

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

ROSETTA STONE LTD.,)
)
Plaintiff,)
)
vs.)
)
GOOGLE INC.,)
)
Defendant.)
)

Case No. 1:09-cv-00736 (GBL/TCB)

**DECLARATION OF JENNIFER L. SPAZIANO IN OPPOSITION TO
GOOGLE INC.'S MOTION FOR SUMMARY JUDGMENT AND ITS MOTION TO
EXCLUDE EXPERT REPORT AND OPINION OF DR. KENT VAN LIERE**

FILED IN PART UNDER SEAL

I, Jennifer L. Spaziano, declare and state as follows:

1. I am a partner of the law firm of Skadden, Arps, Slate, Meagher & Flom LLP, in Washington, D.C. I am duly licensed to practice before the courts of the State of California and the District of Columbia and have been admitted to appear *pro hac vice* in the captioned matter. I am counsel for Rosetta Stone Ltd. in the captioned matter and make this Declaration in Support of Rosetta Stone Ltd.'s Opposition to Google's Motion for Summary Judgment and its Motion to Exclude Expert Report and Opinion of Dr. Kent Van Liere. I make this Declaration based on my own personal knowledge, and if called upon to do so, I could and would testify competently thereto.

2. Attached hereto as Exhibit 1 is a true and correct copy of a document bearing Bates Nos. GOOG-RS-0251016 through GOOG-RS-0251020 that I understand was produced by Google in the captioned matter and that I received as counsel of record for Rosetta Stone.

3. Attached hereto as Exhibit 2 is a true and correct copy of a document bearing Bates Nos. GOOG-RS-0251045 through GOOG-RS-0251052 that I understand was produced by Google in the captioned matter and that I received as counsel of record for Rosetta Stone.

4. Attached hereto as Exhibit 3 is a true and correct copy of a document bearing Bates Nos. GOOG-RS-0263687 through GOOG-RS-0263713 that I understand was produced by Google in the captioned matter and that I received as counsel of record for Rosetta Stone.

5. Attached hereto as Exhibit 4 is a true and correct copy of a document bearing Bates Nos. GOOG-RS-0261590 through GOOG-RS-0261592 that I understand was

produced by Google in the captioned matter and that I received as counsel of record for Rosetta Stone.

6. Attached hereto as Exhibit 5 is a true and correct copy of a document bearing Bates Nos. GOOG-RS-0261327 through GOOG-RS-0261332 that I understand was produced by Google in the captioned matter and that I received as counsel of record for Rosetta Stone.

7. Attached hereto as Exhibit 6 is a true and correct copy of a document bearing Bates Nos. GOOG-RS-0078474 through GOOG-RS-0078475 that I understand was produced by Google in the captioned matter and that I received as counsel of record for Rosetta Stone.

8. Attached hereto as Exhibit 7 is a true and correct copy of a document bearing Bates No. GOOG-RS-0262011 that I understand was produced by Google in the captioned matter and that I received as counsel of record for Rosetta Stone.

9. Attached hereto as Exhibit 8 is a true and correct copy of a document bearing Bates Nos. GOOG-RS-0004383 through GOOG-RS-0004384 that I understand was produced by Google in the captioned matter and that I received as counsel of record for Rosetta Stone.

10. Attached hereto as Exhibit 9 is a true and correct copy of a document bearing Bates Nos. GOOG-RS-0054248 through GOOG-RS-0054249 that I understand was produced by Google in the captioned matter and that I received as counsel of record for Rosetta Stone.

11. Attached hereto as Exhibit 10 is a true and correct copy of a print out from <https://adwords.google.com/select/KeywordToolExternal>, dated April 8, 2010, that was printed at my direction.

12. Attached hereto as Exhibit 11 is a true and correct copy of a print out from <https://adwords.google.com/support/aw/bin/answer.py?hl=en&answer=64886>, dated April 8, 2010, that was printed at my direction.

13. Attached hereto as Exhibit 12 is a true and correct copy of a print out from <http://www.google.com/sktool/>, dated April 8, 2010, that was printed at my direction.

14. Attached hereto as Exhibit 13 is a true and correct copy of a document bearing Bates Nos. GOOG-RS-0334580 through GOOG-RS-0334593 that I understand was produced by Google in the captioned matter and that I received as counsel of record for Rosetta Stone.

15. Attached hereto as Exhibit 14 is a true and correct copy of a document bearing Bates Nos. GOOG-RS-0273344 through GOOG-RS-0273348 that I understand was produced by Google in the captioned matter and that I received as counsel of record for Rosetta Stone.

16. Attached hereto as Exhibit 15 is a true and correct copy of a document bearing Bates Nos. GOOG-RS-0308897 through GOOG-RS-0308898 that I understand was produced by Google in the captioned matter and that I received as counsel of record for Rosetta Stone.

17. Attached hereto as Exhibit 16 is a true and correct copy of a document bearing Bates Nos. GOOG-RS-0268071 through GOOG-RS-0268072 that I understand was

produced by Google in the captioned matter and that I received as counsel of record for Rosetta Stone.

18. Attached hereto as Exhibit 17 is a true and correct copy of a document bearing Bates Nos. GOOG-RS-0281768 through GOOG-RS-0281769 that I understand was produced by Google in the captioned matter and that I received as counsel of record for Rosetta Stone.

19. Attached hereto as Exhibit 18 is a true and correct copy of a document bearing Bates No. GOOG-RS-0268822 that I understand was produced by Google in the captioned matter and that I received as counsel of record for Rosetta Stone.

20. Attached hereto as Exhibit 19 is a true and correct copy of a document bearing Bates Nos. GOOG-RS-0281770 through GOOG-RS-0281771 that I understand was produced by Google in the captioned matter and that I received as counsel of record for Rosetta Stone.

21. Attached hereto as Exhibit 20 is a true and correct copy of a document bearing Bates Nos. GOOG-RS-0273182 through GOOG-RS-0273199 that I understand was produced by Google in the captioned matter and that I received as counsel of record for Rosetta Stone.

22. Attached hereto as Exhibit 21 is a true and correct copy of a document bearing Bates Nos. GOOG-RS-0335033 through GOOG-RS-0335034 that I understand was produced by Google in the captioned matter and that I received as counsel of record for Rosetta Stone.

23. Attached hereto as Exhibit 22 is a true and correct copy of a print out from <http://adwords.blogspot.com/2010/03/new-best-practices-to-find-more.html>, dated April 5, 2010, that was printed at my direction.

24. Attached hereto as Exhibit 23 is a true and correct copy of a print out from <http://adwords.google.com/support/aw/bin/answer.py?hl=en&answer=74996>, dated April 5, 2010, that was printed at my direction.

25. Attached hereto as Spaziano Exhibit 24 are true and correct copies of excerpts from Google Inc.'s Form 10-K for the Fiscal Year Ended December 31, 2009, that was obtained from the Securities and Exchange Commission's website (<http://www.sec.gov>).

26. Attached hereto as Exhibit 25 is a true and correct copy of a document bearing Bates Nos. GOOG-RS-0038855 through GOOG-RS-0038862 that I understand was produced by Google in the captioned matter and that I received as counsel of record for Rosetta Stone.

27. Attached hereto as Exhibit 26 is a true and correct copy of a document bearing Bates Nos. GOOG-RS-0029722 through GOOG-RS-00029726 that I understand was produced by Google in the captioned matter and that I received as counsel of record for Rosetta Stone.

28. Attached hereto as Exhibit 27 is a true and correct copy of a document bearing Bates Nos. GOOG-RS-0308674 through GOOG-RS-0308676 that I understand was produced by Google in the captioned matter and that I received as counsel of record for Rosetta Stone.

29. Attached hereto as Exhibit 28 is a true and correct copy of a document bearing Bates Nos. GOOG-RS-0273806 through GOOG-RS-0273811 that I understand was

produced by Google in the captioned matter and that I received as counsel of record for Rosetta Stone.

30. Attached hereto as Exhibit 29 is a true and correct copy of a document bearing Bates No. GOOG-RS-0270962 that I understand was produced by Google in the captioned matter and that I received as counsel of record for Rosetta Stone.

31. Attached hereto as Exhibit 30 is a true and correct copy of a document bearing Bates Nos. GOOG-RS-0480278 through GOOG-RS-0480287 that I understand was produced by Google in the captioned matter and that I received as counsel of record for Rosetta Stone.

32. Attached hereto as Exhibit 31 is a true and correct copy of a document bearing Bates Nos. GOOG-RS-0250264 through GOOG-RS-0250275 that I understand was produced by Google in the captioned matter and that I received as counsel of record for Rosetta Stone.

33. Attached hereto as Exhibit 32 is a true and correct copy of a document bearing Bates Nos. GOOG-RS-0000291 through GOOG-RS-0000292 that I understand was produced by Google in the captioned matter and that I received as counsel of record for Rosetta Stone.

34. Attached hereto as Exhibit 33 is a true and correct copy of a document bearing Bates Nos. GOOG-RS-0000452 through GOOG-RS-0000455 that I understand was produced by Google in the captioned matter and that I received as counsel of record for Rosetta Stone.

35. Attached hereto as Exhibit 34 is a true and correct copy of a document bearing Bates Nos. GOOG-RS-0000003 through GOOG-RS-0000006 that I understand was

produced by Google in the captioned matter and that I received as counsel of record for Rosetta Stone.

36. Attached hereto as Exhibit 35 is a true and correct copy of a document bearing Bates Nos. GOOG-RS-0000099 through GOOG-RS-0000101 that I understand was produced by Google in the captioned matter and that I received as counsel of record for Rosetta Stone.

37. Attached hereto as Exhibit 36 is a true and correct copy of Rosetta Stone Ltd.'s Supplemental Responses to Google Inc.'s First Set of Interrogatories and Exhibit 1 thereto, which were served on March 18, 2010 in the captioned matter.

38. Attached hereto as Exhibit 37 is a true and correct copy of the Expert Report of Kent D. Van Liere, along with true and correct copies of Exhibits A through D thereto, that I understand was produced by Rosetta Stone in the captioned matter and that I received as counsel of record for Rosetta Stone.

39. Attached hereto as Exhibit 38 is a true and correct copy of a document bearing Bates Nos. GOOG-RS-0002423 through GOOG-RS-0002428 that I understand was produced by Google in the captioned matter and that I received as counsel of record for Rosetta Stone.

40. Attached hereto as Exhibit 39 is a true and correct copy of a document bearing Bates No. GOOG-RS-0000290 that I understand was produced by Google in the captioned matter and that I received as counsel of record for Rosetta Stone.

41. Attached hereto as Exhibit 40 is a true and correct copy of a document bearing Bates Nos. GOOG-RS-0000010 through GOOG-RS-0000011 that I understand was

produced by Google in the captioned matter and that I received as counsel of record for Rosetta Stone.

42. Attached hereto as Exhibit 41 is a true and correct copy of a document bearing Bates Nos. GOOG-RS-0079210 through GOOG-RS-0079269 that I understand was produced by Google in the captioned matter and that I received as counsel of record for Rosetta Stone.

43. Attached hereto as Exhibit 42 is a true and correct copy of a document bearing Bates Nos. GOOG-RS-0068596 through GOOG-RS-0068629 that I understand was produced by Google in the captioned matter and that I received as counsel of record for Rosetta Stone.

44. Attached hereto as Exhibit 43 is a true and correct copy of a document bearing Bates Nos. GOOG-RS-0001998 through GOOG-RS-0001999 that I understand was produced by Google in the captioned matter and that I received as counsel of record for Rosetta Stone.

45. Attached hereto as Exhibit 44 is a true and correct copy of a print out from <http://adwords.google.com/support/aw/bin/static.py?hl=en&topic=21966&guide=21804&subtopic=21933&page=guide.cs>, dated April 8, 2010, that was printed at my direction.

46. Attached hereto as Exhibit 45 is a true and correct copy of a document bearing Bates Nos. GOOG-RS-310695 through GOOG-RS-310718 that I understand was produced by Google in the captioned matter and that I received as counsel of record for Rosetta Stone.

47. Attached hereto as Exhibit 46 is a true and correct copy of a document bearing Bates Nos. GOOG-RS-0336226 through GOOG-RS-0336250 that I understand was

produced by Google in the captioned matter and that I received as counsel of record for Rosetta Stone.

48. Attached hereto as Exhibit 47 is a true and correct copy of a document identified as Exhibit 18 of the 03/18/2010 deposition of Susan Wojcicki in the captioned matter.

49. Attached hereto as Exhibit 48 is a true and correct copy of a document bearing Bates Nos. GOOG-RS-0000015 through GOOG-RS-0000016 that I understand was produced by Google in the captioned matter and that I received as counsel of record for Rosetta Stone.

50. Attached hereto as Exhibit 49 are true and correct copies of excerpts from the transcript of the 3/3/10 deposition of Simon Berriochoa in the captioned matter.

51. Attached hereto as Exhibit 50 are true and correct copies of excerpts from the transcript of the 3/3/10 deposition of Edward Allen Blair in the captioned matter.

52. Attached hereto as Exhibit 51 are true and correct copies of excerpts from the transcript of the 2/23/10 deposition of Terri Chen in the captioned matter.

53. Attached hereto as Exhibit 52 are true and correct copies of excerpts from the transcript of the 3/11/10 deposition of Denis P. Doyle in the captioned matter.

54. Attached hereto as Exhibit 53 are true and correct copies of excerpts from the transcript of the 3/8/10 deposition of Steve F. DuBow in the captioned matter.

55. Attached hereto as Exhibit 54 are true and correct copies of excerpts from the transcript of the 3/8/10 deposition of Eric M. Duehring in the captioned matter.

56. Attached hereto as Exhibit 55 are true and correct copies of excerpts from the transcript of the 3/3/10 deposition of Eric Eichmann in the captioned matter.

57. Attached hereto as Exhibit 56 are true and correct copies of excerpts from the transcript of the 3/1/10 deposition of April Garvey in the captioned matter.

58. Attached hereto as Exhibit 57 are true and correct copies of excerpts from the transcript of the 3/4/10 deposition of Baris Gultekin in the captioned matter.

59. Attached hereto as Exhibit 58 are true and correct copies of excerpts from the transcript of the 9/30/04 deposition of Rose Hagan in *GEICO v. Google, Inc.*, No. 1:04CV507 (E.D. Va.) that I understand was produced by Google in the captioned matter and that I received as counsel of record for Rosetta Stone.

60. Attached hereto as Exhibit 59 are true and correct copies of excerpts from the transcript of the 11/29/06 deposition of Rose Hagan in *CNG Financial Corp. v. Google, Inc.*, No. 1:06-cv-040 (N.D. Ohio) that I understand was produced by Google in the captioned matter and that I received as counsel of record for Rosetta Stone.

61. Attached hereto as Exhibit 60 are true and correct copies of excerpts from the transcript of the 3/5/10 deposition of Rose Hagan in the captioned matter.

62. Attached hereto as Exhibit 61 are true and correct copies of excerpts from the transcript of the 3/5/10 deposition of Richard T. Holden in the captioned matter.

63. Attached hereto as Exhibit 62 are true and correct copies of excerpts from the transcript of the 3/9/10 deposition of Deborah Jeffries in the captioned matter.

64. Attached hereto as Exhibit 63 are true and correct copies of excerpts from the transcript of the 2/22/10 deposition of Van Leigh in the captioned matter.

65. Attached hereto as Exhibit 64 are true and correct copies of excerpts from the transcript of the 3/10/10 deposition of Bill Lloyd in the captioned matter.

66. Attached hereto as Exhibit 65 are true and correct copies of excerpts from the transcript of the 2/25/10 deposition of Cory Louie in the captioned matter.

67. Attached hereto as Exhibit 66 are true and correct copies of excerpts from the transcript of the 1/10/07 deposition of Larry Page in *Google Inc. v. American Blind & Wallpaper Factory, Inc.*, 03-cv-05340-JF (N.D. Cal.) that I understand was produced by Google in the captioned matter and that I received as counsel of record for Rosetta Stone.

68. Attached hereto as Exhibit 67 are true and correct copies of excerpts from the transcript of the 3/10/10 deposition of Rita Kay Porter in the captioned matter.

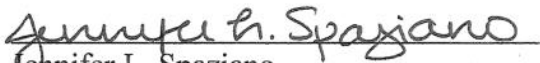
69. Attached hereto as Exhibit 68 are true and correct copies of excerpts from the transcript of the 2/25/10 deposition of John Ramsey in the captioned matter.

70. Attached hereto as Exhibit 69 are true and correct copies of excerpts from the transcript of the 3/12/10 deposition of Diana Stanley Thomas in the captioned matter.

71. Attached hereto as Exhibit 70 is a true and correct copy of the transcript of the Kent D. Van Liere in the captioned matter.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on April 9, 2010, at Washington, District of Columbia.


Jennifer L. Spaziano

CERTIFICATE OF SERVICE

I hereby certify that on April 9, 2010 I will electronically file the foregoing with the Clerk of the Court using the CM/ECF system which will then send a notification of such filing (NEF) to the following:

Jonathan D. Frieden
ODIN, FELDMAN & PETTLEMAN, P.C.
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Fairfax, VA 22031
jonathan.frieden@ofplaw.com

Counsel for Defendant, Google Inc.

True and correct copies of documents filed under seal will be sent electronically to:

jonathan.frieden@ofplaw.com
margretcaruso@quinnemanuel.com

April 9, 2010

Date

/s/

Warren T. Allen II (Va. Bar No. 72691)
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