

EXHIBIT 4

**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)

**ROSETTA STONE LTD.’S SUPPLEMENTAL RESPONSES
TO GOOGLE INC.’S FIRST SET OF INTERROGATORIES**

Pursuant to Rule 34 of the Federal Rules of Civil Procedure and Local Rule 26(B), Plaintiff Rosetta Stone Ltd. (“Rosetta Stone”) hereby supplements its Answers to Google Inc.’s First Set of Interrogatories served on November 23, 2009.

OBJECTIONS

Rosetta Stone incorporates by reference its General Objections and Objections to Specific Interrogatories, served on November 6, 2009 (the “Objections”), into each of its responses set forth below as though fully set forth therein.

SUPPLEMENTAL RESPONSES TO SPECIFIC INTERROGATORIES

INTERROGATORY NO. 3:

Identify each person or entity YOU contend has ever been confused by any SPONSORED LINKS.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 3:

Subject to and without waiving its Objections, Rosetta Stone supplements its response to Interrogatory No. 3 as follows: Rosetta Stone contends that many individuals have been

confused by Google sponsored links. For example, Rosetta Stone's customer care center has received numerous complaints from individuals who have purchased pirated/counterfeit software believing the software to be genuine Rosetta Stone product. Since approximately December 2008, such complaints have been logged in what is known as the "Parature" database. During the period April 1, 2009 through December 9, 2009, Rosetta Stone received approximately 123 such complaints. During the period December 9, 2009 through March 8, 2010, a period during which Rosetta Stone observed a proliferation of sponsored links to pirate/counterfeit sites, Rosetta Stone received approximately 139 such complaints. In addition, Rosetta Stone's website (www.rosettastone.com) contains an anti-piracy page (<http://www.rosettastone.com/global/anti-piracy>) on which users can report pirated/counterfeit Rosetta Stone goods (<http://www.rosettastone.com/global/anti-piracy-initiative>). Such reports are maintained in what is known as the "Quickbase" database.

Neither Rosetta Stone's customer care center nor its web-based inquiry system is designed to ask customers about confusion per se and neither is designed to determine where the individual was exposed to the pirate/counterfeit site. Nor does Rosetta Stone require complainants to provide contact information when they lodge a piracy/counterfeit complaint. Nevertheless, certain individuals have volunteered that they were exposed to a pirate/counterfeit site via Google's sponsored links. In addition, through independent investigation, Rosetta Stone has been able to determine that certain websites from which pirated/counterfeit software was purchased appear primarily via Google's sponsored links. Based on such information, Rosetta Stone was able to identify six individuals who had purchased pirated/counterfeit software through a Google sponsored link. Rosetta Stone, through counsel, contacted each of these individuals and all six confirmed that they had been confused by

Google's sponsored links. These individuals are: Denis Doyle, Steve Floyd DuBow, Matt Gordon, Deborah Park Jeffries, Rita Porter and Diana Stanley Thomas.

In addition to information obtained through the customer care center and the web-based inquiry system, Rosetta Stone also is aware of confusion caused by Google sponsored links through reports it has received from Rosetta Stone kiosk employees. These employees have reported that customers have requested that the kiosk match the prices set forth in a web printout from a pirate/counterfeit site and that individuals have attempted to return to the kiosks pirated/counterfeit software. Call center representatives also have reported that individuals have raised questions about Rosetta Stone's pricing as a result of information they have gathered through the internet.

Furthermore, individuals who purchased genuine Rosetta Stone software from Amazon.com have attempted to return the software to Rosetta Stone under Rosetta Stone's six-month guarantee. That guarantee, however, is available only to individuals who purchase software directly from Rosetta Stone.

Rosetta Stone further responds to Interrogatory No. 3 pursuant to Rule 33(d) of the Federal Rules of Civil Procedure by referring Google to the following documents: RS-009-000033 to RS-009-000044, RS-014-009601 to RS-014-009632, RS-009-000045 to RS-009-000368, RS-014-000298 to RS-014-001209 and RS-014-012020 to RS-014-012170. Rosetta Stone also refers Google to the depositions of Van Leigh, Mike Hill, Jason Calhoun, Eric Duehring, Simon Berriochoa, Denis Doyle, Steve Floyd DuBow, Deborah Park Jeffries, Rita Porter and Diana Stanley Thomas. Rosetta Stone also refers Google to the documents it has produced in connection with this matter and to the depositions of current and former Google

employees.¹ Rosetta Stone reserves the right to amend and/or supplement this response as discovery of additional information may from time to time require.

INTERROGATORY NO. 4:

Describe all instances known to YOU of confusion, including mistake, or deception (including but not limited to all misdirected mail, in person visits, telephone calls, or other communications included for a third party but received by you) RELATING TO any of the ROSETTA STONE MARKS and GOOGLE'S advertising programs. For each instance described, your response should include when and how you became aware of the instance, when the instance occurred, all persons with knowledge of such instance, the source of their knowledge, the circumstances reflecting the confusion, and the IDENTITY of all DOCUMENTS and things supporting or refuting your response to this Interrogatory.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 4:

Subject to and without waiving its Objections to this interrogatory, Rosetta Stone supplements its response to Interrogatory No. 4 as follows: Rosetta Stone contends that many have been confused by Google sponsored links. For example, Rosetta Stone's customer care center has received numerous complaints from individuals who have purchased pirated/counterfeit software believing the software to be genuine Rosetta Stone product. Since approximately December 2008, such complaints have been logged in what is known as the "Parature" database. During the period April 1, 2009 through December 9, 2009, Rosetta Stone received approximately 123 such complaints. During the period December 9, 2009 through

¹ Because Google has designated much of its production "Attorneys' Eyes Only" pursuant to the Agreed Protective Order, Rosetta Stone is not in a position to identify responsive documents or testimony. Rosetta Stone understands generally from its counsel that discovery obtained from Google supports Rosetta Stone's claims in this action and, on that basis, has referred generally to Google's discovery in these supplemental responses.

March 8, 2010, a period during which Rosetta Stone observed a proliferation of sponsored links to pirate/counterfeit sites, Rosetta Stone received approximately 139 such complaints. In addition, Rosetta Stone's website (www.rosettastone.com) contains an anti-piracy page (<http://www.rosettastone.com/global/anti-piracy>) on which users can report pirated/counterfeit Rosetta Stone goods (<http://www.rosettastone.com/global/anti-piracy-initiative>). Such reports are maintained in what is known as the "Quickbase" database.

Neither Rosetta Stone's customer care center nor its web-based inquiry system is designed to ask customers about confusion per se and neither is designed to determine where the individual was exposed to the pirate/counterfeit site. Nor does Rosetta Stone require complainants to provide contact information when they lodge a piracy/counterfeit complaint. Nevertheless, certain individuals have volunteered that they were exposed to a pirate/counterfeit site via Google's sponsored links. In addition, through independent investigation, Rosetta Stone has been able to determine that certain websites from which pirated/counterfeit software was purchased appear primarily via Google's sponsored links. Based on such information, Rosetta Stone was able to identify six individuals who had purchased pirated/counterfeit software through a Google sponsored link. Rosetta Stone, through counsel, contacted each of these individuals and all six confirmed that they had been confused by Google's sponsored links. These individuals are: Denis Doyle, Steve Floyd DuBow, Matt Gordon, Deborah Park Jeffries, Rita Porter and Diana Stanley Thomas.

In addition to information obtained through the customer care center and the web-based inquiry system, Rosetta Stone also is aware of confusion caused by Google sponsored links through reports it has received from Rosetta Stone kiosk employees. These employees have reported that customers have requested that the kiosk match the prices set forth in a web printout from a pirate/counterfeit site and that individuals have attempted to return to the kiosks

pirated/counterfeit software. Call center representatives also have reported that individuals have raised questions about Rosetta Stone's pricing as a result of information they have gathered through the internet.

Furthermore, individuals who purchased genuine Rosetta Stone software from Amazon.com have attempted to return the software to Rosetta Stone under Rosetta Stone's six-month guarantee. That guarantee, however, is available only to individuals who purchase software directly from Rosetta Stone.

Rosetta Stone further responds to Interrogatory No. 4 pursuant to Rule 33(d) of the Federal Rules of Civil Procedure by referring Google to the following documents: RS-009-000033 to RS-009-000044, RS-014-009601 to RS-014-009632, RS-009-000045 to RS-009-000368, RS-014-000298 to RS-014-001209 and RS-014-012020 to RS-014-012170. Rosetta Stone also refers Google to the documents identified on Exhibit 1 to the February 1, 2010 letter from Jennifer L. Spaziano to Margret M. Caruso (Rosetta Stone's Supplemental Response to Interrogatory No. 4) and to the documents identified on Exhibit 1 attached hereto (Rosetta Stone's Second Supplemental Response to Interrogatory No. 4). Rosetta Stone also refers Google to the depositions of Van Leigh, Mike Hill, Jason Calhoun, Eric Duehring, Simon Berriochoa, Denis Doyle, Steve Floyd DuBow, Deborah Park Jeffries, Rita Porter and Diana Stanley Thomas. Rosetta Stone also refers Google to the documents it has produced in connection with this matter and to the depositions of current and former Google employees. Rosetta Stone reserves the right to amend and/or supplement this response as discovery of additional information may from time to time require.

INTERROGATORY NO. 5:

IDENTIFY all facts RELATING TO studies, including formal or informal analysis, investigation, surveys, focus groups, consumer research, or other information or reports that YOU contend support any of YOUR claims, including for each study, when it was commissioned, conducted, and completed, by whom it was conducted, and its conclusions.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 5:

Subject to and without waiving its Objections to this interrogatory, Rosetta Stone supplements its response to Interrogatory No. 5 as follows: Rosetta Stone further responds to Interrogatory No. 5 pursuant to Rule 33(d) of the Federal Rules of Civil Procedure by referring Google to the documents identified on Exhibit 2 to the February 1, 2010 letter from Jennifer L. Spaziano to Margret M. Caruso (Rosetta Stone's Supplemental Response to Interrogatory No. 5) and to the documents identified on Exhibit 2 attached hereto (Rosetta Stone's Second Supplemental Response to Interrogatory No. 5). Rosetta Stone also refers Google to the depositions of Nino Ninov, Raymond Yau, Michael Wu, and Tom Adams. Rosetta Stone also refers Google to the documents it has produced in connection with this matter and to the depositions of current and former Google employees. Finally, Rosetta Stone refers Google to the expert reports of Kent Van Liere and James Malackowski and to the depositions of these experts. Rosetta Stone reserves the right to amend and/or supplement this response as discovery of additional information may from time to time require.

INTERROGATORY NO. 6:

IDENTIFY all facts supporting your contention that GOOGLE knowingly contributed to any likelihood of confusion, actual confusion, initial interest confusion, mistake, or deception allegedly resulting from SPONSORED LINKS displayed following entry of a search query that consists of or contains a ROSETTA STONE MARK.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 6:

Subject to and without waiving its Objections to this interrogatory, Rosetta Stone supplements its response to Interrogatory No. 6 as follows: See also Rosetta Stone's supplemental responses to Interrogatory Nos. 3, 4, 9 and 10 and the documents referenced therein. Rosetta Stone also refers Google to the documents it has produced in connection with this matter and to the depositions of current and former Google employees.

INTERROGATORY NO. 7:

IDENTIFY all facts supporting your contention that GOOGLE willfully contributed to any likelihood of confusion, actual confusion, initial interest confusion, mistake, or deception allegedly resulting from SPONSORED LINKS displayed following entry of a search query that consists of or contains a ROSETTA STONE MARK.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 7:

Subject to and without waiving its Objections to this interrogatory, Rosetta Stone supplements its response to Interrogatory No. 7 as follows: See also Rosetta Stone's supplemental responses to Interrogatory Nos. 3, 4, 9 and 10 and the documents referenced therein. Rosetta Stone also refers Google to the documents it has produced in connection with this matter and to the depositions of current and former Google employees. Rosetta Stone reserves the right to amend and/or supplement this response as discovery of additional information may from time to time require.

INTERROGATORY NO. 8:

IDENTIFY all facts concerning YOUR interactions with any third party RELATING TO use of any of the ROSETTA STONE MARKS in connection with any GOOGLE advertising program, including AdWords.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 8:

Subject to and without waiving its Objections to this interrogatory, Rosetta Stone supplements its response to Interrogatory No. 8 as follows: Rosetta Stone further responds to Interrogatory No. 8 pursuant to Rule 33(d) of the Federal Rules of Civil Procedure by referring Google to the documents identified on Exhibit 3 to the February 1, 2010 letter from Jennifer L. Spaziano to Margret M. Caruso (Rosetta Stone's Supplemental Response to Interrogatory No. 8) and to the documents identified on Exhibit 3 attached hereto (Rosetta Stone's Second Supplemental Response to Interrogatory No. 8). Rosetta Stone also refers Google to the depositions of Jason Calhoun, Mike Hill, Van Leigh, April Garvey, Chris Klipple, Julie Longley, Nicole Tabatabai, Brian Miller, Michael Wu, Eric Eichmann, Eric Duehring and Tom Adams. Rosetta Stone also refers Google to the documents it has produced in connection with this matter and to the depositions of current and former Google employees. Rosetta Stone reserves the right to amend and/or supplement this response as discovery of additional information may from time to time require.

INTERROGATORY NO. 9:

IDENTIFY each SPONSORED LINK that you contend may lead or has led to confusion with ROSETTA STONE or otherwise infringed YOUR rights under the Lanham Act.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 9:

Subject to and without waiving its Objections to this interrogatory, Rosetta Stone supplements its response to Interrogatory No. 9 as follows: Rosetta Stone further responds to Interrogatory No. 9 pursuant to Rule 33(d) of the Federal Rules of Civil Procedure by referring Google to the documents identified on Exhibit 4 to the February 1, 2010 letter from Jennifer L. Spaziano to Margret M. Caruso (Rosetta Stone's Supplemental Response to Interrogatory Nos. 9 and 10) and to the documents identified on Exhibit 4 attached hereto (Rosetta Stone's Second

Supplemental Response to Interrogatory Nos. 9 and 10). Rosetta Stone also refers Google to the depositions of Jason Calhoun, Mike Hill, Denis Doyle, Steve Floyd DuBow, Deborah Park Jeffries, Rita Porter and Diana Stanley Thomas. Rosetta Stone reserves the right to amend and/or supplement this response as discovery of additional information may from time to time require.

INTERROGATORY NO. 10:

For each SPONSORED LINK that you identified in response to the proceeding Interrogatory, IDENTIFY each one that YOU contend does not offer genuine ROSETTA STONE products or services from the advertised website.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 10:

Subject to and without waiving its Objections to this interrogatory, Rosetta Stone supplements its response to Interrogatory No. 10 as follows: Rosetta Stone further responds to Interrogatory No. 10 pursuant to Rule 33(d) of the Federal Rules of Civil Procedure by referring Google to the documents identified on Exhibit 4 to the February 1, 2010 letter from Jennifer L. Spaziano to Margret M. Caruso (Rosetta Stone's Supplemental Response to Interrogatory Nos. 9 and 10) and to the documents identified on Exhibit 4 attached hereto (Rosetta Stone's Second Supplemental Response to Interrogatory Nos. 9 and 10). Rosetta Stone also refers Google to the depositions of Jason Calhoun, Mike Hill, Denis Doyle, Steve Floyd DuBow, Deborah Park Jeffries, Rita Porter and Diana Stanley Thomas. Rosetta Stone reserves the right to amend and/or supplement this response as discovery of additional information may from time to time require.

INTERROGATORY NO. 11:

IDENTIFY all facts that support YOUR contention that any of the ROSETTA STONE MARKS are distinctive and famous.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 11:

Subject to and without waiving its Objections to this interrogatory, Rosetta Stone supplements its response to Interrogatory No. 11 as follows: See also Rosetta Stone's supplemental response to Interrogatory No. 5 and the documents referenced therein. Rosetta Stone reserves the right to amend and/or supplement this response as discovery of additional information may from time to time require.

INTERROGATORY NO. 13:

IDENTIFY all facts relating to YOUR allegations of damages, including all facts relating to alleged lost sales and profits, resulting from SPONSORED LINKS displayed following entry of a search query that consists of or contains a ROSETTA STONE MARK.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 13:

Subject to and without waiving its Objections to this interrogatory, Rosetta Stone supplements its response to Interrogatory No. 13 as follows: Rosetta Stone refers Google to the expert report and deposition of James Malackowski as well as to documents produced in connection with the Malackowski expert report and deposition. Rosetta Stone also refers Google to the depositions of Van Leigh, Simon Berriochoa, Heather Ingram, Jason Calhoun, Mike Hill, Michael Wu and Tom Adams. Rosetta Stone also refers Google to the documents it has produced in connection with this matter and to the depositions of current and former Google employees. Rosetta Stone reserves the right to amend and/or supplement this response as discovery of additional information may from time to time require.

INTERROGATORY NO. 14:

State, by product, ROSETTA STONE's total gross revenues to date, by week and month, for each good or service sold in connection with any of the ROSETTA STONE MARKS.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 14:

Subject to and without waiving its Objections to this interrogatory, Rosetta Stone supplements its response to Interrogatory No. 14 as follows: Rosetta Stone further responds to Interrogatory No. 14 pursuant to Rule 33(d) of the Federal Rules of Civil Procedure by referring Google to the documents identified in the February 1, 2010 letter from Jennifer L. Spaziano to Margret M. Caruso (RS-00205188 to RS-00205189, RS-00205371 to RS-00205399, and RS-00205400) and to the documents identified on Exhibit 5 attached hereto (Rosetta Stone's Second Supplemental Response to Interrogatory Nos. 14 and 15). Rosetta Stone reserves the right to amend and/or supplement this response as discovery of additional information may from time to time require.

INTERROGATORY NO. 15:

State, by product, ROSETTA STONE'S total profits to date, by week and month, for each good and service sold in connection with any of the ROSETTA STONE MARKS.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 15:

Subject to and without waiving its Objections to this interrogatory, Rosetta Stone supplements its response to Interrogatory No. 15 as follows: Rosetta Stone further responds to Interrogatory No. 15 pursuant to Rule 33(d) of the Federal Rules of Civil Procedure by referring Google to the documents identified in the February 1, 2010 letter from Jennifer L. Spaziano to Margret M. Caruso (RS-00205188 to RS-00205189, RS-00205371 to RS-00205399, and RS-00205400) and to the documents identified on Exhibit 5 attached hereto (Rosetta Stone's Second Supplemental Response to Interrogatory Nos. 14 and 15). Rosetta Stone reserves the right to amend and/or supplement this response as discovery of additional information may from time to time require.

INTERROGATORY NO. 16:

IDENTIFY all analyses (including, by way of example, studies, reports, investigations, research, PowerPoints, and email commentary) RELATING TO any reason for increases or decreases in ROSETTA STONE profits.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 16:

Subject to and without waiving its Objections to this interrogatory, Rosetta Stone supplements its response to Interrogatory No. 16, as clarified in the February 19, 2010 email from Jonathan Oblak, as follows: Subject to and without waiving its Objections to this interrogatory, Rosetta Stone supplements its response to Interrogatory No. 16 as follows: Rosetta Stone further responds to Interrogatory No. 16 pursuant to Rule 33(d) of the Federal Rules of Civil Procedure by referring Google to the documents identified in the exhibit attached to the February 22, 2010 letter from Jennifer L. Spaziano to Jonathan B. Oblak (Rosetta Stone's Second Supplemental Response to Interrogatory No. 16) and to the documents identified on Exhibit 6 attached hereto (Rosetta Stone's Third Supplemental Response to Interrogatory No. 16). Rosetta Stone also refers Google to the depositions of Eric Eichmann, Eric Duehring, Van Leigh, Michael Wu and Tom Adams. Rosetta Stone reserves the right to amend and/or supplement this response as discovery of additional information may from time to time require.

INTERROGATORY NO. 17:

IDENTIFY all analyses (including, by way of example, studies, reports, investigations, research, PowerPoints, and email commentary) RELATING TO traffic to the website www.rosettastone.com as a result of Internet advertising campaigns. Your response should include all analysis RELATING TO reasons, explanations, or potential causes for increase or decrease in such traffic.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 17:

Subject to and without waiving its Objections to this interrogatory, Rosetta Stone supplements its response to Interrogatory No. 17 as follows: Rosetta Stone further responds to Interrogatory No. 17 pursuant to Rule 33(d) of the Federal Rules of Civil Procedure by referring Google to the documents identified on Exhibit 5 to the February 1, 2010 letter from Jennifer L. Spaziano to Margret M. Caruso (Rosetta Stone's Supplemental Response to Interrogatory No. 17) and to the documents identified on Exhibit 7 attached hereto (Rosetta Stone's Second Supplemental Response to Interrogatory No. 17). Rosetta Stone also refers Google to the depositions of Van Leigh and Tom Nowaczyk. Rosetta Stone reserves the right to amend and/or supplement this response as discovery of additional information may from time to time require.

INTERROGATORY NO. 18:

IDENTIFY every legal challenge RELATING TO any ROSETTA STONE MARK or products bearing such mark, including lawsuits, arbitrations, mediations, or administrative proceedings, including NAD and ITAB proceedings, letters, and other threats of legal action. Your description should IDENTIFY the parties to the dispute, describe all marks involved in the dispute, provide a general description of the issues in the dispute, and describe the outcome of the dispute.

RESPONSE TO INTERROGATORY NO. 18:

Subject to and without waiving its Objections to this interrogatory, Rosetta Stone supplements its response to Interrogatory No. 18 as follows: Rosetta Stone further responds to Interrogatory No. 18 pursuant to Rule 33(d) of the Federal Rules of Civil Procedure by referring Google to the documents identified on Exhibit 6 to the February 1, 2010 letter from Jennifer L. Spaziano to Margret M. Caruso (Rosetta Stone's Supplemental Response to Interrogatory No. 18) and to the documents identified on Exhibit 8 attached hereto (Rosetta Stone's Second

Supplemental Response to Interrogatory No. 18). Rosetta Stone also refers Google to the depositions of John Ramsey and Jason Calhoun. Rosetta Stone reserves the right to amend and/or supplement this response as discovery of additional information may from time to time require.

Dated: March 18, 2010

/s/
Warren T. Allen II (Va. Bar No. 72691)
Attorney for Rosetta Stone Ltd.
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, N.W.
Washington, D.C. 20005-2111
Telephone: (202) 371-7126
Facsimile: (202) 661-9121
Warren.Allen@skadden.com

CERTIFICATE OF SERVICE

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

Jonathan D. Frieden
ODIN, FELDMAN & PETTLEMAN, P.C.
9302 Lee Highway, Suite 1100
Fairfax, VA 22031
jonathan.frieden@ofplaw.com

Margret M. Caruso
QUINN EMANUEL URQUHART & SULLIVAN, LLP
555 Twin Dolphin Drive, Fifth Floor
Redwood Shores, CA 94065
margretcaruso@quinnemanuel.com

Counsel for Defendant, Google Inc.

Dated: March 18, 2010

Respectfully submitted,

/s/ _____
Warren T. Allen II (Va. Bar No. 72691)
Attorney for Rosetta Stone Ltd.
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, N.W.
Washington, D.C. 20005-2111
Telephone: (202) 371-7126
Facsimile: (202) 661-9121
Warren.Allen@skadden.com