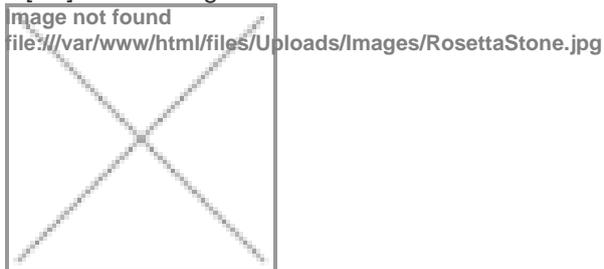




## EDVA Grants Summary Judgment for Google, Dismisses Rosetta Stone's Trademark Infringement Suit

04.30.2010

On Wednesday, April 28, the Eastern District of Virginia granted defendant Google's motion for summary judgment and dismissed Rosetta Stone's trademark infringement suit against Google, for "reasons to be stated in [his] forthcoming Memorandum Order."



In a [memorandum in support](#) of a Motion for Partial Summary Judgment as to Liability, Rosetta Stone had alleged, *inter alia*, that the use of Rosetta Stone's trademarks on sponsored advertisements positioned alongside its "organic" search results both actually and likely confused customers as to the source and authenticity of the products advertised. Rosetta Stone further charged that Google had knowledge that these sponsored ads were purchased by known counterfeiters based on Rosetta Stone's repeated notifications of such to Google over a period of seven months. In addition, Rosetta Stone had alleged that Google's use of its trademarks to trigger such sponsored ads was an infringing use.

Google, in a [memorandum in support](#) of a Motion for Summary Judgment, countered that its "policy prohibits the sale or promotion of counterfeit goods," and that it had promptly dealt with all known instances of counterfeiting in this case. Moreover, Google claimed, the uses of Rosetta Stone's trademarks by its AdWords program were not actionable because they constituted either lawful references by legitimate resellers to genuine Rosetta Stone products, or references by alleged counterfeiters, who themselves determined the content of their ads, to supposed Rosetta Stone products, the sources of which were known to consumers and the authenticity of which Google had no responsibility to independently determine. Finally, Google asserted that its use of Rosetta Stone's trademarks and other searched terms to generate ads was a functional and otherwise lawful use that failed to confuse customers.

The case had been scheduled to go to trial on May 5, 2010. As reported by Law360.com, Rosetta Stone will consider an appeal to the Fourth Circuit after it has had an opportunity to read Judge Lee's opinion.

We previously blogged about the case [here](#).

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