

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

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

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

**EXHIBITS TO THE DECLARATION OF JENNIFER L. SPAZIANO IN SUPPORT OF
ROSETTA STONE LTD.'S OMNIBUS MOTION IN LIMINE**

EXHIBITS 2, 6, 7, 8 FILED UNDER SEAL

SPAZIANO
EXHIBIT 1

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support@rosettastone.com

<http://www.rosettastone.com>

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espanolsupport@rosettastone.com

<http://espanol.rosettastone.com>

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UNITED KINGDOM

Contact Information

378 Clapham Road, London SW9 9AR United Kingdom

<http://www.rosettastone.co.uk>

cs@rosettastone.co.uk

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<http://www.rosettastone.co.uk/global/support/>

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GERMANY

Contact Information

Theresie, Franziska-Bilek-Weg, 80339 Munich

<http://www.rosettastone.de>

cs.de@rosettastone.de

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JAPAN

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<http://www.rosettastone.co.jp>

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KOREA

Contact Information

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**SPAZIANO
EXHIBIT 2**

**EXHIBIT FILED
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**SPAZIANO
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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(Alexandria Division)

ROSETTA STONE LTD.

Plaintiff,

v.

GOOGLE INC.

Defendant.

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

**DEFENDANT GOOGLE INC.'S RESPONSES TO PLAINTIFF
ROSETTA STONE LTD.'S FIRST SET OF INTERROGATORIES**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure and Local Rule 26(c), Defendant Google Inc. ("Google") hereby responds to Plaintiff Rosetta Stone Ltd.'s ("Rosetta Stone") First Set of Interrogatories ("the Interrogatories") to Defendant Google Inc.

Objections Applicable to Rosetta Stone's Instructions, Definitions, And All Requests

Google objects to each of the Interrogatories on each and every one of the following grounds, which are incorporated into and made a part of Google's response to each and every individual request:

1. Google objects to the Interrogatories on the grounds that they seek to impose obligations upon Google not required by the Federal Rules of Civil Procedure.
2. Google objects to the Interrogatories on the ground that they call for information that is not relevant to the subject matter of the pending action, nor reasonably calculated to lead to the discovery of admissible evidence, including to the extent they call for information before July 10, 2004. Google's responses to these interrogatories will be limited to information after July 10, 2004.

4. Google objects to the Interrogatories to the extent that they call for the disclosure of information subject to the attorney-client privilege, the attorney-work product doctrine, or any other applicable privilege.

5. Google objects to the Interrogatories on the grounds that they seek information protected by the right to privacy under state and/or federal laws.

6. Rosetta Stone objects to the Interrogatories to the extent that they seek information that is not known by it after making reasonable inquiries regarding the information.

OBJECTIONS AND RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1:

With respect to Google's "Third Affirmative Defense: First Sale Doctrine," set forth in its Answer in this lawsuit, state all facts that support Google's averment that "the claims made in this Complaint are barred, in whole or in part, by the first sale doctrine," and identify all persons with knowledge of this affirmative defense, as well as the substance of each such person's knowledge.

RESPONSE TO INTERROGATORY NO. 1:

Google objects to this Interrogatory on the grounds that it (i) is premature, in that it seeks full information about Google's affirmative defenses at this early stage of discovery; and (ii) to the extent that this Interrogatory purports to require Google to articulate each and every minute detail which may support the referenced defense, it is overly broad and unduly burdensome.

Subject to and without waiving the foregoing objections, Google responds that many of the Sponsored Link ads appearing for a Google search on a Rosetta Stone trademark are for resellers of genuine Rosetta Stone products. These genuine Rosetta Stone products sold by the advertisers are materially identical to the products that Rosetta Stone itself sells or has previously sold. The first sale doctrine prevents a producer from controlling distribution of its trademarked product beyond the first sale of the product. Thus, the doctrine permits the use of a trademark holder's mark to resell genuine goods that are not materially different from the goods the

trademark holder itself sells. With regard to these advertisers that sell genuine goods not materially different from Rosetta Stone's own goods, their use of Rosetta Stone's marks does not constitute infringement. This includes both authorized Rosetta Stone resellers like Amazon.com and unauthorized resellers of genuine Rosetta Stone products on sites such as eBay.

Pursuant to Fed. R. Civ. Pro. 33(d), Google responds that additional information responsive to this request is available in a spreadsheet Google will produce reflecting the identity of all displayed ads for which an advertiser bid on an alleged Rosetta Stone trademark as a keyword. In addition, Google expects that discovery will reveal agreements between Rosetta Stone and resellers, sales and other agreements to other third party advertisers, and the identity of individuals at Rosetta Stone and advertising entities having knowledge about these facts.

INTERROGATORY NO. 2:

With respect to Google's "Fourth Affirmative Defense: Functionality," set forth in its Answer in this lawsuit, state all facts that support Google's averment that "the claims made in the Complaint are barred, in whole or in part, on the basis that any marks at issue are functional," including but not limited to all facts that support the conclusion that any of the Rosetta Stone Marks are functional. In particular, identify each Rosetta Stone Mark you contend is functional and identify all persons with knowledge of this affirmative defense, as well as the substance of each such person's knowledge.

RESPONSE TO INTERROGATORY NO. 2:

Google objects to this Interrogatory on the grounds that it (i) is premature, in that it seeks full information about Google's affirmative defenses at this early stage of discovery; and (ii) to the extent that this Interrogatory purports to require Google to articulate each and every minute detail which may support the referenced defense, it is overly broad and unduly burdensome.

Subject to and without waiving the foregoing objections, Google responds that all of Rosetta Stone's alleged trademarks are functional to the extent Rosetta Stone asserts that the use of any of its alleged marks as a keyword constitutes an infringing use. All of Rosetta Stone's

alleged marks are functional in the keyword context because they serve an indexing function that is separate and apart from use as a trademark.

Daniel Dulitz and Jonathan Alferness are the persons most knowledgeable of how words serve an indexing function in Google's advertising programs. In addition, Google expects that further discovery, including review of Rosetta Stone's still-incomplete document production and depositions of its employees, will reveal additional facts and persons with knowledge of this defense.

INTERROGATORY NO. 3:

With respect to Google's "Seventh Affirmative Defense: Laches," set forth in its Answer in this lawsuit, state all facts that support Google's averment that "Plaintiff's claims are barred by the doctrine of laches," including but not limited to what Rosetta Stone allegedly failed to do that supports this averment and what prejudice or harm Google has suffered as a result thereof, and identify all persons with knowledge of this affirmative defense, as well as the substance of each such person's knowledge.

RESPONSE TO INTERROGATORY NO. 3:

Google objects to this Interrogatory on the grounds that it (i) is premature in that it seeks full information about Google's affirmative defenses at this early stage of discovery; and (ii) to the extent that this Interrogatory purports to require Google to articulate each and every minute detail which may support the referenced defense, it is overly broad and unduly burdensome.

Subject to and without waiving the foregoing objections, Google responds that, in April of 2004, Google announced a change in its advertising program policies regarding the use of trademarks as keywords. Pursuant to that policy, Google would no longer disable upon request and investigation advertising by advertisers who bid on alleged trademarks as keywords. Alana Karen has knowledge of that policy change, its announcement generally, and its announcement to Google's advertisers.

Notwithstanding Google's express public policy concerning use of trademarks as keywords and Rosetta Stone's status as an AdWords customer since 2002, Rosetta Stone did not file suit against Google until July 10, 2009. During the intervening time, Google has invested significant resources in developing its advertising programs and in enforcing its trademark policies, including enforcing its trademark policies when advertisers have improperly used the alleged Rosetta Stone trademarks. Alana Karen and Rose Hagan are the persons most knowledgeable of the investment of such resources and implementation of Google's trademark policies.

Currently, Google believes that persons identified in Rosetta Stone's Answers to Interrogatories No. 1 and 2 have additional information that will support Google's defense. In addition, Google expects that further discovery, including review of Rosetta Stone's still-incomplete document production and depositions of its employees, will reveal additional facts and persons with knowledge of this defense.

INTERROGATORY NO. 4:

With respect to Google's "Eighth Affirmative Defense: Generic Terms," set forth in its Answer in this lawsuit, state all facts that support Google's averment that "The claims made in the Complaint are barred, in whole or in part, on the basis that some or all marks at issue are generic." In particular, identify which of the Rosetta Stone Marks you assert are generic and identify all persons with knowledge of this affirmative defense as well as the substance of each such person's knowledge.

RESPONSE TO INTERROGATORY NO. 4:

Google objects to this Interrogatory on the grounds that it (i) is premature, in that it seeks full information about Google's affirmative defenses at this early stage of discovery; (ii) improperly seeks the disclosure of expert testimony before such disclosure is required; and (iii) to the extent that this Interrogatory purports to require Google to articulate each and every

minute detail which may support the referenced defense, it is overly broad and unduly burdensome.

Subject to and without waiving the foregoing objections, Google responds that several of Rosetta Stone's alleged trademarks are generic and therefore invalid. These include: "Global Traveler," "Language Library," "Dynamic Immersion," "Sharedtalk," "Totale," and "Audio Companion." This is evident from the use that other entities make of these words, for example, through Internet search engine results and the dictionary meanings of these words, considered along with how Rosetta Stone uses these marks. For example, Rosetta Stone's website invites consumers to learn about Rosetta Stone's "unique dynamic immersion method."

<http://www.rosettastone.com/personal/how-it-works>.

In addition to expert testimony on this subject, Google expects that further discovery, including review of Rosetta Stone's still-incomplete document production and depositions of its employees, will reveal additional facts and persons with knowledge of this defense.

INTERROGATORY NO. 5:

With respect to Google's "Tenth Affirmative Defense: Waiver, Acquiescence and Estoppel," set forth in its Answer in this lawsuit, state all facts that support Google's averment that "Each of the purported claims set forth in the Complaint is barred, by the doctrines of waiver, acquiescence, and estoppel," including but not limited to: (a) what conduct, actions and communications by Rosetta Stone support this averment; (b) how Google relied on such conduct, actions and communications; and (c) what prejudice or harm Google has suffered as a result thereof. In addition, identify all persons with knowledge of these affirmative defense, as well as the substance of each such person's knowledge.

RESPONSE TO INTERROGATORY NO. 5:

Google objects to this Interrogatory on the grounds that it (i) is premature, in that it seeks full information about Google's affirmative defenses at this early stage of discovery; and (ii) to the extent that this Interrogatory purports to require Google to articulate each and every minute detail which may support the referenced defense, it is overly broad and unduly burdensome.

Subject to and without waiving the foregoing objections, Google hereby incorporates by reference its response to Interrogatory No. 3. Further, Google responds that since 2002, Rosetta Stone has advertised through Google's advertising programs, has had actual and constructive knowledge of Google's trademark policies and practices with respect to the Rosetta Stone marks, and has had extensive communications with Google. Pursuant to Rule 33(d), Google refers Rosetta Stone to documents that Google has produced which reflect and/or refer to those communications and persons with knowledge of them. Notwithstanding this extensive history between the parties (which did not include any indication by Google that it would consider changing the application of its trademark policies to the Rosetta Stone trademarks), and Rosetta Stone's continued advertising through Google's advertising programs pursuant to Google's policies, until July 2009, Rosetta Stone did not commence any legal action against Google. Rosetta Stone's inaction thus led Google to believe that Rosetta Stone did not believe that Google's actions were harming Rosetta Stone or infringing its rights. Google employees Alana Karen, Terri Chen, Bill Lloyd, Mickey Ryder, and Cory Louie have information about this topic.

In addition, during the time period Rosetta Stone complains of, it had agreements with resellers to resell Rosetta Stone products and with affiliates to drive traffic to Rosetta Stone's website. Indeed, according to documents produced by Rosetta Stone, Rosetta Stone expressly approved certain of its affiliates to bid on its alleged trademarks as keywords. Currently, it appears that April Garvey, Daavi Zain, and Bernard Hamman of Rosetta Stone have information about this subject, and that the persons identified in Rosetta Stone's Answers to Interrogatories No. 1 and 2 have additional information that will support Google's defense. In addition, Google expects that further discovery, including review of Rosetta Stone's still-incomplete document

production and depositions of its employees, will reveal additional facts and persons with knowledge of this defense.

INTERROGATORY NO. 6:

With respect to Google’s “Fourteenth Affirmative Defense: Unclean Hands,” set forth in its Answer in this lawsuit, state all facts that support Google’s averment that “Plaintiff’s claims are barred by the doctrine of unclean hands,” including but not limited to what misconduct Rosetta Stone engaged in that supports this averment and what personal injury or harm Google has suffered as a result thereof, and identify all persons with knowledge of this affirmative defense, as well as the substance of each such person’s knowledge.

RESPONSE TO INTERROGATORY NO. 6:

Google objects to this Interrogatory on the grounds that it (i) is premature, in that it seeks full information about Google’s affirmative defenses at this early stage of discovery; and (ii) to the extent that this Interrogatory purports to require Google to articulate each and every minute detail which may support the referenced defense, it is overly broad and unduly burdensome.

Subject to and without waiving the foregoing objections, Google responds that Rosetta Stone has been using its alleged trademarks in an anticompetitive way to prohibit advertisers from using those marks to fairly refer to products and services and to hinder consumer access to competitive and other information. This includes Rosetta Stone’s attempts to use trademark law to prohibit its resellers from advertising genuine Rosetta Stone products. In addition, Google expects that further discovery, including review of Rosetta Stone’s still-incomplete document production and depositions of its employees, will reveal additional facts and persons with knowledge of this defense.

INTERROGATORY NO. 7:

With respect to Google’s “Seventeenth Affirmative Defense: Failure to Mitigate,” set forth in its Answer in this lawsuit, state all facts that support Google’s averment that “The claims made in the Complaint are barred, in whole or in part, because of a failure to mitigate damages, if such damages exist, “including but not limited to what steps Rosetta Stone allegedly failed to take to mitigate its damages and the effect that such failures allegedly caused on Rosetta Stone’s

claim for damages, and identify all persons with knowledge of this affirmative defense, as well as the substance of each such person's knowledge.

RESPONSE TO INTERROGATORY NO. 7:

Google objects to this Interrogatory on the grounds that it is premature, in that it (i) seeks full information about Google's affirmative defenses at this early stage of discovery; (ii) improperly seeks the disclosure of expert testimony before such disclosure is required; and (iii) to the extent that this Interrogatory purports to require Google to articulate each and every minute detail which may support the referenced defense, it is overly broad and unduly burdensome.

Subject to and without waiving the foregoing objections, Google responds that assuming for purposes of this Interrogatory Response that liability is found, Rosetta Stone failed to use all ordinary care and make all reasonable exertions to render the alleged injury to it as light as possible. Rosetta Stone could have reduced the amount of its claimed damages by: enforcing contractual agreements with resellers and affiliates not to advertise using Rosetta Stone's alleged trademarks; taking legal actions against any advertisers whose advertising is at issue in this action; taking legal actions against advertisers and/or Google as soon as Rosetta Stone first became aware of the practices about which it complains; not participating in Google's advertising program; not bidding as high as it did to place advertisements through Google; not using affiliates; not using resellers; and not bidding to have more than one Rosetta Stone ad appear in response to any given search query.

Google further responds that Rosetta Stone's retained damages expert James E. Malackowski appears to have knowledge related to Rosetta Stone's ability to enforce its own policies with its resellers and affiliates as he assumes Rosetta Stone will be 100% effective in mitigating all damages arising from any use of the alleged trademarks by Rosetta Stone's

resellers and affiliates. *See* Expert Report of James E. Malackowski, December 14, 2009, p. 17 (“Therefore, post-September 2008, I have assumed that 0% of affiliates utilized Rosetta Stone branded paid search terms.”).

In addition, Google expects that further discovery, including review of Rosetta Stone’s still-incomplete document production and depositions of its employees, will reveal additional facts and persons with knowledge of this defense.

INTERROGATORY NO. 8:

With respect to Google’s “Twentieth Affirmative Defense: Fraud,” set forth in its Answer in this lawsuit, state all facts that support Google’s averment that “The claims made in the Complaint are barred, in whole or in part, by fraud on the United States Patent and Trademark Office.” In particular, identify which of the Rosetta Stone Marks were prosecuted and/or obtained through fraud on the United States Patent & Trademark Office; the exact fraudulent conduct committed, including why such conduct constituted fraud, and identify all person with knowledge of this affirmative defense, as well as the substance of their knowledge.

RESPONSE TO INTERROGATORY NO. 8:

Google objects to this Interrogatory on the grounds that it (i) is premature, in that it seeks full information about Google’s affirmative defenses at this early stage of discovery; and (ii) to the extent that this Interrogatory purports to require Google to articulate each and every minute detail which may support the referenced defense, it is overly broad and unduly burdensome.

Subject to and without waiving the foregoing objections, Google responds that given the generic and descriptive nature of several of Rosetta Stone’s alleged trademarks, those marks may have been obtained by fraud. Google expects that Rosetta Stone employee Jeanne May is likely to have information related to the registration of Rosetta Stone’s alleged trademarks and that further discovery, including review of Rosetta Stone’s still-incomplete document production and depositions of its employees, will reveal facts and persons with knowledge of this defense.

INTERROGATORY NO. 9:

With respect to Google's "Twenty-First Affirmative Defense: Abandonment," set forth in its Answer in this lawsuit, state all facts that support Google's averment that "The claims made in the Complaint are barred, in whole or in part, by abandonment of any marks at issue." In particular, identify which of the Rosetta Stone Marks you assert have been abandoned and all persons with knowledge of this affirmative defense, as well as the substance of each such person's knowledge.

RESPONSE TO INTERROGATORY NO. 9:

Google objects to this Interrogatory on the grounds that it (i) is premature, in that it seeks full information about Google's affirmative defenses at this early stage of discovery; and (ii) to the extent that this Interrogatory purports to require Google to articulate each and every minute detail which may support the referenced defense, it is overly broad and unduly burdensome.

Subject to and without waiving the foregoing objections, Google expects that further discovery, including review of Rosetta Stone's still-incomplete document production and depositions of its employees, will reveal facts and persons with knowledge of this defense.

INTERROGATORY NO. 10:

With respect to Google's "Twenty-Second Affirmative Defense: Third-Party Use," set forth in its Answer in this lawsuit, state all facts that support Google's averment that "The claims made in the Complaint are barred, in whole or in part, by reason of other parties' use of any marks at issue." In particular, identify all third parties whose use of Rosetta Stone marks you contend form the basis for this affirmative defense; describe the exact use such third parties made of the Rosetta Stone Marks; and identify all persons with the knowledge of this affirmative defense, as well as the substance of each such person's knowledge.

RESPONSE TO INTERROGATORY NO. 10:

Google objects to this Interrogatory on the grounds that it (i) is premature, in that it seeks full information about Google's affirmative defenses at this early stage of discovery; and (ii) to the extent that this Interrogatory purports to require Google to articulate each and every minute detail which may support the referenced defense, it is overly broad and unduly burdensome.

Subject to and without waiving the foregoing objections, Google responds that the choice to advertise through Google's advertising programs, including which keywords to bid on, what to title an ad, the creative text of the ad, and the landing page associated with the ad, is made exclusively by third party advertisers. Google advises all of its advertisers that they are responsible for ensuring that their ads do not infringe the rights of any other party. Facts relating to third parties who advertised through Google's advertising programs using an alleged Rosetta Stone trademark as a keyword are reflected in a spreadsheet that will be produced by Google. Pursuant to Rule 33(d), Google refers Rosetta Stone to that spreadsheet, and identifies David Baker as having knowledge about the data it reflects.

INTERROGATORY NO. 11:

Identify each communication made by Google in connection with this lawsuit by which it instructed any of its officers, directors, employees, contractors, agents or other persons to retain documents concerning this lawsuit and/or the events, conduct, incidents or factual averments set forth in the Complaint or Answer in this lawsuit, or otherwise implemented a "litigation hold" for this lawsuit. In particular, identify each person to whom such communication was directed, including that person's title or position, and the date(s) on which each such person received such communication.

RESPONSE TO INTERROGATORY NO. 11:

Google objects to this Interrogatory on the grounds that it (i) seeks information protected by the attorney-client privilege, attorney work-product doctrine, or other applicable privilege; and (ii) is neither relevant to the claim or defense of any party nor reasonably calculated to lead to the discovery of admissible evidence.

For the reasons stated above, Google does not respond further to this interrogatory.

INTERROGATORY NO. 12:

Identify each person from whom Google has collected and reviewed documents for possible production in connection with this lawsuit, including the person's title or position.

RESPONSE TO INTERROGATORY NO. 12:

Google objects to this Interrogatory on the grounds that it (i) seeks information protected by the attorney-client privilege, attorney work-product doctrine, or other applicable privilege; and (ii) is neither relevant to the claim or defense of any part nor reasonably calculated to lead to the discovery of admissible evidence.

For the reasons stated above, Google does not respond further to this interrogatory.

INTERROGATORY NO. 13:

Identify each person who was responsible for or took part in identifying and/or collecting documents from the persons identified in response to Interrogatory No. 12 above or any other source for possible production in response to any document production request from Rosetta Stone in this lawsuit, including that person's title or position, and describe in detail their responsibility for and/or actions they took relating to such document identification/collection effort.

RESPONSE TO INTERROGATORY NO. 13:

Google objects to this Interrogatory on the grounds that it (i) seeks information protected by the attorney-client privilege, attorney work-product doctrine, or other applicable privilege; and (ii) is neither relevant to the claim or defense of any part nor reasonably calculated to lead to the discovery of admissible evidence.

For the reasons stated above, Google does not respond further to this interrogatory.

INTERROGATORY NO. 14:

Identify each database under the custody or control of Google that was reviewed and/or searched in order to identify and/or collect documents that might be responsive to any document production request from Rosetta Stone in this lawsuit and the search criteria and/or search terms used to conduct that review and/or search.

RESPONSE TO INTERROGATORY NO. 14:

Google objects to this Interrogatory on the grounds that it (i) seeks information protected by the attorney-client privilege, attorney work-product doctrine, or other applicable privilege; (ii) is neither relevant to the claim or defense of any part nor reasonably calculated to lead to the

discovery of admissible evidence; and (iii) is vague and ambiguous in its instructions to “[i]dentify each database.”

For the reasons stated above, Google does not respond further to this interrogatory.

INTERROGATORY NO. 15:

For the period February 1, 2002 through the present, identify each person who was ever responsible for, in charge of or had a non-clerical role concerning Rosetta Stone’s advertising on or through the Google AdWord’s Program, including but not limited to each such person’s job title; a brief description of each such person’s responsibilities; and, if not currently an employee of Google, the current or last known address for that person.

RESPONSE TO INTERROGATORY NO. 15:

Google objects to this Interrogatory on the grounds that it is overly broad and unduly burdensome; (ii) is neither relevant to the claim or defense of any part nor reasonably calculated to lead to the discovery of admissible evidence to the extent it asks for information prior to July 10, 2004; and (iii) is vague and ambiguous, overly broad and unduly burdensome with regard to the phrases “in charge of” and “had a non-clerical role concerning Rosetta Stone’s advertising on or through the Google AdWord’s Program.”

Subject to and without waiving the foregoing objections, Google responds that following individuals are or were Customer Service Representatives dedicated to Rosetta Stone’s advertising account with Google:

Christina Aguiar
Fred Perrotta
Greg Kaye
Tara Conrad
Julia Burg
Suzy Nicoletti
Lacey Schnell
Jennifer King
Brian Wright
Fiona Sortor

INTERROGATORY NO. 16:

For the period February 1, 2002 through the present, identify each person who was ever responsible for, in charge of or had a non-clerical role relating to the training of Google employees who assisted Google advertisers in their advertising on or through the Google AdWords Program, including but not limited to each such person's job title; a brief description of each such person's responsibilities; and, if not currently an employee of Google, the current or last known address for that person.

RESPONSE TO INTERROGATORY NO. 16:

Google objects to this Interrogatory on the grounds that it (i) is overly broad and unduly burdensome to the extent it requests information about each person who has been involved with training Google advertising employees, each person "responsible for" Google advertising employees, each person "in charge of" Google advertising employees, and information about every employee who "assisted Google advertisers in their advertising"; (ii) is neither relevant to the claim or defense of any part nor reasonably calculated to lead to the discovery of admissible evidence to the extent it asks for information prior to July 10, 2004 and asks for information that does not relate to Rosetta Stone, including the identification of every person involved in training Google employees who assisted every one of Google's advertisers; and (iii) is vague and ambiguous, overly broad and unduly burdensome with regard to the phrases "in charge of" and "had a non-clerical role relating to the training of Google employees who assisted Google advertisers in their advertising on or through the Google AdWords Program."

Subject to and without waiving the foregoing objections, Google identifies the following individuals who worked in the group responsible for AdWords training at some time since 2004:

Ian Stuart
Scott MaCarthy
Justin Vinluan
Dustin Cu
Adam Varro
Jenny Blake
Allison Hobbs
Seth Marbin

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing **Defendant Google Inc.'s Responses to Plaintiff Rosetta Stone Ltd.'s First Interrogatories** was transmitted via electronic-mail and first-class mail, this 20th day of January, 2010, to:

Terence P. Ross
Crowell Moring
1001 Pennsylvania Ave., N.W.
Washington, D.C. 20004-2595
Phone: 202-624-2645
Fax: 202-628-5116
Email: tross@crowell.com

Counsel for Plaintiff Rosetta Stone Ltd.

/s/
Cheryl A. Galvin

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

ROSETTA STONE LTD.

Plaintiff,

v.

GOOGLE INC.

Defendant.

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

VERIFICATION OF TERRI CHEN

I, Terri Chen, declare:

I am Senior Trademark Counsel at Google Inc. ("Google"). I am authorized to execute this verification on behalf of Google. I have read Defendant Google Inc.'s Responses to Plaintiff Rosetta Stone Ltd.'s First Set of Interrogatories. The responses contained therein are true and correct to the best of my knowledge.

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

Executed this 20th day of January, 2010, at Mountain View, California.



Terri Chen

SPAZIANO
EXHIBIT 4

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Table of Contents

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

FORM 10-K

(Mark One)

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

For the fiscal year ended December 31, 2009

OR

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

Commission file number: 000-50726

Google Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

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

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

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

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

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

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

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

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

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

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

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

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

accelerated filer or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer Accelerated filer Non-accelerated filer Smaller reporting company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

At June 30, 2009, the aggregate market value of shares held by non-affiliates of the registrant (based upon the closing sale price of such shares on The Nasdaq Global Select Market on June 30, 2009) was \$97,782,305,918.

At January 29, 2010, there were 243,872,592 shares of the registrant's Class A common stock outstanding and 74,106,699 shares of the registrant's Class B common stock outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's Proxy Statement for the 2010 Annual Meeting of Stockholders are incorporated herein by reference in Part III of this Annual Report on Form 10-K to the extent stated herein. Such proxy statement will be filed with the Securities and Exchange Commission within 120 days of the registrant's fiscal year ended December 31, 2009.

Table of Contents

Google Inc.
CONSOLIDATED BALANCE SHEETS
(In thousands, except par value per share)

	<u>As of December 31,</u>	
	<u>2008</u>	<u>2009</u>
Assets		
Current assets:		
Cash and cash equivalents	\$ 8,656,672	\$10,197,588
Marketable securities	7,189,099	14,287,187
Accounts receivable, net of allowance of \$80,086 and \$78,884	2,642,192	3,178,471
Deferred income taxes, net	286,105	644,406
Income taxes receivable, net	—	23,244
Prepaid revenue share, expenses and other assets	1,404,114	836,062
Total current assets	20,178,182	29,166,958
Prepaid revenue share, expenses and other assets, non-current	433,846	416,119
Deferred income taxes, net, non-current	—	262,611
Non-marketable equity securities	85,160	128,977
Property and equipment, net	5,233,843	4,844,610
Intangible assets, net	996,690	774,938
Goodwill	4,839,854	4,902,565
Total assets	\$31,767,575	\$40,496,778
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable	\$ 178,004	\$ 215,867
Accrued compensation and benefits	811,643	982,482
Accrued expenses and other current liabilities	480,263	570,080
Accrued revenue share	532,547	693,958
Deferred revenue	218,084	285,080
Incomes taxes payable, net	81,549	—
Total current liabilities	2,302,090	2,747,467
Deferred revenue, non-current	29,818	41,618
Income taxes payable, net, non-current	890,115	1,392,468
Deferred income taxes, net, non-current	12,515	—
Other long-term liabilities	294,175	311,001
Commitments and contingencies		
Stockholders' equity:		
Convertible preferred stock, \$0.001 par value, 100,000 shares authorized; no shares issued and outstanding	—	—
Class A and Class B common stock, \$0.001 par value per share: 9,000,000 shares authorized; 315,114 (Class A 240,073, Class B 75,041) and par value of \$315 (Class A \$240, Class B \$75) and 317,772 (Class A 243,611, Class B 74,161) and par value of \$318 (Class A \$244, Class B \$74) shares issued and outstanding, excluding 26 and zero Class A shares subject to repurchase at December 31, 2008 and 2009	315	318
Additional paid-in capital	14,450,338	15,816,738
Accumulated other comprehensive income	226,579	105,090
Retained earnings	13,561,630	20,082,078
Total stockholders' equity	28,238,862	36,004,224
Total liabilities and stockholders' equity	\$31,767,575	\$40,496,778

See accompanying notes.

Table of Contents

Google Inc.

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

	Year Ended December 31,		
	<u>2007</u>	<u>2008</u>	<u>2009</u>
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 5**

10-K 1 a2197162z10-k.htm 10-K

Use these links to rapidly review the document

[TABLE OF CONTENTS](#)[INDEX TO CONSOLIDATED FINANCIAL STATEMENTS](#)[Table of Contents](#)

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

Form 10-K

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

For the fiscal year ended December 31, 2009

Commission file number: 1-34283

Rosetta Stone Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State of incorporation)

043837082
(I.R.S. Employer Identification No.)

1919 North Lynn St., 7th Fl,
Arlington, Virginia
(Address of principal executive offices)

22209
(Zip Code)

Registrant's telephone number, including area code:
800-788-0822

Securities Registered Pursuant to Section 12(b) of the Act:

Title of Each Class	Name of Each Exchange on Which Registered
Common Stock, par value \$0.00005 per share	New York Stock Exchange

Securities Registered Pursuant to Section 12(g) of the Act:
None

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 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 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-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large Accelerated filer Accelerated filer Non-accelerated filer Smaller reporting company
(Do not check if a smaller reporting company)

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes No

The aggregate market value of the common stock held by non-affiliates of the registrant was approximately \$300 million as of June 30, 2009 (based on the last sale price of such stock as quoted on the New York Stock Exchange).

As of March 2, 2010, there were 20,251,027 shares of common stock outstanding.

Documents incorporated by reference: Portions of the definitive Proxy Statement to be delivered to stockholders in connection with the 2010 Annual Meeting of Stockholders to be held on May 26, 2010 are incorporated by reference into Part III.

Table of Contents

ROSETTA STONE INC.
CONSOLIDATED BALANCE SHEETS
(in thousands, except per share amounts)

	<u>As of December 31.</u>	
	<u>2009</u>	<u>2008</u>
Assets		
Current assets:		
Cash and cash equivalents	\$ 95,188	\$ 30,626
Restricted cash	50	34
Accounts receivable (net of allowance for doubtful accounts of \$1,349 and \$1,103, respectively)	37,400	26,497
Inventory, net	8,984	4,912
Prepaid expenses and other current assets	7,447	6,598
Deferred income taxes	6,020	2,282
Total current assets	<u>155,089</u>	<u>70,949</u>
Property and equipment, net	18,374	15,727
Goodwill	34,838	34,199
Intangible assets, net	10,704	10,645
Deferred income taxes	5,565	6,828
Other assets	872	470
Total assets	<u>\$ 225,442</u>	<u>\$ 138,818</u>
Liabilities and stockholders' equity		
Current liabilities:		
Accounts payable	\$ 1,605	\$ 3,207
Accrued compensation	10,463	8,570
Other current liabilities	25,638	20,021
Deferred revenue	24,291	14,382
Income tax payable	4,184	1,332
Current maturities of long-term debt—related party (Note 9)	—	4,250
Total current liabilities	<u>66,181</u>	<u>51,762</u>
Long-term debt—related party (Note 9)		5,660
Deferred revenue	1,815	1,362
Other long-term liabilities	1,011	963
Total liabilities	<u>69,007</u>	<u>59,747</u>
Commitments and contingencies (Note 14)		
Stockholders' equity:		
Class A, Series A-1 Convertible Preferred Stock, \$0.001 par value; zero and 269 shares authorized; zero and 269 shares issued and outstanding, liquidation preference of zero and \$26,876 at December 31, 2009 and December 31, 2008, respectively	—	26,876
Class A, Series A-2 Convertible Preferred Stock, \$0.001 par value; zero and 178 shares authorized; zero and 178 shares issued and outstanding, liquidation preference of zero and \$17,820 at December 31, 2009 and December 31, 2008, respectively	—	17,820
Class B Convertible Preferred Stock, \$0.001 par value; zero and 115 shares authorized; zero and 111 issued and outstanding, liquidation preference of zero and \$11,341 at December 31, 2009 and 2008, respectively	—	11,341
Preferred Stock, \$0.001 par value; 10,000 and zero shares authorized; zero and zero shares issued and outstanding at December 31, 2009 and December 31, 2008, respectively	—	—
Class A Convertible Common Stock, \$0.00005 par value; zero and 900 shares authorized; zero and zero shares issued and outstanding at December 31, 2009 and 2008, respectively	—	—
Class B Convertible Common Stock, \$0.00005 par value; zero and 20,000 shares authorized; zero and zero shares issued and outstanding at December 31, 2009 and 2008, respectively	—	—
Non-designated common stock, \$0.00005 par value, 190,000 and 39,100 shares authorized, 20,440 and 1,936 shares issued and outstanding at December 31, 2009 and December 31, 2008, respectively	2	1
Additional paid-in capital	130,872	10,814
Accumulated income	25,785	12,422
Accumulated other comprehensive loss	(224)	(203)
Total stockholders' equity	<u>156,435</u>	<u>79,071</u>
Total liabilities and stockholders' equity	<u>\$ 225,442</u>	<u>\$ 138,818</u>

See accompanying notes to consolidated financial statements.

F-3

Table of Contents

ROSETTA STONE INC.

CONSOLIDATED STATEMENTS OF OPERATIONS

(in thousands except per share amounts)

	Year Ended December 31.		
	2009	2008	2007
Revenue:			
Product	\$ 218,549	\$ 184,182	\$ 119,897
Subscription and service	33,722	25,198	17,424
Total revenue	<u>252,271</u>	<u>209,380</u>	<u>137,321</u>
Cost of revenue:			
Cost of product revenue	30,264	26,539	19,055
Cost of subscription and service revenue	3,163	2,137	1,632
Total cost of revenue	<u>33,427</u>	<u>28,676</u>	<u>20,687</u>
Gross profit	<u>218,844</u>	<u>180,704</u>	<u>116,634</u>
Operating expenses			
Sales and marketing	114,899	93,384	65,437
Research and development	26,239	18,387	12,893
General and administrative	57,174	39,577	29,786
Lease abandonment	—	1,831	—
Total operating expenses	<u>198,312</u>	<u>153,179</u>	<u>108,116</u>
Income from operations	<u>20,532</u>	<u>27,525</u>	<u>8,518</u>
Other income and expense:			
Interest income	159	454	673
Interest expense	(356)	(891)	(1,331)
Other income	112	239	154
Total other income (expense)	<u>(85)</u>	<u>(198)</u>	<u>(504)</u>
Income before income taxes	20,447	27,327	8,014
Income tax provision	7,084	13,435	5,435
Net income	<u>13,363</u>	<u>13,892</u>	<u>2,579</u>
Preferred stock accretion	—	—	(80)
Net income attributable to common shareholders	<u>\$ 13,363</u>	<u>\$ 13,892</u>	<u>\$ 2,499</u>
Net income per share attributable to common stockholders:			
Basic	<u>\$ 0.89</u>	<u>\$ 7.29</u>	<u>\$ 1.47</u>
Diluted	<u>\$ 0.67</u>	<u>\$ 0.82</u>	<u>\$ 0.15</u>
Common shares and equivalents outstanding:			
Basic weighted average shares	<u>14,990</u>	<u>1,905</u>	<u>1,702</u>
Diluted weighted average shares	<u>19,930</u>	<u>16,924</u>	<u>16,533</u>

See accompanying notes to consolidated financial statements.

**SPAZIANO
EXHIBIT 6**

**EXHIBIT FILED
UNDER SEAL**

**SPAZIANO
EXHIBIT 7**

**EXHIBIT FILED
UNDER SEAL**

**SPAZIANO
EXHIBIT 8**

**EXHIBIT FILED
UNDER SEAL**

SPAZIANO
EXHIBIT 9

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

ROSETTA STONE LTD.

Plaintiff,

v.

GOOGLE INC.

Defendant.

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

DEFENDANT GOOGLE'S SUPPLEMENTAL INITIAL DISCLOSURES

Pursuant to Rule 26 of the Federal Rules of Civil Procedure, Defendant Google Inc. ("Google") makes the following supplemental initial disclosures. Google reserves the right, pursuant to Federal Rule of Civil Procedure 26(e), to supplement these disclosures.

INTRODUCTORY STATEMENT

The following disclosures are made based on the information reasonably available to Google as of the date hereof. By making these disclosures, Google does not represent that it is identifying every document, tangible thing, or witness possibly relevant to this lawsuit. Nor does Google waive its right to object to production of any document or tangible thing disclosed herein on the basis of any privilege, the work-product doctrine, relevancy, undue burden, or any other valid ground for objection. Rather, Google's disclosures represent a good-faith effort to identify the information required under Rule 26(a)(1).

Persons who are not now officers, directors, or managing agents of Google may have information relevant to this lawsuit. Google does not purport in these disclosures to make disclosures on behalf of, or based on the information available to, any such person.

Finally, Google makes these disclosures without in any way waiving:

1. The right to object on the grounds of competency privilege, relevancy, materiality, hearsay, or any other proper ground, to the use, in whole or in part for any purpose, of any information disclosed herein in any subsequent proceeding in this action or any other action;

2. The right to object on any and all grounds at any time to any other discovery request or proceeding involving or relating to the subject matter of these disclosures, including without limitation, objections on the basis of any privilege, the work product doctrine, relevancy, or undue burden;

3. The right to object to the production of any document or tangible thing disclosed in these disclosures on the basis of a privilege or other valid objection; and

4. The right to object to the production of any document or tangible thing disclosed in these disclosures on the basis of confidentiality, absent an appropriate protective order.

All of the disclosures set forth below are made subject to the above objections and qualifications.

1. Rule 26(a)(1)(A): Witnesses

For many of the subjects listed below, there may be numerous persons who have some knowledge of discoverable information. Google has identified those persons likely to have discoverable information that Google may use to support its claims or defenses who Google presently believes are most knowledgeable about the listed subjects, but Google reserves its right to supplement these disclosures as discovery progresses. Google employees or former employees, including those identified below, may be contacted only through Google counsel.

Name	Subjects
Christina Aguiar	Information relating to Rosetta Stone's advertising account, including Rosetta Stone's bidding on competitors' trademarks.
Jonathan Alferness	Information regarding the general functionality of the Google AdWords auction and the Smart Ad Selection System.
David Baker	Information regarding data from Google's AdWords database relating to the keyword "Rosetta Stone" or variants thereof, including impressions, click through rates, and money owed to Google as a result of such clicks; information regarding Google's ad approval process.
Terri Chen	Information regarding Google's trademark policies.
Edward Chiang	Information regarding the functionality of the current AdWords keyword tool.
Sanjay Datta	Information relating to Google's finances generally, including revenues and profits generated by AdWords.
Daniel Dulitz	Information relating to the functionality and appearance of "Sponsored Links," including non-privileged consumer research relating thereto.
Baris Gultekin	Information regarding the legacy functionality of the AdWords keyword tool; information regarding the development, functionality and performance of Google's current automated ad approval system.
Rose Hagan	Information concerning Google's U.S. trademark policies relating to its AdWords program.
Richard Holden	Information regarding implementation of the AdWords program, including information regarding the implementation of automated tools Google provides to advertisers.
Alana Karen	Information concerning the 2004 trademark policy, AdWords advertisers and advertisements, and the implementation of the Google AdWords service.
Bill Lloyd	Google's policies concerning AdWords, Google's review, approval, and disapproval of advertising, including actions Google takes regarding trademark and counterfeiting complaints about ads, including ads using Rosetta Stone trademarks.
Cory Louie	Technology and methodologies generally available to combat fraud

	and abuse, including, but not limited to counterfeiting; Google's efforts to assist Rosetta Stone in combating fraud and abuse through Google programs.
Mickey Ryder	Google's processing of Rosetta Stone's DMCA notices directed to Google, and Google's receipt of unsolicited "spam" emails from third parties claiming to sell Rosetta Stone software at discounted prices.
Nitin Sharma	Information related to quantifying search activity using the alleged Rosetta Stone trademarks; information (including statistics) regarding the frequency with which Google displays ads on the search results page.
Asish Vij	Information related to Google programs used by third party website publishers to record and track user activity on their websites, and information available to AdWords customers via Google Analytics and AdWords Report Center.
Susan Wojcicki	Information regarding Google's business development, values and practices; information regarding Google's trademark policies; general information regarding the operation of the AdWords program.

The above individuals may be contacted only through counsel at Quinn Emanuel Urquhart & Sullivan, 555 Twin Dolphin Drive, 5th Floor, Redwood Shores, California, 94065, (650) 801-5000.

In addition, current or former employees and counsel of Rosetta Stone Limited have information that Google may use to support its defenses, including but not limited to information relating to preclusion, laches, the statute of limitations, fair use, first sale doctrine, functionality, innocent infringement, generic terms, lack of secondary meaning, waiver, acquiescence, estoppel, non-infringement, no causation, no damage, unclean hands, lack of irreparable harm, adequacy of remedy at law, failure to mitigate, first amendment, duplicative claims, fraud, abandonment, third-party use, actions of others and no punitive damages. At this time, Google believes the following Rosetta Stone current or former employees have knowledge and

information regarding Google's defenses: Tom Adams, Simon Berriochoa, Jason Calhoun, Eric Deuhring, Eric Eichmann, April Garvey, Bernard Hamann, Mike Hill, Heather Ingram, Christopher Klipple, Van Leigh, Julie Longley, Brian Miller, Nino Ninov, Tom Nowaczyk, John Ramsey, Nicole Tabatabai, Raymond Yau, Michael Wu.

Also, Rosetta Stone Limited has identified five third-party witnesses that Google may use to support its defenses as listed above. At this time, Google believes the following witnesses may have information regarding Google's defenses: Deborah Park Jefferies, Denis Doyle, Diana Stanley Thomas, Steve Floyd Dubow and Rita Porter. Further, Google believes that the following third-party witnesses may have information regarding Google's defenses: Amazon, Inc. and eBay Inc. Google reserves the right to object on the grounds of competency, privilege, relevancy, materiality, hearsay, or any other proper ground, to the testimony of any individuals disclosed herein.

These disclosures do not include any expert witnesses identified pursuant to Rule 26.

2. Rule 26(a)(1)(B): Documents

Google identifies the following documents that are in Google's custody, possession, and control, and that at this time, Google reasonably believes it may use to support its defenses:

1. Certain documents relating to advertisements that were displayed in response to searches that included or consisted of the alleged Rosetta Stone trademarks, including such advertisements and communications; contracts with advertisers concerning their bids on keywords that included or consisted of the alleged Rosetta Stone trademarks; and click through rates, revenue, and other data collected for such advertisements.
2. Google's trademark and other policies and procedures for its AdWords program.

3. Documents sufficient to show how the AdWords program operates.
4. Certain documents relating to the appearance of Sponsored Links.
5. Communications with Rosetta Stone or those acting on its behalf, and certain documents relating thereto.
6. Relevant financial data.
7. Documents reflecting Google's programs to combat fraud and abuse, including but not limited to counterfeiters.
8. Documents publicly available on Google's website, www.google.com.

Google identifies the following documents that are in Rosetta Stone's custody, possession, and control, and that at this time, Google reasonably believes it may use to support its defenses:

1. Documents and communications regarding Rosetta Stone's brand awareness and brand equity.
2. Relevant financial data.
3. Documents and communications regarding Rosetta Stone resellers and affiliates.
4. Documents and communications relating to counterfeit complaints.
5. Documents and communications related to Rosetta Stone's advertising programs.
6. Documents and communications related to Rosetta Stone's involvement in the Business Software Alliance (BSA) and similar organizations.
7. Documents and communications related to Rosetta's Stone's lobbying efforts.
8. Documents reflecting Rosetta Stone's web analytics reports from all sources, including but not limited to, Google Analytics, Omniture and Hitwise.

9. Documents and communications related to complaints lodged with Google regarding alleged use of Rosetta Stone trademarks.
10. Documents and communications related to third party advertisements of Rosetta Stone's products.
11. Documents reflecting Rosetta Stone's alleged ownership of the relevant trademarks.
12. Documents publicly available on Rosetta Stone's official website, www.rosettastone.com.

3. Rule 26(a)(1)(C): Damages

This category of disclosure is not presently applicable to Google.

4. Rule 26(a)(1)(D): Insurance Agreements

Google is not aware of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in this action or to indemnify or reimburse for payments made to satisfy the judgment.

DATED: March 18, 2010

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

/s/

Margret M. Caruso, Esquire (Admitted *Pro Hac Vice*)
QUINN EMANUEL URQUHART & SULLIVAN,
LLP

555 Twin Dolphin Drive, 5th Floor
Redwood Shores, California 94065
(650) 801-5101
(650) 801-5100 (facsimile)
margretcaruso@quinnemanuel.com

Counsel for Defendant Google Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 18th day of March, 2010, I will serve this document by electronic mail on counsel for the Plaintiff:

Warren T. Allen II
Clifford M. Sloan
Jennifer L. Spaziano
Skadden, Arps, Slate, Meagher, & Flom, LLP
1440 New York Avenue, N.W.
Washington, D.C. 20005-2111
warren.allen@skadden.com
cliff.sloan@skadden.com
jen.spaziano@skadden.com
Counsel for Plaintiff Rosetta Stone Ltd.

/s/ Margret M. Caruso
Margret M. Caruso
Counsel for Defendant Google Inc.