

**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)

WRITTEN STIPULATION OF UNCONTESTED FACTS

Pursuant to Federal Rule of Civil Procedure 26(a)(3) and the Court's September 29, 2009 and February 18 Orders, Plaintiff Rosetta Stone Ltd. ("Rosetta Stone") and Defendant Google Inc. ("Google") hereby submit this written stipulation of uncontested facts.

The Parties

1. The plaintiff, Rosetta Stone Ltd. ("Rosetta Stone") develops and sells technology-based language learning products and services.
2. The defendant, Google Inc. ("Google") owns and operates an Internet search engine.

Rosetta Stone's Marketing and Business

3. Rosetta Stone claims trademark rights in four marks, ROSETTA STONE, ROSETTA STONE LANGUAGE LEARNING SUCCESS, ROSETTASTONE.COM, and ROSETTA WORLD. Each of these has been registered with the United States Patent and Trademark Office.

4. Rosetta Stone identifies itself, together with the products and services that it offers, using the Rosetta Stone marks in different advertising media, including television and radio commercials, magazine advertisements, kiosks in public places, and the Internet.

5. Rosetta Stone advertises, promotes and uses the Rosetta Stone marks through several channels, including print, direct mail, radio, television and on-line.

6. At times, Rosetta Stone has had certain authorized resellers, including Amazon.com, Barnes & Noble, and Borders, which sell authentic Rosetta Stone products originating from Rosetta Stone.

Google's Search Engine

7. To use Google's search engine, users enter a word or phrase query into the search box and press enter. Google then returns a search results page displaying a list of links to websites that Google has determined to be relevant to the users' query.

8. Google's search results pages display unpaid search results ("organic links"). They may also display paid ads ("sponsored links") adjacent to the organic results through Google's AdWords program.

9. Google is paid by its AdWords advertisers on a "cost-per-click" basis. When a Google user "clicks" on a Sponsored Link in Google's search results page, the advertiser pays Google for the click.

10. Rosetta Stone has participated in Google's AdWords program since 2002. Rosetta Stone and Google have a contract governing Rosetta Stone's AdWords advertising.

Google's AdWords Trademark Policies

11. Since 2004, Google's trademark policy has permitted advertisers to use trademarked terms as keyword triggers for advertisements. Under the 2004 trademark policy, in

response to a trademark owner's request, Google agreed to remove uses of a trademark within certain text of an ad, including its title.

12. In 2009, Google revised its trademark policy to also permit certain types of advertisers to include trademarked terms in the text of their ads. The 2009 policy allows, in addition to the brand owner and certain entities authorized by the brand owner, advertisers who (1) actually resell legitimate products bearing the trademark; (2) sell components, replacement parts of compatible products corresponding to the trademark; or (3) provide non-competitive information about the goods or services corresponding to the trademark term, to include the trademark in ad text.

13. Google's AdWords policy prohibits the sale or promotion of counterfeit goods or services.

14. Google has a team of employees whose responsibilities include responding to complaints about ads that violate certain of its AdWords policies, including its anti-counterfeit policy.

15. Google has a Safety and Enforcement team that also works to address problems with fraud and counterfeiting.

Respectfully submitted,

April 2, 2010

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 2nd day of April, 2010, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which then sent a notification of such filing (NEF) to the following:

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