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Vol. IX, Tab 46 - Ex. 68 - Deposition of John Ramsey (Rosetta Stone Corporate Counsel)

John Ramsey
Rosetta Stone

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

-----X

ROSETTA STONE LTD., :

Plaintiff, : Civil Action No.

vs. : 1:09cv736

: (GBL/TCB)

GOOGLE INC., :

Defendant. :

-----X

Washington, D.C.

Thursday, February 25, 2010

Videotape Deposition of:

JOHN RAMSEY,

the witness, was called for examination by counsel
for the Defendant, pursuant to notice, commencing
at 9:08 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, when were
present on behalf of the respective parties:

Job No. 242163

1 So this was -- there were resellers who
2 were appearing on Google search results who were
3 able, because they had the resources, to pay the
4 amounts necessary to get themselves into first
5 position, and they were using Rosetta Stone's
6 keywords and using Rosetta Stone in the ad copy,
7 and that's -- that's kind of an overview.

8 Q You mentioned resellers with resources
9 bidding on Rosetta Stone to get themselves into
10 first position. Which resellers were you talking
11 about?

12 A For example, Amazon.

13 Q Any others?

14 A I mean, primarily it's Amazon. There
15 may be instances where others have done so as
16 well, but it's primarily Amazon.

17 Q Does Rosetta Stone have a contract with
18 Amazon that prevents it from bidding on
19 Rosetta Stone's trademarks as keywords?

20 A We do not have a contract with Amazon
21 that would -- that authorizes them to bid on the
22 keywords or prevents them, but we have informed
23 them that they are not authorized to do so.

24 Q What is their response to that?

25 A They generally reject the premise and

1 of whether they are advertising authentic
2 Rosetta Stone product?

3 A When Amazon does it, I believe they
4 probably would be selling authentic Rosetta Stone
5 product.

6 Q And Rosetta Stone objects to that
7 advertising?

8 MS. SPAZIANO: Objection.

9 THE WITNESS: Rosetta Stone does not
10 object to Amazon. We want Amazon to sell our
11 product. We object to them bidding on our
12 keywords and using our trademarks without
13 authorization.

14 BY MS. CARUSO:

15 Q Why is that?

16 A Why do we object to that?

17 Q Yes.

18 A Because that's our brand. Those are our
19 trademarks, they're ours, and they're our
20 intellectual property.

21 Q Is it Rosetta Stone's position that no
22 one for any purpose can use the word Rosetta Stone
23 without Rosetta Stone's authorization?

24 MS. SPAZIANO: Objection. It's outside
25 the scope of his testimony as a 30(b)(6) witness.

1 topic, leaving aside the expert's report, you're
2 not aware of any quantification of that harm?

3 A I am not aware of it.

4 Q Are you aware of a lawsuit that
5 Rosetta Stone brought against Rocket Languages LTD
6 and other companies?

7 A I am.

8 Q When did Rosetta Stone bring that
9 lawsuit?

10 A It was in -- in early 2009. I may be
11 wrong with the date. I'm sorry. That's terrible.

12 Q What's your understanding of what
13 Rosetta Stone was complaining about in that
14 lawsuit?

15 A We were complaining that an entity
16 called Rocket Languages, which purported to offer
17 a competitive language learning software, also
18 available by download, and its affiliate network,
19 were infringing our trademark, were acting
20 anticompetitively, were -- there were various
21 counts.

22 Q What was it that Rocket Languages and
23 the other defendants were doing that were the
24 subject matter of Rosetta Stone's complaint?

25 A What was happening is that -- and it

1 dovetailed into the whole Capone issue.

2 Rocket was using its affiliates -- it
3 had multiple affiliates, and they were bidding on
4 our search -- on our keywords, using our keywords
5 in their ad text, and they were all over the --
6 all over the Google search pages.

7 Some of them were just disparaging.
8 There was a lot of messaging in -- you know,
9 Rosetta Stone sucks, don't buy Rosetta Stone.
10 Some of them were purported to be quasi review
11 sites that -- some of them -- there were various
12 iterations of this on the paid search sites that
13 they were -- and because Rocket had had -- was
14 using individual affiliates to drive the traffic,
15 they were -- you would have, you know, three,
16 four, five sponsored links showing up on Google
17 all at once, and that was part of the complaint.

18 Q Did the complaint include -- I think
19 what I heard you say is some of these sites were
20 quasi review sites?

21 A Uh-huh.

22 Q Did Rosetta Stone have a false
23 advertising claim based on those quasi review
24 sites?

25 A I believe we did, yeah.