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Vol. IX, Tab 46 - Ex. 58 - Deposition of Rose Hagan from GEICO v. Google (Google Managing Counsel Trademarks)

Rose Hagan
Google

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1 IN THE UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF VIRGINIA
3 ALEXANDRIA DIVISION

4 GOVERNMENT EMPLOYEES INSURANCE
5 COMPANY,
6

7 Plaintiff,

8 vs. Case No. 1:04CV507

9 GOOGLE, INC., and
10 OVERTURE SERVICES, INC.
11 Defendants.

12 DEPOSITION OF ROSE HAGAN
13 ATTORNEYS' EYES ONLY
14 TAKEN PURSUANT TO RULE 30(b)(6)
15 THURSDAY, SEPTEMBER 30, 2004
16 VOLUME I
17 PAGES 1 to 228
18
19
20

21 REPORTED BY: COLLEEN H. MILLER, CSR NO. 6197
22 CERTIFIED REALTIME REPORTER
23
24
25

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GECKO

None

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1 the trademark owners to let us know.
 2 Q. Well, there is a way, isn't there, I mean
 3 looking at the registrations in the U.S. Trademark
 4 Office?
 5 A. Trademark rights in the U.S. are derived
 6 through use, not registration.
 7 Q. But wouldn't -- do the registrations
 8 indicate that somebody, whoever the registrant is, has
 9 a right to use the mark in the United States?
 10 A. That would be a partial list of trademark
 11 owners in the United States and wouldn't address at
 12 all authorized users. There is no centralized
 13 database of authorized users for license agreements.
 14 MR. PAGE: I think you just got the tape
 15 sign, if this is a break point.
 16 MR. OSSOLA: All right. Let's do it.
 17 THE VIDEOGRAPHER: This is the -- this is
 18 the end of Volume 1, videotape 1 in the deposition of
 19 Rose Hegan. Off the record at 11:58 a.m.
 20 (Recess taken.)
 21 THE VIDEOGRAPHER: Back on the record at
 22 12:06 p.m. This is the beginning of Volume 1,
 23 videotape 2, in the deposition of Rose Hegan.
 24 BY MR. OSSOLA:
 25 MR. OSSOLA: Let's mark, please, as --

1 e-mail was sent, April 22nd, 2004?
 2 MR. PAGE: Object that it assumes facts.
 3 THE WITNESS: It looks from the page
 4 marked 004084 that we had processed the complaint so
 5 that Le Meridan was blocked as a keyword in France.
 6 BY MR. OSSOLA:
 7 Q. Well, let me direct you to page 1.
 8 Weren't you telling him that the new policy was in
 9 effect and you were -- and that Google was, under the
 10 new policy, allowing Meridan to be used as a keyword?
 11 A. Well, no. Because the new policy was not
 12 in effect. I was advising him of the change.
 13 Q. It was not in effect?
 14 A. The policy had been announced -- the
 15 policy change had been announced but had not yet been
 16 launched.
 17 Q. So it had not yet -- your understanding is
 18 it had not yet been implemented with respect to --
 19 well, in other words, in late April of 2004 Google was
 20 still allowing trademarks to be used as keywords?
 21 MR. PAGE: Objection. Incoherent. Sorry.
 22 BY MR. OSSOLA:
 23 Q. You told -- in this e-mail you told
 24 Mr. Degret on page 1 that the new policy was designed
 25 to reduce user confusion by prohibiting advertisers

1 Exhibit 6, is that where we are? -- 4 GGE004082.
 2 THE WITNESS: That was already marked as
 3 Z.
 4 MR. OSSOLA: I'm sorry.
 5 BY MR. OSSOLA:
 6 Q. All right. Let's look at Exhibit 2 if we
 7 would -- if you would. Is Exhibit 2, at least the
 8 first e-mail on the first two pages, an e-mail from
 9 you to some lawyer who is representing a company that
 10 owned the marks "Le Meridan" and "Meridan"?
 11 A. Yes.
 12 Q. What was the context in which you sent him
 13 this e-mail? And I think "him" is Manuel Degret, who
 14 was representing Meridan.
 15 A. Yes. Let me just refresh my memory here.
 16 We had received a trademark complaint
 17 regarding the Le Meridan trademark and this looks like
 18 this was a follow-up that he had made because he was
 19 still seeing ads appear when he typed in Le Meridan
 20 with other words.
 21 Q. As keywords?
 22 A. As part -- as the search query.
 23 Q. So at the time Meridan was -- Google was
 24 allowing Meridan to be used as a keyword that would
 25 generate sponsored advertisements, at the time this

1 from using trademarks in their ad text or ad titles
 2 unless the advertiser is authorized to do so by the
 3 trademark owner, is that right?
 4 A. I described the policy to him and let him
 5 know that we would be focusing on the ad text for the
 6 ads shown -- I'm sorry, for searches -- for results
 7 shown in the U.S. and Canada.
 8 Q. And you told him, did you not, on page 1
 9 exactly what I just read to you?
 10 A. I'm not seeing those exact words.
 11 Q. All right.
 12 A. Where are you?
 13 Q. "However, the new policy is designed to
 14 reduce user confusion..."
 15 A. Oh, here we go. Yes.
 16 Q. Is it fair to say that one of the purposes
 17 of the new policy was to reduce user confusion?
 18 A. Yes.
 19 Q. And it would do so by prohibiting
 20 advertisers from using trademarks in their ad text or
 21 ad titles unless the trademark owner had allowed it;
 22 is that right?
 23 A. Correct. Upon receipt of a complaint.
 24 Q. Now, what was the basis for the statement
 25 that you made that the new policy was designed to

1 reduce user confusion?
 2 A. It was one of the factors that went into
 3 our decision to move forward with the new policy.
 4 Q. Did you have any factual basis for making
 5 the statement to him that the new policy was designed
 6 to reduce user confusion?
 7 A. Yes.
 8 Q. What was that?
 9 A. Can I ask my counsel a question of
 10 privilege?
 11 MR. OSSOLA: Yes.
 12 THE VIDEOGRAPHER: Off the record at 12:13
 13 p.m.
 14 (Off the record.)
 15 THE VIDEOGRAPHER: Back on the record at
 16 12:15 p.m.
 17 BY MR. OSSOLA:
 18 Q. The pending question is what was your
 19 factual basis for making the statement to him that the
 20 new policy was designed to reduce user confusion?
 21 MR. PAGE: Let me just admonish you to
 22 omit from your answer the content of any
 23 attorney-client communications.
 24 THE WITNESS: Generally if terms are used
 25 in the ad text, if trademark terms are used in the ad

1 text by parties who are not the trademark owner, there
 2 seems to be more user - potential user confusion
 3 about whether or not that advertiser is somehow
 4 affiliated with the trademark owner or offers those
 5 products.
 6 BY MR. OSSOLA:
 7 Q. And how do you know that?
 8 MR. PAGE: Same admonishment.
 9 THE WITNESS: I'm not sure I can answer
 10 that without disclosing work product or
 11 attorney-client privilege.
 12 BY MR. OSSOLA:
 13 Q. Isn't that what you were telling
 14 Mr. Degret, that the new policy was attempting to
 15 reduce user confusion by not allowing advertisers that
 16 weren't affiliated with the trademark owner to use
 17 trademarks in their ad text or titles?
 18 A. That is what I told him.
 19 Q. Okay. And you were intended to -
 20 intending to convey to him, weren't you, what you just
 21 testified to, that there's a potential for more user
 22 confusion if - as to whether the advertiser is
 23 affiliated with a trademark owner if the trademark is
 24 used in the text of the ad?
 25 A. Correct.

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None

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1 -Q. And what was the factual basis, if any,
 2 for the statement that - for that statement that you
 3 were making to Mr. Degret?
 4 MR. PAGE: Same admonishment.
 5 THE WITNESS: I don't believe I can answer
 6 that without disclosing privileged information.
 7 MR. OSSOLA: I don't believe that facts
 8 that she is aware of that support a statement made to
 9 a third party is privileged, but if you want to make
 10 that instruction, that's fine.
 11 MR. PAGE: Suppose I send you a letter
 12 that - in which I tell you my client's innocent and
 13 you ask me "How do you know that?" do you get to get
 14 the answer to that question from me just because I
 15 told you he was innocent?
 16 MR. OSSOLA: I'm just saying that - I'm
 17 not going to debate unrelated hypotheticals -
 18 MR. PAGE: Okay.
 19 MR. OSSOLA: - but you're - are you
 20 instructing her not to answer?
 21 MR. PAGE: I'm instructing her to omit -
 22 to exclude from her answer attorney work product or
 23 the content of attorney-client communications. She
 24 may be able to answer without disclosing them.
 25 BY MR. OSSOLA:

1 Q. But your testimony is that you can't,
 2 right?
 3 A. Correct.
 4 Q. So am I correct that you were making a
 5 statement to Mr. Degret regarding user confusion based
 6 on facts that you were aware of at the time but you
 7 believe you cannot now disclose because of attorney
 8 work product, attorney-client privilege?
 9 A. Correct.
 10 Q. Further on down on page 1 you say that we
 11 came to the conclusion that Internet users are not
 12 likely to be confused by seeing advertisements on a
 13 page.
 14 What did you mean by that?
 15 A. That the mere fact that ads appear on a
 16 page is not necessarily confusing to Internet users.
 17 Q. Did you mean appear on a page as a result
 18 of the use of a trademark as a search term?
 19 A. That could be encompassed in it. Just
 20 more generally people - Internet users are not
 21 confused merely because ads appear on a page. There
 22 has to be something more.
 23 Q. And how do you know that?
 24 A. Once again, I'm not sure I can answer
 25 without disclosing attorney-client or work product