

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/TRJ)

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

# Exhibit 1

RECORD NO. 10-2007

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In The  
**United States Court of Appeals**  
For The Fourth Circuit

**ROSETTA STONE LTD.,**

*Plaintiff – Appellant,*

v.

**GOOGLE INC.,**

*Defendant – Appellee.*

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
AT ALEXANDRIA**

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**BRIEF OF APPELLEE**

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of consumers based on search results is not a proper ground for imposing liability. The Ninth Circuit itself recently acknowledged that confusion is inherently *unlikely* at the search results stage:

[I]n the age of FIOS, cable modems, DSL and T1 lines, reasonable, prudent and experienced internet consumers are accustomed to such exploration by trial and error. They skip from site to site, ready to hit the back button whenever they're not satisfied with a site's contents. They fully expect to find some sites that aren't what they imagine based on a glance at the domain name or search engine summary.

*Toyota Motor Sales, U.S.A., Inc. v. Tabari*, 610 F.3d 1171, 1179 (9th Cir. 2010) (internal citations omitted); *see also Playboy Enters., Inc. v. Netscape Commc'ns Corp.*, 354 F.3d 1020, 1039-40 (9th Cir. 2004) (Berzon, J., concurring) (“There is a big difference between hijacking a customer to another website by making the customer think he or she is visiting the trademark holder’s website (even if only briefly) . . . and just distracting a potential customer with another choice, when it is clear that it is a choice.”).

Other courts have also regarded the initial interest confusion theory skeptically:

At no point are potential consumers “taken by a search engine” to defendant’s website due to defendant’s use of plaintiff’s marks in meta tags. Rather, . . . a link to defendant’s website appears on the search results page as one of many choices for the potential consumer to investigate. . . . [T]he links to defendant’s website always appear as independent and distinct links on the search result pages regardless of whether they are generated through Google’s AdWords program or search of the keyword meta tags of defendant’s website.

JA(46)-5457, 5502. For ease of reference, the upper portion of the test condition is replicated here:

The screenshot shows a search engine results page for the query "Rosetta Stone". The search results are displayed in a grid-like format. At the top, there are sponsored links from Amazon.com and CouponCactus.com. Below these are organic search results, including a Wikipedia entry for "Rosetta Stone" and a link to "Rosetta Stone (software)". The page also features a sidebar on the right with additional sponsored links for Rosetta Stone software, including one for Spanish only and another for v3 software with a 35% discount. The main content area includes a "Story" section and several other organic results related to the Rosetta Stone artifact and software.

Rosetta Stone’s only justification for not allowing participants to click any of the displayed links was that the survey tested initial interest confusion. JA(45)-5188. Unless this Court adopts the initial interest confusion theory, this renders Dr. Van Liere’s survey irrelevant.

precedent holding that a consumer's failure to understand the precise contours of a reseller or affiliate relationship is actionable under 15 U.S.C. § 1114.

Even if this were a viable theory generally, the survey did not show genuine confusion. Dr. Van Liere counted as confused all participants who responded that they thought the Amazon.com and CouponCactus.com links were endorsed by Rosetta Stone. JA(46)-5458; 5926D-5927D. At the time the ads were displayed on Google.com, however, Amazon.com was an authorized reseller of Rosetta Stone products and CouponCactus was one of Rosetta Stone's preferred affiliates, contractually entitled to bid on Rosetta Stone trademarks. JA(38)-2675-84, 3645-48. Therefore, Dr. Van Liere's characterization of confusion was counterfactual. JA(37)-2325-26.

If identification of those two ads is properly omitted from the "confusion" count, the net "confusion" reflected by the survey is -3%. JA(37)-2326. In addition, as discussed in Section I.B.1.a, the purely referential uses in those two ads was entirely lawful, which independently justifies excluding them as a basis for "confusion." Thus, people were *less* confused about the relationship between Rosetta Stone and any given link if Sponsored Links were displayed. *See generally* JA(37)-2325-26; JA(43). To the extent that the survey is relevant, it merely confirms that confusion is *not* likely.

## Exhibit 2

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](http://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

# Exhibit 3

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

Alexandria Division

-----x  
ROSETTA STONE LTD.,

Plaintiff,

v. Civil Action No.: 1:09CV736  
GBL/JFA

GOOGLE, INC.,

Defendant.

-----x

The 30(b)(6) deposition of ROSETTA STONE  
by VAN LEIGH was held on Monday, February 22,  
2010, commencing at 9:10 a.m. at the Offices of  
Skadden, Arps, Slate, Meagher & Flom, LLP, 1440  
New York Avenue, Washington, D.C., before Amy E.  
Sikora, RPR, CRR, CSR-NY, CLR, Notary Public for  
the District of Columbia.

REPORTED BY: Amy E. Sikora, RPR, CRR, CSR-NY, CLR

1 increased usage, and so customers are coming in  
2 to find out about -- more about Rosetta Stone  
3 products.

4 Q. So the trend that you've observed  
5 with respect to using the Internet to research  
6 Rosetta Stone is that it's increased in  
7 frequency?

8 A. To find Rosetta Stone, yes.

9 Q. And have you observed any trend with  
10 regard to the frequency with which users use the  
11 Internet to purchase Rosetta Stone products?

12 A. Increase in the frequency.

13 Q. Let me ask a different question.  
14 Have you observed any trend with respect to how  
15 consumers use the Internet to find a outlet from  
16 which to purchase a Rosetta Stone product?

17 A. We have seen an increase in the  
18 number of searches for branded Rosetta Stone,  
19 which indication that Rosetta Stone offline  
20 marketing and TV marketing is driving people.  
21 Offline meaning print, marketing in magazines and  
22 on the back of Sky Mall, et cetera, in kiosks,  
23 and in retail locations, customers are coming on  
24 looking specifically for the Rosetta Stone  
25 language software, and we've seen an increase in

1 that.

2                   And we've also seen an increase in  
3 the number of complaints that we have gotten from  
4 customers ending up getting duped on --  
5 particularly on Google paid search where they're  
6 typing in Rosetta Stone because another ad is out  
7 there saying, Rosetta Stone for \$148, buy  
8 Rosetta Stone here. We've had an increase in the  
9 number of people letting us know, calling in to  
10 our call center, coming to our kiosk, telling us,  
11 I wanted to go to Rosetta Stone, I ended up on  
12 the wrong site, I thought it was the same site,  
13 and I purchased and I got duped.

14           Q.       And do you know whether any of those  
15 customers, in searching for Rosetta Stone, they  
16 selected a site that had bid on the keyword  
17 Rosetta Stone?

18           A.       Yes.

19           Q.       How do you know?

20           A.       We have cust -- we have customers,  
21 there are six customers, I think, that we have  
22 the names of that we can give. Six customers we  
23 can give.

24           Q.       Six customers. Tell me about those  
25 customers. What form of complaint have they

1 lodged?

2 A. In general, the story is this, okay:

3 The customer goes out, they are looking for

4 Rosetta Stone software. They type in

5 "Rosetta Stone," because they want to buy

6 Rosetta Stone software from us, from

7 Rosetta Stone. They see an ad that says,

8 Rosetta Stone for \$148. Excuse me. They click

9 on that particular link because the trade dress

10 is the exact same. The box images are the same.

11 The retail price that they have is the retail

12 price on Rosetta Stone with a slash through down

13 to a very, very low sales price. They buy,

14 thinking they're getting Rosetta Stone, and the

15 minute they open their box they know they've been

16 duped.

17 Q. So these are six customers, six

18 customers that you can identify?

19 A. I can give you lots of stories from

20 kiosks. I can give you lots of stories from call

21 center. I know that there are six particular

22 customers that are going to be named that are

23 willing to -- to explain what happened to them

24 and how Google duped them by allowing a pirate

25 Rosetta Stone site to be out there. And -- and

1 with Rosetta Stone in the ad text, that  
2 Rosetta Stone had multiple times asked to be  
3 taken down and every day it came back up. And  
4 customers felt the pain because of that, because  
5 they got CD's that didn't work. And then this  
6 was during -- you know, during the holiday season  
7 and everything else, then they can't actually buy  
8 the Rosetta Stone software that they want to buy  
9 because they've just invested in a blank CD.

10 Q. Tell me, with respect to these six  
11 customers, is it your testimony that they all  
12 purchased what we call pirated software; is that  
13 what happened with those six customers?

14 A. I have not -- I do not know the  
15 answer to that question. You would have to ask  
16 them.

17 Q. Okay. With respect to these six  
18 customers, so it may be that they received either  
19 software that --

20 MR. OBLAK: Well, withdrawn.

21 Q. Do you know one way or another  
22 whether any of those six customers received  
23 software that provided language learning  
24 services?

25 A. I know that these customers did not



1 was going to be deposed. I have had discussions  
2 with Nicole Tabatabai. I've had discussions  
3 with -- with internal counsel and with external  
4 counsel. I've had discussions with Brandt  
5 Rousseaux. I've had discussions with Eric  
6 Duehring. Obviously, while Chris Klipple was  
7 still employed, I had numerous discussions with  
8 him. I've had discussions with Jason Calhoun.

9 Q. Did you assist in preparing an  
10 interrogatory response relating to consumer  
11 confusion? Do you know -- take a step back.

12 Do you know what an interrogatory  
13 is?

14 A. A question.

15 Q. Okay. Do you know what it is in the  
16 context of a lawsuit?

17 A. No, I don't.

18 Q. Did you review -- two questions.

19 Did you review any documents  
20 relating to consumer confusion to prepare for  
21 your testimony today?

22 A. Yes.

23 Q. And do you recall you what reviewed?

24 A. I reviewed documents that had  
25 stories that had come into the call center and --

1 by customers who had been duped and -- and  
2 thought they were buying from Rosetta Stone.

3 I've reviewed documents that had  
4 stories from the kiosk where customers were  
5 trying to bring the product back to the kiosk  
6 thinking that they had bought Rosetta Stone. I  
7 reviewed a lot of documents. I can go on and on  
8 and on.

9 Q. Sure.

10 A. I reviewed the lot of documentation.

11 Q. Sure. Were you involved in  
12 collecting -- collecting documents in your view  
13 related to consumer confusion for production as  
14 part of this litigation?

15 A. Yes, I was.

16 Q. Okay. And are those the type of  
17 documents that you -- you were just describing?

18 A. Yes

19 Q. Was anybody else involved in  
20 collecting those types of documents?

21 A. Absolutely. There -- there were  
22 people throughout the office involved in  
23 collecting documents. If I'm understanding  
24 your -- your question.

25 Q. Sure. But collecting specifically

1 with respect to consumer confusion?

2 A. There were -- there were other  
3 documents, particularly from previous employees  
4 that had documents on their hard drives.

5 Q. Just so we're maybe talking about  
6 the same thing, why don't you tell me what your  
7 understanding of consumer confusion is in the  
8 context of this interrog -- or this topic.

9 A. Well, there are really multiple  
10 forms of consumer confusion that are being caused  
11 here. So when a customer types in  
12 "rosetta stone" within Google, they are intending  
13 to come to the Rosetta Stone website. They've  
14 gone -- they've either seen an advertisement  
15 somewhere on TV or heard it on the radio or seen  
16 it in a magazine or seen a kiosk, but they're  
17 looking for Rosetta Stone. They're not looking  
18 for something else. They're looking for our  
19 particular product.

20 Q. They could be looking for the  
21 "rosetta stone" -- the "rosetta stone"; correct?

22 A. Right. And that's an interesting  
23 point. They could be. But we have data that  
24 shows when they are, and it's typically school  
25 children, right, students that are looking for

1 going off the record. The time is 12:10.

2 (Recess taken.)

3 THE VIDEOGRAPHER: We're back on the  
4 record. The time is 12:12.

5 BY MR. OBLAK:

6 Q. So one form of confusion that you  
7 were describing was when -- you started to  
8 describe how a customer would be using the  
9 "rosetta stone" term to try and find  
10 Rosetta Stone?

11 A. Yes.

12 Q. Could you elaborate? Do you mean  
13 the website, the software? What do you mean when  
14 you're thinking about that kind of potential  
15 confusion?

16 A. Right. So what happens is, the  
17 customer types in "rosetta stone," because  
18 they've actually seen something -- they've seen a  
19 TV ad or they've heard a radio ad or they've seen  
20 it in print and they want to come find  
21 Rosetta Stone software. So they type in  
22 "rosetta stone."

23 And what they find is they get to  
24 Google and they see all these paid search  
25 listings. Rosetta Stone is in number one

1 position, but then they see these other listings  
2 that are in third position, and fourth position,  
3 and using "rosetta stone" in their ad text.

4           And they click there and then they  
5 see a site that looks just like Rosetta Stone.  
6 You know, it's got the same trade dress. It's  
7 got similar type of box images. It's got the  
8 right retail price that's slashed through to this  
9 really low price. And they think, oh, I'm -- I'm  
10 on Rosetta Stone. And -- and they buy. So  
11 that's one portion. I mean, there's also --

12           Q.        Could we refer to that as a pirated?  
13 What's the best way to refer to it?

14           A.        That can be pirated.

15           Q.        Okay.

16           A.        Then there's also competitors, where  
17 if a customer goes -- they type in  
18 "rosetta stone" and they see an ad for, we'll  
19 say, Berlitz. And so they're out there and they  
20 say, What's Berlitz. I've seen Rosetta Stone,  
21 the ad. Is Berlitz a part of Rosetta Stone?  
22 What is it? And so they click on Berlitz, and  
23 they go to that competitor's site and they're  
24 confused by that.

25           Q.        Okay.

1 Q. Do you think they're customers who  
2 are looking for Rosetta Stone software, but  
3 really don't care whether or not they go to the  
4 Rosetta Stone site or a site of an affiliate or a  
5 reseller?

6 A. So that's -- I think that the  
7 customers want to go to -- from what I've heard,  
8 I think they want to go to the Rosetta Stone  
9 website.

10 Q. Where have you heard that?

11 A. Stories. Every story that comes in  
12 is -- is one that the customer did not intend to  
13 have happen to them what happened, because Google  
14 was allowing it.

15 Q. Well, the customer may not have  
16 intended to buy fake software, but do you have  
17 any reason to believe that the customers always  
18 intend to go to the Rosetta Stone website to buy  
19 Rosetta Stone software?

20 A. Well, we get complaints because they  
21 did not know, right. So they -- they end up  
22 buying from, let's say, Amazon, and Amazon does  
23 not offer a six-month guarantee. And they went  
24 to -- they went to actually buy Rosetta Stone  
25 software from us. They ended up buying it from

1 Amazon and thinking that because Amazon has so  
2 many affiliates that we are actually an Amazon  
3 affiliate, and then they don't get the six-month  
4 guarantee and they're upset.

5 Q. In the example you've provided, do  
6 the customers know there's a six-month guarantee?

7 A. Yes, they do. It's all over the  
8 Rosetta Stone website.

9 Q. Were they looking for it, when they  
10 searched for Rosetta Stone software, were they  
11 looking for a six-month guarantee?

12 A. I can't speak to what's actually in  
13 the mind of each consumer when they search  
14 "rosetta stone," except that they want to find  
15 Rosetta Stone software.

16 Q. Right. So you have no idea whether  
17 or not in searching "rosetta stone" and in  
18 looking for Rosetta Stone software they want to  
19 buy it directly from the company or from Amazon  
20 or from Barnes & Noble or from some other  
21 affiliate or reseller that sells the software;  
22 correct?

23 A. We have stories -- so each  
24 individual that comes in, I can't speak to,  
25 right. We have stories of customers who didn't

1 intend to buy from another entity besides  
2 Rosetta Stone.

3 Q. You have customers who said they  
4 specifically wanted to buy from the company's  
5 website and instead they bought somewhere else?

6 A. They specifically wanted to buy from  
7 Rosetta Stone so that they could get all of the  
8 guarantees and assurances that they get from  
9 Rosetta Stone.

10 Q. And instead they ended up buying  
11 somewhere else?

12 A. They ended up buying somewhere else.

13 Q. But you can't identify any of those  
14 customers?

15 A. Not as this point in time.

16 Q. Is there any point in time where you  
17 could identify those customers?

18 A. I can certainly go back and ask.

19 Q. Have you gone back and asked  
20 already?

21 A. From here? Obviously not. I'm  
22 still here.

23 Q. I don't mean today. I meant prior  
24 to today, have you ever asked, can we identify  
25 specific customers that told us they wanted to



1 there?

2 MR. ETTINGER: Asked and answered.

3 A. I can go back and -- and get this  
4 but I don't have it here.

5 Q. You can go back and get this. You  
6 can go back and get specific customers who as a  
7 result -- I've got finish.

8 A. I'm sorry.

9 Q. As a result of the type of consumer  
10 confusion you've described, ended up buying from  
11 an affiliate or a reseller when they intended to  
12 buy it from rosettastone.com?

13 A. We get complaints all the time about  
14 this stuff happening. I can go back and query --  
15 you know, the stories are all -- are voluminous.  
16 And . . .

17 Q. Suffice it to say, you're not aware  
18 of any specific customers that have been  
19 identified by name that you can provide us in  
20 those two categories?

21 A. I cannot provide you with a name  
22 today.

23 Q. And with respect to competitors'  
24 category, I think we got a little sidetracked on  
25 competitors, can you identify for me any specific

## 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)

DECLARATION OF JASON CALHOUN IN SUPPORT OF ROSETTA STONE LTD'S  
MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO LIABILITY

FILED UNDER SEAL

I, Jason Calhoun, declare and state as follows:

1. I am the Enforcement Manager of Rosetta Stone Ltd. ("Rosetta Stone" or the "Company") and have served in this role since July 2008. In this capacity, I manage Rosetta Stone's anti-piracy and anti-fraud programs, which are designed to protect the Company's intellectual property. I make this Declaration based on my own personal knowledge, and if called upon to do so, I could and would testify competently thereto.

2. Sellers of illegal pirated and counterfeit Rosetta Stone language-learning software routinely advertise on Google's search-results pages through Google's AdWords program. Without authorization from Rosetta Stone, these pirates and counterfeiters bid on Rosetta Stone's trademarks through Google's AdWords auction in order to have their paid advertisements, also known as "Sponsored Links," appear when a consumer types "Rosetta Stone" or some variation thereof as a search term. The ad text and URLs for these Sponsored Links often contain the phrase "Rosetta Stone" or a variation of one of Rosetta Stone's trademarks. Moreover, the landing pages for these Sponsored Links frequently mirror Rosetta Stone's own web page, copying verbatim or emulating Rosetta Stone's banners and trade dress. I know that products sold through pirate/counterfeit Sponsored Link advertisements are counterfeit as customers have forwarded products purchased from these companies to Rosetta Stone.

3. Rosetta Stone's Enforcement Team actively employs its own piracy/counterfeit surveillance practices, including, among other measures, manual monitoring of paid advertisements on Google's search-results pages. At least once per day, Enforcement Team members enter up to 102 branded search terms into Google's search engine and capture screenshots of the search results. These searches are conducted in Virginia and/or Colorado.

Attached hereto as Exhibit A is a true and correct copy of the 102 Rosetta Stone branded terms used to generate the Google search-results screenshots. Thereafter, Sponsored Link advertisements generated by these searches are reviewed to determine whether the advertisers are selling pirated, counterfeit, or unauthorized reproductions of Rosetta Stone's software. The Enforcement Team notifies Google whenever it identifies a Sponsored Link offering counterfeit or pirated Rosetta Stone software. The Enforcement Team also works with law enforcement, internet service providers, and trade associations to investigate these illegal activities.

4. In or about August 2009, paid advertisements for pirated and counterfeit Rosetta Stone software increased markedly on Google's search-results pages. During the period September 2009 to the present, Rosetta Stone repeatedly contacted Google, via email, to request that specific paid-search advertisements be taken down on the basis that the sites to which Google was directing traffic were selling pirated or counterfeit Rosetta Stone software. Between September 3, 2009 and March 1, 2010, Rosetta Stone notified Google of nearly 200 instances of Sponsored Links advertising pirate/counterfeit web sites. Attached hereto as Exhibit B is a true and correct copy of the correspondence during the aforementioned period between Rosetta Stone and Google regarding the removal of pirate or counterfeit advertisements.

5. During the period August 23, 2009 through March 1, 2010, pirate/counterfeit sites triggered by a Rosetta Stone trademark keyword have appeared as Sponsored Links almost daily. Attached hereto as Exhibit C is a true and correct copy of a spreadsheet reflecting the dates upon which Rosetta Stone found a pirate/counterfeit Sponsored Link advertisement on Google, the date upon which Rosetta Stone advised Google that the Sponsored Link advertisement was fraudulent, the domain names associated with each such Sponsored Link advertisement, the text of each such Sponsored Link advertisement, and the date

and substance of Google's response. Attached hereto as Exhibit D are true and correct copies of screenshots of the Google search-results pages displaying, and/or the landing pages relating to, the Google Sponsored Links that Rosetta Stone reported to Google as offering pirated or counterfeit Rosetta Stone software between September 3, 2009 and March 1, 2010. Each screenshot within Exhibit D has been marked with a footer reflecting the screenshot's file name, which typically includes the date the screenshot was captured by Rosetta Stone and/or the domain name of the screenshot.

6. Rosetta Stone manually reviews Google paid-search advertisements from Harrisonburg, Virginia, Arlington, Virginia and/or Boulder, Colorado. Because Sponsored Links change throughout the day, however, and because an advertiser has the ability to target its Sponsored Link advertisements to specific geographic areas, Rosetta Stone is limited in its ability to monitor all Google paid-search advertisements in every location at all times of the day. It would be cost prohibitive for Rosetta Stone to monitor Google paid-search advertisements continuously in all fifty states, much less every intrastate geographic region defined by Google. Moreover, Rosetta Stone monitors Google paid-search results for only 102 of the nearly 3,000 branded search terms on which Rosetta Stone bids. For these reasons, it is highly unlikely that Exhibit D reflects all the pirate/counterfeit ads displayed on Google's Sponsored Link advertisements during the period September 3, 2009 through March 1, 2010.

7. Google's response time to Rosetta Stone's complaints regarding the appearance of pirate/counterfeit sites on Google Sponsored Link advertisements has varied over time. From September 2009 to late-January 2010, Rosetta Stone reported its complaints to Google Trust and Safety Manager Cory Louie, whose staff typically was able to take down the illegal advertisement within a day. Beginning in late-January 2010, however, Google no longer

permitted Rosetta Stone to request the removal of advertisements through Google's Trust and Safety Team, instead requiring Rosetta Stone to submit a formal complaint to the Google Legal Advertising Team. Google then "investigates" the formal complaint and, upon confirmation that the site is offering illegal software, removes the advertisement from its Sponsored Links. This process has, at times, required up to a week or more to receive a response from Google. Attached hereto as Exhibit E is a true and correct copy of the formal complaint form currently required by the Google Legal Advertising Team.

8. Notwithstanding Rosetta Stone's monitoring efforts and Google's responses to Rosetta Stone's complaints regarding Sponsored Links offering pirated and counterfeit Rosetta Stone software, Google's responses to the identified infringement is insufficient as substantively identical ad text and landing pages routinely reappear in connection with Sponsored Links even after Google reportedly has taken action to remove offending Sponsored Links.

9. Rosetta Stone's customer care center has received numerous complaints from individuals who have reported companies or individuals offering counterfeit Rosetta Stone software for sale and/or who have purchased counterfeit software over the internet believing the software to be genuine Rosetta Stone product. During the period April 1, 2009 through December 9, 2009, Rosetta Stone received approximately 123 such piracy complaints. During the period December 9, 2009 through March 8, 2010, a period during which Rosetta Stone observed a proliferation of Google Sponsored Links to counterfeit sites, Rosetta Stone received approximately 139 such piracy complaints. The focus of Rosetta Stone's customer care representatives is on customer satisfaction and trying to assist customers with product returns

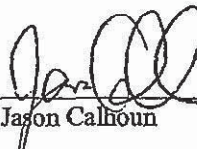
and other issues with Rosetta Stone product. Thus, customer care representatives do not always inquire whether the complainant found the counterfeit site through a Google Sponsored Link.

10. In addition, Rosetta Stone's websites contain anti-piracy pages on which users can report piracy or counterfeiting of Rosetta Stone products. Between July 11, 2008, and March 25, 2010, Rosetta Stone received 333 reports through the web-based inquiry system from individuals who indicated that they purchased and received counterfeit Rosetta Stone software. This web-based inquiry system, however, is not designed to ask customers about confusion per se, nor is it designed to determine if a search engine led the individual to the counterfeit site. Nor does the system require complainants to provide contact information when they lodge a piracy/counterfeiting complaint.

11. Rosetta Stone has evaluated the software provided by Steve DuBow, Rita Porter, Denis Doyle and Deborah Jeffries and has confirmed that the software is counterfeit and not genuine Rosetta Stone product.

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

Executed on March 26, 2010, at Harrisonburg, Virginia.

  
Jason Calhoun



CALHOUN  
EXHIBIT C

Calhoun Exhibit C

Exhibit Number	Plrate/Counterfeit Domain Name	Ad Text	Date/Ad Found/Notice to Google	Google Response	Google Action
D-1	madoffetch.com	\$119 Get Rosetta Soft Not \$545 Save 75%;Free Shipping Only 3 Days.Patpat Accept_Order!	3/1/2010	3/4/2010	Confirm steps taken to take ad down.
D-2	learningsofts.com	\$148 Buy Rosetta Stone Lowest Priced Best Software! Free ship&Free Returns.Buy Now.	2/28/2010	3/1/2010	Confirm steps taken to take ad down.
D-3	rosettaonsale.com	\$148 GET ROSETTA STONE Learn Foreign language with Rosetta Award Wnning Software Ship Free!	2/28/2010	3/1/2010	Confirm steps taken to take ad down.
D-4	discountrosettastore.com	\$148 GET ROSETTA STONE Learn Foreign language with Rosetta Award Winning Software Ship Free!	2/26/2010	3/1/2010	Confirm steps taken to take ad down.
D-5	learnsoftlocker.com	\$158 Buy Rosetta Spanish Learn Foreign Language with Rosetta Award Winning Software Ship Free!	2/24/2010	3/1/2010	Confirm steps taken to take ad down.
D-6	bestrosetta.com/rosetta-stone	\$149 Buy Rosetta Learn Save 70% Valentina's Day Promotions Plus Free Fast Shipping. Buy Now!	2/23/2010	3/1/2010	Confirm steps taken to take ad down.
D-7	learn-help.com	\$148 GET ROSETTA STONE Learn Foreign language with Rosetta Award Winning Software Ship Free!	2/22/2010	3/1/2010	Confirm steps taken to take ad down.
D-8	languagesstores.com	\$158 GET ROSETTA STONE Learn Foreign language with Rosetta Award Wnning Software Ship Free!	2/22/2010	2/22/2010	Confirm steps taken to take ad down.
D-9	languagesstoras.com	\$158 GET ROSETTA STONE Learn Foreign language with Rosetta Award Winning Software Ship Free!	2/21/2010	2/22/2010	Confirm steps taken to take ad down.
D-10	languagesstoras.com	\$148 GET ROSETTA STONE Learn Foreign language with Rosetta Award Wnning Software Ship Free!	2/20/2010	2/22/2010	Confirm steps taken to take ad down.
D-11	languagessoftlocker.com	\$148 GET ROSETTA STONE Learn Foreign language with Rosetta Award Winning Software Ship Free!	2/19/2010	2/19/2010	Confirm ad taken down
D-12	languagessoftlocker.com	\$148 GET ROSETTA STONE Learn Foreign language with Rosetta Award Wnning Software Ship Free!	2/18/2010	2/19/2010	Confirm ad taken down
D-13	languagessoftlocker.com	\$148 GET ROSETTA STONE Learn Foreign language with Rosetta Award Winning Software Ship Free!	2/17/2010	2/19/2010	Confirm ad taken down
D-14	languagessoftlocker.com	\$148 GET ROSETTA STONE Learn Foreign language with Rosetta Award Wnning Software Ship Free!	2/16/2010	2/19/2010	Confirm ad taken down
D-15	languagessoftlocker.com	\$148 GET ROSETTA STONE Learn Foreign language with Rosetta Award Wnning Software Ship Free!	2/15/2010	2/19/2010	Confirm ad taken down

\*Sponsored Link ad text appearing on Google search-results pages has been reproduced without corrections to spelling, grammar, or punctuation.

Calhoun Exhibit C

Exhibit Number	Pirate/Counterfeit Domain Name	Ad Text	Date Ad Found & Notice to Google	Google Response	Google Action
D-16	languagesoflocker.com	\$148 GET ROSETTA STONE Learn Foreign language with Rosetta Award Winning Software ,Ship Free!	2/14/2010	2/19/2010	Confirm ad taken down
D-17	languagesoflocker.com	\$148 GET ROSETTA STONE Learn Foreign language with Rosetta Award Winning Software ,Ship Free!	2/13/2010	2/19/2010	Confirm ad taken down
No Exhibit	languagesoflocker.com	\$148 GET ROSETTA STONE, Learn Foreign language with Rosetta Award Winning Software ,Ship Free!	2/12/2010	2/19/2010	Confirm ad taken down
D-18	languagesoflocker.com	\$148 GET ROSETTA STONE Learn Foreign language with Rosetta Award Winning Software ,Ship Free!	2/11/2010	2/19/2010	Confirm ad taken down
D-19	rosettastonelearner.com	\$148 GET ROSETTA STONE Learn Foreign language with Rosetta Award Winning Software ,Ship Free!	2/9/2010	2/12/2010	Confirm complaint processed
D-20	farfetchonline.com	\$119 Buy Rosetta Soft Not \$548, Save 70%; Free Shipping Only 3 Days, Paypal Accept, Order!	2/8/2010	2/12/2010	Confirm complaint processed
D-21	languagemalls.com	\$148 GET ROSETTA STONE Learn Foreign language with Rosetta Award Winning Software ,Ship Free!	2/8/2010	2/12/2010	Confirm ad taken down
D-22	rosettastonelearner.com	\$148 GET ROSETTA STONE Learn Foreign language with Rosetta Award Winning Software ,Ship Free!	2/8/2010	2/12/2010	Confirm complaint processed
D-23	languagemalls.com	\$148 GET ROSETTA STONE Learn Foreign language with Rosetta Award Winning Software ,Ship Free!	2/7/2010	2/12/2010	Confirm ad taken down
D-24	farfetchonline.com	\$159 Buy Rosetta Soft Not \$548, Save 70%; Free Shipping Only 3 Days, Paypal Accept, Order!	2/7/2010	2/12/2010	Confirm complaint processed
D-25	lovelythank.com/rosetta+stone	\$149 Buy Rosetta Spanish, Save 70% Valentine's Day Promotions, Free Fast Shipping, Buy Now!	2/6/2010	2/12/2010	Unable to Process because Google claims it is a "marketplace site"
D-26	rosettastonelearner.com	\$148 GET ROSETTA STONE Learn Foreign language with Rosetta Award Winning Software ,Ship Free!	2/6/2010	2/12/2010	Confirm complaint processed
D-27	farfetchonline.com	\$159 Buy Rosetta Soft Not \$548, Save 70%; Free Shipping Only 3 Days, Paypal Accept, Order!	2/6/2010	2/12/2010	Confirm complaint processed
D-28	rosettastonelearner.com	\$148 GET ROSETTA STONE Learn Foreign language with Rosetta Award Winning Software ,Ship Free!	2/5/2010	2/12/2010	Confirm complaint processed

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Calhoun Exhibit C

Exhibit Number	Pirate Counterfeit Domain Name	Ad Text	Date Ad Found / Notice to Google	Google Response	Google Action
No Exhibit	bestrosetta.com/rosetta-stone	\$149 Buy Rosetta Spanish, Save 70% Valentine's Day Promotions, Free and Fast Shipping, Buy Now!	2/4/2010	3/1/2010	Confirm steps taken to take ad down.
D-29	rosetta-stone-learner.com	\$148 GET ROSETTA STONE Learn Foreign Language with Rosetta Award Winning Software, Ship Free!	2/4/2010	2/12/2010	Confirm complaint processed
D-30	farfetchonline.com	\$159 Buy Rosetta Soft Not \$548, Save 70%; Free Shipping Only 3 Days, Paypal Accept, Order!	2/3/2010	2/12/2010	Confirm complaint processed
D-31	cheaprosetta-stone-sale.com	\$159 Buy Rosetta Soft Not \$548, Save 70%; Free Shipping Only 3 Days, Paypal Accept, Order!	2/2/2010		No recorded response.
D-32	rosetta-stone-mails.com	\$148 GET ROSETTA STONE Learn Foreign Language with Rosetta Bestbuy Language Learning Software!	2/2/2010		No recorded response.
D-33	language-tools-mail.com	\$148 GET ROSETTA STONE, Learn Foreign Language With Rosetta Award Winning Software, Ship Free!	2/1/2010	2/2/2010	Confirm steps taken to take ad down.
D-34	RosettaStoneOnSale.net	\$159 Buy Rosetta Soft Not \$548, Save 70%; Free Shipping Only 3 Days, Paypal Accept, Order!	2/1/2010	2/1/2010	Confirm ad taken down
D-35	biggoodpro.com	NA	1/29/2010	2/2/2010	Instructed to file DMCA claim.
D-36	fallsnew.com	Find Discount, Save 70% Top Language Software, Free Shipping, Buy Now!	1/28/2010	1/28/2010	Will not remove because claims site is a "news aggregator"
D-37	RosettaStoneLanguage.net	\$159 Buy Rosetta Soft Not \$548, Save 70%; Free Shipping Only 3 Days, Paypal Accept, Order!	1/28/2010	1/28/2010	Confirm ad taken down
D-38	fallsnew.com	Find Discount, Save 70% Top Language Software, Free Shipping, Buy Now!	1/27/2010	1/28/2010	Will not remove because claims site is a "news aggregator"
D-39	RosettaStoneLanguage.net	\$159 Buy Rosetta Soft Not \$548, Save 70%; Free Shipping Only 3 Days, Paypal Accept, Order!	1/27/2010	1/28/2010	Confirm ad taken down
D-40	discountrosetta-stone1.com	\$168 BUY ROSETTA STONE BestBuy Language Learning Software Free shipping limited time buy now	1/26/2010	1/26/2010	Confirm ad taken down
D-41	shopnewsite.com/Discount	Find Discount, Save Top Language Software Free Shipping, Buy Now!	1/26/2010	1/26/2010	Confirm ad taken down

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Calhoun Exhibit C

Exhibit Number	Pirate/Counterfeit Domain Name	Ad Text	Date Ad Found & Notice to Google	Google Response	Google Action
D-42	discountrosetastone1.com	\$168 BUY ROSETTA STONE BestBuy Language Learning Software Free shipping limited time buy now.	1/25/2010	1/26/2010	Confirm ad taken down
D-43	shopnewsite.com/Discount	Find Discount, Save Top Language Software Free Shipping, Buy Now!	1/25/2010	1/26/2010	Confirm ad taken down
D-44	CheaperRosettaStone.com	\$119 Buy Rosetta Not \$485, Save 80%! Free Shipping Only 3 Days, Paypal Accept, Order!	1/23/2010	1/26/2010	Confirm ad taken down
D-45	esoftpurchase.com	\$168 GET ROSETTA STONE BestBuy Language Software Free shipping limited time buy now.	1/23/2010	1/26/2010	Confirm ad taken down
D-46	rosetastonelocker.com	\$148 GET rosetta stone, BestBuy Language Learning Software Free ship, quick delivery, No tax	1/23/2010	1/26/2010	Confirm ad taken down
D-47	esoftpurchase.com	\$168 GET ROSETTA BestBuy Language Learning Software Free shipping limited time buy now	1/22/2010	1/26/2010	Confirm ad taken down
D-48	rosetastonelocker.com	Chinese Learning Software Fun, Easy & Proven materials Learn basic Chinese quickly	1/22/2010	1/26/2010	Confirm ad taken down
D-49	shopnewsite.com/Discount	Find Discount, Save 70% Top Language Software, Free Shipping, Buy Now!	1/22/2010	1/26/2010	Confirm ad taken down
D-50	CheaperRosettaStone.com	\$159 Buy Rosetta Soft Not \$548, Save 70%! Free Shipping Only 3 Days, Paypal Accept, Order!	1/20/2010	1/20/2010	Confirm receipt of notice
D-51	CheaperRosettaStone.com	\$159 Buy Rosetta Soft Not \$548, Save 70%! Free Shipping Only 3 Days, Paypal Accept, Order!	1/19/2010	1/19/2010	Confirm receipt of notice
D-52	havesoft.com	\$168 Buy ROSETTA STONE BestBuy Language Learning Software free shipping limited time buy now	1/19/2010	1/19/2010	Confirm receipt of notice
D-53	lyllelearning.com	\$75 Spanish 2 levels levels 1 & 2 for only \$75 free shipping	1/19/2010	1/20/2010	Confirm ad taken down
D-54	auctionofvcd.com	\$153 GET ROSETTA STONE no tax. Low price, 365 Day Returns. No shipping. No hassles, guarantee.	1/18/2010	1/18/2010	Confirm ad taken down
No Exhibit	themenz.com/Rosetta-Stone	\$159 Buy Rosetta Soft Not \$548, Save 70%! Free Shipping Only 3 Days, Paypal Accept, Order!	1/16/2010	1/16/2010	Confirm ad taken down
No Exhibit	toprosetastone.com	no tax. Low price, 365 Day Returns. No shipping. No hassles, guarantee.	1/16/2010	1/16/2010	Unable to locate ad
D-55	toprosetastone.com	\$148 GET ROSETTA STONE no tax. Low price, 365 Day Returns. No shipping. No hassles, guarantee.	1/15/2010	1/15/2010	Confirm ad taken down

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Exhibit Number	Pirate/Counterfeit Domain Name	Ad Text	Date Ad Found / Notice to Google	Google Response	Google Action
D-56	toprosetastone.com	\$148 GET ROSETTA STONE no tax. Low price.365 Day Returns. No shipping. No hassles. guarantee.	1/12/2010	1/14/2010	Confirm ad taken down
D-57	toprosetastone.com	\$148 GET ROSETTA STONE no tax. Low price.365 Day Returns. No shipping. No hassles. guarantee.	1/11/2010	1/11/2010	Confirm ad taken down
No Exhibit	toprosetastone.com	\$148 GET ROSETTA STONE no tax. Low price.365 Day Returns. No shipping. No hassles. guarantee.	1/10/2010	1/10/2010	Confirm ad taken down
D-58	auktionofdvd.com	\$153 GET ROSETTA STONE no tax. Low price.365 Day Returns. No shipping. No hassles. guarantee.	1/9/2010	1/10/2010	Confirm ad taken down
No Exhibit	winbuyer.com	Rosetta Stone Spanish Save on Software, \$140 - \$140 in 11 stores.	1/9/2010	1/10/2010	Confirm ad taken down
D-59	auktionofdvd.com	\$153 GET ROSETTA STONE no tax. Low price.365 Day Returns. No shipping. No hassles. guarantee.	1/8/2010	1/8/2010	Confirm ad taken down
D-60	viprosetastone.com	\$168 GET ROSETTA STONE BestBuy Language Learning Software Free shipping limited time buy now	1/8/2010	1/8/2010	Confirm ad taken down
D-61	viprosetastone.com	\$168 GET ROSETTA STONE BestBuy Language Learning Software Free shipping limited time buy now	1/7/2010	1/7/2010	Confirm ad taken down
D-62	KooKua.com	75% Off Wholesale Items Buy Wholesale items at 75% Off, Great Deals On 1000s of Items.Buy!	1/6/2010	1/7/2010	Confirm ad taken down
D-63	newfreebuy.com/discount	Find Discount. Save 70% Top Language Software. Free Shipping. Buy Now!	1/6/2010	1/7/2010	Confirm ad taken down
D-64	Bestishopse.com/Discount	Find Discount. Save 70%, Top Language Software. Free Shipping. Buy Now!	1/4/2010	1/4/2010	Confirm ad taken down
D-65	freeasybuy.com/Discount	Find Discount. Save 70% Top Language Software. Free Shipping. Buy Now!	1/4/2010	1/5/2010	Confirm ad taken down
D-66	studyingdvd.com	\$239 Language Software language-learning software hot sale Spanish Level 1, 2&3 with 888 Units	1/4/2010	1/5/2010	Confirm ad taken down
D-67	bestezlive.com/Language_Software	Find Discount. Top Language Software. Compare Prices. Buy Now!	12/29/2009	1/2/2010	Confirm ad taken down
D-68	Moviehow.com	Learn Latin Spanish The Best Latin Spanish Programs. Up to 40% off. Learn Spanish Now.	12/29/2009	1/2/2010	Unable to locate ad
D-69	newpricelist.net/RosettaStoneColorado	Find Low Prices Buy Top Language Software. Compare Prices & Save Money!	12/24/2009	12/24/2009	Confirm ad taken down

\*Sponsored Link ad text appearing on Google search-results pages has been reproduced without corrections to spelling, grammar, or punctuation.

Calhoun Exhibit C

Exhibit Number	Pirate/Counterfeit Domain Name	Ad Text	Date Ad Found & Notice to Google	Google Response	Google/Action
D-70	uinsoft.com	\$168 GET ROSETTA STONE BestBuy Language Learning Software Free shipping limited time buy now	12/24/2009	12/24/2009	Confirm ad taken down
D-71	FindDiscountForYou.com?q=rosetta	Learn Spanish, Save 70% Top Language Programs. Free & Fast Shipping. Buy Now!	12/18/2009	12/18/2009	Confirm ad taken down
D-72	buy-rosetta-stone.com	\$168 get ROSETTA STONE, 50% off, get the learning language software, free shipping.	12/12/2009	12/14/2009	Confirm ad taken down
D-73	RosettaStone.cvdbaonline.com	Learn Spanish \$159 Rosetta Spanish Save 60%, The Last 2 Days. Buy Now!	12/1/2009	12/1/2009	Confirm ad taken down
No Exhibit	sellsoftmail.com	\$168 Buy Rosetta Spanish BestBuy Language Learning Software free shipping & buy now!	11/24/2009	11/24/2009	Confirm ad taken down
D-74	gainsoftmail.com/rosettaStone	\$139 get Language Software Level 1, 2, & 3 with Audio, Now Onsale 74% Off, Free&Fast Shipping, Buy Now	11/19/2009	11/19/2009	Confirm ad taken down
D-75	Newzstore.com/Rosetta_Stone	\$135 Learn Spanish_ Save 75%. RosettaStones with Audio. Free & Fast Shipping. Buy Now!	11/19/2009	11/19/2009	Confirm ad taken down
D-76	gainsoftmail.com/rosettaStoneColorado	\$139 get Language Software Level 1, 2, & 3 with Audio, Now Onsale 74% Off, Free&Fast Shipping, Buy Now	11/17/2009	11/18/2009	Confirm ad taken down
D-77	Newbuylive.com/Rosetta_Stone	\$139 Learn Spanish_ Save 75%. RosettaStones with Audio. Free & Fast Shipping. Buy Now!	11/17/2009	11/18/2009	Confirm ad taken down
D-78	softreadygo.com	\$178 Language Program Sale Learn Spanish, Chinese, Arabic Korean Easily & Fun, Free Shipping	11/17/2009	11/18/2009	Confirm ad taken down
D-79	gainsoftmail.com/rosettaStoneColorado	\$142 get Language Software Level 1, 2 & 3 with Audio, Now Onsale 74% Off, Free&Fast Shipping, Buy Now	11/16/2009	11/16/2009	Confirm ad taken down
D-80	softreadygo.com	\$17 Language Program Sale Learn Spanish, Chinese, Arabic Korean Easily & Fun, Free Shipping	11/16/2009	11/16/2009	Confirm ad taken down
D-81	Hoteasy4you.com/Rosetta_Stone	\$139 Learn Spanish_ Save 75%. RosettaStones with Audio. Free & Fast Shipping. Buy Now!	11/13/2009	11/13/2009	Unable to locate ad
D-82	Hoteasy4u.com/Rosetta_Stone	\$139 Learn Spanish_ Save 75%. RosettaStones with Audio. Free & Fast Shipping. Buy Now!	11/12/2009	11/12/2009	Confirm ad taken down
D-83	Bigeasy2u.com/Rosetta_StoneVirginia	\$139 Learn Spanish_ Save 75%. RosettaStones with Audio. Free & Fast Shipping. Buy Now!	11/6/2009	11/6/2009	Confirm ad taken down

\*Sponsored Link ad text appearing on Google search-results pages has been reproduced without corrections to spelling, grammar, or punctuation.

Calhoun Exhibit C

Exhibit Number	Rate/Counterfeit Domain Name	Ad Text	Date/Ad Found/Notice to Google	Google Response	Google/Action
D-84	Hoteasy4you.com/Rosetta_Stone	\$139 Learn Spanish_ Save 75%, RosettaStones with Audio. Free & Fast Shipping, Buy Now!	11/6/2009	11/9/2009	Confirm ad taken down
D-85	Hotshoppro.com/Rosetta_StoneVirginia	\$139 Learn Spanish_ Save 75%, RosettaStones with Audio. Free & Fast Shipping, Buy Now!	11/5/2009	11/5/2009	Confirm ad taken down
D-86	Mygoodpro.com/Rosetta_Stone	\$139 Learn Spanish_ Save 75%, RosettaStones with Audio. Free & Fast Shipping, Buy Now!	11/5/2009	11/6/2009	Confirm ad taken down
D-87	Biggoodpro.com/Rosetta_Stone	\$139 Learn Spanish_ Save 75%, RosettaStones with Audio. Free & Fast Shipping, Buy Now!	11/4/2009	11/4/2009	Confirm ad taken down
D-88	Bestez2u.com/Rosetta_Stone	\$139 Learn Spanish_ Save 75%, RosettaStones with Audio. Free & Fast Shipping, Buy Now!	11/3/2009	11/3/2009	Confirm ad taken down
D-89	Bestezpro.com/Rosetta_Stone	\$139 Learn Spanish_ Save 75%, RosettaStones with Audio. Free & Fast Shipping, Buy Now!	11/3/2009	11/4/2009	Confirm ad taken down
D-90	Hotezpro.com/Rosetta_Stone	\$139 Learn Spanish_ Save 75%, RosettaStones with Audio. Free & Fast Shipping, Buy Now!	11/3/2009	11/3/2009	Confirm ad taken down
D-91	Bestez2u.com/Rosetta_Stone	\$139 Learn Spanish_ Save 75%, RosettaStones with Audio. Free & Fast Shipping, Buy Now!	11/2/2009	11/2/2009	Confirm ad taken down
D-92	Besttopforyou.com/Rosetta_Stone	\$139 Learn Spanish_ Save 75%, RosettaStones with Audio. Free & Fast Shipping, Buy Now!	10/30/2009	11/2/2009	Confirm ad taken down
D-93	Easyhotpro.com/Rosetta_Stone	\$139 Learn Spanish Save 75%, RosettaStones with Audio. Free & Fast Shipping, Buy Now!	10/29/2009	10/29/2009	Confirm ad taken down
D-94	lytlelearning.com	\$75 Spanish levels 1 & 2 Spanish levels 1 & 2 for only \$75 Free Shipping.	10/29/2009	10/30/2009	Referred to Google Trademark Team on 11/3/09
D-95	Myfullpro.com/Rosetta_Stone	\$139 Learn Spanish_ Save 75%, RosettaStones with Audio. Free & Fast Shipping, Buy Now!	10/29/2009	10/30/2009	Confirm ad taken down
D-96	RosettaStone.dvdbaonline.com	Rosetta Spanish \$159 Rosetta Spanish Save 60% The Last 2 Days, Buy Now!	10/29/2009	10/30/2009	Confirm ad taken down
D-97	Hotrockyou.com/Rosetta_Stone	\$139 Learn Spanish_ Save 75%, RosettaStones with Audio. Free & Fast Shipping, Buy Now!	10/28/2009	10/28/2009	Confirm ad taken down
D-98	Freepropro.com/Rosetta_Stone	\$139 Learn Spanish_ Save 75%, RosettaStones with Audio. Free & Fast Shipping, Buy Now!	10/27/2009	10/27/2009	Confirm ad taken down

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Calhoun Exhibit C

Exhibit Number	Pirate/Counterfeit Domain Name	Ad Text	Date Ad Found & Notice to Google	Google Response	Google Action
D-99	Justdvdmails.com/Rosetta_Stone	Learn Latin Spanish \$239 Free Shipping Learn Latin Spanish, Learn Spanish Software, Buy Now.	10/27/2009	10/27/2009	Confirm ad taken down
D-100	Myfreepro.com/Rosetta_Stone	\$139 Learn Spanish Save 75%, RosettaStones with Audio. Free & Fast Shipping, Buy Now!	10/27/2009	10/28/2009	Confirm ad taken down
No Exhibit	Myfreeyou.com/Rosetta_Stone	\$139 Learn Spanish Save 75%, RosettaStones with Audio. Free & Fast Shipping, Buy Now!	10/27/2009	10/28/2009	Confirm ad taken down
D-101	Freepro2u.com/RosettaStone	\$139 Learn Spanish Save 75%, RosettaStones with Audio. Free & Fast Shipping, Buy Now!	10/26/2009	10/27/2009	Confirm ad taken down
D-102	Rightdvdmail.com/Rosetta_Stone	Learn Latin Spanish \$239 Free Shipping, Learn Latin Spanish Learn Spanish Software, Buy Now.	10/26/2009	10/27/2009	Confirm ad taken down
D-103	Ourdvdslock.com/Rosetta_Stone	Learn Spanish - \$239 Free Shipping, Learn Latin Spanish Save 50%, Buy Learn Soft Now.	10/24/2009	10/26/2009	Confirm ad taken down
D-104	Yourholpro.com/RosettaStone	\$149 Learn Spanish Save 70%, RosettaStones with Audio. Free & Fast Shipping, Buy Now!	10/24/2009	10/26/2009	Confirm ad taken down
D-105	Dvdsbest.com/Rosetta_Stone	Learn Spanish Software \$239, Free & Fast Shipping, Learning Latin Spanish Software.	10/23/2009	10/23/2009	Confirm ad taken down
D-106	formydv.com/rosetta-stone	Spanish Language Software Spanish (Latin America) Level 1.2.3 with Audio Companion, buy now \$135!	10/23/2009	10/23/2009	Confirm ad taken down
D-107	Hothot2u.com/RosettaStone	\$132 Learn Spanish Save 70%, RosettaStones with Audio. Free & Fast Shipping, Buy Now!	10/23/2009	10/23/2009	Confirm ad taken down
D-108	Hothotforyou.com/RosettaStone	\$139 Learn Spanish RosettaStones with Audio. Free & Fast Shipping, Buy Now!	10/22/2009	10/22/2009	Confirm ad taken down
D-109	Hotbest4u.com/RosettaStone	\$149 Learn Spanish 70% Off, Free Shipping, Top language programs, Buy Now!	10/21/2009	10/21/2009	Confirm ad taken down
D-110	Justfordvd.com/rosetta_Stone	Learn Spanish - \$239 Free Shipping, Latin America Spanish Learning Latin Spanish, Buy Now.	10/20/2009	10/20/2009	Confirm ad taken down
D-111	Bigbestlive.com/Rosetta_Stone	\$149 Learn Spanish Save 70%, Free Shipping, Top language programs, Buy Now!	10/19/2009	10/19/2009	Confirm ad taken down
D-112	DVDsetmails.com/Rosetta_Stone	Learn Spanish Software \$239, Free Shipping, Latin Spanish, Learn Spanish Software, Buy Now.	10/19/2009	10/19/2009	Confirm ad taken down
D-113	formydv.com/rosetta-stone	Spanish Language Software Spanish (Latin America) Level 1.2.3 with Audio Companion, buy now \$135!	10/19/2009	10/19/2009	Confirm ad taken down

\*Sponsored Link ad text appearing on Google search-results pages has been reproduced without corrections to spelling, grammar, or punctuation.

Calhoun Exhibit C

Exhibit Number	IP/Rate/Counterfeit/Domain/Name	Ad/Text	Date Ad/Founding Notice to Google	Google Response	Google Action
D-114	Onlyfordvs.com/Rosetta_Stone	Learn Spanish - \$239 Free Shipping, Learning Spanish. Buy Spanish Language Software Now.	10/18/2009	10/18/2009	Confirm ad taken down
D-115	hotsalemail.com/RosettaStoneNew York	\$142 get RosettaStones RosettaStones with Audio Free shipping, Buy Now!	10/17/2009	10/17/2009	Confirm ad taken down
D-116	justdvmalls.com/Rosetta_Stone	Learn Spanish - \$139 Free Shipping, Latin America Spanish Learning Latin spanish, Buy Now.	10/17/2009	10/17/2009	Confirm ad taken down
D-117	Alltdv4.com/Rosetta_Stone	Learn Spanish - \$139 Free Shipping, Latin America Spanish Learning Latin Spanish, Buy Now.	10/16/2009	10/16/2009	Confirm ad taken down
D-118	Hotolive.com/Rosetta Stone	\$148 Learn Spanish, now RosettaStones with Audio. Free Shipping, Buy Now!	10/16/2009	10/16/2009	Confirm ad taken down
D-119	Dvdiff.com/Rosetta_Stone	Learn Spanish Software \$139, Free Shipping, Latin Spanish. Learn Spanish Software, Buy Now.	10/15/2009	10/15/2009	Confirm ad taken down
D-120	gosoftwaredirect.net	Rosetta Stone \$175 Get 10 Rosetta Stone Languages for Only \$175 Full version Limited Time	10/15/2009	10/15/2009	Confirm ad taken down
D-121	Hotopro.com/RosettaStone	\$115 RosettaStones RosettaStones with Audio. Free shipping, Buy Now!	10/14/2009	10/14/2009	Confirm ad taken down
D-122	Onlydvtset.com/Rosetta_Stone	Learn Spanish Software, \$139, Free Shipping, Latin Spanish. Learn Spanish Software, Buy Now.	10/14/2009	10/14/2009	Confirm ad taken down
No Exhibit	buytopdvd.com/Virginia	\$135 RosettaStones Spanish Language Software Sale fun and effective! Order now	10/13/2009	10/13/2009	Confirm ad taken down
No Exhibit	ecositsoft.com/Rosetta_StoneNew York	\$256 Get RosettaStone Now Learn Naturally, Speak Confidently Huge Selection, Free Shipping, Buy!	10/13/2009	10/13/2009	Confirm ad taken down
D-123	gainsoftshop.com/RosettaStone	Get RosettaStones \$178 Best Language Software, 67% Off Level 1 & 2 & 3, Free Shipping, Buy!	10/13/2009	10/13/2009	Confirm ad taken down
D-124	Hotopro.com/RosettaStone	Save 70% Rosetta Stones RosettaStones with Audio. Free shipping, Buy Now!	10/13/2009	10/13/2009	Confirm ad taken down
D-125	Hotopro.com/Rosetta Stone/Virginia	Save 30% Rosetta Stones Buy Level 1, 2 & 3 with Audio, Free & Fast shipping, Buy Now!	10/13/2009	10/13/2009	Confirm ad taken down
D-126	allinhere2000.cn/RosettaStone	\$177 Language Software Spanish, Chinese (Mandarin), Portuguese, Korean, Arabic, Get RosettaStones \$178, Best Language Software, 67% Off Level 1 & 2 & 3, Free Shipping, Buy!	10/12/2009	10/12/2009	Confirm ad taken down
No Exhibit	gainsoftshop.com/RosettaStone	Get RosettaStones \$178, Best Language Software, 67% Off Level 1 & 2 & 3, Free Shipping, Buy!	10/12/2009	10/13/2009	Confirm ad taken down

\*Sponsored Link ad text appearing on Google search-results pages has been reproduced without corrections to spelling, grammar, or punctuation.

Calhoun Exhibit C

Exhibit Number	Pirate/Counterfeit Domain Name	Ad Text	Date Ad Found & Notice to Google	Google Response	Google Action
D-127	Hottopro.com/Rosetta_Stones	Save 70% Rosetta Stones Buy Level 1, 2 & 3 with Audio. Free & Fast shipping, Buy Now! \$189.99 Buy RosettaStones Learn a New Language With Fun Save 68%, Free shipping, Buy Now!	10/12/2009	10/12/2009	Confirm ad taken down
No Exhibit	soft-brand.com/Rosetta Stone	\$158 Buy RosettaStones Best Language Learning Software save 71%, Free shipping, Buy Now!	10/12/2009	10/12/2009	Confirm ad taken down
No Exhibit	softer4world.com/RosettaStone	RosettaStones - \$178 only \$178, save 60%, Level 1, 2 & 3 Free & Fast Shipping, Buy Now!	10/12/2009	10/13/2009	Confirm ad taken down
D-128	Totobay.com/Rosetta Stone	Learn Spanish - \$139 Free & Fast Shipping, Learn Spanish, Buy Language Soft Now!	10/9/2009	10/9/2009	Confirm ad taken down
No Exhibit	Hotoppro.com/Rosetta Stone	\$139 get ROSETTA STONE Learn Naturally Through Immersion 54% Off & Free Shipping, Buy Now!	10/6/2009	10/7/2009	Confirm ad taken down
No Exhibit	bossdisk.com/Rosetta Stone	\$169 Buy RosettaStones Get Level 1, 2 & 3 Set with Audio Save 68%, Free Delivery, Try It Now!	10/6/2009	10/7/2009	Confirm ad taken down
No Exhibit	soft-brand.com/Rosetta Stone	Learn Spanish - \$139 Free & Fast Shipping, Latin Spanish, Buy Language Soft Now!	10/1/2009	10/1/2009	Confirm ad taken down
D-129	mytop2u.com/Rosetta Stone	Learn Spanish - \$139 Free Shipping, Learning Spanish, Buy Spanish Language Software Now.	9/30/2009	10/1/2009	Confirm ad taken down
D-130	mytop2u.com/Rosetta Stone	Learn Spanish - \$139 Free Shipping, Latin America Spanish, Learning Latin Spanish, Buy Now.	9/30/2009	10/1/2009	Confirm ad taken down
D-131	Onlinevane.com/Rosetta Stone	Learn Spanish Software only \$139, Learning Latin Spanish Free & Fast Shipping, Buy Now.	9/29/2009	9/29/2009	Confirm ad taken down
D-132	Shopodcasts.com/Rosetta Stone	Learn Spanish - \$139, Only \$139 Free & Fast Shipping, Buy Language Soft Now!	9/28/2009	9/28/2009	Confirm ad taken down
D-133	Hotmail4you.com/Rosetta Stone	Learn Spanish - \$139 Free Shipping, Learning Spanish, Buy Spanish Language Software Now.	9/28/2009	9/28/2009	Confirm ad taken down
D-134	Hotmart4u.com/Rosetta Stone	Learn Spanish Software \$139, Free Shipping, Latin Spanish, Learn Spanish Software, Buy Now.	9/24/2009	9/29/2009	Confirm ad taken down
D-135	dvdmallonline.com/Rosetta Stone	Learn Spanish - \$129, Free Express Shipping	9/24/2009		No recorded response.
D-136	dvdsellmall.com	Latin Spanish Software Learn Now	9/24/2009	9/24/2009	Confirm ad taken down

\*Sponsored Link ad text appearing on Google search-results pages has been reproduced without corrections to spelling, grammar, or punctuation.

Calhoun Exhibit C

Exhibit Number	Pirate/Counterfeit Domain Name	Ad Text	Date Ad Found / Notice to Google	Google Response	Google Action
D-137	Justdvdstores.com/Rosetta_Stone	Learn Spanish - \$139 High Quality, Fast & Free Shipping. Save 50%, Buy Learn Soft Now.	9/24/2009	9/24/2009	Confirm ad taken down
D-138	Dvdbilling.com/Rosetta_Stone	Learn Spanish - \$139 Free Shipping, Learning Spanish, Spanish Language Software, Buy Now.	9/23/2009	9/23/2009	Confirm ad taken down
D-139	Allfordvs.com/Rosetta_Stone	Learn Spanish - \$139 High Quality, Fast & Free Shipping. Save 50%, Buy Learn Soft Now.	9/22/2009	9/23/2009	Confirm ad taken down
D-140	Rightdvdstores.com/Rosetta_Stone	Learn Spanish - \$139 High Quality, Fast & Free Shipping. Save 50%, Buy Learn Soft Now.	9/22/2009	9/22/2009	Confirm ad taken down
D-141	shopcine.com	\$139 Learn Spanish New Learning Spanish Method High Quality, Free Shipping.	9/22/2009	9/22/2009	Confirm ad taken down
No Exhibit	Dvdsetsdealing.com/Rosetta_Stone	Learn Spanish - \$139 High Quality, Fast & Free Shipping. Save 50%, Buy Learn Soft Now.	9/20/2009	9/20/2009	Confirm ad taken down
No Exhibit	shopcine.com	135\$ Learn Spanish New Learning Spanish Method High Quality, Free Shipping.	9/20/2009	9/21/2009	Confirm ad taken down
No Exhibit	Justdvdsets.com/Rosetta_Stone	Learn Spanish Software only \$139, Learning Latin Spanish Free & Fast Shipping.	9/19/2009	9/19/2009	Confirm ad taken down
No Exhibit	shopcine.com	135\$ Learn Spanish New Learning Spanish Method High Quality, Free Shipping.	9/19/2009	9/19/2009	Confirm ad taken down
D-142	Rightdvdstore.com/Rosetta_Stone	Learn Spanish - \$139 High Quality, Fast & Free Shipping. Save 50%, Buy Learn Soft Now.	9/18/2009	9/18/2009	Confirm ad taken down
D-143	rosettago.com/rosetta_stone	Spanish LV1, 2&3 \$268.99 Latin American, Rosetta Language Free DHL Shipping, Offer This Month	9/18/2009	9/18/2009	Confirm ad taken down
D-144	shopcine.com	135\$ Learn Spanish Rosetta Stones Latin American Spanish Level 1, 2&3 Set with Audio, Buy now	9/18/2009	9/18/2009	Confirm ad taken down
D-145	Dvdsetonly.com/Rosetta_Stone	Learn Spanish Software only \$139, Learning Latin Spanish, Free & Fast Shipping.	9/17/2009	9/18/2009	Confirm ad taken down
D-146	hotmail2u.com/Rosetta_Stone	Learn Spanish - \$139, Only \$139, Free & Fast Shipping. Buy Language Soft Now!	9/17/2009	9/18/2009	Confirm ad taken down
No Exhibit	shopcine.com/Rosetta_Stone	Learn Spanish Software Latin American Spanish Level 1, 2&3 Set with Audio, only 135\$! Buy now	9/17/2009	9/18/2009	Confirm ad taken down
D-147	hotmarforyou.com	Learn Spanish - \$139, Only \$139 Free & Fast Shipping. Buy Language Soft Now!	9/16/2009	9/16/2009	Confirm ad taken down
D-148	ilearnlatin.com/rosetta_stone	Spanish LV1, 2&3 - \$268.99 Latin American, Rosetta Language Free DHL Shipping, Offer this Month	9/16/2009	9/16/2009	Confirm ad taken down

\*Sponsored Link ad text appearing on Google search-results pages has been reproduced without corrections to spelling, grammar, or punctuation.

Calhoun Exhibit C

Exhibit Number	Pirate/Counterfeit Domain Name	Ad Text*	Date Ad Found & Notice to Google	Google Response	Google Action
D-149	Superdvdforums.com/Rosetta_Stone	Learn Spanish - \$139 High Quality, Fast & Free Shipping. Save 50%. Buy Learn Soft Now.	9/16/2009	9/16/2009	Confirm ad taken down
D-150	hotmallstore.com/Rosetta_Stone	Learn Spanish, - \$139 Only \$139, Free & Fast Shipping. Buy Rosetta Now!	9/15/2009	9/15/2009	Confirm ad taken down
D-151	ilearnlatin.com/rosetta.stone	Spanish Lv1,2&3. \$268.99 Latin American,Rosetta Language Free DHL Shipping.Offer this Month	9/15/2009	9/15/2009	Confirm ad taken down
D-152	OnlineDVDsets.com/Rosetta_Stone	rosetta stone only \$139, Learning Latin Spanish Free & Fast Shipping.	9/15/2009	9/15/2009	Confirm ad taken down
D-153	RosettaStone.shopping-bar.com	\$139 RosettaStone Spanish Not \$548,Save 75%;Free Shipping Only 3 Days,Paypal Accept,Order!	9/15/2009	9/15/2009	Confirm ad taken down
D-154	youroutletlive.com/Rosetta_Stone	Learn Spanish, - \$139 Only \$139, Free & Fast Shipping. Buy Rosetta Now!	9/15/2009	9/15/2009	Confirm ad taken down
D-155	Dvdsets/rade.com/Rosetta_Stone	Learn Spanish - \$139 High Quality, Fast & Free Shipping. Save 50%. Buy Learn Soft Now.	9/14/2009	9/14/2009	Confirm ad taken down
D-156	easytouchdvd.com/RosettaStone	Spanish Learn. - \$135 Rosetta stone Language Software. Free Shipping, 55% Off, Buy Now!	9/14/2009	9/14/2009	Confirm ad taken down
D-157	ilearnlatin.com/rosetta.stone	Spanish LV 1,2&3 Boxset \$268.99,Rosetta Language Software Free DHL Shipping. Offer this Month	9/14/2009	9/14/2009	Confirm ad taken down
D-158	allinhere2006.cn/Rosetta_Stone	\$280 Spanish Lv1&2&3 Accept Paypal, buy it Now, No tax.	9/8/2009	9/8/2009	Confirm ad taken down
No Exhibit	Mydvdcollecticns.com/Rosetta_Stone	Learn Spanish - \$139 High Quality, Fast & Free Shipping. Save 50%. Buy Learn Soft Now.	9/8/2009	9/8/2009	Confirm ad taken down
No Exhibit	rosettastonesf.com/rosetta.stone	Spanish Lv1&2&3. \$298.99 Latin American,Language Software, Free Express Shipping,Hot Sale	9/8/2009	9/8/2009	Confirm ad taken down
D-159	rosettastonesf.com/rosetta.stone	Spanish Lv1&2&3. \$298.99 Latin American,Language Software, Free Express Shipping,Hot Sale	9/8/2009	9/3/2009	Confirm ad taken down
No Exhibit	Dvdseriesboxset.com/Rosetta_Stone	Learn Spanish - \$139 High Quality, Fast & Free Shipping. Save 50%. Buy Learn Soft Now.	9/3/2009	9/3/2009	Confirm ad taken down

\*Sponsored Link ad text appearing on Google search-results pages has been reproduced without corrections to spelling, grammar, or punctuation.

# Exhibit 5

IN THE DISTRICT COURT  
FOR THE DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

-----:

ROSETTA STONE, LTD., :

:

Plaintiff, :

: C.A. No.:

vs. : 1:09-cv-00736 (GBL/TCB)

:

GOOGLE, INC., :

:

Defendant. :

:

-----:

Lakewood, Colorado

Monday, March 8, 2010

Videotaped Deposition of:

STEVE F. DUBOW

called for oral examination by counsel for Plaintiff,  
pursuant to notice, at the Sheraton Denver West  
Hotel, 360 Union Blvd., Lakewood, Colorado, before  
Barbara J. Castillo, RMR/CRR, of Capital Reporting  
Company, a Notary Public in and for the State of  
Colorado, beginning at 10:52 a.m., when were present  
on behalf of the respective parties:

1 1 Q Did the ad text, the actual text of the ad  
2 2 itself, appearing on the link use the term "Rosetta  
3 3 Stone"?

4 4 MR. STERN: Objection, foundation.

5 5 A Yes.

6 6 MR. STERN: Objection, foundation.

7 7 Q (BY MR. ETTINGER) It's okay. You may answer  
8 8 now.

9 9 A Yes, it did.

10 10 Q When you clicked on the -- the link or your  
11 11 wife clicked on the link -12

12 A Uh-huh.

13 13 Q -- did you see the page that came up?

14 14 A Yeah, oh, absolutely.

15 15 Q Sir, do you recall the name of the -- the  
16 16 company that advertised on the link that you -- you and  
17 17 your wife clicked on?

18 18 A Yes. It was a company called Bossdisk.

19 19 Q Could you spell that, please.

20 20 A B-o, double, s-d-i-s-k.

21 21 (Exhibit Number 1 was marked.)

22 22 Q (BY MR. ETTINGER) Sir, I'm going to hand you



1 1 what's been marked as DuBow Exhibit 1. It is a two2  
2 page document that I'll represent to you is a landing  
3 3 page from a Google search to Gain Soft Mall, not  
4 4 Bossdisk, but I want to ask you if this -- if you can  
5 5 take a look at this exhibit and ask you whether or not  
6 6 it bears any resemblance to the one that you saw when  
7 7 you clicked on the Bossdisk site.

8 8 A It's virtually identical. The price here is  
9 9 \$142. I guess it's gone up. Mine was 139. And I  
10 10 don't remember the version number being presented on  
11 11 the level of Rosetta Stone.

12 12 Q The page that was presented to you and your  
13 13 wife, did it have the Rosetta Stone boxes appear on the  
14 14 Web itself?

15 15 A To the best of my recollection, it looked  
16 16 almost exactly like this.

17 17 Q All right. Sir, if you'd look to the second  
18 18 page, do you see at the bottom of the second page  
19 19 there's some links like to -- conditions of use,  
20 20 contact us.

21 21 A Uh-huh.

22 22 Q Do you recall whether you and your wife

1 1 A Okay.

2 2 Q And you see there, there is an e-mail from

3 3 Bossdisk to sfdubow@attglobal.net.

4 4 A Dot net, yes.

5 5 Q All right. Is that your e-mail address?

6 6 A It is.

7 7 Q And does this document -- did you receive

8 8 this e-mail from Bossdisk?

9 9 A Yes.

10 10 Q Okay. And, sir, what is this e-mail?

11 11 A It's a confirmation, appears to be, of my

12 12 purchase.

13 13 Q And what is the date of your purchase?

14 14 A I guess it was October 6th.

15 15 Q And what year?

16 16 A 2009.

17 17 Q And could I get you to turn to the second

18 18 page of the exhibit.

19 19 A Okay.

20 20 Q And could you please describe for the court

21 21 the second e-mail that you received from Bossdisk at

22 22 3:09 p.m.?

# Exhibit 6

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

GOVERNMENT EMPLOYEES INSURANCE  
COMPANY,

Plaintiff,

vs. Case No. 1:04CV507

GOOGLE, INC., and  
OVERTURE SERVICES, INC.  
Defendants.

DEPOSITION OF ROSE HAGAN  
ATTORNEYS' EYES ONLY  
TAKEN PURSUANT TO RULE 30(b)(6)  
THURSDAY, SEPTEMBER 30, 2004  
VOLUME I  
PAGES 1 to 228

REPORTED BY: COLLEEN H. MILLER, CSR NO. 6197  
CERTIFIED REALTIME REPORTER

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APPEARANCES (CONTINUED)

FOR DEFENDANT BRINKS, HOFER, GILSON &  
OVERTURE: P.C.  
BY: JENNIFER BAUMANN,  
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jbaumann@brinkshofer.com

THE VIDEOGRAPHER: DAN MOTTAZ VIDEO  
PRODUCTIONS LLC  
BY: STEVE LEFTWICH  
182 Second Street, Suite 202  
San Francisco, CA 94105  
(415) 624-1300

ALSO PRESENT: NATALIE WRAY

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APPEARANCES

FOR THE PLAINTIFF: ARNOLD & PORTER LLP  
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(202) 942-5000  
wintech@aporter.com

FOR DEFENDANT KEKER & VAN NEST LLP  
GOOGLE, INC.: BY: MICHAEL H. PAGE &  
ANJALI S. SAKARIA,  
ATTORNEYS AT LAW  
710 Sansome Street  
San Francisco, CA 94111  
(415) 391-5400  
jhl@kvn.com

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1 Notice to take Rule 30(b)(6) 11  
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2 E-mail string, Bates Numbers GGE004082 61  
through GGE004087

3 Document entitled "Domestic Trademark 82  
Policy Change Transition Plan Discussion"  
dated February 23, 2004, Bates Numbers  
Google 005348 through Google 005350

4 Multipage document entitled "Trademark 112  
Updates," Bates Numbers Google 002869  
through Google 002894

5 Google, Inc.'s second supplemental 123  
response to Plaintiff's First Set of  
Interrogatories Number 6

1 reduce user confusion?  
 2 A. It was one of the factors that went into  
 3 our decision to move forward with the new policy.  
 4 Q. Did you have any factual basis for making  
 5 the statement to him that the new policy was designed  
 6 to reduce user confusion?  
 7 A. Yes.  
 8 Q. What was that?  
 9 A. Can I ask my counsel a question of  
 10 privilege?  
 11 MR. OSSOLA: Yes.  
 12 THE VIDEOGRAPHER: Off the record at 12:13  
 13 p.m.  
 14 (Off the record.)  
 15 THE VIDEOGRAPHER: Back on the record at  
 16 12:15 p.m.  
 17 BY MR. OSSOLA:  
 18 Q. The pending question is what was your  
 19 factual basis for making the statement to him that the  
 20 new policy was designed to reduce user confusion?  
 21 MR. PAGE: Let me just admonish you to  
 22 omit from your answer the content of any  
 23 attorney-client communications.  
 24 THE WITNESS: Generally if terms are used  
 25 in the ad text, if trademark terms are used in the ad

1 text by parties who are not the trademark owner, there  
 2 seems to be more user -- potential user confusion  
 3 about whether or not that advertiser is somehow  
 4 affiliated with the trademark owner or offers those  
 5 products.  
 6 BY MR. OSSOLA:  
 7 Q. And how do you know that?  
 8 MR. PAGE: Same admonishment.  
 9 THE WITNESS: I'm not sure I can answer  
 10 that without disclosing work product or  
 11 attorney-client privilege.  
 12 BY MR. OSSOLA:  
 13 Q. Isn't that what you were telling  
 14 Mr. Degret, that the new policy was attempting to  
 15 reduce user confusion by not allowing advertisers that  
 16 weren't affiliated with the trademark owner to use  
 17 trademarks in their ad text or titles?  
 18 A. That is what I told him.  
 19 Q. Okay. And you were intended to --  
 20 intending to convey to him, weren't you, what you just  
 21 testified to, that there's a potential for more user  
 22 confusion if -- as to whether the advertiser is  
 23 affiliated with a trademark owner if the trademark is  
 24 used in the text of the ad?  
 25 A. Correct.

1 Q. And what was the factual basis, if any,  
 2 for the statement that -- for that statement that you  
 3 were making to Mr. Degret?  
 4 MR. PAGE: Same admonishment.  
 5 THE WITNESS: I don't believe I can answer  
 6 that without disclosing privileged information.  
 7 MR. OSSOLA: I don't believe that facts  
 8 that she is aware of that support a statement made to  
 9 a third party is privileged, but if you want to make  
 10 that instruction, that's fine.  
 11 MR. PAGE: Suppose I send you a letter  
 12 that -- in which I tell you my client's innocent and  
 13 you ask me "How do you know that?" do you get to get  
 14 the answer to that question from me just because I  
 15 told you he was innocent?  
 16 MR. OSSOLA: I'm just saying that -- I'm  
 17 not going to debate unrelated hypotheticals --  
 18 MR. PAGE: Okay.  
 19 MR. OSSOLA: -- but you're -- are you  
 20 instructing her not to answer?  
 21 MR. PAGE: I'm instructing her to omit --  
 22 to exclude from her answer attorney work product or  
 23 the content of attorney-client communications. She  
 24 may be able to answer without disclosing them.  
 25 BY MR. OSSOLA:

1 Q. But your testimony is that you can't,  
 2 right?  
 3 A. Correct.  
 4 Q. So am I correct that you were making a  
 5 statement to Mr. Degret regarding user confusion based  
 6 on facts that you were aware of at the time but you  
 7 believe you cannot now disclose because of attorney  
 8 work product, attorney-client privilege?  
 9 A. Correct.  
 10 Q. Further on down on page 1 you say that we  
 11 came to the conclusion that Internet users are not  
 12 likely to be confused by seeing advertisements on a  
 13 page.  
 14 What did you mean by that?  
 15 A. That the mere fact that ads appear on a  
 16 page is not necessarily confusing to Internet users.  
 17 Q. Did you mean appear on a page as a result  
 18 of the use of a trademark as a search term?  
 19 A. That could be encompassed in it. Just  
 20 more generally people -- Internet users are not  
 21 confused merely because ads appear on a page. There  
 22 has to be something more.  
 23 Q. And how do you know that?  
 24 A. Once again, I'm not sure I can answer  
 25 without disclosing attorney-client or work product

# Exhibit 7

IN THE UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF OHIO  
 WESTERN DIVISION  
 CNG FINANCIAL CORPORATION, )  
 )  
 Plaintiff/Counterclaim )  
 Defendant, )  
 )  
 -vs- ) CASE NO. 1:06-cv-040  
 )  
 GOOGLE, INC., )  
 )  
 Defendant/Counterclaim ) ATTORNEYS' EYES ON  
 Plaintiff. )

DEPOSITION OF ROSE HAGAN

DATE: November 29, 2006  
 TIME: 9:11 a.m.  
 LOCATION: FENWICK & WEST, LLP  
 801 California Street  
 Mountain View, California  
 REPORTED BY: Anne M. Torreano, CSR, RPR  
 Certified Shorthand Reporter  
 License Number C-10520

1 APPEARANCES:  
 2 For the Plaintiff/Counterclaim Defendant, CNG FINAN  
 CORPORATION:  
 3 FROST BROWN TODD, LLP  
 4 BY: BARRY D. HUNTER  
 5 250 West Main Street  
 6 Suite 2700  
 7 Lexington, Kentucky 40507  
 8 (859) 231-0000  
 9 CNG FINANCIAL CORPORATION  
 10 BY: RICHARD E. KAMMER  
 11 5155 Financial Way  
 12 Mason, Ohio 45040  
 13 (513) 229-6536  
 14 For the Defendant/Counterclaim Plaintiff, GOOGLE,  
 INC.:  
 15 KEKER & VAN NEST, LLP  
 16 BY: KLAUS H. HAMM  
 17 710 Sansome Street  
 18 San Francisco, California 94111  
 19 (415) 391-5400  
 20 The Videographer:  
 21 McMAHON & ASSOCIATES, LLC  
 22 BY: KEVIN McMAHON  
 23 97 East Saint James Street  
 24 Suite 101  
 San Jose, California 95112  
 (408) 298-6686

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1 A. I don't know.  
 2 Q. Okay. In other words, if there were  
 3 suggestions about how to improve an ad campa  
 4 addition or deletion of key words, would that be  
 5 something the optimizers would do as opposed t  
 6 CSRs, or how would that work?  
 7 A. I'm actually not sure how they interact.  
 8 Q. Okay. When you said that this was direct  
 9 the bin approval folks and the CSRs, was it also  
 10 perhaps addressed to the optimizers, or do you t  
 11 they weren't part of this?  
 12 A. I don't know.  
 13 Q. It is a different group, though? There's a  
 14 different team head?  
 15 A. Yes.  
 16 Q. Okay. Did you prepare this document?  
 17 A. No.  
 18 Q. Okay. Did you have a role in its preparati  
 19 A. Yes.  
 20 Q. Okay. And what was that role?  
 21 A. I reviewed drafts of it and gave comments  
 22 Q. And who prepared it?  
 23 A. An attorney in our New York office called  
 24 Ramsi. I can't pronounce his last name, but it's  
 25 H-o-m-s-a-n-y.

1 Q. Okay. And is he in-house?  
 2 A. Yes.  
 3 Q. Who presented it?  
 4 A. I think different people may have presente  
 5 at different times, and I'm not sure who presente  
 6 Q. Okay. Do you know when this was prepa  
 7 A. It probably would have been prepared befo  
 8 of April, maybe end of March 2004, as we were t  
 9 be announcing the change in policy.  
 10 Q. And do you know when it was presented?  
 11 A. Around that same time frame.  
 12 Q. Okay. On 61837, "Why's the Policy Chan  
 13 the third point, "The policy aims to avoid mislead  
 14 users into believing particular ads are sponsorec  
 15 affiliated with a trademark company when they a  
 16 How does it do that?  
 17 A. By making the advertiser remove the  
 18 trademarked term from the ad text.  
 19 Q. Okay. This talks about why the policy is  
 20 changing. How did the change in policy further t  
 21 objective, if at all?  
 22 A. Actually, that was a goal under the old pol  
 23 as well, but I think this was explaining why the p  
 24 change was only as to key words, why we were  
 25 having a policy with regard to the ad text.

1 Q. So you're not -- so this isn't intended to  
 2 suggest that the change was done to avoid misle  
 3 users?  
 4 A. Retaining the ad text portion of the compl  
 5 procedure was done to avoid misleading users.  
 6 Q. Okay. But you always had that.  
 7 A. Correct.  
 8 Q. So this isn't suggesting that the reason fo  
 9 the change was to avoid misleading users?  
 10 MR. HAMM: Objection. Asked and answe  
 11 THE WITNESS: It was a reason for the ch  
 12 MR. HUNTER: Okay.  
 13 THE WITNESS: The reason that section c  
 14 policy still exists.  
 15 BY MR. HUNTER:  
 16 Q. Okay. Other than that, did the change ha  
 17 anything to do with avoiding misleading users, o  
 18 than the policy of keeping what was there before  
 19 text?  
 20 A. I mean, we wanted to make sure users we  
 21 confused. We thought this was the way to do th  
 22 Q. Well, you thought that under the old polici  
 23 too; correct?  
 24 A. We did think that the ad text portion of the  
 25 policy --

1 Q. Right.  
 2 A. -- met the same end, yes.  
 3 Q. Let me try it this way: Was there anything  
 4 different that you did after June of '04 that you  
 5 thought would help avoid user confusion?  
 6 A. No.  
 7 Q. Okay. So if I were to ask you, as I was go  
 8 to, did you believe that anything in the old policy  
 9 causing user confusion that you obviated with th  
 10 policy, that would not be the case?  
 11 A. Correct.  
 12 Q. Okay. 61847, the last page.  
 13 A. Excuse me.  
 14 Q. The third point, "Does this trademark polic  
 15 change/increase our ad partners's liability for ad:  
 16 shown on trademark terms?"  
 17 A. Yes?  
 18 Q. Does it? What is -- what is -- what is that  
 19 referring to?  
 20 Are you all asking the CSRs to chime in or  
 21 that?  
 22 A. No.  
 23 MR. HAMM: Objection to form.  
 24 MR. HUNTER: It wasn't a serious question  
 25 THE WITNESS: No, I think this was intent



# Exhibit 8

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

ROSETTA STONE LTD.,

Plaintiff,

vs.

CASE NO. 1:09-cv-00736  
(GBL/TCB)

GOOGLE INC.,

Defendant.

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HIGHLY CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER

ATTORNEYS' EYES ONLY

DEPOSITION OF

TERRI CHEN

VOLUME I

FEBRUARY 23, 2010

9:13 a.m.

525 University Avenue, 11th Floor

Palo Alto, California

Reported by Quyen N. Do, RPR, CSR No. 12447

1 as a 30(b)(6) witness or in your individual capacity?

2 A No. Just reviewing -- I -- I did review some  
3 deposition transcripts.

4 Q When did you review those deposition  
5 transcripts?

6 A Yesterday.

7 Q What case or cases were those deposition  
8 transcripts from?

9 A Geico vs. Google and CNG vs. Google.

10 Q Any other cases?

11 A No.

12 Q Okay. American Blinds?

13 A I don't believe so. There -- I may have  
14 reviewed a couple of pages from it here and there, but  
15 I -- I don't believe I reviewed the actual -- the full  
16 transcript on that one.

17 Q What about American Airlines?

18 A No.

19 Q Do you remember how many deposition  
20 transcripts you reviewed either in total or in part?

21 A Yes.

22 Q How many?

23 A I believe three. So the -- yeah.

24 Q So, from the Geico case, do you remember how  
25 many you reviewed?

1 A Yes. One.

2 Q Whose deposition was that?

3 A Rose Hagan.

4 Q From the CNG case, how many depositions did  
5 you review?

6 A One.

7 Q And whose deposition was that?

8 A Rose Hagan.

9 Q And from the American Blind case, you said you  
10 may have reviewed pages --

11 A I -- I may have. I'm -- I'm not sure.

12 Q Do you have a recollection as to what  
13 deposition you may have reviewed?

14 A Yes. Rose Hagan.

15 Q Other than Rose Hagan's depositions, did you  
16 review depositions of any other witnesses?

17 A No.

18 Q Did you review the deposition of Larry Page  
19 from the American Blinds case?

20 A No.

21 Q And you reviewed those transcripts yesterday?

22 A Yes.

23 Q Okay. Is that the same for the other  
24 documents that you identified? Did you review those all  
25 yesterday?

# Exhibit 9

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

ROSETTA STONE, LTD.,

Plaintiff,

vs.

CASE NO.

1:09-cv-00736 (GBL/TCB)

GOOGLE, INC.,

Defendant.

~~~~~

HIGHLY CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

DEPOSITION OF  
30 (b) (6) GOOGLE, INC. and ROSE HAGAN  
PALO ALTO, CALIFORNIA  
MARCH 5, 2010

Reported by Katherine E. Lauster, CSR No. 1894

1 could say I had seven and a half years of  
2 preparation for this deposition, but nothing  
3 specific to preparing for today.

4 Q. Since leaving Google in January 2010, have  
5 you reviewed any documents that relate to the  
6 subject matter of today's deposition?

7 A. No, I have not, with the exception of  
8 yesterday.

9 Q. Right. Miss Hagan, you were previously  
10 deposed in a matter between Google and GEICO; is  
11 that correct?

12 A. Yes, that is correct.

13 Q. And that deposition took place on  
14 December 30th, 2004?

15 A. Approximately.

16 Q. When you testified at deposition in the  
17 GEICO case, were you testifying under oath as you  
18 are today?

19 A. Yes.

20 Q. Did you testify truthfully and accurately  
21 in that deposition?

22 A. Yes, I did.

23 Q. Following the deposition in the GEICO  
24 case, did you make any changes or corrections to  
25 your deposition transcript?

1           A.    I believe I made minor corrections of  
2 typos and that nature of thing.

3           Q.    Do you recall making any more substantive  
4 changes other than typos and -- and minor  
5 corrections of that sort.

6           A.    I don't recall.

7           Q.    You were also deposed in a matter between  
8 Google and American Blind and Wallpaper Factory,  
9 Inc.; is that correct?

10          A.    Yes, that's correct.

11          Q.    And that took place in August of 2006; is  
12 that right?

13          A.    That sounds about right.

14          Q.    And when you were deposed in that case,  
15 you were testifying under oath as you are today?

16          A.    Yes, I was.

17          Q.    Did you testify truthfully and accurately  
18 in that case?

19          A.    Yes, I did.

20          Q.    Following your deposition in the American  
21 Blind Case did you make any changes or corrections  
22 to your deposition transcript.

23          A.    I remember reviewing the transcript, and I  
24 believe I made minor corrections, once again, of  
25 typos.



1 Q. Nothing substantive that you can recall?

2 A. I don't recall.

3 Q. You were also deposed in a matter between  
4 CNG Financial Corporation and Google; is that  
5 correct?

6 A. Yes.

7 Q. And that occurred in November 2006; is  
8 that right?

9 A. That sounds about right.

10 Q. When you were testifying in deposition in  
11 that case you were testifying under oath as you are  
12 today; correct?

13 A. Yes.

14 Q. Did you testify truthfully and accurately  
15 in that case?

16 A. Yes, I did.

17 Q. Following that deposition, did you make  
18 any changes or corrections to your deposition  
19 transcript?

20 A. I can't recall exactly. I think I made  
21 small corrections as to typos.

22 Q. But no substantive changes that you can  
23 recall?

24 A. Not that I recall.

25 Q. Other than the three cases that we just