

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

ROSETTA STONE LTD.,)	
)	
Plaintiff-Appellant,)	
)	
v.)	No. 10-2007
)	
GOOGLE INC.,)	
)	
Defendant-Appellee.)	

AFFIDAVIT OF ERIC GOLDMAN

1. My name is Eric Goldman. I offer this affidavit in support of my motions for leave to intervene in this appeal and to seek unsealing of the Joint Appendix and briefs in this appeal.

2. I am an Associate Professor of law at the Santa Clara University School of Law and Director of its High Tech Law Institute. I teach and research in the areas of Internet law, advertising law and intellectual property. I have written several recent papers on search engines, online marketing practices, and the application of trademark law in the online context. In articles such as *Brand Spillovers*, 22 Harv. J.L. Tech. 382 (2009), and *Deregulating Relevancy in Internet Trademark Law*, 54 Emory L.J. 507 (2005), I have specifically explored the legality of keyword advertising.

3. My Technology & Marketing Law Blog, blog.ericgoldman.com, analyzes cases related to keyword advertising. For important cases, I may track the case

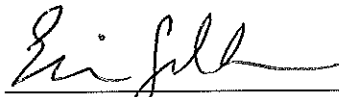
from complaint to final decision. My blog has been listed in the ABA Journal's list of top 100 legal blogs (the "Blawg 100") for two years in a row.

4. There have been about two dozen lawsuits by trademark owners against search engines relating to keyword advertising, resulting in a few published opinions; three such cases (other than this one) are currently pending, to my knowledge. I do not have precise figures for the number of suits filed by trademark owners against companies for buying keyword advertising, but I would estimate that there have been more than a hundred such lawsuits, producing a couple of dozen opinions.

5. Disclosure of the contents of the Joint Appendix would inform my academic research and policy advocacy in several respects. First, it could help me identify holes in the empirical scholarship that need to be filled. I have been working with a social scientist at Penn State University to develop an empirical study of how consumers use search engines, and knowing what work has been done (or checking to see if we can replicate the results) would be very useful to designing the study. Second, disclosure would allow me to double-check the veracity of representations the litigants are making in other fora about the facts of the case; it would be my plan to report on any discrepancies. Third, by seeing what facts the parties are relying upon, I can better advise my readers about which facts are salient to litigation so they can reflect on their own behavior. Finally, as

legislators consider statutory regulation of search engine advertising, a complete picture of accurate in-the-field experiences by both search engines and trademark owners can help inform those considerations and enable me to propose and advocate better policy proposals.

Pursuant to 28 U.S.C. § 1746, I hereby certify under penalty of perjury that the foregoing is true and correct. Executed on December 10, 2010.

A handwritten signature in cursive script, appearing to read "Eric Goldman", written over a horizontal line.

Eric Goldman