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1                    BEFORE THE UNITED STATES DISTRICT COURT
                         FOR THE DISTRICT OF COLUMBIA
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3      UNITED STATES OF AMERICA, et al., .
                                         .  Case Number 20-cv-3010
4                Plaintiffs,             .
                                         .
5          vs.                           .
                                         .  Washington, D.C.
6      GOOGLE LLC,                       .  October 19, 2023
                                         .  9:32 a.m.
7                Defendant.              .
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9                     TRANSCRIPT OF BENCH TRIAL, DAY 25
                              (MORNING SESSION)
10                 BEFORE THE HONORABLE AMIT P. MEHTA
                        UNITED STATES DISTRICT JUDGE
11


12     APPEARANCES:

13     For DOJ Plaintiffs:          KENNETH DINTZER, ESQ.
                                    United States Department of Justice
14                                  1100 L Street Northwest
                                    Washington, D.C. 20005
15


16     For Plaintiffs State of
       Colorado and State of
17     Nebraska:                    WILLIAM F. CAVANAUGH, JR., ESQ.
                                    Patterson Belknap Webb & Tyler LLP
18                                  1133 Avenue of the Americas
                                    Suite 2200
19                                  New York, New York 10036

20     For Plaintiff State of
       New York:                    MICHAEL SCHWARTZ, ESQ.
21                                  Office of the Attorney General
                                    28 Liberty Street
22                                  20th Floor
                                    New York, New York 10005
23


24                          -- continued --

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1    APPEARANCES (CONTINUED):

2    For the Defendant:          JOHN SCHMIDTLEIN, ESQ.
                                 GLORIA MAIER, ESQ.
3                                Williams & Connolly LLP
                                 680 Maine Avenue Southwest
4                                Washington, D.C. 20024

5                                WENDY HUANG WASZMER, ESQ.
                                 Wilson Sonsini Goodrich & Rosati
6                                1301 Avenue of the Americas
                                 40th Floor
7                                New York, New York 10019

8

9    Official Court Reporter:    SARA A. WICK, RPR, CRR
                                 333 Constitution Avenue Northwest
10                               Room 4704-B
                                 Washington, D.C. 20001
11                               202-354-3284

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13   Transcript produced by computer-aided transcription.

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C O N T E N T S

TESTIMONY

EXHIBITS RECEIVED

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 1                    P R O C E E D I N G S

 2          (Call to order of the court.)

 3               COURTROOM DEPUTY:  Good morning, Your Honor.  This is

 4     Civil Action 20-3010, United States of America, et al., versus

 5     Google LLC.

 6          Kenneth Dintzer for the DOJ; William Cavanaugh on behalf of

 7     Plaintiff States; John Schmidtlein on behalf of Google.

 8               THE COURT:  All right.  Good morning, everyone.  I

 9     hope everybody is well.

10          All right.  Before we get started, why don't I just inquire

11     of Ms. Waszmer in terms of the one witness, Mr. Vallez, and

12     whether or not you have all been able to resolve the question.

13               MS. WASZMER:  Good morning, Your Honor.  With the help

14     of Microsoft counsel, we resolved that late last night.  So we

15     anticipate doing everything in open session.

16               THE COURT:  Okay.  Terrific.

17          So with that, I think Ms. Nylen, I believe it is, wished to

18     be heard.  But hopefully, that resolves the issue.

19               MS. NYLEN:  That does.

20               THE COURT:  Okay.  I appreciate that.

21          Are we ready to proceed this morning?

22               MR. CAVANAUGH:  We are, Your Honor.  Plaintiff States

23     call Jeff Hurst.

24          JEFFREY HURST, WITNESS FOR THE PLAINTIFFS, SWORN

25               THE COURT:  Mr. Hurst, welcome.
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1   THE WITNESS: Thank you.

2   DIRECT EXAMINATION

3   BY MR. CAVANAUGH:

4   Q.   Good morning, Mr. Hurst. Could you just please provide

5   your name, and where do you live?

6   A.   Jeffrey Alan Hurst, Austin, Texas.

7   Q.   All right. Mr. Hurst, did we meet last night over Zoom?

8   A.   We did.

9   Q.   Okay. For approximately how long?

10   A.   40 minutes.

11   Q.   Okay. Are you currently employed?

12   A.   I am not.

13   Q.   What was your last place of employment?

14   A.   Expedia Group.

15   Q.   Okay. What is Expedia Group?

16   A.   Expedia Group is a online travel agent, sells flights and

17   hotels and vacation rentals and cars and other parts of a trip

18   experience.

19   Q.   Does it have various brands?

20   A.   It does.

21   Q.   What are those brands?

22   A.   The primary three brands are expedia.com, Hotels.com, and

23   Vrbo. They operate probably on the order of a dozen other

24   brands around the world such as Travelocity, Orbitz, Hotwire,

25   several smaller ones.

1   Q.   Okay. Could you briefly provide the Court with your

2   educational background, and then we will talk about your work

3   history?

4   A.   I have my undergraduate degree from the University of Texas

5   and my master's from Stanford, master's in business.

6   Q.   Why don't you walk us through your professional experience.

7   A.   Coming out of undergraduate, I was at McKenzie in

8   San Francisco. Then I was at Levi Strauss in the strategy

9   group. I went to Stanford. After Stanford, I went back to

10   McKenzie for almost three years. From there, I joined HomeAway

11   in 2010 as a director of strategy.

12   Q.   What was HomeAway?

13   A.   HomeAway is a vacation rental marketplace that consisted

14   of, I think, 15 or 20 consumer-facing brands, largest among them

15   at the time VRBO, which subsequently became Vrbo.

16   And then I was at HomeAway until 2015 as the chief strategy

17   officer, when it was bought by Expedia Group, and I stayed at

18   Expedia Group as the chief commercial officer of HomeAway, then

19   the president of HomeAway, then the co-lead of marketing for

20   Expedia Group, and then the chief operating officer for Expedia

21   Group.

22   Q.   Okay. When did you become the chief operating officer?

23   A.   I think it would have been around June or July of '21.

24   Q.   And I think you said prior to that, you were co-lead of

25   marketing --

1   A.   Yes.

2   Q.   -- for Expedia Group? Roughly what time period was that?

3   A.   March of '20 would have been when I started, and then

4   transitioned from that role to the COO role.

5   Q.   And at Vrbo, you were the president. When did you become

6   president?

7   A.   I think it was November of '19.

8   Q.   And then prior to that, you were in various positions with

9   Vrbo?

10   A.   Yeah. I was the chief commercial officer for quite some

11   time, which managed our supply acquisition teams and what we

12   called retail, which was a general management function.

13   Q.   Okay. Does Expedia Group have what's known as inventory

14   partners?

15   A.   We do, providers who provide us hotel content or airline

16   content or cars or vacation rentals.

17   Q.   Okay. When a user searches on one of Expedia Group's

18   websites or apps., where do those query results come from?

19   A.   All of the results are via contracts we've signed with

20   those inventory providers. So it could be an individual

21   homeowner, all the way through a company like American Airlines

22   or Marriott.

23   Q.   And I should have asked you, what does Vrbo do?

24   A.   Vrbo is a online travel agent that specializes in vacation

25   rentals. And so it's where you would book a whole home for your

1   family as opposed to potentially a flight or a hotel.

2   THE COURT: I'm sorry. Did I hear you say Vrbo is a

3   member of the Expedia Group? In other words, it's one of the

4   subs?

5   THE WITNESS: It is. It was acquired in December of

6   2015.

7   THE COURT: Okay. Thank you.

8   BY MR. CAVANAUGH:

9   Q.   How does Expedia Group generate revenue?

10   A.   Primary source of revenue is commission by providing

11   bookings to their inventory partners.

12   Q.   Okay. Does Expedia generate revenue from noncommission

13   sources, such as advertising?

14   A.   Yes, I think a small portion.

15   Q.   Okay. How small a portion?

16   A.   Single-digit percentage.

17   Q.   Single digits in terms of overall revenue?

18   A.   In terms of overall Expedia's revenue, it would be a

19   single-digit percentage.

20   Q.   What group would handle the advertising that would appear

21   on an Expedia website?

22   A.   The internal team responsible for selling. It is called

23   media solutions.

24   Q.   Okay. Were you responsible for that group?

25   A.   I was not.

1   Q.   Within Expedia Group, are you familiar with the travel

2   leadership team?

3   A.   Yes.

4   Q.   Can you explain to the judge what that is?

5   A.   Travel leadership team is the top executive team at Expedia

6   Group. It consists of Barry Diller, the executive chairman,

7   Peter Kern, the CEO, and then direct reports of Peter Kern.

8   Q.   Were you a member of TLT?

9   A.   Starting in November of '19.

10   Q.   Okay. Did TLT meet regularly?

11   A.   Typically, weekly.

12   Q.   And what were the purpose of those meetings?

13   A.   Discuss weekly -- weekly results and upcoming priorities,

14   anything we needed to collaborate on.

15   Q.   And when did you start attending those weekly meetings?

16   A.   November of '20 -- sorry, November of '19.

17   Q.   That's when you became president of --

18   A.   President of Vrbo was the first time I was a standing

19   member of travel leadership team. I would have attended

20   sporadically prior to that, kind of at invitation.

21   Q.   When you attended TLT meetings, including various roles you

22   had at Vrbo, would you learn information about the other Expedia

23   Group brands?

24   A.   Yes.

25   Q.   How so?

1   A.   How so?

2   Q.   Yes.

3   A.   A large portion of that meeting and the offshoots of it,

4   which we'd call quarterly business reviews or our strategy and

5   planning process, are -- you know, in particular in advance of

6   2020 was to exchange pattern across the brands to see if there

7   was something happening at Hotels.com that could inform what we

8   did at Vrbo, or potentially something we had learned at Vrbo

9   that could inform what we did at Expedia Group.

10   Q.   I'm going to turn to a different topic.

11   Are you familiar with -- strike that.

12   Does Expedia Group engage in digital advertising?

13   A.   Yes, we do.

14   Q.   Okay. What types of digital advertising?

15   A.   We organized our -- I would say at this point most of the

16   advertising is probably digital in some form. The channels we

17   would have looked at, search engine marketing, which is

18   basically the text ads at the top of Google, and then we would

19   have called it meta providers. So that would be Trip Advisor or

20   Kayak or Google's meta product. We would have then had social

21   spend, mainly through meta but also -- meta brands but also

22   TikTok, that would have largely been -- all been digital.

23   We would have then had display advertising and affiliate

24   spend. Some of our branded media, so think like a traditional

25   commercial, would be digital in nature in that it might be

1   running on a streaming service, but we think of that a little

2   bit differently from the prior channels.

3   Q.   All right. Let's focus initially on search engine

4   advertising.

5   Would those be general search engines?

6   A.   Yes.

7   Q.   And in the United States, what would that encompass?

8   A.   It would have been Google. Technically, I think it would

9   have been Google and Bing, but the only thing we ever would have

10   talked about was Google.

11   Q.   Okay. So can you give me a sense of proportionality

12   between Google and Bing digital advertising?

13   A.   Something like 10 to 1, I think, yeah, something like 10 to

14   1 in favor of Google.

15   Q.   I think you mentioned this already. Did Expedia buy text

16   ads on Google?

17   A.   Yes.

18   Q.   Okay. In terms of the various channels you've mentioned,

19   how much did Expedia invest in search engine marketing compared

20   to the other marketing channels?

21   A.   Search engine marketing was the largest source of spend.

22   Q.   Okay. Why did Expedia Group do most of its spend on search

23   engine marketing?

24   A.   It's where the most travelers are, and so there isn't a

25   great substitute for the volume of high-intent customers you can

1   find on Google. And so when we think about it, you know,

2   someone is in Google and has actively typed a query which gives

3   you reason to believe they might be booking travel. And so it's

4   more valuable to us than a lot of the other opportunities.

5   Q.   Is that what you mean by "high intent"?

6   A.   Yes. So if you think of the ingredients for Expedia's site

7   to work, you basically need to know where they're going, how

8   many people are going, and the dates, and that query would

9   generally tell us where they're trying to go, either

10   conceptually, like a beach, or specifically, you know,

11   Washington, D.C.

12   Q.   Now, you also mentioned meta providers. Can you explain to

13   us what you mean by that?

14   A.   Yes. When we talk about meta, it's basically a price

15   comparison engine. Google hotels or Google travel, Google

16   flights, Trip Advisor, Skyscanner, Trivago, Kayak, you know.

17   There's -- Google is the largest among them, and then there

18   are several others that compete in the space. We would work

19   with probably all of them.

20   Q.   And would Expedia brands buy ads on those --

21   A.   Yes.

22   Q.   In those channels? Focusing on --

23   THE COURT: I'm sorry to interrupt. Just to be clear,

24   on those platforms, when you say you purchased ads, do you mean

25   digital ads, or does that also include paying to participate in

1   the price comparison process?

2   THE WITNESS: In the meta channels, it is primarily an

3   auction. And so you're paying to participate in the process.

4   I'm sure some of the meta products have a, call it, version of

5   ads that might feel like a display ad or something. But

6   overwhelmingly, the spend is to basically bid to have your price

7   show up for a specific hotel.

8   So in general, it would be something like the Hilton in

9   Washington, D.C., and then there might be five or six price

10   points below it, and different providers had bid to show up as

11   one of those price points.

12   THE COURT: All right. So if I -- I've used Kayak,

13   for example, and go to Kayak and Washington, D.C. hotels, and

14   results, and in order to appear on that results page, there's an

15   auction, and you participate in the auction, and if you are

16   displayed, you pay whatever auction price that you pay?

17   THE WITNESS: If you are clicked instead of displayed,

18   but yes.

19   BY MR. CAVANAUGH:

20   Q.   So let me just clarify. For the meta ads we were just

21   talking about, for Google, does that appear on the SERP?

22   A.   So it would -- I would say overwhelmingly for a travel

23   query, you would expect to see a Google meta product. It

24   wouldn't be unanimously, but overwhelmingly.

25   Q.   But to get to the ad, does the ad appear on a SERP?

1   A.   I think you would see, you know, a map with a bunch of

2   dots, maybe prices on the dots, and then you would see a handful

3   of properties. You wouldn't know it was an ad until you clicked

4   it and then you were in the Google travel experience, where you

5   would see more, you know -- essentially, more provider names.

6   Q.   Are you familiar with the term "SEM"?

7   THE COURT: Just to make sure I understand, on Google

8   specifically, what you're talking about, what we've called

9   verticals, in other words, there's sort of a vertical for

10   travel, and there are text ads that can appear and hotels in

11   D.C. there can be a text ad that appears at the top.

12   But you're talking about the verticals that would actually

13   have specific hotels and perhaps a map that accompanies the

14   search? Is that what you're referring to?

15   THE WITNESS: Yes. You would -- as a consumer, you

16   would mainly experience it as a map. That's how you would know

17   it was something different. Most travel queries will have like

18   four, it could be less, text ads. And then you will see a map.

19   The map will have a couple of hotels or products on the left,

20   dots. Clicking anything in the map takes you to the Google

21   Travel product.

22   Whereas, clicking the four links above it would take you to

23   usually a nonGoogle product. It could be Expedia or Booking or

24   Vrbo or anyone else that won that auction.

25   Then below the map, you would see what we call organic

1   results, which are the unpaid placements in Google.

2   THE COURT: I see. And your payment for a click would

3   come where in that --

4   THE WITNESS: The largest source of spend would be

5   those top four ads, where we're paying for a text link that

6   takes you into one of our brand properties.

7   And then not that far behind would be what we call that map

8   treatment or meta providers, where we would be paying, once you

9   clicked off the search engine results page on Google into the

10   Google product and then if you clicked one of the price points

11   that said Expedia or Hotels.com, that's when we would be

12   monetized.

13   THE COURT: Gotcha. Okay. Thank you for the

14   clarification.

15   BY MR. CAVANAUGH:

16   Q.   Are you familiar with the term "SEM"?

17   A.   Yes.

18   Q.   What does that stand for?

19   A.   Search engine marketing, which are typically the top four

20   text ads I referenced.

21   Q.   And are you familiar with the term "SEO"?

22   A.   Yes.

23   Q.   What does that reference?

24   A.   Search engine optimization, which is the term used for

25   getting more out of the organic, or free, results that were

1   below the map in the description I provided.

2   Q.   And if we see those terms in Expedia documents, that's what

3   those would be referring to?

4   A.   Yes. It's very common shorthand for us.

5   Q.   Can a consumer go directly to Expedia's website and enter

6   the same information they enter on Google?

7   A.   Could you elaborate?

8   Q.   Are there differences -- I saw a reference in your

9   deposition where you refer to Google saw things that OTAs

10   hadn't.

11   A.   So Google can respond to any query that you type into its

12   text box. I'm not aware of it ever saying sorry, we don't have

13   an idea what that is. And so you can put in, you know, "top

14   beach hotel in Miami" or "best place with a view in the

15   Caribbean" or a "family of five trying to go somewhere with a

16   Labradoodle." Any of those will return a result.

17   Expedia only works with structured queries. And so you

18   have to basically say where you're going, what dates you're

19   going, and how many people are going in order for it to return

20   results from its inventory of supply partners.

21   Whereas, Google's returning results from anything it has

22   scraped on the Internet. And so it has a much wider aperture

23   for what a valid query is than Expedia would or Vrbo.

24   Q.   Okay. Let me just go back to the ads for the meta product

25   in the immersives.

1   In your view, is there a difference between Google text ads

2   and those ads with respect to users' intent?

3   A.   Typically, I would say the meta or map product has more

4   intent, and at a very coarse level, it's because they gave us

5   more ingredients to fulfill one of our queries.

6   So for the Google meta product to be accurate, it also

7   needs location, dates, and ideally number of people in the

8   party.

9   Once you have those three things, they can pass it to us to

10   where we're providing a more accurate result, and it's typically

11   a signal someone's closer to a booking occasion.

12   Q.   And so the user has provided that information?

13   A.   Yes.

14   Q.   And in your view, is that reflecting the user's intent?

15   A.   Yes.

16   Q.   Does Expedia Group -- on what does Expedia Group spend more

17   money on, Google text ads or these ads in the immersives?

18   A.   Text ads.

19   Q.   By what proportion?

20   A.   It's probably on the order of, if you combined them,

21   two-thirds text/one-third meta, but that's an obviously dated

22   estimate.

23   Q.   You also mentioned purchase of ads on social media

24   platforms.

25   What kind of ads?

1   A.   On a social media platform, Facebook or Instagram, we're

2   more buying an audience. So we're trying to typically short

3   firm video in front of an audience that the social media

4   provider or platform has qualified as maybe being interested in

5   a type of travel.

6   So we basically pick a set of characteristics, and then we

7   run video ads in front of them, usually with the goal of getting

8   them to download our app. and engage with our product.

9   On the flip side, when we think about Google, we're more

10   buying a query. So someone has expressed intent, and we're

11   trying to buy them at that moment of intent to get them

12   interested in our product.

13   So the ads look a lot different, but even the theory behind

14   them is pretty different.

15   Q.   And what is that difference based on?

16   A.   It's based -- it's really based on intent and where someone

17   is in a purchase decision. We don't know in a social channel --

18   we would rarely know in a social channel if someone is trying to

19   book travel right now. We would know they have an affinity for

20   it. Maybe they're interacting with different groups or

21   different ads. But we wouldn't be as likely to know I'm trying

22   to go to Miami October 20th through 22nd, which is kind of the

23   most information you would know in Google and a pretty frequent

24   use case in Google.

25   Q.   Let me ask you about direct traffic to Expedia.

1   How does Expedia define direct traffic?

2   A.   It's basically anyone who goes directly to our URL, so

3   types it in or opens the app. from their mobile device.

4   Q.   So when a user navigates directly to expedia.com, is that

5   considered direct traffic?

6   A.   It is.

7   Q.   Okay. What about if they just put in "Expedia"?

8   A.   You know, it kind of depends on the browser. Someone could

9   start typing "Expedia" into most browsers, and depending on

10   whether they're on a phone or a desktop, so say Chrome on a

11   desktop probably gives you a dropdown list. One of them might

12   take you directly to expedia.com. One of them might be "search

13   Google for Exped," because you haven't finished it, and then

14   there would be other options. If you click on something other

15   than direct to expedia.com, it will put you frequently in the

16   Google search results page, which could have a link directly to

17   Expedia that's free or could have a paid link, because our

18   competitors or we may be bidding on that term on Google.

19   Q.   When a -- when a user clicks on one of the organic links,

20   is that considered direct traffic?

21   A.   No. We would characterize that as SEO traffic for our

22   internal tracking.

23   Q.   When you were at Expedia, was Expedia able to grow its

24   direct channel?

25   A.   Yes, it grew in absolute terms. I don't think it grew a

1   lot in relative terms. It would have varied a little bit by

2   brand property.

3   Q.   Okay. How would that vary?

4   A.   We had, I think, towards the end of my tenure more luck

5   getting people direct into Vrbo than we had on expedia.com or

6   Hotels.com, but none of them were, I'd say, really meaningful

7   shifts. Like, it wasn't as though the mix shifted five or ten

8   points. I think single digits was considered a very big

9   success, and I think on Vrbo, especially moving to ad, we might

10   have achieved single digits.

11   Q.   Did any increases that you observed in direct traffic

12   impact what Expedia had to spend on search engine marketing?

13   A.   No, I don't think so. The use case maybe. If people are

14   searching for our brand more often, it's a little cheaper to buy

15   it on Google, but in general, I think the amount we were paying

16   Google rose pretty consistently with how the business was

17   performing.

18   I don't recall meetings where we were so enthusiastic about

19   our direct traffic that we were, oh, we can spend less on Google

20   now. That wasn't really the trade-off.

21   Q.   Did you consider advertising on Google as essential?

22   A.   Yes.

23   Q.   Why?

24   A.   It's where all the intent is. There's not a -- there's not

25   an opportunity to go buy that many high-intent consumers to

1   introduce them to your product anywhere else.

2   MR. CAVANAUGH: Your Honor, may I approach? We have a

3   few documents.

4   BY MR. CAVANAUGH:

5   Q.   Mr. Hurst, did there come a time when Google introduced a

6   vacation rental unit to appear on its SERP?

7   A.   Did there come a time when Google introduced a vacation

8   rental unit on SERP? Yes.

9   Q.   Okay. Let me ask you to turn to PSXD07, a demonstrative.

10   This is a search one of my colleagues conducted on "vacation

11   rental Saratoga Springs, New York."

12   And we see at the top, is that a Vrbo text ad?

13   A.   Yes, it is.

14   Q.   Okay. Would Vrbo have paid more for that top spot?

15   A.   Yes. Google's generally a second-price auction. So each

16   spot higher in the order is more expensive.

17   Q.   And if we can scroll down, so you have, I think, four --

18   Peter, if you could go back up a little bit.

19   You have three text ads, and then what appears below that?

20   A.   Below the three text ads is the -- what we would call the

21   vacation rentals meta product.

22   Q.   Okay. And then if we could just go below that, are these

23   the organic links?

24   A.   Yes.

25   Q.   All right. And is Vrbo the top --

1   A.   Yes, we are.

2   Q.   Okay. Now, if you had anticipated -- would you anticipate

3   that for something like this type of search, that Vrbo would

4   come near the top in the organic links?

5   A.   I would.

6   Q.   Why?

7   A.   We -- in particular -- I haven't been to Saratoga Springs,

8   New York, but in general for leisure destinations, Vrbo

9   typically has a high SEO rank because we have a lot of inventory

10   and have a long-established business.

11   Now, it would have been more the case that we were at the

12   top earlier in my tenure, you know. We are -- Vrbo is less

13   frequently there today than they were years ago.

14   Q.   And why is that?

15   A.   I don't exactly know.

16   Q.   Okay. Was there more competition?

17   A.   I think there's -- there's certainly more competition from

18   Airbnb than there would have been a decade ago. I think there

19   are, you know, maybe more people trying to optimize for those

20   results, but I'm not sure. I just know that what used to be a

21   larger portion of our traffic became smaller.

22   Q.   If you anticipated that you were going to be at or near the

23   top of the organic links, why then buy a text ad?

24   A.   So if the organic links were on top, you wouldn't. You

25   have to basically -- think of like the Google universe as

1   finite. A certain number of people are going to enter this

2   search term or any other. And you're basically doing two part

3   science/one part art of how often are they going to make it all

4   the way down the page to your organic results. And depending on

5   your calculus there, you decide what position you want to be

6   buying on top to increase the likelihood that people come to

7   your property.

8   And so you're thinking about the return on the dollar spent

9   and the incrementality of that dollar spent as to whether you're

10   going to buy position 1, 2, or 3, and that's over and over.

11   The same would go for the meta product.

12   Q.   So let's go to the -- if we could scroll back up to the

13   vacation rental unit.

14   Did Vrbo -- at one time, did Vrbo appear in the vacation

15   rental unit?

16   A.   Early in the product's development, we would have been most

17   of the inventory in the unit.

18   Q.   Did there come a time when Vrbo withdrew from the vacation

19   rental unit?

20   A.   Yes. That was in 2020.

21   Q.   And why did it withdraw?

22   A.   So we were -- we had collaborated, we had partnered with

23   Google quite a bit on the development of it with the premise,

24   you know, from our account team at Google that this was going to

25   be a new highly invested placement, it was going to be a big

1   opportunity for us to capture, you know, more Google share, and

2   it was going to be free at the beginning. And so we were

3   working with them to build this.

4   As we build it, we're not getting quite the results we were

5   hoping for out of it, and at the same time, they started talking

6   about how they were going to introduce paid features within it.

7   We, based a little bit on the other brands' experience with

8   the hotels product and the flights product, came to the

9   conclusion that it was not going to be in our best interest to

10   help build a product that was essentially going to cannibalize

11   what was below the page.

12   And so if every time Google introduces something paid,

13   fewer people end up getting to the organic results, it's not

14   always obvious that helping them to build that out is in your

15   best interest, because you've got to think about the alternative

16   for a user's click.

17   Q.   You mentioned other experiences in Hotel. Can you explain

18   to the Court what you are referencing?

19   A.   Both the Google Hotel product, which looks similar to this

20   in a search experience, but separately the Google Flight

21   product, which is kind of all of the flight results.

22   Q.   If you could turn to in your binder PSXD08.

23   My colleague did a search for "where to stay in Buffalo,"

24   to which I would probably say New York City, but the -- if we

25   look at this, Vrbo again has a text ad at the top?

1   A.   Yeah.

2   Q.   Now, would a search like this, would this embrace hotels as

3   well?

4   A.   Yes. This is a more generic search term, so kind of -- I

5   would think of it as all lodging is relevant. And you can

6   bid -- vacation rentals could bid on hotels or vice versa, but

7   you're typically trying to match the intent that someone typed

8   into the search browser.

9   Q.   And if we can scroll down to "where to stay/Buffalo, New

10   York," is this the hotel unit? Is this Google's hotel unit?

11   A.   Yes, it is. On the prior one, it said "properties" at the

12   bottom, and on this one, it says "hotels." That's kind of the

13   distinction you would use to tell which one you're in.

14   Q.   You were referring back to the prior, PSX07?

15   A.   07 says "properties" at the bottom of it, and this one

16   says "hotels."

17   Q.   Can Expedia appear in the hotel unit?

18   A.   We wouldn't appear on the first page, but if you clicked

19   into it, the second page could have us as price points.

20   Q.   Okay. And why couldn't you appear on the first page?

21   A.   I don't think we're eligible to.

22   Q.   Okay. Would the same thing be true with respect to Vrbo in

23   the hotels unit?

24   A.   In the hotels unit, yes. And so we're kind of like --

25   we're a price point behind the lodging provider, you know, one

1   of these three options. We're a price point behind it. We're

2   not on the first page.

3   Q.   Let's turn to a related topic. Are you familiar with the

4   term "customer acquisition cost"?

5   A.   Yes.

6   Q.   Okay. What does that mean in your business?

7   A.   Customer acquisition cost is the amount of money you're

8   spending to acquire a new customer. So there's a return on

9   spend in incrementality. It's talking more about your

10   incrementality.

11   Q.   If you could turn to PSX0113, and if you could identify

12   this document for us.

13   A.   This is an e-mail I sent to our executive chairman shortly

14   after I became president of Vrbo in December of 2019.

15   MR. CAVANAUGH: Your Honor, we would move 113 into

16   evidence.

17   MS. MAIER: No objection.

18   THE COURT: It will be admitted.

19   (Exhibit PSX0113 received into evidence.)

20   BY MR. CAVANAUGH:

21   Q.   There's a chart on the second page of this. If you could

22   explain to the Court -- did you prepare this chart?

23   A.   Yes.

24   Q.   Okay. What was the purpose of it, and what is it showing?

25   A.   Well, the purpose of it, it wasn't actually for Barry. I

1   prepared this chart for Google, shared it with Google, and then

2   subsequently shared it with Barry.

3   The purpose of it in the context of, I guess, both the

4   original conversation and with Barry was to describe whether or

5   not our partnership with Google was actually serving our

6   interests.

7   And so this is a Vrbo-specific set of data that is

8   describing how many visits we got from the combination of text

9   ads or SEM at the top of Google results and SEO or free

10   placements near the bottom of Google results.

11   What we found in going through this was we had basically

12   seen a flat amount of volume from Google over a greater than

13   four-year period. While over that four-year period, we went to

14   spending about ten times as much to get the same thing as we did

15   originally in 2015.

16   We made a very large and -- very large investment, people

17   wise and money wise, with Google. And I don't think we actually

18   ended up getting anything incremental in return.

19   This was basically a preamble to the decision not to

20   partner going forward on the map product, because we thought it

21   had the potential to exacerbate this trend.

22   Q.   And so if we look at this in 2016, Vrbo was spending $43

23   million and getting 507 million visits? Is that the right way

24   to read this?

25   A.   That is the right way to read it.

1   Q.   All right. And then four years later, you have fewer

2   visits and a spend of $272 million?

3   A.   I think the bullet points in the e-mail are probably the

4   more accurate apples to apples.

5   Q.   Okay. Why don't we go back to that.

6   A.   2019, the bar chart is year to date. The estimate for the

7   full year at the time we prepared this was that we were going to

8   spend 290 million for a little bit less than 500 million.

9   And these data points also include an estimate for 2015.

10   We did not have as robust a data set there. We know we spent 21

11   million, but we didn't have an exact visits number.

12   So I think of the most -- kind of the beginning and ending

13   of the story from this standpoint is 21 million for 500 million

14   visits versus $290 million for less than 500 million visits.

15   Q.   Now, with respect to the other brands --

16   THE COURT: So to what do you attribute the trend?

17   THE WITNESS: So think about the -- over this time

18   horizon, there's a couple of dynamics. One is, the Google

19   search results page itself is changing. And so more and more

20   inventory and real estate are going to those text ads at the

21   top. Maybe there used to be -- I don't remember exactly in

22   2015. At some point, they were on the right, not the top. So

23   the stuff on the right shifts to the top. Maybe it's one ad or

24   two ads become four ads.

25   Then as you introduce the map, you're now in a place to

1   where, in particular on a mobile device, you may scroll three

2   times before you get to what we called SEO opportunity, an SEO

3   link. And so as the composition of the page changes, there's

4   less traffic going to SEO.

5   Separately, as auction participants increase, then you have

6   both more links and a higher cost within the SEM structure

7   above.

8   In this time horizon, the meta product's not really

9   included as a source of spend or traffic, but it would have been

10   potentially starting to capture why there's fewer SEO visits

11   below it.

12   THE COURT: Thank you.

13   BY MR. CAVANAUGH:

14   Q.   To follow up on a point you just made, the numbers we're

15   looking at for 2019, did that include clicks from the vacation

16   rental -- your ads on a vacation rental meta products?

17   A.   No. We would have characterized that as meta channel as

18   opposed to as SEO.

19   Q.   Now, if we had included that, would it materially change

20   these numbers?

21   A.   No. It was de minimis. It would have been no incremental

22   spend and marginal incremental visits.

23   Q.   Okay. What conclusions did you draw from this analysis?

24   A.   That we had spent a heck of a lot of money on Google for no

25   incremental business value.

1   Q.   Okay.   Did you discuss this with Google?

2   A.   I did.

3   Q.   Okay.   In what context?

4   A.   We had a meeting at Phocuswright a month or two prior to

5   this e-mail -- I think Phocuswright is in November, so it's

6   probably November -- about kind of -- we had meetings with

7   Google all the time. So we had a partnership meeting. This one

8   had a standard agenda of how are things going and then also what

9   our plans were for participation in their vacation rental map

10   product or meta product.

11   I led the meeting by basically describing to them, in my

12   new role as president, I was concerned that our robust

13   partnership with Google had produced these results. We hadn't

14   really looked at this way. All of the Google dialogue centers

15   around your paid conversation. There's not really a mechanism

16   to talk about unpaid or pay changes. There's a mechanism to

17   talk about how you spend more in text ads and how you spend more

18   on meta or how you spend more in YouTube or how you spend more

19   in any other Google product.

20   And I brought it up with the group, you know. Kind of

21   looks of awkward who is going to say something next. And it was

22   hey, let's take this separately under consideration and move on

23   to the agenda, which was frustrating.

24   And then separately, the meeting notes they published made

25   no reference to the first ten minutes of my conversation with

1   the group on this topic, which was exceedingly frustrating.

2   And coming out of that, reached out to the account manager,

3   why is this not a topic? Oh, they're in my detailed notes,

4   we're going to get back to you.

5   I just felt like I was stuck in the Google attorney crack

6   and was unlikely to come out, and that's where I, you know, kind

7   of decided -- that's when I, which was different than we,

8   thought we were no longer going to participate in that product,

9   but we needed to find a different way to partner with Google.

10   Q.   In your chart, this is just Vrbo spend on Google; correct?

11   A.   This is.

12   Q.   If we were to look at the spend for Expedia brands as a

13   whole, would it be --

14   A.   Much larger.

15   Q.   Okay. Based on your work at Expedia brands when you were

16   co-lead of marketing and COO, were the other brands continuing

17   to invest heavily in Google Ads?

18   A.   Yes.

19   Q.   Okay. Were they experiencing the same things you were

20   experiencing?

21   A.   I think the same overall dynamic, although they were

22   further along in the evolution in that the hotel meta product

23   was very well-established. You would expect it to always be on

24   the page. Whereas, the vacation rental product in this time was

25   more in trial. And so I think we were earlier in the curve of

1   seeing the search results page change to four links and a map.

2   Whereas, they were already past that point in the curve. It was

3   kind of always four links and a map.

4   Q.   If you could look at PSX00112.

5   And could you identify this document?

6   A.   This is the follow-on e-mail thread from the meeting at

7   Phocuswright with the Google account team.

8   Q.   Let me just go back to what we were just discussing. We

9   were talking about the other Expedia brands. After 2019 and

10   after you did this analysis, did Vrbo keep spending on text ads?

11   A.   Yes.

12   Q.   Why?

13   A.   It was the -- there's not a replacement for the volume and

14   intent of consumers.

15   Q.   So let's go back to 112. I think before I interrupted you

16   you were describing this.

17   THE COURT: Can I interrupt and ask another question.

18   Hypothesize with me, if you would, a world in which there

19   was a search engine that was as equally -- equal competitor to

20   Google. What's that world look like for online travel companies

21   like Expedia?

22   THE WITNESS: If there were another, say, equal-sized

23   general search engine?

24   THE COURT: Right.

25   THE WITNESS: I think you would -- so what it would

1   mean for us internally is that we wouldn't spend all of our time

2   in general search focused on what Google says we should focus

3   on, you know, their definition of a consumer journey, their

4   definition of new data products, their definition. We have to

5   be very present there and, in many cases, kind of following cue

6   of what they think the next thing is.

7   In a world where there were two equals, we would have more

8   opportunity to, say, partner with the alternative on a different

9   way to approach text ads or a different treatment or, you know,

10   more likely highlighting different parts of a value proposition.

11   So I think the -- my understanding of what really makes

12   Google thrive is they commoditize a category. They turn it into

13   a price point. And if you can turn something into a price

14   point, it's very easy to create an auction, because the auction

15   is just rewarding the next commodity that pays more.

16   In a world where there's two doing different things, you

17   might have an opportunity in our case to highlight a loyalty

18   program or to highlight customer service or to make more of the

19   experience about the thing that you sell that is unique beyond

20   having a low price.

21   And I think you -- it's a reasonable but not perfect

22   analogy to think of, you know -- not too far ago, you said you

23   were a Kayak user -- that Kayak and Trip Advisor and Trivago and

24   Skyscanner were kind of known for different things in the meta

25   space, even though they had a functionally similar problem they

1   were solving. And you could have seen that same type of

2   evolution with other general search engines, where maybe one is

3   more focused on reviews and trust, as Trip Advisor would have

4   been, and one may be more focused on price, like a Google or a

5   Trivago in that case.

6   So it's hard to know exactly how it would have played out,

7   but I think you would have had more consumer differentiation and

8   more innovation at the OTA and provider level to compete within

9   those search results.

10   THE COURT: Thank you.

11   BY MR. CAVANAUGH:

12   Q.   Just to follow up on the judge's question, you've testified

13   about concerns you had regarding the vacation rental unit and

14   the hotel unit created by Google.

15   In the hypothetical world the judge was just describing,

16   does an alternative give you options?

17   A.   Yes.

18   Q.   How so?

19   A.   It -- you don't end up -- it gives you options in that

20   there's a different type of partnership that could exist with

21   two, three, or four equal players in terms of them having an

22   incentive to build something with you and you having an

23   incentive to try something different.

24   And that collaboration is rare with a kind of one-sided

25   partnership as I experienced with Google, where you're more

1   frequently listening to what they say you need to do as opposed

2   to having an open audience around what you could do together.

3   Q.   Let's go back to 112. Could you just describe what this

4   is.

5   A.   So you probably need to read from the back forward. The

6   second-to-last page is an e-mail from one of the participants on

7   the Google account management team that is summarizing the

8   meeting where I led by providing the data set referenced in the

9   e-mail we just looked at for Barry Diller.

10   Q.   Let me just stop you so we can get this into evidence.

11   Are these e-mails that you sent to Google and Google

12   responded to you?

13   A.   Google sent the first e-mail as a summary of the meeting we

14   had at Phocuswright, and then I think I forward it to our

15   account lead, which is page 4 in this e-mail chain. No, sorry,

16   it's page 3 in the e-mail chain.

17   So we had an e-mail summarizing the meeting from Tony.

18   Then we had an e-mail that is adding additional context from our

19   account manager, Shaun, who I don't think was personally in the

20   meeting, and then we had my reply expressing frustration with

21   why the Google notes did not reference what I thought was the

22   most important part of the meeting.

23   MR. CAVANAUGH: Your Honor, we would move 112 into

24   evidence.

25   MS. MAIER: No objection.

1   THE COURT: It will be admitted.

2   (Exhibit PSX112 received into evidence.)

3   BY MR. CAVANAUGH:

4   Q.   Let's turn to Bates page 1407. It's in the bottom

5   right-hand corner, the number, the second page of the document.

6   This is your response to Shaun.

7   You say, "The summary notes miss the main point of emphasis

8   on my end from the discussion. Basically, since 2015, Vrbo is

9   spending 10X as much with Google (entire entity) and receiving

10   fewer visits than in 2015 (including SEO). During the same time

11   frame, our marketplace (and revenue) is up about 3X."

12   Could you explain to the Court what the source of your

13   dissatisfaction was?

14   A.   So in a time horizon where our business -- you know, think

15   about revenue grew three times, our spend with Google grew ten

16   times. And given that the volume of traffic we were getting

17   from Google had basically been flat, then our 3X growth is not

18   actually aided that much by Google, even though we're spending

19   ten times as much money with them.

20   And so, you know, in particular in the context of them

21   asking to support a paid product that was another means to

22   monetize our relationship, it felt quite unyielding that this

23   was my experience and the next ask was may I have another.

24   Q.   Did Shaun respond to you?

25   A.   Yes. That's the lower right, ending in 7. "All captured

1   in more detailed notes I received."

2   Q.   If we look at the e-mail above, he states, "At a high

3   level, agree on the cost per visit increases, but we've also

4   substantially increased revenue per visit during that same time

5   frame, which obfuscates a bit of how unprofitable, I believe,

6   the program was in 2015."

7   What was your reaction to this statement?

8   A.   This was frustrating.

9   Q.   Why?

10   A.   So the use of we, as in Google and Vrbo, had substantially

11   increased revenue per visit was a falsehood to me.

12   We, Vrbo, had changed our business model, largely

13   influenced by the need to be more competitive on Google. So we

14   had changed our business model in order to charge a traveler

15   service fee and become a commission site. Previously, we were a

16   subscription site. So kind of a flat all you can use, paid by

17   the homeowner.

18   And so us having grown 3X during this time horizon, you

19   know, would have happened with or without Google's partnership.

20   It was influenced by our need to spend more on Google, but it

21   would have happened regardless.

22   And so the point that we got more profitable, so they

23   deserved more, was meritless to me. They don't just empirically

24   deserve to make more money when we make more money and, in

25   particular, not ten times as much money when we make three times

1   as much money.

2   And so it was a -- this was a challenge. I think it was

3   within a few months after this Shaun was, not at request,

4   removed from the account. We kind of did not work with him

5   again.

6   Q.   Could Expedia brands forego advertising on Google?

7   A.   No.

8   Q.   Why not?

9   A.   It wouldn't be consistent with the way we create value for

10   our marketplace and shareholders by growing our business.

11   Growing without Google from where we start is not -- I don't

12   think it's mathematically possible.

13   Q.   Could Expedia brands reasonably shift ad spend from Google

14   to Bing?

15   A.   We could, you know -- at a 10-to-1 ratio, and let's assume

16   maybe we've got a similar share in each, I don't think there is

17   a way to shift enough spend to Bing to make up for that gap.

18   I'm actually very confident there is not a way to spend that

19   much money in Bing and find all the travelers you had in Google

20   by using one instead of the other.

21   MR. CAVANAUGH: Nothing further, Your Honor. I pass

22   the witness.

23   THE COURT: All right. I take it that DOJ has no

24   questions of this witness?

25   MS. BELLSHAW: No, Your Honor. Thank you.

1   MS. MAIER: Good morning, Your Honor. Gloria Maier

2   for Google.

3   THE COURT: Ms. Maier.

4   CROSS-EXAMINATION

5   BY MS. MAIER:

6   Q.   Good morning, Mr. Hurst.

7   A.   Good morning. We've met before.

8   Q.   Yes. It's good to meet you in person. We met previously

9   at your deposition. I guess that was a year and a half ago now.

10   A.   That seems right.

11   Q.   Yes. So, Expedia Group we've talked about a bit today.

12   Expedia Group is a publicly traded company; correct?

13   A.   Yes.

14   Q.   And I think you mentioned Expedia Group has had 3X growth?

15   A.   No. Vrbo, in the time horizon described in that e-mail,

16   had experienced 3X growth.

17   Q.   Okay. Expedia Group also has experienced growth over the

18   past -- let's say from 2014 to the present?

19   A.   Yes.

20   Q.   And we -- so I think is it fair to say that from 2014 to

21   2018, Expedia Group's revenues doubled?

22   A.   Not knowing specifically, it is certainly fair to say it

23   grew.

24   Q.   Okay. And, you know, we looked at an exhibit previously

25   together. I'm going to show that one to you again today.

1   A.   Great.

2   MS. MAIER: May I approach?

3   THE COURT: Of course.

4   BY MS. MAIER:

5   Q.   All right. So Mr. Hurst, if you could turn to DX0273 in

6   that binder.

7   A.   Yes.

8   Q.   This is an Expedia Group presentation from February of

9   2019.

10   This has been admitted into evidence, Your Honor.

11   So Mr. Hurst, Expedia posts information like this on its

12   investors website; correct?

13   A.   Yes.

14   THE COURT: Is this something we can put up on the

15   screen?

16   MS. MAIER: Yes. We can put up DX0273.

17   BY MS. MAIER:

18   Q.   So Mr. Hurst, to go back to my question, Expedia posts this

19   kind of information on their investors website?

20   A.   Yes.

21   Q.   So Expedia, as a publicly traded company, has a page that

22   has all of their SEC filings, their earnings statements,

23   financial presentations like this?

24   A.   Yeah. It would typically be updated quarterly or ad hoc

25   for specific events.

1   Q.   Okay. So this is one of those presentations. And if you

2   look at slide 9 of this presentation, this shows certain metrics

3   for the Expedia Group as a whole, including revenue and gross

4   bookings.

5   Do you see that?

6   A.   I do.

7   Q.   And so for revenue, Expedia Group's revenue doubled from

8   2014 to 2018?

9   A.   Yes.

10   Q.   And so did Expedia Group's gross bookings?

11   A.   Yes. It's a little bit win dated. So from '15 to '16, we

12   would have added Vrbo to the group. So that's why it kind of

13   pops more in that year, because there's an acquisition. But

14   yes.

15   Q.   And so these charts cover most of the time period that's

16   reflected in the e-mail that you were discussing with

17   Mr. Cavanaugh; correct?

18   A.   One year earlier in these charts, but most of the time

19   period, yes.

20   Q.   And the e-mail that you were discussing goes through 2019;

21   correct?

22   A.   I think through the third quarter of 2019.

23   Q.   And it's true that Expedia's revenues were also higher in

24   2019 than they were in 2018?

25   A.   Yes.

1   Q.   So notwithstanding the information that you set forth in

2   that e-mail that went to Google, 2014 to 2019 was a period of

3   growth for the Expedia Group?

4   A.   Yes.

5   Q.   And I think we've discussed today that Vrbo is the vacation

6   rental brand of the Expedia Group; correct?

7   A.   Correct.

8   Q.   And you mentioned that during this period of time, Vrbo in

9   particular faced increasing competition from Airbnb?

10   A.   Yes.

11   Q.   And when it comes to getting traffic through search

12   engines, Vrbo prefers to get free clicks from the organic

13   results; correct?

14   A.   We prefer SEO to SEM, yes.

15   Q.   And so by SEO, you mean --

16   A.   Free below, you know, below the paid ads, yes.

17   Q.   And those are more valuable because it's a higher-profit

18   click to Vrbo?

19   A.   Yeah, the -- it's not necessarily a more valuable shopper

20   so much as it is that we didn't pay to bring them in.

21   Q.   And the basic -- am I right that the basic concern

22   expressed in your e-mail was that Vrbo was getting less free

23   traffic from Google's organic results from that period of time,

24   and more traffic from Google was coming through the ads?

25   A.   There would have been two dynamics. So that dynamic would

1   have been true. But the other dynamic would have been what it

2   cost to get the ads out of the paid environment. So there's

3   shift from unpaid to paid, and then there's increase in cost

4   within paid.

5   Q.   So Vrbo was buying a lot more ads in 2019 than it was in

6   2015?

7   A.   We were definitely spending more. Now, I think the cost

8   per click would have gone up. So there wouldn't have been a

9   linear relationship. So buying more ads and spending even more.

10   Q.   But part of the dynamic was buying more ads?

11   A.   Yes.

12   Q.   And so when it comes -- I think with Mr. Cavanaugh you

13   discussed how Vrbo may appear on the Google search results page

14   and where Vrbo may appear in the organic listings.

15   Is it fair to say that when it comes to those organic

16   results, Vrbo does not necessarily show up first?

17   A.   Yes, it's fair to say we don't always show up first.

18   Q.   And there are a lot of other websites that may appear above

19   Vrbo in those organic results?

20   A.   Yes.

21   Q.   And Google has ranking systems that determine order of

22   those organic search results?

23   A.   I presume so. I would never have been given access to

24   them.

25   Q.   Bu do you know generally that things like relevance to the

1 query matters to where you would show up in those results?

2 A.   Yes.

3 Q.   And also quality factors, like site speed and landing page

4 quality?

5 A.   Yes.

6 Q.   And so Vrbo essentially has to compete to show up at a

7 higher position in those organic results?

8 A.   Yes.

9 Q.   And I want to pull up a demonstrative now, it's been marked

10 for identification DXD18, at page 2. I believe we have copies

11 that we can hand out, but we will also put that on the screen.

12   Your Honor, may I approach?

13   THE COURT: You may.

14   THE WITNESS: Thank you.

15   BY MS. MAIER:

16 Q.   So Mr. Cavanaugh showed you some example search results

17 page. This is another such example.

18   You will agree that the search results page is dynamic? It

19 doesn't necessarily look the same, depending upon where you're

20 searching, but it's dynamic?

21 A.   I think it's dynamic on dimensions other than just the

22 term. I think it also takes into account the user's behavior,

23 but I'm not sure.

24 Q.   And so in this particular example, this is a search for

25 "vacation rentals, Boulder, Colorado." And in this particular

1   example, you see that Google's vacation rental module appears on

2   the top; correct?

3   A.   Yes.

4   Q.   This particular sample does not include ads above it;

5   right?

6   A.   Correct.

7   Q.   And then below it, you see that there are a number of

8   organic results; right?

9   A.   Yes.

10   Q.   And so in this example, it includes -- I see six here. So

11   there are five results that appear above the Vrbo result in this

12   example?

13   A.   Yes.

14   Q.   And so this one includes Kayak, HomeToGo, FlipKey, Trip

15   Advisor, and Airbnb; right?

16   A.   Yes.

17   Q.   And so when it comes from Vrbo's perspective, Vrbo is

18   competing for user attention with everything on this page;

19   correct?

20   A.   Yes.

21   Q.   And that includes the vacation rentals unit at the top of

22   the page?

23   A.   It does.

24   Q.   And then if we can go to the next page of the

25   demonstrative, marked as page 3, Mr. Hurst, this is another

1   example SERP. This one is for "places to stay in Asheville,

2   North Carolina."

3   Do you see that?

4   A.   It is.

5   Q.   And so for this one, there are two ads at the top.

6   Do you see that?

7   A.   I do.

8   Q.   The top one is for Trip Advisor; the one below it is for

9   Vrbo?

10   A.   Yes.

11   Q.   And in this instance, Vrbo has chosen to bid for that ad on

12   Google's SERP?

13   A.   Yes.

14   Q.   And Vrbo will pay for that if a user clicks on it?

15   A.   Yes.

16   Q.   But Vrbo is still competing with Trip Advisor to gain that

17   click up at the top of the page?

18   A.   Correct.

19   Q.   And Vrbo is also competing with, below it, the places to

20   stay unit that shows information about potential places to stay?

21   A.   I do not think we're in that "places to stay" unit. It

22   looks like it says "hotels" there.

23   Q.   But Vrbo is competing for user attention with the

24   information being displayed there?

25   A.   Yes.

1   Q.   And there are also -- just looking at sort of above the

2   fold on this search results page on this example, we only see

3   two organic results; correct?

4   A.   Correct.

5   Q.   And Vrbo does not appear among those organic results?

6   A.   They do not.

7   Q.   So in order to receive the preferred prominent placement on

8   the page, Vrbo has chosen to bid for an ad?

9   A.   Yes.

10   Q.   And we've mentioned competition with Airbnb, but in

11   general, is it fair to say that Expedia's brands, including

12   Vrbo, compete in intensely competitive markets?

13   A.   Yes.

14   Q.   And so we saw that Expedia Group was growing during this

15   time period; correct? But Airbnb was also growing during this

16   time period; correct?

17   A.   Yes.

18   Q.   And Airbnb was growing at an even higher growth rate than

19   the Expedia Group brands were?

20   A.   I don't know for sure. They went public later. But it is

21   my opinion they were probably growing faster than us.

22   Q.   And you do -- you are aware of sort of trends in the way --

23   trends in click data and brand interest on search engines;

24   correct?

25   A.   I'm aware of the terms.

1   Q.   You are aware that there's information available about

2   trends --

3   A.   Yes.

4   Q.   -- in who is searching for what brand?

5   A.   Yes. They would have had faster interest than we would

6   over this time horizon.

7   Q.   I'm going to put up demonstrative DXD18 at page 4.

8   Do you see that? So this is a visual representation of

9   that interest that you're describing; right?

10   A.   Yes.

11   Q.   And so Google makes available publicly trends data where

12   you can compare how frequently users are searching for one

13   search term versus another; right?

14   A.   Yes.

15   Q.   And so this graph shows that sort of in the early days,

16   users were more frequently searching for the term Vrbo compared

17   to Airbnb; correct?

18   A.   Yes, it does show that.

19   Q.   And then there's a point at which the lines cross and

20   Airbnb becomes a much more frequently searched term than Vrbo?

21   A.   Yes.

22   Q.   If you go to the next page of the demonstrative, it zooms

23   in on the dates, and so this shows that comparison for the

24   period of time 2015 to 2019; right?

25   A.   Yes, it shows that.

1   Q.   And so in addition to increasing competition from Airbnb,

2   Vrbo also faced competition from other brands; correct?

3   A.   Yes, we do.

4   Q.   And that includes from Trip Advisor; correct?

5   A.   Yes.

6   Q.   And Booking.com?

7   A.   Yes.

8   Q.   And the other travel brands like Kayak and FlipKey?

9   A.   Slightly separate, in that Trip Advisor is potentially a

10   partner. FlipKey, I think, might have gone away over this time

11   horizon. Kayak was also a partner.

12   Q.   FlipKey was a vacation rentals brand introduced by Trip

13   Advisor at some point during this period?

14   A.   I think that they were purchased by Trip Advisor, you know,

15   probably before I joined HomeAway, so pre-2010.

16   Q.   But there were a number of players in this space --

17   A.   There are.

18   Q.   -- competing?

19   A.   Including the property managers, the actual supply

20   partners.

21   Q.   Right. And so those supply partners being hotels; correct?

22   A.   Hotels would be an example.

23   Q.   And then there are other property managers that manage

24   vacation rental properties?

25   A.   Correct.

1   Q.   And also during this period of time -- you can take that

2   one down -- Vrbo faced increasing competition from the units

3   being introduced in Google search results page; correct?

4   A.   Yes.

5   Q.   So then in -- we've talked about the period of time up

6   through 2019. In 2020, the COVID-19 pandemic hit; right? And

7   that had a -- correct?

8   A.   Yes.

9   Q.   That had a major impact on Expedia's financial results in

10   the '20-'21 time period?

11   A.   Extending into '22, but most felt in '20 and '21.

12   Q.   But then in 2022, Expedia's business did substantially

13   rebound; correct?

14   A.   Yes.

15   Q.   And so it's true that -- so Expedia's revenues in 2022 were

16   above the level that they were in the 2018-2019 time period;

17   correct?

18   A.   Yes, our revenue would have surpassed.

19   Q.   Okay. And Expedia delivered its most profitable year in

20   2022?

21   A.   Probably in absolute terms. I'm not sure if it would have

22   been in percentage terms, but yes, in absolute terms.

23   Q.   Okay. And let's put up an exhibit that has been admitted

24   into evidence, DX0590. This is also in your binder.

25   Is this an example of the kind of press release that

1   Expedia Group releases quarterly or annually?

2   A.   Yes. For this time horizon, this would be the annual.

3   Q.   Okay. And so this release is for Expedia's full year 2022

4   results; correct?

5   A.   Yes.

6   Q.   And under the "key highlights" section on the second page,

7   it notes that Expedia had "record full year and fourth quarter

8   lodging bookings and lodging revenue"; correct?

9   A.   Yes.

10   Q.   And then below that, it notes, "We were pleased that we

11   were able to deliver our most profitable year in 2022"?

12   A.   Yes, it says that.

13   Q.   And that's quoting Peter Kern, Expedia Group's CEO;

14   correct?

15   A.   Yes.

16   Q.   And when Peter Kern provides financial results like this

17   publicly, he's providing accurate information about them?

18   A.   He is.

19   Q.   And then he also notes, "We begin 2023 with record app.

20   usage and member counts."

21   Do you see that?

22   A.   I do.

23   Q.   And that was true that Expedia Group did begin the year

24   with more people using its app. and more members?

25   A.   This specific number is about members, so how many people

1 create a loyalty count, which could be different from people.

2   So we had a big drive to take people who may not have used

3 loyalty and make them loyalty. So that would have driven some

4 shift here.

5 Q.   Right. And it does say "record app. usage"; correct?

6 A.   Yes, that would have been true.

7 Q.   And so that refers to people using Expedia's app.?

8 A.   Yes.

9 Q.   And thinking about how an Expedia user can get to Expedia,

10 you do agree that there are a number of different ways that such

11 a person can find their way to Expedia; correct?

12 A.   There are.

13 Q.   So one is they can open the Expedia app.; correct?

14 A.   I don't think you would find your way to Expedia by opening

15 the app. You've already found it. But that is a way to enter

16 the product, is directly through the app.

17 Q.   To enter the product. So people can enter the Expedia

18 product in a number of different ways?

19 A.   Yes.

20 Q.   One of those being by opening up the app.; correct?

21 A.   Yes.

22 Q.   They can also directly navigate to Expedia by going to

23 www.expedia.com?

24 A.   Yes.

25   THE COURT: Just a clarification. When you say the

1   Expedia app., is that just for the brand Expedia, or is there a

2   universal Expedia Group app. that would allow you to search

3   among the different companies?

4   THE WITNESS: Each brand has a different app. So

5   there would be an Expedia app., a Vrbo app., a Hotels.com app.

6   would be the three largest.

7   BY MS. MAIER:

8   Q.   And so to go back to some of the ways that a person can

9   enter the Expedia Group product, one is the app. One is direct

10 navigation to the website; correct?

11   Expedia also engages in e-mail and push notification

12 marketing; correct?

13 A.   Yes.

14 Q.   So people could click on a link in an e-mail that Expedia

15 sent them; correct?

16 A.   Yes.

17 Q.   Or could click on a push notification on their phone that

18 Expedia sent them?

19 A.   Only if they had the app. installed, but yes.

20 Q.   And then that would launch the app.?

21 A.   Yes.

22 Q.   And you mentioned before social media. Expedia does have a

23 presence in social media; correct?

24 A.   We do.

25 Q.   Including through social media marketing?

1   A.   Yes.

2   Q.   And so a person could navigate to Expedia by clicking on a

3   link within a social media experience?

4   A.   Yeah, you would either navigate to the app. store to get

5   the app., to the app., or to Expedia in a web form.

6   Q.   And you mentioned that Expedia does video advertising;

7   correct?

8   A.   Yes.

9   Q.   And that is displayed on a variety of online platforms?

10   A.   Online and traditional broadcast.

11   Q.   And on the online platforms, those ads allow a user that

12   wants to engage with Expedia to click on a link to be taken to

13   Expedia?

14   A.   You wouldn't always be taken to Expedia, because you would

15   frequently go to the app. store in that environment. But it

16   would always be a link we provided to get you more familiar with

17   an Expedia Group brand.

18   Q.   And then a person could also navigate, as we discussed

19   earlier, to Expedia through a search engine?

20   A.   Yes.

21   Q.   And within a search engine, there are multiple ways that a

22   user could navigate to Expedia; correct?

23   A.   The ways we've discussed, like text ads, meta, and organic?

24   Yes.

25   Q.   And some of those ways Expedia does not pay for; correct?

1   A.   We pay for all text ads, most meta, although there are free

2   links in the Google meta product now, and then we don't pay for

3   the organic results.

4   Q.   And when it comes to the free links and the Google meta

5   product, to just explain that for a moment, what that means is

6   when a Google user launches the Google hotels unit and then

7   clicks on the information about a particular property --

8   correct?

9   A.   Yes.

10   Q.   Within that information, Google displays booking links for

11   that property; correct?

12   A.   Yes.

13   Q.   And some of those booking links are sponsored listings for

14   which a supplier or OTA has paid an advertising fee; correct?

15   A.   Yes.

16   Q.   But then others are not? Others are simply unpaid booking

17   links; correct?

18   A.   Right. I think that product was introduced in '20 or '21.

19   I think the unpaid part happened during my tenure and across

20   Expedia.

21   Q.   And Expedia is eligible to participate in those unpaid

22   booking links?

23   A.   We are.

24   Q.   And then you mentioned earlier today that other

25   companies -- there are a variety of online meta search companies

1   for travel; correct?

2   A.   Yes.

3   Q.   And so those include Trip Advisor, Trivago, and Kayak;

4   correct?

5   A.   Yes.

6   Q.   In addition to the Google meta search product we were just

7   discussing?

8   A.   Yes.

9   Q.   And those are also platforms on which Expedia can purchase

10   advertising?

11   A.   They are.

12   Q.   And that is intent-based advertising?

13   A.   It is. The same ingredients of location, dates, people.

14   Q.   And so -- let's see here. And so when it comes to social

15   media marketing, Expedia does use targeting techniques to best

16   target populations within social media?

17   A.   We do.

18   Q.   And overall, Expedia seeks to maximize its incremental

19   return on paid advertising across its advertising types?

20   A.   Yes.

21   Q.   And Expedia measures and seeks to optimize return on ad

22   spend for a variety of formats of digital search -- digital

23   advertising?

24   A.   Yes.

25   Q.   And so it tries to optimize those returns for the paid

1   search on search engines; correct?

2   A.   It does.

3   Q.   But it also tries to optimize those results for other forms

4   of digital advertising, like paid social?

5   A.   Yes, and we would look at them relative to one another.

6   Q.   And the Expedia Group tries to optimize the mix of

7   advertising channels; correct?

8   A.   Yes.

9   Q.   So in one quarter, it might choose to spend more money on

10   the paid social advertising as compared to the search engine

11   marketing?

12   A.   On a relative basis, I don't think we would have ever spent

13   more on social than search engine marketing.

14   Q.   Not more overall.

15   A.   Okay.

16   Q.   But might shift some spend to the other advertising

17   channels?

18   A.   Yes.

19   Q.   But direct traffic generates the majority of Expedia's

20   bookings; correct?

21   A.   Yes.

22   Q.   And I think we've talked about this, but direct traffic is

23   primarily someone opening the Expedia app. or typing

24   "expedia.com" into a browser?

25   A.   Correct.

1   Q.   And in recent quarters beginning in, let's say, mid-2022,

2   Expedia's direct business has been growing; correct?

3   A.   Yes, it would have been growing.

4   Q.   And almost two-thirds of Expedia's gross bookings have come

5   from traffic that came to them directly?

6   A.   Yes.

7   Q.   And thinking about -- so the remaining --

8   A.   That last point, just for clarity, whether it's Expedia

9   Group or Expedia brand, there's a lot of different dynamics

10   happening within them.

11   Q.   Okay. Maybe we can look at a document that will be helpful

12   here.

13   A.   Okay.

14   Q.   So we have marked for identification, it's in the binder,

15   DX2026.

16   So this -- so looking at this exhibit, Mr. Hurst --

17   A.   Okay.

18   Q.   -- does this look to be one of Expedia Group's earning

19   calls transcripts?

20   A.   It does.

21   Q.   And this is the type of information that Expedia Group

22   posts on its investor website?

23   A.   Yes.

24   Q.   And in these earnings calls, Expedia Group's CEO speaks to

25   the investor community about the Expedia Group's financial

1   results?

2   A.   Yes.

3   Q.   And he provides true information during those updates?

4   A.   He does.

5   MS. MAIER: Okay. We move to admit DX2026 into

6   evidence.

7   THE COURT: Any objection, Mr. Cavanaugh?

8   MR. CAVANAUGH: No objection, Your Honor.

9   THE COURT: That will be admitted.

10   (Exhibit DX2026 received into evidence.)

11   MS. MAIER: And then we have two other earnings call

12   transcripts that are the same sort of thing in your binder,

13   DX2027 and 2028. For the sake of efficiency, I move to admit

14   those into evidence.

15   THE COURT: Mr. Cavanaugh?

16   MR. CAVANAUGH: No objection.

17   THE COURT: All right. So 2027 and 2028 will also be

18   admitted.

19   (Exhibits DX2027 and DX2028 received into evidence.)

20   BY MS. MAIER:

21   Q.   Mr. Hurst, so looking at the August 4th, 2022 earnings call

22   transcript that is marked as DX2026, Peter Kern noted that, on

23   page 4, marked 004 at the bottom, in the second paragraph, "not

24   surprisingly, therefore, our direct business continues to grow,

25   with almost two-thirds of our business to consumer gross

1   bookings in Q2 generated from traffic that came to us directly."

2   Do you see that?

3   A.   Yes, I do.

4   Q.   Okay. And so that is -- do you understand that to be

5   traffic for the Expedia Group?

6   A.   That would be Expedia global traffic, Expedia Group global

7   traffic.

8   And the distinction I was making was that as travel becomes

9   more U.S.-centric, our metrics on topics like this actually look

10   better on a ratio basis, because we have a stronger U.S.

11   business than we do an international business.

12   And so a shift to something like two-thirds may not just be

13   that we were doing a better job driving direct traffic. It

14   could be that the mix of our business shifted to the place where

15   there was more direct traffic. So there are two factors at

16   play.

17   Q.   But Peter Kern has been telling the investing community

18   that Expedia Group is being successful in deriving the majority

19   of its bookings from direct traffic?

20   A.   This is a globally true statement.

21   Q.   And thinking about sort of the remaining one-third of the

22   pie, that includes all of the other forms of traffic that we've

23   been talking about today; correct?

24   A.   Yes.

25   Q.   So that includes the meta search traffic from meta websites

1   other than Google; correct?

2   A.   Yes.

3   Q.   That includes the social traffic; correct?

4   A.   Yes.

5   Q.   That includes the free search engine optimization organic

6   traffic from Google?

7   A.   Yes.

8   Q.   It includes traffic from Bing?

9   A.   Yes.

10   Q.   And so the fraction of traffic that's coming from paid

11   Google marketing is a fraction of the one-third?

12   A.   Correct.

13   Q.   And -- so thinking about this statement from Mr. Kern to

14   the investing public, Expedia has been publicly stating that it

15   is evolving its strategy to increasingly focus on building

16   direct relationships with its customers; right?

17   A.   Yes.

18   Q.   And so earlier today, we talked a little bit about whether

19   Expedia is able to try something different; right?

20   A.   Yes.

21   Q.   It is correct that Expedia is trying to do something

22   different at present; correct?

23   A.   We are trying to get a different outcome, yes.

24   Q.   And part of that process includes promoting loyalty

25   programs within Expedia; correct?

1   A.   Yes.   One Key is the name of it.

2   Q.   And it includes promoting Expedia's app.; correct?

3   A.   Yes.

4   Q.   And encouraging consumers to come directly to Expedia's

5   app. --

6   A.   Yes.

7   Q.   -- as much as possible; correct?   And it also includes

8   rolling out innovations in Expedia's app.; correct?

9   A.   Yes, it would include features.

10   Q.   And overall improving Expedia's product offerings?

11   A.   Yes.

12   Q.   So I think another exhibit that you have in front of you in

13   your binder is DX0308.   This is Expedia Group's most recent

14   annual filing with the SEC for the year 2022.   It has been

15   admitted into evidence.

16   On page 2 of this document, one of the -- I'm sorry.   It's

17   page 005 at the bottom.   The fourth paragraph that begins "in

18   2021," this is a statement describing some of the changes in

19   strategy that Expedia Group has been making recently; correct?

20   Is that right, Mr. Hurst?

21   A.   I'm just reading it.

22   Q.   Okay.

23   A.   Yes.

24   Q.   And it says, "In 2021, we began evolving our consumer

25   retail strategy from being largely transactionally focused where

 1   we were primarily focused on acquiring customers through

 2   performance marketing channels to building direct,

 3   longer-lasting relationships with our customers."

 4   Do you see that?

 5   A.   I do.

 6   Q.   And so that's an accurate statement of changing strategy at

 7   Expedia Group?

 8   A.   Probably emphasis on evolving as opposed to like change on

 9   a dime.

10   Q.   And so this -- but this evolution began in or around 2021?

11   A.   Yes.

12   Q.   And as a part of it, the second sentence notes, "We focused

13   towards increasing customer loyalty and app. adoption as loyalty

14   members and app. users typically experience higher repeat rates,

15   gross profits, and bookings relative to nonloyalty members and

16   non-app. users"; right?

17   A.   Right.

18   Q.   There's just one other statement in this, later in the

19   document at page .035. This notes that -- the third paragraph.

20   Mr. Hurst, do you see that paragraph beginning "in 2022"?

21   A.   I do.

22   Q.   The first sentence is similar to what we just saw, but it

23   also notes here that in 2022, Expedia Group is "allocating more

24   marketing spend towards our loyalty programs, paid app.

25   downloads, and brand awareness."

1   Do you see that?

2   A.   Yeah. It doesn't mean allocating more than the other

3   channels. It means more in those places than we used to, which

4   would have been equally true for the other channels.

5   Q.   Okay. So an increasing amount in those channels --

6   A.   Yes.

7   Q.   -- relatively speaking?

8   A.   Yes.

9   Q.   And those -- so paid app. downloads -- I don't know if

10   we've covered this, but in app. stores, Expedia is able to

11   purchase advertising there as well; correct?

12   A.   Correct, yes.

13   Q.   And so it can -- if a user is searching for travel apps. in

14   an app. store, Expedia is able to purchase an ad for one of its

15   apps.; correct?

16   A.   Correct.

17   Q.   And that gives more prominent placement to Expedia's apps.

18   and increases the likelihood that a user might choose and

19   download that app.?

20   A.   Yes.

21   Q.   And then brand awareness, do those ads include advertising

22   on paid social?

23   A.   Brand awareness would mainly be TV and streaming platform.

24   And so it would include, you know, YouTube-TV or college

25   football, whatever those formats would be.

1   MS. MAIER: And, Your Honor, I don't know if we want

2   to take our morning break. I probably have -- I am about

3   halfway through.

4   THE COURT: Okay. All right. Let's do that. It's a

5   little bit after 11:00. We will resume at 11:20.

6   Mr. Hurst, I will ask you not to discuss your testimony

7   with anyone during the break.

8   THE WITNESS: Okay.

9   (Recess taken from 11:03 a.m. to 11:21 a.m.)

10   (Call to order of the court.)

11   THE COURT: Please be seated, everyone.

12   BY MS. MAIER:

13   Q.   Hello again, Mr. Hurst.

14   A.   Hello.

15   Q.   So, I want to go back for a moment.

16   Could you bring up slide 3 of the demonstrative.

17   We were speaking a bit earlier about how Vrbo was facing

18   increasing competition in the organic results during the period

19   of time we were talking about.

20   Do you recall that?

21   A.   Yes.

22   Q.   Vrbo was also facing increasing competition in the paid ads

23   as well on the search results page?

24   A.   Yes.

25   Q.   You can take that one down.

```
 1          So moving back to what we were discussing just before the

 2     break --

 3     A.    So maybe one clarification.  On the organic side, it's hard

 4     to know what's competitive versus algorithmic versus something

 5     else.  So it would be empirically true, we were getting less

 6     traffic from SEO.  As to whether it had become more competitive

 7     or not would be a Google question more than a Expedia Group

 8     question.

 9     Q.    But there were a lot of other companies who were --

10     A.    Someone was getting clicks, and we were getting fewer of

11     them.

12     Q.    Got it.  So turning back to the period of time in 2022 that

13     the -- we were looking at some of the financial reports from

14     that period of time.  So let's bring back up -- and you can turn

15     in your binder, to DX2026.

16          As a part of the results during this time period, so this

17     is the second quarter 2022 earnings call results, some of the

18     facts that Peter Kern provided to investors at this time was

19     that -- let's go on page 3, .003, towards the bottom of the

20     page.

21          "Over the last 18 months on our Expedia and Hotels.com

22     brands, loyalty members drove approximately three times the

23     gross bookings per customer."

24          Do you see that?

25     A.    Yes.
```

1   Q.   And they had over twice the gross profit per customer and

2   twice the repeat business as compared to nonmembers; right?

3   A.   Yes.

4   Q.   And that was accurate?

5   A.   Yes.

6   Q.   And also, app. users drove 2.5 times the gross bookings per

7   customer; correct?

8   A.   Correct.

9   Q.   And app. downloads were also on the -- have been on the

10   rise; correct?

11   A.   Yes.

12   Q.   And in this time period, one of the facts that he shared on

13   the next page is that new app. downloads grew 58 percent in

14   Q2 '22 versus Q2 2019; correct?

15   A.   Yes.

16   Q.   And it's correct that over this period of years, the app.

17   downloads were growing; right?

18   A.   Yes.

19   Q.   And app. usage was growing?

20   A.   Yes.

21   Q.   And he noted "and really, this is just the beginning." So

22   he says, "With improving product features, including our price

23   tracking product for flights, which has been a huge

24   engagement-driver in the app., and with the rollout of loyalty

25   to all our customers next year, we will be able to drive much

1   more direct engagements with our customers."

2   That summarizes the strategy that Expedia Group has been

3   engaged in; right?

4   A.   Yes.

5   Q.   We have marked in the binder for identification one more

6   document, an investor presentation from June 1st, 2022, so right

7   around this same time. That's been marked by identification as

8   DX2030. It's in your binder.

9   This is another one of the investor presentations from the

10   Expedia Group investor website. And do you recognize it to be

11   such?

12   A.   I do.

13   MS. MAIER: Your Honor, we move to admit DX2030.

14   MR. CAVANAUGH: No objection.

15   THE COURT: It will be admitted.

16   (Exhibit DX2030 received into evidence.)

17   BY MS. MAIER:

18   Q.   Will you put up on the screen that exhibit and then going

19   to page .003 of that exhibit.

20   So this is -- kind of at the introduction of this

21   presentation, it notes "Expedia has grown big over time," and

22   that graph there reflects Expedia Group's gross bookings;

23   correct?

24   A.   It does.

25   Q.   But it also includes some of the criticisms of Expedia

1 Group's strategy and structure during that time period

2 reflected; correct?

3 A.   Yes.

4 Q.   And one of those criticisms in the investor presentation

5 reflects "slow product innovation."

6   Do you see that?

7 A.   I do.

8 Q.   And was that an issue within the company?

9 A.   Combined with the complexity. And so the issue was, we had

10 to build things more than one time. So you would build a

11 feature for Expedia that was functionally similar to Hotels.com,

12 and then you would build it for Hotels.com. So it was actually

13 slower because you were building it twice.

14 Q.   And Expedia Group was working to improve that product

15 innovation and streamline those products?

16 A.   Yes.

17 Q.   And it also noted here, one of the criticisms was that over

18 this period of time, Expedia Group had an "over-reliance on

19 performance marketing"; right?

20 A.   Yes.

21 Q.   And -- you can take that one down.

22   And I think you were asked some questions earlier this

23 morning about, you know, what if Expedia stopped advertising on

24 Google.

25   Is it fair to say that Expedia Group would end up spending

1   that money in other venues or would have more profit in a

2   smaller business?

3   A.   Or -- I think those are the two extreme ends of the pole.

4   There's shades in between. And so if we weren't spending on

5   Expedia, we could try and spend on more people. If we weren't

6   spending on Google, the money could go into more product

7   development, more personnel, which would be kind of a flavor in

8   the middle.

9   On one extreme, put it all into profit. On another, you're

10   reinvesting into something. We wouldn't be able to spend it all

11   in substitute channels, but we could potentially spend more in

12   other places.

13   Q.   But there are other channels that are available to the

14   Expedia Group, including the meta search channels that we

15   discussed; correct?

16   A.   Meta search would be the closest comparable for Google's

17   meta product. The only real comparable for the text ads would

18   be Bing, and you wouldn't be able to redeploy all that money in

19   a similar intent environment.

20   Q.   But Bing -- Expedia Group does buy advertising on Bing;

21   correct?

22   A.   Yeah.

23   Q.   And get traffic from Bing's organic results; correct?

24   A.   Both organic and paid, yes.

25   Q.   And Expedia Group does participate in Bing's hotels unit,

1   which they may call The Answer; correct?

2   A.   I've never talked about Bing's hotels unit. So if you've

3   seen it in their -- if you've seen it online, they do.

4   The amount of time I spent talking to Bing in my career was

5   zero. Whereas, with Google, it would have been every month and

6   every quarter.

7   Q.   But there were people on your team that were handling

8   advertising relationships on Bing?

9   A.   Yes.

10   Q.   So thinking about innovation and Expedia's app., we talked

11   a bit about how Expedia has been rolling out new features in its

12   app.; correct?

13   And so we have a demonstrative, DX.006. So the judge asked

14   about the different Expedia apps.

15   So this is the app. for the Expedia brand; correct?

16   A.   It appears so.

17   Q.   And if you go to the next page, this is a demonstrative

18   that reflects the price tracking feature in Expedia's app.

19   That's a new feature that Expedia released over the past

20   couple of years?

21   A.   Yes.

22   Q.   And that's helpful to consumers? It can show them if the

23   price of the flight that they want to buy is a good price or if

24   it is expected to go up or down?

25   A.   Yes.

1   Q.   And then on the next page, you mentioned One Key. This is

2   the new loyalty program that Expedia Group has recently rolled

3   out; correct?

4   A.   Yes. After my tenure concluded, but yes.

5   Q.   And Expedia has released some other improvements in its

6   app., including one involving ChatGPT; correct?

7   A.   I am aware of a press release. I have not used it.

8   Q.   And -- but during your tenure at Expedia Group, Sam Altman,

9   the CEO of OpenAI, was on Expedia's board of directors; correct?

10   A.   He was.

11   Q.   And Expedia had a partnership with OpenAI to develop new

12   tools and features?

13   A.   During my tenure, it was probably more of a sparkle in an

14   eye than a deep partnership I participated in.

15   Q.   But you are aware that this year -- and you can go to the

16   next page -- Expedia did introduce in its app. an additional

17   feature with ChatGPT?

18   And you can play that.

19   And so this is a demonstrative taken from Expedia's YouTube

20   page that shows how now in Expedia's app. a user can interact

21   with a ChatGPT feature and ask open-ended questions like "can

22   you recommend a couple romantic resorts on Maui?"

23   And the ChatGPT will provide, you know, a list of answers

24   and suggestions. And users can ask additional open-ended

25   questions like "what are some fun activities on Maui?"

1   And this way, a user's able to ask more open-ended queries

2   than they used to be able to on just the Expedia interface.

3   A.   Is that a question?

4   Q.   Yes.

5   And so you can go to the next page, Andrew.

6   So yes, that is a question, that now in the Expedia app.,

7   users are able to ask open-ended questions and get travel

8   planning information?

9   A.   I have not used the product. I am familiar that that's how

10   ChatGPT works.

11   Q.   Okay. But -- so you are familiar with how ChatGPT works,

12   and that is how ChatGPT does generate open-ended answers?

13   A.   I have used ChatGPT, the product. I have not used ChatGPT

14   within Expedia.

15   Q.   Okay. But your testimony earlier today that Expedia --

16   when you search on Expedia, you're limited to searching

17   structured information, do you agree that that testimony that

18   you provided might be a little bit outdated now, given the

19   release of the ChatGPT functionality in the Expedia app.?

20   A.   I don't believe -- my personal use, which includes booking

21   my hotel for the past several nights, there is not an option to

22   use the search bar on Expedia that provides a general search or

23   ChatGPT experience. It is still very much, I start

24   typing "Washington, D.C.," it starts to autofill whether I want

25   Washville or Washington, D.C. or the greater metro. And that's

1   the limitation of the Expedia or Vrbo or Hotels.com search bar.

2   Q.   The search bar on the Web site?

3   A.   Or to my knowledge -- I booked it on the app. -- the app.

4   search bar. So I expect it's a different product treatment

5   somewhere within the app. as opposed to a general search bar

6   treatment in the search that most -- me and, I think, most

7   customers would use when they interact with the Expedia or

8   Hotels or Vrbo product.

9   Q.   But with this new ChatGPT feature that Expedia has

10   released, users are now able to start their search journey in a

11   different way using the ChatGPT?

12   MR. CAVANAUGH: Objection, Your Honor; no foundation.

13   THE COURT: Yeah, I think he said he's not familiar

14   with it. So it will be sustained.

15   BY MS. MAIER:

16   Q.   But so you have been away from the company for a number of

17   months at this point; right?

18   A.   Since January of '23.

19   Q.   January of '23. But you said that you are aware of a press

20   release about this feature?

21   A.   Yes.

22   Q.   And that press release, I think, is admitted into evidence

23   and is in your binder at DX0592.

24   In the press release, the announcement does explain that

25   Expedia members can now start an open-ended conversation in the

1   Expedia app. and get recommendations on places to go, where to

2   stay, how to get around, and what to see and do based on the

3   chat.

4   Do you see that?

5   A.   I do see that.

6   Q.   And that's a part of the information that Expedia released

7   in their press release?

8   A.   It is in the press release, yes.

9   Q.   And the press release also does say that "the new trip

10   planning experience brings in intelligent shopping by

11   automatically saving hotels discussed in the conversation to a

12   trip in the app."

13   A.   It does say that.

14   Q.   So Mr. Hurst, when it comes to a person who wants to plan

15   travel, a person could start their search for a hotel in a

16   particular location on Expedia; correct?

17   A.   Yes. Well -- yes.

18   Q.   And a person could also do that on Google?

19   A.   Yes.

20   Q.   And a person could start their search for things to do in a

21   particular area on Expedia; correct?

22   A.   Yes.

23   Q.   And a person could also do that on Google?

24   A.   Yes.

25   Q.   And a person could search for a flight on Expedia?

1 A. Yes.

2 Q. And a person could also do that on Google?

3 A. Yes.

4 Q. And when it comes to Google's hotels unit, I think we were

5 discussing earlier this morning in my questions the way in which

6 the vacation rentals unit or the places to stay unit or the

7 hotels unit competes with Vrbo; correct?

8 A. Correct.

9 Q. And that also competes with the other Expedia brands as

10 well?

11 A. Yes.

12 Q. And Expedia does regularly state in their SEC filings that

13 it competes with search engines, including Google?

14 A. We do.

15 Q. And it also states in its SEC filings that its brands

16 compete for advertising revenue with those search engines?

17 A. I would take your word for it.

18 Q. I can point you -- I'm sorry. What was that?

19 A. I do not know our SEC filings verbatim.

20 Q. Sure. You have one of them in front of you in your binder,

21 DX0308.

22 A. Okay.

23 Q. At page 13.013. Sorry. This might be the wrong page.

24 Okay. Sorry.

25   It says here, under the bolded header, "We operate in an

1   intensely competitive global environment." You see that there's

2   a section below that that begins with "search engines and large

3   online portal websites" down below.

4   Sorry. I'm talking about the paragraph -- three paragraphs

5   down, with that italicized language "search engines and large

6   online portal websites" and the top paragraph on the next page.

7   And so here it says, "In addition, our brands or brands in

8   which we hold a significant ownership position, including

9   Trivago, compete for advertising revenue with these search

10   engines."

11   Do you see that?

12   A.   Yes.

13   Q.   And that is true?

14   A.   Yes.

15   Q.   So we briefly -- you were asked a few questions earlier

16   this morning about the ads that Expedia Group sells on its

17   platforms.

18   Do you recall those questions?

19   A.   I do.

20   Q.   One of those forms of ads is called Expedia travel ads?

21   A.   Yes.

22   Q.   And if you can bring up the demonstrative at page 12.

23   So travel ads on Expedia's platform are a form of

24   pay-per-click hotel advertising?

25   A.   They are.

1   Q.   And these travel ads allow hotel advertisements to appear

2   at the top of the Expedia search results?

3   A.   Generally, yes.

4   Q.   Okay. And Expedia promotes its travel ads as a way to

5   maximize your hotel's visibility?

6   A.   Yes.

7   Q.   And that it provides its advertisers an added boost they

8   need to engage travelers?

9   A.   Yes, it says that.

10   Q.   And Expedia markets the travel ad's precise targeting

11   abilities?

12   A.   Yes.

13   Q.   And so if you go to the next page of the demonstrative, so

14   this is a sample search results page from expedia.com, and it

15   reflects that this just shows the top three hotel results here

16   that are marked "ad" in that little white box.

17   These are the Expedia travel ads; correct?

18   A.   Correct.

19   Q.   And so these are the ones that an advertiser has to pay

20   more for if they wish to appear high on Expedia's search results

21   page?

22   A.   So it is -- you have to pay more to be in these ads. It's

23   not always true that you have to pay more to be at the top of

24   search results.

25   Q.   Okay. But the search results are usually at the top of the

1   page -- or, I'm sorry, the travel ads are usually at the top of

2   the page and have a more prominent placement?

3   A.   Similar to the dynamics described earlier with Google, the

4   number and frequency with which we show all these ads would

5   vary. But I do think when they show, it would frequently be at

6   the top.

7   Q.   And these ads are served in response to the user's query;

8   correct?

9   A.   Yes.

10   Q.   So in this sample, a user says that they're going to

11   Boulder, Colorado, for particular dates, and these three travel

12   ads are all ads for hotels in Boulder for those particular

13   dates?

14   A.   Correct.

15   Q.   And a hotel who chooses to buy Expedia's travel ads could

16   also consider buying similar types of ads sold by Google;

17   correct?

18   A.   The purchase mechanism is different, but the -- the

19   purchase mechanism here is a commission and pay per click. So

20   everything on our page has a commission dynamic. And then

21   incrementally, you can basically pay to boost it with a

22   pay-per-click dynamic.

23   And so whether it's a -- it's got more of a comparable to

24   the Google meta product where you might choose to pay more in

25   Google meta and then maybe pay less here.

1   I don't think of it as being a substitute for the Google

2   text product, you know. At some level, all dollars are

3   fungible. But I think the use case would be more between Google

4   meta and this.

5   Q.   And with Google's hotel ads, I think what you were just

6   describing is, as we discussed earlier today, within those

7   results, a hotel's booking information could simply appear in

8   unpaid results, or they could pay to purchase a pay-per-click ad

9   to appear higher in those results?

10   A.   Right. In the Google example, you would go to the hotel or

11   other OTA, and in our example, you would stay on our site, "our"

12   being Expedia's.

13   Q.   And you were asked briefly about Expedia's revenues from

14   its advertising business.

15   Is it fair to say that in 2022 Expedia earned nearly

16    $1 billion in advertising revenue?

17   A.   It would be fairer for me to say it if I saw the exhibit.

18   Q.   So in your binder, the 10-K that we've been looking at,

19   Exhibit DX0308, on page .042, in that top chart, there is the

20   revenue by business, and there's a row for advertising media and

21   other, and it's $911 million?

22   A.   Right.

23   Q.   Okay. So that's nearly a billion dollars of the $11

24   billion and change that Expedia earned that year?

25   A.   Yes.

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 1                THE COURT:  Can I just ask you to move your mic

 2       closer?  Thank you.

 3                MS. MAIER:  Yes, Your Honor.

 4                THE WITNESS:  This number is not exclusively that ad

 5       placement we discussed, although it is included in this number.

 6                BY MS. MAIER:

 7       Q.   Expedia offers some other forms of advertising as well?

 8       A.   Yes.

 9                MS. MAIER:  All right.  If you could give me one

10       moment, Your Honor.

11           Your Honor, I have no further questions.

12                THE COURT:  Great.  Thank you.

13           Any redirect, Mr. Cavanaugh?

14                MR. CAVANAUGH:  Yes.  Thank you.  Just a few

15       questions.

16                         REDIRECT EXAMINATION

17                BY MR. CAVANAUGH:

18       Q.   Mr. Hurst, when a user clicks on an Expedia link on the

19       Google search engine result page and is automatically taken to a

20       previously downloaded Expedia app. -- are you following me?

21       A.   Yes.

22       Q.   Is that considered direct traffic?

23       A.   No.  We would have paid to get them back into the app.

24       Q.   So it's not considered direct traffic?

25       A.   No.
```

1   Q.   Okay. In your view, what is the difference between Google

2   text ads and ads in the Google meta product?

3   A.   It's higher intent in the meta product, in particular

4   because you get dates and/or people, which could be quite

5   different than something like "place with a view in Miami."

6   Q.   And would that also be true for a user that goes directly

7   to the Expedia app.?

8   A.   Directly to the app. from Google or just in general?

9   Q.   Let's start with from Google.

10   A.   There wouldn't be a use case where we got that type of

11   qualified into the app. from Google. We would put you on a

12   web-landing page from their meta product.

13   Q.   What about for a -- someone who goes directly to the

14   Expedia app., they downloaded the app.?

15   A.   You would -- you wouldn't really know the same type of

16   intent, because you wouldn't have a actual text signal when they

17   opened the app., of this is what they're doing, until they got

18   into the app.

19   And then you would have a better feel, are they servicing

20   an existing trip, are they trying to book something new, in

21   which they might give you exactly the same information.

22   Those would be the different dynamics.

23   Q.   And that information you got would inform you as to the

24   user's intent?

25   A.   Yes.

1   THE COURT: I didn't hear you clearly when you were

2   asked the comparison of which product has the higher intent,

3   text ads or the meta product.

4   THE WITNESS: Higher intent is in the meta product,

5   because they're providing more signal.

6   THE COURT: Okay.

7   BY MR. CAVANAUGH:

8   Q.   If you could turn to the demonstratives that counsel for

9   Google provided you, and if you would go to 002 -- actually, the

10   second page.

11   A.   Okay.

12   Q.   Do you see in the upper right-hand corner on the first

13   page, there's a red dot?

14   A.   I do.

15   Q.   Do you see that?

16   A.   Yes.

17   Q.   Okay. Does that indicate whether someone has signed in?

18   A.   Yes, it does.

19   Q.   Okay. And when you sign in --

20   THE COURT: Signed into Google?

21   MR. CAVANAUGH: Yes.

22   BY MR. CAVANAUGH:

23   Q.   Could the user have saved user preferences in there?

24   A.   Yes. I mean, and it would also just know your history of

25   what you look at.

1   Q.   And might that impact whether text ads appear or do not

2   appear?

3   A.   It might. And in this use case, I suspect the larger

4   impact -- I actually think vacation rentals are illegal in

5   Boulder, and so they've got ordinances against it, and sometimes

6   when there are ordinances against a vacation rental property, we

7   don't bid on it, and we would typically expect competitors to

8   not bid on it.

9   It's a, frankly, confusing and often-changing dynamic. So

10   I don't know the current space. But I know both Boulder Denver

11   at one point had been working to regulate away vacation rentals.

12   Q.   Okay. If you could turn to 003.

13   A.   Yes.

14   Q.   We don't see the red dot, do we?

15   A.   We do not.

16   Q.   Would that indicate someone had not signed in?

17   A.   I don't know every Google use case, but that's my personal

18   experience.

19   Q.   Okay. And there are text ads that appear on 003; correct?

20   A.   Correct.

21   Q.   And do any appear on 002?

22   A.   No.

23   Q.   Did Expedia spend more on Google SEM, the text ads, in 2022

24   than it did in 2019?

25   A.   Yes.

1   Q.   You were asked some questions about competition.

2   Does Expedia compete with Google's meta products?

3   A.   Yes.

4   Q.   Okay. Do you view Expedia as competing with Google's

5   general search product?

6   A.   No.

7   Q.   Why not?

8   A.   You can't generally search for most of the things I search

9   Google for on Expedia. There's no mechanism for who won the

10   playoff baseball game or who's got the best price on something

11   I'm buying for my kids or any number of things you could search

12   for.

13   There's just -- Expedia product literally does not work for

14   what I assume is the overwhelming majority of Google general

15   search.

16   Q.   If I was going to take a trip when this trial is over

17   someday and I wanted to buy a book about where I was going,

18   could I do that on Expedia?

19   A.   No.

20   MR. CAVANAUGH: Nothing further. Thank you,

21   Mr. Hurst.

22   Thank you, Your Honor.

23   THE COURT: Mr. Hurst, thank you very much for your

24   time and your testimony, sir. Safe travels home.

25   THE WITNESS: Thank you. I presume I can leave

1   everything?

2   THE COURT: You can leave that, and someone will grab

3   it. Thank you.

4   All right. Are the States ready with the next witness?

5   MR. SCHWARTZ: Good morning, Your Honor. Michael

6   Schwartz from New York State on behalf of the Plaintiff States.

7   Our next witness is Mr. Paul Vallez.

8   PAUL VALLEZ, WITNESS FOR THE PLAINTIFFS, SWORN

9   THE COURT: All right. Mr. Vallez, welcome.

10   THE WITNESS: Thank you.

11   MR. SCHWARTZ: May I proceed?

12   THE COURT: I'm sorry. Say your name one more time.

13   MR. SCHWARTZ: Michael Schwartz.

14   THE COURT: Thanks.

15   DIRECT EXAMINATION

16   BY MR. SCHWARTZ:

17   Q.   Good morning, sir.

18   A.   Good morning.

19   Q.   Can you please state and spell your name for the record.

20   A.   My name is Paul Vallez. Last name is spelled V-a-l-l-e-z.

21   Q.   Are you currently employed?

22   A.   Yes.

23   Q.   And where do you work?

24   A.   I work at a technology company called Skai.

25   Q.   And Skai is spelled S-k-a-i?

1   A.   Correct.

2   Q.   Can you briefly describe Skai's business?

3   A.   Skai is a technology company that builds an omnichannel

4   platform that enables advertisers to manage, to optimize, to

5   effectively manage their overall marketing programs.

6   Q.   And what types of entities are Skai's customers?

7   A.   Usually enterprise-type brands, brands that have a big

8   online presence that are looking to promote their products and

9   services online.

10   Q.   Are ad agencies also Skai customers?

11   A.   Yes, ad agencies as well.

12   Q.   Was Skai previously called Kenshoo?

13   A.   It was.

14   Q.   When did Skai -- when did the company change its name from

15   Kenshoo to Skai?

16   A.   I believe it was in 2022, I believe. We went ahead and

17   repositioned the company and pivoted, and the name change came

18   along with that.

19   Q.   And is it okay if for today's purposes I refer to the

20   company as Skai, whether it was before or after the name change?

21   A.   Yes.

22   Q.   How long have you worked at Skai?

23   A.   In December, it will be ten years.

24   Q.   So around 2013 is when you joined the company?

25   A.   The end of 2013, yes.

1   Q.   And what is your current position?

2   A.   I'm the executive vice president for our business

3   development and partnerships at Skai.

4   Q.   And what are your responsibilities in that role?

5   A.   My roles have shifted throughout the years, but today, I

6   focus on really working closely with all of our strategic

7   partners, whether it be Google, Microsoft, Snapchat, TikTok. I

8   lead the overall negotiation of net new deals, as well as manage

9   the existing partnerships that we have today.

10   Q.   Does Skai assist advertisers in purchasing ads in different

11   digital marketing channels?

12   A.   I'm sorry. Can you repeat the question?

13   Q.   Sure. Does Skai work with advertisers to purchase ads in

14   different digital channels?

15   A.   Yes.

16   Q.   And what are those different digital channels?

17   A.   I would say the channels that we typically work on are

18   search, social, apps., retail media, and display advertising.

19   THE COURT: When you say your "partners," do you mean

20   the platforms that your customers can place advertisements on?

21   Is that who you consider your partners?

22   THE WITNESS: Correct; correct. We build to their

23   marketplace, and we coordinate, collaborate. So we use the

24   term "partner" because we engage on a regular basis.

25   THE COURT: Gotcha. Okay. Thank you.

1   BY MR. SCHWARTZ:

2   Q.   What generally is the search channel?

3   A.   Can you be more specific?

4   Q.   Sure. So what are some examples of different partners in

5   the search channel?

6   A.   Okay. I would say today it's Google. It's Bing, Microsoft

7   Bing. We also work with Yahoo! Japan and to a certain extent,

8   not significant, but some of the more regional players like

9   Baidu and Yandex.

10   Q.   And what is Baidu?

11   A.   Baidu is another -- it's a competing search engine. They

12   operate mostly in China.

13   Q.   What are some examples of major partners in the social

14   channel?

15   A.   Meta is probably our largest. I would say our second one

16   is TikTok, Snapchat, Pinterest.

17   Q.   What are some examples of major partners in the retail

18   channel?

19   A.   The largest is Amazon. We also work with Walmart, Target.

20   Q.   And can you explain generally what is meant by the -- the

21   app. marketing channel?

22   A.   So we work with -- there's two types of classifications of

23   advertisers that usually will focus on apps. Those are app.

24   mobile first companies, let's say like Airbnb where their

25   primary business model is an app. And then we also work with

1   companies where the app. is an extension of their business,

2   let's say like Target also promotes their app. as a way to keep

3   reengaging with their customers.

4   Q.   And in your current position, do you have oversight

5   responsibilities for the different channels you just described?

6   A.   Yes.

7   Q.   I would like to show you a document that we've marked

8   PSX1200.

9   MR. SCHWARTZ: May I approach, Your Honor?

10   THE COURT: All right.

11   THE WITNESS: Is it okay if I familiarize myself with

12   this?

13   THE COURT: Sure.

14   BY MR. SCHWARTZ:

15   Q.   And I can represent to you, this is an image we took a few

16   days ago of the paid search website -- page on Skai's website.

17   A.   Uh-huh.

18   Q.   Do you recognize this page?

19   A.   Yes.

20   MR. SCHWARTZ: Your Honor, I move to admit PSX1200.

21   MS. WASZMER: No objection, Your Honor.

22   THE COURT: It will be admitted.

23   (Exhibit PX1200 received into evidence.)

24   BY MR. SCHWARTZ:

25   Q.   The first sentence reads, "There's no paid media channel

1   that better captures the intent of users."

2   Do you see that?

3   A.   I do.

4   Q.   And do you agree with that statement?

5   THE COURT: I'm sorry. I'm not following the

6   statement.

7   MR. SCHWARTZ: This again is the paid search tab

8   within the Skai, website. And there's a paragraph of text near

9   the bottom of the first page.

10   THE COURT: I understand. Paid search, gotcha.

11   THE WITNESS: I assume that we're referring to search,

12   based on all the logos up there.

13   BY MR. SCHWARTZ:

14   Q.   And just to clarify, because it's maybe not clear, there

15   are five tabs running, sort of going down the page, and this

16   specific one is the middle one, the "paid search" one.

17   A.   Yes, I would agree with that statement.

18   Q.   And can you explain why it is that paid search is better

19   than all other channels at capturing the intent of users?

20   A.   If you think about the experience of a consumer, an

21   individual who is going out there and consuming content,

22   browsing the web, when you think about where they are in their

23   process of exploring or looking at products or maybe exploring

24   purchase, search is more often than not the last step, one of

25   the last steps in that journey.

1   So when it comes to the moment right when they're about to

2   make a decision, make a purchase, search again is more often

3   than not that channel where they make their decision.

4   Q.   How, if at all, does advertising on the paid social channel

5   differ from advertising in the paid search channel?

6   A.   The way we think about all the different channels and

7   advertising, we try to align a lot of the different ad types,

8   whether it be social or search, with the customer journey, the

9   journey that the customer goes through on their path towards a

10   purchase. And we try to align some of these ad formats with

11   that journey.

12   And so we've already talked about search being close to

13   that bottom of that funnel, that last step before they make a

14   decision. We think about social as being more upper funnel, for

15   earlier in that stage, where we're trying to influence and

16   engage when they're not necessarily in the context of

17   purchasing.

18   Q.   Have you heard the terms "push ads" and "pull ads" used in

19   the context of digital marketing?

20   A.   Yes.

21   Q.   And what do those terms mean?

22   A.   A push ad will generally mean that -- actually, let me

23   start with pull ads. We think about search as pull in the sense

24   that the consumer is specifically going out and asking for

25   information. They're looking for a very specific topic.

1   They're searching it. They're actually pulling information.

2   It's more intentional.

3   Whereas, push is where -- you may be in what we call

4   lean-back experience. You're consuming content. You're being

5   entertained. And as a result, you're being pushed ads to you

6   that may or may not be relevant to your experience.

7   Yeah, that's how we think about them.

8   Q.   But I think you just testified that you associate pull ads

9   more with the search channel; is that right?

10   A.   Pull ads definitely more with search channels.

11   Q.   And are there certain channels that you associate more so

12   with push ads?

13   A.   We generally think about search as pull. Yeah. I don't

14   off the top of my head think of any other ad formats as pull as

15   the way we do with search.

16   Q.   Understood. Are there other channels, though, as to

17   push -- what other channels are push ads?

18   A.   Oh, push ads? Okay. Push ads are generally more what we

19   call upper funnel. They're more video, display, that type of

20   media, social media.

21   Q.   So is it fair to say that they're more -- the social media

22   channel is more characterized with push ads?

23   A.   They are, because the consumer is not intentionally trying

24   to pull information. They're being -- they're usually getting a

25   feed that's being presented to them, different options, again

1   which may or may not be relevant to the context which they're

2   in.

3   THE COURT: Mr. Schwartz, can I just ask you to keep

4   your voice up as well? Thank you.

5   BY MR. SCHWARTZ:

6   Q.   Focusing on the social channel still, are you aware of any

7   ads that are sold in the social channel in response to user

8   queries?

9   A.   I am.

10   Q.   And have you heard those referred to sometimes as social

11   search ads?

12   A.   Yes.

13   Q.   And can advertisers manage social search ads on the Skai

14   tool?

15   A.   Not today, no. We've engaged with some of the publishers,

16   we call them, like a meta. A lot of these are still in their

17   infancy and fairly nascent, but we've talked to a lot of

18   different publishers about these opportunities.

19   But it's really not a priority for advertisers at this

20   point. So we haven't really built out support or engaged on

21   that front too deeply yet.

22   Q.   And can you explain why, in your experience, those types of

23   ads are not a priority for advertisers?

24   A.   Because they're not performing at the same level as

25   traditional search. Advertisers who focus on search are used to

1   a certain level of performance. They're used to a certain level

2   of controls they have to drive good performance. But what

3   they're finding, at least from the advertisers that we engage

4   with, is that it's not the same level of control, it's not

5   keyword-driven. And so as a result, it's not performing at the

6   same level, and so they haven't really pushed too much budget in

7   that direction.

8   Q.   You've alluded to this, but in the course of your job, do

9   you speak with advertisers?

10   A.   Yes.

11   Q.   And at times, do you discuss specific features with

12   advertisers?

13   A.   Yes.

14   Q.   And does Skai make business decisions based in part on the

15   feedback it receives from its customers?

16   A.   Yes.

17   Q.   And why is that?

18   A.   We position our advertisers as investors in Skai. They

19   are -- they're the ones who are -- they're the ones that we're

20   trying to solve problems for. So they have allowed us voice

21   when it comes to the feedback and the priorities in which we set

22   for our business.

23   Q.   Do the large advertisers that you work with generally have

24   a single team or multiple teams managing advertising in the

25   different channels that we discussed?

1   A.   Multiple teams.

2   Q.   Does Skai allow advertisers to set distinct budgets by the

3   different channels?

4   A.   They do set very specific -- an advertiser will definitely

5   set a specific budget per channel, yes.

6   Q.   Have you heard the term "SEM tool" used to refer to a tool

7   that helps manage search ad campaigns across multiple search

8   engines?

9   A.   Yes.

10   Q.   And is one of the functions that Skai provides an SEM tool?

11   A.   We provide SEM tools, features, functions, services, but

12   that's not all that we provide, yes.

13   Q.   And do you know the other major companies in the U.S. that

14   provide SEM capabilities?

15   A.   Yes.

16   Q.   And can you list them?

17   A.   The primary one that we come up against a lot and hear a

18   lot about is Search Ads 360.

19   Q.   And are there other major --

20   A.   There are some other ones, but we don't really come across

21   them as much. They're much smaller. We have heard about Marin

22   and Adobe.

23   Q.   And SA360 is owned by Google?

24   A.   Yes.

25   Q.   And do you consider SA360 to be a competitor to Skai?

1   A.   Yes.

2   Q.   Do you know the relative size of the four major SEM tools

3   you just listed?

4   A.   Size in terms of?

5   Q.   So in terms of, let's say, ad spend managed.

6   A.   I mean, we've done some internal estimations, but they're

7   not scientific necessarily.

8   Q.   Can you give just a general order of magnitude based on

9   your internal estimates?

10   A.   We would expect that Search Ads 360 is probably ten times

11   the size of Skai in terms of our search footprint. And I would

12   say that Adobe and Marin are probably -- Adobe is maybe a third

13   of where we're at in terms of our search spend, and Marin is

14   probably maybe 10 percent, 10 to 20 percent of the size of Skai.

15   Q.   Okay.

16   A.   Again, relative to our search spend that we manage.

17   Q.   Do you know the extent to which Search Ads 360 or SA360 is

18   used by ad agencies?

19   A.   Yes.

20   Q.   And what's your understanding of the extent to which SA360

21   is used by ad agencies?

22   A.   We estimate it to be at or above 90 percent of the market.

23   Q.   Have you heard the term "native tool" used to refer to a

24   tool used to place ads on a specific search engine?

25   A.   Yes.

1   Q.   And both Google and Microsoft have native tools?

2   A.   Yes.

3   Q.   What, if anything, is the value for an advertiser in using

4   an SEM tool like Skai as opposed to one of the native tools?

5   A.   Incremental value. We try to look at the marketplace and

6   provide value on top of that marketplace.

7   So whether it be efficiencies, helping them to drive their

8   performance by adding optimization on top of what the native

9   applications do, and sometimes, efficiencies across not channels

10   but, let's say, search engines, yes.

11   Q.   And can you explain what you mean by efficiencies across

12   search engines?

13   A.   So one example would be a solution that we launched called

14   mirroring. We found that oftentimes advertisers are spending a

15   lot of their time in the native tool for Google's ads

16   marketplace, and when they wanted to bring a lot of those

17   campaigns over to Microsoft, it was a lot of work trying to

18   reconcile them. They would do quarterly audits to understand

19   what do I have on Google versus what do I have on Microsoft.

20   And so we provided a solution for them to be able to just

21   mirror everything over so they didn't have to do all that work

22   manually, and they were able to just with a few clicks mirror

23   all of their activity from Google over to Microsoft.

24   Q.   So using an SEM tool like Skai, an advertiser could use one

25   interface to manage their ad campaigns on multiple search

1   engines?

2   A.   Correct.

3   Q.   And that wouldn't be possible using a particular native

4   tool?

5   A.   Correct.

6   Q.   And then I think you said as well using an SEM tool like

7   Skai, an advertiser could compare the performance of its ad

8   campaigns on multiple search engines?

9   A.   I'm sorry. I couldn't hear you.

10   Q.   Is it correct that using an SEM tool like Skai, an

11   advertiser can compare how its ad campaigns on multiple search

12   engines are performing in one single interface?

13   A.   Yes.

14   Q.   In your experience, is it common for large advertisers to

15   run ad campaigns on multiple search engines?

16   A.   Yes.

17   Q.   Can you estimate the relative ad spend on Skai in the U.S.

18   between the different search engines?

19   A.   What is the ad spend we have running on the different

20   search engines?

21   Q.   Correct.

22   A.   Yes. We have about 5 billion annually running on Google

23   AdWords, Google Ads today, and about 600 million globally on

24   Microsoft.

25   Q.   And the number is even lower for the other search engines

1   you mentioned earlier?

2   A.   Yes, much smaller.

3   THE COURT: So those are global numbers?

4   THE WITNESS: Yes.

5   BY MR. SCHWARTZ:

6   Q.   Do you know as to the U.S. specifically if -- how that

7   would impact the numbers, at least the relative size of the

8   numbers?

9   A.   I would say if you put -- if you took all the search

10   engines outside of Google and Microsoft, they together would

11   represent less than 1 percent of our global spend.

12   Q.   In your experience, why does the majority, the vast

13   majority of the ad spend by advertisers go to Google?

14   A.   Volume. They have the highest amount of volume or

15   inventory available.

16   Q.   And can you explain what you mean by that?

17   A.   Sure. If you think about a day in the life of an

18   advertiser, they're trying to be as efficient and effective as

19   they can be in terms of driving revenue for their business.

20   So where they're going to start first is, where can I get

21   the most volume so that I'm not having to spend all my time

22   across many, many channels, but I can get most of my work done

23   where the volume sits. And because Google has the majority of

24   the search volume, they start and spend most of their time with

25   Google.

1   Q.   And by "volume," do you mean user queries?

2   A.   Correct; correct.

3   Q.   Of your customers that buy paid search ads, are there any

4   that exclusively buy on Google?

5   A.   It's a small percent. I would say it's less than

6   10 percent, yes. But the majority, obviously, spend across

7   both.

8   Q.   Are there any that buy exclusively on Bing?

9   A.   Through our -- I mean, all we know is what we know. So in

10   terms of, we do have a number of advertisers that also focus

11   just on Bing. It doesn't mean they don't advertise on Google,

12   but we know that they focus their campaigns with us on Bing,

13   yes.

14   Q.   And do advertisers sometimes shift their spend between

15   Google and Bing?

16   A.   They do.

17   Q.   And why might an advertiser shift spend between Google and

18   Bing?

19   A.   An advertiser is looking at where can I invest my dollars

20   that's going to drive the most efficiency and performance.

21   That's one of the reasons. Sometimes, if it's too difficult to

22   be able to bring budget back and forth more fluidly versus

23   having to do it manually, that can be a barrier for them.

24   Q.   I'm going to show you another document.

25   Your Honor, this document is PSX1119. This document is in

1   evidence. May I approach?

2   THE COURT: You may.

3   THE WITNESS: Thank you.

4   BY MR. SCHWARTZ:

5   Q.   If you turn past the empty first page to the second page,

6   the title of this document is "total search intelligence,

7   June 2020."

8   Do you see that?

9   A.   Yes.

10   Q.   And do you recognize this document?

11   A.   I do.

12   Q.   And what generally is it?

13   A.   I'm sorry. What's the question?

14   Q.   What is this document?

15   A.   This is a presentation that we provide to prospective

16   advertisers that we want to win their business.

17   Q.   And this document would have been prepared in or around

18   June 2020?

19   A.   Yes.

20   Q.   If you could turn in the bottom right to page 11 in the

21   document, do you see there are some green boxes along the bottom

22   of the page?

23   A.   Uh-huh.

24   Q.   The first one says "2000-plus brands and agencies."

25   What does that mean?

1   A.   That is the number of entities that we work with as

2   customers. So we have in terms of customers about 2,000

3   entities, which are a combination of brands and agencies.

4   Q.   And the second box says "about $7 billion spend under

5   management."

6   What does that mean?

7   A.   Across all the channels and publishers, which are all the

8   logos you see at the top of the page, when you aggregate all the

9   spend that we are managing through our platform, that's the

10   number, about 7 billion at that point in time.

11   Q.   And if you would turn to the next page of the document,

12   page 12.

13   A.   Uh-huh.

14   Q.   So in the middle of the page, it says "for the world's most

15   successful brands."

16   Are those some examples there of Skai customers at this

17   time?

18   A.   Yes.

19   THE COURT: If you could just flip back to the prior

20   page, I'm just curious. What's the check represent?

21   THE WITNESS: That was -- it's Verizon, I believe.

22   THE COURT: Okay.

23   THE WITNESS: I believe it is. I'm just surprised

24   that we would put a Verizon there. It might have been when

25   Verizon was -- I think Verizon and Yahoo! were one company, one

1   entity. But we have Yahoo! separately. So I'm sorry. I'm not

2   sure.

3   THE COURT: That's okay. I was just curious.

4   BY MR. SCHWARTZ:

5   Q.   And just by the way, the logo to the right of that, the paw

6   with the "DU," is that Baidu?

7   A.   It is.

8   Q.   If you turn back to page 4 of the document.

9   A.   Okay.

10   Q.   There are four categories, four columns here,

11   "native/free," "full publisher stack," "build in-house," and

12   then it says "Kenshoo search independent platform."

13   What is generally meant by the four different categories on

14   this slide?

15   A.   If you're an advertiser and you're looking for a solution

16   to be able to manage your advertising, these are generally the

17   four different buckets that are different paths an advertiser

18   would fall into.

19   They would either go and just work free on the native

20   platforms. They would build their own technology because they

21   wanted to build that internal muscle. I'm sorry. That's the

22   build in-house.

23   The full publisher stack is where you might, instead of

24   using the native tool, you would use the whole ecosystem of

25   tools that are available for that publisher, like reporting or

1   optimization, different ad types and formats.

2   Or you would go with the independent platform like Kenshoo

3   or Skai.

4   Q.   And when it says "native/free," that's referring to the

5   native tools we discussed earlier?

6   A.   Yes.

7   Q.   Can you briefly explain what the -- what the points about

8   native tool are being conveyed here?

9   A.   Oftentimes -- the first point is around value on top. So

10   if you take optimization, for example, both Google and Microsoft

11   offer their own automated bidding technology. But the bidding

12   often focuses on -- I'm sorry. It focuses on the bid and the

13   budget. But there's a lot more ways to optimize and provide

14   value for the advertiser beyond just bidding and budgets.

15   And so we, for example, put value on -- we add value on top

16   of that, more ways to optimize on top of what the publishers do.

17   So that's an example of value on top.

18   Or we might add features that make their optimization even

19   perform better. So we use them as a foundation and build value

20   on top of those features.

21   Second one, "All of your competitors have access to the

22   same basic tool set." So if you're an advertiser and you are

23   working in a very competitive landscape, then that means all

24   your competitors have access to the same exact tools and

25   functions. So there's not really a big differentiator for them

1   to advance their performance ahead of their peers or

2   competitors.

3   Q.   And when you say that Kenshoo or Skai is an independent

4   platform, what does it mean that it's independent?

5   A.   It means that we are working on behalf of the advertiser to

6   make sure we're helping them achieve their goals and objectives.

7   So we're neutral. We don't take sides between one publisher

8   versus the other.

9   A lot of our advertisers try to think about Skai as an

10   advertiser for them, a neutral third party who is giving them

11   advice that is not again biased towards one publisher versus the

12   other.

13   Q.   And in your experience, do advertisers value the fact that

14   Skai is an independent platform?

15   A.   Yes.

16   Q.   Now, I think you testified earlier that SA360 is owned by

17   Google.

18   A.   Yes.

19   Q.   And obviously, Google is the main search engine that -- I

20   think you said is the predominant search engine to advertise on?

21   A.   Yes.

22   Q.   Do you have any concerns about the fact that Google owns

23   the predominant SEM tool as well as the predominant search

24   engine?

25   A.   We have concerns, yes.

1   Q.   And can you explain?

2   A.   Let me start by saying that we value competition. We think

3   competition is a good thing. So if there are other players out

4   there, whether it be a neutral third party or a publisher,

5   competition is good.

6   But it's only in cases where there are disadvantages, and

7   we have identified some disadvantages that we have as a neutral

8   third party versus -- Search Ads 360 is a part of Google that

9   has maybe access to more benefits and advantages than we do.

10   Q.   And the third category here says "build in-house."

11   So first of all, what does build in-house mean?

12   A.   It means that they would actually build -- they would

13   actually take the APIs available from the different

14   marketplaces, whether it be Google or Microsoft, and they would

15   build features and functions to help them manage their

16   advertising programs on a day-to-day basis.

17   Q.   And when you say "they," you're referring to a specific

18   advertiser?

19   A.   Yes. We often find that the larger, more sophisticated

20   advertisers, they're always evaluating what do we build versus

21   what do we buy. Because a lot of it is around how they compete

22   online. If they're going to be successful online, they have to

23   build that muscle. They can't always farm it off to an agency

24   or a third party. They want to be a part of the process and

25   have some of their own technology to manage it.

1   Q.   In your experience, do advertisers sometimes switch from

2   using one SEM tool to a different SEM tool?

3   A.   It happens, yes.

4   Q.   And would you say it happens frequently or infrequently?

5   A.   I would say it depends on the size of the advertiser. The

6   more complex your advertising program is, the more difficult it

7   is to switch. And so there's some barriers out there for

8   switching based on the size, complexity, and scale of your

9   program.

10   Q.   If I could just return for a moment to the prior issues we

11   were discussing, I think you testified that there were some

12   disadvantages for Kenshoo as an independent platform as compared

13   to Google; is that right?

14   A.   Yes.

15   Q.   Can you just explain what -- the disadvantages you were

16   referring to?

17   A.   I think one example is around their technology stack. So

18   it's -- there is a tool that is -- that is widely used by the

19   market. The original name was DoubleClick. I think the most

20   recent name is Google Ad Manager at this point.

21   But what often happens is, our understanding is up to

22   80 percent of the market uses this tool for measurement, for

23   trying to deduplicate all their conversions. And so they use it

24   as what we call in the industry their true north, what they

25   define as what is the single source of truth where we can define

1   our measurement, our conversions for our business.

2   One of the challenges that we've had is if you're an

3   advertiser using Search Ads 360, you generally get to use that

4   Google Ad Manager for free, but if you're using a third party

5   like Skai, then there is fees associated with it. And those

6   fees are often much more than our fees for our platform by

7   itself. So it becomes cost prohibitive for the advertiser to

8   use a third party, because it's hard to compete with free.

9   Q.   So switching back to the topic of switching SEM tools, for

10   the large advertisers you work with, do they typically have to

11   implement additional employee training when they would switch

12   from one SEM tool to another?

13   A.   Yes.

14   Q.   And do they typically, these large advertisers, have to

15   redo the conversion tracking and integration they have when they

16   switch SEM tools?

17   A.   Yes.

18   Q.   And in your experience, how long would it generally take a

19   large advertiser to switch from one SEM tool to another?

20   A.   I mean, every advertiser is unique based on their

21   complexity, but we've seen it takes months.

22   Q.   Changing topics a little bit, do the Google and Microsoft

23   native tools offer certain features within them that help buy

24   advertisements?

25   THE COURT: Let me interrupt you, Counselor. It

1   sounds like you're switching topics and areas. So it may be a

2   good time to break for lunch. So we will return at 1:30.

3   Mr. Vallez, we will ask you not to discuss your testimony

4   with anyone during the lunch break. Thank you, sir.

5   THE WITNESS: Thank you, Your Honor.

6   MR. SCHMIDTLEIN: Your Honor, I think we are on track

7   to be done for today probably around 3:00 -- by the 3:00

8   afternoon break. So I just wanted to give you that --

9   MR. CAVANAUGH: I had predicted 3:30 yesterday. Maybe

10   it is 3:00. Mr. Hurst went a little faster than I anticipated.

11   THE COURT: Okay. We can reach out to --

12   MR. SCHMIDTLEIN: I wasn't sure, in light of last

13   night's filing, if you were still thinking about having some

14   additional argument or discussion, but I just wanted to let you

15   know.

16   THE COURT: I appreciate it. We will reach out and

17   have some -- at least invite counsel for the *Times* here to go

18   through this. If they can arrive by -- if he can arrive by

19   3:00, all the better.

20   Thank you.

21   (Recess taken at 12:27 p.m.)

22

23

24

25

1   CERTIFICATE OF OFFICIAL COURT REPORTER

2

3   I, Sara A. Wick, certify that the foregoing is a

4   correct transcript from the record of proceedings in the

5   above-entitled matter.

6

7

8   /s/ Sara A. Wick   October 19, 2023

9   SIGNATURE OF COURT REPORTER   DATE

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6602:10, 6602:11
incentive [2] -
6529:22, 6529:23
include [8] - 6507:25,
6523:9, 6524:15,
6540:4, 6551:3,
6557:9, 6559:21,
6559:24
included [3] - 6524:9,
6524:19, 6576:5
includes [14] -
6540:10, 6540:14,
6540:21, 6544:4,
6555:22, 6555:25,
6556:3, 6556:5,
6556:8, 6556:24,
6557:2, 6557:7,
6563:25, 6568:20
including [11] -
6504:21, 6531:10,
6536:3, 6542:11,
6544:19, 6548:25,
6562:22, 6565:14,
6567:6, 6571:13,
6572:8
increase [3] - 6518:6,
6524:5, 6538:3
increased [2] -
6532:4, 6532:11
increases [3] -
6515:11, 6532:3,
6559:18
increasing [7] -
6537:9, 6544:1,
6545:2, 6558:13,
6559:5, 6560:18,
6560:22
increasingly [1] -
6556:15
incremental [6] -
6522:18, 6524:21,
6524:22, 6524:25,
6551:18, 6593:5
incrementality [3] -
6518:9, 6521:9,
6521:10
incrementally [1] -
6574:21
independent [6] -
6599:12, 6600:2,
6601:3, 6601:4,
6601:14, 6603:12
indicate [2] - 6578:17,
6579:16
individual [2] -
6502:20, 6586:21
industry [1] - 6603:24
infancy [1] - 6589:17
influence [1] -
6587:15

influenced [2] -
6532:13, 6532:20
inform [3] - 6505:7,
6505:9, 6577:23
information [24] -
6504:22, 6511:6,
6512:12, 6513:23,
6535:11, 6535:19,
6537:1, 6541:20,
6541:24, 6543:1,
6546:17, 6550:7,
6550:10, 6553:21,
6554:3, 6568:8,
6568:17, 6570:6,
6575:7, 6577:21,
6577:23, 6587:25,
6588:1, 6588:24
infrequently [1] -
6603:4
ingredients [3] -
6507:6, 6512:5,
6551:13
innovation [4] -
6529:8, 6564:5,
6564:15, 6566:10
innovations [1] -
6557:8
inquire [1] - 6499:10
Instagram [1] - 6513:1
installed [1] - 6548:19
instance [1] - 6541:11
instead [3] - 6508:17,
6533:20, 6599:23
integration [1] -
6604:15
intelligence [1] -
6597:6
intelligent [1] -
6570:10
intensely [2] -
6542:12, 6572:1
intent [21] - 6506:25,
6507:5, 6512:2,
6512:4, 6512:14,
6513:10, 6513:11,
6513:16, 6515:24,
6515:25, 6520:7,
6527:14, 6551:12,
6565:19, 6577:3,
6577:16, 6577:24,
6578:2, 6578:4,
6586:1, 6586:19
intent-based [1] -
6551:12
intentional [1] -
6588:2
intentionally [1] -
6588:23
interact [2] - 6567:20,
6569:7

interacting [1] -
6513:20
interest [5] - 6519:9,
6519:15, 6542:23,
6543:5, 6543:9
interested [2] -
6513:4, 6513:12
interests [1] - 6522:6
interface [3] - 6568:2,
6593:25, 6594:12
internal [5] - 6503:22,
6514:22, 6592:6,
6592:9, 6599:21
internally [1] - 6528:1
international [1] -
6555:11
Internet [1] - 6511:22
interrupt [3] -
6507:23, 6527:17,
6604:25
interrupted [1] -
6527:15
introduce [4] - 6516:1,
6519:6, 6523:25,
6567:16
introduced [5] -
6516:5, 6516:7,
6544:12, 6545:3,
6550:18
introduces [1] -
6519:12
introduction [1] -
6563:20
inventory [8] -
6502:13, 6502:20,
6503:11, 6511:20,
6517:9, 6518:17,
6523:20, 6595:15
invest [3] - 6506:19,
6526:17, 6596:19
invested [1] - 6518:25
investing [2] -
6555:17, 6556:14
investment [1] -
6522:16
investor [6] - 6553:22,
6553:25, 6563:6,
6563:9, 6563:10,
6564:4
investors [4] -
6535:12, 6535:19,
6561:18, 6590:18
invitation [1] -
6504:20
invite [1] - 6605:17
involving [1] - 6567:6
issue [3] - 6499:18,
6564:8, 6564:9
issues [1] - 6603:10
italicized [1] - 6572:5

itself [2] - 6523:19,
6604:7

J

January [2] - 6569:18,
6569:19
Japan [1] - 6584:7
Jeff [1] - 6499:23
JEFFREY [2] - 6498:4,
6499:24
Jeffrey [1] - 6500:6
job [2] - 6555:13,
6590:8
John [1] - 6499:7
JOHN [1] - 6497:2
joined [3] - 6501:10,
6544:15, 6582:24
journey [6] - 6528:3,
6569:10, 6586:25,
6587:8, 6587:9,
6587:11
JR [1] - 6496:17
judge [3] - 6504:4,
6529:15, 6566:13
JUDGE [1] - 6496:10
judge's [1] - 6529:12
July [1] - 6501:23
June [4] - 6501:23,
6563:6, 6597:7,
6597:18
Justice [1] - 6496:13

K

Kayak [10] - 6505:20,
6507:16, 6508:12,
6508:13, 6528:23,
6540:14, 6544:8,
6544:11, 6551:3
keep [3] - 6527:10,
6585:2, 6589:3
KENNETH [1] -
6496:13
Kenneth [1] - 6499:6
Kenshoo [6] -
6582:12, 6582:15,
6599:12, 6600:2,
6601:3, 6603:12
Kern [8] - 6504:7,
6546:13, 6546:16,
6554:22, 6555:17,
6556:13, 6561:18
key [1] - 6546:6
Key [2] - 6557:1,
6567:1
keyword [1] - 6590:5
keyword-driven [1] -
6590:5
kids [1] - 6580:11

kind [23] - 6504:20,
6512:25, 6513:22,
6514:8, 6519:21,
6520:4, 6520:12,
6520:24, 6523:12,
6525:6, 6525:20,
6526:6, 6527:3,
6528:5, 6528:24,
6529:24, 6532:16,
6533:4, 6535:19,
6536:12, 6545:25,
6563:20, 6565:7
knowing [1] - 6534:22
knowledge [1] -
6569:3
known [2] - 6502:13,
6528:24

L

Labradoodle [1] -
6511:16
landing [2] - 6539:3,
6577:12
landscape [1] -
6600:23
language [1] - 6572:5
large [10] - 6505:3,
6522:16, 6572:2,
6572:5, 6590:23,
6594:14, 6604:10,
6604:14, 6604:19
largely [3] - 6505:22,
6532:12, 6557:25
larger [4] - 6517:21,
6526:14, 6579:3,
6602:19
largest [7] - 6501:14,
6506:21, 6507:17,
6510:4, 6548:6,
6584:15, 6584:19
last [11] - 6499:14,
6500:7, 6500:13,
6530:6, 6553:8,
6561:21, 6581:20,
6586:24, 6586:25,
6587:13, 6605:12
lasting [1] - 6558:3
late [1] - 6499:14
launch [1] - 6548:20
launched [1] -
6593:13
launches [1] - 6550:6
lead [5] - 6501:19,
6501:24, 6526:16,
6530:15, 6583:8
leadership [3] -
6504:2, 6504:5,
6504:19
lean [1] - 6588:4

lean-back [1] - 6588:4
learn [1] - 6504:22
learned [1] - 6505:8
least [3] - 6590:3,
6595:7, 6605:17
leave [2] - 6580:25,
6581:2
led [2] - 6525:11,
6530:8
left [1] - 6509:19
leisure [1] - 6517:8
less [11] - 6509:18,
6515:19, 6517:12,
6523:8, 6523:14,
6524:4, 6537:22,
6561:5, 6574:25,
6595:11, 6596:5
level [10] - 6512:4,
6529:8, 6532:3,
6545:16, 6575:2,
6589:24, 6590:1,
6590:4, 6590:6
Levi [1] - 6501:8
Liberty [1] - 6496:21
life [1] - 6595:17
light [1] - 6605:12
likelihood [2] -
6518:6, 6559:18
likely [2] - 6513:21,
6528:10
limitation [1] - 6569:1
limited [1] - 6568:16
linear [1] - 6538:9
lines [1] - 6543:19
link [9] - 6510:5,
6514:16, 6514:17,
6524:3, 6548:14,
6549:3, 6549:12,
6549:16, 6576:18
links [15] - 6509:22,
6514:19, 6516:23,
6517:4, 6517:23,
6517:24, 6524:6,
6527:1, 6527:3,
6550:2, 6550:4,
6550:10, 6550:13,
6550:17, 6550:22
list [3] - 6514:11,
6567:23, 6591:16
listed [1] - 6592:3
listening [1] - 6530:1
listings [2] - 6538:14,
6550:13
literally [1] - 6580:13
live [1] - 6500:5
LLC [2] - 6496:6,
6499:5
LLP [2] - 6496:17,
6497:3
location [3] - 6512:7,

6551:13, 6570:16
lodging [4] - 6520:5,
6520:25, 6546:8
logo [1] - 6599:5
logos [2] - 6586:12,
6598:8
long-established [1] -
6517:10
longer-lasting [1] -
6558:3
look [15] - 6513:13,
6519:25, 6522:22,
6526:12, 6527:4,
6527:20, 6532:2,
6536:2, 6539:19,
6552:5, 6553:11,
6553:18, 6555:9,
6578:25, 6593:5
looked [4] - 6505:17,
6525:14, 6530:9,
6534:24
looking [11] - 6524:15,
6542:1, 6553:16,
6554:21, 6561:13,
6575:18, 6582:8,
6586:23, 6587:25,
6596:19, 6599:15
looks [3] - 6519:19,
6525:21, 6541:22
low [1] - 6528:20
lower [2] - 6531:25,
6594:25
loyalty [11] - 6528:17,
6547:1, 6547:3,
6556:24, 6558:13,
6558:24, 6561:22,
6562:24, 6567:2
luck [1] - 6515:4
lunch [2] - 6605:2,
6605:4

M

magnitude [1] -
6592:8
MAIER [22] - 6497:2,
6521:17, 6530:25,
6534:1, 6534:5,
6535:2, 6535:4,
6535:16, 6535:17,
6539:15, 6548:7,
6554:5, 6554:11,
6554:20, 6560:1,
6560:12, 6563:13,
6563:17, 6569:15,
6576:3, 6576:6,
6576:9
Maier [2] - 6534:1,
6534:3
mail [19] - 6521:13,

6523:3, 6525:5,
6527:6, 6530:6,
6530:9, 6530:13,
6530:15, 6530:16,
6530:17, 6530:18,
6532:2, 6534:15,
6536:16, 6536:20,
6537:2, 6537:22,
6548:11, 6548:14
mails [1] - 6530:11
main [2] - 6531:7,
6601:19
Maine [1] - 6497:3
major [6] - 6545:9,
6584:13, 6584:17,
6591:13, 6591:19,
6592:2
majority [7] - 6552:19,
6555:18, 6580:14,
6595:12, 6595:13,
6595:23, 6596:6
manage [11] -
6544:23, 6582:4,
6582:5, 6583:8,
6589:13, 6591:7,
6592:16, 6593:25,
6599:16, 6602:15,
6602:25
managed [2] -
6502:11, 6592:5
management [3] -
6502:12, 6530:7,
6598:5
Manager [2] -
6603:20, 6604:4
manager [2] - 6526:2,
6530:19
managers [2] -
6544:19, 6544:23
managing [2] -
6590:24, 6598:9
manually [2] -
6593:22, 6596:23
map [15] - 6509:1,
6509:13, 6509:16,
6509:18, 6509:19,
6509:20, 6509:25,
6510:7, 6511:1,
6512:3, 6522:20,
6523:25, 6525:9,
6527:1, 6527:3
March [1] - 6502:3
marginal [1] - 6524:22
Marin [3] - 6591:21,
6592:12, 6592:13
marked [9] - 6539:9,
6540:25, 6553:14,
6554:22, 6554:23,
6563:5, 6563:7,
6573:16, 6585:7

market [3] - 6592:22,
6603:19, 6603:22
marketing [23] -
6501:19, 6501:25,
6505:17, 6506:19,
6506:20, 6506:21,
6506:23, 6510:19,
6515:12, 6526:16,
6548:12, 6548:25,
6551:15, 6552:11,
6552:13, 6556:11,
6558:2, 6558:24,
6564:19, 6582:5,
6583:11, 6584:21,
6587:19
marketplace [7] -
6501:13, 6531:11,
6533:10, 6583:23,
6593:5, 6593:6,
6593:16
marketplaces [1] -
6602:14
markets [2] - 6542:12,
6573:10
Marriott [1] - 6502:22
master's [2] - 6501:5
match [1] - 6520:7
materially [1] -
6524:19
mathematically [1] -
6533:12
matter [1] - 6606:5
matters [1] - 6539:1
Maui [2] - 6567:22,
6567:25
maximize [2] -
6551:18, 6573:5
McKenzie [2] - 6501:7,
6501:10
mean [22] - 6507:5,
6507:13, 6507:24,
6521:6, 6528:1,
6537:15, 6559:2,
6578:24, 6583:19,
6587:21, 6587:22,
6592:6, 6593:11,
6595:16, 6596:1,
6596:9, 6596:11,
6597:25, 6598:6,
6601:4, 6602:11,
6604:20
meaningful [1] -
6515:6
means [6] - 6531:21,
6550:5, 6559:3,
6600:23, 6601:5,
6602:12
meant [2] - 6584:20,
6599:13
measurement [2] -

6603:22, 6604:1
measures [1] -
6551:21
mechanism [5] -
6525:15, 6525:16,
6574:18, 6574:19,
6580:9
media [17] - 6503:23,
6505:24, 6512:23,
6513:1, 6513:3,
6548:22, 6548:23,
6548:25, 6549:3,
6551:15, 6551:16,
6575:20, 6583:18,
6585:25, 6588:20,
6588:21
meet [3] - 6500:7,
6504:10, 6534:8
meeting [11] - 6505:3,
6525:4, 6525:7,
6525:11, 6525:24,
6527:6, 6530:8,
6530:13, 6530:17,
6530:20, 6530:22
meetings [5] -
6504:12, 6504:15,
6504:21, 6515:18,
6525:6
MEHTA [1] - 6496:10
member [4] - 6503:3,
6504:8, 6504:19,
6546:20
members [6] -
6546:24, 6546:25,
6558:14, 6558:15,
6561:22, 6569:25
mentioned [13] -
6506:15, 6506:18,
6507:12, 6512:23,
6519:17, 6534:14,
6537:8, 6542:10,
6548:22, 6549:6,
6550:24, 6567:1,
6595:1
meritless [1] -
6532:23
met [2] - 6534:7,
6534:8
meta [46] - 6505:19,
6505:20, 6505:21,
6507:12, 6507:14,
6508:2, 6508:4,
6508:20, 6508:23,
6510:8, 6511:24,
6512:3, 6512:6,
6512:21, 6516:21,
6518:11, 6524:8,
6524:16, 6524:17,
6525:10, 6525:18,
6526:22, 6528:24,

6549:23, 6550:1, 6550:2, 6550:4, 6550:25, 6551:6, 6555:25, 6565:14, 6565:16, 6565:17, 6574:24, 6574:25, 6575:4, 6577:2, 6577:3, 6577:12, 6578:3, 6578:4, 6580:2, 6584:15, 6589:16

metrics [2] - 6536:2, 6555:9

metro [1] - 6568:25

Miami [3] - 6511:14, 6513:22, 6577:5

mic [1] - 6576:1

MICHAEL [1] - 6496:20

Michael [2] - 6581:5, 6581:13

Microsoft [12] - 6499:14, 6583:7, 6584:6, 6593:1, 6593:17, 6593:19, 6593:23, 6594:24, 6595:10, 6600:10, 6602:14, 6604:22

mid-2022 [1] - 6553:1

middle [3] - 6565:8, 6586:16, 6598:14

might [22] - 6505:25, 6507:3, 6508:5, 6508:9, 6514:11, 6514:12, 6515:9, 6528:17, 6544:10, 6552:9, 6552:16, 6559:18, 6568:18, 6571:23, 6574:24, 6577:21, 6579:1, 6579:3, 6596:17, 6598:24, 6599:23, 6600:18

million [12] - 6522:23, 6523:2, 6523:8, 6523:11, 6523:13, 6523:14, 6575:21, 6594:23

minimis [1] - 6524:21

minutes [2] - 6500:10, 6525:25

mirror [2] - 6593:21, 6593:22

mirroring [1] - 6593:14

miss [1] - 6531:7

mix [3] - 6515:7, 6552:6, 6555:14

mobile [3] - 6514:3, 6524:1, 6584:24

model [3] - 6532:12, 6532:14, 6584:25

module [1] - 6540:1

moment [6] - 6513:11, 6550:5, 6560:15, 6576:10, 6587:1, 6603:10

monetize [1] - 6531:22

monetized [1] - 6510:12

money [14] - 6512:17, 6521:7, 6522:17, 6524:24, 6531:19, 6532:24, 6532:25, 6533:1, 6533:19, 6552:9, 6565:1, 6565:6, 6565:18

month [2] - 6525:4, 6566:5

months [4] - 6533:3, 6561:21, 6569:17, 6604:21

morning [15] - 6499:3, 6499:8, 6499:13, 6499:21, 6500:4, 6534:1, 6534:6, 6534:7, 6560:2, 6564:23, 6571:5, 6572:16, 6581:5, 6581:17, 6581:18

MORNING [1] - 6496:9

most [25] - 6505:15, 6506:22, 6506:24, 6509:17, 6513:23, 6514:9, 6518:16, 6523:12, 6530:22, 6536:15, 6536:18, 6545:11, 6545:19, 6546:11, 6550:1, 6557:13, 6569:6, 6580:8, 6595:21, 6595:22, 6595:24, 6596:20, 6598:14, 6603:19

mostly [1] - 6584:12

move [8] - 6521:15, 6525:22, 6530:23, 6554:5, 6554:13, 6563:13, 6576:1, 6585:20

moving [2] - 6515:9, 6561:1

MR [42] - 6499:22, 6500:3, 6503:8, 6508:19, 6510:15, 6516:2, 6516:4, 6521:15, 6521:20, 6524:13, 6529:11, 6530:23, 6531:3,

6533:21, 6554:8, 6554:16, 6563:14, 6569:12, 6576:14, 6576:17, 6578:7, 6578:21, 6578:22, 6580:20, 6581:5, 6581:11, 6581:13, 6581:16, 6584:1, 6585:9, 6585:14, 6585:20, 6585:24, 6586:7, 6586:13, 6589:5, 6595:5, 6597:4, 6599:4, 6605:6, 6605:9, 6605:12

MS [25] - 6499:13, 6499:19, 6521:17, 6530:25, 6533:25, 6534:1, 6534:5, 6535:2, 6535:4, 6535:16, 6535:17, 6539:15, 6548:7, 6554:5, 6554:11, 6554:20, 6560:1, 6560:12, 6563:13, 6563:17, 6569:15, 6576:3, 6576:6, 6576:9, 6585:21

multiple [8] - 6549:21, 6590:24, 6591:1, 6591:7, 6593:25, 6594:8, 6594:11, 6594:15

muscle [2] - 6599:21, 6602:23

N

name [11] - 6500:5, 6557:1, 6581:12, 6581:19, 6581:20, 6582:14, 6582:17, 6582:20, 6603:19, 6603:20

names [1] - 6509:5

nascent [1] - 6589:17

native [11] - 6592:23, 6593:1, 6593:4, 6593:8, 6593:15, 6594:3, 6599:19, 6599:24, 6600:5, 6600:8, 6604:23

native/free [2] - 6599:11, 6600:4

nature [1] - 6505:25

navigate [5] - 6547:22, 6549:2, 6549:4, 6549:18, 6549:22

navigates [1] - 6514:4

navigation [1] -

6548:10

near [4] - 6517:4, 6517:22, 6522:10, 6586:8

nearly [2] - 6575:15, 6575:23

Nebraska [1] - 6496:17

necessarily [5] - 6537:19, 6538:16, 6539:19, 6587:16, 6592:7

need [6] - 6507:7, 6530:1, 6530:5, 6532:13, 6532:20, 6573:8

needed [2] - 6504:14, 6526:9

needs [1] - 6512:7

negotiation [1] - 6583:8

net [1] - 6583:8

neutral [4] - 6601:7, 6601:10, 6602:4, 6602:7

never [2] - 6538:23, 6566:2

New [12] - 6496:19, 6496:20, 6496:22, 6497:7, 6516:11, 6517:8, 6519:24, 6520:9, 6581:6

new [13] - 6518:25, 6521:8, 6525:12, 6528:4, 6562:13, 6566:11, 6566:19, 6567:2, 6567:11, 6569:9, 6570:9, 6577:20, 6583:8

next [17] - 6525:21, 6528:6, 6528:15, 6531:23, 6540:24, 6543:22, 6562:13, 6562:25, 6566:17, 6567:1, 6567:16, 6568:5, 6572:6, 6573:13, 6581:4, 6581:7, 6598:11

night [2] - 6499:14, 6500:7

night's [1] - 6605:13

nights [1] - 6568:21

non [1] - 6558:16

non-app [1] - 6558:16

noncommission [1] - 6503:12

none [1] - 6515:6

nonGoogle [1] - 6509:23

nonloyalty [1] -

6558:15

nonmembers [1] - 6562:2

North [1] - 6541:2

north [1] - 6603:24

Northwest [2] - 6496:14, 6497:9

noted [3] - 6554:22, 6562:21, 6564:17

notes [12] - 6525:24, 6526:3, 6530:21, 6531:7, 6532:1, 6546:7, 6546:10, 6546:19, 6558:12, 6558:19, 6558:23, 6563:21

nothing [2] - 6533:21, 6580:20

notification [2] - 6548:11, 6548:17

notwithstanding [1] - 6537:1

November [6] - 6502:7, 6504:9, 6504:16, 6525:5, 6525:6

Number [1] - 6496:3

number [18] - 6512:7, 6518:1, 6523:11, 6531:5, 6540:7, 6544:16, 6546:25, 6547:10, 6547:18, 6569:16, 6574:4, 6576:4, 6576:5, 6580:11, 6594:25, 6596:10, 6598:1, 6598:10

numbers [5] - 6524:14, 6524:20, 6595:3, 6595:7, 6595:8

Nylen [1] - 6499:17

NYLEN [1] - 6499:19

O

obfuscates [1] - 6532:5

objection [8] - 6521:17, 6530:25, 6554:7, 6554:8, 6554:16, 6563:14, 6569:12, 6585:21

objectives [1] - 6601:6

observed [1] - 6515:11

obvious [1] - 6519:14

obviously [3] - 6512:21, 6596:6, 6601:19

6562:23, 6564:5, 6564:14, 6565:6, 6565:17, 6568:9, 6568:13, 6569:4, 6569:8, 6574:24, 6575:2, 6577:2, 6577:3, 6577:12, 6578:2, 6578:3, 6578:4, 6580:5, 6580:13

product's [2] - 6518:16, 6524:8

products [8] - 6508:4, 6509:19, 6524:16, 6528:4, 6564:15, 6580:2, 6582:8, 6586:23

professional [1] - 6501:6

profit [4] - 6537:17, 6562:1, 6565:1, 6565:9

profitable [3] - 6532:22, 6545:19, 6546:11

profits [1] - 6558:15

program [5] - 6528:18, 6532:6, 6567:2, 6603:6, 6603:9

programs [4] - 6556:25, 6558:24, 6582:5, 6602:16

prohibitive [1] - 6604:7

prominent [3] - 6542:7, 6559:17, 6574:2

promote [1] - 6582:8

promotes [2] - 6573:4, 6585:2

promoting [2] - 6556:24, 6557:2

properties [5] - 6509:3, 6510:6, 6520:11, 6520:15, 6544:24

property [7] - 6515:2, 6518:7, 6544:19, 6544:23, 6550:7, 6550:11, 6579:6

proportion [1] - 6512:19

proportionality [1] - 6506:11

proposition [1] - 6528:10

prospective [1] - 6597:15

provide [10] - 6500:4, 6501:1, 6502:15,

6567:23, 6591:11, 6591:12, 6591:14, 6593:6, 6597:15, 6600:13

provided [7] - 6511:1, 6512:12, 6549:16, 6561:18, 6568:18, 6578:9, 6593:20

provider [4] - 6509:5, 6513:4, 6520:25, 6529:8

providers [6] - 6502:15, 6502:20, 6505:19, 6507:12, 6508:10, 6510:8

provides [5] - 6546:16, 6554:3, 6568:22, 6573:7, 6591:10

providing [5] - 6503:10, 6512:10, 6530:8, 6546:17, 6578:5

PSX00112 [1] - 6527:4

PSX0113 [2] - 6521:11, 6521:19

PSX07 [1] - 6520:14

PSX1119 [1] - 6596:25

PSX112 [1] - 6531:2

PSX112....................
.... [1] -
6498:9

PSX113....................
.... [1] -
6498:9

PSX1200 [2] - 6585:8, 6585:20

PSX1200....................
.... [1] -
6498:11

PSXD07 [1] - 6516:9

PSXD08 [1] - 6519:22

public [2] - 6542:20, 6556:14

publicly [5] - 6534:12, 6535:21, 6543:11, 6546:17, 6556:14

published [1] - 6525:24

publisher [6] - 6599:11, 6599:23, 6599:25, 6601:7, 6601:11, 6602:4

publishers [4] - 6589:15, 6589:18, 6598:7, 6600:16

pull [9] - 6539:9, 6587:18, 6587:23, 6588:8, 6588:10, 6588:13, 6588:14,

6588:24

pulling [1] - 6588:1

purchase [12] - 6512:23, 6513:17, 6551:9, 6559:11, 6559:14, 6574:18, 6574:19, 6575:8, 6583:13, 6586:24, 6587:2, 6587:10

purchased [2] - 6507:24, 6544:14

purchasing [2] - 6583:10, 6587:17

purpose [4] - 6504:12, 6521:24, 6521:25, 6522:3

purposes [1] - 6582:19

push [11] - 6548:11, 6548:17, 6587:18, 6587:22, 6588:3, 6588:12, 6588:17, 6588:18, 6588:22

pushed [2] - 6588:5, 6590:6

put [14] - 6511:13, 6514:7, 6514:15, 6535:14, 6535:16, 6539:11, 6543:7, 6545:23, 6563:18, 6565:9, 6577:11, 6595:9, 6598:24, 6600:15

PX1200 [1] - 6585:23

Q

Q2 [3] - 6555:1, 6562:14

qualified [2] - 6513:4, 6577:11

quality [2] - 6539:3, 6539:4

quarter [5] - 6536:22, 6546:7, 6552:9, 6561:17, 6566:6

quarterly [4] - 6505:4, 6535:24, 6546:1, 6593:18

quarters [1] - 6553:1

queries [6] - 6509:17, 6511:17, 6512:5, 6568:1, 6589:8, 6596:1

query [9] - 6502:18, 6507:2, 6507:8, 6508:23, 6511:11, 6511:23, 6513:10, 6539:1, 6574:7

questions [11] -

6533:24, 6564:22, 6567:21, 6567:25, 6568:7, 6571:5, 6572:15, 6572:18, 6576:11, 6576:15, 6580:1

quite [5] - 6502:10, 6518:23, 6519:4, 6531:22, 6577:4

quoting [1] - 6546:13

R

rank [1] - 6517:9

ranking [1] - 6538:21

rare [1] - 6529:24

rarely [1] - 6513:18

rate [1] - 6542:18

rates [1] - 6558:14

ratio [2] - 6533:15, 6555:10

reach [2] - 6605:11, 6605:16

reached [1] - 6526:2

reaction [1] - 6532:7

read [3] - 6522:24, 6522:25, 6530:5

reading [1] - 6557:21

reads [1] - 6585:25

ready [2] - 6499:21, 6581:4

real [2] - 6523:20, 6565:17

really [15] - 6513:16, 6515:6, 6515:20, 6524:8, 6525:14, 6525:15, 6528:11, 6562:21, 6577:15, 6583:6, 6589:19, 6589:20, 6590:6, 6591:20, 6600:25

reason [1] - 6507:3

reasonable [1] - 6528:21

reasonably [1] - 6533:13

reasons [1] - 6596:21

rebound [1] - 6545:13

receive [1] - 6542:7

received [7] - 6521:19, 6531:2, 6532:1, 6554:10, 6554:19, 6563:16, 6585:23

RECEIVED [1] - 6498:8

receives [1] - 6590:15

receiving [1] - 6531:9

recent [3] - 6553:1, 6557:13, 6603:20

recently [2] - 6557:19,

6567:2

Recess [2] - 6560:9, 6605:21

recognize [3] - 6563:10, 6585:18, 6597:10

recommend [1] - 6567:22

recommendations [1] - 6570:1

reconcile [1] - 6593:18

record [5] - 6546:7, 6546:19, 6547:5, 6581:19, 6606:4

recorded [1] - 6497:12

red [2] - 6578:13, 6579:14

redeploy [1] - 6565:18

Redirect [1] - 6498:5

redirect [1] - 6576:13

REDIRECT [1] - 6576:16

redo [1] - 6604:15

reengaging [1] - 6585:3

refer [4] - 6511:9, 6582:19, 6591:6, 6592:23

reference [4] - 6510:23, 6511:8, 6525:25, 6530:21

referenced [2] - 6510:20, 6530:8

referencing [1] - 6519:18

referred [1] - 6589:10

referring [7] - 6509:14, 6511:3, 6520:14, 6586:11, 6600:4, 6602:17, 6603:16

refers [1] - 6547:7

reflected [2] - 6536:16, 6564:2

reflecting [1] - 6512:14

reflects [4] - 6563:22, 6564:5, 6566:18, 6573:15

regarding [1] - 6529:13

regardless [1] - 6532:21

regional [1] - 6584:8

regular [1] - 6583:24

regularly [2] - 6504:10, 6571:12

regulate [1] - 6579:11

reinvesting [1] -

6565:10
related [1] - 6521:3
relationship [2] - 6531:22, 6538:9
relationships [3] - 6556:16, 6558:3, 6566:8
relative [8] - 6515:1, 6552:5, 6552:12, 6558:15, 6592:2, 6592:16, 6594:17, 6595:7
relatively [1] - 6559:7
release [10] - 6545:25, 6546:3, 6567:7, 6568:19, 6569:20, 6569:22, 6569:24, 6570:7, 6570:8, 6570:9
released [4] - 6566:19, 6567:5, 6569:10, 6570:6
releases [1] - 6546:1
relevance [1] - 6538:25
relevant [3] - 6520:5, 6588:6, 6589:1
reliance [1] - 6564:18
remaining [2] - 6553:7, 6555:21
remember [1] - 6523:21
removed [1] - 6533:4
rental [16] - 6501:13, 6516:6, 6516:8, 6516:11, 6518:13, 6518:15, 6518:19, 6524:16, 6525:9, 6526:24, 6529:13, 6537:6, 6540:1, 6544:24, 6579:6
rentals [11] - 6500:17, 6502:16, 6502:25, 6516:21, 6520:6, 6539:25, 6540:21, 6544:12, 6571:6, 6579:4, 6579:11
repeat [3] - 6558:14, 6562:2, 6583:12
replacement [1] - 6527:13
reply [1] - 6530:20
REPORTER [2] - 6606:1, 6606:9
Reporter [1] - 6497:9
reporting [1] - 6599:25
reports [2] - 6504:7, 6561:13
repositioned [1] -

6582:17
represent [3] - 6585:15, 6595:11, 6598:20
representation [1] - 6543:8
request [1] - 6533:3
resolve [1] - 6499:12
resolved [1] - 6499:14
resolves [1] - 6499:18
resorts [1] - 6567:22
respect [3] - 6512:2, 6520:22, 6523:15
respond [2] - 6511:11, 6531:24
responded [1] - 6530:12
response [3] - 6531:6, 6574:7, 6589:7
responsibilities [2] - 6583:4, 6585:5
responsible [2] - 6503:22, 6503:24
result [6] - 6511:16, 6512:10, 6540:11, 6576:19, 6588:5, 6590:5
results [58] - 6502:18, 6502:19, 6504:13, 6508:14, 6510:1, 6510:9, 6510:25, 6511:20, 6511:21, 6514:16, 6517:20, 6518:4, 6519:4, 6519:13, 6519:21, 6522:9, 6522:10, 6523:19, 6525:13, 6527:1, 6529:9, 6537:13, 6537:23, 6538:13, 6538:16, 6538:19, 6538:22, 6539:1, 6539:7, 6539:16, 6539:18, 6540:8, 6540:11, 6542:2, 6542:3, 6542:5, 6545:3, 6545:9, 6546:4, 6546:16, 6550:3, 6552:3, 6554:1, 6560:18, 6560:23, 6561:16, 6561:17, 6565:23, 6573:2, 6573:14, 6573:15, 6573:20, 6573:24, 6573:25, 6575:7, 6575:8, 6575:9
resume [1] - 6560:5
retail [4] - 6502:12, 6557:25, 6583:18, 6584:17

return [9] - 6511:16, 6511:19, 6518:8, 6521:8, 6522:18, 6551:19, 6551:21, 6603:10, 6605:2
returning [1] - 6511:21
returns [1] - 6551:25
revenue [19] - 6503:9, 6503:10, 6503:12, 6503:17, 6503:18, 6531:11, 6531:15, 6532:4, 6532:11, 6536:3, 6536:7, 6545:18, 6546:8, 6571:16, 6572:9, 6575:16, 6575:20, 6595:19
revenues [4] - 6534:21, 6536:23, 6545:15, 6575:13
reviews [2] - 6505:4, 6529:3
rewarding [1] - 6528:15
right-hand [2] - 6531:5, 6578:12
rise [1] - 6562:10
robust [2] - 6523:10, 6525:12
role [4] - 6502:4, 6525:12, 6583:4
roles [2] - 6504:21, 6583:5
rolled [1] - 6567:2
rolling [2] - 6557:8, 6566:11
rollout [1] - 6562:24
romantic [1] - 6567:22
Room [1] - 6497:10
Rosati [1] - 6497:5
rose [1] - 6515:16
roughly [1] - 6502:2
row [1] - 6575:20
RPR [1] - 6497:9
run [2] - 6513:7, 6594:15
running [4] - 6506:1, 6586:15, 6594:19, 6594:22

S

SA360 [5] - 6591:23, 6591:25, 6592:17, 6592:20, 6601:16
safe [1] - 6580:24
sake [1] - 6554:13
Sam [1] - 6567:8
sample [3] - 6540:4,

6573:14, 6574:10
San [1] - 6501:8
SARA [1] - 6497:9
Sara [2] - 6606:3, 6606:8
Saratoga [2] - 6516:11, 6517:7
saved [1] - 6578:23
saving [1] - 6570:11
saw [5] - 6511:8, 6511:9, 6542:14, 6558:22, 6575:17
scale [1] - 6603:8
Schmidtlein [1] - 6499:7
SCHMIDTLEIN [3] - 6497:2, 6605:6, 6605:12
Schwartz [3] - 6581:6, 6581:13, 6589:3
SCHWARTZ [16] - 6496:20, 6581:5, 6581:11, 6581:13, 6581:16, 6584:1, 6585:9, 6585:14, 6585:20, 6585:24, 6586:7, 6586:13, 6589:5, 6595:5, 6597:4, 6599:4
science/one [1] - 6518:3
scientific [1] - 6592:7
scraped [1] - 6511:22
screen [3] - 6535:15, 6539:11, 6563:18
scroll [4] - 6516:17, 6518:12, 6520:9, 6524:1
Search [5] - 6591:18, 6592:10, 6592:17, 6602:8, 6604:3
search [128] - 6505:17, 6506:3, 6506:5, 6506:19, 6506:21, 6506:22, 6509:14, 6510:9, 6510:19, 6510:24, 6514:12, 6514:16, 6515:12, 6516:10, 6517:3, 6518:2, 6519:20, 6519:23, 6520:2, 6520:4, 6520:8, 6523:19, 6527:1, 6527:19, 6527:23, 6528:2, 6529:2, 6529:9, 6537:11, 6538:13, 6538:22, 6539:16, 6539:18, 6539:24, 6542:2, 6542:23, 6543:13,

6545:3, 6548:2, 6549:19, 6549:21, 6550:25, 6551:6, 6551:22, 6552:1, 6552:10, 6552:13, 6555:25, 6556:5, 6560:23, 6565:14, 6565:16, 6568:16, 6568:22, 6569:1, 6569:2, 6569:4, 6569:5, 6569:6, 6569:10, 6570:15, 6570:20, 6570:25, 6571:13, 6571:16, 6572:2, 6572:5, 6572:9, 6573:2, 6573:14, 6573:20, 6573:24, 6573:25, 6576:19, 6580:5, 6580:8, 6580:11, 6580:15, 6583:18, 6584:2, 6584:5, 6584:11, 6585:16, 6586:7, 6586:10, 6586:11, 6586:16, 6586:18, 6586:24, 6587:2, 6587:5, 6587:8, 6587:12, 6587:23, 6588:9, 6588:10, 6588:13, 6588:15, 6589:11, 6589:13, 6589:25, 6591:7, 6592:11, 6592:13, 6592:16, 6592:24, 6593:10, 6593:12, 6593:25, 6594:8, 6594:11, 6594:15, 6594:18, 6594:20, 6594:25, 6595:9, 6595:24, 6596:3, 6597:6, 6599:12, 6601:19, 6601:20, 6601:23
searched [1] - 6543:20
searches [1] - 6502:17
searching [8] - 6515:14, 6539:20, 6543:4, 6543:12, 6543:16, 6559:13, 6568:16, 6588:1
seated [1] - 6560:11
SEC [5] - 6535:22, 6557:14, 6571:12, 6571:15, 6571:19
second [14] - 6516:15, 6520:19, 6521:21, 6530:6, 6531:5, 6546:6, 6554:23, 6558:12, 6561:17,

6533:18, 6551:22,
6552:9, 6552:16,
6558:24, 6565:5,
6565:10, 6565:11,
6579:23, 6592:5,
6592:13, 6592:16,
6594:17, 6594:19,
6595:11, 6595:13,
6595:21, 6595:24,
6596:6, 6596:14,
6596:17, 6598:4,
6598:9
spending [12] -
6521:8, 6522:14,
6522:22, 6527:10,
6531:9, 6531:18,
6538:7, 6538:9,
6564:25, 6565:4,
6565:6, 6593:14
spent [6] - 6518:8,
6518:9, 6523:10,
6524:24, 6552:12,
6566:4
sponsored [1] -
6550:13
sporadically [1] -
6504:20
spot [2] - 6516:14,
6516:16
Springs [2] - 6516:11,
6517:7
stack [3] - 6599:11,
6599:23, 6603:17
stage [1] - 6587:15
stand [1] - 6510:18
standard [1] - 6525:8
standing [1] - 6504:18
standpoint [1] -
6523:13
Stanford [3] - 6501:5,
6501:9
start [13] - 6504:15,
6514:9, 6533:11,
6568:23, 6569:10,
6569:25, 6570:15,
6570:20, 6577:9,
6587:23, 6595:20,
6595:24, 6602:2
started [3] - 6499:10,
6502:3, 6519:5
starting [2] - 6504:9,
6524:10
starts [1] - 6568:24
State [4] - 6496:16,
6496:16, 6496:20,
6581:6
state [2] - 6571:12,
6581:19
statement [9] -
6532:7, 6555:20,

6556:13, 6557:18,
6558:6, 6558:18,
6586:4, 6586:6,
6586:17
statements [1] -
6535:22
STATES [3] - 6496:1,
6496:3, 6496:10
states [2] - 6532:2,
6571:15
States [7] - 6496:13,
6499:4, 6499:7,
6499:22, 6506:7,
6581:4, 6581:6
stating [1] - 6556:14
stay [8] - 6519:23,
6541:1, 6541:20,
6541:21, 6570:2,
6571:6, 6575:11
stay/Buffalo [1] -
6520:9
stayed [1] - 6501:17
stenotype [1] -
6497:12
step [2] - 6586:24,
6587:13
steps [1] - 6586:25
still [5] - 6541:16,
6568:23, 6589:6,
6589:16, 6605:13
stop [1] - 6530:10
stopped [1] - 6564:23
store [3] - 6549:4,
6549:15, 6559:14
stores [1] - 6559:10
story [1] - 6523:13
strategic [1] - 6583:6
strategy [10] - 6501:8,
6501:11, 6501:16,
6505:4, 6556:15,
6557:19, 6557:25,
6558:6, 6563:2,
6564:1
Strauss [1] - 6501:8
streaming [2] -
6506:1, 6559:23
streamline [1] -
6564:15
Street [2] - 6496:14,
6496:21
strike [1] - 6505:11
stronger [1] - 6555:10
structure [2] - 6524:6,
6564:1
structured [2] -
6511:17, 6568:17
stuck [1] - 6526:5
stuff [1] - 6523:23
subs [1] - 6503:4
subscription [1] -

6532:16
subsequently [2] -
6501:15, 6522:2
substantially [3] -
6532:4, 6532:10,
6545:12
substitute [3] -
6506:25, 6565:11,
6575:1
success [1] - 6515:9
successful [3] -
6555:18, 6598:15,
6602:22
suggestions [1] -
6567:24
Suite [1] - 6496:18
summarizes [1] -
6563:2
summarizing [2] -
6530:7, 6530:17
summary [2] -
6530:13, 6531:7
supplier [1] - 6550:14
supply [4] - 6502:11,
6511:20, 6544:19,
6544:21
support [2] - 6531:21,
6589:20
surpassed [1] -
6545:18
surprised [1] -
6598:23
surprisingly [1] -
6554:24
suspect [1] - 6579:3
sustained [1] -
6569:14
switch [5] - 6603:1,
6603:7, 6604:11,
6604:16, 6604:19
switching [4] -
6603:8, 6604:9,
6605:1
SWORN [2] - 6499:24,
6581:8
systems [1] - 6538:21

T

tab [1] - 6586:7
tabs [1] - 6586:15
target [1] - 6551:16
Target [2] - 6584:19,
6585:2
targeting [2] -
6551:15, 6573:10
team [10] - 6503:22,
6504:2, 6504:5,
6504:19, 6518:24,
6527:7, 6530:7,

6566:7, 6590:24
teams [3] - 6502:11,
6590:24, 6591:1
technically [1] -
6506:8
techniques [1] -
6551:15
technology [6] -
6581:24, 6582:3,
6599:20, 6600:11,
6602:25, 6603:17
ten [8] - 6515:7,
6522:14, 6525:25,
6531:15, 6531:19,
6532:25, 6582:23,
6592:10
tenure [6] - 6515:4,
6517:12, 6550:19,
6567:4, 6567:8,
6567:13
term [15] - 6509:6,
6510:16, 6510:21,
6510:24, 6514:18,
6518:2, 6520:4,
6521:4, 6539:22,
6543:13, 6543:16,
6543:20, 6583:24,
6591:6, 6592:23
terms [21] - 6499:11,
6503:17, 6503:18,
6506:18, 6511:2,
6514:25, 6515:1,
6529:21, 6542:25,
6545:21, 6545:22,
6587:18, 6587:21,
6592:4, 6592:5,
6592:11, 6592:13,
6595:19, 6596:10,
6598:2
Terrific [1] - 6499:16
testified [4] - 6529:12,
6588:8, 6601:16,
6603:11
testimony [5] -
6560:6, 6568:15,
6568:17, 6580:24,
6605:3
TESTIMONY [1] -
6498:3
Texas [2] - 6500:6,
6501:4
text [32] - 6505:18,
6506:15, 6509:10,
6509:11, 6509:18,
6510:5, 6510:20,
6511:12, 6512:1,
6512:17, 6512:18,
6516:12, 6516:19,
6516:20, 6517:23,
6519:25, 6522:8,

6523:20, 6525:17,
6527:10, 6528:9,
6549:23, 6550:1,
6565:17, 6575:2,
6577:2, 6577:16,
6578:3, 6579:1,
6579:19, 6579:23,
6586:8
text/one [1] - 6512:21
text/one-third [1] -
6512:21
THE [87] - 6496:1,
6496:1, 6496:10,
6499:8, 6499:16,
6499:20, 6499:24,
6499:25, 6500:1,
6503:2, 6503:5,
6503:7, 6507:23,
6508:2, 6508:12,
6508:17, 6509:7,
6509:15, 6510:2,
6510:4, 6510:13,
6521:18, 6523:16,
6523:17, 6524:12,
6527:17, 6527:22,
6527:24, 6527:25,
6529:10, 6531:1,
6533:23, 6534:3,
6535:3, 6535:14,
6539:13, 6539:14,
6547:25, 6548:4,
6554:7, 6554:9,
6554:15, 6554:17,
6560:4, 6560:8,
6560:11, 6563:15,
6569:13, 6576:1,
6576:4, 6576:12,
6578:1, 6578:4,
6578:6, 6578:20,
6580:23, 6580:25,
6581:2, 6581:8,
6581:9, 6581:10,
6581:12, 6581:14,
6583:19, 6583:22,
6583:25, 6585:10,
6585:11, 6585:13,
6585:22, 6586:5,
6586:10, 6586:11,
6589:3, 6595:3,
6595:4, 6597:2,
6597:3, 6598:19,
6598:21, 6598:22,
6598:23, 6599:3,
6604:25, 6605:5,
6605:11, 6605:16
theory [1] - 6513:13
therefore [1] - 6554:24
they've [1] - 6579:5
thinking [7] - 6518:8,
6547:9, 6553:7,

6555:21, 6556:13, 6566:10, 6605:13

third [13] - 6512:21, 6536:22, 6555:21, 6556:11, 6558:19, 6592:12, 6601:10, 6602:4, 6602:8, 6602:10, 6602:24, 6604:4, 6604:8

thirds [4] - 6512:21, 6553:4, 6554:25, 6555:12

thread [1] - 6527:6

three [15] - 6500:22, 6501:10, 6512:9, 6516:19, 6516:20, 6521:1, 6524:1, 6529:21, 6531:15, 6532:25, 6548:6, 6561:22, 6572:4, 6573:15, 6574:11

thrive [1] - 6528:12

throughout [1] - 6583:5

TikTok [3] - 6505:22, 6583:7, 6584:16

title [1] - 6597:6

TLT [3] - 6504:8, 6504:10, 6504:21

today [15] - 6517:13, 6534:11, 6534:25, 6537:5, 6550:24, 6555:23, 6556:18, 6568:15, 6575:6, 6583:5, 6583:9, 6584:6, 6589:15, 6594:23, 6605:7

today's [1] - 6582:19

together [3] - 6530:2, 6534:25, 6595:10

Tony [1] - 6530:17

took [2] - 6585:15, 6595:9

tool [22] - 6589:14, 6591:6, 6591:10, 6592:23, 6592:24, 6593:4, 6593:15, 6593:24, 6594:4, 6594:6, 6594:10, 6599:24, 6600:8, 6600:22, 6601:23, 6603:2, 6603:18, 6603:22, 6604:12, 6604:19

tools [11] - 6567:12, 6591:11, 6592:2, 6593:1, 6593:4, 6599:25, 6600:5, 6600:24, 6604:9, 6604:16, 6604:23

top [41] - 6504:5, 6505:18, 6509:11, 6510:5, 6510:19, 6511:13, 6516:12, 6516:14, 6516:25, 6517:4, 6517:12, 6517:23, 6517:24, 6518:6, 6519:25, 6522:9, 6523:21, 6523:22, 6523:23, 6540:2, 6540:21, 6541:5, 6541:8, 6541:17, 6572:6, 6573:2, 6573:15, 6573:23, 6573:25, 6574:1, 6574:6, 6575:19, 6588:14, 6593:6, 6593:8, 6598:8, 6600:9, 6600:15, 6600:16, 6600:17, 6600:20

topic [6] - 6505:10, 6521:3, 6526:1, 6526:3, 6587:25, 6604:9

topics [3] - 6555:9, 6604:22, 6605:1

total [1] - 6597:6

towards [6] - 6515:4, 6558:13, 6558:24, 6561:19, 6587:9, 6601:11

track [1] - 6605:6

tracking [4] - 6514:22, 6562:23, 6566:18, 6604:15

trade [1] - 6515:20

trade-off [1] - 6515:20

traded [2] - 6534:12, 6535:21

traditional [3] - 6505:24, 6549:10, 6589:25

traffic [34] - 6513:25, 6514:1, 6514:5, 6514:20, 6514:21, 6515:11, 6515:19, 6517:21, 6524:4, 6524:9, 6531:16, 6537:11, 6537:23, 6537:24, 6552:19, 6552:22, 6553:5, 6555:1, 6555:5, 6555:6, 6555:7, 6555:13, 6555:15, 6555:19, 6555:22, 6555:25, 6556:3, 6556:6, 6556:8, 6556:10, 6561:6, 6565:23, 6576:22,

6576:24

training [1] - 6604:11

transactionally [1] - 6557:25

TRANSCRIPT [1] - 6496:9

Transcript [1] - 6497:13

transcript [2] - 6554:22, 6606:4

transcription [1] - 6497:13

transcripts [2] - 6553:19, 6554:12

transitioned [1] - 6502:4

travel [29] - 6500:16, 6502:24, 6504:1, 6504:5, 6504:19, 6507:3, 6507:15, 6508:22, 6509:4, 6509:10, 6509:17, 6513:5, 6513:19, 6527:20, 6544:8, 6551:1, 6555:8, 6559:13, 6568:7, 6570:15, 6572:20, 6572:23, 6573:1, 6573:4, 6573:10, 6573:17, 6574:1, 6574:11, 6574:15

Travel [1] - 6509:21

traveler [1] - 6532:14

travelers [3] - 6506:24, 6533:19, 6573:8

Travelocity [1] - 6500:24

travels [1] - 6580:24

treatment [4] - 6510:8, 6528:9, 6569:4, 6569:6

trend [2] - 6522:21, 6523:16

trends [4] - 6542:22, 6542:23, 6543:2, 6543:11

TRIAL [1] - 6496:9

trial [2] - 6526:25, 6580:16

tries [3] - 6551:25, 6552:3, 6552:6

trip [5] - 6500:17, 6570:9, 6570:12, 6577:20, 6580:16

Trip [12] - 6505:19, 6507:16, 6528:23, 6529:3, 6540:14, 6541:8, 6541:16, 6544:4, 6544:9,

6544:12, 6544:14, 6551:3

Trivago [5] - 6507:16, 6528:23, 6529:5, 6551:3, 6572:9

true [14] - 6520:22, 6536:23, 6538:1, 6545:15, 6546:23, 6547:6, 6554:3, 6555:20, 6559:4, 6561:5, 6572:13, 6573:23, 6577:6, 6603:24

trust [1] - 6529:3

truth [1] - 6603:25

try [7] - 6529:23, 6556:19, 6565:5, 6587:7, 6587:10, 6593:5, 6601:9

trying [17] - 6507:9, 6511:15, 6513:2, 6513:11, 6513:18, 6513:21, 6517:19, 6520:7, 6556:21, 6556:23, 6577:20, 6587:15, 6588:23, 6590:20, 6593:17, 6595:18, 6603:23

turn [16] - 6505:10, 6516:9, 6519:22, 6521:3, 6521:11, 6528:12, 6528:13, 6531:4, 6535:5, 6561:14, 6578:8, 6579:12, 6597:5, 6597:20, 6598:11, 6599:8

turning [1] - 6561:12

TV [2] - 6559:23, 6559:24

twice [3] - 6562:1, 6562:2, 6564:13

two [17] - 6512:21, 6518:2, 6523:24, 6525:4, 6528:7, 6528:16, 6529:21, 6537:25, 6541:5, 6542:3, 6553:4, 6554:11, 6554:25, 6555:12, 6555:15, 6565:3, 6584:22

two-thirds [4] - 6512:21, 6553:4, 6554:25, 6555:12

Tyler [1] - 6496:17

type [10] - 6511:11, 6513:5, 6517:3, 6529:1, 6529:20, 6553:21, 6577:10, 6577:15, 6582:7,

6588:19

typed [2] - 6507:2, 6520:7

types [9] - 6505:14, 6514:3, 6551:19, 6574:16, 6582:6, 6584:22, 6587:7, 6589:22, 6600:1

typically [13] - 6504:11, 6510:19, 6512:3, 6512:10, 6513:2, 6517:9, 6520:7, 6535:24, 6558:14, 6579:7, 6583:17, 6604:10, 6604:14

typing [3] - 6514:9, 6552:23, 6568:24

U

U.S [4] - 6555:10, 6591:13, 6594:17, 6595:6

U.S.-centric [1] - 6555:9

unanimously [1] - 6508:24

under [4] - 6525:22, 6546:6, 6571:25, 6598:4

undergraduate [2] - 6501:4, 6501:7

understood [1] - 6588:16

unique [2] - 6528:19, 6604:20

unit [23] - 6516:6, 6516:8, 6518:13, 6518:15, 6518:17, 6518:19, 6520:10, 6520:17, 6520:23, 6520:24, 6529:13, 6529:14, 6540:21, 6541:20, 6541:21, 6550:6, 6565:25, 6566:2, 6571:4, 6571:6, 6571:7

UNITED [3] - 6496:1, 6496:3, 6496:10

United [3] - 6496:13, 6499:4, 6506:7

units [1] - 6545:2

universal [1] - 6548:2

universe [1] - 6517:25

University [1] - 6501:4

unlikely [1] - 6526:6

unpaid [7] - 6510:1, 6525:16, 6538:3, 6550:16, 6550:19,

6550:21, 6575:8

unprofitable [1] - 6532:5

unyielding [1] - 6531:22

up [35] - 6508:7, 6508:10, 6516:18, 6518:12, 6519:13, 6522:18, 6524:14, 6525:20, 6529:12, 6529:19, 6531:11, 6533:17, 6535:14, 6535:16, 6538:8, 6538:16, 6538:17, 6539:1, 6539:6, 6539:9, 6541:17, 6543:7, 6545:5, 6545:23, 6547:20, 6560:16, 6561:14, 6563:18, 6564:25, 6566:24, 6572:22, 6586:12, 6589:4, 6591:17, 6603:21

upcoming [1] - 6504:13

updated [1] - 6535:24

updates [1] - 6554:3

upper [3] - 6578:12, 6587:14, 6588:19

URL [1] - 6514:2

usage [3] - 6546:20, 6547:5, 6562:19

user [22] - 6502:17, 6512:12, 6514:4, 6514:19, 6528:23, 6540:18, 6541:14, 6541:23, 6547:9, 6549:11, 6549:22, 6550:6, 6559:13, 6559:18, 6567:20, 6574:10, 6576:18, 6577:6, 6578:23, 6589:7, 6596:1

user's [6] - 6512:14, 6519:16, 6539:22, 6568:1, 6574:7, 6577:24

users [10] - 6543:12, 6543:16, 6558:14, 6558:16, 6562:6, 6567:24, 6568:7, 6569:10, 6586:1, 6586:19

users' [1] - 6512:2

uses [1] - 6603:22

V

V-a-l-l-e-z [1] - 6581:20

---

vacation [27] - 6500:17, 6501:13, 6502:16, 6502:24, 6516:6, 6516:7, 6516:10, 6516:21, 6518:13, 6518:14, 6518:18, 6520:6, 6524:15, 6524:16, 6525:9, 6526:24, 6529:13, 6537:5, 6539:25, 6540:1, 6540:21, 6544:12, 6544:24, 6571:6, 6579:4, 6579:6, 6579:11

valid [1] - 6511:23

VALLEZ [2] - 6498:6, 6581:8

Vallez [5] - 6499:11, 6581:7, 6581:9, 6581:20, 6605:3

valuable [3] - 6507:4, 6537:17, 6537:19

value [14] - 6524:25, 6528:10, 6533:9, 6593:3, 6593:5, 6593:6, 6600:9, 6600:14, 6600:15, 6600:17, 6600:19, 6601:13, 6602:2

varied [1] - 6515:1

variety [3] - 6549:9, 6550:25, 6551:22

various [4] - 6500:19, 6502:8, 6504:21, 6506:18

vary [2] - 6515:3, 6574:5

vast [1] - 6595:12

venues [1] - 6565:1

verbatim [1] - 6571:19

Verizon [4] - 6598:21, 6598:24, 6598:25

versa [1] - 6520:6

version [1] - 6508:4

versus [12] - 6499:4, 6523:14, 6543:13, 6561:4, 6562:14, 6593:19, 6596:22, 6601:8, 6601:11, 6602:8, 6602:20

vertical [1] - 6509:9

verticals [2] - 6509:9, 6509:12

via [1] - 6502:19

vice [2] - 6520:6, 6583:2

video [4] - 6513:3, 6513:7, 6549:6, 6588:19

---

view [6] - 6511:14, 6512:1, 6512:14, 6577:1, 6577:5, 6580:4

visibility [1] - 6573:5

visit [3] - 6532:3, 6532:4, 6532:11

visits [9] - 6522:8, 6522:23, 6523:2, 6523:11, 6523:14, 6524:10, 6524:22, 6531:10

visual [1] - 6543:8

voice [2] - 6589:4, 6590:20

volume [10] - 6506:25, 6522:12, 6527:13, 6531:16, 6595:14, 6595:21, 6595:23, 6595:24, 6596:1

Vrbo [68] - 6500:23, 6501:15, 6502:5, 6502:9, 6502:23, 6502:24, 6503:2, 6504:18, 6504:22, 6505:8, 6509:24, 6511:23, 6515:5, 6515:9, 6516:12, 6516:14, 6516:25, 6517:3, 6517:8, 6517:12, 6518:14, 6518:18, 6519:25, 6520:22, 6521:14, 6522:7, 6522:22, 6526:10, 6527:10, 6531:8, 6532:10, 6532:12, 6534:15, 6536:12, 6537:5, 6537:8, 6537:12, 6537:18, 6537:22, 6538:5, 6538:13, 6538:14, 6538:16, 6538:19, 6539:6, 6540:11, 6540:17, 6541:9, 6541:11, 6541:14, 6541:16, 6541:19, 6541:23, 6542:5, 6542:8, 6542:12, 6543:16, 6543:20, 6544:2, 6545:2, 6548:5, 6560:17, 6560:22, 6569:1, 6569:8, 6571:7

VRBO [1] - 6501:15

Vrbo's [1] - 6540:17

Vrbo-specific [1] - 6522:7

vs [1] - 6496:5

W

walk [1] - 6501:6

Walmart [1] - 6584:19

wants [2] - 6549:12, 6570:14

Washington [9] - 6496:5, 6496:14, 6497:4, 6497:10, 6507:11, 6508:9, 6508:13, 6568:24, 6568:25

Washville [1] - 6568:25

Waszmer [1] - 6499:11

WASZMER [3] - 6497:5, 6499:13, 6585:21

ways [8] - 6547:10, 6547:18, 6548:8, 6549:21, 6549:23, 6549:25, 6600:13, 6600:16

Web [1] - 6569:2

web [3] - 6549:5, 6577:12, 6586:22

web-landing [1] - 6577:12

Webb [1] - 6496:17

website [10] - 6503:21, 6511:5, 6535:12, 6535:19, 6548:10, 6553:22, 6563:10, 6585:16, 6586:8

websites [5] - 6502:18, 6538:18, 6555:25, 6572:3, 6572:6

weekly [4] - 6504:11, 6504:13, 6504:15

welcome [2] - 6499:25, 6581:9

well-established [1] - 6526:23

WENDY [1] - 6497:5

whereas [6] - 6509:22, 6511:21, 6526:24, 6527:2, 6566:5, 6588:3

white [1] - 6573:16

whole [4] - 6502:25, 6526:13, 6536:3, 6599:24

Wick [2] - 6606:3, 6606:8

WICK [1] - 6497:9

widely [1] - 6603:18

wider [1] - 6511:22

William [1] - 6499:6

WILLIAM [1] - 6496:17

Williams [1] - 6497:3

Wilson [1] - 6497:5

win [2] - 6536:11, 6597:16

wise [2] - 6522:17

wish [1] - 6573:20

wished [1] - 6499:17

withdraw [1] - 6518:21

withdrew [1] - 6518:18

witness [5] - 6499:11, 6533:22, 6533:24, 6581:4, 6581:7

WITNESS [26] - 6499:24, 6500:1, 6503:5, 6508:2, 6508:17, 6509:15, 6510:4, 6523:17, 6527:22, 6527:25, 6539:14, 6548:4, 6560:8, 6576:4, 6578:4, 6580:25, 6581:8, 6581:10, 6583:22, 6585:11, 6586:11, 6595:4, 6597:3, 6598:21, 6598:23, 6605:5

won [2] - 6509:24, 6580:9

word [1] - 6571:17

words [2] - 6503:3, 6509:9

works [3] - 6511:17, 6568:10, 6568:11

world [6] - 6500:24, 6527:18, 6527:20, 6528:7, 6528:16, 6529:15

world's [1] - 6598:14

www.expedia.com [1] - 6547:23

Y

Yahoo [3] - 6584:7, 6598:25, 6599:1

Yandex [1] - 6584:9

year [16] - 6522:13, 6523:6, 6523:7, 6534:9, 6536:13, 6536:18, 6545:19, 6546:3, 6546:7, 6546:11, 6546:23, 6557:14, 6562:25, 6567:15, 6575:24

years [7] - 6501:10, 6517:13, 6523:1,