A. No, I have not.
 8 Q. Are you prepared to testify on behalf
 9 of Sellify LLC today?
 10 A. I am the president, so, yes.
 11 Q. Are you also prepared to testify in
 12 your individual capacity?
 13 A. Yes.
 14 Q. What is your home address?
 15 A. 2 Canterbury Green, number 2613,
 16 Stamford, Connecticut, 06901.
 17 Q. Are you currently employed?
 18 A. Yes. I am the president of Sellify
 19 LLC.
 20 Q. Are you employed by anyone else?
 21 A. No, not to my knowledge. No.
 22 Q. I would like to just go through your
 23 educational and work background, so why don't you
 24 take me through it starting with college.
 25 A. Okay. Yes, I went to college, and I

1 Maki - Confidential
 2 A. No.
 3 Q. And you are not at all sick today?
 4 A. No.
 5 Q. Is there any reason that you can
 6 think of that you can't answer my questions
 7 truthfully and accurately?
 8 A. Not to my knowledge.
 9 Q. Have you ever been deposed before?
 10 A. No.
 11 Q. I am going to have the court reporter
 12 mark as Exhibits 1 and 2 the notices of
 13 deposition, both a 30(b)(6) deposition notice and
 14 your individual notice.
 15 (Defendant's Exhibit 1, Notice of
 16 30(b)(6) deposition, was so marked for
 17 identification.)
 18 (Defendant's Exhibit 2, Notice of
 19 deposition, was so marked for
 20 identification.)
 21 Q. Have you seen Defendant's Exhibits 1
 22 and 2 before?
 23 A. I don't believe I have. Notice of
 24 deposition. Notice of deposition. What are the
 25 differences?

1 Maki - Confidential
 2 majored in economics. I went to Williams
 3 College, and then --
 4 Q. When did you graduate?
 5 A. In 2002. And after college I worked
 6 for a year in finance and I then went to law
 7 school, and I actually left law school to start,
 8 to work on OneQuality.com.
 9 Q. OneQuality.com?
 10 A. OneQuality, the brand. I guess the
 11 company.
 12 Q. When you say the company, what do you
 13 mean?
 14 A. There wasn't a OneQuality.com at the
 15 time, but that is what was the goal to put up a
 16 website, so, yes, OneQuality.com was what I went
 17 to go work for.
 18 Q. Let me take a couple of steps back.
 19 You said you graduated from Williams with a major
 20 in economics?
 21 A. Correct.
 22 Q. You went to work in finance for a
 23 year you said?
 24 A. Yes.
 25 Q. Where was that?

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1 Maki - Confidential
2 A. Scholtz & Company.
3 Q. Can you spell that?
4 A. Yes. It is S-c-h-o-l-t-z, and I
5 don't think it is a U. I am blanking. Sorry.
6 It has been eight years. & Co.
7 Q. Where is that located?
8 A. It was in Manhattan, but I'm not sure
9 where it is located now.
10 Q. What did you do for Scholtz &
11 Company?
12 A. A variety of things. I mean I was
13 supposed to be a research analyst, but the
14 economy was doing poorly, so I did anything that
15 needed to be done. It was a very small company.
16 Q. When you say research analyst, what
17 did a research analyst do?
18 A. Perform research on investments as
19 well as I was also doing back office work for
20 them as well. But initially it was going to be
21 just that, but that is all we had to do.
22 Q. I'm sorry. When you say that is all
23 you had to do?
24 A. I mean that is what I had to do, I
25 guess is a better way to put it.

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1 Maki - Confidential
2 Q. Because the economy was doing badly?
3 A. Exactly, yes. So there used to be
4 two people doing my job before I got there. They
5 consolidated the position to me, and I was just
6 to do whatever he needed to be done. That was
7 what ended up happening. It wasn't what was
8 up front to me, but, yes.
9 Q. So you were one of two employees
10 there?
11 A. No, I was -- I guess I don't even
12 know if they were considered employees, but I was
13 the only employee, I guess. Other people were
14 partners, I assume. I don't know the legal
15 workings of the firm, but that was the impression
16 I got.
17 Q. What does Scholtz & Company do?
18 A. They invest money for their clients.
19 Q. I'm sorry. Just to go back to what
20 you were saying, so the economy was bad, so you
21 were just sort of doing?
22 A. Doing anything that needed to be
23 done, correct.
24 Q. Because when the economy is bad,
25 obviously the operations of the company don't

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1 Maki - Confidential
2 continue as normal?
3 A. Exactly. It was just after
4 September 11th, and we were cutting back. He had
5 consolidated two positions into one, and I came
6 in.
7 Q. And then you said you left Scholtz &
8 Company to go to law school?
9 A. Yes. I went to law school.
10 Q. When was that?
11 A. I don't recall the specific date, but
12 I went to law school after working at Scholtz &
13 Company.
14 Q. How long were you at Scholtz &
15 Company?
16 A. It was approximately a year, give or
17 take a month or so.
18 Q. So presumably in the fall of '03 you
19 started law school?
20 A. No, I didn't start law school in '03,
21 I don't believe. It wasn't right away. It
22 was -- there was a little bit of a lag, but I
23 wasn't working.
24 Q. Where did you start law school?
25 A. Which school?

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1 Maki - Confidential
2 Q. Yes.
3 A. University of Arkansas.
4 Q. Do you recall did you start at the
5 beginning of a semester?
6 A. Yes, I did.
7 Q. Was it the fall semester or the
8 spring semester?
9 A. It was the fall semester, so I guess,
10 I mean I don't want to guess, I want to be
11 specific, and I don't recall the exact. It
12 was -- there was a little lag, but then I started
13 school. It has been seven years or whatever or
14 six years.
15 Q. I guess what I am trying to figure
16 out is was it '03 or was it '04 or was it some
17 other time?
18 A. I mean we can -- it is definitely --
19 there are definitely records. I could find it
20 out for you exactly specifically.
21 Q. But it was either '03 or '04?
22 A. Like I said, we can call the school
23 and figure out exactly when I started. I think
24 that would probably be the easiest way to do it.
25 MR. DEHN: It sounds like you have

1 Maki - Confidential
 2 fond memories of law school.
 3 Q. How long were you at law school?
 4 A. I was there for one year.
 5 Q. For one year?
 6 A. Yes, that's correct.
 7 Q. And then you dropped out of law
 8 school?
 9 A. I left, yes.
 10 Q. When was that?
 11 A. Specifically I don't recall the exact
 12 date.
 13 Q. Did you complete a full year of law
 14 school?
 15 A. I completed a full year, yes.
 16 Q. Then you left after that?
 17 A. I left, yes.
 18 Q. What did you do after that?
 19 A. I was doing what was it called, after
 20 law school I left, and then I went to
 21 San Francisco to basically I was going to start a
 22 similar company to what my business partner was
 23 doing, and then we decided to do the same thing.
 24 Q. I don't understand that.
 25 A. Okay. So I left law school, and I

1 Maki - Confidential
 2 had the intention of starting a OneQuality.com on
 3 my own, that type of company.
 4 Q. When you say that type of company,
 5 when you say a OneQuality.com, was it in fact
 6 OneQuality.com, or was it another Internet-based
 7 company?
 8 A. It wasn't an Internet-based company.
 9 It wasn't even a company. It hadn't even gotten
 10 to that point. I was 25 or whatever age I was.
 11 I don't want to be specific because I'm not
 12 recalling the exact years, but I was young and
 13 essentially we were selling on eBay, so it wasn't
 14 an official company at that point, and the intent
 15 was to create a big company and make it into
 16 something. That was the intent.
 17 Q. And you moved out to San Francisco to
 18 do that?
 19 A. Yes. Correct.
 20 Q. And --
 21 A. That was just for a few months. Then
 22 so my former business partner and I decided that
 23 we were going to join forces and we were going to
 24 put our heads together and create a business.
 25 Q. This was a business of selling things

1 Maki - Confidential
 2 on eBay?
 3 A. Not on eBay. On -- the business that
 4 we were going to do together was going to be not
 5 just -- the goal wasn't to create just an eBay
 6 business. The -- eBay was a distribution channel
 7 so it was one channel in which we could sell.
 8 Our brand would be across multiple distribution
 9 channels, and ultimately it was, what we were
 10 doing we were essentially trying to create the
 11 Carmax of electronics. Carmax focuses on used
 12 cars. We wanted to focus on used electronics,
 13 and that was the goal.
 14 Q. I am going to try to pinpoint certain
 15 things in time. You said you moved out to
 16 San Francisco?
 17 A. Yes, I did.
 18 Q. When you were out in San Francisco,
 19 did you start a business of some sort?
 20 A. No. I was just selling on eBay, so
 21 it wasn't like an official business at that
 22 point.
 23 Q. What were you selling on eBay?
 24 A. The exact same type of items. Used
 25 equipment.

1 Maki - Confidential
 2 Q. Used what kind of equipment?
 3 A. Everything. I mean camcorders,
 4 cameras, everything.
 5 Q. Used electronics equipment?
 6 A. Correct, mostly used electronics.
 7 And there were other things. It has been so long
 8 I don't recall specifically.
 9 Q. And that was what you did when you
 10 moved out to San Francisco?
 11 A. Yes, but at that point I hadn't
 12 dropped out of law school. That was the summer
 13 after. I guess I just want to clarify. So I
 14 hadn't dropped out of law school at that point.
 15 I had moved out to San Francisco because you have
 16 a summer break after your semester, and I knew
 17 that I could make money doing this, so I was
 18 going to go ahead and try this, and if it was
 19 going to be successful I was going to drop out,
 20 and then when I talked to my business partner we
 21 then together decided that we were going to make
 22 this into something special.
 23 Q. Who was the business partner?
 24 A. Adrian Meli.
 25 Q. How did you know Mr. Meli?

1 Maki - Confidential
 2 A. I knew him from college.
 3 Q. He graduated your year?
 4 A. Yes.
 5 Q. Do you know what Mr. Meli was doing
 6 while you were at law school?
 7 A. He was working at an investment firm.
 8 Q. And then the two of you began selling
 9 items on eBay in San Francisco?
 10 A. Not in San Francisco. It was based
 11 out of New York. I moved back to New York. We
 12 ran a business from Manhattan, and then
 13 eventually it moved out to Connecticut.
 14 Q. What did you do when you were in
 15 San Francisco?
 16 A. What did I do when I was in
 17 San Francisco? Specifically are you asking?
 18 Q. Business-wise. I don't mean where
 19 did you live or where did you eat.
 20 A. I know a couple of good sushi
 21 restaurants. I was selling items on eBay.
 22 Specifically I was trying to build a model, as
 23 these ideas form, you know, you start to change
 24 your path as you formulate a business idea, and I
 25 was starting to -- slowly starting to figure out

1 Maki - Confidential
 2 what would work, and that is what I was doing out
 3 there. I had gone out to San Francisco on a
 4 whim, and I thought that it would be the place to
 5 start it, but it wasn't necessarily the best
 6 place to be either.
 7 Q. When you were in San Francisco, were
 8 you working with Mr. Meli?
 9 A. When I was in San Francisco, was I
 10 working with Mr. Meli? There might have been
 11 like a few week overlap or whatever, but it
 12 wasn't like, there could have been some sort of
 13 overlap when I was in San Francisco, but the bulk
 14 of it was separate from them.
 15 Q. So there was a time when you were
 16 selling on eBay without a business partner?
 17 A. Correct.
 18 Q. How long was that for?
 19 A. I don't recall specifically.
 20 Q. Roughly?
 21 A. I couldn't tell you.
 22 Q. Was it a couple of months?
 23 A. You know, you are asking very
 24 specific questions. I don't know the exact
 25 answer. Sorry.

1 Maki - Confidential
 2 Q. Was it a year?
 3 A. Like I said, I don't know.
 4 Q. But you might know roughly.
 5 A. I can try to -- after this I can go
 6 back and try to figure it out thinking about it,
 7 but I can't think of it.
 8 Q. When you were selling these used
 9 electronics, where were you getting them?
 10 A. We sourced them from a variety of
 11 sources.
 12 Q. Such as?
 13 A. I mean we would buy them from
 14 individuals.
 15 Q. Where did you buy them?
 16 A. Particularly we would buy them from,
 17 first we started buying them off of people from
 18 Craigslist. That was some of the places we
 19 actually bought them from, and some from eBay and
 20 different places, and we sourced our equipment in
 21 different means.
 22 Q. Then you would resell them on eBay?
 23 A. Correct. Not just eBay, but
 24 eventually it became a business outside of eBay,
 25 but eBay was kind of how you got your foot in the

1 Maki - Confidential
 2 door.
 3 Q. So at first you were selling it just
 4 through eBay?
 5 A. At first I was just selling it
 6 through eBay. Yes. We didn't have a website at
 7 first. No.
 8 Q. When you were buying these
 9 electronics, you said you were buying them from
 10 people off of Craigslist?
 11 A. Correct.
 12 Q. Or what was the other? Where else
 13 did you say you got?
 14 A. eBay.
 15 Q. You would buy things off of
 16 Craigslist or eBay and then resell them on eBay?
 17 A. Exactly. Yes.
 18 MR. DEHN: Just wait for counsel to
 19 finish your question before responding.
 20 THE WITNESS: I apologize.
 21 Q. How much money -- strike that. Where
 22 did you get the money to buy the items?
 23 A. It was just personal money.
 24 Q. How much money did you invest?
 25 A. I guess specifically in terms of when

1 Maki - Confidential
 2 at that point, and we went off on a diversion,
 3 but I would appreciate if you could pick up the
 4 story from there.
 5 A. We started the business, I guess, and
 6 I am just confused in terms of what are the --
 7 what is the question? We started the business.
 8 We had a business, and we started it.
 9 Q. What was the business?
 10 A. The business was OneQuality,
 11 specifically OneQuality LLC.
 12 Q. When did you form OneQuality LLC?
 13 A. I don't recall, because I didn't form
 14 OneQuality. He did the paperwork. He was the
 15 one who was doing the paperwork.
 16 Q. Do you know when he formed OneQuality
 17 LLC?
 18 A. No, I don't. Sorry.
 19 Q. Do you recall what year it was?
 20 A. I don't. Sorry. He would be the
 21 person to ask. I don't know the answer to that.
 22 There are records, so we should be able to look
 23 that up, I guess. That is my answer.
 24 Q. Was there a period of time before you
 25 formed the LLC that you were --

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 2 another price. So that is where we got the idea.
 3 Is that doing business? Take it for
 4 what it is. It is friends sitting around and
 5 just thinking, oh, that is an interesting idea.
 6 Like we didn't have paperwork. We haven't signed
 7 things, I guess.
 8 Q. For how long have you paid taxes?
 9 A. For how long have I paid taxes?
 10 MR. DEHN: You mean generally?
 11 Q. You, Mr. Maki, how long have you paid
 12 taxes for?
 13 A. I think the government makes you pay
 14 your whole life.
 15 Q. Okay. So, when you make profit, you
 16 have to report them to the government, right?
 17 A. Correct. Yes, of course.
 18 Q. Do you recall when it was you started
 19 making a profit that you were reporting to the
 20 government?
 21 A. That would be I guess the best way to
 22 do that would be look at tax records.
 23 Q. Do you know if you have given your
 24 counsel your tax records?
 25 A. I have given him, in terms of

1 Maki - Confidential
 2 A. I didn't form the LLC.
 3 Q. Before the LLC was formed.
 4 A. Um-hum.
 5 Q. That you and Mr. Meli were conducting
 6 this business?
 7 A. If you just repeat it. I apologize.
 8 Just one more time because I am trying to
 9 understand what you are saying.
 10 Q. I am asking you whether you guys did
 11 business together before you formed the LLC?
 12 A. Did we do business together before we
 13 formed the LLC. In the general business did we
 14 do any business? I don't really, I guess it is
 15 too general of a question to understand. I guess
 16 like we had worked together in terms of buying
 17 and reselling stuff, but it wasn't -- there was
 18 no business. You know what I mean?
 19 We bought a few things here and
 20 there. To kind of figure out the idea, we, you
 21 know, the way that we got the idea was like we
 22 saw something on Craigslist and like, hey, let's
 23 try to resell it on eBay, because it is a bit of
 24 an arbitrage. It is selling in this market for
 25 one price, and it is selling in this market for

1 Maki - Confidential
 2 production --
 3 THE WITNESS: What did I give you for
 4 production?
 5 MR. DEHN: Whatever I got from you,
 6 you got.
 7 A. What have I produced to Frank? Is
 8 that the question?
 9 Q. No. My question is were you making
 10 any money in 2004?
 11 A. Was I making -- I don't recall the
 12 specific year. I apologize.
 13 Q. Do you recall making money in 2005?
 14 A. I don't remember what year. I don't
 15 remember what happened in that year. Go back
 16 three years. Maybe I can remember. I don't
 17 remember specifically what my tax returns in 2005
 18 were. No.
 19 Q. Do you remember when you and Mr. Meli
 20 started selling items together on eBay or
 21 anywhere else?
 22 A. I don't recall, no.
 23 Q. Why don't -- since you are the
 24 plaintiff in this case, why don't you try to give
 25 me an estimate of when that was.

1 Maki - Confidential
 2 A. It would be a guess. It would just
 3 be a total guess, so I don't recall.
 4 Q. Were you selling items when you were
 5 still in college?
 6 A. Was I selling items --
 7 Q. With Mr. Meli while you were still in
 8 college?
 9 A. I don't believe so, but I can't
 10 answer it. I would say I'm not positive on the
 11 answer, so I don't recall.
 12 Q. And, when you were in law school,
 13 were you and Mr. Meli selling items on eBay?
 14 A. I don't recall.
 15 Q. And, after you graduated, I'm sorry.
 16 Not graduated. After you left law school, at
 17 some point you started selling items with Mr.
 18 Meli, correct?
 19 A. Correct.
 20 Q. Was it right after you left law
 21 school?
 22 A. I don't recall the specific date.
 23 Q. Now you said earlier that you said,
 24 well, I am going to take the summer and I am
 25 going to try to figure out whether I can make

1 Maki - Confidential
 2 the end. I don't recall the date. I just
 3 remember at first I was alone and at some point
 4 we started working together.
 5 Q. And you have no idea when that was?
 6 A. No, I don't. Yes. It is a long time
 7 ago. I apologize.
 8 Q. Do you know the summer of what year?
 9 A. I don't, no. Sorry. I could figure
 10 it out. If we go back, I should be able to look
 11 at when I graduated from law school.
 12 MR. DEHN: Graduated from college.
 13 A. No, law school. I am confused.
 14 Q. I am confused. I thought you dropped
 15 out of law school?
 16 A. Did I say graduated law school?
 17 MR. DEHN: Yes.
 18 A. When I left law school. I apologize.
 19 So, when I left law school, it would be the
 20 summer after I left law school, so after my first
 21 year of law school it would be that summer.
 22 Q. And that was the summer that you and
 23 Mr. Meli began selling items together?
 24 A. At some point, yes, we were working
 25 together.

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 2 money off this, and if so then I am going to drop
 3 out of law school. Do you remember when you said
 4 that?
 5 A. It is a paraphrase, I guess, yes.
 6 Q. It was like ten minutes ago.
 7 A. But the exact quote we could actually
 8 look up, so.
 9 Q. Right. So did you in fact make money
 10 that summer?
 11 A. Did I in fact make money that summer?
 12 I don't recall what was made or what wasn't. I
 13 don't know if it was a wash or if I made any
 14 money or if it was just like spending money or
 15 if -- I don't remember.
 16 Q. Do you remember whether you were
 17 selling items, whether you made money or not?
 18 A. Yes, I do remember selling items. I
 19 already said that. Yes.
 20 Q. So you were selling items that
 21 summer?
 22 A. Yes.
 23 Q. And you were doing it with Mr. Meli?
 24 A. That is not what I said. He came
 25 into the picture later into the summer towards

1 Maki - Confidential
 2 Q. And do you remember how long you were
 3 selling items for together before you formed an
 4 LLC?
 5 A. I don't, sorry.
 6 Q. Do you remember roughly how long that
 7 was?
 8 A. I don't know when the paperwork was
 9 done, because I didn't do the paperwork, so I
 10 don't know when the LLC was formed. I don't know
 11 how long it was. I don't even recall which
 12 specific year this is. I just know it was after
 13 law school.
 14 Q. And you at some point formed
 15 OneQuality LLC, correct? Not you, Mr. Meli at
 16 some point formed OneQuality LLC.
 17 A. I believe it was him, yes.
 18 Q. If it wasn't him, who would it be?
 19 A. His fiance could have been the one
 20 who formed it.
 21 Q. What is his fiance's name?
 22 A. Jennifer O'Connor. It could have
 23 been under her, because she was a partner as
 24 well. So, if she formed it, I don't know, but it
 25 would have been through his direction.

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 2 Q. It was not you?
 3 A. OneQuality LLC? Did I do the
 4 paperwork? No, I did not do the paperwork for
 5 OneQuality LLC.
 6 Q. But you know at some point there was
 7 paperwork?
 8 A. There were tax returns. There had to
 9 be. That is how I know. There were tax returns.
 10 I was on the tax returns. There had been to some
 11 sort, I assume there had to be some sort of
 12 filing.
 13 Q. But you don't remember when it was?
 14 A. No, I don't, because I didn't do it.
 15 I didn't file the paperwork, so I don't know when
 16 it was.
 17 Q. What did OneQuality LLC do?
 18 A. In terms of?
 19 Q. You are aware that when you
 20 incorporate a business you need to say what the
 21 business does, right?
 22 A. Okay.
 23 MR. DEHN: I object to the form.
 24 Q. The question is are you aware of
 25 whether when you incorporate a company you have

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 2 them through trade-ins as well. A lot through
 3 trade-ins, a lot through eBay, a lot through
 4 Craigslist.
 5 I am trying to think if there is
 6 anything I am missing. There might be somewhere
 7 else that we got, but that would be over 99 or 90
 8 some odd percent if there is like I don't know
 9 what else it would be called, a trade-in. What
 10 else could I be missing, but that is where I
 11 would see it coming from.
 12 Q. What is a trade-in?
 13 A. When I say trade-in, I mean someone
 14 could just sell us their camera by coming to us.
 15 We would advertise that we buy used cameras.
 16 Used camcorders, used equipment, right, so if
 17 someone saw the advertisement they would come to
 18 our website and sell it to us.
 19 Q. Where did you advertise?
 20 A. Well, for one, we would do it through
 21 our eBay listings, but then they didn't allow us
 22 to do it because eventually it went against eBay
 23 policy. We did it on our website.
 24 Q. When say it went against eBay policy,
 25 what do you mean?

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 2 to say what the business does?
 3 A. You just made me aware of it, and I
 4 have done it before, so now I recall I think that
 5 you have to, yes, so, yes.
 6 Q. What was the business of OneQuality
 7 LLC?
 8 A. I didn't file the paperwork, so I
 9 mean I know what we did like specifically
 10 operating we resold items, but I don't know what
 11 was said on the paperwork.
 12 Q. When you say you resold items, why
 13 don't you take me through the various ways that
 14 you resold items.
 15 MR. DEHN: I object to the form.
 16 Q. How did you resell items? You said
 17 you resold items.
 18 A. How did we resell items?
 19 Q. What did you do?
 20 A. We bought them and then resold them.
 21 Q. Where did you buy them?
 22 A. From a number of sources.
 23 Q. What were the sources?
 24 A. We would buy them from off of eBay,
 25 we would buy them off of Craigslist, and we got

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 2 A. Well, first, eBay would allow you to
 3 do that, you could advertise for trade-ins, and
 4 then actually they decided that they weren't
 5 going to do it anymore, so we weren't allowed to
 6 keep it in our listings. And actually I spoke
 7 with the CEO of eBay at the time. Basically they
 8 invited the top sellers to a conference, the top
 9 50 or 100 to an eBay e-commerce conference, and I
 10 suggested that they should let us advertise, and
 11 I told him how they had told us that we couldn't
 12 do it anymore, and he went through and he is like
 13 he thought initially it appeared he thought it
 14 was a good idea, but then he referred me to some
 15 sort of policy committee or something and this
 16 kind of got lost in the shuffle and never
 17 happened.
 18 Q. When was this?
 19 A. I don't recall the year, but I
 20 remember meeting with him, because I was excited
 21 to meet with him.
 22 Q. Give me a rough estimate of when it
 23 was.
 24 A. During the past, I mean, I don't
 25 know. Like I said, it would be a guess. I don't

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2 ways that you were -- we were talking about the
3 various ways that you would get items. You said
4 trade-ins, eBay?

5 A. Craigslist. So basically wherever
6 people, we would buy them directly from people
7 and we would buy them from businesses.
8 Businesses would sell their items, and we would
9 come in and sweep them up. We'd buy that
10 equipment.

11 Q. How did you find those businesses?

12 A. I don't recall specifically each one.
13 You could -- they could have sold to us
14 previously. They could have -- it could have
15 been something they sold one item through eBay
16 and then we found out they were selling a whole
17 bunch of items, whatever it may be, but we would
18 essentially just that would be a way we could
19 source the equipment.

20 Q. And this was what OneQuality LLC was
21 doing?

22 A. Correct. Yes.

23 Q. You were -- then you would resell
24 those items on eBay?

25 A. Or through other channels if --

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2 date.

3 Q. Do you know who would have that
4 information?

5 A. I don't. Sorry.

6 Q. You know you are testifying here on
7 behalf of the plaintiff, right?

8 A. Of course.

9 Q. You know that the plaintiff Sellify
10 has filed the complaint in this action, right?

11 A. Yes. Correct.

12 Q. Let's go back to Sellify LLC. Who
13 were the members of Sellify LLC?

14 A. Sellify LLC is just me.

15 Q. I'm sorry. Strike that. I meant
16 OneQuality. Who were the members of OneQuality
17 LLC?

18 A. If I recall correctly, and this is
19 again a matter of record so we can look it up,
20 but it was myself, Adrian and Jennifer.

21 Q. Do you remember what the various
22 percentages of ownership were?

23 A. Stated in the documents, I don't
24 recall specifically, because we had a dispute
25 over the ownership the way it was supposed to be

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2 whatever way we would market them, yes.

3 Q. What were the other channels?

4 A. You know, eventually we had slowly
5 progressed as you are selling on eBay and then
6 you have a website and then you are selling
7 through your website, et cetera, so I think, but
8 we had eBay and the website. That was like I
9 don't know how else -- I can't recall if there is
10 anything else.

11 Q. But you don't recall there being
12 anything beyond eBay and the website?

13 A. No.

14 Q. Do you remember when the website was
15 formed?

16 A. I don't, no. I definitely don't. I
17 was trying to think back, and I couldn't figure
18 it out. So...

19 Q. Do you recall -- do you have any idea
20 when the website was formed?

21 A. I don't. I know it was formed -- it
22 wasn't formed yesterday. We could go through
23 that step process again, but I don't have a
24 specific date. I was trying to think about it
25 the other day, and I couldn't figure out the

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2 set up, so I don't recall the breakdown. It has
3 been a while, but we had a dispute over that.

4 Q. Do you remember whether that dispute
5 arose immediately upon formation of the
6 corporation?

7 A. When -- so did it arise immediately
8 upon. I don't recall when it happened. Sorry.

9 Q. As you understand, what was supposed
10 to be the breakdown of ownership?

11 A. It was we were all going to be equal
12 partners, one-third, 33.333 percent for
13 everybody.

14 Q. Did OneQuality LLC ever have any
15 employees?

16 A. Did we ever have any employees? Yes,
17 we did.

18 Q. Who were those employees?

19 A. I don't have -- I can try to get them
20 from either Adrian or Jennifer. I don't have the
21 information.

22 Q. How many employees were there?

23 A. I can't give you an exact number, but
24 I can say we had around five or so like at a
25 time. That is approximately. There weren't a

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 2 whole bunch. This is a rough, rough estimate.
 3 But that is like when I say rough, I mean I can't
 4 picture there being more than like eight or nine
 5 at a time, but the total I don't know because I
 6 am trying to think back. I don't recall. I
 7 would say at any one point we probably had about
 8 five.
 9 Q. What did those employees do?
 10 A. Mostly it would be a lot of like
 11 shipping, packaging, taking pictures of some of
 12 the items, testing the equipment, that type of
 13 stuff.
 14 Q. But you weren't in charge of -- were
 15 you in charge of hiring those employees?
 16 A. Was I in charge of hiring? I mean we
 17 were all partners, so we would all kind of
 18 interview or go meet someone and see if we liked
 19 them.
 20 Q. In terms of the day-to-day management
 21 of the corporation, it sounds like your partners
 22 may have had more involvement with that than you
 23 did, is that right?
 24 A. No, not at all.
 25 Q. So why don't you tell me who had the

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 2 Q. Mr. Meli was a passive investor in
 3 the corporation?
 4 A. At some point. I think it changed at
 5 some point too.
 6 Q. Do you remember when that was?
 7 A. I don't. I just I never was involved
 8 with the documents. I knew he was a passive
 9 investor. He wasn't. But it was always him
 10 doing it.
 11 Q. Who was involved with the financial
 12 statements of OneQuality LLC?
 13 A. Involved with the financial
 14 statements?
 15 MR. DEHN: You mean who prepared
 16 them?
 17 Q. Who had responsibility for OneQuality
 18 LLC's finances?
 19 A. We didn't -- we are not a public
 20 corporation. We didn't produce like you mean SEC
 21 documents or something?
 22 Q. No.
 23 A. I am confused.
 24 Q. It is a much more straightforward
 25 question, which is who was responsible for

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 2 primary involvement in day-to-day management?
 3 A. Primary involvement in day-to-day
 4 management. I guess primary involvement?
 5 Q. I will rephrase it. Who was involved
 6 in the day-to-day management of OneQuality LLC?
 7 A. I mean it changed throughout, but
 8 ultimately the partners were Adrian was a passive
 9 investor for a long time, but he definitely, he
 10 had been involved, and then it was Jennifer and
 11 myself who were at the office during the day.
 12 Q. When you say he was a passive
 13 investor, what do you mean by that?
 14 A. I just knew he was a passive investor
 15 for tax purposes. That is what he was.
 16 Q. Why don't you explain to me what that
 17 means.
 18 A. Someone who doesn't actually operate
 19 a business as a passive investor. I forget the
 20 definition, but you can only, I think you can
 21 only work 500 hours or so in a year or something.
 22 This is just a guess. If you work more than
 23 that, then you are no longer passive. You are
 24 active. There is some sort of set -- the IRS
 25 defines it as something. I forget specifically.

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 2 OneQuality LLC's finances?
 3 A. We all worked together on it, so
 4 there is no specific person who was like you are
 5 just in charge of this, but you know, it was a
 6 partnership. No one had one specific thing. We
 7 all did everything, so...
 8 Q. Except Mr. Meli was passive?
 9 A. At some point, yes. I don't know the
 10 point, but technically he was a passive investor
 11 according to his returns and everything.
 12 Q. Were those returns correct?
 13 A. I mean I don't recall how long he was
 14 involved exactly in which years or when he
 15 changed. I just knew that he told me that he had
 16 done it at some point, so I don't know if those
 17 returns are correct or incorrect.
 18 Q. When you say he had done it, what is
 19 the "it" you are talking about?
 20 A. I don't recall what I was referring
 21 to.
 22 Q. You said, "I don't recall how long he
 23 was involved exactly in which years or when he
 24 changed. I just knew he told me he had done it
 25 at some point."

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 2 Q. Do you do it every day?
 3 A. I would think so, but again I can't
 4 say with specificity that I do it like 50 times a
 5 day or once a day, two times a day, once a month.
 6 I go do it when I need to go do it, so a lot of
 7 it comes through e-mail. You can do a lot of it
 8 through e-mail.
 9 When you sell something, you get an
 10 e-mail and basically you ship it and then we
 11 access it differently than say -- some of our
 12 stuff is uploaded not necessarily by logging in.
 13 Because we access it, we will upload our stuff
 14 through eBay. eBay gives us a program so we can
 15 type in information so we don't have to be logged
 16 in to upload information to get like a product
 17 listing.
 18 Q. You said you thought that the eBay,
 19 the OneQuality eBay store originally was not
 20 your -- formed through your account, right?
 21 A. I just don't recall it being mine,
 22 and I don't think it was mine, but like I don't
 23 recall. I don't think so. But I don't remember
 24 specifically.
 25 Q. Is it now yours?

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 2 running as a business. At least he had told me
 3 that, but he may have been. I don't know.
 4 Q. It sounds like you have some doubt as
 5 to his bookkeeping and his record keeping with
 6 respect to OneQuality before you guys had the
 7 dispute. Is that accurate? When you say you are
 8 just not sure what he was doing?
 9 A. I will say this. I have a lack of
 10 trust in that. That is about it.
 11 Q. It sounds like that extends through
 12 to all aspects of the business when you guys were
 13 operating it together?
 14 A. All aspects? If you don't trust
 15 someone for one thing, you trust them for
 16 another? You are asking my personal feeling of
 17 how it is? I don't know. I really just don't
 18 trust him, so I don't know how far that extends.
 19 And with regards to certain things, I mean do I
 20 trust him -- I really don't trust him.
 21 Q. During 2008, were you selling items
 22 on eBay?
 23 A. Yes, I was.
 24 Q. Where were you selling items on eBay?
 25 A. I was selling them under another eBay

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 2 A. Yes. Well, it is Sellify LLC's.
 3 Q. When did Sellify LLC acquire it?
 4 A. I don't have a specific date, but it
 5 was from the settlement.
 6 Q. So, after the settlement, Sellify LLC
 7 acquired that account?
 8 A. Yes, within however long it took them
 9 to send the information to give it to me.
 10 Q. As I understand it, and we will get
 11 to this in more detail later, but there was a
 12 period in 2008 where there was a dispute going on
 13 between you and your partners, correct?
 14 A. Correct, yes.
 15 Q. During that period of time was the
 16 OneQuality eBay store operating?
 17 A. Was the OneQuality eBay store. It
 18 wasn't in my control, so I believe Adrian would
 19 sell some things here and there, but it wasn't
 20 like he was running a business. It was some of
 21 his personal items, and I think it was some of
 22 the inventory that he had acquired when we
 23 dissolved or when he split up the company, he
 24 separated out some of the assets, and I think he
 25 sold some of his assets there, but he wasn't

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 2 account. It was Sellify-store.
 3 Q. Sellify-store?
 4 A. Yes.
 5 Q. That was during 2008?
 6 A. But there is a dash in there.
 7 Q. Got it.
 8 A. I don't know the correct term. A
 9 dash or hyphen.
 10 Q. When was the Sellify-store formed?
 11 A. I don't remember. It is the eBay
 12 account I have had for I believe -- you know
 13 what? I'm not even sure, because I actually -- I
 14 don't recall. I'm not sure. I don't know. I
 15 have had an eBay account for a while, but I'm not
 16 sure if that was it or if it was something else,
 17 because I know that there was an account that --
 18 I don't even know. I don't know. Sorry. I'm
 19 not sure how long I have had it. What was the
 20 question? As to how long I have had it?
 21 Q. When was the Sellify-store formed?
 22 A. I don't know. Sorry.
 23 Q. Did you have other eBay accounts?
 24 A. Yes. So the Sellify-store was the
 25 main one, and then, yes, I had other eBay

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 2 whatever, and there is a number of ways that
 3 people come through, and I would say a lot of
 4 their traffic, and again we can probably, there
 5 is probably information on exactly the percentage
 6 of traffic that comes from search engines that
 7 goes to eBay that eventually ends up in a sale,
 8 and I guess that would be in terms of -- so that
 9 would be the best way to go about it is probably
 10 ask them.

11 Q. Have you ever made any effort to find
 12 that out?

13 A. Find out specifically what percentage
 14 of the traffic that comes from eBay? I have
 15 looked into kind of like the buying habits of
 16 people, but I don't have hard numbers on it, no.

17 Q. You don't need to use Google to get
 18 to your eBay store, correct?

19 A. Google and search engine, that is how
 20 people navigate this mass web of information. It
 21 is very difficult to find. Even when I go to a
 22 website I just type in the URL into Google and it
 23 just pulls it up and you click on it and you go.

24 Q. That is not my question. My question
 25 is you don't need to go through Google to get to

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 2 your eBay store, right?

3 A. No, you do not. There would be an
 4 address. I forget the specific address, but
 5 something-eBay-OneQuality-store.

6 Q. Or you could go to eBay?

7 A. And find one of our products and then
 8 end up on our store, yes, without a doubt.

9 Q. And undoubtedly that is how some
 10 people get to you, right?

11 A. I would guess so, yes. People go to
 12 eBay and find us on eBay.

13 Q. Could they even put in your name in
 14 the eBay search engine and find the store there?

15 A. Not in the main bar. You have to be
 16 a little more sophisticated. You have to go into
 17 the advance search and then search by a person,
 18 so they wouldn't be able to just type it into
 19 that main bar, I don't believe. I think that it
 20 would pull up an error, because that is searching
 21 for products, so you have to go into advanced
 22 search.

23 Q. But certainly, if you were looking
 24 for a product, your product might come up and
 25 then they could find --

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2 A. Hopefully at the top they come up.

3 Q. So your hope is that you get lots of
 4 hits through that as well, right?

5 A. You would hope. More importantly
 6 sales.

7 MR. WANG: I think we are running low
 8 on the tape, so let's take a couple of
 9 minute break.

10 THE VIDEOGRAPHER: Off the record at
 11 2:38 p.m.

12 (Recess taken)

13 THE VIDEOGRAPHER: Back on the record
 14 at 2:49 p.m.

15 BY MR. WANG:

16 Q. Mr. Maki, I am going to ask you a few
 17 more background questions. The OneQuality-store
 18 on eBay, did that store have repeat customers?

19 A. Yes.

20 Q. The types of items you sell, is there
 21 a particular target audience for those items?

22 A. Yes, I mean it is more specific than
 23 say selling like razor blades. Yes.

24 Q. How so?

25 A. A lot of our customers would be, I

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2 can't generalize, but they are not going to be
 3 elderly. It is not going to be -- or as many
 4 elderly people. It is going to be people who are
 5 looking to create, either individually or as a
 6 company, create some sort of production. Maybe
 7 like, for instance, we had a reality TV show buy
 8 ten cameras from us recently, and they created a
 9 reality TV show doing that, and that is a bigger
 10 order. And then you have an individual who buys
 11 it because they want to film themselves
 12 skateboarding or something because they want to
 13 put it on the Internet.

14 Q. So generally more sophisticated
 15 customers?

16 A. I would like to call my customers
 17 smart, but I don't say smarter than the average
 18 person. They are what they are.

19 Q. And at one point OneQuality formed a
 20 website, correct?

21 A. Yes.

22 Q. What was that website?

23 A. As you said, OneQuality.

24 OneQuality.com.

25 Q. What was the URL for it?

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 2 yet.
 3 Q. When did you prepare the revised
 4 calculation?
 5 A. I don't recall the specific time.
 6 Q. A couple of weeks ago?
 7 A. Well, it is May 18th. I mean, yes.
 8 I guess. I don't know. Yes, a few weeks ago, I
 9 guess.
 10 MR. DEHN: I think there was a
 11 modification that was made.
 12 THE WITNESS: Yes, whenever I sent
 13 them to him, I did it, and then I sent it
 14 to him, so there was no lag. So whenever
 15 he received them.
 16 Q. Was when you prepared them?
 17 A. Yes.
 18 MR. DEHN: But then there was a
 19 modification that was made after we met on
 20 Thursday as you recall.
 21 (Discussion off the record)
 22 MR. WANG: Frank --
 23 MR. DEHN: I don't want an untrue
 24 statement to be in the record. We
 25 discussed it.

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 2 to him, like here it is.
 3 Q. These documents represent your
 4 calculation of your damages in this action,
 5 right?
 6 A. Yes.
 7 Q. Did anyone else work with you on
 8 these documents?
 9 A. No.
 10 Q. Let's look at the revised damages
 11 calculation, which is Defendant's Exhibit 4. Why
 12 don't you walk me through this document to
 13 explain to me how you calculated your damages?
 14 A. So, when valuing my damages, I looked
 15 at the value of the brand of OneQuality.com
 16 previously before the defamatory acts by Amazon
 17 went up and compared to the value of the brand
 18 after the defamatory ads went up. So, when
 19 looking at a brand, just to kind of make it more
 20 understandable, a brand to a company is like a
 21 reputation to a person. And those aren't my
 22 words. Those are the words of Jeff Bezos, CEO of
 23 Amazon.
 24 Q. I don't mean to cut you off. But I'm
 25 not looking for --

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 2 THE WITNESS: Yes, we were talking.
 3 You were saying Thursday of?
 4 MR. DEHN: Last week.
 5 THE WITNESS: Yes. Okay. So
 6 revised.
 7 MR. DEHN: I am just correcting a
 8 fact.
 9 Q. So why don't you tell me --
 10 A. Like I said, I don't have a specific
 11 date for you.
 12 Q. What is the difference between these
 13 two, as you understand them? It sounds like you
 14 said you got additional information?
 15 A. The difference between these two, as
 16 I understand it, well, I mean --
 17 Q. Let me ask you a different question.
 18 Why did you revise it?
 19 A. Because I wanted to be as specific as
 20 I have been probably very specific as best I can
 21 to get as close to the numbers, and this was done
 22 before we had done our taxes, and this was done
 23 as I was starting to do them and realized that I
 24 was off, so I wanted to be much more accurate and
 25 I didn't know if I was supposed to, just send it

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 2 A. I'm just explaining to you. So I was
 3 looking at the value of the brand prior to and
 4 the value of the brand -- before and after, and I
 5 needed to quantify it, right? And I was just
 6 trying to explain it, a brand to me and to a lot
 7 of other people is your reputation, and however
 8 that is communicated to you, I will try to say it
 9 again.
 10 But, anyway, if you look at the
 11 revenue at the end of 2007 and you look at the
 12 profit, and when valuing a company, a standard
 13 way to do it is to apply a multiple to the
 14 profit, the earnings, an earnings multiple, a
 15 price/earnings multiple. And, for example, when
 16 I was doing this, approximately Amazon was at --
 17 I forget. Let's see. Amazon today is 56 times
 18 earnings or something, but it is a moving number,
 19 right? So, but anyway, I was just trying to give
 20 an example of another retailer.
 21 So we applied the multiple of nine
 22 times earnings to OneQuality.com at the end of
 23 2007, and then we applied it to the at the end of
 24 one year prior after the defamatory ads to look
 25 at what damage had been done to the brand and to

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 2 quantify it, so we valued the company at the end
 3 of 2009, and, if you see below, I did the
 4 multiple, multiplied nine times the earnings in
 5 2007 and nine times the estimated earnings in
 6 2009 and looked at the differences, you subtract
 7 the differences, and you get the damages value.

8 Q. Anything else you did to calculate
 9 your damages?

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

12 Q. Generally?

13 A. No. I think that is it. Right? I
 14 don't think I am missing anything.

15 Q. I now would like to take you through
 16 the document in some more detail, so let's look
 17 at year 2006.

18 MR. DEHN: Still looking at Exhibit
 19 4?

20 MR. WANG: Yes, I think we will
 21 mostly be able to focus on Exhibit 4 for
 22 now.

23 Q. The year 2006 the revenue is
 24 \$4,329,632, and the profit was \$638,935, correct?

25 A. Yes.

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2 Q. And the entity there was OneQuality
 3 LLC, correct?

4 A. Correct.

5 Q. So does that refresh your
 6 recollection as to whether -- well, let me ask
 7 you a different question. Do you know when
 8 OneQuality LLC was formed?

9 A. I don't know, no. Again, I didn't do
 10 the paperwork, so I don't know.

11 Q. But presumably it was in existence in
 12 2006?

13 A. It was in existence in 2006. That is
 14 what I have here. Yes.

15 Q. Do you know where the revenue came
 16 from, that 4 million and change in revenue? What
 17 were you selling to get the revenue?

18 A. Used equipment. That is what we
 19 sell.

20 Q. Do you know where you were selling at
 21 that point?

22 A. In 2006, where we were selling. I
 23 don't recall when the -- you are asking if it was
 24 on eBay versus the website? Is that the
 25 question?

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2 Q. Yes.

3 A. I don't recall when the website went
 4 up, but it is more -- I don't know. I don't
 5 know. I don't want to guess. I'm not sure
 6 specifically when the website went up.

7 MR. WANG: I am going to have the
 8 reporter mark a copy of the first amended
 9 complaint in this action as Defendant's
 10 Exhibit 5.

11 (Defendant's Exhibit 5, First amended
 12 complaint, was so marked for
 13 identification.)

14 Q. If you could look at paragraph 11 on
 15 page 3. The OneQuality website was lodged on or
 16 about 2007. Do you see that?

17 A. Yes.

18 Q. Do you have any reason to believe
 19 that is incorrect?

20 A. No, I have no reason to believe that
 21 is incorrect, but I don't know where we would
 22 have gotten that number, I guess, the date.

23 Q. You are here on behalf of Sellify
 24 LLC, the plaintiff in this action, right?

25 A. Yes. Correct.

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2 Q. And do you recognize this document?

3 A. Yes. The complaint. Yes.

4 Q. Do you know what it is?

5 A. Yes.

6 Q. What is your understanding of what
 7 this document is?

8 A. My understanding of the document. It
 9 is a complaint.

10 Q. It is a complaint filed by your
 11 company?

12 A. Correct, yes.

13 Q. Against Amazon.com?

14 A. Correct.

15 Q. Why would you put this in your
 16 complaint if you don't know if it is true?

17 A. If I don't know if it is true.

18 MR. DEHN: I object to the form of
 19 the question.

20 Q. I am going to read back. You say, "I
 21 don't know where we would have gotten that
 22 number, the date."

23 A. Yes, I don't. I don't recall. I
 24 don't remember like doing all the research to
 25 when Frank asked me a question when was the site

1 Maki - Confidential
 2 that the majority is from eBay.
 3 Q. You mean like the vast majority of
 4 it?
 5 A. Vast versus -- majority. I just put
 6 majority on it, and we can -- I don't know how
 7 else.
 8 Q. I know you can't give me a number.
 9 A. Okay.
 10 Q. I understand that.
 11 A. Yes.
 12 Q. But majority can mean a lot of
 13 things. Are you saying it was more than
 14 50 percent, or are you saying it was around
 15 three-quarters? 95 percent?
 16 A. I couldn't give you a percentage.
 17 Q. Would you say it is well more than
 18 half?
 19 A. Well more than half?
 20 Q. I am just trying to get a general
 21 sense.
 22 A. I just want to make sure I say it
 23 correctly. I would say yes, it is well more than
 24 half, because I don't want to misstate anything.
 25 Q. But, beyond that, you don't know?

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 2 argue with you here. You had said the fourth
 3 quarter for retail is the big quarter, right?
 4 A. I guess what I mean is the end of the
 5 year. Christmas and that time of year is big for
 6 everybody, and we were shutting down.
 7 Q. If you look at year 2008, the revenue
 8 is [REDACTED] Profit is [REDACTED] and change. The
 9 entity is "Sellify LLC (without OneQuality.com)."
 10 A. Yes.
 11 Q. What does that mean?
 12 A. This was selling through
 13 Sellify-store, the eBay account, and not through
 14 a website. We didn't have -- I didn't have
 15 OneQuality.com. I guess I don't know what you
 16 are looking for. Like it is not with
 17 OneQuality.com. Without.
 18 Q. Does it include the OneQuality eBay
 19 store?
 20 A. No, it does not. No.
 21 Q. This is simply the Sellify, as I
 22 recall, Sellify-store?
 23 A. Correct. Yes. It is a separate eBay
 24 store.
 25 Q. On that, from that store, you made

1 Maki - Confidential
 2 A. I don't know the specific. I don't
 3 want to go and say it is this percentage and be
 4 wrong because I am guessing for you. I don't
 5 know.
 6 Q. In any case, the profit from 2006 to
 7 2007 decreased by 50 percent, correct?
 8 A. Yes, and that was because at the end
 9 of 2007 Adrian had decided to shut down the
 10 business, so we weren't -- although we were
 11 operating, we weren't restocking items towards
 12 the end, and the fourth quarter is -- for retail
 13 is the big quarter. So profits were hurt because
 14 of the fact that we were in the mindset of
 15 winding down.
 16 Q. Are there other reasons that profits
 17 were hurt?
 18 A. Not that I can think of, no.
 19 Q. It was just you were winding down in
 20 the fourth quarter?
 21 A. Of 2007, yes. I don't recall the
 22 specific dates. I just remember it was towards
 23 the end of the year, and I don't remember
 24 specific dates.
 25 Q. But I am just -- I'm not trying to

1 Maki - Confidential
 2 gross revenue of [REDACTED] and profit of [REDACTED]?
 3 A. Correct.
 4 Q. I believe you testified earlier that
 5 the OneQuality-store also continued to operate in
 6 2008?
 7 A. Yes. I didn't have possession of it.
 8 It would have been my partner.
 9 Q. Do you know how much money that --
 10 A. What he has told me is what I can go
 11 off of, and he didn't give me any numbers. He
 12 just told me he used it to, again, so, when we
 13 dissolved, whatever leftover inventory we had
 14 would have been split amongst us, so he kept the
 15 OneQuality.com and OneQuality-store and sold off
 16 his inventory supposedly through OneQuality-store
 17 in 2008, and then that was that. So that is what
 18 he has told me.
 19 Q. When did you dissolve?
 20 A. I didn't file the paperwork. I was
 21 told it was around the end of 2000 -- the year
 22 when it stops being OneQuality, so 2007.
 23 Q. How much inventory was there?
 24 A. I don't know. It would be in the tax
 25 records, I would think.

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 2 I would say yes. If there is, like it would be a
 3 very tiny percent or something else, and I can't
 4 think of what it would be. Yes. I would say
 5 99.999 percent positive that it is 100 percent
 6 eBay.
 7 Q. Got it. Did you file tax returns in
 8 2008?
 9 A. Yes. I did.
 10 Q. Have you given them to your counsel?
 11 A. I don't recall which returns I have
 12 given him and which ones I haven't. I don't
 13 remember if you guys asked for me personally or
 14 if you asked for Sellify LLC or what it was or
 15 which ones I did give or which ones I didn't, but
 16 I gave him whatever was requested.
 17 Q. When you sold the items in 2008, it
 18 says here entity Sellify LLC, correct?
 19 A. I'm sorry. Would you say that one
 20 more time.
 21 Q. 2008, you are all the way over to the
 22 right side under the column that says entity.
 23 A. Sellify LLC. Yes.
 24 Q. So the entity in 2008 was Sellify
 25 LLC?

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 2 He had possession of it. So, to my knowledge, I
 3 don't know what was going on with it. When I
 4 periodically checked to see if it was there, it
 5 was there, but I don't know what he was doing
 6 with it.
 7 Q. When you checked to see if it was
 8 there, what was on the site?
 9 A. The site.
 10 Q. Was there inventory on the site?
 11 A. Yes, it was the site. I don't know
 12 what he was using it for.
 13 Q. You checked it, though, you said,
 14 periodically?
 15 A. Yes. I mean I don't recall
 16 specifically which dates or when I did it, but I
 17 definitely went over and was curious to see if he
 18 just booted me from the company, and all of a
 19 sudden it was running. I was just trying to
 20 figure out what was going on. He was saying he
 21 didn't, but it was still up. So I don't really
 22 know what he was using it for, to tell you the
 23 truth.
 24 Q. But you saw that the site was up?
 25 A. Yes.

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 2 A. Yes.
 3 Q. When did you form Sellify LLC?
 4 A. That would be -- I don't have a date
 5 for that. We would be able to look it up because
 6 it is filed with the Secretary of State, so we
 7 should be able to find that.
 8 Q. But you yourself?
 9 A. I physically did it, yes, so we could
 10 find the actual date. It was filed in
 11 Connecticut, so we could find it with the
 12 Connecticut Secretary of State.
 13 Q. Do you recall whether it was actually
 14 in 2008 or prior to that?
 15 A. It was right around the end of 2007,
 16 beginning of 2008. That is when the paperwork
 17 went in, I think. I don't recall. It was like
 18 as soon as -- let me make sure I get my years
 19 right. So 2008 is when we had -- it would have
 20 been before the business started operating, and
 21 again we could look it up with the Connecticut
 22 Secretary of State.
 23 Q. During 2008, was the OneQuality.com
 24 website operating?
 25 A. During 2008, Adrian had the website.

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 2 Q. And you saw that there was inventory
 3 on it?
 4 A. Yes.
 5 Q. Did you ever try to buy anything off
 6 the site?
 7 A. No.
 8 Q. Did you look to see what it was they
 9 were selling?
 10 A. I am trying to go back -- I really
 11 don't remember if I looked, but I must have. It
 12 is on the front page, so I would have seen it, so
 13 I wouldn't have gone through the whole thing. I
 14 probably was frustrated to even look at it.
 15 Q. Why is that?
 16 A. I mean why would I be frustrated to
 17 look at the site if it was still up? Because
 18 that wasn't what he told me -- I was under the
 19 impression that it was going to be completely
 20 shut down.
 21 Q. But it wasn't?
 22 A. You know, again I don't know if he
 23 just didn't touch it. If it just like sat there,
 24 because if you are not advertising, it is very
 25 immediate on the web. If you are not -- there's

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 2 no one going to the web, there's no one going to
 3 the site, if you're not advertising, no one is
 4 going to go to the website. If you are not
 5 answering the phones, no one is going to buy
 6 anything, because trust is 99 percent of it, so I
 7 don't know exactly what he was using it for. I
 8 don't know. That would be something to ask him.
 9 Q. Have you asked him in connection with
 10 this?
 11 A. No.
 12 Q. You have mentioned this partnership
 13 dispute a number of times.
 14 A. Yes.
 15 Q. Why don't you describe to me what the
 16 partnership dispute was.
 17 MR. DEHN: Just to clarify, when you
 18 say partnership, it is an informal term
 19 partnership.
 20 Q. It is an LLC, but you have described
 21 it as a partnership. You have described it in
 22 various documents and in your testimony today as
 23 a partnership dispute. I am happy to describe it
 24 as whatever you would like. LLC dispute. A
 25 dispute with the members of your limited

1 Maki - Confidential
 2 liability corporation.
 3 A. So what was the dispute about is the
 4 question?
 5 Q. Yes, why don't you just tell me about
 6 the dispute.
 7 A. Okay. I am just trying to think
 8 back. So it was over with regard to the profits
 9 and the distribution of the profits while the
 10 business was running, and it was over the
 11 distribution of the website. He kept the name.
 12 He kept the brand and everything like that. It
 13 all started over, I mean it was him, the dispute
 14 started with him first coming after me for money,
 15 which is, I had pushed, we had been arguing over
 16 the disbursement of the assets, so he thought I
 17 got too much for some things, and it was
 18 basically like a divorce. Everyone thinks they
 19 are right and they deserve everything, and it was
 20 messy. But ultimately there is a difference
 21 between what he did with the dissolution of the
 22 company, how he split up the assets, and the way
 23 that business was formed with regard to, this is
 24 the biggest part of the dispute was that he just
 25 absolutely lied to me from the beginning of how

1 Maki - Confidential
 2 the business was going to be run.
 3 Q. Why don't you explain to me what it
 4 was that he did.
 5 A. Okay. So, when we were starting the
 6 business, it was supposed to be an equal
 7 partnership between me, Jen and Adrian, and what
 8 happened was is that never panned out, and the
 9 specific percentages I ended up with I don't
 10 remember. We can look them up somewhere. They
 11 must be in the tax returns, but I didn't get what
 12 I was supposed to get. But at that point the
 13 business hadn't become what it was, and I should
 14 have put my foot down, and I was a bit of a
 15 pushover for not pushing harder, but we argued
 16 and we argued over the fact that he wasn't giving
 17 me what he had told me he would give me, and
 18 ultimately I had never signed any of the
 19 paperwork, and I didn't have any agreements in
 20 writing, and I was -- I had a very, very poor, it
 21 was a very poor decision to have done that and
 22 trust him so much, and that was the major part of
 23 the dispute.
 24 Q. When you say you didn't get what you
 25 were supposed to get?

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 2 A. With regard to the distribution of
 3 the income.
 4 Q. What were you supposed to get?
 5 A. It was supposed to be a third each.
 6 That is what we agreed to when we started the
 7 business.
 8 Q. It is a third of what?
 9 A. The profits and everything.
 10 Q. The net profits?
 11 A. Yes.
 12 Q. What did you get?
 13 A. It would be in the tax returns. I
 14 don't recall the exact. It was less.
 15 Q. So you believed you were entitled to
 16 a third of the net profits from each of those
 17 years?
 18 A. Correct. Yes.
 19 Q. He gave you something less than that?
 20 A. Correct. I trusted him
 21 unfortunately.
 22 Q. That is how -- was he doing the
 23 bookkeeping for OneQuality LLC?
 24 A. He had control over the bank account,
 25 so that was essentially how he would control who

1 Maki - Confidential
 2 Q. But is he taking, was it when you
 3 talk about the brand, are you talking about the
 4 www.OneQuality.com?
 5 A. Correct.
 6 Q. Or are you talking about something
 7 larger?
 8 A. Www.OneQuality.com. He took
 9 OneQuality.com. He took the eBay store. He
 10 took, basically whatever he wanted he took, and
 11 then that was the way it worked.
 12 Q. So, when you talk about taking the
 13 brand, you are talking about the website, the
 14 eBay store. Anything else?
 15 A. I can't think of anything else off
 16 the top of my head, no. If you give me a second.
 17 I am just trying to think. I can't think of
 18 anything. The way he divvied up the inventory
 19 and valued it I also had issues with too.
 20 Q. What was that? What were those
 21 issues?
 22 A. Just the way he valued the inventory
 23 to say, you know, when you split up the
 24 inventory, if I gave you this stapler and said
 25 you just got \$30,000 worth of inventory, that

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 2 would be kind of how -- not to that extreme, but
 3 doing things like that was what was bothersome to
 4 me, the way he was splitting up everything.
 5 Q. Why was it that he was splitting up
 6 the inventory as opposed to you?
 7 A. Again, because he had control over
 8 the bank account.
 9 Q. Let's go to look at the 2009 year
 10 here on your revised damages calculation. The
 11 revenue number here is [REDACTED] and change, right?
 12 A. The revised one, yes.
 13 Q. And the profit is [REDACTED] ?
 14 A. Yes. Give or take some. That is
 15 going to be pretty accurate, I think. It is not
 16 done yet. It is not audited. It is not
 17 finalized. That is why there are question marks.
 18 Q. Got it. On Exhibit 3 the revenue
 19 number you had there was [REDACTED] and change?
 20 A. Correct.
 21 Q. But the profit number is the same?
 22 A. Correct.
 23 Q. So you raised the revenue number by
 24 about 30 some odd thousand dollars, but the
 25 profit number stayed the same?

1 Maki - Confidential
 2 A. Correct. I didn't raise the revenue
 3 number, I just counted more revenue. I didn't
 4 adjust it. This is from me doing -- going
 5 through and starting to do the taxes.
 6 Q. There it says "With OneQuality.com
 7 and rough estimate," right?
 8 A. Yes. I mean it is not supposed to
 9 be -- it was just supposed to be generalized like
 10 rough estimate with OneQuality.com, if that makes
 11 sense.
 12 Q. I understand, because at some point
 13 in 2009 you got the right to use OneQuality.com?
 14 A. Correct.
 15 Q. This revenue number, how much of that
 16 number -- when you got the right to use
 17 OneQuality.com, did you also get the right to use
 18 the OneQuality eBay store?
 19 A. Yes.
 20 Q. So when did you start using the
 21 OneQuality eBay store?
 22 A. I don't recall the specific date.
 23 Towards the beginning of the year. I don't have
 24 a specific time.
 25 Q. Did you also --

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 2 A. It was near the time of the ads
 3 basically. It was like two weeks or a month.
 4 Within that time like all right around there, and
 5 the ads were, I think, I don't want to guess, I
 6 don't really remember when they were. They were
 7 March. In March I believe is when I saw them.
 8 Q. Were you also using the Sellify-store
 9 on eBay in 2009?
 10 A. In 2009, yes, we did use the
 11 Sellify-store.
 12 Q. Is that reflected in these revenue
 13 numbers as well?
 14 A. Yes, everything is reflected.
 15 Q. The Sellify-store as well?
 16 A. Correct.
 17 Q. Of this revenue number here, how much
 18 of that revenue is from the OneQuality eBay
 19 store?
 20 A. I don't know.
 21 Q. As with the prior years, would it be
 22 the large majority of it?
 23 A. Yes. I mean I don't know if it is
 24 the majority. I'm not sure, because -- I'm not
 25 sure exactly what the percentages were, because I

1 Maki - Confidential
 2 don't do that. I just get the sales, and we
 3 don't go through each channel. I couldn't tell
 4 you.
 5 Q. What about, what percentage of this
 6 was from the www.OneQuality.com website?
 7 A. I couldn't tell you percentages,
 8 because I don't know the specific figures. If
 9 you have them.
 10 Q. You are the plaintiff here.
 11 A. Okay. I don't know the percentages.
 12 Sorry.
 13 Q. Do you think again it is a quarter, a
 14 third of the sales were from the
 15 www.OneQuality.com website?
 16 A. I wouldn't want to guess.
 17 Q. I'm not asking you to guess. I am
 18 just asking you to estimate.
 19 A. I would be guessing.
 20 Q. Do you remember when precisely you
 21 gained the rights to use the OneQuality.com
 22 website?
 23 A. Not specifically the date, but it was
 24 near or around the time, it would have been
 25 sometime between when the settlement was done and

1 Maki - Confidential
 2 when the ads went up. It was right around that
 3 time frame.
 4 Q. Who had the rights before that?
 5 A. To OneQuality.com?
 6 Q. Yes.
 7 A. I believe it was Adrian who had
 8 control of it, so it would be Adrian.
 9 Q. In the beginning of 2009 before you
 10 got the rights to the site and before you got the
 11 rights to the eBay store, your revenue was
 12 derived entirely from the Sellify eBay store,
 13 right?
 14 A. I'm sorry. You lost me for a second.
 15 Q. At the beginning of 2009 before you
 16 get the rights to the website, before you get the
 17 rights to the OneQuality-store?
 18 A. It would have been Sellify-store,
 19 correct.
 20 Q. Sellify-store. Nothing else?
 21 A. Nothing else.
 22 Q. And the Sellify-store continued to
 23 sell items throughout 2009?
 24 A. Yes. Not many. Very infrequently.
 25 Q. Does it continue to sell items in

1 Maki - Confidential
 2 2010?
 3 A. Unfortunately not that many, but we
 4 still list items on it.
 5 Q. Because the market is just not so
 6 good?
 7 A. No, not that. You know, I would say
 8 that the reason why Sellify-store doesn't sell a
 9 whole bunch, it is not -- the listings probably
 10 aren't as good as the OneQuality listings.
 11 Q. What do you mean by that?
 12 A. We take more time with the OneQuality
 13 listings than the Sellify-store. We also got,
 14 when we got it we also had like a design for all
 15 of our listings for OneQuality that came over, so
 16 we got the template and we used that template
 17 which is nicer than the Sellify-store. Maybe it
 18 is that. I don't know. It would be speculating.
 19 Q. In 2008 did you have any employees
 20 when you were selling just as the Sellify-store?
 21 A. In 2008, no.
 22 Q. In 2009 after you got the rights to
 23 the OneQuality, did you hire employees?
 24 A. Towards the end of 2009 I hired an
 25 employee.

1 Maki - Confidential
 2 Q. But before that it was just you?
 3 A. Yes.
 4 Q. What is your revenue for 2010 to
 5 date?
 6 A. I don't have that number. Sorry.
 7 Q. But I am sure you must -- do you keep
 8 books?
 9 A. Yes, but it is not up to date. What
 10 is this? May. We don't have May's numbers. We
 11 haven't gone through. We don't know specifically
 12 the revenue for 2010.
 13 Q. If you wanted to find out your sales
 14 for 2010, could you?
 15 A. Yes.
 16 Q. Has anyone asked you to do that in
 17 connection with this litigation?
 18 A. Has anyone asked me?
 19 Q. Strike that. Have you done that in
 20 connection with this litigation?
 21 A. Looked at my 2010 sales?
 22 Q. Yes.
 23 A. I am confused. Could you just repeat
 24 the question because I want to make sure I answer
 25 correctly.

1 Maki - Confidential
 2 Q. Where did you see it posted?
 3 A. It was on Yahoo. It was a question
 4 that says can I trust OneQuality, and I believe
 5 it is a document that we have.
 6 Q. Okay. Other than that?
 7 A. Other than that, have I had people
 8 not trust us?
 9 Q. No, do you have -- has anyone, other
 10 than the one instance you have just referred to,
 11 do you recall any instance of someone saying they
 12 don't trust OneQuality?
 13 A. I don't recall specifically people
 14 saying I don't trust OneQuality.
 15 Q. I'm not asking just specifically
 16 though. I am asking generally.
 17 A. Generally or specifically, I don't
 18 recall it.
 19 Q. So, if somebody today were looking
 20 for a camcorder, how would the ads affect them?
 21 A. Well, the thing is that the Internet
 22 is viral, so it is very viral and anything that
 23 goes out, you hear about some company that is
 24 scamming other companies, or not scamming, but
 25 being talked about as scammers or criminals,

1 Maki - Confidential
 2 doing criminal activities, you are going to tell
 3 your friend and say, hey, this is not a good
 4 place to buy from, and the word travels fast.
 5 Q. You said the Sellify webstore does
 6 worse than the OneQuality webstore, right?
 7 A. The Sellify webstore does worse than
 8 the OneQuality webstore. Yes. That was because
 9 I think the presentation of the listings are
 10 better on the OneQuality-store, yes.
 11 Q. We will get back to the ads in a
 12 little bit, but, when you regained the rights to
 13 use the OneQuality.com site, you said this was
 14 sometime around March 2009, right?
 15 A. So it would be right around when the
 16 ads went up, and I believe that is the time
 17 period.
 18 Q. What did you do for the site once you
 19 gained the rights?
 20 A. What did I do for the site?
 21 Q. What did you do to relaunch the site?
 22 A. Pretty much you just click a button
 23 and it's back up. There is not much to it. That
 24 is the thing about the Internet. It is very
 25 immediate. You can go from having a full-blown

1 Maki - Confidential
 2 business to just hitting a button to hitting a
 3 button and having it right back up. There is not
 4 a whole lot of work. The site has been made and
 5 the design has been done and it is a very quick
 6 and immediate thing you can do.
 7 Q. What was the status of the site, when
 8 you said relaunch, though, what was the status of
 9 the site before you clicked that button to
 10 restart it? I thought you said it was still up?
 11 A. Yes, this is with regard to putting
 12 out products.
 13 Q. I'm sorry. I thought you said you
 14 would check periodically and it had products on
 15 it?
 16 A. Putting out the products that I have.
 17 Because I am selling specific products.
 18 Q. What was being sold on it when you
 19 weren't in charge of the site?
 20 A. I don't know the specific products
 21 that were on there. I just know that what I had
 22 I needed to fill out and put in the stuff that I
 23 had. I needed to fill up the website.
 24 Q. Because you wanted to have quality
 25 products on the website?

1 Maki - Confidential
 2 A. No, because I wanted to list the
 3 items that we had on the website.
 4 Q. What kind of inventory did you have
 5 when you relaunched the site?
 6 A. I guess in terms of there were
 7 camcorders, cameras. I don't recall
 8 specifically.
 9 Q. How much inventory?
 10 A. I don't recall specifically.
 11 Q. Was it the same amount of inventory
 12 you had when you were selling in 2006 and 2007?
 13 A. Was it the same amount of inventory I
 14 had in 2006 and 2007?
 15 Q. When you had two partners and
 16 investment capital.
 17 A. No. The inventory was less, but I
 18 had the ability to buy more inventory, but why
 19 would you start dumping a bunch of your money
 20 into a company that is being trashed by the most
 21 reputable site on the Internet? It would be
 22 suicide. It wouldn't be smart.
 23 I had available capital. We had just
 24 settled, and, in addition to the money I have, I
 25 had an extra [REDACTED] to plow into the business,

1 Maki - Confidential
 2 OneQuality.com?
 3 A. I don't believe I did, but again we
 4 could check with Google. I buy keywords. I
 5 wouldn't necessarily remember what was it that
 6 was bought. But I don't think I did, because, if
 7 you type in OneQuality.com, OneQuality.com comes
 8 up first. The problem is that now all of a
 9 sudden right next to it it says the defaming ad
 10 from Amazon, so everyone now when they look up
 11 OneQuality they now get to see Amazon, the most
 12 reputable business online, saying don't buy from
 13 them. They are not trustworthy.
 14 Q. And, when you say now, you don't
 15 actually mean now, right?
 16 A. Yes. The ads are not up.
 17 Q. You mean for the period from March to
 18 August 2009?
 19 A. Yes, five months approximately give
 20 or take.
 21 Q. You said the majority of the work is
 22 done by eBay. eBay drives traffic, right?
 23 A. Yes, a lot of it. They do a lot of
 24 the marketing. eBay drives a ton of traffic, and
 25 they get it through the search engines.

1 Maki - Confidential
 2 Q. So, when you relaunched the site,
 3 explain to me how eBay drives traffic to your
 4 site.
 5 A. How eBay drives traffic? For one,
 6 eBay buys, I don't know if they were buying
 7 keywords at that moment or how it works or what
 8 they were doing, but in general eBay buys the
 9 traffic from the search engines, and they also
 10 publish feeds in the Google product feeds, so, if
 11 you go to the Google product search, you are
 12 looking for an item that is a comparison shopping
 13 engine or if you go to shopping.com or if you go
 14 to any of these shopping engines, they will
 15 publish your items out into those feeds, and they
 16 will drive the traffic to your feeds. On our
 17 eBay listing, though, we then have all of our
 18 pictures and everything right there to sell to
 19 our customers.
 20 Q. Once they get to you through those
 21 various eBay traffic drivers?
 22 A. Whatever it may be. Through Google
 23 or through a comparison shopping engine, but I
 24 believe that the majority of their traffic comes
 25 through search engines.

1 Maki - Confidential
 2 Q. But all of those various things you
 3 have described, those don't involve typing in
 4 OneQuality or OneQuality.com into a search
 5 engine, right?
 6 A. No, it is when you go to buy it you
 7 do that because you want to make sure that it is
 8 a safe place to buy from.
 9 Q. I understand what you are saying, but
 10 my question was different, and I move to strike
 11 that answer. My question was the various things
 12 you have described don't involve typing
 13 OneQuality or OneQuality.com into a search
 14 engine?
 15 A. If you could say that one more time.
 16 I'm sorry.
 17 Q. The ways that you have described how
 18 eBay drives traffic to your store, none of those
 19 involves typing OneQuality into the --
 20 OneQuality.com into a Google search engine?
 21 A. To get there, no.
 22 Q. You have talked about you said, well,
 23 most of the advertising was done by eBay, most of
 24 the traffic is driven by eBay, but I did some
 25 advertising. What advertising did you do?

1 Maki - Confidential
 2 A. Just through I believe it was all
 3 through Google. That is where I advertised.
 4 Q. What type of advertising do you do on
 5 Google?
 6 A. Keyword bidding.
 7 Q. What sort of keywords?
 8 A. For instance, for a particular
 9 product, it might be the Canon XL2. I will buy a
 10 Canon XL2 and I'll come up with the search
 11 results.
 12 Q. And do you contact Canon to ask them
 13 for the right to use the keyword Canon in your
 14 keyword buy?
 15 A. I've never contacted Canon about
 16 that.
 17 Q. Have they ever given you the approval
 18 to do that?
 19 A. No, they haven't.
 20 Q. What about Canon XL2, that specific?
 21 Do you ever contact them to ask them whether you
 22 can buy that product keyword?
 23 A. No, I haven't. I haven't contacted
 24 them, but at the same time I wouldn't think they
 25 would care. You are comparing that to --

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 2 anything, you need to stop buying, and, if you
 3 start selling things, you buy more. It is very
 4 simple.
 5 MR. WANG: We have to take a couple
 6 of minute break. We are out of tape. So
 7 let's take five minutes.
 8 THE VIDEOGRAPHER: Off the record at
 9 4:11 p.m.
 10 (Recess taken)
 11 THE VIDEOGRAPHER: Back on the record
 12 at 4:30 p.m.
 13 BY MR. WANG:
 14 Q. Mr. Maki, I would like to direct your
 15 attention again to Exhibit 4, the revised damages
 16 calculation. On the first line of the third
 17 paragraph, it says, "THE negative ads appeared
 18 and severely damaged the business's reputation."
 19 Do you see that?
 20 A. Yes, I do.
 21 Q. And you wrote that, right?
 22 A. Correct.
 23 Q. When did you first notice that they
 24 appeared?
 25 A. It was I think like a few weeks. Not

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 2 to be specific, but approximately a few weeks
 3 after relaunching the website.
 4 Q. Did you do anything when you saw that
 5 they had appeared?
 6 A. Yes. Almost instantly I called
 7 Amazon.
 8 Q. Tell me about that call.
 9 A. You know, I don't remember everything
 10 specifically about it, but I do remember that the
 11 person on the other end of the phone couldn't
 12 help me.
 13 Q. Do you remember who you called at
 14 Amazon?
 15 A. I don't remember who it was.
 16 Q. Do you remember what you told that
 17 person?
 18 A. Yes, I told him specifically about
 19 the ads that were being put up there, that they
 20 were buying ads, and I was trying to figure out
 21 what was going on, frantically trying to save my
 22 business.
 23 Q. You said that person couldn't help
 24 you?
 25 A. No. I mean clearly no one helped me

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 2 for five months.
 3 Q. What did that person tell you?
 4 A. I don't recall specifically, but it
 5 was pretty much like there is nothing they can
 6 do. I couldn't speak with the manager. I don't
 7 want to say. It has been a while. It was just
 8 upsetting they wouldn't help me. That is what I
 9 took from it. I don't recall specifically the
 10 words that were said.
 11 Q. It was one phone call you made?
 12 A. I am starting to blank on that. I
 13 may have called more than once.
 14 Q. You said you were frantically trying
 15 to save your business, right?
 16 A. Yes.
 17 Q. So what else did you do?
 18 A. I believe I sent, not to quote me,
 19 because --
 20 Q. Actually, we are on the record. That
 21 is sort of exactly what we are doing.
 22 A. I understand. I am trying to go back
 23 through it, because there are so many facts that
 24 are involved, and it has been a while. So I
 25 think I sent an e-mail through the customer

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 2 service line, and I'm not sure if I sent two, but
 3 I sent at least one.
 4 Q. And this was in addition to making
 5 the phone call?
 6 A. Yes. And then, after sending the
 7 e-mails and realizing it wasn't going anywhere, I
 8 contacted my attorney.
 9 Q. When was that?
 10 A. I believe it was the same day.
 11 Q. In March 2009?
 12 A. There was no response from the
 13 customer service person, and I believe he said
 14 something along the lines of like, you know,
 15 there is nothing we can do. Too bad.
 16 Q. Did that unidentified person explain
 17 to you why there was nothing that he purportedly
 18 could do?
 19 A. No, he did not.
 20 Q. I am just trying to get the full
 21 universe of actions that you took.
 22 A. Sure.
 23 Q. So you made a phone call to customer
 24 service?
 25 A. Correct.

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 2 Q. Where did you get the number for
 3 that?
 4 A. Somewhere on the Amazon site I am
 5 assuming.
 6 Q. You sent an e-mail to customer
 7 service?
 8 A. Yes. I don't know if it was through
 9 a contact form or if it was like an e-mail, but I
 10 sent them a message, yes.
 11 Q. Did you beyond that, what else -- and
 12 you said you contacted your attorney?
 13 A. I did. I may have sent more than one
 14 message to them. I am sure they would have it if
 15 I sent it. I don't have it. If it was sent to
 16 them, it was sent. I just don't remember at the
 17 time. Right now I can't recall anything else.
 18 Q. Did you keep a record of that phone
 19 call?
 20 A. Record of the phone call? No. I
 21 didn't keep a record of it.
 22 Q. So you contacted your attorney?
 23 A. Correct.
 24 Q. You said at the same time. Did you
 25 do anything else?

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 2 A. Besides being really upset and scared
 3 of what was going to happen? I don't recall
 4 anything else. No.
 5 Q. Did you contact Google?
 6 A. No.
 7 Q. Why not?
 8 A. Well, you know, I talked to my
 9 attorney.
 10 Q. Wait.
 11 MR. DEHN: You just can't say
 12 whatever conversation or advice we had.
 13 You can say you talked to me.
 14 A. I consulted with my attorney.
 15 Q. And it was on the basis of legal
 16 advice that you received that you didn't contact
 17 Google?
 18 MR. DEHN: Objection. I think that
 19 is a privileged question.
 20 MR. WANG: I'm not so sure it is.
 21 What is the basis for the privilege?
 22 MR. DEHN: You are asking him whether
 23 he took an action or not took an action
 24 because of legal advice. That sort of
 25 begs the question what the advice was.

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 2 MR. WANG: I don't think so. My
 3 question is did you contact Google. If
 4 the answer is no, then my question is why
 5 didn't you contact Google.
 6 MR. DEHN: Okay. If you can answer
 7 the question without revealing what the
 8 advice was or was not, go ahead.
 9 A. Could you repeat it.
 10 Q. Did you contact Google?
 11 A. No.
 12 Q. Why not?
 13 A. For one, before contacting them I
 14 consulted with my attorney, yes. I can't say
 15 what he said, right?
 16 Q. No. My question is, on the basis of
 17 your attorney's advice, you did not contact
 18 Google, is that correct?
 19 A. Yes, in combination with the fact
 20 that it wasn't Google actually writing the ad.
 21 It was Amazon. So the same reason I went to Bic
 22 for someone who wrote down, a pen manufacturer or
 23 the publisher of a book, you would sue the
 24 author. You sue the person who is defaming you.
 25 It goes to the person who is writing the words,

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 2 not the person whose paper it is on, who provided
 3 the pen. It was Amazon.
 4 Q. You understand that Google hosted the
 5 ads in question, right?
 6 A. Google hosted the ads, yes.
 7 Q. You understand that Google was paid
 8 to place those ads, correct?
 9 A. Google was paid to place those ads,
 10 correct. Yes.
 11 Q. But you didn't contact Google?
 12 A. No, I did not.
 13 Q. Just to be clear, the ads that you
 14 are complaining about are the ads that came up
 15 when you searched for OneQuality.com or
 16 OneQuality or www.OneQuality.com on Google?
 17 A. Correct.
 18 Q. And those were sponsored ads on --
 19 that said either beware of scammers or don't buy
 20 from scam artists?
 21 A. Yes. I don't recall the specifics of
 22 it.
 23 Q. How many people do you think saw
 24 those ads?
 25 A. We can guess and speculate or we can

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 2 contact Google and find out the number of
 3 impressions. That would probably be the best way
 4 to do it.
 5 Q. But I guess my question is you have
 6 claimed that these severely damaged your business
 7 reputation, so you have made that claim. How
 8 many people do you think saw those ads?
 9 A. I think we can talk numbers, but what
 10 is most important is who saw it. Those people
 11 who were about to purchase researching the
 12 company and it is very targeted. It is the
 13 buyers who are about to make a decision whether
 14 or not to buy something at that point of
 15 purchase, and having that negative ad there, it
 16 is the end of it. It couldn't be a worse place.
 17 It is highly targeted. How many people saw it?
 18 Honestly I have no clue, and I have no clue. It
 19 could be -- the point being is that it could be
 20 very few. It could be ten. It could be 20. It
 21 could be 100. It could be more. But the point
 22 is that it is not just the people who saw it, it
 23 is viral in nature.
 24 If you go out and whatever it may be,
 25 cry rape about something. It is not going to be

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 2 particular document. I don't know the document,
 3 whatever it is, the one where it says can I trust
 4 OneQuality. That is how I discovered that, by
 5 Googling OneQuality. It has got the name in it,
 6 and it pulls it up.
 7 Q. That document, what does it say after
 8 can I trust OneQuality? Does it reference the
 9 ad?
 10 A. It doesn't reference anything, and no
 11 one answers anything. It is just a question.
 12 Yahoo questions and answers, the forum. Someone
 13 poses the question. There is no response.
 14 Q. Your testimony earlier was that
 15 people Google OneQuality.com to try to figure out
 16 the exact same question, right, can they trust
 17 OneQuality.com?
 18 A. I'm sorry.
 19 Q. If a potential customer Googles
 20 OneQuality.com, your testimony is they are doing
 21 that because they want to ask that very question,
 22 can I trust OneQuality.com?
 23 A. The same thing is why you would
 24 Google your own name. You are checking your
 25 reputation. So you are checking the reputation

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 2 just the person you tell that finds out. They
 3 are going to tell other people. It is going to
 4 spread. It is a viral comment in nature calling
 5 someone a criminal or involving criminal
 6 activities.
 7 Q. What is the evidence that you have
 8 that these statements went viral?
 9 A. For one, I saw the posting on Yahoo.
 10 Q. Other than the posting on Yahoo?
 11 A. What other evidence do I have? I
 12 think the statements by themselves stand -- I
 13 don't have any evidence other than the statements
 14 themselves are viral or something that would
 15 become viral if they are stated by someone. That
 16 is my opinion, and I will leave it at that.
 17 Q. Have you ever -- after the ads came
 18 down, did you ever Google OneQuality to see if
 19 there was reference to the ads?
 20 A. That is how I found the ad, the
 21 negative Yahoo comment with the can I trust
 22 OneQuality.
 23 Q. That was how you discovered the ads
 24 that you are complaining about?
 25 A. No. That is how I discovered that

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 2 of the site to make sure there aren't paid
 3 advertisements coming up for instance.
 4 Q. But the document you are referring to
 5 is simply just asking the question can I trust
 6 them?
 7 A. Correct. But putting the question
 8 out, though, is hurtful in a sense because at the
 9 point of sale you don't want to bring up any
 10 issues of trust, and it brings up an issue of
 11 trust. If someone has an issue of trust and
 12 another person is asking it, they themselves are
 13 going to have an issue of trust.
 14 Q. Is there any reference in that Yahoo
 15 posting to the scammer's ad?
 16 A. No.
 17 Q. And have you ever seen any reference
 18 through a search engine to the scammer's ad?
 19 A. The ads themselves.
 20 Q. Other than the ads themselves?
 21 A. I am trying to think. I don't think
 22 so. No. I don't think so. I have to think
 23 about it for a second, though.
 24 Q. Take as much time as you want.
 25 A. I don't think so. I am still

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 2 MR. DEHN: With nothing else?
 3 MR. WANG: With nothing else.
 4 A. The ad doesn't reference it, but they
 5 may reference it when they send it.
 6 Q. But you have no -- you know of no
 7 instances in which you have seen somebody
 8 referencing the ad in connection with OneQuality?
 9 A. Not that I recall. I don't recall.
 10 I am trying to think, because there has been so
 11 many things that I have seen. I don't think so.
 12 Q. Did anybody ever send you an e-mail
 13 telling you about the ads?
 14 A. Did anyone ever send me an e-mail
 15 telling me about the ads? I found the ads by
 16 Googling them, so I would assume, I don't know, I
 17 never got an e-mail telling me about them. I
 18 found them myself.
 19 Q. But nobody independently contacted
 20 you and said, hey, Chris, I saw these ads?
 21 A. No one independently contacted me,
 22 but I found them while doing a reputation check
 23 on the business. I was Googling the name just as
 24 people do like you or you are at home and you
 25 want to make sure nothing is written poorly about

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 2 boom, done, like, you know, I'm not going to shop
 3 there.
 4 Q. Somebody who has never seen the ad
 5 and has never been told about the ad wouldn't
 6 know about the ad, right?
 7 A. Someone who has never seen it and
 8 never been told about it.
 9 Q. Yes.
 10 A. Like braille? I am trying to think
 11 of a way around that, but, unless there is a way
 12 around it, I don't know. I can't think of a way
 13 around it at the moment, no. Like I don't know
 14 what to tell you. If I spend some time thinking
 15 about it, maybe there is a way. What do you mean
 16 by told?
 17 Q. My question is at some point the ads
 18 came down, right?
 19 A. Thank God, yes.
 20 Q. And so, after the ads came down, or
 21 even before the ads came down, if somebody didn't
 22 Google any of the terms and --
 23 A. Sorry.
 24 MR. DEHN: Let him finish the
 25 question.

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 2 you. You Google yourself.
 3 Q. And your testimony, just so I
 4 understand, earlier you said, no matter the
 5 number of impressions, it's the fact the number
 6 of -- first you said the number of impressions
 7 does matter, and then you said, well, but the
 8 fact that there were any impressions at all
 9 severely damaged the business, right?
 10 A. I would say this. You say, if there
 11 were just five, would that damage the business?
 12 Yes. But, if there are 100, it damages it even
 13 more. If there are 200, it damages it even more.
 14 It gets worse, but is it still damaging at five?
 15 Yes. Is it damaging at ten? Yes, it is even
 16 more damaging. It gets more damaging as it goes
 17 up, but the nature of the comment is one where
 18 someone will want to spread it.
 19 You are calling a company a criminal.
 20 It is repeatable. It's something people will
 21 tell their friends. Like, hey, I am buying this
 22 camcorder to videotape my skateboard videos or I
 23 am buying a videocamera to tape this deposition,
 24 and you hear one person talking about it, and you
 25 hear this one quality name associated with it,

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 2 MR. WANG: I will start over.
 3 Q. After the ads came down, if somebody
 4 were Googling OneQuality and didn't know and
 5 wasn't told by anyone else about the ads, they
 6 wouldn't know about the ads, right?
 7 A. If it had not been communicated to
 8 them in any sort of means, then they would not
 9 have known about them.
 10 Q. Right. And somebody even while the
 11 ads were up who came -- who was either looking
 12 for or came to one of the OneQuality sites or was
 13 searching for OneQuality on an engine other than
 14 Google and again was not otherwise told of the
 15 ads, would not have known about the ads, correct?
 16 A. So sorry. Go ahead.
 17 Q. Unless you Googled during the time
 18 when the ads were up or otherwise heard from
 19 somebody about the ads --
 20 A. Someone or communicated somehow to.
 21 Q. Yes. Then somebody -- then a person
 22 would not know about the ads, correct?
 23 A. Yes.
 24 Q. How many times did you see the ads?
 25 A. I don't recall specifically.

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 2 inventory. This is again from what he has told
 3 me. I would say, if there was anything sold, it
 4 would be like a very, very small amount, so it
 5 would be like, you know, less -- besides -- I
 6 would think he probably didn't do anything
 7 besides the extra inventory. It would be pretty
 8 close. I don't know. I am speculating on what
 9 Adrian would do. I don't know what Adrian would
 10 do. I really don't. That is what I have learned
 11 to know.

12 Q. Now how did you value the brand in
 13 2007?

14 A. That is right here in the document.

15 Q. Why don't you explain it for the
 16 record.

17 A. Sure. The brand, so I looked at the
 18 profit, and I did it very conservatively because
 19 again, I didn't account for the fact that we were
 20 shutting down at the end during the biggest
 21 quarter, and I didn't account for that, and that
 22 would have been a big difference. We probably
 23 would have made more money, but I don't want to
 24 speculate on anything. I was just being
 25 conservative. I took a conservative multiple of

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 2 and subtract that out and subtract our expenses.

3 Q. Did you look at anything else?

4 A. No.

5 Q. Did you take into account any other
 6 factors when you were doing this valuation?

7 A. The factors I took into account were
 8 just to be ultraconservative. Again, Amazon
 9 trades at 50 to 70 times, depending on what the
 10 market is doing, 50 to 70 times earnings, and it
 11 is an online retail company versus other online
 12 retail companies, I thought a multiple of nine
 13 times earnings was fairly conservative.

14 Q. Based on what other than what you've
 15 testified?

16 A. Based off of public valuation data on
 17 the companies.

18 Q. Which public valuation data did you
 19 look at?

20 A. This is just from my experience in
 21 valuing companies.

22 Q. What is your experience in valuing
 23 companies?

24 A. I majored in economics, and I also
 25 worked in an investment firm for a year, and I

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 2 nine times earnings, and I looked at the value of
 3 the company, the profit times nine, and I got the
 4 value, and then I looked at 2009 and did the same
 5 thing and then we looked at the difference.

6 Q. What documents did you look at to
 7 prepare that valuation?

8 A. The tax returns that we sent.

9 Q. Other than that, what about for 2009?

10 A. For 2009, it was -- that is kind of
 11 when I was preparing the documents for you, I
 12 realized the revenue, at that point I hadn't gone
 13 through, we hadn't done the taxes. It was just a
 14 rough estimate, as I said. When I was going
 15 through the transactional sheet that we had
 16 supplied to you, I realized that the number was
 17 bigger, and I went through and tried to clarify
 18 all the mistakes and see if there is anything,
 19 and that is how I came up with it.

20 Q. But how did you come up with the
 21 numbers that you have on the row at the bottom
 22 that says 2009? The [REDACTED]

23 A. The [REDACTED]? That would have been
 24 off of -- I know how much we paid for everything,
 25 so I can look at how much we sold everything for

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 2 have been investing since -- on and off since I
 3 was a junior in high school approximately. I
 4 don't know the exact date, but I have been doing
 5 it for a long time.

6 Q. Where are your investment proceeds
 7 reflected? Are they through an LLC?

8 A. No, like an IRA account or if you
 9 have an account at Fidelity or something. You
 10 know what I mean? That is not a part of the
 11 business. That is a personal investment.

12 Q. What company valuation experience did
 13 you have during your one year at the financial
 14 company after college?

15 A. I mean I have had -- I have read a
 16 number of books, and I have also followed
 17 industry for ten years. I guess if you are
 18 saying am I an expert? No, I'm not an expert, if
 19 that is what you are looking for, but the point
 20 is that I do have a background in it, and I've
 21 spent a lot of time with it, and I've also spent
 22 a lot of time with smaller companies and I
 23 understand how they work, and in valuing a brand
 24 you need to consider the competitive advantages,
 25 and we had a very strong competitive advantage

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 2 business, but I could have put more in. You can
 3 buy more inventory, but it is -- the factor of
 4 whether or not to keep putting more capital in is
 5 a function of a number of things. You have got
 6 to look at the turn of your inventory, and, if
 7 the inventory is not turning, you don't need to
 8 buy more equipment. You don't need to buy more
 9 items. You don't need to put the capital in,
 10 because then it is going to be sitting in a bank
 11 account. Why would you do that?
 12 Q. So, instead of buying more inventory
 13 and investing more capital, what were you doing?
 14 A. What was I doing?
 15 MR. DEHN: I object to the form of
 16 the question. About what?
 17 Q. What were you doing to mitigate the
 18 effects of these ads? You said you're not
 19 putting in capital. So what were you doing
 20 instead of putting in capital?
 21 A. I mean there was capital in there.
 22 You don't over -- you don't keep putting more
 23 capital if the items aren't selling fast enough.
 24 You don't put more capital in especially with
 25 these ads up there, because it is going to -- you

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 2 have ten camcorders. Why buy 20 more if you have
 3 these ads and it is hurting your sales?
 4 Q. You are aware that the ads were taken
 5 down in August 2009, correct?
 6 A. Yes.
 7 Q. Does your damages calculation at all
 8 reflect the fact that the ads were taken down in
 9 August 2009?
 10 A. The damage was permanent, so, no.
 11 Q. So, whether they were taken down in
 12 August 2009 or whether they stayed up through the
 13 end of 2009 in your view wouldn't make any
 14 difference?
 15 A. Just give me the dates again. Sorry.
 16 Q. Whether the ads stayed up throughout
 17 the entirety of 2009 or whether they were taken
 18 down in August 2009 in your view makes no
 19 difference because the effect is permanent?
 20 A. Yes. I mean in a sense -- is it
 21 permanent? The damages are permanent. Would it
 22 have been more damaging if they had continued on?
 23 Yes, but it is not -- I guess what I am trying to
 24 say is that it is marginally -- I think that the
 25 damage had been done. The word is out that

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 2 OneQuality is a scammer, and at that point it is
 3 not as important that they are up another five
 4 months, six years, five years, two years, five
 5 days. The word is out.
 6 Q. You said earlier that you are
 7 sponsoring a reality team.
 8 A. Yes, we haven't completed it.
 9 Q. But you said you were doing that in
 10 order to put the word out that you guys are
 11 trustworthy.
 12 A. That is poor -- not poor. That is
 13 not what I meant by it. We are sponsoring them
 14 to get our name out there to show that, because
 15 in their show they are going to say, oh -- the
 16 first show they actually had a making of the
 17 show, and they showed where they got the cameras
 18 from. They were like, oh, we got them from
 19 OneQuality, and they mentioned it in their TV
 20 show, and it was broadcast on the Outdoor Network
 21 or Sportsman Channel or one of those sports
 22 networks, and I thought that was, once I saw the
 23 results of that, it was definitely in my mind a
 24 good way of showing people that we are shipping
 25 cameras. We are not scamming people, that we are

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 2 actually doing a good job, and we had done it the
 3 first time. This time we are actually going to
 4 sponsor a team too.
 5 Q. Over the year plus since these ads
 6 appeared, have you done anything other than this
 7 one reality placement?
 8 A. I have spent a lot more on Google
 9 AdWords advertising.
 10 Q. What are the ads that you have put on
 11 Google, when you get the AdWords have you --
 12 strike that. When you purchase an AdWord, you
 13 can choose the text that pops up, right?
 14 A. For instance, beware of scammers.
 15 Q. You can choose whatever text you
 16 want, right?
 17 A. Unfortunately.
 18 Q. And so you said you have spent more
 19 on Google AdWords advertising. Have you chosen
 20 text that says, OneQuality is trustworthy or
 21 something to that effect?
 22 A. Not to my knowledge. I mean I don't
 23 think that was the text of the ads. It was to
 24 drive more traffic to the site and get people to
 25 share, hopefully just get people to the site, and

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 2 some of them will be tainted and have heard about
 3 it, and hopefully we can find some people that
 4 haven't.
 5 Q. Let's go back to your testimony
 6 earlier where you said the damage is permanent.
 7 So is it your testimony that say six months after
 8 the ads are up, I'm sorry, the ads are down, the
 9 damage is the same?
 10 A. Six months after the ads are down.
 11 The damage is the same as what?
 12 Q. That the effect on profits would be
 13 the same as when the ads were up on Google.
 14 A. The damages from those ads are
 15 permanent. I guess I don't know how else to
 16 explain it to you.
 17 Q. But my question is is the effect on
 18 your profits the same six months after the ads
 19 are down as when the ads were up?
 20 A. Is the effect on your profits six
 21 months -- I think there is more than one effect,
 22 so I guess if we could just clarify what you mean
 23 by effect, because like there is a permanent
 24 effect of it, and then there is also the effect
 25 of the new people like there is let's say word of

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 2 Q. I'm sorry. Strike that. You have
 3 testified --
 4 A. I am --
 5 MR. DEHN: Let him start all over.
 6 MR. WANG: I understand.
 7 Q. You have produced a damages
 8 calculation that said the difference in value
 9 caused by the ads was \$2.4 million, correct?
 10 A. Correct.
 11 Q. And by that, you are saying that, if
 12 the ads had never appeared, you would -- the
 13 value of the business would be \$2.4 million more,
 14 correct?
 15 A. Greater, correct.
 16 Q. Now six months from now --
 17 A. Yes.
 18 Q. -- is it your -- or six months after
 19 the ads came down --
 20 A. Okay.
 21 Q. -- is it your testimony that the
 22 value of the business would continue to be
 23 \$2.4 million less than if the ads had never
 24 appeared to begin with?
 25 A. I guess that is kind of what I am

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 2 mouth has gone to these ads have reached ten
 3 people were told, but they all told ten friends,
 4 and now it has gone to those ten friends who tell
 5 ten friends and you have a thousand people or
 6 whatever it may be that have now heard of it.
 7 That will always be there.
 8 I'm not saying that that won't be
 9 there. That effect will still be the same.
 10 Those people aren't buying from us. I don't know
 11 what you mean in terms of is there another effect
 12 in terms of what you are asking about.
 13 Q. Let me ask it a different way. So
 14 you have said that the value of your business is
 15 \$2.4 million less because of the ads, right?
 16 A. Correct.
 17 Q. Is it your testimony that six months
 18 after the ads came down the value of the business
 19 will still be \$2.4 million less?
 20 A. I see what you are saying. Okay. So
 21 less than, I guess I am a little confused. Do
 22 you mean less than what?
 23 Q. You are -- than if the ads had
 24 continued to run.
 25 A. Than if the ads had continued to run?

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 2 getting at. So like, if you have a valuation at
 3 this point and it is 2.4 million less, it should
 4 grow, you should hopefully be able to, what is it
 5 called, you have the difference between the two.
 6 What happens -- so, looking at the valuation, so
 7 like say six months from -- I have to see the
 8 specific dates, so I can think about it. So six
 9 months from was it in August when the ads went
 10 down?
 11 Q. Yes.
 12 A. So that would be in February. Are
 13 the effects still the same? Yes. I don't think
 14 that the valuation -- the difference in value is
 15 going to be affected by time.
 16 Q. And whether that is six months or
 17 five years, you think it is not affected by time?
 18 A. Yes. I don't think -- the difference
 19 between what you should be at and what you aren't
 20 is going to remain the same.
 21 Q. So you haven't accounted for any
 22 diminishing effect of the ads after they have
 23 been taken down?
 24 A. I see what you are saying. No. The
 25 diminishing effect of the negative, I factor it

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 2 in as a permanent negative like a write-down or
 3 whatever you want to think of it as, as like a
 4 damage to the business reputation that was
 5 permanent at that point.
 6 Q. And I am going to ask my question one
 7 more time, because I think that answered it, but
 8 you haven't accounted for a diminishing effect of
 9 the ads after they were taken down?
 10 MR. DEHN: Objection to the form of
 11 the question.
 12 Q. Have you accounted for the
 13 diminishing effect of the ads after they were
 14 taken down?
 15 A. Of the ads after they were taken
 16 down. Quite honestly, the diminishing effect of
 17 the negative effect, there isn't a diminishing
 18 negative effect, so, no, I did not account for
 19 it.
 20 Q. Are you aware of any literature or
 21 other authority where there is an effect on
 22 business, that effect is permanent and never can
 23 be diminished?
 24 A. I guess the way I thought of it was
 25 in terms of a reputation, a brand, and once -- if

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 2 you like -- if you became -- if you do something
 3 such as maybe such extreme as rape someone, like
 4 that is with you forever. It doesn't matter at
 5 any point further down the road. That is still
 6 with you.
 7 Q. But in connection with your
 8 calculation here, you haven't relied on any --
 9 A. Outside literature?
 10 Q. Yes.
 11 A. With regard to that, no.
 12 Q. And you have now used the rape
 13 example a couple of times. Do you believe that
 14 the ads that you are complaining about are
 15 tantamount to that type of allegation?
 16 A. No. Without a doubt. I just thought
 17 it was a good way of showing -- of a damage to a
 18 reputation and the permanence of it and how it
 19 works. It is a really, not even close. That is
 20 a criminal situation. So that is different.
 21 Q. I would like to go through the ways
 22 that people could get to the OneQuality website.
 23 I know we did this a little bit earlier, but
 24 somebody could get to the OneQuality.com -- we
 25 will start with the OneQuality.com website. So

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 2 the OneQuality.com website, they could get to
 3 your website by simply typing www.OneQuality.com,
 4 correct, into a browser?
 5 A. Yes.
 6 Q. And did you take -- and those
 7 individuals wouldn't see the ads if they just
 8 typed OneQuality.com into the browser, correct?
 9 A. No, because --
 10 Q. When the ads were up.
 11 A. Because they could have put it into
 12 Google and then seen it and then come back and
 13 then look at the site to kind of verify
 14 everything. I wouldn't agree with that
 15 statement.
 16 Q. I understand that, but let's put
 17 aside the people who you say would go and sort of
 18 check up on the business reputation. Simply
 19 putting in OneQuality.com or www.OneQuality.com
 20 into the URL in your browser, those people would
 21 not see the Google ads when they were up,
 22 correct?
 23 A. Assuming they didn't see them before
 24 that?
 25 Q. All I am just asking you is as a

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 2 result of just typing OneQuality.com or
 3 www.OneQuality.com into the browser --
 4 A. Does the ad come up?
 5 Q. Yes.
 6 A. No, you wouldn't see it in that
 7 browser window.
 8 Q. Right. It would just go right to
 9 your website?
 10 A. To OneQuality.com.
 11 Q. And those individuals would not see
 12 the ad unless they separately went to Google and
 13 typed it?
 14 A. Or they have seen it or they have
 15 heard about it from somebody, yes.
 16 Q. But, unless they had otherwise seen
 17 it, simply doing that, they would not see the ad,
 18 correct?
 19 A. Correct.
 20 Q. Did you take those -- did you factor
 21 out those individuals when you were calculating
 22 your damages in this litigation?
 23 A. The people who go directly to our
 24 website, there is no -- I guess the point is that
 25 anyone who is going to buy a \$2500 item, whether

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 2 they eventually type it in directly or type it in
 3 through Google or what point they do it, they are
 4 going to do a little research on the company.
 5 They are not going to send \$2,000 for a used item
 6 on the Internet. You are going to do a little
 7 background research. Those people, like you
 8 said, before or after, they would have seen it at
 9 some point.

10 Q. So is it your testimony that each
 11 person who goes to your website
 12 www.OneQuality.com will at some point go to
 13 Google and see those ads as well?

14 A. No, that is not what I am saying at
 15 all. What I am saying is that a large percentage
 16 of people who are looking to purchase the item
 17 not going to the website, but looking to check
 18 out and actually send the \$2,000, will indeed be
 19 cautious and they'll check the reputation.

20 Q. What percent? You said a large
 21 percent. What percentage of those people do you
 22 think visit the website and then also Google
 23 OneQuality.com?

24 A. I don't know. I just know that
 25 people are very cautious when purchasing things

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 2 online.

3 Q. I understand that, but you
 4 testified -- I'm sorry. We have to go off the
 5 record for a minute.

6 THE VIDEOGRAPHER: Off the record at
 7 5:55 p.m.
 8 (Recess taken)

9 THE VIDEOGRAPHER: Back on the record
 10 at 6:08 p.m.

11 BY MR. WANG:

12 Q. Mr. Maki, you testified earlier that
 13 a large percentage of people looking to purchase
 14 the item will be cautious and I think you said
 15 check the reputation, and I asked you what
 16 percentage of the people who went and thought
 17 about purchasing an item on OneQuality.com would
 18 then go to Google to check the reputation of the
 19 company. What percentage do you believe that is?

20 A. You said I said a percentage?

21 Q. You said a large percentage. I am
 22 wondering what percentage do you think?

23 A. It would be a guess.

24 Q. Okay, but why don't you guess,
 25 because you have testified it is a large

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 2 percentage.

3 A. That is what I would think. I mean
 4 it is just what I think. I think of it in terms
 5 of if I was buying something such as this online
 6 and I didn't know who it was, I would look into
 7 him.

8 Q. And you think what? More than half
 9 of the people would do it?

10 A. I don't know.

11 Q. Do you think three-quarters of the
 12 people would do it?

13 A. Like I said, I can't give you a
 14 specific number.

15 Q. And anyone who searched on a search
 16 engine other than Google even while the ads were
 17 up, they wouldn't have seen the ads that you are
 18 talking about, right?

19 A. To my knowledge, no. I don't know
 20 how it is distributed. Actually some of the
 21 other search engines, Google runs searches for
 22 them, so they display ads on them as well, so I
 23 forget which ones they are, but some of them I
 24 guess may have had ads. I don't know.

25 Q. But, other than the ones where Google

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2 runs the search engine, like if it was Yahoo, for
 3 example?

4 A. Yes. If Google isn't providing it,
 5 then it wouldn't be on there, but I don't know
 6 which ones Google does or doesn't provide it for.

7 Q. Okay, so those are the people who get
 8 to the website by typing in www.OneQuality.com
 9 directly. Then we talked earlier about other
 10 ways that you could get to the website, so people
 11 who searched for a product and ended up on your
 12 eBay page, those people don't have to go through
 13 Google to get to -- I'm sorry -- to
 14 OneQuality.com, right?

15 A. Say it one more time. Sorry.

16 Q. So, if somebody searches for a
 17 product as opposed to searching by your name, you
 18 search for a product and your site comes up and
 19 they go directly to your site by clicking
 20 directly to your site, those people don't go
 21 through Google to get to your site, right?

22 A. Where were they searching?

23 Q. I'm sorry. Whether they went through
 24 Google or not, they wouldn't have typed
 25 OneQuality.com in the Google search, right? You

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 2 could get -- strike that. You can get to your
 3 site by putting products into Google and having
 4 your site come up as a search result, right?
 5 A. Yes. Specific products, correct.
 6 Q. If those people were directed to your
 7 website, those people would not see the Google
 8 ads, right, unless they saw it -- unless they
 9 went back otherwise?
 10 A. Unless they saw it previously or were
 11 told about it or unless it's -- so they are
 12 typing it into the product search -- unless it is
 13 being syndicated through the content network and
 14 coming up below. I mean it could potentially
 15 come up if they are doing it through the Google
 16 product search. Sometimes you see the content
 17 ads come up below, and they could be coming up
 18 through there. I don't know.
 19 Q. Do you have any evidence that that
 20 actually happened with the ads you are
 21 complaining of here?
 22 A. No, I didn't notice that, no.
 23 Q. So the people who were searching just
 24 for a product and your site came up, they could
 25 click directly through your site and those people

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 2 Q. Yes.
 3 A. So people who haven't seen the ads?
 4 Q. Right.
 5 A. No, because when you calculated --
 6 when I calculated the damages, I looked at the
 7 negative effect, the people who have seen the
 8 ads.
 9 Q. But you didn't account for people who
 10 could get to your site through --
 11 A. I didn't assume everyone saw the ads.
 12 You know what I mean? That is not the
 13 assumption. It is quantifying the damage and
 14 looking at -- essentially looking at the profits
 15 and applying a multiple to it.
 16 Q. And people -- let's talk about your
 17 eBay store. People could get to your eBay store
 18 on eBay, right, by searching for products on eBay
 19 and get to your eBay store there, right?
 20 A. Yes.
 21 Q. And, if they did that, they wouldn't
 22 other than what you have already described in
 23 ways they would see the ads, other than, but, if
 24 they did simply that --
 25 A. Specifically that.

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 2 would not see the Google ads, correct?
 3 A. Again, assuming all the other things
 4 we just talked about.
 5 Q. Yes.
 6 A. They are not seeing the ad currently
 7 and they haven't seen it previously.
 8 Q. Correct.
 9 A. Okay.
 10 Q. They wouldn't see it, right?
 11 A. Yes.
 12 Q. When you were calculating your
 13 damages, did you account for those individuals
 14 when you calculated the effect on the business?
 15 A. I guess I don't know which
 16 individuals these are. I was kind of confused.
 17 Q. You said that people could get to
 18 your website by searching for products.
 19 A. Yes, going through the products. So
 20 searching on say Google and then going for the
 21 products and then going to our website without
 22 seeing any of the ads or have seen the ads.
 23 Q. Yes.
 24 A. Did I account for those people in
 25 calculating the damages?

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 2 Q. If they did specifically that --
 3 A. And nothing else.
 4 Q. They would not see the Google ads,
 5 right?
 6 A. Again, if it is not syndicated on the
 7 content network, and sometimes I'm not sure if
 8 eBay is part of the content network, but they
 9 definitely have ads that pop up below the search
 10 results, so I'm not sure if that's part of the
 11 Google content network, so that may be integrated
 12 into the site. I'm not sure.
 13 Q. But you said that you wouldn't get to
 14 eBay your --
 15 A. I guess the content ads can be
 16 syndicated to websites and end up into their
 17 search results, the ads can come up on the sides
 18 or below, and it may look like it appears it's
 19 coming from eBay, but it would be coming from
 20 Google.
 21 Q. I understand that. First of all, do
 22 you have any evidence that that occurred with
 23 these?
 24 A. No, I don't, but you are asking is
 25 there a possibility, and I am giving you an

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2 example.

3 Q. And you also said that the way to get
4 to the OneQuality-store on eBay is to go through
5 a product, not through the name, correct?

6 A. That is a way to get to the -- you
7 wouldn't go to -- you could end up at the eBay
8 store, but you first would go to the product
9 page.

10 Q. Okay. And people who did that,
11 unless they otherwise had searched on Google,
12 which we have already discussed, those people
13 wouldn't see the Google ads, right?

14 A. Yes. If they haven't already seen
15 the ads through the means we have discussed, then
16 presumably, if the ad isn't shown at that point,
17 which we are not sure how it would be, because
18 again we are not sure if eBay is part of the
19 content network, then they wouldn't have seen it.

20 Q. And you haven't accounted for that in
21 your damages calculation either, correct?

22 A. Again, I was accounting for the --
23 when I was doing the damages, I was looking at
24 the impact of the people who did see it and what
25 that did to our earnings which are quantifiable

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2 numbers which are very specific in profit, and
3 then applying an earnings multiple to it, which
4 makes it very easy to look at the quantifiable
5 differences between the strength of the company
6 previously and after.

7 Q. But you don't know the number of
8 people who saw it?

9 A. No, we don't.

10 Q. And you have said the difference in
11 value over the five-month period of time as a
12 result of the ads for the five-month period of
13 time is \$2.4 million?

14 A. Correct.

15 Q. But you have no idea how many people
16 saw those ads?

17 A. I mean I think you guys might have
18 supplied some sort of document, but it didn't
19 have impressions. It would be -- I would be
20 guessing, so I don't know specifically how many
21 people have seen them, no.

22 Q. But in any event, you didn't account
23 for that at all when you were preparing your
24 damages calculation?

25 A. No, I didn't.

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2 Q. Okay.

3 A. Again, I just wanted to emphasize
4 that to me obviously having more people is more
5 damaging, but just having a few people is very
6 damaging in itself, because it is a viral type of
7 an accusation. That is going to ruminate with --
8 be seen by a lot of people or heard, a word of
9 mouth type situation.

10 Q. Right, and, again, you have no
11 documentary evidence to support that statement,
12 correct?

13 A. Same thing with gravity. I don't
14 have documentary evidence either, but this seems
15 very likely to me.

16 Q. But it is just based on your opinion?

17 A. Yes. I am sure there would be a
18 number of people who would agree with that.

19 Q. And there are other ways that people
20 could get to your -- people could put in either
21 the Google search engine through products or
22 other search engines where Google doesn't run the
23 search engines, they could put in product names
24 and they could get to your eBay store without
25 ever seeing the Google ads unless they otherwise

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2 boom, gone. If you want examples, I can give
3 examples.

4 Q. But is it your testimony that the ads
5 that were on Google for five months that didn't
6 identify your company's name were of the same
7 nature as the examples that you have used?

8 A. Do I think it is -- it is just as --
9 the damage is caused by the fact that it is very
10 clear what they were doing and very clear who it
11 was directed at, right? You are Googling
12 yourself. You are Googling the reputation of the
13 site, and it comes up and says don't buy from
14 scam artists. Yes, I do. It is calling me a
15 criminal.

16 Q. So it is your -- is it your view that
17 Internet users who Google something and see
18 sponsored ads don't have the proper
19 sophistication to understand the nature of
20 sponsored ads?

21 A. That is not what I said. I don't
22 know -- I really didn't understand the question,
23 I guess, because you kind of stated that people
24 aren't sophisticated or something along those
25 lines, and I wasn't really following it.

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2 Q. My question is is it your view that
3 the impact of a sponsored ad which is identified
4 as a sponsored link is the same as, for example,
5 an indictment of an accounting firm?

6 A. Okay. So would it be I guess, when I
7 look at it, whether it is clearly an
8 advertisement or whether or not it wasn't an
9 advertisement, if someone wrote an article saying
10 I am a scam artist or someone purchased a
11 full-page ad in The New York Times saying I am a
12 scam artist I don't think it makes a difference.
13 Whether or not it is sponsored or clearly
14 sponsored or not, it is just as bad.

15 Q. So you don't distinguish between
16 something that is identified as a sponsored link
17 and something that appears, for example, as a
18 government indictment?

19 A. That is not what I said. I said that
20 a statement in a sponsored link or in a sponsored
21 advertisement it is just as defaming as if it
22 came from a non-sponsored published source. In
23 fact, it might actually be worse because they are
24 paying money to put it out there.

25 Q. As you understand, what is the motive

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2 to put a sponsored ad out there?

3 A. Corporate greed like clearly. I mean
4 from what I understand, I don't have the numbers
5 with regard to this, but it seems like Amazon
6 spends a lot of money driving traffic to a site
7 through affiliates. I don't know where their
8 marketing dollars are spent. It seems like a
9 large portion is spent on affiliates, and they
10 don't disclose it in their statements, and it is
11 very clear they are letting other people do their
12 dirty work.

13 Q. So your view is that the motive for
14 putting up the sponsored ads is corporate greed?

15 A. I guess that is not the best way to
16 phrase it. What I would say is that the motive
17 for not regulating their affiliates, letting them
18 run wild is corporate greed. They don't care how
19 the traffic shows up at their company. They
20 don't care if they operate outside the scope of
21 the agreement. They treat them -- they just care
22 if people buy stuff from them and if they show up
23 at their website, and it comes down to the fact
24 that it is a dollars game for them, and they
25 don't care about the negative externalities. The

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2 effects to their business. Such as BP with the
3 oil spill. A lot of companies are like this.
4 They don't care about the negative externalities
5 of their actions.

6 Q. Your company places sponsored ads,
7 right?

8 A. Yes. Correct.

9 Q. What is the purpose of your company
10 placing sponsored ads?

11 A. To attract customers.

12 Q. Because attracting customers will
13 make money for you, correct?

14 A. I mean I guess there is probably
15 other factors that are involved, but, you know,
16 selling to customers gives us the opportunity to
17 make money, yes, and it also gives us the
18 opportunity to build our brands and gain a loyal
19 customer.

20 Q. You have testified that your
21 reputation, the damage to your reputation is
22 permanent, correct?

23 A. Correct.

24 Q. Because of that, do you plan to close
25 down your business?

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 2 A. Because it is very clear to me that
 3 that would be the case.
 4 Q. But, other than that, you have no
 5 basis for that statement?
 6 A. I have a basis. I just said it.
 7 Q. But, beyond what you've said, you
 8 have no basis?
 9 A. Correct. At this time, I can't think
 10 of any.
 11 Q. Do you have any evidence that
 12 Amazon.com had ever heard of your company before
 13 your counsel contacted it?
 14 A. I don't know.
 15 Q. Paragraph 60, page 11, "Upon
 16 information and belief, defendant knew or should
 17 have known that its agent-affiliate Cutting Edge
 18 was engaged in the activities alleged in this
 19 complaint and that such activities served to
 20 confuse plaintiff's customers and potential
 21 customers and lured them to defendant's own
 22 website to make their purchases."
 23 What is the basis for your statement
 24 that Amazon.com should have known about Cutting
 25 Edge's actions?

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 2 "defendant's actions are willful."
 3 Do you see that statement?
 4 A. Yes.
 5 Q. What is the basis for saying
 6 Amazon.com's actions are willful?
 7 A. They willfully neglected this. We
 8 tried contacting them. If you are defaming
 9 someone and you are getting contacted by an
 10 attorney, you think you would respond.
 11 Q. Do you have any reason to believe
 12 that Cutting Edge and not Amazon placed these
 13 sponsored ads?
 14 A. Do I have any reason to believe that
 15 Cutting Edge and not Amazon?
 16 Q. No. I'm sorry. I got it backwards.
 17 Let me rephrase it. Do you have any reason to
 18 believe that Amazon, not Cutting Edge, placed
 19 these sponsored ads?
 20 A. Like I said, I thought when I first
 21 saw it that it was Amazon. Now that they are
 22 denying it and they have hired attorneys, it
 23 would be really ridiculous to continue to lie
 24 about it, so I would assume that they used their
 25 agent Cutting Edge.

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 2 A. Why should they have known?
 3 Q. What is your basis for saying they
 4 should have known?
 5 A. How many times did we try to contact
 6 Amazon and never got a response?
 7 Q. So your basis is that you tried to
 8 contact them and you didn't get a response?
 9 A. Well, we tried to contact them. I
 10 tried to contact them personally. I then tried
 11 to contact them -- I don't know -- we went
 12 through the whole process of e-mail versus phone
 13 calls, and then through my attorney and I know he
 14 was telling me he was trying to get in contact
 15 with them and they weren't responding.
 16 Q. So your point is they knew or should
 17 have known because you contacted them?
 18 A. And told them that I was being
 19 defamed, and I don't have any other information.
 20 There could be other information where this
 21 affiliate has operated outside the affiliate
 22 agreement that hasn't been produced. I don't
 23 know. Whether there is, I don't know.
 24 Q. Paragraph 62, it says, "Cutting Edge
 25 and defendant," defendant here is Amazon.com,

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 2 Q. My question is do you have any reason
 3 to believe that Amazon.com itself placed these
 4 ads knowing what you know now?
 5 A. Knowing what I know now, they did it
 6 through their affiliate agent Cutting Edge, so
 7 whether -- Amazon is just a bunch of papers,
 8 right? Whenever you have an issue with the
 9 company, there are employees that are acting, and
 10 there are documents that dictate how these
 11 employees will act on behalf of the company, and
 12 Cutting Edge wasn't -- well, quote unquote,
 13 according to Amazon wasn't an employee, but they
 14 were behaving with all the authority of Amazon to
 15 place these ads, so saying whether it was Amazon
 16 or not, I mean Cutting Edge certainly had the
 17 authority to do it as it appeared to us, and it
 18 surely looked like it was Amazon placing the ads.
 19 Q. When you say they were behaving with
 20 all the authority of Amazon in placing these ads,
 21 what is your basis for saying that?
 22 A. Because they were using Amazon's
 23 trademark, and you know that, if you are using
 24 another company's trademark like that in an
 25 advertisement on Google that, especially a big

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 2 A. Okay. So you want to know how they
 3 could have removed the ads.
 4 Q. I want to know how you said they were
 5 not beyond defendant's control.
 6 A. Okay. For one they could have
 7 contacted Google, because it was their trademark
 8 that was being used improperly. Also
 9 OneQuality.com, they are bidding on it, but
 10 Amazon was being used by someone who was
 11 supposedly not authorized, Amazon.com. So there
 12 is a difference between bidding on it in the
 13 background, but actually displaying it in the
 14 foreground. Maybe you don't understand. Anyway.
 15 Q. Well, why don't you explain that to
 16 me?
 17 A. Okay. You want me to explain it? So
 18 essentially they can bid on my trademark in terms
 19 of on their -- whoever it is, Cutting Edge's
 20 computer, can say let's bid on OneQuality.com,
 21 and they can also in regards to the foreground,
 22 they can display a trademark, but they displayed
 23 Amazon's trademark as it coming from Amazon.
 24 Q. Okay. So when you say -- it wasn't
 25 bidding on your trademark that was wrongful,

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 2 right?
 3 A. I guess --
 4 Q. It was the display of Amazon.com --
 5 A. Calling me a scammer.
 6 Q. -- in the ads that troubled you,
 7 right?
 8 A. The trademark, I mean they shouldn't
 9 be bidding on my trademark for one, but the
 10 biggest thing was the fact that they were calling
 11 me a scammer and using their name to defame me.
 12 Q. If they shouldn't be bidding on your
 13 trademark, why couldn't you call Google and
 14 complain about that?
 15 A. Again, I talked to my lawyer. That
 16 is how I made my decision by speaking to my
 17 attorney.
 18 Q. So, as a result of your conversation
 19 with your counsel, you decided not to call Google
 20 with respect to their bidding on your trademark?
 21 A. No, it was how to stop this from
 22 happening was to contact Amazon, because to us it
 23 appeared it was Amazon.
 24 Q. But why didn't you think it would be
 25 a good idea to try to contact Google?

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 2 A. I think we have gone over this
 3 before, but I can again, I talked to my attorney,
 4 and he told me --
 5 MR. DEHN: You can't testify as to
 6 what I told you.
 7 THE WITNESS: Okay.
 8 A. So because of my attorney's advice we
 9 went the route and we were trying to get in touch
 10 with Amazon to get them to pull it down.
 11 Q. Before you spoke to your attorney,
 12 did you think it would be a good idea to contact
 13 Google?
 14 A. Before I spoke to my attorney?
 15 Q. Yes.
 16 A. I was frantic. I was scared. I
 17 didn't know what to do, and I started calling. I
 18 called Amazon and I believe I e-mailed them
 19 before I spoke to them. Anyway, I don't recall
 20 what my mindset was before I spoke to him. It
 21 was like do I go Google, go Amazon. It was
 22 Amazon who was writing it, and to me that is what
 23 I would think.
 24 The person who is writing the
 25 defaming ad should be the one who you should be

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 2 talking to. If you are taking out an ad in The
 3 New York Times defaming me, I would call you. If
 4 you are saying this is written by your name, then
 5 it would be you who I contact.
 6 Q. And you wouldn't contact The New York
 7 Times?
 8 A. I don't think, to my knowledge, I
 9 don't know, I really don't know how it works. I
 10 would consult with an attorney because I don't
 11 know what I can tell The New York Times to do.
 12 I'm not an attorney.
 13 Q. And it didn't occur to you to contact
 14 Google? Let me rephrase that. You said that
 15 Google permitted them to bid on your keyword,
 16 correct?
 17 A. They were bidding on a keyword on
 18 Google AdWords, correct.
 19 Q. And you think they shouldn't be doing
 20 that, right?
 21 MR. DEHN: I'm sorry. Who is they?
 22 Q. You think that Google shouldn't be
 23 allowing Cutting Edge to bid on your keyword.
 24 Correct?
 25 A. Or Amazon via Cutting Edge.

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 2 I don't remember doing this valuation.
 3 Q. So here it could be --
 4 A. There might have been other factors
 5 that I considered into it that I hadn't thought
 6 of before. There are a number of things I can't
 7 think of, but I don't remember doing this.
 8 Q. And then you continued to say, "I
 9 didn't drop out of law school and work nonstop to
 10 be left with next to nothing. I should have
 11 gotten one-third of that or \$792,000 when you
 12 decided to shut down the company. However, I
 13 would be willing to take \$200,000 as a complete
 14 settlement for the websites, eBay accounts and
 15 intellectual property of OneQuality LLC."
 16 Do you see that?
 17 A. Yes.
 18 Q. So your statement there was you would
 19 be willing to take \$200,000 as a settlement for
 20 the websites, the eBay accounts and all of the
 21 intellectual property of OneQuality LLC, correct?
 22 A. Yes.
 23 Q. You can put this document aside. Did
 24 you collect documents for production in this
 25 action?

1 Maki - Confidential
 2 A. Yes.
 3 Q. At that point, did you make any
 4 effort to contact Cutting Edge to get them to
 5 take the ads down?
 6 A. Again, I talked to my attorney, and I
 7 was letting him handle everything. But we didn't
 8 contact them. No.
 9 Q. You did not?
 10 A. Yes. To my knowledge.
 11 Q. Why didn't you contact them?
 12 A. Again, I consulted with my attorney,
 13 and that is what I decided to do.
 14 Q. As a result of your conversation with
 15 your attorney you didn't contact Cutting Edge?
 16 A. Correct.
 17 Q. The document you have in front of
 18 you, Exhibit 10, have you seen this document
 19 before?
 20 A. If this is the same document, the
 21 production of documents, yes.
 22 Q. You have?
 23 A. Yes, I have.
 24 Q. What did you do to collect documents
 25 in response to this request?

1 Maki - Confidential
 2 A. Yes. I collected documents.
 3 Q. What did you do to collect those
 4 documents?
 5 A. I don't recall specifically. I went
 6 down the list and whatever he asked for, I got.
 7 MR. WANG: So I am going to mark as
 8 Exhibit 10 Amazon.com's first set of
 9 document requests to Sellify.
 10 (Defendant's Exhibit 10, Amazon.com's
 11 first set of document requests to Sellify,
 12 was so marked for identification.)
 13 Q. Before we deal with this document,
 14 when you learned, you said at some point you
 15 learned that the entity that had placed the
 16 sponsored ads was an entity called Cutting Edge,
 17 correct?
 18 A. Correct.
 19 Q. When you learned that, did you make
 20 any effort to contact Cutting Edge?
 21 A. When I learned after the ads had
 22 been -- what was the question?
 23 Q. At some point, you learned that the
 24 ads were being placed by a company called Cutting
 25 Edge, correct?

1 Maki - Confidential
 2 A. I just went down the list and
 3 whatever I had that was asked for, I produced it.
 4 Q. When did you do that?
 5 A. I don't recall specifically. I don't
 6 remember when I got this. I don't recall
 7 specifically.
 8 Q. Item 4 on page 3, "Documents
 9 sufficient to show on a monthly basis from the
 10 establishment of the www.OneQuality.com website
 11 to the present."
 12 Do you see that?
 13 A. Broken out on a monthly basis. Yes.
 14 Q. "B, the number of persons purchasing
 15 products through the website."
 16 Do you see that?
 17 A. Yes.
 18 Q. Do you see C, "the total dollar
 19 amount of all sales through the website"?
 20 A. Yes.
 21 Q. And D, "the total cost to the
 22 plaintiff of goods sold through the website"?
 23 A. Yes.
 24 Q. And E, "plaintiff's profit net of all
 25 costs and expenses from sales through the