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# Vol. IX, Tab 42 - Ex. 7 - Deposition Edward Blair (Expert on statistics for Google)

Edward Blair  
*Google*

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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF  
ALEXANDRIA DIVISION

-----x  
ROSETTA STONE, LTD., :  
 :  
 Plaintiff, :  
 :  
 vs. : Case No.  
 : 1:09-CV-00736  
 GOOGLE, INC., : (GBL/TCB)  
 :  
 Defendant. :  
-----x

Washington, D.C.

Wednesday, March 3, 2010

Deposition of:

EDWARD ALLEN BLAIR, Ph.D.

called for oral examination by counsel for  
Plaintiff, pursuant to notice, at 1440 New York  
Avenue, N.W., before Monica A. Voorhees, of Capital  
Reporting, RPR/CSR, a Notary Public in and for the  
District of Columbia, beginning at 9:12 a.m., when  
were present on behalf of the respective parties:

1 Q. Did you speak with anyone at Google  
2 about your deposition today?

3 A. No.

4 Q. When were you retained for this  
5 engagement?

6 A. I think mid-December of '09, 2009.

7 Q. And who contacted you?

8 A. If I recall correctly, it was a woman  
9 named Cheryl Galvin.

10 Q. And she's an attorney with Quinn,  
11 Emanuel?

12 A. That's my understanding.

13 Q. And what did she, what did she ask you?

14 A. You know, I don't really recall. She, I  
15 mean she said they had a lawsuit, probably asked me  
16 if I had any conflicts. I don't really recall that  
17 for sure, described maybe the nature of the lawsuit,  
18 asked about my availability.

19 Q. Did she explain your assignment?

20 A. At that time probably not.

21 Q. Okay. When do you, did you receive your  
22 assignment in this engagement?

1 A. Well, I'll return to something I said  
2 earlier, that I don't understand this litigation to  
3 be, for example, Amazon versus Wikipedia.

4 I understand this to be Amazon, or  
5 whoever, being served as advertising, so I  
6 understand it to be not the content of those links  
7 or those particular links, not who those links are  
8 for, not the fact that they even refer to a Rosetta  
9 Stone software, per se, but the fact that they  
10 appear as advertising versus appearing as organic  
11 results.

12 Q. And so to try to summarize what you  
13 said, the issue that we're trying to isolate is the  
14 paid search section of the Web search pages?

15 A. I --  
16 MS. CARUSO: Objection.  
17 THE WITNESS: I, I think the issue is  
18 whether material appearing as page search versus  
19 organic creates a problem.

20 BY MR. LELAND:

21 Q. Okay.

22 A. From a confusion point of view, mind

1 you have two things, when you make this comparison I  
2 think you have two things moving at once.

3           You are comparing the sponsored links or  
4 links that appeared as sponsored links with links  
5 that appear as organic or natural search, which is  
6 of interest, but at the same time the, the nature of  
7 the links that you're comparing is changing. You're  
8 also comparing links that talk about Rosetta Stone  
9 software with links that in the main talk about  
10 Rosetta Stone historical artifact.

11           Q.       How would you remedy this situation if  
12 you were designing a study to test consumer  
13 confusion in this matter?

14           MS. CARUSO:   Objection.

15           THE WITNESS:   You know, I'd have to  
16 think more about it, but my initial response is that  
17 I would take the links that are shown as sponsored  
18 links and simply relocate them to the organic search  
19 section, so that you've got the same information,  
20 the only difference is whether it's, whether you've  
21 got sponsored links versus organic.

22           BY MR. LELAND:

1 Q. But that would violate these fundamental  
2 principles because the control would no longer  
3 mirror the stimulus except for the offending  
4 portions of the test stimulus?

5 A. Well I'm not going to agree with you on  
6 violating these principles. Again, the control is  
7 not uncommonly a constructed stimulus. We talked  
8 earlier about me doing E Visa versus E passport.

9 In this case E passport, there is no  
10 website called E passport. The point was to isolate  
11 the issue, which was the use of E visa as a name.

12 The, the construction of the control,  
13 the whole point of the control is to isolate the  
14 issue at interest.

15 Q. Would you change the ad text of these  
16 sponsored links at all before inserting them into  
17 the organic section of the control?

18 MS. CARUSO: Objection.

19 THE WITNESS: You know I, I would, I'd  
20 really have to think about that. I doubt that I  
21 would, but I'd really have to think about that.

22 BY MR. LELAND: