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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

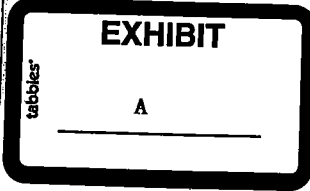
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GOOGLE INC., a Delaware corporation,)	
)	
Plaintiff(s),)	
vs.)	Case No.
)	
AMERICAN BLIND & WALLPAPER FACTORY, INC., a Delaware corporation d/b/a decoratedtoday.com, Inc., and DOES 1 through 100, inclusive,)	C 03-5340-JF (RS)
)	
Defendant(s).)	
<hr/>		
AMERICAN BLIND & WALLPAPER FACTORY, INC., a Delaware corporation d/b/a decoratedtoday.com, Inc., and DOES 1 through 100, inclusive)	
)	
Counter-Plaintiff,)	
vs.)	
GOOGLE INC., a Delaware corporation,)	
)	
Counter-Defendant.)	

DEPOSITION OF DR. ITAMAR SIMONSON
Held at Howrey
525 Market Street, Suite 3600
San Francisco, California
Friday, December 15, 2006, 9:51 a.m.

REPORTED BY: James Beasley, CSR No. 12807

DR. ITAMAR SIMONSON



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1 search result that the consumer would expect to get
 2 if they just put in blinds?
 3 A. I don't know. I don't think that that
 4 would be a concern. I'm not sure how many
 5 consumers have some theories about the algorithm
 6 that generates organic results or in the context of
 7 the survey that would be a significant factor, that
 8 somehow they would analyze and say, well, here is
 9 American Blinds.
 10 Let's assume that they know to research a
 11 brand or think, is there American Blinds, which
 12 sounds like a perfectly legitimate organic result.
 13 I mean, there are blinds that are made and sold in
 14 America. So there is nothing unusual there.
 15 Q. Okay. So have you any other suggestions
 16 for what a proper control would be?
 17 A. You know, I haven't thought -- that seems
 18 so obvious. I haven't thought about others.
 19 Q. Okay.
 20 A. I mean, you could have asked about a
 21 different brand. That would be another control.
 22 Like, would you find -- I don't know, name another
 23 brand.
 24 Q. Uh-huh.
 25 A. That could be another control.

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1 Q. Okay.
 2 A. This was an especially easy survey for
 3 which to find a control.
 4 Q. Would changing the appearance of the way
 5 the listings come back be a proper control, in
 6 other words, moving the sponsored listings down to
 7 the bottom and putting a disclaimer saying that
 8 these listings aren't related to the search term?
 9 A. I don't know. Now you -- that's an
 10 open -- there are infinite possibilities about
 11 moving it two inches down or an inch and a half up.
 12 I don't see any need for that.
 13 I mean, the key here is whether the
 14 consumers are misled after entering the term
 15 american blinds by the sponsored links that appear.
 16 So I think that's really the question, not exactly
 17 the positioning.
 18 I understand the complaint is not saying,
 19 how come the sponsored links appear two inches to
 20 the right or whatever. My understanding, that's
 21 not the basis for the allegations here.
 22 Q. Well, I think you're mistaken on that.
 23 You're aware that the ordering of listings can have
 24 an impact on the click-through rate, right?
 25 A. Yes.

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1 Q. And that's why right now the sponsored
 2 listings are either at the top of the organic
 3 listings or directly to the right of the top of the
 4 organic listings, correct?
 5 A. Yes.
 6 Q. And so if you assume -- if you just accept
 7 my representation that the manner in which the
 8 listings are presented in response to a search term
 9 in the trademark is part of the problem, would it
 10 be an acceptable control to just move the sponsored
 11 listings down to the bottom and put a disclaimer
 12 up?
 13 A. No.
 14 Q. And why not?
 15 A. No. I mean, I don't think that's the
 16 question. The question is whether -- I forget how
 17 Mr. Ossip defined his mandate, but I believe he
 18 said, whether consumers who enter the search term
 19 american blinds in the Google search engine are
 20 misled by their results by the sponsored links
 21 appearing on the web results.
 22 That's the question. So the question is,
 23 in other words, you have to enter the terms
 24 american blinds and then you are misled by the
 25 links. It doesn't say are misled because the

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1 links -- the sponsored links appear one inch from
 2 the top as opposed to four and a half inches from
 3 the top. I just didn't see that in his objective
 4 for the survey. So therefore that would not be my
 5 control.
 6 Q. Okay. But if it was his control, why
 7 wouldn't that have been acceptable, what would your
 8 criticism be?
 9 A. Because it would have the same problems
 10 that we talked about.
 11 Q. I don't understand. What would the same
 12 problems be?
 13 A. Well, because it still would not show in
 14 any way that the beliefs or the answers had
 15 anything to do with entering the key words,
 16 american blinds.
 17 Q. Well, but you understand that the
 18 infringement is not the fact that people type in
 19 american blinds, or the alleged infringement is not
 20 the fact people type in american blinds, it's what
 21 comes back in response to that?
 22 A. Yeah, that's my understanding.
 23 Q. So if you were to compare what's currently
 24 coming back versus, you know, rearranging it in
 25 some way and you didn't have -- and you didn't have