

UNITED STATES DISTRICT COURT
JUDGE JEREMY FOGEL, PRESIDING
COURTROOM NO. 3 - 5TH FLOOR

CIVIL MINUTES

Court Proceedings: Further Case Management Conference, Friday, February 3, 2006
Case Number: CV-03-5340-JF/RS

Courtroom Deputy Clerk: Diana Munz
Court Reporter: Peter Torreano

TITLE: GOOGLE V. AMERICAN BLIND & WALLPAPER

PLAINTIFF
Google

DEFENDANT
American Blind & Wallpaper

Attorneys Present: Michael Page
Klaus Hamm

Attorneys Present: Stacey Wexler, David Rammelt
Robert Phillips

PROCEEDINGS:

Further Case Management Conference held. Counsel are present.

The Court extends all case management dates by 4 months. The case is set for jury trial on 3/16/07 at 1:30 p.m., pretrial conference on 3/2/07 at 11:00 a.m. and motion hearing on 12/1/06 at 9:00 a.m.

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 6 GOOGLE INC. and Third-Party Defendants
 ASK JEEVES, INC. and EARTHLINK, INC.

7 [additional counsel appear on next page]
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9 UNITED STATES DISTRICT COURT
 10 NORTHERN DISTRICT OF CALIFORNIA

11	GOOGLE INC., a Delaware corporation,) Case No. C 03-5340-JF (EAI)
12	Plaintiff,)
13	v.) JOINT FED. R. CIV. P. 26(f) REPORT,
14	AMERICAN BLIND & WALLPAPER) CASE MANAGEMENT STATEMENT
15	FACTORY, INC., a Delaware corporation) AND PROPOSED CASE MANAGEMENT
16	d/b/a decoratetoday.com, Inc.; and DOES 1-) ORDER
17	100, inclusive,)
18	Defendants.) Date: February 3, 2006
19	AMERICAN BLIND & WALLPAPER) Time: 10:30 a.m.
20	FACTORY, INC., a Delaware corporation) Courtroom: 3, 5 th Flr.
21	d/b/a decoratetoday.com, Inc.,) Judge: Hon. Jeremy Fogel
22	Counter-Plaintiff,)
23	v.)
24	GOOGLE, INC., AMERICA ONLINE, INC.,)
25	NETSCAPE COMMUNICATIONS)
26	CORPORATION, COMPUSERVE)
27	INTERACTIVE SERVICES, INC., ASK)
28	JEEVES, INC., and EARTHLINK, INC.)
	Counter-Defendants/ Third-Party Defendants)

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18 INTERACTIVE SERVICES, INC.
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1 Plaintiff/Counter-Defendant Google Inc. ("Google"), Defendant/Counter-Plaintiff American
2 Blind & Wallpaper Factory, Inc. ("American Blind"), and Third-Party Defendants America Online,
3 Inc. ("America Online"), Netscape Communications Corp. ("Netscape"), Compuserve Interactive
4 Services, Inc. ("Compuserve"), Ask Jeeves, Inc. ("Ask Jeeves"), and Earthlink, Inc. ("Earthlink")
5 submit the following joint case management conference statement.

6 **I. DESCRIPTION OF THE CASE**

7 **A. Background**

8 Google filed this action against American Blind on November 26, 2003, seeking a declaratory
9 judgment that its current policy regarding the sale of keyword-triggered advertising does not constitute
10 trademark infringement. American Blind contends that many of American Blind's competitors – with
11 the assistance and encouragement of search engines such as Google – have attempted to confuse
12 American Blind's customers and capitalize illegally on American Blind's goodwill and reputation by
13 purchasing advertising keywords identical or substantially similar to American Blind's federally
14 registered and common law trademarks from the search engines, including Google. Google disagrees
15 that American Blind's customers are likely to be confused as a result of the purchase of such
16 keywords, or that Google assists in or encourages illegal conduct on the part of American Blind's
17 competitors.

18 American Blind filed counterclaims and third-party claims against Google, America Online,
19 Inc., Netscape Communications Corp., Compuserve Interactive Services, Inc., Askjeeves, Inc., and
20 Earthlink, Inc. for trademark infringement and dilution, unfair competition, and tortious interference
21 with prospective economic advantage.

22 Discovery is ongoing in this case. There are two pending discovery motions brought by
23 American Blind, which are scheduled to be heard by Judge Seeborg immediately before this case
24 management conference is held before the Court.

25 **B. Principal Factual and Legal Issues**

26 The principal factual and legal issues remain the same as they did in the parties' last joint case
27 management statement, filed on April 26, 2005.

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1 **C. Service of Process**

2 There are no unserved parties.

3 **D. Additional Parties**

4 Neither Google, American Blind, nor the Third-Party Defendants currently intend to join any
5 additional parties.

6 **II. ALTERNATIVE DISPUTE RESOLUTION**

7 The parties participated in a mediation before retired Judge Fern Smith on December 13, 2005.
8 The mediation did not result in settlement.

9 **III. INITIAL DISCLOSURES UNDER FED. R. CIV. P. 26(A)**

10 The parties have served their Rule 26 initial disclosures upon one another.

11 **IV. CASE MANAGEMENT PLAN**

12 **A. Discovery and Trial Schedule**

13 The Court has adopted the following case management schedule:

14	Cutoff of Fact Discovery	February 27, 2006
15	All Parties' Expert Reports Due	March 31, 2006
16	Rebuttal Expert Reports Due	May 15, 2006
17	Cutoff of Expert Discovery	June 30, 2006
18	Cutoff for filing Dispositive Motions	July 31, 2006
19	Pretrial Conference Statement	October 2, 2006
20	Pretrial Conference	October 13, 2006 at 11:00 a.m.
21	Trial Date	November 17, 2006 at 11:00 a.m.

22 American Blind's position:

23 American Blind believes that the schedule in this case should be extended by six months.

24 American Blind has an outstanding discovery dispute with Google over Google's production of
25 documents. Over a period of several months, the parties negotiated a Stipulated Protective Order
26 which was entered by the Court on September 19, 2005. On October 26, 2005, the parties exchanged
27 their initial document production. Since that time, American Blind has diligently reviewed Google's
28

1 voluminous production and discovered that Google has produced documents in response to only one of
 2 American Blind's document requests, has not appropriately reviewed the documents it has produced
 3 for confidentiality labels, has overdesignated the vast majority of documents it has produced, and has
 4 not complied with Rule 34(b) in its production. In late December, after the long-delayed mediation in
 5 this case, American Blind brought discovery motions on some of these issues which are currently
 6 pending before Judge Seeborg; they are scheduled to be heard immediately before the Case
 7 Management Conference. Additional discovery motions on document production and/or interrogatory
 8 responses may be necessary if Google continues to refuse to abide by its discovery obligations.

9 Given the state of Google's document production, an additional six months is necessary to
 10 adequately complete discovery. The schedule American Blind proposes is:

11	Cutoff of Fact Discovery	August 28, 2006
12	All Parties' Expert Reports Due	September 29, 2006
13	Rebuttal Expert Reports Due	November 15, 2006
14	Cutoff of Expert Discovery	December 29, 2006
15	Cutoff for filing Dispositive Motions	January 31, 2007
16	Pretrial Conference Statement	April 2, 2007
17	Pretrial Conference	April 13, 2007 at 11:00 a.m.
18	Trial Date	May 18, 2007 at 11:00 a.m.

19 Google's position:

20 Google opposes American Blind's request to extend by six months the scheduling dates already
 21 adopted by the Court. The parties have had more than enough time to complete discovery. Google
 22 filed its complaint more than two years ago, on November 26, 2003. Although the Court stayed
 23 discovery on June 21, 2004, that stay expired eight months ago, on May 11, 2005. As explained in its
 24 oppositions to American Blind's discovery motions, Google has diligently complied with its discovery
 25 obligations. Google has made multiple document productions—and produced more than 100,000
 26 pages of documents—in response to American Blind's extensive document requests. American
 27 Blind's claim that Google has produced documents in response to only one of its requests is simply
 28

1 untrue. While Google prefers to avoid further delay, it has informed American Blind that it would
2 accept a compromise whereby the Court extends all deadlines by one month.

3 **B. Trial Duration**

4 The parties estimate a trial of approximately two weeks.

6 Dated: January 20, 2006

KEKER & VAN NEST, LLP

7 By: /s/ Klaus H. Hamm

8 KLAUS H. HAMM

9 Attorneys for Plaintiff/Counter-Defendant
10 GOOGLE INC.

11 Dated: January 20, 2006

HOWREY LLP

12 By: /s/ Robert N. Phillips

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21 AMERICAN BLIND AND WALLPAPER
22 FACTORY, INC.

TAYLOR & COMPANY LAW OFFICES,
INC.

21 Dated: January 20, 2006

22 By: /s/ Stacey L. Wexler

23 STACEY L. WEXLER

24 Attorneys for Third-Party Defendants
25 AMERICA ONLINE, INC., NETSCAPE
26 COMMUNICATIONS CORPORATION,
27 and COMPUSERVE INTERACTIVE
28 SERVICES, INC.

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IT IS SO ORDERED.

Dated: January __, 2006

Hon. Jeremy Fogel
United States District Court Judge

ATTESTATION AS TO CONCURRENCE

I, Klaus H. Hamm, under penalty of perjury of the laws of the United States of America, attest that concurrence in the filing of this document has been obtained from each of the other signatories to this document.

Cranmer, Patricia

From: ECF-CAND@cand.uscourts.gov
Sent: Friday, January 20, 2006 5:42 PM
To: efileing@cand.uscourts.gov
Subject: Activity in Case 5:03-cv-05340-JF Google Inc. v. American Blind & Wallpaper Factory, Inc. "Case Management Statement (Joint)"

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The following transaction was received from Hamm, Klaus Hemingway on 1/20/2006 at 5:41 PM PST

Case Name: Google Inc. v. American Blind & Wallpaper Factory, Inc.
Case Number: [5:03-cv-5340](#)
Filer: Ask Jeeves, Inc.
Google Inc.
Earthlink, Inc.

Document Number: [88](#)

Docket Text:

JOINT CASE MANAGEMENT STATEMENT *Joint Fed. R. Civ. P. 26(f) Report, Case Management Statement and Proposed Case Management Order* filed by Google Inc., Earthlink, Inc., Ask Jeeves, Inc., Google Inc.. (Hamm, Klaus) Filed on 1/20/2006)

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename: C:\Data\Blind\JCMConfStmnt.pdf
Electronic document Stamp:
STAMP CANDStamp_ID=977336130 [Date=1/20/2006] [FileNumber=2361141-0]

5b11ef0b544b8288069a7ef7e6a2054b2ab98460a792cbd536cf2b972620e8944f419
fd00055be3ec1c15b57d550725f9ad14ce80f1d4b36d0e1eee26a28e7fc]]

1/23/2006

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