



3-5-2008

# Vol. VII, Tab 38 - Ex. 64 - Holden Deposition (Google PM Director)

Richard T. Holden

*Google*

Follow this and additional works at: <http://digitalcommons.law.scu.edu/appendix>



Part of the [Computer Law Commons](#), [Intellectual Property Commons](#), and the [Internet Law Commons](#)

## Automated Citation

Holden, Richard T., "Vol. VII, Tab 38 - Ex. 64 - Holden Deposition (Google PM Director)" (2008). *Rosetta Stone v. Google (Joint Appendix)*. Paper 25.

<http://digitalcommons.law.scu.edu/appendix/25>

This Deposition is brought to you for free and open access by the Research Projects and Empirical Data at Santa Clara Law Digital Commons. It has been accepted for inclusion in Rosetta Stone v. Google (Joint Appendix) by an authorized administrator of Santa Clara Law Digital Commons. For more information, please contact [sculawlibrarian@gmail.com](mailto:sculawlibrarian@gmail.com).

Certified Copy

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

ROSETTA STONE, LTD.,

Plaintiff,

vs.

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

GOOGLE, INC.,

Defendant.

CONFIDENTIAL - ATTORNEYS' EYES ONLY

DEPOSITION OF

RICHARD T. HOLDEN

March 05, 2010  
10:32 a.m.

Four Embarcadero Center, Suite 3800  
San Francisco, California

Michelle L. Archuletta, CSR No. 11028



**ESQUIRE**  
an Alexander Gallo Company

Toll Free: 800.770.3363  
Facsimile: 415.591.3335

Suite 1100  
44 Montgomery Street  
San Francisco CA 94104  
[www.esquireolutions.com](http://www.esquireolutions.com)

5.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

SAN FRANCISCO, CALIFORNIA;

FRIDAY, MARCH 05, 2010; 10:32 A.M.

RICHARD T. HOLDEN

having been first duly sworn, testifies as follows:

EXAMINATION

BY MS. PARK:

Q Good morning, Mr. Holden. My name is Amy Park, and I'm an attorney with the Skadden Arps firm, and I represent Rosetta Stone in this matter, Rosetta Stone versus Google, and I'll be taking your deposition here today.

A Okay.

Q Would you state your full name and present residence address for the record, please.

A It's Richard Timothy Holden, H-O-L-D-E-N; and my address is 3662 Clay Street, San Francisco.

Q Have you been deposed before, Mr. Holden?

A Yes, I have been.

Q How many times?

A Two other times.

Q Do you recall what matters they were?

A Yes. One was the American Airlines suit against Google, and another was Function Media.



ESQUIRE  
an Alexander Galle Company

Toll Free: 800.770.3363  
Facsimile: 415.591.3335

Suite 1100  
44 Montgomery Street  
San Francisco, CA 94104  
www.esquiresolutions.com

17

1 that advertisers use directly or agencies use on behalf  
2 of advertisers. I'm not selling to advertisers. We  
3 have a sales team that does that, but we are building  
4 tools that either the advertisers use, agencies use, or  
5 sometimes our internal salespeople are using these also  
6 on behalf of an advertiser.

7 Q So, for example, a sales team might be  
8 dedicated to a client or particular client; whereas, am  
9 I correct in understanding, that a director of product  
10 management would not be dedicated to a specific client  
11 or group of clients but rather a product or group of  
12 products?

13 A Correct. I'm building products for advertisers  
14 to use worldwide.

15 Q Understood. You've mentioned AdWords. Can you  
16 give me a description of exactly what AdWords is?

17 A Sure. AdWords is a cost-per-click advertising  
18 program, meaning advertisers pay only when somebody  
19 clicks on their ad. Historically, online advertising  
20 has been cost-per-thousand impression or CPM, and  
21 advertisers would pay any time an ad was actually just  
22 shown on a Web site.

23 What we did is we, in 2001, we came out with a  
24 new ad model where you only paid when somebody clicked  
25 on the ad, but in addition we added a different factor



ESQUIRE  
an Alexander Gallo Company

Toll Free: 800.770.3363  
Facsimile: 415.591.3335

Suite 1100  
44 Montgomery Street  
San Francisco, CA 94104  
[www.esquiresolutions.com](http://www.esquiresolutions.com)



1 to it as well which is what we call our quality score.

2 An advertiser pays based on the quality of  
3 their ad and the bid that they make on an ad as well, so  
4 historically there was another company in this space  
5 called Overture before we were in this space, and they  
6 charged advertisers on a cost-per-click basis also, but  
7 whoever paid the most ended up being a top ad on a  
8 search results page.

9 We changed that model slightly to say that the  
10 top position is not just who pays the most, it's the  
11 combination of the quality of the ad, meaning how much  
12 is somebody clicking on the ad, how much is somebody  
13 interacting with that ad and the bid, and as a result  
14 the reason why we did that was to take user relevancy  
15 into account.

16 We wanted to show ads that were more relevant  
17 to users, so we gave advertisers the benefit if they had  
18 a higher quality ad we would charge them less because we  
19 wanted to give an incentive to create higher quality  
20 ads.

21 Q You used the term bid, the bid and quality.  
22 What do you mean by bid?

23 A AdWords is an auction, and so every advertiser  
24 determines a set of keywords that they would like to  
25 trigger their ads. So if somebody comes to Google and



**ESQUIRE**  
an Alexander & Galle Company

Toll Free: 800.770.3363  
Facsimile: 415.591.3335

Suite 1100  
44 Montgomery Street  
San Francisco, CA 94104  
www.esquireolutions.com

1 types a search, every one of the words that they entered  
2 is a keyword, and an advertiser has been bidding on  
3 those keywords.

4 Every time a consumer does a search on Google,  
5 we run an auction. So there are millions of auctions  
6 being done throughout the day, and at that time we  
7 determine the advertisers who have been bidding on those  
8 keywords, and then they participate in this auction  
9 together. And it's a combination of who has the highest  
10 bid, also who has the highest quality ads are the ones  
11 that win the auction. And then in realtime we decide  
12 which ads to show based on that auction.

13 Q So who has the highest bid means who pays the  
14 most for their ad placement?

15 MS. PENNYPACKER: Misstates testimony.

16 MS. PARK: That's a question. I was confused  
17 by your response.

18 THE WITNESS: Highest bid meaning an advertiser  
19 comes in and they determine the maximum cost per click  
20 that they're willing to pay for an ad that might show  
21 up. We enter that into the auction. We determine all  
22 the eligible ads for an auction, and we take into  
23 account -- in an auction that didn't take quality score  
24 into account, we would just take the highest bidder and  
25 we would show that ad at the top. But we also take in



Toll Free: 800.770.3363  
Facsimile: 415.591.3335

Suite 1100  
44 Montgomery Street  
San Francisco, CA 94104  
www.esquireolutions.com

20

1 this notion of quality and that's comprised of many  
2 factors.

3 One is click-through rate. Another is  
4 historical click-through rate for a particular keyword.  
5 There are many factors that we take into account to  
6 determine that quality score. It's the combination of  
7 the bid and the quality score that determines what the  
8 rank of that ad is ultimately on the search results  
9 page.

10 BY MS. PARK:

11 Q How does -- so someone within Google examines  
12 each ad and determines what its quality score is?

13 A No.

14 MS. PENNYPACKER: Foundation.

15 THE WITNESS: No. It's computer driven. We  
16 have algorithms that determine what those ads are. We  
17 look at statistics based on the history of ads showing.  
18 The history of ads showing against certain keywords and  
19 we determine quality score through algorithms.

20 BY MS. PARK:

21 Q Through a proprietary Google algorithm?

22 A Correct.

23 Q You said at one point in one of your prior  
24 responses that Google determines all eligible ads to  
25 participate in the auction. What do you mean by that?



**ESQUIRE**  
an Alcatel-Lucent Company

Toll Free: 800.770.3363  
Facsimile: 415.591.3335

Suite 1100  
44 Montgomery Street  
San Francisco, CA 94104  
www.esquiresolutions.com



21

1 What is an eligible ad?

2 A Well, when an advertiser creates an ad it goes  
3 into our approvals process, which is an automated  
4 process as well. There are certain ads that may not be  
5 eligible to show because they may violate certain  
6 policies that we have. They could be using terminology  
7 that we don't support.

8 We don't condone -- for example, we don't allow  
9 ads for firearms. It could be having firearm terms in  
10 that ad, so it wouldn't be eligible. But if it's passed  
11 through the approval process, then it's in the pool of  
12 eligible ads, and at that point an ad might not show  
13 because the advertiser is budget limited.

14 An advertiser sets a budget for the day. They  
15 may have spent that whole budget for the day, so we'll  
16 essentially take that ad and put it into a pool for that  
17 day and it's no longer eligible. That's an example of  
18 something that might not be eligible.

19 Q I understand. And the approvals process is  
20 computerized or automated?

21 MS. PENNYPACKER: Foundation.

22 THE WITNESS: I should say it's heavily  
23 automated. It's not completely automated. We strive to  
24 make it as automated as possible, but there's certain  
25 aspects of it that aren't automated at this point.



ESQUIRE  
an Alexander Galle Company

Toll Free: 800.770.3363  
Facsimile: 415.591.3335

Suite 1100  
44 Montgomery Street  
San Francisco, CA 94104  
[www.esquireolutions.com](http://www.esquireolutions.com)



1 BY MS. PARK:

2 Q Is there a name for the automated portion of  
3 the approvals process? For example, is it a program?  
4 Is it a software tool?

5 A We typically call it the approval bin.

6 Q And how does something -- how does a proposed  
7 ad get into the approval bin?

8 MS. PENNYPACKER: Foundation.

9 THE WITNESS: An advertiser online or an agency  
10 on their behalf creates an ad, a text ad and then they  
11 submit the ad online, and once it's submitted it goes  
12 into the approval process.

13 BY MS. PARK:

14 Q Can you walk me through the steps in that  
15 process? You've just told me the first step, as I  
16 understand it, the ad -- the proposed ad gets submitted  
17 by the advertiser or the agency and it goes into the,  
18 quote, approval process.

19 What is the first step in that process?

20 MS. PENNYPACKER: Foundation.

21 THE WITNESS: Well, I'm not -- I'm not an  
22 expert in the approval process. Generally know how it  
23 works.

24 BY MS. PARK:

25 Q Do you have an understanding in your role as a

  
**ESQUIRE**  
an Alexander Galle Company

Toll Free: 800.770.3363  
Facsimile: 415.591.3335

Suite 1100  
44 Montgomery Street  
San Francisco, CA 94104  
www.esquiresolutions.com

111

1 A No, I do not know.

2 Q I assume since it says spokeswoman that you  
3 were not the source of that statement?

4 A I think that would be correct.

5 Q Do you agree with that statement?

6 A It is consistent with what I was saying before  
7 is we look at user interest first and we try to strike a  
8 balance with advertisers. It talks about the balance  
9 specifically; whereas, I would typically talk about it's  
10 user interest first and then we try to ensure that  
11 there's a proper balance between publishers,  
12 advertisers, and users, but yes, it's consistent with  
13 what I was saying earlier.

14 Q And do you agree with the statement that  
15 Google's trademark policy that's being referenced here  
16 strikes a proper balance between trademark owners'  
17 interests and consumer choice?

18 A Yeah, I agree with that statement.

19 Q And, to your knowledge, this was the -- still  
20 the Google trademark policy that had been in place since  
21 April of 2004?

22 A Again, I don't know if there had been tweaks in  
23 intervening time frame, but yes, I think it's the same  
24 policy.

25 Q I can represent to you that it is.



Toll Free: 800.770.3363  
Facsimile: 415.591.3335

Suite 1100  
44 Montgomery Street  
San Francisco, CA 94104  
www.esquireolutions.com

112

1 I'll direct your attention to the next  
2 paragraph, "Google acknowledges that piggybacking occurs  
3 and says that when it gets complaints, it investigates  
4 the claims and tries to stop the practice."

5 Do you see that?

6 A Yes, I do.

7 Q Are you familiar with the term piggybacking?

8 A I am only because of this story. I had never  
9 heard the term before I read this story.

10 Q Is that a term that's used within Google,  
11 piggybacking?

12 A I had never heard it before this story. I was  
13 surprised when I saw it in this story.

14 Q Have you heard the term since the story?

15 A No, I have not.

16 Q Earlier you said that you agreed with the  
17 statement that the trademark policy in effect at this  
18 time strikes a proper balance between trademark owners'  
19 interest and consumer choice.

20 Why do you agree with that statement?

21 A Primarily, again, from the viewpoint of how we  
22 look at advertising as it should be as relevant to the  
23 consumer as the organic or the unpaid search results,  
24 and that we don't want to show an ad unless it is as  
25 relevant; in fact, we'd rather show fewer ads rather



ESQUIRE  
an Alexander Gallo Company

Toll Free: 800.770.3363  
Facsimile: 415.591.3335

Suite 1100  
44 Montgomery Street  
San Francisco, CA 94104  
www.esquiresolutions.com



113

1 than more ads to make sure that they are relevant ads.

2 This principle around how this policy was  
3 crafted is consistent with helping us drive more  
4 relevant ads ultimately to the consumer, and I think it  
5 strikes a good balance because it's generating the  
6 information consumers are looking for, and generally  
7 represents the advertisers fine from my perspective too.

8 Q How does it represent the advertisers fine?

9 A Well, any advertiser has an opportunity to bid  
10 on keywords that are related to searches that consumers  
11 are doing on Google, and advertisers come to us to  
12 generate leads to them. We provide a vehicle for them  
13 for getting relevant leads. That's why they come back  
14 because it's highly ROI positive for them, and I think  
15 it strikes a balance because again we're generating more  
16 leads for more advertisers that are consistent with what  
17 the advertisers are coming to us for.

18 Q And did you -- do you feel that it also  
19 protected advertisers because it prevented persons who  
20 didn't own the trademark from using another trademark  
21 owners' trademark in their ad text?

22 MS. PENNYPACKER: Vague. Speculation.

23 BY MS. PARK:

24 Q That's what this policy did, right, the policy  
25 in effect at the time?



Toll Free: 800.770.3363  
Facsimile: 415.591.3335

Suite 1100  
44 Montgomery Street  
San Francisco, CA 94104  
www.esquiresolutions.com



114

1 A Go ahead and restate.

2 Q The policy in effect at the time, as I  
3 understand it, and as I thought you agreed it was, the  
4 2004 policy that was in effect at this time permitted  
5 nontrademark owners to use trademarked terms as keywords  
6 to trigger ads, but did not permit the use by a  
7 nontrademark owner of a trademark term in the text of  
8 the ad.

9 A Right. And that's -- that is what the policy  
10 was at the time.

11 Q And that is the policy that you said you agree  
12 with, because it fairly -- I think you said you agree  
13 that it strikes a proper balance between trademark  
14 owners' interests and consumer choice?

15 MS. PENNYPACKER: Misstates testimony.  
16 BY MS. PARK:

17 Q Is that true? Is that accurate?

18 A Yeah, I didn't -- this is what I was quoted as  
19 saying at the time. I didn't state that currently, but  
20 I agreed that that is an accurate representation of my  
21 belief around the policy.

22 Q Okay. And my next question to you was: Do you  
23 believe that this policy struck a proper balance between  
24 trademark owners' interest and consumer choice because,  
25 I'm paraphrasing and correct me if I'm wrong, because it



ESQUIRE  
an Alexander Gallo Company

Toll Free: 800.770.3363  
Facsimile: 415.591.3335

Suite 1100  
44 Montgomery Street  
San Francisco, CA 94104  
www.esquireolutions.com