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 AMERICA ONLINE, INC.,
 6 NETSCAPE COMMUNICATIONS
 CORPORATION, and COMPUSERVE
 7 INTERACTIVE SERVICES, INC.

8
 9 IN THE UNITED STATES DISTRICT COURT
 10 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 11 SAN JOSE DIVISION

12 GOOGLE INC., a Delaware corporation,
 13 Plaintiff,

14 v.

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

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

21 v.

22 GOOGLE, INC., AMERICA ONLINE, INC.,
 23 NETSCAPE COMMUNICATIONS
 CORPORATION, COMPUSERVE
 24 INTERACTIVE SERVICES, INC., ASK
 JEEVES, INC., and EARTHLINK, INC.,
 25 Counter-Defendants/
 26 Third-Party Defendants.

Case No. C 03-5340 JF (EAI)

**MEMORANDUM OF POINTS AND
 AUTHORITIES IN SUPPORT OF
 MOTION BY THIRD-PARTY
 DEFENDANTS AMERICA ONLINE, INC.,
 NETSCAPE COMMUNICATIONS
 CORPORATION, AND COMPUSERVE
 INTERACTIVE SERVICES, INC. TO
 DISMISS THIRD-PARTY CLAIMS**

Date: September 17, 2004
 Time: 9:00 a.m.
 Place: Courtroom 3, 5th Floor

Honorable Jeremy Fogel

1 **I. INTRODUCTION**

2 Defendant and counter-claimant American Blind & Wallpaper Factory, Inc. (“American
3 Blind”) has brought claims against third-party defendants America Online, Inc., Netscape
4 Communications Corporation, and Compuserve Interactive Services, Inc. (collectively referred to
5 herein as the “Service Providers”) for the sole reason that the Service Providers utilize the web
6 searching platform developed by plaintiff and counter-defendant Google Inc. (“Google”). The Service
7 Providers respectfully submit that American Blind’s third-party claims against them should be
8 dismissed under Federal Rule of Civil Procedure 12(b)(6) because allegations that they simply use the
9 Google web searching platform fail to state a claim upon which relief can be granted. The claims
10 against the Service Providers also should be dismissed because the allegations against Google are
11 insufficient, and to the extent the third-party claims against the Service Providers are based on those
12 same allegations, those claims similarly cannot be sustained.

13 **II. ARGUMENT**

14 The charging allegations against the Service Providers can be found in just two paragraphs of
15 American Blind’s Answer, Affirmative Defenses, Counterclaims, and Third-Party Claims
16 (“Counterclaims”) filed in this action on May 4, 2004. (Counterclaims, ¶¶ 67-68.) The Service
17 Providers are alleged only to be using the Google web searching platform. They are not alleged to be
18 engaging in the other business practices alleged against Google, or to have engaged in any other
19 independent wrongdoing. These allegations do not provide a sufficient basis to state a claim against
20 the Service Providers, and those third-party claims should be dismissed with prejudice.

21 To the extent American Blind seeks to hold the Service Providers liable for the manner in
22 which the Google web searching platform works, American Blind’s claims fail as a matter of law for
23 the reasons stated in the motion to dismiss filed on behalf of Google and third-party defendants Ask
24 Jeeves, Inc. (“Ask Jeeves”) and Earthlink, Inc. (“Earthlink”). The Service Providers incorporate herein
25 by this reference, and adopt the arguments set forth in the Motion to Dismiss Counterclaims and Third-
26 Party Claims filed with this Court by Google, Ask Jeeves, and Earthlink on June 23, 2004. The claims
27 against the Service Providers should be dismissed with prejudice for this reason as well.

28 1.

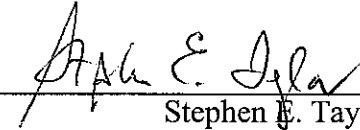
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III. CONCLUSION

Based on the foregoing, the Service Providers respectfully request that the claims against them be dismissed. There are no allegations that they have engaged in any independent wrongdoing. Moreover, for the reasons stated in Google's motion to dismiss, simply using the Google web searching platform fails to support a claim against Google or the Service Providers.

Dated: June 23, 2004

Respectfully submitted,
TAYLOR & COMPANY LAW OFFICES, INC.

By: 
Stephen E. Taylor

Attorneys for Third-Party Defendants
AMERICA ONLINE, INC., NETSCAPE
COMMUNICATIONS CORPORATION, and
COMPUSERVE INTERACTIVE SERVICES, INC.

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PROOF OF SERVICE

I am employed in the County of San Francisco, State of California. I am over the age of 18 and not a party to the within action. My business address is Taylor & Company Law Offices, Inc., One Ferry Building, Suite 355, San Francisco, California 94111.

On June 23, 2004, I served a true and correct copy of the document(s) described as:

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION BY THIRD-PARTY DEFENDANTS AMERICA ONLINE, INC., NETSCAPE COMMUNICATIONS CORPORATION, AND COMPUSERVE INTERACTIVE SERVICES, INC. TO DISMISS THIRD-PARTY CLAIMS on the following interested parties in this action:

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Mr. Mark A. Lemley
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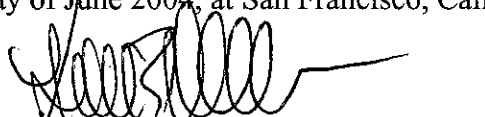
1 [X] [BY US MAIL, CCP § 1013a(3)] I caused the foregoing document(s) to be enclosed
2 in a sealed envelope, with first class postage fully paid, for delivery on the individuals identified above
3 as indicated herein. I am "readily familiar" with the firm's practice of collection and processing
4 correspondence for mailing and know that, in the ordinary course of Taylor & Company Law Offices,
5 Inc.'s business practice, the document(s) described above would be deposited with the United States
6 Postal Service on that same day at San Francisco, California, in the ordinary course of business. I am
7 aware that on motion of the party served, service is presumed to be invalid if the postal cancellation
8 date, or postage meter date, is more than one day after the date of deposit for mailing set forth in this
9 declaration.

10 [] [BY FACSIMILE, CCP § 1013(e)] I caused the foregoing document(s) to be
11 transmitted by facsimile to the offices of the addressees indicated above at the facsimile numbers listed
12 for each addressee served. Upon completion of said facsimile transmission, the transmitting machine
13 issued a transmission report showing that the transmission was complete and without error.

14 [] [BY OVERNIGHT DELIVERY, CCP § 1013(d)] I caused delivery of the
15 document(s) listed above to be effected by overnight mail, by placing true and correct copies in
16 separate envelopes for each addressee shown above, with the name and address of the person served
17 shown on the envelope, and by sealing the envelope and placing it for collection. Delivery fees were
18 paid or provided for in accordance with the ordinary business practices of Taylor & Company Law
19 Offices, Inc.

20 [] [BY PERSONAL SERVICE, CCP § 1011(a)] I caused the foregoing document(s) to
21 be served by hand on the following individual(s) as indicated on the "Declaration of Personal Service"
22 attached hereto as Exhibit A. The person who delivered a true and correct copy of such document(s) to
23 the person(s) identified below is identified in Exhibit A attached hereto.

24 I declare under penalty of perjury, under the laws of the United States of America, that the
25 foregoing is true and correct. Executed this 23rd day of June 2004, at San Francisco, California.

26 

27 Kellie B. Mickelson