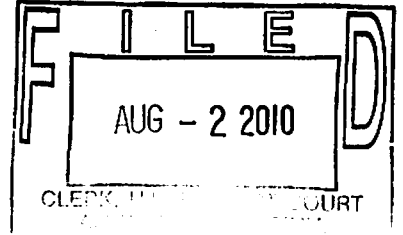


IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION



Rosetta Stone, Ltd.,)
)
Plaintiff,)
)
v.)
)
Google, Inc.,)
)
Defendant.)

Case No. 1:09cv736 (GBL/TCB)

ORDER

THIS MATTER is before the Court on Defendant's Objections to Evidence and Motion to Strike. (Dkt. No. 155.) Upon review of Defendant Google, Inc's ("Google") objections to certain documents and testimony, which were attached to declarations that Plaintiff Rosetta Stone, Ltd. ("Rosetta Stone") submitted in support of its Motion for Partial Summary Judgment as to Liability (Dkt. No. 103), it is hereby

ORDERED that Google's Objections to Evidence and Motion to Strike are OVERRULED and DENIED, respectively.

As to Objection one, the Court holds that the cited paragraphs of Rosetta Stone's Calhoun Declaration (1) do not constitute hearsay or lack foundation because, as Rosetta Stone's Enforcement Manager, Mr. Calhoun had personal knowledge of the anti-fraud and anti-piracy information contained in the declaration; (2) are not irrelevant because they establish a necessary element of Rosetta Stone's trademark infringement

claim; and (3) are not argumentative because Mr. Calhoun's statements are factual in nature, are not conclusory, and are substantiated by documentary support.

As to Objection two, the Court holds that Mr. Calhoun possesses the personal knowledge necessary to authenticate the email messages that comprise Calhoun Declaration, Exhibit B, because each of these email messages was either sent by or to Mr. Calhoun.

As to Objection three, the Court holds that Calhoun Declaration, Exhibit C does not constitute inadmissible hearsay and does not lack foundation because Mr. Calhoun, in his capacity as Rosetta Stone's Enforcement Manager, can authenticate the spreadsheets that comprise Exhibit C, which summarize the numerous occasions in which Rosetta Stone notified Google that many of Google's Sponsored Link advertisers were selling counterfeit Rosetta Stone products.

As to Objection four, the Court holds that paragraph three of Rosetta Stone's Leigh Declaration does not lack foundation because Mr. Leigh, in his capacity as Rosetta Stone's Director of Online, Direct-to-Consumer Sales, used his personal knowledge and experience to substantiate his claims. Further, Mr. Leigh's assertions are not contradicted by substantial evidence to the contrary.

Objections five through twelve are moot because Google

provides the name and location of the additional relevant deposition testimony necessary for Google's fair understanding and contemporaneous consideration of the excerpts to which it objects.

As to Objection thirteen, the Court holds that Spaziano Declaration, Exhibits 24 to 27 are relevant and non-prejudicial, and do not constitute hearsay or lack foundation because (1) they are relevant to establishing Google's knowledge and intent for purposes of Rosetta Stone's trademark infringement claim; (2) they were not being offered to prove the truth of the matter asserted; and (3) they were produced in response to the Court's order directing Google to produce all trademark complaints.

As to Objections fourteen and fifteen, the Court holds that Spaziano Declaration, Exhibits 8 to 15 are relevant and not unduly prejudicial because Google's consumer confusion studies have significant bearing on this case and have a tendency to make more probable Rosetta Stone's trademark infringement claim.

As to Objections sixteen to eighteen, the Court holds that the cited depositions attached to Rosetta Stone's Spaziano Declaration are relevant because each concerns Rosetta Stone's allegations that consumers were actually confused as to the origin of the Rosetta Stone products they purchased, which aims to establish an essential element of Rosetta Stone's trademark infringement claim.

