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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 KRIS BREWER

I, Kris Brewer, certify and declare that:

1. I am currently employed as Associate Discovery Counsel by Google Inc. ("Google"). I make this declaration in support of Google's Opposition to Rosetta Stone Ltd.'s Motion for Sanction in the matter captioned *Rosetta Stone Ltd. v. Google Inc.*, Civil Action No. 1:09-cv-736 (E.D. Va.). I am over the age of eighteen. I know the facts stated herein of my own personal knowledge. If called to testify as a witness, I can and would do so competently and under oath.

2. In connection with this matter, Google retained an outside vendor to electronically upload all documents Google collected, make them available for review, and produce non-privilege, responsive documents. Google also retained an outside vendor that employs contract attorneys to review the documents collected by Google. Both vendors received instruction from myself and outside counsel on matters concerning the processing, review and production of documents.

3. I coordinated with Google's outside counsel to ensure that Google was collecting all documents it agreed to produce, including those additional documents the Court ordered produced. Among other steps to facilitate collection of documents, I, along with other Google legal staff, manually reviewed Google's internal databases, where documents created by company employees are stored, and directed the collection of email for certain individuals Google determined likely to have responsive information (including those from whose email had been collected in past AdWords trademark litigation). I also worked with other Google employees to facilitate data pulls of certain requested information that required engineering assistance with the design and use of custom scripts. In addition, I facilitated the collection of communications mentioning Rosetta Stone and relating to AdWords from Google's Trax database.

4. Upon learning of the Court's ruling on February 4, 2010, I worked with other Google legal staff to collect the documents ordered to be produced from the American Airlines action, collect all trademark complaints received by Google's legal AdWords team since January 2002 other than those available through the Trax data base, and collect all documents ordered to be produced concerning eBay. Our collection efforts for these additional documents included requests for documents from the outside counsel that represented Google in American Airlines, additional collection and searches of data from Google's internal databases, and additional collection of email. According to my understanding, our collection efforts yielded a production of approximately 35,000 documents for trademark complaints alone.

5. Upon receiving correspondence by opposing counsel dated February 22, 2010 and March 8, 2010 that questioned the sufficiency of Google's production, Google took further steps to confirm the sufficiency of its collection. For example, opposing counsel pointed out the

existence of document bates-numbered GOOG-RS-0342010, that showed an index of experiments conducted by Prashant Fuloria. Google re-conducted a search of its internal database that had produced that index and double-checked each of those links, but each link led to an error message stating that the page could not be found. Google conducted all other reasonable searches it could think of, but was unable to locate the documents referenced in the index. In addition, all board meeting minutes, including meetings of subcommittees of the Board, were manually reviewed by Google's in-house counsel.

6. Based on my efforts collecting and supervising the collection of documents, it was my understanding that as of March 10, 2010, Google had collected and provided to its outside vendor, for review by contract attorneys, all documents Google had agreed to, and been ordered to produce.

7. I am aware that in connection with preparing Google's opposition to Rosetta Stone's motion for partial summary judgment, responsive documents were discovered that had not previously produced. It was my understanding, based on the bates-numbered documents I saw in connection with preparing my declaration, that, at least as of April 9, 2010, those documents had been bates-stamped and were ready for production.

8. Since discovering that those documents had not been produced, Google and its outside counsel have been investigating how they had not previously been produced. We retraced our document collection steps and considered whether any other sources for responsive documents relating to the 2004 trademark experiments were plausible and investigated each of those sources. We had always believed that our collection had been comprehensive, and we eventually discovered that although Google had made a complete collection and provided those

documents to its outside vendor before the close of discovery, the documents had not been properly reviewed for production.

9. It is my understanding from outside counsel that the documents referenced in my Declaration of April 9, 2010 were part of a group of documents that had not been properly reviewed for production. It is my understanding that all the documents in that group have now been reviewed by Google's outside counsel and that all responsive, non-privileged, non-duplicative documents will be produced today. Many of the documents we are producing today are substantially similar to information that is included in our previous productions.

10. It was always Google's intention to comply fully with its discovery obligations and this Court's orders. At no time did Google intend to withhold the documents it agreed to produce or was ordered to produce.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 21st day of April, 2010 at Mountain View, California.



Kris Brewer