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Vol. IX, Tab 47 - Ex. 31 - Deposition of Richard Holden (Google Project Manager Director)

Richard Holden
Google

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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



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1 A September of '96.

2 Q And, I'm sorry, when did you leave @Home?

3 A I left @Home in February 2002. It was then
4 called Excite@Home. We had acquired Excite.

5 Q When you say you were a product manager there,
6 what does that mean?

7 A I worked with engineers to build the features
8 that our customers used, so these were broadband
9 modem -- early stages of broadband services, so we were
10 delivering e-mail services, Web browsers, et cetera, so
11 we were creating the client software and the
12 infrastructure that these customers used to get online
13 through a broadband cable modem connection.

14 Q You said during your time at @Home you went
15 from being a product manager to a director of product
16 management?

17 A Yes.

18 Q And what was a director of product management?

19 A The director of product management managed the
20 product managers who worked with the engineers to build
21 these products, so I had a team of product managers who
22 reported to me.

23 Q And after your time at @Home which became
24 Excite@Home, what was your next position?

25 A I started at Google in 2002.



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1 Q And how did it come to pass that you left
2 Excite@Home and went to Google?

3 A Well, Excite@Home went out of business. I was
4 part of the shutdown crew, so I left when there were
5 about 30 people left in the company.

6 Q And you sent out a resume and looked for a
7 position?

8 A I made some phone calls, sent some e-mails.
9 The person who hired me at @Home Network in 1996 was
10 Jonathan Rosenberg and he had --- in February of 2002 had
11 become the vice president of product management at
12 Google, and that's how I ended up at Google.

13 Q You said you went to Google in 2002. What
14 month?

15 A I started there in June.

16 Q When you started at Google, what was your first
17 position with the company?

18 A My first position was actually product
19 marketing manager, so I was working on how we market our
20 services rather than building our services initially.

21 Q And how long did you serve as a product
22 marketing manager?

23 A Two months.

24 Q You didn't enjoy marketing?

25 A No, I was hired as a marketing person because


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1 our founders believe in having only product managers.
2 with computer science degrees, and I didn't have one.
3 Jonathan knew he wanted me to do product management, but
4 I didn't have a computer science degree. Once I was
5 there at Google, we made that switch a couple months
6 later to product management.

7 Q So in about August of 2002 is when you became a
8 product manager?

9 A Yes.

10 Q And what were your duties and responsibilities
11 as a product manager at Google?

12 A We had launched probably eight months earlier
13 AdWords, our click -- cost-per-click ad program, and I
14 was one of the first product managers working on that,
15 so I was working with engineers again to define and
16 build the features that advertisers used to set up and
17 maintain ad campaigns on AdWords.

18 Q And how long did you serve in this position of
19 product manager from August '02 until what date?

20 A Well, I was a variety of levels of product
21 manager over a few years. I became a director of
22 product management in I think it was in January of 2005.

23 Q So is it correct that from August of 2002
24 through December of 2004 you were a product manager?

25 A Yeah, we have different titles.


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1 Q Yes.

2 A In fact, I frankly can't remember if we had all
3 those titles then, but we had levels within it, and we
4 have senior product manager and group product manager.
5 I was various levels within product manager until the
6 end of 2004 and then became a director in early 2005.

7 Q A director of what?

8 A Of product management.

9 Q So from August 2002 through December 2004, you
10 had various titles but effectively served as a product
11 manager all throughout that time period?

12 A Correct.

13 Q And were your duties and responsibilities
14 essentially the same throughout that time period?

15 A No, they were growing. Initially I was what we
16 would call an individual contributor. I was just
17 working on features myself with engineers, and during
18 that period of time there were product managers who were
19 reporting to me who were working on features, so my
20 responsibilities expanded during that period of time.

21 Q But throughout that time you continued to have
22 responsibility for or work with AdWords?

23 A That was the product areas I was focused on. I
24 became less connected day to day with building the
25 features and more with managing people who were building



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1 the features, but yes, it was all related to AdWords.

2 Q In January of 2005 when you assumed the
3 position of director of product management, was that
4 still with respect to the AdWords product?

5 A Yes.

6 Q And are you still a director of product
7 management?

8 A Yes.

9 Q And you've held that position since January of
10 2005, that same position?

11 A Yes.

12 Q What are your duties and responsibilities as a
13 director of product management?

14 A I manage a team of product managers who work
15 with the engineers to build features for our
16 advertisers.

17 Q And is that -- the product for which you're
18 responsible, is it just AdWords or are there other
19 products within your sphere of responsibility?

20 A There is AdWords but there are many features
21 and aspects of AdWords, and I manage a portion of
22 AdWords. I have a colleague who manages another portion
23 of AdWords, and I also manage product managers who work
24 on Google Analytics.

25 Q What portion of Adwords are you responsible



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1 for?

2 A I'm focused on the tools that -- primarily on
3 the tools that advertisers use to set up and maintain an
4 ad campaign on Google; so what we would typically call
5 the front end, the Web site that an advertiser logs into
6 to see their ad campaign, see their reports, set up
7 their ad campaigns. In addition, I'm responsible for
8 the AdWords API.

9 Q What does API mean?

10 A Application programming interface. It's the
11 tool set or the language essentially that third parties
12 use to use our infrastructure to build their own
13 interfaces on top of our ad systems, and so I have
14 product managers who work on that. I also have product
15 managers who work on something called AdWords Editor,
16 which is a downloadable piece of software, client
17 software that customers can use to manage ad campaigns
18 in AdWords as well. It's just a different interface for
19 that, and then I have product managers that work on
20 Google Analytics as well.

21 Q So in your sphere of responsibility you're
22 responsible for products and product management. Do you
23 have any responsibility vis-a-vis Google clients or
24 advertisers?

25 A Well, ultimately my team is building products



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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



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1 I'll ask the court reporter to mark as
2 Exhibit 4.

3 (Exhibit 4 marked)

4 THE WITNESS: Okay.

5 BY MS. PARK:

6 Q Do you recognize this document, Mr. Holden?

7 A I think I remember seeing this story when it
8 was published.

9 Q Is this one of the documents that you reviewed
10 to prepare for your deposition that refreshed your
11 recollection?

12 A No, it was not.

13 Q Can you tell me what this document is?

14 A It's a story from the Wall Street Journal from
15 2008.

16 Q I want to direct your attention to the second
17 page of the document, ending in Bates No. 172.

18 A (Witness complies.)

19 Q And in particular the third paragraph -- third
20 full paragraph on that page, the second sentence of that
21 paragraph says, "Google's trademark policy strikes a
22 proper balance between trademark owners' interests and
23 consumer choice and has been validated by prior court
24 decisions," end quote, "a Google spokeswoman says."

25 Do you know who that Google spokeswoman was?


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1 gave consumers more options because more -- it was
2 increasing the relevant ads that were shown to them, and
3 at the same time it wasn't allowing advertisers who
4 didn't own the trademark to use trademark text in the ad
5 itself?

6 MS. PENNYPACKER: Vague.

7 THE WITNESS: I think that at the time it,
8 looking at it from the users' view point, which we
9 always talk about ads from, it ends up generating, I
10 presume, additional ads that were relevant to consumers
11 which is what our primary interest was at that time. I
12 wasn't really thinking about the creatives as much as I
13 was thinking about that we were generating more ads that
14 are relevant to the consumer, and our vehicle for doing
15 that was allowing those advertisers to use those terms,
16 those trademarked terms as keywords or bid on those
17 trademarked terms.

18 BY MS. PARK:

19 Q I understand that. And then this refers to a
20 balance between the user -- the consumer's choice which
21 you have described to me at length, and the trademark
22 owners' interest, right, and I'm asking you what is the
23 trademark owners' interest that's being balanced against
24 that?

25 MS. PENNYPACKER: Misstates the document.



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1 THE WITNESS: Well, the statement here is about
2 not the trademark owner interest. My statement is about
3 advertisers and users. And the trademark owners are one
4 set of advertisers, but I am referring to advertisers in
5 general here.

6 BY MS. PARK:

7 Q I think we're talking about different
8 statements.

9 A I am sorry.

10 Q I'm talking about the statement in paragraph 3
11 made by the Google spokeswoman, who we agree is not you,
12 but I asked you: Do you agree with her statement quoted
13 here that Google's trademark policy strikes a proper
14 balance between trademark owners' interest and consumer
15 choice, and I thought you said yes, you did agree with
16 that, although you did not make that statement.

17 Do you agree with it?

18 A I apologize. I was reading my quotation in the
19 next paragraph and blending the two.

20 Q I understand.

21 A What I would say is that I think that that
22 statement is correct about balancing user interest. I
23 think it is also correct to the extent that we're
24 talking about advertisers in general. I don't think she
25 was talking about advertisers in general. I was, in my

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1 quotation, talking about advertisers in general, and
2 that's where the delicate balance comes in, because
3 there are many advertisers who have many different
4 interests. I wasn't talking about one class of
5 advertisers; I was talking about all advertisers.

6 Q I understand that, and I'm focused, though, on
7 her statement, and my question is: Do you agree with
8 her statement that Google's trademark policy strikes a
9 proper balance between trademark owners' interest and
10 consumer choice?

11 MS. PENNYPACKER: Asked and answered.

12 THE WITNESS: I think at the time when this
13 policy was in place and at that time it struck a fair
14 balance between consumer interest and a broad -- and
15 advertiser interest in general. I think it was also
16 striking a balance with trademark owners as well, but
17 that's -- again, I guess I'm not really thinking about
18 it in terms of trademark. I'm thinking about it in
19 terms of advertiser interest as a whole.

20 BY MS. PARK:

21 Q In the next paragraph where it says, "Google
22 acknowledges that piggybacking occurs and says that when
23 it gets complaints, it investigates the claims and tries
24 to stop the practice."

25 Were you the source of that statement,



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1 Mr. Holden?

2 A I don't believe so.

3 Q Do you know at the time of when this policy was
4 in place what Google did to investigate the claims and
5 tried to stop the practice?

6 A It's consistent with what I was saying before
7 where I have a general understanding of what our policy
8 was. I don't know the actual procedures around it, but
9 my understanding is that an advertiser could file a
10 complaint with our policy team or our operations team.
11 They would investigate the claim. If they found that
12 the advertiser's claim was accurate and that people were
13 doing things counter to what our policies were, they
14 would then take action and pull down those ads.

15 Q But you don't have any specific knowledge about
16 that; that's someone else I would have to ask?

17 A Yes, it's the operations and policy team. Not
18 the product team.

19 Q In the next sentence of this article there's a
20 quote from you. Can you read that to me?

21 A "We have a long-running policy where we don't
22 allow advertisers to use trademarked terms in an ad text
23 to avoid creating any user confusion."

24 Q How did it come to be that you were quoted in
25 this article?

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1 A. I assume that somebody from our PR team asked
2 me to meet with this reporter.

3 Q. You're assuming that. Do you recall that?

4 A. I don't because I get asked by the PR team to
5 meet with lots of different reporters. That's usually
6 how it happens. I assume that was the case in this case
7 as well.

8 Q. Did anyone from the PR team tell you why they
9 chose you or asked you to give a statement?

10 A. Well, we have a number of people that speak on
11 AdWords or advertising in general. At that time I was
12 one of those people, and we have a lot of requests for
13 interviews, so we have a number of people that talk
14 about AdWords, so I was one of the people that's on
15 their list of people to contact about stories for
16 AdWords.

17 Q. Did you have any discussion about why you were
18 chosen to provide a quote regarding trademark policy
19 considering what your role is in the company?

20 A. I don't know why specifically I was chosen,
21 other than I'm one of the directors who works on AdWords
22 and speaks on AdWords issues often, so I might have just
23 been -- happened to have been the person that was
24 available that day. I really don't know why.

25 Q. Did you have any discussion or communication



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1 with anyone about why you were the person chosen to make
2 this statement?

3 A Not that I -- no, I don't believe so.

4 Q But as a director, certainly you felt that you
5 were, I guess -- strike that.

6 Do you know what the basis of your statement
7 was?

8 A The basis of the statement?

9 Q Yeah.

10 A No. Opinion, probably. I don't know quite
11 honestly.

12 Q You say, "We don't allow advertisers to use
13 trademarked terms in ad text to avoid creating user
14 confusion."

15 Why did you say "to avoid creating user
16 confusion"? Why did you say that was the reason for
17 your long-running policy?

18 A I don't know why at the time, but I probably --
19 probably, in my opinion, I thought that it was a
20 well-crafted policy because it increased user choice and
21 user information, and at the same time I probably felt
22 like it was fair to the trademark owner because we
23 weren't -- we weren't -- we weren't confusing ultimately
24 probably the end user as to who was the presenter of
25 this ad or what product was being sold by not having in


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1 the creative as well.

2 Q Did you make any other public statements about
3 Google's trademark policy ever?

4 A I may have. Not that I recall.

5 Q Did anyone ever tell you that this statement
6 what you're quoted as giving was inaccurate?

7 A No, no one -- not that I recall anyone made any
8 comment on this story.

9 MS. PARK: Okay. I'm finished with this
10 document. So if you'd like to take a break now, we can
11 do so.

12 MS. PENNYPACKER: Okay.

13 (Lunch recess from 1:33 p.m. to 2:23 p.m.)

14 BY MS. PARK:

15 Q So before we broke for lunch we were talking
16 about an Exhibit No. 4, and looking back over the
17 question and answer I think something might have been
18 amiss, either in the repetition or in the transcription,
19 so I wonder if I could have the court reporter read back
20 the question that I asked and your response thereto. Go
21 ahead:

22 (Record read as follows:

23 "Question: You say, 'We don't allow
24 advertisers to use trademarked terms in
25 ad text to avoid creating user


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ERRATA FOR RICHARD T. HOLDEN'S DEPOSITION TRANSCRIPT
 (March 5, 2010)

Page	Line(s)	From	To	Reason
17	24	where you only paid when somebody clicked	where the advertiser pays only when somebody clicks	Transcription error
19	1-3	the words that they entered is a keyword, and an advertiser has been bidding on those keywords	the words they entered are a keyword, and an advertiser may be bidding on those keywords	Transcription error
31	7	build	built	Misspelling
32	7	managed at that time	managed by Sales at that time	Transcription error
32	15-17	and so – and they were embedded in the software, like the approval bin and the like as the policies changed,	and so the policies were embedded in the software, like with the approval bin, and the software is updated as the policies changed,	Transcription error
46	11-12	Ramsey Homsany, who was a, I believe, a legal. R. Homsany	Ramsey Homsany who was, I believe, in legal	Transcription error
46-47	25-9	a gentleman Salar Kamangar who was on this thread, I believe, also was heading and I reported to him. And Susan was his counterpart and she headed up what we called at the time our partnership of syndication product team. She managed at that time our AdSense business, which is where we take our AdWords ads and don't – and not show them on Google search results pages, but we actually	a gentleman named Salar Kamangar, who was on this thread, I believe, was heading, and I reported to him. Susan was his counterpart and she headed up what we called at the time our partnership or syndication product team. She managed our AdSense business at the time, which is where we show AdWords ads not on Google search results but, at the request of web publishers, on websites with the ads targeted to the content of	Transcription error

		show them on Web sites against content on the Web on Web Publisher, and sites like New York Times and so on.	the page (sites like The New York Times and so on.)	
49	20	sported	supported	Transcription error
56	5	Automater	Automator	Misspelling
57	7	New Trade Policy	New Trademark Policy	Transcription error
57	18	I think he's in	I think he was on	Transcription error
66	19	talk about advertising	talk about related to advertising	Transcription error.
67	18	have more ability now at a broader set	have more ability now to bid on a broader set	Transcription error.
67	21-23	we were supposing, we didn't know, they could increase ROI	we were supposing, but we didn't know, that they could increase their ROI	Transcription error
95	17	Not	No	Transcription error
123	16	what	what is	Transcription error
124	7-8	as well as to any ownership of trademarked terms	as well as with any owners of trademark terms	Transcription error
134	24	class	classes	Transcription error
151	18	Alien Eustis	Alan Eustace	Transcription error
151	19	Shawna	Shona	Transcription error
160	25	discussion with at some point	discussion with him at some point	Transcription error
167	9	wants to spend on their 50,000	wants to spend on their campaign \$50,000	Transcription error
171	14	A	a	Transcription error
172	24	overtake	compensate	Transcription error
194	20	in the	in	Transcription error
204	9	upset	upset about	Transcription error
213	5	based on	DELETE "based on" FROM THE SENTENCE	Transcription error
218	23	e-mails	e-mail	Transcription error
222	8	our training aspects were	our training aspect was	Transcription error
224	19	from my perspective, on what's our objective here	from my perspective, was our objective here	Transcription error
229	5	Barish	Baris	Misspelling
238	5	are few	are a few	Transcription error