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5 Attorneys for Third-Party Defendants
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
20 decoratetoday.com, Inc.,

21 Counter-Claimant,

22 v.

23 GOOGLE, INC., AMERICA ONLINE, INC.,
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)

**NOTICE OF MOTION AND 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 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on September 17, 2004, at 9:00 a.m., or as soon thereafter as the
3 matter may be heard in Courtroom 3, on the 5th Floor of the United States District Court for the
4 Northern District of California, located at 280 South First Street, San Jose, California 95113, before
5 the Honorable Jeremy Fogel, third-party defendants America Online, Inc. ("AOL"), Netscape
6 Communications Corporation ("Netscape"), and Compuserve Interactive Services, Inc.
7 ("Compuserve") will and hereby do move this Court pursuant to Federal Rule of Civil Procedure
8 12(b)(6) for an order dismissing with prejudice all of defendant and counter-claimant American Blind
9 & Wallpaper Factory, Inc.'s ("American Blind") third-party claims against AOL, Netscape and
10 Compuserve on the grounds that:

- 11 (1) The only allegations against AOL, Netscape and Compuserve are that they use the
12 Google Inc. web searching platform, which allegations fail to state a claim against
13 these third-party defendants upon which relief can be granted; and
- 14 (2) Using the Google Inc. web searching platform does not constitute use of any of
15 American Blind's putative trademarks to identify the source of their products or
16 services, and because none of them have engaged in wrongful activity for
17 purposes of an interference with prospective economic advantage claim, as stated
18 in the motion to dismiss filed on behalf of Google Inc., Ask Jeeves, Inc., and
19 Earthlink, Inc., which is incorporated herein.

20 This motion is based on (1) this Notice of Motion and Motion by America Online, Inc.,
21 Netscape Communications Corporation, and Compuserve Interactive Services, Inc. to Dismiss Third-
22 Party Claims, (2) the supporting Memorandum of Points and Authorities, (3) the motion to dismiss

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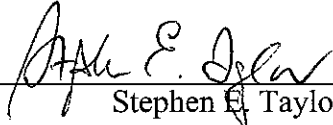
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1 filed on behalf of Google Inc., Ask Jeeves, Inc., and Earthlink, Inc., which is incorporated herein by
2 this reference, (4) the pleadings, records and files in this action, and (5) on such oral argument as may
3 be presented at the time of the hearing, as well as all other matters this Court deems to be appropriate.
4

5 Dated: June 23, 2004

Respectfully submitted,

6 TAYLOR & COMPANY LAW OFFICES, INC.

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8 By:  _____
9 Stephen E. Taylor

10 Attorneys for Third-Party Defendants
11 AMERICA ONLINE, INC., NETSCAPE
12 COMMUNICATIONS CORPORATION, and
13 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: **NOTICE OF MOTION AND 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:

Mr. Michael H. Page
Mr. Mark A. Lemley
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Counsel for American Blind & Wallpaper Factory, Inc.

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Counsel for American Blind & Wallpaper Factory, Inc.


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 _____
28 Kellie B. Mickelson