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10 AMERICAN BLIND AND WALLPAPER  
FACTORY, INC.

11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA  
13

14 GOOGLE INC., a Delaware  
15 corporation,

16 Plaintiff,

17 v.

18 AMERICAN BLIND &  
WALLPAPER FACTORY, INC., a  
19 Delaware corporation d/b/a  
decoratetoday.com, Inc., and DOES  
20 1-100, INCLUSIVE,

21 Defendant.

22 AMERICAN BLIND &  
WALLPAPER FACTORY, INC., a  
23 Delaware corporation d/b/a  
decoratetoday.com, Inc.,  
24

25 Counter-Plaintiff,

26 v.

27 GOOGLE, INC., AMERICA  
ONLINE, INC., NETSCAPE  
28 COMMUNICATIONS

**Filed**

MAY 04 2004

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE

CASE NO. C 03-5340 JF

**DEFENDANT AMERICAN BLIND &  
WALLPAPER FACTORY, INC.'S  
ANSWER, AFFIRMATIVE  
DEFENSES, COUNTERCLAIMS,  
AND THIRD-PARTY CLAIMS**

**DEMAND FOR JURY TRIAL**

1 CORPORATION, COMPUSERVE  
2 INTERACTIVE SERVICES, INC.,  
3 ASK JEEVES, INC., and  
4 EARTHLINK, INC.

5  
6 Counter-Defendants/  
7 Third-Party Defendants.

8 Defendant American Blind & Wallpaper Factory, Inc. d/b/a decoratetoday.com, Inc.  
9 (“American Blind”) hereby answers the Complaint of Plaintiff Google, Inc. (“Google”) as  
10 follows:

11 1. American Blind admits that Google provides Internet search engine services to  
12 Internet users. American Blind is without sufficient knowledge or information to form a belief as  
13 to the truth of the remaining allegations contained in paragraph 1, and on that basis denies each  
14 and every remaining allegation contained therein.

15 2. American Blind admits the allegations contained in paragraph 2.

16 3. American Blind admits that jurisdiction is proper in this Court under 28 U.S.C. §  
17 1331 (federal question), 17 U.S.C. § 1051 et seq. (Lanham Act), and 28 U.S.C. § 1338(a)  
18 (trademarks). American Blind denies the remaining allegations contained in paragraph 3.

19 4. American Blind admits the allegations contained in paragraph 4.

20 5. American Blind admits the allegations contained in paragraph 5.

21 6. American Blind admits that it has asserted that Google’s sale of keyword-triggered  
22 advertising services constitutes trademark infringement. American Blind denies the remaining  
23 allegations contained in paragraph 6.

24 7. American Blind is without sufficient knowledge or information to form a belief as  
25 to the truth of the allegations contained in paragraph 7, and on that basis denies each and every  
26 allegation contained therein.

27 8. American Blind admits that Google offers to its business customers a keyword  
28 triggered advertising program entitled “AdWords.” American Blind is without sufficient

1 knowledge or information to form a belief as to the truth of the remaining allegations contained in  
2 paragraph 8, and on that basis denies each and every allegation contained therein.

3 9. American Blind admits that Google's AdWords program permits Google's  
4 advertising customers to purchase advertising links associated with certain keywords. American  
5 Blind is without sufficient knowledge or information to form a belief as to the truth of the  
6 remaining allegations contained in paragraph 9, and on that basis denies each and every allegation  
7 contained therein.

8 10. American Blind denies the allegations contained in paragraph 10.

9 11. American Blind admits the allegations contained in paragraph 11.

10 12. American Blind admits the allegations contained in paragraph 12.

11 13. American Blind denies that Kelley Drye subsequently acknowledged that it had a  
12 conflict of interest in representing American Blind because it also represented Google in another  
13 matter. American Blind admits that Google was instructed to contact American Blind directly to  
14 resolve this matter.

15 14. American Blind admits that on September 26, 2002 Rose Hagan, Google's Senior  
16 Trademark Counsel, spoke with Bill Smith of American Blind regarding Google's ability to block  
17 American Blind's competitors from purchasing keywords that are identical or substantially  
18 similar to American Blind's trademarks. American Blind denies the remaining allegations  
19 contained in paragraph 14.

20 15. American Blind admits the allegations contained in paragraph 15.

21 16. American Blind admits the allegations contained in paragraph 16.

22 17. American Blind is without sufficient knowledge or information to form a belief as  
23 to the truth of the allegation that on August 6, 2003, Luis Vuitton SA sued Google and its French  
24 subsidiary for trademark infringement arising out of Google's posting of links to companies and  
25 other organizations that have paid to associate themselves with certain keywords, and on that  
26 basis denies this allegation. American Blind admits that Luis Vuitton SA sued Google for  
27 trademark infringement. American Blind further admits the remaining allegations contained in  
28 paragraph 17.

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18. American Blind denies the allegations contained in paragraph 18.

**CLAIMS FOR RELIEF**

**CLAIM ONE**

**(Declaratory Judgment of Non-infringement of Trademarks, 15 U.S.C. § 1051 et seq.)**

19. American Blind repeats and incorporates by reference paragraphs 1-18 of this Answer.

20. American Blind admits that it has claimed that Google’s sale of keywords that are identical or substantially similar to American Blind’s trademarks as part of Google’s AdWords program constitutes trademark infringement. American Blind denies the remaining allegations contained in paragraph 20.

21. American Blind denies the allegations contained in paragraph 21.

22. American Blind admits that Google is seeking a declaratory judgment from this Court that its current policy regarding the sale of keyword-triggered advertising does not constitute trademark infringement. American Blind denies that Google is entitled to such a declaratory judgment.

**PRAYER FOR RELIEF**

23. American Blind denies that Google is entitled to judgment according to the declaratory relief sought.

24. American Blind denies that Google is entitled to costs in this action.

25. American Blind denies that Google is entitled to any further relief.

**AFFIRMATIVE DEFENSES**

**First Affirmative Defense**

(Failure to State Facts)

Google’s Complaint fails to state facts constituting a legally cognizable cause of action against American Blind.

**Second Affirmative Defense**

(Improper Declaratory Judgment Action)

Although the only named defendant is American Blind, Google’s Complaint does not

1 restrict the relief sought to its dispute with American Blind, but rather seeks a more global stamp  
2 of approval of its marketing practices. In other words, Google does not ask this Court to declare  
3 that it has not infringed upon or otherwise violated American Blind's *specific* marks, but rather  
4 that Google generally has a "right to sell keyword-triggered advertising to its customers."  
5 Pursuant to the Declaratory Judgment Act, this abstract question cannot be answered by a  
6 declaratory judgment. 28 U.S.C. § 2201(a).

7 **COUNTERCLAIMS**

8 Defendant American Blind & Wallpaper Factory, Inc. d/b/a decoratetoday.com,  
9 Inc. ("American Blind") as and for a Counterclaim against Counter-Defendant Google, Inc.  
10 ("Google"), and Third-Party Defendants America Online, Inc. ("AOL"), Netscape  
11 Communications Corporation ("Netscape"), CompuServe Interactive Services, Inc.  
12 ("CompuServe"), Ask Jeeves, Inc. ("Ask Jeeves"), and EarthLink, Inc. ("EarthLink") (hereinafter  
13 the Counter-Defendant and the Third-Party Defendants shall collectively be referred to simply as  
14 the "Defendants"), alleges as follows:

15 **NATURE OF CASE**

16  
17 1. The Defendants operate for their own profit various Internet "search engines,"  
18 which are used by consumers to search the World Wide Web for, among other things, products  
19 and services. In deliberate disregard of American Blind's long-standing intellectual property  
20 rights, Defendants have advertised, promoted, offered for sale and sold "keywords" identical to  
21 certain of American Blind's trademarks to various third parties. Indeed, Defendant Google  
22 actively solicits others to purchase not only American Blind's registered and unregistered  
23 trademarks, but also virtually every conceivable iteration of these marks. Furthermore, the  
24 Defendants have deliberately manipulated their search engine "results" so that, when consumers  
25 use these search engines to find American Blind's products and services, the consumers are  
26 unwittingly diverted to competitors' products and services. By this unfair and deceitful conduct,  
27 Defendants have infringed and diluted, and continue to infringe and dilute, American Blind's  
28 registered and unregistered service marks and trademarks.

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**Parties**

2. American Blind is a Delaware corporation with its principal place of business at 909 North Sheldon Road, Plymouth, Michigan.

3. Google is a Delaware corporation with a principal place of business in Mountain View, California.

4. Upon information and belief, AOL is a Delaware corporation with its principal place of business in Dulles, Virginia. Upon information and belief, AOL advertises, solicits clients, and conducts sales and purchases in the State of California.

5. Upon information and belief, Ask Jeeves is a Delaware corporation with its principal place of business in Emeryville, California. Upon information and belief, Ask Jeeves advertises, solicits clients, and conducts sales and purchases in the State of California.

6. Upon information and belief, CompuServe is a Delaware corporation with its principal place of business in Columbus, Ohio. Upon information and belief, Compuserve advertises, solicits clients, and conducts sales and purchases in the State of California.

7. Upon information and belief, EarthLink is a Delaware corporation with its principal place of business in Atlanta, Georgia. Upon information and belief, Earthlink advertises, solicits clients, and conducts sales and purchases in the State of California.

8. Upon information and belief, Netscape is a Delaware corporation with its principal place of business in Mountain View, California. Upon information and belief, Netscape advertises, solicits clients, and conducts sales and purchases in the State of California.

**Jurisdiction and Venue**

9. This is an action arising under the Lanham Act, 15 U.S.C. §§ 1114(1)(a), 1125(a), and 1125(c). This Court has federal question jurisdiction over these claims pursuant to 15 U.S.C. § 1121, and 28 U.S.C. §§ 1331, 1338(a) and 1338(b).

10. The Court has subject matter jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367(a).

1 11. Defendants are subject to the personal jurisdiction of this Court because, among  
2 other things, a substantial part of the events giving rise to this litigation occurred in the State of  
3 California.

4 12. In addition, Defendants are subject to the personal jurisdiction of this Court  
5 because, among other things, upon information and belief each of the Defendants is subject to  
6 California's long-arm statute.

7 13. In addition, Defendants are subject to the personal jurisdiction of this Court  
8 because, among other things, upon information and belief each of the Defendants has transacted  
9 and presently is transacting business in the state of California by: (a) providing Internet users in  
10 California access to its search engine; (b) providing Internet users in California advertising on its  
11 website; (c) contracting with, or attempting to contract with, California residents for the sale of  
12 goods or services, including the sale of advertising space on its Internet website; (d) selling or  
13 attempting to sell goods or services to residents of the State of California; (e) maintaining an  
14 office in the State of California; and/or (f) committing tortious acts in the State of California.

15 14. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and (c) because a  
16 substantial part of the events giving rise to the claims occurred in this district and the Defendants  
17 are all residents of this district.

18 15. Google's counsel has represented that Google, Ask Jeeves, and Earthlink will  
19 consent to jurisdiction and venue in this judicial district.

20 **PLAINTIFF'S TRADEMARKS**

21 16. American Blind is one of the largest direct-to-consumer retailers of custom order  
22 window treatments and wall coverings in the United States and on the Internet. American Blind,  
23 in conjunction with its predecessor companies, has been in the home decorating business for over  
24 a half century. American Blind sells and promotes its home decorating products and related  
25 services across the United States through a website and toll-free telephone numbers.

26 17. Since at least as early as 1986, and long prior to the acts of the Defendants  
27 complained of herein, American Blind adopted and used, and has continued to use, the names and  
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1 marks AMERICAN BLIND and AMERICAN BLINDS (hereinafter collectively identified as  
2 "AMERICAN BLIND") in connection with home decorating products and related services which  
3 have been offered for sale and sold in interstate commerce in the United States, including the  
4 State of California. Since the adoption and first use of the AMERICAN BLIND name and mark  
5 as aforesaid, American Blind has continuously used said mark by prominently displaying it on the  
6 packaging and advertising for American Blind's products, which products have been advertised,  
7 promoted, offered for sale and sold in interstate commerce in the United States, including the  
8 State of California.

9 18. In addition to the AMERICAN BLIND name and mark, American Blind is the  
10 owner of and has the exclusive rights to use the following trademarks registered with the United  
11 States Patent and Trademark Office:

Mark	Reg. Number	Reg. Date
AMERICAN BLIND & WALLPAPER FACTORY	2,022,925	12/17/96
AMERICAN BLIND FACTORY	1,463,548	11/03/87
DECORATETODAY	2,470,542	07/17/01

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17 (True and accurate copies of proof of these registrations are attached hereto as Exhibit A.) The  
18 foregoing registered marks, together with the AMERICAN BLIND name and mark are  
19 hereinafter collectively referred to as the "American Blind Marks."

20 19. The name and mark AMERICAN BLIND comprises a distinctive part of  
21 American Blind's corporate title and trade name, which trade name has been prominently  
22 displayed by American Blind upon the packaging for its home decorating products and related  
23 services sold under the American Blind Marks.

24 20. Since long prior to the acts of the Defendants complained of herein, American  
25 Blind's home decorating products and related services sold under the American Blind Marks have  
26 been extensively advertised, promoted and sold by American Blind in interstate commerce  
27 throughout the United States, including the State of California. American Blind expends millions  
28



1 of dollars each year in connection with the advertisement and promotion of its products and  
2 services sold under the American Blind Marks.

3 21. The dollar amount of sales in the United States of American Blind's home  
4 decorating products and related services sold under the American Blind Marks offered for sale  
5 and sold under the American Blind Marks since their original adoption and use are well in excess  
6 of hundreds of millions of dollars.

7 22. Plaintiffs have been careful, skillful and meticulous in the conduct of their  
8 business offering home decorating products and related services under the American Blind  
9 Marks.

10 23. As a consequence, and as a result of the substantial sales and extensive advertising  
11 and promotion of American Blind's home decorating products and related services, American  
12 Blind's home decorating products and related services sold under the American Blind Marks have  
13 acquired a fine reputation, and are famous among prospective purchasers of home decorating  
14 products and related services in the United States, including the State of California. The public  
15 has used and now uses the American Blind Marks to identify American Blind and its home  
16 decorating products and related services and to distinguish American Blind and its products and  
17 services from the home decorating products and related services offered by others, and the  
18 American Blind Marks have acquired an outstanding celebrity as a source of quality home  
19 decorating products and related services, and symbolizes and embodies the goodwill rightfully  
20 belonging exclusively to American Blind.

21 **FACTUAL BACKGROUND**

22 **A. The Internet And The World Wide Web**

23 24. The Internet is a global network of millions of interconnected computers. The  
24 World Wide Web is a portion of the Internet especially suited to displaying images and sound, in  
25 addition to text. Much of the information on the World Wide Web is stored in the form of  
26 "webpages," which can be accessed through a computer connected to the Internet (available  
27 through commercial Internet service providers or "ISPs"), and viewed using a computer program  
28

1 called a "browser," such as Microsoft Internet Explorer or Netscape Navigator. "Websites" are  
2 locations on the World Wide Web containing a collection of webpages. A website is identified  
3 by its own unique Uniform Resource Locator ("URL") (e.g. <http://www.americanblind.com> ),  
4 which ordinarily incorporates its site's "domain name" (e.g. "American Blind").

5 25. Among Internet users in the United States, it is estimated that thirty-nine percent  
6 (39%) currently use the Internet to make online purchases.

7 26. As a result, it is estimated that, today, annual sales of goods and services over the  
8 Internet exceed \$92 billion.

9 **B. The Business Of Plaintiff American Blind**

10 27. American Blind spends millions of dollars each year advertising the American  
11 Blind Marks, including advertising in over forty national magazines, on every major search  
12 engine, on national television and radio, and through millions of direct mailings and catalogs  
13 distributed throughout the United States.

14 28. For example, American Blind advertises its goods and services under the  
15 American Blind Marks on national television on the Home & Garden Network and in national  
16 magazines such as *Better Homes & Gardens*, *Good Housekeeping*, and *Country Living*.

17 29. Today, American Blind has close to seven million households on file nationwide  
18 and generates annual revenues in excess of \$100 million.

19 30. Since 1997, American Blind has continuously operated a distinctive Internet  
20 website, through which the company sells blinds and other window treatments, wall coverings  
21 and other home decorating products and related services.

22 31. Today, American Blind owns many Internet domain names, including but not  
23 limited to:

- 24 • [www.americanblind.com](http://www.americanblind.com)
- 25 • [www.americanblindandwallpaper.com](http://www.americanblindandwallpaper.com)
- 26 • [www.americanblindandwallpaperfactory.com](http://www.americanblindandwallpaperfactory.com)
- 27 • [www.americanblindfactory.com](http://www.americanblindfactory.com)
- 28 • [www.americanblinds.com](http://www.americanblinds.com)
- [www.americanblindsandmore.com](http://www.americanblindsandmore.com)

- 1 • [www.americanblindsandwallpaper.com](http://www.americanblindsandwallpaper.com)
- 2 • [www.americanblindsandwallpaperfactory.com](http://www.americanblindsandwallpaperfactory.com)
- 3 • [www.americanblindswallpaperandmore.com](http://www.americanblindswallpaperandmore.com)
- 4 • [www.americanblindwallpaper.com](http://www.americanblindwallpaper.com)
- 5 • [www.americanwallpaperandblind.com](http://www.americanwallpaperandblind.com)
- 6 • [www.americanwallpaperandblinds.com](http://www.americanwallpaperandblinds.com)

7 32. Accordingly, if a consumer using an Internet web browser types in any of the  
8 company's URLs – for example, if a consumer types [www.americanblinds.com](http://www.americanblinds.com) in his or her web  
9 browser address bar – the consumer is directed to American Blind's web servers where he or she  
10 can view, browse and purchase the company's products and services.

11 33. A significant and critical amount of American Blind's business is conducted via  
12 the Internet. The company estimates that, each day, it receives in excess of thirty thousand  
13 (30,000) visits by customers or potential customers to its Internet website and processes over  
14 400,000 Internet transactions every year.

15 34. American Blind has spent over \$10 million in developing its website, and spends  
16 in excess of \$1 million per year in maintaining, enhancing and updating its website. In addition,  
17 American Blind employs over 50 full-time employees in connection with its Internet operations,  
18 all of whom are rigorously trained and supervised.

### 19 **C. The Business Of Defendant Google**

20 35. Internet customers who are searching for a specific company product or  
21 information, but who do not know the exact domain name or website address at which it may be  
22 found, may use "keywords" and/or "search engines" to locate websites which match the  
23 keywords sought by the customer. Keywords are the textual terms that a consumer enters to  
24 locate the desired website or domain name. A search engine, such as Google, uses algorithms to  
25 process these keywords against its database and produces a search results page, which lists the  
26 websites (usually, in order of decreasing relevance with the most relevant websites listed first)  
27 that match the customer's keyword search.

1           36.     Upon information and belief, Google's Internet search engine, which is free to  
2 consumers, is the most widely-used Internet search engine in the world. Upon information and  
3 belief, it answers hundreds of millions of user searches and covers billions of web pages daily.

4           37.     Upon information and belief, Google also sells a number of products and services  
5 to individuals, businesses, and educational and governmental entities. One of the programs  
6 Google offers to its business customers is a keyword-triggered advertising program entitled  
7 "AdWords."

8           38.     Google's "AdWords" program enables advertisers to purchase or bid on keywords  
9 that generate an advertising link (known as a "Sponsored Link") to the purchaser's website. For  
10 example, a company might bid on the keyword "wallpaper" through Google's "AdWords"  
11 program so that the company's website will be the first, or among the first, listed "Sponsored  
12 Links" when a customer enters the word "wallpaper" in Google's search engine window. Google  
13 posts these so-called "Sponsored Links" on the top of and at margins of its search engine results  
14 page based on whichever keywords appear in user queries posted to Google's Internet search  
15 engine. Google's advertising customers then pay Google based on the number of Internet users  
16 who "click" on these advertising links.

17           39.     The designation "Sponsored Link" is itself confusing and misleading. In many  
18 instances, the Defendants' search engine "results" pages are designed so that the "Sponsored  
19 Link" display is inconspicuous or otherwise not apparent. Moreover, it is not apparent who  
20 exactly "sponsors" these links.

21           40.     Google profits every time an Internet user clicks on a "Sponsored Link" for one of  
22 the advertisers to whom Google has sold keywords in its "AdWords" program.

23           41.     According to Google, 96% of its net revenues in the first quarter of 2004, which  
24 totaled \$389 million, were derived from advertising revenues.

25     **D.     Defendant Google's Acts**

26           42.     Google has sold many keywords comprised, in whole or in part, of the American  
27 Blind Marks, to competitors of American Blind.  
28

1           43.     Although Google purported to agree not to sell American Blind’s registered  
2 trademarks – which promise turns out to have been false – Google flat out refused to stop selling  
3 other American Blind Marks. Indeed, Google has admitted that it continues to sell, over  
4 American Blind’s objections, the name and mark AMERICAN BLIND and certain combinations  
5 of words within the American Blind Marks to American Blind’s competitors. Consequently,  
6 Google causes the purchase of the American Blind Marks to trigger a link to these competitor’s  
7 websites to appear in Google’s search results when a consumer types in any one of the American  
8 Blind Marks.

9           44.     For example, Google continues to sell to American Blind’s competitors the  
10 keywords “American Blind,” “American Blinds” and “Americanblinds.com,” among others.  
11 Accordingly, if a consumer using Google’s search engine types “American Blind and Wallpaper  
12 Factory” in the search window, Google causes the links to websites of competitors who have  
13 purchased the “American Blind” keyword from Google to appear at the top or in the margins of  
14 the results page. Similarly, it is possible for a consumer who types “American Blinds” or  
15 “Americanblinds.com” in the Google search window to be directed to a “results” web page that  
16 displays the products and services of American Blind’s competitors through the keyword sold to  
17 them by Google.

18           45.     Google does not just sell American Blind’s marks, it actively promotes and  
19 encourages competitors to embark on a sweeping competitive raid on the American Blind Marks  
20 and virtually every conceivable, though indistinguishable, iteration of those marks. This is  
21 accomplished by what Google calls its “AdWords Keywords Suggestions” feature, which lures  
22 Google’s paying customers by the promise of “ideas for new keywords that can help you improve  
23 your ad relevance” (this feature is not available to, or even viewable by, the public).

24           46.     Google’s AdWords Keywords Suggestions feature generates additional  
25 recommended keyword purchases to Google’s advertising customers. Google likes to refer to this  
26 as “keyword targeting.” It cannot, therefore, be suggested that Google is merely selling terms  
27 that, by happenstance, coincidentally comprise part (or all) of the American Blind Marks. Rather,

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1 Google intentionally has designed its financially lucrative “AdWords” program to maximize the  
2 infringement and dilution of American Blind’s marks.

3 47. More specifically, a competitor of American Blind who is considering purchasing  
4 the keyword “American Blind” – which Google freely, though improperly, sells to the highest  
5 bidder – is also encouraged by Google to spend even more money purchasing additional marks  
6 owned by American Blind:

7 If you’re showing your ads on broad-matched keywords, these queries may  
8 trigger your ads. ***To increase your clickthrough rate, you should consider***  
9 ***replacing your general keywords with any relevant, more specific***  
10 ***suggestions you see here.*** You should also identify any irrelevant terms  
11 and add them as negative matches (otherwise your ads will show for terms  
12 that don’t pertain to your business).

- 11 • american blinds
- 12 • american blinds and wallpaper
- 13 • american wallpaper and blinds
- 14 • american blinds wallpaper
- 15 • american blinds & wallpaper
- 16 • american wallpaper & blinds
- 17 • american wallpaper blinds
- 18 • american wall paper and blinds
- 19 • american blinds and wallpaper factory
- 20 • american blinds and wall paper
- 21 • american windows and blinds
- 22 • american blinds com
- 23 • american window blinds
- 24 • american blinds wallpaper & more
- 25 • american window and blinds
- 26 • american blinds and windows
- 27 • american blinds and draperies
- 28 • american blinds company
- american blinds wallpaper and more
- american blinds and wallpaper company
- all american blinds
- american blinds and wallcoverings
- american mini blinds
- american blinds factory

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  - american blinds & draperies
  - american blinds and drapes
  - american home blinds
  - american wall and blinds
  - american blinds and drapery
  - american blinds and wallpaper com
- \* \* \* \*

(See Exhibit B (emphasis supplied).) The overlap with the American Blind Marks and domain names (*compare* to American Blind’s registered domain names referenced in paragraph 31 *supra*) is unmistakable. Each of these “suggestions” being made by Google to its customers involves the deliberate sale by Google of the American Blind Marks.

48. These “suggestions” are lumped into categories by Google and are sometimes referred to as “optimization campaigns” in marketing keyword groupings to Google’s paying customers looking to increase their advertising on Google.

49. Adding insult to injury, Google has even labeled the optimization campaign containing every iteration of American Blind’s marks, the “American Blind” optimization campaign. Upon information and belief, Google’s sales staff actively promotes this campaign of infringement under the “American Blind” optimization program to American Blind’s competitors.

50. In each of these examples, by the operation and design of its keyword sales program, Google causes consumers who specifically intend and desire to find American Blind’s products and services to be diverted instead to search “results” web pages that list American Blind’s competitor’s products and services. This result is intended, both by Google and its customers who purchase keywords consisting of the American Blind Marks. Google sells, and its customers hope to purchase, the possibility that they will intercept consumers who, due to American Blind’s extensive and pervasive advertising resulting in invaluable goodwill, are trying

1 to find one of the nation's largest and most respected and trusted direct-to-consumer retailer of  
2 window treatments and wall coverings.

3 51. Once intercepted, consumers may click on American Blind's competitors' links  
4 and thus be directed to the competitors' websites. Consumers may not realize that they have  
5 unwittingly "clicked" on a competitors' website. Once there, the consumer, having been  
6 distracted, may not ever return to American Blind's website. Even if the consumer appreciates  
7 the diversion, he or she will have to spend time and energy trying to backtrack or otherwise find  
8 American Blind.

9 52. Through this practice, Google traffics in the infringement and dilution of the  
10 American Blind Marks. Google has knowingly sold the American Blind Marks in commerce and  
11 included them in Google's search engine for Google's own profit and to increase the competitive  
12 advantage of American Blind's competitors. This practice began after the American Blind Marks  
13 were registered and/or became famous and distinctive.

14 53. Google admits that, in connection with its AdWords program, companies in the  
15 United States, Germany, and France have filed trademark claims against Google.

16 54. A court in France has held Google liable for allowing advertisers to select as  
17 "keywords" certain trademarked terms owned by others.

18 55. Google admits that it may be found liable for its AdWords advertising program for  
19 trademark infringement and other claims that have been asserted against it in the United States  
20 and Europe.

21 56. Prior to the filing of American Blind's related lawsuit in the Southern District of  
22 New York on January 27, 2004, Google's own trademark policy provided that Google would  
23 block companies from purchasing as "keywords" the trademarks of other companies.

24 57. Indeed, as described earlier, Google had represented to American Blind that  
25 Google was blocking competitors from purchasing American Blind's registered trademarks.

26 58. Pursuant to Google's former trademark policy, once Google was advised of a  
27 purchase of another company's trademark, Google would, at its discretion, block the purchase of  
28 that trademark.



1           59. Google has the technological capability of blocking the purchase of keywords, if it  
2 desires.

3           60. Google adopted and used this former trademark policy for over four years.

4           61. Google adopted and used this former trademark policy because it believed it would  
5 be, or could be, found liable for trademark infringement or other related claims if it did not block  
6 such purchases.

7           62. In conformity with this belief, Google confidentially settled a number of claims  
8 asserted by companies that had informed Google that Google's sales of their trademarks were  
9 illegal.

10          63. Following the filing of American Blind's lawsuit in the Southern District of New  
11 York on January 27, 2004, Google changed its trademark policy.

12          64. Under Google's new trademark policy, Google will no longer disable ads due to  
13 selection by advertisers of trademarks as keyword triggers for those ads.

14          65. Google admits that as a result of this change in its trademark policy, it may be  
15 subject to more trademark infringement lawsuits.

16          66. Google's change in its trademark policy and its continuing sale of the American  
17 Blind Marks constitutes conscious and deliberate disregard of American Blind's trademark rights.

18 **E. The Business Of The Other Defendants**

19          67. AOL, Ask Jeeves, CompuServe, Earthlink, and Netscape (hereinafter collectively  
20 referred to as the "Non-Google Defendants") each operate websites that include a search engine  
21 for locating information on the internet.

22          68. On information and belief, the Non-Google Defendants pay Google in exchange  
23 for Google providing access to its web searching platform. By utilizing the Google web  
24 searching platform, the Non-Google Defendants display similar, if not virtually the same, results  
25 of search queries as those displayed by Google. On information and belief, each of the Non-  
26 Google Defendants also profit every time an Internet user clicks on any of the links provided by  
27 these search results.

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1           69. Google has agreed, orally or in writing, to indemnify and provide a defense to each  
2 of these Non-Google Defendants.

3 **F. Harm To Plaintiff**

4           70. American Blind has not given the Defendants permission or a license to utilize the  
5 American Blind Marks for the promotion or sale of products and services of American Blind's  
6 competitors.

7           71. Defendants and certain of American Blind's competitors seek to exploit the hard-  
8 earned popularity and success of American Blind and the products and services sold by American  
9 Blind under the famous American Blind Marks. In an attempt to illegally capitalize on the  
10 American Blind Marks, Defendants have permitted and promoted certain of American Blind's  
11 competitors to bid on advertising keywords so that their websites are listed in a position above or  
12 next to American Blind's link when a consumer types a search query identical or substantially  
13 similar to the American Blind Marks.

14           72. For example, a consumer can run a search on Google's search engine for  
15 "American Blind and Wallpaper Factory," one of American Blind's registered marks, with the  
16 obvious intent of locating and visiting American Blind's website. Nonetheless, the first link  
17 shown on the Google search "results" page may be for one of American Blind's competitors, such  
18 as theblindfactory.com. (*See e.g.*, Exhibit C). Similarly, if a consumer types "American Blinds"  
19 in the Google search bar, they may be directed to a "results" page in which the first two  
20 companies listed at the top are direct competitors – Justblinds.com and EZblinds.com – as are at  
21 least six of the eight companies – SelectBlinds.com, Blinds.com, eDirectBlinds.com,  
22 Homedepot.com, NetShutters.com and StarDecorating.com – listed along the margin. (*See, e.g.*,  
23 Exhibit D). Search Google for "americanblinds.com" – a domain name owned by and registered  
24 to American Blind – and the consumer is directed to search "results" that list EZblinds.com and  
25 JustBlinds.com at the top of the page. (*See, e.g.*, Exhibit E). If the consumer clicks on any of  
26 these competing websites, Google will be entitled to a fee from these competitors. In addition,  
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1 these competitors will have obtained a customer, or potential customer, solely as a result of the  
2 goodwill and reputation associated with American Blind and its products and services.

3 73. A similar, though different and possibly more confusing, search “result” occurs  
4 when a consumer uses one of the Non-Google Defendants’ websites to conduct a Google  
5 “powered” or “enhanced” search (*i.e.*, where Google provides the underlying search engine). For  
6 example, a consumer who conducts a search for “American Blinds” from Netscape’s website is  
7 confronted misleadingly with a host of competitor’s advertisements. Some competitors’  
8 advertisements are called “Sponsored Links,” while others are given priority treatment with  
9 graphics at the very top of the search “results” page. (*See, e.g.*, Exhibit F.) Again, this diversion  
10 and confusion is the intended result – allowing American Blind’s competitors to intercept  
11 consumers looking for American Blind.

12 74. The Defendants’ search engines are designed and intended to divert and lure  
13 consumers from the websites that they intend to visit – *e.g.*, the American Blind websites – to  
14 other websites owned by competing advertisers such as BlindsGalore.Com, et. al. By design, the  
15 Defendants profit when consumers click on competitors’ links and visit the advertisers’ sites.  
16 None of this revenue, however, is paid to the owner of the trademark for whom the consumer was  
17 searching. Thus, Defendants and their advertisers are wrongfully profiting off of the goodwill  
18 and reputation of trademark owners such as American Blind.

19 75. Defendants’ search engines are deceptive and mislead consumers into believing  
20 falsely that the website links to which they are directed via manipulated search “results” links are  
21 sponsored or authorized by and/or originating from American Blind, the trademark owner for  
22 which the user was searching.

23 76. The manipulated search “results” engineered by the Defendants fail to inform the  
24 consumers that the companies listed therein may have no relationship with – and, indeed, may  
25 directly compete with American Blind – the trademark owner for which the user was searching.

26 77. The manipulated search engine “results,” which are in fact advertisements sold by  
27 Defendants based on a search utilizing the American Blind Marks, dilute the ability of the  
28 American Blind Marks to identify American Blind as a source of its goods and services.

1           78. In some cases, the competitor companies listed at the top or in the margins of these  
2 manipulated search engine “results” are nebulously identified as “Sponsored Links.” This  
3 designation is as, if not more, confusing to consumers because the Defendants do not indicate by  
4 whom these links supposedly are “sponsored.” Consumers may believe falsely that American  
5 Blind or other mark holders “sponsor” or otherwise are affiliated with these links.

6           79. Moreover, the “Sponsored Links” are deliberately designed to be virtually  
7 indistinguishable from the website links on the search results page to the trademark owners,  
8 including American Blind, for whom the user was searching. The actual links to the “Sponsored  
9 Links” are not a different color, nor are they a different typeface or font size. No meaningful  
10 effort is made to conspicuously separate the truth from the paid advertisements. Specifically, the  
11 Defendants could, but do not, advise the consumer that the so-called “Sponsored Links” are in  
12 fact paid advertisements that are neither sponsored by or affiliated with the trademark owner for  
13 which the user was searching.

14           80. American Blind’s current customers have been and will likely continue to be  
15 confused about the origin and sponsorship of the companies other than American Blind listed by  
16 the Defendants in their deceptive search engine “results.”

17           81. Confusion regarding the companies identified under Defendants’ search engine  
18 “results” implies an affiliation with American Blind that has damaged and will continue to  
19 damage American Blind’s reputation and customer relationships.

20           82. Defendants’ actions steal customers from American Blind’s website, divert  
21 consumers to inferior products and services, erode the distinctiveness of American Blind’s Marks,  
22 and impair American Blind’s honest and good faith efforts to promote and sell its products on the  
23 Internet.

24           83. Defendants’ actions have caused damage and irreparable injury to American Blind.  
25 Further damage and irreparable injury will result if Defendants are allowed to continue to violate  
26 American Blind’s rights.

27           84. These deliberate acts constitute a use of the American Blind Marks by Google in  
28 violation of federal and state law.

1 85. Among other things, the deliberate acts of Google and its use of the American  
2 Blind Marks, as described herein, constitute trademark infringement and unfair competition under  
3 the Lanham Act, 15 U.S.C. §§ 1114(1)(a) and 1125(a), dilution of American Blind's famous  
4 marks in violation Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c), dilution and unfair  
5 competition under the laws of the State of California, trademark infringement and unfair  
6 competition under the common law, and tortious interference with prospective economic  
7 advantage in violation of the laws of the State of California.

8 86. In addition to harming American Blind's reputation and the value of its marks,  
9 Defendants have realized and continue to realize profits and other benefits rightfully belonging to  
10 American Blind.

11 87. Defendants repeatedly have ignored American Blind's demands to cease all  
12 unauthorized use of the American Blind Marks and/or words confusingly similar thereto in their  
13 keyword Internet advertising.

14 88. Defendants' repeated failure to comply with American Blind's demands manifests  
15 their intent to continue to wrongfully compete with, infringe upon and dilute American Blind's  
16 proprietary rights in the American Blind Marks. American Blind seeks an injunction to halt  
17 Defendants' wrongful conduct and an award of damages as well as attorneys' fees and expenses  
18 for Defendants' willful and wanton conduct.

19 **FIRST CAUSE OF ACTION**

20 **Lanham Act – Trademark Infringement**

21 89. American Blind incorporates herein by reference each and every allegation  
22 contained in paragraphs 1 through 69 with the same force and effect as if here fully set forth.

23 90. Defendants' unauthorized and willful use of copies, variations, reproductions,  
24 simulations or colorable imitations of American Blind's registered marks among the American  
25 Blind Marks in connection with the advertising, offering for sale and sale of Defendants' keyword  
26 advertising services constitutes use in commerce which infringes American Blind's exclusive  
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1 rights in its federally-registered marks and is likely to cause confusion, mistake or deception as to  
2 the source of the services which are the subject of the keyword advertising offered by Defendants.

3 91. The aforesaid acts of Defendants, namely, the unauthorized and willful use of  
4 copies, variations, reproductions, simulations or colorable imitations of American Blind's  
5 registered marks in connection with the sale of keyword advertising, constitutes trademark  
6 infringement in violation of Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1).

7 92. The aforesaid acts of Defendants have caused and, unless said acts are restrained  
8 by this Court, will continue to cause American Blind to suffer irreparable injury.

9 93. American Blind has no adequate remedy at law.

10 **SECOND CAUSE OF ACTION**  
11 **Lanham Act – False Representation**

12 94. American Blind incorporates herein by reference each and every allegation  
13 contained in paragraphs 1 through 74 with the same force and effect as if here fully set forth.

14 95. Use by Defendants of copies, variations, reproductions, simulations or colorable  
15 imitations of the American Blind Marks on and in connection with keyword advertising conveys  
16 the misleading commercial impression to the public that the advertisers other than American  
17 Blind listed in the Defendants' manipulated search "results" pages, or their products, are  
18 approved by, sponsored by or are somehow affiliated or connected with American Blind.

19 96. The aforesaid acts of Defendants, namely, the use of copies, variations,  
20 reproductions, simulations or colorable imitations of the American Blind Marks on and in  
21 connection with keyword advertising, constitutes a false designation of origin and false  
22 description and representation, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. §  
23 1125(a).

24 97. The aforesaid acts of Defendants have caused and, unless said acts are restrained  
25 by this Court, will continue to cause American Blind to suffer irreparable injury.

26 98. American Blind has no adequate remedy at law.  
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1 **THIRD CAUSE OF ACTION**

2 Lanham Act - Dilution

3 99. American Blind incorporates herein by reference each and every allegation  
4 contained in paragraphs 1 through 79 with the same force and effect as if here fully set forth.

5 100. Use by Defendants of copies, variations, reproductions, simulations or colorable  
6 imitations of the American Blind Marks in connection with the advertising, offering for sale and  
7 sale of Defendants' keyword advertising services has and will continue to lessen the capacity of  
8 American Blind's famous and distinctive American Blind Marks to distinguish American Blind's  
9 products and services from those of others, and has diluted the distinctive quality of American  
10 Blind's famous and distinctive American Blind Marks.

11 101. The aforesaid acts of Defendants constitute dilution in violation of Section 43(c) of  
12 the Lanham Act, 15 U.S.C. § 1125(c).

13 102. The aforesaid acts of Defendants have caused and, unless said acts are restrained  
14 by this Court, will continue to cause American Blind to suffer irreparable injury.

15 103. American Blind has no adequate remedy at law.

16 **FOURTH CAUSE OF ACTION**

17 Injury to Business Reputation and Dilution – Cal. Bus. & Prof. Code § 14330

18 104. American Blind incorporates herein by reference each and every allegation  
19 contained in paragraphs 1 through 84 with the same force and effect as if here fully set forth.

20 105. The unauthorized use by Defendants of copies, variations, reproductions,  
21 simulations or colorable imitations of American Blind's registered marks among the American  
22 Blind Marks in connection with the advertising, offering for sale and sale of Defendants' keyword  
23 advertising services will dilute or tarnish American Blind's business reputation and/or the  
24 effectiveness of the well-known, famous and distinctive American Blind Marks.

25 106. The aforesaid acts of Defendants constitute dilution and injury to American  
26 Blind's business reputation in violation of California Business & Professions Code § 14330.  
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1           107. The aforesaid acts of Defendants have caused and, unless said acts are restrained  
2 by this Court, will continue to cause American Blind to suffer irreparable injury.

3           108. American Blind has no adequate remedy at law.

4   **FIFTH CAUSE OF ACTION**

5   Unfair Competition – Cal. Bus. & Prof. Code § 17200

6           109. American Blind incorporates herein by reference each and every allegation  
7 contained in paragraphs 1 through 89 with the same force and effect as if here fully set forth.

8           110. The unauthorized use by Defendants of copies, variations, reproductions,  
9 simulations or colorable imitations of American Blind’s registered marks among the American  
10 Blind Marks in connection with the advertising, offering for sale and sale of Defendants’ keyword  
11 advertising services will dilute or tarnish American Blind’s business reputation and/or the  
12 effectiveness of the well-known, famous and distinctive American Blind Marks.

13           111. Defendants’ acts as above alleged are misleading in a material respect, the public  
14 is likely to be deceived, and American Blind has suffered injury as a result of defendants’ acts.

15           112. The aforesaid acts of Defendants constitute unfair competition in violation of  
16 California Business & Professions Code § 17200.

17           113. The aforesaid acts of Defendants have caused and, unless said acts are restrained  
18 by this Court, will continue to cause American Blind to suffer irreparable injury.

19           114. American Blind has no adequate remedy at law.

20   **SIXTH CAUSE OF ACTION**

21   Common Law – Trademark Infringement and Unfair Competition

22           115. American Blind incorporates herein by reference each and every allegation  
23 contained in paragraphs 1 through 95 with the same force and effect as if here fully set forth.

24           116. The aforesaid acts of Defendants constitute trademark infringement and unfair  
25 competition in violation of American Blind’s rights under the common law of the State of  
26 California.  
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1 117. The aforesaid acts of Defendants have caused and, unless said acts are restrained  
2 by this Court, will continue to cause American Blind to suffer irreparable injury.

3 118. American Blind has no adequate remedy at law.

4 **SEVENTH CAUSE OF ACTION**

5 Tortious Interference With Prospective Economic Advantage

6 119. American Blind incorporates herein by reference each and every allegation  
7 contained in paragraphs 1 through 99 with the same force and effect as if here fully set forth.

8 120. Many of American Blind's customers regularly purchase products from American  
9 Blind's website, and are repeat customers. It is probable that such customers and others will  
10 continue to seek to visit American Blind's website and purchase American Blind's goods and  
11 services in the future.

12 121. Upon information and belief, Defendants were aware of the existence of American  
13 Blind's reasonable expectation of future transactions with American Blind's returning customers,  
14 as well as consumers who may be attracted to American Blind's goods and services as a result of  
15 American Blind's enviable goodwill and the extensive advertising and promotion of the  
16 American Blind Marks.

17 122. Absent Defendants' intentional and improper interference through their deceptive  
18 and manipulated search engine "results," it is reasonably certain that American Blind would  
19 realize additional sales from existing customers and/or new customers.

20 123. Defendants have intentionally and improperly interfered with American Blind's  
21 future and prospective sales through the Defendants' conduct; namely, their deceptive and  
22 manipulated search engine "results" that divert consumers from American Blind's websites.

23 124. The aforesaid acts of Defendants have caused and, unless said acts are restrained  
24 by this Court, will continue to cause American Blind to suffer irreparable injury.

25 125. American Blind has no adequate remedy at law.

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**EIGHTH CAUSE OF ACTION**

Contributory Trademark Infringement – Lanham Act

(In the Alternative)

126. American Blind incorporates herein by reference each and every allegation contained in paragraphs 1 through 123 with the same force and effect as if here fully set forth.

127. American Blind firmly believes that the aforesaid acts of Defendants, namely, the unauthorized and willful use of copies, variations, reproductions, simulations or colorable imitations of the American Blind Marks in connection with the sale of keyword advertising, constitutes direct trademark infringement in violation of Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1).

128. However, to the extent that Defendants’ conduct is deemed somehow not to constitute “direct” trademark infringement, the Defendants nevertheless are still liable to American Blind for the conduct described herein.

129. American Blind asserts, in the alternative, that Defendants’ acts, namely the inducement of American Blinds’ competitors to purchase the American Blind Marks as keywords and the refusal to block or otherwise disable American Blind’s competitors’ advertisements that result from searches for the American Blind Marks (despite Defendants’ knowledge that such advertisements infringe the American Blind Marks), constitute contributory trademark infringement.

130. The aforesaid acts of Defendants have caused and, unless said acts are restrained by this Court, will continue to cause American Blind to suffer irreparable injury.

131. American Blind has no adequate remedy at law.

**NINTH CAUSE OF ACTION**

Contributory Dilution – Lanham Act

(In the Alternative)

132. American Blind incorporates herein by reference each and every allegation contained in paragraphs 1 through 128 with the same force and effect as if here fully set forth.

1 133. American Blind firmly believes that the aforesaid acts of Defendants, namely, the  
2 unauthorized and willful use of copies, variations, reproductions, simulations or colorable  
3 imitations of the American Blind Marks in connection with the advertising, offering for sale and  
4 sale of Defendants' keyword advertising services, has and will continue to lessen the capacity of  
5 American Blind's famous and distinctive American Blind Marks to distinguish American Blind's  
6 products and services from those of others, and has diluted the distinctive quality of American  
7 Blind's famous and distinctive American Blind Marks, in violation of Section 43(c) of the  
8 Lanham Act, 15 U.S.C. § 1125(c).

9 134. However, to the extent that Defendants' conduct is deemed somehow not to  
10 constitute "direct" trademark dilution, the Defendants nevertheless are still liable to American  
11 Blind for the conduct described herein.

12 135. American Blind asserts, in the alternative, that Defendants' acts, namely the  
13 inducement of American Blinds' competitors to purchase the American Blind Marks as keywords  
14 and the refusal to block or otherwise disable American Blind's competitors' advertisements that  
15 result from searches for the American Blind Marks (despite Defendants' knowledge that such  
16 advertisements were being used to dilute the American Blind Marks), constitute contributory  
17 trademark dilution.

18 136. The aforesaid acts of Defendants have caused and, unless said acts are restrained  
19 by this Court, will continue to cause American Blind to suffer irreparable injury.

20 137. American Blind has no adequate remedy at law.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, as to all counts of this Counterclaim/Third-Party Complaint, Defendants  
23 will continue their unlawful activities unless enjoined and American Blind's remedy at law is  
24 inadequate; and

25 WHEREFORE, as to all counts of this Counterclaim/Third-Party Complaint, American  
26 Blind requests:  
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28 (A) A preliminary and a permanent injunction prohibiting Defendants and their

1 officers, partners, agents, subcontractors, servants, employees, subsidiaries and related companies  
2 or entities, and all others acting in concert or participating with them from:

- 3 1. directly or indirectly selling or offering for sale advertising keywords that  
4 are identical or substantially similar to the American Blind Marks, which  
5 are likely to cause consumer confusion, mistake, or deception with respect  
6 to the American Blind Marks;
- 7 2. continuing to post listings for American Blind's competitors when Internet  
8 users run a search on Defendants' search engines using keywords that are  
9 identical or substantially similar to the American Blind Marks;
- 10 3. requiring Defendants to immediately contact all current advertisers who  
11 have purchased keywords identical or substantially similar to the American  
12 Blind Marks and/or terms confusingly similar thereto, to inform them that  
13 the advertisers' links will no longer appear when an Internet user runs a  
14 search for a term that is identical or substantially similar to the American  
15 Blind Marks;
- 16 4. making any use of the American Blind Marks and/or terms confusingly  
17 similar thereto which is likely to confuse consumers into believing that the  
18 goods and services subject of Defendants keyword advertising is sponsored  
19 by, affiliated with, or otherwise tacitly endorsed by American Blind and/or  
20 which is likely to dilute the distinctive and famous American Blind Marks;
- 21 5. making any designations of origin, descriptions, representations or  
22 suggestions that American Blind is the source, sponsor or in any way  
23 affiliated with its competitors, their products or their websites; and
- 24 6. engaging in any other act constituting unfair competition or deceptive  
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practices with American Blind or constituting an infringement of American Blind's rights in and to the American Blind Marks.

(B) That Defendants be required to reimburse American Blind for all actual damages and lost sales suffered by American Blind by reason of Defendants' illegal conduct, as well as any profits of Defendants that are attributable to Defendants' unfair competition, dilution and infringement not taken into account in computing the actual damages, and that punitive damages be awarded as authorized under the law;

(C) That Defendants be required to pay all of American Blind's attorneys' fees, expenses and costs associated with this action pursuant to the Lanham Act, 15 U.S.C. §1117; and

(D) That this Court grant such other and further relief as this Court may deem just and equitable.

Dated: May 4, 2004

HOWREY SIMON ARNOLD &  
WHITE

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

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Factory, Inc.

**JURY DEMAND**

Counter-Plaintiff demands a jury on all issues so triable.

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Dated: May 4, 2004

HOWREY SIMON ARNOLD &  
WHITE

By: /s/ Robert N. Phillips  
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AMERICAN BLIND AND  
WALLPAPER FACTORY, INC.

**ATTESTATION OF CONCURRENCE OF FILING**

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

/s/ Robert N. Phillips  
Robert N. Phillips