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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 GREGORY
 RUPPRECHT 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, GREGORY RUPPRECHT, declare as follows:

2 1. I am over the age of eighteen and am competent to make this Declaration based
3 upon my own personal knowledge or, where indicated, based upon facts made known to me
4 through the corporate records of American Blind & Wallpaper Factory, Inc. (“ABWF”).
5

6 2. I have been continuously employed by ABWF since March 15, 2000. My present
7 title is Vice President of Technology. At the time Google filed this lawsuit on November 26,
8 2003, I served as Manager of Technology, responsible for all the computer equipment, operations
9 and EDI (electronic data interchange).
10

11 3. This Declaration is being submitted in order to summarize the efforts undertaken
12 within ABWF to locate, produce and preserve documents and electronic matter pertaining to the
13 subject matter of the Google trademark lawsuit.
14

15 4. Beginning in 2004 through early 2006, I was instructed by Steve Katzman several
16 times to search for, locate and preserve electronic data concerning communications with Google,
17 keyword advertising (including bidding, spending, click-through rates, consumer surveys,
18 trademarks), ABWF’s Internet branding efforts, domain names and URLs, and consumer
19 confusion. I complied with Mr. Katzman’s instructions. I do not remember the dates on which I
20 received these instructions, but I recall receiving the instruction at least five times.
21

22 5. I recall specifically that in January 2004, I was instructed to assemble hard
23 documents and electronic data concerning the domain names and URLs owned or controlled by
24 ABWF, which I did.
25

26 6. I conducted searches of my work computer hard drive in 2004 and early 2005 for
27 documents relating to Google, keyword advertising, the company’s Internet branding efforts,
28

1 domain names and URLs, and consumer confusion. I was specifically instructed that I was to
2 find and preserve these documents because they were relevant to the lawsuit against Google. Mr.
3 Katzman told me not to destroy these kinds of materials. This instruction was repeated by Mr.
4 Katzman several times to me and the management team during team meetings.

5
6 7. Only a relatively small group of employees within ABWF would have any of the
7 documents requested. These individuals were almost exclusively the members of the
8 management team. Given Mr. Katzman's frequent admonitions to us, it was common knowledge
9 among the people who were in possession of or instructed to collect documents relevant to
10 Google's lawsuit that they were to preserve copies of pertinent materials.

11
12 8. In 2004-2005, the management team likely included myself, Steve Katzman, Dan
13 Gilmartin, Bob Flynn, Joe Charno, Tom Discenna, Sam Stevens, Sue Sullivan, Angie Sustarich
14 and Michael Layne. Because ABWF underwent a fair amount of personnel changes during this
15 time frame, I am unable to state all the team members with certainty.

16
17 9. In 2006, the management team likely included myself, Steve Katzman, Jeff
18 Alderman, Sam Stevens, Martha Ross, Michael Layne, Irma Kline, Gerry Curran, Angie
19 Sustarich, and Ron Myers. Because ABWF underwent a fair amount of personnel changes during
20 this time frame, I am unable to state all the team members with certainty.

21
22 10. Martha Ross, Jeff Alderman, Angie Sustarich and I are the only individuals still
23 employed by ABWF who were also members of the management team at some point from 2004
24 to 2006.

1 11. I was present when other members of the management team were instructed by
2 Mr. Katzman to search their personal computers and exchange server for the types of documents
3 he had explained were relevant to the Google lawsuit.
4

5 12. I complied with the directive and to the best of my knowledge the other members
6 of the management teams complied with Mr. Katzman's instructions.
7

8 13. I have personal knowledge that Michael Layne preserved relevant documents, such
9 as the raw data from the product and customers surveys run by ABWF, by placing them on
10 ABWF's "L" drive, which is used to store shared files within each department as well as the
11 entire company and that he participated with me in collection efforts.
12

13 14. When I located any pertinent materials, I gave them to Mr. Katzman.
14

15 15. In addition to searching my own computer, I assisted others in searching their
16 personal computers in the event they did not know how to search and retrieve the information that
17 was requested. I showed at least six or seven individuals how to conduct an advanced search,
18 including Steve Katzman, Martha Ross, Jeff Alderman, Sam Stephens, Ron Myers and Dan
19 Gilmartin.
20

21 16. In addition, I was also asked in 2004 and 2005 to search the company's network
22 servers for e-mails concerning these topics. This was a more difficult task because, with our
23 system, it was hard to search for multiple topics across different e-mail accounts. Accordingly,
24 members of the management team and employees whose responsibilities fell within the topic
25 areas requested were asked to search the local (i.e. hard drives) on their work computers. To the
26 best of my knowledge, the group of employees within ABWF that would have any of the
27
28

1 documents requested by Google searched their own computers and files on the server for
2 responsive documents.

3

4 17. In total, I estimate that I have spent over 250 hours in the past three years
5 searching for, reviewing and/or producing documents pertaining to the Google lawsuit. In total, I
6 estimate that I have had approximately eleven discussions with lawyers at the law firm of Kelly
7 Drye & Warren regarding document collection and production in this case.

8

9 18. I am not aware that any document that was relevant to the Google lawsuit was
10 destroyed.

11

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

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

14

15

/s/ Gregory Rupprecht
GREGORY RUPPRECHT

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