

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)

DECLARATION OF JONATHAN B. OBLAK

I, Jonathan B. Oblak, hereby declare as follows:

1. I am over the age of eighteen. I am competent to testify to, and have personal knowledge of, the matters contained herein.

2. I represent Defendant Google Inc. in this action. In that capacity, I have gained personal knowledge of the facts contained herein, each of which is true and correct.

Google Deposition Testimony

3. Attached to this declaration as Exhibit 1 are true and correct copies of certain selected portions of the transcript of the deposition of Rose Hagan, dated March 5, 2010.

4. Attached to this declaration as Exhibit 2 are true and correct copies of certain selected portions of the transcript of the deposition of Bill Lloyd, dated March 10, 2010.

Rosetta Stone Deposition Testimony

5. Attached to this declaration as Exhibit 3 are true and correct copies of certain selected portions of the transcript of the deposition of Eric Eichmann, dated March 3, 2010.

6. Attached to this declaration as Exhibit 4 are true and correct copies of certain selected portions of the transcript of the deposition of Michael Wu, dated March 5, 2010.

7. Attached to this declaration as Exhibit 5 are true and correct copies of certain selected portions of the transcript of the deposition of Michael Hill, dated February 26, 2010.
8. Attached to this declaration as Exhibit 6 are true and correct copies of certain selected portions of the transcript of the deposition of April Garvey, dated March 1, 2010.
9. Attached to this declaration as Exhibit 7 are true and correct copies of certain selected portions of the transcript of the deposition of Nicole Tabatabai, dated March 11, 2010.
10. Attached to this declaration as Exhibit 8 are true and correct copies of certain selected portions of the transcript of the deposition of Christopher Klipple, dated March 8, 2010.
11. Attached to this declaration as Exhibit 9 are true and correct copies of certain selected portions of the transcript of the deposition of Jason Calhoun, dated March 8, 2010.
12. Attached to this declaration as Exhibit 10 are true and correct copies of certain selected portions of the transcript of the deposition of John Ramsey, dated February 25, 2010.
13. Attached to this declaration as Exhibit 11 are true and correct copies of certain selected portions of the transcript of the deposition of Van Leigh, dated February 22, 2010.

Documents

14. Attached to this declaration as Exhibit 12 is a true and correct copy a spreadsheet relied upon by James E. Malackowski in his expert report, bates labeled GOOG-RS-0250990.
15. Attached to this declaration as Exhibit 13 is a true and correct copy of a document relating to Rosetta Stone's lobbying efforts produced by Rosetta Stone in this litigation dated August 13, 2008 bates labeled RS-00092658.
16. Attached to this declaration as Exhibit 14 is a true and correct copy of a document relating to Rosetta Stone's lobbying efforts produced by Rosetta Stone in this litigation dated December 14, 2007 bates labeled RS-00082708.

17. Attached to this declaration as Exhibit 15 is a true and correct copy of a PowerPoint entitled Affiliate Overview produced by Rosetta Stone in this litigation dated November 29, 2007 bates labeled RS-00002738.

18. Attached to this declaration as Exhibit 16 is a true and correct copy of a document relating to communications between Rosetta Stone and Google employees produced by Rosetta Stone in this litigation dated October 13, 2008, bates labeled RS-00036926.

19. Attached to this declaration as Exhibit 17 is a true and correct copy of a document relating to communications between Rosetta Stone and Google employees produced by Rosetta Stone in this litigation dated December 2, 2008, bates labeled RS-00035721.

20. On April 26, 2010, Rosetta Stone produced the Second Supplemental Report of James Malackowski. I have reviewed and am generally familiar with the contents thereof. Among the categories of damages sought by RS pursuant to Mr. Malackowski's report is \$2,548,086 that Rosetta Stone claims constitutes excess payments made by Rosetta Stone to Google for sponsored links based on the Rosetta Stone Marks from July 10, 2004 through March 31, 2010.

21. Attached to this declaration as Exhibit 18 is a true and correct copy of screenshots taken of searches conducted on www.google.com on April 25, 2010.

22. Attached to this declaration as Exhibit 19 is a true and correct copy of a document relating to the Alliance Against Bait and Click produced by Rosetta Stone in this litigation, bates labeled RS-00092985.

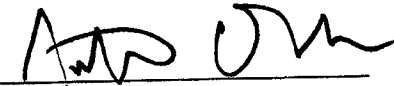
23. Attached to this declaration as Exhibit 20 is a true and correct copy of a document relating to the Alliance Against Bait and Click produced by Rosetta Stone in this litigation, bates labeled RS-00092815.

24. On April 23, 2010 Judge Buchanan heard arguments on Rosetta Stone's April 16, 2010 motion for sanctions against Google. At arguments addressing the motion for sanctions, Judge Buchanan commented to the effect that she did not see that Rosetta Stone had suffered any prejudice, or that Google had acted in bad faith, in connection with the challenged document production. Judge Buchanan denied Rosetta Stone's motion for sanctions from the bench.

25. During the course of discovery, Google has produced more than 88,9000 documents (not including technically responsive but non-substantive "spam").

26. On March 15, 2010, Rosetta Stone produced 899 documents totaling over 17,000 pages.

I declare under the penalty of perjury under the laws of the State of New York and the Commonwealth of Virginia that the foregoing is true and correct. Executed this 27th day of April, 2010, at New York, New York.



Jonathan B. Oblak

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 27th day of April, 2010, I electronically filed the Declaration of Jonathan B. Oblak with the Clerk of Court using the CM/ECF system, which then sent a notification of such filing (NEF) to the following:

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