

**SPAZIANO
EXHIBIT 1**

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(Alexandria Division)

ROSETTA STONE LTD.

Plaintiff,

v.

GOOGLE INC.

Defendant.

CIVIL ACTION NO. 1:09cv736
(GBL / TCB)

ANSWER TO PLAINTIFF'S COMPLAINT AND AFFIRMATIVE DEFENSES

Defendant Google Inc. ("Google"), through its counsel, answers the Complaint of Rosetta Stone Ltd. ("Rosetta Stone") as set forth below. Unless specifically admitted, Google denies each of the allegations of Rosetta Stone's Complaint.

NATURE OF THE ACTION

1. Google admits that Plaintiff purports to state claims related to the use of trademarks on the Internet, that the fundamental purpose of trademark law, in the bricks-and-mortar world and on the Internet, is to protect consumers from being confused as to the source or affiliation of the products or services that they seek to buy, and that many companies differentiate their products and services within the marketplace. Google denies the remaining allegations in Paragraph 1, and denies the implication that it has made any unlawful use of Rosetta Stone's alleged trademarks and similar marks.

2. Google lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in the first three sentences of Paragraph 2, and therefore denies the same. Google denies the remaining allegations in Paragraph 2.

3. Google admits that it owns and operates one of the world's most utilized Internet search engines, that a search engine allows computer users to search the World Wide Web for websites containing particular content, and that Google's search engine is available on its own website, www.google.com, as well as through other websites. Google denies the remaining allegations in Paragraph 3.

4. Google admits that to use its search engine, a web user must enter a search query to receive a list of links to web pages that Google's search algorithm identifies as relevant to the search query, that web users may then click on the provided links to view the associated websites, and that Google displays search results that are the product of an objective algorithm, which is not influenced by payments to Google from the website owners. Google denies the remaining allegations in Paragraph 4.

5. Google admits that it allows third parties to bid on keywords that may trigger display of their advertisements as Sponsored Links. Google denies the remaining allegations in Paragraph 5.

6. Google denies the allegations of the fourth sentence of Paragraph 6. Google lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations, and therefore denies the same.

THE PARTIES

7. Google lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 7, and therefore denies the same.

8. Google admits that it is a corporation organized under the laws of the State of Delaware with a principal place of business in Mountain View, California, that it advertises, solicits clients, has office space and conducts business in the Commonwealth of Virginia and

within the Alexandria Division of this District. Google denies the remaining allegations in Paragraph 8.

JURISDICTION AND VENUE

9. Google admits that in this action Rosetta Stone attempts to assert claims under the Lanham Act, 15 U.S.C. §§ 1051, *et seq.*, that the Court has federal question jurisdiction over such claims and supplemental jurisdiction over the Virginia state law trademark claims. Google denies the substance of all alleged claims.

10. Google admits that it is subject to personal jurisdiction in the Commonwealth of Virginia. Google denies all of the remaining allegations in Paragraph 10.

11. Google denies that venue is proper on the grounds of a forum selection clause in a contract it has with Rosetta Stone.

12. Google denies that venue is proper on the grounds of a forum selection clause in a contract it has with Rosetta Stone.

FACTUAL BACKGROUND

13. Google admits that the description of the Internet in Paragraph 13 is accurate, except as to the final sentence, which it denies to the extent “functionally” means anything other than “connects to the same website.”

14. Google lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 14, and therefore denies the same.

15. Google lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 15, and therefore denies the same.

16. Google lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 16, and therefore denies the same.

17. Google lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 17, and therefore denies the same.

18. Google lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 18, and therefore denies the same.

19. Google lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 19, and therefore denies the same.

20. Google lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 20, and therefore denies the same.

21. Google lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 21, and therefore denies the same.

22. Google lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 22, and therefore denies the same.

23. Google lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 23, and therefore denies the same.

24. Google lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 24, and therefore denies the same.

25. Google admits that many web users may use a search engine to locate a domain name or website address and that its search engine applies a formula, or algorithm, to display links to websites that may relate to the customer's search query. Google lacks knowledge or information to form a belief as to the truth or falsity of the remaining allegations in Paragraph 25, and therefore denies the same.

26. Google admits that the "natural" or "organic" results of the search engine are determined by an objective system, including the patented PageRank algorithm, that produces

search results in the order deemed most relevant to the user's search query. Google denies the remaining allegations in Paragraph 26.

27. Google admits that it profits from advertising relevant to search queries. Google denies the remaining allegations in Paragraph 27.

28. Google admits that advertisements, labeled "Sponsored Links," may be displayed to the right of and above "organic" search results. Google denies the remaining allegations in Paragraph 28.

29. Google admits that advertisers bid on the placement of their advertisements, and the amount of such bids is one factor that may determine placement of the advertisement. Google denies the remaining allegations in Paragraph 29.

30. Google denies all of the allegations in Paragraph 30.

31. Google denies all of the allegations in Paragraph 31.

32. Google admits that it has other advertising programs that are triggered by keywords. Google denies the remaining allegations in Paragraph 32.

33. Google denies all of the allegations in Paragraph 33.

34. Google admits that consumers may use a Google Toolbar on their Internet browsers to allow for Google searching even when not viewing a web page that features Google's search engine, and the allegations of the first two sentences of Paragraph 34. Google denies the remaining allegations in Paragraph 34.

35. Google admits the first sentence of Paragraph 35, and lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 35, and therefore denies the same.

36. Google admits that it offers a program called AdWords through which advertisers can arrange to have their advertisements displayed on the Internet, including on Google's search engine in the form of "Sponsored Links." Google denies the remaining allegations in Paragraph 36.

37. Google admits that advertisers agree to pay Google for each time a web user clicks on a "Sponsored Link" that appears on Google's search results page.

38. Google denies all of the allegations in Paragraph 38.

39. Google admits that keywords selected by an advertiser may trigger advertisements in response to user search queries corresponding to keywords selected by an advertiser, and that sometimes advertisers choose to include keywords in the text or body of their advertisements. Google denies the remaining allegations in paragraph 39.

40. Google denies that it makes "infringing use of proprietary marks," and denies all of the remaining allegations in Paragraph 40.

41. Google admits that it has the technical ability to prevent advertisers from bidding on individual words. Google denies all of the remaining allegations in Paragraph 41.

42. Google admits that its April 29, 2004 S-1 SEC filing reported that it formerly did not allow advertisers to use the trademarks of others as triggers.

43. Google admits that it has the technical ability to prevent advertisers from using certain non-descriptive keywords as AdWords triggers. Google denies the remaining allegations in Paragraph 43.

44. Google admits that the quoted language appeared in its 2004 S-1. Google denies the remaining allegations in Paragraph 44.

45. Google admits that the quoted language appeared in its 2004 S-1. Google denies the remaining allegations in Paragraph 45.

46. Google admits that its current policy for many countries other than the United States and Canada is that when it receives a complaint from a trademark owner it will investigate to ensure that the advertisements at issue are not using a term corresponding to the trademarked term in the ad text or as a keyword. Google denies the remaining allegations in Paragraph 46.

47. Google admits that it currently maintains guidelines for third party use of Google brand features, and that those guidelines currently include the language quoted in Paragraph 47. Google denies the remaining allegations in Paragraph 47, including the allegation that it does not treat the marks of other companies with respect.

48. Google admits that Rosetta Stone has not directly or indirectly given Google any permission, authority, or license to use or sell the right to use the words claimed by Rosetta Stone to be the "Rosetta Stone Marks" for the promotion of the goods and services of any third parties, however Google denies the implication that Google needs Rosetta Stone's permission, authority or license in connection with the operation of the AdWords Program or Google's organic search listings.

49. Google denies all of the allegations in Paragraph 49.

50. Google denies all of the allegations in Paragraph 50.

51. Google denies all of the allegations in Paragraph 51.

52. Google denies the implication that Google needs Rosetta Stone's permission, authority or license in connection with the operation of the AdWords program, denies the implication that Google sells the right to use Rosetta Stone's trademarks, and denies all the remaining allegations in Paragraph 52.

53. Google denies all of the allegations in Paragraph 53.

54. Google denies all of the allegations in Paragraph 54.

55. Google denies all of the allegations in Paragraph 55.

56. Google admits that it allows third party advertisers to bid on keywords to use as part of their advertising campaigns, and that it could prevent individual terms from being bid on. Google denies the remaining allegations in Paragraph 56.

57. Google admits that the words claimed by Rosetta Stone to be the “Rosetta Stone Marks” may be contained in the keyword tool directory, but denies all of the remaining allegations in Paragraph 57.

58. Google denies all of the allegations in Paragraph 58.

59. Google denies all of the allegations in Paragraph 59.

60. Google denies all of the allegations in Paragraph 60.

61. Google admits that it has other advertising programs in addition to the AdWords program. Google denies the remaining allegations in Paragraph 61.

62. Google denies all of the allegations in Paragraph 62.

63. Google admits that Google charges advertisers a fee every time a web user clicks on a “Sponsored Link.”

64. Google denies all of the allegations in Paragraph 64.

65. Google denies all of the allegations in Paragraph 65.

66. Google denies all of the allegations in Paragraph 66.

67. Google denies all of the allegations in Paragraph 67.

68. Google denies all of the allegations in Paragraph 68.

69. Google denies all of the allegations in Paragraph 69.

**FIRST CLAIM FOR RELIEF
TRADEMARK/SERVICE MARK INFRINGEMENT
UNDER THE LANHAM ACT**

70. Google incorporates its responses to each and every allegation contained above with the same force and effect as if fully set forth herein.

71. Google lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 71, and therefore denies the same.

72. Google denies all of the allegations in Paragraph 72.

73. Google denies all of the allegations in Paragraph 73.

74. Google denies all of the allegations in Paragraph 74.

75. Google denies all of the allegations in Paragraph 75.

76. Google denies all of the allegations in Paragraph 76.

77. Google denies all of the allegations in Paragraph 77.

78. Google denies all of the allegations in Paragraph 78.

79. Google denies all of the allegations in Paragraph 79.

**SECOND CLAIM FOR RELIEF
CONTRIBUTORY TRADEMARK/SERVICE MARK INFRINGEMENT
UNDER THE LANHAM ACT**

80. Google incorporates its responses to each and every allegation contained above with the same force and effect as if fully set forth herein.

81. Google denies all of the allegations in Paragraph 81.

82. Google denies all of the allegations in Paragraph 82.

83. Google denies all of the allegations in Paragraph 83.

84. Google denies all of the allegations in Paragraph 84.

85. Google denies all of the allegations in Paragraph 85.

86. Google denies all of the allegations in Paragraph 86.

87. Google denies all of the allegations in Paragraph 87.

88. Google denies all of the allegations in Paragraph 88.

89. Google denies all of the allegations in Paragraph 89.

**THIRD CLAIM FOR RELIEF
VICARIOUS TRADEMARK/SERVICE MARK INFRINGEMENT
UNDER THE LANHAM ACT**

90. Google incorporates its responses to each and every allegation contained above with the same force and effect as if fully set forth herein.

91. Google admits that it has the ability to prevent certain uses of the alleged Rosetta Stone Marks in connection with its advertising programs. Google denies the remaining allegations in Paragraph 91.

92. Google denies all of the allegations in Paragraph 92.

93. Google denies all of the allegations in Paragraph 93.

94. Google denies all of the allegations in Paragraph 94.

95. Google denies all of the allegations in Paragraph 95.

96. Google denies all of the allegations in Paragraph 96.

97. Google denies all of the allegations in Paragraph 97.

98. Google denies all of the allegations in Paragraph 98.

99. Google denies all of the allegations in Paragraph 99.

**FOURTH CLAIM FOR RELIEF
FALSE REPRESENTATION UNDER THE LANHAM ACT**

100-107. Google does not respond to the allegations of Paragraph 100-107 because this claim has been dismissed pursuant to the Court's order of September 21, 2009.

**FIFTH CLAIM FOR RELIEF
TRADEMARK/SERVICE MARK DILUTION
UNDER THE LANHAM ACT**

108. Google incorporates its responses to each and every allegation contained above with the same force and effect as if fully set forth herein.

109. Google lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 109, and therefore denies the same.

110. Google denies all of the allegations in Paragraph 110.

111. Google denies all of the allegations in Paragraph 111.

112. Google denies all of the allegations in Paragraph 112.

113. Google denies all of the allegations in Paragraph 113.

114. Google denies all of the allegations in Paragraph 114.

115. Google denies all of the allegations in Paragraph 115.

116. Google denies all of the allegations in Paragraph 116.

117. Google denies all of the allegations in Paragraph 117.

118. Google denies all of the allegations in Paragraph 118.

**SIXTH CLAIM FOR RELIEF
FOR TRADEMARK INFRINGEMENT UNDER VIRGINIA LAW**

119. Google incorporates its responses to each and every allegation contained above with the same force and effect as if fully set forth herein.

120. Google lacks knowledge or information sufficient to form a belief as to the truth or falsity of Paragraph 120, and therefore denies the same.

121. Google denies all of the allegations in Paragraph 121.

122. Google denies all of the allegations in Paragraph 122.

123. Google denies all of the allegations in Paragraph 123.

124. Google denies all of the allegations in Paragraph 124.

**SEVENTH CLAIM FOR RELIEF
UNFAIR COMPETITION UNDER VIRGINIA LAW**

125. Google incorporates its responses to each and every allegation contained above with the same force and effect as if fully set forth herein.

126. Google lacks knowledge or information sufficient to form a belief as to the truth or falsity of first sentence of Paragraph 126, and therefore denies the same. Google denies the remaining allegations in Paragraph 126.

127. Google denies all of the allegations in Paragraph 127.

128. Google denies all of the allegations in Paragraph 128.

129. Google denies all of the allegations in Paragraph 129.

**EIGHTH CLAIM FOR RELIEF
VIOLATION OF VA CODE § 18.2-499**

130-135. Google does not respond to the allegations of Paragraph 130-135 because this claim has been dismissed pursuant to the Court's order of September 21, 2009.

FURTHER ANSWER AND AFFIRMATIVE DEFENSES

By way of further Answer and as affirmative defenses, Google denies that it is liable to Plaintiff on any of the claims alleged and denies that Plaintiff is entitled to damages, treble or punitive damages, equitable relief, attorneys' fees, costs, pre-judgment interest or to any relief whatsoever, and states as follows:

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

136. The Complaint, on one or more counts set forth therein, fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

(Fair Use)

137. The claims made in the Complaint are barred, in whole or in part, by the doctrines of fair use, nominative fair use and/or descriptive use.

THIRD AFFIRMATIVE DEFENSE

(First Sale Doctrine)

138. The claims made in the Complaint are barred, in whole or in part, by the first sale doctrine.

FOURTH AFFIRMATIVE DEFENSE

(Functionality)

139. The claims made in the Complaint are barred, in whole or in part, on the basis that any marks at issue are functional.

FIFTH AFFIRMATIVE DEFENSE

(Innocent Infringement)

140. The claims made in the Complaint are barred, in whole or in part, because any infringement, if any, was innocent.

SIXTH AFFIRMATIVE DEFENSE

(Statutes of Limitations)

141. The claims made in the Complaint are barred, in whole or in part, by applicable statutes of limitations.

SEVENTH AFFIRMATIVE DEFENSE

(Laches)

142. Plaintiff's claims are barred by laches, in that Plaintiff has unreasonably delayed efforts to enforce its rights, if any, despite its full awareness of Google's actions.

EIGHTH AFFIRMATIVE DEFENSE

(Generic Terms)

143. The claims made in the Complaint are barred, in whole or in part, on the basis that some or all marks at issue are generic.

NINTH AFFIRMATIVE DEFENSE

(Lack of Secondary Meaning)

144. The claims made in the Complaint are barred, in whole or in part, on the basis that some or all marks at issue lack secondary meaning.

TENTH AFFIRMATIVE DEFENSE

(Waiver, Acquiescence, and Estoppel)

145. Each of the purported claims set forth in this Complaint is barred by the doctrines of waiver, acquiescence, and estoppel.

ELEVENTH AFFIRMATIVE DEFENSE

(Non-Infringement)

146. Defendant has not infringed any applicable trademarks under federal or state law.

TWELFTH AFFIRMATIVE DEFENSE

(No Causation)

147. Plaintiff's claims against Google are barred because Plaintiff's damages, if any, were not caused by Google.

THIRTEENTH AFFIRMATIVE DEFENSE

(No Damage)

148. Without admitting that the Complaint states a claim, there has been no damage in any amount, manner or at all by reason of any act alleged against Defendant in the Complaint, and the relief prayed for in the Complaint therefore cannot be granted.

FOURTEENTH AFFIRMATIVE DEFENSE

(Unclean Hands)

149. Plaintiff's claims are barred by the doctrine of unclean hands.

FIFTEENTH AFFIRMATIVE DEFENSE

(Lack of Irreparable Harm)

150. Plaintiff's claims for injunctive relief are barred because Plaintiff cannot show that it will suffer any irreparable harm from Google's actions.

SIXTEENTH AFFIRMATIVE DEFENSE

(Adequacy of Remedy at Law)

151. The alleged injury or damage suffered by Plaintiff, if any, would be adequately compensated by damages. Accordingly, Plaintiff has a complete and adequate remedy at law and is not entitled to seek equitable relief.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

152. The claims made in the Complaint are barred, in whole or in part, because of a failure to mitigate damages, if such damages exist.

EIGHTEENTH AFFIRMATIVE DEFENSE

(First Amendment)

153. The claims made in the Complaint are barred, in whole or in part, by the First Amendment to the Constitution of the United States.

NINETEENTH AFFIRMATIVE DEFENSE

(Duplicative Claims)

154. Without admitting that the Complaint states a claim, any remedies are limited to the extent that there is sought an overlapping or duplicative recovery pursuant to the various claims for any alleged single wrong.

TWENTIETH AFFIRMATIVE DEFENSE

(Fraud)

155. The claims made in the Complaint are barred, in whole or in part, by fraud on the United States Patent & Trademark Office.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Abandonment)

156. The claims made in the Complaint are barred, in whole or in part, by abandonment of any marks at issue.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(Third-Party Use)

157. The claims made in the Complaint are barred, in whole or in part, by reason of other parties' use of any marks at issue.

TWENTY-THIRD AFFIRMATIVE DEFENSE

(Actions of Others)

158. The claims made in the Complaint are barred, in whole or in part, because Google is not liable for the acts of others over whom it has no control.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(No Punitive Damages)

159. Google alleges that no punitive or exemplary damages should be awarded arising out of the claims made in the Complaint under the law of the United States and Virginia because: (i) an award of punitive or exemplary damages would be unconstitutional under the United States and Virginia Constitutions; specifically, the First Amendment to the United States Constitution and Article I, Section 12 of the Virginia Constitution; (ii) any recovery of punitive or exemplary damages arising out of the claims made in the Complaint would constitute the imposition of a criminal fine or penalty without the substantive or procedural safeguards guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and by Article I, Section 11 of the Virginia Constitution; (iii) the imposition of any punitive or exemplary damages in this lawsuit would constitute an excessive fine or penalty under Article I, Section 9 of the Virginia Constitution; (iv) any such award is precluded or limited pursuant to Section 8.01-38.1 of the Virginia Code or the United States Constitution and the due process clause; and (v) punitive damages would violate the United States and Virginia Constitutions and common law because such an award is based from procedures that are vague, open-ended unbound in discretion, arbitrary and without sufficient constraints or protection against arbitrary and excessive awards.

ADDITIONAL DEFENSES

160. Google reserves the right to assert additional defenses based on information learned or obtained during discovery.

WHEREFORE, Google prays for judgment as follows:

1. That Rosetta Stone takes nothing by way of its Complaint;
2. That the Complaint, and each and every purported claim for relief therein, be dismissed with prejudice.

3. That Google be awarded its costs of suit incurred herein, including attorneys' fees and expenses; and

4. For such other and further relief as the Court deems just and proper.

Respectfully Submitted,

GOOGLE INC.
By counsel

/s/

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Stephen A. Cobb, Esquire (VSB No. 75876)
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Counsel for Defendant Google Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 2nd day of October, 2009, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following::

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#1146703v1

**SPAZIANO
EXHIBIT 2**

**EXHIBIT FILED
UNDER SEAL**

**SPAZIANO
EXHIBIT 3**

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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

FORM 10-K

(Mark One)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 2009

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

Commission file number: 000-50726

Google Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

77-0493581
(I.R.S. Employer
Identification No.)

1600 Amphitheatre Parkway
Mountain View, CA 94043
(Address of principal executive offices) (Zip Code)
(650) 253-0000
(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

<u>Title of Each Class</u>	<u>Name of Exchange on Which Registered</u>
Class A Common Stock, \$0.001 par value	The Nasdaq Stock Market LLC (Nasdaq Global Select Market)

Securities registered pursuant to Section 12(g) of the Act:

Title of Each Class
Class B Common Stock, \$0.001 par value
Options to purchase Class A Common Stock

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15 (d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§229.405 of this chapter) is not contained herein, and will not be contained, to the best of the registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-

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Advertisers in our AdWords program create text-based or display ads, bid on the keywords that will trigger the display of their ads and set daily spending budgets. AdWords features an automated online signup process that lets advertisers quickly implement ad campaigns on Google properties and the web sites of our Google Network members. Ads are ranked for display in AdWords based on a combination of the maximum cost-per-click pricing set by the advertiser and click-through rates and other factors used to determine the relevance of the ads. This favors the ads that are most relevant to users, improving the experience both for the person looking for information and for the advertiser who is generating relevant ads. The AdWords program offers advertisers the following additional benefits:

Return on Investment. Many advertising dollars are spent delivering messages in an untargeted fashion, and payment for these advertisements is not tied to performance. AdWords shows ads only to users seeking information related to what the advertisers are selling, and advertisers choose how much they want to pay when a user clicks on their ad. Because we offer a simple ad format, advertisers can also avoid incurring significant costs associated with creating ads. As a result, even small advertisers find AdWords cost-effective for connecting with potential customers. In addition, advertisers can create many different ads, increasing the likelihood that an ad is suited to a user's search. Users can find advertisements for what they are seeking, and advertisers can find users who want what they are offering.

Branding. In addition to our cost-per-click pricing model, we also allow advertisers to pay on a cost-per-impression basis on the Google Network. We also offer Placement Targeting, a service that lets advertisers target specific web sites with text and display ads, so that they can more effectively reach specific sets of customers. In addition to targeting sites by content, advertisers can choose placements on sites based on user demographic attributes. To protect user privacy, we use only third-party opt-in panel data to map the demographics of sites in our networks. Placement Targeting is an auction-based system where placement targeted ads compete with keyword-targeted ads in the same auction.

Access to the Google Search and Content Network. We serve AdWords ads on Google properties, our syndicated search partners' web sites, and the millions of third-party web sites that make up the Google Network. As a result, we can offer extensive search and content inventory on which advertisers can advertise. Apart from keyword-based ads targeted to search queries and Placement Targeting, we also offer advertisers an effective contextual advertising option—Content Targeting—that displays their ads on relevant content pages across our network of partner sites and products. As a result, AdWords advertisers can target users on Google properties and on search and content sites across the web. This gives advertisers increased exposure to users who are likely to be interested in their offerings. The Google Network significantly enhances our ability to attract interested advertisers.

Campaign Control. Google AdWords gives advertisers hands-on control over most elements of their ad campaigns. Advertisers can specify the relevant search or content topics for each of their ads. Advertisers can also manage expenditures by setting a maximum daily budget and determining how much they are willing to pay whenever a user clicks or views an ad. Other features that make it easy to set up and manage ad campaigns include:

- *Campaign Management.* Advertisers can target multiple ads to a given keyword and easily track individual ad performance to see which ads are the most effective.
- *Conversion Tracking.* Conversion tracking is a free tool integrated into AdWords reports that measures the conversions of an advertiser's campaigns, enabling a better understanding of the overall return on investment generated for the advertiser by the AdWords program.
- *Traffic Estimator.* This tool estimates the number of searches and potential costs related to advertising on a particular keyword or set of keywords.
- *Quality-Based Bidding.* Advertisers' keywords are assigned dynamic first page bids based on their Quality Score—the higher the Quality Score, the lower the first page bid. This rewards advertisers with relevant keywords and ads.

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- *Budgeted Delivery.* Advertisers can set daily budgets for their campaigns and control the timing for delivery of their ads.
- *AdWords Discounter.* This feature gives advertisers the freedom to increase their maximum cost-per-click because it automatically adjusts pricing so that they never pay more than the minimum amount required to exceed the rank of the next ranked ad.

We offer larger advertisers additional services that help maximize returns on their internet marketing investments and improve their ability to run large, dynamic campaigns. These include dedicated client service representatives as well as:

- *Creative Maximization.* Our AdWords specialists help advertisers select relevant keywords and create more effective ads.
- *Vertical Market Experts.* Specialists with experience in particular industries offer guidance on how to target potential customers.
- *Bulk Posting.* We help businesses launch and manage large ad campaigns with hundreds or even thousands of targeted keywords.
- *The AdWords API and Commercial Developer Program.* For large advertisers as well as third parties, Google's free AdWords API service lets developers engineer computer programs that interact directly with the AdWords system. With such applications, advertisers and third parties can more efficiently and creatively manage their large AdWords accounts and campaigns. The AdWords Commercial Developer Program also enables our third-party developer ecosystem to continue designing and delivering innovative business applications based on the AdWords platform and distribution channel.

Global Support. We provide customer service to our advertiser base through our global support organization. AdWords is available on a self-service basis with email and real-time chat support. At certain spending levels and through certain signup channels, phone support is also available. Advertisers with more extensive needs and advertising budgets can request strategic support services, which include an account team, to help them set up and manage their campaigns. Depending on geography, we accept bank and wire transfers, direct debit, and local debit cards carrying the Visa and MasterCard logos. We also accept payment through international credit cards. For selected advertisers, we offer several options for credit terms and monthly invoicing. We accept payments in over 40 currencies.

Google AdSense

We are enthusiastic about helping content owners monetize their content, which facilitates the creation of better content to search. If there is better content on the web, users are likely to do more searches, and we expect that will be good for our business and for users. Our Google AdSense program enables web sites that are part of the Google Network to deliver AdWords ads that are relevant to the search results or content on their pages. In addition to AdWords, we also surface non-search AdSense inventory (the Content Network) on the DoubleClick Ad Exchange, allowing certified third party display ad networks to compete with AdWords ads for AdSense inventory. We share most of the revenue generated from ads shown by a Google Network member with that member. The key benefits we offer to Google Network members include:

- *Access to Advertisers.* Many small web site companies and content producers do not have the time or resources to develop effective programs for generating revenue from online advertising. Even larger sites, with dedicated sales teams, may find it difficult to generate revenue from pages with specialized content. Google AdSense promotes effective revenue generation by providing Google Network members access to Google's base of advertisers and their broad collection of ads. Our technology automatically starts delivering ads on a web site as soon as the member joins the Google Network. Because the ads are related to what the web site's visitors are looking for on the site, AdSense provides the Google Network member with a way to both monetize and enhance their web sites. The Google Network member determines the placement of the ads on its web site, and controls and directs the nature of ad content.

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Google Inc.

CONSOLIDATED STATEMENTS OF INCOME
(In thousands, except per share amounts)

	Year Ended December 31,		
	2007	2008	2009
Revenues	\$16,593,986	\$21,795,550	\$23,650,563
Costs and expenses:			
Cost of revenues (including stock-based compensation expense of \$22,335, \$41,340, \$47,051)	6,649,085	8,621,506	8,844,115
Research and development (including stock-based compensation expense of \$569,797, \$732,418, \$725,342)	2,119,985	2,793,192	2,843,027
Sales and marketing (including stock-based compensation expense of \$131,638, \$206,020, \$231,019)	1,461,266	1,946,244	1,983,941
General and administrative (including stock-based compensation expense of \$144,876, \$139,988, \$160,642)	1,279,250	1,802,639	1,667,294
Total costs and expenses	<u>11,509,586</u>	<u>15,163,581</u>	<u>15,338,377</u>
Income from operations	5,084,400	6,631,969	8,312,186
Impairment of equity investments	—	(1,094,757)	—
Interest income and other, net	589,580	316,384	69,003
Income before income taxes	5,673,980	5,853,596	8,381,189
Provision for income taxes	1,470,260	1,626,738	1,860,741
Net income	<u>\$ 4,203,720</u>	<u>\$ 4,226,858</u>	<u>\$ 6,520,448</u>
Net income per share of Class A and Class B common stock:			
Basic	<u>\$ 13.53</u>	<u>\$ 13.46</u>	<u>\$ 20.62</u>
Diluted	<u>\$ 13.29</u>	<u>\$ 13.31</u>	<u>\$ 20.41</u>

See accompanying notes.

**SPAZIANO
EXHIBIT 4**

**EXHIBIT FILED
UNDER SEAL**

**SPAZIANO
EXHIBIT 5**

**EXHIBIT FILED
UNDER SEAL**

**SPAZIANO
EXHIBIT 6**

**EXHIBIT FILED
UNDER SEAL**

**SPAZIANO
EXHIBIT 7**

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As filed with the Securities and Exchange Commission on April 29, 2004

Registration No. 333-

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

**FORM S-1
REGISTRATION STATEMENT***Under****The Securities Act of 1933*****GOOGLE INC.**

(Exact name of Registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)7375
(Primary Standard Industrial
Classification Code Number)77-0493581
(I.R.S. Employer
Identification Number)1600 Amphitheatre Parkway
Mountain View, CA 94043
(650) 623-4000

(Address, including zip code, and telephone number, including area code, of Registrant's principal executive offices)

Eric Schmidt
Chief Executive Officer
Google Inc.
1600 Amphitheatre Parkway
Mountain View, CA 94043
(650) 623-4000

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Larry W. Sonsini, Esq.
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P.C.
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Google Inc.
1600 Amphitheatre Parkway
Mountain View, CA 94043
(650) 623-4000William H. Hinman, Jr., Esq.
Simpson Thacher & Bartlett LLP
3330 Hillview Avenue
Palo Alto, California 94304
(650) 251-5000

Approximate date of commencement of proposed sale to the public: As soon as practicable after the effective date of this Registration Statement.

If any of the securities being registered on this Form are being offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, as amended (the "Securities Act"), check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If delivery of the prospectus is expected to be made pursuant to Rule 434, check the following box.

CALCULATION OF REGISTRATION FEE

Proposed Maximum

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We also face risks associated with our trademarks. For example, there is a risk that the word "Google" could become so commonly used that it becomes synonymous with the word "search." If this happens, we could lose protection for this trademark, which could result in other people using the word "Google" to refer to their own products, thus diminishing our brand.

We also seek to maintain certain intellectual property as trade secrets. The secrecy could be compromised by third parties, or intentionally or accidentally by our employees, which would cause us to lose the competitive advantage resulting from these trade secrets.

We are, and may in the future be, subject to intellectual property rights claims, which are costly to defend, could require us to pay damages and could limit our ability to use certain technologies in the future.

Companies in the Internet, technology and media industries own large numbers of patents, copyrights, trademarks and trade secrets and frequently enter into litigation based on allegations of infringement or other violations of intellectual property rights. As we face increasing competition, the possibility of intellectual property rights claims against us grows. Our technologies may not be able to withstand any third-party claims or rights against their use. Any intellectual property claims, with or without merit, could be time-consuming, expensive to litigate or settle and could divert management resources and attention. In addition, many of our agreements with members of our Google Network require us to indemnify these members for third-party intellectual property infringement claims, which would increase our costs as a result of defending such claims and may require that we pay damages if there were an adverse ruling in any such claims. An adverse determination also could prevent us from offering our products and services to others and may require that we procure substitute products or services for these members.

With respect to any intellectual property rights claim, we may have to pay damages or stop using technology found to be in violation of a third party's rights. We may have to seek a license for the technology, which may not be available on reasonable terms and may significantly increase our operating expenses. The technology also may not be available for license to us at all. As a result, we may also be required to develop alternative non-infringing technology, which could require significant effort and expense. If we cannot license or develop technology for the infringing aspects of our business, we may be forced to limit our product and service offerings and may be unable to compete effectively. Any of these results could harm our brand and operating results.

From time to time, we receive notice letters from patent holders alleging that certain of our products and services infringe their patent rights. Some of these have resulted in litigation against us. For example, Overture Services (now owned by Yahoo) has sued us, claiming that the Google AdWords program infringes certain claims of an Overture Services patent. It also claims that the patent relates to Overture Services' own bid-for-ad placement business model and its pay-for-performance technologies. We are currently litigating this case. If Overture Services wins, it may significantly limit our ability to use the AdWords program, and we also may be required to pay damages.

Companies have also filed trademark infringement and related claims against us over the display of ads in response to user queries that include trademark terms. The outcomes of these lawsuits have differed from jurisdiction to jurisdiction. A court in France has held us liable for allowing advertisers to select certain trademarked terms as keywords. We have appealed this decision. We were also sued in Germany on a similar matter where a court held that we are not liable for the actions of our advertisers prior to notification of trademark rights. We are litigating similar issues in other cases in the U.S., France and Germany.

In order to provide users with more useful ads, we have recently revised our trademark policy in the U.S. and Canada. Under our new policy, we no longer disable ads due to selection by our advertisers of trademarks as keyword triggers for the ads. As a result of this change in policy, we may be subject to more trademark infringement lawsuits. Defending these lawsuits could take time and resources. Adverse results in these lawsuits may result in, or even compel, a change in this practice which could result in a loss of revenue for us, which could harm our business.

**SPAZIANO
EXHIBIT 8**

**EXHIBIT FILED
UNDER SEAL**

**SPAZIANO
EXHIBIT 9**

**EXHIBIT FILED
UNDER SEAL**

**SPAZIANO
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UNDER SEAL**

**SPAZIANO
EXHIBIT 28**

**EXHIBIT FILED
UNDER SEAL**