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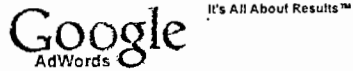
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[Help](#) | [Contact Us](#)

Keyword Tool

Use the Keyword Tool to get new keyword ideas. Select an option below to enter a few descriptive words or phrases, or type in your website's URL. [Keyword Tool Tips](#)

Important note: We cannot guarantee that these keywords will improve your campaign performance. We reserve the right to disapprove any keywords you add. You are responsible for the keywords you select and for ensuring that your use of the keywords does not violate any applicable laws.

Want more keyword ideas? Try the [Search-based Keyword Tool](#), a new tool that will generate ideas matched to your website.

Results are tailored to **English, United States** [Edit](#)

<p>How would you like to generate keyword ideas?</p>	<p>Enter one keyword or phrase per line:</p>	<p>Selected Keywords:</p>
<p><input checked="" type="radio"/> Descriptive words or phrases (e.g. green tea)</p>	<div style="border: 1px solid black; height: 20px;"></div>	<p>To advertise with these keywords on Google, export them in TEXT or CSV format. Click 'Sign up for AdWords' to create your AdWords account, then paste the keywords into your new campaign.</p>
<p><input type="radio"/> Website content (e.g. www.example.com/product?id=74893)</p>	<p><input checked="" type="checkbox"/> Use synonyms</p> <p>Type the characters you see in the picture below. ②</p> <div style="text-align: center; font-size: 2em; font-family: cursive;">gammias</div> <p>Letters are not case-sensitive</p> <p>Filter my results</p> <div style="border: 1px solid black; padding: 2px; display: inline-block;">Get keyword Ideas</div>	<p><i>No keywords added yet</i></p> <p>+ Add your own keywords</p> <div style="border: 1px solid black; padding: 5px; text-align: center;">Sign up for AdWords</div>

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**Upgrade your browser for faster account navigation**[Hide](#)

We suggest that you upgrade to a [recommended browser](#) for optimal performance with AdWords.

What are some advanced tips for using the Keyword Tool?

The [Keyword Tool](#) is a great way to find new keywords for your ad campaigns. Try using it to:

Find keywords based on your site content. Instead of entering your own keywords, try using the Website Content option. It lets you enter the URL of your business website, or of any site related to your business. The AdWords system will then scan your page and then suggest relevant keywords.

Create new, separate ad groups with similar keywords. We recommend creating several ad groups in each campaign, each with a small, narrowly-focused set of similar keywords. Use the Keyword Tool to discover relevant keywords, then divide them into lists of 5 to 20 similar terms. See examples of ad groups promoting a [single](#) product or service and [multiple](#) products or services.

Identify negative keywords. The Keyword Tool can help you identify off-topic keywords that users may be thinking about. Suppose you sell cut flowers and you give the Keyword Tool the keyword 'flowers.' It may suggest the related term 'gardens,' and you may want to add that term to your ad group as a [negative keyword](#). That will keep your ad from showing on searches for 'flower gardens' or similar terms. This helps make sure only interested customers see your ads.

Specify a language and location. If you're using the Keyword Tool while signed in to your account, you can modify your keyword search with advanced settings and tailor results to a particular location and language. If you happen to be targeting Spanish speakers who live in France, make sure you set the Keyword Tool to that language and location.


Start broad and then get specific. Try broad terms like 'flowers' in the Keyword Tool first. Then try specific terms like 'red roses' or 'miniature cactus.'

Learn how to [use the Keyword Tool](#) to get keyword ideas and traffic estimates.

Was this information helpful?

Yes No

[AdWords](#) - [Contacting Us](#) - [Help with other Google products](#) - Change Language:

English (US) 

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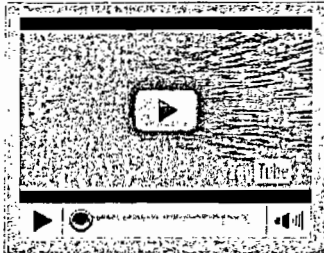
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Google Search-based keyword tool

Keyword Ideas

Help



[How it works](#)

[Learning the basics](#)

[Data privacy](#)

The Search-based Keyword Tool provides keyword ideas:

- Based on actual Google search queries
- Matched to specific pages of your website with your ad and search share
- New to your Adwords account (typically excluding keywords matching those already in your account)
- [Learn more](#)

Important note: We cannot guarantee that these keywords will improve your campaign performance. We reserve the right to disapprove any keywords you add. You are responsible for the keywords you select and for ensuring that your use of the keywords does not violate any applicable laws.



Sign in with your AdWords login information to see a full list of keyword ideas customized to your website (typically excluding those already in your account).

Website

With words or phrases

Tip: Use commas to separate terms or enter one per line.

[Or see top keywords across all categories](#)

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Google Inc. AdWords Program Terms

These Google Inc. AdWords Program Terms ("Terms") are entered into by you and Google Inc. ("Google") regarding the Google AdWords Program ("Program") as further described in the Program's frequently asked questions at <https://adwords.google.com/support/bin/index.py?fulldump=1> (the "FAQs") (collectively, the "Agreement"). "You" or "you" means the party listed on the account you create and you represent you have the authority to agree to this Agreement for that party. You represent and warrant that you are authorized to act on behalf of, and bind to this Agreement, any third party for which you generate ads. You hereby agree and acknowledge:

1 Policies. Program use is subject to all applicable Google and Partner policies, including without limitation the Editorial Guidelines (adwords.google.com/select/guidelines.html), Google Privacy Policy (www.google.com/privacy.html) and Trademark Guidelines (www.google.com/permissions/guidelines.html). Policies may be modified any time. You shall direct only to Google communications regarding your ads on Partner Properties. Some Program features are identified as "Beta," "Ad Experiment," or otherwise unsupported ("Beta Features"). Beta Features are provided "as is" and at your option and risk. You shall not disclose to any third party any information from, existence of or access to Beta Features. Google may modify ads to comply with any Google Property or Partner Property policies.

2 The Program. You are solely responsible for all: (a) keywords and ad targeting options (collectively "Targets") and all ad content and ad URLs ("Creative"), whether generated by or for you; and (b) web sites proximately reachable from Creative URLs and your services and products (collectively "Services"). You shall protect your passwords and take full responsibility for your own, and third party, use of your accounts. Ads may be placed on (y) any content or property provided by Google ("Google Property"), and unless opted-out by you (z) any other content or property provided by a third party ("Partner") upon which Google places ads ("Partner Property"). Google or Partners may reject or remove any ad or Target for any or no reason. You may independently cancel online any campaign at any time (such cancellation is generally effective within 24 hours). Google may cancel immediately any IO, the Program or these Terms at any time with notice (additional notice is not required to cancel a reactivated account). Google may modify the Program or these Terms at any time without liability and your use of the Program after notice that Terms have changed indicates acceptance of the Terms. Sections 1, 2, 4, 5, 6 and 7 will survive any expiration or termination of this Agreement.

3 Prohibited Uses. You shall not, and shall not authorize any party to: (a) generate automated, fraudulent or otherwise invalid impressions or clicks; or (b) advertise anything illegal or engage in any illegal or fraudulent business practice in any state or country where your ad is displayed. You represent and warrant that (x) all your information is correct and current; (y) you hold and grant Google and Partners all rights to copy, distribute and display your ads and Targets ("Use"); and (z) such Use and websites linked from your ads (including services or products therein) will not violate or encourage violation of any applicable laws. Violation of these policies may result in immediate termination of this Agreement or your account without notice and may subject you to legal penalties and consequences.

4 Disclaimer and Limitation of Liability. GOOGLE DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION FOR NONINFRINGEMENT, MERCHANTABILITY AND FITNESS FOR ANY PURPOSE. Google disclaims all guarantees regarding positioning or the levels or timing of: (i) costs per click, (ii) click through rates, (iii) delivery of any impressions on any Partner Property or Google Property or sections of such properties, (iv) clicks or (v) conversions for any ads or Targets. EXCEPT FOR INDEMNIFICATION AMOUNTS PAYABLE TO THIRD PARTIES HEREUNDER AND YOUR BREACHES OF SECTION 1, TO THE FULLEST EXTENT PERMITTED BY LAW: (a) NEITHER PARTY WILL BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, INDIRECT, EXEMPLARY, PUNITIVE, OR OTHER DAMAGES WHETHER IN CONTRACT, TORT OR ANY OTHER LEGAL THEORY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY; AND (b) EACH PARTY'S AGGREGATE LIABILITY TO THE OTHER IS LIMITED TO AMOUNTS PAID OR PAYABLE TO GOOGLE BY YOU FOR THE AD GIVING RISE TO THE CLAIM. Except for payment, neither party is liable for failure or delay resulting from a condition beyond the reasonable control of the party, including but not limited to acts of God, government, terrorism, natural disaster, labor conditions and power failures.

5 Payment. You shall be charged based on actual clicks or other billing methods you may choose online (e.g. cost per impression). You shall pay all charges in the currency selected by you via your online AdWords account, or in

2/17/2010

https://www.google.com/intl/en_us/a...

such other currency as is agreed to in writing by the parties. Charges are exclusive of taxes. You are responsible for paying (y) all taxes and government charges, and (z) reasonable expenses and attorney fees Google incurs collecting late amounts. You waive all claims relating to charges unless claimed within 60 days after the charge (this does not affect your credit card issuer rights). Charges are solely based on Google's click measurements. Refunds (if any) are at the discretion of Google and only in the form of advertising credit for Google Properties. You acknowledge and agree that any credit card and related billing and payment information that you provide to Google may be shared by Google with companies who work on Google's behalf, such as payment processors and/or credit agencies, solely for the purposes of checking credit, effecting payment to Google and servicing your account. Google may also provide information in response to valid legal process, such as subpoenas, search warrants and court orders, or to establish or exercise its legal rights or defend against legal claims. Google shall not be liable for any use or disclosure of such information by such third parties.

6 Indemnification. You shall indemnify and defend Google, its Partners, its agents, affiliates, and licensors from any third party claim or liability (including without limitation reasonable legal fees) arising out of your Program use, Targets, Creative and Services and breach of the Agreement.

7 Miscellaneous. The Agreement must be construed as if both parties jointly wrote it, governed by California law except for its conflicts of laws principles and adjudicated in Santa Clara County, California. The Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. You may grant approvals, permissions and consents by email, but any modifications by you to the Agreement must be made in a writing (not including email) executed by both parties. Any notices to Google must be sent to: Google Inc., AdWords Program, 1600 Amphitheatre Parkway, Mountain View, CA 94043, USA, with a copy to Legal Department, via first class or air mail or overnight courier, and are deemed given upon receipt. Notice to you may be effected by sending email to the email address specified in your account, or by posting a message to your account interface, and is deemed received when sent (for email) or no more than 15 days after having been posted (for messages in your AdWords interface). A waiver of any default is not a waiver of any subsequent default. Unenforceable provisions will be modified to reflect the parties' intention, and remaining provisions of the Agreement will remain in full effect. You may not assign any of your rights hereunder and any such attempt is void. Google and you and Google and Partners are not legal partners or agents, but are independent contractors.

April 19, 2005

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Inside AdWords

Google's official blog for news, information, and tips on AdWords

New best practices to find more customers on the Google Content Network

Monday, March 29, 2010 | 11:10 AM

Labels: [Content Network](#), [New features](#), [Tips](#)

Our [previous post](#) in the Content Network Optimization University series covered the basics of setting up and launching a good campaign on the Content Network.

Today, we'll cover more advanced optimization strategies. We've compiled these by observing best practices from the most successful advertisers on the network. Whether you're new to the Content Network or have been using it for a while, you can get better results from your campaigns by employing some of these strategies.

Build effective campaigns

Taking time up front to set up your campaign correctly goes a long way in getting higher quality traffic to your site. Let's recap the top strategies:

- **Separate Search and Content Network campaigns:** Setting up a separate campaign just for the Content Network will give you more control over daily budgets, ad groups, keywords and bids. Watch [this demo](#) on campaign setup.
- **Create many, tightly themed ad groups:** AdWords can target your ads more precisely if you build multiple ad groups, each with a small tightly-themed set of 5 to 20 keywords. Watch [this demo](#) on ad group setup and [this demo](#) on keyword selection.
- **Copy your best performing text ads from Search campaigns:** For initial setup, it's best to use the text ads with the highest click-through rates from your search campaigns. Watch [this demo](#) on ad text best practices.
- **Setup the same starting CPC bid as your Search campaigns:** We recommend starting with the same maximum CPC bid as your Search campaign ad groups. Once AdWords has collected enough data, our [smart pricing](#) technology will automatically optimize your bids on the Content Network to give you more profitable clicks. Watch [this demo](#) on bidding tactics.
- **Set up AdWords Conversion Tracking on your website:** [Install Conversion Tracking](#) on your website to measure the sales and leads (conversions) you get from each ad group and placement. Watch [this demo](#) to learn how conversion tracking works on the Content Network.

Optimize for better results

It's important to monitor your campaign's performance and consistently optimize individual elements. Before making significant changes (e.g. changing bids, excluding high volume sites, pausing ad groups), wait until enough click or conversion data has accrued. We recommend having at least 5 conversions or 100 clicks per site.

- **Exclude poor-performing sites:** Get more qualified traffic and boost conversions by [excluding sites](#) that perform poorly for your campaign, based on the number of clicks, the average CPC and the number of conversions.
- **Focus your keywords and exclude less relevant keywords:** Add more keywords that describe your product and ad group theme in greater detail. Also, add negative keywords to refine your targeting and prevent impressions on irrelevant sites. Watch [this demo](#) on refining your campaigns.
- **Adjust your bids to manage your costs:** Change your bids for ad groups or individual sites based on conversion rate, average CPC and cost-per-acquisition (CPA) to meet your performance goals. You should bid higher for better performing sites to get more traffic, and lower for poorly performing sites.
- **Use Conversion Optimizer to manage your CPA:** [Google Conversion Optimizer](#) is a free tool that automatically manages bids at the site level to reach a maximum CPA bid, which is the amount you're willing to pay for a conversion (such as a purchase or sign-up).

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Got a question or comment about Inside AdWords? Send us some [email](#).

Need help with your AdWords account? Contact [AdWords Support](#).

Useful Links

[About Inside AdWords](#)

Watch [this video](#) on how to use Conversion Optimizer.

Expand your campaign for more traffic

To get additional traffic and boost sales from your campaign, we recommend creating a keyword expansion strategy for the Content Network.

- **Use the Wonder Wheel tool for ad group ideas:** You can use [Wonder Wheel](#) on Google Search to brainstorm new ad group themes and keyword ideas. When you search for any topic on Google.com, Wonder Wheel will generate up to eight related topics for you to consider.
- **Create new ad groups to reach additional parts of the network:** Each topic in Wonder Wheel represents a possible ad group theme for your campaign. Simply click on any of the topics to see other searches and themes related to it. Any closely related topics that are less relevant to your product are great candidates for your negative keyword list. Watch [this demo](#) to learn how to use this strategy.
- **Expand your keyword list to get more traffic:** Once you have finalized your ad group themes, use the [AdWords Keyword Tool](#) to get keyword ideas. Enter ad group theme descriptions or keywords under the "Descriptive words or phrases" tab. Select the 5 to 10 most frequently searched keywords and save them to your ad group. This will help to ensure that your list stays highly relevant to your ad group theme.

You can find all the latest videos and updates on our [YouTube channel](#). We hope these tips help you get even better results from your Content network campaigns!

Posted by Katrina Kurnit, *Inside AdWords* crew

[| Email Post](#)

Links to this post

- [Interactive Marketing Weekly Roundup 4.2.10](#)
- [Effectively Advertising In Google's Content Network](#)
- [Ressources pédagogiques \(et autres\) :o\)](#)
- [5 Best Practices for Google's Content Network](#)
- [\[G\] New best practices to find more customers on the Google ...](#)

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EXHIBIT 23

Upgrade your browser for faster account navigation[Hide](#)

We suggest that you upgrade to a [recommended browser](#) for optimal performance with AdWords.

How do I use keyword insertion?

Introduction

Keyword insertion is an advanced feature that can help make your ad more relevant to a diverse audience. To use keyword insertion, you place a short piece of code into your ad text. Each time the ad shows, AdWords will automatically replace the code with the keyword that triggered the ad.

Keyword insertion may be used with any text-based ad. This feature should be used with care, so we strongly recommend that you take the time to review the contents of this tutorial before trying keyword insertion in your account.

Using the Keyword Insertion Code

To use keyword insertion, insert the following code at any point in your ad text, including in the [display URL](#) or [destination URL](#):

```
{keyword:default text}
```

When your ad appears on a search result page, the code will be replaced by the keyword that triggered the ad. If the keyword is too long, and would cause the ad text to exceed its [character limit](#), the ad's default text will be used instead.

[See an example](#)

[Learn more about the keyword insertion code](#)

Using Keyword Insertion Effectively

When using keyword insertion, make sure all the keywords in your ad group:
are closely related
fit well in each ad variation containing the keyword insertion code

Otherwise, your ads will appear confusing or irrelevant to users.

Check out the examples below for an illustration of this concept. In general, the more narrowly focused your ad groups, the more successful they'll be.

[Good ad group](#)

[Better ad group](#)

Keyword Insertion Guidelines

Ads using keyword insertion must adhere to the following guidelines or they'll be disapproved:

Keyword insertion ads can't promote adult content.

When a keyword appears in an ad, the ad should reflect correct grammar and punctuation. It should also be accurate, clear, and directly relevant to your site, service, or product.

As always, all your ads and keywords must meet our advertising policies.

Was this information helpful?

Yes No

[AdWords](#) - [Contacting Us](#) - [Help with other Google products](#) - [Change Language](#):

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SPAZIANO
EXHIBIT 24

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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:

Title of Each Class	Name of Exchange on Which Registered
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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The Technology Behind Search and Our User Products and Services

Our web search technology uses a combination of techniques to determine the importance of a web page independent of a particular search query and to determine the relevance of that page to a particular search query.

Ranking Technology. One element of our technology for ranking web pages is called PageRank. While we developed much of our ranking technology after Google was formed, PageRank was developed at Stanford University with the involvement of our founders and was therefore published as research. PageRank is a query-independent technique for determining the importance of web pages by looking at the link structure of the web. PageRank treats a link from web page A to web page B as a "vote" by page A in favor of page B. The PageRank of a page is the sum of the pages that link to it. The PageRank of a web page also depends on the importance (or PageRank) of the other web pages casting the votes. Votes cast by important web pages with high PageRank weigh more heavily and are more influential in deciding the PageRank of pages on the web.

Text-Matching Techniques. Our technology employs text-matching techniques that compare search queries with the content of web pages to help determine relevance. Our text-based scoring techniques do far more than count the number of times a search term appears on a web page. For example, our technology determines the proximity of individual search terms to each other on a given web page, and prioritizes results that have the search terms near each other. Many other aspects of a page's content are factored into the equation, as is the content of pages that link to the page in question. By combining query independent measures such as PageRank with our text-matching techniques, we are able to deliver search results that are relevant to what users are trying to find.

Infrastructure. We provide our products and services using our own software and hardware infrastructure, which provides substantial computing resources at low cost. We currently use a combination of off-the-shelf and custom software running on clusters of commodity computers. Our considerable investment in developing this infrastructure has produced several benefits. This infrastructure simplifies the storage and processing of large amounts of data, eases the deployment and operation of large-scale global products and services, and automates much of the administration of large-scale clusters of computers. Although most of this infrastructure is not directly visible to our users, we believe it is important for providing a high-quality user experience. It enables significant improvements in the relevance of our search and advertising results by allowing us to apply superior search and retrieval algorithms that are computationally intensive. We believe the infrastructure also shortens our product development cycle and lets us pursue innovation more cost effectively.

How We Provide Value to Our Advertisers and Content Owners

Google AdWords

For advertisers seeking to market their products and services to consumers and business users over the internet, we offer Google AdWords, an auction-based advertising program that lets advertisers deliver relevant ads targeted to search queries or web content across Google sites and through the web sites of our Google Network, which is the network of third parties that use our advertising programs to deliver relevant ads with their search results and content. The Google Network is also increasingly encompassing different forms of media as well, including content providers who use our advertising programs to deliver ads in online video, television and radio broadcasts. AdWords is accessible to advertisers in 41 different interface languages.

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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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In addition, because our services are accessible worldwide, certain foreign jurisdictions have claimed and others may claim that we are required to comply with their laws, even where we have no local entity, employees, or infrastructure.

Culture and Employees

We take great pride in our culture. We embrace collaboration and creativity and encourage the iteration of ideas to address complex technical challenges. Transparency and open dialog are central to us, and we like to make sure that company news, whether about product launches, industry news and innovations, or organizational changes, reaches our employees first through internal channels like weekly TGIF meetings, Tech Talks, blogs, and messages from leadership.

We have evolved into a software, technology, internet, mobile, advertising, and media company all rolled into one. We take technology innovation very seriously and compete aggressively for talent across the globe. We strive to hire the best computer scientists and engineers to help us solve very significant challenges across systems design, artificial intelligence, machine learning, data mining, networking, software engineering, testing, distributed systems, cluster design, and other areas. We work hard to provide an environment where these talented people can have fulfilling jobs and produce technological innovations that have a positive effect on the world through daily use by millions of people.

Despite our rapid growth, we still cherish our roots as a startup, and we give employees the freedom to act on their ideas regardless of their level within the company. This spirit has spurred some of our most impactful global initiatives, including Google Flu Trends, which uses search data to estimate global flu activity, GoogleServe, our annual company-wide community service event, and products like Google News, orkut, and Android.

We aim to reflect the globally diverse audience of our products in our employee population and believe that we can serve our users better when we foster diverse perspectives and ideas within the company. We provide very significant rewards for individuals and teams that provide great value to us, our advertisers, and our users. The commitment to maintaining and enhancing these programs year after year supports Google's culture of innovation and performance and also keeps employee interests aligned with those of the company.

At December 31, 2009, we had 19,835 employees, consisting of 7,443 in research and development, 7,338 in sales and marketing, 2,941 in general and administrative and 2,113 in operations. All of Google's employees are also equityholders, with significant collective employee ownership.

Seasonality

Both seasonal fluctuations in internet usage and traditional retail seasonality have affected, and are likely to continue to affect, our business. Internet usage generally slows during the summer months, and commercial queries typically increase significantly in the fourth quarter of each year. These seasonal trends have caused and will likely continue to cause, fluctuations in our quarterly results, including fluctuations in sequential revenue growth rates.

Available Information

Our web site is located at www.google.com, and our investor relations web site is located at <http://investor.google.com>. The following filings are available through our investor relations web site after we file them with the Securities and Exchange Commission (SEC): Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, and our Proxy Statements for our annual stockholder's meetings (for the last two years). We also provide a link to the section of the SEC's web site at www.sec.gov that has all of our public filings. Our Quarterly Reports, Annual Reports, and Proxy Statements for the last two years are also available for download free of charge on our investor relations web site. Further, a copy of this Annual Report on Form 10-K is located at the

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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 25

**EXHIBIT FILED
UNDER SEAL**

SPAZIANO
EXHIBIT 26

**EXHIBIT FILED
UNDER SEAL**

SPAZIANO
EXHIBIT 27

**EXHIBIT FILED
UNDER SEAL**

SPAZIANO
EXHIBIT 28

**EXHIBIT FILED
UNDER SEAL**

SPAZIANO
EXHIBIT 29

**EXHIBIT FILED
UNDER SEAL**

SPAZIANO
EXHIBIT 30

**EXHIBIT FILED
UNDER SEAL**

SPAZIANO
EXHIBIT 31

**EXHIBIT FILED
UNDER SEAL**

SPAZIANO
EXHIBIT 32

**EXHIBIT FILED
UNDER SEAL**

SPAZIANO
EXHIBIT 33

**EXHIBIT FILED
UNDER SEAL**

SPAZIANO
EXHIBIT 34

**EXHIBIT FILED
UNDER SEAL**

SPAZIANO
EXHIBIT 35

EXHIBIT FILED
UNDER SEAL

SPAZIANO
EXHIBIT 36

EXHIBIT FILED
UNDER SEAL

SPAZIANO
EXHIBIT 37

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

ROSETTA STONE LTD.,

Plaintiff,

-v-

Civil Action No. 1:09cv736(GBL/TCB)

GOOGLE INC.,

Defendant.

EXPERT REPORT OF KENT D. VAN LIERE

QUALIFICATIONS

1. I am a Vice President at NERA Economic Consulting (“NERA”) where I participate in the Intellectual Property, Antitrust, Product Liability, and Securities Practices. My business address is 10955 Westmoor Drive Suite 400, Westminster, Colorado 80021. NERA is a firm providing expert economic, financial, statistical, and survey research analysis.

2. Among my responsibilities, I conduct market analysis, sampling analysis, and survey research on a wide range of topics regarding consumer decision making, consumer choice, and consumer behavior. In the course of my 30 year career I have conducted several hundred studies for leading corporations and government agencies involving studies of employees, consumers and businesses. I have published articles in leading peer-reviewed journals, as well as technical reports in which consumer attitudes, choices, and behavior have been the focus.

3. Prior to joining NERA, I served as a Principal, President, or Director of the market analysis and survey research practice for HBRS and Hagler Bailly for more than 15 years. I also served as President and CEO of Primen, a market intelligence firm that was a joint venture of the Electric Power Research Institute and the Gas Research Institute. Earlier in my career, I was a tenured Associate Professor at the University of Tennessee where I taught undergraduate and graduate level courses in statistics, survey research methods, and social psychology. I also taught as a Visiting Associate Professor at the University of Wisconsin. My courses were regularly cross listed or recommended for students in the business school as well as liberal arts. I hold a Ph.D. from Washington State University.

4. I have substantial experience conducting and using focus groups and surveys to measure consumer opinions and behaviors regarding products and services including purchase processes, branding and positioning, market segmentation, product attributes, new product research, and communications strategies. During my career in academic and commercial research, I personally facilitated hundreds of focus groups and I have designed and analyzed hundreds of surveys focused on these marketing related issues.

5. With respect to litigation, I have designed and reviewed studies on the application of sampling and survey research methods in litigation for a variety of matters including trademark/trade dress infringement, secondary meaning, misrepresentative/deceptive advertising as well as in matters related to antitrust, mass torts, labor disputes and product liability. I have provided deposition testimony and testimony at trial related to issues of sampling, survey research, and statistical analysis. A copy of my current resume showing my publications in the past 10 years and testimony in the prior 4 years is attached as Exhibit A.

6. NERA is being compensated for my services in this matter at my rate of \$495 per hour. Other NERA consultants assisted me in this engagement and are being compensated at rates less than \$495 per hour. No part of NERA's compensation depends on the outcome of this litigation. Throughout this report, I have used the terms "I," and "my" to refer to work performed by me and/or under my direction.

DOCUMENTS

7. As part of my work, I relied upon the Complaint filed in this lawsuit and standard treatises on the application of survey research in trademark law, research on consumer search and purchasing behavior on the internet and industry reports on internet searches. A list of the specific materials I relied upon can be found in Exhibit B.

ASSIGNMENT AND SUMMARY OF CONCLUSIONS

8. I was retained by counsel to design research to determine whether consumers are confused as to the origin, sponsorship or approval of the "sponsored links" that appear on the search results page after a consumer has conducted a Google search using a Rosetta Stone trademark as a keyword and/or are confused as to the affiliation, endorsement, or association of the websites linked to those "sponsored links" with Rosetta Stone. In preparing this report, I have utilized processes, methodologies, analyses, and principles that I would ordinarily apply in performing research.

9. The study I designed tested for actual confusion regarding the appearance of sponsored links when consumers conducted a Google search for "Rosetta Stone." The study also had a control condition that was used to assess confusion occurring as a result of the non-

infringing elements of a search conducted when using trademarked keywords. As is typically done in these types of studies, a measure of “net confusion” was computed by subtracting the confusion measured in the control condition from the confusion measured in the test condition.

10. Based on the study conducted, I conclude that a significant portion of consumers in the relevant population are likely to be confused as to the origin, sponsorship or approval of the “sponsored links” that appear on the search results page after a consumer has conducted a Google search using a Rosetta Stone trademark as a keyword and/or are likely to be confused as to the affiliation, endorsement, or association of the websites linked to those “sponsored links” with Rosetta Stone.

BACKGROUND

11. Rosetta Stone is a leading technology-based language learning system. Rosetta Stone has registered a number of trademarks in connection with its brand and the products and services it offers to consumers. These trademarks include: “Rosetta Stone”, “Rosetta Stone Language & Learning Success”, “RosettaStone.com” and many others.¹

12. Google’s search engine is a widely available internet service which allows consumers to search for information, products, and services. After entering a word or words into the Google search box and then pressing the search button (or the “Enter” key on the keyboard), Google’s search engine returns a set of listings or search results. The results include what are referred to as “natural” or “organic links” and may also include “sponsored links”.

13. Google represents generally, that sponsored links differ from organic links in that sponsored links appear because a person, company, or organization has successfully bid upon the right to have their link placed on the results page when specific search terms or “keywords” have been entered into the search bar.² These sponsored links are labeled as “sponsored links” on the search results page. They appear either horizontally across the top of

¹ *Rosetta Stone, Ltd. v. Google, Inc.*, Complaint (hereafter “Complaint”), p. 6.

² Google has stated that the bidding process includes more than a willingness to pay for placement, but also includes a “quality score” derived by Google. See <http://adwords.google.com/support/aw/bin/answer.py?hl=en&answer=49174>.

the search results page above the organic links and/or as a vertical column of links to the right of the organic links.

METHODOLOGY

14. The design of this research followed generally accepted principles for the design of trademark confusion studies as described in any number of key treatises on the topic.³ In general, the design of a confusion study requires careful attention to the following key areas:

- The definition of the relevant population;
- The procedures for sampling from the relevant population;
- The survey questions and interviewing procedures;
- The nature of the specific test and control stimuli shown to sampled consumers; and
- The protocol for estimating confusion.

The discussion in this section of the report is organized around these key areas.

Definition of the Relevant Population

15. In general terms, the relevant population for a trademark infringement case is usually defined as "...that segment of the population whose perceptions and state of mind are relevant to the issues in the case."⁴ For this case, the relevant population can reasonably be understood as the group of United States consumers who would potentially use Google's search services to gather information about the purchase of products and services from Rosetta Stone or to purchase products and services from Rosetta Stone. This population can generally be defined by four characteristics:

³ See Diamond, S. (2000) "Reference Guide on Survey Research" in the *Reference Manual on Scientific Evidence Second Edition*, Federal Judicial Center at: [http://www.fjc.gov/public/pdf.nsf/lookup/sciman00.pdf/\\$file/sciman00.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/sciman00.pdf/$file/sciman00.pdf); Federal Judicial Center (2004); *Manual for Complex Litigation, Fourth*. Section 11.493, p. 102; McCarthy, J. Thomas (2006) *McCarthy on Trademarks and Unfair Competition 4th Edition*, Chapter 32.

⁴ McCarthy at 32:159.

- 1) consumers in the United States who are interested in learning a language;
- 2) who would use the internet in the next 12 months to search for information about learning a language;
- 3) who have heard of Rosetta Stone; and
- 4) who have previously used and believe they would use Google's search engine services.

Sampling of the Relevant Population

16. Sampling procedures were used that are typical in trademark infringement research and consumers need to be shown visual stimuli. These procedures include conducting interviews at mall facilities in a widely distributed and relevant geographical area and using quota sampling to assure representativeness across a range of demographic groups.⁵

17. I selected eight separate cities representing the major census regions of the United States. Only malls that did not include a Rosetta Stone kiosk or stand-alone cart were included. Each city selected was able to accommodate our research needs.⁶ The cities selected were Chicago, IL, Dallas, TX, Denver, CO, Gaithersburg, MD, Miami, FL, San Jose, CA, Seattle, WA and Yorktown Heights, NY. The cities selected are a reasonable representation of the geographies serviced by Rosetta Stone, and therefore are geographies in which the relevant population can be found.

18. After selecting the malls, individual consumers needed to be sampled. Within the malls, sampled consumers were distributed throughout days of the week and across demographic quotas. First, interviews were split between weekday interviewing and weekend interviewing.⁷ Interviewers were also instructed to distribute interviewing throughout the day.

⁵ McCarthy at 32:165.

⁶ This included the ability to administer the survey using a computer linked to the internet, a room which would allow enough space for the interviewer's computer and a computer for the respondent, and the ability to have staff monitor at least some portion of the interviews.

⁷ Weekdays were defined as Monday morning through Friday afternoon and weekends were defined as Friday evening through Sunday evening.

Second, quotas based on demographic characteristics were used to assure a reasonable representation of the diversity of consumers in the relevant population. Based on discussions with Rosetta Stone, I determined that a reasonable demographic distribution would be to split the interviews equally between men and women. In addition, in discussions with Rosetta Stone, it was determined that the age distribution for purchasers of language learning software tend to roughly group into about 50 percent between 18 and 35 years of age, about 20 percent between 35 and 44 years of age, and about 30 percent for those 45 years of age or older. These proportions were used in the quotas assigned in each mall. Each interviewing facility was instructed to complete a minimum number of interviews in each of the age and gender quota cells to achieve approximately the desired proportions.

19. To ensure that respondents were part of the relevant population as defined for this case, a series of screening questions was asked. Copies of the screening and main questionnaire, as well as instructions provided to the facilities, are attached as Exhibit C.

20. Specifically potential respondents were asked a series of questions about their purchasing behaviors and their use of search engines. Respondents were considered qualified for the interview if they:⁸

- 1) were interested in learning a language;
- 2) would use the internet in the next 12 months to look for information about learning a language;
- 3) had heard of Rosetta Stone; and
- 4) had both used Google as a search engine in the past 12 months and would be willing to use Google as a search engine in the next 12 months.

⁸ As is generally standard practice in these types of studies, potential respondents were screened out of the study if they worked in market research or for a store in the mall. I also screened out those who worked for an internet search company, or a company making products for learning foreign languages as these respondents would potentially have knowledge of the litigation at issue.

21. The screener also ensured that individuals who needed glasses or contact lenses to read had them available for the interview and were willing to wear them. All qualified respondents had to be willing to provide a name and contact telephone number so that the interview could later be validated.

Survey Questions and Interviewing Procedures

22. The studies described in this report are based on completed interviews with 379 respondents who met the screening criteria. These 379 respondents were randomly assigned to one of two conditions described below. The test condition had a total of 188 completed interviews and the control condition had a total of 191 completed interviews. The final interviews were divided between eight cities (approximately 50 respondents per city) and across the demographic categorization (by gender and age) as described previously.

23. Once the interviewer determined that the respondent was qualified, he or she was brought to the interviewing facility. Respondents were taken to a room with two computers. One computer was for the respondent to use and one for the interviewer to use to record respondents' responses. The interviewer and the respondent were stationed such that the interviewer could see the respondent's computer screen but the respondent could not see the interviewer's screen. As a first step, respondents were re-screened to ensure that the responses to the screening questions were accurately recorded and that only qualified respondents were included in the study. Any respondent whose answers to the re-screening made them ineligible were screened out and not asked the main survey questions.

24. The interviewer then began the main survey process. The test or control condition to be seen by the respondent was selected randomly by the CAPI program on the interviewer's computer.⁹ The interviewer instructed the respondent to open the appropriately numbered Internet Explorer icon on the desktop of the respondent's computer based on which condition was randomly selected (either condition 1 or condition 2). Once opened, a start page

⁹ CAPI stands for "Computer Assisted Personal Interviewing" system.

appeared and the respondent was asked to read the number appearing on the page. This allowed for an independent verification that the respondent was viewing the intended condition.

25. The computer screen then showed the basic Google home search page with an empty search box. Respondents were shown a card with the words “Rosetta Stone” on it and were asked to type those words into the Google search box. The respondent initiated the search by either clicking on the search button or hitting the enter button. The search results then came up on the screen. The search results were screenshots¹⁰ of Google search results that were shown to respondents on a computer as though they had just conducted a search using the trademark “Rosetta Stone.”

26. While looking at the search results, the respondent was first asked to indicate “which link or links, if any, do you think sells Rosetta Stone language software products?” No distinction was made between sponsored and organic listings and respondents were not given any guidance other than to look at the search results as they “normally would”. Respondents were permitted to identify the links however they felt appropriate. This could include reading the title of the link, the text of the link, the url of the link or some combination thereof.

27. Next, the respondent was asked to consider the links that had just been mentioned and to indicate “which link or links, if any, are a Rosetta Stone company website?” Again, no distinction was made between sponsored and organic listings and respondents could indicate as many or as few of the links as they felt were appropriate.

28. Finally, respondents were asked to look at the remaining search links and indicate “which link or links, if any, do you think are endorsed by the Rosetta Stone company?” As with the prior questions, no guidance was given with respect to whether the respondent should look at organic or sponsored links.

¹⁰ The screenshots used were coded from the original Google results pages using html codes. The final screenshots did not contain live links to actual websites. The screenshots were provided by Rosetta Stone through its infringement monitoring program.

29. As a follow up, the respondent was asked to explain why for each of the named links he/she thought it was a Rosetta Stone company website or why he/she thought the link was endorsed by Rosetta Stone. The follow up questions about each link the respondent identified were asked in the order the links had been originally mentioned.

30. At the conclusion of the questions, respondents were thanked for their time and were asked to provide their contact details.¹¹

31. The interviews were conducted as double-blind studies; that is, neither the interviewers nor the respondents were aware of the purpose of the research. Special care was used in writing the survey instructions so that interviewers and respondents were led to believe that other respondents were doing other searches on other products.

32. All completed interviews were called to validate their participation in the interview. Any interviews that did not validate were excluded from the final data.

The Test Stimuli

33. In the study conducted, there were two screenshots used (*see* Exhibit D for the copies of the screenshots). The test screenshot was a copy of an actual search results page with sponsored links appearing horizontally at the top of the page and in a vertical column on the right side of the organic links.¹² The test screenshot included not only the actual text and words of the sponsored links themselves but also the appearance of the links on the page, the label “sponsored links,” the color blocking and the order and placement of the links in the visual space on the page.

34. As noted above, the screenshot for the test condition is a copy of an actual screenshot obtained from a search done on the trademarked keywords “Rosetta Stone.”¹³ The

¹¹ The names and phone numbers of all respondents were used for validation purposes and were not ever part of the record seen by me or my staff.

¹² For the purposes of this study the official Rosetta Stone sponsored link was removed from the series of horizontal sponsored links.

¹³ For the purposes of this study the official Rosetta Stone sponsored link was removed from the series of horizontal sponsored links.

(continued...)

screenshot has two horizontal sponsored links and four sponsored links running vertically down the right hand side. All of the sponsored links contain some variant of the Rosetta Stone trademark.

35. The screenshot also included a series of organic links. The first of these links (including a number of sublinks) is the authorized and official Rosetta Stone company link.

The Control Stimuli

36. The possible existence of “background noise” (that is confusion caused by elements of the test that do not constitute infringement) or demand effects may threaten the validity of the confusion estimate found in the test condition. As a consequence, most likelihood of confusion studies also measure confusion in a control group to assess the level of confusion due to background noise.

37. In general, the control group stimulus should be designed such that the control stimulus “. . . shares as many characteristics with the experimental stimulus as possible, with the key exception of the characteristic whose influence is being assessed.”¹⁴ Therefore, the design of the control stimuli for the foregoing test conditions is relatively straightforward. A search using the trademark “Rosetta Stone” which generates only organic listings would be the non-infringing alternative to the test stimuli because it would not include any allegedly infringing sponsored links. Thus, the appropriate control for this case is to use a screenshot that is identical to the test screenshot in every way except that it does not show any sponsored links (or any of the other features of the Google search page that are used to distinguish the sponsored links such as the headings “sponsored links” or shade colors for the sponsored links area on the page).

38. The control screenshot therefore shows the same set of organic links used in the test screenshot (*see* Exhibit D for the control screenshots). In total there are 11 organic listings

(...continued)

¹⁴ Diamond, “Reference Guide” p. 258.

on the control screenshot. One of the organic links (with a number of sublinks) is the Rosetta Stone company link. Nine of the organic listings on the control page are not the Rosetta Stone company websites and are also not endorsed by Rosetta Stone. One of the organic listings is endorsed by Rosetta Stone but is not the Rosetta Stone company website (the Wikipedia link – “Rosetta Stone (software) – Wikipedia, the free encyclopedia”).

Measures of Confusion in the Test and Control Conditions

39. The following protocol was used to estimate the levels of actual confusion in the test condition. As explained above, respondents were asked to look at the test stimuli and then identify the link or links, if any, that were a Rosetta Stone company website and then to identify the link or links not already mentioned, if any, that were endorsed by Rosetta Stone. A respondent was counted as confused if he/she identified any sponsored links in response to these two questions.

40. The following protocol was used to estimate the levels of actual confusion in the control condition. Any respondent in the control group that mentioned one of the nine organic links, meaning the first Wikipedia link, the “Story” link, the “The Rosetta Stone” link, the “Rosetta Stone for Unix” link, the “Rosetta Stone – Crystalinks” link, the “Ancient Egyptian Culture” link, the “Pharaohs Exhibition” link, the “Mr. Dowling’s Rosetta Stone Page” or the links inclusive of “Book results for Rosetta Stone”, as a link that was the Rosetta Stone company website was counted as confused. Respondents who did not mention one of these nine links in the first question, but who did say that any of the eight links, (with the exception of the Wikipedia entry about the Rosetta Stone language learning software), were links endorsed by Rosetta Stone were also counted as confused. The actual confusion measured in the control condition is the background level of confusion caused by elements of the Google search that are non-infringing and irrelevant to this case.

RESULTS

41. For the test condition, there were a total of 188 completed interviews of which 47 percent were confused.

42. For the control condition, 30 percent of the 191 respondents were confused as to elements of the search results that are not at issue in this case. This is the overall rate of generalized confusion or the measure of “background noise” for the study. The data for both studies are attached as Exhibit E.

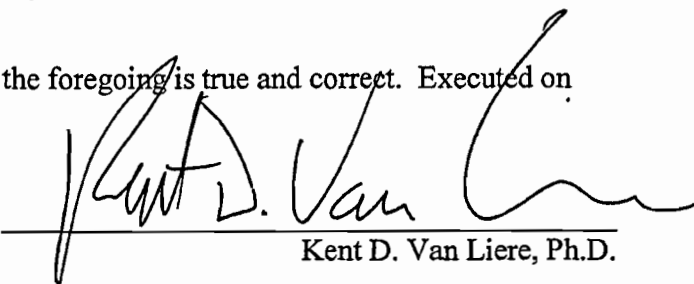
43. The net confusion rate is typically calculated by subtracting the confusion rate found in the control condition from the gross confusion rate found in the test condition. This yields a net confusion rate of 17 percent.

CONCLUSIONS

44. The study conducted was carefully designed to determine whether consumers are confused as to the origin, sponsorship or approval of the “sponsored links” that appear on the search results page after a consumer has conducted a Google search using a Rosetta Stone trademark as a keyword and/or are confused as to the affiliation, endorsement, or association of the websites linked to those “sponsored links” with Rosetta Stone. The study included an appropriate control to “net” out confusion caused by factors associated with a Google search that are non-infringing to this case. After applying these controls, the study concluded that 17 percent of consumers demonstrate actual confusion. Based on these results and the procedures used to conduct these studies, I conclude that there is reliable evidence that a significant portion of the relevant population is likely to be confused as to the origin, sponsorship or approval of the “sponsored links” that appear on the search results page after a consumer has conducted a Google search using a Rosetta Stone trademark as a keyword and/or are confused as to the affiliation, endorsement, or association of the websites linked to those “sponsored links” with Rosetta Stone.

45. My opinions and conclusions as expressed in this report are to a reasonable degree of professional certainty. My work is ongoing and my opinions will continue to be informed by any additional material that becomes available to me. As of the date of this report, Google has not produced any documents in connection with this litigation. Therefore, the opinions expressed in this report are subject to change based on pending discovery of Google.

I declare under penalty of perjury that the foregoing is true and correct. Executed on
December 14, 2009.



Kent D. Van Liere, Ph.D.

Exhibit A

KENT D. VAN LIERE, Ph.D. **VICE PRESIDENT**

Dr. Van Liere is a Vice President at NERA with expertise in survey research, sampling, statistics, risk analysis and market research. He has testified at trial and in deposition on the application of statistical methods, sampling, questionnaire design, and the use of surveys.

Dr. Van Liere's litigation and project experience includes sampling, survey research, design of field protocols, and statistical analysis of large data files (i.e., sales data, products in the field, insurance claims, employee records, customer data, or transactions data) in a number of areas including:

Intellectual Property

- **Trademark Infringement:** Design, analysis, and critique of samples and surveys used to measure consumer confusion, secondary meaning, and dilution in trademark infringement cases.
- **False and Misleading Advertising:** Design, analysis, and critique of samples and surveys used to measure consumer understanding of and response to advertising claims.
- **Copyright infringement:** Sampling plans and analysis of the rates of infringing material in populations of shared information (such as through websites or other sharing medium).
- **Patent Infringement:** Sample designs and surveys to establish rates at which infringing material exist in populations of products or unique use of features in product user populations.

Mass Torts and Class Actions

- **Product Liability and Construction Defects:** Analysis of statistical samples of products and product use to determine product performance issues, statistical evaluation of causes of product failures, and damages in product liability and construction defect class action litigation. Analysis of sales records to forecast total sales. Products have included a wide range of consumer and building products.

- **Representations and Omissions:** Many class actions focus on misleading and deceptive information or omissions of information. Design and analysis of sampling plans and surveys to measure consumers' awareness of key documents or facts, reliance on representations, materiality of information for decisions, satisfaction with products, purchase processes, and analysis of choice behaviors in a range of consumer and business products areas.
- **Labor:** Analysis of employment records, methods for sampling records or employees, and use of surveys for purposes of estimating key facts in labor class actions including time to complete activities, exempt/nonexempt activities, and meal and rest break issues.
- **Asbestos and Toxic Torts:** Estimation of future claims and claim costs arising from exposures to various hazardous materials such as asbestos including modeling future liability for purposes of setting financial reserves, analysis of large claim files, insurance allocations, and insurance buybacks.

Energy/Environment/Water/Infrastructure

- **Customer Demand:** Design and analysis of customer samples and surveys to measure customer usage (demand) and customer preferences for a wide range of product and rate offerings including pricing or rate options, incentive programs, information programs, new service offerings.
- **Value of Service/Outage Costs:** Design and analysis of value of service and outage cost studies based on surveys using lost profits and willingness to pay methodologies.
- **Evaluation of programs and services** including customer satisfaction and program impacts.

Market Definition/Market Segmentation/New Products

- **Analysis of consumer choice and business decision making** for purposes of measuring and evaluating market potential, market segmentation, strategy formulation, new product offerings, positioning/branding, and customer retention/switching behavior in the areas of consumer household products, automobiles, lighting and building products, energy efficiency and solar products, telecommunications services, industrial products, and information and subscription services.

Prior to joining NERA, Dr. Van Liere served as a Principal of Freeman Sullivan where he directed survey research and sampling projects for litigation; President of Primen (a firm that conducted market research for the energy/infrastructure industry); Senior Vice President of Hagler Bailly where he directed the survey research and market analysis practice; the President/Principal of HBRS (a highly regarded survey research firm); and Associate Professor at the University of Tennessee where he taught statistics, sampling, and research methods at both the graduate and undergraduate levels.

Education

Washington State University

Ph.D. Sociology, specialization in research methods and statistics (1979).

Washington State University

M.A. Sociology, (1976).

Hamline University

B.A. Sociology, with Honors (1974).

Professional Experience

- 2006 **NERA Economic Consulting**
Vice President
- 2002-2005 **Freeman, Sullivan & Co., San Francisco**
Principal
- 2000-2002 **Primen (a joint venture of the Electric Power Research Institute and the Gas Research Institute)**
President and Chief Executive Officer
- 1995-2000 **Hagler Bailly, Inc. (HBIX)**
Senior Vice President (1997-2000), Director (1995-1997)
- 1985-1995 **HBRS, Inc., Madison, WI**
President (1992-1995), Principal (1985-1992)
- 1985 **University of Wisconsin-Madison**
Visiting Associate Professor, Department of Rural Sociology (summer)
- 1978-1985 **University of Tennessee**
Associate Professor (with tenure), Department of Sociology (1984-1985),
Assistant Professor, Department of Sociology (1978-1984)
- 1983-1984 **Tennessee Valley Authority**
Visiting Analyst, Strategic Planning Staff, Office of Planning and Budget

Expert Analysis and Testimony

Intellectual Property Matters

Real Estate Disposition Corporation v. National Home Auction Corporation, United States District Court, Central District of California—Expert report on a survey to address issues of materiality, confusion, and misleading advertising in an unfair business practices and infringement case. (Expert Report: February, 2008; Surrebuttal report: March, 2008, Deposition: January, 2009).

Mary Kay, Inc. v. Amy Weber, Scott Weber, and Touch of Pink Cosmetics, United States District Court, Northern District of Texas, Dallas Division—Expert report on likelihood of confusion with regard to sale of branded products on a website. (Expert Report: December 2008; Deposition, December 2008)

American Airlines, Inc., v. Google, Inc., United States District Court, Northern District of Texas, Fort Worth Division—Expert report on likelihood of confusion with regard to trademark or branded keyword searches using the Google search engine. (Expert Report: May 2008; Deposition, May 2008, Surrebuttal Report, June 2008).

Rocky Brands, Inc., and Rocky Brands Wholesale, LLC, v. Glen Bratcher, Westwood Footwear and Accessories, LLC, and Nantong Hong Yi Wang Shoes Co., LTD, United States District Court, Southern District of Ohio, Eastern Division—Expert report on a likelihood of confusion with regard to trade dress of products in the footwear markets. (Expert Report: April 2008, Deposition: April 2008).

Faloney et al. v. Wachovia Bank, United States District Court, Eastern District of Pennsylvania—Expert analysis and rebuttal declaration on issues related to common representations to consumers in a precertification class action lawsuit related to telemarketing. (Expert Report: February, 2008).

Lulu Enterprises, Inc. v. N-F Newsite, LLC and Hulu Tech, Inc., United States District Court, Eastern District of North Carolina—Expert report on likelihood of confusion with regard to websites. (Expert Report: October 2007).

Confidential Client—Consulting rebuttal expert on survey design, sampling, survey implementation, and study design in trademark infringement and confusion analysis in the consumer beverages markets. (Expert Report: April 2007).

Anti-Trust, Labor and Commercial Disputes

Cencast Services, L.P., et al. v. The United States, United States Court of Federal Claims—Expert declarations regarding sampling and surveys of labor records and workers related to issues of FICA/FUTA taxes in the entertainment industry. (Expert Declaration: November, 2009)

IDT Telecom, Inc. and Union Telecard Alliance, LLC. v. CVT Prepaid Solutions, Inc. et al., United States District Court, District of New Jersey—Expert rebuttal report on survey and sampling issues related to consumer purchases of international pre-paid calling cards. (Expert Report: May, 2009)

Federal Trade Commission v. Whole Foods Market, Inc. and Wild Oats Markets, Inc., United States District Court, District of Columbia—Expert rebuttal report on sampling and survey design issues in an antitrust proceeding related to a preliminary injunction to block a proposed merger of Whole Foods Markets Inc. and Wild Oats. (Expert Report: July 2007; Deposition: July, 2007).

Javier Olguin v. Fed Ex Ground Package Systems, Superior Court of California, County of Orange—Expert rebuttal declaration on sampling and survey design issues in a pre-certification labor class action. (Expert Declaration: March 2007; Deposition: April, 2007).

Redwood Fire and Casualty Insurance Company v. Personnel Plus et al., Superior Court of California, County of Los Angeles—Expert analysis and sample design to estimate workman compensation premiums from employee payroll records. (Deposition: December, 2007).

Adelphia Communications Corp v. Deloitte and Touche, LLP, Court of Common Pleas, Philadelphia, Pennsylvania—Expert rebuttal report on use of surveys of employees to estimate business process inputs to calculation of capitalizable costs for accounting restatement. (Expert Report: December, 2006; Deposition: February 2007).

Laser Vision Eye Institute of California v. Nidek, Inc., Superior Court of California, County of Alameda—Expert declaration on estimation of economic damages from business interruption due to equipment availability issues. (Expert Declaration, March 2003).

Product Liability, Mass Torts and Construction Defects

Jovan Jones et al., v. Sears, Roebuck & Company, United States District Court, Northern District of Illinois, Eastern Division—Expert affidavit on issues related to using samples and surveys to estimate the rate of installation of nonconforming appliance venting. (Affidavit: November, 2009)

John Sutherland et al. v. Dan Gamel, Inc., Superior Court of California, County of Fresno—Expert rebuttal report on issues related to use of a survey to characterize a putative class in a pre-certification class action related to RV sales practices. (Expert Report: May, 2009).

Zill et al. v. Sprint Spectrum L.P. and Wireless Co. LP, Superior Court of California, County of Alameda—Expert rebuttal declarations on sampling, survey design, survey implementation, and the use of contingent valuation survey to estimate damages in a wireless communications class action. Expert report based on a survey of putative class members on consumer expectations and purchase behavior for wireless handsets. (Expert Declaration: December, 2006 and February, 2007; Deposition: April 2007; Expert Report: June 2007).

McAdams et al. v. Monier Lifetile et al., Superior Court of California, County of Placer—Deposition testimony and expert report on statistical and survey research, sample design, data analysis regarding issues related to representations and consumer expectations for construction product longevity in a pre-certification class action. (Expert Report and Declarations: October/November 2005; Deposition: November 2005).

Weiner, et al. v. Shake Company of California, Inc., et al., Superior Court of California, County of Contra Costa—Testifying expert on statistical analysis, sample design, causation issues, and damages regarding the prevalence of roofing failure in homes made with Cal Shake Roofing products. (For Liability Phase Trial: Multiple declarations and depositions in 2005, trial

testimony June 2005. For Damage Phase Trial: Expert declaration, September, 2006; Deposition: September 2006).

Kaiser Aluminum Chemical Corporation v. Certain Underwriters at Lloyd's London et al., Superior Court of California, County of San Francisco—Statistical analysis related to sampling of insurance claims and allocation of liability among excess insurers for asbestos liability.

Lotzer, et al. v. International Window Corporation, et al., Superior Court of California, County of Solano—Consulting expert on statistical analysis for purpose of estimating sales from invoice data and design of sampling strategies for product field tests in post-certification class action.

Confidential client—Analysis of asbestos claims, exposures by occupation, settlement costs, and future claims costs associated with a major boiler manufacturer.

Confidential Client, United States Bankruptcy Court, District of Delaware—Statistical surveying, analysis and consultation regarding the prevalence of failure in homes constructed with a specific building product.

McIlhargie, et al. v. Moulded Fiberglass Companies et al., Superior Court of California, County of San Joaquin—Consulting expert on statistical analysis, sampling design, and consultation on prevalence of construction building product defect in pre-certification class action.

Bowen-Fromm v. Terra Shake Products, et al., Superior Court of California, County of Alameda—Statistical analysis, sampling design, and consultation on prevalence of product defects in a class action lawsuit.

Bayview Hunters Point, All Hallows, Shoreview and LaSalle Apartments L.P. v. Colorworks Collegiate Painters; Simonton Building Products, United States District Court, Northern District of California—Statistical analysis and sampling design for estimation of the prevalence of construction defects in windows, doors, and siding.

Nature Guard Cement Roofing Shingles Cases in Davis v. Louisiana-Pacific Corporation, Superior Court of California, County of Stanislaus—Consulting expert on statistical analysis of evidence regarding prevalence of construction defects.

People of the State of California, v. Apartment Investment and Management Company, et al., Superior Court of California, County of San Francisco—Consulting expert on statistical analysis and sampling designs related to the prevalence of hazards and other construction and maintenance issues leading to notice of violations in buildings. (Expert report, October, 2003).

Naef, et al. v. Masonite, Superior Court, County of Mobile, Alabama—Consulting expert on statistical surveying and analysis of the prevalence of siding failure in homes made with Masonite siding. Identification of factors contributing to failure, projection of failure rates observed during the survey to the population of homes manufactured with subject siding, calculation of expected future costs of legal settlement under the various terms and conditions.

Summary of Consulting Experience in Market Analysis, Sampling, Survey Research and Policy Evaluation Experience

Over the past 20 years have served as a Practice Leader, Principal Investigator, and President/CEO for companies in market analysis and customer research. Principal investigator for over 300 market assessment, customer segmentation, customer choice, consumer opinion and public policy evaluation engagements in energy, telecom, environment, infrastructure, transportation, and consumer products and services industries. Key areas have included:

Measurement of Consumer Behavior and Customer Attitudes, Opinions, and Choice Studies—Directed more than 125 major projects measuring customer attitudes, customer intentions, and customer choices using broad range of survey techniques. Research projects addressed defining markets, customer segmentation, market potential, new product forecasting, satisfaction and company image tracking, and in support of litigation related to brand awareness/image, confusion, trademark issues, and use of products. Surveys included data collection from industrial companies, commercial companies, agricultural firms, and consumers. Areas included telecom, financial services, energy, environment, consumer products, industrial products, water, and business services.

Value of Service and Outage Cost Research—Led teams that designed and implemented new methods of measuring valuing service reliability by measuring outage costs for electricity and gas service using customer surveys. These surveys measured residential, commercial, industrial, and agricultural customers' outage costs and their preferences for different scenarios of service reliability. These projects included clients throughout the United States. The studies involved several thousand surveys with all customer segments including residential, commercial, industrial, and agricultural customers.

Design of Performance Measurement Systems—Led teams that designed and implemented performance measurement systems for companies focused on financial, process and customer goals. Projects included goal setting, identification of key performance indicators, setting performance standards, identifying data sources, and developing reporting systems. These engagements involved working with employees on surveys of staff time usage and allocation of time to activities as well as design of customer satisfaction/expectations surveys with customers.

Energy, Environment, and Transportation—Led teams conducting evaluations of major energy efficiency, demand management, environmental and transportation programs including rate programs, rebate programs, information programs and load control programs for major utilities, government agencies, and research institutes. Projects included sampling designs, survey designs, survey implementation using all modes of surveys (in-person, telephone, mail, internet), and statistical analysis of surveys of customers, and cost benefit evaluations. Over 150 program evaluations over past 20 years.

Environmental Attitudes and Behaviors—Early research focused on environmental attitudes and environmental behaviors in a wide range of settings. Co-developer of one of the most widely used environmental attitude scales (New Environmental Paradigm (NEP) scale).

Publications

Van Liere, Kent D., Butler, Sarah. 2007. "Emerging Issues in the Use of Surveys in Trademark Infringement on the Web." Paper published in the *Advanced Trademark & Advertising Law Conference* proceedings, Seattle, WA, September, 2007.

King, Mike, Kent Van Liere, Gene Meehan, Glenn R. George, Wayne P. Olson, Amparo D. Nieto. 2007. "Making a Business of Energy Efficiency: Sustainable Business Models for Utilities," Edison Electric Institute, Washington, D.C., August, 2007.

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Lawton, Leora, Michael Sullivan, Kent D. Van Liere, Aaron Katz, and Joseph Eto "A Framework and Review of Customer Outage Costs: Integration and Analysis of Electric Utility Outage Cost Surveys," Energy Storage Program, Office of Electric Transmission and Distribution, U.S. Department of Energy, LBNL-54365, 2004.

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Malloy, Ken, Jamie Wimberly, and Kent D. Van Liere. 1999. "The Customer Stewardship Program: Successfully Linking Consumer Education and Corporate Strategy," *The Electricity Journal*, August/September 1999.

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Market Tracking: Assessing Sources and Access to Appliance Sales Data, EPRI, Palo Alto, CA: 1997. TR-108928.

Performance Measurement in Utilities: A Framework for Creating Effective Management Systems. EPRI, Palo Alto, CA: 1996. TR-106860 3269-34.

Van Liere, Kent D., Rick Winch, Kathleen Standen, Shel Feldman, and Dale Brugger. 1994. "The Design and Structure of a Statewide Sales Tracking System for Residential Appliances." In *Energizing the Energy Policy Process*, edited by Roberta W. Walsh and John G. Heilman, Westport, Connecticut, Quorum Books, pp. 199-216.

Van Liere, Kent D. and William Lyons. 1986. "Measuring Perceived Program Quality." In *Performance Funding in Higher Education*, edited by Trudy W. Banta, Boulder, Colorado, National Center for Higher Education Management System, pp. 85-94.

Dunlap, Riley E. and Kent D. Van Liere. 1984. "The Dominant Social Paradigm and Concern for Environmental Quality: An Empirical Analysis." *Social Science Quarterly*, 65: 1013-1028.

Hand, Carl M. and Kent D. Van Liere. 1984. "Religion, Mastery Over Nature and Environmental Concerns." *Social Forces*, 63: 555-570.

Ladd, Anthony E., Thomas C. Hood, and Kent D. Van Liere. 1983. "Ideological Themes in the Antinuclear Movement: Consensus and Diversity." *Sociological Inquiry*, 53: 252-272.

Lounsbury, John W., Kent D. Van Liere, and Gregory J. Meissen. 1983. "PsychoSocial Assessment." In *Social Impact Assessment Methods*, edited by K. Kinsterbush, L. Llewellyn, and C.P. Wolff, Beverly Hills, California, Sage, pp. 215-240.

Van Liere, Kent D. and Riley E. Dunlap. 1983. "Cognitive Integration of Social and Environmental Beliefs." *Sociological Inquiry*, 53: 333-341.

Van Liere, Kent D. and Benson H. Bronfman. 1981. "Beliefs About Social Control and Participation in a Load Management Project." *Housing and Society*, 8: 124-135.

Van Liere, Kent D. and Riley E. Dunlap. 1981. "Environmental Concern: Does it Make a Difference How It's Measured?" *Environment and Behavior*, 13: 651-676.

Van Liere, Kent D. and Frank P. Noe. 1981. "Outdoor Recreation and Environmental Attitudes: Further Examination of the Dunlap-Hefferen Thesis." *Rural Sociology*, 46: 505-513.

Van Liere, Kent D. and Riley E. Dunlap. 1980. "The Social Bases of Environmental Concern: A Review of Hypotheses, Explanations, and Empirical Evidence." *Public Opinion Quarterly*, 44: 181-197.

Tremblay, Kenneth R., Jr., Don A. Dillman, and Kent D. Van Liere. 1980. "An Examination of the Relationship Between Housing Preferences and Community Size Preferences." *Rural Sociology*, 45: 509-519.

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Van Liere, Kent D. and Riley E. Dunlap. 1978. "Moral Norms and Environmental Behavior: An Application of Schwartz's Norm-Activation Model to Yard Burning." *Journal of Applied Social Psychology*, 8: 174-188.

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Dunlap, Riley E. and Kent D. Van Liere. 1977. "Land Ethic or Golden Rule." *Journal of Social Issues*, 33: 200-207.

Dunlap, Riley E. and Kent D. Van Liere. 1977. "Response to Heberlein." *Journal of Social Issues*, 33: 211-212.

Dunlap, Riley E. and Kent D. Van Liere. 1979. "Decline in Public Concern for Environmental Quality: A Reply." *Rural Sociology*, 44: 204-212.

Professional Associations

Member, American Association of Public Opinion Research

Member, American Statistical Association

October 2009

Exhibit B

Documents relied upon:

- 1) Rosetta Stone, Ltd. V. Google, Inc., Complaint
- 2) Diamond, S. (2000) “Reference Guide on Survey Research” in the *Reference Manual on Scientific Evidence Second Edition*, Federal Judicial Center
- 3) McCarthy, J. Thomas (2006) *McCarthy on Trademarks and Unfair Competition 4th Edition*, Chapter 32
- 4) Manual for Complex Litigation, Fourth, Section 11.493

Exhibit C

WEB SEARCH STUDY

TOP SHEET

(THIS IS A PERSONAL INTERVIEW)

- SCREENER -

RESPONDENT I.D. #: _____

(RECORD AT END OF INTERVIEW. PLEASE PRINT.)

RESPONDENT'S NAME: _____	TEL. # () _____
CITY: _____	STATE: _____ ZIP: _____
INTERVIEWER: _____	DATE: _____

RESPONDENT I.D. #: _____

Web Search Survey

- SCREENER -

INTRODUCTION:

Hello, I am _____ from _____. We are conducting a brief survey and would like to include your opinions. Please be assured that the questions are for research only and we are not selling anything.

NOTE: RECORD ALL TERMINATIONS WHICH OCCUR IN ANY QUESTION S0-S2 BY CIRCLING THE NEXT AVAILABLE NUMBER IN GRID AT BOTTOM OF THIS BOX. RECORD ONLY ONE TERMINATION PER CONTACT. RE-USE SCREENER UNTIL YOU REACH A QUALIFIED RESPONDENT.

S0. Are you a US citizen?

- 1 Yes
- 2 No **[SCREEN OUT]**

S1. Do you or does anyone else in your household work for any of the following? (READ ENTIRE LIST AND CIRCLE ALL THAT APPLY)

- 1 A market research company **[SCREEN OUT]**
- 2 A company that sells videos and DVDs
- 3 A company that sells travel packages
- 4 An internet search engine company **[SCREEN OUT]**
- 5 A company that makes products for learning foreign languages **[SCREEN OUT]**
- 6 A store or company located in this mall **[SCREEN OUT]**
- 7 No, none of the above

S2. In the past three months, have you participated in a market research study, other than a political poll? (RECORD SINGLE ANSWER)

- 1 Yes **[SCREEN OUT]**
- 2 No
- 3 Don't know **[SCREEN OUT]**

RECORD TERMINATIONS WHICH OCCUR ON THIS PAGE BELOW:

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25
26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50

S3. I am going to read you a list of topics. For each topic, please tell me if this is something you are interested in or are not interested in. Are you interested in... [READ LIST. CHECK ALL THAT APPLY]

	YES I am Interested	NO, NOT Interested	Don't Know
Learning how to play a musical instrument			
Learning new cooking techniques			
Learning a foreign language			
Learning simple car repair			
Learning how to better manage your finances			

[IF RESPONDENT SAYS HE/SHE IS NOT INTERESTED IN "LEARNING A FOREIGN LANGUAGE" OR DOES NOT KNOW WHETHER INTERESTED IN A FOREIGN LANGUAGE, THANK AND SCREEN OUT.]

S4. You mentioned learning a foreign language as one of your interests. In the next 12 months, do you think you will or will not search for information about learning a foreign language on the internet?

- 1 Yes, will use the internet to search for information about learning a foreign language
- 2 No, will not use the internet to search for information about learning a foreign language
- 3 Don't know
- 4 Refused

[IF RESPONDENT IN THE NEXT YEAR WOULD NOT USE THE INTERNET TO SEARCH FOR INFORMATION ABOUT LEARNING A FOREIGN LANGUAGE, DOES NOT KNOW OR REFUSED IN S4 THANK AND SCREEN OUT.]

S5. I am going to read a list of companies that have foreign language products. Please tell me, which, if any of these companies you have heard of? [READ ENTIRE LIST AND CIRCLE ALL THAT APPLY]

- 1 Berlitz
- 2 Pimsleur
- 3 Rosetta Stone
- 4 Fluenz
- 5 None of these

[IF RESPONDENT HAS NOT HEARD OF "ROSETTA STONE" THANK AND SCREEN OUT.]

RECORD TERMINATIONS FOR S3, S4 AND S5 BELOW:

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25
26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50

S6. I'd like to read a list of internet search engines. Please tell me which of these search engines you have used in the past 12 months? [READ ENTIRE LIST AND CIRCLE ALL THAT APPLY]

- 1 AOL
- 2 Ask.com
- 3 Google
- 4 MSN Live Search
- 5 Yahoo

S7. And which of these search engines do you think you will use in the next 12 months? [READ ENTIRE LIST AND CIRCLE ALL THAT APPLY]

- 1 AOL
- 2 Ask.com
- 3 Google
- 4 MSN Live Search
- 5 Yahoo

IF RESPONDENT HAS NOT USED GOOGLE IN PAST 12 MONTHS (S6) AND WILL NOT USE GOOGLE IN THE NEXT 12 MONTHS THANK AND SCREEN OUT.

RECORD TERMINATIONS WHICH OCCUR IN S6 AND S7 (GOOGLE NOT MENTIONED) HERE:

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25
26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50

S8. (RECORD GENDER BY OBSERVATION)

- 1 Male
- 2 Female

S9. And, into which of the following categories does your age fall?

- 1 18 – 24
- 2 25 – 34
- 3 35 – 44
- 4 45 – 54
- 5 55 or older
- 6 (VOL) Under 18 or Refused age **[SCREEN-OUT]**

INTERVIEWER: CHECK AGE/GENDER QUOTAS AND TERMINATE IF FULL. RECORD IN THE APPROPRIATE BOX BELOW.

<u>O/Q TERM- M18 - 24</u> -- CIRCLE NEXT AVAILABLE NUMBER BELOW. ERASE AND RE-USE SCREENER.												
1	2	3	4	5	6	7	8	9	10	11	12	
<u>O/Q TERM- M25 - 34</u> -- CIRCLE NEXT AVAILABLE NUMBER BELOW. ERASE AND RE-USE SCREENER.												
1	2	3	4	5	6	7	8	9	10	11	12	
<u>O/Q TERM- M35 - 44</u> -- CIRCLE NEXT AVAILABLE NUMBER BELOW. ERASE AND RE-USE SCREENER.												
1	2	3	4	5	6	7	8	9	10	11	12	
<u>O/Q TERM- M45 - 54</u> -- CIRCLE NEXT AVAILABLE NUMBER BELOW. ERASE AND RE-USE SCREENER.												
1	2	3	4	5	6	7	8	9	10	11	12	
<u>O/Q TERM- M 55+ --</u> CIRCLE NEXT AVAILABLE NUMBER BELOW. ERASE AND RE-USE SCREENER.												
1	2	3	4	5	6	7	8	9	10	11	12	
<u>O/Q TERM- F18 - 24</u> -- CIRCLE NEXT AVAILABLE NUMBER BELOW. ERASE AND RE-USE SCREENER.												
1	2	3	4	5	6	7	8	9	10	11	12	
<u>O/Q TERM- F25 - 34</u> -- CIRCLE NEXT AVAILABLE NUMBER BELOW. ERASE AND RE-USE SCREENER.												
1	2	3	4	5	6	7	8	9	10	11	12	
<u>O/Q TERM- F35 - 44</u> -- CIRCLE NEXT AVAILABLE NUMBER BELOW. ERASE AND RE-USE SCREENER.												
1	2	3	4	5	6	7	8	9	10	11	12	
<u>O/Q TERM- F45 - 54</u> -- CIRCLE NEXT AVAILABLE NUMBER BELOW. ERASE AND RE-USE SCREENER.												
1	2	3	4	5	6	7	8	9	10	11	12	
<u>O/Q TERM- F 55+ --</u> CIRCLE NEXT AVAILABLE NUMBER BELOW. ERASE AND RE-USE SCREENER.												
1	2	3	4	5	6	7	8	9	10	11	12	

RECORD UNDER 18 / REFUSED AGE TERMINATIONS S18 HERE:																								
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25
26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50

INTERVIEWER: IF RESPONDENT IS NOT WEARING GLASSES:

S10. Do you normally wear glasses or contact lenses when you read?

- 1 Yes
- 2 No **[SKIP TO S12]**
- 3 Not sure / Refused **[SCREEN-OUT]**

S11. Are you willing to bring them with you and wear them for the interview?

- 1 Yes
- 2 No/Refused **[SCREEN-OUT]**

INTERVIEWER: IF RESPONDENT REFUSES TO ANSWER S10 OR REFUSES TO WEAR CONTACTS / GLASSES IN S11, TERMINATE AND RECORD IN THE APPROPRIATE BOX BELOW BASED ON RESPONDENT'S AGE & GENDER.

S10/S11 TERM-M18-24-CIRCLE NEXT AVAILABLE NUMBER BELOW. ERASE AND RE-USE SCREENER.												
1	2	3	4	5	6	7	8	9	10	11	12	
S10/S11 TERM-M25-34-CIRCLE NEXT AVAILABLE NUMBER BELOW. ERASE AND RE-USE SCREENER.												
1	2	3	4	5	6	7	8	9	10	11	12	
S10/S11 TERM-M35-44-CIRCLE NEXT AVAILABLE NUMBER BELOW. ERASE AND RE-USE SCREENER.												
1	2	3	4	5	6	7	8	9	10	11	12	
S10/S11 TERM-M45-54-CIRCLE NEXT AVAILABLE NUMBER BELOW. ERASE AND RE-USE SCREENER.												
1	2	3	4	5	6	7	8	9	10	11	12	
S10/S11 TERM-M55+- CIRCLE NEXT AVAILABLE NUMBER BELOW. ERASE AND RE-USE SCREENER.												
1	2	3	4	5	6	7	8	9	10	11	12	
S10/S11 TERM-F18-24-CIRCLE NEXT AVAILABLE NUMBER BELOW. ERASE AND RE-USE SCREENER.												
1	2	3	4	5	6	7	8	9	10	11	12	
S10/S11 TERM-F25-34-CIRCLE NEXT AVAILABLE NUMBER BELOW. ERASE AND RE-USE SCREENER.												
1	2	3	4	5	6	7	8	9	10	11	12	
S10/S11 TERM-F35-44-CIRCLE NEXT AVAILABLE NUMBER BELOW. ERASE AND RE-USE SCREENER.												
1	2	3	4	5	6	7	8	9	10	11	12	
S10/S11 TERM-F45-54-CIRCLE NEXT AVAILABLE NUMBER BELOW. ERASE AND RE-USE SCREENER.												
1	2	3	4	5	6	7	8	9	10	11	12	
S10/S11 TERM-F 55+ - CIRCLE NEXT AVAILABLE NUMBER BELOW. ERASE AND RE-USE SCREENER.												
1	2	3	4	5	6	7	8	9	10	11	12	

S12. We would like to invite you to participate in a short study that we think you will find interesting. Would you like to participate in this study? We will provide you a \$5 incentive as a thank you for your time.

- 1 Yes, will participate *[CONTINUE]*
- 2 No, will not participate *[TERMINATE]*

INTERVIEWER: IF RESPONDENT REFUSES TO PARTICIPATE IN S12 TERMINATE AND RECORD IN THE APPROPRIATE BOX BELOW BASED ON RESPONENT'S AGE & GENDER.

REFUSAL TERM-M18-24-CIRCLE NEXT AVAILABLE NUMBER BELOW. ERASE AND RE-USE SCREENER.												
1	2	3	4	5	6	7	8	9	10	11	12	
REFUSAL TERM-M25-34-CIRCLE NEXT AVAILABLE NUMBER BELOW. ERASE AND RE-USE SCREENER.												
1	2	3	4	5	6	7	8	9	10	11	12	
REFUSAL TERM-M35-44-CIRCLE NEXT AVAILABLE NUMBER BELOW. ERASE AND RE-USE SCREENER.												
1	2	3	4	5	6	7	8	9	10	11	12	
REFUSAL TERM-M45-54-CIRCLE NEXT AVAILABLE NUMBER BELOW. ERASE AND RE-USE SCREENER.												
1	2	3	4	5	6	7	8	9	10	11	12	
REFUSAL TERM-M55+- CIRCLE NEXT AVAILABLE NUMBER BELOW. ERASE AND RE-USE SCREENER.												
1	2	3	4	5	6	7	8	9	10	11	12	
REFUSAL TERM-F18-24-CIRCLE NEXT AVAILABLE NUMBER BELOW. ERASE AND RE-USE SCREENER.												
1	2	3	4	5	6	7	8	9	10	11	12	
REFUSAL TERM-F25-34-CIRCLE NEXT AVAILABLE NUMBER BELOW. ERASE AND RE-USE SCREENER.												
1	2	3	4	5	6	7	8	9	10	11	12	
REFUSAL TERM-F35-44-CIRCLE NEXT AVAILABLE NUMBER BELOW. ERASE AND RE-USE SCREENER.												
1	2	3	4	5	6	7	8	9	10	11	12	
REFUSAL TERM-F45-54-CIRCLE NEXT AVAILABLE NUMBER BELOW. ERASE AND RE-USE SCREENER.												
1	2	3	4	5	6	7	8	9	10	11	12	
REFUSAL TERM-F 55+ - CIRCLE NEXT AVAILABLE NUMBER BELOW. ERASE AND RE-USE SCREENER.												
1	2	3	4	5	6	7	8	9	10	11	12	

BRING QUALIFIED RESPONDENT TO INTERVIEWING AREA.

Main Questionnaire

[SCREEN 1]

Thank you for participating in today's interview.

[INTERVIEWER: INSTRUCT RESPONDENT TO SIT IN FRONT OF THE LAPTOP COMPUTER. RESPONDENT SHOULD BE SEATED NEAR INTERVIEWER BUT NOT BE ABLE TO READ INTERVIEWER'S SCREEN]

To be sure that I have the correct information and that it is entered into the computer, I will need to ask you the questions that were just asked in the mall. This will only take a minute.

[RE-ASK ALL SCREENING QUESTIONS. IF RESPONDENT NO LONGER QUALIFIES, THANK RESPONDENT AND EXPLAIN THAT THEY ARE NOT ELIGIBLE TO COMPLETE THE STUDY].

[SCREEN 2]

Today we are conducting a study on how consumers use the internet. We are interested in your honest opinions. There are no right or wrong answers. If you don't know the answer to any of my questions, that's okay, just say you don't know or that you do not have an opinion. Please do not guess.

I am going to have you do a search on the internet. For this study, different survey participants are being asked to use different search engines to look for information about different brand name products. Today we are asking participants at this mall to use "Google" to search.

PROGRAMMING NOTE: RANDOMLY ASSIGN RESPONDENT TO CONDITION 1 or 2. QUOTA FOR EACH OF 8 SITES IS 50 OVERALL.

[SCREEN 3]

I am going to give you a brand name to enter in the search bar. First I need to open the web browser for you.

[INTERVIEWER: CLICK ON ICON (1 or 2) TO OPEN THE BROWSER ON THE LAPTOP FOR RESPONDENT]

[SCREEN 4]

Q1a. So that I can confirm that I opened the correct page for you, what number do you see on the screen?

- 1
- 2

[SCREEN 5]

I am now going to ask you to do a search on the internet using this computer. You can use the mouse to move the cursor and the roll button on the center of the mouse to scroll up and down as you normally would. One of the things you said you were interested in was learning a foreign language. Today I would like you to conduct a search for language learning software using the brand name on this card.

[INTERVIEWER, HAND RESPONDENT CARD].

[SCREEN 6]

Please go ahead click on the "Start" button on your screen to begin.

Please now go ahead and type this brand of language learning software [Rosetta Stone] into the search bar exactly as you see it printed on this card. When you have finished typing you can click on the "search" button.

[INTERVIEWER: CONFIRM RESPONDENT HAS TYPED THE SEARCH TERM CORRECTLY]

[SCREEN 7]

Q2. Do you see search results?

Yes [SKIP TO SCREEN 9]

No

[SCREEN 8 – IF Q2=NO]

Let me see if I can help you.

INTERVIEWER: RESET THE SEARCH PAGE AND ASK RESPONDENT TO TYPE THE SEARCH TERM AGAIN – MAKING SURE THEY TYPE THE WORDS EXACTLY. IF THE RESPONDENT STILL REPORTS THEY CANNOT SEE SEARCH RESULTS, TERMINATE INTERVIEW AND CONTACT SUPERVISOR IMMEDIATELY.

- 1 Respondent see results [GO BACK TO Q2 & UNSET]
- 2 Problems not resolved – terminate interview [TERMINATE]

[SCREEN 9]

Now, please look at this page as you would normally look at a search results page, but please do not click on any of the results at this time.

[CLICK 'NEXT' WHEN RESPONDENT IS READY TO PROCEED]

[SCREEN 10]

Q3. I would now like to ask you a few questions about these results. Which link or links if any do you think sells Rosetta Stone language software products?

PROGRAMMING NOTE: ALL POSSIBLE SITES THAT COULD BE SHOWN IN EACH OF THE CONDITIONS WILL BE LISTED FOR INTERVIEWERS TO RANK THE ORDER IN WHICH THEY WERE MENTIONED.

INTERVIEWER: RECORD CAREFULLY. IF NECESSARY, LOOK AT LINKS RESPONDENT IS POINTING TO. RECORD THE ORDER IN WHICH LINKS WERE MENTIONED BY USING NUMBERS; FOR EXAMPLE, TYPE A '1' IN THE BOX FOR THE LINK MENTIONED FIRST, TYPE A '2' IN THE BOX FOR THE LINK MENTIONED SECOND, ETC.

[SCREEN 11] [SHOW LINKS MENTIONED IN Q3]

Q4. Of the links you just mentioned, which link or links if any, are a Rosetta Stone company website?

INTERVIEWER: RECORD CAREFULLY. IF NECESSARY, LOOK AT LINKS RESPONDENT IS POINTING TO. RECORD THE ORDER IN WHICH LINKS WERE MENTIONED BY USING NUMBERS; FOR EXAMPLE, TYPE A '1' IN THE BOX FOR THE LINK MENTIONED FIRST, TYPE A '2' IN THE BOX FOR THE LINK MENTIONED SECOND, ETC.

[SCREEN 12 – SHOW LINKS NOT MENTIONED IN Q4 TO BE RANK ORDERED]

Q5. Of the links you mentioned, which link or links, if any, are endorsed by the Rosetta Stone company?

INTERVIEWER: RECORD CAREFULLY. IF NECESSARY, LOOK AT LINKS RESPONDENT IS POINTING TO. RECORD THE ORDER IN WHICH LINKS WERE MENTIONED BY USING NUMBERS; FOR EXAMPLE, TYPE A '1' IN THE BOX FOR THE LINK MENTIONED FIRST, TYPE A '2' IN THE BOX FOR THE LINK MENTIONED SECOND, ETC.

[SCREEN 13 ASK Q6 FOR EACH SITE MENTIONED IN Q.4. SHOW EACH ON SEPARATE SCREEN]

Q6. Now thinking about the links you mentioned, we would like to understand what it is about the link that makes you think it is a Rosetta Stone company website.

For example, why do you think the link that starts with the phrase – [SHOW FIRST ANSWER FROM Q3] – is a Rosetta Stone company website?

INTERVIEWER NOTE: IF RESPONDENT PROVIDES A GENERAL ANSWER FOR ALL LINK NAMES OR MENTIONS THAT THEY ALL HAVE THE SAME CHARACTERISTIC, SAY:

I need to confirm what you have said about all of the links for each of the individual links. Does what you said apply to [READ NAME OF LINK]?"

(INTERVIEWER: TYPE "SAME ANSWER" IF RESPONDENT CONFIRMS THEIR ANSWER FOR THIS LINK)

(OPEN-END; RECORD VERBATIM)

[SCREEN 14 – ASK Q7 FOR EACH SITE MENTIONED IN Q.5 SHOW EACH ON SEPARATE SCREEN]

Q7. Now I would like to ask you about the links that you indicated are endorsed by the Rosetta Stone company.

For example, why do you think the Rosetta Stone company endorses the link that starts with the phrase [SHOW LINK FROM Q5]?

(OPEN-END; RECORD VERBATIM)

[INTERVIEWER ENTER AND VERIFY INFORMATION COLLECTED ON SCREENER.]

Those are all the questions that I have for you today. I just need to confirm your name, phone number, and the zip code where you live to verify that you completed this interview. I need this information so that my supervisor can verify a portion of my work. If you are contacted, it will only be to confirm that I conducted this interview and for no other reason.

RESPONDENT STATEMENT

READ TO RESPONDENT:

By providing this information, you acknowledge that you were interviewed today, and that during this interview you conducted a web search and were asked some questions about what you saw.

(INTERVIEWER: CONFIRM ALL INFORMATION FROM SCREENER WITH RESPONDENT)

NAME: _____ DATE: _____

TELEPHONE #: _____

Is that a daytime or evening telephone number?

1. Daytime telephone number
2. Evening telephone number
3. Both daytime/evening number

ZIP: _____

INTERVIEWER STATEMENT

INTERVIEWER: THIS MUST BE COMPLETED BEFORE YOU CAN FINISH THE INTERVIEW.

I hereby certify that all of the above information was obtained by me from the respondent named above who is not personally known to me.

INTERVIEWER NAME: _____

WEB SEARCH SURVEY INTERVIEWER INSTRUCTIONS

PROJECT OVERVIEW

This is a study of adults aged 18 and older who meet the survey screening criteria. In this survey, respondents are to be screened in the mall and then taken to your facility to complete the interview using a survey via computer.

QUALIFIED RESPONDENT

In order to qualify for this study, a respondent must not work for or have a household member that works for:

- a market research company
- an internet search company
- a company that makes products for learning foreign languages, or
- a store or company in the mall.

Qualified respondents must not have participated in a market research survey other than a political poll during the last three months. They must be interested in learning a foreign language and will, in the next 12 months, look for information about learning a foreign language on the internet. Additionally they must have heard of the Rosetta Stone company.

They must have used Google as a search engine in the past 12 months and would be willing to use Google as a search engine in the next 12 months.

Respondents who wear contact lenses or glasses must have them with them and agree to wear them during the interview in order to qualify for the study.

SCREENER TERMINATION BOXES

All screeners have termination boxes to be used for tracking all respondent intercepts and terminations.

Once a screener has been used to screen an eligible respondent who completes the main interview, a new, clean, screening form should be obtained to continue respondent intercept and screening. If, in the process of screening, all numbers in a termination box have been circled before intercepting an eligible respondent, a new, clean screening form should be used to screen the next potential respondent.

QUOTA

Your facility's quota is 50. You should have approximately 25 males and 25 females. You will also need to track quotas by age group. Quotas for each age group are provided below.

Age Group	Number of Female Interviews	Number of Male Interviews
18 - 24	8	8
25 - 34	5	5
35 - 44	5	5
45 - 54	5	5
55 and over	2	2

INTERVIEWING SET UP

The private interviewing area is to contain a table, two chairs, a computer for the interviewer and the laptop computer provided by NERA for the respondent to use for the "web site" portion of the interview.

You, the **interviewer**, should be positioned to complete the survey questionnaire on the computer, so that the **respondent cannot see the questions** on your computer screen.

The laptop should be positioned so that you can access it and initiate the web site portion of the interview conveniently. The respondent must be seated in front of the laptop computer to complete the web site portion of the survey. The respondent should not touch or use the laptop other than when instructed by you for the web site portion of the interview.

LAPTOP COMPUTERS

Your facility will be receiving one laptop computer for respondents to use during the "web site" portion of the interview. The laptop should not be used by facility staff or respondents for any other purpose. When the laptop computer is not in use, it should be stored in a secure location. While interviewing is taking place, the laptop should:

- be plugged into the wall using the provided power cord,
- have the provided mouse attached.

You will need to initiate the web site for the respondent during the interview by clicking on one of two designated icons on the desktop. The icons are labeled with the numbers 1 and 2.

If, at any time during the interview, the program initiated by clicking on the icon does not work, call NERA.

MAIN QUESTIONNAIRE

The screening for qualified respondents should be done in the mall using the paper screeners. Screening should be done in pencil so that the answers of ineligible respondents can be erased.

Once a respondent has been qualified, and agrees to participate and comes back to your facility, you will begin the questionnaire using the computer version. The computer version will provide you with a respondent ID number. You will need to write the respondent ID on the first two pages of the paper screener.

As part of the computer version of the questionnaire, the screening questions asked in the mall will be re-asked. DO NOT just enter/copy the answers from the screener into the computer without re-asking the respondent the screener questions and waiting for them to provide their answers. Once the computer screening questions are completed and the respondent has qualified, the survey will continue automatically to the main questionnaire.

You will access the survey questionnaire as provided by Cunningham Research.

TEST INTERVIEWS AND INTERVIEWER TRAINING

Your facility will be provided with a test url to be used for training the interviewers. The test url will grant access to a practice questionnaire and allow you to become familiar and comfortable with the questionnaire prior to interviewing a qualified respondent. **Each interviewer who will be working on this project, either screening respondents or conducting interviews, must complete a test interview, prior to interviewing others.**

INTERCEPT PROCEDURES

- > After positioning yourself at your assigned screening site, you should attempt to screen the first individual approaching your site who appears to be 18 years of age or older. If that individual does not qualify, does not meet any available age quota categories, or refuses to participate, you should approach the next individual, and the next, until you locate a qualified participant. Proceed from attempt (to screen/qualify) to attempt (to screen/qualify) utilizing the selection method described, approaching each prospective respondent, regardless of race, dress, appearance or any other consideration.
- > It is important that you do not attempt to screen and/or interview more than one person from a collection or party of individuals.
- > After qualifying a respondent, you are to take that individual to your facility to be interviewed in your interviewing area. The respondent will need to answer the screener questions again. If for any reason the respondent no longer qualifies once he/she has answered the screening questions in the facility, you should thank the person for his/her time and terminate the interview. No incentive should be given to unqualified individuals.
- > Upon completion of the interview (including the collection of name and phone number and your confirmation), the respondent should be given the incentive payment.

- > Once the respondent is finished gathering payment, you are to return to the mall and position yourself at your assigned screening site, and repeat the respondent selection process previously described.

OTHER REMINDERS

- > Do not interview anyone you know.
- > Terminate the attempt to interview if there is a language or hearing difficulty.
- > Do not attempt to screen/qualify anyone who has, or might have, overheard the screening of a previous respondent.
- > During the screening portion of the interview, if you approach a party of two or more, address your request to only one of the individuals and request that the other individual(s) not help or assist the participating individual with her answers. If this occurs, terminate the attempt to interview. Again, you are not to interview more than one person from such a party/collection of individuals.
- > Do not stand or sit in a position where a respondent can read any of the words or screening questions.
- > During the Questionnaire portion of the interview, the respondent should be alone, with the exception of a parent with a young child. It is essential that respondents waiting to be interviewed are not able to see or hear an interview being conducted.

QUESTIONNAIRE PROCEDURES

- > It is important **that the questions are read verbatim**, exactly as written. Do not paraphrase a question or reword it. Do not add any words to the questions or attempt to explain the meaning of questions. Consistency between interviews is essential.
- > It is also important that **the responses are accurately recorded**. Open-ended responses are to **be recorded verbatim**, exactly as the respondent says it. Do not paraphrase or edit. Any responses which appear to be inaccurately recorded will be reviewed and discussed with supervisors.
- > Administer each questionnaire in a completely uniform manner, reading each question exactly as it is written and allow the respondent as much time as he/she needs to answer before proceeding to the next question. Do not change the wording of any question or rephrase a question, and ask only the questions included on the questionnaire. If a respondent indicates he/she does not understand a question or asks you to explain a question, simply repeat it exactly as worded. If necessary, repeat the question an additional two times. If the respondent still does not understand or asks that a question be explained, terminate the interview.
- > Upon completing the interview, please provide the respondent with the incentive payment for participating. Have the respondent sign his/her name and date on the

respondent ID/signature form next to the ID used for the interview. The interviewer must also put his/her initials on the ID/signature form.

You are to take care in not misplacing any study materials. No survey materials are to be removed from your facility except to be used in recruiting respondents. All survey materials are confidential. No one, other than the interviewing staff and Supervisors, is to review any of the survey materials. All materials, used and unused, must be returned to NERA upon completion of the project.

NERA CONTACT INFORMATION – SAN FRANCISCO STUDY HEADQUARTERS LOCATION

NERA Economic Consulting
One Front Street
Suite 2600
San Francisco, CA 94111

There are two people that you can contact at NERA with questions about the study or to report any problems or concerns. Sarah Butler is the primary contact and you can also contact Arie Singer.

Primary Contact:

Sarah Butler –
Sarah.Butler@nera.com

Secondary Contacts:

Arie Singer –
Arie.Singer@nera.com

INTERVIEWER INSTRUCTIONS

SIGNATURE PAGE

Note: After reading and reviewing these instructions and procedures, along with the Screeners/Questionnaires, please print your name and then sign this set of instructions, acknowledging that you have read these materials.

Name (Please Print)

Signature

WEB SEARCH STUDY SUPERVISOR INSTRUCTIONS

LIST OF MATERIALS

Screeners (80)
Supervisor Instructions (3)
Paper Copy Questionnaire (3)
Interviewer Instructions (10)
Laptop Computer (1)

Please read through the survey instructions and the paper copy questionnaire as soon as you receive this package. A conference call has been arranged to review all materials. Any questions you have regarding the survey or procedures can be addressed during this call.

If any materials are missing, or any instructions are unclear, please notify Sarah Butler or Arie Singer immediately. Contact information is at the end of this document.

PROJECT OVERVIEW

This is a study of adults aged 18 and older who meet the survey screening criteria. In this survey, respondents are to be screened in the mall and then taken to your facility to complete the interview using a survey via a computer.

QUALIFIED RESPONDENT

In order to qualify for this study, a respondent must not work for or have a household member that works for:

- a market research company,
- an internet search company,
- a company that makes products for learning foreign languages, or
- a store or company in the mall.

Qualified respondents must not have participated in a market research survey other than a political poll during the last three months. They must be interested in learning a foreign language and will, in the next 12 months, look for information about learning a foreign language on the internet. Additionally they must have heard of the Rosetta Stone company.

They must have used Google as a search engine in the past 12 months and would be willing to use Google as a search engine in the next 12 months

Respondents who wear contact lenses or glasses must have them with them and agree to wear them during the interview in order to qualify for the study.

SCREENER TERMINATION BOXES

All screeners have termination boxes to be used for tracking all respondent intercepts and terminations.

Once a screener has been used to screen an eligible respondent who completes the main interview, a new, clean, screening form should be obtained to continue respondent intercept and screening. If, in the process of screening, all numbers in a termination box have been circled before intercepting an eligible respondent, a new, clean screening form should be used to screen the next potential respondent.

QUOTA

Your facility's quota is 50. You should have approximately 25 males and 25 females. You will also need to track quotas by age group. Quotas for each age group are provided below.

Age Group	Number of Female Interviews	Number of Male Interviews
18 – 24	8	8
25 – 34	5	5
35 – 44	5	5
45 – 54	5	5
55 and over	2	2

INTERVIEWING SCHEDULE/INTERVIEWING LOCATIONS

Interviewing is to commence as scheduled and is to be continued each day until your assigned quotas are completed. **Make sure that no more than 50% (25 interviews) of your facility's total quota is conducted EITHER during the week (Monday through Thursday) or on the weekend (Friday through Sunday).** Any interviews beyond this quota will not be accepted.

The private interviewing area is to contain a table, two chairs, a computer for the interviewer and the laptop computer provided by NERA for the respondent to use for the "web site" portion of the interview.

The **interviewer** should be positioned to complete the survey questionnaire on the computer so that the **respondent cannot see the questions** on the interviewer's computer screen.

The laptop should be positioned so that the interviewer can access it and initiate the web site portion of the interview conveniently. The respondent must be seated in front of the laptop computer to complete the web site portion of the survey. The respondent should not touch or use the laptop other than when instructed by the interviewer for the web site portion of the interview.

CREW ROTATION

No single interviewer should complete more than one-half (25) of your facility's total quota of interviews.

LAPTOP COMPUTERS

Your facility will be receiving one laptop computer for respondents to use during the “web site” portion of the interview. The laptop should not be used by your staff or respondents for any other purpose. When the laptop computer is not in use, it should be stored in a secure location. While interviewing is taking place, the laptop should:

- be plugged into the wall using the provided power cord,
- have the provided mouse attached.

Interviewers will need to initiate the web site for the respondent during the interview by clicking on one of two designated icons on the desktop. The icons are labeled with the numbers 1 and 2.

BE SURE TO TEST EACH ICON ON THE LAPTOP COMPUTER AS SOON AS YOU RECEIVE IT. If there are any problems with the icons or the programs initiated by clicking on them, notify Sarah Butler or Arie Singer immediately.

If, at any time during the interview, the program initiated by clicking on the icon does not work, call NERA.

MAIN QUESTIONNAIRE

The screening for qualified respondents should be done in the mall using the paper screeners. Screening should be done in pencil so that the answers of ineligible respondents can be erased.

Once a respondent has been qualified, and agrees to participate and comes back to your facility, the interviewer will begin the questionnaire using the computer version. The computer version will provide the interviewer with a respondent ID number. The interviewer will need to write the respondent ID on the first two pages of the paper screener.

As part of the computer version of the questionnaire, the screening questions asked in the mall will be re-asked. **DO NOT just enter/copy the answers from the screener into the computer without re-asking the respondent the screener questions and waiting for them to provide their answers.** Once the computer screening questions are completed and the respondent has qualified, the interviewer will continue automatically to the main questionnaire.

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TEST INTERVIEWS AND INTERVIEWER TRAINING

Your facility will be provided with a test url to be used for training the interviewers. The test url will grant access to a practice questionnaire and allow the interviewers to become familiar and comfortable with the questionnaire prior to interviewing a qualified respondent. **Each interviewer who will be working on this project, either screening respondents or conducting interviews, must complete a test interview online.**

INTERCEPT PROCEDURES

- > After positioning yourself at your assigned screening site, you should attempt to screen the first individual approaching your site who appears to be 18 years of age or older. If that individual does not qualify, does not meet any available age quota categories, or refuses to participate, you should approach the next individual, and the next, until you locate a qualified participant. Proceed from attempt (to screen/qualify) to attempt (to screen/qualify) utilizing the selection method described, approaching each prospective respondent, regardless of race, dress, appearance or any other consideration.
- > It is important that you do not attempt to screen and/or interview more than one person from a collection or party of individuals.
- > After qualifying a respondent, you are to take that individual to your facility to be interviewed in your interviewing area. The respondent will need to answer the screener questions again. If for any reason the respondent no longer qualifies once he/she has answered the screening questions in the facility, you should thank the person for his/her time and terminate the interview. No incentive should be given to unqualified individuals.
- > Upon completion of the interview (including the collection of name and phone number and interviewer confirmation), the respondent should be given the incentive payment.
- > Once the respondent is finished gathering payment, you are to return to the mall and position yourself at your assigned screening site, and repeat the respondent selection process previously described.

OTHER REMINDERS

- > Do not interview anyone you know.
- > Terminate the attempt to interview if there is a language or hearing difficulty.
- > Do not attempt to screen/qualify anyone who has, or might have, overheard the screening of a previous respondent.
- > During the screening portion of the interview, if you approach a party of two or more, address your request to only one of the individuals and request that the other individual(s) not help or assist the participating individual with her answers. If this occurs, terminate the attempt to interview. Again, you are not to interview more than one person from such a party/collection of individuals.
- > Do not stand or sit in a position where a respondent can read any of the words or screening questions.
- > During the Questionnaire portion of the interview, the respondent should be alone, with the exception of a mother with a young child. It is essential that respondents waiting to be interviewed are not able to see or hear an interview being conducted.

QUESTIONNAIRE PROCEDURES

- > It is important **that the questions are read verbatim**, exactly as written. Do not paraphrase a question or reword it. Do not add any words to the questions or attempt to explain the meaning of questions. Consistency between interviews is essential.
- > It is also important that **the responses are accurately recorded**. Open-ended responses are to **be recorded verbatim**, exactly as the respondent says it. Do not paraphrase or edit. Any responses which appear to be inaccurately recorded will be reviewed and discussed with supervisors.
- > Administer each questionnaire in a completely uniform manner, reading each question exactly as it is written and allow the respondent as much time as he/she needs to answer before proceeding to the next question. Do not change the wording of any question or rephrase a question, and ask only the questions included on the questionnaire. If a respondent indicates he/she does not understand a question or asks you to explain a question, simply repeat it exactly as worded. If necessary, repeat the question an additional two times. If the respondent still does not understand or asks that a question be explained, terminate the interview.
- > Upon completing the interview, please provide the respondent with the incentive payment for participating. Have the respondent sign his/her name and date on the respondent ID/signature form next to the ID used for the interview. The interviewer must also put his/her initials on the ID/signature form.

You are to take care in not misplacing any study materials. No survey materials are to be removed from your facility except to be used in recruiting respondents. All survey materials are confidential. No one, other than the interviewing staff and Supervisors, is to review any of the survey materials. All materials, used and unused, must be returned to NERA upon completion of the project.

Final Shipment of All Survey Materials

When you are contacted by NERA to make your final shipment of remaining materials, you are to return all survey materials. **UNUSED SCREENERS SHOULD BE RETURNED IN THIS FINAL SHIPMENT.**

Shipping costs for the return of any materials not shipped in the final FedEx shipment, and/or charges for any materials that need to be returned to you for signature, etc., will be at your expense.

Ship final materials shipment to:

Sarah Butler
NERA Economic Consulting

One Front Street
Suite 2600
San Francisco, CA 94111
(415) 291-1022

Please use Federal Express for your daily shipments.

On the call you will be provided with a FedEx number to use for these shipments. You will be provided with a number for the internal billing reference.

NERA CONTACT INFORMATION – SAN FRANCISCO STUDY HEADQUARTERS LOCATION

NERA Economic Consulting
One Front Street
Suite 2600
San Francisco, CA 94111

There are two people that you can contact at NERA with questions about the study or to report any problems or concerns. Sarah Butler is the primary contact and you can also contact Arie Singer.

Primary Contact:

Sarah Butler –
Sarah.Butler@nera.com

Secondary Contact:

Arie Singer –
Arie.Singer@nera.com

SUPERVISOR INSTRUCTIONS

SIGNATURE PAGE

Note: After reading and reviewing these instructions and procedures, along with the Interviewer Instructions, and Screeners/Questionnaires, please print your name and then sign this set of instructions, acknowledging that you have read these materials.

Name (Please Print)

Signature

Exhibit D

"Rosetta Language" sale

Amazon.com/RosettaStone Top program, new Version 3. Ships free, no tax, order today!

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CouponCactus.com/RosettaStone Free 2-Day Shipping + 12% Cash Back on Rosetta Stone Language Software.

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Rosetta Stone v3 35% off

Learn a foreign language easily
with Rosetta Stone V3 Software.
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Rosetta Stone - Wikipedia, the free encyclopedia

The Rosetta Stone, 3rd of a 3-stone series, is a multilingual stèle that allowed linguists to begin the process of hieroglyph decipherment. ...
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Rosetta Stone® Software

100% Six-Month Money Back Guarantee
Free 2-Day Shipping. Free Headset.
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Rosetta Stone is language-learning software produced by Rosetta Stone, Ltd. Its title is an allusion to the Rosetta Stone, an artifact inscribed in multiple ...
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Story

The Rosetta Stone is a stone with writing on it in two languages (Egyptian ... The Rosetta Stone is written in three scripts because when it was written, ...
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The Rosetta Stone

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Rosetta Stone for Unix

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The Rosetta Stone is 3 feet 9 inches long and 2 feet 4 1/2 inches wide - (114x72x28cm). It is dark grey-pinkish granite stone (originally thought to be ...
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In 1799, French soldiers unearthed a great stone that led to the decoding of Egyptian hieroglyphics. Learn the story of the Rosetta Stone in a lesson ...
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Rosetta Stone

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Story

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The Rosetta Stone

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Rosetta Stone - Crystalinks

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Ancient Egyptian Culture

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EXHIBIT 42

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EXHIBIT 43

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**SPAZIANO
EXHIBIT 44**



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Optimization Center

Learn how to improve your account's performance and reach more customers. Sign in to your account at adwords.google.com to try the tips that are right for you!

<p>Overview</p> <hr/> <p>Basic tips</p> <p>Intermediate tips</p> <p>Advanced tips</p> <hr/> <p>Ads</p> <hr/> <p>Keywords</p> <hr/> <p>Targeting</p> <hr/> <p>Bidding and Budgeting</p> <hr/> <p>Account Structure</p> <hr/> <p>Tips by advertising goal</p> <ul style="list-style-type: none"> Improve your ROI Improve your CTR » Increase your sales & leads Improve your ad position <p>Print this guide</p>	<h3>Improve Your CTR</h3> <p>Clickthrough rate (CTR) improvement is really about making your ads more relevant to your potential customers. Optimization should focus on creating highly relevant and compelling advertising to help drive more targeted traffic to your website. Filter out irrelevant searches by refining your keyword list and incorporating negative keywords where appropriate. In addition, your ad text should reflect your keywords' theme as closely as possible.</p> <p>Ad text tips:</p> <ul style="list-style-type: none"> • Include unique selling points to make your ad stand out • Inter-capitalize the ad text to improve its appearance • Write a compelling headline • Use a descriptive display URL • Use keywords in your ads to make them more relevant • Use keyword insertion to make your ad more relevant <p>Keyword tips:</p> <ul style="list-style-type: none"> • Use negative keywords to eliminate unwanted clicks • Create a relevant keyword list to target when your ads can show • Avoid using overly generic keywords • Use appropriate keyword matching options to control who sees your ads • Find relevant keywords using the "See search terms" report <p>Targeting tips:</p> <ul style="list-style-type: none"> • Target the right region for your business • Target the right language for your business <h3>Include unique selling points to make your ad stand out</h3> <p>Your ad text should make you stand out from your competitors. Do this by highlighting your unique selling points like products, prices, or services that make your business unique, attractive, or different. Consider looking at your competitors' ads and see if you can make your ad stand out from theirs by highlighting the unique points that you have to offer. Try testing different messages to see what works best for you</p>
--	--

business.

Remember that when customers choose your ad over others, it's based purely on the content of your ad. The more information about your product that a user can gain from your ad text, the better. For example, if a user sees the price of a product and still clicks the ad, you know they're interested in a potential purchase at that price. If they don't like the price, they won't click your ad, and you save yourself the cost of that click.

Inter-capitalize the ad text to improve its appearance

Appropriate capitalization in ads can have a surprising effect on how they look. Ads that use appropriate capitalization can look more professional and eye-catching. Of the example ads below, which one would you click on if you were looking to buy a new camera?

slr digital cameras

on sale now. voted best after-sales service. 80% off most cameras
www.camerashopsite.com

SLR Digital Cameras

On Sale Now. Voted Best After-Sales Service. 80% Off Most Cameras
www.CameraShopSite.com

The second ad looks more professional, showing that the advertiser has taken more care about the message he is trying to convey. Look over your existing ads and see whether any of them can be improved by something as simple as adding a few capital letters to the beginning of words.

In addition, capitalizing the first letter of every word in your display URL can bring more attention to your company name and brand. For example, www.CheapTireShop.com will encourage brand recognition much better than www.cheaptiresshop.com.

Write a compelling headline

An ad's headline is usually the first thing a user sees. Because it appears as a link in blue underlined text, your headline is an important piece of your ad to get right.

For your ad's headline, use a descriptive phrase that clearly highlights the product or service that the ad promotes. If you're trying to build brand awareness, focus on the benefits that make your products or services unique. This will usually perform better than an ad that uses a company name in the headline, especially if your brand is already clearly highlighted in the ad's display URL. If, on the other hand, users are likely to recognize your company name, you might choose to mention your company name along with phrases like "official site" to capitalize on your brand's reputation.

Use a descriptive display URL

If your display URL is less than the 35 character limit, you can use the remaining characters to add a descriptive path name following your website's domain. These descriptive paths can complement your ad's message and set expectations for the customer about what content they'll see on your landing page.

Here are a few reasons to use a descriptive display URL:

- Emphasize an ad group's theme, product, or service:
`www.CameraShopSite.com/Lenses`
- Highlight the target location of your campaign or where your store is located:
`www.CameraShopSite.com/London`
- Describe a unique offer mentioned in your ad text:
`www.CameraShopSite.com/SummerSale`
- Build brand awareness by highlighting the brand name or company again in the display URL:
`www.CameraShopSite.com/WidgetBrand`

The display URL path does not have to be a functioning page of your actual website. However, make sure your destination URL for the ad links to a page that matches the theme described in your display URL.

Use keywords in your ads to make them more relevant

One of the key ways to improve your ads' performance is to make them more relevant to potential customers. Ads, like keywords, should be specific to your products or services and therefore relevant to your target audience. For each ad group, make sure your ads closely relate to the corresponding keyword lists. Go one step further and add some of your specific keywords into the title and description lines of your ads. This highlights how your ad is relevant to the exact search a user just performed. If part of your ad matches what a user searched for, that phrase will appear in bold, giving even more emphasis to your ad.


For example, imagine you search on Google for "digital camera" and see a general ad about electronics. Would you click on it? The ad's website might have information on digital cameras, but you'd be more likely to find what you're looking for from an ad that has "Digital Camera" in its text. The more specific ad has just what you want and is much more likely to be clicked.

Use keyword insertion to make your ad more relevant

[Keyword insertion](#) is an advanced ad text feature that can help make your ad more relevant to a diverse audience. This feature inserts a user's search query into a part of your ad text you choose (even the display URLs). When a user sees an ad with the same term they searched for, they'll be more likely to click the ad.

To use keyword insertion, place the following short piece of code into a section of your ad text: {KeyWord:Default Text} where "Default Text" is

the backup text you'll use in your ad. Each time the ad shows, AdWords will automatically replace that text with the keyword that triggered the ad. This can be a good solution for advertisers using keywords with different model numbers or brands. For example, if you write your ad's headline as "Buy {KeyWord:Widgets Here!}" it can appear as "Buy #320x Widgets" if a user searches for "#320x Widgets" or appear as "Buy #888x Widgets" if the next user searches for "#888x Widgets."

 Use keyword insertion with care and do not use it in place of proper ad group structure. It's always important to create tightly themed ad groups, and this is especially true with keyword insertion. If your ad group has keywords that don't match the same theme, you can easily end up with poorly targeted ads.

Learn [how to use keyword insertion](#) and see some examples.

Use negative keywords to eliminate unwanted clicks

[Negative keywords](#) are a core component of a successful keyword list. A negative keyword prevents your ad from showing when that word or phrase is included in a search query. For instance, if you sell cameras, but not underwater cameras, you can add the negative keyword *underwater* to make sure your ad doesn't show to someone searching for underwater cameras. Because that person seeks something you don't offer, they aren't likely to make a purchase from you; therefore, by filtering out those unwanted impressions, negative keywords can help you reach the most appropriate prospects, reduce your costs, and increase your return on investment.

You can use negative keywords to filter out certain searches for a number of reasons:

- **Filter out different products or services:** A real estate agent who is focused on selling homes may wish to include not only the negative keywords *rent* and *renting*, but also use the Keyword Tool to find ideas for variations such as *rents*, *rental*, and *rentals* to use as additional negative keywords.
- **Filter out irrelevant searches:** An advertiser may discover that the name of one of his products also happens to be the name of a musical group. In this case, it's a good idea to include negative keywords such as *music*, *band*, *concert*, *ticket*, *lyric*, *album*, *mp3*, and the pluralized versions of these words.
- **Filter out non-buyers:** A seller of digital cameras may want to filter out research-oriented searches by adding negative keywords like *review*, *rate*, *rating*, *compare*, *comparing*, *comparison*, and the pluralized versions of these words.

When constructing a negative keyword list, try to be as exhaustive as possible. However, be careful that none of your negative keywords overlap with your regular keywords, as this will cause your ad not to show. It's important to remember that over-using negative keywords can result in a very limited advertising audience. However, not using negative keywords can mean that your ads show to users who aren't interested in your business or service. Consider all your potential keywords carefully, including negative keywords, before you add them to your account.



Tool: The Keyword Tool and "See search terms" report are two great ways to find [potential negative keywords](#) for your ad group.

[Learn how to add or edit negative keywords](#).

Create a relevant keyword list to target when your ads can show

A highly relevant keyword list allows your ads to get clicks from people who are interested in what you have to offer. If you're new to online advertising, it might be tempting to add keywords that are not related to your ad but that probably get a lot of search traffic. The result? Most people who would see the ad are not looking for what your website offers, so you'd end up wasting money on clicks from people who were not potential customers to begin with. Instead, having keywords that directly match your ad text and website will help you gain valuable ad exposure and traffic.

Here are some simple steps to take when building a relevant keyword list:

- **When choosing keywords, think like a customer.** What terms or phrases would your customers use to describe your products or services? List any keywords that you think users might search for on Google to find your business. Keep in mind that customers may use different terms to find your product or service than the terms you would normally use. An advertiser selling nutrition bars may think of his product as "protein bars" for body builders, when a large portion of his customers might be busy professionals looking for "meal replacement bars."
- **Choose specific keywords that relate to your business, ad group, and landing page.** Keywords that are too broad can negatively affect your performance by generating many ad impressions but few clicks. To avoid this, delete generic keywords on your list that could relate to a wide spectrum of products or services. One-word keywords are likely to be too generic, so try using two- or three-word phrases.
- **Include variations.** For optimal ad visibility, include relevant keyword variations, along with singular and plural versions. If applicable, consider using colloquial terms, alternate spellings, synonyms, product codes, and serial numbers.

For example, let's say you sell chocolate gifts. Here are three keywords with different levels of relevancy:

- *chocolate* is unlikely to be a good keyword because it is too broad and generic. It can trigger your ad to show on unrelated searches like "chocolate cake recipe" and "chocolate brown labrador puppies" and therefore is unlikely to reach your intended audience.
- *chocolate boxes* is a better alternative as it describes the specific product offered on your website.
- *chocolate gifts* is also a good term as the keyword corresponds exactly to your business

Avoid using overly generic keywords

Keywords that are too broad or generic can lower your performance by generating many ad impressions (how often your ad is shown) but few clicks. To avoid this, be careful when using generic terms (especially

one-word keywords) that could relate to a wide spectrum of products or services that you don't actually offer. Use keywords that directly relate to your specific products or services. One-word keywords are likely to be too generic, so try using two- or three-word phrases.

Use appropriate keyword matching options to control who sees your ads

The four keyword matching options determine which Google searches can trigger your ads to appear. These options can help you control who sees your ads.

You can set each search-targeted keyword to have one of these four settings. To use a keyword matching option, just add the appropriate punctuation to your keyword:

1. **Broad match:** keyword
Allows your ad to show on similar phrases and relevant variations
2. **Phrase match:** "keyword"
Allows your ad to show for searches that include the exact phrase and possibly includes other words as well
3. **Exact match:** [keyword]
Allows your ad to show for searches that match the exact phrase exclusively
4. **Negative match:** -keyword
Ensures your ad doesn't show for any search that includes that term

With some options, you'll enjoy more ad impressions, clicks, and conversions; with others, you'll get fewer impressions and more narrow targeting. With broad match (the default setting for keywords), you'll typically receive the highest number of ad impressions. By applying the appropriate matching options to your keywords, you can best meet your ROI goals.

Learn more about [keyword matching options](#).

Find relevant keywords using the "See search terms" report

When you use broad-match keywords (the default setting), your ads can appear when someone searches for a variation of your keyword, like a similar phrase or related word. To see a list of searches that have triggered your ad, see the "See search terms" report in your account.

You can use this report to identify relevant terms that are driving traffic to your website, and then add them as new keywords. For example, if your campaign has the keyword *digital cameras* on broad match, the report may show that your ads appeared for the search query "digital cameras London." If your business sells to people in London, you could add this phrase as a keyword in your account; if you do not serve London, you could add *London* as a negative keyword to make sure your ad stops appearing on that search. By adding irrelevant search terms as negative keywords, you can help improve your clickthrough

rate (CTR).

Learn [how to run a "See search terms" report](#) to find new keyword ideas.

Target the right region for your business

It's important to set your location targeting to reflect where you do business. Here are some tips for finding which targeting options are right for you:

- **Country targeting** - Target countries or territories if your business or website serves a wide audience across one or more countries. This option is best suited for businesses that are nationwide, international, or internet-based and that serve customers in many areas.
- **Region and city targeting** - Target regions and cities if your business serves specific geographic areas or if you want different advertising messages in different regions. With region and city targeting, you can capture a smaller population segment and receive more qualified clicks. This option is best used by advertisers whose audience is concentrated in defined areas such as stores or restaurants, or larger businesses that want to show locally-relevant ad text in specific areas.
- **Customized targeting** - Target customized areas if your ad is relevant only to a precise geographic area where you do business. With customized targeting, your ads will only appear to customers who are located in or are searching for results within a specified distance from your business or within the area you define. Customized targeting is best suited for advertisers with an audience in very specific local areas.

Be sure to target only the languages and locations that are relevant for your business. For example, if you ship your products to locations within a certain distance of your business, target only those locations. This ensures that your campaign's ads only appear to users who live in those specific areas.

If you intend to target two different countries, you should consider setting up a separate campaign for each one and selecting the relevant location and language for each individual campaign. By creating separate geographic campaigns, you make it easier to manage your account and track each region's return on investment. It also means that you can create very customized and targeted campaigns by tailoring your keywords and ad text to each individual market.


Learn [how to select, refine, and exclude locations](#) for your campaign's targeting.


Target the right language for your business

Language targeting allows you to reach an audience that speaks the language of your ads and website, making them more likely to become customers. Here are some tips for finding which language option is right for you:

- **Single language** - Target the language in which your ad is written. For example, if your ad is written in English, target English-speaking users.
- **Multiple languages** - If you want to target more than one language,

- create a separate campaign for each language.
- **Combine with location targeting** - As people speak many different languages in many different locations, language targeting also gives you an excellent way to reach your users even if they are physically located in non-native areas. For example, if you are a company based in the UK and want to target the English-speaking population of Spain, you can set your country targeting to Spain and your language targeting to English. When we detect that a user in Spain speaks English, your ad can appear. We recommend creating separate campaigns for each country and language pair. This will help to ensure that wherever your potential customers are located, they will see your ads in their language.

 **Note:** Always remember to target the language in which your ad is written and that matches the language on your landing page. This will ensure that your potential customers will be able to immediately understand your ad and will be more likely to click on it. Remember that Google won't translate your ad for you.

Learn how to [change your language setting](#)  for a campaign.


Was this information helpful?

Yes No

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EXHIBIT 46

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UNDER SEAL

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EXHIBIT 47

EXHIBIT FILED
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EXHIBIT 48

**EXHIBIT FILED
UNDER SEAL**

SPAZIANO
EXHIBIT 49

EXHIBIT FILED
UNDER SEAL

**SPAZIANO
EXHIBIT 50**

EXHIBIT FILED
UNDER SEAL

SPAZIANO
EXHIBIT 51

EXHIBIT FILED
UNDER SEAL

SPAZIANO
EXHIBIT 52

Capital Reporting Company
Doyle, Denis P. 03-11-2010

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

----- x
ROSETTA STONE, LTD, :
 :
 Plaintiff, :
 :
 vs. : Case No. 1:09-CV-00736
 :
 GOOGLE, INC., : (GBL/TCB)
 :
 Defendant. :
 :
----- x

Chevy Chase, Maryland

Thursday, March 11, 2010

Videotaped Deposition of:

DENIS P. DOYLE,

Called for oral examination by counsel for Plaintiff,
pursuant to notice, at the residence of Denis P.
Doyle, 110 Summerfield Road, Chevy Chase, MD, before
Denise M. Brunet, RPR, of Capital Reporting Company, a
Notary Public in and for the State of Maryland,
beginning at 10:29 a.m., when were present on behalf
of the respective parties:

Capital Reporting Company
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11

1 Q And did you have success with the product 10:35:57
2 when you tried it eight or ten years ago? 10:35:59
3 A I did. I had limited success. And I think 10:36:01
4 the lack of success was my lack of diligence. 10:36:04
5 Q What language did you attempt to learn 10:36:06
6 through Rosetta Stone eight to ten years ago? 10:36:09
7 A Spanish. 10:36:11
8 Q Did there come a point in time, sir, when you 10:36:11
9 decided that you were going to try again in the more 10:36:15
10 recent future -- 10:36:17
11 A Yes, there did. 10:36:17
12 Q -- in the more recent past? 10:36:17
13 A Yes. 10:36:18
14 Q When was that? 10:36:19
15 A It was last fall. I got a flyer from 10:36:20
16 American Express with my monthly bill advertising a 10:36:24
17 discounted Rosetta Stone, and it piqued my curiosity. 10:36:27
18 Q And what did you do in response to that 10:36:31
19 curiosity? 10:36:34
20 A I went to the web, and the first sponsored 10:36:34
21 link that showed up -- I opened to their home page and 10:36:40
22 they had a real bargain, \$139 for a \$435 product, 10:36:46

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1 which I couldn't resist. And I thought it was 10:36:51
2 legitimate and ordered it on the web through PayPal. 10:36:54
3 Q All right. Let's go a little slower. You 10:36:57
4 say you went on the web. Did you use a search engine? 10:36:59
5 A Used Google. 10:37:01
6 Q Is that your default search engine? 10:37:03
7 A Yes, it is, by preference. I love Google. 10:37:05
8 Q How often do you use Google as a general 10:37:08
9 rule? 10:37:11
10 A I would say I must Google five, maybe ten 10:37:11
11 times a day. 10:37:13
12 Q So in the fall of 2009 when you went on the 10:37:13
13 web, you used Google as your search browser? 10:37:17
14 A Yes. 10:37:21
15 Q What did you type into the search browser 10:37:21
16 when searching for Rosetta Stone software? 10:37:25
17 A Just Rosetta Stone. 10:37:26
18 Q And no other search terms? 10:37:27
19 A Not that I recall. 10:37:29
20 Q And then you pressed Enter, and what did you 10:37:29
21 see? 10:37:32
22 A I saw a group of sponsored ads on the left 10:37:32

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13

1 and sponsored ads on the right and went to the first 10:37:36
2 sponsored ad to see what it offered, and it offered 10:37:39
3 Spanish 3, 4 -- 1, 2, 3, 4 for 139 bucks. 10:37:42
4 Q And when you say you went to the first 10:37:45
5 sponsored ad, are you referring to the links that 10:37:48
6 appear on the search page? 10:37:52
7 A Yes. 10:37:52
8 Q Do you recall what the link said? 10:37:53
9 A I don't, except that it was -- I went -- I 10:37:55
10 cancelled payment on it after I discovered that it was 10:37:59
11 pirated software, and I wrote the name down, 10:38:02
12 SourcePlaza. But I don't remember -- I remember that 10:38:08
13 being the name of the web page when I got it. 10:38:10
14 Q So SourcePlaza was the name of the company 10:38:14
15 that was advertising on Google? 10:38:17
16 A Yes. 10:38:18
17 Q And do you remember what the ad link itself 10:38:19
18 said? You know, did it -- you know, did it have -- 10:38:22
19 the text of the ad, did it say, "by Rosetta Stone" or 10:38:24
20 did it say, "get software here"? What did it say, if 10:38:27
21 you remember? 10:38:30
22 A No, something of that sort. It was just a 10:38:30

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1 standard stock ad, that they were presenting 10:38:34
2 themselves as a retailer of Rosetta Stone. 10:38:36
3 Q And did the ad, the link for the ad itself, 10:38:40
4 use the words "Rosetta Stone," to your knowledge? 10:38:44
5 A I presume it did, since I was looking for 10:38:45
6 Rosetta Stone. 10:38:48
7 Q As you sit here today, do you remember 10:38:49
8 whether the URL or the address associated with the 10:38:52
9 website SourcePlaza, whether it used the terms 10:38:55
10 "Rosetta Stone"? 10:38:58
11 A I don't remember, no, but I doubt it. I 10:38:59
12 would be surprised if it did, but I don't remember. 10:39:03
13 Q Why would that surprise you? 10:39:04
14 A Because the URL, universal locator network 10:39:05
15 reference, is not something that I would expect to see 10:39:10
16 there. 10:39:13
17 Q And why is that? 10:39:13
18 A I wouldn't be aware of it. I guess I would 10:39:14
19 just be surprised. 10:39:21
20 Q Okay. So in your experience, you've not seen 10:39:22
21 trademark terms appear in the URLs of companies 10:39:26
22 offering products? 10:39:30

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1 A No, I've never looked for that. I use Amazon 10:39:31
2 frequently and Amazon-related activities, and I don't 10:39:36
3 get that far. 10:39:42
4 Q So when you clicked on the link that offered 10:39:42
5 this Rosetta Stone software for \$139, what did you 10:39:45
6 see? 10:39:48
7 A I saw a picture of the Rosetta Stone box with 10:39:48
8 a little blue seal on it, guaranteed, or a hundred 10:39:53
9 percent satisfaction or some such thing. So I ordered 10:39:58
10 it, and thought that I -- thought it was too good to 10:40:01
11 be true, which it turned out to be too good to be 10:40:06
12 true. 10:40:09
13 Q What color was the box that was displayed on 10:40:09
14 the ad? 10:40:11
15 A Oh, it was the characteristic yellow of -- 10:40:11
16 amarillo, as they say in Espanol. 10:40:14
17 Q So you were familiar with what the Rosetta 10:40:16
18 Stone box looked like? 10:40:17
19 A Yes, I've seen it. And I had priced it at 10:40:17
20 Barnes and Noble and priced it at other retail 10:40:21
21 outlets. 10:40:24
22 Q From the website itself, sir, when you went 10:40:24

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1 on the website and you saw the box that was displayed, 10:40:26
2 was there anything on the website that led you to 10:40:28
3 believe that this product wasn't genuine? 10:40:31
4 A No. I didn't look at it with great care, but 10:40:32
5 I -- nothing led me to believe that it wasn't genuine. 10:40:36
6 Q And did you actually purchase from 10:40:38
7 SourcePlaza? 10:40:41
8 A I did, yes. 10:40:41
9 Q So you placed an order that very same day 10:40:42
10 that you went on the web? 10:40:45
11 A I did. 10:40:45
12 Q At the time you placed your order with 10:40:46
13 SourcePlaza, did you think you were buying genuine 10:40:50
14 Rosetta Stone software? 10:40:53
15 A I did, yes. 10:40:54
16 Q Do you know what the term "counterfeit 10:40:55
17 software" means? 10:41:00
18 A I presume I do, yeah. Self-explanatory. 10:41:01
19 Pirated software. I mean, made up, like counterfeit 10:41:04
20 money. 10:41:09
21 Q You said pirated before. What does that mean 10:41:09
22 to you? 10:41:12

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24

1 Q And when you called Rosetta Stone, to whom or 10:47:35
2 what department were you directed? 10:47:39
3 A I don't have any recollection. I just got 10:47:40
4 the switchboard, and they directed me wherever they 10:47:44
5 directed me. 10:47:46
6 Q And what did you tell Rosetta Stone? 10:47:46
7 A I told them that I had this software and 10:47:48
8 wanted to check its authenticity. And they said that 10:47:51
9 it was inauthentic, that it was probably -- I use the 10:47:56
10 word "pirated" and I think they used the word 10:47:58
11 "pirated." And -- 10:48:02
12 Q I'm sorry. Please finish. 10:48:02
13 A No. And that was really essentially it. And 10:48:03
14 I then called American Express to see if I could 10:48:06
15 cancel payment on the product. 10:48:09
16 Q Now, when you called Rosetta Stone and you 10:48:09
17 advised them that you were having problems with the 10:48:13
18 software, did you tell them the source from which you 10:48:16
19 purchased it? 10:48:19
20 A I presumably did. I must have told them I 10:48:19
21 purchased it on the web. I made no secret of that. 10:48:23
22 Q Do you recall whether you told them that 10:48:26

SPAZIANO
EXHIBIT 53

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1

IN THE DISTRICT COURT
FOR THE DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

-----:
ROSETTA STONE, LTD., :
 :
 :
 Plaintiff, :
 : C.A. No. :
 vs. : 1:09-cv-00736 (GBL/TCB)
 :
 :
 GOOGLE, INC., :
 :
 :
 Defendant. :
 :
 :
-----:

Lakewood, Colorado

Monday, March 8, 2010

Videotaped Deposition of:

STEVE F. DUBOW

called for oral examination by counsel for Plaintiff,
pursuant to notice, at the Sheraton Denver West
Hotel, 360 Union Blvd., Lakewood, Colorado, before
Barbara J. Castillo, RMR/CRR, of Capital Reporting
Company, a Notary Public in and for the State of
Colorado, beginning at 10:52 a.m., when were present
on behalf of the respective parties:

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15

1 A No. Not really.

2 Q And you indicated that you used Google as
3 your search engine when looking for Rosetta Stone; is
4 that right?

5 A That's correct.

6 Q All right. Are you certain of that?

7 A Absolutely.

8 Q And do you recall specifically the search
9 terms that you entered on the Google search bar when
10 looking for Rosetta Stone software?

11 A I simply typed in Rosetta Stone.

12 Q Why did you use the trademark Rosetta Stone
13 at that time?

14 A Because --

15 MR. STERN: Objection, foundation.

16 A Because as I said --

17 MR. STERN: Excuse me. I'm sorry. Objection,
18 foundation. Go ahead.

19 A Okay. As I said, I had decided that Rosetta
20 Stone was the product that I was most interested in.

21 Q (BY MR. ETTINGER) Did you actually do the
22 typing or did your wife do the typing on the search

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16

1 bar?

2 A Well, I guess my wife did the -- the typing,
3 and then I helped her scroll through the links that
4 were presented.

5 Q And did you direct your wife what terms to
6 enter into the search bar?

7 A Yes.

8 Q All right. And were those terms Rosetta
9 Stone?

10 A Yes.

11 Q Did you use any other terms other than
12 Rosetta Stone at the time you searched on Google to
13 look for the purchase of software?

14 A No.

15 Q Do you know what the term "sponsored link"
16 means?

17 A I do now. I heard it for the first time
18 this morning. I wasn't exactly sure. I've seen those
19 on the right-hand side of the -- of the Google Web
20 page, but I wasn't exactly sure what it was.

21 Q Okay. At the time that you entered the terms
22 or your wife entered the terms "Rosetta Stone" in the

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17

1 Google search engine --

2 A Uh-huh.

3 Q -- in October 2009, do you recall whether any
4 advertisements appeared on the first page?

5 A I -- what -- what do you mean by
6 advertisements?

7 Q Links that appear to you to be companies
8 selling goods in response to your query.

9 A Yes. Yeah. There were quite a few under
10 that description, yes.

11 Q What do you recall seeing on the search page
12 results when you entered Rosetta Stone in the Google
13 search engine?

14 A I saw a number of sites and -- advertising
15 Rosetta Stone software for a number of different
16 discounted prices. What attracted us to this
17 particular site was that they presumed to be a Rosetta
18 Stone reseller reselling OEM or original equipment
19 manufactured product.

20 Q Did you click on one or more of the -- of the
21 links that appeared to offer Rosetta Stone products for
22 sale?

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18

1 A We probably clicked on a few before deciding
2 on this one. I don't remember. It was six months ago.

3 Q Ultimately you selected one particular link -
4 -

5 A Yes.

6 Q -- to purchase your software; is that
7 correct?

8 A Correct.

9 Q And what attracted you to that link?

10 A I think the fact, again, re- -- my memory is
11 not a hundred percent here, but I think the fact that
12 they -- they presumed to be a reseller. And it looked
13 like a legitimate Rosetta Stone site.

14 Q What do you mean by reseller?

15 A That they were a -- a sanctioned reseller of
16 Rosetta Stone product.

17 Q Was that important to you?

18 A Absolutely.

19 Q Why is that?

20 A Well, because there's -- there's a lot of
21 bootlegged software product out there. This one looked
22 to be legitimate.

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19

1 Q Did the ad text, the actual text of the ad
2 itself, appearing on the link use the term "Rosetta
3 Stone"?

4 MR. STERN: Objection, foundation.

5 A Yes.

6 MR. STERN: Objection, foundation.

7 Q (BY MR. ETTINGER) It's okay. You may answer
8 now.

9 A Yes, it did.

10 Q When you clicked on the -- the link or your
11 wife clicked on the link --

12 A Uh-huh.

13 Q -- did you see the page that came up?

14 A Yeah, oh, absolutely.

15 Q Sir, do you recall the name of the -- the
16 company that advertised on the link that you -- you and
17 your wife clicked on?

18 A Yes. It was a company called Bossdisk.

19 Q Could you spell that, please.

20 A B-o, double, s-d-i-s-k.

21 (Exhibit Number 1 was marked.)

22 Q (BY MR. ETTINGER) Sir, I'm going to hand you

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1 A Probably less than a half hour, I'd say.

2 Q Did you, in fact, place an order with the
3 company Bossdisk?

4 A Yes, I did.

5 Q And what did you do?

6 A I ordered Latin American Spanish, Levels 1,
7 2, and 3, which I received.

8 Q And what was the purchase price?

9 A It was \$139.

10 Q At the time that you placed the order with
11 Bossdisk -- Bossdisk, did you know how much other
12 companies were, charging for the Rosetta Stone software
13 Levels 1, 2, and 3?

14 A Oh, yes.

15 Q And how did you know this?

16 A Well, I -- going into Borders or looking at
17 Amazon.com, I knew the price for the latest version was
18 much higher than what I paid.

19 Q Did the lower price -- purchase price offered
20 through Bossdisk lead you to conclude that the software
21 that was being offered was not genuine Rosetta Stone
22 software?

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24

1 A Not at all.

2 Q And why is that?

3 A I thought it was back level software, in
4 other words, an earlier version. I don't necessarily
5 have to have the latest and greatest. I thought it
6 would work sufficiently good for me.

7 Q Have you ever heard of the term "counterfeit
8 software"?

9 A Absolutely.

10 Q And had what does that mean to you?

11 A It means not produced by the original
12 manufacturer.

13 Q At the time you placed your order with
14 Bossdisk, did you intend to purchase counterfeit
15 software?

16 A Oh, no, never, no.

17 Q At the time you placed your order with
18 Bossdisk, did you believe that you were purchasing
19 counterfeit software?

20 A No, I didn't.

21 Q How did you pay for the order?

22 A I used PayPal.

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1 the package that you received from Bossdisk?

2 A I did.

3 Q Okay. And do you have that?

4 A I do.

5 Q I'm going to mark this as Exhibit 3, and I'll
6 work with counsel to get whatever photocopies or
7 photographs that he would like.

8 (Exhibit Number 3 was marked.)

9 Q (BY MR. ETTINGER) Could you please describe
10 -- keep that in front of you, sir.

11 A Front of me.

12 Q Could you please describe the contents of
13 that box.

14 A It has a number of CDs, CD-ROMs, a headset
15 for an audio -- for audio CDs, a little instruction
16 manual.

17 Q Okay. Could you please hold it up so the
18 camera could record it.

19 A All right.

20 Q So when you received this package from
21 Bossdisk, did you have any reason to suspect that it
22 was not original Rosetta Stone -- Rosetta Stone

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1 software?

2 MR. STERN: Objection, foundation.

3 A Not at all, no.

4 Q (BY MR. ETTINGER) The packaging was
5 consistent with what you had seen on the Internet?

6 A Yes. And it was consistent with what I had
7 seen in the stores.

8 Q On the top part of the box, do you see that
9 it says -- could you read that into the record? What
10 does it say at the very top of the box?

11 A Rosetta Stone with a trademark symbol.

12 Q And the trademark symbol, what is that? And
13 when I say what is -- is it just a --

14 A It's an R and a circle.

15 Q Okay. And next to it is what?

16 A It looks like the Rosetta Stone.

17 Q Okay. And could you turn it to make sure the
18 camera gets that. All right, sir, could you open the
19 box and just detail the index -- or index the -- the
20 contents for us by holding up each piece in front of
21 the camera --

22 A Okay.

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1 A I don't remember if I did.

2 Q Anything else?

3 A And finally there's a headphone for the
4 audio -- for the audio disks.

5 Q Okay. And that came in the original package
6 from Bossdisk?

7 A Yes. Yes.

8 Q Sir, did you receive any instruction manual
9 or user manual from Bossdisk?

10 A It -- the only -- I don't remember. It's
11 not in here, so it may have been on this disk, the --
12 the user guide. I -- I don't remember.

13 Q So you don't recall whether there were any
14 written materials in the package you received, correct?

15 A I'm almost certain there was not. And
16 certainly there was not a welcome package that I got in
17 the Borders version of this.

18 Q Now, what happened when you attempted to load
19 the disks onto your computer?

20 A They loaded successfully. And it recognized
21 the fact that the software -- there were updates
22 available on the Rosetta Stone Website. It

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1 automatically went to that Website, downloaded those
2 updates and then asked me for a key to activate the
3 software.

4 Q So make sure I understand. When you load the
5 disks from Bossdisk --

6 A Uh-huh.

7 Q -- they took you to the Rosettastone.com
8 Website?

9 A Yes.

10 Q And that is where your computer automatically
11 downloaded the most recent versions?

12 A Yes.

13 Q And were you able to access those versions?

14 A Yes.

15 Q Okay. When you say it requested an
16 authorization code, what is it that you were asked to
17 put into the computer?

18 A There's a key provided to allow you to use
19 the entire functionality of each level of the software,
20 Level 1, Level 2, et cetera. And each level requires a
21 separate key. There were no keys in here. I didn't
22 realize when this I bought it, but there were no keys

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1 provided.

2 Q So without the keys, was the software
3 functional?

4 A It was somewhat functional. It's very basic
5 function, as far as I could tell. But in order to
6 enjoy the complete complement of that product, you need
7 the key.

8 Q And what -- what did you do to determine how
9 to get the key?

10 A Well, the first thing I did is call Rosetta
11 Stone.

12 Q Why did you call Rosetta Stone?

13 A Because I thought that since this company
14 was a representative perhaps they just forgot to put
15 the welcome kit in this package and that they would
16 have a key.

17 Q And who did you contact at Rosetta Stone?

18 A I called their customer service.

19 Q How did you get their number?

20 A From their Website.

21 Q What did you ask of Rosetta Stone?

22 A I explained that I bought this from what I

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1 thought was one of their resellers and that they forgot
2 to provide a key and could Rosetta Stone give me that
3 key.

4 Q And what did Rosetta Stone respond to you?

5 A They said no, I would have to go back to the
6 reseller and get the key from him.

7 Q Did you attempt to do that?

8 A I did.

9 Q Were you successful?

10 A No.

11 Q What happened when you tried to contact the -
12 - the company that sold you the software?

13 MR. STERN: Objection, foundation.

14 Q (BY MR. ETTINGER) You may answer.

15 A I sent an e-mail off to them, which was
16 never responded to.

17 Q Do you recall when you sent that e-mail?

18 A I'd have to look.

19 Q Why don't you look at Exhibit Number -- is it
20 Number 2 and see if you can find the e-mail that you're
21 referring to.

22 A Yes. It was sent on November 15th of

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1 2009.

2 MR. STERN: Can -- can you identify the page
3 you're looking at?

4 A It's this one here. You can see it with my
5 scribbling on it. It's --

6 MR. STERN: Yes. This is the e-mail of
7 February 17, 2010, at 2:38 p.m.

8 A These are just copies of what I received
9 that I sent to Mr. Ettinger.

10 MR. STERN: I'm sorry, so this is the e-mail
11 of November 7 -- November 15 --

12 A Right.

13 MR. STERN: -- 2009, at 2:27.

14 A Yes.

15 MR. STERN: Thank you.

16 Q (BY MR. ETTINGER) And what did you ask of
17 Bossdisk?

18 A I asked them to -- they obviously forgot to
19 give the key so I need the key to use their software.

20 Q And is this the e-mail that you never
21 received a response to?

22 A That's correct.

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1 Q When you didn't receive a response from
2 Bossdisk, what did you do?

3 A Well, actually I had already talked to
4 Rosetta Stone at that point. When I didn't receive the
5 response from -- from Bossdisk, I -- I guess I -- if I
6 remember correctly, I sent off an e-mail to Rosetta
7 Stone with a copy of the bill of sale or the receipt
8 and then finally got a response from them indicating
9 that these people were not a legitimate reseller. And
10 subsequently I contacted my credit card company.

11 Q Okay. Could I get you to turn to the e-mail
12 November 15, 2009, at 3:38 p.m. --

13 A Yes.

14 Q -- from support at Rosetta Stone to you.

15 A Right.

16 Q Okay. And is this the e-mail --

17 MR. STERN: Wait, wait. Where are you?

18 MR. ETTINGER: If you flip -- I'm sorry.

19 A This is the last page actually.

20 MR. STERN: Okay. I'm sorry.

21 MR. ETTINGER: This makes it hard without

22 Bates numbers, and I apologize for that. Are we all

Steve DuBow

From: "Steve DuBow" <sfubow@attglobal.net>
To: "Ettinger, Mitchell S" <Mitchell.Ettinger@skadden.com>
Sent: Wednesday, February 17, 2010 2:31 PM
Subject: Fw: Welcome to Special Discount And Free Shipping
Hello Mitch:

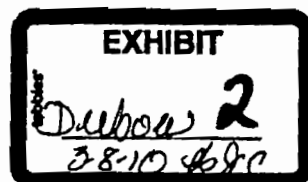
This is the first email we received from Bossdisk after ordering RS from them. I'll send the other emails in sequence.

Regards,
Steve

----- Original Message -----

From: "Special Discount And Free Shipping" <bossdisk@gmail.com>
To: <sfubow@attglobal.net>
Sent: Tuesday, October 06, 2009 3:06 PM
Subject: Welcome to Special Discount And Free Shipping

- > Dear Steve
- >
- > We wish to welcome you to Special Discount And Free Shipping.
- >
- > With your account, you can now take part in the various services we have to offer you. Some of these services include:
- >
- > Permanent Cart - Any products added to your online cart remain there until you remove them, or check them out.
- >
- > Address Book - We can now deliver your products to another address other than yours! This is perfect to send birthday gifts direct to the birthday-person themselves.
- >
- > Order History - View your history of purchases that you have made with us.
- >
- > Products Reviews - Share your opinions on products with our other customers.
- >
- > For help with any of our online services, please email the store-owner: <bossdisk@gmail.com>
- >
- > Sincerely,
- >
- > Special Discount And Free Shipping
- > Store Owner
- >
- > <http://www.bossdisk.com/>
- >
- >
- >
- > This email address was given to us by you or by one of our customers. If you did not sign up for an account, or feel that you have received this email in error, please send an email to bossdisk@gmail.com
- >
- >
- > This email is sent in accordance with the US CAN-SPAM Law in effect 01/01/2004. Removal requests can be sent to this address and will be honored and respected.
- >
- >



2/17/2010

Steve DuBow

From: "Steve DuBow" <sfubow@attglobal.net>
 To: "Ettinger, Mitchell S" <Mitchell.Ettinger@skadden.com>
 Sent: Wednesday, February 17, 2010 2:33 PM
 Subject: Fw: Order Confirmation No: 23

----- Original Message -----

From: "Special Discount And Free Shipping" <bossdisk@gmail.com>
 To: <sfubow@attglobal.net>
 Sent: Tuesday, October 06, 2009 3:09 PM
 Subject: Order Confirmation No: 23

> Order Confirmation from Special Discount And Free Shipping
 >
 > Steve DuBow
 >
 > Thanks for shopping with us today!
 > The following are the details of your order.
 > -----
 > Order Number: 23
 > Date Ordered: Tuesday 06 October, 2009
 > Detailed Invoice:
 > http://www.bossdisk.com/index.php?main_page=account_history_info&order_id=23
 >
 > Products
 > -----
 > 1 x Rosetta Stone Latin American Spanish Level 1,2&3 Set with Audio =
 > \$139.00
 > -----
 > Sub-Total: \$139.00
 > FREE SHIPPING! (Free Shipping Only): \$0.00
 > Total: \$139.00
 >
 > Delivery Address
 > -----
 > Steve DuBow
 > 26500 Longview Drive
 > Conifer, CO 80433
 > United States
 >
 > Billing Address
 > -----
 > Steve DuBow
 > 26500 Longview Drive
 > Conifer, CO 80433
 > United States
 >
 > Payment Method
 > -----
 > PayPal
 >
 >
 > -----
 > This email address was given to us by you or by one of our customers. If you
 > feel that you have received this email in error, please send an email to
 > bossdisk@gmail.com
 >
 >
 > -----

> Copyright (c) 2009 Special Discount And Free Shipping. Powered by Zen Cart

>

>

> This email is sent in accordance with the US CAN-SPAM Law in effect

> 01/01/2004. Removal requests can be sent to this address and will be honored

> and respected.

>

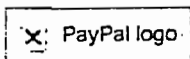
>

Steve DuBow

From: "Steve DuBow" <sfdubow@attglobal.net>
To: "Ettinger, Mitchell S" <Mitchell.Ettinger@skadden.com>
Sent: Wednesday, February 17, 2010 2:32 PM
Subject: Fw: Your payment to 陈 海滨

— Original Message —

From: service@paypal.com
To: [Steve DuBow](#)
Sent: Tuesday, October 06, 2009 3:09 PM
Subject: Your payment to 陈 海滨



Oct. 6, 2009 15:09:32 PDT
 Receipt No: 4079-1164-2596-5078

Hello Steve DuBow,

You sent a payment of \$139.00 USD to 陈 海滨.

This charge will appear on your credit card statement as payment to PYPAL *CHENHAIBINO.

Merchant information
 陈 海滨
chenhaibin02@gmail.com

Instructions to merchant
 None provided

Description	Unit price	Qty	Amount
Special Discount And Free Shipping Purchase Item #: Store Receipt	\$139.00 USD	1	\$139.00 USD

Insurance: _____
Total: \$139.00 USD

Receipt No: 4079-1164-2596-5078

Please keep this receipt number for future reference. You'll need it if you contact customer service at 陈 海滨 or PayPal.

Use PayPal next time!

It looks as if you already have a PayPal account.

When you shop online, it's faster and easier to check out with PayPal. Your financial information is securely stored and never shared with merchants when you pay.

Questions? Visit the Help Center at: www.paypal.com/help.

Thanks for using PayPal – the safer, easier way to pay and get paid online.

Please do not reply to this email. This mailbox is not monitored and you will not receive a response.

PayPal Email ID PP1469.

2/17/2010

Steve DuBow

From: "Steve DuBow" <sfdubow@attglobal.net>
To: "Ettinger, Mitchell S" <Mitchell.Ettinger@skadden.com>
Sent: Wednesday, February 17, 2010 2:34 PM
Subject: Fw: Order Update #23

----- Original Message -----

From: "Special Discount And Free Shipping" <bossdisk@gmail.com>
To: <sfdubow@attglobal.net>
Sent: Tuesday, October 06, 2009 9:40 PM
Subject: Order Update #23

> Special Discount And Free Shipping (Order Number: 23)

> _____
> Dear Customer,

> Here is your tracking number: EE168568248CN.

> The tracking number will be online in 2 days.

> You can track your order through this website:

> <http://www.ems.com.cn/english-main.jsp>

> If you have any questions, please do not hesitate to contact us.

> Thanks and Regards,

> Customer Service

> _____
> This email address was given to us by you or by one of our customers. If you

> feel that you have received this email in error, please send an email to

> bossdisk@gmail.com

> This e-mail is sent in accordance with the US CAN-SPAM Law in effect

> 01/01/2004. Removal requests can be sent to this address and will be honored

> and respected.

>

>

Steve DuBow

From: "Steve DuBow" <sfubow@attglobal.net>
To: "Ettinger, Mitchell S" <Mitchell.Ettinger@skadden.com>
Sent: Wednesday, February 17, 2010 2:41 PM
Subject: Fw: Ticket #14006-407919: Requested Info From Customer (Activation ID is missing in the box)
This is the email I received from RS when I got no reply from Bossdisk and discovered that they were no longer on Google. I haven't been back to Google to check again, however. We found them by doing a search on Rosetta Stone.

----- Original Message -----

From: support@rosettastone.com
To: sfubow@attglobal.net
Sent: Sunday, November 15, 2009 2:07 PM
Subject: Ticket #14006-407919: Requested Info From Customer (Activation ID is missing in the box)

In an effort to resolve your request, we would like to request additional information. Please see the comment from your Rosetta Stone representative below.

Rosetta Stone

The Fastest Way to Learn a Language. Guaranteed™.

Comment(s): Dear Steve,

Thank you for contacting Rosetta stone. I understand that you have received your product with no activation ID in the box. In order to create a new activation ID for you, we will need to establish proof of purchase. We can establish this by the following means:

1.) If you purchased the product directly from Rosetta Stone we can attempt to locate your order in our system if you provide any or all of the following information:

- Your order or customer number.
- The customer name as it would appear on the order, including the state that the order was purchased in or shipped to.
- The first digit and last four digits of the credit card with which the product was purchased.

2.) If you purchased the product through a reseller (e.g. Barnes & Noble, Amazon, Borders etc.) You will need to provide a record of the purchase indicating the exact product you have.

- If you purchased the product online, logon to your Amazon or B&N account, and go to your purchase history. Copy and paste the record of your purchase into the e-mail that is replying to this ticket. If you are having problems locating your purchase, please contact your reseller.
- If you purchased the program through another reseller at a retail location you may fax your receipt to 540-437-2843 ATTN: Jennifer Rushing; alternatively you may scan a copy and attach it to an e-mail that is replying

to this ticket. If you do not have your physical receipt at this time, please contact the retailer, and they should be able to retrieve a record of your purchase. Please allow us up to 24-48 hours to verify your proof of purchase.

Once we have established proof of purchase, we will be able to create a new Activation ID for your product.

Thank You,

Jennifer

Ticket Information:

Ticket #: 14006-407919

Date Created: 11/15/2009 4:00 PM EDT

To update or check the status of this Ticket:

- Go to: <http://support.rosellastone.com/ics/support/default.asp?deptID=14006&ticketID=473642>
- Log In, and you will be automatically taken to the Ticket page.

Steve DuBow

From: "Steve DuBow" <sfdubow@attglobal.net>
To: "Ettinger, Mitchell S" <Mitchell.Ettinger@skadden.com>
Sent: Wednesday, February 17, 2010 2:38 PM
Subject: Fw: Order #4079-1164-2596-5078

This is the email I sent to Bossdisk that was never answered. I still have the package that they sent me that I can send to you. It's very strange that they would even bother sending me anything if they were really a fraud but it appears that's what happened.

*I guess I sent
this after talking
to Jennifer*

----- Original Message -----

From: Steve DuBow
To: bossdisk@gmail.com
Sent: Sunday, November 15, 2009 2:27 PM
Subject: Order #4079-1164-2596-5078

Hello:

I just installed the Rosetta Stone software that I ordered from you on Oct. 6, 2009. I cannot activate the software because there was no Application ID or Welcome kit in the package you sent me. The software is useless if I cannot activate it. Can you provide me with the Activation ID or a replacement copy of the package? Please advise.

Thank you and Regards,
Steve DuBow

Steve DuBow

From: "Steve DuBow" <sfubow@attglobal.net>
To: "Ettinger, Mitchell S" <Mitchell.Ettinger@skadden.com>
Sent: Wednesday, February 17, 2010 2:43 PM
Attach: Bossdisk_Order Confirmation No_ 23.eml
Subject: Fw: Ticket #14006-407919: Requested Info From Customer (Activation ID is missing in the box)
 This is my reply to Jennifer at RS.

----- Original Message -----

From: Steve DuBow
To: support@rosettastone.com
Sent: Sunday, November 15, 2009 2:43 PM
Subject: Re: Ticket #14006-407919: Requested Info From Customer (Activation ID is missing in the box)

Hello Jennifer:

I have attached the invoice for my Rosetta Stone purchase. My wife Sandy ordered it from an OEM software reseller on the Internet. They said they were a Rosetta Stone reseller. I'm getting the bad feeling that we may have been ripped off. Can you let me know if this outfit is legitimate? If not, I'll have go to after them. If they are ok, then I hope you'll send me the activation ID. Thanks for your help.

Regards,
 Steve DuBow

----- Original Message -----

From: support@rosettastone.com
To: sfubow@attglobal.net
Sent: Sunday, November 15, 2009 2:07 PM
Subject: Ticket #14006-407919: Requested Info From Customer (Activation ID is missing in the box)

In an effort to resolve your request, we would like to request additional information. Please see the comment from your Rosetta Stone representative below.

Rosetta Stone

The Fastest Way to Learn a Language. Guaranteed™.

Comment(s): Dear Steve,

Thank you for contacting Rosetta stone. I understand that you have received your product with no activation ID in the box. In order to create a new activation ID for you, we will need to establish proof of purchase. We can establish this by the following means:

1.) If you purchased the product directly from Rosetta Stone we can attempt to locate your order in our system if you provide any or all of the following information:

- Your order or customer number.
- The customer name as it would appear on the order, including the state that the order was purchased in or shipped to.
- The first digit and last four digits of the credit card with which the product

was purchased.

2.) If you purchased the product through a reseller (e.g. Barnes & Noble, Amazon, Borders etc.) You will need to provide a record of the purchase indicating the exact product you have.

- If you purchased the product online, logon to your Amazon or B&N account, and go to your purchase history. Copy and paste the record of your purchase into the e-mail that is replying to this ticket. If you are having problems locating your purchase, please contact your reseller.
- If you purchased the program through another reseller at a retail location you may fax your receipt to 540-437-2843 ATTN: Jennifer Rushing; alternatively you may scan a copy and attach it to an e-mail that is replying to this ticket. If you do not have your physical receipt at this time, please contact the retailer, and they should be able to retrieve a record of your purchase. Please allow us up to 24-48 hours to verify your proof of purchase.

Once we have established proof of purchase, we will be able to create a new Activation ID for your product.

Thank You,

Jennifer

Ticket Information:

Ticket #: 14006-407919

Date Created: 11/15/2009 4:00 PM EDT

To update or check the status of this Ticket:

- Go to: <http://support.rosettastone.com/ics/support/default.asp?deptID=14006&ticketID=473642>
- Log In, and you will be automatically taken to the Ticket page.

Steve DuBow

From: "Steve DuBow" <sfubow@attglobal.net>
To: "Ettinger, Mitchell S" <Mitchell.Ettinger@skadden.com>
Sent: Wednesday, February 17, 2010 2:47 PM
Subject: Fw: Ticket #14006-407919: Answered (Activation ID is missing in the box)
This is Jennifer's reply to my email to her. At this point, I contacted my credit card company (which I used through PayPal) to file a claim. I was eventually able to get my money back after the credit card company could not make contact with Bossdisk. So, I feel fortunate that the only thing I lost was time. I then went out and purchased RS from Borders. Please let me know if you need anything else.

Regards,
Steve

----- Original Message -----

From: support@rosettastone.com
To: sfubow@attglobal.net
Sent: Sunday, November 15, 2009 3:38 PM
Subject: Ticket #14006-407919: Answered (Activation ID is missing in the box)

Your Rosettastone.com request has been answered. Please see the comments below for additional information. If you need further assistance, please reply to this email or click the link below to access the support portal.

Rosetta Stone

The Fastest Way to Learn a Language. Guaranteed™.

Comment(s): Dear Steve,

Thank you for your reply. It appears that you have ordered your program from bossdisk.com, which is indeed not an authorized reseller. Because they sold this program to you illegally, we will not be able to provide you with an Activation ID.

I sincerely apologize for the inconvenience and highly suggest that you contact the reseller and try to get your money back.

You may also file a report with us on www.rosettastone.com. There is an Anti-Piracy link at the bottom of the screen; once inside that link, click the red button saying "Report Piracy/Fraud" and fill out all the information requested. Our Legal Department will then look at your report and assist you accordingly.

If you have any further questions, please feel free to contact us.

Thank you,

Jenifer

Ticket Information:

Ticket #: 14006-407919

Date Created: 11/15/2009 4:00 PM EDT

To update or check the status of this Ticket:

- Go to: <http://support.rosettastone.com/ics/support/default.asp?deptID=14006&ticketID=473642>
- Log in, and you will be automatically taken to the Ticket page.

SPAZIANO
EXHIBIT 54

**EXHIBIT FILED
UNDER SEAL**

SPAZIANO
EXHIBIT 55

**EXHIBIT FILED
UNDER SEAL**

SPAZIANO
EXHIBIT 56

**EXHIBIT FILED
UNDER SEAL**

SPAZIANO
EXHIBIT 57

**EXHIBIT FILED
UNDER SEAL**

SPAZIANO
EXHIBIT 58

EXHIBIT FILED
UNDER SEAL

SPAZIANO
EXHIBIT 59

EXHIBIT FILED
UNDER SEAL

SPAZIANO
EXHIBIT 60

EXHIBIT FILED
UNDER SEAL

SPAZIANO
EXHIBIT 61

EXHIBIT FILED
UNDER SEAL

**SPAZIANO
EXHIBIT 62**

Capital Reporting Company
Jeffries, Deborah 03-09-2010

13

1 Q Did you replicate that search?

2 A Uh-huh.

3 Q Tell me what you did.

4 A I -- you mean my --

5 Q Physically, what did you do?

6 A Physically what I did? I typed in
7 Rosetta Stone and the information that Mom found
8 popped up on the right-hand side, and I clicked
9 it and found the same thing she did.

10 Q So when you typed in Rosetta Stone,
11 were you typing that into the Google search
12 engine?

13 A Yes.

14 Q And do you recall when you did this?

15 A No. The actual date?

16 Q Yes.

17 A No. I know that when we purchased
18 it, just because I was looking -- it was in
19 October.

20 Q October of what year?

21 A 2009.

22 Q So you say that you typed in the words

1 "Rosetta Stone" into the Google search engine.

2 A Right.

3 Q And then you pressed enter?

4 A Yeah.

5 Q And then you saw links appear on the
6 right-hand side?

7 A Yes.

8 Q Do you know what the term "sponsored
9 link" means?

10 A I do now.

11 Q How do you know that?

12 A Because once we went through this
13 fiasco and I called Rosetta Stone, they told me.

14 Q What is your understanding of what a
15 sponsored link is?

16 A It's paid. It's like a billboard.
17 That's my description.

18 Q I'm going to mark as Jeffries Exhibit 1
19 just an example search for Rosetta Stone Spanish.
20 I'm not suggesting that this was done in October,
21 Ms. Jeffries. But I would just ask that you take
22 a look at this layout.

1 MR. STERN: Yes.

2 Q MR. ETTINGER: When you looked at the
3 web page that your mother provided to you after
4 replicating her search, what did you believe that
5 this company was offering for sale?

6 A What I was looking for was Spanish
7 Rosetta Stone.

8 Q Did you have any belief or suggestion
9 in your mind that this was not an authorized sale
10 of Rosetta Stone software?

11 A No.

12 MR. STERN: Objection. Foundation.

13 Q MR. ETTINGER. Let him make his
14 objection and then you can answer.

15 A Sorry.

16 MR. STERN: It's okay. You're doing fine.

17 Q MR. ETTINGER: It's just the format.
18 Did you have any belief in your mind
19 that the company that was offering this product
20 through the Internet that you found on the Google
21 search engine was offering a legal software for
22 sale?

1 MR. STERN: Objection. Foundation.

2 A No.

3 Q MR. ETTINGER: What did you do next in
4 your pursuit of the purchase of Rosetta Stone
5 software?

6 A I read through what was on the site
7 and then I -- my mother and I went to a local
8 office supply place and wanted to see if we could
9 find it there, because we had read that Staples
10 matched prices. So we went to a local Staples
11 store and took this printout with us.

12 Q When you say this printout, you're
13 referring to Exhibit 2?

14 A Yes.

15 Q And what did you learn when you went to
16 the Staples?

17 A That they didn't match web pricing.

18 Q Did they give you any -- did they give
19 you anything in writing that suggested to you
20 what their policy was regarding matching prices
21 that appeared on the Internet?

22 A Yes. They printed it out for me.

1 Q I will hand you what's been marked as
2 Exhibit 3. It is a one-page document that is
3 entitled Staples price match guarantee. Has the
4 date at the bottom -- Claude, your copy probably
5 will not have it, 10/11/2009. I will hand that
6 to the witness.

7 Ms. Jeffries, could you please verify
8 for us that Exhibit 3 is what you were provided
9 by Staples.

10 (Exhibit No. 3 marked.)

11 A Yes.

12 Q So when Staples said that they wouldn't
13 match the price that you found on the Internet,
14 what did you do next?

15 A We went home and bought it on-line.

16 Q Did you buy it from the company,
17 softer4world.com?

18 A Yes.

19 Q The same company that you found through
20 the Google search engine?

21 A Yes.

22 Q Did you actually place the order or did

1 find out which documents we're talking
2 about. I've got it. Thank you very much.

3 A Sure.

4 MR. ETTINGER: Claude, I apologize.

5 MR. STERN: That's all right.

6 Q MR. ETTINGER: So this is -- this
7 exhibit reflects two e-mails, one from
8 softer4world confirming your order?

9 A Right.

10 Q And you forwarded that to your mother.
11 Correct?

12 A Yes.

13 Q And when you placed the order, whose
14 name did you make the order in?

15 A I used my name.

16 Q And you used your mother's credit card?

17 A Yes.

18 Q How much was the purchase price?

19 A \$158.

20 Q Did you actually receive product in
21 response to your order?

22 A Yes.

1 Q What did you receive?

2 A A box about that size.

3 Q I'm going to mark as exhibit --

4 A That's the box, isn't it? They sent
5 the whole thing to you.

6 Q I'm going to mark as Exhibit 5 this box
7 of materials entitled Rosetta Stone, and it
8 contains certain CDs, and I'll have the witness
9 go through that. On the outside of the box is a
10 mailer I'll have the witness identify. So this
11 will all be Exhibit 5. First of all, could you
12 identify the outside mailer for me?

13 (Exhibit No. 5 marked.)

14 A This is the one that it came -- that
15 the Rosetta Stone came in, yes.

16 Q So this mailer is addressed to whom?

17 A This was a gentleman that --

18 Q What's the name on there?

19 A William Thomas.

20 Q Who is William Thomas?

21 A The individual that I spoke with,
22 when I called Rosetta Stone after I found out

1 that it wasn't a real copy, when I tried to use
2 it and instead I saw I had a counterfeit copy.

3 Q Can you take a look at Jeffries Exhibit
4 5 and tell me whether or not these are the
5 materials you received from softer4world.com?

6 A Well, I tell ya, I only opened the
7 first -- we tried to play the first one. The rest
8 of it I didn't even really look at.

9 Q You indicated you sent the entire set
10 to Rosetta Stone?

11 A Correct.

12 Q Why did you do that?

13 A Because they asked me to.

14 Q Did they tell you why they wanted it?

15 A They said that they had a fraud
16 division, and I was rather alarmed that the thing
17 came from someplace in the Pacific Rim when I had
18 no idea that's where I ordered it from, and was
19 more than happy to send it back to them.

20 Q Let's go a little slower. When the
21 package arrived in the mail, was there any
22 indication as to its country of origin?

SPAZIANO
EXHIBIT 63

**EXHIBIT FILED
UNDER SEAL**

SPAZIANO
EXHIBIT 64

**EXHIBIT FILED
UNDER SEAL**

SPAZIANO
EXHIBIT 65

**EXHIBIT FILED
UNDER SEAL**

SPAZIANO
EXHIBIT 66

EXHIBIT FILED
UNDER SEAL

SPAZIANO
EXHIBIT 67

Capital Reporting Company
Porter, Rita Kay 03-10-2010

		12
1	words.	10:32:06
2	Q. And you indicated that this research	10:32:10
3	was done on foot, by going to the store and	10:32:11
4	reading about Rosetta Stone?	10:32:15
5	A. Yes.	10:32:16
6	Q. Did you actually see the Rosetta Stone	10:32:18
7	product in any of the stores that you were in?	10:32:20
8	A. I saw the book or the cover. They	10:32:23
9	didn't really have the software inside. They only	10:32:24
10	had the cover part. So I looked at that.	10:32:27
11	Q. When you say "the cover part," what do	10:32:30
12	you mean?	10:32:31
13	A. The package that it came in, the box.	10:32:31
14	Q. And what color was the box?	10:32:33
15	A. Yellow.	10:32:35
16	Q. Was it a distinctive color to you?	10:32:35
17	A. Oh, very.	10:32:37
18	Q. So when did you determine that you	10:32:41
19	wanted to purchase Rosetta Stone? Do you recall	10:32:42
20	the approximate time frame?	10:32:45
21	A. Probably the first part of November.	10:32:46
22	Q. And you indicated that you went online	10:32:48
23	to make that purchase; is that right?	10:32:51
24	A. That's correct.	10:32:53
25	Q. Could you please describe for us what	10:32:53

	13
1 you did when -- literally, when you went on the	10:32:54
2 Internet to try to purchase Rosetta Stone.	10:32:59
3 A. Okay. Well, I opened Google, and the	10:33:01
4 first thing I saw was the top, the sponsored link	10:33:03
5 that said "RosettaStone.com," so I went in there	10:33:06
6 and I started looking at all their products and	10:33:08
7 found they had two different kinds of Spanish.	10:33:08
8 One is a Castilian Spanish, spoken in Spain, and	10:33:11
9 the other is the Mexican Spanish. I determined I	10:33:13
10 wanted the Castilian Spanish just because I	10:33:16
11 thought, since I'm going to Spain, why not. And I	10:33:19
12 started researching that, determined I really	10:33:21
13 wanted Levels 1 through 5, but probably could only	10:33:23
14 afford Levels 1 through 3.	10:33:27
15 So I started looking for Levels 1	10:33:29
16 through 3, and -- just doing Google searches,	10:33:32
17 seeing who else might sell it. And, of course,	10:33:36
18 Borders, Barnes & Noble, those types of people	10:33:39
19 sell it. And then there were some other links on	10:33:42
20 the right-hand side, and one of them -- I clicked	10:33:44
21 on that link -- it was \$142, which is a much	10:33:46
22 cheaper price. So I'm a bargain shopper, and I	10:33:49
23 thought, That sounds really good.	10:33:52
24 Q. So let's go back just for a second.	10:33:54
25 When you went on Google, is that your default	10:33:55

		14
1	search engine?	10:33:58
2	A. Yes.	10:33:58
3	Q. All right. So whenever you do searches	10:33:59
4	on the Internet, you use Google?	10:34:00
5	A. Yes.	10:34:03
6	Q. And do you recall what you actually	10:34:04
7	typed into the search engine when you were looking	10:34:05
8	for the Rosetta Stone software?	10:34:08
9	A. "Rosetta Stone Spanish."	10:34:10
10	Q. And that was your search terms -- those	10:34:11
11	were your search terms?	10:34:14
12	A. Uh-huh.	10:34:15
13	Q. Did you do this Internet shopping in	10:34:16
14	one session where you went onto RosettaStone.com	10:34:19
15	as you described and ultimately clicked on a link	10:34:22
16	for \$142, or did this occur over time?	10:34:24
17	A. This occurred over time. Just about	10:34:26
18	every night I was on just looking for -- for good	10:34:28
19	prices.	10:34:31
20	Q. Bear with me one second.	10:34:36
21	Okay. When you typed in "Rosetta	10:35:01
22	Stone Spanish" at the time that you actually went	10:35:03
23	forward to make your purchase, okay, do you recall	10:35:05
24	where the link appeared on the page that you	10:35:08
25	actually clicked on to take you to the \$142 price?	10:35:11

Capital Reporting Company
Porter, Rita Kay 03-10-2010

		15
1	A. Yes. It was on the right-hand side of	10:35:15
2	the page.	10:35:17
3	Q. And do you recall the name of the	10:35:17
4	company that was associated with that link?	10:35:18
5	A. Gainsoftmall.	10:35:20
6	Q. Gainsoftmall?	10:35:21
7	A. Uh-huh. Would you like for me to spell	10:35:23
8	that?	10:35:24
9	Q. Sure.	10:35:25
10	A. G-a-i-n-s-o-f-t-m-a-l-l.	10:35:26
11	(Deposition Exhibit No. 1 was	10:35:29
12	marked for identification.)	10:35:29
13	Q. (By Mr. Ettinger) First, let me show	10:35:29
14	you what I've marked as Exhibit 1 -- this is a	10:35:35
15	two-page document bearing Bates Nos. RS-008-000030	10:35:50
16	to '31 -- and ask you to just take a look at that	10:35:56
17	for a moment.	10:36:00
18	A. (Indicating.)	10:36:01
19	Q. Do you recognize this document?	10:36:09
20	A. Yes.	10:36:10
21	Q. Okay. Could you tell us what it is?	10:36:10
22	A. I had made a purchase from Gainsoftmall	10:36:11
23	and this was a purchase through PayPal, and it	10:36:14
24	just tells me how much I paid through PayPal to	10:36:16
25	CHENPING022.	10:36:18

Capital Reporting Company
Porter, Rita Kay 03-10-2010

		16
1	Q. Okay. And what is the date of the	10:36:20
2	transaction?	10:36:22
3	A. 11/15/2009.	10:36:23
4	Q. And does that refresh your recollection	10:36:26
5	that you did this on November 15, 2009?	10:36:28
6	A. Yes, it does.	10:36:31
7	Q. You can put that down for just a	10:36:32
8	moment.	10:36:33
9	(Deposition Exhibit No. 2 was	10:36:34
10	marked for identification.)	10:36:34
11	Q. (By Mr. Ettinger) Let me show you what	10:36:34
12	I've marked as Exhibit 2.	10:36:36
13	MR. STERN: I'm sorry. Could	10:36:43
14	you -- could you repeat the question and answer --	10:36:43
15	the question and the answer -- the last two,	10:36:45
16	please.	10:36:49
17	(The record was read by the	10:37:27
18	reporter as requested.)	10:37:27
19	Q. (By Mr. Ettinger) Let me show you what	10:37:29
20	I've marked as Exhibit 2, just get you to take a	10:37:29
21	look at that for a second. This is a three-page	10:37:32
22	document which I will represent to you is a screen	10:37:36
23	shot of a "Rosetta Stone Spanish" search --	10:37:40
24	A. Uh-huh.	10:37:44
25	Q. -- that was done on 11/16/2009.	10:37:45

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		17
1	A. Okay.	10:37:48
2	Q. And I ask you, can you, from looking at	10:37:49
3	this, identify the link that you saw when you went	10:37:53
4	onto the Internet on 11/15/2009 and clicked on it	10:37:56
5	to take you to Gainsoftmall?	10:38:00
6	A. Yes. It's this -- how do I do this?	10:38:02
7	Q. Just hold it up and point to it.	10:38:04
8	A. This one right here (indicating).	10:38:06
9	Q. And could you for the record, please,	10:38:07
10	read into the record what that says.	10:38:09
11	A. Yes. It says, "\$142 Get Language	10:38:11
12	Software, Level 1, 2, 3 with audio, now on sale,	10:38:14
13	74 percent off, free and fast shipping, buy now,	10:38:19
14	www.Gainsoftmall.com/Rosetta Stone, Colorado."	10:38:22
15	Q. You indicated that the link that you	10:38:29
16	clicked on on November 15, 2009, appeared in the	10:38:31
17	right-hand side of your screen. Do you recall	10:38:35
18	exactly where it appeared on November 15?	10:38:38
19	A. I would -- no -- I would say it's on	10:38:42
20	the right-hand side, but I don't know if it was in	10:38:43
21	Spot No. 1 or 2, but it was 1 or 2.	10:38:46
22	Q. All right. Thank you. You can turn	10:38:49
23	that over just a moment.	10:38:50
24	(Deposition Exhibit No. 3 was	10:38:53
25	marked for identification.)	10:38:53

		18
1	Q. (By Mr. Ettinger) Let me show you what	10:38:55
2	I've marked as Exhibit 3. And I'll represent to	10:38:57
3	you that this is the landing page from the --	10:39:00
4	click on that link that you just identified in	10:39:02
5	Exhibit 2 on the day after you purchased your	10:39:04
6	software, 11/16/2009.	10:39:06
7	MR. ETTINGER: That's	10:39:11
8	3 (indicating).	10:39:14
9	Q. (By Mr. Ettinger) And, ma'am, can you	10:39:21
10	tell us whether or not this is the -- very similar	10:39:22
11	or the same landing page that you saw when you	10:39:26
12	clicked on the link?	10:39:28
13	MR. STERN: Objection.	10:39:29
14	A. Yes.	10:39:30
15	MR. STERN: Foundation.	10:39:30
16	THE WITNESS: Sorry.	10:39:31
17	MR. STERN: That's all right. As	10:39:31
18	counsel mentioned to you, I'm making formal	10:39:32
19	objections to the form of the question that's	10:39:35
20	being asked, but if you understand the question,	10:39:36
21	you may answer.	10:39:38
22	THE WITNESS: Okay.	10:39:38
23	A. And, yes, it does appear to be similar	10:39:39
24	to or the one that I did click on.	10:39:42
25	Q. (By Mr. Ettinger) Okay. And what	10:39:44

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		19
1	about this Exhibit 3 looks familiar to you?	10:39:45
2	A. On page 2, "Rosetta Stone Version 3,	10:39:49
3	Spanish (Latin America), Level 1, 2, 3 Set with	10:39:54
4	Audio Companion."	10:39:57
5	Q. You're talking about the --	10:39:59
6	A. The last one, the Spain.	10:40:00
7	Q. So the last one appearing on the right	10:40:02
8	on the second page?	10:40:04
9	A. That's correct.	10:40:04
10	Q. All right. And --	10:40:05
11	A. And then --	10:40:06
12	Q. Go ahead. I'm sorry.	10:40:07
13	A. You said what else appealed to me; is	10:40:08
14	that correct?	10:40:10
15	Q. No. What else -- what else in this	10:40:10
16	document --	10:40:12
17	A. Okay. The "100 percent satisfaction	10:40:12
18	guaranteed," the "30-day Money Back," the "Free	10:40:15
19	Shipping."	10:40:18
20	Q. All of those things appeared on the web	10:40:18
21	site that you looked at?	10:40:20
22	A. Yes.	10:40:21
23	Q. And did the web site that you -- the	10:40:22
24	landing page that you went to on November 15th,	10:40:24
25	have these images of the Rosetta Stone yellow box?	10:40:26

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		20
1	A. Yes.	10:40:31
2	Q. And do you recall whether, in fact, it	10:40:32
3	had retail prices crossed through with the offered	10:40:33
4	purchase price?	10:40:36
5	A. Yes.	10:40:37
6	Q. Okay. It appears as it does in	10:40:38
7	Exhibit 3?	10:40:40
8	A. Yes.	10:40:40
9	Q. Had you ever purchased a product from	10:40:48
10	Gainsoftmall before November 15, 2009?	10:40:49
11	A. No, I have not.	10:40:52
12	Q. Ms. Porter, at the bottom of the second	10:41:01
13	page of Exhibit 3, there is a -- what appears to	10:41:03
14	be a hyperlink that says "Conditions of use." Do	10:41:07
15	you see that?	10:41:09
16	A. Yes.	10:41:10
17	Q. Did you click on that, by any chance?	10:41:11
18	A. No.	10:41:13
19	Q. Do you remember clicking on any of	10:41:13
20	those hyperlinks that appear at the bottom of the	10:41:15
21	page, "Home," "Contact Us," "Shipping," "Privacy,"	10:41:17
22	or "Site Map"?	10:41:20
23	A. I believe I clicked on "Home" and got	10:41:21
24	the same pages basically, the same information,	10:41:24
25	and then the "Shipping" I looked at to see, you	10:41:26

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	21
1 know, how it was going to be shipped or if there	10:41:29
2 was going to be a shipping charge.	10:41:31
3 Q. And what -- when you clicked on	10:41:33
4 "Shipping," what did the site tell you?	10:41:34
5 A. It was a free shipping. I don't really	10:41:36
6 recall more about it, but I was satisfied that I	10:41:40
7 was going to get my merchandise.	10:41:42
8 Q. Okay. Did you actually place an order	10:41:44
9 with Gainsoftmall.com?	10:41:50
10 A. Yes, I did.	10:41:51
11 Q. All right. And when you placed your	10:41:52
12 order, was it through your -- with	10:41:53
13 Gainsoftmall.com, was it in connection with your	10:41:55
14 search on Google for "Rosetta Stone Spanish"?	10:41:58
15 A. Yes, it was.	10:42:03
16 Q. And what did you, in fact, order?	10:42:03
17 A. I ordered Rosetta Stone Version 3,	10:42:05
18 Spanish, parentheses, Spain, end of parentheses,	10:42:08
19 Level 1, 2, and 3 set with audio companion for	10:42:12
20 \$142.	10:42:18
21 Q. Now, you indicated that you had done a	10:42:18
22 little research about Rosetta Stone, so I take it	10:42:20
23 you understood -- at the time that you made this	10:42:24
24 purchase you understood that other companies were	10:42:24
25 charging more for the Rosetta Stone software;	10:42:26

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		22
1	isn't that right?	10:42:28
2	A. That's correct.	10:42:28
3	Q. Did the lower purchase price offered	10:42:29
4	through Gainsoftmall lead you to conclude that the	10:42:31
5	product that you were ordering was not genuine	10:42:34
6	Rosetta Stone software?	10:42:37
7	A. Was not genuine? No. It was -- it	10:42:38
8	appeared to be absolutely genuine.	10:42:40
9	Q. So when you placed the order, is it	10:42:42
10	fair to say that you believed you were purchasing	10:42:43
11	genuine Rosetta Stone software?	10:42:46
12	A. Yes, I did.	10:42:48
13	Q. Have you ever heard the term	10:42:49
14	"counterfeit software"?	10:42:49
15	A. Not "counterfeit."	10:42:52
16	Q. Is -- in the term -- in the police	10:42:52
17	vernacular, is there a term for --	10:42:55
18	A. Bootlegged.	10:42:59
19	Q. Bootlegged. So what does that term	10:43:00
20	"bootlegged software" mean to you?	10:43:00
21	A. Means that it's not authentic.	10:43:01
22	Q. Is it illegal to sell bootlegged	10:43:04
23	software?	10:43:07
24	A. Yes.	10:43:07
25	MR. STERN: Objection. Objection.	10:43:08

		23
1	Legal foundation.	10:43:08
2	Q. (By Mr. Ettinger) From your experience	10:43:09
3	as a police officer, do you know whether it's	10:43:10
4	legal to sell bootlegged software in Kansas?	10:43:11
5	A. It is not legal.	10:43:14
6	Q. At the time that you placed your order	10:43:16
7	with Gainsoftmall, did you intend to purchase	10:43:17
8	bootlegged software?	10:43:21
9	A. No.	10:43:22
10	Q. Okay. You indicated you paid with	10:43:26
11	your -- you paid for the order with PayPal; is	10:43:27
12	that right?	10:43:30
13	A. That's correct.	10:43:31
14	Q. All right. What is PayPal?	10:43:31
15	A. Well, that's a good question. It's	10:43:34
16	a -- it's a company, I guess, that takes your	10:43:35
17	money and gives it to the person that is selling	10:43:39
18	the goods.	10:43:42
19	Q. And did you use a credit card through	10:43:43
20	PayPal to make the purchase?	10:43:45
21	A. Yes, I did. My American Express card.	10:43:46
22	Q. Do you recall whether you received	10:43:54
23	confirmation from Gainsoftmall that your order had	10:43:55
24	been received?	10:43:58
25	A. Yes, I did.	10:43:59

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		24
1	Q. Let me show you what's been marked as	10:44:01
2	Exhibit 4.	10:44:03
3	(Deposition Exhibit No. 4 was	10:44:05
4	marked for identification.)	10:44:05
5	Q. (By Mr. Ettinger) You can put that one	10:44:10
6	down.	10:44:11
7	This is a two-page -- three-page	10:44:14
8	document, RS-008-000027 through '29. And if I	10:44:16
9	could get you to look at the second page, which is	10:44:28
10	numbered 28 at the bottom. Do you see that?	10:44:32
11	A. Number 28, yes.	10:44:34
12	Q. Okay. So we're just on the same page	10:44:36
13	here. Can you tell us whether or not that the	10:44:38
14	e-mail that appears in the middle of this page is	10:44:40
15	the confirmation you received from Gainsoftmall?	10:44:43
16	A. Yes.	10:44:46
17	Q. Do you know what the reference to	10:44:48
18	"Order Number: 3" means?	10:44:49
19	A. No. Other than the fact it's probably	10:44:51
20	the third order they received for it. I don't	10:44:53
21	know.	10:44:55
22	Q. Do you recall whether the web site	10:44:57
23	indicated how many copies of the software it had	10:44:59
24	available for purchase?	10:45:01
25	A. Yes. It was something like 700 and	10:45:02

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		25
1	some, I think.	10:45:04
2	Q. And you saw that on the web site	10:45:05
3	itself?	10:45:07
4	A. Yes.	10:45:08
5	Q. Now, if you look at the date ordered	10:45:11
6	that appears a little bit below your name on	10:45:14
7	the -- on that same page, page 28 -- do you see	10:45:18
8	that?	10:45:21
9	A. I'm sorry. I don't understand what	10:45:23
10	you're asking.	10:45:24
11	Q. Okay. The e-mail that you received	10:45:25
12	from Gainsoftmall came in to you at what time and	10:45:27
13	on what date?	10:45:32
14	A. November 15th at 10:44 a.m.	10:45:33
15	Q. Okay. And do you see -- if you go down	10:45:35
16	just a little ways on the page, it has a date	10:45:38
17	ordered.	10:45:40
18	A. Monday, November 16th, 2009.	10:45:42
19	Q. Okay. At the time you received this,	10:45:44
20	did that give you any reason for concern that the	10:45:47
21	order date was one day after the date that you	10:45:51
22	actually received the e-mail from them?	10:45:54
23	A. No. I probably didn't even read the	10:45:57
24	e-mail. I just saw order confirmation No. 3 and	10:46:00
25	said okay.	10:46:02

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		26
1	Q. Okay. And does this confirmation	10:46:03
2	reflect the purchase price that you paid, \$142?	10:46:06
3	A. Yes.	10:46:09
4	Q. And it lists your home address	10:46:10
5	accurately?	10:46:12
6	A. Yes.	10:46:13
7	Q. And the payment method accurately;	10:46:13
8	correct?	10:46:15
9	A. Yes.	10:46:15
10	Q. Now, could I get you to go back to	10:46:21
11	Exhibit 1 just for a moment.	10:46:23
12	A. Exhibit 1?	10:46:24
13	Q. Exhibit 1, which is the PayPal receipt.	10:46:25
14	A. Okay.	10:46:28
15	Q. All right. You indicated that you	10:46:28
16	actually received this PayPal receipt through your	10:46:29
17	e-mail; correct?	10:46:32
18	A. That's correct.	10:46:33
19	Q. All right. At the time you received	10:46:33
20	the PayPal receipt that included a reference to a	10:46:35
21	payment made to someone with a Chinese name --	10:46:38
22	A. Yes.	10:46:43
23	Q. -- because -- and I say that because of	10:46:43
24	the Chinese symbols.	10:46:45
25	A. Uh-huh.	10:46:46

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		27
1	Q. Do you recall seeing it at the time and	10:46:47
2	recognizing that your payment went to some --	10:46:49
3	someone with a Chinese name?	10:46:52
4	A. Yes. I thought, CHENPING022.	10:46:53
5	Q. Did that --	10:46:56
6	MR. STERN: I'm sorry. I'm sorry.	10:46:57
7	Can I get that back again, please, just the	10:46:57
8	question and answer.	10:47:00
9	MR. ETTINGER: Just one second.	10:47:01
10	THE WITNESS: Sure.	10:47:03
11	(The following was read by the	10:47:03
12	reporter:	10:47:03
13	QUESTION: "Do you recall seeing	10:47:03
14	it at the time and recognizing that your payment	10:47:03
15	went to some -- someone with a Chinese name?")	10:47:03
16	MR. STERN: I'm good. That's	10:47:12
17	fine.	10:47:12
18	Q. (By Mr. Ettinger) Did the fact that	10:47:13
19	your payment -- the fact that your payment went to	10:47:14
20	someone who had a Chinese name and a -- the	10:47:16
21	"CHENPING022," did that give you any reason to be	10:47:19
22	alarmed?	10:47:22
23	A. No.	10:47:23
24	Q. At the time that you made the payment	10:47:26
25	and received this confirmation from PayPal, did	10:47:29

		28
1	you even recognize the fact that the payment had	10:47:31
2	gone to someone with a Chinese surname?	10:47:33
3	A. The Chinese surname, yes.	10:47:35
4	Q. Did you, in fact, receive product from	10:47:42
5	Gainsoftmall?	10:47:44
6	A. I did.	10:47:45
7	Q. Could you describe for us, please, what	10:47:46
8	you received.	10:47:48
9	A. It looked like a -- well, it was a	10:47:49
10	Rosetta Stone box. It looked like the way a cigar	10:47:52
11	box opened. It was complicated for me because I	10:47:56
12	expected it just to open up and slide out, but it	10:47:58
13	opened differently than I thought it would. Is	10:48:02
14	that all you want me to say about that?	10:48:06
15	Q. Well, what color was the box?	10:48:09
16	A. It was yellow.	10:48:10
17	Q. And did it have any images on the box?	10:48:11
18	A. Yes. It looked like a Rosetta Stone	10:48:14
19	box that I had seen in Borders or Barnes & Noble.	10:48:14
20	Q. From the -- from the outward appearance	10:48:19
21	of the product that you received, could you	10:48:20
22	distinguish it in any way from the product that	10:48:22
23	you had seen at Borders?	10:48:24
24	A. No. It looked exactly the same.	10:48:25
25	(Deposition Exhibit No. 5 was	10:48:27

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		29
1	marked for identification.)	10:48:27
2	Q. (By Mr. Ettinger) All right. Before	10:48:27
3	we get into the contents of the box --	10:48:28
4	A. Uh-huh.	10:48:30
5	Q. -- let me show you what I've marked as	10:48:30
6	Exhibit 5.	10:48:31
7	A. Yes.	10:48:32
8	MR. ETTINGER: And, Claude, this	10:48:33
9	is the shipping label that I gave you a copy of	10:48:34
10	earlier.	10:48:38
11	MR. STERN: Okay. Hold on.	10:49:08
12	(Discussion off the record.)	10:49:45
13	Q. (By Mr. Ettinger) So you have before	10:50:05
14	you Exhibit 5; right?	10:50:05
15	A. Yes.	10:50:06
16	Q. Okay. Can you tell us what this is.	10:50:07
17	A. This is the -- I don't know what to	10:50:09
18	call it -- the packing slip or whatever that was	10:50:13
19	on the outside of the box that came to my house	10:50:15
20	from CHENPING.	10:50:17
21	Q. Okay. And as far as the name and	10:50:19
22	description of the contents, can you -- can you	10:50:22
23	read that into the record. Appears in the lower	10:50:24
24	left-hand corner.	10:50:28
25	A. "Gift DVD, \$10, CN."	10:50:29

		30
1	Q. And when you -- when you saw this	10:50:33
2	packing slip, did that give you any reason for	10:50:35
3	concern?	10:50:38
4	A. It was a little bit. I asked my	10:50:39
5	husband about it and he said that perhaps Rosetta	10:50:40
6	Stone had sold some -- some, you know, copies,	10:50:42
7	overstock, or something they didn't want, to	10:50:47
8	China, and he said, "Don't worry about it. It	10:50:50
9	will probably be fine." So I went ahead and	10:50:52
10	installed it on my computer.	10:50:54
11	Q. All right. So when you opened up the	10:50:56
12	box, could you tell us what was in the contents --	10:50:58
13	what the contents consisted of. Excuse me.	10:50:59
14	A. You know, I haven't looked at it for	10:51:05
15	three or four months, but there was some software	10:51:06
16	in there. There was a headset with a microphone.	10:51:08
17	That's all I remember. We do have that in	10:51:15
18	property at the Overland Park Police Department.	10:51:19
19	Q. And I'll get to that in just a moment.	10:51:21
20	A. Okay.	10:51:23
21	Q. The software, was it on CD-ROMs?	10:51:24
22	A. Yes.	10:51:28
23	Q. All right. And how many CDs, if you	10:51:28
24	recall, were in the box?	10:51:32
25	A. I don't know.	10:51:33

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		31
1	Q. Do you recall whether there was an	10:51:33
2	instruction manual?	10:51:34
3	A. I didn't see an instruction manual.	10:51:35
4	Q. You indicated that the package that you	10:51:38
5	received from Gainsoftmall.com is in property at	10:51:41
6	the police department?	10:51:45
7	A. Yes.	10:51:46
8	Q. And is that something that you have	10:51:47
9	control over to retrieve if you wanted to?	10:51:49
10	A. Most likely.	10:51:51
11	Q. And so if we were to ask you to	10:51:53
12	retrieve that, would you be willing to try?	10:51:54
13	A. Yes.	10:51:56
14	There was one other thing in the	10:51:56
15	box -- it was a little piece of paper, as I	10:52:03
16	recall -- that said, "If you have problems, don't	10:52:05
17	call Rosetta Stone" or something like that. It	10:52:07
18	was some weird, cryptic note.	10:52:09
19	Q. Did it give you a number or person to	10:52:13
20	contact instead of Rosetta Stone?	10:52:15
21	A. No. I just don't remember enough about	10:52:18
22	it, but it was something weird about it and -- I	10:52:20
23	don't remember.	10:52:25
24	Q. Okay. Is that note with the software	10:52:25
25	that was given to the police department?	10:52:28

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		32
1	A. Yes, it is. I do not have a copy of	10:52:29
2	that.	10:52:31
3	Q. Before you placed your disk into the	10:52:32
4	computer, okay, from the outward appearance of the	10:52:34
5	box and the fact that you had the software, did	10:52:36
6	you believe you had genuine Rosetta Stone	10:52:40
7	software?	10:52:43
8	A. Yes, I did.	10:52:43
9	Q. Did you actually try to load it onto	10:52:44
10	your computer?	10:52:46
11	A. Yes.	10:52:46
12	Q. And what happened when you did that?	10:52:46
13	A. It didn't work as I thought it would.	10:52:49
14	As I recall, I couldn't get it to load, and so I	10:52:53
15	asked my computer-savvy son to help me and he	10:52:55
16	couldn't get it to load right. There was no	10:52:59
17	authorization code with it, as I recall.	10:53:03
18	Q. Did the software have any	10:53:06
19	functionality?	10:53:07
20	A. I don't think so.	10:53:09
21	Q. You weren't able to get the programs to	10:53:11
22	run at all?	10:53:12
23	A. No.	10:53:13
24	Q. What did you do when you could not get	10:53:15
25	the program to run?	10:53:17

			33
1	A.	I called Rosetta Stone.	10:53:18
2	Q.	Okay. You didn't follow --	10:53:19
3	A.	I said, "It doesn't work."	10:53:21
4	Q.	Okay. And why did you call Rosetta	10:53:22
5		Stone?	10:53:24
6	A.	Because it was a Rosetta Stone product.	10:53:25
7	Q.	And what did you do to determine who at	10:53:29
8		Rosetta Stone to contact?	10:53:31
9	A.	I got on their web site, and I believe	10:53:34
10		there's a customer help button or something like	10:53:37
11		that, so I got their customer service number and	10:53:39
12		called.	10:53:42
13	Q.	All right. And do you recall who you	10:53:45
14		spoke with when you contacted Rosetta Stone?	10:53:45
15	A.	I do not.	10:53:48
16	Q.	Do you recall when you contacted	10:53:48
17		Rosetta Stone?	10:53:49
18	A.	No, I don't remember.	10:53:55
19	Q.	Ultimately, did you complete an	10:53:58
20		antipiracy report on the Rosetta Stone web site?	10:54:00
21	A.	Yes, I did.	10:54:05
22		(Deposition Exhibit No. 6 was	10:54:05
23		marked for identification.)	10:54:05
24	Q.	(By Mr. Ettinger) All right. Let me	10:54:05
25		show you what I've marked as Exhibit 6 and ask if	10:54:06

		34
1	you can confirm that this exhibit contains the	10:54:09
2	information that you provided to Rosetta Stone	10:54:12
3	through their web site. Take your time looking at	10:54:14
4	it. This is a --	10:54:19
5	A. Okay.	10:54:20
6	Q. -- document bearing Bates Nos.	10:54:20
7	RS-008-000018 through '21.	10:54:22
8	A. Okay.	10:55:06
9	Q. Okay. So my question to you is, on	10:55:07
10	pages 18, 19, and 20, the first three of this	10:55:09
11	exhibit --	10:55:12
12	A. Uh-huh.	10:55:12
13	Q. -- does it reflect information you	10:55:13
14	provided to Rosetta Stone through the -- their	10:55:15
15	antipiracy web site?	10:55:16
16	A. Yes, it does.	10:55:19
17	Q. All right. And, Ms. Porter, does this	10:55:20
18	document refresh your recollection as to when you	10:55:26
19	entered the data into the Rosetta Stone web site?	10:55:33
20	A. Yes.	10:55:35
21	Q. And when was that?	10:55:36
22	A. 11/24 of '09.	10:55:36
23	Q. And do you know who Michael Hill is?	10:55:39
24	A. Yes. He's an investigator with the	10:55:43
25	legal department of Rosetta Stone, I believe.	10:55:46

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		35
1	Q. Did you speak to Mr. Hill directly?	10:55:49
2	A. Yes, I did.	10:55:51
3	Q. Okay. And what was the nature of your	10:55:51
4	conversation with Mr. Hill?	10:55:56
5	A. He called me and he asked about the	10:55:59
6	Rosetta Stone product that I had purchased, and he	10:56:03
7	said that there were some other people that had	10:56:06
8	purchased this product, and he said something	10:56:13
9	about some cases in Kansas and Missouri and that	10:56:15
10	Lawrence Police Department was working on a	10:56:21
11	student possibly selling some software, Rosetta	10:56:24
12	Stone unauthorized software.	10:56:27
13	Q. And did Mr. Hill ask you to do anything	10:56:29
14	in particular?	10:56:32
15	A. No, he did not.	10:56:32
16	Q. Did you follow up on your conversation	10:56:35
17	with Mr. Hill?	10:56:36
18	A. I followed up with my department,	10:56:38
19	because as a police officer, I'm required to	10:56:39
20	report any time I'm involved in an investigation.	10:56:43
21	So I contacted my bureau commander. I sent him an	10:56:45
22	e-mail and we filed a police report, but nothing	10:56:49
23	further was done.	10:56:52
24	Q. Okay. With respect to the software	10:56:53
25	that you purchased from Gainsoftmall, what did	10:56:55

		36
1	Rosetta Stone advise you to do?	10:56:57
2	A. Well, they told me that I needed the	10:56:59
3	update, so I called them again for an update, and	10:57:01
4	then I was told that those -- they were not --	10:57:04
5	this person that I purchased it from was not an	10:57:06
6	authorized reseller of Rosetta Stone products.	10:57:08
7	Q. And, therefore, you were not able to	10:57:12
8	access the updates?	10:57:15
9	A. That's correct.	10:57:17
10	Q. All right.	10:57:17
11	MR. STERN: I'm sorry. Just for	10:57:18
12	clarification, you said "so I called them." Is	10:57:19
13	the "them" Rosetta Stone?	10:57:22
14	THE WITNESS: Yes.	10:57:24
15	MR. STERN: Okay.	10:57:25
16	THE WITNESS: For the update?	10:57:26
17	MR. STERN: Yes.	10:57:27
18	THE WITNESS: Yes.	10:57:29
19	Q. (By Mr. Ettinger) Had you ever before	10:57:29
20	purchased software on the Internet that turned out	10:57:30
21	to be bootlegged?	10:57:32
22	A. No.	10:57:33
23	Q. What, if anything, did you do to recoup	10:57:39
24	the money that you had paid to Gainsoftmall?	10:57:41
25	A. First of all, I contacted PayPal	10:57:44

SPAZIANO
EXHIBIT 68

EXHIBIT FILED
UNDER SEAL

SPAZIANO
EXHIBIT 69

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Thomas, Diana Stanley 03-12-2010

12

1 Q When you say "how many," you're talking
2 about how many levels you bought?

3 A Correct.

4 Q When you used your Google search tool to
5 find the Rosetta Stone software, do you recall
6 what query you put or terms you used to attempt to
7 find the software?

8 MR. OBLAK: Objection to the form.

9 A Um, Rosetta Stone.

10 Q And why did you type in the words
11 "Rosetta Stone"?

12 A Because that's what I was looking for.

13 Q And did you press enter after you typed
14 in Rosetta Stone?

15 A Yes.

16 Q Could you describe for us what you saw
17 on the search result page that came up?

18 A Well, there was a whole bunch of
19 advertisements. Like, it said "Rosetta Stone"
20 with a line underneath it, and then if you look
21 off to the right, you know, "Rosetta Stone cheap,"
22 blah blah. I don't know.

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13

1 Q And did you click on different links
2 that appeared on that landing page?

3 A I did.

4 Q What did you learn when you clicked on
5 these different links?

6 A Everybody has a different price, so I
7 was looking for the cheapest one.

8 Q What do you recall the cheapest price to
9 be the day you did the search?

10 A I believe it was around \$90 for Spanish
11 1, and that's the one that I was looking for. I
12 didn't want to buy the whole set.

13 Q And do you recall who offered Span --
14 Rosetta Stone Spanish 1 for approximately \$90?

15 A Are you asking for a name?

16 Q Yes. If you recall who was offering it
17 at that price.

18 A Like the Sourceplaza?

19 Q If that was the name.

20 A Okay. Then that was the name,
21 Sourceplaza.

22 Q Sourceplaza?

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14

1 A I'm sorry.

2 Q I'm just asking you if you recall who
3 was offering it at that price.

4 A There were a lot of people. Different
5 prices and stuff. I don't remember the exact one
6 for \$90.

7 Q Did you click on a link to purchase the
8 software?

9 A Yes.

10 Q Okay. Where did the link appear on the
11 search results page that you clicked on that
12 ultimately lead to your purchase?

13 A Do you mean either in the middle, on the
14 right or the left?

15 Q Literally where on the page did it
16 appear?

17 A On the right (Indicating).

18 Q Let me show you what I'm going to mark
19 as Stanley Thomas 1.

20 (At which time, Stanley Thomas Exhibit
21 1, Screen shots of internet pages,
22 consisting of four pages, was marked

1 for identification by counsel.)

2 Q This is a four-paged document that I'll
3 represent to you is basically a search that was
4 done for Rosetta Stone Spanish on September --
5 excuse me, on October 16th 2009, and this is
6 obviously after the point in time you said you
7 purchased it. But I'm asking you just to take a
8 look at Exhibit 1, and if you could tell us where
9 on the page the link appeared that you clicked on?

10 A Off to the right over here on sponsored
11 links (Indicating).

12 Q Could you hold that up for the camera
13 please and just point to it?

14 A Sure (Indicating).

15 Q Point to it.

16 A This side (Indicating).

17 Q Do you recall whether the link that you
18 clicked on appeared in the first, second or third
19 position on the list?

20 A I don't.

21 Q Do you remember how high up on the list
22 it was?

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16

1 A It was up there. It was more toward the
2 top than to the bottom of the page, but I don't
3 remember the exact location.

4 Q And you said it was one of the sponsored
5 links. Do you understand what a "sponsored link"
6 is?

7 A I thought that they were linked directly
8 to Rosetta Stone or to whoever you're looking for,
9 but I guess they're not I'm finding out now.

10 Q When you clicked on the link and saw the
11 landing page, right, you clicked on the link for
12 Rosetta Stone software and you went to a landing
13 page, what did you see on that landing page?

14 A Rosetta Stone, the box.

15 Q And do you recall the color of the box?

16 A It was yellow. Looks just like the
17 Rosetta Stone boxes.

18 Q Do you remember anything else about the
19 landing page that you saw?

20 A No.

21 Q When you clicked on the link, what, if
22 anything, did you believe about the affiliation

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17

1 between the company that was offering the software
2 that you saw and Rosetta Stone?

3 MR. OBLAK: Object to form.

4 A I thought that they were people that
5 worked with Rosetta Stone.

6 Q Let me show you what I've marked as
7 Stanley Thomas Exhibit 2.

8 (At which time, Stanley Thomas Exhibit
9 2, Screen shots of internet pages,
10 consisting of seven pages, was marked
11 for identification by counsel.)

12 Q This is a seven-paged document. I'll
13 represent to you it is a printout of a landing
14 page for Sourceplaza dot com from October 16th
15 2009, again, after the date of your purchase. But
16 my question to you is, does this landing page for
17 Sourceplaza dot com, resemble, in any respect, the
18 one that you saw when you purchased Rosetta Stone
19 software?

20 A Yes.

21 Q And in what way or ways is it similar to
22 what you saw?

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18

1 A Well, it has the price on the right and
2 then it has the Rosetta Stone box, which I thought
3 was the original Rosetta Stone stuff (Indicating).

4 Q And, in fact, as you sit here today, do
5 you remember what purchase price you paid for the
6 Rosetta Stone software?

7 A I believe it was \$89.97, somewhere in
8 that vicinity. After taxes and stuff it ended up
9 being like a hundred and something.

10 Q Okay. Let me show you --

11 A I don't remember.

12 Q Okay. Hang on one second. Let me see
13 if I can refresh your memory.

14 A Okay.

15 (At which time, Stanley Thomas Exhibit
16 3, Email, one page, was marked for
17 identification.)

18 BY MR. ETTINGER

19 Q Let me show you what I've marked as
20 Stanley Thomas Exhibit 3. It's a one-paged e-mail
21 from Diana Stanley to paymenteasy2009 at Gmail dot
22 com.

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19

1 Would you take a look and read that to
2 yourself.

3 A (Witness complied with request.)

4 Yes, yes. That's my e-mail.

5 Q Do you recognize this e-mail?

6 A Yes, I do.

7 Q You said this is your e-mail?

8 A Correct.

9 Q Is that your e-mail address, "flymenu"
10 at Gmail dot com?

11 A "Fly4menu," yes.

12 Q To whom were you sending this e-mail?

13 A Paymenteasy2009.

14 Q And this e-mail reflects that you're
15 requesting a return of the purchase price of \$139?

16 A Correct.

17 Q Does this email refresh your
18 recollection that you paid \$139?

19 A Correct. After taxes and, yup with my
20 phone number.

21 Q Okay.

22 A At the time I still had everything in

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20

1 the box.

2 Q At the time you sent this e-mail?

3 A Correct.

4 Q So you ordered your software from
5 Sourceplaza dot com on the very same day that you
6 did your initial search on Google?

7 A Yes.

8 MR. OBLAK: Objection to form.

9 MR. ETTINGER: Let me try to rephrase it.

10 BY MR. ETTINGER:

11 Q Did you have one or more sessions with
12 the Google search Rosetta Stone before you
13 purchased the software?

14 A Oh, I searched a couple; quite a few.

15 Q Different sites?

16 A Yes.

17 Q But when you made the purchase, was it
18 on the same day as you began the search effort?

19 A Yes.

20 Q And you indicated that you bought from
21 Sourceplaza dot com; correct?

22 A Correct.

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21

1 Q I believe you said you paid \$139 we now
2 know.

3 A Correct.

4 Q At the time that you --

5 MR. ETTINGER: Withdrawn.

6 Q Did you -- how did you pay for the
7 software you ordered from Sourceplaza dot com?

8 A My ATM bank card.

9 Q Okay.

10 A Which came straight out of my checking
11 account.

12 Q At the time that you purchased the
13 Rosetta Stone software through Sourceplaza dot
14 com, did you believe you were buying genuine
15 Rosetta Stone software?

16 A Yes.

17 Q Do you know what counterfeit software is
18 or bootleg software?

19 A Yeah.

20 Q What does that mean to you?

21 A "Bootleg" means that they've either
22 bought it illegally and they're selling it

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22

1 illegally under a fictitious name, and

2 "counterfeit" means it's not the real stuff.

3 Q When you made your purchase from

4 Sourceplaza dot com of Rosetta Stone software, did

5 you intend to buy either counterfeit or bootleg

6 software?

7 A No.

8 Q Did you, in fact, receive software from

9 Sourceplaza?

10 A I did.

11 Q Could you describe for us what you

12 received?

13 A I received this box (Indicating), which

14 is the yellow box, showing Rosetta Stone.

15 Q Could you hold that up?

16 A Hold it up?

17 Q Please hold it up.

18 You're referring now to Exhibit 2?

19 A Yes, sure.

20 Q Please describe it for the record.

21 A Okay. It was in a brown box and then

22 this box, which shows Rosetta Stone with all the -

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EXHIBIT 70

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