# **EXHIBIT 2**

## published as a part of Google's Advertising designation, use, or inclusion of one or more relating to the sale, marketing, promotion, offering, engine, website, or other Internet-related services communications with current or past Google All documents relating to Google's text of Sponsored Links or other messages terms in Google's Advertising Programs, or in the Marks, as Keywords or other designated search Marks or Terms Similar To The Rosetta Stone trademarks of language education companies, Customers or with users of Google's Internet search REQUEST including but not limited to the Rosetta Stone seeks documents protected by the attorney-client designated search terms," "other messages" and party nor reasonably calculated to lead to the applicable privilege. privilege, attorney work-product doctrine, or other other than the alleged Rosetta Stone trademarks and the production of documents related to trademarks "language education companies" and in that it seeks discovery of admissible evidence as to "other and neither relevant to the claim or defense of any it (i) is vague, overly broad, unduly burdensome Google objects to this Request on the grounds that OBJECTION lacks an appropriate temporal limitation; and (ii) Google has already agreed to produce all trademark owners' accusations against Google, REASONING

objections, Google responds that it will produce and are discovered as a result of Google's advertising programs, if any such documents exist Stone's alleged trademarks and Google's Google's advertising customers regarding Rosetta documents relating to communications with Subject to and without waiving the foregoing non-privileged, non-attorney work product reasonable efforts to locate such documents.

> between a senior user's mark and a junior user's actions depend on the likelihood of confusion

complaints, and discovery responses are irrelevant

to the current case. Trademark infringement

including emails, cease and desist letters,

of third parties. Documents that relate to other trademark owners, including trademark complaints Google objects to documents relating to other requests is burdensome and takes time. However, to Plaintiff's numerous and extremely broad enormous amount of data for documents responsive month. Needless to say, sorting through this and hundreds of millions of ads are served every Billions of searches are run on Google every day. trademarks and Google's advertising programs. documents that relate to Rosetta Stone's alleged

of these requests is in no way outweighed by the advertisers, different consumer expectations—have different products, different types and identities of different than the current case—different an 'inherently factual' issue that depends on the no bearing on this litigation. Moreover, the burden trademarks were at issue, different advertisements, cases in which the "facts and circumstances" were Steakhouse & Saloon, Inc. v. Alpha of Virginia, use, and "determining the likelihood of confusion is the use of Rosetta Stone's alleged trademarks. Inc., 43 F.3d 922, 933 (4th Cir. 1995). As such, fact that these documents have nothing to do with facts and circumstances in each case." Lone Star

All documents relating to Google's analysis of the use of trademarks as Keywords in paid advertisements, including but not limited to data provided by or communicated to third party consultants, data or analysis generated by or stored in third party software, data or analysis generated by or stored in software developed by Google.

ambiguous with regards to the phrase "Keywords in alleged Rosetta Stone trademarks; (iv) is vague and extent it seeks documents relating to the use of of other requests; (iii) is oppressive, unduly "relating to" in asking for "all documents relating privilege". work-product doctrine, or other applicable paid advertisements; and (v) seeks documents specific trademarks as keywords other than the defense of any party nor reasonably calculated to it makes improper use of the omnibus phrase protected by the attorney-client privilege, attorney lead to the discovery of admissible evidence to the burdensome, and is neither relevant to the claim or matter and temporal limitations; (ii) is duplicative keywords without specifying appropriate subject to" an analysis of the use of trademarks as

Subject to and without waiving the foregoing objections, Google responds that it will produce non-privileged, non-attorney work product documents relating to any analysis Google has conducted of the use of the alleged Rosetta Stone trademarks, or trademarks generally, as keywords, if any such documents exist and are discovered as a result of Google's reasonable efforts to locate such documents.

it (i) is overly broad and unduly burdensome in that Google objects to this Request on the grounds that of trademarks as keywords generally; they are in responsive documents it created relating to the use To the extent Google has any non-privileged the process of being provided

the use of Rosetta Stone's alleged trademarks. of these requests is in no way outweighed by the no bearing on this litigation. Moreover, the burden advertisers, different consumer expectations—have Steakhouse & Saloon, Inc. v. Alpha of Virginia, actions depend on the likelihood of confusion to the current case. Trademark infringement Google, including emails, cease and desist letters. to other trademark owners' accusations against Google objects to requests. Documents that relate specific to trademark's complaints of third parties, different products, different types and identities of trademarks were at issue, different advertisements, different than the current case-different cases in which the "facts and circumstances" were Inc., 43 F.3d 922, 933 (4th Cir. 1995). As such, facts and circumstances in each case." Lone Star an 'inherently factual' issue that depends on the use, and "determining the likelihood of confusion is between a senior user's mark and a junior user's complaints, and discovery responses are irrelevant However, documents relating to analysis that is fact that these documents have nothing to do with

All documents relating to any senior executive or board meeting, including but not limited to Board of Directors meetings, Executive Management Group meetings, and GPS meetings at which Google's trademark policy or any lawsuit related to that policy was discussed. Such documents shall include, but not be limited to, minutes, notes or reports of meetings.

without specifying appropriate subject matter and use of the omnibus phrase "relating to" in asking of admissible evidence, in that it makes improper nor reasonably calculated to lead to the discovery neither relevant to the claim or defense of any party it (i) is overly broad and unduly burdensome, and is Google objects to this Request on the grounds that Google's reasonable efforts to locate such documents exist and are discovered as a result of senior executive or board meetings, if any such discussions of Google's trademark policies at non-attorney work product documents reflecting objections, Google will produce non-privileged, Subject to and without waiving the foregoing doctrine, or other applicable privilege. the attorney-client privilege, attorney work-product meetings"; and (iii) seeks documents protected by temporal limitations; (ii) does not define "GPS lawsuit related to that policy was discussed" board meeting and GPS meetings at which . . . any for "all documents relating to" "any executive or

To the extent Google has any non-privileged responsive documents reflecting discussions of Google's trademark policies, it already agreed to produce them.

complaints, and discovery responses are irrelevant Google, including emails, cease and desist letters, to other trademark owners' accusations against Google objects to requests. Documents that relate specific to trademark's complaints of third parties, trademarks were at issue, different advertisements, different than the current case—different cases in which the "facts and circumstances" were Steakhouse & Saloon, Inc. v. Alpha of Virginia, an 'inherently factual' issue that depends on the use, and "determining the likelihood of confusion is between a senior user's mark and a junior user's actions depend on the likelihood of confusion to the current case. Trademark infringement However, documents relating to analysis that is no bearing on this litigation. advertisers, different consumer expectations—have different products, different types and identities of facts and circumstances in each case." Lone Star Inc., 43 F.3d 922, 933 (4th Cir. 1995). As such,

All documents relating to the sale, marketing, promotion, offering, designation, use, or inclusion of one or more of the Rosetta Stone Marks or Terms Similar To The Rosetta Stone Marks, as Keywords or other designated search terms in Google's Advertising Programs or in the text of Sponsored Links or other messages published as a part of Google's Advertising Programs.

documents exist and are discovered as a result of documents relating to advertisements where the non-privileged, non-attorney work product objections, Google responds that it will produce "similar to"; and (iii) seeks information protected it lacks appropriate subject matter and temporal broad and unduly burdensome, vague and it (i) is duplicative of other requests; (ii) is overly Google's reasonable efforts to locate such keywords or in the advertisement text, if any such alleged Rosetta Stone trademarks were used as Subject to and without waiving the foregoing product doctrine, or other applicable privilege. by the attorney-client privilege, attorney worksearch terms," "other messages," and the phrase limitations and with regards to "other designated lead to the discovery of admissible evidence in that defense of any party nor reasonably calculated to ambiguous, and is neither relevant to the claim or Google objects to this Request on the grounds that

Google has already agreed to produce all documents that relate to Rosetta Stone's alleged trademarks and Google's advertising programs. Billions of searches are run on Google every day, and hundreds of millions of ads are served every month. Needless to say, sorting through this enormous amount of data for documents responsive to Plaintiff's numerous and extremely broad requests is burdensome and takes time.

			9. All documents relating to communications between Google and Rosetta Stone.
applicable privilege. Subject to and without waiving the foregoing objections, Google responds that it will produce non-privileged, non-attorney work product documents related to its communications with Rosetta Stone related to Google's search and advertising services and products.	to the claim or defense of any party nor reasonably calculated to lead to the discovery of admissible evidence and will not be produced; and (ii) seeks information protected by the attorney-client privilege, attorney work-product doctrine, or other	Stone without specifying an appropriate subject matter limitation. Specifically it request "all communications," not just those relevant to this action, including communications between Google and Rosetta Stone relating to Google's license of Rosetta Stone's products, which are neither relevant	Google objects to this Request on the grounds that it (i) is overly broad and unduly burdensome in that it makes improper use of the omnibus phrase "relating to" in asking for "all documents <i>relating to</i> " communications between Google and Rosetta
			Google has already agreed, and is in the process of producing thousands of documents relating to communications between Google and Rosetta Stone that relate to Google's search and advertising services and products, going back to at least 2002.

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All documents relating to communications between Google and any third party complaining, objecting to or criticizing Google's sale, marketing, promotion, offering, designation, use, or inclusion of such party's trademarks as a Keyword or other designated search term in Google's Advertising Programs or in the text of Sponsored Links or other messages published as a part of Google's Advertising Programs, including cease and desist letters received by Google from any owner or purported owner of any trademark and any responses to such cease and desist letters, as well as allegations that the use of trademarks would or had caused consumer confusion.

it (i) is duplicative of other requests; (ii) is overly applicable privilege. privilege, attorney work-product doctrine, or other "other designated search terms" and "other action; (iv) is vague and ambiguous with regards to other than the alleged trademarks at issue in this extent it calls for documents relating to trademarks defense of any party nor reasonably calculated to restrictions; (iii) is neither relevant to the claim or appropriate subject matter and temporal communications with "any" third party and lacks asking for "all documents relating to" broad and unduly burdensome in that it makes Google objects to this Request on the grounds that information protected by the attorney-client reasonably accessible due to Google; and (vi) seeks messages"; (v) seeks information that is not lead to the discovery of admissible evidence to the improper use of the omnibus phrase "relating to" in

nothing to do with the use of Rosetta Stone's outweighed by the fact that these documents have advertisements, different products, different types circumstances" were different than the current Alpha of Virginia, Inc., 43 F.3d 922, 933 (4th Cir case." Lone Star Steakhouse & Saloon, Inc. v. of confusion is an 'inherently factual' issue that confusion between a senior user's mark and a letters, complaints, and discovery responses are relate to other trademark owners' accusations Google's advertising programs. Documents that relating to Rosetta Stone's alleged trademarks and Google has agreed to produce all documents Moreover, the burden of these requests is in no way expectations—have no bearing on this litigation. and identities of advertisers, different consumer case—different trademarks were at issue, different depends on the facts and circumstances in each junior user's use, and "determining the likelihood infringement actions depend on the likelihood of irrelevant to the current case. Trademark against Google, including emails, cease and desist alleged trademarks. 1995). As such, cases in which the "facts and

subject to such a "standing request." considered treating the Rosetta Stone Marks as requests"; and (e) whether or not Google has owners the option of making such "standing ways that Google has communicated to trademark taken to honor such "standing requests"; (d) all responses thereto; (c) all steps that Google has copies of all such "standing requests" and Google's a way for them to place a 'standing request"; (b) owners to file a complaint about an existing ad and Complaint Form" is "both a way for trademark the Washington Examiner as published on October to: (a) the statement of Google's spokesperson to including but not limited to all documents relating used in the text or title of a Sponsored Link, those trademark owners' trademarks from being trademark owners to Google asking to prevent All documents relating to "standing requests" from 18, 2007, to the effect that Google's "Trademark

> to the claim or defense of any party nor reasonably in Google's custody or control. applicable privilege; and (iv) seeks information not information protected by the attorney-client sub-categories of information; (iii) seeks includes "all documents relating to" each of the five documents relating to" any trademark, rather than the omnibus phrase "relating to" in asking for "all and temporal limitations, it makes improper use of evidence in that lacks appropriate subject matter calculated to lead to the discovery of admissible broad and unduly burdensome and neither relevan it (i) is duplicative of other requests; (ii) is overly Google objects to this Request on the grounds that privilege, attorney work-product doctrine, or other those that are the subject of this litigation; and it

Subject to and without waiving the foregoing objections, Google responds that it will produce non-privileged, non-attorney work product documents responsive to the Request that concern trademarks generally or Rosetta Stone's alleged trademarks, if any such documents exist and are discovered as a result of Google's reasonable efforts to locate such documents.

Alpha of Virginia, Inc., 43 F.3d 922, 933 (4th Cir. advertisements, different products, different types case—different trademarks were at issue, different circumstances" were different than the current mark and a junior user's use, and "determining the and desist letters, complaints, and discovery accusations against Google, including emails, cease alleged trademarks. nothing to do with the use of Rosetta Stone's outweighed by the fact that these documents have Moreover, the burden of these requests is in no way expectations—have no bearing on this litigation. and identities of advertisers, different consumer each case." Lone Star Steakhouse & Saloon, Inc. v. issue that depends on the facts and circumstances in likelihood of confusion between a senior user's Trademark infringement actions depend on the responses are irrelevant to the current case. Documents that relate to other trademark owners' 1995). As such, cases in which the "facts and likelihood of confusion is an 'inherently factual'

#### J.

All documents relating to settlement agreements or any other documents memorializing settlement arrangements between Google and a third party relating to Google's sale, marketing, promotion, offering, designation, use, or inclusion of the third party's trademark(s) as Keywords or other designated search terms in Google's Advertising Programs, or in the text of Sponsored Links or other messages published as a part of Google's Advertising Programs, including but not limited to the settlement agreement in American Airlines, Inc. v. Google Inc., Case No. 4:07-cv-00487-A (N.D. Tex.) (filed Aug. 16, 2007).

doctrine, or other applicable privilege. attorney-client privilege, attorney work-product disclosure of confidential agreements with third ambiguous with regards to "other designated search appropriate temporal limitation; (iii) is vague and alleged Rosetta Stone trademarks and lacks an arrangements regarding trademarks other than the of admissible evidence to the extent it seeks given Federal Rules of Evidence Rule 408's discovery of admissible evidence, particularly any party nor reasonably calculated to lead to the it (i) is neither relevant to the claim or defense of parties; and (v) seeks information protected by the terms" and "other messages"; (iv) requests documents relating to settlement agreements and nor reasonably calculated to lead to the discovery neither relevant to the claim or defense of any party policy, (ii) is oppressive, unduly burdensome, and compromise and offers to compromise and public prohibition on admitting evidence relating to Google objects to this Request on the grounds that

and identities of advertisers, different consumer advertisements, different products, different types circumstances" were different than the current Alpha of Virginia, Inc., 43 F.3d 922, 933 (4th Cir. each case." Lone Star Steakhouse & Saloon, Inc. v. and desist letters, complaints, and discovery do not prove, "and by virtue of Rule 408 [are] not In addition, such documents are protected by expectations—have no bearing on this litigation case—different trademarks were at issue, different 1995). As such, cases in which the "facts and issue that depends on the facts and circumstances in mark and a junior user's use, and "determining the likelihood of confusion between a senior user's Trademark infringement actions depend on the accusations against Google, including emails, cease Documents that relate to other trademark owners' WL 198081 at \*1 (S.D.N.Y. April 22, 1997). relevant to, the strength of the claims asserted" in Federal R. Evid. 408. Prior settlement agreements likelihood of confusion is an 'inherently factual' responses are irrelevant to the current case. Music, Inc. v. Warner Bros. Records, Inc., 1997 the previous suits against Google. Collister Alley

#### 4

All documents related to any negotiations, agreements, settlements, arrangements or communications with RE/MAX International, Inc. or any of its subsidiaries, affiliates or franchisees related to the use of RE/MAX's trademarks (or those of its subsidiaries, affiliates or franchisees) in Google's Advertising Programs.

with third parties; and (v) seeks information "relating to" in asking for "all documents related other than the alleged Rosetta Stone trademarks; extent it seeks documents relating to settlement compromise and offers to compromise and public prohibition on admitting evidence relating to given Federal Rules of Evidence Rule 408's discovery of admissible evidence, particularly any party nor reasonably calculated to lead to the it (i) is neither relevant to the claim or defense of work-product doctrine, or other applicable protected by the attorney-client privilege, attorney (iv) requests disclosure of confidential agreements appropriate temporal and subject matter limitations; to" the subject matter of the Request and lacks it makes improper use of the omnibus phrase (iii) is overly broad and unduly burdensome in that agreements and arrangements regarding trademarks lead to the discovery of admissible evidence to the defense of any party nor reasonably calculated to policy; (ii) is neither relevant to the claim or Google objects to this Request on the grounds that

case-different trademarks were at issue, different circumstances" were different than the current Alpha of Virginia, Inc., 43 F.3d 922, 933 (4th Cir. and desist letters, complaints, and discovery accusations against Google, including emails, cease relevant to, the strength of the claims asserted" in do not prove, "and by virtue of Rule 408 [are] not Federal R. Evid. 408. Prior settlement agreements In addition, such documents are protected by expectations—have no bearing on this litigation. and identities of advertisers, different consumer advertisements, different products, different types 1995). As such, cases in which the "facts and each case." Lone Star Steakhouse & Saloon, Inc. v. issue that depends on the facts and circumstances in mark and a junior user's use, and "determining the likelihood of confusion between a senior user's Trademark infringement actions depend on the Documents that relate to other trademark owners' WL 198081 at \*1 (S.D.N.Y. April 22, 1997). the previous suits against Google. Collister Alley likelihood of confusion is an 'inherently factual' responses are irrelevant to the current case. Music, Inc. v. Warner Bros. Records, Inc., 1997

All documents related to any negotiations, agreements, settlements, arrangements or communications with Time Warner, Inc. or any of its subsidiaries, affiliates or franchisees (including but not limited to AOL LLC) related to the use of Time Warner's trademarks (or those of its subsidiaries, affiliates or franchisees) in Google's Advertising Programs.

Google objects to this Request on the grounds that it (i) is neither relevant to the claim or defense of any party nor reasonably calculated to lead to the discovery of admissible evidence to the extent it seeks documents relating to trademarks other than the alleged Rosetta Stone trademarks; (ii) is overly broad and unduly burdensome in that it makes improper use of the omnibus phrase "relating to" in asking for "all documents related to" the subject matter of the Request without appropriate subject matter or temporal limitations; and (iii) seeks information protected by the attorney-client privilege, attorney work-product doctrine, or other applicable privilege.

circumstances" were different than the current Alpha of Virginia, Inc., 43 F.3d 922, 933 (4th Cir. each case." Lone Star Steakhouse & Saloon, Inc. v. and desist letters, complaints, and discovery accusations against Google, including emails, cease expectations—have no bearing on this litigation. and identities of advertisers, different consumer advertisements, different products, different types case—different trademarks were at issue, different issue that depends on the facts and circumstances in likelihood of confusion is an 'inherently factual' mark and a junior user's use, and "determining the likelihood of confusion between a senior user's Trademark infringement actions depend on the responses are irrelevant to the current case. Documents that relate to other trademark owners' In addition, such documents are protected by 1995). As such, cases in which the "facts and

do not prove, "and by virtue of Rule 408 [are] not relevant to, the strength of the claims asserted" in

Federal R. Evid. 408. Prior settlement agreements

the previous suits against Google. *Collister Alley Music, Inc.* v. *Warner Bros. Records, Inc.*, 1997 WL 198081 at \*1 (S.D.N.Y. April 22, 1997).

All documents relating to the use of the Rosetta Stone Marks or Terms Similar To The Rosetta Stone Marks, in any lists of "More Specific Keywords," "Similar Keywords" or any other suggestions of terms, phrases or words to be sold, marketed, promoted, offered, designated, used, or included as Keywords or other designated search terms in Google's Advertising Programs, or in the text of Sponsored Links or other messages published as a part of Google's Advertising Programs.

Google objects to this Request on the grounds that it (i) is duplicative of other requests; (ii) is unduly burdensome and is neither relevant to the claim or defense of any party nor reasonably calculated to lead to the discovery of admissible evidence in that it asks for "all" documents regarding use of the alleged Rosetta Stone trademarks; (iii) is vague and ambiguous, and with regards to "other designated search terms" and "other messages"; (iv) seeks information protected by the attorney-client privilege, attorney work-product doctrine, or other applicable privilege.

Subject to and without waiving the foregoing

such non-privileged, non-attorney work product

objections, Google responds that it will produce

responsive documents it discovers as a result of

Google's reasonable efforts to locate such

documents, if any.

Google has already agreed to produce all documents that relate to Rosetta Stone's alleged trademarks and Google's advertising programs. Billions of searches are run on Google every day, and hundreds of millions of ads are served every month. Needless to say, sorting through this enormous amount of data for documents responsive to Plaintiff's numerous and extremely broad requests is burdensome and takes time.

All documents relating to any analysis, review, consideration, deliberations, debate, or other communications by or on behalf of Google with respect to the possibility of removing Trademarks Owned By Third Parties, including but not limited to the Rosetta Stone Marks or Terms Similar To The Rosetta Stone Marks, from any lists or sets of words, terms, or phrases available to be used, included, or designated as Keywords or other designated search terms in Google's Advertising Programs, or in the text of Sponsored Links or other messages published as a part of Google's Advertising Programs.

claim or defense of any party nor reasonably ambiguous with regards to "other designated search evidence to the extent it seeks documents relating broad and unduly burdensome in that it makes it (i) is duplicative of other requests; (ii) is overly applicable privilege. privilege, attorney work-product doctrine, or other information protected by the attorney-client terms" and "other messages"; and (v) seeks trademarks at issue in this action; (iv) is vague and to trademarks other than the alleged Rosetta Stone calculated to lead to the discovery of admissible matter limitations; (iii) is neither relevant to the matter of the Request and lacks appropriate subject asking for "all documents relating to" the subject Google objects to this Request on the grounds that improper use of the omnibus phrase "relating to" in

Subject to and without waiving the foregoing objections, Google responds that it will produce non-privileged, non-attorney work product documents responsive to this Request in relation to its preventing third parties from using Rosetta Stone's alleged trademarks or trademarks generally as keywords or ad text, if any such documents exist and are discovered as a result of Google's reasonable efforts to locate such documents.

alleged trademarks.

Google has already agreed to produce documents relating to Rosetta Stone's alleged trademarks or trademarks generally.

nothing to do with the use of Rosetta Stone's circumstances" were different than the current each case." Lone Star Steakhouse & Saloon, Inc. v. outweighed by the fact that these documents have Moreover, the burden of these requests is in no way and identities of advertisers, different consumer advertisements, different products, different types Alpha of Virginia, Inc., 43 F.3d 922, 933 (4th Cir. mark and a junior user's use, and "determining the Trademark infringement actions depend on the and desist letters, complaints, and discovery accusations against Google, including emails, cease Documents that relate to other trademark owners' expectations—have no bearing on this litigation. case—different trademarks were at issue, different issue that depends on the facts and circumstances in 1995). As such, cases in which the "facts and likelihood of confusion is an 'inherently factual' likelihood of confusion between a senior user's responses are irrelevant to the current case.

All documents relating to any analysis, review, consideration, deliberations, debate, or other communications by or on behalf of Google with respect to the possibility of limiting the sale, marketing, promotion, offering, designation, use, or inclusion of Trademarks Owned By Third Parties, including but not limited to the Rosetta Stone Marks or Terms Similar To The Rosetta Stone Marks, in Google's Advertising Programs.

attorney-client privilege, attorney work-product action; and (iv) seeks information protected by the alleged Rosetta Stone trademarks at issue in this admissible evidence to the extent it seeks relevant to the claim or defense of any party nor matter of the Request and lacks appropriate subject asking for "all documents relating to" the subject broad and unduly burdensome in that it makes it (i) is duplicative of other requests; (ii) is overly reasonable efforts to locate such documents and are discovered as a result of Google's trademarks generally, if any such documents exist regarding Rosetta Stone's alleged trademarks or documents, if any, responsive to this Request non-privileged, non-attorney work product objections, Google responds that it will produce Subject to and without waiving the foregoing doctrine, or other applicable privilege. documents relating to trademarks other than the reasonably calculated to lead to the discovery of matter or temporal limitations; (III) is neither improper use of the omnibus phrase "relating to" in Google objects to this Request on the grounds that

Google has already agreed to produce documents relating to Rosetta Stone's alleged trademarks or trademarks generally.

and desist letters, complaints, and discovery accusations against Google, including emails, cease nothing to do with the use of Rosetta Stone's outweighed by the fact that these documents have Moreover, the burden of these requests is in no way expectations—have no bearing on this litigation. and identities of advertisers, different consumer advertisements, different products, different types case—different trademarks were at issue, different circumstances" were different than the current Alpha of Virginia, Inc., 43 F.3d 922, 933 (4th Cir. each case." Lone Star Steakhouse & Saloon, Inc. v. mark and a junior user's use, and "determining the Trademark infringement actions depend on the Documents that relate to other trademark owners' alleged trademarks. issue that depends on the facts and circumstances in likelihood of confusion between a senior user's responses are irrelevant to the current case. likelihood of confusion is an 'inherently factual' 1995). As such, cases in which the "facts and

All documents relating to any analysis, review, consideration, deliberations, debate, or other communications by or on behalf of Google with respect to the possibility of prohibiting advertisers or potential advertisers from bidding on, purchasing or otherwise using the Trademarks Owned By Third Parties as Keywords or other designated search terms in Google's Advertising Programs, or in the text of Sponsored Links or other messages published as a part of Google's Advertising Programs.

matter of the Request and lacks appropriate subject asking for "all documents relating to" the subject documents responsive to this Request regarding non-privileged, non-attorney work product objections, Google responds that it will produce Subject to and without waiving the foregoing doctrine, or other applicable privilege. messages"; and (v) seeks information protected by "other designated search terms" and "other action; (iv) is vague and ambiguous with regards to alleged Rosetta Stone trademarks at issue in this documents relating to trademarks other than the admissible evidence to the extent it seeks reasonably calculated to lead to the discovery of relevant to the claim or defense of any party nor matter and temporal limitations; (iii) is neither broad and unduly burdensome in that it makes it (i) is duplicative of other requests; (ii) is overly Google objects to this Request on the grounds that efforts to locate such documents. discovered as a result of Google's reasonable trademarks, if any such documents exist and are trademarks generally and Rosetta Stone's alleged the attorney-client privilege, attorney work-product improper use of the omnibus phrase "relating to" in

Google has already agreed to produce documents relating to Rosetta Stone's alleged trademarks or trademarks generally.

outweighed by the fact that these documents have expectations—have no bearing on this litigation. and identities of advertisers, different consumer circumstances" were different than the current Alpha of Virginia, Inc., 43 F.3d 922, 933 (4th Cir. each case." Lone Star Steakhouse & Saloon, Inc. v. and desist letters, complaints, and discovery accusations against Google, including emails, cease Documents that relate to other trademark owners' alleged trademarks. nothing to do with the use of Rosetta Stone's advertisements, different products, different types case—different trademarks were at issue, different 1995). As such, cases in which the "facts and issue that depends on the facts and circumstances in likelihood of confusion is an 'inherently factual' mark and a junior user's use, and "determining the likelihood of confusion between a senior user's Trademark infringement actions depend on the responses are irrelevant to the current case. Moreover, the burden of these requests is in no way

All documents relating to any analysis, review, consideration, deliberations, debate, or other communications by or on behalf of Google with respect to any financial implications to Google, including but not limited to any increase or decrease in the value of Google's stock or stock options, related to the sale, marketing, promotion, offering, designation, use, or inclusion of Trademarks Owned By Third Parties, including but not limited to the Rosetta Stone Marks and Terms Similar To The Rosetta Stone Marks, as a part of Google's Advertising Programs.

ambiguous and overly broad and unduly asking for "all documents relating to" the subject improper use of the omnibus phrase "relating to" in broad and unduly burdensome in that it makes it (i) is duplicative of other requests; (ii) is overly Google objects to this Request on the grounds that Google's reasonable efforts to locate such documents exist and are discovered as a result of Google's advertising programs, if any such Stone's alleged trademarks, in connection with the use of trademarks generally, or of Rosetta documents commenting on any effect on revenue of non-privileged, non-attorney work product objections, Google responds that it will produce Subject to and without waiving the foregoing product doctrine, or other applicable privilege. by the attorney-client privilege, attorney workburdensome as to the phrase "any financial matter or temporal limitations; (iii) is vague and matter of the Request and lacks appropriate subject implication"; and (iv) seeks information protected

Google has already agreed to produce documents relating to Rosetta Stone's alleged trademarks or trademarks generally.

Documents that relate to other trademark owners'

circumstances" were different than the current Alpha of Virginia, Inc., 43 F.3d 922, 933 (4th Cir. and desist letters, complaints, and discovery accusations against Google, including emails, cease Moreover, the burden of these requests is in no way expectations—have no bearing on this litigation. and identities of advertisers, different consumer advertisements, different products, different types case—different trademarks were at issue, different each case." Lone Star Steakhouse & Saloon, Inc. v. mark and a junior user's use, and "determining the likelihood of confusion between a senior user's responses are irrelevant to the current case. outweighed by the fact that these documents have alleged trademarks. nothing to do with the use of Rosetta Stone's 1995). As such, cases in which the "facts and Trademark infringement actions depend on the issue that depends on the facts and circumstances in ikelihood of confusion is an 'inherently factual'

All documents relating to any analysis, review, consideration, deliberations, debate, or other communications by or on behalf of Google with respect to any financial implications to Google, including but not limited to any increase or decrease in the value of Google's stock or stock options, if Google were to cease all sale, marketing, promotion, offering, designation, use, or inclusion of Trademarks Owned By Third Parties, including but not limited to the Rosetta Stone Marks and Terms Similar To The Rosetta Stone Marks, as a part of Google's Advertising Programs.

Google objects to this Request on the grounds that it (i) is duplicative of other requests; (ii) is overly broad and unduly burdensome and neither relevant to the claim or defense of any party nor reasonably calculated to lead to the discovery of admissible evidence in that it makes improper use of the omnibus phrase "relating to" in asking for "all documents relating to" the subject matter of the Request and lacks appropriate temporal and subject matter limitations; (iii) is vague and ambiguous and overly broad and unduly burdensome as to the phrase "any financial implication"; and (iv) seeks information protected by the attorney-client privilege, attorney work-product doctrine, or other applicable privilege.

Subject to and without waiving the foregoing objections, Google responds that it will produce non-privileged, non-attorney work product documents relating to Google's consideration of the effect on revenue if no use of trademarks generally, or of Rosetta Stone's alleged trademarks, were permitted in connection with Google's advertising programs, if any such documents exist and are discovered as a result of Google's reasonable efforts to locate such documents.

Google has already agreed to produce documents relating to Rosetta Stone's alleged trademarks or trademarks generally.

expectations—have no bearing on this litigation. Alpha of Virginia, Inc., 43 F.3d 922, 933 (4th Cir. and desist letters, complaints, and discovery accusations against Google, including emails, cease Documents that relate to other trademark owners' nothing to do with the use of Rosetta Stone's outweighed by the fact that these documents have Moreover, the burden of these requests is in no way and identities of advertisers, different consumer case—different trademarks were at issue, different circumstances" were different than the current each case." Lone Star Steakhouse & Saloon, Inc. v. issue that depends on the facts and circumstances in mark and a junior user's use, and "determining the likelihood of confusion between a senior user's Trademark infringement actions depend on the responses are irrelevant to the current case. alleged trademarks. advertisements, different products, different types 1995). As such, cases in which the "facts and likelihood of confusion is an 'inherently factual'

All documents relating to any Google polices, guidelines, procedures, or other guidance relating to the sale, marketing, promotion, offering, designation, use, or inclusion of Trademarks Owned By Third Parties as Keywords or other designated search terms in Google's Advertising Programs, or in the text of Sponsored Links or other messages published as a part of Google's Advertising Programs, including all documents relating to any change in, amendment to or modification of such policies, guidelines, procedures or other guidance and the reasons for such changes, amendments or modifications.

broad and unduly burdensome in that it makes alleged Rosetta Stone trademarks at issue in this and subject matter limitations; (III) is neither efforts to locate such documents. discovered as a result of Google's reasonable generally, if any such documents exist and are alleged Rosetta Stone trademark or trademarks documents responsive to this Request regarding the non-privileged, non-attorney work product objections, Google responds that it will produce Subject to and without waiving the foregoing doctrine, or other applicable privilege. the attorney-client privilege, attorney work-product messages"; and (v) seeks information protected by "other designated search terms" and "other action; (iv) is vague and overbroad with regards to documents relating to trademarks other than the admissible evidence to the extent it seeks reasonably calculated to lead to the discovery of relevant to the claim or defense of any party nor matter of the Request, lacks appropriate temporal asking for "all documents relating to" the subject it (i) is duplicative of other requests; (ii) is overly improper use of the omnibus phrase "relating to" in

Google has already agreed to produce documents relating to Rosetta Stone's alleged trademarks or trademarks generally.

Google objects to this Request on the grounds that

outweighed by the fact that these documents have Moreover, the burden of these requests is in no way and identities of advertisers, different consumer advertisements, different products, different types circumstances" were different than the current each case." Lone Star Steakhouse & Saloon, Inc. v. and desist letters, complaints, and discovery accusations against Google, including emails, cease Documents that relate to other trademark owners' alleged trademarks. nothing to do with the use of Rosetta Stone's expectations—have no bearing on this litigation. case—different trademarks were at issue, different Alpha of Virginia, Inc., 43 F.3d 922, 933 (4th Cir. issue that depends on the facts and circumstances in likelihood of confusion is an 'inherently factual' mark and a junior user's use, and "determining the likelihood of confusion between a senior user's Trademark infringement actions depend on the 1995). As such, cases in which the "facts and responses are irrelevant to the current case.

Documents sufficient to identify and disclose the conclusions or findings of all Studies conducted by, for, on behalf of, or to the benefit of Google concerning the use of the term "Sponsored Link" as opposed to any other form of designation for the Sponsored Links in Google's Advertising Programs.

action—instead of to studies undertaken to alleged Rosetta Stone trademarks at issue in this extent the phrase "all Studies . . . concerning the defense of any party nor reasonably calculated to "Studies . . . concerning the use of the term it (i) is vague and ambiguous regarding the phrase Google objects to this Request on the grounds that work-product doctrine, or other applicable protected by the attorney-client privilege, attorney temporal restriction; and (iii) seeks information Advertising Programs—and lacks an appropriate of designation for the Sponsored Links in Google's any benefit or effect as opposed to any other form determine if the term "Sponsored Link" provides use of the term 'Sponsored Link'" includes studies lead to the discovery of admissible evidence to the burdensome and neither relevant to the claim or focused on specific trademarks that are not the "Sponsored Link"; (ii) is overly broad and unduly

Subject to and without waiving the foregoing objections, Google responds that it will produce documents sufficient to show the results or conclusions of non-privileged, non-attorney work product studies undertaken for the purpose of determining if the term "Sponsored Link" provides any benefit or effect as opposed to any other form of designation for the Sponsored Links in Google's Advertising Programs, if any such documents exist and are discovered as a result of Google's reasonable efforts to locate such documents.

Google had already agreed to produce all documents that relate to Rosetta Stone's alleged trademarks and Google's advertising programs. Google has also agreed to produce all non-privileged documents that describe studies, experiments and analyses that have been conducted that relate to trademarks in advertising and/or to the coloring and layout of Sponsored Links, and to produce documents describing how its advertising programs work.

actions depend on the likelihood of confusion complaints, and discovery responses are irrelevant expectations—have no bearing on this litigation. and identities of advertisers, different consumer advertisements, different products, different types circumstances" were different than the current use, and "determining the likelihood of confusion is to the current case. Trademark infringement trademark owners' accusations against Google, case—different trademarks were at issue, different Star supra. As such, cases in which the "facts and an 'inherently factual' issue that depends on the between a senior user's mark and a junior user's including emails, cease and desist letters, tacts and circumstances in each case." See Lone However, Documents that relate to other

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Documents sufficient to identify and disclose the conclusions or findings of all Studies conducted by, for, on behalf of, or to the benefit of Google concerning ways in which Internet users distinguish between Sponsored Links and natural (organic) search results, including but not limited to Studies that test the effect of any language, colors, design elements, placement, or disclaimers on such Sponsored Links and natural (organic) search results.

calculated to lead to the discovery of admissible claim or defense of any party nor reasonably and unduly burdensome and neither relevant to the applicable privilege. privilege, attorney work-product doctrine, or other and natural (organic) search results; and (iii) seeks studies undertaken to determine generally how Stone trademarks at issue in this action—instead of specific trademarks that are not the alleged Rosetta concerning . . . " includes studies focused on evidence to the extent the phrase "all Studies... matter or temporal limitations; (ii) is overly broad it relates to "all" studies without appropriate subject it (i) is overly broad and unduly burdensome in that Google objects to this Request on the grounds that information protected by the attorney-client Internet users distinguish between Sponsored Links

Subject to and without waiving the foregoing objections, Google responds that it will produce documents sufficient to show results of non-privileged, non-attorney work product studies undertaken to determine generally the ways that Internet users distinguish between Sponsored links and natural search results, if any such documents exist and are discovered as a result of Google's reasonable efforts to locate such documents.

Google had already agreed to produce all documents that relate to Rosetta Stone's alleged trademarks and Google's advertising programs. Google has also agreed to produce all non-privileged documents that describe studies, experiments and analyses that have been conducted that relate to trademarks in advertising and/or to the coloring and layout of Sponsored Links, and to produce documents describing how its advertising programs work.

actions depend on the likelihood of confusion complaints, and discovery responses are irrelevant and identities of advertisers, different consumer advertisements, different products, different types case—different trademarks were at issue, different to the current case. Trademark infringement including emails, cease and desist letters, trademark owners' accusations against Google, circumstances" were different than the current an 'inherently factual' issue that depends on the use, and "determining the likelihood of confusion is expectations—have no bearing on this litigation. Star supra. As such, cases in which the "facts and between a senior user's mark and a junior user's facts and circumstances in each case." See Lone However, Documents that relate to other

All documents analyzing or reporting on the effect on consumers of the layout, design or wording of the results page that a consumer sees after conducting a Google search, including without limitation the selection of the fonts, the colors, the placement of ads and the use of Sponsored Links to denote paid advertisements.

or reporting on the effect of the layout, design or objections, Google responds that it will produce Subject to and without waiving the foregoing doctrine, or other applicable privilege. analysis or reporting of the effect on consumers of extent it seeks documents focused on specific it (i) is overly broad and unduly burdensome to the Google objects to this Request on the grounds that efforts to locate such documents. discovered as a result of Google's reasonable generally, if any such documents exist and are wording of the results page on consumers non-privileged, non-attorney work product analysis the attorney-client privilege, attorney work-product generally—and lacks an appropriate temporal the layout, design, and wording of results pages trademarks at issue in this action—instead of trademarks that are not the alleged Rosetta Stone limitation; and (ii) seeks information protected by

Google had already agreed to produce all documents that relate to Rosetta Stone's alleged trademarks and Google's advertising programs. Google has also agreed to produce all non-privileged documents that describe studies, experiments and analyses that have been conducted that relate to trademarks in advertising and/or to the coloring and layout of Sponsored Links, and to produce documents describing how its advertising programs work.

complaints, and discovery responses are irrelevant expectations—have no bearing on this litigation and identities of advertisers, different consumer circumstances" were different than the current actions depend on the likelihood of confusion to the current case. Trademark infringement including emails, cease and desist letters, trademark owners' accusations against Google, advertisements, different products, different types case—different trademarks were at issue, different an 'inherently factual' issue that depends on the use, and "determining the likelihood of confusion is between a senior user's mark and a junior user's Star supra. As such, cases in which the "facts and facts and circumstances in each case." See Lone However, Documents that relate to other

All documents relating to every instance in which any of the Rosetta Stone Marks or Terms Similar To The Rosetta Stone Marks, has been sold, marketed, promoted, offered, designated, used, or included as a Keyword or other designated search term in any of Google's Advertising Programs, including but not limited to agreements, proposals, the advertisements or "Sponsored Links" triggered by or containing the Rosetta Stone Marks or by Terms Similar To The Rosetta Stone Marks and any screenshots of such advertisements or "Sponsored Links."	Documents sufficient to identify and disclose the conclusions or findings of all Studies conducted by, for, on behalf of, or to the benefit of Google concerning the use of any trademark as a Keyword in one of Google's Advertising Programs.
Google objects to this Request on the grounds that it (i) is duplicative of other requests; (ii) is overly broad and unduly burdensome in that it makes improper use of the omnibus phrase "relating to" in asking for "all documents relating to" the subject matter of the Request and lacks appropriate subject matter limitations; (iii) is vague and overbroad with regards to "other designated search terms"; and (iv) seeks information protected by the attorney-client privilege, attorney work-product doctrine, or other applicable privilege.  Subject to and without waiving the foregoing objections, Google responds that it will produce such non-privileged, non-attorney work product responsive documents it discovers as a result of Google's reasonable efforts to locate such documents.	Google objects to this Request on the grounds that it (i) is overly broad and unduly burdensome to the extent it seeks documents focused on specific trademarks that are not the alleged Rosetta Stone trademarks at issue in this action—as opposed to studies conducted by, for, on behalf of, or to the benefit of Google concerning the use of trademarks generally or any alleged Rosetta Stone trademark as keywords in Google's advertising programs—and lacks an appropriate temporal limitation; and (ii) seeks information protected by the attorney-client privilege, attorney work-product doctrine, or other applicable privilege.  Notwithstanding and without waiving these specific objections or the General Objections, Google responds that it will produce documents sufficient to show the results of general, non-privileged, non-attorney work product studies relating to the general use of trademarks, or the use of the alleged Rosetta Stone trademarks, as keywords in Google advertising programs, if any such documents exist and are discovered as a result of Google's reasonable efforts to locate such documents.
Google has already agreed to produce all documents that relate to Rosetta Stone's alleged trademarks and Google's advertising programs.	Google has already agreed to produce documents relating to Rosetta Stone's alleged trademarks or trademarks generally.  Documents that relate to other trademark owners' accusations against Google, including emails, cease and desist letters, complaints, and discovery responses are irrelevant to the current case.  Trademark infringement actions depend on the likelihood of confusion between a senior user's mark and a junior user's use, and "determining the likelihood of confusion is an 'inherently factual' issue that depends on the facts and circumstances in each case." Lone Star Steakhouse & Saloon, Inc. v. Alpha of Virginia, Inc., 43 F.3d 922, 933 (4th Cir. 1995). As such, cases in which the "facts and circumstances" were different than the current case—different trademarks were at issue, different advertisements, different products, different types and identities of advertisers, different consumer expectations—have no bearing on this litigation.

54. All documents that show every Sponsored Link or other message published as a part of Google's Advertising Programs, in the form it was published, that was triggered by a Keyword or other designated search term that incorporates one or more of the Rosetta Stone Marks or Terms Similar To The Rosetta Stone Marks.	43. All documents relating to every instance in which any of the Rosetta Stone Marks or Terms Similar To The Rosetta Stone Marks, has been marketed, promoted, offered, designated, used, or included in the text of Sponsored Links or other messages published as a part of Google's Advertising Programs, including agreements and proposals.
Google objects to this Request on the grounds that it (i) is duplicative of other requests; (ii) is overly broad and unduly burdensome in that it requests "all" documents that show "every" Sponsored Link with no appropriate temporal limitations; (iii) seeks documents that are not reasonably accessible to Google; (iv) is vague and ambiguous with regards to "other designated search terms" and "other messages"; and (v) seeks information protected by the attorney-client privilege, attorney work-product doctrine, or other applicable privilege. Subject to and without waiving the foregoing objections, Google responds that it will produce non-privileged, non-attorney work product documents that show Sponsored Links that were triggered by an alleged Rosetta Stone trademark used as a keyword.	Google objects to this Request on the grounds that it (i) is duplicative of other requests; (ii) is overly broad and unduly burdensome in that it makes improper use of the omnibus phrase "relating to" in asking for "all documents <i>relating to</i> " the subject matter of the Request and lacks appropriate subject matter limitations; and (iii) seeks information protected by the attorney-client privilege, the attorney work-product doctrine, or other applicable privilege.  Subject to and without waiving the foregoing objections, Google responds that it will produce communications and agreements relating to ads that contain one of Rosetta Stone's alleged trademarks and have appeared as Sponsored Links in response to a given Keyword that consists of or contains one of Rosetta Stone's alleged trademarks.
Google has already agreed to produce all documents that relate to Rosetta Stone's alleged trademarks and Google's advertising programs.	Google has already agreed to produce all documents that relate to Rosetta Stone's alleged trademarks and Google's advertising programs.

67.  All transcripts of depositions and the exhibits thereto, in <i>American Airlines, Inc. v. Google Inc.</i> , Case No. 4:07-cv-00487-A (N.D. Tex.) (filed Aug. claim 16, 2007).  trade:  trade:  infor:  Agree and (  regar:  to the	All documents concerning all reporting on, advertising, marketing, optimizing or selling of Google's Advertisers in the language education field, whether or not the information concerns Rosetta Stone Marks or Terms Similar To The Rosetta Stone Marks.  63.  All documents concerning all Studies, analyses, reports or presentations prepared by or for Google relating to companies that Google considers to be within the language education field or that sell language learning products and/or services, including but not limited to Compete Studies and Quarterly Reviews.  Google trela Stone Marks.  Google it rela subjective it related to Compete Studies and products and/or services, subjective it related to Compete Studies and of adverting to companies that Google or that sell subjective it related to Compete Studies and products and seeks posse custo
Google objects to this Request on the grounds that it (i) is overly broad in that it requests all transcripts of all depositions; (ii) is neither relevant to the claim or defense of any party nor reasonably calculated to lead to the discovery of admissible evidence as it concerns trademarks and facts other than those relating to the alleged Rosetta Stone trademarks at issue in this action; (iii) seeks information protected under the Confidentiality Agreement entered into by the parties in that case; and (iv) seeks transcripts (and exhibits thereto) regarding parties and facts not involved or related to the current litigation.	Google objects to this Request on the grounds that it (i) is overly broad and unduly burdensome in that it relates to "all" documents and contains no appropriate subject matter or temporal limitations, and Google does not know the identity of all language education products or services; and (iii) is vague and ambiguous with regards to "language education field" and "potential advertisers."  Google objects to this Request on the grounds that it (i) is overly broad and unduly burdensome in that it relates to "all" documents "concerning" the subject matter of the Request, Google does not know the identity of all language education products or services, and it lacks appropriate subject matter and temporal limitations; (ii) is neither relevant to the claim or defense of any party nor reasonably calculated to lead to the discovery of admissible evidence to the extent responsive documents are based on information not created for, or used in connection with, any of Google's advertising programs; (iii) is vague and ambiguous with regards to "language education field"; and (iv) seeks information that is not in Google's possession, including the identity of potential customers.
Documents that relate to other trademark owners' accusations against Google, including emails, cease and desist letters, complaints, and discovery responses are irrelevant to the current case.  Trademark infringement actions depend on the likelihood of confusion between a senior user's mark and a junior user's use, and "determining the likelihood of confusion is an 'inherently factual' issue that depends on the facts and circumstances in each case." Lone Star Steakhouse & Saloon, Inc. v. Alpha of Virginia, Inc., 43 F.3d 922, 933 (4th Cir. 1995). As such, cases in which the "facts and circumstances" were different than the current case—different trademarks were at issue, different advertisements, different products, different types and identities of advertisers, different consumer expectations—have no bearing on this litigation.	Google has agreed to produce documents responsive to this request after receipt of Rosetta Stone's list of companies in the language education field that have advertised on Google using an alleged Rosetta Stone mark as a keyword, to the extent there are fewer than 10 companies identified.  Google has agreed to produce documents responsive to this request after receipt of Rosetta Stone's list of companies in the language education field that have advertised on Google using an alleged Rosetta Stone mark as a keyword, to the extent there are fewer than 10 companies identified.

or studies prepared in connection with <i>American Airlines, Inc. v. Google Inc.</i> , Case No. 4:07-cv-00487-A (N.D. Tex.) (filed Aug. 16, 2007).	00 A
All expert reports, consumer or user confusion studies and all documents relating to such reports	<u>?</u> ≥

alleged Rosetta Stone trademarks at issue in this "relating to" in asking for "all" documents "relating privilege, attorney work-product doctrine, or other current litigation or related to it; and (v) seeks regarding parties and facts not involved in the parties in that case; (iv) seeks expert reports Confidentiality Agreement entered into by the action; (iii) seeks information protected under the trademarks and facts other than those relating to the discovery of admissible evidence as it concerns party nor reasonably calculated to lead to the (ii) is neither relevant to the claim or defense of any appropriate temporal and subject matter limitations; to" the subject matter of the Request and lacks it makes improper use of the omnibus phrase it (i) is overly broad and unduly burdensome in that Google objects to this Request on the grounds that information protected by the attorney-client

v. Google Inc., Case No. 4:07-cv-00487-A (N.D. Copies of all requests to and responses to requests Tex.) (filed Aug. 16, 2007). for admission by Google in American Airlines, Inc.

> matter limitations; (ii) is neither relevant to the it (i) is overly broad and without proper subject Google objects to this Request on the grounds that applicable privilege.

in the current litigation or related to it. discovery regarding parties and facts not involved evidence as it concerns trademarks and facts other claim or defense of any party nor reasonably trademarks at issue in this action; and (iii) seeks than those relating to the alleged Rosetta Stone calculated to lead to the discovery of admissible

> Alpha of Virginia, Inc., 43 F.3d 922, 933 (4th Cir. mark and a junior user's use, and "determining the accusations against Google, including emails, cease and identities of advertisers, different consumer advertisements, different products, different types circumstances" were different than the current 1995). As such, cases in which the "facts and each case." Lone Star Steakhouse & Saloon, Inc. v. likelihood of confusion between a senior user's responses are irrelevant to the current case. and desist letters, complaints, and discovery Documents that relate to other trademark owners' expectations—have no bearing on this litigation. case—different trademarks were at issue, different issue that depends on the facts and circumstances in likelihood of confusion is an 'inherently factual' Trademark infringement actions depend on the

accusations against Google, including emails, cease circumstances" were different than the current and desist letters, complaints, and discovery and identities of advertisers, different consumer Alpha of Virginia, Inc., 43 F.3d 922, 933 (4th Cir. each case." Lone Star Steakhouse & Saloon, Inc. v. issue that depends on the facts and circumstances in likelihood of confusion between a senior user's expectations—have no bearing on this litigation advertisements, different products, different types case—different trademarks were at issue, different mark and a junior user's use, and "determining the Trademark infringement actions depend on the responses are irrelevant to the current case. Documents that relate to other trademark owners 1995). As such, cases in which the "facts and ikelihood of confusion is an 'inherently factual'

All documents relating to consumer or user understanding or perception of Google's Sponsored Links, including but not limited to research or analysis conducted by or for Google on such understandings and perceptions.

it (i) is premature under the Federal Rules of Civil objections, Google responds that it will produce attorney-client privilege, attorney work-product and (iv) seeks information protected by the appropriate subject matter and temporal limitations; Stone trademarks at issue in this action and lacks other than those relating to the alleged Rosetta documents relate to specific trademarks and facts of admissible evidence to the extent such nor reasonably calculated to lead to the discovery neither relevant to the claim or defense of any party Procedure and the Court's scheduling order; (ii) is exist and are discovered as a result of Google's connection with litigation, if any such documents conducted by experts retained by Google in Google's Sponsored Links other than those to consumer or user understanding or perception of documents consisting of studies generally relating non-privileged, non-attorney work product Subject to and without waiving the foregoing doctrine, or other applicable privilege. limited to documents relating to this case; (iii) is information about every Sponsored Link and is not overly broad and unduly burdensome, as it seeks reasonable efforts to locate such documents.

Google has already agreed to produce documents relating to Rosetta Stone's alleged trademarks or trademarks generally.

Google objects to this Request on the grounds that

expectations—have no bearing on this litigation Alpha of Virginia, Inc., 43 F.3d 922, 933 (4th Cir. each case." Lone Star Steakhouse & Saloon, Inc. v. accusations against Google, including emails, cease advertisements, different products, different types case—different trademarks were at issue, different circumstances" were different than the current mark and a junior user's use, and "determining the likelihood of confusion between a senior user's Trademark infringement actions depend on the responses are irrelevant to the current case. and desist letters, complaints, and discovery Documents that relate to other trademark owners' and identities of advertisers, different consumer 1995). As such, cases in which the "facts and issue that depends on the facts and circumstances in likelihood of confusion is an 'inherently factual'

All documents relating to consumer or user confusion related in any way to Google's Sponsored Links, Google's Advertising Program and/or the use of Keywords in search engines, including surveys conducted by or for Google relating to the sale, marketing, promotion, offering, designation, use, or inclusion of Keywords by Google in any way. This Request specifically includes draft surveys and survey results relating to the potential for likelihood of consumer confusion arising out of the sale, marketing, promotion, offering, designation, use, or inclusion of trademarks as Keywords or designated search terms in Google's Advertising Programs.

arguably caused—by the use of trademarks other experts retained by Google in connection with advertising programs other than those conducted by objections, Google responds that it will produce Subject to and without waiving the foregoing doctrine, or other applicable privilege. in this action and lacks an appropriate temporal about consumer confusion—not caused or even admissible evidence, in that it seeks information relevant to the claim or defense of any party nor overly broad and unduly burdensome and neither it (i) is premature under the Federal Rules of Civi efforts to locate such documents. discovered as a result of Google's reasonable to consumer confusion resulting from Google's documents consisting of studies generally relating non-privileged, non-attorney work product the attorney-client privilege, attorney work-product than the alleged Rosetta Stone trademarks at issue reasonably calculated to lead to the discovery of Procedure and the Court's scheduling order; (ii) is Google objects to this Request on the grounds that litigation, if any such documents exist and are limitation; and (iii) seeks information protected by

Google has already agreed to produce documents relating to Rosetta Stone's alleged trademarks or trademarks generally.

expectations—have no bearing on this litigation each case." Lone Star Steakhouse & Saloon, Inc. v. and identities of advertisers, different consumer advertisements, different products, different types case—different trademarks were at issue, different circumstances" were different than the current Alpha of Virginia, Inc., 43 F.3d 922, 933 (4th Cir. issue that depends on the facts and circumstances in mark and a junior user's use, and "determining the responses are irrelevant to the current case. and desist letters, complaints, and discovery accusations against Google, including emails, cease Documents that relate to other trademark owners' likelihood of confusion between a senior user's likelihood of confusion is an 'inherently factual' Trademark infringement actions depend on the 1995). As such, cases in which the "facts and

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All documents relating to consumers' ability, or lack thereof, to recognize Google's Sponsored Links as paid advertisements, including but not limited to research or analysis conducted by or for Google on such understandings and perceptions.

and (iii) seeks information protected by the admissible evidence to the extent such documents overly broad and unduly burdensome and neither it (i) is premature under the Federal Rules of Civil efforts to locate such documents. discovered as a result of Google's reasonable litigation, if any such documents exist and are experts retained by Google in connection with advertisements other than those conducted by recognize Google's Sponsored Links as paid consumers' ability, or lack thereof, generally to documents consisting of studies relating to non-privileged, non-attorney work product objections, Google responds that it will produce Subject to and without waiving the foregoing doctrine, or other applicable privilege. attorney-client privilege, attorney work-product issue in this action or Sponsored Links generally; relating to the alleged Rosetta Stone trademarks at relate to specific Sponsored Links other than those reasonably calculated to lead to the discovery of relevant to the claim or defense of any party nor Procedure and the Court's scheduling order; (ii) is Google objects to this Request on the grounds that

Google has already agreed to produce documents relating to Rosetta Stone's alleged trademarks or trademarks generally.

expectations—have no bearing on this litigation advertisements, different products, different types circumstances" were different than the current each case." Lone Star Steakhouse & Saloon, Inc. v. mark and a junior user's use, and "determining the Trademark infringement actions depend on the and desist letters, complaints, and discovery accusations against Google, including emails, cease Documents that relate to other trademark owners' and identities of advertisers, different consumer case—different trademarks were at issue, different Alpha of Virginia, Inc., 43 F.3d 922, 933 (4th Cir. issue that depends on the facts and circumstances in likelihood of confusion between a senior user's responses are irrelevant to the current case. 1995). As such, cases in which the "facts and likelihood of confusion is an 'inherently factual'

All documents, including but not limited to those maintained in the Trakken system, that relate to consumer confusion (either showing confusion or lack of confusion) with, criticism of, or suggestions for improvement for: Sponsored Links, the relationship of Sponsored Links to natural search results, the layout of the paid and unpaid search results page, the use of the terms "Sponsored Links" or the relationship between the consumer's search query and the paid results presented by

Google objects to this Request on the grounds that it (i) is overly broad and unduly burdensome and neither relevant to the claim or defense of any party nor reasonably calculated to lead to the discovery of admissible evidence in that it is not limited to confusion relating to the alleged Rosetta Stone trademarks at issue in this action and lacks appropriate temporal limitations; and (ii) seeks information protected by the attorney-client privilege, the attorney work-product doctrine, or other applicable privilege.

lat | Google has already agreed to produce all documents relating to Rosetta Stone's alleged trademarks.

Trademarks.

Documents that relate to other trademark owner accusations against Google, including emails, cand desist letters, complaints, and discovery

outweighed by the fact that these documents have and identities of advertisers, different consumer Alpha of Virginia, Inc., 43 F.3d 922, 933 (4th Cir. accusations against Google, including emails, cease alleged trademarks. nothing to do with the use of Rosetta Stone's Moreover, the burden of these requests is in no way expectations—have no bearing on this litigation. advertisements, different products, different types case—different trademarks were at issue, different circumstances" were different than the current each case." Lone Star Steakhouse & Saloon, Inc. v. issue that depends on the facts and circumstances in mark and a junior user's use, and "determining the likelihood of confusion between a senior user's Trademark infringement actions depend on the responses are irrelevant to the current case. and desist letters, complaints, and discovery Documents that relate to other trademark owners' 1995). As such, cases in which the "facts and likelihood of confusion is an 'inherently factual'

93. All expert reports relating to damages prepared in connection with the lawsuit, <i>American Airlines Inc. v Google Inc.</i> , No. 4:07-CV-487-A (N.D. Texas), including any exhibits thereto.	92. All agreements, including drafts thereof, that reference the Rosetta Stone Marks or Terms Similar To The Rosetta Stone Marks.
Google objects to this Request on the grounds that it (i) is duplicative of other requests; (ii) is neither relevant to the claim or defense of any party nor reasonably calculated to lead to the discovery of admissible evidence as it concerns trademarks and facts other than those relating to the alleged Rosetta Stone trademarks at issue in this action; (iii) seeks expert reports regarding parties and facts not involved in the current litigation or related to it; (iv) seeks information protected by a confidentiality agreement entered into by the parties in that case; (v) seeks information not in Google's possession, custody, or control; and (vi) seeks information protected by the attorney-client privilege, attorney work-product doctrine, or other applicable privilege.	Google objects to this Request on the grounds that (i) it is duplicative of other requests; (ii) is overly broad and unduly burdensome and is neither relevant to the claim or defense of any party nor reasonably calculated to lead to the discovery of admissible evidence in that it is not limited to Google's advertising programs, including documents relating to Google's license(s) relating to Rosetta Stone products and service and lacks an appropriate temporal limitation; (iii) as used in context, "agreements" is vague and ambiguous; and (iv) it seeks information protected by the attorney-client privilege, attorney work-product doctrine, or other applicable privilege.  Subject to and without waiving the foregoing objections, Google responds that it will produce agreements with Rosetta Stone concerning Google's search and advertising services and products.
Documents that relate to other trademark owners' accusations against Google, including emails, cease and desist letters, complaints, and discovery responses are irrelevant to the current case.  Trademark infringement actions depend on the likelihood of confusion between a senior user's mark and a junior user's use, and "determining the likelihood of confusion is an 'inherently factual' issue that depends on the facts and circumstances in each case." Lone Star Steakhouse & Saloon, Inc. v. Alpha of Virginia, Inc., 43 F.3d 922, 933 (4th Cir. 1995). As such, cases in which the "facts and circumstances" were different than the current case—different trademarks were at issue, different advertisements, different products, different types and identities of advertisers, different consumer expectations—have no bearing on this litigation.	Google has already agreed to produce all documents that relate to Rosetta Stone's alleged trademarks and Google's advertising programs.

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Documents sufficient to show all payments made by Google to any third party as a result of the filing of a lawsuit against Google in which it was alleged that Google's Advertising Programs, in whole or part, violated the Lanham Act.

on the further grounds that it (i) is neither relevant of a lawsuit." If this Request is for payments made evidence to the extent it seeks documents not calculated to lead to the discovery of admissible unduly burdensome, and neither relevant to the compromise and public policy; (ii) is oppressive, evidence relating to compromise and offers to Evidence Rule 408's prohibition on admitting evidence, particularly given Federal Rules of calculated to lead to the discovery of admissible to the claim or defense of any party nor reasonably pursuant to settlement agreements, Google objects by Google to any third party as a result of the filing it is vague and ambiguous as to "all payments made Google objects to this Request on the grounds that requests disclosure of confidential agreements with lacks an appropriate temporal limitation; and (iii) relating to the alleged Rosetta Stone trademarks and claim or defense of any party nor reasonably

Federal R. Evid. 408. Prior settlement agreements In addition, such documents are protected by expectations—have no bearing on this litigation. advertisements, different products, different types case—different trademarks were at issue, different circumstances" were different than the current Alpha of Virginia, Inc., 43 F.3d 922, 933 (4th Cir. mark and a junior user's use, and "determining the likelihood of confusion between a senior user's Trademark infringement actions depend on the responses are irrelevant to the current case. and desist letters, complaints, and discovery accusations against Google, including emails, cease Documents that relate to other trademark owners' the previous suits against Google. Collister Alley relevant to, the strength of the claims asserted" in do not prove, "and by virtue of Rule 408 [are] not and identities of advertisers, different consumer each case." Lone Star Steakhouse & Saloon, Inc. v. issue that depends on the facts and circumstances in WL 198081 at \*1 (S.D.N.Y. April 22, 1997). Music, Inc. v. Warner Bros. Records, Inc., 1997 1995). As such, cases in which the "facts and likelihood of confusion is an 'inherently factual'

Keyword that is a trademark.	achieved when a Sponsored Link is triggered by a	All documents relating to click-through rates

"relating to" in asking for "all documents relating seeks documents that are not reasonably accessible doctrine, or other applicable privilege; and (vi) attorney-client privilege, attorney work-product a trademark"; (v) seeks documents protected by the Google, with regards to the phrase "Keyword that is documents the identity of which is not known to trademarks; (iv) is vague and ambiguous, and seeks keywords other than the alleged Rosetta Stone documents relating to the use of trademarks as admissible evidence to the extent it seeks reasonably calculated to lead to the discovery of relevant to the claim or defense of any party nor oppressive, unduly burdensome, and is neither (ii) is duplicative of other requests; (iii) is appropriate subject matter and temporal limitations; to" click-through rates without specifying it makes improper use of the omnibus phrase it (i) is overly broad and unduly burdensome in that Google objects to this Request on the grounds that

Trademark infringement actions depend on the and desist letters, complaints, and discovery accusations against Google, including emails, cease of the information sought. discovery, particularly given the lack of relevance trademarked terms—presumably using the U.S. of 97 months—and determine which are keywords that trigger all of these ads-for a period Yet Rosetta Stone expects Google to search the month for hundreds of thousands of advertisers. circumstances" were different than the current issue that depends on the facts and circumstances in responses are irrelevant to the current case. not a feasible undertaking for purposes of identity of all U.S. registered trademarks. This is case—different trademarks were at issue, different Alpha of Virginia, Inc., 43 F.3d 922, 933 (4th Cir. each case." Lone Star Steakhouse & Saloon, Inc. v. mark and a junior user's use, and "determining the likelihood of confusion between a senior user's Patent and Trademark Office to determine the Google serves hundreds of millions of ads every 1995). As such, cases in which the "facts and likelihood of confusion is an 'inherently factual' Documents that relate to other trademark owners?

and identities of advertisers, different consumer expectations—have no bearing on this litigation

advertisements, different products, different types

entity placing the Sponsored Link.

are not reasonably accessible to Google. applicable privilege; and (vi) seeks documents that privilege, attorney work-product doctrine, or other documents protected by the attorney-client extent of all trademarks and the identity of all burdensome in that Google does not know the full trademarks; (iv) is oppressive and unduly keywords other than the alleged Rosetta Stone documents relating to the use of trademarks as admissible evidence to the extent it seeks relevant to the claim or defense of any party nor oppressive, unduly burdensome, and is neither (ii) is duplicative of other requests; (iii) is appropriate subject matter and temporal limitations; to" click-through rates without specifying "relating to" in asking for "all documents relating it (i) is overly broad and unduly burdensome in that Google objects to this Request on the grounds that competitors of every trademark owner; (v) seeks reasonably calculated to lead to the discovery of it makes improper use of the omnibus phrase

Google serves hundreds of millions of ads every month for hundreds of thousands of advertisers. Yet Rosetta Stone expects Google to search the keywords that trigger all of these ads—for a period of 97 months—and determine (1) which are trademarked terms—presumably using the U.S. Patent and Trademark Office to determine the identity of all U.S. registered trademarks—and then (2) which of advertisers compete in some way with any of the owners of every trademarked keyword. This is not a feasible undertaking for purposes of discovery, particularly given the lack of relevance of the information sought.

and desist letters, complaints, and discovery accusations against Google, including emails, cease expectations—have no bearing on this litigation. advertisements, different products, different types circumstances" were different than the current Alpha of Virginia, Inc., 43 F.3d 922, 933 (4th Cir. each case." Lone Star Steakhouse & Saloon, Inc. v. mark and a junior user's use, and "determining the and identities of advertisers, different consumer case—different trademarks were at issue, different issue that depends on the facts and circumstances in likelihood of confusion between a senior user's responses are irrelevant to the current case. likelihood of confusion is an 'inherently factual' Trademark infringement actions depend on the Documents that relate to other trademark owners' 1995). As such, cases in which the "facts and

Documents sufficient to identify the top 500 Keywords ranked by gross revenue generated for Google for each month since January 1, 2002.	All documents relating to communications between Google and eBay concerning the unauthorized use of eBay's trademarks as Keywords and in Sponsored Links.
Google objects to this Request on the grounds that it (i) is duplicative of other requests; (ii) is overly broad and unduly burdensome in that it requests information from prior to July 23, 2004; (iii) is neither relevant to the claim or defense of any party nor reasonably calculated to lead to the discovery of admissible evidence, particularly in that it seeks documents relating to trademarks other than the alleged Rosetta Stone trademarks; and (iv) requests information that Google does not have or maintain and/or is not reasonably accessible to Google.	Google objects to this Request on the grounds that it (i) overly broad, unduly burdensome, and is neither relevant to the claim or defense of any party nor reasonably calculated to lead to the discovery of admissible evidence to the extent it seeks documents relating to communications regarding trademarks other than the alleged Rosetta Stone trademarks; (ii) is overly broad and unduly burdensome in that it makes improper use of the omnibus phrase "relating to" in asking for "all documents <i>relating to</i> " the subject matter of the Request and lacks appropriate temporal limitations; and (iii) seeks information protected by the attorney-client privilege, attorney work-product doctrine, or other applicable privilege.
The burden of these requests is in no way outweighed by the fact that these documents have nothing to do with the use of Rosetta Stone's alleged trademarks. Plaintiff offers no explanation as to how the top 200 trademark keywords or the top 500 overall keywords have any bearing whatsoever on the alleged infringement of Rosetta Stone's trademarks, or how they may lead to the discovery of admissible evidence. During one meet and confer session, Plaintiff's counsel conceded that the only potential use for such information was for his firm to discover other companies that may have a complaint with Google. Plaintiff has pointed to no justification that relates to the claims at issue in this case or their need for such documents to prosecute the case.	Documents that relate to other trademark owners' accusations against Google, including emails, cease and desist letters, complaints, and discovery responses are irrelevant to the current case.  Trademark infringement actions depend on the likelihood of confusion between a senior user's mark and a junior user's use, and "determining the likelihood of confusion is an 'inherently factual' issue that depends on the facts and circumstances in each case." Lone Star Steakhouse & Saloon, Inc. v. Alpha of Virginia, Inc., 43 F.3d 922, 933 (4th Cir. 1995). As such, cases in which the "facts and circumstances" were different than the current case—different trademarks were at issue, different advertisements, different products, different types and identities of advertisers, different consumer expectations—have no bearing on this litigation.

109.  Documents sufficient to identify the top 500  Keywords ranked by click-throughs delivered for each month since January 1, 2002.	Documents sufficient to identify the top 500 Keywords ranked by total impressions delivered for each month since January 1, 2002.
Google objects to this Request on the grounds that it (i) is duplicative of other requests; (ii) is overly broad and unduly burdensome in that it requests information from prior to July 23, 2004; (iii) is neither relevant to the claim or defense of any party nor reasonably calculated to lead to the discovery of admissible evidence, particularly in that it seeks documents relating to trademarks other than the alleged Rosetta Stone trademarks; and (iv) requests information that Google does not have or maintain and/or is not reasonably accessible to Google.	Google objects to this Request on the grounds that it (i) is duplicative of other requests; (ii) is overly broad and unduly burdensome in that it requests information from prior to July 23, 2004; (iii) is neither relevant to the claim or defense of any party nor reasonably calculated to lead to the discovery of admissible evidence, particularly in that it seeks documents relating to trademarks other than the alleged Rosetta Stone trademarks; and (iv) requests information that Google does not have or maintain and/or is not reasonably accessible to Google.
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Documents sufficient to identify the top 200 Keywords that are trademarks ranked by total impressions delivered for each month since January 1, 2002.	Documents sufficient to identify the top 200 Keywords that are trademarks ranked by gross revenue generated for Google for each month since January 1, 2002.
Google objects to this Request on the grounds that it (i) is duplicative of other requests; (ii) is overly broad and unduly burdensome in that it requests information from prior to July 23, 2004 and in that Google does not know the identity of all trademarks; (iii) is neither relevant to the claim or defense of any party nor reasonably calculated to lead to the discovery of admissible evidence, particularly in that it seeks documents relating to trademarks; and (iv) requests information that Google does not have or maintain and/or is not reasonably accessible to Google.	Google objects to this Request on the grounds that it (i) is duplicative of other requests; (ii) is overly broad and unduly burdensome in that it requests information from prior to July 23, 2004 and in that Google does not know the identity of all trademarks; (iii) is neither relevant to the claim or defense of any party nor reasonably calculated to lead to the discovery of admissible evidence, particularly in that it seeks documents relating to trademarks; and (iv) requests information that Google does not have or maintain and/or is not reasonably accessible to Google.
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To the extent that any Rosetta Stone Mark is not included in the rankings produced in response to Requests 107-112, documents sufficient to show where each such Rosetta Stone Mark is ranked.	Documents sufficient to identify the top 200 Keywords that are trademarks ranked by click-throughs delivered for each month since January 1, 2002.
Google objects to this Request on the grounds that it (i) is duplicative of other requests; (ii) requests information that Google does not have or maintain and/or is not reasonably accessible to Google; (iii) is overly broad and unduly burdensome in that it requests information from prior to July 23, 2004; (iv) is neither relevant to the claim or defense of any party nor reasonably calculated to lead to the discovery of admissible evidence; and (v) is overly broad and unduly burdensome in seeking over 3800 data points.	Google objects to this Request on the grounds that it (i) is duplicative of other requests; (ii) is overly broad and unduly burdensome in that it requests information from prior to July 23, 2004 and in that Google does not know the identity of all trademarks; (iii) is neither relevant to the claim or defense of any party nor reasonably calculated to lead to the discovery of admissible evidence, particularly in that it seeks documents relating to trademarks other than the alleged Rosetta Stone trademarks; and (iv) requests information that Google does not have or maintain and/or is not reasonably accessible to Google.
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