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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GOOGLE INC., a Delaware corporation,

Plaintiff,

v.

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

Defendants.

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

**JOINT FED. R. CIV. P. 26(f) REPORT,
CASE MANAGEMENT STATEMENT
AND PROPOSED CASE MANAGEMENT
ORDER**

Date: May 13, 2005

Time: 10:30 a.m.

Courtroom: 3, 5th Flr.

Judge: Hon. Jeremy Fogel

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

Counter-Plaintiff,

v.

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

Counter-Defendants/
Third-Party Defendants

Plaintiff/Counter-Defendant Google Inc. (“Google”), Defendant/Counter-Plaintiff American
Blind & Wallpaper Factory, Inc. (“American Blind”), and Third-Party Defendants American Online,
Inc. (“America Online”), Netscape Communications Corp. (“Netscape”), Compuserve Interactive
Services, Inc. (“Compuserve”), Ask Jeeves, Inc. (“Ask Jeeves”), and Earthlink, Inc. (“Earthlink”)
submit the following joint case management conference statement.

I. DESCRIPTION OF THE CASE

A. Background

Google filed this action against American Blind on November 26, 2003, seeking a declaratory
judgment that its current policy regarding the sale of keyword-triggered advertising does not constitute

1 trademark infringement. American Blind contends that many of American Blind's competitors – with
2 the assistance and encouragement of search engines such as Google – have attempted to confuse
3 American Blind's customers and capitalize illegally on American Blind's goodwill and reputation by
4 purchasing advertising keywords identical or substantially similar to American Blind's federally
5 registered and common law trademarks from the search engines, including Google. Google disagrees
6 that American Blind's customers are likely to be confused as a result of the purchase of such
7 keywords, or that Google assists in or encourages illegal conduct on the part of American Blind's
8 competitors.

9 American Blind filed counterclaims and third-party claims against Google, American Online,
10 Inc., Netscape Communications Corp., CompuServe Interactive Services, Inc., Askjeeves, Inc., and
11 Earthlink, Inc. for trademark infringement and dilution, unfair competition, and tortious interference
12 with prospective economic advantage.

13 On June 23, 2004, Google and the Third-Party Defendants filed a motion to dismiss the
14 counterclaims and third-party claims filed by American Blind. On March 30, 2005, this Court denied
15 the motion to dismiss with regard to all counts for trademark infringement and dilution and for unfair
16 competition. The Court granted the motion to dismiss with regard to American Blind's claim for
17 tortious interference with prospective business advantage.

18 Per the Court's June 21, 2004 Order, discovery was stayed in this case until three weeks after
19 the Court ruled on the motions to dismiss, which was April 20, 2005. Google and American Blind
20 have propounded written discovery requests on each other.

21 **B. Principal Factual and Legal Issues**

22 Google contends the principal factual and legal issues are:

23 (1) Whether Google's sale of keyword-triggered advertising to various of its customers
24 constitutes trademark infringement; and

25 (2) Whether the purchase by various of Google's customers of keywords that are allegedly
26 similar to American Blind's marks, and the appearance of the websites of those customers as
27 "Sponsored Links" beside the search results that Google displays in response to search queries using
28 those keywords, is likely to cause confusion as to whether American Blind's goods and services are

1 associated with the goods and services of the keyword purchasers.

2 American Blind contends that, in addition to the above, the principal factual and legal issues
3 include:

4 (1) Whether Google is marketing and/or selling terms identical or substantially similar to
5 American Blind's federally registered and common law trademarks as part of Google's keyword-
6 triggered advertising program;

7 (2) Whether Google's sale of terms identical or substantially similar to American Blind's
8 federally registered and common law trademarks as part of Google's keyword-triggered advertising
9 program constitutes trademark infringement;

10 (3) Whether Google's sale of terms identical or substantially similar to American Blind's
11 federally registered and common law trademarks as part of Google's keyword-triggered advertising
12 program constitutes indirect or contributory trademark infringement;

13 (4) Whether Google's sale of terms identical or substantially similar to American Blind's
14 federally registered and common law trademarks as part of Google's keyword-triggered advertising
15 program dilutes American Blind's trademarks;

16 (5) Whether Google's sale of terms identical or substantially similar to American Blind's
17 federally registered and common law trademarks as part of Google's keyword-triggered advertising
18 program tarnishes American Blind's trademarks;

19 (6) Whether customers of American Blind are actually confused by Google's sale of terms
20 identical or substantially similar to American Blind's federally registered and common law trademarks
21 as part of Google's keyword-triggered advertising program;

22 (7) Whether the purchase by various of Google's customers of keywords that are identical or
23 substantially similar to American Blind's federally registered and common law trademarks, and the
24 appearance of the websites of those customers as "Sponsored Links" beside the search results that
25 Google displays in response to search queries using those keywords, is likely to cause confusion as to
26 whether American Blind's goods and services are associated with the goods and services of the
27 keyword purchasers;

28 (8) Whether American Blind has suffered any actual damages as a result of Google's sale of

1 terms identical or substantially similar to American Blind’s federally registered and common law
2 trademarks as part of its keyword-triggered advertising program;

3 (9) Whether Google’s alleged infringement of American Blind’s federally registered and
4 common law trademarks is willful and deliberate;

5 (10) Whether Google’s sale of terms identical or substantially similar to American Blind’s
6 federally registered and common law trademarks as part of it keyword-triggered advertising program
7 has resulted in unfair competition;

8 (11) Whether Google shares revenue from its sale of terms identical or substantially similar to
9 American Blind’s federally registered and common law trademarks as part of Google’s keyword-
10 triggered advertising program with the Third-Party Defendants or others;

11 (12) To what extent does Google derive profits from the sale of terms identical or substantially
12 similar to American Blind’s federally registered and common law trademarks as part of Google’s
13 keyword-triggered advertising program to purchasers other than American Blind;

14 (13) To what extent does Google derive profits from the sale of terms identical or substantially
15 similar to registered and common law trademarks as part of Google’s keyword-triggered advertising
16 program to purchasers other than the mark holders;

17 (14) To what extent do competitors of American Blind benefit unfairly, by exposure, sales or
18 “click-throughs”, by purchasing terms identical or substantially similar to American Blind’s federally
19 registered and common law trademarks as part of Google’s keyword-triggered advertising program;

20 (15) Whether Google has agreed not to permit the sale of terms identical or substantially
21 similar to other trademark holders’ trademarks as part of its keyword-triggered advertising program;

22 (16) Whether other customers of Google have complained about Google’s sale of terms
23 identical or substantially similar to their trademarks as part of Google’s keyword-triggered advertising
24 program.

25 **C. Service of Process**

26 There are no unserved parties.

27 **D. Additional Parties**

28 Neither Google, American Blind, nor the Third-Party Defendants currently intend to join any

1 additional parties.

2 **II. ALTERNATIVE DISPUTE RESOLUTION**

3 The parties generally agree that private mediation may be beneficial in this case, and will meet
4 and confer over the appropriate time frame to engage in such mediation.

5 **III. INITIAL DISCLOSURES UNDER FED. R. CIV. P. 26(A)**

6 Pursuant to this Court’s April 22, 2005 Order, the parties will serve their Rule 26 initial
7 disclosures upon one another on April 27, 2005.

8 **IV. CASE MANAGEMENT PLAN**

9 **A. Discovery and Trial Schedule**

10 The parties jointly propose the following case management schedule:

11	Cutoff of Fact Discovery	February 27, 2006
12	All Parties’ Expert Reports Due	March 31, 2006
13	Rebuttal Expert Reports Due	May 15, 2006
14	Cutoff of Expert Discovery	June 30, 2006
15	Cutoff for filing Dispositive Motions	July 31, 2006
16	Pretrial Conference Statement	October 2, 2006
17	Pretrial Conference	October 12, 2006
18	Trial Date	November 2006

19 **B. Protective Order**

20 The parties will meet and confer on an appropriate protective order and submit a proposed
21 order to the Court by May 30, 2005.

22 **C. Trial Duration**

23 The parties estimate a trial of approximately two weeks.

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1 Dated: April 26, 2005

KEKER & VAN NEST, LLP

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By: /s/ Michael H. Page
MICHAEL H. PAGE

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Attorneys for Plaintiff/Counter-Defendant
GOOGLE INC.

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7 Dated: April 26, 2005

HOWREY LLP

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By: /s/ Robert N. Phillips
ROBERT N. PHILLIPS

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Attorneys for Defendant/Counter-Plaintiff
AMERICAN BLIND AND WALLPAPER
FACTORY, INC.

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18 Dated: April 26, 2005

TAYLOR & COMPANY LAW OFFICES,
INC.

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By: /s/ Stephen E. Taylor
STEPHEN E. TAYLOR

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

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1 IT IS SO ORDERED.
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4 Hon. Jeremy Fogel, United States District Court Judge
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9 **ATTESTATION AS TO CONCURRENCE**

10 I, Robert N. Phillips, under penalty of perjury of the laws of the United States of America,
11 attest that concurrence in the filing of this document has been obtained from each of the other
12 signatories to this document.

13 /s/ Robert N. Phillips
14 Robert N. Phillips
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