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1 Q. So the idea is that if you are gonna lose them  
2 to your affiliate, it's because they are shopping for  
3 something other than your products or not shopping?

4 A. I guess that's -- if we are gonna -- repeat  
5 that for me, please.

6 Q. Is the idea of telling your affiliates they  
7 can't promote any of your competitors in order to assure  
8 that if a customer doesn't get through your affiliate to  
9 you, it's not because they are shopping for blinds with  
10 somebody else?

11 A. I don't think that's necessarily the case.  
12 The intent of taking affiliate just to our website and  
13 showing no competition, obviously, is we don't want to,  
14 obviously, promote our brand and spend the money we are  
15 spending to build our brand and have spent over the  
16 years -- you know, we don't want to just have the  
17 affiliate capture that traffic and then promote a  
18 blinds.com company and loose that customer to a  
19 competitor.

20 Q. Okay. In the case of affiliates who direct  
21 traffic directly to your website, is your policy  
22 as it sets here -- says here, that the affiliates cannot  
23 use americanblinds.com, americanwallpaper.com or  
24 decorate.com in their display U.R.L.?

25 A. That one point I would tell you again back to

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1 what we said earlier is it cannot be decorate.com,  
2 americanblinds.com, americanwallpaper.com directly in  
3 the front part of it.

4 And if we do see that, then we do police  
5 that and resolve that.

6 Now, I will tell you that if they want to  
7 say, you know, www.affiliatename.com, slash, and then  
8 one of these, then that's an okay policy.

9 Q. I see, and this is the policy even if it's an  
10 affiliate who actually directs someone directly to your  
11 website?

12 A. Correct.

13 Q. They still have to display their own U.R.L.?

14 A. They have to display their own U.R.L. or,  
15 again, as you know, after, you know, the affiliate  
16 name.com, slash, they can put, you know, one of these  
17 marks at the end of that.

18 Q. I see. Are you aware of Google's policy that  
19 requires advertisers to display the actual U.R.L. to  
20 which the user will be directed in their ad?

21 A. As part of their editorial guidelines?

22 Q. Yeah.

23 A. I have heard of that policy, yes.

24 Q. Doesn't requiring your affiliates to, in fact,  
25 direct traffic directly to you not to use these U.R.L.s

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1 violate that policy?

2 A. I am not familiar with that. I would have to  
3 discuss that with outside counsel.

4 Q. You can put that exhibit aside.

5 MR. PAGE: Three.

6 MR. GARRITY: That was 3.

7 MR. PAGE: Mark as Exhibit 4.

8 (Mark'd for identification  
9 was Deposition Exhibit No. 4.)

10 Q. (BY MR. PAGE) Exhibit 4 is a multi-page  
11 document entitled 2005 S.E.O. Strategy Recommendations,  
12 1/13/2005, ABWF046215 through 221?

13 Do you recognize this document?

14 A. Yes, I do.

15 Q. Is this a document you prepared?

16 A. Yes.

17 Q. Take a look at the third to last page, 046219,  
18 the one with the Venn diagram, Venn, V-e-n-n.

19 This is a page that's titled Search Term  
20 Expansion; and under Generic Terms, it says, browsers  
21 search by generic terms; and under Specific Terms, it  
22 says, buyers search by specific terms.

23 What do those two comments mean?

24 A. Those two comments really refer to people are  
25 at different stages along the buying process.

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1 Obviously, you have people that are the,  
2 you know, I will call the top part of the buying process  
3 funnel.

4 Some of those people may use generic,  
5 very generic, keywords, to help them kind of get down  
6 this buying funnel process.

7 Let me give you an example. A keyword  
8 like window treatments, a keyword like blinds, that's  
9 one phrase, you know, keyword, generic keyword.

10 Some of those people may know what they  
11 want; and some of those people may be at the top part  
12 of that shopping process funnel and in research mode to  
13 find what they are looking for, so to work their way  
14 down the funnel.

15 That is what I refer to as far as under  
16 the generic term the browsers and we do it every day.  
17 You know, we browse by, highest, you know, generally  
18 highest level terms, help me kind of work my way down  
19 to specifically, you know, what I am looking for in a  
20 lot of cases.

21 Under buyers use, again, specific terms,  
22 if somebody is typing in the word American Blinds,  
23 American Wallpaper, if somebody is typing in  
24 decoratetoday, that's a specific term, that person is  
25 in buying mode. They have seen that. They know

1 specifically what they want.  
 2 If somebody types in -- and I will give  
 3 you another example that's not a branded keyword --  
 4 Hunter Douglass two-inch wood blinds, that person has  
 5 done their homework, they have done their research.  
 6 Q. I see.  
 7 A. They have a good idea specifically what they  
 8 are looking for.  
 9 Q. I see.  
 10 A. So that's what I mean by those two.  
 11 Q. I see. So is that sort of the bottom line on  
 12 this, that the more specific a search term, the higher  
 13 the conversion rate? Is that it?  
 14 A. Besides branding, obviously, and, obviously,  
 15 that varies and it varies across the engine.  
 16 Q. That makes sense.  
 17 MR. PAGE: I will mark this as Exhibit 5.  
 18 (Mark'd for identification  
 19 was Deposition Exhibit No. 5.)  
 20 Q. (BY MR. PAGE) Exhibit 5 is a multi-page  
 21 document, ABWF48841 through 50, which consists of a  
 22 string of e-mails, the last of which is from -- the  
 23 last non redacted one is from Joe Charno to a number  
 24 of people, including yourself.  
 25 Do you recognize this document?

1 A. Yeah, I do recall this document.  
 2 Q. Is this, in fact, an e-mail -- a string of  
 3 e-mails that you received?  
 4 A. It appears so, yes.  
 5 MR. PAGE: Do you know the basis for the  
 6 redactions on this?  
 7 MR. GARRITY: I'm sorry. I don't.  
 8 Q. (BY MR. PAGE) Do you know what -- do you know  
 9 what is contained in the various pages that are redacted  
 10 at the back?  
 11 A. No, I don't.  
 12 Q. In this string of e-mails, Mr. Charno says on  
 13 March 28th, 2003, "We are going to move in a new  
 14 direction with our U.R.L." This is on the third page.  
 15 "Our new U.R.L. will be americanblinds.com."  
 16 By new U.R.L., is he referring to your  
 17 destination U.R.L.?  
 18 A. He is referring to -- I am not Joe, so I don't  
 19 know specifically, I guess, what he was referring to.  
 20 I would tell you, since this point in  
 21 time, we have made tremendous progress, especially from  
 22 a marketing standpoint, to move from decoratetoday.com  
 23 in marketing to americanblinds.com in this time.  
 24 This truly was a ripple effect. Around  
 25 this time is when we started putting americanblinds.com

1 on our catalogs, our postcards, all of our print media,  
 2 our TV commercials, e-mail, search.  
 3 It was also what we used in things like  
 4 Linens and Things stores and our program with Linens and  
 5 Things catalogs.  
 6 It was truly a ripple effect that took  
 7 place, again, logo wear, from business cards,  
 8 stationery, and et cetera.  
 9 Q. Is it currently the company's plan to phase out  
 10 the decoratetoday.com U.R.L.?  
 11 A. The company is in discussions right now of  
 12 going towards americanblinds.com. There is currently  
 13 talks about going to americanblinds.com for the  
 14 destination U.R.L.  
 15 For consistency, I will tell you that  
 16 there is also brand equity, however, built in  
 17 decoratetoday and has been built in decoratetoday  
 18 since 2000.  
 19 So, to say abandon it, I wouldn't say  
 20 necessarily abandon it, because there is brand equity  
 21 in that; but American Blinds in particular has, in my  
 22 opinion, and the company opinion here from Joe is  
 23 there is, again, I would say, more equity in American  
 24 Blinds than decoratetoday.  
 25 Q. So is it still an open question as to whether

1 American Blind is gonna continue to use the  
 2 decoratetoday.com U.R.L.?  
 3 A. I think, again, our management team has  
 4 discussed that with the new board members. I am sure  
 5 there is continued discussions around that and what it's  
 6 gonna take fully to migrate over, again.  
 7 So I would say, yes, it is in  
 8 discussions; but, again, it wouldn't be an abandonment  
 9 case.  
 10 Q. So, to shorten that, is it still an open  
 11 question as to whether you are gonna stop using it at  
 12 some point in time?  
 13 A. I believe it is an open question. Again, we  
 14 are making progress but it's an open question at this  
 15 point.  
 16 MR. PAGE: I will mark as Exhibit 6.  
 17 (Mark'd for identification  
 18 was Deposition Exhibit No. 6.)  
 19 Q. (BY MR. PAGE) Exhibit 6 is a two-page  
 20 document, ABWF046258 and 59, which appears to be a  
 21 printout from a data base or spreadsheet with a caption,  
 22 Ad Text Report; Date Range May 1, 2004 through May 24,  
 23 2004; Campaigns, all; AdWords Type, all.  
 24 Can you tell me what this document is?  
 25 A. Yeah. It appears to me as a report from

1 Google, which is an ad text or ad copy report, which  
 2 shows the title or headline description, line 1, line  
 3 2 and the display U.R.L. for each of these campaigns  
 4 and ad groups.

5 Q. Why does American Blind use different display  
 6 U.R.L.s in different ads?

7 A. Our customers internalize us and have  
 8 internalized us over the years as American Blinds,  
 9 American Wallpaper, decoratetoday, different marks; and  
 10 so, at this point in time, we used different marks based  
 11 on the ad group and the keywords associated inside of  
 12 that ad group.

13 Q. And you continue to do that today, correct?

14 A. We do do that today.

15 Q. If you are trying to, as you put it, make  
 16 progress, in moving away from the decoratetoday.com  
 17 brand to the American Blinds or American Wallpaper  
 18 brand, why do you continue to use decoratetoday.com as  
 19 a destination U.R.L. in ads?

20 A. That's a good question. In ads -- and this is  
 21 from '04, obviously. So what we have in place now is  
 22 different, and we do use decoratetoday today in some  
 23 ads.

24 We have got, for example, a separate ad  
 25 group for decoratetoday related brand keywords.

1 Q. Yeah. Let me reask it.

2 A. Sure.

3 Q. Based on that clarification, I think I used the  
 4 wrong terms.

5 Don't -- aren't you concerned that using  
 6 different display U.R.L.s on different ads on, for  
 7 example, Google will lead to conclusion as to what  
 8 the name of your company is?

9 A. No.

10 Q. Why not?

11 A. I would tell you that, again, if it's a blind  
 12 related keyword, window treatment related keyword, we  
 13 will use American Blinds.

14 If it's a wallpaper related keyword, we  
 15 will use American Wallpaper.

16 We do not believe there is confusion.  
 17 Our customers know us, again, as -- and over the past  
 18 20 years, have known us as American Blinds, American  
 19 Wallpaper, our customers and the previous buyers -- and  
 20 we talked about this in the Kaden studies earlier as  
 21 well -- associate our brand in most cases to what they  
 22 bought.

23 So, if somebody just bought blinds,  
 24 what's the name of the company? American Blinds,  
 25 American Blinds and wallpaper, American Blinds,

1 Why do we use that display U.R.L. in  
 2 those ad groups? So we are more relevant for the  
 3 searcher if they are typing in decoratetoday as one  
 4 word, as two words, with a space, dot com, any variation  
 5 of that. So we have a relevant ad up here.

6 I will also tell you that we have  
 7 decoratetoday associated with our, I would call it, And  
 8 More products, meaning products such as art, such as  
 9 area rugs, curtains, bedding.

10 You know, during the past, we attached  
 11 decoratetoday to those to show that decoratetoday brand  
 12 with those And More products.

13 Q. Are you concerned that using multiple different  
 14 destination U.R.L.s will cause confusion among consumers  
 15 as to the name of your company?

16 A. Again, today, it's one destination U.R.L.; and  
 17 that destination U.R.L. today that still resides on the  
 18 website is decoratetoday.

19 Q. But you display different destination U.R.L.s  
 20 in different Google ads, right?

21 A. Display. Just so we are clear on terminology  
 22 here, display U.R.L.s is what we use in the ads.  
 23 Destination U.R.L. is where they land on the website.

24 Q. Right.

25 A. So, to answer your question --

1 Wallpaper and More.

2 If somebody just bought wallpaper, a lot  
 3 of those customers refer to us as American Wallpaper,  
 4 American Wallpaper and Blinds, different derivatives;  
 5 but the commonality between that is American, associated  
 6 to the window treatments and wall coverings.

7 Q. And if your goal is to establish that  
 8 commonality, why would you continue to use decoratetoday  
 9 as a display U.R.L.?

10 A. Decoratetoday, there is brand equity that has  
 11 been built up over the last five years, roughly, with  
 12 decoratetoday. We have decoratetoday on a number of  
 13 our vendor agreements from several years ago. They are  
 14 still active agreements.

15 We have got decoratetoday posted  
 16 throughout the website. It is on the website. We  
 17 have got decoratetoday as the destination U.R.L.  
 18 Decoratetoday is in our natural search U.R.L. that  
 19 people see.

20 So there is brand equity built up over  
 21 time with that name.

22 Q. But aren't you concerned that that leads people  
 23 to not know that decoratetoday and American Blind are  
 24 the same company?

25 A. No, not at all, and I will tell you that, on

1 the website today, we have always had American Blinds  
 2 attached to decoratetoday. American Blinds brings you  
 3 decoratetoday.com.  
 4 We have always -- we have never had a  
 5 point in time that we haven't attached on the website  
 6 American Blinds, the company name, to decoratetoday.  
 7 MR. PAGE: Mark this as Exhibit 7.  
 8 (Mark'd for identification  
 9 was Deposition Exhibit No. 7.)  
 10 Q. (BY MR. PAGE) This is a multi-page document  
 11 beginning ABWF045830, two, three-page varied spreadsheet  
 12 that appears to be a spreadsheet printout, caption, Top  
 13 20 Process.  
 14 Can you tell me what this document is?  
 15 A. This document is a S.E.O. report.  
 16 Q. I'm sorry. A what report?  
 17 A. S.E.O., search engine optimization, report  
 18 that apparently is looking at results from Google.  
 19 This report is actually from a system that Joe Charno  
 20 built.  
 21 It's not from the Coremetrics report that  
 22 we looked at earlier. I am not sure how it's bringing  
 23 back -- it says Top 20 Process. I'm not real clear  
 24 here. Obviously, it's bringing back 30 terms, not 20.  
 25 So how it's --

1 Q. I see. So it's still sitting there but it  
 2 doesn't have current data in it?  
 3 A. I believe it still -- yes. I don't access it,  
 4 to be honest with you, now.  
 5 MR. PAGE: Should we get checked out?  
 6 MR. GARRITY: Sure.  
 7 MR. PAGE: Okay.  
 8 THE VIDEOGRAPHER: Off the record,  
 9 12:12:56 p.m.  
 10 (Recess taken.)  
 11 THE VIDEOGRAPHER: Back on the record  
 12 after a lunch break, 1:27:29 p.m.  
 13 MR. PAGE: Marked as Exhibit 8.  
 14 (Mark'd for identification  
 15 was Deposition Exhibit No. 8.)  
 16 Q. (BY MR. PAGE) Exhibit 8 is a three-page string  
 17 of e-mails marked GGLE00012372 through 74, the last of  
 18 which in time is on June 2nd of last year from you to  
 19 Britton Picciolini.  
 20 Do you recognize these documents?  
 21 A. Yes.  
 22 Q. Who is Britton Picciolini?  
 23 A. She was one of our Google account reps.  
 24 Q. In June of 2005, did you have Google disable  
 25 all log-ins for the American Blind account, other than

1 Q. Well, it's just like all those people who  
 2 attended one of the 15 top 10 law schools in America.  
 3 Do you know what the -- is the ranking on  
 4 here of position based on total clicks?  
 5 A. On page 1, that appears to be the case based on  
 6 these keywords that are here in 1 through 30.  
 7 Q. You said this was a system that Joe Charno put  
 8 together.  
 9 Do you know, is the data being picked up  
 10 from Coremetrics?  
 11 A. No.  
 12 Q. Is this data that's being picked up directly  
 13 from Google and from internally?  
 14 A. This -- the data to create this report, I will  
 15 tell you, was picked up -- it was a manual process and  
 16 it was a manual process to pick up the keyword level  
 17 click cost, click and cost data here from the engines  
 18 directly; and then we married that up to Vidi Emi, our  
 19 Vidi Emi web analytics company, which was prior to  
 20 Coremetrics.  
 21 Q. That's V-i-d-i E-m-i?  
 22 A. E-m-i.  
 23 Q. Okay. Does this system still exist?  
 24 A. This system does. We don't update the data  
 25 into this report. We just rely on core metrics.

1 your own?  
 2 A. I believe this is around the time that Joe  
 3 Charno left.  
 4 Q. Okay. I'm sorry. I misspoke. I didn't mean  
 5 your own. I meant Steve -- Mr. Katzman's, I believe.  
 6 A. Yes.  
 7 Q. Is the log-in stevek@americanblinds.com  
 8 Mr. Katzman's log-in?  
 9 A. That was the company log-in.  
 10 Q. Prior to this date, what other log-ins did  
 11 American Blind have with Google?  
 12 A. I would have to look in the account. I believe  
 13 that was the primary log-in that we used to access our  
 14 account.  
 15 Q. Why is it that you, as you say on the second  
 16 page at the bottom, needed to do some housekeeping and  
 17 reset our log-in info to your accounts?  
 18 A. Again, I believe that was as a result of Joe  
 19 Charno leaving. So it was really just a security  
 20 protocol that we do.  
 21 Q. Was there anyone other than Joe Charno that had  
 22 access to the prior log-in information that did not have  
 23 access to the new one?  
 24 A. Did not have access to the new one?  
 25 Q. Was there anybody eliminated from -- let me

1 restate it a little more coherently.  
 2 Was there anyone other than Mr. Charno  
 3 who -- whose access to your Google account ended as a  
 4 result of this change?  
 5 A. Not to my recollection.  
 6 Q. Did you have some concern that Mr. Charno would  
 7 continue to access American Blinds' Google account after  
 8 he left the company?  
 9 A. It's just company policy. Whenever somebody  
 10 leaves, that has access to any reporting system or  
 11 interface, that we, you know, deactivate their log-in  
 12 and change passwords.  
 13 Q. Okay. Since you have been at American Blind,  
 14 how many people have had access to American Blind's  
 15 Google account?  
 16 A. A number of people. I couldn't tell you. I  
 17 would say, off the top of my head, it's probably  
 18 roughly in the ballpark of half a dozen.  
 19 Q. Are all of those people still with the company  
 20 with the exception of Mr. Charno?  
 21 A. Obviously, Mr. Katzman is no longer there, as  
 22 well as Bill Smith.  
 23 Q. When did Mr. Smith leave?  
 24 A. I don't recall the timing of when he left.  
 25 Q. Approximately.

1 A. I would say around 2000, end of 2002, if I had  
 2 to take a guess.  
 3 Q. All right. At the time he left, did you reset  
 4 your Google password?  
 5 A. I believe we did change the password.  
 6 Q. And have you changed the password again since  
 7 Mr. Katzman left?  
 8 A. Yes.  
 9 Q. Put that aside.  
 10 MR. PAGE: I mark as Exhibit 9.  
 11 (Mark'd for identification  
 12 was Deposition Exhibit No. 9.)  
 13 Q. (BY MR. PAGE) Exhibit 9 is a multi-page,  
 14 four-page document beginning at GGLE00018021, a letter  
 15 to Carrie Chung at Google from Mr. Charno on it appears  
 16 to be February 8th, 2006 from the footer.  
 17 Have you seen this document before?  
 18 A. No, I have not.  
 19 Q. In this document, Mr. Charno brings to Google's  
 20 attention a company called BlindsGalore.com and  
 21 complains that they are operating three websites, all  
 22 leveraging the same data store, and then identifies the  
 23 three different U.R.L.s that lead to the same data  
 24 store.  
 25 Why did American Blind feel it needed to

1 bring that to Google's attention?  
 2 A. I believe at the time it was, it's my  
 3 recollection, Google's policy that a company could not  
 4 have multiple sites listed or, I would say, more than  
 5 one placement for that advertiser listed on Google.  
 6 Q. At the time American Blinds sent this letter to  
 7 Google, it was listing multiple visible U.R.L.s in its  
 8 own ads on Google, correct?  
 9 A. You know what, without going back and looking  
 10 at the ads that were in there, I couldn't recall.  
 11 Q. Well, we looked earlier at a listing from the  
 12 spring of 2004, in which you were using multiple visible  
 13 U.R.L.s, correct?  
 14 A. Multiple display U.R.L.s.  
 15 Q. Display, correct.  
 16 A. Which all link to the same site,  
 17 decoratetoday.com.  
 18 Q. Right.  
 19 A. I believe, in this scenario, these were  
 20 actually going to the different websites, even  
 21 though they were owned by the same company.  
 22 Q. I see. And do you see some sort of substantive  
 23 difference between those two situations?  
 24 A. Apparently, that was the case when this letter  
 25 was written; and, today, if I had to, you know, go back

1 and say, you know, can we use multiple display U.R.L.s,  
 2 again, we have one account, just so we are clear, with  
 3 Google. We have got one account.  
 4 Can we use multiple display U.R.L.s for  
 5 our one account? Yeah, as long as it goes to the one  
 6 site, one destination U.R.L.s.  
 7 At this point, they had three destination  
 8 U.R.L.s, which my understanding here was being operated  
 9 by the same company.  
 10 Q. Would -- if each of these three U.R.L.s, in  
 11 fact, landed at the same destination U.R.L., would you  
 12 have a problem with that?  
 13 A. I think what you are asking me is if we had --  
 14 can you clarify that, please?  
 15 Q. Suppose that instead of having the three  
 16 U.R.L.s, BlindsGalore.com, ezblinds.com and  
 17 austinanddunn.com, going to three different websites  
 18 with the same content, they had them all go to the same  
 19 website with the same content, would you have not  
 20 objected to that?  
 21 A. So if the three -- if I understand you  
 22 correctly -- and let me just rephrase that.  
 23 So, if these websites were display  
 24 U.R.L.s, in this scenarios, all linked to the same  
 25 destination U.R.L., would I have a problem with that?

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1 Q. Right, yeah.  
 2 A. I would tell you, if they were all bidding on  
 3 the same keyword like blinds, I would have a problem  
 4 with that.  
 5 Today, we have one placement. The  
 6 company has one Google account. We have got one  
 7 placement. We have asked Google when we have had --  
 8 when we have reported scenarios like this to Google --  
 9 and this so happens to be one, and we asked them if we  
 10 could have multiple ads for the same keyword. Their  
 11 answer was no.  
 12 Q. Okay. And is it your testimony that there is  
 13 never a circumstance in which an American -- two  
 14 different American Blind ads appear in response to a  
 15 single search on Google?  
 16 A. No, that's not what I said.  
 17 I said us, as an advertiser, on Google,  
 18 with our account, the one account that we have, cannot  
 19 have two ads that we pay for, ourselves, show up under  
 20 the same search result.  
 21 Q. I see. So you are drawing a distinction  
 22 between a situation where one of the ads is from an  
 23 affiliate?  
 24 A. Again, we have one account. Affiliates have  
 25 separate accounts with Google.

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1 Q. Is it ever the case that more than one ad is  
 2 triggered from American Blinds' account at the same  
 3 time?  
 4 A. Again, as an advertiser, we only have one ad  
 5 per keyword triggered or -- I'm sorry -- one ad for  
 6 that search result.  
 7 Q. What happens if a search matches more than one  
 8 of your criteria, one of your keywords?  
 9 For instance, suppose the search was for  
 10 American Blind and Wallpaper and you have one keyword  
 11 for American Blind and one keyword for American  
 12 Wallpaper, both would be triggered by that search,  
 13 correct?  
 14 A. Not on Google.  
 15 Q. Why not?  
 16 A. They only take one listing per advertiser for  
 17 that search result.  
 18 Q. I see. What was Google's response to this  
 19 letter?  
 20 A. Again, it's my first time seeing a copy of this  
 21 letter. I don't recall ever even seeing a response at  
 22 all regarding this issue around this time period.  
 23 Q. Okay. Were you aware of this -- were you aware  
 24 of the issue with BlindsGalore prior to today?  
 25 A. Yes.

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1 Q. Do you know whether that issue was resolved in  
 2 any way?  
 3 A. I will tell you that BlindsGalore participates  
 4 very aggressively in the paid search arena.  
 5 During this time period, they were also  
 6 aggressively participating in paid search with ezblinds  
 7 and dunnblinds. I have not seen ezblinds or -- I'm  
 8 sorry -- dunnandaustin on paid search in a while.  
 9 Q. So, as far as you know, the problem that you  
 10 were complaining about in this letter is not current --  
 11 is not still happening?  
 12 A. To my knowledge, sitting here today, again, I  
 13 would see BlindsGalore participate very heavily.  
 14 I do not see ezblinds and austinanddunn  
 15 participate in paid search.  
 16 Q. But you have no knowledge as to why that  
 17 happened?  
 18 A. Why what happened?  
 19 Q. Why now you don't see ezblinds or austinanddunn  
 20 and you used to?  
 21 A. No, I don't recall.  
 22 MR. PAGE: Mark as Exhibit 10.  
 23 (Mark'd for identification  
 24 was Deposition Exhibit No. 10.)  
 25 Q. (BY MR. PAGE) Exhibit 10 is a three-page

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1 string of e-mails beginning at ABWF001304, which, in  
 2 turn, also bears some other Bates numbers, the last  
 3 in time being an e-mail from ByDesign/USA Wallpaper  
 4 to Susan Greenspon with a cc to  
 5 lawz414@buckinghamlaw.com, Subject, Re: USA Wallpaper.  
 6 Have you seen this document before?  
 7 A. No, I haven't.  
 8 Q. Are you familiar with any dispute between  
 9 American Blind and USA Wallpaper concerning paid search?  
 10 A. USA Wallpaper is a competitor of ours.  
 11 During the previous week when I was  
 12 educating myself regarding the lawsuit for this, I  
 13 recall seeing just the name USA Wallpaper pop up; but I  
 14 am not familiar with this document.  
 15 Q. Are you familiar with any dispute between  
 16 American Blind and USA Wallpaper concerning USA  
 17 Wallpaper ads showing up on what you considered your  
 18 brand as keywords?  
 19 A. There was a point that I do recall hearing  
 20 about USA Wallpaper, as far as showing up on our brand  
 21 keywords. I did see them show up on brand keywords.  
 22 We have, you know, I would say a lot of negative  
 23 keywords loaded on the search engines.  
 24 I believe USA Wallpaper is one of those  
 25 negative keywords in our program, if my memory serves me

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1 correctly.

2 Q. Do you know if USA Wallpaper has put in place

3 negative keywords in their Google campaigns to avoid

4 appearing on your trade names?

5 A. I don't recall. I will tell you that we have

6 literally dozens of settlement agreements in place that

7 we have reached with our other companies; and, in those

8 cases, I would tell you that American Blinds has

9 come to a settlement and, I would say, one, a lot of

10 those settlement agreements that we currently have in

11 place.

12 I am not familiar with the details of

13 them. The details for any litigation that we had was

14 between Steve Katzman and our outside counsel.

15 Q. Do you know whether there was any litigation

16 between American Blind and USA Wallpaper?

17 A. I don't recall.

18 Q. Do you know whether there has ever been any

19 litigation between USA Wallpaper and American Blinds?

20 No. I'm sorry. I just asked that

21 question.

22 MR. PAGE: Mark as Exhibit 11.

23 (Mark'd for identification

24 was Deposition Exhibit No. 11.)

25 Q. (BY MR. PAGE) Exhibit 11 is a five-page

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1 document beginning at ABWF000227, the first page of

2 which is an e-mail from Mr. Charno to Mr. Katzman

3 reading, "Re: Country Curtains. Steve: Country

4 Curtains is not even a search term for us in Google. We

5 are showing up due to the phrase/broad match on

6 curtains," signed Joe.

7 Are you familiar with a dispute between

8 American Blind and a company called Country Curtains?

9 A. No, I am not.

10 Q. Do you know whether Country Curtains -- whether

11 any litigation ensued between Country Curtains and

12 American Blinds?

13 A. To my recollection, again, I have never seen

14 this; and I am not aware of this.

15 Q. You mentioned a minute ago that American Blind

16 puts in place negative keywords.

17 Is the purpose of those negative keywords

18 to avoid appearing on searches for your competitor's

19 trade names?

20 A. We have some competitors as negative keywords.

21 We use negative keywords also to better target our

22 program and basically filter out, you know, your

23 unqualified traffic. We have involved negative

24 keywords in all the engines over the years.

25 Q. Is it your policy to proactively put in place

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1 negative keywords for any of your competitors' trade

2 names?

3 A. Again, we have a number of our competitors as

4 negative keywords in our programs.

5 Q. I understand that.

6 My question is whether that is something

7 you do on your own or only when the competitor demands

8 that you do it?

9 A. Negative keywords are added when, as far as

10 negative keywords are added to our program, as it's

11 brought to my attention.

12 If outside counsel tells us, if our CEO

13 tells us, Steve, or Joel, at this point, tells us.

14 Do we target competitors' keywords? No,

15 not at all, we don't target competitors' keywords.

16 Q. Do you consider bidding on the keyword

17 wallpaper to be targeting USA Wallpaper?

18 A. No.

19 Q. Why not?

20 A. If I was bidding on the keyword USA Wallpaper,

21 that would be targeting USA Wallpaper.

22 Q. But if you were just bidding on the term

23 wallpaper, it would not be targeting USA Wallpaper?

24 A. Wallpaper for us is 20 plus percent of our

25 business and has been over the past 20 years.

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1 Q. Do you know what percentage of USA Wallpaper's

2 business wallpaper is?

3 A. I do not.

4 Q. Is it a fair assumption that they sell

5 wallpaper?

6 A. I would assume so.

7 Q. Do you consider it to be an infringement of

8 their trademark rights if you place an ad for wallpaper

9 with a broad -- if you place an ad keyed on the term

10 wallpaper on Google and, as a result, your ads appear

11 when people search for USA Wallpaper?

12 A. Can you rephrase that question, please?

13 Q. Do you feel that if American Blind keys an

14 ad off the word wallpaper and, as a result, an

15 American Blind ad appears when a user types in the

16 search USA Wallpaper, do you consider that to be an

17 infringement of USA Wallpaper's rights by you?

18 A. I must be missing something there. I am having

19 a tough time with that question.

20 Q. Let me see if I am ask it a different way.

21 MR. GARRITY: Broad search, you mean that

22 kind of a thing?

23 MR. PAGE: Yeah.

24 Q. (BY MR. PAGE) Do you think it is okay to have

25 your ads appear keyed off the word wallpaper in response

1 by a search from a user by USA Wallpaper?  
 2 A. A search from a user for USA Wallpaper? If  
 3 it's a broad match such as wallpaper that we have in the  
 4 program -- let me just make sure I understand you -- and  
 5 somebody -- you are saying if somebody types in the  
 6 search term USA Wallpaper --  
 7 Q. USA Wallpaper.  
 8 A. -- and we pop up?  
 9 Q. Yeah.  
 10 A. No.  
 11 Q. You think that's perfectly fair for you to do?  
 12 A. We are not targeting USA Wallpaper at all.  
 13 Ideally, they could add us as a negative keyword; or,  
 14 ideally, Google could not allow is to have them show up  
 15 on any of our American Wallpaper related or American  
 16 Blinds related keywords.  
 17 Q. Have you ever asked USA Wallpaper to use -- to  
 18 add what you claim to be your trademarks as negatives in  
 19 their campaigns?  
 20 A. I have had no communications at all with USA  
 21 Wallpaper. As former people, Steve Katzman or Joe  
 22 Charno, have had communications with them. By looking  
 23 at this e-mail, I would say they have had  
 24 communications.  
 25 Q. Okay.

1 A. And looking back at this e-mail, I would tell  
 2 you too it appears that this is in regards to American  
 3 Blinds and Wallpaper keywords and decoratetoday  
 4 keywords, not American Wallpaper.  
 5 MR. PAGE: A little bit of housekeeping  
 6 here. Sorry.  
 7 Exhibit 12.  
 8 (Mark'd for identification  
 9 was Deposition Exhibit No. 12.)  
 10 Q. (BY MR. PAGE) Sorry. A multi-page document  
 11 beginning ABWF008762 is a letter from Stephanie Carter  
 12 at the august firm of Kelley Drye and Warren to the  
 13 Commissioner for Trademarks beginning May 2nd, 2005,  
 14 responding to Office Action Number 1 concerning the  
 15 American Blind's mark.  
 16 Have you seen this document before?  
 17 A. No, I haven't.  
 18 Q. On the second page of the document, there is a  
 19 section entitled Likelihood of Confusion, in which your  
 20 counsel tells the trademark office that, "The registrant  
 21 of the U.S. Registration number 2,186,728 (the Draperies  
 22 mark)" -- which is apparently a reference to American  
 23 Blinds and Draperies and Design -- "and Applicant" --  
 24 which is American Blind -- "previously entered into that  
 25 certain Settlement Agreement, dated February 29th, 2000,

1 in which the parties resolved any issues of confusion  
 2 and the registrant consented to the use of the subject  
 3 mark by Applicant."  
 4 Are you familiar with a settlement  
 5 agreement between your company and American Blinds and  
 6 Draperies and Design?  
 7 A. If you can just give me a second. I do -- I  
 8 am familiar. I did run across, I believe, that name in  
 9 settlement agreements this week.  
 10 My understanding of the settlement  
 11 agreements that American Blinds entered into with  
 12 American Blinds and Draperies was the following:  
 13 American Blinds and Draperies had to  
 14 change their name on their website to American Draperies  
 15 and Blinds.  
 16 They also had to notify the search  
 17 engines to no longer use American Blinds and Draperies  
 18 and that they were using American -- I believe it was  
 19 americandraperies.com, and they wouldn't participate  
 20 in the paid search space under American Blinds.  
 21 Q. I see. Had there been a lawsuit filed  
 22 between -- sorry. Strike that.  
 23 Had your company previously filed a  
 24 lawsuit against -- let's call them American -- if I call  
 25 them American Draperies, will you understand that's who

1 I am referring to?  
 2 A. Yes.  
 3 Q. Had there been a lawsuit filed between American  
 4 Blind and American Draperies?  
 5 A. I know there was a settlement reached.  
 6 Q. My question is whether that settlement  
 7 was reached before or after a lawsuit was filed?  
 8 If you don't know, you don't know.  
 9 A. I don't know the period of time.  
 10 Q. In that settlement agreement, did American  
 11 Blind agree to do or not do anything?  
 12 A. You know, from what I can recall -- I don't  
 13 recall if there was -- what the details  
 14 of it were. I have to consult with outside counsel  
 15 or Steve Katzman, who was part of it at that time.  
 16 Q. Do you know if in the settlement agreement  
 17 between American Blind and American Draperies any  
 18 money changed hands in either direction?  
 19 A. Not to my knowledge.  
 20 MR. PAGE: I did make that 12, didn't I?  
 21 MR. GARRITY: Yes.  
 22 MR. PAGE: Obviously, for the record, as  
 23 we have discussed off line, it's our position that  
 24 that settlement agreement and any other confidential  
 25 settlement agreement should have been produced to us in



1 advance of this deposition; and we would reserve our  
2 rights to recall the witness once we have the documents.

3 MR. GARRITY: Understood.

4 MR. PAGE: I also understand I am just  
5 shooting the messenger.

6 I have no idea why some subset of these  
7 don't have staples.

8 MR. PAGE: Let me mark as Exhibit 13.  
9 (Mark'd for identification  
10 was Deposition Exhibit No. 13.)

11 Q. (BY MR. PAGE) Exhibit 13 is a multi-page set  
12 of documents starting at ABWF048405 going through 415.

13 The first page of which consists of a  
14 letter from Dawda, D-a-w-d-a, Mann, M-a-n-n, Mulcahy,  
15 M-u-l-c-a-h-y, and Sadler, S-a-d-l-e-r, to Jim Buch  
16 perhaps, B-u-c-h, who is the CEO of 3 Day Blinds; and  
17 this is what's commonly referred to as a cease and  
18 desist letter from counsel for American Blind and  
19 Wallpaper Factory, Inc., to 3 Day Blinds.

20 Have you seen this document before? I'm  
21 sorry. It's dated June 12th, 2006.

22 A. I don't recall seeing this document before.

23 Q. Who are Dawda, Mann, Mulcahy and Sadler?

24 A. They are our local outside counsel. We use  
25 them to help -- help police our brand in regards to paid

1 keywords on paid search.

2 Q. Okay. Can you tell from Exhibit A what the  
3 keyword is that 3 Day Blinds bid on?

4 A. I can't tell based on looking at this.

5 Q. Do you have any reason to think that they bid  
6 on American Blinds rather than simply American or  
7 blinds?

8 A. Again, by looking at a screen shot, I can't  
9 say.

10 Q. If you can't say by looking at a screen shot,  
11 how is it you know that 3 Day Blinds has done  
12 anything you consider to be infringement of your  
13 rights?

14 A. If I were to do a search and put parentheses  
15 around American Blinds and they still showed up, then  
16 it would be fairly safe to say that they were bidding  
17 on that exact keyword, American Blinds.

18 Q. I see. And is it your practice to do that  
19 before turning over searches to outside counsel?

20 A. I do go through that process. Scot also goes  
21 through that process, calls up the company, understands  
22 how they are targeting and resolves.

23 Q. If you could turn to the fourth page of this  
24 letter, which is captioned Settlement Agreement, there  
25 is a list of terms which this draft agreement would

1 search programs.

2 I will tell you, if there is an issue  
3 that arises -- we police our brands daily. If there  
4 is an issue that arises regarding American Blinds,  
5 decoratetoday, any of our marks, we -- our process is to  
6 take a screen shot capture.

7 We send that screen shot capture to Scot  
8 Storrie, who is a member of this firm.

9 He drafts a cease and desist letter,  
10 contacts the individual, and follows up with them  
11 accordingly.

12 Q. Are you familiar with the -- with a dispute  
13 between American Blind and 3 Day Blinds concerning a  
14 Google search?

15 A. Again, I have not seen this document before.  
16 Obviously, the dispute appears on page 3 with the word  
17 American Blinds.

18 Q. By that you are referring to Exhibit A, which  
19 is a Google screen shot?

20 A. Yes.

21 Q. Have you seen 3 Day Blind searches before  
22 this?

23 I mean, is this an issue you have been  
24 aware of before seeing this letter?

25 A. I have seen 3 Day Blinds pop up on our brand

1 prohibit the use of as keywords.

2 Do the settlement agreements that you  
3 have reached with competitors typically include this  
4 list of terms?

5 A. For purposes of settlement agreements regarding  
6 paid search programs, that's my understanding.

7 Obviously, there has been other  
8 settlement agreements taken place for other issues.

9 The new ones that we are catching since I  
10 have been working with Scot, really since the May time  
11 period, it's a form letter.

12 Q. So this list is substantially the same in each  
13 case?

14 A. Again, as of May, as of my time working with  
15 Scot, this is a form letter. So, again, I have not seen  
16 all of them in detail.

17 Q. Is it your company's position that anyone  
18 keying a search off the term American Wallpaper is  
19 infringing your company's rights?

20 A. American Wallpaper has been a mark and a brand  
21 that our customers have come to believe and really take  
22 ownership of in their minds over the past 20 years.

23 It's a mark that people in the custom  
24 wall coverings business and wallpaper for the past 20  
25 years have come to recognize and it's established.

1 Q. Is it your -- is it American Blind's position  
2 that anyone searching for the words American Wallpaper  
3 is looking for your company?

4 A. I would say, yes.

5 Q. Have you ever done anything to study whether  
6 that's true?

7 A. We have not done any specific studies for that  
8 besides one that I can recall of, which I believe  
9 Michael testified to regarding American Wallpaper, which  
10 is just a study that he conducted, himself, a number of  
11 years ago.

12 Q. Uh-huh.

13 And that study, in fact, revealed that a  
14 third of the people searching for -- a third of the  
15 people who came to your website after searching for  
16 American Wallpaper weren't looking for your company but

1 anyone who did not choose to come to your website  
2 after searching for American Wallpaper, correct?

3 A. Again, I believe they would have to click  
4 through one of the keywords to come to our website.

5 Q. And, over 30 percent of those people were  
6 looking for Americana themed wallpaper, correct?

7 A. Based on this data, that's what I am reading  
8 here.

9 Q. And is it American Blind's position that your  
10 competitors are barred from advertising to those 30  
11 percent of the people who are searching for Americana  
12 themed wallpaper?

13 A. We do carry, I will tell you, American themed  
14 wallpaper and have the largest selection of Americana  
15 themed wallpaper of anyone in the industry, as well.

16 Q. Does that mean that no one else in the world

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1 And your e-mail says, "Carrie/Jenny, we  
 2 noticed that wallpaperwholesaler doesn't allow users to  
 3 click back to Google. This is a violation of Google's  
 4 policy. Is this correct?"  
 5 Do you regularly bring to Google's  
 6 attention violation of their policies by your  
 7 competitors?  
 8 A. We do, as we catch them and are aware of  
 9 them.  
 10 Q. And is Google typically responsive when you  
 11 do bring these things -- these issues to their  
 12 attention?  
 13 A. Under this particular example, I would tell you  
 14 that Google was responsive. Google has not always been  
 15 responsive.  
 16 I wish we knew all the black box rules at  
 17 Google but we don't.  
 18 Q. You and everyone else.  
 19 A. And, I'll be honest with you, that's why it is  
 20 very difficult for us to manage the program. It's a  
 21 black box. There is always a guessing game.  
 22 You can go through all the reporting you  
 23 want. You can have whatever formula you want to justify  
 24 your R.O.I.  
 25 However, paid search space is a balance

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1 between the numbers, science, art, and strategy.  
 2 Q. No voodoo?  
 3 A. I am sure there is somewhere.  
 4 MR. GARRITY: Only when you are in New  
 5 Orleans. Paid search in New Orleans has use of voodoo.  
 6 MR. PAGE: Do you have pins?  
 7 THE WITNESS: They have lava lamps. I  
 8 don't know if that's an indication.  
 9 MR. PAGE: Mark as Exhibit 16 --  
 10 (Mark'd for identification  
 11 was Deposition Exhibit No. 16.)  
 12 Q. (BY MR. PAGE) -- is a multi-page letter  
 13 June 21th, 2006 from Mr. Storrie, S-t-o-r-r-i-e, of  
 14 Dawda, Mann, et cetera, to Neal Kennedy of The Kennedy  
 15 Law Office in Marble Falls, Texas, ABWF 048505 through  
 16 512.  
 17 Have you seen this document before?  
 18 A. No, I haven't.  
 19 Q. Okay. This appears to be some correspondence  
 20 concerning Wallpapers To Go and wallpaperstogo.com  
 21 and it says that -- it says, "Dear Mr. Kennedy:  
 22 Pursuant to our previous conversations, American Blind  
 23 and Wallpaper Factory, Inc., has identified Wallpapers  
 24 To Go and wallpaperstogo.com as negative keywords;" and  
 25 then it goes on to say that it appears that Wallpapers

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1 To Go, Inc., has similarly set American Blinds' marks as  
 2 negative keywords.  
 3 Are you familiar with Wallpapers To Go?  
 4 A. I have seen them, again, in the paid search  
 5 arena as I manage the programs and police our brands,  
 6 yes.  
 7 Q. When were you first aware of Wallpapers To Go?  
 8 A. I believe they have been around as a company  
 9 for several years.  
 10 Q. Okay. When did you -- when did Google first  
 11 establish negative keywords for Wallpapers To Go and  
 12 wallpaperstogo.com in its own search bidding?  
 13 A. When did we put their -- what was your  
 14 question?  
 15 MR. GARRITY: I think you misspoke. You  
 16 said Google as opposed to American Blinds.  
 17 MR. PAGE: Oh, I'm sorry. Never mind.  
 18 Let's start again. Thanks.  
 19 MR. GARRITY: Sure.  
 20 Q. (BY MR. PAGE) When did American Blind first  
 21 establish Wallpapers To Go and wallpaperstogo.com as  
 22 negative keywords in its Google ad campaigns?  
 23 A. I don't recall the timing.  
 24 Q. Isn't it the case that you did not establish  
 25 them as negative keywords until Wallpapers To Go asked

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1 you to?  
 2 A. Again, I don't recall the timing. If they  
 3 weren't negative keywords in the program, then I suppose  
 4 we didn't have them in as negative keywords.  
 5 Q. But you were aware of the existence of  
 6 Wallpapers To Go for some time, right?  
 7 You just told me you had --  
 8 A. Yes.  
 9 Q. -- known of them for several years.  
 10 A. Yes.  
 11 Q. Why is it that you didn't put their trademarks  
 12 in as negative keywords until they asked you to?  
 13 A. Why is it?  
 14 Q. Yeah.  
 15 A. We -- again, I think this goes back to what we  
 16 discussed earlier, proactively, you know, we don't go  
 17 and pull lists of every single competitor and put them  
 18 in as negative keywords.  
 19 I will tell you that this word or words,  
 20 these words, Wallpapers To Go, again, I can't say why we  
 21 didn't.  
 22 I will just tell you that we don't have  
 23 lists of all our competitors and dump them into every  
 24 search engine for every negative keyword. It would be  
 25 great if everybody did that and everyone was happy and

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1 happy.

2 Q. Do you feel that you have any obligation to

3 avoid having your ads show up on broad match on searches

4 for competitor's names before they ask you to?

5 A. You know, we -- again, these competitors -- and

6 a lot of them are small, pure play dot com companies,

7 pop up overnight.

8 It would be impossible for us to know of

9 every company and every competitor. It just starts up a

10 website.

11 Q. But this one you knew of.

12 You have known of this company for a

13 couple years, correct?

14 THE VIDEOGRAPHER: Please repeat your

15 question. It did not come out on the audio of the tape.

16 Q. (BY MR. PAGE) But you knew of Wallpapers To Go

17 for a couple of years without putting them in as a

18 negative keyword, correct?

19 A. Correct. I have heard of the company, that's

20 correct.

21 Q. And you knew that if you didn't put them in

22 as a negative keyword, your ad would appear every time

23 somebody keyed off the word wallpaper, every time

24 somebody on Google typed in Wallpapers To Go, correct?

25 MR. GARRITY: Object to the form of the

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1 question. You can answer.

2 THE WITNESS: That's correct.

3 Q. (BY MR. PAGE) And you didn't do anything to

4 stop that until they asked you to?

5 A. That's correct.

6 MR. PAGE: Tape change time. Take a

7 short break.

8 THE VIDEOGRAPHER: Off the record,

9 2:25:02 p.m.

10 (Recess taken.)

11 THE VIDEOGRAPHER: Back on the record

12 2:37:14 p.m.

13 (Mark'd for identification

14 was Deposition Exhibit No. 17.)

15 Q. (BY MR. PAGE) Exhibit 17 is a document

16 entitled Permanent Injunction Order, ABWF000170 through

17 73, dated, I think, 16, March, 2001, either 16 or 18, in

18 the matter of Decoratetoday.com, Inc. v. American Blind

19 and Accessory Company, Inc. and Directory One, Inc.

20 Have you seen this document before?

21 A. In preparation for today, went through boxes of

22 documents. It's likely that I took a glance at this but

23 I don't recall seeing this.

24 Q. Are you familiar with a piece of litigation

25 that occurred between Decoratetoday.com, Inc., and

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1 American Blind and Accessory Company, Inc.?

2 A. I am not familiar with it, no.

3 Q. So do you know -- I take it you -- I might as

4 well ask.

5 Do you know whether there was any sort

6 of settlement agreement or other contract entered into

7 between Decoratetoday.com and American Blind and

8 Accessory Company?

9 A. To my knowledge -- again, I am not familiar

10 with that.

11 Q. So you just don't know?

12 A. No.

13 Q. Now, you are learning how to shorten depos.

14 MR. PAGE: Mark as Exhibit 18.

15 (Mark'd for identification

16 was Deposition Exhibit No. 18.)

17 Q. (BY MR. PAGE) Exhibit 18 is a multi-page

18 document, string of e-mails, ABWF48835 through 39.

19 The last in time, other than whatever has

20 been redacted, being from Scot Powers to yourself,

21 July 21st of this year.

22 Have you seen this document before?

23 A. I recall seeing an e-mail from Scot. How

24 it's printed out, though, it's very difficult to read.

25 Q. Yeah. What is this document?

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1 A. I believe this document was a high level

2 marketing trend analysis from Scot.

3 Q. I see, and is it your understanding that, for

4 instance, the first two -- strike that.

5 The second and third page represents

6 the percentages attributable to each of the marketing

7 channels listed at the top for each year from 1996

8 through 2006, in terms of where customers were

9 acquired?

10 A. That would be my understanding. I can't

11 testify to these numbers, how it's printed out in

12 this fashion; but I believe that was the content of

13 this e-mail.

14 Q. Okay. So, is it your understanding that, for

15 example, in 1996, 3 percent of customers were acquired

16 by a third party, 5 percent via alternative media, 92

17 percent via magazine?

18 Is that how you would read this?

19 A. Yeah, that's how I would interpret this.

20 Q. And is the second half of this e-mail the

21 percentage attributed to each channel of sales as

22 opposed to customers acquired?

23 A. Yes.

24 Q. Do you have any reason to think there is

25 anything inaccurate about any of these figures?

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1 A. I don't. Again, how it's printed out, I am  
 2 concerned with.  
 3 Q. That, I can't help with. That's how we  
 4 received it.  
 5 A. These do look in the ballpark, 54 percent of  
 6 sales coming from internet campaigns in 2006.  
 7 MR. PAGE: Mark as Exhibit 19.  
 8 (Mark'd for identification  
 9 was Deposition Exhibit No. 19.)  
 10 Q. (BY MR. PAGE) Exhibit 19 is a two-page string  
 11 of e-mails, Bates number GGLE00006336 and 7, the last  
 12 of which in time was from Bill Smith at decoratetoday  
 13 to Britton Mauchline at Google and several other people  
 14 at American Blind and Google concerning USA Wallpaper.  
 15 Have you seen this document before?  
 16 A. No, I don't recall seeing this document. It  
 17 may have been in the boxes that I went through over  
 18 the past few days and week.  
 19 Q. Did American Blind, in fact, bring  
 20 USA Wallpaper's ad campaign to Google's attention  
 21 in January of 2003?  
 22 A. That looks like what is being said here in  
 23 the e-mail.  
 24 Q. And did Google inform American Blind that,  
 25 although they were matching on broad match, that one

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1 solution would be to ask USA Wallpaper to put in  
 2 negatives on American Blind's trademarks?  
 3 A. I am just reading the response here from  
 4 Britton. She is saying that we can request to place  
 5 the keyword on an exact, which would eliminate them  
 6 from your branded search.  
 7 Q. And your response to Google was that would be  
 8 great and how about also making our branded words  
 9 negative, correct?  
 10 A. I don't think the word negative is there.  
 11 MR. GARRITY: The top, the last e-mail.  
 12 MR. PAGE: It says, also --  
 13 THE WITNESS: Oh, I see, okay.  
 14 MR. GARRITY: At the top of the page.  
 15 THE WITNESS: Sorry.  
 16 MR. GARRITY: Okay.  
 17 MR. PAGE: We stepped all over her on  
 18 that one.  
 19 Q. (BY MR. PAGE) So, here is my question.  
 20 While you were asking Google to help you  
 21 in getting USA Wallpaper to establish exact matches in  
 22 negative keywords to protect your trademarks, why didn't  
 23 you do that for theirs?  
 24 A. You know, I don't know the answer to that. I  
 25 would assume we would need to ask Bill Smith or Joe

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1 Charno.  
 2 If they put us as a negative keyword,  
 3 then our policy today, as it states, is to, if we have  
 4 an agreement with a competitor that is brought to our  
 5 attention, then -- there are alot of sounds here  
 6 today -- if we, again, have an agreement with a  
 7 competitor, that we will both put each other's brand  
 8 keywords into negative campaigns on each other's  
 9 accounts; and that's what we are doing today.  
 10 It's an open door policy. We voluntarily  
 11 do that to all of our competitors that we come in  
 12 contact with.  
 13 Q. Will you put your competitor's trademarks on  
 14 negative lists without an agreement with them?  
 15 A. Will we put our -- will we put -- would you  
 16 rephrase that, please?  
 17 Q. Let me rephrase it.  
 18 Do you feel that you have any obligation  
 19 to put your competitor's trademarks on negative lists  
 20 in your ad campaigns, independent of having an agreement  
 21 with them?  
 22 A. Again, it's our policy and it seems to work  
 23 well -- it's an open policy -- that we, as we get  
 24 approached by a competitor, we will add them as negative  
 25 keywords to our campaigns.

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1 Q. And it's also your policy that until -- that if  
 2 your competitor doesn't approach you and ask, you won't,  
 3 right?  
 4 A. We don't aggressively or knowingly bid on  
 5 competitor's keywords. We don't buy competitor's  
 6 keywords and target ads on competitor's keywords.  
 7 That's not where we focus our efforts.  
 8 Q. But you know that you will get traffic on  
 9 broad match as a result of people searching for your  
 10 competitor's trademarks, unless you put them in negative  
 11 lists, right?  
 12 A. That's correct.  
 13 Q. And knowing that, you don't put them in, unless  
 14 your competitors demand that you do, correct?  
 15 A. If they bring it to our attention, then we will  
 16 add them as a negative keyword.  
 17 Q. And if they don't bring it to your attention,  
 18 you won't, right?  
 19 A. Again, at this point, it's an open-door policy.  
 20 If they come to us, we will do the same. We don't -- we  
 21 don't --  
 22 Q. My question is, if they don't come to you,  
 23 will you do anything to avoid your broad matches hitting  
 24 searches for their trademarks?  
 25 A. We target our ads accordingly with our company

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1 name in the brand, in the ad copy. We don't go and add  
 2 competitive keywords to our account.  
 3 Again, willingly, as it comes up, if it  
 4 is brought to our attention, we will go and add a  
 5 negative keyword in and it works great today.  
 6 Q. My question is, if it is not brought to your  
 7 attention by your competitors, will you add their trade  
 8 names as negative keywords?  
 9 A. Again, let me tell you, the policy today and  
 10 how it stands is it's a volunteer policy. It will  
 11 come if they come to us or we go to them.  
 12 Q. I am gonna keep asking this question 'til you  
 13 answer it. All right?  
 14 If they don't come to you and demand that  
 15 you put in their trademarks as negative keywords, you  
 16 don't do it, do you?  
 17 A. We don't do that today.  
 18 Q. And you, nonetheless, send threatening letters  
 19 to people threatening to sue them when they don't do  
 20 that for you, correct?  
 21 A. We will approach them with, again, Scot Storrie  
 22 is the process that we use. As we are aware of it, we  
 23 will send the screen shot to him; and it's brought up to  
 24 their attention that way.  
 25 Q. So your policy is to not proactively put in

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1 your competitor's trade names as negatives; and yet you  
 2 threaten to sue your competitors if they have the same  
 3 policy, correct?  
 4 MR. GARRITY: Object to the form. You  
 5 can answer.  
 6 THE WITNESS: Again, today, I will tell  
 7 you that we focus our efforts on protecting our brands.  
 8 We have got a lot of equity in our brands.  
 9 We do not, at this point in time, today,  
 10 go and add lists of our competitors into our program.  
 11 We do not buy their keywords. I think I  
 12 just answered your question.  
 13 Q. (BY MR. PAGE) But you threaten to sue them  
 14 when they don't buy your keywords but hit them because  
 15 of a broad match, correct?  
 16 A. We send them a generic cease and desist letter.  
 17 Q. And that cease and desist letter says, do what  
 18 we want or we will sue you, in effect, correct?  
 19 MR. GARRITY: Object to the form.  
 20 THE WITNESS: I can't answer that.  
 21 THE VIDEOGRAPHER: Why don't we go off  
 22 the record to see what's going on. It's really  
 23 affecting the video and sound.  
 24 MR. PAGE: Yes.  
 25 THE VIDEOGRAPHER: Thank you. Off the

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1 record, 2:52:42 p.m.  
 2 (Recess taken.)  
 3 THE VIDEOGRAPHER: Back on the record,  
 4 3:02:18 p.m.  
 5 (Mark'd for identification  
 6 was Deposition Exhibit No. 20.)  
 7 MR. PAGE: Mark as Exhibit 20.  
 8 Q. (BY MR. PAGE) Exhibit 20 is a multi-page  
 9 document captioned S.E.O. Overview, Appendix, ABWF045550  
 10 through 558.  
 11 Have you seen this document before?  
 12 A. Yes. This looks like a document that I have  
 13 created.  
 14 Q. Do you know when you created this document?  
 15 A. You know, I don't recall the timing. It looks  
 16 like it's through June 1st, 2005.  
 17 That's a forecast. So probably around  
 18 that time period is what I would say.  
 19 Q. I see. So does this reflect data for American  
 20 Blinds' various adwords, campaigns from the first half  
 21 of, you are aware of, January through at least May of  
 22 2005?  
 23 A. Yes.  
 24 Q. If you could turn to the page numbered 045554,  
 25 which is captioned Top Drivers/High Cost Terms, there is

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1 a column -- the first column is Searchterm. The second  
 2 is Category. The third is something called S.T. Group.  
 3 What is S.T. Group?  
 4 A. I believe that recalls to -- sorry. I believe  
 5 this S.T. group refers to a flag that we had that said  
 6 either a top keyword is a quote, unquote, generic top  
 7 driver or by default not.  
 8 Q. I see. So this was just a code so that you  
 9 could, for example, like affect all of your top drivers  
 10 as a unit or sort?  
 11 A. Yeah, more for reporting purposes. This is an  
 12 old -- one of the old Joe Charno reports that we did  
 13 use.  
 14 Q. Do you have any reason to think that the --  
 15 strike that.  
 16 As far as you know, is the data set forth  
 17 in this exhibit accurate?  
 18 A. It appears accurate.  
 19 Q. I have no further -- no.  
 20 MR. GARRITY: Too good.  
 21 MR. PAGE: Mark as Exhibit 21.  
 22 (Mark'd for identification  
 23 was Deposition Exhibit No. 21.)  
 24 Q. (BY MR. PAGE) Exhibit 21 is a four-page string  
 25 of e-mails, the last in time being from you to Britton

1 Mauchline, M-a-u-c-h-l-i-n-e, at Google, October 28th,  
 2 2004.  
 3 Do you recognize this document?  
 4 A. It appears to be one of my correspondences with  
 5 Google.  
 6 Q. If you could turn to the third page, there is  
 7 an e-mail from you from October 26th to Oscar Castro and  
 8 John Ludgey. Subject: Google ABWM Brand Keywords; and  
 9 it says, "Can you please create tracking U.R.L.s for  
 10 these Google AdWords keywords."  
 11 What's a tracking U.R.L.?  
 12 A. Tracking U.R.L. is -- just to put this in the  
 13 context with Vidi Emi again, this is when they were  
 14 predating Coremetrics as our web analytic partner.  
 15 A tracking U.R.L. is a -- we are direct  
 16 marketers, so we measure everything as best as we can.  
 17 So tracking U.R.L. is simply a method in  
 18 which we track activity for that particular event, in  
 19 this case, keyword.  
 20 Q. I see. So is this -- we, I think earlier  
 21 today, we were talking about your ability to tell what  
 22 keyword a Google user had searched for when they arrived  
 23 at your website.  
 24 Is this the mechanism by which you do  
 25 that?

1 A. For paid search.  
 2 Q. For paid search, ah. Strike that.  
 3 This morning we discussed the fact  
 4 that Google passes through to you on natural search  
 5 information concerning what the search term was.  
 6 Is this the analogue for paid search?  
 7 A. The tracking U.R.L.s back in this time,  
 8 October 26th of '04, this looks like how our trucking  
 9 U.R.L.s were constructed.  
 10 Q. I see, and I take it there is something in the  
 11 code after the question mark on each of these U.R.L.s  
 12 that corresponds to the keyword that triggered the ad?  
 13 A. Yes.  
 14 Q. Is it just some sort of numerical list?  
 15 A. It's a -- it's a parameter, you know, made up  
 16 of code numbers and letters, X.G.O.A. at the end of that  
 17 where you say a.d.c. equals X.G.O.A. represents Google.  
 18 Q. And I take it there is some portion of the  
 19 earlier string that represents a particular search term?  
 20 A. Yes. The zjxj equals -- those parameters are  
 21 the corresponding keywords.  
 22 Q. So, since these are actually all different  
 23 pages with different U.R.L.s, whoever lands on this  
 24 page, you can tell they got there by that particular  
 25 keyword on that particular search engine, correct?

1 A. Yes. They are not different pages but just,  
 2 again, there is a parameter in the U.R.L. that's  
 3 different.  
 4 MR. PAGE: Okay. Exhibit 22.  
 5 (Mark'd for identification  
 6 was Deposition Exhibit No. 22.)  
 7 Q. (BY MR. PAGE) Exhibit 22 is a two-page  
 8 document, ABWF008488, entitled S.E.O. R.O.I. Report,  
 9 Full List, March, 2006.  
 10 Can you tell me what this document is?  
 11 A. It is a report from Coremetrics. It's an  
 12 S.E.O. R.O.I. Report for Google is the vendor.  
 13 The category for most of these says  
 14 branding, and these are some of our branding search  
 15 terms.  
 16 Q. Is this some of your branding search terms or  
 17 all of them?  
 18 A. This looks like some of them.  
 19 Q. Can you think of any branding search terms that  
 20 are missing from this list?  
 21 A. American Blind without the S.  
 22 Q. It's the fifth one down, isn't it?  
 23 A. Oh, I'm sorry. You are correct. We have got,  
 24 you know, I would say, you know, around 40 or so  
 25 branding keywords in our program.

1 Q. So is it true that you don't know one way or  
 2 the other whether this is a complete list of your  
 3 branding keywords?  
 4 A. I would say that's true, because if this report  
 5 was run from this time period and a word did not pick up  
 6 activity, then it wouldn't show up on this list; but we  
 7 still might have it in the program.  
 8 Q. I see. So when you get reports from  
 9 Coremetrics, do they omit keywords for which there are  
 10 no clicks?  
 11 A. Not necessarily. It depends on the time period  
 12 you are running the report, because we could run this  
 13 report from , you know, 3/1 to 3/20.  
 14 There could be a keyword, however, that  
 15 didn't receive a click during the month of March, as an  
 16 example, that landed on the file in February purchased  
 17 during this time period, and that would show up but it  
 18 wouldn't have a click. It would have a sale but not a  
 19 click.  
 20 Q. Ah, I see.  
 21 A. Because that was cookied.  
 22 Q. Ah, I see. So you could have user X visits the  
 23 website -- follows an ad through to the website in  
 24 February, comes back in March and buys blinds.  
 25 So you would end up with zero clicks but

1 sales?  
2 A. Correct.  
3 Q. Which is where some of the division by zero  
4 errors would come from?  
5 A. That's probably an example, yes.  
6 Q. Okay, got it.  
7 MR. PAGE: Let me mark as Exhibit 23.  
8 (Mark'd for identification  
9 was Deposition Exhibit No. 23.)  
10 Q. (BY MR. PAGE) Exhibit 23 is another  
11 Coremetrics report, three pages, ABWF008806 through 8.  
12 On the second page, it's captioned S.E.O.  
13 R.O.I. Report - Keyword Detail; and then it's dated May,  
14 2006, 5/1/2006 through 5/10/2006.  
15 What is this document?  
16 A. This appears to be a report that Steve Katzman  
17 ran and had e-mailed to his Yahoo account.  
18 Q. Is this a report that's automatically generated  
19 at some particular frequency or only upon request?  
20 A. This particular one, I am not sure, to be  
21 honest with you. You can set reports to get e-mailed  
22 to you at any frequency.  
23 Q. I see. So, on the Coremetrics system, am I  
24 correct in assuming that you can have like an automated  
25 weekly report that just comes out; or you can have some

1 sort of standard report form that you can trigger when  
2 you want to --  
3 A. Yes.  
4 Q. -- or you can simply go in and construct a  
5 search at any time for specific information?  
6 A. For ad hoc reports, yes.  
7 Q. And do you do all three of those things?  
8 A. We do have some reports set up for different  
9 things, you know. It's really, you know, Coremetrics is  
10 our partner to keep the finger on the pulse, if you  
11 will, for the on-line business.  
12 Q. So it's really just depending on what your  
13 needs are, you either automate a report or you just do  
14 it ad hoc?  
15 A. Correct.  
16 Q. How big a company is Coremetrics? Do they  
17 provide services to a lot of people?  
18 A. They are, I would say, the leader in the web  
19 analytic space.  
20 If you go to their website, I am sure  
21 they have got a partial client list you can take a  
22 look at.  
23 Q. Quite a business.  
24 (Mark'd for identification  
25 was Deposition Exhibit No. 24)

1 Q. (BY MR. PAGE) Let me show you. Exhibit 24  
2 is another Coremetrics report sent from Coremetrics  
3 to Mr. Katzman on May 11th, 2006, ABWF009026 through  
4 30.  
5 Can you tell me what this report is?  
6 A. It looks like another report that Mr. Katzman  
7 had set up to e-mail him. It looks like e-mail him  
8 or actually just send it to his Yahoo e-mail.  
9 Q. I see. And is this report details on R.O.I.  
10 and other figures for all of your branding keywords  
11 for the period 5-1-2006 through 5-10-2006?  
12 A. It appears to be the case, looking at this  
13 document.  
14 Q. If you could look at -- the last two pages list  
15 average cost per click and average position for the  
16 various keywords for this period.  
17 Again, you have to keep flipping back and  
18 forth, because it's a spreadsheet; but do those cost per  
19 click for these branding keywords appear typical to you,  
20 or is there anything that looks out of the ordinary?  
21 A. No. I would say it looks pretty typical.  
22 Q. There is nothing in there that goes, god,  
23 that's not normal? It's not a trick question. I don't  
24 see anything I think is, if that helps.  
25 A. No. It's -- you know, when it's paired off

1 like this, no, it does not look abnormal.  
2 I would say -- you know, let me see what  
3 this sale, J 12, average position, 7.64.  
4 Q. Yeah. I believe -- check me if I'm wrong but I  
5 believe that's your grand total of all campaigns as  
6 opposed to branding?  
7 I think 13 is the average for all  
8 branding.  
9 A. Okay.  
10 Q. Does that match your understanding?  
11 A. Yeah. That seems, I would say, a little high,  
12 though, for average position for the overall campaign  
13 during the time period.  
14 Q. High meaning, typically, your placement is  
15 better than that?  
16 A. Average position overall. Again, we have over  
17 7,000 keywords in the program. An average position  
18 changes, you know, by keyword obviously but, overall, I  
19 would say we -- I would say we are closer to an average  
20 position overall of around position 5.  
21 Q. So, by higher, you mean higher numerically than  
22 average?  
23 A. Yes.  
24 Q. Not higher on the page?  
25 A. Higher numerically. So 7.64 is, obviously,



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1 higher than average 5.  
 2 Q. And is 1.34 pretty average for the position on  
 3 the branding keywords?  
 4 A. That does seem a little bit low; but, again,  
 5 that position, average position, changes accordingly  
 6 to the keyword.  
 7 I don't think this report also shows  
 8 content match keywords or activity. That's separate.  
 9 MR. PAGE: I'll tell you something later.  
 10 Let me mark as Exhibit 25.  
 11 (Mark'd for identification  
 12 was Deposition Exhibit No. 25.)  
 13 Q. (BY MR. PAGE) Exhibit 25 is another  
 14 Coremetrics report, also from Thursday, May 11th, to  
 15 Mr. Katzman.  
 16 It's ABWF009128 through 134 and the  
 17 subject, Same Day Sales 2, number 2, Trending, Google  
 18 and MSN.  
 19 Have you seen this document before?  
 20 A. No, I haven't.  
 21 Q. Have you seen reports of this format?  
 22 A. Sure.  
 23 Q. What does the graph on this second page  
 24 represent?  
 25 A. A lot of lines.

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1 Q. And what do those lines tell a user or a  
 2 reader?  
 3 A. That this is a very difficult report to read,  
 4 don't look at it. I can't read this graph, especially  
 5 in black and white.  
 6 Q. Infinite information and no information tend to  
 7 be synonymous.  
 8 A. It looks to me what this table below is,  
 9 though, is the search engine and then the category.  
 10 Q. For each day between February 10th and  
 11 May 10th?  
 12 A. That's what it looks like to be, yes.  
 13 Q. I see, and the dollar amounts reflected, are  
 14 those sales attributable to each category for each day  
 15 as opposed to ad spend?  
 16 A. Yes. Actually, on the left side of this chart,  
 17 there is something I can read. It says sales, same  
 18 session on the left.  
 19 Q. I see. So this is tracking daily sales coming  
 20 from people who click through on ads on Yahoo and Google  
 21 in each of these categories that day but not tracking  
 22 subsequent revisit sales; is that correct?  
 23 A. Actually, it's only same session sales. So,  
 24 let's give you a quick example.  
 25 If I clicked right now, I closed my

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1 browser and I come back 10 minutes from now, that would  
 2 show up as one.  
 3 Q. I see. So, in other words, if you bought  
 4 something in the session 10 minutes from now, it would  
 5 not reflect -- it would not be counted, if that session  
 6 ten minutes from now wasn't as a result of coming  
 7 through an ad?  
 8 A. I believe that's the case in this report.  
 9 Q. So, basically, it's a report that doesn't have  
 10 to go track cookies and figure out subsequent history?  
 11 A. How the same session works is just again the  
 12 same session. It doesn't pick up concurrent activity.  
 13 Q. Okay. Is there -- do you have any reason to  
 14 think any of the data in this report is inaccurate?  
 15 A. No reason to believe that it's inaccurate  
 16 looking at it at a glance. Just so you are clear, too,  
 17 this does not include any off-line sales. It's just  
 18 same session cart sales, shopping cart.  
 19 (Mark'd for identification  
 20 was Deposition Exhibit No. 26.)  
 21 Q. (BY MR. PAGE) I show you Exhibit 26, which is,  
 22 much to your surprise, a Coremetrics report from  
 23 Thursday, May 11th.  
 24 MR. GARRITY: A busy day in the  
 25 Coremetrics household.

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1 MR. PAGE: Yeah.  
 2 Q. (BY MR. PAGE) ABWF009135 through 141.  
 3 Subject: M.T.D. Keyword Conversion Rate Same Session  
 4 Google and Yahoo.  
 5 Can you tell me what this report  
 6 reflects, other than a messy graph?  
 7 A. It looks similar to the previous report,  
 8 meaning it looks like it's showing search engine, then  
 9 the category or the keyword category; and it's showing  
 10 the conversion rate only again on the same session,  
 11 conversion rate.  
 12 Q. And that's essentially C.T.O.? Is that the  
 13 correct term for it?  
 14 A. Based in the S.E.O. report, that would be  
 15 defined at C.T.O.  
 16 Q. So it's the percentage of visits that turn into  
 17 sales?  
 18 A. It's the percentage of visits that convert into  
 19 an order. It's not sales dollars.  
 20 Q. Right.  
 21 A. Okay.  
 22 Q. So it's the percentage of the people who  
 23 actually complete an order in that session?  
 24 A. Correct.  
 25 Q. And, again, this does not include telephone

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1 follow on or later sessions?  
 2 A. Correct.  
 3 Q. And is it typical that your branding campaigns  
 4 have much better conversion rates than your other  
 5 campaigns?  
 6 A. Absolutely, without a question.  
 7 Q. And that's true on both Google and Yahoo?  
 8 A. And MSN. It's not here, actually. Yes.  
 9 Q. Okay. All right. Have you ever done a  
 10 comparison of branding campaign results between Yahoo  
 11 and Google?  
 12 A. To my knowledge, not a specific comparison. We  
 13 may have over the years. I don't recall.  
 14 Q. So do you know whether your R.O.I. is better  
 15 on branding campaigns on Google or Yahoo?  
 16 A. Off the top of my head, I couldn't tell you  
 17 that.  
 18 Obviously, the data exists. I would  
 19 tell you that the best converting search engine for us  
 20 is MSN.  
 21 Q. Is that uniform over different campaigns?  
 22 A. Overall, at the program level.  
 23 Q. So MSN converts better on both branding and  
 24 non branding campaigns?  
 25 A. Yeah, at the program level. I haven't looked

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1 at it per se at the branding versus branding across  
 2 engine level.  
 3 Q. Do you have an understanding as to why MSN  
 4 converts better than Google or Yahoo?  
 5 A. It's really a different user group, different  
 6 audience that uses MSN versus Google versus Yahoo.  
 7 Q. Is there something about the MSN user group  
 8 that leads it to be -- to have a better conversion  
 9 rate?  
 10 A. I am not MSN. I really can't answer that.  
 11 Q. I am just wondering if you had any idea about  
 12 it. It seems like an interesting phenomenon.  
 13 A. Again, it's a different user group.  
 14 A.O.L. is a different user group  
 15 altogether as well. It's an older generation, you know,  
 16 people that need a little more hand-holding potentially.  
 17 MR. PAGE: The residents of the land of  
 18 the flashing 12, yeah. You want a portrait of the  
 19 A.O.L. user, my mom.  
 20 MR. GARRITY: I was just going to say, my  
 21 oxygenarian parents, who forget their log-in I.D. every  
 22 week.  
 23 MR. PAGE: And probably not because they  
 24 change it.  
 25 MR. GARRITY: No. The old gray cells

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1 just aren't what they used to be.  
 2 MR. PAGE: Mark as Exhibit 27.  
 3 (Mark'd for identification  
 4 was Deposition Exhibit No. 27.)  
 5 Q. (BY MR. PAGE) Exhibit 27 is a multi-page  
 6 document, ABWF49243 through 285, which is a Complaint  
 7 in the matter of American Blind and Wallpaper Factory,  
 8 Inc., versus Blindsforless.com, L.L.C., doing business  
 9 as WindowtreatmentsUSA.com.  
 10 Are you familiar with  
 11 WindowtreatmentsUSA.com?  
 12 A. That may have been one in, again, the boxes  
 13 that I went through; but, no, I am not familiar with  
 14 that one in particular.  
 15 Q. This was -- I think it was very recent.  
 16 This complaint is dated less than a month  
 17 ago, July 10th, 2006.  
 18 Does that refresh your recollection at  
 19 all as to whether you know anything about this  
 20 lawsuit?  
 21 A. No. Again, I am involved in -- as an  
 22 individual marketing. Legal affairs are run through  
 23 our CEO and our outside counsel.  
 24 Q. I was just wondering if this happened to be --  
 25 whether this was a -- were you involved at all in

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1 locating the allegedly infringing website?  
 2 A. I may have sent this screen shot and done the  
 3 screen shot capture.  
 4 Q. Do you know one way or the other?  
 5 A. I may have.  
 6 Q. Okay. Have you ever had any communication  
 7 with anyone at either blindsforless.com or  
 8 windowtreatmentsUSA.com?  
 9 A. No, I have not.  
 10 Q. Okay. Other than the surveys that we discussed  
 11 earlier today, are you aware of any market research,  
 12 consumer surveys, or consumer studies that American  
 13 Blind has conducted related to any of its trademarks?  
 14 A. The three Kaden studies that we talked about  
 15 earlier today, the Michael Layne, the American Wallpaper  
 16 study, those are all that I am aware of.  
 17 Q. When you say the Michael Layne, you're  
 18 referring to the survey on the website that would  
 19 concern what people were looking for when they search  
 20 for American Wallpaper?  
 21 A. Yes.  
 22 Q. That's what you meant by the Michael Layne  
 23 one?  
 24 A. Yes.  
 25 Q. Other than those, are you aware of any surveys

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1 that American Blind has conducted concerning anything to  
 2 do with its trademarks?  
 3 A. No.  
 4 Q. Other than -- we discussed various affiliates  
 5 that you have through Commission Junction.  
 6 Do you have any affiliates, other than  
 7 Commission Junction affiliates?  
 8 A. Define affiliates.  
 9 Q. Okay. Anyone who receives a commission as a  
 10 result of directing traffic to your website?  
 11 A. Yes.  
 12 Q. Other than Commission Junction, what affiliates  
 13 do you have?  
 14 A. Target, Linens and Things. The third one would  
 15 be Entertainment -- Entertainment Publishing.  
 16 Q. What is Linens and Things?  
 17 A. Linens and Things is a retailer. We have a  
 18 kiosk presence in over 500 stores across the country.  
 19 We have kiosk displays in their stores, which may be a  
 20 wooden kiosk display that has different styles or types  
 21 of blinds so customers can go and feel what they are  
 22 looking for.  
 23 We have got -- we have catalog bins and  
 24 fliers as well inside of Linens and Things stores, over  
 25 500 stores across the country, with, as you walk into

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1 the store, it's in primarily the window area of the  
 2 store as well as the bedding area of the store.  
 3 That's a value add for their guests.  
 4 It's displayed in the store as well as on  
 5 the co-brand catalogs that we have them -- that Linens  
 6 and Things partners with American Blinds, Wallpaper and  
 7 More.  
 8 Q. And these kiosks, do they include some sort of  
 9 computer for which people can place orders?  
 10 A. No. They are not electronic kiosks.  
 11 Q. They are just display?  
 12 A. They are display kiosks and catalog bins that  
 13 drive people to go on line as well as to call an 800  
 14 number. We also do on-line marketing with them as  
 15 an exchange.  
 16 So on Linens and Things website, which is  
 17 owned through dot com, as an example, you will see us in  
 18 multiple places on their website; and they are also on  
 19 our website.  
 20 We've also done a number of other  
 21 programs with them, such as package insert programs.  
 22 So we have an insert piece, a paper  
 23 insert piece, which has sometimes over the years been  
 24 a co-branded catalog.  
 25 It sometime has been an insert piece with

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1 them that, as an example, talks about the relationship;  
 2 and it positions us as their featured partner.  
 3 So if an order transacts on Linens and  
 4 Things website, our insert piece is actually placed  
 5 inside of their packages with the packing slip.  
 6 Q. I see.  
 7 A. We have done credit card programming inserts  
 8 with them as well, new mover program inserts, store  
 9 announcements that we have actually gone out to their  
 10 stores and met with key store managers in the morning  
 11 and did a kind of rah-rah, fire-up session of, this is  
 12 who we are; and this is the value ad to your guests.  
 13 So it's a good relationship.  
 14 Q. Other than your Commission Junction affiliates,  
 15 Target, Linens and Things, and Entertainment, do you  
 16 have other affiliates?  
 17 A. Again, affiliates being --  
 18 Q. People who you pay one way or another to direct  
 19 traffic to your website.  
 20 A. At this point in time, again, Target is the  
 21 other one. I don't know if I mentioned them. We are  
 22 on target.com's site.  
 23 So if you are searching for window  
 24 treatments or window coverings on Target, you are gonna  
 25 see our banner, our featured partner page in their

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1 website. We also have custom blinds. We power all  
 2 their custom blinds on their website.  
 3 Q. Other than -- any other affiliates you can  
 4 think of?  
 5 A. Not as I sit here today.  
 6 MR. PAGE: Tape changing time  
 7 THE VIDEOGRAPHER: Off the record,  
 8 3:43:42 p.m.  
 9 (Recess taken.)  
 10 THE VIDEOGRAPHER: Back on the record,  
 11 3:52:14 p.m.  
 12 Q. (BY MR. PAGE) Other than affiliates,  
 13 does American Blind license its trademarks to  
 14 anyone?  
 15 A. Yes, our marketing partners. I alluded to  
 16 some of them earlier, such as G.M.A.C. Real Estate, the  
 17 credit card issuers, Visa, Discover, Master Card,  
 18 Infibank, which is Infistar, yeah, a number of our  
 19 marketing partners, absolutely.  
 20 Q. You have a custom blind line that you refer to  
 21 as American Brand, correct?  
 22 A. Correct.  
 23 Q. If I buy -- if I buy a blind from that line --  
 24 A. Uh-huh.  
 25 Q. -- what name is on the box?

1 A. What name is on the box?  
 2 Q. Yeah. I mean, how is it branded when it comes  
 3 in the mail?  
 4 A. It definitely says -- the blinds is American  
 5 Blinds. I believe there is a sticker, even on the  
 6 bottom of the blind, to help you, and further assist  
 7 you, if you have got any questions; and you know for  
 8 sure it's American Blinds.  
 9 Q. Okay. So it doesn't say American Brand?  
 10 That's just what you call it?  
 11 A. Well, see, American Brand -- American Brand is  
 12 a significant part of our business; and there is brand  
 13 equity in American Brand blinds, no question about it.  
 14 American Brand blinds, for example,  
 15 accounts for, roughly, 41 percent of our total business  
 16 and 60 percent of all of our blind sales.  
 17 There is significant equity built in  
 18 American Brand. It's in our catalogs. It's on our  
 19 website. We have jump pages for it, e-mail campaigns.  
 20 Affiliates promote American Brand in some cases to pick  
 21 up the data fee.  
 22 Q. What I am trying to get at is whether, in fact,  
 23 as a customer, I see the word American Brand or whether  
 24 I see the words American Blind when I purchase an  
 25 American Brand blind?

1 A. As a part description, product I.D., whatever  
 2 you want to call it.  
 3 Q. Will there be a logo on the packing slip?  
 4 A. There should be a logo on the packing slip,  
 5 yes.  
 6 Q. Do you know what it is?  
 7 A. It's, I believe, American Blinds. That's my  
 8 understanding as we sit here today.  
 9 Q. Okay, okay. Your -- I think we covered this  
 10 this morning. Your current policy with affiliates is  
 11 that for a select set of affiliates, they are permitted  
 12 to key advertisements on Google off of your trademarks,  
 13 correct?  
 14 A. They are allowed -- a select group of our  
 15 affiliates, search affiliates, are allowed on Google  
 16 only to flush out competitors to bid on our select  
 17 group of brand keywords.  
 18 Q. Okay, and you do not permit them to do that on  
 19 other search engines?  
 20 A. Correct.  
 21 Q. Are they permitted to use the -- use your  
 22 branding keyword terms in the text of their  
 23 advertisements?  
 24 A. Are they permitted to use our branding keyword  
 25 terms in the text?

1 In other words, is American Brand the  
 2 name you put on the box; or is that something you refer  
 3 to it as internally when you are referring to blinds  
 4 that are trade marked American Blind?  
 5 A. I think our customers definitely when they  
 6 buy American Brand, they will call it American Brand  
 7 blinds. In their mind's eye, it's painted American  
 8 Brand blinds. I don't know what else to tell you.  
 9 Q. Yeah, I'm confused now. Let's go back. I go  
 10 on your website. I buy an American Brand blind.  
 11 A. Okay.  
 12 Q. It comes in a box, right?  
 13 A. Correct.  
 14 Q. What does the box say?  
 15 A. The boxes --  
 16 Q. Does it say American Blind and Wallpaper  
 17 Factory, does it say American Blind, or does it say  
 18 American Brand blinds?  
 19 A. You know, I don't know the answer to that, to  
 20 be honest with you. It's a private label and we have  
 21 different vendors for our own private label.  
 22 On the packing slip inside the box, it  
 23 will say American Brand. So, for example, American  
 24 Brand two-inch mini. So, yes, there is --  
 25 Q. I see. As a part description?

1 Q. Yeah.  
 2 A. Yes.  
 3 Q. Is that true of any affiliate?  
 4 A. Affiliates are allowed to use the name, our  
 5 marks; and that's the license agreement with them.  
 6 Q. Other than your search affiliates, is anyone  
 7 else permitted by American Blind to use your branding  
 8 terms in the text of advertisements on Google?  
 9 A. No, no one is permitted outside of that core  
 10 group of affiliates to do that.  
 11 Q. And when you say core group of affiliates, are  
 12 you referring to that select group, they can use it as a  
 13 keyword, or the larger group of affiliates that can use  
 14 your brands in the text of their ads?  
 15 A. Again, the five or six that are allowed to bid  
 16 on our brand keywords, that's who I am referring to when  
 17 I said core.  
 18 Q. Right, but the larger universe of affiliates is  
 19 permitted to use your trademark terms in the text of  
 20 ads, correct?  
 21 A. Paid?  
 22 Q. Yes.  
 23 A. Yes, they are.  
 24 Q. If you could take a look at Curran Exhibit 4,  
 25 which is somewhere in one of the many piles, it's a

1 single page.  
 2 A. Okay.  
 3 Q. Have you seen Curran Exhibit 4 before?  
 4 A. Yes, I did see it during this week.  
 5 Q. And does the top section of Curran 4 accurately  
 6 report the total number of visitors to American Blind's  
 7 website for each of the month's listed?  
 8 A. It's total sessions. So you would probably say  
 9 that's closer to total visits than visitors.  
 10 Q. I see. So, in other words, if an individual  
 11 visited twice in June, it would count two here, rather  
 12 than one because it was a unique visitor?  
 13 A. I would have to go back to the individual who  
 14 constructed this report to see if that's an accurate  
 15 statement.  
 16 Q. You don't know one way or the other?  
 17 A. Off the top of my head, I don't.  
 18 Q. Jeff, do you know if you guys have produced  
 19 anything other than this for total visits?  
 20 THE WITNESS: Jeff or Paul?  
 21 MR. PAGE: Paul.  
 22 MR. GARRITY: Oh, I'm sorry. The reason  
 23 why I didn't look up -- no problem.  
 24 MR. PAGE: Bad time.  
 25 MR. GARRITY: I believe that this is it,

1 but, I mean, I can certainly -- I can go back and  
 2 confirm that, though. That's my belief.  
 3 In what I have gone through, which is a  
 4 lot in the last few, two weeks or three weeks or so, I  
 5 have not seen anything beyond this.  
 6 MR. PAGE: Neither have I.  
 7 THE WITNESS: We get roughly 30 to 35,000  
 8 unique visits a day to the website. So these numbers do  
 9 look like a fair representation.  
 10 Q. (BY MR. PAGE) And do you know, on the second  
 11 section on this spreadsheet, are the shopping cart  
 12 sales, are these dollars or number of sales?  
 13 A. They appear to be sales.  
 14 Q. Sales?  
 15 A. Sales dollars.  
 16 Q. Sales dollars. In other words, so, for  
 17 instance, the three million and change in the last  
 18 month on here for 2006 would be three million dollars,  
 19 not three million individual sales?  
 20 A. Correct. Again, that's just shopping cart  
 21 sales.  
 22 Q. All right. And is the next -- and the next  
 23 section at the bottom is -- represents -- strike that.  
 24 Does the bottom section represent  
 25 shopping cart sales plus related sales?

1 A. That's my understanding of this document, yes.  
 2 Q. And the related sales are sales through  
 3 the 800 number that's posted on the website; is that  
 4 correct?  
 5 A. It's probably an 800 number, 800 numbers that  
 6 we have set up for internet programs.  
 7 Q. To the best of your knowledge, are these true  
 8 and correct figures?  
 9 A. Yes.  
 10 MR. PAGE: Let's take a short break.  
 11 THE VIDEOGRAPHER: Certainly. Off the  
 12 record, 4:05:22 p.m.  
 13 (Recess taken.)  
 14 THE VIDEOGRAPHER: Back on the record,  
 15 4:12:40 p.m.  
 16 MR. PAGE: With the caveat that we  
 17 reserve the right to recall this witness in the event  
 18 additional documents relevant to his testimony are  
 19 produced, I have no further questions.  
 20 MR. GARRITY: I will just reserve --  
 21 certainly reserve our right to object on whether or  
 22 not this witness needs to be recalled with respect  
 23 to any additional documents that might be produced.  
 24 With that being said, thanks very much,  
 25 Mike, and thanks to the witness.

1 THE VIDEOGRAPHER: That concludes the --  
 2 MR. PAGE: I'm sorry.  
 3 THE VIDEOGRAPHER: Oh, I'm sorry. Go  
 4 ahead.  
 5 MR. PAGE: A couple of housekeeping  
 6 items. You were going to check whether you have any  
 7 additional documents related to surveys that hadn't  
 8 been produced.  
 9 MR. GARRITY: The review of the drop-off  
 10 by affiliates?  
 11 MR. PAGE: Right. That's right.  
 12 MR. GARRITY: Yeah. Absolutely.  
 13 MR. PAGE: And, also, there was one  
 14 document, whose exhibit number I don't have in front  
 15 of me, that had a number of redacted pages; and you  
 16 were going to find out what the basis was for that  
 17 redaction since we haven't gotten any log on it.  
 18 MR. GARRITY: I'm sorry. I didn't  
 19 realize -- I am glad you reminded me on that.  
 20 Yes, we will be happy to get back to you  
 21 on that.  
 22 MR. PAGE: Great. All right. Great.  
 23 THE VIDEOGRAPHER: That's it? That  
 24 concludes today's deposition of Mr. Jeffrey A. Alderman.  
 25 Off the record, 4:14:10 p.m.

1 (The deposition concluded  
2 at or about 4:15 p.m.)  
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2  
3 I further certify that I am not Of  
4 Counsel to either party nor interested in the event of  
5 this cause.  
6  
7

8 Lana Kia Haws, CM, RPR, CSR-0995  
9 Notary Public  
10 State of Michigan  
11 County of Oakland  
12 Acting in the County of Wayne  
13  
14

15 My Commission Expires:  
16 September 29, 2011  
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2 CERTIFICATE OF NOTARY  
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4  
5 STATE OF MICHIGAN )  
6 ) ss.  
7 COUNTY OF OAKLAND )  
8  
9 I, Lana Kia Haws, Certified  
10 Shorthand Reporter and Notary Public in and for the  
11 above county and state, do hereby certify that the  
12 deposition of JEFFREY A. ALDERMAN was taken before me  
13 at the time and place hereinbefore set forth; that  
14 the witness was by me first duly sworn to testify  
15 to the truth, the whole truth and nothing but the  
16 truth; that thereupon the foregoing questions were  
17 asked and foregoing answers made by the witness  
18 which were duly recorded by me stenographically and  
19 later reduced to computer transcription; and I certify  
20 that this is a true and correct transcript of my  
21 stenographic notes so taken.  
22  
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24  
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