




2-22-2010

## Vol. VIII, Tab 38 - Ex. 66 - Van Leigh Deposition (Rosetta Online Marketing Director)

Van Leigh  
*Rosetta Stone*

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

ORIGINAL

-----x  
ROSETTA STONE LTD.,

Plaintiff,

v.

Civil Action No.: 1:09CV736  
GBL/JFA

GOOGLE, INC.,

Defendant.  
-----x

The 30(b)(6) deposition of ROSETTA STONE  
by VAN LEIGH was held on Monday, February 22,  
2010, commencing at 9:10 a.m. at the Offices of  
Skadden, Arps, Slate, Meagher & Flom, LLP, 1440  
New York Avenue, Washington, D.C., before Amy E.  
Sikora, RPR, CRR, CSR-NY, CLR, Notary Public for  
the District of Columbia.

REPORTED BY: Amy E. Sikora, RPR, CRR, CSR-NY, CLR

Job No: 242160

1 A. Tracked or untracked? And here's  
2 why I ask, right. So -- with, let's say, TV, you  
3 may have a tracked ROM which is the people that  
4 we know because they type -- that Rosetta Stone  
5 knows specifically came to a URL that was  
6 advertised on that TV advertisement.

7 So they came to that landing page,  
8 or they somehow indicated that they were coming  
9 from that TV advertisement. That's tracked.  
10 There is a untracked effect that occurs from --  
11 from all advertising where you may hear it on the  
12 radio and -- and come to rosettastone.com, type  
13 it in, and we never know that you heard it on the  
14 radio. But in fact that is what drove the  
15 demand.

16 Q. Is what you're testifying that in  
17 some mediums you don't know whether the response  
18 was linked to the form of advertisement?

19 A. No. That's not exactly what I'm  
20 saying. What I'm saying is that there's a  
21 tracked portion of return on media and there is  
22 the nontracked halo effect, so to speak.

23 Q. What falls within untracked?

24 A. What do you mean by "falls"?

25 Q. Well -- let me start over.

1 Is it your testimony that with  
2 respect to some of the advertising that  
3 Rosetta Stone undertakes --

4 A. Yes.

5 Q. -- it is unable to link back new  
6 customer business to the specific form of  
7 advertising?

8 A. My testimony is that you -- that --  
9 there -- there is an untracked effect, right.  
10 There's a tracked and untracked. Certain  
11 customers come through, they type in  
12 rosettastone.com. They do not indicate where  
13 they heard about rosettastone.com and we, because  
14 they don't enter a specific URL, we don't know,  
15 right. But then there's obviously a tracked  
16 return on media that we can -- we can see.

17 Q. So to the extent that Rosetta Stone  
18 is able to track --

19 A. Yes.

20 Q. -- what provides the highest ROM of  
21 the types identified a few minutes ago?

22 A. You're limiting me to TV, radio, and  
23 print and paid search?

24 Q. Yes.

25 A. Is that right?

1 Q. Yes.

2 A. Paid search.

3 MR. OBLAK: Let's mark this as 10.

4 (Leigh Exhibit No. 10, document with  
5 handwritten title: Direct Retail 2006 - Present  
6 12/08, 11 pages, marked for identification as of  
7 this date.)

8 A. I just want to be clear, in terms of  
9 tracked.

10 Q. Yes, yes. If you can't track it,  
11 you don't know?

12 A. Right. Well, what you can see is,  
13 when TV clearance actually goes down, we see  
14 fewer impressions within the -- within the search  
15 engines, so we know that TV actually drives that  
16 awareness to have customers go in and look for  
17 Rosetta Stone within different search engines.  
18 So we know that it's driving it. And also if TV  
19 clearance goes up, we see additional impressions.

20 MR. OBLAK: Can we mark this.

21 For the record, this is a document  
22 produced in native file. The Bates number that  
23 corresponds to its place in the production is  
24 RS00006572. And I will represent that if it's --  
25 the label is correct here on my folder, it's --



1 the file is entitled "Direct Retail 2006 to  
2 Present, 12/08."

3 A. It's entitled what?

4 Q. Direct Retail, 2006 to Present,  
5 12/08.

6 MR. ETTINGER: So one Bates number  
7 represents this range?

8 MR. OBLAK: I think that's what  
9 happens when it's a native file.

10 A. I'm so sorry. Can you tell me one  
11 more time. Direct retail?

12 Q. Sure. "Direct Retail 2006 - Present  
13 12/08. I take it, this is having been, you know,  
14 transcribed to a label here.

15 A. Okay.

16 Q. But the native file I believe had a  
17 title along those lines.

18 A. Okay.

19 Q. Do you recognize this type of  
20 document and if so you can tell me what it is?

21 A. This document appears to be a  
22 summary of the direct consumer business.

23 Q. Okay. And what do you understand  
24 the first page, the small chart on the first  
25 page, to represent?