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1 Plaintiff Google Inc. (“Google”) and Defendant American Blind & Wallpaper Factory,
2 Inc. (“American Blind”) submit the following joint case management conference statement.

3 **I. DESCRIPTION OF THE CASE**

4 **A. Background**

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

15 On January 27, 2004, American Blind filed suit in the Southern District of New York
16 against Google, American Online, Inc., Netscape Communications Corp., Compuserve
17 Interactive Services, Inc., Askjeeves, Inc., and Earthlink, Inc. for trademark infringement and
18 dilution, unfair competition, and tortious interference with prospective economic advantage.

19 On January 28, 2004, American Blind moved to dismiss this action or, alternatively, to
20 stay proceedings based on equitable exceptions to the “first-to-file” rule. The Court denied that
21 motion on April 8, 2004.

22 On April 8, 2004, Google filed a motion to dismiss, or alternatively, to transfer American
23 Blind’s New York action on the ground that Google’s California action had precedence under the
24 “first-to-file” rule. That motion remains pending before the New York court.

25 American Blind has yet to file an answer to Google’s complaint in this case. Neither
26 party has yet propounded any written discovery.

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

2 Google contends the principal factual and legal issues are:

3 (1) Whether Google's sale of keyword-triggered advertising to various of its customers
4 constitutes trademark infringement; and

5 (2) Whether the purchase by various of Google's customers of keywords that are
6 allegedly similar to American Blind's marks, and the appearance of the websites of those
7 customers as "Sponsored Links" beside the search results that Google displays in response to
8 search queries using those keywords, is likely to cause confusion as to whether American Blind's
9 goods and services are associated with the goods and services of the keyword purchasers.

10 American Blind contends that, in addition to the above, the principal factual and legal
11 issues include:

12 (1) Whether Google is selling terms identical or substantially similar to American
13 Blind's federally registered and common law trademarks as part of its keyword-triggered
14 advertising program;

15 (2) Whether Google's sale of terms identical or substantially similar to American Blind's
16 federally registered and common law trademarks as part of its keyword-triggered advertising
17 program constitutes trademark infringement;

18 (3) Whether Google's sale of terms identical or substantially similar to American Blind's
19 federally registered and common law trademarks as part of its keyword-triggered advertising
20 program dilutes American Blind's trademarks;

21 (4) Whether Google's sale of terms identical or substantially similar to American Blind's
22 federally registered and common law trademarks as part of its keyword-triggered advertising
23 program tarnishes American Blind's trademarks;

24 (5) Whether customers of American Blind are actually confused by Google's sale of
25 terms identical or substantially similar to American Blind's federally registered and common law
26 trademarks as part of its keyword-triggered advertising program;

27 (6) Whether the purchase by various of Google's customers of keywords that are
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1 identical or substantially similar to American Blind’s federally registered and common law
2 trademarks, and the appearance of the websites of those customers as “Sponsored Links” beside
3 the search results that Google displays in response to search queries using those keywords, is
4 likely to cause confusion as to whether American Blind’s goods and services are associated with
5 the goods and services of the keyword purchasers;

6 (7) Whether American Blind has suffered any actual damages as a result of Google’s
7 sale of terms identical or substantially similar to American Blind’s federally registered and
8 common law trademarks as part of its keyword-triggered advertising program;

9 (8) Whether Google’s alleged infringement of American Blind’s federally registered and
10 common law trademarks is willful and deliberate;

11 (9) Whether Google’s sale of terms identical or substantially similar to American Blind’s
12 federally registered and common law trademarks as part of its keyword-triggered advertising
13 program has resulted in unfair competition;

14 (10) Whether Google’s sale of terms identical or substantially similar to American
15 Blind’s federally registered and common law trademarks as part of its keyword-triggered
16 advertising program has resulted in tortious interference with prospective economic advantage;

17 (11) Whether Google shares revenue from its sale of terms identical or substantially
18 similar to American Blind’s federally registered and common law trademarks as part of its
19 keyword-triggered advertising program with the anticipated additional defendants or others;

20 (12) Whether Google has agreed not to permit the sale of terms identical or substantially
21 similar to other trademark holders’ trademarks as part of its keyword-triggered advertising
22 program;

23 (13) Whether other customers of Google have complained about Google’s sale of terms
24 identical or substantially similar to their trademarks as part of Google’s keyword-triggered
25 advertising program.

26 **C. Service of Process**

27 There are no unserved parties.

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1 **D. Additional Parties**

2 Google does not currently intend to join any additional parties. American Blind intends
3 to add American Online, Inc., Netscape Communications Corp., Compuserve Interactive
4 Services, Inc., Askjeeves, Inc., and Earthlink, Inc. as additional defendants in this action.

5 **II. ALTERNATIVE DISPUTE RESOLUTION**

6 The parties generally agree that private mediation may be beneficial in this case, and will
7 meet and confer over the appropriate time frame to engage in such mediation.

8 **III. INITIAL DISCLOSURES UNDER FED. R. CIV. P. 26(a)**

9 The parties will serve their initial disclosures upon one another on May 27, 2004.

10 **IV. CASE MANAGEMENT PLAN**

11 **A. Discovery and Trial Schedule**

12 Google proposes the following case management schedule:

13	Cutoff of Fact Discovery	August 30, 2004
14	Expert Reports Due	September 27, 2004
15	Responsive Expert Reports Due	October 11, 2004
16	Cutoff of Expert Discovery	October 25, 2004
17	Cutoff for filing Dispositive Motions	November 8, 2004
18	Pretrial Conference Statement	January 14, 2005
19	Pretrial Conference	January 24, 2005
20	Trial Date	February 2005

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22 American Blind proposes the following case management schedule:

23	Cutoff of Fact Discovery	April 29, 2005
24	All Parties' Expert Reports Due	May 30, 2005
25	Rebuttal Expert Reports Due	July 15, 2005
26	Cutoff of Expert Discovery	August 31, 2005
27	Cutoff for filing Dispositive Motions	September 30, 2005

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1	Pretrial Conference Statement	December 2, 2005
2	Pretrial Conference	December 12, 2005
3	Trial Date	January, 2006

4 **B. Protective Order**

5 The parties will meet and confer on an appropriate protective order and submit a
6 proposed order to the Court by May 27, 2004.

7 **C. Trial Duration**

8 The parties estimate a trial of approximately one week.

9 Dated: April 16, 2004 KEKER & VAN NEST, LLP

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By: /s/ Michael H. Page

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MICHAEL H. PAGE
Attorneys for Plaintiff
GOOGLE INC.

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15 Dated: April 16, 2004 HOWREY SIMON ARNOLD & WHITE,
LLP

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By: /s/ Robert N. Phillips

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ATTESTATION OF CONCURRENCE OF FILING

I hereby attest that Michael H. Page has concurred in the filing of this document.

/s/ Robert N. Phillips

Robert N. Phillips