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Vol. VI, Tab 38 - Declaration of Margret M. Caruso

Margret M. Caruso

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(Alexandria Division)

ROSETTA STONE LTD.

Plaintiff,

v.

GOOGLE INC.

Defendant.

CIVIL ACTION NO. 1:09cv736
(GBL / TCB)

DECLARATION OF MARGRET M. CARUSO

I, Margret M. Caruso, hereby declare as follows:

1. I am over the age of eighteen. I am competent to testify to, and have personal knowledge of, the matters contained herein.

2. I represent Defendant Google Inc. in this action. In that capacity, I have gained personal knowledge of the facts contained herein, each of which is true and correct.

Order Dismissing Rosetta Stone's False Endorsement Claim

3. Attached to this declaration as Exhibit 1 is a true and correct copy of this Court's Order Granting In Part And Denying In Part Defendant's Motion To Dismiss in this action, dated Sept. 21, 2009.

FTC Letter Regarding Sponsored Links

4. Attached to this declaration as Exhibit 2 is a true and correct copy of a letter from the FTC to Gary Ruskin dated June 27, 2002, bates labeled GOOG-RS-0335013 to GOOG-RS-0335016.

Google's Terms and Conditions, Policy, and Technology

5. Attached to this declaration as Exhibit 3 is a true and correct copy of a printout of Exhibit 1 of Google's Motion to Dismiss filed Sept. 21, 2009 (Docket #13). Exhibit 1 is the

declaration of Christina Aguiar in support of Google's Motion to Dismiss and accompanying Google Advertising Program Terms.

6. Attached to this declaration as Exhibit 4 is a true and correct copy of a document produced by Rosetta Stone in this litigation entitled "Google AdWords", and bates labeled RS-013-000802.

7. Attached to this declaration as Exhibit 5 is a true and correct copy of a print out from www.google.com/corporate/tech.html, dated March 9, 2010 and printed at my direction, bearing bates label GOOG-RS-0479748.

Rosetta Stone's Contract With Google

8. Attached to this declaration as Exhibit 6 is a true and correct copy of the declaration of Brian James Miller, dated September 3, 2009.

Google Search Results Pages for the Search Term "Rosetta Stone"

9. Attached to this declaration as Exhibit 7 is a true and correct copy of a document produced by Rosetta Stone in this litigation which purports to be a screenshot of Google's search results page dated Sept. 10, 2009, bates labeled RS-00205023 to RS-00205025.

10. Attached to this declaration as Exhibit 8 is a true and correct copy of a document which purports to be a screenshot produced by Rosetta Stone in this litigation as part of a collection of screenshots that Rosetta Stone represents were provided to Dr. Van Liere for use in his survey, bates numbered RS-015-000001.01.

11. Attached to this declaration as Exhibit 9 is a true and correct copy of a document which purports to be a screenshot produced by Rosetta Stone in this litigation as part of a collection of screenshots that Rosetta Stone represents were provided to Dr. Van Liere for use in his survey, bates numbered RS-015-000001.02.

12. Attached to this declaration as Exhibit 10 is a true and correct copy of a document which purports to be a screenshot produced by Rosetta Stone in this litigation as part of a collection of screenshots that Rosetta Stone represents were provided to Dr. Van Liere for use in his survey, bates numbered RS-015-000001.04.

13. Attached to this declaration as Exhibit 11 is a true and correct copy of a document which purports to be a screenshot produced by Rosetta Stone in this litigation as part of a collection of screenshots that Rosetta Stone represents were provided to Dr. Van Liere for use in his survey, bates numbered RS-015-000001.05.

14. Attached to this declaration as Exhibit 12 is a true and correct copy of a document which purports to be a screenshot produced by Rosetta Stone in this litigation as part of a collection of screenshots that Rosetta Stone represents were provided to Dr. Van Liere for use in his survey, bates numbered RS-015-000001.06.

15. Attached to this declaration as Exhibit 13 is a true and correct copy of a document which purports to be a screenshot produced by Rosetta Stone in this litigation as part of a collection of screenshots that Rosetta Stone represents were provided to Dr. Van Liere for use in his survey, bates numbered RS-015-000001.07.

16. Attached to this declaration as Exhibit 14 is a true and correct copy of a document which purports to be a screenshot produced by Rosetta Stone in this litigation as part of a collection of screenshots that Rosetta Stone represents were provided to Dr. Van Liere for use in his survey, bates numbered RS-015-000001.08.

17. Attached to this declaration as Exhibit 15 is a true and correct copy of a document which purports to be a screenshot produced by Rosetta Stone in this litigation as part of a

collection of screenshots that Rosetta Stone represents were provided to Dr. Van Liere for use in his survey, bates numbered RS-015-000001.09.

18. Attached to this declaration as Exhibit 16 is a true and correct copy of a document which purports to be a screenshot produced by Rosetta Stone in this litigation as part of a collection of screenshots that Rosetta Stone represents were provided to Dr. Van Liere for use in his survey, bates numbered RS-015-000001.10.

19. Attached to this declaration as Exhibit 17 is a true and correct copy of a document which purports to be a screenshot produced by Rosetta Stone in this litigation as part of a collection of screenshots that Rosetta Stone represents were provided to Dr. Van Liere for use in his survey, bates numbered RS-015-000001.11.

20. Attached to this declaration as Exhibit 18 is a true and correct copy of a document which purports to be a screenshot produced by Rosetta Stone in this litigation as part of a collection of screenshots that Rosetta Stone represents were provided to Dr. Van Liere for use in his survey, bates numbered RS-015-000001.12.

21. Attached to this declaration as Exhibit 19 is a true and correct copy of a screenshot produced by Rosetta Stone in this litigation as part of a collection of screenshots that Rosetta Stone represents were provided to Dr. Van Liere for use in his survey, bates numbered RS-015-000001.03. Though the screenshot does not include a date, all of the produced screenshots appear to have the date of the screenshot in the filename and the file name of this screenshot is "20080221(a)_RosettaStone." Of the twelve screenshots provided by Rosetta Stone to Dr. Van Liere, this was the only one that matched Exhibit D of Dr. Van Liere's Expert Report.

Google's Responsiveness To Rosetta Stone's Trademark Concerns

22. Attached to this declaration as Exhibit 20 is a true and correct copy of a document produced by Rosetta Stone in this litigation which purports to be an email from Lena Huang to John Ramsey dated Sept. 6, 2007, bates labeled RS-00089723 to RS-00089724.

23. Attached to this declaration as Exhibit 21 is a true and correct copy of a document produced by Rosetta Stone in this litigation which purports to be an email from Christina Aguiar to April Garvey dated Sept. 19, 2008, bates labeled RS-00095464 to RS-00095465.

24. Attached to this declaration as Exhibit 22 is a true and correct copy of a document produced by Rosetta Stone in this litigation which purports to be an email from Pamela Mulder to April Garvey dated Sept. 23, 2008, bates labeled RS-00018968 to RS-00018970.

25. Attached to this declaration as Exhibit 23 is a true and correct copy of a document produced by Rosetta Stone in this litigation which purports to be an email from Christopher Klipple to Christina Aguiar dated Oct. 13, 2008, bates labeled RS-00036926 to RS-00036927.

26. Attached to this declaration as Exhibit 24 is a true and correct copy of a document produced by Rosetta Stone in this litigation which purports to be an email from Christopher Klipple to Christina Aguiar dated Dec. 18, 2008, bates labeled GOOG-RS-0193766 to GOOG-RS-0193771.

27. Attached to this declaration as Exhibit 25 is a true and correct copy of a document produced by Rosetta Stone in this litigation which purports to be an email from Christopher Klipple to Christina Aguiar dated May 7, 2009, bates labeled GOOG-RS-0131481 to GOOG-RS-0131483.

28. Attached to this declaration as Exhibit 26 is a true and correct copy of a document produced by Rosetta Stone in this litigation which purports to be an email from Jason Calhoun to Jeff Wu dated Mar. 4, 2009, bates labeled RS-00074322 to RS-00074330.

29. Attached to this declaration as Exhibit 27 is a true and correct copy of a document produced by Rosetta Stone in this litigation which purports to be an email from Jason Calhoun to Cory Louie dated June 23, 2009, bates labeled GOOG-RS-0494014 to GOOG-RS-0494018.

30. Attached to this declaration as Exhibit 28 is a true and correct copy of a document produced by Rosetta Stone in this litigation which purports to be an email from Christopher Klipple to Hal Narus dated Sept. 10, 2009, bates labeled RS-00092421.

31. Attached to this declaration as Exhibit 29 is a true and correct copy of a document produced by Rosetta Stone in this litigation which purports to be an email from Jason Calhoun to clouie@google.com and John.Ogden@ic.fbi.gov dated Oct. 23, 2009, bates labeled RS-00179572.

Rosetta Stone Brand Studies

32. Attached to this declaration as Exhibit 30 is a true and correct copy of a document produced by Rosetta Stone in this litigation which purports to be an email from Nino Ninov to Tom Adams dated Aug. 21, 2005, bates labeled RS-00079338.

33. Attached to this declaration as Exhibit 31 is a true and correct copy of a document produced by Rosetta Stone in this litigation which is titled "Survey of Rosetta Stone Brand Health" dated Aug. 2005, bates labeled RS-007-000022 to RS-007-000066.

34. Attached to this declaration as Exhibit 32 is a true and correct copy of a document produced by Rosetta Stone in this litigation titled "Language Learning in the United States of America" dated Mar. 2006, bates labeled RS-007-000290 to RS-007-000365.

35. Attached to this declaration as Exhibit 33 is a true and correct copy of a document produced by Rosetta Stone in this litigation which purports to be an email from Eric Eichmann to a number of individuals dated Sept. 17, 2007, bates labeled RS-00083333 to RS-00083334.

36. Attached to this declaration as Exhibit 34 is a true and correct copy of a document produced by Rosetta Stone in this litigation titled "Competitive Analysis," bates labeled RS-00011979 to RS-00011995.

37. Attached to this declaration as Exhibit 35 is a true and correct copy of a document produced by Rosetta Stone in this litigation titled "DTC 2008 Plan," bates labeled RS-00179580 to RS-00179602.

Rosetta Stone's Lobbying Efforts To Change Trademark Law

38. Attached to this declaration as Exhibit 36 is a true and correct copy of a document produced by Rosetta Stone in this litigation which purports to be an email from Michael Wu to a number of people, including attachments, dated Feb. 1, 2008, bates labeled RS-00082607 to RS-00082629.

39. Attached to this declaration as Exhibit 37 is a true and correct copy of a document produced by Rosetta Stone in this litigation which purports to be an email from Michael Wu to Mike Crane dated June 18, 2008, bates labeled RS-00093876 to RS-00093879.

40. Attached to this declaration as Exhibit 38 is a true and correct copy of a document produced by Rosetta Stone in this litigation which purports to be an email from Michael Wu to Jeanne May dated June 20, 2008, bates labeled RS-00080041 to RS-00080044.

41. Attached to this declaration as Exhibit 39 is a true and correct copy of a document produced by Rosetta Stone in this litigation which purports to be an email from Michael Wu to Jeanne May dated July 3, 2008, bates labeled RS-00079905 to RS-00079906.

eBay User Agreement

42. Attached to this declaration as Exhibit 40 is a true and correct copy of a declaration of the custodian of records of eBay Inc., dated Mar. 9, 2010 produced by eBay in this litigation and bates labeled GOOG-RS-0479836.

43. Attached to this declaration as Exhibit 41 is a true and correct copy of eBay's user agreement, dated Dec. 23, 2009 produced by eBay in this litigation and bates labeled GOOG-RS-0309121 to GOOG-RS-0309131.

Amazon Vendor Agreement

44. Attached to this declaration as Exhibit 42 is a true and correct copy of a declaration of the custodian of records of Amazon.com, Inc., dated Mar. 12, 2010 produced by Amazon.com in this litigation and bates labeled GOOG-RS-0494019 to GOOG-RS-0494020.

45. Attached to this declaration as Exhibit 43 is a true and correct copy of Amazon's Vendor Terms and Conditions, dated Mar. 22, 2006 produced by Amazon.com in this litigation and bates labeled GOOG-RS-0308586 to GOOG-RS-0308592.

Rosetta Stone Form S-1 Prospectus

46. Attached to this declaration as Exhibit 44 is a true and correct copy of an excerpt from a document produced by Rosetta Stone in this litigation entitled Form S-1 Prospectus, bates labeled RS-005-005920.

Rosetta Stone's Purported Survey Evidence

47. Attached to this declaration as Exhibit 45 is a true and correct copy of the Expert Report of Kent D. Van Liere, dated Dec. 14, 2009, including Exhibits to Dr. Van Liere's report, except for Exhibit E, which, because of volume is provided to the Court on the CD-ROM attached to this declaration as Exhibit 50.

48. Attached to this declaration as Exhibit 46 is a true and correct copy of a document produced by Rosetta Stone in this litigation which purports to be a screenshot and was part of a collection of screenshots that Rosetta Stone represents were provided to Dr. Van Liere for use in his survey, bates numbered RS-015-000001.03. Though the screenshot does not include a date, all of the produced screenshots appear to have the date of the screenshot in the filename and the

file name of this screenshot is "20080221(a)_RosettaStone." Of the twelve screenshots provided by Rosetta Stone to Dr. Van Liere, this was the only one that matched Exhibit D of Dr. Van Liere's Expert Report.

Rosetta Stone Search Engine Performance Data

49. Attached to this declaration as Exhibit 47 is a true and correct copy of a document produced by Rosetta Stone in this litigation titled "Search Engines – Paid Report," bates labeled RS-013-000957 to RS-013-000962.

50. Attached to this declaration as Exhibit 48 is a true and correct copy of a document produced by Rosetta Stone in this litigation titled "Search Engine Report," bates labeled RS-013-000971 to RS-013-000974.

51. Attached to this declaration as Exhibit 49 is a true and correct copy of a document produced by Rosetta Stone in this litigation titled "Orders Report," bates labeled RS-013-000944 to RS-013-000950.

Google Rosetta Stone Keyword Data

52. Attached to this declaration as Exhibit 50 is a CD-ROM containing a true and correct copy of an Excel spreadsheet containing data regarding impressions and clickthroughs of all sponsored links appearing on the search results pages for keywords of certain identified Rosetta Stone trademarks from April 2002 through January 2010 bates labeled GOOG-RS-0479242.

Deposition Testimony

53. Attached to this declaration as Exhibit 51 is a copy of certain selected portions of the transcript of the deposition of Tom Peder Herman Adams, dated Mar. 12, 2010.

54. Attached to this declaration as Exhibit 52 is a copy of certain selected portions of the transcript of the deposition of Jonathan Alferness, dated Mar. 12, 2010.

55. Attached to this declaration as Exhibit 53 is a copy of certain selected portions of the transcript of the deposition of Jason Calhoun, dated Mar. 8, 2010.

56. Attached to this declaration as Exhibit 54 is a copy of certain selected portions of the transcript of the deposition of Edward Chiang, dated Feb. 24, 2010.

57. Attached to this declaration as Exhibit 55 is a copy of certain selected portions of the transcript of the deposition of Terri Chen, dated Feb. 23, 2010.

58. Attached to this declaration as Exhibit 56 is a copy of certain selected portions of the transcript of the deposition of Denis P. Doyle, dated March 11, 2010.

59. Attached to this declaration as Exhibit 57 is a copy of certain selected portions of the transcript of the deposition of Steve F. Dubow, dated Mar. 8, 2010.

60. Attached to this declaration as Exhibit 58 is a copy of certain selected portions of the transcript of the deposition of Eric M. Duehring, dated Mar. 8, 2010.

61. Attached to this declaration as Exhibit 59 is a copy of certain selected portions of the transcript of the deposition of Daniel Dulitz, dated Feb. 26, 2010.

62. Attached to this declaration as Exhibit 60 is a copy of certain selected portions of the transcript of the deposition of Eric Eichmann, Mar. 3, 2010.

63. Attached to this declaration as Exhibit 61 is a copy of certain selected portions of the transcript of the deposition of Baris Gultekin, dated Mar. 4, 2010.

64. Attached to this declaration as Exhibit 62 is a copy of certain selected portions of the transcript of the deposition of Rose Hagan, dated Mar. 5, 2010.

65. Attached to this declaration as Exhibit 63 is a copy of certain selected portions of the transcript of the deposition of Michael Hill, dated Feb. 26, 2010.

66. Attached to this declaration as Exhibit 64 is a copy of certain selected portions of the transcript of the deposition of Richard T. Holden, dated Mar. 5, 2010.

67. Attached to this declaration as Exhibit 65 is a copy of certain selected portions of the transcript of the deposition of Christopher Klipple, dated Mar. 8, 2010.

68. Attached to this declaration as Exhibit 66 is a copy of certain selected portions of the transcript of the deposition of Van Leigh, dated Feb. 22, 2010.

69. Attached to this declaration as Exhibit 67 is a copy of certain selected portions of the transcript of the deposition of Bill Lloyd, dated Mar. 10, 2010.

70. Attached to this declaration as Exhibit 68 is a copy of certain selected portions of the transcript of the deposition of Cory Louie, dated Feb. 25, 2010.

71. Attached to this declaration as Exhibit 69 is a copy of certain selected portions of the transcript of the deposition of Nino G. Ninov, dated Feb. 23, 2010.

72. Attached to this declaration as Exhibit 70 is a copy of certain selected portions of the transcript of the deposition of Thomas Nowaczyk, dated Mar. 10, 2010.

73. Attached to this declaration as Exhibit 71 is a copy of certain selected portions of the transcript of the deposition of Rita Kay Porter, dated Mar. 10, 2010.

74. Attached to this declaration as Exhibit 72 is a copy of certain selected portions of the transcript of the deposition of John Ramsey, dated Feb. 25, 2010.

75. Attached to this declaration as Exhibit 73 is a copy of certain selected portions of the transcript of the deposition of Nicole Tabatabai, dated Mar. 11, 2010.

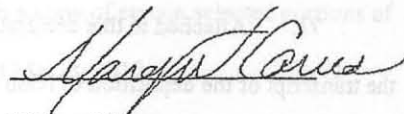
76. Attached to this declaration as Exhibit 74 is a copy of certain selected portions of the transcript of the deposition of Diana Stanley Thomas, dated Mar. 12, 2010.

77. Attached to this declaration as Exhibit 75 is a copy of certain selected portions of the transcript of the deposition of Kent D. Van Liere, dated January 13, 2010.

78. Attached to this declaration as Exhibit 76 is a copy of certain selected portions of the transcript of the deposition of Susan Woycicki, dated Mar. 18, 2010.

79. Attached to this declaration as Exhibit 77 is a copy of certain selected portions of the transcript of the deposition of Michael Wu, dated Mar. 5, 2010.

I declare under penalty of perjury under the laws of the State of California and the Commonwealth of Virginia that the foregoing is true and correct. Executed this 26 day of March, 2010, at Redwood Shores, California.


Margret Caruso