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8

9 UNITED STATES DISTRICT COURT  
 10 NORTHERN DISTRICT OF CALIFORNIA

11	GOOGLE INC., a Delaware corporation,	) Case No. C 03-5340-JF (EAI)
		)
12	Plaintiff,	) <b>JOINT FED. R. CIV. P. 26(f) REPORT,</b>
		) <b>CASE MANAGEMENT STATEMENT</b>
13	v.	) <b>AND PROPOSED CASE MANAGEMENT</b>
		) <b>ORDER</b>
14	AMERICAN BLIND & WALLPAPER	)
	FACTORY, INC., a Delaware corporation	) Date: February 3, 2006
15	d/b/a decoratetoday.com, Inc.; and DOES 1-	) Time: 10:30 a.m.
	100, inclusive,	) Courtroom: 3, 5 <sup>th</sup> Flr.
16	Defendants.	) Judge: Hon. Jeremy Fogel
		)
17		)
18	AMERICAN BLIND & WALLPAPER	)
	FACTORY, INC., a Delaware corporation	)
19	d/b/a decoratetoday.com, Inc.,	)
		)
20	Counter-Plaintiff,	)
		)
21	v.	)
		)
22	GOOGLE, INC., AMERICA ONLINE, INC.,	)
	NETSCAPE COMMUNICATIONS	)
23	CORPORATION, COMPUSERVE	)
	INTERACTIVE SERVICES, INC., ASK	)
24	JEEVES, INC., and EARTHLINK, INC.	)
		)
25	Counter-Defendants/ Third-Party Defendants	)
		)
26		)

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

6 **I. DESCRIPTION OF THE CASE**

7 **A. Background**

8 Google filed this action against American Blind on November 26, 2003, seeking a declaratory  
9 judgment that its current policy regarding the sale of keyword-triggered advertising does not constitute  
10 trademark infringement. American Blind contends that many of American Blind’s competitors – with  
11 the assistance and encouragement of search engines such as Google – have attempted to confuse  
12 American Blind’s customers and capitalize illegally on American Blind’s goodwill and reputation by  
13 purchasing advertising keywords identical or substantially similar to American Blind’s federally  
14 registered and common law trademarks from the search engines, including Google. Google disagrees  
15 that American Blind’s customers are likely to be confused as a result of the purchase of such  
16 keywords, or that Google assists in or encourages illegal conduct on the part of American Blind’s  
17 competitors.

18 American Blind filed counterclaims and third-party claims against Google, America Online,  
19 Inc., Netscape Communications Corp., Compuserve Interactive Services, Inc., Askjeeves, Inc., and  
20 Earthlink, Inc. for trademark infringement and dilution, unfair competition, and tortious interference  
21 with prospective economic advantage.

22 Discovery is ongoing in this case. There are two pending discovery motions brought by  
23 American Blind, which are scheduled to be heard by Judge Seeborg immediately before this case  
24 management conference is held before the Court.

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

26 The principal factual and legal issues remain the same as they did in the parties’ last joint case  
27 management statement, filed on April 26, 2005.

1 **C. Service of Process**

2 There are no unserved parties.

3 **D. Additional Parties**

4 Neither Google, American Blind, nor the Third-Party Defendants currently intend to join any  
5 additional parties.

6 **II. ALTERNATIVE DISPUTE RESOLUTION**

7 The parties participated in a mediation before retired Judge Fern Smith on December 13, 2005.  
8 The mediation did not result in settlement.

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

10 The parties have served their Rule 26 initial disclosures upon one another.

11 **IV. CASE MANAGEMENT PLAN**

12 **A. Discovery and Trial Schedule**

13 The Court has adopted the following case management schedule:

14	Cutoff of Fact Discovery	February 27, 2006
15	All Parties' Expert Reports Due	March 31, 2006
16	Rebuttal Expert Reports Due	May 15, 2006
17	Cutoff of Expert Discovery	June 30, 2006
18	Cutoff for filing Dispositive Motions	July 31, 2006
19	Pretrial Conference Statement	October 2, 2006
20	Pretrial Conference	October 13, 2006 at 11:00 a.m.
21	Trial Date	November 17, 2006 at 11:00 a.m.

22 American Blind's position:

23 American Blind believes that the schedule in this case should be extended by six months.  
24 American Blind has an outstanding discovery dispute with Google over Google's production of  
25 documents. Over a period of several months, the parties negotiated a Stipulated Protective Order  
26 which was entered by the Court on September 19, 2005. On October 26, 2005, the parties exchanged  
27 their initial document production. Since that time, American Blind has diligently reviewed Google's  
28

1 voluminous production and discovered that Google has produced documents in response to only one of  
 2 American Blind's document requests, has not appropriately reviewed the documents it has produced  
 3 for confidentiality labels, has overdesignated the vast majority of documents it has produced, and has  
 4 not complied with Rule 34(b) in its production. In late December, after the long-delayed mediation in  
 5 this case, American Blind brought discovery motions on some of these issues which are currently  
 6 pending before Judge Seeborg; they are scheduled to be heard immediately before the Case  
 7 Management Conference. Additional discovery motions on document production and/or interrogatory  
 8 responses may be necessary if Google continues to refuse to abide by its discovery obligations.

9 Given the state of Google's document production, an additional six months is necessary to  
 10 adequately complete discovery. The schedule American Blind proposes is:

11	Cutoff of Fact Discovery	August 28, 2006
12	All Parties' Expert Reports Due	September 29, 2006
13	Rebuttal Expert Reports Due	November 15, 2006
14	Cutoff of Expert Discovery	December 29, 2006
15	Cutoff for filing Dispositive Motions	January 31, 2007
16	Pretrial Conference Statement	April 2, 2007
17	Pretrial Conference	April 13, 2007 at 11:00 a.m.
18	Trial Date	May 18, 2007 at 11:00 a.m.

19 Google's position:

20 Google opposes American Blind's request to extend by six months the scheduling dates already  
 21 adopted by the Court. The parties have had more than enough time to complete discovery. Google  
 22 filed its complaint more than two years ago, on November 26, 2003. Although the Court stayed  
 23 discovery on June 21, 2004, that stay expired eight months ago, on May 11, 2005. As explained in its  
 24 oppositions to American Blind's discovery motions, Google has diligently complied with its discovery  
 25 obligations. Google has made multiple document productions—and produced more than 100,000  
 26 pages of documents—in response to American Blind's extensive document requests. American  
 27 Blind's claim that Google has produced documents in response to only one of its requests is simply  
 28

1 untrue. While Google prefers to avoid further delay, it has informed American Blind that it would  
2 accept a compromise whereby the Court extends all deadlines by one month.

3 **B. Trial Duration**

4 The parties estimate a trial of approximately two weeks.

5  
6 Dated: January 20, 2006

KEKER & VAN NEST, LLP

7  
8 By: /s/ Klaus H. Hamm

KLAUS H. HAMM

9 Attorneys for Plaintiff/Counter-Defendant  
10 GOOGLE INC.

11 Dated: January 20, 2006

HOWREY LLP

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13 By: /s/ Robert N. Phillips

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TAYLOR & COMPANY LAW OFFICES,  
INC.

22 Dated: January 20, 2006

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24 By: /s/ Stacey L. Wexler

STACEY L. WEXLER

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

1 IT IS SO ORDERED.

2  
3 Dated: January \_\_\_\_, 2006

4 \_\_\_\_\_  
Hon. Jeremy Fogel  
5 United States District Court Judge  
6

7  
8 **ATTESTATION AS TO CONCURRENCE**

9 I, Klaus H. Hamm, under penalty of perjury of the laws of the United States of America, attest  
10 that concurrence in the filing of this document has been obtained from each of the other signatories to  
11 this document.  
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