

# EXHIBIT 2

**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)

**PLAINTIFF ROSETTA STONE LTD.'S  
SUPPLEMENTAL RULE 26(a)(1) DISCLOSURES**

Plaintiff Rosetta Stone Ltd. (“Rosetta Stone”), by and through counsel, respectfully submits these supplemental disclosures pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure. These disclosures reflect information identified, obtained and/or discovered since Rosetta Stone’s service of its initial disclosures on October 26, 2009. These supplemental disclosures are made without waiver of the attorney-client privilege, attorney work product doctrine or any other applicable privilege. Rosetta Stone reserves the right to object to the production and/or introduction into evidence of any document or evidence described herein or testimony by any of the disclosed witnesses on the basis of privilege, relevance or otherwise, as appropriate. Rosetta Stone also reserves the right to add to, or amend, this disclosure, as appropriate and necessary.

## **I. Individuals Likely To Have Discoverable Information**

The individuals listed below are likely to have discoverable information relevant to this lawsuit.

- Tom Adams (Rosetta Stone Chief Executive Officer): information relating to Rosetta Stone's history; information relating to the infringement of Rosetta Stone's trademarks; information relating to harm to Rosetta Stone's brand caused by trademark infringement; information relating to Rosetta Stone's damages.
- Simon Berriochoa (Rosetta Stone Vice President Operations): information relating to the infringement of Rosetta Stone's trademarks; information relating to customer confusion; information relating to Rosetta Stone's damages.
- Jason Calhoun (Rosetta Stone Enforcement Manager): information relating to the infringement of Rosetta Stone's trademarks; information relating to pirating and counterfeiting of Rosetta Stone product; information relating to trademark policing and anti-piracy efforts; information relating to customer confusion; information relating to communications with Google.
- Eric Deuhring (Rosetta Stone Vice President I): information relating to the infringement of Rosetta Stone's trademarks; information relating to harm to Rosetta Stone's brand caused by trademark infringement; information relating to marketing/advertising strategy.
- Eric Eichmann (Rosetta Stone Chief Operating Officer): information relating to marketing/advertising strategy; information relating to the infringement of Rosetta Stone's trademarks; information relating to harm to Rosetta Stone's brand caused by trademark infringement; information relating to Rosetta Stone's damages.
- Mike Hill (Rosetta Stone Enforcement Specialist): information relating to the infringement of Rosetta Stone's trademarks; information relating to pirating and counterfeiting of Rosetta Stone product; information relating to trademark policing and anti-piracy efforts; information relating to customer confusion.
- Heather Ingram (Rosetta Stone Senior Product Manager): information relating to Rosetta Stone's damages.
- Van Leigh (Rosetta Stone Director 1): information relating to the infringement of Rosetta Stone's trademarks; information relating to harm to Rosetta Stone's brand caused by trademark infringement; information relating to customer confusion; information relating to Rosetta Stone's damages; information relating to communications with Google.
- Nino Ninov (Rosetta Stone Vice President II): information relating to consumer behavior and Rosetta Stone products and trademarks.

- Tom Nowaczyk (Rosetta Stone Marketing Analytics Manager): information relating to the infringement of Rosetta Stone's trademarks; information relating to Rosetta Stone's damages.
- John Ramsey (Rosetta Stone Corporate Counsel): information relating to the infringement of Rosetta Stone's trademarks; information relating to trademark policing and anti-piracy efforts; information relating to communications with Google; information relating to harm to Rosetta Stone's brand caused by trademark infringement.
- Nicole Tabatabai (Rosetta Stone Marketing Specialist): information relating to the infringement of Rosetta Stone trademarks; information relating to Rosetta Stone's damages; information relating to communications with Google.
- Michael Wu (Rosetta Stone General Counsel): information relating to the infringement of Rosetta Stone's trademarks; information relating to trademark policing and anti-piracy efforts; information relating to harm to Rosetta Stone's brand caused by trademark infringement.
- Raymond Yau (Rosetta Stone Project Manager III): information relating to consumer behavior and Rosetta Stone products and trademarks.
- Steve DuBow (26500 Long View Drive, Conifer, CO 80433): information relating to confusion caused by Google sponsored links and Google's trademark policies.
- Deborah Jeffries (3800 North Delta Highway, Eugene, OR 97408): information relating to confusion caused by Google sponsored links and Google's trademark policies.
- Rita Kay Porter (10801 West 99th Street, Overland Park, KS 66214): information relating to confusion caused by Google sponsored links and Google's trademark policies.
- Denis Doyle (110 Summerfield Road, Chevy Chase, MD 20815): information relating to confusion caused by Google sponsored links and Google's trademark policies.
- Diana Stanley Thomas (12 Smith Road, Cornwall, NY 12518): information relating to confusion caused by Google sponsored links and Google's trademark policies.

- Former and current Google employees, including Christina Aguiar, Jonathan Alferness, David Baker, Terri Chen, Edward Chiang, Sanjay Datta, Daniel Dulitz, Baris Gultekin, Rose Hagan, Richard Holden, Alana Karen, William Lloyd, Edward (Cory) Louie, John Ploumitsakos, Mickey Rider, Nitin Sharma, Ashish Vij and Susan Wojcicki: information relating to Google's trademark policies; information relating to customer confusion; information relating to Google's marketing/advertising strategy.

Google and/or its counsel should contact current employees of Rosetta Stone only through Rosetta Stone's counsel. The address for current and/or former employees of Google are presumed known to Google and not included herein. In accordance with the schedule set by the Court, Rosetta Stone will identify on April 1, 2010, the name of each witness that it may present at trial other than solely for impeachment.

## **II. Documents**

Rosetta Stone may use the following documents to support its claims in this lawsuit:

- Documents produced by Rosetta Stone to Google
- Documents produced by Google to Rosetta Stone
- Transcripts and exhibits of the depositions taken by Rosetta Stone
- Transcripts and exhibits of the depositions taken by Google
- Rosetta Stone's Responses to Google's Interrogatories
- Google's Responses to Rosetta Stone's Interrogatories
- Publicly available trademark applications and registrations
- Publicly available materials posted on Google and Google affiliate websites

Rosetta Stone reserves the right to object to the production of any document on any basis permitted by the Federal Rules of Civil Procedure, the Federal Rules of Evidence, the Local Rules of this Court, and/or common law. In accordance with the schedule set by the Court, Rosetta Stone will identify on April 1, 2010, each document or other exhibit, including summaries of other evidence, that it may present at trial other than solely for impeachment.

### **III. Damages**

Among the categories of damages that Rosetta Stone seeks are:

1. all profits reaped by Google from its unlawful actions;
2. all damages sustained by Rosetta Stone as a result of Google's unlawful actions;
3. all damages to the Rosetta Stone trademarks caused by Google's unlawful actions;
4. the cost of corrective advertising, or other actions taken to monitor, address and repair the damage to Rosetta Stone's trademarks resulting from Google's unlawful actions;
5. the return of all monies paid by Rosetta Stone to Google that Rosetta Stone incurred in attempting to mitigate the damage caused by Google's unlawful actions;
6. a reasonable royalty for the unlawful use of Rosetta Stone's trademarks; and
7. all costs, including attorneys' fees, incurred by Rosetta Stone to stop Google's unlawful actions.

The calculations of some of these categories of damages are set forth in the Supplemental Expert Report of James E. Malackowski, dated February 4, 2010. Given that Google's unlawful actions are ongoing, however, these calculations are based, in part, on outdated data from Google. Moreover, other elements of damages, such as attorneys' fees, cannot be fully quantified at present time. Thus, the computation of certain elements of Rosetta Stone's damages will have to await an accounting upon completion of this litigation. The foregoing list of damages does not constitute a waiver by Rosetta Stone of its right to pursue any remedy available at law or in equity.

#### **IV. Insurance**

Rosetta Stone 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.

Respectfully submitted

Dated: March 18, 2010

/s/ \_\_\_\_\_  
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**CERTIFICATE OF SERVICE**

I hereby certify that this document is being served on March 18, 2010, by electronic mail to:

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*Counsel for Defendant, Google Inc.*

Dated: March 18, 2010

Respectfully submitted,

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