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## Vol. VIII, Tab 38 - Ex. 77 - Wu Deposition (Rosetta Stone General Counsel)

Michael Wu  
*Rosetta Stone*

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

Certified  
Transcript

-----x  
ROSETTA STONE LTD., :  
Plaintiff, : Civil Action No.  
: 1:09cv736  
vs. : (GBL/TCB)  
GOOGLE INC., :  
Defendant. :  
-----x

Washington, D.C.

Friday, March 5, 2010.

Videotape Deposition of:

MICHAEL WU,

the witness, was called for examination by counsel  
for the Defendant, pursuant to notice, commencing  
at 9:01 a.m., at the law offices of Skadden, Arps,  
Slate, Meagher & Flom LLP, 1440 New York Avenue,  
Northwest, Conference Room 305, Washington, D.C.,  
before Dawn A. Jaques, CSR, CLR, and Notary Public  
in and for the District of Columbia, videotaped by  
Daniel McClutchy, when were present on behalf of  
the respective parties:

Job No: 242167

1 Q Did Mr. -- to your knowledge, did  
2 Mr. Christ discuss with Mr. Magure whether this  
3 could serve as a prototype for further national  
4 legislation?

5 A Not that I'm aware of.

6 Q Has Rosetta Stone ever expressed to  
7 anyone outside the company why it favors a  
8 legislative change in the area of bidding on  
9 trademark law -- bidding on trademarks?

10 A Yes, and I think the position is  
11 Google's liberal policy permits third parties and  
12 Google itself to profit off our very valuable  
13 brand, and our other alternatives were either  
14 not accept -- we tried to negotiate commercially  
15 with Google or have to incur incredible legal  
16 expenses to fight the powerhouse that Google has  
17 and legions of lawyers that it has at its  
18 disposal, as in this case, so we tried to do  
19 everything possible under the sun for the last  
20 few years before engaging in Google in this  
21 litigation matter.

22 And given the fact that Google has  
23 billions and billions and billions of dollars of  
24 revenue that it's made off the backs of trademark  
25 owners, obviously, we wanted to find some other

1 method rather than directly suing Google for  
2 trademark infringement.

3 Q And what specific efforts did  
4 Rosetta Stone undertake to initiate legislative  
5 change in the area of bidding on trademarks?

6 A We wanted to build a coalition,  
7 legislative coalition, to effect change on the  
8 national level.

9 Q To pass law to -- that -- withdrawn.  
10 To pass legislation that would change  
11 trademark law -- federal trademark law?

12 A We wanted to pass legislation on the  
13 federal front in order to stop the sale of  
14 trademarks as keyword advertisements.

15 Q Did Rosetta Stone express the view in  
16 pursuing this effort that existing law was  
17 inadequate to halt Google's conduct in this  
18 regard?

19 A I think that Google -- I mean  
20 Rosetta Stone expressed its concerns over the fact  
21 that the only other remedies available were to  
22 either take Google to court or try to reach a  
23 commercial agreement, which we tried, and we  
24 wanted to think of any other way in which to stop  
25 Google from selling our trademarks as keyword

1 advertisements.  
2 Mr. Chris: We're a very small company. We don't  
3 have the vast resources that Google has at its  
4 disposal.

5 Q Well, if Rosetta Stone were to enact a  
6 change in the trademark law so as to prohibit the  
7 conduct, the bidding on trademark terms that  
8 Google was permitting, wouldn't Rosetta Stone  
9 still have to take Google to court to stop that  
10 conduct?

11 MR. ETTINGER: Objection. Do not  
12 provide --

13 THE WITNESS: I think --

14 MR. ETTINGER: Do not provide a legal  
15 opinion as to --

16 THE WITNESS: Yeah.

17 MR. ETTINGER: -- what Rosetta Stone  
18 would have to do in order to enforce a law that  
19 might be passed, but if you have an opinion  
20 outside of your role as general counsel and want  
21 to express it, feel free to do so.

22 THE WITNESS: I don't have an opinion.

23 BY MR. OBLAK:

24 Q What happened to the legislative effort  
25 in Utah that 1-800 CONTACTS had been pursuing?



1 A I don't believe it went anywhere.

2 Q Do you know why?

3 A I believe there was strong lobbying by  
4 Google's lobbyists that killed the bill.

5 Q Was Rosetta Stone -- withdrawn.

6 Was Rosetta Stone in favor of the  
7 legislation as it was proposed by Mr. Magure?

8 A I had my associate general counsel,  
9 Bruce Christ, deal with this, so --

10 Q Do you recall there being aspects of it  
11 that Rosetta Stone opposed?

12 A I don't recall because I was not  
13 involved in the details of this legislation.

14 Q Okay. Am I correct, if you look at  
15 Mr. Magure's e-mail in the third paragraph, the  
16 paragraph being, "Only an advertiser who exercises  
17 a 'bad-faith attempt to profit' from another's  
18 trademark has any liability under this statute."

19 Do you see that paragraph?

20 A Uh-huh.

21 Q He continues, "Operators of interactive  
22 information services (search engines, such as  
23 Google, Microsoft, AOL, Yahoo, etc.) and anyone  
24 who legitimately uses trademarks are specifically  
25 exempted from any liability or impact from this