

1 Robert N. Phillips (SBN 120970)
 Ethan B. Andelman (SBN 209101)
 2 HOWREY SIMON ARNOLD & WHITE, LLP
 525 Market Street, Suite 3600
 3 San Francisco, CA 94105
 Telephone: (415) 848-4900
 4 Facsimile: (415) 848-4999

5 David A. Rammelt (Admitted *Pro Hac Vice*)
 Susan J. Greenspon (Admitted *Pro Hac Vice*)
 6 KELLEY DRYE & WARREN LLP
 333 West Wacker Drive, Suite 2600
 7 Chicago, IL 60606
 Telephone: (312) 857-7070
 8 Facsimile: (312) 857-7095

9 Attorneys for Defendant/Counter-Plaintiff
 AMERICAN BLIND AND WALLPAPER
 10 FACTORY, INC.

11 UNITED STATES DISTRICT COURT
 12 NORTHERN DISTRICT OF CALIFORNIA

13 GOOGLE INC., a Delaware corporation,

14 Plaintiff,

15 v.

16 AMERICAN BLIND & WALLPAPER
 FACTORY, INC., a Delaware corporation
 d/b/a decoratetoday.com, Inc.; and DOES 1-
 17 100, inclusive,

18 Defendants.

Case No. C 03-5340-JF (EAI)

**DECLARATION OF JEFFREY
 ALDERMAN IN SUPPORT OF
 AMERICAN BLIND & WALLPAPER
 FACTORY INC.'S OPPOSITION TO
 GOOGLE INC.'S MOTION FOR
 SUMMARY JUDGMENT**

19
 20 AMERICAN BLIND & WALLPAPER
 FACTORY, INC., a Delaware corporation
 d/b/a decoratetoday.com, Inc.,

21 Counter-Plaintiff,

22 v.

23 GOOGLE, INC.,

24 Counter-Defendants/
 25
 26
 27
 28

Date: February 16, 2007
 Time: 9:00 a.m.
 Courtroom: 3
 Hon. Jeremy Fogel

1 I, JEFFREY ALDERMAN, declare as follows:

2 1. I am the Director of Business Development and E-Commerce for American
3 Blind and Wallpaper Factory, Inc. (“American Blind”). I am fully familiar with the facts set forth
4 herein, and, if called to testify, could do so competently.

5 2. This Declaration is submitted in opposition to Google, Inc.’s Motion for
6 Summary Judgment.

7 3. American Blind is one of the largest direct-to-consumer retailers of custom
8 order window treatments and wall coverings in the United States.

9 4. American Blind, in conjunction with its predecessor companies, has been
10 in the home decorating business for over a half century.

11 5. American Blind promotes, offers for sale and sells its home decorating
12 products and related services across the United States through its website, a network of thousands
13 of on-line marketing affiliates, product catalogues, a shop at home service, a showroom in
14 Michigan, and toll-free telephone numbers.

15 6. Over the history of the American Blind’s business, over eight million
16 customers and potential customers have shopped for home decorating products such as draperies,
17 window blinds and wallpaper with American Blind.

18 7. American Blind’s net sales of its products and services over the past five
19 years well exceeds five hundred million dollars.

20 8. American Blind long ago adopted and used, and has continued to use, the
21 names and marks AMERICAN BLINDS (and/or AMERICAN BLIND, identified herein as
22 “AMERICAN BLINDS”), AMERICAN BLIND FACTORY, DECORATETODAY,
23 AMERICAN BLIND AND WALLPAPER, and AMERICAN BLIND & WALLPAPER
24 FACTORY (hereinafter collectively identified as the “American Blind Marks”) in connection
25 with home decorating products and related services.

26 9. American Blind has long featured the term “AMERICAN” within the
27 American Blind Marks.

28

1 catalogue is attached as Exhibit C hereto. American Blind's sales catalogue identifies American
2 Blind's products only by product type, color number, color name and size.

3 16. American Blind's sales agents use sales scripts when answering calls from
4 customers using these catalogues. These sales scripts repeatedly identify American Blind and the
5 products and services offered in the catalogues using the AMERICAN BLINDS mark. A sales
6 script used for responding to telephone calls is attached as Exhibit D hereto.

7 17. The AMERICAN BLINDS mark is the display URL for the American
8 Blind's Website. The mark appears prominently on each of the "blinds" category pages of the
9 American Blind's Website.

10 18. American Blind owns dozens of domain name registrations incorporating
11 the AMERICAN BLINDS mark, all of which drive traffic to the American Blind Website.

12 19. American Blind uses the AMERICAN BLINDS mark in e-mail campaigns
13 and in keyword advertising.

14 20. American Blind's on-line sales affiliates actively use the name and mark
15 AMERICAN BLINDS on and in connection with websites advertising and promoting American
16 Blind's products and services and to drive traffic to the American Blind's Website.

17 21. The private label blinds sold by American Blind, together with product
18 samples of such blinds sent to prospective customers, identify and mark American Blind's
19 products with the designation

20 **American**

21 Blinds, Wallpaper & More

22 together with the AMERICAN BLINDS mark (as the display URL for the American Blind's
23 Website). Examples of product samples and the labels affixed to the bottom of the private label
24 blinds are attached as Exhibit E hereto.

25 22. No other name or designation appears anywhere on or in connection with
26 the products or the packaging for the products. The sales and shipping invoices accompanying
27 American Blind's product samples and American Blind's private label products identify
28

1 American Blind's products only by product type, color number, color name and size. Examples
2 of shipping invoices for American Blind's private label blinds are attached as Exhibit F hereto.

3 23. The AMERICAN BLIND FACTORY mark has been used on and in
4 connection with window blinds and advertising and promotion for American Blind's products and
5 services. American Blind owns dozens of domain name registrations incorporating the
6 AMERICAN BLIND FACTORY mark, iterations of the AMERICAN BLIND FACTORY mark,
7 or which use the AMERICAN BLIND FACTORY mark as a formative, all of which drive traffic
8 to the American Blind Website.

9 24. American Blind uses the AMERICAN BLIND FACTORY mark in
10 keyword advertising. American Blind's on-line sales affiliates actively use the name and mark
11 AMERICAN BLIND FACTORY on and in connection with websites (including metadata and
12 keyword advertising) to advertise and promote American Blind's products and services and to
13 drive traffic to the American Blind's Website.

14 25. American Blind used the DECORATETODAY mark as the destination
15 URL for American Blind Website (www.decoratetoday.com) and the mark is used on American
16 Blind's website ("American Blinds Wallpaper and More brings you decoratetoday.com").

17 26. American Blind uses the DECORATETODAY mark in e-mail campaigns
18 and in keyword advertising, and the DECORATETODAY mark is used by American Blind's
19 affiliates advertising and promoting American Blind's products and services.

20 27. American Blind uses the AMERICAN BLINDS, WALLPAPER & MORE
21 mark on American Blind's sales catalogues, the American Blind's Website, and is the only mark,
22 in addition to AMERICAN BLINDS, appearing on American Blind's products.

23 28. The AMERICAN BLIND & WALLPAPER mark has been in use since
24 1986. The AMERICAN BLIND & WALLPAPER mark is used on order forms for use in
25 purchasing American Blind's products and services.

26 29. American Blind owns dozens of domain name registrations incorporating
27 the AMERICAN BLIND [AND/&] WALLPAPER mark, all of which drive traffic to the
28 American Blind Website. American Blind uses the AMERICAN BLIND [AND/&]

1 WALLPAPER mark in keyword advertising. The AMERICAN BLIND [AND/&]

2 WALLPAPER mark is one of the best performing keywords used by American Blind in its
3 Internet advertising.

4 30. American Blind's on-line sales affiliates actively use the name and mark
5 AMERICAN BLIND & WALLPAPER on and in connection with websites (including metadata
6 and keyword advertising) to advertise and promote American Blind's products and services and
7 to drive traffic to the American Blind Website.

8 31. American Blind makes widespread use of the AMERICAN BLIND &
9 WALLPAPER FACTORY mark. The mark is used in multiple different advertising medium,
10 including yellow pages listings, magazine advertisements, catalogue display cases, and postcards
11 mailed to customers and prospective customers. The AMERICAN BLIND & WALLPAPER
12 FACTORY mark appears on company letterhead, order forms, business cards, and apparel.
13 American Blind's showroom is identified on both exterior and interior signage under the
14 AMERICAN BLIND & WALLPAPER FACTORY mark. Examples of such use are attached as
15 Exhibit G hereto.

16 32. American Blind's catalogues have used the AMERICAN BLIND &
17 WALLPAPER FACTORY mark.

18 33. The AMERICAN BLIND & WALLPAPER FACTORY mark is used
19 throughout the American Blind's Website. American Blind owns dozens of domain name
20 registrations incorporating the AMERICAN BLIND & WALLPAPER FACTORY mark, all of
21 which drive traffic to the American Blind Website. American Blind uses the AMERICAN
22 BLIND & WALLPAPER FACTORY in keyword advertising and long used the AMERICAN
23 BLIND & WALLPAPER FACTORY mark in e-mail campaigns.

24 34. American Blind's on-line sales affiliates actively use the name and mark
25 AMERICAN BLIND & WALLPAPER FACTORY on and in connection with websites
26 (including metadata and keyword advertising) to advertise and promote American Blind's
27 products and services and to drive traffic to the American Blind's Website.

28

1 35. American Blind has distributed between ten and twelve million mailings
2 (in the form of catalogues and postcards) nationwide in each of the past ten years bearing the
3 American Blind Marks.

4 36. American Blind maintains a database of over five million e-mail addresses,
5 which it uses for extensive e-mail campaigns run multiple times throughout each month.

6 37. Since 2001, American Blind has spent in excess of fifty million dollars
7 (\$50,000,000) advertising, marketing and promoting its goods and services under the American
8 Blind Marks in medium other than the Internet (“Off-Line Marketing”).

9 38. This amount is in addition to the tens of millions of dollars invested by
10 American Blind in such marketing of the American Blind Marks in the fifteen years the marks
11 were in use before 2001.

12 39. American Blind’s Off-Line Marketing efforts using the American Blind
13 Marks include television and radio commercials, direct mail pieces (including catalogues and
14 postcards), newspaper and magazine advertising, Yellow Pages advertising, trade shows, third
15 party package insert programs, third party catalogue “blow-in” programs, cooperative advertising
16 mailings, and magazine advertising.

17 40. American Blind also promotes the American Blind Marks through its third
18 party partner programs. Under such programs, American Blind advertises its products and
19 services bearing the American Blind Marks in print programs through partners such as the U.S.
20 Postal Service, G.M.A.C. Real Estate, and American Express.

21 41. As part of the relationship with Linens N’ Things, American Blind has
22 kiosk displays in over five hundred (500) Linens N’ Things retail stores located throughout the
23 country. The American Blind Marks are used in Linens N’ Things package insert programs, and
24 co-branded catalogues incorporating American Blind’s products and services sold under the
25 American Blind Marks have been distributed multiple times each year to the over twenty million
26 Linens N’ Things customers on Linens N’ Things mailing list. A copy of the agreement with
27 Linens N’ Things is attached as Exhibit H hereto.

28

1 42. Over fifty percent of American Blind's sales transactions are consummated
2 through the American Blind Website. The American Blind Website receives over thirty thousand
3 visits each day by customers or potential customers. American Blind makes over four hundred
4 thousand sales transactions over the American Blind Website each year.

5 43. American Blind has spent over ten million dollars (\$10,000,000)
6 developing its website, and spends in excess of an additional one million dollars (\$1,000,000)
7 each year in maintaining, enhancing and updating its website.

8 44. American Blind since 2001 has spent over fifteen million dollars
9 (\$15,000,000) advertising, marketing and promoting its goods and services under the American
10 Blind Marks exclusively in Internet marketing programs ("Internet Marketing").

11 45. American Blind's Internet Marketing programs include email marketing,
12 affiliate campaigns, participating in on-line shopping networks and catalogue aggregation
13 programs, data feed programs, and paid search programs, namely, keyword advertising.

14 46. American Blind has to date paid Google over five million dollars
15 (\$5,000,000) to advertise products and services under the American Blind Marks.

16 47. Internet Marketing of the American Blind Marks also includes programs
17 with credit card companies such as Visa, MasterCard, and Discover Card which have featured
18 links to the American Blind Website. American Blind has a strategic alliance with Meredith
19 Corporation the result of which is a link to the American Blind Website appearing on the Better
20 Homes and Gardens website.

21 48. Target promotes American Blind as a "Featured Partner" on its website.
22 Target's on-line customers are directed to a co-branded website created by American Blind on
23 which products and services are advertised and offered for sale under the American Blind Marks.
24 Target has also sold American Blind products directly through Target's own website. Customers
25 searching the Target website using the American Blind Marks, such as AMERICAN BLINDS,
26 would receive search results identifying various styles and colors of American Blind's private
27 label products and purchase the same. A copy of the agreement with Target is attached as Exhibit
28 I hereto.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 26th day of January 2007, in Plymouth, Michigan.

/s/ Jeffrey Alderman
JEFFREY ALDERMAN

ATTESTATION AS TO CONCURRENCE

I, Ethan B. Andelman, 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 the signatory to this document.

/s/ Robert N. Phillips
Robert N. Phillips