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 16 American Blind and Wallpaper Factory, Inc.

17 UNITED STATES DISTRICT COURT
 18 NORTHERN DISTRICT OF CALIFORNIA

19 GOOGLE INC., a Delaware corporation,
 20 Plaintiff,

21 v.

22 AMERICAN BLIND & WALLPAPER
 23 FACTORY, INC., a Delaware corporation
 24 d/b/a decoratetoday.com, Inc., and DOES
 25 1-100, INCLUSIVE,
 26 Defendant.

CASE NO. C 03-5340-JF(RS)

**DECLARATION OF JEFFREY ALDERMAN
 REGARDING ABWF'S PRESERVATION,
 COLLECTION AND PRODUCTION OF
 MATERIALS IN RESPONSE TO APRIL 27,
 2007 COURT ORDER**

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

Counter-Plaintiff,

v.

GOOGLE, INC.,
 Counter-Defendant.

Hon. Richard Seeborg

1 I, JEFFREY ALDERMAN, declare as follows:

2
3 1. I am over the age of eighteen and am competent to make this Declaration based
4 upon my own personal knowledge or, where indicated, based upon facts made known to me
5 through the corporate records of American Blind & Wallpaper Factory, Inc. ("ABWF"). I am
6 fully familiar with the facts set forth herein, and, if called to testify, could do so competently.

7 2. I am the Director of Online Marketing and Business Development for ABWF. I
8 have been continuously employed by ABWF since September 2001. At the time Google filed
9 this lawsuit on November 26, 2003, I served as E-Commerce Relationship Manager responsible
10 for starting the e-mail marketing program and forming the E-Commerce Department. I have
11 operated under several titles since 2003 and my current title is Director of Online Marketing and
12 Business Development. In addition to my prior responsibilities, as Director of Online Marketing
13 and Business Development, I became responsible for e-mail marketing, implementing new third-
14 party marketing programs, as well as expanding ABWF's marketing into alternative media.

15 3. This Declaration is being submitted in order to summarize the efforts undertaken
16 within ABWF to locate, produce and preserve documents and electronic matter pertaining to the
17 subject matter of the Google trademark lawsuit.

18 4. In late 2003 and early 2004, I was instructed by the company's CEO, Steve
19 Katzman, that I was to find and preserve documents that were relevant to the Google lawsuit,
20 which I was told included documentation concerning communications with Google, keyword
21 advertising (including bidding, spending, click-through rates, consumer surveys, trademarks),
22 ABWF's Internet branding efforts, domain names and URLs, and consumer confusion. I was
23 specifically told by Mr. Katzman not to destroy these kinds of materials. This same instruction
24 was issued to all of the management team at more than one meeting, including employees
25 responsible for e-commerce, finance, marketing, brand management and the senior executives.
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1 5. In 2004-2005, the management team likely included myself, Steve Katzman, Dan
2 Gilmartin, Bob Flynn, Joe Charno, Tom Discenna, Sam Stevens, Sue Sullivan, Angie Sustarich
3 and Michael Layne. Because ABWF underwent a fair amount of personnel changes during this
4 time frame, I am unable to state all the team members with certainty.

5
6 6. In 2006, the management team likely included myself, Steve Katzman, Jeff
7 Alderman, Sam Stevens, Martha Ross, Michael Layne, Irma Kline, Gerry Curran, Angie
8 Sustarich, and Ron Myers. Because ABWF underwent a fair amount of personnel changes during
9 this time frame, I am unable to state all the team members with certainty.

10 7. Martha Ross, Jeff Alderman, Angie Sustarich and I are the only individuals still
11 employed by ABWF who were also members of the management team at some point from 2004
12 to 2006.

13
14 8. I complied with the instructions Mr. Katzman gave me at the meetings in late 2003
15 and early 2004. Specifically, in the first quarter of 2004, I searched my work computer for e-
16 mails relating to the topics Mr. Katzman indicated were relevant to the Google lawsuit. I also
17 searched my personal folder on the network exchange server. In addition, I searched the shared
18 network system, where all important documents are maintained. I subsequently repeated this
19 search in 2005 and 2006. In addition, I took care to preserve all of the documents Mr. Katzman
20 identified to me were relevant to Google's lawsuit.

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22 9. I recall that members of the management team were all asked to search their
23 personal computers and exchange server for these types of documents and to preserve the same.
24 To the best of my knowledge, the members of the management team complied with Mr.
25 Katzman's instructions.

26 10. On February 25, 2004, an internal ABWF search was conducted to locate, identify
27 and preserve electronic data pertaining to ABWF customers who may have been confused about
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1 the source of their purchases. This search was overseen or conducted by Mr. Katzman.

2 Interviews were also conducted by Michael Layne of members of the sales team.

3 11. On March 13, 2004, the ABWF computer system was searched by Joe Charno for
4 documents sent to or from seven specific Google employees. These were provided to Mr.
5 Katzman and Kelley Drye & Warren. Another series of searches was conducted for similar items
6 on April 5, 2004.
7

8 12. The document collections process occurred in two basic waves. The first wave
9 was overseen by Mr. Katzman, during 2004 through 2005, wherein he disseminated the discovery
10 requests or the subjects of the discovery requests to the management team to collect responsive
11 information. The individuals with the primary responsibility for overseeing the search included,
12 but were not limited to, Mr. Katzman, Greg Rupprecht and Joe Charno. I received the request to
13 compile documents during the first wave from Joe Charno and to the extent that I found anything,
14 I provided responsive documents to Mr. Katzman.
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16 13. The second wave of document collection occurred during 2006. I oversaw the
17 second wave and the individuals primarily responsible for the search effort during this time frame
18 were myself, Greg Rupprecht and Gerry Curran. I was responsible for the collection of all
19 information retrieved during 2006.
20

21 14. Being a smaller company, the management team and any other individuals
22 involved in the search effort, such as myself when I was not a member of the management team,
23 were able to and did frequently discuss many of issues that were the subject of discovery or
24 relevant to this case in person during face-to-face meetings.

25 15. I understand that on May 21, 2004, Google served its first set of document
26 requests and interrogatories. Within a couple of months thereafter – I cannot recall specifically
27 how soon after – I was shown a copy of these requests and asked to locate potentially responsive
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1 materials, which I did. I specifically remember reviewing the materials I located with Joe
2 Charno, who at the time was Vice President of Marketing and Advertising with responsibility for
3 E-commerce.

4 16. On April 15, 2005, I compiled a list of ABWF and Google employees, as well as
5 competitive websites, to find further potentially responsive documents for this litigation. I
6 searched our network server and my work computer for documents referring to these employees
7 and websites.

8 17. In 2005, I searched my work computer, and several of the drives on the ABWF
9 network for presentations concerning Google, keyword advertising and branding; anything related
10 to Google paid search advertising; brand word analysis; media plans and all emails and other
11 documentation regarding the foregoing subjects. I provided all documents I found relating to
12 these subjects to Mr. Katzman.

13 18. In May 2005, I was asked to search for advertisements showing use of the ABWF
14 marks. I collected and provided these materials to Mr. Katzman.

15 19. I understand that in June 2005, Mr. Katzman and Kelley Drye & Warren collected
16 cease-and-desist letters that had been sent to competitors and other companies who we believed
17 had been bidding on our trademark terms as keywords.

18 20. As in previous years, in 2006, Mr. Katzman instructed the management team at
19 team meetings to collect and preserve documents relevant to the Google lawsuit.

20 21. I understand that on May 10, 2006, Google served a second set of document
21 requests and interrogatories. During this time period, ABWF was undergoing a change in
22 management. Mr. Katzman left the company as did several individuals on the management team.
23 In or about June 2006, I was shown a copy of these requests and asked to locate potentially
24 responsive materials, which I did.
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1 22. Between 2004 and early 2006, Mr. Katzman was the person within ABWF who
2 worked with Kelley Drye & Warren to produce documents. Documents that I located were sent
3 to Mr. Katzman. In early 2006, Mr. Katzman was increasingly focused on management issues
4 within the company unrelated to the Google lawsuit, and so at this time I became the primary
5 liaison between ABWF and Kelley Drye & Warren with regard to document production and data
6 retrieval.
7

8 23. I have direct personal knowledge of the breadth of the documents ABWF collected
9 both through my personal searches when Mr. Katzman was overseeing the collection and through
10 my subsequent supervision of the collection. I specifically recall compiling all of our responsive
11 marketing materials, including but not limited to our online and print advertising (catalogs and
12 mailers); financial materials, including but not limited to our annual per product break downs;
13 approximately 36,000 pages worth of materials including or regarding Coremetrics reports for
14 web analytics that measured the site traffic and activity, how ABWF's online marketing programs
15 were working and how people were interacting with ABWF's website; and all DVD's and related
16 materials to ABWF's consumer research studies. This list is by no means exhaustive of
17 everything I recall compiling and producing.
18

19 24. During my deposition, I was never asked about ABWF's document retention
20 policies or my knowledge regarding what documents ABWF employees were asked to locate, nor
21 was I asked about instructions we received to preserve materials or documents pertaining to the
22 Google lawsuit.
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24 25. Of all the ABWF employee witnesses deposed by Google, I had the most
25 knowledge of the document collection and preservation efforts. My search efforts caused me to
26 search the computers of other employees for responsive materials as well as my own computer
27 and files and the company's server and files. When it became apparent in October 2006 that a
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1 former employee, Michael Layne, had not properly searched his computer or files, at my
2 instruction, ABWF searched Mr. Layne's computer and produced the responsive materials found.

3 26. In total, between 2004 and 2006, I estimate that I spent over 500 hours searching
4 for, locating and producing relevant documents pertaining to this lawsuit.

5 27. I am not aware that any relevant document was destroyed.

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

7 Executed this 10th day of May 2007, in Plymouth, Michigan.

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9
10 /s/ Jeffrey Alderman
11 JEFFREY ALDERMAN

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