

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

NATIONAL FEDERATION OF THE  
BLIND, THE NATIONAL FEDERATION  
OF THE BLIND OF CALIFORNIA,  
on behalf of their members,  
and BRUCE SEXTON, on behalf  
of himself and all others  
similarly situated,

Plaintiffs,

vs.

Case No.

C06-01802 MHP

TARGET CORPORATION,  
Defendant.

\_\_\_\_\_ /

Deposition of

DANIEL FRYE

June 19, 2007

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DEPOSITION OF DANIEL FRYE  
TUESDAY, JUNE 19, 2007

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1 BE IT REMEMBERED that, pursuant to the laws  
2 governing the taking and use of depositions, and  
3 on Tuesday, June 19, 2007, commencing at 9:30  
4 a.m., thereof, at the Law Offices of Brown,  
5 Goldstein & Levy, 120 E. Baltimore Street, Suite  
6 1700, Baltimore, Maryland 21202, before me, Nancy  
7 P. Richmond, Registered Professional Reporter and  
8 Notary Public for the State of Maryland,  
9 personally appeared,  
10 ---  
11

DANIEL FRYE

13 a witness, called for examination, having been  
14 first duly sworn, was examined and testified as  
15 follows:

EXAMINATION BY MR. KLESTOFF:

17 Q. Good morning, Mr. Frye. My name is  
18 Alexei Klestoff, and I'm from Morrison & Foerster,  
19 and we represent Target Corporation in this  
20 action. Can you please state your name for the  
21 record?

A. My name is Daniel Frye.

23 Q. I'm going to talk a little bit about  
24 procedure. You're giving testimony under oath.  
25 It's like you being in court. I'll be asking you

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1 questions, and you just give me your answer to the  
2 best of your ability.

A. Sure.

4 Q. If my questions are unclear, just let me  
5 know. And if you later on -- sometimes it happens  
6 that you'll find that you'll think of some  
7 additional information that was responsive to a  
8 question that I asked earlier, just feel free to  
9 let me know, and we'll go over that.

11 And if you're tired and you need a  
12 break, just let me know. I just ask that if  
13 there's a question pending, we'll have you answer  
14 that question first, and then we'll take a break.

15 Is there any reason you couldn't testify  
16 fully and truthfully today?

A. No.

17 Q. Not under -- any on any medications?

A. No.

19 Q. Okay. What did you do to prepare for  
20 this deposition?

21 A. I met with counsel for about an  
22 hour-and-a-half.

23 Q. And did you review any documents?

A. Yes.

25 Q. Do you remember what they were?

1 A. I reviewed my declaration and several  
2 e-mail documents.

3 Q. And do you remember what those e-mails  
4 were about?

5 A. They were about the Target suit in  
6 question.

7 Q. Okay. So let's mark your -- you gave a  
8 declaration in this case on -- I think it was on  
9 May 23rd of this year.

10 MR. KLESTOFF: And we'll mark that as  
11 Exhibit 1.

12 (Thereupon, Frye Exhibit Number 1 was  
13 marked.)

14 Q. I'll set that in front of you, but I'll  
15 just read portions of your declaration into the  
16 record, and counsel -- if I get anything wrong,  
17 I'm sure counsel will let me know.

18 So let's talk a little bit about your  
19 background. Can you just give me a brief rundown  
20 of your educational background?

21 A. Sure. My B.A. is in history from  
22 Erskine College, a small, four-year liberal arts  
23 college in Due West, South Carolina. My J.D. is  
24 from Washington School of Law, graduated in 1993.

25 I have a certification in mediation from

1 employment of the National Federation of the  
2 Blind. I serve as its manager of affiliate  
3 action, advocacy and training in the Department of  
4 Affiliate Action. I'm still in that position  
5 today.

6 Q. And in that position, what are your  
7 responsibilities, generally?

8 A. I am generally responsible for managing  
9 our membership development and cultivation  
10 efforts. I am responsible for original writing  
11 and editing of documents that are published in the  
12 "Braille Monitor," the Federation's monthly  
13 magazine, circulated to about 40,000 people.

14 I am responsible for administering our  
15 individual and systemic advocacy initiatives that  
16 come out of the Department of Affiliate Actions  
17 that are brought to my attention.

18 Q. And by administering these advocacy  
19 programs, what -- specifically, what does that  
20 entail?

21 A. It may entail assisting a blind person  
22 who has been denied access to a building because  
23 they have a guide dog. It may entail assisting  
24 someone with a Social Security dispute. It may  
25 entail assisting someone in acquiring Medicare.

1 the University of Washington School of Law,  
2 acquired in 1994.

3 Q. So you're an attorney?

4 A. I'm not practicing.

5 Q. Not practicing. And can you just give  
6 me a brief rundown of your employment history?

7 A. Of course. I was a Social Security and  
8 Americans with Disabilities Act consultant for the  
9 National Federation of the Blind in 1995 for about  
10 six months.

11 Following that, I went to work for the  
12 Social Security Administration, where I served as  
13 a contract representative and ultimately a union  
14 representative, representing the interests of the  
15 bargaining unit for the American Federation of  
16 Government Employees, Local 3937.

17 I served with the Federal Government  
18 from September of 1996 through October of 2002.  
19 Subsequently, I took the position of National  
20 Advocate with the Association of Blind Citizens of  
21 New Zealand in November 2002. In that role, I was  
22 responsible for the administration of the  
23 political and legislative priorities of consumer  
24 and civil rights organization in New Zealand.

25 In September of 2005, I came to the

1 It may entail employment discrimination or any  
2 number of other miscellaneous issues that blind  
3 people would encounter.

4 Q. Would that include this lawsuit, as  
5 well?

6 A. Certainly it would include working in  
7 cooperation with counsel to do whatever was  
8 necessary to address the issues of the lawsuit.

9 Q. And would that also include other  
10 websites, access to other websites or  
11 accessibility issues to other websites?

12 A. It could potentially include that, if  
13 that were brought to my attention. My  
14 responsibilities are brought in latitude and not  
15 defined entirely until the issue arises.

16 Q. Have any other -- have any issues about  
17 other websites been brought to your attention in  
18 the past?

19 MR. GOLDSTEIN: Other than by counsel?

20 MR. KLESTOFF: Of course.

21 A. Other than by counsel, no, not  
22 specifically; certainly not in the context of a  
23 formal legal action. I may occasionally have  
24 people, you know, express frustration with a  
25 website, but they don't remain in my memory, and

1 they certainly haven't been the product of a  
 2 specific case.  
 3 Q. And how did you come to learn about  
 4 this, the issues with Target's website?  
 5 MR. GOLDSTEIN: Other than through  
 6 conversations with counsel?  
 7 MR. KLESTOFF: Of course.  
 8 Q. I'm not looking for any conversations  
 9 with your lawyer.  
 10 A. Sure. The issue about Target has been a  
 11 ubiquitous one in terms of -- in terms of our  
 12 membership. I've seen press releases that have  
 13 announced the issue at hand.  
 14 I've heard conversation in the course  
 15 of -- in the course of involvement with  
 16 membership. It's difficult for me to identify  
 17 specifically how I came to learn about it, because  
 18 it's been so prevailing and available.  
 19 Q. Do you remember when you first heard  
 20 anything about issues with Target's website?  
 21 A. Not specifically.  
 22 Q. All right. Well, let's go back to your  
 23 declaration. And it says here that on --  
 24 paragraph six of your declaration says that you're  
 25 legally blind. What does that mean to you in

1 software. I use a Braille display, which also  
 2 displays what one sees on the screen in  
 3 refreshable Braille. Those are the two media that  
 4 I access the screen with.  
 5 Q. And what version of JAWS do you use  
 6 currently?  
 7 A. I think my version of JAWS is 7.10, but  
 8 I can't be sure. It is not 8.0, but it's very  
 9 close to it.  
 10 Q. Have you ever tried using 8.0?  
 11 A. Yes.  
 12 Q. And are there any differences that you  
 13 noticed?  
 14 A. I'm not a technical expert, but the  
 15 substantive differences are sufficiently  
 16 sophisticated that I wouldn't perceive them. I  
 17 wouldn't perceive the differences.  
 18 Q. And the Braille display software that  
 19 you use, what version is that? Do you know?  
 20 A. I don't know.  
 21 Q. Do you know what brand it is?  
 22 A. I don't know.  
 23 Q. And let's go -- let's start with JAWS.  
 24 How did you first -- how did you learn to use  
 25 JAWS?

1 other varying definitions of the term?  
 2 A. The statutory definition of legal  
 3 blindness is that one possesses vision that is --  
 4 well, I won't go into the specific statutory  
 5 definition.  
 6 But, essentially, one is legally blind  
 7 if they have less than ten percent of normal  
 8 vision in terms of straight-ahead vision or less  
 9 than twenty percent of the field of vision to the  
 10 left and right.  
 11 I am totally blind. I have bilateral  
 12 enucleations, so I fall clearly within that  
 13 category.  
 14 MR. GOLDSTEIN: Mr. Frye, could you, for  
 15 the benefit of the court reporter, spell the  
 16 word, "enucleations"?  
 17 THE WITNESS: I'm not sure I could do it  
 18 for my benefit.  
 19 A. Both of my eyes have been removed. I  
 20 have prosthetic eyes.  
 21 Q. And then the rest of that paragraph says  
 22 that you use screen access software to access the  
 23 Internet. What type of screen access software do  
 24 you use?  
 25 A. I use JAWS, which is a screen access

1 A. I received instruction from private  
 2 contractors, who were -- who were hired by my  
 3 employer. And I also received some instruction  
 4 from a disability student service office during my  
 5 first year of law school.  
 6 Q. And was that on version 7.10, or was  
 7 that on an earlier version?  
 8 A. That would have been on an earlier  
 9 version.  
 10 Q. Okay. Do you remember what version that  
 11 was?  
 12 A. No, although the earliest version I  
 13 recall using is, like, 4.5. But I don't recall  
 14 what version I started on. I'm sure that was not  
 15 the first one.  
 16 Q. How would you describe your skill level  
 17 with JAWS?  
 18 A. Competent.  
 19 Q. Competent?  
 20 A. Hm-hmm.  
 21 Q. And by competent, what does that mean,  
 22 specifically?  
 23 A. I'm proficient. I'm able to do my job  
 24 with JAWS. I'm able to do Internet research. I'm  
 25 able to produce documents in Word. I'm able to

1 review Excel spreadsheets, generally able to  
2 manipulate the Office Suite and use the Internet  
3 and Outlook Express with JAWS.

4 Q. Does that include online shopping?

5 A. Yes.

6 Q. In your experience with JAWS, are some  
7 online websites more accessible or -- strike that.  
8 Comparing JAWS -- strike that again.

9 Let's go back to the Braille display.

10 How did you learn how to use that?

11 A. Through the same vendors that taught me  
12 how to use speech software.

13 Q. And was that an earlier version or the  
14 same version as you use currently?

15 A. I'm certain it was an earlier version.  
16 I learned how to use the computer some ten or  
17 fifteen years ago.

18 Q. And --

19 MR. GOLDSTEIN: Mr. Frye, if you could  
20 turn slightly to your right, it might be  
21 easier for the court reporter.

22 THE WITNESS: Oh, sorry.

23 MR. GOLDSTEIN: You're a very quiet man.

24 Q. And how would you describe your skill  
25 level with the Braille display software?

1 A. I haven't had any significant problems  
2 with the JAWS software.

3 Q. Have you had any -- well, have you had  
4 any insignificant problems?

5 MR. GOLDSTEIN: Object to the form.

6 MR. KLESTOFF: You can go ahead and  
7 answer that.

8 A. I think with any computer software, one  
9 occasionally encounters problems. The problems  
10 that I've encountered have never kept me from  
11 being able to generally do my work.

12 Sometimes JAWS will freeze up.  
13 Sometimes JAWS will read a double comma when  
14 there's only a single comma there. I mean, the  
15 problems are those problems that Freedom  
16 Scientific, the company that produces JAWS, will  
17 be aware of.

18 Without a technical background, I can't  
19 be more specific about the challenges that I've  
20 encountered with JAWS. But they are -- they are  
21 ordinary in nature, and they are consistent with  
22 the history of the software.

23 Q. Have you ever had any problems with the  
24 Braille display software?

25 A. No. I mean, no more so than I've

1 A. Comparable to that with the use of  
2 speech.

3 Q. You mean -- by that, you mean JAWS?

4 A. Yes.

5 Q. And in your experience, which software  
6 is easier to use, JAWS or the Braille display  
7 software?

8 A. Their purposes, counsel, are  
9 complementary. Just for background, so that I can  
10 give you an answer that I think will satisfy your  
11 interests, I use speech to do substantial reading,  
12 cursory review of documents.

13 I use Braille to edit and to help me  
14 identify where I can find a semi-colon or a comma.  
15 JAWS can, of course, accomplish the same goal, but  
16 for my purposes, I use Braille for detail  
17 orientation. I use speech for general reading.

18 Q. Which one do you use for using the  
19 Internet, generally?

20 A. I use them both, although primarily I  
21 use speech, because when I'm accessing the  
22 Internet, I'm not as invested where the commas  
23 are.

24 Q. Have you had any problems with the JAWS  
25 software?

1 encountered with JAWS.

2 Q. Have you ever used any other types of  
3 screen access software?

4 A. I have been trained on how to use  
5 Window-Eyes, the competitor speech software to  
6 JAWS.

7 THE WITNESS: Could I get some water,  
8 please?

9 MR. GOLDSTEIN: Yes.

10 THE WITNESS: Thank you.

11 Q. Why do you use JAWS as opposed to  
12 Window-Eyes?

13 A. I think the reason I use JAWS instead of  
14 Window-Eyes is probably twofold. It was the first  
15 speech software to which I was exposed when I was  
16 trained, and it is by far the dominant speech  
17 software in the adaptive technology field.

18 And so I find that I can get better  
19 technical support from JAWS than I can from  
20 Window-Eyes.

21 Q. So just to summarize what you just said,  
22 you use JAWS because you get better technical  
23 support; is that correct?

24 MR. GOLDSTEIN: Object to the form.

25 MR. KLESTOFF: Go ahead and answer.

1 A. I use JAWS because I get better, more  
2 timely technical support, because the company is  
3 significantly larger than Window-Eyes, its  
4 competitor.

5 Q. But it's not because of any superiority  
6 between the two programs?

7 MR. GOLDSTEIN: Object to the form.

8 A. The answer to that is that JAWS, from my  
9 perspective, is superior, though invariably, like  
10 Coke and Pepsi, you'll find members of the  
11 blindness community who prefer one over the other.

12 Both softwares are able to allow you to  
13 access information that otherwise wouldn't be  
14 accessed. It's a good thing that both exist.  
15 It's helpful to the market.

16 And the blindness community is a small  
17 market, and that there are several speech software  
18 systems out there is useful in terms of research  
19 innovation for both products.

20 Q. To your knowledge, why do people in  
21 the -- what specific aspects of one program -- or  
22 of Window-Eyes do people in the blindness  
23 community feel is superior to JAWS?

24 A. I don't feel equal to answering that. I  
25 am an advocate and a social sort of oriented

1 Q. Has anyone reported to you that JAWS is  
2 easier to use than Window-Eyes for online  
3 shopping?

4 A. No.

5 Q. Move on to a different topic. How long  
6 have you used the Internet?

7 A. I've used the Internet probably since  
8 the early to middle nineties, maybe -- maybe about  
9 the time of second, third year in law school, '92,  
10 '93, if you regard, like, Lexus Nexus as the  
11 Internet. I don't know if one does. But that's  
12 sort of what I started doing, online types of  
13 things.

14 Q. So you started using the Internet  
15 primarily to use Lexus Nexus?

16 A. Yeah.

17 Q. Have you ever encountered any problems  
18 with Lexus Nexus over the years?

19 A. No.

20 Q. How often do you use the Internet?

21 A. Daily.

22 Q. What sort of things do you use the  
23 Internet for?

24 A. Work-related research, current events  
25 reading, shopping, shopping pre-preparation,

1 person. I'm not a technical specialist.

2 Q. But what do people tell you -- what  
3 specific reasons have people given you that -- for  
4 their opinion that Window-Eyes is better?

5 MR. GOLDSTEIN: Object to the form.

6 A. The one rationale that I've heard is  
7 that -- by those who prefer Window-Eyes, is that  
8 they regard Window-Eyes as a system or software  
9 that is more easily scripted to accommodate  
10 unconventional mainframe software systems.

11 Both, as I understand it -- and, again,  
12 I need to qualify any remarks I make by saying  
13 that I'm not a computer specialist.

14 But most people tell me that Window-Eyes  
15 is a software that can be more easily amended or  
16 tinkered with to accommodate unconventional work  
17 site environment, that JAWS is harder to modify,  
18 though I understand that both programs can be  
19 modified. But you have to have more aptitude to  
20 modify JAWS than you do to modify Window-Eyes.

21 Q. To your knowledge -- or strike that.  
22 Has anyone reported to you that Window-Eyes is  
23 easier to use for online shopping as compared to  
24 JAWS?

25 A. No.

1 pretty much a variety of things. Work, current  
2 events, shopping, if I want to know about a topic,  
3 I Google it.

4 I guess I would say I use the Internet  
5 for the full array of things that most people do.

6 Q. Is there anything else specifically that  
7 you can remember that you would use the Internet  
8 for?

9 A. No. I mean, my answer is sufficiently  
10 general that, I mean, there are all kinds of  
11 things that I use the Internet for. But I can't  
12 remember anything specific.

13 Q. And in paragraph seven of your  
14 declaration, you say you regularly use the  
15 Internet in connection with in-store shopping.  
16 Let's just start with that first part. In that  
17 sentence, what did you mean by "regularly"?

18 A. Well --

19 MR. GOLDSTEIN: I think you should read  
20 the entire paragraph to the witness, to be  
21 fair.

22 MR. KLESTOFF: Sure.

23 Q. It says, "I regularly use the Internet  
24 in connection with in-store shopping. At least  
25 twice a month, I visit websites for local stores,

1 such as Wal-Mart and Safeway, to preview their  
2 products, compare prices and determine what I want  
3 to buy before I go to the store."

4 That word, "regularly," you say, "I  
5 regularly use the Internet in connection with  
6 in-store shopping." What does regularly mean?

7 A. I think "regularly" is further defined  
8 in the next sentence, that at least twice a month,  
9 I use it to do store shopping previews.

10 Q. Okay. Do you make online purchases?

11 A. Have I ever made online purchases? Do I  
12 make them? Yes.

13 Q. Make them, generally.

14 A. I make them occasionally.

15 Q. Occasionally. How often?

16 A. I don't know how often. I probably  
17 three or four times a year.

18 Q. When was the last time that you  
19 purchased something online?

20 A. I can't be absolutely sure, but I know I  
21 purchased some CD's online from Amazon a month or  
22 so ago.

23 Q. Did you have any problems with the  
24 Amazon site?

25 A. No, I didn't use it. My wife did it. I

1 purchase?

2 A. The last time I personally navigated a  
3 website to make an online purchase must have been  
4 in May, when I went to the NFB.org website to  
5 purchase my pre-registration and national banquet  
6 ticket for our convention that's scheduled for a  
7 few weeks from now.

8 Q. And that was May of this year?

9 A. Uh-huh, April or May.

10 MR. GOLDSTEIN: I'm glad you reminded  
11 me.

12 THE WITNESS: It's too late to purchase  
13 them now online. You can get them at the  
14 convention.

15 MR. GOLDSTEIN: Oops.

16 A. Did you ask a question?

17 Q. Not yet.

18 A. Oh, good.

19 Q. How many -- and how many purchases do  
20 you personally make without the assistance of your  
21 wife online, as compared to in the store?

22 MR. GOLDSTEIN: Object to the form.

23 A. Yeah. Can you clarify the question?

24 Q. Well, can you give me a percentage of  
25 the entire universe of your personal purchases

1 just purchased it.

2 Q. So what do you mean by purchase?

3 A. What do I mean by purchase? I mean that  
4 my wife and I talked about what CD's we want. We  
5 sat around the computer. We looked to see if the  
6 CD in question was available. It was, and she put  
7 our credit card information in, and the CD came in  
8 the mail in exchange for the consideration of the  
9 money it cost.

10 Q. So did your wife do the navigation of  
11 the website?

12 A. Yes.

13 Q. And is your wife sighted?

14 A. No.

15 Q. Do you know what screen access software  
16 she was using?

17 A. She doesn't use any.

18 Q. So is she able to -- she has some vision  
19 then?

20 A. She does.

21 Q. So she's able to get around on websites  
22 generally without screen access software?

23 A. She is.

24 Q. And when was the last time that you  
25 personally navigated a website to make an online

1 without the assistance of your wife, what  
2 percentage of those purchases were online?

3 MR. GOLDSTEIN: Object to the form.

4 A. I don't -- no, I can't give you a  
5 percentage. I can tell you that my wife purchases  
6 dramatically more things online than I do. I tend  
7 to use the Internet for pre-shopping evaluation.

8 She can look at pictures and things and  
9 make more of a definitive determination about  
10 whether or not she wants to purchase it online.

11 Q. Do you use the Internet all the time for  
12 pre-shopping evaluation?

13 A. No.

14 Q. Strike that. I'm sorry.

15 A. Okay.

16 Q. For all -- what websites do you  
17 generally visit when you do this pre-shopping  
18 evaluation?

19 A. When I do pre-shopping evaluation, I  
20 have visited any number of websites. The ones  
21 that immediately come to mind are referenced in my  
22 declaration.

23 Q. And that would be Wal-Mart and Safeway?

24 A. Those are examples, yeah.

25 Q. What other examples can you remember?

1 A. I have visited Best Buy. I have visited  
 2 Target. I have visited -- I have visited a  
 3 bookstore website from time to time.  
 4 Q. Do you remember which bookstore website  
 5 that was specifically?  
 6 A. No. It was either Barnes & Noble or  
 7 B. Dalton or one of those major chain bookstores.  
 8 Q. Anything else?  
 9 A. Not that immediately come to mind;  
 10 though that doesn't mean that I haven't visited  
 11 others.  
 12 Q. And when you visit the Wal-Mart's online  
 13 site, have you had any problems in the past?  
 14 A. No, not significantly.  
 15 Q. Have you generally had any problems?  
 16 A. No.  
 17 Q. Have you had any problems at all with  
 18 Wal-Mart's site?  
 19 A. No.  
 20 Q. And when was the last time you visited  
 21 Wal-Mart's site?  
 22 A. Well, the time that, of course, comes to  
 23 mind is when I did my comparative evaluation to  
 24 purchase the XM satellite radio receiver. I can't  
 25 remember if that's been the last time or not.

1 shopping?  
 2 A. Hm-hmm. Yes.  
 3 Q. Have you ever personally gone to Safeway  
 4 to do grocery shopping by yourself?  
 5 A. I've personally gone to Safeway to look  
 6 at their items, compare them, chat with Renae  
 7 about what's available. But, generally, almost  
 8 exclusively Renae does the purchasing if we're  
 9 going to do online purchasing.  
 10 Q. Online purchases aside, have you ever  
 11 gone to Safeway to do grocery shopping in the past  
 12 without the assistance of your wife?  
 13 A. To the bricks-and-mortar store?  
 14 Q. Correct.  
 15 A. Yes.  
 16 Q. Have you had any problems at Safeway,  
 17 purchasing groceries?  
 18 A. Occasionally one will find that the  
 19 shopper assistant that you get isn't equal to  
 20 reading English. But besides the frustrations  
 21 that are associated with trying to find someone  
 22 that can answer my question sufficiently, no, I  
 23 haven't had any trouble acquiring what I need at  
 24 the store.  
 25 Q. One more question about Wal-Mart. Who

1 Q. Have you had any problems with Safeway's  
 2 online site?  
 3 A. No, not really. Not really.  
 4 Q. No problems at all?  
 5 A. No, no problems that kept me from  
 6 identifying what I want and purchasing it,  
 7 purchasing the product, no.  
 8 Q. Let's go back to Wal-Mart. Have you  
 9 personally have you made any on line purchases at  
 10 Walmart.com?  
 11 A. Not that I recall.  
 12 Q. And on Safeway, have you made any online  
 13 purchases on the Safeway site?  
 14 A. Yes, we have made online purchases from  
 15 the Safeway site.  
 16 Q. Have you specifically, without the  
 17 assistance of your wife, made purchases on  
 18 Safeway's site?  
 19 A. No. That's -- that doesn't fall within  
 20 my scope of responsibilities in the dynamic of our  
 21 relationship.  
 22 Q. So let me see if I understand this.  
 23 Generally, on Safeway, you go online to the  
 24 Safeway site to do some pre-shopping evaluation,  
 25 and then your wife generally does the grocery

1 makes the -- who generally makes the in-store  
 2 purchases at Wal-Mart, you or your wife?  
 3 A. In-store purchases have been made by  
 4 both of us and often jointly. We go together.  
 5 Q. The last time, when you purchased an XM  
 6 radio at Wal-Mart, did you go to the store by  
 7 yourself, or was it with -- jointly, with your  
 8 wife?  
 9 A. I went jointly with my wife.  
 10 Q. And does she generally need assistance  
 11 at the store to locate products and to purchase  
 12 them?  
 13 A. Sometimes, but not always.  
 14 Q. And you say you visited Best Buy's  
 15 online site. Have you had any problems with that  
 16 site?  
 17 A. No.  
 18 Q. And who generally makes the purchases at  
 19 Best Buy?  
 20 A. We actually, as far as I recall, haven't  
 21 made purchases from Best Buy. We looked at them  
 22 to compare availability. We went to their store,  
 23 but we have not purchased anything from Best Buy.  
 24 Q. Why haven't you purchased anything from  
 25 Best Buy?



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1 A. Because I didn't find their customer  
 2 service to be satisfactory.  
 3 Q. What specifically about their customer  
 4 service did you not find satisfactory?  
 5 A. They weren't timely when we went into  
 6 the store to inquire about the availability of an  
 7 XM receiver, and their personnel didn't seem  
 8 familiar with the product.  
 9 Q. And then the online bookstore site that  
 10 you weren't able to identify, have you had any  
 11 problems with that site?  
 12 A. No. The one that was either Barnes &  
 13 Noble's or B. Dalton?  
 14 Q. Correct.  
 15 A. No, I haven't had problems with those  
 16 sites, as far as I can recall.  
 17 Q. And in terms of the in-store shopping,  
 18 who generally makes the purchases there, you or  
 19 your wife?  
 20 A. Well, it depends on what occasion. If  
 21 it's for Renae's birthday, I make the purchases.  
 22 If it's something we're purchasing for a family  
 23 member or friend, we may go together. It's  
 24 circumstance contingent.  
 25 Q. And you specifically identified Wal-Mart

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1 and Safeway in paragraph seven of your  
 2 declaration. Do you visit those stores -- do you  
 3 visit Wal-Mart more often than other stores?  
 4 MR. GOLDSTEIN: Object to the form.  
 5 A. Wal-Mart --  
 6 MR. GOLDSTEIN: Than any other given  
 7 store or than all stores together? I mean,  
 8 what are we talking about here?  
 9 Q. Well, strike that. Why did you  
 10 specifically identify Wal-Mart and Safeway in your  
 11 declaration, as opposed to other stores?  
 12 A. They were examples of stores that came  
 13 to mind at the time I was giving the declaration  
 14 of places that I regularly visit.  
 15 Q. Do you visit those places more often as  
 16 compared to the other stores that you generally  
 17 visit?  
 18 A. I don't know. I haven't analyzed it all  
 19 that much. They are just examples of places that  
 20 I can think of that I have visited.  
 21 Q. And when you're determining what store  
 22 to make a purchase at, what's the general criteria  
 23 that you use?  
 24 A. Well, I generally try to think about  
 25 what I understand the store to be known for

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1 carrying, its merchandise. I am mindful of  
 2 economics, and I am mindful often of proximity to  
 3 my home, probably the same criteria that most  
 4 people would use to determine where to buy  
 5 product.  
 6 Q. What's the most important criteria? All  
 7 things --  
 8 A. Well, I'm big on economics, so if I can  
 9 go and find something that's competitively priced,  
 10 I'll do that.  
 11 Q. So if there's the same item is being  
 12 sold at Wal-Mart and, say, Best Buy, the price  
 13 would be the most important to you? Is that  
 14 accurate?  
 15 A. It certainly would be a significant  
 16 factor in the -- in my decision. The fact is that  
 17 everything is going to be circumstance contingent.  
 18 It depends on where I am at the time. It depends  
 19 on what my daily plans are, how convenient it's  
 20 going to be.  
 21 Any number of organizational factors  
 22 that I have to consider in functioning as a blind  
 23 person will come into play as to whether I go to  
 24 one store or another.  
 25 Q. When you make your in-store purchases,

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1 how do you generally get to the store?  
 2 A. I generally take a bus or take a taxi or  
 3 walk. It depends on where it is and how  
 4 convenient it is and how much time I want to  
 5 invest.  
 6 Q. In paragraph eight of your declaration,  
 7 you say, "For the most part, I do not enjoy  
 8 shopping because I find the crowds and waiting  
 9 around bothersome. Using a store's website to  
 10 select what I want in advance streamlines the  
 11 shopping process so I can spend my time doing  
 12 other things."  
 13 How does the store's -- using a store's  
 14 website streamline the shopping process for you?  
 15 A. It gives me advance knowledge of whether  
 16 or not the store has in its merchandise the  
 17 product that I want to buy, and it gives me a  
 18 sense of the comparative prices.  
 19 And so it allows me to determine some  
 20 advance information prior to going to the store.  
 21 Q. In those instances that you haven't used  
 22 the Internet to pre-select items before you go to  
 23 the actual bricks-and-mortar store, have you ever  
 24 had any problems determining whether an item was  
 25 in stock?

1 A. No.  
 2 Q. Have you ever had any problems  
 3 determining what the comparative prices were?  
 4 MR. GOLDSTEIN: Compared to what?  
 5 MR. KLESTOFF: Well, Mr. Frye said that  
 6 he uses the online sites to determine  
 7 comparative prices, the price of a particular  
 8 item. I'm just using his terminology.  
 9 A. Well, if I go to one store, yes, I would  
 10 have trouble knowing what comparative prices are,  
 11 because I likely wouldn't go to two stores to  
 12 achieve the same thing. I would just buy it and  
 13 go.  
 14 Q. In those instances where you haven't  
 15 used a store's website to pre-select items, have  
 16 you had any -- and then gone into the store, have  
 17 you had any problems determining what the prices  
 18 were?  
 19 A. No. I generally know what the price is  
 20 by the time I get it, take it to the counter and  
 21 buy it.  
 22 Q. Is there any other way that -- you  
 23 mentioned that using -- buying products online  
 24 streamlines the shopping process. Two of the ways  
 25 that you identified that it would streamline the

1 A. Those are the ones that immediately come  
 2 to mind.  
 3 Q. In your declaration, you say that you  
 4 generally select what you want from the store  
 5 websites and then purchase the item at the store.  
 6 And you do that because you prefer to get your  
 7 hands on the product before you make a final  
 8 decision of whether to buy it.  
 9 What does "get my hands on the product"  
 10 mean?  
 11 A. It means that I want to see if the  
 12 product is something that I can use. It means I  
 13 want to look, for instance, at the satellite radio  
 14 receiver and determine if the buttons are  
 15 distinguishable or if it's a flat panel display  
 16 that can only be used by somebody with vision.  
 17 If I'm purchasing an appliance, I want  
 18 to see if the washing machine has knobs on it or  
 19 if it only has a flat panel display that's going  
 20 to be useless to me.  
 21 I can read and generally get a lot of  
 22 valuable information on the web, but before I make  
 23 a purchase, particularly one of significance, I  
 24 want to look at it and see if it's something that  
 25 I'm going to be able to independently manage.

1 process is knowing whether a particular item is in  
 2 stock and determining comparative prices,  
 3 comparative pricing.  
 4 Is there any other way that using a  
 5 store's website streamlines the process?  
 6 A. I may be able to get narrative  
 7 information about the product that I wouldn't be  
 8 able to elicit from the assistance of a shopping  
 9 assistant in the store, and that can be useful in  
 10 some circumstances.  
 11 Q. What do you mean by narrative  
 12 information?  
 13 A. Information about the product that might  
 14 be -- that might be on the box or might describe  
 15 the product more thoroughly than your average \$7  
 16 an hour worker is prepared to invest in describing  
 17 to me.  
 18 Q. You said information on the box. That  
 19 would be something that --  
 20 A. Information on the box, on the package,  
 21 on the -- any marketing information that the  
 22 website might include is what I'm referring to.  
 23 Q. Is there any other way in which using a  
 24 store's website streamlines the shopping process  
 25 for you?

1 Q. You do that for all your in-store  
 2 purchases?  
 3 A. No.  
 4 Q. What types of in-store purchases do you  
 5 do that for?  
 6 A. In-store purchases where the item in  
 7 question is something that is likely based on my  
 8 experience in life as a blind person to be  
 9 difficult for me to use.  
 10 Q. What specific types of products would  
 11 those be?  
 12 A. Like the appliances I previously  
 13 mentioned, like a satellite receiver, like a  
 14 radio, like a stereo, anything that you have to  
 15 operate that traditionally, as a result of the  
 16 evolution of product design, is going to prove  
 17 inaccessible to blind people.  
 18 Q. What store do you generally buy those  
 19 types of items at?  
 20 A. I don't buy anything in any general  
 21 store. I go to stores that are competitive.  
 22 I have gone to Wal-Mart. I have gone to  
 23 Sears. I have gone to Target. I have gone to any  
 24 variety of stores. It depends on what I'm needing  
 25 and based on the criteria shared with you earlier,

1 what works for me.  
 2 Q. Okay. Let's move to your --  
 3 THE WITNESS: Can we have a stretch  
 4 break?  
 5 MR. KLESTOFF: Yeah, sure.  
 6 (Recess taken -- 10:00 a.m.)  
 7 (After recess -- 10:10 a.m.)  
 8 Q. So let's move on to Target. In your  
 9 declaration, you say you shop at Target stores at  
 10 least once every three months. What types of  
 11 items do you purchase at Target?  
 12 A. The item that I recall purchasing most  
 13 recently was patio furniture. We bought a table  
 14 and four chairs for our backyard.  
 15 Q. Any other types of products?  
 16 A. I believe we've purchased gardening  
 17 supplies there, a rake or whatever those things  
 18 are, shovel and things. I don't do that.  
 19 We probably purchased juice and one  
 20 thing or another. We never can go to a store and  
 21 leave with only the thing we went to buy.  
 22 Q. Is that all you can remember?  
 23 A. Those are the things that come  
 24 immediately to mind. I think we bought a ladder  
 25 one time.

1 Target than any other store, and mostly it was  
 2 meant sort of as a humorous sort of comment.  
 3 Q. I understand.  
 4 A. But, anyway --  
 5 MR. GOLDSTEIN: Husband's lament.  
 6 THE WITNESS: Exactly.  
 7 Q. And you said most recently you purchased  
 8 patio furniture at Target?  
 9 A. That's the merchandise I remember  
 10 purchasing most recently.  
 11 Q. Was that the last time you shopped at  
 12 Target?  
 13 A. Probably, but I can't swear to that.  
 14 Q. Who went to the store, you or your wife?  
 15 A. When we purchased the patio furniture?  
 16 Q. Correct.  
 17 A. Both of us.  
 18 Q. Were you able to find what you were  
 19 looking for?  
 20 A. Yeah. We found something that met our  
 21 purposes.  
 22 Q. Describe your experience that last time,  
 23 when you purchased patio furniture.  
 24 A. It was an unconventional store  
 25 purchasing experience. We went in; we looked

1 Q. Who makes the in-store purchases  
 2 generally, you or your wife?  
 3 MR. GOLDSTEIN: Are you talking about  
 4 Target, specifically?  
 5 Q. At Target, specifically.  
 6 A. It's circumstance contingent again. So  
 7 sometimes me, sometimes Renae, sometimes joint.  
 8 Q. What's your experience like when you go  
 9 into the store at Target, generally?  
 10 A. Fine.  
 11 Q. Are you able to locate the items that  
 12 you're looking for?  
 13 A. Usually, yes.  
 14 Q. And you said you also never leave Target  
 15 without buying something that you weren't looking  
 16 for. How do you generally find those items?  
 17 MR. GOLDSTEIN: Object to the form. I  
 18 think he said that generally about stores,  
 19 not Target.  
 20 THE WITNESS: Yeah.  
 21 Q. Oh, generally, okay. You said that you  
 22 never leave a store without also buying something  
 23 that you weren't looking for. Is that the case  
 24 with Target?  
 25 A. It's probably no less the case with

1 around for patio furniture. We looked at several  
 2 alternative pieces of merchandise. We chose one,  
 3 and we purchased it.  
 4 Q. Were you assisted by someone at Target  
 5 at that time?  
 6 A. Yeah. I think we had the assistance of  
 7 a sales representative.  
 8 Q. Was he helpful?  
 9 A. I'm sure he was.  
 10 Q. You say you're sure he was. You don't  
 11 remember specifically?  
 12 A. Yeah. I mean, it doesn't stand out as  
 13 distinguished customer service that I recall  
 14 vividly, but I'm sure it was -- I'm certain it was  
 15 adequate. I'm certain it was perfectly fine.  
 16 Q. So you were able to locate the item you  
 17 were looking for and make a purchase with no  
 18 problems?  
 19 A. That's right.  
 20 Q. Did you check Target's website before  
 21 you went to make this purchase?  
 22 A. I don't recall, but we may have, because  
 23 we were looking at getting furniture. And so we  
 24 may have, but I don't recall in the specific  
 25 instance if we used that technique or not.

1 Q. And you don't remember if you had any  
2 problems accessing Target's site?

3 A. I don't recall if I used Target's site  
4 to determine whether or not to purchase the patio  
5 furniture or not. I can tell you that if we did  
6 use the Target site to purchase the -- to preview  
7 the patio furniture, I don't think I was party to  
8 that review. Renae would have done that, if, in  
9 fact, we did it at all.

10 And I don't recall if in that instance  
11 we used the previewing technique to achieve that  
12 goal or not. I don't remember.

13 Q. Has your wife experienced any problems  
14 accessing Target's site?

15 A. I don't know. She hasn't discussed them  
16 with me, if she has.

17 Q. All right. Let's move on. I want to  
18 talk a little bit more about your XM radio  
19 purchase. You said that about a year ago you  
20 tried to look for products on Target.com, but you  
21 were unable to do so because the website was  
22 inaccessible. Do you remember the specific date  
23 of that?

24 A. No.

25 Q. Do you remember if it was winter,

1 Q. That would be 7.09? Would that be a  
2 fair assumption?

3 A. Yeah. I don't know how they count their  
4 version numbers, but it would be a recent version.

5 Q. How did you determine that you wanted to  
6 purchase an XM radio?

7 A. I enjoy music, and I enjoy talk radio,  
8 and I had conversations with friends who found XM  
9 to be a desirable product. I fly a lot around the  
10 country to do speaking, and I flew on AirTran,  
11 which features XM onboard its airplanes.

12 And so both of those experiences  
13 persuaded me that XM would be a product that might  
14 be economical and entertaining.

15 Q. Were you looking for a specific model of  
16 XM radio?

17 A. No. I was looking for a portable model  
18 that I could take with me if I wanted to, but that  
19 I could also play through my non-portable stereo  
20 at home.

21 Q. You say you went to three store websites  
22 to see what XM receivers they sold, to find out  
23 how much they cost and to identify more of their  
24 features. And you specifically identify Wal-Mart,  
25 Best Buy and Target. Why did you pick those three

1 spring?

2 A. It would have been in springtime,  
3 sometime between April and June.

4 Q. April and June of 2006, correct?

5 A. Yeah.

6 Q. And how did you access Target's website?  
7 Did you access it from Target's home page?

8 A. Probably. I probably went to  
9 Target.com.

10 Q. In general, when you access Target from  
11 Target's website, do you log on to Target.com or  
12 do you use external linking from other sites?

13 MR. GOLDSTEIN: Object to the form.

14 A. No. I generally just go onto  
15 Target.com.

16 Q. And where did you -- where were you when  
17 you accessed Target's website on that occasion?

18 A. I was at probably a lunch break or an  
19 afternoon break at work.

20 Q. And what screen access software did you  
21 use?

22 A. JAWS.

23 Q. Which version?

24 A. I don't remember. Probably the version  
25 I have now or just the one before it.

1 sites?

2 A. They were sites that or they were stores  
3 where I had learned from acquaintances that XM  
4 satellite radio receivers might be sold.

5 Q. Did you look at any other sites?

6 A. Not that I recall.

7 Q. And you say you were easily able to find  
8 the information you wanted at Walmart.com and  
9 Bestbuy.com.

10 A. Yes. I found the information I needed  
11 at those two sites.

12 Q. And what specific information were you  
13 looking for?

14 A. I was specifically looking to determine  
15 if they sold XM radio satellite receivers and to  
16 determine if they had portable models of the same  
17 and to determine how much they might cost. Those  
18 are the immediate things that I was looking to  
19 identify.

20 Q. Was there any other information that you  
21 were looking for, aside from the three pieces of  
22 information you identified?

23 A. Mindful that this was a year ago, I  
24 don't recall any other. Those seem to be the  
25 things I might have been looking for.

1 Q. How did you access Wal-Mart.com on that  
2 occasion? Through its home page? External  
3 linking?

4 A. Probably just through its home page. I  
5 mean, I would probably tend to access most things  
6 through what I understood to be their Internet  
7 website, usually affiliated with their store name  
8 in one way or another.

9 Q. Did you have any problems finding what  
10 you wanted at Walmart.com?

11 A. No.

12 Q. How quickly were you able to find the  
13 information that you wanted at Walmart.com?

14 A. I don't know, 15, 20 minutes.

15 Q. How did you access Bestbuy.com on that  
16 occasion?

17 A. Probably via its named website.

18 Q. And how quickly were you able to access  
19 the information you were looking for on  
20 Bestbuy.com?

21 A. Qualifying this, of course, mindful of  
22 the fact that I didn't time myself, probably a  
23 comparable amount of time, 15 to 20 minutes.

24 Q. And you say in your declaration that  
25 when you went to Target.com, the website was

1 specifically you did on that occasion? When you  
2 first got to the website, what did you do?

3 A. Mindful that this has been a year or so  
4 now, I would have -- my traditional practice is to  
5 do a web link or a web list command with JAWS that  
6 let's me just read the names of the links on the  
7 page, a web link list command. And I would have  
8 reviewed the links to see if there was any link  
9 that immediately might have seemed to have a  
10 correlation to the item I was purchasing.

11 If I had found that link, I would have  
12 gone to it and looked around with speech and read  
13 the page, maybe. And that's probably what I did  
14 to start my process.

15 Q. And you were able to do all those steps  
16 on that occasion?

17 MR. GOLDSTEIN: Object to the form.

18 A. I'm certain I undertook most of -- I'm  
19 certain I -- I undertook those steps when I went  
20 to the site. But being unable to identify  
21 anything very clearly, I didn't -- I didn't find  
22 what I was looking for.

23 Q. Were you able to use the web list  
24 command with JAWS to list the links on the page on  
25 that occasion?

1 impossible to navigate with the screen reader.  
2 Can you be a little bit more specific as to the  
3 problems you were experiencing?

4 A. When I went to the Target.com website, I  
5 encountered hundreds of links which, when using  
6 speech software, makes it a challenge to identify  
7 what link might lead you to the product that you  
8 want to find.

9 Many of those links were not,  
10 apparently, in the terms of the computer people,  
11 properly labeled, because they would simply say  
12 graphic and an arbitrary number, which gave me no  
13 valuable information.

14 And occasionally there would be -- there  
15 would be brief narrative phrases like "sell here"  
16 or something that didn't seem to have any  
17 relationship to anything else. Those are the  
18 things that immediately come to mind.

19 Q. Was that on the site's home page?

20 A. That's where I would have originally  
21 encountered that kind of stuff. Invariably, I'm  
22 sure, I tried to press other links and found  
23 similar -- found similar information on pages  
24 several layers in.

25 Q. So why don't you walk me through what

1 A. Yeah. My understanding is that if you  
2 do that command, the links will appear, and -- but  
3 they all or many of them would just be graphics  
4 and numbers. They wouldn't have any -- they  
5 wouldn't have any intelligent title that would  
6 give you a sense of what the link was going to  
7 take you to.

8 Q. And after you got the list of links on  
9 the page, what did you do then? Do you remember?

10 A. No. I -- I might have gone up and  
11 looked for a search box. I may or may not have  
12 found one. The detail of what I did is clouded by  
13 the passage of time.

14 What I remember vividly is that I was  
15 unsuccessful in my effort and that the site was  
16 incredibly cluttered, not well labeled and hard to  
17 use.

18 Q. Do you remember any other specific  
19 problems with the website on that occasion?

20 A. No. Those were sufficiently  
21 disheartening that I -- those were sufficiently  
22 disheartening that I couldn't achieve my goal.

23 Q. At some point you stopped using the  
24 website for your search?

25 A. Yes.

1 Q. Do you remember what specific point that  
2 was?

3 MR. GOLDSTEIN: Object to the form.

4 A. Yeah. I mean, I would have stopped  
5 using or stopped attempting to do it after I  
6 concluded that I wasn't going to be able to  
7 identify the merchandise I wanted to purchase.

8 Q. Was that on Target's home page?

9 A. It was on the Target website. I'm not  
10 sure if I was on the home page when I concluded  
11 that my search wasn't going to be fruitful. I  
12 don't recall at what part of the website I was on.

13 Q. And of all the steps that you took that  
14 you described earlier, how many times did you try  
15 these steps?

16 A. Repeatedly. I don't know specifically  
17 how many times. I wasn't easily dissuaded. You  
18 know, I made a concerted effort.

19 Q. Was it more than five?

20 A. I'm not prepared to give you a number.

21 Q. Can you -- I'm entitled to your best  
22 estimate. Is it less than ten?

23 MR. GOLDSTEIN: Object to the form. Is  
24 what less than ten? I mean, are you asking  
25 how many times did you get gobbledegook in

1 Q. Did you do anything else to try to  
2 access the information you were looking for on the  
3 site?

4 MR. GOLDSTEIN: Object to the form.

5 A. Did I do anything else to try and access  
6 the information I was looking for on your website?  
7 Is that what you asked?

8 Q. Yes.

9 A. No. After I concluded I couldn't find  
10 it, I didn't do anything else.

11 Q. Did you call Target.com's 800 number for  
12 help in accessing the site?

13 A. No.

14 Q. Did you e-mail Target.com for help  
15 accessing the site?

16 A. No.

17 Q. Did you call JAWS's tech support people  
18 for help accessing the site?

19 A. No.

20 Q. Did you ever try calling Target to get  
21 the information that you wanted about the XM  
22 radio?

23 A. No, I did not.

24 Q. Did you ever go to Target, the Target  
25 bricks-and-mortar store, to look for the XM radio?

1 response to a web list, or how many times did  
2 you search for an edit box?

3 Q. How many times did you try going through  
4 the steps that you described to me? Was it less  
5 than ten?

6 A. Well, if I had done it ten times, it  
7 would have probably taken me quite a bit of time,  
8 so perhaps it was less than ten. But, again,  
9 counsel, I don't know how many times it was. It  
10 was repeatedly.

11 Q. Okay. And you say you were -- you  
12 mentioned that you were using JAWS to navigate the  
13 site; is that correct?

14 A. Yes.

15 Q. Were you using the Braille access  
16 software as well?

17 A. I'm sure I was referencing the Braille  
18 access software. In general, for the type of  
19 search I was doing, the detail that I derive from  
20 Braille access software would have offered very  
21 little additional advantage.

22 Q. Did you try to use any other screen  
23 access software to access the site on that  
24 occasion?

25 A. No.

1 A. No. Once I determined that I could find  
2 what I wanted or do my pre-shopping evaluation on  
3 other websites that I was able to successfully  
4 use, I determined to give my business to stores  
5 that offered me an accessible website.

6 Q. So you never went to Target to look for  
7 an XM radio?

8 A. No.

9 Q. And you say you bought the XM radio at  
10 Wal-Mart, correct?

11 A. Yes.

12 Q. What type of -- what type of XM radio  
13 did you ultimately end up buying?

14 A. I think the model is called a My-Fi.

15 Q. Do you remember how much it cost?

16 A. Somewhere between 150 and \$200, maybe a  
17 little less, maybe a little more.

18 Q. Did you ever find out if Target sold XM  
19 radios since then?

20 A. No. I have one. Do you?

21 Q. I'm not --

22 A. You're not sure?

23 Q. I'm not sure. And then you say in your  
24 declaration that your experience using Target.com  
25 was so frustrating that you haven't tried to use

1 it to find product information again. This was  
2 the XM radio, the last time you -- strike that.  
3 Was the last time you accessed Target's  
4 website the time when you were looking for that XM  
5 radio?

6 A. I may have accessed it to try and see if  
7 I could use, as referenced in my declaration, a  
8 gift registry. But those two instances have been  
9 the last times I've tried to access the Target  
10 website for any significant purchase.

11 Q. So you -- was your attempt to access the  
12 gift registry before or after the time you  
13 accessed Target to -- for information about the XM  
14 radio?

15 A. My recollection is that it would have  
16 been somewhat after the XM radio time, though not  
17 significantly after it.

18 Q. You say you haven't tried to use  
19 Target's website to find product -- to find  
20 product information again. Have you used Target's  
21 website to do anything else?

22 A. What else would you do on Target's  
23 website? No.

24 Q. No. You say -- have you gone to the  
25 actual Target store since the last time you

1 remember, to be sure.

2 Q. And how did you access the site on that  
3 occasion?

4 A. Probably in a very similar fashion to  
5 the way I would have tried to access the site when  
6 I was looking for the XM receiver.

7 Q. And that would be by directly accessing  
8 the home page?

9 A. Yes.

10 Q. Was that the first time you tried to  
11 access Target's baby registry?

12 A. Probably, yes.

13 Q. Had you tried to access Target's wedding  
14 registry in the past?

15 A. I -- I think when I went on to look at  
16 the baby registry, I observed that there was a  
17 wedding registry and may have tried to look at  
18 both simultaneously. I don't think I looked at  
19 them on separate occasions.

20 Q. And on that specific occasion that you  
21 accessed Target's baby registry, where were you  
22 when you accessed it?

23 A. I was on a break or at lunch at work, I  
24 imagine.

25 Q. Do you remember what software you were

1 accessed Target's website?

2 A. With the passage of time, it's hard to  
3 remember all of the chronology. But, of course,  
4 we purchased the -- we purchased the patio  
5 furniture sometime last spring or summer. So it  
6 may be that that occurred before or after.

7 And I may have gone to a Target in the  
8 interim with Renae to look at something or  
9 another, yes. But I don't recall that we've  
10 purchased anything specifically; I don't recall  
11 that we haven't.

12 Q. Let's move on to the occasion when you  
13 attempted to access Target's gift registry. Do you  
14 remember specifically when that was?

15 A. No. It was in the spring or so of last  
16 year. Yeah, the spring or so of last year, I  
17 think is when it was. I believe that's what my  
18 declaration says.

19 Q. Do you remember what month it was?

20 A. No. I don't remember specifically what  
21 month it was.

22 Q. Was that before or after you purchased  
23 your patio set from Target?

24 A. I don't recall. For some reason, I  
25 think it was slightly before, but I don't

1 using?

2 A. I used JAWS exclusively.

3 Q. When you say you were unable to access  
4 the online registry using a screen reader, what  
5 was the specific problem on that occasion?

6 A. I couldn't find a list of the products  
7 that were -- that would have been on a registry, a  
8 registrant's list.

9 Q. Let's walk through the specific steps  
10 that you took. You first logged onto the -- to  
11 Target's home page, correct?

12 A. Hm-hmm.

13 Q. And then what did you do?

14 A. I would have checked for what link  
15 seemed most appropriate. I might have gone to  
16 that link. I can't recall if I found a link that  
17 said registry or baby registry, but I may have.

18 As I recall, I might have made modestly  
19 more progress in determining that there was a  
20 registry. And after that, I found myself barred  
21 from being able to determine much more.

22 I couldn't find the person's -- I  
23 couldn't find a list of registrants. I couldn't  
24 figure out how to access the person's file or  
25 preferences. Certainly, I couldn't get in to see

1 what the merchandise was that they wanted.  
 2 Q. Were you able to do a search for the  
 3 registrant's name?  
 4 A. Not that I can recall. I didn't see  
 5 that option available to me.  
 6 Q. And on that occasion, how many times did  
 7 you try to access the baby registry?  
 8 A. Repeatedly. Again, I don't know how  
 9 many times. I wouldn't want to be disingenuous  
 10 and tell you a specific number.  
 11 Q. Is it safe to say less than ten times?  
 12 A. You can probably safely say less than  
 13 ten times, but I can't guarantee that that's the  
 14 number or anything.  
 15 Q. Did you call Target's online help  
 16 number?  
 17 A. No. I wasn't aware that there was an  
 18 online help number, but I made no such calls.  
 19 Q. Did you ever e-mail Target.com about the  
 20 problem?  
 21 A. I made no further inquiries through any  
 22 resources available, if they existed.  
 23 Q. So it would be accurate to say that you  
 24 didn't use JAWS's tech support people?  
 25 A. It would.

1 Q. So was the plan that your wife would --  
 2 you would select the gift and your wife would  
 3 purchase it from the store?  
 4 A. Are you kidding? It was probably a  
 5 joint exercise.  
 6 Q. By joint exercise, what do you mean?  
 7 A. We probably talked about it and looked  
 8 at it, and I looked around on the site, and she  
 9 probably looked around on the site, and we  
 10 probably came to some understanding.  
 11 Q. But was your wife ultimately going to  
 12 make the purchase at the store?  
 13 A. Probably.  
 14 Q. Probably?  
 15 A. Yeah. It was simply a matter of  
 16 convenience and such. I don't need to go to the  
 17 store to demonstrate any particular capacity or  
 18 motivation. We just do what is convenient in the  
 19 course of our lives, dependent on what our  
 20 respective schedules are, counsel.  
 21 Q. But on that specific occasion, you don't  
 22 remember whether you --  
 23 A. No.  
 24 MR. GOLDSTEIN: Let him finish the  
 25 question, please, Mr. Frye.

1 Q. Did you call Target to try to access the  
 2 registry that way?  
 3 A. I made no further inquiries.  
 4 Q. You didn't go to the Target store, did  
 5 you --  
 6 A. I did not.  
 7 Q. -- to check the registry?  
 8 A. No.  
 9 Q. Have you ever accessed a baby registry  
 10 at the actual store?  
 11 A. At the actual Target store?  
 12 Q. Correct.  
 13 A. No.  
 14 Q. Have you ever accessed a wedding  
 15 registry at the actual Target store?  
 16 A. Ultimately no, I don't think I've ever  
 17 used any of the Target registries.  
 18 Q. Then you say you ultimately selected a  
 19 gift from the Babies R Us online registry instead,  
 20 and your wife purchased it from the store. Why  
 21 was it that your wife purchased it from the store  
 22 rather than you?  
 23 A. Probably because I was either out of  
 24 town or working. My wife is a freelance writer,  
 25 and she has more discretionary time than do I.

1 Q. On that specific occasion, do you  
 2 remember whether the plan was for your wife to  
 3 purchase the gift at the store?  
 4 A. I remember that that's ultimately what  
 5 happened, and I presume that was probably our  
 6 plan.  
 7 Q. So you've identified two times where  
 8 you've tried to use Target's website specifically;  
 9 the time when you were looking for information  
 10 about the XM receiver and the time when you tried  
 11 to access Target's gift registry.  
 12 Are there any other times that you've  
 13 used Target's website?  
 14 A. No, not that come to mind.  
 15 Q. So you've only used Target's website  
 16 twice?  
 17 A. Those are the only two times that  
 18 immediately come to mind; that's right.  
 19 Q. You don't specifically remember any  
 20 other time?  
 21 A. No.  
 22 Q. Have you visited Target's website in the  
 23 last two or three months?  
 24 A. Last two or three months, I don't -- I  
 25 don't think I have.



1 Q. Are you aware of any changes that have  
2 been made to the site recently?

3 A. Not as a result of my personal  
4 observation.

5 Q. Has anyone told you -- aside from your  
6 conversations with counsel, has anyone told you of  
7 any changes that have been made to Target's  
8 website?

9 A. I have heard unsubstantiated sort of  
10 rumbling that, as a result of these actions, that  
11 efforts might be being taken to improve the  
12 quality of the site, but I have not observed them  
13 personally. This is conversation just in general  
14 that is occurring within the blindness community.

15 Q. Do you remember any specifics about  
16 these conversations?

17 A. No, just that measures might be underway  
18 to improve the quality of the accessibility of the  
19 site.

20 Q. And you haven't accessed the site since  
21 you've had these conversations?

22 MR. GOLDSTEIN: Asked at least three  
23 times.

24 A. No, I have not.

25 Q. How did you come to provide a

1 A. Yes.

2 Q. Which ones?

3 A. I subscribe to a number of the NFB,  
4 National Federation of the Blind, sponsored  
5 mailing lists. The ones that immediately come to  
6 mind are "Blind Law," which is a mailing list for  
7 blind attorneys and other blind people involved in  
8 the legal profession in one context or another;  
9 "Blind Rehabilitation Professionals"; "Blind" --  
10 the list serve for the National Federation of the  
11 Blind in Washington, since I have deep routes in  
12 Seattle.

13 For a time I was subscribed to the -- an  
14 employment list to help blind people find  
15 employment.

16 Those are the ones that immediately come  
17 to mind. I maybe subscribe to others. There are  
18 70 or 80 such lists. I'm certainly not subscribed  
19 to them all.

20 MR. KLESTOFF: I'm going hand out what  
21 I'd like to mark as Exhibit 2.

22 MR. GOLDSTEIN: I assume, by the way,  
23 these are Frye 1 and Frye 2?

24 MR. KLESTOFF: Correct.

25 MR. GOLDSTEIN: Because otherwise, we

1 declaration in this lawsuit?

2 A. I was invited to provide a declaration  
3 as a result of invitations that were generally  
4 made to the community to review and evaluate the  
5 website.

6 Q. When was the first time you had contact  
7 with the attorneys in this action?

8 MR. GOLDSTEIN: Concerning this case?

9 Q. Concerning this case.

10 A. It would have been spring of last year,  
11 probably late-ish March of 2006.

12 Q. And were you contacted first, or was it  
13 the other way around?

14 A. I'm sure that I was contacted first.

15 Q. And you say there was a general  
16 invitation to the blind community to access the  
17 website and evaluate it -- access Target's website  
18 and evaluate it; is that correct?

19 A. Yes.

20 Q. When was that?

21 A. Well, after I had conversation with  
22 counsel, we -- I learned about the invitation. It  
23 would have been in late-ish March.

24 Q. Do you subscribe to any Internet mailing  
25 lists?

1 end up with a multiplicity of ones and twos  
2 from 20 different depositions.

3 MR. KLESTOFF: Correct.

4 (Thereupon, Frye Exhibit Number 2 was  
5 marked.)

6 Q. And I'll just represent to you that this  
7 looks like this is a March 31, 2006, message with  
8 the subject, "NFB-DB assistance sought with Target  
9 Corporation lawsuit." And at the very top it says  
10 "From: Dan Frye," and it looks like the message  
11 is from David Andrews. At the very top it says,  
12 "Dan Frye."

13 And it says, "As you may know, the NFB  
14 has filed a lawsuit against Target Corporation for  
15 the inaccessibility of its website,  
16 <http://www.Target.com>. If you have encountered  
17 access barriers on Target.com and are willing to  
18 provide testimony for use in the lawsuit, please  
19 contact Brett Kaufman at Disability Rights  
20 Advocates, using the following contact information  
21 as soon as possible."

22 And it lists Brett Kaufman's name,  
23 title, his phone number and his e-mail, and it  
24 says that -- goes on to say, "Should you have  
25 additional questions about how you can best be of

1 assistance or provide support for this initiative,  
2 please contact me directly at my contact details  
3 provided below for a briefing before communicating  
4 with the staff at Disability Rights Advocates.

5 "Thank you for your cooperation," and it  
6 has your name, Daniel B. Frye. And it says,  
7 "Manager of Affiliate Action Advocacy and  
8 Training, National Federation for the Blind."

9 A. I'm sure it doesn't say for the Blind.

10 Q. I apologize. National Federation of the  
11 Blind, Department of Affiliate Action, and it  
12 gives your address on Johnson Street, your phone  
13 numbers and e-mails and the web address.

14 A. Okay.

15 MR. GOLDSTEIN: Let me lodge an  
16 objection at this point on the question of  
17 scope. The additional hearing was postponed,  
18 an additional briefing and these depositions  
19 also noted purportedly in connection with the  
20 declarations that were filed at the Court's  
21 request on the use of Target.com for  
22 pre-shopping.

23 This exhibit has absolutely nothing to  
24 do with that topic. The representation has  
25 been that -- from Target, that these

1 Q. Okay.

2 MR. GOLDSTEIN: Let me just say there  
3 that, because I regard communications  
4 between -- not because I regard -- because  
5 the case law teaches that communications  
6 between attorney and client with respect to  
7 matters intended to be disclosed to third  
8 parties is not privileged, I am not  
9 instructing this witness to refrain from  
10 answering these questions.

11 However, I don't want anyone to think  
12 that, in the process, we're waiving the  
13 attorney-client privilege. We're not waiving  
14 the attorney-client privilege. This simply  
15 happens to be a non-privileged communication.

16 MR. KLESTOFF: Noted.

17 Q. Did you ask for people to provide you  
18 information about their lack of problems accessing  
19 Target.com?

20 A. Can you read to me the sentence? I  
21 believe what it says is that I asked them to  
22 evaluate or review the website. I didn't ask them  
23 to tell me if they found problems or successes.

24 Q. This one specifically says, "If you have  
25 encountered access barriers on Target.com."

1 depositions should not count towards the  
2 limit on depositions because they are  
3 restricted to and narrowed to the scope of  
4 the issue of pre-shopping.

5 And, therefore, I think it is an abuse  
6 of the deposition process and the agreement  
7 made in this case to proceed on this matter.

8 MR. KLESTOFF: Your objection is noted.

9 Q. Who is David Andrews? Are you familiar  
10 with someone named David Andrews?

11 A. Yes. David Andrews is the list serve  
12 owner of the NFB sponsored list service.

13 Q. And how did it come about that you sent  
14 this message to David Andrews?

15 A. I sent the message to David Andrews at  
16 the request of counsel.

17 Q. And here it says -- it specifically  
18 says, "If you have encountered access barriers on  
19 Target.com, and are willing to provide testimony  
20 for use in the lawsuit, please contact Brett  
21 Kaufman."

22 Why did you phrase it in that particular  
23 way?

24 A. I used the language provided to me at  
25 the advice of counsel.

1 A. Okay. Then I asked them to let us know.

2 Q. Have you ever sent out a message  
3 requesting information from people who have had no  
4 problems accessing Target, Target's website?

5 A. As I recall, I've sent out two messages  
6 of a similar nature, and I don't recall the  
7 language in the other one. My request would have  
8 generally wanted people to review and honestly  
9 evaluate what they saw.

10 I wasn't specifically seeking a  
11 favorable or a negative answer. I was seeking  
12 objective information that could be used in the  
13 course of this action.

14 Q. And I want to summarize your earlier  
15 testimony. You say that this specific language in  
16 this March 31, 2006, posting was provided to you  
17 by counsel, correct?

18 A. Correct.

19 Q. And then later on, it says, "Should you  
20 have any additional questions about how you can  
21 best be of assistance or provide support for this  
22 initiative, please contact me directly for a  
23 briefing before communicating with staff at  
24 Disability Rights Advocates."

25 What was that briefing? Can you

1 describe that to me?

2 A. I was simply going to let people who  
3 ordinarily might be unfamiliar with legal  
4 exercises know that they were going to be giving a  
5 declaration, that the declaration had the  
6 potential to be used in the course of this action,  
7 that anything they said would be reduced to  
8 writing, and to simply allay any fears that they  
9 might have had regarding what, to many, can seem  
10 an intimidating exercise.

11 It would have given them -- reaffirmed  
12 that they had Mr. Kaufman's information and send  
13 them on their merry way.

14 Q. Was there any other reason why the  
15 briefing was set up?

16 A. No.

17 Q. How many briefing sessions were there?

18 A. I don't recall specifically. There  
19 weren't a lot.

20 Q. Was it less than five?

21 A. No, it would have been not less than  
22 five.

23 Q. Was it less than ten?

24 A. It may have been less than ten at one  
25 point, yes.

1 referring to the briefing sessions.

2 A. Yeah. There were between ten and twenty  
3 briefing sessions, but I'm not clear what your  
4 question is.

5 Q. How many people were at these briefing  
6 sessions?

7 A. They were telephone briefing sessions.  
8 They didn't come and see me in my office.

9 Q. Did you get any comments in response to  
10 your message that were positive about Target's  
11 website?

12 A. I don't recall which message it was in  
13 response to, but I did get one comment from a lady  
14 who was reluctant to be critical of Target because  
15 Target was known for the charitable solicitation  
16 of fruit baskets or something at Christmastime and  
17 had been supportive of her local chapter.

18 Q. And that was the only --

19 A. That was the only unqualified  
20 positive -- unqualified positive response.

21 I received responses from one or two  
22 people whose evaluation was either inconclusive or  
23 inconclusive about the nature of the website or  
24 who ruminated on their reflection on a variety of  
25 things, including whether or not they thought the

1 Q. You say at one point. Were there  
2 subsequent briefing sessions?

3 A. Well, there was a subsequent message  
4 that I sent out, which may have yielded further  
5 inquiries. Some people called me. Some people  
6 who apparently didn't feel a need to have a  
7 briefing would have contacted Disability Rights  
8 Advocates in California directly.

9 So at one point it was certainly less  
10 than ten. It may have ultimately gone over ten,  
11 but I can't tell you that it went significantly  
12 higher than that.

13 Q. Is it fair to say between ten to  
14 fifteen?

15 A. It's fair to say between ten and twenty.

16 Q. Ten and twenty. Do you know how many  
17 people responded to your message?

18 A. Not ultimately, because some people  
19 contacted DRA directly.

20 Q. Of the people that contacted you  
21 specifically, was it between fifteen and twenty?

22 A. I'm sorry.

23 MR. GOLDSTEIN: Objection. Witness just  
24 said it was between ten and twenty.

25 MR. KLESTOFF: I thought he was

1 case was meritorious.

2 Q. How many inconclusive responses were  
3 there?

4 A. Two or three. I don't know.

5 Q. Do you remember what any of the  
6 responses specifically said?

7 A. Most of the inconclusive responses  
8 specifically said they hadn't had occasion to  
9 review the website, that they had heard secondhand  
10 from others that it was difficult to use and that  
11 others still had told them that they had had no  
12 problems.

13 But their experience was -- but they  
14 weren't prepared to comment, because they  
15 themselves had not accessed the website.

16 Q. And of the responses that ruminated on  
17 the merit of the lawsuit, do you remember what --  
18 specifically what those responses were?

19 MR. GOLDSTEIN: Objection. Some of  
20 those we have produced where they did not get  
21 into the attorney-client sphere, but where  
22 they did contain requests that certain things  
23 be communicated to counsel, among the client,  
24 we have not produced those.

25 And the witness is instructed not to

1 answer with respect to those.

2 With respect to those comments, and I  
3 believe we produced them yesterday or Friday,  
4 the additional ones we found, where there is  
5 no reference to communications to counsel,  
6 you're free, of course, Mr. Frye, to respond  
7 to the question.

8 A. Sure. And your question was, what did  
9 they say why they thought it wasn't meritorious?

10 Q. Correct.

11 A. Oh, they wondered -- they wondered  
12 whether or not, you know, ultimately the website  
13 was going to be regarded as successful, was it  
14 going to be regarded as accessible.

15 Again, they didn't know for sure, but  
16 they wondered. They referenced other website  
17 actions, legal actions that had been taken, not by  
18 the NFB, that they regarded as erroneous.

19 All of that is to say that it was their  
20 personal opinion that was being offered. Much of  
21 it I regard as erroneous.

22 MR. KLESTOFF: I'd like to mark this  
23 next as Frye Exhibit 3.

24 (Thereupon, Frye Exhibit Number 3 was  
25 marked.)

1 Brett Kaufman."

2 And it gives his title, his phone number  
3 and his e-mail.

4 And then it says, "Finally, please  
5 simply let me know when you've made contact with  
6 representatives at Disability Rights Advocates so  
7 that I can track the number of people who have  
8 been referred to them and who have actually filed  
9 the statement. We need at least 30 people to make  
10 statements, and if you'll keep me informed, I'll  
11 be best able to monitor our progress."

12 It says, "Thank you and please call me  
13 if you have any questions," and gives your name  
14 and address and phone numbers and website.

15 MR. GOLDSTEIN: Mr. Klestoff, I think it  
16 used the word "experiences" in the plural,  
17 "verbally articulate your experiences to  
18 them."

19 MR. KLESTOFF: I'm sorry. That's  
20 correct. I apologize.

21 Q. How did you come to send this message to  
22 David Andrews?

23 A. I sent this message at the advice of  
24 counsel.

25 Q. And then --

1 Q. Frye Exhibit 3, just represent to you  
2 this is another message from David Andrews, the  
3 subject, "NFB-DB assisting with Target lawsuit  
4 easier than ever."

5 And it says, "Dan Frye has asked me to  
6 post the following. It is important." And it  
7 says, "David Andrews. As part of the Federation's  
8 legal action against Target's web operations, we  
9 are in need of blind people to examine the  
10 website, Target.com, and offer their assessment,  
11 particularly as it relates to any access problems  
12 experienced, as soon as possible.

13 "Initially, I thought that the officials  
14 at Disability Rights Advocates wanted people to  
15 draft their own declarations. As it turns out,  
16 however, they only want people to review the site  
17 and then call and verbally articulate your  
18 experience to them. They will then draft your  
19 statement for you to review and sign.

20 "If any of you have not done this,  
21 please take the time to review the website and  
22 call the law clerk assigned to this case at  
23 Disability Rights Advocates, our partner in  
24 prosecuting this action.

25 "Please contact as soon as possible

1 A. At the advice and request of counsel.

2 Q. And the language in that, in the first  
3 sentence, your message says, "We are in need of  
4 blind people to examine the website, Target.com,  
5 and offer their assessment, particularly as it  
6 relates to any access problems experienced."

7 Why did you choose that language?

8 A. Well, I wanted people to review it and  
9 assess it and let us know if they were finding any  
10 difficulties. But the language that I used was  
11 developed in consultation with counsel.

12 Q. Do you remember how many people  
13 responded to this message?

14 A. No. I think when I referenced that I  
15 spoke in briefing ten to twenty, that would  
16 represent the number of people I spoke to as a  
17 result of both solicitations.

18 Q. And then it says that the Disability  
19 Rights Advocates wants people to review the site,  
20 then call and verbally articulate people's  
21 experiences to them, and then they will draft the  
22 statement.

23 Why was it handled this way? Do you  
24 know?

25 A. That was the strategy determined by

1 counsel. And the original message didn't  
2 specifically give that detail, so we wanted to  
3 make it clear to people that that would be the  
4 means that it would be handled by -- by which it  
5 would be handled.

6 Q. And at the end there, it says, "We need  
7 at least 30 people to make statements." Why was  
8 that specific number chosen? Do you know?

9 A. Advice of counsel.

10 Q. Okay. Have you ever -- have you made  
11 any other communications such as this since April  
12 of 2006?

13 A. No.

14 Q. Has there been anything in the "Braille  
15 Monitor" regarding the lawsuit, that you're aware  
16 of?

17 A. Probably there has. I just can't  
18 remember what monthly edition, but I'm sure  
19 there's been something, but I can't swear to that.  
20 I'd have to go back and review the "Monitors."

21 Q. And were the -- were these mentions of  
22 the Target website in connection with efforts to  
23 seek out people to submit declarations in this  
24 action?

25 A. Since I can't remember whether or not

1 MR. GOLDSTEIN: Could I have some  
2 representation, counsel, as to the connection  
3 between Frye Exhibit 4 and pre-shopping by  
4 Mr. Frye on the Target website?

5 MR. KLESTOFF: This will -- this e-mail  
6 certainly goes to Mr. Frye's awareness of  
7 problems on the website and any efforts to  
8 access the site after these e-mails.

9 MR. GOLDSTEIN: Again, it has absolutely  
10 nothing to do with the issue that led to the  
11 Court agreeing that there could be these  
12 additional depositions that would not count  
13 towards the limit. And I object to any  
14 questions related to Exhibit 4 as altogether  
15 outside the scope of this deposition.

16 MR. KLESTOFF: That's noted.  
17 (Thereupon, Frye Exhibit Number 4 was  
18 marked.)

19 Q. And I'm just going to represent to you  
20 that this is -- it looks like an e-mail string  
21 between you and Mike Freeman, dated March 31,  
22 2006, and it's got the Bates number at the bottom,  
23 NFB 0422.

24 And at the bottom it looks like there's  
25 a message from you, Mr. Frye, to Mike.

1 there has been something subsequent to these  
2 messages in the "Monitor," I certainly am not  
3 going to remember the content of those messages.

4 It is possible, it seems likely to me,  
5 that there would have been, but I don't know if  
6 there has been, and I certainly am not aware of  
7 its content. That is not to say I don't read the  
8 "Monitor," but I don't recall if we have covered  
9 that specifically or not.

10 Q. Do you remember if there were any such  
11 mentions previous, before these message?

12 A. No, I don't remember when or if the  
13 "Monitor" has covered the issue. I'm inclined to  
14 think it has, but I don't remember when or if or  
15 what the content would have been.

16 Q. Are you aware of any pod casts on this  
17 issue?

18 A. No.

19 MR. GOLDSTEIN: Again, I'm going to --  
20 everything since we got away from Mr. Frye's  
21 use is beyond the scope of what was  
22 represented by Target to be the reason for  
23 these depositions.

24 MR. KLESTOFF: I'm going to mark another  
25 Exhibit as Frye Exhibit 4.

1 And it says, "Smile. I've just been  
2 brought in the loop today. Is this," parentheses,  
3 "access to the Target website," close parentheses,  
4 "really an issue from your perspective? Your  
5 feedback would be useful to have. Best, Dan  
6 Frye."

7 What did you mean about being brought in  
8 the loop?

9 A. As I've testified, I was consulted by  
10 counsel in late-ish March; apparently, it was near  
11 the end of March. And I was asked to place the  
12 announcements that we have discussed on the web  
13 page and to help identify people who could assess  
14 the merits and demerits of the Target website.

15 As part of that exercise, I sent out the  
16 announcements via David Andrews, and I solicited  
17 the objective input of others in the organization.

18 Q. And then Mr. Freeman, in response to  
19 your e-mail, responds, just to summarize the  
20 e-mail, save time -- and if counsel has any  
21 problem, he's welcome to object -- Mr. Freeman  
22 says that, "If Target uses the same web engine as  
23 Amazon, I don't see accessibility as a problem.  
24 Although Amazon can be wordy and awkward to use,  
25 it's doable."

1 Are you aware that -- whether or not  
2 Target uses the same web engine as Amazon?

3 A. I've been told that it does. I'm not  
4 personally aware of it. I don't have that  
5 technical aptitude.

6 Q. And have you personally had any problems  
7 with Amazon's website?

8 A. No.

9 Q. And then later on he says, "I know when  
10 we first heard of the lawsuit, some members of  
11 NABS said, 'Hey, wait a minute. I tried Target  
12 and it worked fine.'"

13 Do you know what NABS stands for?

14 MR. GOLDSTEIN: All right. Go ahead and  
15 answer.

16 A. NABS stands for the National Association  
17 of Blind Students. It's a division of the  
18 National Federation of the Blind.

19 Q. Are you aware of any such comments that  
20 were made to you?

21 MR. GOLDSTEIN: I object, because you  
22 did not give him the total context of the  
23 comments. This is an instance where not  
24 reading the entire portion is misleading.

25 I think it has to be clear that after

1 Q. Then later on it says, "I know Curtis  
2 Chong couldn't make it work, and I believe Steve  
3 Jacobson couldn't either." Who is Curtis Chong?

4 A. Curtis Chong is currently the deputy  
5 director at the Iowa Department for the Blind, a  
6 rehabilitation department serving blind and  
7 vision-impaired people in the state of Iowa.

8 He has significant technical background,  
9 used to be the Director of the International  
10 Braille and Technology Center. He is the  
11 president of the Computer Users Division of the  
12 National Federation of the Blind. That division  
13 name may not be exactly correct.

14 Curtis is a technological guru in the  
15 blindness field, whose knowledge of access  
16 software and access technology is absolutely  
17 credible.

18 Q. And who is Steve Jacobson?

19 A. Steve is a member of the NFB. He lives  
20 in Minnesota. Steve also has significant computer  
21 aptitude. I believe he's a computer engineer of  
22 some kind. I'm not as well acquainted with Steve.

23 Q. Have you ever exchanged e-mails with  
24 Mr. Jacobson?

25 A. Yes.

1 the statement, "I know when we first heard of  
2 the lawsuit, some members of NABS said, 'Hey,  
3 wait a minute. I tried Target and it worked  
4 fine,'" that the message continues, "but, as  
5 I understand it, when challenged to reproduce  
6 their success, they had problems; i.e., they  
7 failed."

8 Q. Okay. And then the sentence that comes  
9 after that, says, "As I understand it, one can go  
10 through all the checkout steps except the last, to  
11 make the purchase, which requires holding one's  
12 mouse over an icon or punching a button that  
13 screen readers do not detect."

14 Have you yourself ever had any problems  
15 using the checkout function on Target?

16 A. I never managed to get as far as  
17 checkout.

18 Q. Are you aware of other people's problems  
19 with -- specifically with the checkout function on  
20 Target.com?

21 A. Yes. I've been informed that other  
22 people have been unsuccessful in checking out  
23 because of the -- what I understand to be the  
24 graphic nature of it and the fact that it's not  
25 usable with the speech software.

1 Q. Have you exchanged e-mail with  
2 Mr. Jacobson on the subject of Target's --  
3 Target.com's accessibility?

4 A. Yes.

5 Q. And what did Mr. Jacobson have to say  
6 about the accessibility of the website?

7 MR. GOLDSTEIN: Objection to the extent  
8 that some of that had to do with  
9 communications to counsel in this case.

10 We have produced the paragraph of the  
11 Jacobson e-mail that is not attorney-client  
12 privilege, and -- but -- and you may,  
13 Mr. Frye, talk about that paragraph to the  
14 extent that counsel asks about it, but not  
15 otherwise.

16 A. And I'd have to hear that paragraph to  
17 remember our conversations. They were in excess  
18 of a year ago.

19 Q. Do you remember generally if it was --  
20 if Mr. Jacobson had good things to say about the  
21 website?

22 A. No. I remember that Mr. Jacobson had  
23 concerns about the website, but I don't remember  
24 specifically what he had to say. I'm happy to  
25 have you review that paragraph with me, and then

1 I'll be able to give you more detail about our  
2 exchange within what counsel has said I can talk  
3 to you.

4 Q. We'll get to that. Have you -- was that  
5 the only e-mail that you've ever exchanged with  
6 Mr. Jacobson?

7 MR. GOLDSTEIN: On the subject of  
8 Target?

9 Q. On the subject of Target's accessibility  
10 problems.

11 A. As far as I recall, that's all.

12 MR. KLESTOFF: Let's take a break, and  
13 I'll see if I have anything else.

14 THE WITNESS: Okey doke.

15 (Recess taken -- 11:22 a.m.)

16 (After recess -- 11:26 a.m.)

17 MR. KLESTOFF: Let's go back on the  
18 record. I'm going to mark another document  
19 as Frye Exhibit 5.

20 (Thereupon, Frye Exhibit Number 5 was  
21 marked.)

22 Q. And this is -- appears to be an e-mail  
23 chain between you, Mr. Frye, and someone named  
24 Chairman Mal.

25 MR. GOLDSTEIN: And, again, I lodge my

1 Q. And this is the only e-mail to that  
2 effect that you can recall?

3 A. It's the only one that I can recall,  
4 unless you produced another e-mail. I had, you  
5 know, exchanges with a variety of people, and,  
6 like I said, it's conceivable that others, mindful  
7 of the action underway, would have inquired out of  
8 curiosity's sake. But I don't recall anyone  
9 specifically.

10 Q. And then your response is -- it's on the  
11 same day, April 29, 2006?

12 A. I'm a timely responder.

13 Q. It says, "Thank you for your message.  
14 As far as I know, everybody is invited to contact  
15 the Disability Rights Advocates, our partners, to  
16 share their perspective on the website. I imagine  
17 that having the diverse views of blind people,  
18 from experts to beginners with adaptive  
19 technology, will prove useful.

20 "I encourage you to contact the firm and  
21 let them determine if your comments will be useful  
22 in this context. My best to Mark and Beau." And  
23 signed, "Best, Dan Frye."

24 Do you know if Mr. Graham ever contacted  
25 Disability Rights Advocates?

1 objection as to scope.

2 Q. And, first, can you tell me -- it's an  
3 April 26 -- or 29, 2006, e-mail with a subject of  
4 "Target" -- it says "Target suit." Can you tell  
5 me who Chairman Mal is?

6 A. He's a member of the National Federation  
7 of the Blind. His name is Malcolm Graham. He  
8 lives in Austin, Texas.

9 Q. And the original message, it says, "Dan,  
10 I reviewed the Target website but got nowhere. I  
11 wonder, however, should I contact the Disability  
12 Rights law firm? I'm quite new at JAWS with the  
13 Internet. Moreover, I really didn't want to  
14 purchase anything from them."

15 It says, "I hope you and Renae are well.  
16 Little Markee is chilling today, and Beau had his  
17 annual shots today."

18 A. Beau is a dog.

19 Q. To your knowledge -- or strike that.  
20 Has anyone else made these types of complaints,  
21 where people have had -- have tried accessing  
22 Target specifically to see if they could but  
23 without the intent to purchase anything?

24 A. Not to my knowledge, though they may  
25 have. But, I mean, not to my specific knowledge.

1 A. No.

2 Q. Since you received -- let's go back to  
3 Frye Exhibit 4, please. And then, since that  
4 March 31, 2006, e-mail -- strike that. Have  
5 you -- between March 31, 2006, the date of this  
6 e-mail, to the present, have you accessed  
7 Target.com?

8 A. At some point in the -- like I said,  
9 with the distance of time, I don't remember  
10 specifically when. But, as discussed, in the  
11 spring of last year I would have accessed  
12 Target.com to inquire about the XM satellite radio  
13 and subsequent to inquire about the registry at  
14 the store.

15 Q. And do you remember if that was after  
16 this e-mail or before?

17 A. I presume it was after. It was in the  
18 spring, and that's pretty early in the spring, so  
19 I presume it was after.

20 Q. Do you remember if it was after your  
21 April 13, 2006, message to David Andrews, which  
22 would be Exhibit 3?

23 A. I don't specifically remember, but  
24 probably or certainly in close proximity to those  
25 times.

1 MR. KLESTOFF: I think that's all I have  
 2 today, Mr. Frye. I appreciate your time.  
 3 THE WITNESS: It's my pleasure.  
 4 MR. GOLDSTEIN: I have no questions for  
 5 the witness.  
 6 Mr. Frye, you have the right to review  
 7 and make corrections to the transcript within  
 8 30 days after the delivery of the transcript  
 9 to you. While you can waive that right, I  
 10 would advise you to exercise that right.  
 11 THE WITNESS: I will exercise that  
 12 right.  
 13 (Whereupon, the deposition was concluded  
 14 at 11:35 o'clock a.m.)  
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 25

1  
 2 AL BETZ & ASSOCIATES, INC.  
 3 Administrative Offices  
 4 P.O. Box 665  
 5 Westminster, Maryland 21158  
 6 VOICE - (410)752-1733 FAX (410)875-2857  
 7 e-mail - productiondept@albetzreporting.com  
 8  
 9 DATE: July 2 2007  
 10 JOB NUMBER: NR256841  
 11 CASE CAPTION: NATIONAL FEDERATION OF THE BLIND V.  
 12 TARGET CORP.  
 13 COURT: UNITED STATES DISTRICT COURT FOR THE  
 14 NORTHERN DISTRICT OF CALIFORNIA  
 15 CASE NO. C06-01802 MHP  
 16 DEPONENT: DANIEL FRYE  
 17 DATE OF DEPOSITION: June 19, 2007  
 18 ATTORNEYS/FIRMS:  
 19 ATTORNEY NAME/FIRM  
 20 DANIEL F. GOLDSTEIN, ESQUIRE  
 21 MEGHAN SIDHU CAPEK, ESQUIRE  
 22  
 23 ALEXEI KLESTOFF, ESQUIRE  
 24 Morrison & Foerster, LLP  
 25

1 CERTIFICATE  
 2  
 3 STATE OF MARYLAND )  
 4 COUNTY OF CARROLL )  
 5  
 6 I, NANCY P. RICHMOND, Registered  
 7 Professional Reporter, do hereby certify that I  
 8 was authorized to and did stenographically report  
 9 the foregoing deposition of DANIEL FRYE; that a  
 10 review of the transcript was requested; and that  
 11 the transcript is a true record of my stenographic  
 12 notes.  
 13 I FURTHER CERTIFY that I am not a  
 14 relative, employee, attorney, or counsel of any of  
 15 the parties, nor am I a relative or employee of  
 16 any of the parties' attorney or counsel connected  
 17 with the action, nor am I financially interested  
 18 in the action.  
 19 Dated this 20th day of June, 2007.  
 20  
 21  
 22 \_\_\_\_\_  
 23 NANCY P. RICHMOND, RPR  
 24 and Notary Public  
 25

1 Dear Sir/Madam:  
 2  
 3 Bound herewith is the transcript of the  
 4 above-referenced deposition. Please read the  
 5 transcript and sign the errata pages. Any  
 6 additions or corrections should be listed on the  
 7 errata sheets provided. Please remove the signed,  
 8 completed errata sheets and return them to the  
 9 address listed above for processing.  
 10  
 11 If this process has not been completed  
 12 within (30) thirty days from the date of this  
 13 letter, we will assume that the right to read the  
 14 deposition has been waived. This is in accordance  
 15 with Rule 30(e) of the Federal Rules of Civil  
 16 Procedure and Rule 411 Section (a) of the Maryland  
 17 Rules of Procedure.  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25



1 READING & SIGNING PROCEDURE  
 2  
 3 The deposition of DANIEL FRYE, taken in  
 4 the matter, on the date, and at the time and place  
 5 set out on the title page hereof.  
 6 It was requested that the deposition be  
 7 taken by the reporter and that same be reduced to  
 8 typewritten form.  
 9 It was agreed by and between counsel and  
 10 the parties that the Deponent will read and sign  
 11 the transcript of said deposition.

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1	PAGE/LINE	CHANGE	REASON
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24	SIGNATURE		DATE:
25	DANIEL FRYE		

1 DEPOSITION ERRATA SHEET  
 2 RE: Al Betz & Associates, Inc.  
 3 File No.: NR256841  
 4 CASE CAPTION: NATIONAL FEDERATION OF THE BLIND V.  
 5 TARGET CORP.  
 6 DEPONENT: DANIEL FRYE  
 7 DEPOSITION DATE: June 19, 2007  
 8 I have read the entire transcript of my  
 9 Deposition taken in the above-captioned matter or  
 10 the same has been read to me. I request that the  
 11 changes noted on the following errata sheet be  
 12 entered upon the record for the reasons indicated.  
 13 I have signed my name to the Errata Sheet and  
 14 authorize you to attach it to the original  
 15 transcript.

16 PAGE/LINE CHANGE REASON  
 17 \_\_\_\_\_  
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 23 \_\_\_\_\_  
 24 SIGNATURE \_\_\_\_\_ DATE: \_\_\_\_\_  
 25 DANIEL FRYE

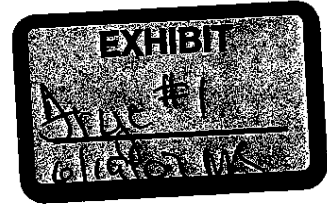
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S**

1 LAURENCE W. PARADIS (California Bar No. 122336)  
2 ROGER N. HELLER (California Bar No. 215348)  
3 DISABILITY RIGHTS ADVOCATES  
4 2001 Center Street, Third Floor  
5 Berkeley, California 94704  
6 Telephone: (510) 665-8644  
7 Facsimile: (510) 665-8511  
8 TTY: (510) 665-8716

9 JOSHUA KONECKY (California Bar No. 182897)  
10 RACHEL BRILL (California Bar No. 233294)  
11 SCHNEIDER & WALLACE  
12 180 Montgomery Street, Suite 2000  
13 San Francisco, CA 94104  
14 Telephone: (415) 421-7100  
15 Fax: (415) 421-7105  
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17 DANIEL F. GOLDSTEIN (*pro hac vice*)  
18 BROWN, GOLDSTEIN & LEVY, LLP  
19 120 E. Baltimore St., Suite 1700  
20 Baltimore, MD 21202  
21 Telephone: (410) 962-1030  
22 Fax: (410) 385-0869

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900 S. Crouse Ave.  
Crouse-Hinds Hall, Suite 300  
Syracuse, NY 13244-2130  
Telephone: (315) 443-9703  
Fax: (315) 443-9725



23 UNITED STATES DISTRICT COURT  
24 NORTHERN DISTRICT OF CALIFORNIA  
25 SAN FRANCISCO DIVISION

26 NATIONAL FEDERATION OF THE  
27 BLIND, the NATIONAL FEDERATION OF  
28 THE BLIND OF CALIFORNIA, on behalf of  
their members, and Bruce F. Sexton, on behalf  
of himself and all others similarly situated,

Plaintiffs,

v.

TARGET CORPORATION,  
Defendant.

Case No.: C 06-01802 MHP

CLASS ACTION

DECLARATION OF DANIEL FRYE IN  
SUPPORT OF PLAINTIFFS' MOTION  
FOR CLASS CERTIFICATION

DISABILITY RIGHTS A. OCATES  
2001 CENTER STREET, THIRD FLOOR  
BERKELEY, CALIFORNIA 94704-1204  
510.665.8644

DISABILITY RIGHTS ADVOCATES  
2001 CENTER STREET, THIRD FLOOR  
BERKELEY, CALIFORNIA 94704-1204  
510.665.8644

1 I, Daniel B. Frye, declare as follows:

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

4 2. My name is Daniel B. Frye.

5 3. I live in Baltimore, Maryland.

6 4. I am the Manager of Affiliate Action Advocacy and Training for the National  
7 Federation of the Blind.

8 5. I have been a member of the National Federation of the Blind since 1982.

9 6. I am legally blind and use screen-access software to access the Internet.

10 7. I regularly use the Internet in connection with in-store shopping. At least twice a  
11 month, I visit websites for local stores, such as Wal-Mart and Safeway, to preview their  
12 products, compare prices, and determine what I want to buy before I go to the store.

13 8. For the most part, I do not enjoy shopping because I find the crowds and waiting  
14 around bothersome. Using a store's website to select what I want in advance streamlines the  
15 shopping process so I can spend my time doing other things.

16 9. Although I could buy products directly online, I often select what I want from store  
17 websites then purchase the item at the store. I do so because I prefer to get my hands on the  
18 product before I make a final decision of whether to buy it. Also, sometimes I want to buy an  
19 item right away.

20 10. I shop at Target stores at least once every three months. Target offers a great  
21 selection of household products and furniture at reasonable prices. Recently, I bought a patio set  
22 from Target.

23 11. About one year ago, I tried to look for products on Target.com, but was unable to do  
24 so because the website was inaccessible. On that occasion, I wanted to buy a portable XM-  
25 satellite radio receiver. I planned to select a receiver online then go to the store so that I could  
26 feel the design, button locations, etc., before making the final decision to purchase it. I had a  
27 general idea of what I wanted and went to three store websites to see what receivers they sold,

28

DISABILITY RIGHTS ADVOCATES  
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BERKELEY, CALIFORNIA 94704-1204  
510.665.8644

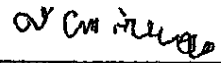
1 how much they cost, and learn more about their features. I was easily able to find the  
2 information I wanted at Walmart.com and Bestbuy.com. When I went to Target.com, however,  
3 the website was impossible to navigate with a screen reader. I could not even determine if  
4 Target sold XM receivers. I became so frustrated that I abandoned my search at Target  
5 altogether. Instead, I selected the receiver I liked best from Wal-Mart.com then purchased it at a  
6 Wal-Mart store. If Target.com had been accessible, and offered the type of receiver I wanted at a  
7 competitive price, I would have purchased it from a Target store.

8 12. My experience using Target.com was so frustrating that I have not tried to use it to  
9 find product information again. As a result, I do not make as many purchases from Target as I  
10 would if its website were accessible.

11 13. If Target.com were accessible, I would also use Target's gift registry. Several friends  
12 of mine have registered at Target for weddings and baby showers. Last spring, some friends  
13 registered at Target and Babies "R" Us for their baby shower. I tried to use Target's online  
14 registry to select a shower gift. I was unable to access the online registry using a screen reader  
15 and, again, became so frustrated that I gave up. I selected a gift from the Babies "R" Us online  
16 registry instead and my wife purchased it from the store.

17 14. I declare under penalty of perjury under the laws of the United States of America that  
18 the foregoing is true and correct.

19 Executed this 23<sup>rd</sup> day of May, 2007, at Baltimore, MD,

20  
21   
22 \_\_\_\_\_  
23 DANIEL B. FRYE

## [nfb-db] Assistance Sought with Target Corporation Lawsuit

David Andrews [dandrews at visi.com](mailto:dandrews@visi.com)

Fri Mar 31 22:30:43 CST 2006

- Previous message: [\[nfb-db\] Fwd: PAC Mate 4.0 Released!](#)
- Messages sorted by: [\[ date \]](#) [\[ thread \]](#) [\[ subject \]](#) [\[ author \]](#)

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>From Dan Frye:

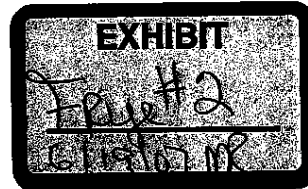
As you may know, the NFB has filed a lawsuit against Target Corporation for the inaccessibility of its website <http://www.target.com>.

If you have encountered access barriers on Target.com, and are willing to provide testimony for use in the lawsuit, please contact Brett Kaufman at Disability Rights Advocates using the following contact information as soon as possible.

Brett Kaufman  
Law Clerk  
Disability Rights Advocates  
510-665-8644  
[bkaufman at dralegal.org](mailto:bkaufman@dralegal.org)

Should you have additional questions about how you can best be of assistance or provide support for this initiative, please contact me directly at my contact details provided below for a briefing before communicating with the staff at Disability Rights Advocates. Thank you for your cooperation.

Daniel B. Frye  
Manager of Affiliate Action Advocacy and Training  
National Federation of the Blind  
Department of Affiliate Action  
1800 Johnson Street  
Baltimore, Maryland 21230  
Telephone: (410) 659-9314 Ext. 2208  
Cell: (410) 241-7006  
Fax: (410) 659-6893  
E-Mail: [dfrye at nfb.org](mailto:dfrye@nfb.org)  
Web Address:  
[www.nfb.org](http://www.nfb.org)



Voice of the Nation's Blind"

- 
- Previous message: [\[nfb-db\] Fwd: PAC Mate 4.0 Released!](#)
  - Messages sorted by: [\[ date \]](#) [\[ thread \]](#) [\[ subject \]](#) [\[ author \]](#)

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[More information about the nfb-db mailing list](#)

## [nfb-db] Assisting with Target Lawsuit Easier Than Ever

David Andrews [dandrews at visi.com](mailto:dandrews@visi.com)

Thu Apr 13 22:35:36 CDT 2006

- Previous message: [\[nfb-db\] Fwd: Jernigan Institute News - April 13, 2006](#)
- Next message: [\[nfb-db\] President Maurer on Thru Our Eyes Radio Show](#)
- Messages sorted by: [\[ date \]](#) [\[ thread \]](#) [\[ subject \]](#) [\[ author \]](#)

---

Dan Frye has asked me to post the following: it is important.

David Andrews

As part of the Federation's legal action against Target's web operations, we are in need of blind people to examine the website [target.com](http://target.com), and offer their assessment, particularly as it relates to any access problems experienced, as soon as possible. Initially, I thought that the officials at Disability Rights

Advocates wanted people to draft their own declarations. As it turns out, however, they only want people to review the site, and then call and verbally articulate your experiences to them. They will then draft your statement for you to review and sign. If any of you have not done this, please take the time to review the website, and call the law clerk assigned to this case at Disability Rights Advocates, our partner in prosecuting this action.

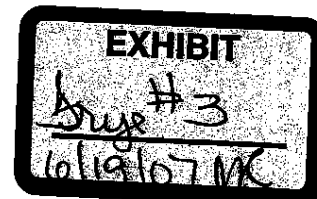
Please contact, as soon as possible:

Brett Kaufman  
Law Clerk  
Disability Rights Advocates  
510-665-8644  
[bkaufman at dralegal.org](mailto:bkaufman@dralegal.org)

Finally, please simply let me know when you've made contact with representatives at Disability Rights Advocates so that I can track the number of people that have been referred to them and who have actually filed a statement. We need at least 30 people to make statements, and if you will keep me informed, I'll be best able to monitor our progress.

Thank you. Please contact me if you have any questions.

Daniel B. Frye  
Manager of Affiliate Action Advocacy and Training  
National Federation of the Blind  
Department of Affiliate Action  
1800 Johnson Street  
Baltimore, Maryland 21230  
Telephone: (410) 659-9314 Ext. 2208  
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Fax: (410) 659-6893  
E-Mail: [dfrye at nfb.org](mailto:dfrye@nfb.org)  
Web Address:  
[www.nfb.org](http://www.nfb.org)



From: Mike Freeman [k7uij@panix.com]  
Sent: Friday, March 31, 2006 4:16 PM  
To: Frye, Dan  
Subject: RE: Target

Hi, Dan.

I can't honestly give you an answer. If Target truly uses the same web engine as Amazon, I don't see accessibility as a problem; although Amazon can be a bit wordy and awkward to use (and I mean the general site, not the stripped-down access site here), it's doable. If you know what words to look for, you can browse and purchase items without problems. But I haven't tried it with Target to see. I know when we first heard of the lawsuit, some members of NABS said: "Hey wait a minute! I tried Target and it worked fine!". But, as I understand it, when challenged to reproduce their success, they had problems, i.e., they failed. AS I understand it, one can go through all the checkout steps except the last -- to make the purchase -- which requires holding one's mouse over an icon or punching a button that screen-readers do not detect. I know Curtis Chong couldn't make it work and I believe Steve Jacobson couldn't, either. But some others still wonder if we aren't cruisin' for a bruisin'!k As I say, I don't really know as I haven't used the site. There's a Target close enough to me that I just go in there and buy stuff!

When that dude sued Southwest Airlines a few years ago, alleging their site to be inaccessible, I was thankful that we (NFB) didn't join in -- not that we were asked -- because I myself \*had\* used the site to purchase tickets to a miniconvention in Spokane a few days before I read of the suit. The site was awkward -- not inaccessible. I will say, though, that even though the guy lost the suit (as he should have), Southwest did do some redesign of the site so that it was far easier to use with access technology. I am finding, incidentally, that sites such as those of Alaska Air and Horizon, while still useable, are becoming more awkward to figure out -- more tables, less narrative description. Apparently, sight impairs the ability to read and process the written word. (har)

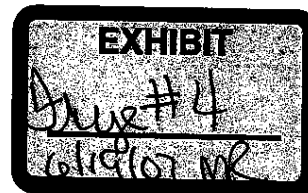
I don't suppose my musings helped much, for which I am sorry. (smile)

Mike

On Fri, 31 Mar 2006, Frye, Dan wrote:

> Mike:  
> Smile!! I have just been brought in the loop today. Is this (access to the Target website) really an issue from your perspective? Your feedback would be useful to have.  
>  
> Best,  
>  
> Dan Frye

REDACTED





**Unknown**

---

**From:** Dan Frye [dfrye@nfb.org]  
**Sent:** Saturday, April 29, 2006 8:43 PM  
**To:** Chairman Mal; Frye, Dan  
**Cc:** markee.noble@earthlink.net  
**Subject:** re: Target suit

Malcolm:

Thank you for your message. As far as I know, everybody is invited to contact the Disability Rights Advocates organization, our partners, to share their perspective on the website. I imagine that having the diverse views of blind people, from experts to beginners with adaptive technology, will prove useful. I encourage you to contact the firm and let them determine if your comments will be useful in this context. My best to Mark and Beau.

With Kind Regards,

Dan Frye

> ----- Original Message -----

>From: "Chairman Mal" <chairmanmal@earthlink.net>  
>To: "Frye, Dan" <DFrye@nfb.org>  
>Date: Sat, 29 Apr 2006 14:35:43 -0500  
>Subject: Target suit

>Dan,

>I reviewed the Target web-site but got nowhere. I wonder, however, should I contact the Disability Rights law firm? I am quite new at JAWS with the Internet. Moreover, I really didn't want to purchase anything from them. I hope you and Renee are well. Little Markee is chilling today, and Beau had his annual shots this morning.

>Malcolm

