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 10 AMERICAN BLIND AND WALLPAPER
 FACTORY, INC.

Filed

MAY 04 2004

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

11 UNITED STATES DISTRICT COURT
 12 NORTHERN DISTRICT OF CALIFORNIA

14 GOOGLE INC., a Delaware
 15 corporation,

16 Plaintiff,

17 v.

18 AMERICAN BLIND &
 WALLPAPER FACTORY, INC., a
 19 Delaware corporation d/b/a
 decoratetoday.com, Inc., and DOES
 20 1-100, INCLUSIVE,

21 Defendant.

CASE NO. C 03-5340 JF

**DEFENDANT AMERICAN BLIND &
 WALLPAPER FACTORY, INC.'S
 ANSWER, AFFIRMATIVE
 DEFENSES, COUNTERCLAIMS,
 AND THIRD-PARTY CLAIMS**

DEMAND FOR JURY TRIAL

22 AMERICAN BLIND &
 23 WALLPAPER FACTORY, INC., a
 Delaware corporation d/b/a
 24 decoratetoday.com, Inc.,

25 Counter-Plaintiff,

26 v.

27 GOOGLE, INC., AMERICA
 ONLINE, INC., NETSCAPE
 28 COMMUNICATIONS

DEFENDANT'S ANSWER, AFFIRMATIVE
DEFENSES, AND COUNTERCLAIMS

1 CORPORATION, COMPUSERVE
2 INTERACTIVE SERVICES, INC.,
3 ASK JEEVES, INC., and
4 EARTHLINK, INC.

5 Counter-Defendants/
6 Third-Party Defendants.

7 Defendant American Blind & Wallpaper Factory, Inc. d/b/a decoratetoday.com, Inc.
8 (“American Blind”) hereby answers the Complaint of Plaintiff Google, Inc. (“Google”) as
9 follows:

10 1. American Blind admits that Google provides Internet search engine services to
11 Internet users. American Blind is without sufficient knowledge or information to form a belief as
12 to the truth of the remaining allegations contained in paragraph 1, and on that basis denies each
13 and every remaining allegation contained therein.

14 2. American Blind admits the allegations contained in paragraph 2.

15 3. American Blind admits that jurisdiction is proper in this Court under 28 U.S.C. §
16 1331 (federal question), 17 U.S.C. § 1051 et seq. (Lanham Act), and 28 U.S.C. § 1338(a)
17 (trademarks). American Blind denies the remaining allegations contained in paragraph 3.

18 4. American Blind admits the allegations contained in paragraph 4.

19 5. American Blind admits the allegations contained in paragraph 5.

20 6. American Blind admits that it has asserted that Google’s sale of keyword-triggered
21 advertising services constitutes trademark infringement. American Blind denies the remaining
22 allegations contained in paragraph 6.

23 7. American Blind is without sufficient knowledge or information to form a belief as
24 to the truth of the allegations contained in paragraph 7, and on that basis denies each and every
25 allegation contained therein.

26 8. American Blind admits that Google offers to it is business customers a keyword
27 triggered advertising program entitled “AdWords.” American Blind is without sufficient
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1 knowledge or information to form a belief as to the truth of the remaining allegations contained in
2 paragraph 8, and on that basis denies each and every allegation contained therein.

3 9. American Blind admits that Google's AdWords program permits Google's
4 advertising customers to purchase advertising links associated with certain keywords. American
5 Blind is without sufficient knowledge or information to form a belief as to the truth of the
6 remaining allegations contained in paragraph 9, and on that basis denies each and every allegation
7 contained therein.

8 10. American Blind denies the allegations contained in paragraph 10.

9 11. American Blind admits the allegations contained in paragraph 11.

10 12. American Blind admits the allegations contained in paragraph 12.

11 13. American Blind denies that Kelley Drye subsequently acknowledged that it had a
12 conflict of interest in representing American Blind because it also represented Google in another
13 matter. American Blind admits that Google was instructed to contact American Blind directly to
14 resolve this matter.

15 14. American Blind admits that on September 26, 2002 Rose Hagan, Google's Senior
16 Trademark Counsel, spoke with Bill Smith of American Blind regarding Google's ability to block
17 American Blind's competitors from purchasing keywords that are identical or substantially
18 similar to American Blind's trademarks. American Blind denies the remaining allegations
19 contained in paragraph 14.

20 15. American Blind admits the allegations contained in paragraph 15.

21 16. American Blind admits the allegations contained in paragraph 16.

22 17. American Blind is without sufficient knowledge or information to form a belief as
23 to the truth of the allegation that on August 6, 2003, Luis Vuitton SA sued Google and its French
24 subsidiary for trademark infringement arising out of Google's posting of links to companies and
25 other organizations that have paid to associate themselves with certain keywords, and on that
26 basis denies this allegation. American Blind admits that Luis Vuitton SA sued Google for
27 trademark infringement. American Blind further admits the remaining allegations contained in
28 paragraph 17.

1 18. American Blind denies the allegations contained in paragraph 18.

2 **CLAIMS FOR RELIEF**

3 **CLAIM ONE**

4 **(Declaratory Judgment of Non-infringement of Trademarks, 15 U.S.C. § 1051 et seq.)**

5 19. American Blind repeats and incorporates by reference paragraphs 1-18 of this
6 Answer.

7 20. American Blind admits that it has claimed that Google’s sale of keywords that are
8 identical or substantially similar to American Blind’s trademarks as part of Google’s AdWords
9 program constitutes trademark infringement. American Blind denies the remaining allegations
10 contained in paragraph 20.

11 21. American Blind denies the allegations contained in paragraph 21.

12 22. American Blind admits that Google is seeking a declaratory judgment from this
13 Court that its current policy regarding the sale of keyword-triggered advertising does not
14 constitute trademark infringement. American Blind denies that Google is entitled to such a
15 declaratory judgment.

16 **PRAYER FOR RELIEF**

17 23. American Blind denies that Google is entitled to judgment according to the
18 declaratory relief sought.

19 24. American Blind denies that Google is entitled to costs in this action.

20 25. American Blind denies that Google is entitled to any further relief.

21 **AFFIRMATIVE DEFENSES**

22 **First Affirmative Defense**

23 (Failure to State Facts)

24 Google’s Complaint fails to state facts constituting a legally cognizable cause of action
25 against American Blind.

26 **Second Affirmative Defense**

27 (Improper Declaratory Judgment Action)

28 Although the only named defendant is American Blind, Google’s Complaint does not

1 restrict the relief sought to its dispute with American Blind, but rather seeks a more global stamp
2 of approval of its marketing practices. In other words, Google does not ask this Court to declare
3 that it has not infringed upon or otherwise violated American Blind's *specific* marks, but rather
4 that Google generally has a "right to sell keyword-triggered advertising to its customers."
5 Pursuant to the Declaratory Judgment Act, this abstract question cannot be answered by a
6 declaratory judgment. 28 U.S.C. § 2201(a).

7 **COUNTERCLAIMS**

8 Defendant American Blind & Wallpaper Factory, Inc. d/b/a decoratetoday.com,
9 Inc. ("American Blind") as and for a Counterclaim against Counter-Defendant Google, Inc.
10 ("Google"), and Third-Party Defendants America Online, Inc. ("AOL"), Netscape
11 Communications Corporation ("Netscape"), CompuServe Interactive Services, Inc.
12 ("CompuServe"), Ask Jeeves, Inc. ("Ask Jeeves"), and EarthLink, Inc. ("EarthLink") (hereinafter
13 the Counter-Defendant and the Third-Party Defendants shall collectively be referred to simply as
14 the "Defendants"), alleges as follows:

15 **NATURE OF CASE**

16
17 1. The Defendants operate for their own profit various Internet "search engines,"
18 which are used by consumers to search the World Wide Web for, among other things, products
19 and services. In deliberate disregard of American Blind's long-standing intellectual property
20 rights, Defendants have advertised, promoted, offered for sale and sold "keywords" identical to
21 certain of American Blind's trademarks to various third parties. Indeed, Defendant Google
22 actively solicits others to purchase not only American Blind's registered and unregistered
23 trademarks, but also virtually every conceivable iteration of these marks. Furthermore, the
24 Defendants have deliberately manipulated their search engine "results" so that, when consumers
25 use these search engines to find American Blind's products and services, the consumers are
26 unwittingly diverted to competitors' products and services. By this unfair and deceitful conduct,
27 Defendants have infringed and diluted, and continue to infringe and dilute, American Blind's
28 registered and unregistered service marks and trademarks.

Parties

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2. American Blind is a Delaware corporation with its principal place of business at 909 North Sheldon Road, Plymouth, Michigan.

3. Google is a Delaware corporation with a principal place of business in Mountain View, California.

4. Upon information and belief, AOL is a Delaware corporation with its principal place of business in Dulles, Virginia. Upon information and belief, AOL advertises, solicits clients, and conducts sales and purchases in the State of California.

5. Upon information and belief, Ask Jeeves is a Delaware corporation with its principal place of business in Emeryville, California. Upon information and belief, Ask Jeeves advertises, solicits clients, and conducts sales and purchases in the State of California.

6. Upon information and belief, CompuServe is a Delaware corporation with its principal place of business in Columbus, Ohio. Upon information and belief, Compuserve advertises, solicits clients, and conducts sales and purchases in the State of California.

7. Upon information and belief, EarthLink is a Delaware corporation with its principal place of business in Atlanta, Georgia. Upon information and belief, Earthlink advertises, solicits clients, and conducts sales and purchases in the State of California.

8. Upon information and belief, Netscape is a Delaware corporation with its principal place of business in Mountain View, California. Upon information and belief, Netscape advertises, solicits clients, and conducts sales and purchases in the State of California.

Jurisdiction and Venue

9. This is an action arising under the Lanham Act, 15 U.S.C. §§ 1114(1)(a), 1125(a), and 1125(c). This Court has federal question jurisdiction over these claims pursuant to 15 U.S.C. § 1121, and 28 U.S.C. §§ 1331, 1338(a) and 1338(b).

10. The Court has subject matter jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367(a).

1 11. Defendants are subject to the personal jurisdiction of this Court because, among
2 other things, a substantial part of the events giving rise to this litigation occurred in the State of
3 California.

4 12. In addition, Defendants are subject to the personal jurisdiction of this Court
5 because, among other things, upon information and belief each of the Defendants is subject to
6 California's long-arm statute.

7 13. In addition, Defendants are subject to the personal jurisdiction of this Court
8 because, among other things, upon information and belief each of the Defendants has transacted
9 and presently is transacting business in the state of California by: (a) providing Internet users in
10 California access to its search engine; (b) providing Internet users in California advertising on its
11 website; (c) contracting with, or attempting to contract with, California residents for the sale of
12 goods or services, including the sale of advertising space on its Internet website; (d) selling or
13 attempting to sell goods or services to residents of the State of California; (e) maintaining an
14 office in the State of California; and/or (f) committing tortious acts in the State of California.

15 14. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and (c) because a
16 substantial part of the events giving rise to the claims occurred in this district and the Defendants
17 are all residents of this district.

18 15. Google's counsel has represented that Google, Ask Jeeves, and Earthlink will
19 consent to jurisdiction and venue in this judicial district.

20 **PLAINTIFF'S TRADEMARKS**

21 16. American Blind is one of the largest direct-to-consumer retailers of custom order
22 window treatments and wall coverings in the United States and on the Internet. American Blind,
23 in conjunction with its predecessor companies, has been in the home decorating business for over
24 a half century. American Blind sells and promotes its home decorating products and related
25 services across the United States through a website and toll-free telephone numbers.

26 17. Since at least as early as 1986, and long prior to the acts of the Defendants
27 complained of herein, American Blind adopted and used, and has continued to use, the names and
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1 marks AMERICAN BLIND and AMERICAN BLINDS (hereinafter collectively identified as
 2 “AMERICAN BLIND”) in connection with home decorating products and related services which
 3 have been offered for sale and sold in interstate commerce in the United States, including the
 4 State of California. Since the adoption and first use of the AMERICAN BLIND name and mark
 5 as aforesaid, American Blind has continuously used said mark by prominently displaying it on the
 6 packaging and advertising for American Blind’s products, which products have been advertised,
 7 promoted, offered for sale and sold in interstate commerce in the United States, including the
 8 State of California.

9 18. In addition to the AMERICAN BLIND name and mark, American Blind is the
 10 owner of and has the exclusive rights to use the following trademarks registered with the United
 11 States Patent and Trademark Office:

Mark	Reg. Number	Reg. Date
AMERICAN BLIND & WALLPAPER FACTORY	2,022,925	12/17/96
AMERICAN BLIND FACTORY	1,463,548	11/03/87
DECORATETODAY	2,470,542	07/17/01

12 (True and accurate copies of proof of these registrations are attached hereto as Exhibit A.) The
 13 foregoing registered marks, together with the AMERICAN BLIND name and mark are
 14 hereinafter collectively referred to as the “American Blind Marks.”
 15

16 19. The name and mark AMERICAN BLIND comprises a distinctive part of
 17 American Blind’s corporate title and trade name, which trade name has been prominently
 18 displayed by American Blind upon the packaging for its home decorating products and related
 19 services sold under the American Blind Marks.
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21 20. Since long prior to the acts of the Defendants complained of herein, American
 22 Blind’s home decorating products and related services sold under the American Blind Marks have
 23 been extensively advertised, promoted and sold by American Blind in interstate commerce
 24 throughout the United States, including the State of California. American Blind expends millions
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1 of dollars each year in connection with the advertisement and promotion of its products and
2 services sold under the American Blind Marks.

3 21. The dollar amount of sales in the United States of American Blind's home
4 decorating products and related services sold under the American Blind Marks offered for sale
5 and sold under the American Blind Marks since their original adoption and use are well in excess
6 of hundreds of millions of dollars.

7 22. Plaintiffs have been careful, skillful and meticulous in the conduct of their
8 business offering home decorating products and related services under the American Blind
9 Marks.

10 23. As a consequence, and as a result of the substantial sales and extensive advertising
11 and promotion of American Blind's home decorating products and related services, American
12 Blind's home decorating products and related services sold under the American Blind Marks have
13 acquired a fine reputation, and are famous among prospective purchasers of home decorating
14 products and related services in the United States, including the State of California. The public
15 has used and now uses the American Blind Marks to identify American Blind and its home
16 decorating products and related services and to distinguish American Blind and its products and
17 services from the home decorating products and related services offered by others, and the
18 American Blind Marks have acquired an outstanding celebrity as a source of quality home
19 decorating products and related services, and symbolizes and embodies the goodwill rightfully
20 belonging exclusively to American Blind.

21 **FACTUAL BACKGROUND**

22 **A. The Internet And The World Wide Web**

23 24. The Internet is a global network of millions of interconnected computers. The
24 World Wide Web is a portion of the Internet especially suited to displaying images and sound, in
25 addition to text. Much of the information on the World Wide Web is stored in the form of
26 "webpages," which can be accessed through a computer connected to the Internet (available
27 through commercial Internet service providers or "ISPs"), and viewed using a computer program

1 called a “browser,” such as Microsoft Internet Explorer or Netscape Navigator. “Websites” are
2 locations on the World Wide Web containing a collection of webpages. A website is identified
3 by its own unique Uniform Resource Locator (“URL”) (e.g. <http://www.americanblind.com>),
4 which ordinarily incorporates its site’s “domain name” (e.g. “American Blind”).

5 25. Among Internet users in the United States, it is estimated that thirty-nine percent
6 (39%) currently use the Internet to make online purchases.

7 26. As a result, it is estimated that, today, annual sales of goods and services over the
8 Internet exceed \$92 billion.

9 **B. The Business Of Plaintiff American Blind**

10 27. American Blind spends millions of dollars each year advertising the American
11 Blind Marks, including advertising in over forty national magazines, on every major search
12 engine, on national television and radio, and through millions of direct mailings and catalogs
13 distributed throughout the United States.

14 28. For example, American Blind advertises its goods and services under the
15 American Blind Marks on national television on the Home & Garden Network and in national
16 magazines such as *Better Homes & Gardens*, *Good Housekeeping*, and *Country Living*.

17 29. Today, American Blind has close to seven million households on file nationwide
18 and generates annual revenues in excess of \$100 million.

19 30. Since 1997, American Blind has continuously operated a distinctive Internet
20 website, through which the company sells blinds and other window treatments, wall coverings
21 and other home decorating products and related services.

22 31. Today, American Blind owns many Internet domain names, including but not
23 limited to:

- 24 • www.americanblind.com
- 25 • www.americanblindandwallpaper.com
- 26 • www.americanblindandwallpaperfactory.com
- 27 • www.americanblindfactory.com
- 28 • www.americanblinds.com
- www.americanblindsandmore.com

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- www.americanblindsandwallpaper.com
- www.americanblindsandwallpaperfactory.com
- www.americanblindsandwallpaperandmore.com
- www.americanblindwallpaper.com
- www.americanwallpaperandblind.com
- www.americanwallpaperandblinds.com

32. Accordingly, if a consumer using an Internet web browser types in any of the company’s URLs – for example, if a consumer types www.americanblinds.com in his or her web browser address bar – the consumer is directed to American Blind’s web servers where he or she can view, browse and purchase the company’s products and services.

33. A significant and critical amount of American Blind’s business is conducted via the Internet. The company estimates that, each day, it receives in excess of thirty thousand (30,000) visits by customers or potential customers to its Internet website and processes over 400,000 Internet transactions every year.

34. American Blind has spent over \$10 million in developing its website, and spends in excess of \$1 million per year in maintaining, enhancing and updating its website. In addition, American Blind employs over 50 full-time employees in connection with its Internet operations, all of whom are rigorously trained and supervised.

C. The Business Of Defendant Google

35. Internet customers who are searching for a specific company product or information, but who do not know the exact domain name or website address at which it may be found, may use “keywords” and/or “search engines” to locate websites which match the keywords sought by the customer. Keywords are the textual terms that a consumer enters to locate the desired website or domain name. A search engine, such as Google, uses algorithms to process these keywords against its database and produces a search results page, which lists the websites (usually, in order of decreasing relevance with the most relevant websites listed first) that match the customer’s keyword search.

1 36. Upon information and belief, Google's Internet search engine, which is free to
2 consumers, is the most widely-used Internet search engine in the world. Upon information and
3 belief, it answers hundreds of millions of user searches and covers billions of web pages daily.

4 37. Upon information and belief, Google also sells a number of products and services
5 to individuals, businesses, and educational and governmental entities. One of the programs
6 Google offers to its business customers is a keyword-triggered advertising program entitled
7 "AdWords."

8 38. Google's "AdWords" program enables advertisers to purchase or bid on keywords
9 that generate an advertising link (known as a "Sponsored Link") to the purchaser's website. For
10 example, a company might bid on the keyword "wallpaper" through Google's "AdWords"
11 program so that the company's website will be the first, or among the first, listed "Sponsored
12 Links" when a customer enters the word "wallpaper" in Google's search engine window. Google
13 posts these so-called "Sponsored Links" on the top of and at margins of its search engine results
14 page based on whichever keywords appear in user queries posted to Google's Internet search
15 engine. Google's advertising customers then pay Google based on the number of Internet users
16 who "click" on these advertising links.

17 39. The designation "Sponsored Link" is itself confusing and misleading. In many
18 instances, the Defendants' search engine "results" pages are designed so that the "Sponsored
19 Link" display is inconspicuous or otherwise not apparent. Moreover, it is not apparent who
20 exactly "sponsors" these links.

21 40. Google profits every time an Internet user clicks on a "Sponsored Link" for one of
22 the advertisers to whom Google has sold keywords in its "AdWords" program.

23 41. According to Google, 96% of its net revenues in the first quarter of 2004, which
24 totaled \$389 million, were derived from advertising revenues.

25 **D. Defendant Google's Acts**

26 42. Google has sold many keywords comprised, in whole or in part, of the American
27 Blind Marks, to competitors of American Blind.
28

1 43. Although Google purported to agree not to sell American Blind’s registered
2 trademarks – which promise turns out to have been false – Google flat out refused to stop selling
3 other American Blind Marks. Indeed, Google has admitted that it continues to sell, over
4 American Blind’s objections, the name and mark AMERICAN BLIND and certain combinations
5 of words within the American Blind Marks to American Blind’s competitors. Consequently,
6 Google causes the purchase of the American Blind Marks to trigger a link to these competitor’s
7 websites to appear in Google’s search results when a consumer types in any one of the American
8 Blind Marks.

9 44. For example, Google continues to sell to American Blind’s competitors the
10 keywords “American Blind,” “American Blinds” and “Americanblinds.com,” among others.
11 Accordingly, if a consumer using Google’s search engine types “American Blind and Wallpaper
12 Factory” in the search window, Google causes the links to websites of competitors who have
13 purchased the “American Blind” keyword from Google to appear at the top or in the margins of
14 the results page. Similarly, it is possible for a consumer who types “American Blinds” or
15 “Americanblinds.com” in the Google search window to be directed to a “results” web page that
16 displays the products and services of American Blind’s competitors through the keyword sold to
17 them by Google.

18 45. Google does not just sell American Blind’s marks, it actively promotes and
19 encourages competitors to embark on a sweeping competitive raid on the American Blind Marks
20 and virtually every conceivable, though indistinguishable, iteration of those marks. This is
21 accomplished by what Google calls its “AdWords Keywords Suggestions” feature, which lures
22 Google’s paying customers by the promise of “ideas for new keywords that can help you improve
23 your ad relevance” (this feature is not available to, or even viewable by, the public).

24 46. Google’s AdWords Keywords Suggestions feature generates additional
25 recommended keyword purchases to Google’s advertising customers. Google likes to refer to this
26 as “keyword targeting.” It cannot, therefore, be suggested that Google is merely selling terms
27 that, by happenstance, coincidentally comprise part (or all) of the American Blind Marks. Rather,

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1 Google intentionally has designed its financially lucrative “AdWords” program to maximize the
2 infringement and dilution of American Blind’s marks.

3 47. More specifically, a competitor of American Blind who is considering purchasing
4 the keyword “American Blind” – which Google freely, though improperly, sells to the highest
5 bidder – is also encouraged by Google to spend even more money purchasing additional marks
6 owned by American Blind:

7 If you’re showing your ads on broad-matched keywords, these queries may
8 trigger your ads. ***To increase your clickthrough rate, you should consider***
9 ***replacing your general keywords with any relevant, more specific***
10 ***suggestions you see here.*** You should also identify any irrelevant terms
11 and add them as negative matches (otherwise your ads will show for terms
12 that don’t pertain to your business).

- 11 • american blinds
- 12 • american blinds and wallpaper
- 13 • american wallpaper and blinds
- 14 • american blinds wallpaper
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- 16 • american wallpaper & blinds
- 17 • american wallpaper blinds
- 18 • american wall paper and blinds
- 19 • american blinds and wallpaper factory
- 20 • american blinds and wall paper
- 21 • american windows and blinds
- 22 • american blinds com
- 23 • american window blinds
- 24 • american blinds wallpaper & more
- 25 • american window and blinds
- 26 • american blinds and windows
- 27 • american blinds and draperies
- 28 • american blinds company
- american blinds wallpaper and more
- american blinds and wallpaper company
- all american blinds
- american blinds and wallcoverings
- american mini blinds
- american blinds factory

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- american blinds and wallpapers
- american blinds and shades
- american brand blinds
- american blinds and wallcovering
- american blinds & draperies
- american blinds and drapes
- american home blinds
- american wall and blinds
- american blinds and drapery
- american blinds and wallpaper com

* * * *

(See Exhibit B (emphasis supplied).) The overlap with the American Blind Marks and domain names (*compare* to American Blind’s registered domain names referenced in paragraph 31 *supra*) is unmistakable. Each of these “suggestions” being made by Google to its customers involves the deliberate sale by Google of the American Blind Marks.

48. These “suggestions” are lumped into categories by Google and are sometimes referred to as “optimization campaigns” in marketing keyword groupings to Google’s paying customers looking to increase their advertising on Google.

49. Adding insult to injury, Google has even labeled the optimization campaign containing every iteration of American Blind’s marks, the “American Blind” optimization campaign. Upon information and belief, Google’s sales staff actively promotes this campaign of infringement under the “American Blind” optimization program to American Blind’s competitors.

50. In each of these examples, by the operation and design of its keyword sales program, Google causes consumers who specifically intend and desire to find American Blind’s products and services to be diverted instead to search “results” web pages that list American Blind’s competitor’s products and services. This result is intended, both by Google and its customers who purchase keywords consisting of the American Blind Marks. Google sells, and its customers hope to purchase, the possibility that they will intercept consumers who, due to American Blind’s extensive and pervasive advertising resulting in invaluable goodwill, are trying

1 to find one of the nation's largest and most respected and trusted direct-to-consumer retailer of
2 window treatments and wall coverings.

3 51. Once intercepted, consumers may click on American Blind's competitors' links
4 and thus be directed to the competitors' websites. Consumers may not realize that they have
5 unwittingly "clicked" on a competitors' website. Once there, the consumer, having been
6 distracted, may not ever return to American Blind's website. Even if the consumer appreciates
7 the diversion, he or she will have to spend time and energy trying to backtrack or otherwise find
8 American Blind.

9 52. Through this practice, Google traffics in the infringement and dilution of the
10 American Blind Marks. Google has knowingly sold the American Blind Marks in commerce and
11 included them in Google's search engine for Google's own profit and to increase the competitive
12 advantage of American Blind's competitors. This practice began after the American Blind Marks
13 were registered and/or became famous and distinctive.

14 53. Google admits that, in connection with its AdWords program, companies in the
15 United States, Germany, and France have filed trademark claims against Google.

16 54. A court in France has held Google liable for allowing advertisers to select as
17 "keywords" certain trademarked terms owned by others.

18 55. Google admits that it may be found liable for its AdWords advertising program for
19 trademark infringement and other claims that have been asserted against it in the United States
20 and Europe.

21 56. Prior to the filing of American Blind's related lawsuit in the Southern District of
22 New York on January 27, 2004, Google's own trademark policy provided that Google would
23 block companies from purchasing as "keywords" the trademarks of other companies.

24 57. Indeed, as described earlier, Google had represented to American Blind that
25 Google was blocking competitors from purchasing American Blind's registered trademarks.

26 58. Pursuant to Google's former trademark policy, once Google was advised of a
27 purchase of another company's trademark, Google would, at its discretion, block the purchase of
28 that trademark.

1 59. Google has the technological capability of blocking the purchase of keywords, if it
2 desires.

3 60. Google adopted and used this former trademark policy for over four years.

4 61. Google adopted and used this former trademark policy because it believed it would
5 be, or could be, found liable for trademark infringement or other related claims if it did not block
6 such purchases.

7 62. In conformity with this belief, Google confidentially settled a number of claims
8 asserted by companies that had informed Google that Google's sales of their trademarks were
9 illegal.

10 63. Following the filing of American Blind's lawsuit in the Southern District of New
11 York on January 27, 2004, Google changed its trademark policy.

12 64. Under Google's new trademark policy, Google will no longer disable ads due to
13 selection by advertisers of trademarks as keyword triggers for those ads.

14 65. Google admits that as a result of this change in its trademark policy, it may be
15 subject to more trademark infringement lawsuits.

16 66. Google's change in its trademark policy and its continuing sale of the American
17 Blind Marks constitutes conscious and deliberate disregard of American Blind's trademark rights.

18 **E. The Business Of The Other Defendants**

19 67. AOL, Ask Jeeves, CompuServe, Earthlink, and Netscape (hereinafter collectively
20 referred to as the "Non-Google Defendants") each operate websites that include a search engine
21 for locating information on the internet.

22 68. On information and belief, the Non-Google Defendants pay Google in exchange
23 for Google providing access to its web searching platform. By utilizing the Google web
24 searching platform, the Non-Google Defendants display similar, if not virtually the same, results
25 of search queries as those displayed by Google. On information and belief, each of the Non-
26 Google Defendants also profit every time an Internet user clicks on any of the links provided by
27 these search results.

28

1 69. Google has agreed, orally or in writing, to indemnify and provide a defense to each
2 of these Non-Google Defendants.

3 **F. Harm To Plaintiff**

4 70. American Blind has not given the Defendants permission or a license to utilize the
5 American Blind Marks for the promotion or sale of products and services of American Blind's
6 competitors.

7 71. Defendants and certain of American Blind's competitors seek to exploit the hard-
8 earned popularity and success of American Blind and the products and services sold by American
9 Blind under the famous American Blind Marks. In an attempt to illegally capitalize on the
10 American Blind Marks, Defendants have permitted and promoted certain of American Blind's
11 competitors to bid on advertising keywords so that their websites are listed in a position above or
12 next to American Blind's link when a consumer types a search query identical or substantially
13 similar to the American Blind Marks.

14 72. For example, a consumer can run a search on Google's search engine for
15 "American Blind and Wallpaper Factory," one of American Blind's registered marks, with the
16 obvious intent of locating and visiting American Blind's website. Nonetheless, the first link
17 shown on the Google search "results" page may be for one of American Blind's competitors, such
18 as theblindfactory.com. (See e.g., Exhibit C). Similarly, if a consumer types "American Blinds"
19 in the Google search bar, they may be directed to a "results" page in which the first two
20 companies listed at the top are direct competitors – Justblinds.com and EZblinds.com – as are at
21 least six of the eight companies – SelectBlinds.com, Blinds.com, eDirectBlinds.com,
22 Homedepot.com, NetShutters.com and StarDecorating.com – listed along the margin. (See, e.g.,
23 Exhibit D). Search Google for "americanblinds.com" – a domain name owned by and registered
24 to American Blind – and the consumer is directed to search "results" that list EZblinds.com and
25 JustBlinds.com at the top of the page. (See, e.g., Exhibit E). If the consumer clicks on any of
26 these competing websites, Google will be entitled to a fee from these competitors. In addition,
27
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1 these competitors will have obtained a customer, or potential customer, solely as a result of the
2 goodwill and reputation associated with American Blind and its products and services.

3 73. A similar, though different and possibly more confusing, search “result” occurs
4 when a consumer uses one of the Non-Google Defendants’ websites to conduct a Google
5 “powered” or “enhanced” search (*i.e.*, where Google provides the underlying search engine). For
6 example, a consumer who conducts a search for “American Blinds” from Netscape’s website is
7 confronted misleadingly with a host of competitor’s advertisements. Some competitors’
8 advertisements are called “Sponsored Links,” while others are given priority treatment with
9 graphics at the very top of the search “results” page. (*See, e.g.*, Exhibit F.) Again, this diversion
10 and confusion is the intended result – allowing American Blind’s competitors to intercept
11 consumers looking for American Blind.

12 74. The Defendants’ search engines are designed and intended to divert and lure
13 consumers from the websites that they intend to visit – *e.g.*, the American Blind websites – to
14 other websites owned by competing advertisers such as BlindsGalore.Com, et. al. By design, the
15 Defendants profit when consumers click on competitors’ links and visit the advertisers’ sites.
16 None of this revenue, however, is paid to the owner of the trademark for whom the consumer was
17 searching. Thus, Defendants and their advertisers are wrongfully profiting off of the goodwill
18 and reputation of trademark owners such as American Blind.

19 75. Defendants’ search engines are deceptive and mislead consumers into believing
20 falsely that the website links to which they are directed via manipulated search “results” links are
21 sponsored or authorized by and/or originating from American Blind, the trademark owner for
22 which the user was searching.

23 76. The manipulated search “results” engineered by the Defendants fail to inform the
24 consumers that the companies listed therein may have no relationship with – and, indeed, may
25 directly compete with American Blind – the trademark owner for which the user was searching.

26 77. The manipulated search engine “results,” which are in fact advertisements sold by
27 Defendants based on a search utilizing the American Blind Marks, dilute the ability of the
28 American Blind Marks to identify American Blind as a source of its goods and services.