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Vol. IX, Tab 47 - Declaration of Henry Lien (Counsel for Google)

Henry Lien
Google

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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 HENRY LIEN

I, Henry Lien, 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.

Rosetta Stone Brand Documents

3. Attached to this declaration as Exhibit 1 is a true and correct copy of an excerpt of a document produced by Rosetta Stone in this litigation titled "Our Collar - Rosetta Stone New Brand," bates labeled RS-00005076, RS-00005086.

4. Attached to this declaration as Exhibit 2 is a true and correct copy of an excerpt of a document produced by Rosetta Stone in this litigation titled "Competitive WebSite Analytics Report," dated January 2009 and bates labeled RS-00209007, RS-00209021 to RS-00209022.

5. Attached to this declaration as Exhibit 3 is a true and correct copy of an excerpt of a document produced by Rosetta Stone in this litigation titled "Competitive WebSite Analytics Report," dated February 2009 and bates labeled RS-004-000030, RS-004-000049 to RS-004-000050.

6. Attached to this declaration as Exhibit 4 is a true and correct copy of an excerpt of a document produced by Rosetta Stone in this litigation titled "Competitive Website Analytics Report," dated May 2009 and bates labeled RS-00209149, RS-00209164 to RS-00209165.

7. Attached to this declaration as Exhibit 5 is a true and correct copy of an excerpt of a document produced by Rosetta Stone in this litigation titled "Competitive Website Analytics Report," dated June 2009 and bates labeled RS-00209449, RS-00209463 to RS-00209464.

8. Attached to this declaration as Exhibit 6 is a true and correct copy of an excerpt of a document produced by Rosetta Stone in this litigation titled "Competitive Website Analytics Report," dated July 2009 and bates labeled RS-004-000125, RS-004-000142 to RS-004-000143.

9. Attached to this declaration as Exhibit 7 is a true and correct copy of an excerpt of a document produced by Rosetta Stone in this litigation titled "Competitive Website Analytics Report," dated August 2009 and bates labeled RS-004-000092, RS-004-000112 to RS-004-000113.

10. Attached to this declaration as Exhibit 8 is a true and correct copy of an excerpt of a document produced by Rosetta Stone in this litigation titled "Competitive Website Analytics Report," dated October 2009 and bates labeled RS-00209388, RS-00209411 to RS-00209412.

11. Attached to this declaration as Exhibit 9 is a true and correct copy of an excerpt of a document produced by Rosetta Stone in this litigation titled "Competitive Website Analytics Report," dated January 2010 and bates labeled RS-004-000001, RS-004-000021 to RS-004-000022.

Rosetta Stone's Affiliate Program

12. Attached to this declaration as Exhibit 10 is a true and correct copy of an excerpt of a document produced by Rosetta Stone in this litigation titled "Affiliate Overview," dated November 29, 2007 and bates labeled RS-00002738, RS-00002743.

Google's 2000 Stanford Study

13. Attached to this declaration as Exhibit 11 is a true and correct copy of an email from Marissa Meyer entitled "User study feedback on ads," dated January 29, 2000 and bates labeled GOOG-RS-0004213 to GOOG-RS-0004214.

Unrelated Sponsored Links

14. Attached to this declaration as Exhibit 12 is a true and correct copy of an email from "George" to "AdWords Support" entitled "Re:[#42941913] Your Google AdWords Approval Status," dated January 19, 2006 and bates labeled GOOG-RS-0083307 to GOOG-RS-0083311.

Google Search Results Screenshots

15. Attached to this declaration as Exhibits 13-21 and 37 are a true and correct copies of a documents which purport to be a screenshot produced by Rosetta Stone in this litigation bates numbered RS-00175238, RS-00089830, RS-015-000001.02, RS-015.000001.03, RS-015.000001.05, RS-015.000001.06, RS-015.000001.07, RS-015.000001.09, RS-015-000001.11, and RS-00165832. The screenshots of sponsored links provided in Google Inc.'s Opposition to Rosetta Stone's Motion for Partial Summary Judgment were excerpted from this set of screenshots.

Rosetta Stone's Purported Counterfeit Reports

16. Attached to this declaration as Exhibit 22 is a true and correct copy of Exhibit 10.2 from the expert report of James M. Malackowski which was produced by Rosetta Stone in this litigation.

Deposition Testimony

17. Attached to this declaration as Exhibit 23 is a copy of certain selected portions of the transcript of the deposition of Jonathan Alferness, dated Mar. 12, 2010.

18. Attached to this declaration as Exhibit 24 is a copy of certain selected portions of the transcript of the deposition of Edward Blair, dated Mar. 3, 2010.

19. Attached to this declaration as Exhibit 25 is a copy of certain selected portions of the transcript of the deposition of Terri Chen, dated Feb. 23, 2010.

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

21. Attached to this declaration as Exhibit 27 is a copy of certain selected portions of the transcript of the deposition of Eric Eichmann, Mar. 3, 2010.

22. Attached to this declaration as Exhibit 28 is a copy of certain selected portions of the transcript of the deposition of April Garvey, dated Mar. 1, 2010.

23. Attached to this declaration as Exhibit 29 is a copy of certain selected portions of the transcript of the deposition of Baris Gultekin, dated Mar. 4, 2010.

24. Attached to this declaration as Exhibit 30 is a copy of certain selected portions of the transcript of the deposition of Rose Hagan, dated Mar. 5, 2010.

25. Attached to this declaration as Exhibit 31 is a copy of certain selected portions of the transcript of the deposition of Richard T. Holden, dated Mar. 5, 2010.

26. Attached to this declaration as Exhibit 32 is a copy of certain selected portions of the transcript of the deposition of Bill Lloyd, dated Mar. 10, 2010.

27. Attached to this declaration as Exhibit 33 is a copy of certain selected portions of the transcript of the deposition of Cory Louie, dated Feb. 25, 2010.

28. Attached to this declaration as Exhibit 34 is a copy of certain selected portions of the transcript of the deposition of Susan Wojcicki, dated Mar. 12, 2010.

29. Attached to this declaration as Exhibit 35 is a copy of certain selected portions of the transcript of the deposition of Jason Calhoun, dated Mar. 8, 2010.

30. Attached to this declaration as Exhibit 36 is a copy of certain selected portions of the transcript of the deposition of Nino Ninov, dated Feb. 23, 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 9 day of April, 2010, at Redwood Shores, California.

Henry Lien