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 7 GOOGLE INC.

8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA

10
 11 GOOGLE INC., a Delaware corporation,
 12 Plaintiff,

13 v.

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

17 Defendants.

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

**DECLARATION OF AJAY S. KRISHNAN
 IN SUPPORT OF GOOGLE'S RESPONSE
 TO ABWF'S FOUR DECLARATIONS
 REGARDING ABWF'S ALLEGED
 PRESERVATION, COLLECTION, AND
 PRODUCTION OF MATERIALS IN
 RESPONSE TO APRIL 27, 2007
 COURT ORDER**

Hon. Richard Seeborg

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

20 Counter Plaintiff,

21 v.

22 GOOGLE INC.,

23 Counter Defendant.

24
 25 PUBLIC VERSION

1 I, Ajay S. Krishnan, declare as follows:

2 1. I am an attorney at the firm of Keker & Van Nest LLP, counsel for Plaintiff and
3 Counter-Defendant Google Inc., and am admitted to practice before this Court. I make this
4 declaration in support of Google Inc.'s Response to ABWF's Four Declarations Regarding
5 ABWF's Alleged Preservation, Collection, and Production of Materials in Response to April 27,
6 2007 Court Order. Unless otherwise stated, I know the facts stated herein of my personal
7 knowledge and if called as a witness, I would testify competently thereto.

8 2. Attached hereto as Exhibit A is a true and correct copy of an email exchange
9 dated May 26, 2006, involving Michael Layne and Jeffrey Alderman, and which concerns a
10 search for responsive documents. The document was produced by ABWF in the course of
11 litigation, is Bates labeled ABWF 047376 - 047377, and was designated "Attorneys' Eyes Only"
12 by ABWF. It will therefore be filed under seal.

13 **Description of ABWF's October 2005 Document Production**

14 3. The remainder of this declaration summarizes ABWF's 2,790 page October 2005
15 document production, pursuant to the exception to the Best Evidence Rule contained in Federal
16 Rule of Evidence 1006, because this number of pages cannot be conveniently attached to
17 Google's submission or examined in court. While the rule requires Google to make the
18 documents available to ABWF for examination and copying at a convenient time and place, and
19 Google is happy to do so, it should be noted that ABWF already has access to these documents
20 since it was ABWF who produced them. Should the Court desire copies, Google will produce
21 them.

22 4. The cover letter to ABWF's October 2005 production of documents is dated
23 October 26, 2005. It states that the documents in the production are labeled "ABWF 000001
24 through 2790," and that they are responsive to Google's first set of document requests. The first
25 and last pages of the production accurately reflect the Bates numbers indicated in the cover letter.

26 5. Documents Bates labeled ABWF 000001 through ABWF 001522 consist of
27 cease-and-desist letters, complaints, settlement agreements, and various other litigation or pre-
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1 litigation documents related to ABWF's efforts to enforce its alleged trademarks. (A single
2 document occurring later on in the production, Bates labeled ABWF 001794 through ABWF
3 001796, also fits within this category.) The vast majority of the documents authored by ABWF
4 are authored by outside counsel. There are, however, a small number of emails or letters to
5 alleged infringers that threaten litigation and that were drafted by an ABWF employee. These
6 employee-drafted emails and letters, however, are typically produced as part of a set of
7 documents that all pertain to the same matter (*i.e.*, the same alleged infringer), including emails
8 and letters drafted by outside counsel in the same matter.

9 6. Documents Bates labeled ABWF 001523 through ABWF 001783 are emails
10 (occasionally with attachments) from an unknown source account. The reason why the source
11 account is unknown is that the top portion of each document is redacted. ABWF has not
12 supplied a reason for the redaction. If the top portion were not redacted—as is the case for other
13 emails in the October 2005 production—the document would indicate the email account from
14 which the document was printed. The address information (*i.e.*, the “To,” “From,” and “CC”
15 fields) from the most recent unredacted email in each email thread includes the email address for
16 Bill Smith or Joe Charno. Thus, the implication is that Joe Charno and Bill Smith forwarded
17 certain emails from their email accounts to outside counsel, who printed these documents for the
18 document production. These emails are almost uniformly communications between ABWF and
19 Google.

20 7. Documents Bates labeled ABWF 001785 through ABWF 001793 are three
21 emails. The top portion of each document is unredacted, and it appears that these emails were
22 printed from the email account of Stephanie Gilmartin. These three emails are essentially cease-
23 and-desist letters, in which ABWF is seeking to enforce its alleged trademarks.

24 8. Documents Bates labeled ABWF 001800 through ABWF 002058 are emails
25 printed from the email account of Jeffrey Alderman. These are almost uniformly
26 communications to or from Google. Only five were emails that were not sent to or from Google.

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1 9. Documents Bates labeled ABWF 002059 through ABWF 002272 are emails
2 printed from the email account of Steve Katzman. Every one of these emails were to or from
3 Google.

4 10. Documents Bates labeled ABWF 002286 through ABWF 002677 appears to be
5 ABWF's trademark file. It contains documents submitted to or received from the USPTO or the
6 trademark offices of other countries with regard to ABWF's applications for its alleged
7 trademarks.

8 11. Documents Bates labeled ABWF 002681 through ABWF 002714 are invoices
9 from Google to ABWF, for advertising on Google's AdWords program.

10 12. Documents Bates labeled ABWF 002715 through ABWF 002790 are four audited
11 financial statements, for the years 1998 through 2004.

12 I state under penalty of perjury of the laws of the United States of America that the
13 foregoing statements are true and correct. Executed May 25, 2007, at San Francisco, California.

14
15 /s/ Ajay S. Krishnan
16 AJAY S. KRISHNAN

EXHIBIT A

MANUAL FILING NOTIFICATION

Regarding Exhibit A to the DECLARATION OF AJAY S. KRISHNAN IN SUPPORT OF GOOGLE'S RESPONSE TO ABWF'S FOUR DECLARATIONS REGARDING ABWF'S ALLEGED PRESERVATION, COLLECTION, AND PRODUCTION OF MATERIALS IN RESPONSE TO APRIL 27, 2007 COURT ORDER

This filing is in paper form only, and is being maintained in the case file in the Clerk's office. If you are a participant in this case, this filing will be served in hard-copy shortly.

This document was not electronically filed because it is under seal.