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November 15, 2012

### Rosetta Stone and Google Settle Trademark Case Over Sponsored Ads

*IP Buzz*

Rosetta Stone and Google have agreed to dismiss a three-year-old trademark infringement lawsuit in the Eastern District of Virginia and “to meaningfully collaborate to combat online ads for counterfeit goods and prevent the misuse and abuse of trademarks on the Internet,” the companies announced in a joint statement on October 31, 2012.

The lawsuit, which was filed by Rosetta Stone in 2009, centered on Google’s use of sponsored links. Sponsored links are paid advertisements displayed alongside keyword results in Google’s search engine. Google allows sponsors to purchase certain keywords, including trademarks, which trigger the appearance of the sponsor’s advertisement and link when the keyword is entered as a search term. Rosetta Stone challenged Google’s policy of permitting persons other than the trademark owner to purchase sponsored link space in searches for a trademarked keyword. According to Rosetta Stone, competitors and counterfeiters were purchasing ad space on search results for its trademarks and diverting business. The sponsored links, Rosetta Stone said, also amounted to infringement and dilution of its trademarks.

The U.S. District Court granted summary judgment for Google in 2010, finding that consumers were unlikely to be confused by Google’s sponsored links platform and that the Rosetta Stone trademarks were not diluted by Google’s actions. The U.S. Court of Appeals for the Fourth Circuit reversed those rulings earlier this year and **sent the case back to district court for trial**. The terms of the settlement are confidential, but there is no indication that the settlement includes any modifications to Google’s use of sponsored links.

With the resolution of this case, only two lawsuits remain pending against Google for its sponsored links; that number once totaled over a dozen. Google is still defending against CYBERSitter, a company that develops and markets internet content-filtering software, in the Central District of California, where the district court very recently permitted state false advertising and trademark claims to proceed over Google’s motion to dismiss. Google is also defending against Home Décor Center, a Home Depot competitor, in the Central District of California. The latter suit was removed from state to federal court in July 2012.