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

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

13 GOOGLE INC., a Delaware Corporation,

14 Plaintiff,

15 v.

16 AMERICAN BLIND & WALLPAPER
 FACTORY, INC., a Delaware Corporation
 17 d/b/a decoratetoday.com, Inc.; and DOES 1-100,
 inclusive,

18 Defendants.

Case No.: C 03-5340-JF (EAI)

**THIRD-PARTY DEFENDANTS
 AMERICA ONLINE, INC.'S,
 NETSCAPE COMMUNICATIONS
 CORPORATION'S AND
 COMPUSERVE INTERACTIVE
 SERVICES, INC.'S ANSWER TO
 THIRD-PARTY COMPLAINT**

DEMAND FOR JURY

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

22 Counter-Claimant,

23 v.

24 GOOGLE, INC., AMERICA ONLINE, INC.,
 NETSCAPE COMMUNICATIONS
 25 CORPORATION, COMPUSERVE
 INTERACTIVE SERVICES, INC., ASK
 26 JEEVES, INC., and EARTHLINK, INC.,

27 Counter-Defendants.

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 THIRD-PARTY DEFENDANTS AMERICA ONLINE, INC.'S, NETSCAPE COMMUNICATIONS CORPORATION'S
 AND COMPUSERVE INTERACTIVE SERVICES, INC.'S ANSWER TO THIRD-PARTY COMPLAINT: CASE NO.
 C 03-5340-JF (EAI)

1 Third-party defendants America Online, Inc., Netscape Communications Corporation, and
2 CompuServe Interactive Services, Inc. (collectively "the Responding Third Parties") respond to the
3 allegations of the third-party complaint ("Third-Party Complaint") of defendant and third-party
4 plaintiff American Blind & Wallpaper Factory, Inc. (hereafter "American Blind") that pertain to them
5 as follows:

6 **NATURE OF CASE**

7 1. The Responding Third Parties¹ admit that they operate websites that include search
8 engines that, inter alia, allow consumers to search for goods and services. The Responding Third
9 Parties deny the remaining allegations of Paragraph 1.

10 **PARTIES**

11 2. The Responding Third Parties lack sufficient knowledge or information to form a
12 belief as to the truth of the allegations of these paragraphs, and on that basis deny each and every
13 allegation contained therein.

14 3. The Responding Third Parties lack sufficient knowledge or information to form a
15 belief as to the truth of the allegations of these paragraphs, and on that basis deny each and every
16 allegation contained therein.

17 4. Admitted.

18 5. The Responding Third Parties lack sufficient knowledge or information to form a
19 belief as to the truth of the allegations of these paragraphs, and on that basis deny each and every
20 allegation contained therein.

21 6. Admitted.

22 7. The Responding Third Parties lack sufficient knowledge or information to form a
23 belief as to the truth of the allegations of these paragraphs, and on that basis deny each and every
24 allegation contained therein.

25
26 ¹ American Blind's third-party claims are uncertain in that they appear to interchange "Plaintiff" and
27 "Defendant," frequently referring to defendant and third-party plaintiff American Blind as "Plaintiff" and
28 plaintiff Google and the third-party defendants collectively as "Defendants." Where it is decipherable from
context, the Responding Third Parties respond to the allegations as apparently intended rather than as written.

1 8. Admitted.

2 **JURISDICTION AND VENUE**

3 9-10. Admitted.

4 11-15. The Responding Third Parties do not contest either jurisdiction or venue in this
5 District.

6 **PLAINTIFF'S [SIC] TRADEMARKS**

7 16-23. Assuming that the references therein to "Plaintiffs" are intended to refer to
8 defendant American Blind, the Responding Third Parties lack sufficient knowledge or information to
9 form a belief as to the truth of the allegations of these paragraphs, and on that basis deny each and
10 every allegation contained therein.

11 **FACTUAL BACKGROUND**

12 **A. The Internet And The World-Wide Web**

13 24. The Responding Third Parties deny that "the World Wide Web is a portion of the
14 Internet especially suited to displaying images and sound, in addition to text." The Responding Third
15 Parties deny that "American Blind" is an example of a domain name. The Responding Third Parties
16 admit the remaining allegations of this paragraph.

17 25-26. The Responding Third Parties lack sufficient knowledge or information to form a
18 belief as to the truth of the allegations of these paragraphs, and on that basis deny each and every
19 allegation contained therein.

20 **B. The Business of Plaintiff [sic] American Blind**

21 27-34. The Responding Third Parties lack sufficient knowledge or information to form a
22 belief as to the truth of the allegations of these paragraphs, and on that basis deny each and every
23 allegation contained therein.

24 **C. The Business of Defendant [sic] Google**

25 35-41. The Responding Third Parties lack sufficient knowledge or information to form a
26 belief as to the truth of the allegations of these paragraphs, and on that basis deny each and every
27 allegation contained therein.

1 **D. Defendant [sic] Google's Acts**

2 42-66. The Responding Third Parties lack sufficient knowledge or information to form a
3 belief as to the truth of the allegations of these paragraphs, and on that basis deny each and every
4 allegation contained therein.

5 **E. The Business of the Other Defendants [sic]**

6 67. The Responding Third Parties admit that they each operate websites that include
7 search engines. Except as so admitted, the Responding Third Parties lack sufficient knowledge or
8 information to form a belief as to the truth of the allegations of these paragraphs, and on that basis
9 deny each and every allegation contained therein.

10 68. The Responding Third Parties admit that they have contractual relationships with
11 Google wherein they display "sponsored" search results provided by Google, and that they typically
12 receive revenue each time users "click" on those "sponsored" search results. Except as so admitted,
13 the Responding Third Parties lack sufficient knowledge or information to form a belief as to the truth
14 of the allegations of these paragraphs, and on that basis deny each and every allegation contained
15 therein.

16 69. The Responding Third Parties admit that Google has agreed to indemnify them and
17 to provide them with a defense. Except as so admitted, the Responding Third Parties lack sufficient
18 knowledge or information to form a belief as to the truth of the allegations of these paragraphs, and on
19 that basis deny each and every allegation contained therein.

20 **F. Harm to Plaintiff [sic]**

21 70-79. Assuming that references herein to "Defendants" are to plaintiff Google and the
22 third-party defendants, the Responding Third Parties admit that users searching for terms including the
23 component parts of American Blind's claimed marks are presented with advertisements placed by third
24 parties, including entities which appear to compete with American Blind. The Responding Third
25 Parties further admit that they have not entered into any licensing agreements with American Blind,
26 and that Exhibits C through F to American Blind's Third-Party Complaint appear to be search results
27 and advertisements generated by Google (Exhibits C through E) or Google and Netscape (Exhibit F),
28

1 although not presented as they would appear to a user. The Responding Third Parties deny the
2 remaining allegations of these paragraphs.

3 80-88. The Responding Third Parties deny the allegations of these paragraphs.

4 **FIRST CAUSE OF ACTION**

5 **Lanham Act -- Trademark Infringement**

6 89. The Responding Third Parties incorporate by reference their responses set forth in
7 paragraphs 1 through 69 above.

8 90-93. Denied.

9 **SECOND CAUSE OF ACTION**

10 **Lanham Act -- False Representation**

11 94. The Responding Third Parties incorporate by reference their responses set forth in
12 paragraphs 1 through 74 above.

13 95-98. Denied.

14 **THIRD CAUSE OF ACTION**

15 **Lanham Act -- Dilution**

16 99. The Responding Third Parties incorporate by reference their responses set forth in
17 paragraphs 1 through 79 above.

18 100-103. Denied.

19 **FOURTH CAUSE OF ACTION**

20 **Injury to Business Reputation and Dilution -- Cal. Bus. & Prof. Code §14330**

21 104. The Responding Third Parties incorporate by reference their responses set forth in
22 paragraphs 1 through 84 above.

23 105-108. Denied.

24 **FIFTH CAUSE OF ACTION**

25 **Unfair Competition -- Cal. Bus. & Prof. Code §17200**

26 109. The Responding Third Parties incorporate by reference their responses set forth in
27 paragraphs 1 through 89 above.

1 110-114. Denied.

2 **SIXTH CAUSE OF ACTION**

3 **Common Law -- Trademark Infringement and Unfair Competition**

4 115. The Responding Third Parties incorporate by reference their responses set forth in
5 paragraphs 1 through 95 above.

6 116-118. Denied.

7 **SEVENTH CAUSE OF ACTION**

8 **Tortious Interference With Prospective Economic Advantage**

9 119. The Responding Third Parties incorporate by reference their responses set forth in
10 paragraphs 1 through 99 above.

11 120-125. This cause of action has been dismissed by the Court, and thus no responsive
12 pleading is required. To the extent a response is required, the Responding Third Parties deny the
13 allegations of these paragraphs.

14 **EIGHTH CAUSE OF ACTION**

15 **Contributory Trademark Infringement -- Lanham Act**

16 **(In the Alternative)**

17 126. The Responding Third Parties incorporate by reference their responses set forth in
18 paragraphs 1 through 123 above.

19 127-131. Denied.

20 **NINTH CAUSE OF ACTION**

21 **Contributory Dilution -- Lanham Act**

22 **(In the Alternative)**

23 132. The Responding Third Parties incorporate by reference their responses set forth in
24 paragraphs 1 through 128 above.

25 133-137. Denied.

1 **AFFIRMATIVE DEFENSES**

2
3 **FIRST AFFIRMATIVE DEFENSE: ESTOPPEL**

4 American Blind is estopped, in whole or in part, from asserting the claims alleged, and
5 obtaining the relief requested in the Third-Party Complaint against the Responding Third Parties by
6 reason of American Blind's conduct, actions and communications to others.

7 **SECOND AFFIRMATIVE DEFENSE: WAIVER**

8 American Blind has waived, in whole or in part, any rights it may have to institute an action for
9 the alleged wrongdoings of which it complains by reason of American Blind's conduct, actions and
10 communications to others.

11 **THIRD AFFIRMATIVE DEFENSE: NO DAMAGES**

12 The Responding Third Parties aver that American Blind has not been damaged in any amount,
13 manner or at all by reason of any act alleged against the Responding Third Parties in the Third-Party
14 Complaint, and, therefore, the relief prayed for in the Third-Party Complaint cannot be granted.

15 **FOURTH AFFIRMATIVE DEFENSE: FAILURE TO MITIGATE**

16 American Blind has failed to take reasonable action to mitigate its alleged damages, if any there
17 were.

18 **FIFTH AFFIRMATIVE DEFENSE: SPECULATIVE DAMAGES**

19 American Blind's claim for damages must fail because its purported damages are speculative.

20 **SIXTH AFFIRMATIVE DEFENSE: PREEMPTION**

21 American Blind's state law claims are barred, in whole or in part, on the ground that they
22 conflict with, and are preempted by, federal law.

23 **SEVENTH AFFIRMATIVE DEFENSE: LIMITED REMEDIES**

24 Assuming without admitting that any infringement occurred, the Lanham Act, 15 U.S.C. §
25 1114(2), limits American Blind's remedies as to the Responding Third Parties.

26 **EIGHTH AFFIRMATIVE DEFENSE: UNCLEAN HANDS**

27 American Blind's claims are barred by the doctrine of unclean hands.

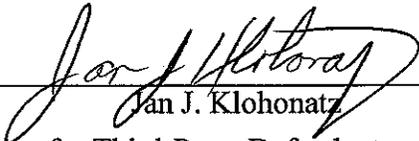
PRAYER FOR RELIEF

WHEREFORE, the Responding Third Parties pray for relief as follows:

1. That judgment be entered in the Responding Third Parties' favor and against American Blind on all counts of the Third-Party Complaint;
2. That American Blind take nothing on its Third-Party Complaint;
3. That American Blind be required to pay all of the Responding Third Parties' attorneys' fees, expenses, and costs pursuant to 15 U.S.C. §1117; and
4. For such other and further relief as the Court may deem proper.

Dated: April 13, 2005

TAYLOR & COMPANY LAW OFFICES, INC.

By: 
Jan J. Klohonatz

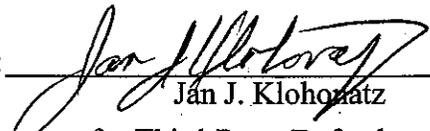
Attorneys for Third-Party Defendants
AMERICA ONLINE, INC.,
NETSCAPE COMMUNICATIONS
CORPORATION and COMPUSERVE
INTERACTIVE SERVICES, INC.

JURY DEMAND

The Responding Third Parties demand a jury on all issues so triable.

Dated: April 13, 2005

TAYLOR & COMPANY LAW OFFICES, INC.

By: 
Jan J. Klohozatz

Attorneys for Third-Party Defendants
AMERICA ONLINE, INC.,
NETSCAPE COMMUNICATIONS
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