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)

MOTION TO DISMISS

Defendant Google Inc. ("Google") moves to dismiss the Complaint of Rosetta Stone Ltd. ("Rosetta Stone") pursuant to Rule 12(b)(3) of the Federal Rules of Civil Procedure, or alternatively, to dismiss the Fourth and Eighth Causes of Action pursuant to Rule 12(b)(6).

This action does not belong before this Court because the Parties have a mandatory forum selection agreement requiring that all claims relating to Google's advertising programs be litigated exclusively in courts located in Santa Clara County, California. Because Rosetta Stone's entire Complaint is predicated on allegations concerning Google's advertising programs, this action should be dismissed.

If the Court finds that Rosetta Stone satisfies its heavy burden of demonstrating why the forum selection clauses to which it voluntarily agreed should not be enforced, Counts IV and VIII should be dismissed for failing to state claims upon which relief can be granted. The Fourth Cause of Action fails because Rosetta Stone has not alleged that Google misleads consumers as to its affiliation, connection, or association with, or sponsorship or approval by, Rosetta Stone. Also, to the extent that the Fourth Cause of Action alleges false advertising under the Lanham Act, the claim fails because Google is not Rosetta Stone's business competitor. The Eighth

Cause of Action should also be dismissed because the Communications Decency Act provides a complete defense to Google for claims predicated upon Internet publication of content created by a third party.

This motion is based upon the accompanying memorandum of points and authorities and declaration, all judicially noticeable facts, as well as the pleadings, records and files in this action.

Respectfully Submitted,

GOOGLE INC.
By counsel

/s/

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21st day of August, 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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