

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

ROSETTA STONE LTD.,	)
	)
Plaintiff,	)
	)
vs.	)
	)
GOOGLE INC.,	)
	)
Defendant.	)

**Case No. 1:09-cv-00736 (GBL/TCB)**

**MEMORANDUM OF LAW IN SUPPORT OF THE UNOPPOSED MOTION  
OF ROSETTA STONE LTD. TO EXTEND DISCOVERY CUTOFF**

Plaintiff Rosetta Stone Ltd., by counsel, hereby moves this Court for an order continuing the discovery cutoff from February 12, 2010, to March 15, 2010. Rosetta Stone has coordinated with Defendant Google Inc. on this Motion and Google Inc. has advised that it does not oppose the Motion. In support of this Motion, Rosetta Stone submits the following:

1. Rosetta Stone filed this suit against Google alleging direct, contributory, and vicarious trademark and service mark infringement, false representation, and trademark dilution under the Lanham Act; trademark infringement and unfair competition under Virginia law; and a violation of the Virginia Code § 18.2-499.

2. On September 21, 2009, the Court denied in part and granted in part Google's motion to dismiss.

3. The Court issued its initial pretrial order on September 29, 2009, setting a Rule 16(b) Pretrial Conference for October 21, 2009.

4. On October 20, 2009, the Court issued a Scheduling Order approving the parties' Joint Discovery Plan.

5. Rosetta Stone has pursued discovery with due diligence. The parties exchanged their initial disclosures on October 26, 2009. Rosetta Stone served a First Set of Requests for Production of Documents on October 30, 2009, and a Second Set of Requests for Production of Documents on November 13, 2009. Rosetta Stone met and conferred with Google on numerous occasions. On January 8, 2010, Rosetta Stone filed a Motion to Compel Production of Documents, which is now scheduled for hearing on February 4, 2010. Rosetta Stone also has served a First Set of Interrogatories, a Third Set of Requests for Production of Documents and a Fourth Set of Requests for Production of Documents.

6. Under the current Scheduling Order, discovery is to be commenced in time to be completed by February 12, 2010. This date simply is not viable, among other reasons, because (i) Google has produced documents as late as January 15, 2010 and has indicated its intention to produce additional documents to Rosetta Stone; (ii) certain documents produced to date have had technological issues associated with them; and (iii) Rosetta Stone's motion to compel the production of additional documents remains outstanding.

7. On January 21, 2010, Rosetta Stone retained undersigned counsel to represent it in connection with this matter. Although Rosetta Stone does not anticipate significant delays associated with its counsel transition, the requested extension will facilitate a smoother transition.

8. Rosetta Stone understands that the Court does not intend to continue the pre-trial conference, which is currently scheduled for February 18, 2010. The requested continuance of the discovery cut-off will not require such a continuance. In light of the fact that discovery would continue beyond the date of the pre-trial conference if the Motion were to be granted, however, Rosetta Stone requests that the date for the submission of Fed. R. Civ. P. 26(a)(3)

disclosures, a list of exhibits to be used at trial, a list of the witnesses to be called at trial, and a written stipulation of uncontested facts be extended from February 18, 2010 to March 22, 2010. Rosetta Stone further requests that the exchange of exhibits be continued from February 18, 2010 to March 22, 2010 and that the deadline for objections to exhibits be continued from March 4, 2010 to April 5, 2010.

WHEREFORE, Rosetta Stone seeks the Court's assistance in resetting the discovery cutoff.

Respectfully submitted,

January 25, 2010

Date

/s/

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**CERTIFICATE OF SERVICE**

I hereby certify that on January 25, 2010, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which shall send notification of such filing (NEF) to the following:

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*Counsel for Defendant, Google Inc.*

Respectfully submitted,

January 25, 2010

Date

/s/

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