

# EXHIBIT A

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1 PATRICIA ANN PERRY - CONFIDENTIAL - 1.10.07  
 09:55 2 NFB during the course of this litigation?  
 09:55 3 A. Correct.  
 09:55 4 Q. And were there any changes that you  
 09:56 5 discussed that were not able to be implemented?  
 09:56 6 A. I do not recall.  
 09:56 7 Q. You don't recall one way or the  
 09:56 8 other?  
 09:56 9 A. Correct.  
 09:56 10 Q. And do you recall any of the specific  
 09:56 11 changes that you discussed or proposed changes  
 09:56 12 that you discussed?  
 09:56 13 A. I recall that we talked about ALT  
 09:56 14 tags.  
 09:56 15 Q. Anything else?  
 09:56 16 A. Not specifically.  
 09:57 17 Q. Did you -- did you know at the time  
 09:57 18 how many -- well, what's your understanding of  
 09:57 19 what ALT tags are first of all?  
 09:57 20 A. My understanding is that ALT tags are  
 09:57 21 necessary to be used with readers.  
 09:57 22 Q. What do you mean necessary to be used  
 09:57 23 with readers?  
 09:57 24 A. My understanding is that for readers  
 09:57 25 such as JAWS to work on a website, ALT tags are

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1 PATRICIA ANN PERRY - CONFIDENTIAL - 1.10.07  
 09:57 2 necessary.  
 09:57 3 Q. Okay. Readers, in other words,  
 09:57 4 devices that are used by people with vision  
 09:57 5 disabilities to browse or use a website?  
 09:57 6 A. Maybe vision disabilities, maybe  
 09:57 7 other disabilities.  
 09:57 8 Q. Including vision disabilities?  
 09:57 9 A. Correct.  
 09:57 10 Q. All right. And did you have any  
 09:58 11 understanding -- when did you first learn about  
 09:58 12 the concept of ALT tags?  
 09:58 13 A. Back in 2000.  
 09:58 14 Q. Okay. So you understood that ALT  
 09:58 15 tags were necessary for a person with a vision  
 09:58 16 disability who's using screen reader software to  
 09:58 17 get on to a website, you understand that alt  
 09:58 18 text was necessary to allow them to get on to  
 09:58 19 the website prior to this litigation?  
 09:58 20 A. When I say in 2000 I learned of ALT  
 09:58 21 tags, my understanding of ALT tags at that time  
 09:58 22 was that ALT tags were used for meta data for  
 09:58 23 things like search, et cetera. At that time, I  
 09:59 24 was not aware that they were needed solely for  
 09:59 25 -- I shouldn't say solely but for readers,

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1 PATRICIA ANN PERRY - CONFIDENTIAL - 1.10.07  
 09:59 2 et cetera. 2000 was the first time that I had  
 09:59 3 entered the web space at all so. . .  
 09:59 4 Q. When was the first time that you  
 09:59 5 became aware that ALT tags were necessary for  
 09:59 6 people with vision disabilities to access the  
 09:59 7 website?  
 09:59 8 A. I don't recall.  
 09:59 9 Q. Do you know if it was within the  
 09:59 10 context of this litigation?  
 09:59 11 A. It was prior to that.  
 09:59 12 Q. Okay. Do you know how long prior to  
 09:59 13 that?  
 09:59 14 A. I don't recall. Again, trade  
 09:59 15 magazines.  
 09:59 16 Q. Okay. Do you know at the time that  
 09:59 17 you were speaking with Mr. Nitschke in 2006, did  
 09:59 18 you have any understanding of the extent to  
 09:59 19 which images, whether images of pictures or  
 10:00 20 images of text on Target.com, did not have ALT  
 10:00 21 tags?  
 10:00 22 A. No, I did not.  
 10:00 23 Q. Is that something that you discussed  
 10:00 24 with him at all, the extent to which there were  
 10:00 25 or there were not ALT tags?

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1 PATRICIA ANN PERRY - CONFIDENTIAL - 1.10.07  
 10:00 2 A. No.  
 10:00 3 Q. Was it your understanding that there  
 10:00 4 were images and -- well, strike that.  
 10:00 5 Was it your understanding that there  
 10:00 6 were images, whether text images or picture  
 10:00 7 images, on Target.com that did not have ALT  
 10:00 8 tags?  
 10:00 9 A. Yes.  
 10:00 10 Q. Okay. Did you understand that to be  
 10:00 11 an obstacle or potential obstacle for people  
 10:00 12 with disabilities trying to access Target.com?  
 10:00 13 A. Not that that was solely what was  
 10:01 14 causing non-accessibility.  
 10:01 15 Q. Was there anything else that you  
 10:01 16 understood to be causing non-accessibility?  
 10:01 17 A. No.  
 10:01 18 Q. Was it your understanding or is it  
 10:01 19 not your understanding that the lack of ALT tags  
 10:01 20 on text or picture images on a website can cause  
 10:01 21 inaccessibility to that website?  
 10:01 22 A. To what extent?  
 10:01 23 Q. Well, what -- do you have an  
 10:01 24 understanding as to whether or not the lack of  
 10:01 25 ALT tags on a website can cause inaccessibility

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1 PATRICIA ANN PERRY - CONFIDENTIAL - 1.10.07  
 10:28 2 ambiguous.  
 10:28 3 THE WITNESS: What do you mean by  
 10:28 4 tracked?  
 10:28 5 BY MR. KONECKY:  
 10:28 6 Q. Well, do you keep track of the -- or  
 10:28 7 do you -- does anybody determine or try to  
 10:28 8 determine the amount of revenues generated by  
 10:28 9 Target.com?  
 10:28 10 A. Target.com has its own P & L.  
 10:28 11 Q. Okay. And what were the revenues of  
 10:28 12 Target.com in 2006?  
 10:28 13 A. They will be approximately six  
 10:28 14 hundred and fifty million.  
 10:28 15 Q. And do you know where those revenues  
 10:29 16 go?  
 10:29 17 MR. McDOWELL: Objection, vague and  
 10:29 18 ambiguous.  
 10:29 19 THE WITNESS: What do you mean where  
 10:29 20 they go?  
 10:29 21 BY MR. KONECKY:  
 10:29 22 Q. I mean presumably, for example, some  
 10:29 23 goes back into the Target.com budget, is that  
 10:29 24 right, or not?  
 10:29 25 A. I'm not -- I'm sorry. I'm not

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1 PATRICIA ANN PERRY - CONFIDENTIAL - 1.10.07  
 10:29 2 following what you mean by where they go. They  
 10:29 3 go back into the budget.  
 10:29 4 Q. Well, I don't know. I guess I'm  
 10:29 5 asking you what happens to the six hundred --  
 10:29 6 describe for me in terms of organizationally  
 10:29 7 where the revenues generated by Target.com go.  
 10:29 8 MR. McDOWELL: Same objection.  
 10:29 9 THE WITNESS: I'm sorry. I'm not  
 10:29 10 understanding what you mean by where do they go.  
 10:30 11 BY MR. KONECKY:  
 10:30 12 Q. Why don't you understand the  
 10:30 13 question?  
 10:30 14 I mean obviously -- I don't mean that  
 10:30 15 in a way other than I'm trying to figure out a  
 10:30 16 way to rephrase it, so that you do understand  
 10:30 17 it.  
 10:30 18 A. Well, in a company, the revenues go  
 10:30 19 to a lot of -- go to a lot of different places,  
 10:30 20 meaning that you spend a lot of money on a lot  
 10:30 21 of different things like overhead, fulfillment  
 10:30 22 costs, et cetera.  
 10:30 23 So I'm not really in a position to  
 10:30 24 explain to you exactly where every dollar of the  
 10:30 25 six hundred and fifty million goes.

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1 PATRICIA ANN PERRY - CONFIDENTIAL - 1.10.07  
 10:31 2 MR. McDOWELL: The --  
 10:31 3 BY MR. KONECKY:  
 10:31 4 Q. When you say overhead, for example,  
 10:31 5 is that overhead for Target.com?  
 10:31 6 A. Yes.  
 10:31 7 Q. Okay. Does any part of the six  
 10:31 8 hundred fifty million go to places other than  
 10:31 9 Target.com?  
 10:31 10 MR. McDOWELL: Objection, vague and  
 10:31 11 ambiguous.  
 10:31 12 THE WITNESS: I can't -- I'm not in a  
 10:31 13 position to answer that question. I do not know  
 10:31 14 where all of our revenues go.  
 10:31 15 BY MR. KONECKY:  
 10:31 16 Q. Do you know whether any of the  
 10:31 17 revenues generated by Target.com are used to  
 10:31 18 benefit Target Corporation generally as opposed  
 10:31 19 to just specifically Target.com?  
 10:31 20 MR. McDOWELL: Objection, vague and  
 10:31 21 ambiguous.  
 10:31 22 THE WITNESS: I can't explain where  
 10:31 23 all of our revenues go.  
 10:31 24 BY MR. KONECKY:  
 10:31 25 Q. Do you know if any of your revenues

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1 PATRICIA ANN PERRY - CONFIDENTIAL - 1.10.07  
 10:31 2 go to places other than specifically Target.com?  
 10:31 3 A. I can't answer that question.  
 10:32 4 Q. Who would be able to answer that  
 10:32 5 question?  
 10:32 6 A. Steve Benson, our director of  
 10:32 7 finance.  
 10:32 8 Q. When you say your director of  
 10:32 9 finance, you mean Target.com's director of  
 10:32 10 finance?  
 10:32 11 A. Correct.  
 10:32 12 Q. Do you know who Mr. Benson reports  
 10:32 13 to?  
 10:32 14 A. Dale Nitschke.  
 10:32 15 Q. Your boss?  
 10:32 16 A. Uh-huh.  
 10:32 17 Q. Who then reports to --  
 10:32 18 THE COURT REPORTER: Is that a yes?  
 10:32 19 THE WITNESS: Yes.  
 10:32 20 BY MR. KONECKY:  
 10:32 21 Q. Who then reports to the president of  
 10:32 22 Target Corporation?  
 10:32 23 A. Yes.  
 10:32 24 MR. KONECKY: Why don't we take a  
 10:32 25 quick break?

1 PATRICIA ANN PERRY - CONFIDENTIAL - 1.10.07  
 11:15 2 Q. Okay. What is it then?  
 11:15 3 A. The number of calls taken per unit  
 11:15 4 sold.  
 11:15 5 Q. Oh. Is there any way of tracking the  
 11:16 6 number of calls taken that do not result in a  
 11:16 7 sale?  
 11:16 8 A. No.  
 11:16 9 Q. That's not something that Target or  
 11:16 10 Amazon to your knowledge tracks?  
 11:16 11 Am I correct?  
 11:16 12 A. All of the contacts -- contacts per  
 11:16 13 unit is just a way of measuring how many  
 11:16 14 contacts come in. It doesn't mean that every  
 11:16 15 contact that comes in is to place an order. It  
 11:16 16 could be questions on: Where is my order? My  
 11:16 17 order came in damaged, et cetera.  
 11:17 18 Q. Do you know what the budget is for  
 11:17 19 the 1-800 number?  
 11:17 20 A. No, I do not.  
 11:17 21 Q. When I say the 1-800 number, I mean  
 11:17 22 that function?  
 11:17 23 A. Yes.  
 11:17 24 Q. You don't know one way or the other  
 11:17 25 what's --

1 PATRICIA ANN PERRY - CONFIDENTIAL - 1.10.07  
 11:17 2 A. I would need to check.  
 11:17 3 Q. Okay. Do you have any estimate?  
 11:17 4 A. I do not.  
 11:17 5 Q. Okay. Paragraph three says,  
 11:17 6 "Target.com was created in 1999."  
 11:17 7 When you say Target.com, are you  
 11:17 8 referring to the division of Target Corporation  
 11:18 9 or the website or something else?  
 11:18 10 A. The website.  
 11:18 11 Q. Okay. So the -- am I correct that  
 11:18 12 the website was launched in 1999?  
 11:18 13 A. Yes, you are.  
 11:18 14 Q. Okay. When did the division of  
 11:18 15 Target Corporation called Target.com get formed?  
 11:18 16 A. I believe it was in 2000.  
 11:18 17 Q. Who was responsible for creating the  
 11:18 18 website Target.com?  
 11:18 19 A. Clarify.  
 11:18 20 Q. Who created it?  
 11:18 21 A. Target.  
 11:18 22 Q. Target Corporation?  
 11:18 23 A. Yes.  
 11:18 24 Q. And do you know why?  
 11:19 25 A. Industry trend.

1 PATRICIA ANN PERRY - CONFIDENTIAL - 1.10.07  
 11:19 2 Q. Are there certain goals or benefits  
 11:19 3 that were trying to be achieved by following  
 11:19 4 this industry trend?  
 11:19 5 A. It was set up in 1999 as a test to  
 11:19 6 see if the guest wanted to interact with  
 11:19 7 Target.com on the Internet or not.  
 11:19 8 Q. And was it determined that guests as  
 11:19 9 a general matter did want to do that?  
 11:19 10 A. Yes.  
 11:19 11 Q. Why?  
 11:19 12 Has Target figured out why guests  
 11:19 13 want to interact with Target.com?  
 11:19 14 MR. McDOWELL: Objection, lacks  
 11:19 15 foundation.  
 11:19 16 THE WITNESS: I --  
 11:19 17 BY MR. KONECKY:  
 11:19 18 Q. Has Target reached any conclusion or  
 11:19 19 understanding of why guests interact with  
 11:20 20 Target.com?  
 11:20 21 MR. McDOWELL: Same objection.  
 11:20 22 THE WITNESS: I can't answer that  
 11:20 23 question.  
 11:20 24 BY MR. KONECKY:  
 11:20 25 Q. Do you know whether Target.com is

1 PATRICIA ANN PERRY - CONFIDENTIAL - 1.10.07  
 11:20 2 responsible for increasing Target Corporation's  
 11:20 3 overall profits?  
 11:20 4 A. Target.com has operated at a loss,  
 11:20 5 so, no.  
 11:20 6 Q. For how long has it operated at a  
 11:20 7 loss?  
 11:20 8 A. Since 1999.  
 11:21 9 Q. When you say operated at a loss, can  
 11:21 10 you describe either quantitatively or  
 11:21 11 qualitatively what you mean?  
 11:21 12 A. Our profits have not been positive.  
 11:21 13 Q. Positive in relation to what?  
 11:21 14 A. In relation to a number that we call  
 11:21 15 EBIT which is the profit that we -- that both  
 11:21 16 Target Corporation and Target.com, any company  
 11:21 17 reports. So it's the amount of profit that's  
 11:21 18 made on the sales which Target.com has not made  
 11:21 19 profit.  
 11:22 20 Q. Why does Target continue to use  
 11:22 21 Target.com?  
 11:22 22 A. I can't answer that question.  
 11:22 23 THE COURT REPORTER: I'm sorry.  
 11:22 24 What is your answer?  
 11:22 25 THE WITNESS: I can't answer that

**EXHIBIT B**

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16  
17 **UNITED STATES DISTRICT COURT**  
18 **NORTHERN DISTRICT OF CALIFORNIA**  
19 **SAN FRANCISCO DIVISION**

20 NATIONAL FEDERATION OF THE  
21 BLIND, the NATIONAL FEDERATION OF  
22 THE BLIND OF CALIFORNIA, on behalf of  
their members, and Bruce F. Sexton, on behalf  
of himself and all others similarly situated,

23 Plaintiffs,

24 v.

25 TARGET CORPORATION,

26 Defendant.

Case No.: C 06-01802 MHP

**CLASS ACTION**

**EXPERT DECLARATION OF DR.  
JAMES W. THATCHER IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
PRELIMINARY INJUNCTION**

Hearing Date: June 12, 2006

Time: 2:00 p.m.

Judge: The Honorable Marilyn Hall  
Patel

DISABILITY RIGHTS ADVOCATES  
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27  
28

1 I, James W. Thatcher, declare as follows:

2 1. The facts in this declaration are based upon my personal knowledge. If called to testify,  
3 I could testify competently to the facts described in this declaration.

4 **Background**

5 2. I am an independent Accessibility Consultant, living in Austin Texas.

6 3. I was contacted by Mazen M. Basrawi of Disability Rights Advocates (hereinafter  
7 “DRA”) in July 2005. Mr. Basrawi asked me to provide my expert assessment of the  
8 accessibility of the website of the Target Corporation. I submitted my report, “Accessibility  
9 Assessment of Target.com,” to DRA. A true and correct copy of that report is attached as  
10 Exhibit A. DRA has continued to retain me as a litigation expert.

11 4. I have consulted on accessibility with clients large and small, including Xerox, Google,  
12 Success Factors, CCH, Thomson-West, Clayton College, NFB, The Rehabilitation Clinic of  
13 Chicago and The State of Texas. I serve as an auditor of Priceline.com approved by the Attorney  
14 General of New York State.

15 **Assistive Technology**

16 5. I received my PhD in Computer Science from the University of Michigan in 1963.

17 6. After that, my thesis advisor, Dr. Jesse Wright, and I both joined IBM Research in  
18 Yorktown Heights, New York.

19 7. With the birth of the IBM PC in the early 1980’s, Dr. Wright (who is blind) and I had the  
20 idea of making the PC “talk” so that it could be used by someone who could not see the screen.  
21 We developed a tool which became the IBM Screen Reader in 1986, providing access to  
22 computing for people who were blind. The phrase “screen reader” was born as was the industry  
23 of providing audio access for blind computer users.

24 8. In those days computers used an operating system called DOS and screen readers were  
25 *relatively* straight forward. With the advent of the Graphical User Interface in the late 1980’s,  
26  
27  
28

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1 the picture darkened and it looked like the access to computing by people who are blind would  
2 be lost. I responded to this challenge leading the development of the first screen reader for a  
3 graphical user interface, called IBM Screen Reader/2, released in 1992. I received the  
4 Distinguished Service award from The National Federation of the Blind in 1994 for this work on  
5 access to the Graphical User Interface.

6  
7 9. Systems like the screen readers and screen magnifiers for people with low vision are  
8 called "assistive technology." I worked primarily on assistive technology until 1996 when I  
9 moved from IBM Research to the IBM Accessibility Center in Austin, Texas.

10 10. When I joined the IBM Accessibility center in 1996 I changed my focus from the  
11 assistive technology that had engrossed me for the previous 13 years to accessibility. I took on  
12 the challenge of bringing Accessibility into the IBM development process. Since IBM had a  
13 long history of employing people with disabilities and of developing innovative assistive  
14 technology, it was natural to demand that IBM produce accessible hardware, software, and  
15 websites. The key to my approach was to develop accessibility guidelines for all areas where  
16 IBM developed products and to get top level management support for requiring that IBM  
17 developers follow those guidelines.

18  
19 **My Experience – Accessibility**

20 11. There are two parts to providing access to computing for people with disabilities. One  
21 part is the assistive technology, which has improved remarkably over the past fifteen years. The  
22 other is the work of the application developer or website designer. Applications and websites  
23 must follow certain protocols or standards so that the assistive technology will be able to get the  
24 information that is displayed for a sighted user and communicate that information through  
25 synthesized speech to a blind user in a clear and organized way.

26  
27 12. The simplest example of web accessibility is the problem of pictures (images) contained  
28 in pages on the World Wide Web. These pictures can be photographs or drawings, but most



1 people don't realize that there are many "pictures" on most web pages that are important words  
2 like "Go," "Search," "Contact us" and "Continue Checkout". These are often actually pictures  
3 of words, not text that can be recognized and spoken by a screen reader.

4 13. Web accessibility requires that "alternative text" is coded with each picture so that a  
5 screen reader can speak the alternative text while a sighted user sees the picture. Note that  
6 accessibility does not say "don't use pictures"; it says "include the alternative text along with  
7 each picture." The alternative text does not change the visual presentation except that it appears  
8 as a text pop-up when the mouse moves over the picture.  
9

10 **Section 508 Standards**

11 14. Corporate support came when Congress passed the Workforce Rehabilitation Act in  
12 1998. This Act contained Section 508 requiring that all federal agencies purchase only  
13 accessible Electronic and Information Technology (IT). Representing IBM, I was Vice  
14 Chairman of the Advisory Committee empanelled by the U.S. Access Board that proposed  
15 Accessibility Standards for Section 508. These standards became effective in June 2001 for all  
16 purchases of IT by federal agencies. This federal requirement on agency purchases led IBM to  
17 adopt a policy that all products, those sold to the government, and those sold to non-  
18 governmental customers, would meet the Section 508 standards. That made much more sense  
19 than having two sets of products.  
20

21 **Web Content Accessibility Guidelines**

22 15. The World Wide Web Consortium (W3C) is an international consortium where Member  
23 organizations, staff, and the public work together to develop Web standards. In 1999 the W3C  
24 released the Web Content Accessibility Guidelines (WCAG). These guidelines are organized  
25 into three priority groups. The Priority One and Priority Two guidelines are similar to the  
26 Section 508 Web Accessibility Standards.  
27  
28

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**Applying the Standards and Guidelines**

16. When I undertake an expert assessment or audit of a website where a specific standard is not specified, I employ a combination of the Section 508 Standards and the Web Content Accessibility Guidelines, Priority One and Two. It is a combination that strongly supports the assistive technology that I know well.

17. There is more to accessibility than just the standards. For the example of pictures I mentioned above, the Section 508 standard just says, “§1194.22(a): A text equivalent for every non-text element shall be provided (e.g., via "alt", "longdesc", or in element content).”

18. This means different things for different kinds of pictures and an understanding of those alternatives is important in creating an accessible website or evaluating website accessibility. Pictures that are links or active buttons should have a text equivalent which is the function of the button or the link, like “Search” or “Continue Checkout”. For pictures which provide information, the text equivalent must convey the same information. Sometimes images are just for decoration or formatting purposes; these pictures need a text equivalent too and it is called the null or the empty text equivalent. That null text equivalent tells assistive technology to ignore the picture.

19. One can’t expect web designers and developers to know how people with disabilities use the Web. That is the reason for the guidelines and standards. But the final test has to be whether a web page can be used by a person with disabilities, in particular by a blind visitor using a screen reader.

**Evaluating Target.com**

20. Target.com is a commercial website that offers products and services for online sale and home delivery that are available in Target retail stores. The online store allows the user to browse products, product descriptions and prices; view sale items and discounts for online shopping; print coupons for use in Target retail stores; purchase items for home delivery; order

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1 pharmacy items and have prescriptions filled for pickup at Target retail stores; find retail store  
2 locations; among a variety of other functions. The homepage of Target.com, captured on March  
3 1, 2006, is attached hereto as Exhibit B.

4 21. There are hundreds of web pages on Target.com, many of which change every day.  
5 There are enterprise-level accessibility testing tools which I could use, but these testing tools are  
6 imperfect. One of the leaders in the testing area who developed the first such tool, called  
7 "Bobby," estimates that the testing tools can detect about 25 percent of accessibility problems  
8 with the remainder requiring human involvement.

9  
10 22. A second reason for not depending on the testing tools is that accessibility errors in the  
11 Target site are very repetitive. The same error occurs over and over and I believe it is more  
12 important to thoroughly understand the accessibility issues on the site rather than just count  
13 them. If I explain these errors and include information on what needs to be done to correct them  
14 then the company is in a better position to build accessibility into the site in the future.

15  
16 23. Instead of attempting to evaluate the whole Target.com site, I looked at six top level  
17 pages, including the Home Page, Browsing for Products (Men), Search Results, Investor  
18 Relations, Press and Diversity. I also went through a complete transaction, finding a product,  
19 adding it to the shopping cart, creating an account, entering credit card information, and  
20 checking out. I looked for accessibility errors all the way through that purchasing process, which  
21 consisted of nine distinct pages. The top level pages and the purchasing process added up to a  
22 total of 15 pages.

23 24. Expanding on my report (attached as Exhibit A) I will focus on four types of access  
24 barriers found on the Target.com website. These four are especially important and are violations  
25 of both the Web Content Accessibility Guidelines and the Section 508 Standards.

26  
27 **Text Equivalents for Active Images**

28 25. I mentioned this accessibility issue as an example of the concept of accessibility. There

1 is a sense in which it is the prototypical accessibility issue. The importance should be clear and  
2 the solution is simple.

3 26. Section 508 and the Web Content Accessibility Guidelines are almost identical in  
4 addressing text equivalents.

5 27. Section 508: “§1194.22 (a) A text equivalent for every non-text element shall be provided  
6 (e.g., via "alt", "longdesc", or in element content).”

7 28. WCAG: “1.1 Provide a text equivalent for every non-text element (e.g., via "alt",  
8 "longdesc", or in element content).”

9 29. Unfortunately there are many important pictures on Target.com that are active and that  
10 lack a text equivalent. When I say “active images” I mean images that look and act like buttons  
11 or images which are links to other parts of the site. An example of such an image from the  
12 Target.com home page is attached hereto as Exhibit C.

13 30. There are two links in this particular picture, one is “Gift Finder” and the other is “Red  
14 Hot Shop”. That is the way those links appear to a sighted user. The following is what the  
15 screen reader reports to a blind user for the first link: “Ref equal sc underscore iw underscore l  
16 underscore 1 601 minus 9748238 minus 9274539? Percent 5 Fencoding equals UTF8 ampersand  
17 amp; node=3112881”.

18 31. That is not only meaningless; it is agonizing to listen to. The numbers, by the way, are  
19 spoken in full, like “nine million seven hundred and forty eight thousand two hundred and thirty  
20 eight.”

21 32. There is a simple explanation for why a screen reader would read this link the way it  
22 does. If the page had been coded for accessibility, the text equivalent, “Gift Finder”, would have  
23 been attached to that picture, and “Gift Finder” is exactly what a screen reader would have  
24 spoken. But there is no text equivalent present so a screen reader tries its best to compensate and  
25 find other information that might help the blind user. When a text equivalent is missing, the  
26  
27  
28

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1 screen reader looks at what page the link will open so in the example here, it is speaking part of  
2 the URL of that page. That URL is the text that is displayed in the status area of Internet  
3 Explorer when the mouse pointer is placed on the link. Although this URL information is  
4 sometimes helpful, in this case it is a string of nonsense symbols that is only of use to the content  
5 management software that is managing the site and not intended for human reading.

6  
7 33. On many Target.com pages there are dozens of links similar to this; one following the  
8 other making no sense for a blind visitor to the site.

9 34. On the 15 pages I examined in detail, there were 219 active images which had no text  
10 equivalent.

11 35. Even when text equivalents are provided there can be subtle problems concerning the  
12 quality of that text equivalent. An example is the "Continue Checkout" button that initiates the  
13 checkout process after an item or items have been chosen. The picture button is attached hereto  
14 as Exhibit D.

15 36. This button does have a text equivalent coded into the page. The text equivalent for this  
16 image button should be "Continue Checkout," because that is what the button does and that is the  
17 text on the button. But "Proceed to Checkout" is the text equivalent assigned to this picture on  
18 Target.com. This is not a critical error like the ones above but it is serious. If a sighted person is  
19 helping a blind shopper, they might say, "Now just find the 'Continue Checkout' button in order  
20 to make your purchase." The blind shopper would respond, "I can't find the 'Continue  
21 Checkout' button."  
22

23 **Text Equivalents for Inactive Images**

24 37. Although every picture must have a text equivalent to be valid code for a web page, a  
25 screen reader will usually ignore the image if it lacks that text equivalent. When an inactive  
26 image doesn't have a text equivalent, at least a blind user is not inundated with gibberish as  
27 illustrated on the active images above. That is good news because on the 15 pages I examined in  
28

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1 detail, there were 1,500 inactive images which had no text equivalent.

2 38. Many of those inactive images are used for formatting and should be assigned the null  
3 text equivalent, but either way the screen readers ignore those pictures. However some of those  
4 images are important. An example is shown in Exhibit E, which is an image containing the  
5 words, "Narrow your results." This image should have "Narrow your results" as its text  
6 equivalent and that information would lead to the form below for a blind user just as it does for a  
7 sighted user. This image has no text equivalent on Target.com and is ignored by a screen reader  
8 so the information in the image is not conveyed to a blind user.

10 39. Another example of an inactive image without a text equivalent is attached hereto as  
11 Exhibit F. This picture is found on the Diversity page of Target.com. The picture here is not a  
12 screen shot of a web page; this is actually a picture on the diversity page, a picture of the words  
13 comprising Target's "Definition of Diversity." It has no text equivalent, which could easily be  
14 coded as the words *in* the picture. It would be far better to make the definition of diversity part  
15 of the text on the page, rather than a picture at all.

16 40. I have discussed a very small number of examples of missing or inadequate text  
17 equivalents. This is an indication of the problem. These are just samples. On *each* page there  
18 are many, sometimes hundreds, of these accessibility barriers.

20 **Keyboard Access**

21 41. It is a fundamental tenet of web accessibility that anything you can do with the mouse  
22 you must also be able to do using only the keyboard. This is typically moving to links or buttons  
23 with the TAB key, then pressing ENTER to follow a link or SPACE to take the action of a  
24 button.

25 42. For a web page to be accessible it must be possible for a user to interact with the page  
26 using only the keyboard. The keyboard as a replacement for the mouse is absolutely essential for  
27 some people with disabilities. Blind users can't use a mouse because manipulating the mouse is  
28



1 a visual activity of moving the mouse pointer from one visual spot on the page to another. With  
2 other disabilities, especially some kinds of mobility impairments, Web surfers may be incapable  
3 of the hand-eye coordination required to manipulate the mouse pointer.

4 43. As I explained above, I went through a process of purchasing an item on Target.com.  
5 After finding the item and adding it to my shopping cart there is a screen containing a “Continue  
6 Checkout” button that I talked about above. A screen shot of the page where the “Continue  
7 Checkout” button appears is attached hereto as Exhibit G.

8 44. The next step in the purchase process is to “press” the “Continue Checkout” button. But it  
9 is impossible to do that using the keyboard. It is necessary to use the mouse and click on the  
10 “Continue Checkout” button in order to proceed. This is the only place where I found that  
11 mouse activation was required and activation by the keyboard did not work. But it is an  
12 absolutely critically place! This is an essential step in making a purchase on Target.com and it  
13 cannot be completed by any person who cannot use the mouse.

14 45. I concluded that it is impossible for a blind person using the keyboard to complete a  
15 purchase on Target.com using the standard sequence of screens for such a purchase.

16 46. On April 6, 2006, when teaching a class on web accessibility at the California Web  
17 Accessibility Conference, I discovered that the barrier caused by the “Continue Checkout”  
18 button on the website of the Target Corporation had been removed. It is now possible to activate  
19 that button from the keyboard and complete a purchase without using the mouse. This was not  
20 possible in my tests prior to April 6, 2006. All other barriers on the website of the Target  
21 Corporation remain as discussed here.

22  
23  
24 **Navigation**

25 47. This issue of navigation is somewhat subtle compared to the other issues I have discussed  
26 above. The problem can be illustrated with the page that contains the “Continue Checkout”  
27 button that I discussed above shown in the screen shot contained in Exhibit E. If you are not  
28



1 using a mouse the problem of getting to that button is significant because keyboard access  
2 proceeds through the page from left to right and from the top to the bottom. In particular there  
3 are about 25 navigation links at the top of the page, followed by about 25 more in the shopping  
4 options section of the page. All of these precede the "Your Cart" section. That means a blind  
5 user must pass through all of these in order to get to the Continue Checkout button.

6  
7 48. Using the tab key to navigate through the page will require about 50 key strokes just to  
8 get the desired button. This takes a long time, it is confusing and it is distracting. This problem  
9 persists on every page that contains those navigation links.

10 49. Screen reader users need some technique for skipping over all those links in order to get  
11 to the desired part of the screen. The Section 508 Web Accessibility Standards address this issue  
12 with the following provision: "§1194.22(o): A method shall be provided that permits users to  
13 skip repetitive navigation links."

14 50. There is no accommodation on the Target.com website to comply with §1194.22(o).

15 51. Screen readers provide for navigation of headings on a page with the keyboard. If  
16 heading text is in fact coded as a heading then this navigation works. For example, on the  
17 Continue Checkout page shown in Exhibit E, the two main sections have text that looks like  
18 heading text, "More Shopping Options" and "Your Cart". If that text were actually designated as  
19 heading text, "More Shopping Options" and "Your Cart". If that text were actually designated as  
20 "heading text" in the source code of the page (which it is not), then a screen reader user could get  
21 to the desired button with just 3 keystrokes, using the next heading key (H) twice followed by the  
22 TAB key.

23 **Labeling Forms**

24 52. Of course forms are very important on a shopping site. You need to enter a description in  
25 a search field, specify the number of each item you want, and fill out personal information  
26 including your address and credit card information.  
27  
28

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1 53. For each piece of information you enter in a form on a website, there has to be some  
2 prompting information near the entry field or check box or radio button to tell you what goes  
3 where.

4 54. If you cannot see the screen it is absolutely essential that you are informed about the  
5 prompting information so that you know which information is to be entered into which field.

6 55. There are simple techniques in a web page that will tie the prompting information to the  
7 input elements so that a blind user will hear exactly what information is to be entered in the  
8 current field. With this accommodation, a blind shopper can complete a purchase conveniently  
9 and confidently.

10 56. The Section 508 standards and Web Content Accessibility Guidelines both have specific  
11 requirements for form labeling.

12 57. Section 508 §1194.22(n): “When electronic forms are designed to be completed online,  
13 the form shall allow people using assistive technology to access the information, field elements,  
14 and functionality required for completion and submission of the form, including all directions  
15 and cues.”

16 58. WCAG 12.4: “Associate labels explicitly with their controls.”

17 59. On Target.com there are no accommodations to facilitate the handling of forms by  
18 shoppers who use screen readers.

19  
20  
21 **Conclusion**

22 60. There are many thousands of images on Target.com that lack text equivalents to make  
23 them available to people using screen readers. It is impossible before April 6, 2006 to complete  
24 a transaction relying on keyboard interaction. Though this one problem appears to have been  
25 fixed, many critical barriers remain. None of the form controls on Target.com have proper  
26 labeling and there is no accommodation to facilitate keyboard navigation throughout Target.com  
27 pages. I have described four types of barriers that are easiest to explain and that are especially  
28


1 important for screen readers. There are other components of Web Accessibility for people with  
2 visual disabilities. As of April 12, 2006 the website of the Target Corporation is virtually  
3 unusable by a visitor who is blind.

4 61. If the Target Corporation modifies its existing website or creates a new website so that  
5 the result complies with the Section 508 Web Accessibility Standards and the Web Content  
6 Accessibility Guidelines, Version 1.0, Priority 1 and Priority 2, then these most severe barriers  
7 that I have described will be addressed and the site will be accessible by people with visual  
8 impairments.  
9

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I declare under penalty of perjury under the laws of the State of California that the  
forgoing is true and correct.

Executed this April day of 12, 2006, at Austin, Texas.

  
\_\_\_\_\_  
JAMES W. THATCHER, PHD

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# Exhibit A

# Accessibility Assessment of Target.com

**Jim Thatcher**  
**<http://jimthatcher.com>**  
**July, 2005**

## 1. My background

Accessibility has been a major part of my work since I developed one of the first audio access systems for blind computer users in 1984. This became IBM Screen Reader for DOS (and thus the phrase was born) in 1986. Later I led the development of the first screen reader for the Graphical User Interface (1991) and I was deeply involved in the development of IBM Home page Reader (1998).

This background in assistive technology gives me special insight into IT accessibility issues. I applied that insight leading the process to create the IBM Accessibility Guidelines (<http://www.ibm.com/able/guidelines.html>) and in bringing accessibility into the IBM development process. I served as Vice-chair of the Electronic and Information Technology Access Advisory Committee empanelled by the U. S. Access Board to draft standards for Section 508 and wrote the web accessibility course for the Information Technology Technical Assistance and Training Center at Georgia Tech that was funded by the U.S. Department of Education in support of Section 508.

I worked for IBM for 37 years. Since retiring in March of 2000 I have been an accessibility consultant (<http://jimthatcher.com>) working with clients large and small including Xerox, Google, Priceline.com, SuccessFactors, Thomson-West, Clayton College, NFB, The Rehabilitation Institute of Chicago and The State of Texas.

## 2. Standards for Web Accessibility

One needs some a measure of accessibility or definition of accessibility. How can I judge whether a web page or web site is accessible to persons with disabilities. The answer is to check for compliance with the Web Content Accessibility Guidelines (or WCAG) (<http://www.w3.org/TR/WCAG/>) from the World Wide Web Consortium (W3C) (<http://www.w3c.org>) and the federal Section 508 Web Accessibility Standards. These two sets of criteria are very similar and identical on the critical items I shall talk about here.

## 3. Summary: Target.com accessibility

I have been asked by the National Federation of the Blind to evaluate the accessibility of Target.com. The key issues for accessibility of any site are:

- (1) **Text equivalents for images.** Every image should have associated with it a text equivalent, called alt-text. For visitors to the website who use a

screen reader, the alt-text replaces the image and is spoken by a screen reader just like any other text on the page.

- (2) **Labeling for forms.** Form controls like text entry fields or check boxes require HTML coding that identifies the purpose of the control so that a screen reader user will know what to type in the text field or what is being agreed to with the check box.
- (3) **Techniques for navigation.** Large pages with lots of links are organized into groups or sections. When those section headings are marked up as HTML headings the keyboard users can move from section to section with a single key on the keyboard. Without this accommodation it is extremely difficult to use the page for its intended purpose.
- (4) **Keyboard access.** Keyboard access to a web site is usually taken for granted. Shoppers with varying disabilities find it impossible to use a mouse and rely on the keyboard instead.

On these key issues, Target fails miserably. Forms are not labeled at all and nothing has been done to improve navigation for screen reader or keyboard users. As a rough estimate, 80% of the images lack text equivalents. There is one spot in the shopping process (on the path I took to checkout) where it is impossible to move forward without using the mouse. Customers who do not use a mouse are not able to buy things on Target.com.

Usually when I evaluate or audit a web site there are a few blatant errors, but many more subtle issues with the style of accessibility accommodations. With Target.com I didn't get into the subtleties. Errors in the four categories listed above overwhelm any subtle issues. And those errors are almost everywhere.

#### **4. Structure of this report**

The results of my evaluation of Target.com, besides the overview above, are contained in the tables in the Section 6. There are three tables. The first table enumerates the problems I found including a count of the errors on the 15 pages that I analyzed.

For those problems that occur frequently (numbers 1 through 7) the second table lists the pages that I evaluated and the number of problems in each category. Finally, for reference, the detailed URL for each page that I checked is contained in the third table.

My method of evaluating Target.com was first to determine a set of representative pages. I chose the home page and then carried out a typical shopping activity, searching, checking out, and purchasing which involved 11 additional pages. I briefly looked at each of the pages linked from the top and the bottom of the home page (Cart, My Account, Gift Registries, etc., on the top and About Target, Careers, Investors, etc on the bottom). With three exceptions (Investors, Press, and Diversity) these seem to be similar to the pages I had already seen.

I study each page with various tools at my disposal to check for the presence or absence of accessibility markup, and then when the markup is present, the quality of that markup. I test interactivity with the keyboard and with one or more screen readers.

The Discussion in Section 5 below was written as I carried out the evaluation. It contains some details that are not conveyed by the tables in the Detailed Results Section 6).

This evaluation of Target.com pages was conducted between July 21, 2005 and July 30, 2005.

## 5. Discussion

### 6.4. Alt-text

When alt-text is present on Target.com (approximately 15 percent of the time) it is generally very well done. It is unusual in my experience to find such a combination of serious accessibility issues and yet what *has* been done has been done well.

When I came to checkout, I was very surprised to find that all active images had alt-text, and as I said above, the alt text is generally well chosen. There were minor exceptions, like alt="Proceed to Checkout" and it should be alt="Continue Checkout" which is the text on the image and the correct description of the action of the button.

As I said, when alt-text was used it was generally ok. An exception in the checkout process is the progress indication at the top of the page consisting of the Target Brand followed by six step names (sign in, address, items, wrap, ship, pay and place order) shown here:



The completed steps are indicated in light red; the current step is dark red (pay in this case) and yet to go steps are in grey (place order in this case). The alt-text for this image on Target.com is "target.com" which is inadequate but it is not clear what is best. There is (what should be) a heading immediately under the image which says "Payment" so to indicate that the current step is payment is redundant. I might use alt="" believing that the information is redundant or alt="step 6 of 7" abstracting the key progress information that the image gives.

As I looked at new pages, ones that weren't similar to those I had checked lready, I continued to find blatant examples of a total disregard for accessibility, for



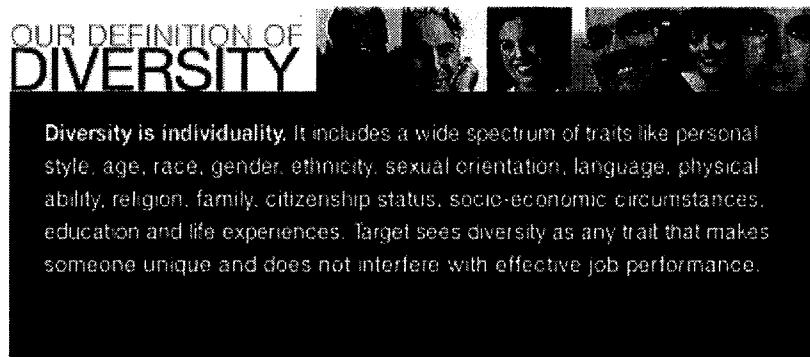
access to the web site by people with disabilities. The Investors link on the bottom of the Home page opens a page which consists of two frames lacking title attributes as required both by the Section 508 Web Accessibility Standards and by the Web Content Accessibility Guidelines from the W3C.



The main navigation links in the top frame (news, about us, companies, etc.) are images which do not have text equivalents. The investor information *itself* is an image of text with no equivalent. The information is not available to a potential investor using a screen reader.

The navigation menu down the left on the Investors page *does* have alt-text though the main menu across the top does not. Neither left nor top menus have alt-text on the Press page; *every single image is missing* a text equivalent.

The Diversity page offers a similar problem relating to text equivalents. The text in the “Definition of Diversity” shown in the screen shot below is actually a picture of text:



A MESSAGE FROM BOB ULRICH, CHAIRMAN AND CEO

That picture has no text equivalent and that means that Target’s “Definition of Diversity” is not available to a visitor to the web site who is blind.

## 6.5. Keyboard access

When evaluating Target.com for accessibility I stepped through a process of shopping, selection, and purchase with just the keyboard (no mouse) and with a screen reader. That keyboard process hit a snag at the crucial point in the shopping process – continuing checkout (screen shot below):

Customers who bought the items in your Cart also bought:

- [Ceramic 6" Chef's Knife - White](#)

**CONTINUE SHOPPING** on the Target.com home page.



With focus on the “Continue Checkout” button (whose alt text is “proceed to checkout”) both the enter key and the space bar should activate the button. That does not happen. Both the enter key and the space bar just cause the view cart page to reload. It is impossible to get beyond this point using only the keyboard.

## 6.6. Form Controls

It is essential to be sure that all edit fields, select menus, radio buttons, check boxes and text areas have `label` elements or `title` attributes that programmatically identify the purpose of the control for screen reader users. When this is done, and a screen reader user lands on a control it will announce that prompt, like “First Name edit” or “Zip Code edit” where the word “edit” is the way the JAWS screen reader tells a blind user that the control is a text entry field. Without this accommodation, JAWS may just say “edit” or worse it may pick up some other words that it guesses might be the prompt and possibly give the user the wrong information.

There are two ways of accomplishing this programmatic identification. One is to assign an `id` to the control and enclose the on-screen prompt with a `label` element whose `for` attribute is the same as the `id` of the control. The idea is illustrated by the following hypothetical code.

```
<label for="fn">First Name:</label> <input id="fn" type="text" size=20>
```

The second method is to use the `title` attribute on the `input` element, like `title="first name"`. This should only be used if the on-screen text is not adequate or the prompting text is not-contiguous.

I found no instances of providing this vital information for disabled users.

## 6. Detailed Results

The table below lists nine different problem types with a brief description of each. The “WCAG” column refers to the checkpoint number of the Web Content Accessibility Guidelines from the W3C (<http://www.w3.org/TR/WCAG10/>). The 508 column references the section of §1194.22 of the Section 508 Web Accessibility Standards (<http://www.access-board.gov/508.htm>).


The “Severity” column shows my professional assessment of importance the issue for access to the site by people with disabilities. For example, although Section 508 and WCAG both require that *every* image have alt-text, I rank missing alt-text on an active image (219 instances) as Critical because a disabled user will probably not be able to accomplish the related task because of the problem. In contrast, missing alt-text on a formatting image (1426 instances) is ranked Low severity because screen readers will ignore the image.

The Severity column also includes the number of errors of that type in the 15 pages that I examined.

### 6.1. Problems

This table contains the description of 9 error types with corresponding references to the Web Content Accessibility Guidelines and the Section 508 Web Accessibility Standards and a severity indication with the total number of occurrences of the error for the 15 pages reviewed.

#	Error Description	WCAG	508	Severity
1	Every active image including image links, image buttons, and image map areas must have clear simple alt-text specifying the function of the image.	1.1	(a)	Critical <b>(219)</b>
	<p>Men ▶                      ▶Pants                      ▶Shirts                      ▶See All</p> <p>The image map on left should read, “Men, Men’s pants, Men’s Shirts, See all Men’s wear.” Instead it sounds like this: “ref=sc_iw_l_3/601-6264770-6816961?%5Fencoding=UTF8&amp;node=1162322 ref=sc_iw_l_3/601-6264770-6816961?%5Fencoding=UTF8&amp;node=1041846 ...”</p>			
2	Every information-bearing image (including image map images) requires alt-text conveying that information.	1.1	(a)	Critical or High <b>(74)</b>
	<p>⬇ Narrow your results</p> <p>Needs alt=“Narrow your results” and is a critical example.</p>			
3	Every formatting image requires empty alt-text (alt=“”).	1.1	(a)	Low <b>(1426)</b>
4	Form Controls require label elements or title attributes	12.4	(n)	Critical <b>(59)</b>

#	Error Description	WCAG	508	Severity
5	Provide navigation methods for keyboard users	13.6	(o)	Critical (*)
<p>Every page must provide this structured navigation. What needs to be done is most obvious on the search results page where all the "red bars",</p> <p><b>Most popular product matches for "oven"</b></p> <p>should be heading level 2 or 3 and with "Search Results" as heading level 1 and "Narrow your search" as heading level 2.</p>				
6	Don't duplicate links text. Combine image with text and use alt="" on image or make the image not a link and use alt="".	n/a	n/a	Medium (62)
 <p><b>Black &amp; Decker Countertop Toaster Oven</b></p> <p>The image link and text link are identical.</p>				
7	Make target of link or function explicit.	13.1	n/a	Medium (38)
<p>For example <b>+ ADD TO CART</b> needs alt="Add to Cart" and title="Add Black and Decker counter toaster oven to cart" assuming this is the button associated with the example in #6 above.</p>				
8	Every Frame needs a title attribute that specifies the function of the frame.	12.1	(i)	High (3)
9	Interaction with each page (shopping in particular) must be possible without a mouse.	9.2	(n)	Critical (1)

## 6.2. Page Reviews

This is the table of the pages that were reviewed with a tabulation of the number of occurrences of each kind of error.

#	Page Description	Error # from Table 6.1						
		1	2	3	4	5	6	7
1	Home Page	124	12	174	1	*	0	12
2	Browse Page (Men)	16	17	225	2	*	18	0
3	Search Results ("oven")	40	3	360	2	*	35	26
4	Detail on shopping item (Ceramic 5" Utility Knife - White)	8	14	137	3	*	3	0
5	Add to cart (gp / cart / view.html)	0	5	144	4	*	3	0
6	Guest Sign In	1	1	14	5	*	0	0
7	Guest Registration	1	1	130	5	*	3	0
8	Address Book	0	0	14	7	*	0	0

#	Page Description	Error # from Table 6.1						
		1	2	3	4	5	6	7
9	Payment Methods	1	2	15	16	*	0	0
10	Billing Address	1	2	15	8	*	0	0
11	Place Order	1	1	37	2	*	0	0
12	Thank you (confirmation)	2	5	130	2	*	0	0
13	Investor Relations	10	3	2	0	*	0	0
14	Press	14	4	7	0	*	0	0
15	Diversity	0	4	22	2	*	0	0

### 6.3. Page URL's

This table (included for completeness) contains the actual URL copied from the address bar of the browser for each of the pages reviewed and listed in table 6.2.

#	Page Description	URL
1	Home Page	<a href="http://www.target.com/gp/homepage.html/601-6264770-6816961">http://www.target.com/gp/homepage.html/601-6264770-6816961</a>
2	Browse Page (Men)	<a href="http://www.target.com/gp/browse.html/ref=nav_t_spc_2_1/601-6264770-6816961?%5Fencoding=UTF8&amp;node=1041828">http://www.target.com/gp/browse.html/ref=nav_t_spc_2_1/601-6264770-6816961?%5Fencoding=UTF8&amp;node=1041828</a>
3	Search Results ("oven")	<a href="http://www.target.com/gp/search.html/ref=sr_bx_1/601-6264770-6816961?field-keywords=oven&amp;url=index%3Dtarget&amp;x=24&amp;y=11">http://www.target.com/gp/search.html/ref=sr_bx_1/601-6264770-6816961?field-keywords=oven&amp;url=index%3Dtarget&amp;x=24&amp;y=11</a>
4	Detail on shopping item (Ceramic 5" Utility Knife - White)	<a href="http://www.target.com/gp/detail.html/ref=13307891_bxgy_cc_text_b/602-1333620-2499063?%5Fencoding=UTF8&amp;asin=B0002HDV80">http://www.target.com/gp/detail.html/ref=13307891_bxgy_cc_text_b/602-1333620-2499063?%5Fencoding=UTF8&amp;asin=B0002HDV80</a>
5	Add to cart (gp / cart / view.html)	<a href="http://www.target.com/gp/cart/view.html/602-1333620-2499063">http://www.target.com/gp/cart/view.html/602-1333620-2499063</a>
6	Guest Sign In	<a href="http://www.target.com/gp/cart/view.html/602-1333620-2499063">http://www.target.com/gp/cart/view.html/602-1333620-2499063</a> (yes seems to be same - must be cookie coming into play)
7	Guest Registration	<a href="https://www.target.com/gp/flex/checkout/sign-in/select.html/602-1333620-2499063">https://www.target.com/gp/flex/checkout/sign-in/select.html/602-1333620-2499063</a>
8	Address Book	<a href="https://www.target.com/gp/flex/sign-in.html/602-1333620-2499063?%5Fencoding=UTF8&amp;step=checkout">https://www.target.com/gp/flex/sign-in.html/602-1333620-2499063?%5Fencoding=UTF8&amp;step=checkout</a>
9	Payment Methods	<a href="https://www.target.com/gp/checkout/address/create.html/602-1333620-2499063">https://www.target.com/gp/checkout/address/create.html/602-1333620-2499063</a>
10	Billing Address	<a href="https://www.target.com/gp/checkout/pay/select.html/602-1333620-2499063">https://www.target.com/gp/checkout/pay/select.html/602-1333620-2499063</a>
11	Place Order	<a href="https://www.target.com/gp/checkout/billing/select.html/602-1333620-2499063">https://www.target.com/gp/checkout/billing/select.html/602-1333620-2499063</a>
12	Thank you (confirmation)	<a href="https://www.target.com/gp/checkout/confirm/select.html/602-1333620-2499063">https://www.target.com/gp/checkout/confirm/select.html/602-1333620-2499063</a>
13	Investor Relations	<a href="http://www.targetcorp.com/targetcorp_group/investor-relations/investor-relations.jhtml">http://www.targetcorp.com/targetcorp_group/investor-relations/investor-relations.jhtml</a>
14	Press	<a href="http://www.targetcorp.com/targetcorp_group/news/news.jhtml">http://www.targetcorp.com/targetcorp_group/news/news.jhtml</a>

Target.com

Accessibility Assessment - July 2005

#	Page Description	URL
15	Diversity	<a href="http://target.com/targetcorp_group/diversity/index.jhtml">http://target.com/targetcorp_group/diversity/index.jhtml</a>

# Exhibit B



Screen shot of Target.com, captured on 03.01.2006



**TARGET**



[CART](#) [MYACCOUNT](#) [REDCARDS](#) [HELP](#)

[TARGET PHOTO](#) [TARGET STORES](#) [WEEKLY AD](#)

[CLUB WEDD REGISTRY](#) [TARGET BABY REGISTRY](#) [WISH LIST](#) [GIFT FINDER](#) [GIFTCARDS](#)

[Women](#) · [Men](#) · [Baby](#) · [Kids](#) · [Home](#) · [Bed + Bath](#) · [Furniture](#) · [Electronics](#) · [Sports](#) · [Toys](#) · [Entertainment](#)

Can we help you find something?  [GO](#) [Sign in](#) | [New guest?](#) [Start here](#)

**This Week at Target.com**

**Spring Break >**  
Check out new swimwear and vacation must-haves.

**New Arrivals in Bedding >**  
Sale on stylish sleeping selections.

**Home Décor >**  
Sale on select furnishings and accessories.

**Women's Shoes >**  
Buy 2 or more pairs, get free shipping.

**Shop Target.com**

**Gift Finder >**  
**Red Hat Shop >**  
**Home >**

- > Bedding
- > Kitchen + Housewares
- > Patio + Garden
- > Home Décor
- > Lighting
- > Rugs
- > Window Coverings
- > Slipcovers
- > Appliances
- > Bath
- > Dining
- > Home Improvement
- > Health + Beauty
- > Pets
- > See All

**When you find a great deal, it just clicks ;-)**







**Online Exclusives Sale. Save 10%-20%\* on select.**

<b>Home &gt;</b> > Bed + Bath > Kitchen Appliances > Home Décor	<b>Furniture &gt;</b> > Living Room > Bedroom > Kitchen + Dining	<b>Patio + Garden &gt;</b> > Wood Furniture > Wicker Furniture > Fabric Sling Furniture
--	---	--

**Save 10%-20%\* on even more web-only items:**

 <p><b>Bed in a Bag &gt;</b> Fashion Bedding + Accessories &gt; Nightstands &gt; Dressers &gt;</p>	 <p><b>Bath Coordinates &gt;</b> Shower Curtains &gt; Towel Sets &gt;</p>	 <p><b>Girls' Bedding Collections &gt;</b> <b>Boys' Bedding Collections &gt;</b> Dressers &gt; Storage Beds &gt;</p>
---	--	---

# Exhibit C

Image from Target.com home page showing two "picture links" –  
Gift Finder and Red Hot Shop, captured on 02.26.2006

**Shop** Target.com

**Gift Finder** >

**Red Hot Shop** >


# Exhibit D

Image button from Target.com showing the words "Continue Checkout"  
but having "Proceed to Checkout" as a "text equivalent"



# Exhibit E

An example of an information bearing image from  
Target.com search results page, captured on 02.26.2006


 Narrow your results



# Exhibit F

Picture showing the words of Target's "Definition of Diversity"  
from the Target.com website, captured on 02.26.2006

OUR DEFINITION OF  
**DIVERSITY**

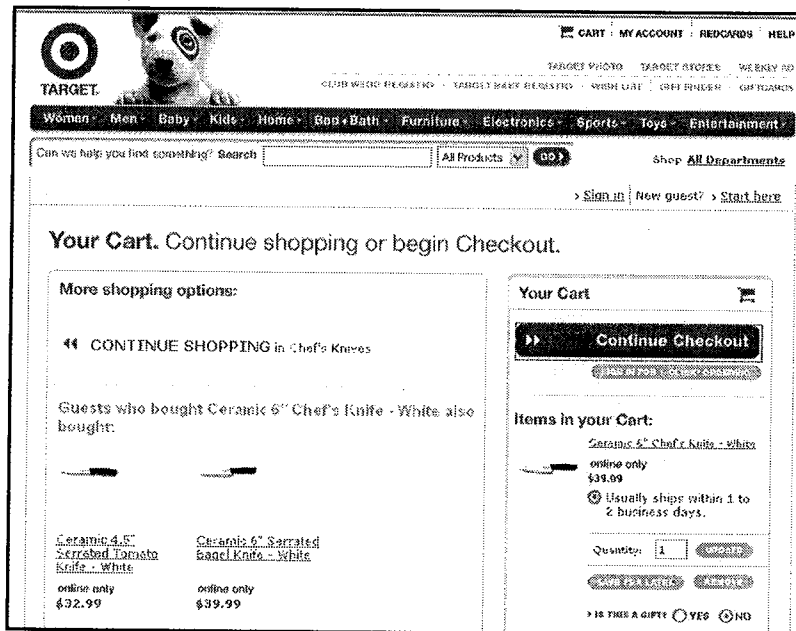


**Diversity is individuality.** It includes a wide spectrum of traits like personal style, age, race, gender, ethnicity, sexual orientation, language, physical ability, religion, family, citizenship status, socio-economic circumstances, education and life experiences. Target sees diversity as any trait that makes someone unique and does not interfere with effective job performance.

A MESSAGE FROM BOB ULRICH, CHAIRMAN AND CEO

# Exhibit G

A screen shot of the web page in the purchase process on Target.com containing the "Continue Checkout" button, captured on 02.26.2006



# EXHIBIT C

1 A. Yes.

2 Q. Let me show you a document we have marked  
3 as Plaintiff's Exhibit F. And I will give a copy to  
4 Stuart.

5 MR. PLUNKETT: Is this F because you  
6 premarked exhibits?

7 MR. PARADIS: Yes. And I think all of this  
8 is Exhibit F. That is your copy.

9 Q. Mr. Letourneau, would you review Exhibit F  
10 and tell me if that looks like a printout of your  
11 website?

12 A. Yes.

13 Q. Okay. Now, the very first paragraph of  
14 your website has a definition of web accessibility. Do  
15 you see that?

16 A. Yes.

17 Q. It says, "What does web accessibility mean?  
18 To me it means that anyone using any kind of web  
19 browsing technology must be able to visit any site and  
20 get a full and complete understanding of the  
21 information contained there, as well as have the full  
22 and complete ability to interact with the site."

23 Is that your understanding of web  
24 accessibility?

25 A. Writ large, yes.

1           A. The use of appropriate alt text is very  
2 important to the experience of someone using the  
3 website, someone with a screen reader using a website.

4           Q. Is it a critical requirement for blind  
5 users?

6           MR. PLUNKETT: Objection. Vague.  
7 Incomplete hypothetical. Calls for speculation.

8           THE WITNESS: According to the standard, it  
9 is important, a very important part of the web  
10 experience. Yes.

11           MR. PARADIS: Q. Based on your own  
12 experience as an expert, would you agree that correctly  
13 providing alt text is a critical access requirement for  
14 blind users to a website?

15           MR. PLUNKETT: Objection. Incomplete  
16 hypothetical. Calls for speculation.

17           THE WITNESS: In general, yes.

18           MR. PARADIS: Q. Another element you  
19 mentioned here is, "misuse or don't use title."

20           What does "title" mean as you used it here?

21           A. The title I am referring to there is the  
22 HTML title that appears in the top bar of most browsers  
23 to identify the page.

24           Q. Is that sometimes also referred to as  
25 headings?

1 Q. Yes.

2 A. What was the intent?

3 Would you repeat that, please?

4 (Record read.)

5 THE WITNESS: Actually, I am not sure I  
6 understand what you mean by "intent" in that.

7 MR. PARADIS: Q. Am I correct that  
8 Priority Two is the designation for features that are  
9 important to provide because some people with  
10 disabilities will have difficulty using the website  
11 unless they are provided?

12 A. I think that characterizes the intent of  
13 Priority Two, yes.

14 Q. And then Priority Three are features that  
15 are not as important as Priorities One and Two, in  
16 terms of making a website usable by disabled people; is  
17 that correct?

18 A. That is an interpretation of that, yes.

19 Q. Is that an interpretation you would agree  
20 with?

21 A. I think in general, yes.

22 Q. Looking again at slide 4 from this  
23 Exhibit E, I see that using header elements to convey  
24 document structure is a Priority Two item. Do you see  
25 that?



1 A. Yes.

2 Q. What does that mean?

3 MR. PLUNKETT: Objection. Vague.

4 THE WITNESS: If a document is a structured  
5 document, then proper use of headers to identify the  
6 sections of that document will aid the understanding  
7 and navigation of that document.

8 MR. PARADIS: Q. Would you consider this a  
9 basic navigation element as you have used the term  
10 "basic"?

11 A. For structured documents, yes.

12 Q. And is this a basic navigation element that  
13 blind people need?

14 MR. PLUNKETT: Objection. Incomplete  
15 hypothetical. Calls for speculation.

16 THE WITNESS: The use of headers would make  
17 it easier for a blind person to navigate a structured  
18 document. Do they need it? That is open to  
19 speculation.

20 MR. PARADIS: Q. Was it the consensus of  
21 the WCAG working group -- let me start again.

22 Was there a WCAG working group?

23 A. Yes.

24 Q. Is that the group that developed the WCAG  
25 1.0 standards?

1 Q. Right. Unfortunately, the declaration and  
2 the attachments use letters. The declaration is  
3 Exhibit B, and attached to the declaration as Exhibit A  
4 is an assessment report that Dr. Thatcher prepared in  
5 July of 2005.

6 A. Thank you.

7 Q. I would like you to look at the tab on the  
8 first page of this report, paragraph three. It's  
9 labeled, "Summary: Target.com accessibility."

10 And then he says in here, "The key issues  
11 for accessibility of any site are: No. 1, Text  
12 equivalents for images."

13 Do you see that?

14 A. Yes.

15 Q. Do you agree with that?

16 A. Yes.

17 Q. No. 2, on the next page is, "Labeling for  
18 forms."

19 Do you have an understanding of what  
20 "Labeling for forms" means?

21 A. Yes.

22 Q. And do you consider labeling for forms to  
23 be a key issue for accessibility of any site for blind  
24 users?

25 MR. PLUNKETT: Objection. Calls for

1 speculation. Incomplete hypothetical.

2 THE WITNESS: I think that proper labeling  
3 of forms can make forms easier to use.

4 MR. PARADIS: Q. What is your  
5 understanding of the requirements within WCAG 1.0  
6 concerning labeling of forms?

7 A. I believe it was a Priority Two. I just --  
8 I want to refresh myself on that.

9 Q. Sure.

10 A. Yes. Priority Two.

11 Q. And what is the purpose for requiring  
12 labeling of forms within WCAG as you understand it?

13 MR. PLUNKETT: Objection. Vague.

14 THE WITNESS: It would -- my interpretation  
15 of that has been that for screen readers that recognize  
16 form labels, it allows the web page designer more  
17 flexibility in how they design their forms, so that the  
18 label that applies for a particular field is  
19 discoverable.

20 MR. PARADIS: Q. Is the ultimate purpose,  
21 as you understand it, so that a blind user can know  
22 with confidence what each field within the form calls  
23 for?

24 A. It would aid that, yes.

25 Q. And is the ultimate purpose, so that a

1 blind user can fill out a form with as much ease and  
2 confidence as a sighted person could?

3 A. Yes.

4 Q. The third item Dr. Thatcher mentions is  
5 labeled "Techniques for navigation." And he says,  
6 "Large pages with lots of links are organized into  
7 groups or sections. When those section headings are  
8 marked up as HTML headings, the keyboard user can move  
9 from section to section with a single key on the  
10 keyboard. Without this accommodation it is extremely  
11 difficult to use the page for its intended purpose."

12 Do you agree that this is an important  
13 access element for blind users in a web page such as  
14 target.com?

15 A. I can't --

16 MR. PLUNKETT: Objection. Calls for  
17 speculation.

18 THE WITNESS: I have not seen target.com,  
19 so I can't --

20 MR. PARADIS: Q. Have you seen the website  
21 of any large retail company?

22 A. Yes.

23 Q. Can you give me an example of one you have  
24 seen in the last year?

25 A. Company called Future Shop.

1 specific. There are many techniques for navigation.

2 MR. PARADIS: Q. Well, looking at how  
3 Dr. Thatcher describes it in paragraph three, he says,  
4 "Large pages with lots of links are organized into  
5 groups or sections."

6 Do you consider that an important access  
7 feature for blind users of a web page that has lots of  
8 links?

9 MR. PLUNKETT: Objection. Vague. Calls  
10 for speculation. Incomplete hypothetical.

11 THE WITNESS: It might very well.

12 MR. PARADIS: Q. In a website that has a  
13 home page with lots of different sections that perform  
14 different functions, is it important for such a page to  
15 have techniques for navigation so that blind users can  
16 move easily around the home page?

17 MR. PLUNKETT: Objection. Incomplete  
18 hypothetical. Calls for speculation. Vague.

19 THE WITNESS: There are many techniques for  
20 navigation, and having some is important.

21 MR. PARADIS: Q. And particularly -- is it  
22 particularly important to have a mechanism to avoid  
23 repetitive navigation links on such a page?

24 MR. PLUNKETT: Objection. Incomplete  
25 hypothetical. Calls for speculation. Vague.

1 THE WITNESS: In general, yes, I do believe  
2 that.

3 MR. PARADIS: Q. And that is a requirement  
4 of Section 508 guidelines, correct?

5 A. I believe it is, yes.

6 Q. Just so I am clear, what do you mean by a  
7 computer -- I am sorry. What do you mean by a web page  
8 versus a website?

9 A. A web page -- a lot of people are arguing  
10 over this one right now. In my opinion, a web page is  
11 a single unit delivered by the entering of a URL, a web  
12 address. A website is the complete collection of  
13 linked pages in a website.

14 Q. The next item, No. 4, in Dr. Thatcher's  
15 report, is labeled, Keyboard access.

16 Do you consider it a critical access  
17 feature for blind users that a website enable them to  
18 perform all of the user functions through a keyboard?

19 MR. PLUNKETT: Objection. Incomplete  
20 hypothetical. Calls for speculation. Vague.

21 THE WITNESS: I generally agree with that,  
22 yes.

23 MR. PARADIS: Q. On the next paragraph,  
24 going to the second sentence -- first of all, this  
25 paragraph discusses target.com. And it says, "On these

1 for speculation. Lacks foundation.

2 THE WITNESS: The purpose is to facilitate,  
3 to make it easier for someone to do that. Screen  
4 readers are not often very good at fixing bad design or  
5 mitigating bad design.

6 MR. PARADIS: Q. Now, the WCAG guidelines  
7 that you helped develop were designed to make web pages  
8 accessible to a wide variety of different types of  
9 disabilities, correct?

10 A. That's the intent, yes.

11 Q. They were designed to make disabled people  
12 able to access websites using a wide range of  
13 screen-reading software, correct?

14 A. It was to allow web page designers to make  
15 web pages that could facilitate that interaction.

16 Q. And the -- your understanding of access  
17 is -- for website access is that even people using  
18 older technologies should be able to interact with the  
19 web page with ease, correct?

20 A. Ideally, yes.

21 MR. PLUNKETT: Objection. Vague.

22 MR. PARADIS: Q. And under your definition  
23 of access, the website designer should not design only  
24 to the most up -- the most recent technologies, but to  
25 the entire range of technologies that are generally

1 being used, correct?

2 MR. PLUNKETT: Objection. Vague.

3 THE WITNESS: Could you read that back,  
4 please?

5 (Record read.)

6 THE WITNESS: Not design only -- yes, I  
7 think that characterizes my --

8 MR. PARADIS: Q. Okay. Do you recall  
9 doing a declaration in this case?

10 A. I am sorry?

11 Q. Do you recall signing a declaration in this  
12 case?

13 A. Yes.

14 Q. And do you recall in paragraph 10 of your  
15 declaration referring to both the WCAG and the  
16 Section 508 standards?

17 A. Yes.

18 Q. Let me -- it's not a trick. Let me give  
19 you a copy of your declaration. I am showing you  
20 Exhibit A, Plaintiff's Exhibit A, which is a copy of  
21 your declaration.

22 So, in paragraph 10, would you please turn  
23 to that? Do you see where you mention both WCAG and  
24 Section 508 standards?

25 A. Yes.



# EXHIBIT D

1 TODD J. NEMOIR - 1.9.07  
 11:07 2 BY MR. KONECKY:  
 11:07 3 Q. Are you aware of -- of any  
 11:07 4 requirement in the design of Target.com for  
 11:07 5 users of any particular degree of education or  
 11:07 6 technological savvy in order to navigate through  
 11:07 7 the site?  
 11:07 8 A. I'm sorry.  
 11:08 9 Could you repeat the question?  
 11:08 10 Q. Sure.  
 11:08 11 MR. KONECKY: Could you read back the  
 11:08 12 question?  
 11:08 13 \* \* \*  
 11:08 14 (Whereupon, the reporter read back  
 11:08 15 the requested portion of the record.)  
 11:08 16 \* \* \*  
 11:08 17 THE WITNESS: There's not -- to the  
 11:08 18 best of my understanding, there's not a  
 11:08 19 particular education level or technological  
 11:08 20 ability that's dictated in any of the design  
 11:08 21 that we do.  
 11:08 22 BY MR. KONECKY:  
 11:08 23 Q. Do you design Target.com so that it  
 11:08 24 is user friendly for the general public?  
 11:09 25 MR. McDOWELL: Objection, lacks

1 TODD J. NEMOIR - 1.9.07  
 11:09 2 foundation, beyond the scope.  
 11:09 3 THE WITNESS: That is one of the  
 11:09 4 business objectives that it serves. That is not  
 11:09 5 the only one.  
 11:09 6 BY MR. KONECKY:  
 11:09 7 Q. And does the business objective of  
 11:09 8 making Target.com user friendly apply to users  
 11:09 9 with both high and moderate and low levels of  
 11:09 10 experience with the Internet?  
 11:09 11 A. I've not been involved in any of  
 11:09 12 those conversations -- any conversations with  
 11:10 13 regard to differentiating users at that point.  
 11:10 14 Q. Am I correct that the Target.com  
 11:10 15 design does not change or differentiate  
 11:10 16 depending upon the particular Internet skill set  
 11:10 17 or education level of the user?  
 11:10 18 A. The experience is the same for users  
 11:10 19 of all experience levels.  
 11:10 20 Q. The experience on Target.com?  
 11:10 21 A. Correct.  
 11:10 22 Q. Let's stick with sighted users of  
 11:10 23 Target.com for a moment.  
 11:11 24 I take it if you're accessing  
 11:11 25 Target.com as a sighted user, in order to

1 TODD J. NEMOIR - 1.9.07  
 11:11 2 navigate through it, you need to be able to  
 11:11 3 read, is that right?  
 11:11 4 A. Yes.  
 11:11 5 Q. Okay. And if you're using a mouse,  
 11:11 6 you need to be able to -- be able to move the  
 11:11 7 mouse and point and click, is that right?  
 11:11 8 A. If you're using a mouse, yes.  
 11:11 9 Q. Is there anything else you need to be  
 11:11 10 able to do as sighted user in order to navigate  
 11:11 11 through Target.com?  
 11:11 12 A. I'm sorry. I -- the question's a bit  
 11:12 13 vague for me.  
 11:12 14 Q. All right. In what way is it vague?  
 11:12 15 A. I mean we assume that you're able to  
 11:12 16 process the information and understand and make  
 11:12 17 judgments as to what you might be interested in.  
 11:12 18 Q. In terms of designing Target.com, at  
 11:12 19 least for sighted users, am I correct that it's  
 11:12 20 designed to be user friendly so long as the  
 11:12 21 person is able to read and process information  
 11:12 22 and use a mouse?  
 11:12 23 A. The friendliness of the experience is  
 11:12 24 one of the components that we take into account  
 11:12 25 when designing an experience. It is not the

1 TODD J. NEMOIR - 1.9.07  
 11:12 2 only one.  
 11:13 3 Q. Okay. I understand it's not the only  
 11:13 4 one.  
 11:13 5 But is there anything else that a  
 11:13 6 sighted user needs in order to have a user  
 11:13 7 friendly experience on Target.com other than the  
 11:13 8 ability to read text and the ability to point  
 11:13 9 and click a mouse?  
 11:13 10 A. I understand -- you asked the same  
 11:13 11 question. I still think it's vague. I mean  
 11:13 12 we're still making assumptions as to their --  
 11:13 13 the cognitive ability of the person to  
 11:13 14 understand the marketing messages we're  
 11:13 15 communicating. We're making assumptions about  
 11:13 16 the tools they have available to access the  
 11:13 17 site.  
 11:13 18 Q. Well, when you design or when Target  
 11:13 19 designs the website, is there anything else that  
 11:14 20 Target puts in the design of the website which  
 11:14 21 would require, at least for sighted users,  
 11:14 22 anything other than the ability to read and the  
 11:14 23 ability to point and click a mouse in order to  
 11:14 24 have a user friendly experience on the website?  
 11:14 25 MR. McDOWELL: Objection, asked and

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1 TODD J. NEMOIR - 1.9.07  
11:43 2 A. I'm sure there is more, yes.  
11:43 3 Q. Is there anything else that you can  
11:43 4 think of right now?  
11:43 5 A. No.  
11:43 6 Q. What about from moving from one page  
11:43 7 to another on Target.com?  
11:43 8 Is there anything that a sighted user  
11:43 9 needs other than to be able to visually see the  
11:43 10 -- the page and the link on the page and to be  
11:43 11 able to mechanically use the mouse in order to  
11:43 12 point and click on the link?  
11:43 13 A. No.  
11:44 14 Q. Are -- when -- when Target.com was  
11:44 15 first designed, am I correct that it was not  
11:44 16 designed with the particular needs of a blind  
11:44 17 user in mind?  
11:44 18 A. I was not at the company when  
11:44 19 Target.com was designed.  
11:44 20 Q. Looking at the design, particularly  
11:44 21 prior to 2006, is it fair to say that it was a  
11:44 22 design that was directed for sighted users as  
11:45 23 opposed to blind users?  
11:45 24 A. The implementation of the design  
11:45 25 would have been accomplished sticking to the

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1 TODD J. NEMOIR - 1.9.07  
11:45 2 developer's existing guidelines which would have  
11:45 3 provided direction to insure that the  
11:45 4 functionality of the site was accessible by all  
11:45 5 of our guests.  
11:45 6 Q. I'm correct that you've had to add or  
11:46 7 would have to add features to the site in order  
11:46 8 to make it -- in order to provide blind users  
11:46 9 with the equivalent ease of use or the same  
11:46 10 level of ease of use as sighted people?  
11:46 11 MR. McDOWELL: Objection, vague and  
11:46 12 ambiguous.  
11:46 13 THE WITNESS: We've made changes to  
11:46 14 the site to improve the guest experience for  
11:46 15 people who use screen readers.  
11:46 16 BY MR. KONECKY:  
11:46 17 Q. And these changes you've made since  
11:46 18 you've been there?  
11:46 19 A. Correct.  
11:46 20 Q. Okay. Some time after March of 2006?  
11:46 21 A. Correct.  
11:46 22 Q. And prior to making those changes, am  
11:46 23 I correct that in terms of perceiving the  
11:46 24 information on the website or being able to move  
11:46 25 through the website, that blind people or others

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1 TODD J. NEMOIR - 1.9.07  
11:47 2 with vision disabilities that use screen access  
11:47 3 software to not -- did not have equivalent ease  
11:47 4 of use or the same level of ease of use on the  
11:47 5 website?  
11:47 6 A. I wouldn't --  
11:47 7 MR. McDOWELL: Objection, vague and  
11:47 8 ambiguous.  
11:47 9 Go ahead.  
11:47 10 THE WITNESS: I wouldn't feel  
11:47 11 comfortable making that assessment.  
11:47 12 BY MR. KONECKY:  
11:47 13 Q. Do you disagree with that assessment?  
11:47 14 MR. McDOWELL: Same objection.  
11:47 15 THE WITNESS: I would need to give  
11:47 16 that some more thought.  
11:47 17 BY MR. KONECKY:  
11:47 18 Q. Sitting here today, as the person  
11:47 19 most knowledgeable for Target on the subjects of  
11:47 20 past efforts taken and contemplated efforts to  
11:47 21 make Target.com accessible and/or usable by  
11:48 22 people who are blind or visually impaired, would  
11:48 23 you disagree with the statement that prior to  
11:48 24 changes that are being implemented starting  
11:48 25 March 2006 or some time shortly thereafter, that

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1 TODD J. NEMOIR - 1.9.07  
11:48 2 blind individuals or individuals with vision  
11:48 3 impairments that need screen access software  
11:48 4 could not experience Target.com with the same  
11:48 5 ease of use as sighted people?  
11:48 6 MR. McDOWELL: Vague and ambiguous.  
11:48 7 THE WITNESS: Again, you're making an  
11:49 8 assessment that I don't feel comfortable with by  
11:49 9 asking that question. I find it difficult to  
11:49 10 exactly compare the two experiences and call one  
11:49 11 easier to use than the other. They're different  
11:49 12 experiences. They're different ways of  
11:49 13 experiencing the same content.  
11:49 14 BY MR. KONECKY:  
11:49 15 Q. Well, if there's no alternate text  
11:49 16 attached to an image, then the blind user cannot  
11:50 17 experience that content, is that correct?  
11:50 18 A. That's correct.  
11:50 19 Q. And that's true regardless of how  
11:50 20 sophisticated the blind user is, right?  
11:50 21 A. Yes.  
11:50 22 Q. Or where the blind user is dialing in  
11:50 23 from or connecting from, right?  
11:50 24 A. Correct.  
11:50 25 Q. And prior to March 2006, there have

1 TODD J. NEMOIR - 1.9.07  
 11:50 2 been many images on Target.com which did not  
 11:50 3 have alternate text, is that right?  
 11:50 4 A. Yes.  
 11:50 5 Q. Over half of the images perhaps,  
 11:50 6 right?  
 11:50 7 A. I wouldn't be able to put a number to  
 11:50 8 it.  
 11:50 9 Q. Possibly over half?  
 11:50 10 MR. McDOWELL: Anything is possible.  
 11:50 11 It calls for speculation.  
 11:50 12 THE WITNESS: (Witness indicating).  
 11:50 13 I wouldn't be able to speculate.  
 11:50 14 BY MR. KONECKY:  
 11:50 15 Q. Okay. Am I correct that how ever  
 11:50 16 many number of images on Target.com that did not  
 11:50 17 have alternate text though, that because the  
 11:51 18 blind individual cannot perceive the content of  
 11:51 19 those images, that that person's experience is  
 11:51 20 not equivalent to or with the same level of ease  
 11:51 21 as the sighted person's experience?  
 11:51 22 MR. McDOWELL: Objection, vague and  
 11:51 23 ambiguous.  
 11:51 24 THE WITNESS: You're drawing one  
 11:51 25 example to characterize the entire guest

1 TODD J. NEMOIR - 1.9.07  
 11:52 2 different.  
 11:52 3 As Target's person most knowledgeable  
 11:52 4 regarding past efforts taken and contemplated  
 11:52 5 efforts to make Target.com accessible and/or  
 11:52 6 usable by people who are blind or visually  
 11:52 7 impaired, do you have any basis to disagree with  
 11:52 8 the statement that in June of 2005,  
 11:52 9 approximately, eighty percent of the images on  
 11:53 10 Target.com did not have alternate text?  
 11:53 11 A. I cannot agree or disagree to the  
 11:53 12 statement.  
 11:53 13 Q. And can you or would you disagree  
 11:53 14 with the statement that as of the beginning of  
 11:53 15 April of -- as of the beginning of 2006, that at  
 11:53 16 least half of the images on Target.com did not  
 11:53 17 have alternate text on them?  
 11:53 18 MR. McDOWELL: Objection, asked and  
 11:53 19 answered.  
 11:53 20 THE WITNESS: Again, I have no  
 11:53 21 assessment of what that percentage would be.  
 11:53 22 BY MR. KONECKY:  
 11:53 23 Q. Either way, you agree that there are  
 11:53 24 thousands of images on Target.com on any given  
 11:53 25 day?

1 TODD J. NEMOIR - 1.9.07  
 11:51 2 experience. In that one example, I would agree  
 11:51 3 with the way you're describing it.  
 11:51 4 BY MR. KONECKY:  
 11:51 5 Q. And have you -- you're familiar with  
 11:51 6 the expert report provided by James Thatcher in  
 11:51 7 this case?  
 11:51 8 A. I am familiar with some suggestions  
 11:51 9 that Dr. Thatcher made.  
 11:51 10 Q. Are you familiar with any  
 11:51 11 observations he made about the Target.com  
 11:51 12 website?  
 11:51 13 A. I know about the summary of those  
 11:52 14 observations, not the specifics.  
 11:52 15 Q. Are you aware that he estimated that  
 11:52 16 up to eighty percent of the images on  
 11:52 17 Target.com, at least as of June 2005, did not  
 11:52 18 have alternate text?  
 11:52 19 A. No.  
 11:52 20 Q. Is that something that you would  
 11:52 21 disagree with?  
 11:52 22 A. We've covered this. I don't know  
 11:52 23 that I can put a number to the percentage of  
 11:52 24 images that did or did not have alternate text.  
 11:52 25 Q. But my question is slightly

1 TODD J. NEMOIR - 1.9.07  
 11:53 2 A. Yes.  
 11:53 3 Q. Okay. And the images can include not  
 11:53 4 just pictures but also text, right?  
 11:53 5 A. Yes.  
 11:53 6 Q. And that for each of those images, if  
 11:53 7 an image does not have alternate text, a blind  
 11:54 8 user cannot perceive the information being  
 11:54 9 provided by that image, is that correct?  
 11:54 10 A. Using an existing screen reader, yes,  
 11:54 11 that's my understanding.  
 11:54 12 Q. Okay.  
 11:54 13 MR. KONECKY: Why don't we take a  
 11:54 14 break?  
 11:54 15 MR. McDOWELL: Should we take lunch?  
 11:54 16 MR. KONECKY: Yeah. That sounds  
 11:54 17 good.  
 12:16 18 \* \* \*  
 12:16 19 (Whereupon, a lunch recess was taken.)  
 13:07 20 \* \* \*  
 13:07 21 BY MR. KONECKY:  
 13:07 22 Q. Did you prepare in any way for this  
 13:08 23 deposition today?  
 13:08 24 A. Yes.  
 13:08 25 Q. How did you do that?

1 TODD J. NEMOIR - 1.9.07  
 14:34 2 A. I'm struggling to recall the specific  
 14:34 3 improvements that were part of each release.  
 14:34 4 They were broken apart more to make better use  
 14:34 5 of development resources than to have  
 14:34 6 consistency in the features.  
 14:34 7 The first specific change was to  
 14:35 8 incorporate the -- both the ability of Target to  
 14:35 9 control the alternative text for images that  
 14:35 10 were on the site.  
 14:35 11 Q. I'm not sure I understand your answer  
 14:35 12 which speaks more to my ability to understand  
 14:35 13 than anything else, but what -- what do you mean  
 14:35 14 specifically?  
 14:35 15 What was done with that -- the first  
 14:35 16 part that you started to describe?  
 14:35 17 A. So for the -- the portions of the  
 14:35 18 experience that Target.com -- on Target.com that  
 14:35 19 a Target resource somewhere developed, we could  
 14:36 20 code -- we can code to include those ALT tags  
 14:36 21 for images ourselves. There are significant  
 14:36 22 portions of the experience that Amazon develops,  
 14:36 23 and so we had no control in those areas. In  
 14:36 24 those areas, they made the changes so that as we  
 14:36 25 provide the image, at the same time, we can

1 TODD J. NEMOIR - 1.9.07  
 14:37 2 for all images that Amazon -- that are put on  
 14:38 3 the parts of the site that Amazon maintains?  
 14:38 4 A. To the best of my knowledge.  
 14:38 5 Q. And I know you mentioned this  
 14:38 6 earlier, but which parts of the site are that --  
 14:38 7 are they, the ones that Amazon maintains?  
 14:38 8 A. All of the shopping and browsing and  
 14:38 9 checkout portions of the site.  
 14:38 10 Q. And was putting the alt text on the  
 14:38 11 shopping and browsing portions of the site part  
 14:38 12 of the first release or subsequent release?  
 14:38 13 A. I believe they were part of the  
 14:39 14 first.  
 14:39 15 Q. And also as part of the first  
 14:39 16 release, Target coded the -- the other images on  
 14:39 17 the parts of the site that it maintained without  
 14:39 18 Amazon for alt text, is that right?  
 14:39 19 A. I'm sorry. I'm trying to be as  
 14:39 20 accurate as I can on this. I don't specifically  
 14:39 21 remember how things made it into the various  
 14:39 22 releases at Amazon.com. If I'm correct in  
 14:39 23 saying that Amazon provided that ability in the  
 14:39 24 first release, that would have then given us the  
 14:39 25 ability to begin providing alternate text for

1 TODD J. NEMOIR - 1.9.07  
 14:36 2 provide an alternate text label for that as  
 14:36 3 well.  
 14:36 4 Q. For the parts of the site that Amazon  
 14:36 5 -- is it right to say powers, operates?  
 14:36 6 What's the right terminology?  
 14:36 7 A. Maintains.  
 14:36 8 Q. Maintains?  
 14:36 9 For the sites that Amazon maintains,  
 14:37 10 Target provides the image, as well as the alt  
 14:37 11 text.  
 14:37 12 A. Correct. Within the content  
 14:37 13 management tool, there is an area where we  
 14:37 14 upload images and provide specifications about  
 14:37 15 that image, its height, its width, as well as  
 14:37 16 any other attributes in including ALT attributes  
 14:37 17 for that image.  
 14:37 18 Q. And what did you say that was part  
 14:37 19 of?  
 14:37 20 A. Seller Central.  
 14:37 21 Q. It's a particular program or  
 14:37 22 protocol?  
 14:37 23 A. That's the contact management tool  
 14:37 24 that Amazon provides to Target.com.  
 14:37 25 Q. And it's the same tool that's used

1 TODD J. NEMOIR - 1.9.07  
 14:39 2 the tens of thousands of images that are  
 14:39 3 available on Target.com through Seller Central.  
 14:39 4 So there was the need to go back to those images  
 14:39 5 that had already been on the site to provide  
 14:40 6 alternate text for those.  
 14:40 7 Q. How many of the tens of thousands of  
 14:40 8 images on the parts of the site maintained by  
 14:40 9 Amazon needed alt text?  
 14:40 10 A. I don't know the number off the top  
 14:40 11 of my head.  
 14:40 12 Q. Do you know if it was more than half?  
 14:40 13 A. I'm pausing because the number that I  
 14:40 14 have in my memory is that there were twenty  
 14:40 15 thousand images that needed alternate text. And  
 14:40 16 my pause is because I don't know if that also  
 14:40 17 included what would be considered decorative  
 14:40 18 images which do receive alternate text, but the  
 14:40 19 alternate text is blank. And I wouldn't want to  
 14:41 20 make a guess as to if those were included or not  
 14:41 21 included in that twenty thousand number that I'm  
 14:41 22 remembering right now.  
 14:41 23 Q. So it's either twenty thousand or  
 14:41 24 more?  
 14:41 25 A. I don't know that's what I said.



1 TODD J. NEMOIR - 1.9.07  
 14:41 2 Q. Well, I mean if they are included,  
 14:41 3 it's approximately twenty thousand; if they're  
 14:41 4 not included, it might be more than twenty  
 14:41 5 thousand?  
 14:41 6 A. Correct.  
 14:41 7 Q. Did -- did the alt text coding for  
 14:41 8 the non-Amazon parts of the site occur before or  
 14:41 9 after or at the same time as the coding for the  
 14:41 10 Amazon portions?  
 14:41 11 MR. McDOWELL: Objection, lacks  
 14:41 12 foundation.  
 14:41 13 THE WITNESS: Yes, to all three.  
 14:41 14 BY MR. KONECKY:  
 14:41 15 Q. Okay. Did they extend beyond more  
 14:41 16 than one phase?  
 14:41 17 A. I am sorry. In areas where we could  
 14:42 18 develop the experience part of following HTML  
 14:42 19 guidelines would include providing an ALT tag,  
 14:42 20 so prior experiences would have had that as part  
 14:42 21 of their development, and they continue to be  
 14:42 22 developed that way.  
 14:42 23 Q. Prior to the releases that occurred  
 14:42 24 in 2006, was there any systematic effort to  
 14:42 25 include alternate text on either -- on any of

1 TODD J. NEMOIR - 1.9.07  
 14:42 2 the images on the Target.com website?  
 14:43 3 A. For the portions of the site that are  
 14:43 4 not maintained by Amazon, as our developers code  
 14:43 5 and deliver those experiences on HTML, it would  
 14:43 6 have been best practice to include ALT tags  
 14:43 7 prior to this specific project.  
 14:43 8 Q. But not for the parts of the site  
 14:43 9 maintained by Amazon?  
 14:43 10 A. Again, Amazon maintains the HTML and  
 14:43 11 code related to those, so Target's ability to  
 14:43 12 provide that alternate text would be limited.  
 14:43 13 Q. All right. But I -- you're getting  
 14:43 14 ahead of me.  
 14:43 15 I just want to know prior to the  
 14:43 16 releases in 2006, am I correct that there was no  
 14:44 17 systematic effort for any of the parts of the  
 14:44 18 site maintained by Amazon to include alt text on  
 14:44 19 the images?  
 14:44 20 A. Not that I'm aware of.  
 14:44 21 Q. Okay. And is that the same answer  
 14:44 22 for any other part of the site that's maintained  
 14:44 23 by another third-party, whether it's Amazon or a  
 14:44 24 different third-party?  
 14:44 25 A. I -- I don't know the scope of what

1 TODD J. NEMOIR - 1.9.07  
 14:44 2 you're talking about when you say third-party.  
 14:44 3 Q. Well, in which -- are there any other  
 14:44 4 entities that maintain portions of Target.com  
 14:44 5 other than Amazon?  
 14:44 6 A. Yes.  
 14:44 7 Q. Okay. And for all of those entities,  
 14:45 8 was there ever any -- for all of those portions  
 14:45 9 of the site, was there any -- ever any  
 14:45 10 systematic effort prior to 2006 in order to  
 14:45 11 label images with alt text?  
 14:45 12 A. I don't know.  
 14:45 13 Q. Okay. You're not aware of any?  
 14:45 14 A. I don't know.  
 14:45 15 Q. With respect to the parts of the  
 14:45 16 Target.com in which Target is providing platform  
 14:45 17 as opposed to Amazon or a different entity, has  
 14:45 18 there been any systematic or regular  
 14:45 19 documentation of the inclusion of alt text in  
 14:46 20 the website?  
 14:46 21 MR. McDOWELL: Objection, vague and  
 14:46 22 ambiguous.  
 14:46 23 THE WITNESS: I'm not sure I  
 14:46 24 understand the specific question you're asking.  
 14:46 25 BY MR. KONECKY:

1 TODD J. NEMOIR - 1.9.07  
 14:46 2 Q. Are there any written protocols for  
 14:46 3 doing that?  
 14:46 4 A. There are development guidelines that  
 14:46 5 we've talked about before that would have  
 14:46 6 included following HTML coding best practices  
 14:46 7 that include -- and one of -- and HTML coding  
 14:46 8 best practice is that when you use images, you  
 14:46 9 specify a height or attribute or width  
 14:46 10 attribute --  
 14:46 11 THE COURT REPORTER: I'm sorry. HTML  
 14:46 12 and best practices is when you use images. . .  
 14:46 13 MR. McDOWELL: And HTML best  
 14:46 14 practices is when you an image, you could -- you  
 14:46 15 supply a height attribute, a width attribute --  
 14:47 16 THE WITNESS: And an ALT attribute.  
 14:47 17 THE COURT REPORTER: Well, that's  
 14:47 18 your answer --  
 14:47 19 THE WITNESS: Yeah. And that's --  
 14:47 20 THE COURT REPORTER: -- on the record  
 14:47 21 so . . .  
 14:47 22 Do you want to just adopt that, or I  
 14:47 23 mean it shows up as Mr. McDowell so . . .  
 14:47 24 MR. McDOWELL: Did I -- did I --  
 14:47 25 THE WITNESS: Yes, that was exact --

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1 TODD J. NEMOIR - 1.9.07  
 14:47 2 MR. McDOWELL: -- did I correctly  
 14:47 3 repeat what you had said?  
 14:47 4 BY MR. KONECKY:  
 14:47 5 Q. Or were going to say?  
 14:47 6 A. Yes. That was what I was going to  
 14:47 7 say.  
 14:47 8 MR. WALBOURN: Well, that's what he  
 14:47 9 said before. She read it back incorrectly.  
 14:47 10 That's what he said before.  
 14:47 11 Start over and let him re-answer the  
 14:47 12 question because that's exactly what he said  
 14:47 13 previously.  
 14:47 14 MR. KONECKY: The record is what it  
 14:47 15 is.  
 14:47 16 MR. WALBOURN: I know.  
 14:47 17 BY MR. KONECKY:  
 14:47 18 Q. The protocols that you were referring  
 14:47 19 to, are they Target protocols or are they the  
 14:47 20 W3C protocols for HTML text or coding or  
 14:48 21 something else?  
 14:48 22 A. The -- the best practices that I'm  
 14:48 23 referring to would be Target's web development  
 14:48 24 best practices --  
 14:48 25 Q. Okay.

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1 TODD J. NEMOIR - 1.9.07  
 14:48 2 A. -- which make reference to the W3C  
 14:48 3 HTML.  
 14:48 4 Q. And when was the last time those were  
 14:48 5 developed, drafted at Target?  
 14:48 6 A. I am aware of a revision that  
 14:48 7 happened in late December, and they -- but  
 14:48 8 they're draft -- reviewed fairly frequently for  
 14:48 9 updates.  
 14:48 10 Q. That's December 2006?  
 14:48 11 A. Correct.  
 14:48 12 Q. And how often have they been updated  
 14:48 13 over the past five years?  
 14:48 14 A. I don't know.  
 14:48 15 Q. At least once a year?  
 14:48 16 A. I can only speak to the last year,  
 14:48 17 and I know that they had -- at a minimum of  
 14:49 18 three times, they've been updated to include  
 14:49 19 additional information.  
 14:49 20 Q. Do you know of any other updates  
 14:49 21 prior to 2006?  
 14:49 22 A. I would need to go back and reference  
 14:49 23 my notes.  
 14:49 24 Q. You have notes about updates like  
 14:49 25 this?

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1 TODD J. NEMOIR - 1.9.07  
 14:49 2 A. I get -- I get the updates when  
 14:49 3 they're made, and included in that is a revision  
 14:49 4 history of the document (witness indicating).  
 14:49 5 Q. Okay. And for purposes of finding  
 14:49 6 the document, what is the specific name?  
 14:49 7 A. I don't know. It would be -- I don't  
 14:49 8 know.  
 14:49 9 Q. Okay. Why did you include alternate  
 14:50 10 text coding as part of this release in 2006?  
 14:50 11 MR. McDOWELL: Objection, lacks  
 14:50 12 foundation.  
 14:50 13 THE WITNESS: To improve the guest  
 14:50 14 experience for users using screen readers to  
 14:50 15 access the website.  
 14:50 16 MR. McDOWELL: Would you read back  
 14:50 17 the question?  
 14:50 18 \* \* \*  
 14:50 19 (Whereupon, the reporter read back  
 14:50 20 the requested portion of the record.)  
 09:54 21 \* \* \*  
 14:50 22 BY MR. KONECKY:  
 14:50 23 Q. What other improvements or changes  
 14:50 24 relative to disability access were made during  
 14:50 25 these releases in 2006?

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1 TODD J. NEMOIR - 1.9.07  
 14:51 2 A. I specifically remember changes being  
 14:51 3 made to forms on line to make them easier to use  
 14:51 4 and to provide additional page information for  
 14:51 5 screen readers, header tags specifically.  
 14:51 6 There's one more set of changes that I'm not  
 14:51 7 recalling.  
 14:51 8 Q. Any changes with respect to use of a  
 14:51 9 keyboard?  
 14:51 10 A. Those would have been specific  
 14:51 11 changes related to the forms I believe.  
 14:51 12 Q. Anything else?  
 14:52 13 A. Not that I remember.  
 14:52 14 Q. Are these changes documented  
 14:52 15 anywhere?  
 14:52 16 A. Yes.  
 14:52 17 Q. Where?  
 14:52 18 A. As part of a project definition that  
 14:52 19 was collaborated with Amazon that's maintained  
 14:52 20 by Target.com.  
 14:52 21 Q. What's a project definition?  
 14:52 22 What does that mean?  
 14:52 23 A. It outlines -- from my point of view,  
 14:52 24 it outlines the high level requirements that are  
 14:52 25 going into a specific project with Amazon.

1 TODD J. NEMOIR - 1.9.07  
 15:13 2 A. Yes.  
 15:13 3 Q. Is that something that also applies  
 15:14 4 to Target.com?  
 15:14 5 MR. McDOWELL: Objection, vague and  
 15:14 6 ambiguous.  
 15:14 7 THE WITNESS: Well, what do you mean  
 15:14 8 by the question?  
 15:14 9 BY MR. KONECKY:  
 15:14 10 Q. Well, would you agree with Dr.  
 15:14 11 Thatcher that in order for a web page on  
 15:14 12 Target.com to be accessible to somebody with a  
 15:14 13 vision disability that relies on screen access  
 15:14 14 software, that it must be possible for the user  
 15:14 15 to interact with the page using only the  
 15:14 16 keyboard?  
 15:14 17 A. I agree that you should be able to  
 15:14 18 accomplish the same tasks by only interacting  
 15:14 19 with the keyboard.  
 15:14 20 Q. And would you agree that that is  
 15:14 21 applicable generally to individuals with vision  
 15:14 22 disabilities who rely on screen access software?  
 15:14 23 MR. McDOWELL: Objection, vague and  
 15:14 24 ambiguous.  
 15:15 25 THE WITNESS: My understanding is

1 TODD J. NEMOIR - 1.9.07  
 15:16 2 track the changes?  
 15:16 3 BY MR. KONECKY:  
 15:16 4 Q. Well, the changes that Target made to  
 15:16 5 Target.com in 2006 with respect to disability  
 15:16 6 access were changes -- all of those changes were  
 15:16 7 subjects included in Dr. Thatcher's report which  
 15:16 8 is here as Exhibit 2, right?  
 15:16 9 A. I don't know that that's true. I  
 15:16 10 haven't reviewed this in its entirety.  
 15:17 11 Q. Okay. Well, keyboard access is one  
 15:17 12 of the changes that Target made in 2006,  
 15:17 13 correct?  
 15:17 14 A. Yes.  
 15:17 15 Q. And keyboard access was one of the  
 15:17 16 recommendations that you recall from Dr.  
 15:17 17 Thatcher?  
 15:17 18 A. So to be clear, all I ever saw were  
 15:17 19 the summary of the changes from Dr. Thatcher,  
 15:17 20 and, yes, that was part of the summarized  
 15:17 21 changes.  
 15:18 22 Q. Okay. On page ten of the report --  
 15:18 23 well, that actually starts toward the bottom of  
 15:18 24 page nine where Dr. Thatcher talks about  
 15:18 25 navigation. And then on page forty-nine or --

1 TODD J. NEMOIR - 1.9.07  
 15:15 2 that people using the screen reading software  
 15:15 3 use the keyboard exclusively to navigate  
 15:15 4 applications, including web pages.  
 15:15 5 BY MR. KONECKY:  
 15:15 6 Q. And that's true regardless of the  
 15:15 7 particular user's proficiency level or level of  
 15:15 8 education or location, right?  
 15:15 9 A. Correct.  
 15:15 10 Q. Okay. And it's also true that in  
 15:15 11 response to Dr. Thatcher's report that in 2006,  
 15:15 12 Target made changes to its website to include  
 15:15 13 keyboard access in certain areas?  
 15:15 14 A. I don't know that those changes were  
 15:15 15 made in response to this report.  
 15:15 16 Q. Okay. Those changes were not made  
 15:15 17 before this report, is that right?  
 15:16 18 A. Correct.  
 15:16 19 Q. And those changes track the  
 15:16 20 recommendations of Dr. Thatcher's report, right?  
 15:16 21 THE COURT REPORTER: I'm sorry.  
 15:16 22 Track the recommendations of what?  
 15:16 23 MR. KONECKY: Of Dr. Thatcher's  
 15:16 24 report.  
 15:16 25 THE WITNESS: And what do you mean,

1 TODD J. NEMOIR - 1.9.07  
 15:18 2 excuse me -- paragraph forty-nine on page ten,  
 15:18 3 it says that: "Screen reader users need some  
 15:18 4 technique for skipping over all of those links  
 15:19 5 in order to get to the desired part of the  
 15:19 6 screen."  
 15:19 7 Do you -- first of all, did Target  
 15:19 8 make any changes with respect to navigation for  
 15:19 9 people using screen readers on the website in  
 15:19 10 2006 as part of those releases?  
 15:19 11 A. Yes.  
 15:19 12 Q. Okay. And specifically, what kind of  
 15:19 13 change was made there?  
 15:19 14 A. The specific change that I remember  
 15:19 15 was adding header tags to pages --  
 15:19 16 Q. Uh-huh.  
 15:19 17 A. -- so that the specific content areas  
 15:19 18 of a page could be separated by. . .  
 15:19 19 Q. And does that assist in allowing  
 15:19 20 people using screen access software to skip over  
 15:20 21 other links in order to get to where they want  
 15:20 22 to go?  
 15:20 23 A. Yes.  
 15:20 24 Q. And do you agree with Dr. Thatcher  
 15:20 25 that oftentimes without that technique, the



1 TODD J. NEMOIR - 1.9.07  
 15:20 2 header tags, there can be multiple links that  
 15:20 3 would take a lengthy amount of time for somebody  
 15:20 4 using screen access software to get through, in  
 15:20 5 order to get to the desired location?  
 15:20 6 MR. McDOWELL: Objection, lacks  
 15:20 7 foundation, vague and ambiguous.  
 15:20 8 THE WITNESS: I'm sorry. I haven't  
 15:20 9 had a time to read all of this.  
 15:20 10 BY MR. KONECKY:  
 15:20 11 Q. Well, take a minute to read paragraph  
 15:20 12 forty-seven through fifty-one.  
 15:21 13 A. Okay.  
 15:21 14 Q. Okay. On page forty-eight, Dr.  
 15:21 15 Thatcher writes that using the tab key to  
 15:21 16 navigate through the page that he's describing  
 15:21 17 in the previous paragraph, in order to get to  
 15:22 18 the continued checkout button, will require  
 15:22 19 about fifty key strokes just to get to the  
 15:22 20 desired button.  
 15:22 21 Do you see where I am?  
 15:22 22 A. Just to be clear, that's paragraph  
 15:22 23 forty-eight?  
 15:22 24 Q. Paragraph forty-eight.  
 15:22 25 A. Okay.

1 TODD J. NEMOIR - 1.9.07  
 15:22 2 Q. The continued checkout reference is  
 15:22 3 in the preceding paragraph.  
 15:22 4 Does that comport with your  
 15:22 5 understanding of Target.com prior to -- at least  
 15:22 6 prior to the releases that occurred in 2006?  
 15:22 7 MR. McDOWELL: Objection, vague and  
 15:22 8 ambiguous.  
 15:22 9 THE WITNESS: I can't say either way.  
 15:22 10 I don't know.  
 15:22 11 BY MR. KONECKY:  
 15:22 12 Q. Okay. So you don't have any reason  
 15:22 13 to disagree with the observation by Dr. Thatcher  
 15:22 14 when he wrote this report in the earlier part of  
 15:23 15 2006 that there were multiple key strokes that  
 15:23 16 would be necessary for a blind user to go  
 15:23 17 through in order to navigate to the desired  
 15:23 18 result or the desired location?  
 15:23 19 A. I have no reason to disagree with  
 15:23 20 that finding.  
 15:23 21 Q. And would you agree that this results  
 15:23 22 in extra time for the blind user to navigate  
 15:23 23 through the website as compared to the sighted  
 15:23 24 user?  
 15:23 25 MR. McDOWELL: Objection, vague and

1 TODD J. NEMOIR - 1.9.07  
 15:23 2 ambiguous.  
 15:23 3 THE WITNESS: I don't know that I can  
 15:23 4 say that actually.  
 15:23 5 BY MR. KONECKY:  
 15:23 6 Q. Do you disagree with that?  
 15:23 7 A. With comparing the time?  
 15:23 8 I don't know that I could say that.  
 15:24 9 That's a -- I can't compare as you just did.  
 15:24 10 Q. Do you agree that putting headers on  
 15:24 11 to -- header tags on to the pages can allow a  
 15:24 12 blind user to move through the site more quickly  
 15:24 13 and easily than without the header tags?  
 15:24 14 A. Yes.  
 15:24 15 Q. And would you agree that that's  
 15:24 16 generally the case for any blind or visually  
 15:24 17 impaired user that relies on screen access  
 15:24 18 software?  
 15:24 19 A. Yes.  
 15:24 20 Q. Okay. And on the other hand, would  
 15:24 21 you agree that for blind users that use screen  
 15:24 22 access software without the header tags, it's  
 15:24 23 going to take longer for them to navigate  
 15:24 24 through the site?  
 15:24 25 A. Correct. So it would take longer for

1 TODD J. NEMOIR - 1.9.07  
 15:25 2 a person using a screen reader -- screen reading  
 15:25 3 software to navigate a page without header tags  
 15:25 4 than with?  
 15:25 5 Q. Yes.  
 15:25 6 A. That's what I would guess.  
 15:25 7 Q. You agree with that?  
 15:25 8 A. Yes.  
 15:25 9 Q. And would you agree that in a case --  
 15:25 10 that there can be cases without header tags, for  
 15:25 11 example, even on Target.com, where it could take  
 15:25 12 fifty strokes to get to a desired location when  
 15:25 13 the header tags aren't there to guide the user?  
 15:25 14 MR. McDOWELL: Objection, lacks  
 15:25 15 foundation.  
 15:25 16 THE WITNESS: Can you ask the  
 15:25 17 question in a different way?  
 15:25 18 BY MR. KONECKY:  
 15:25 19 Q. Sure. Without the header tags to  
 15:25 20 guide the user, would you agree that it can  
 15:25 21 often take multiple key strokes, up to fifty in  
 15:26 22 the case of Target.com, for a blind user to get  
 15:26 23 from one place to the desired result?  
 15:26 24 MR. McDOWELL: Same objection.  
 15:26 25 THE WITNESS: Yes.

1 TODD J. NEMOIR - 1.9.07  
 15:44 2 information is to be entered into which field is  
 15:44 3 necessary in order for -- let me start that  
 15:44 4 again.  
 15:44 5 Would you agree that form labeling or  
 15:44 6 some similar design feature on a website is  
 15:45 7 necessary for a blind user using screen access  
 15:45 8 software to know where information is to be  
 15:45 9 entered in which field when filling out an  
 15:45 10 online form?  
 15:45 11 A. I lost you in the question.  
 15:45 12 I think that it's essential for all  
 15:45 13 guests to understand what the purpose of each  
 15:45 14 form element is.  
 15:45 15 Q. And for guests with vision  
 15:45 16 disabilities, would you agree that form  
 15:45 17 labeling, including prompting information, that  
 15:45 18 interacts with the screen access software is  
 15:45 19 necessary in order to achieve that result?  
 15:45 20 MR. McDOWELL: Objection, asked and  
 15:45 21 answered.  
 15:45 22 THE WITNESS: Again, I'd still  
 15:45 23 maintain that that is a way, but not the only  
 15:45 24 way to accomplish the intended result.  
 15:45 25 BY MR. KONECKY:

1 TODD J. NEMOIR - 1.9.07  
 15:47 2 understanding what the purpose of each form  
 15:47 3 element was.  
 15:47 4 BY MR. KONECKY:  
 15:47 5 Q. And that would apply to the guest  
 15:47 6 with a vision disability regardless of the  
 15:47 7 particular screen access program or the  
 15:47 8 particular level of education or the particular  
 15:47 9 location from where that person is accessing the  
 15:47 10 website, isn't that right?  
 15:47 11 MR. McDOWELL: Objection, lacks  
 15:47 12 foundation.  
 15:47 13 THE WITNESS: I don't know that I can  
 15:47 14 answer that. I've not done a complete  
 15:48 15 evaluation of all assistive technology that  
 15:48 16 people with vision impairment use to access  
 15:48 17 websites.  
 15:48 18 BY MR. KONECKY:  
 15:48 19 Q. From what you're aware of, as the  
 15:48 20 person most knowledgeable today on behalf of  
 15:48 21 Target, am I correct that, generally speaking,  
 15:48 22 people with vision disabilities will need some  
 15:48 23 kind of accommodation, whether or not it's form  
 15:48 24 labeling or something else, on the website in  
 15:48 25 order to be prompted to know where to put what

1 TODD J. NEMOIR - 1.9.07  
 15:45 2 Q. Well, let me ask you two questions  
 15:46 3 about that.  
 15:46 4 Am I correct that there must be some  
 15:46 5 accommodation, whether it's form labeling or  
 15:46 6 something else, that's put into the site to  
 15:46 7 accomplish the result that we're talking about,  
 15:46 8 that is to insure that people with vision  
 15:46 9 disabilities are prompted to know which  
 15:46 10 information is to go where when filling out an  
 15:46 11 online form?  
 15:46 12 A. Yes. The page must be developed in  
 15:46 13 such a way that the information pertaining to  
 15:46 14 form elements either in order or in code relates  
 15:46 15 back to the input for that form.  
 15:46 16 Q. And if that does not happen, people  
 15:46 17 with vision disabilities as a general matter are  
 15:46 18 going to have difficulty knowing which  
 15:46 19 information to input where, isn't that right?  
 15:47 20 MR. McDOWELL: Objection, vague and  
 15:47 21 ambiguous.  
 15:47 22 THE WITNESS: Without associating the  
 15:47 23 two either in order or through code, I would  
 15:47 24 agree with you that a guest using screen reading  
 15:47 25 software would have trouble associating --

1 TODD J. NEMOIR - 1.9.07  
 15:48 2 information when filling out an online form?  
 15:48 3 MR. McDOWELL: This witness is not  
 15:48 4 designated for that category. So despite your  
 15:48 5 attempt to identify him as a Target designee on  
 15:48 6 that topic, he is not.  
 15:48 7 To the extent you can answer the  
 15:48 8 question, feel free.  
 15:48 9 THE WITNESS: I'm not sure I  
 15:48 10 understand what you're asking by the question.  
 15:48 11 BY MR. KONECKY:  
 15:48 12 Q. Well, are you aware of any situation  
 15:49 13 in which it would not be important to provide  
 15:49 14 form labeling or some similar accommodation or  
 15:49 15 program in the site itself to allow an  
 15:49 16 individual who uses screen access software to  
 15:49 17 know where to put which information when filling  
 15:49 18 out online forms?  
 15:49 19 MR. McDOWELL: Objection, vague and  
 15:49 20 ambiguous.  
 15:49 21 THE WITNESS: If the page is coded in  
 15:49 22 such a way that the text to that is read is  
 15:49 23 immediately preceding or next to the input box  
 15:49 24 that the guest is asked to fill out, a guest  
 15:49 25 would be able to -- would you be aware of the

1 TODD J. NEMOIR - 1.9.07  
 15:50 2 relationship between those two elements.  
 15:50 3 BY MR. KONECKY:  
 15:50 4 Q. Are you aware of any such instances  
 15:50 5 like that on Target.com?  
 15:50 6 A. I don't know.  
 15:50 7 Q. Okay. And on Target.com, some of the  
 15:50 8 information that a guest may need to fill in  
 15:50 9 would include private information, like their  
 15:50 10 credit card number, right?  
 15:50 11 A. Correct.  
 15:50 12 Q. All right. So it's important for a  
 15:50 13 guest with a vision disability trying to make a  
 15:50 14 purchase on Target.com to have adequate and  
 15:50 15 reliable form labeling so they know where  
 15:50 16 they're putting information, including private  
 15:50 17 information like a credit card number, right?  
 15:50 18 MR. McDOWELL: Objection, vague and  
 15:50 19 ambiguous.  
 15:50 20 THE WITNESS: Again, form labeling  
 15:50 21 would be one way of associating the information  
 15:50 22 that's being asked for and the actual input area  
 15:51 23 for the guest.  
 15:51 24 BY MR. KONECKY:  
 15:51 25 Q. It's actually the only way that

1 TODD J. NEMOIR - 1.9.07  
 15:51 2 you're aware of as you sit here today, right?  
 15:51 3 A. Well, as I've been talking, the other  
 15:51 4 way would be to immediately put the text in  
 15:51 5 physical relationship to the form element.  
 15:51 6 Q. And has Target done that?  
 15:51 7 A. I-- sorry. For the specific -- for  
 15:51 8 example, for credit card area, those form  
 15:51 9 elements have been labeled.  
 15:51 10 Q. No. The alternative to form  
 15:51 11 labeling, is that something that Target has  
 15:51 12 done?  
 15:51 13 A. I don't know.  
 15:51 14 Q. And the form labeling itself is  
 15:51 15 something that Target did in 2006?  
 15:51 16 A. Correct.  
 15:51 17 Q. After receiving Mr. Thatcher's  
 15:51 18 report?  
 15:51 19 A. Correct.  
 15:51 20 Q. And when Target did the form labeling  
 15:52 21 on the site, it didn't make distinctions based  
 15:52 22 upon the level of skill of a particular user or  
 15:52 23 the -- or other individualized attributes of a  
 15:52 24 particular user, did it?  
 15:52 25 MR. McDOWELL: Objection, vague and

1 TODD J. NEMOIR - 1.9.07  
 15:52 2 ambiguous.  
 15:52 3 THE WITNESS: I don't know.  
 15:52 4 BY MR. KONECKY:  
 15:52 5 Q. You're not aware of them, or are you  
 15:52 6 making any such individualized inquiries of  
 15:52 7 particular users?  
 15:52 8 MR. McDOWELL: Same objection.  
 15:52 9 THE WITNESS: I did not -- I  
 15:52 10 personally did not, no.  
 15:52 11 BY MR. KONECKY:  
 15:52 12 Q. And you're not aware of anybody else  
 15:52 13 doing that, is that right?  
 15:52 14 A. Correct.  
 15:52 15 MR. McDOWELL: It's getting late.  
 15:52 16 Why don't we take a quick break?  
 15:52 17 MR. KONECKY: Sure.  
 15:57 18 \* \* \*  
 15:57 19 (Whereupon, a short recess was taken.)  
 15:57 20 \* \* \*  
 15:57 21 BY MR. KONECKY:  
 15:57 22 Q. Okay. Previously, earlier this  
 15:57 23 morning, you were testifying about certain  
 15:57 24 assumptions that may have been made with respect  
 15:57 25 to the user when determining how to design the

1 TODD J. NEMOIR - 1.9.07  
 15:57 2 site, such as being technologically savvy or  
 15:57 3 well educated, at least as ambiguously defined,  
 15:57 4 correct?  
 15:57 5 A. Correct. Target.com would define  
 15:58 6 their guest as well educated and technically  
 15:58 7 savvy.  
 15:58 8 Q. And then Target or Target.com, a  
 15:58 9 division of Target, would design the website  
 15:58 10 with that particular guest in mind?  
 15:58 11 A. Correct.  
 15:58 12 Q. And that particular guest -- and in  
 15:58 13 doing so, there would only be one website design  
 15:58 14 for Target.com?  
 15:58 15 There wouldn't be more than one  
 15:58 16 Target.com. It would be one design to set a  
 15:58 17 certain level of use for whatever user group  
 15:58 18 Target was assumed was its target population?  
 15:59 19 A. So I would say that Target.com is a  
 15:59 20 collection of many experiences, and the specific  
 15:59 21 guest segment and attributes of that guest would  
 15:59 22 be defined by each experience. Broadly  
 15:59 23 speaking, Target.com would identify the shopping  
 15:59 24 experience as a single guest profile.  
 15:59 25 Q. And the -- and each experience would

# EXHIBIT E

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May 5, 2005

Mr. Robert J. Ulrich  
 Chairman & Chief Executive Officer  
 Target Corporation  
 1000 Nicollet Mall  
 Minneapolis, MN 55403

**Re: Inaccessible Website**

Dear Mr. Ulrich,

We are writing on behalf of the National Federation of the Blind, a nation-wide organization of blind citizens that advances the rights of its members. The NFB is concerned about its members' inability to use the Target website (<http://www.target.com>) with adaptive software known as screen readers. The complaints include the presence of a large amount of information and interactive features contained in the website that are not made accessible to screen-reading software. After extensive technical analysis and user testing, we have determined that the Target website fails to comply with even the minimum standards of website accessibility.

Title III of the Americans with Disabilities Act requires that places of public accommodation not discriminate against people with disabilities in their goods and services. This obligation entails the construction and maintenance of commercial websites in a manner accessible to all persons including persons who are blind.

We prefer, if possible, to resolve this matter through negotiation. Accordingly, if Target Corporation is willing to sit down with us to negotiate changes in company policies and practices to rectify the inaccessibility of its website, we are pleased to meet with you for that purpose. If you are willing to meet with us and representatives from the NFB for this purpose, please let us know by June 6, 2005. If we do not hear from you by that time, and if we find the Target website to remain inaccessible, then we will consider alternative action, including litigation. Thank you for your earliest attention to the above matter.

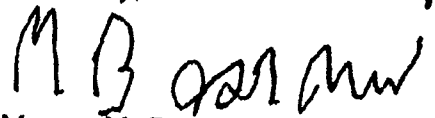
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Sincerely,

A handwritten signature in black ink, appearing to read 'M B Basrawi'.

Mazen M. Basrawi, Esq.

cc: Laurence W. Paradis, Esq.  
Daniel Goldstein, Esq.