

# **EXHIBIT 3.5**

1 MR. PLUNKETT: Objection, assumes facts.

2 THE WITNESS: Not that I'm aware of.

3 BY MR. KONECKY:

4 Q. Are you aware of any costs or burdens that  
5 would make making the online forms accessible to blind  
6 people either prohibitive or undesirable from Target's  
7 point of view?

8 MR. PLUNKETT: Objection, calls for  
9 speculation, assumes facts, lacks foundation.

10 THE WITNESS: I don't know of any.

11 BY MR. KONECKY:

12 Q. And then the navigation issues with respect to  
13 the keyboards, but you talked about in the context of  
14 navigation forms and the product description page, was  
15 there anything in the Amazon document at all that  
16 indicated that allowing blind users to navigate through  
17 Target.com via the keyboard would be undesirable or  
18 prohibitive from a cost or administrative perspective?

19 MR. PLUNKETT: Objection, assumes facts.

20 THE WITNESS: There was nothing in the  
21 document.

22 BY MR. KONECKY:

23 Q. And are you aware of any such costs or burdens  
24 that would prohibit or make undesirable accessibilities  
25 for blind people by allowing them to navigate through the

1 site by using the keyboard?

2 MR. PLUNKETT: Objection, speculation,  
3 assumes facts, lacks foundation.

4 THE WITNESS: I don't know of any.

5 BY MR. KONECKY:

6 Q. Do you know who at Amazon are the point people  
7 that deal with -- that have been dealing with the issues  
8 raised or contained within this document that you  
9 testified about?

10 MR. PLUNKETT: Objection, lacks  
11 foundation.

12 THE WITNESS: I don't know who the  
13 person is. I don't recall who it is.

14 BY MR. KONECKY:

15 Q. First name?

16 A. No, I don't know.

17 Q. Who else from Target has been involved in the  
18 review of this document that you are aware of?

19 A. Todd Nemoir who I mentioned earlier, Deb  
20 Flaherty.

21 Q. Did you mention that person earlier too?

22 A. No, I did not.

23 Q. Who is that?

24 A. Deb Flaherty works for Kelly Spychalla.

25 Q. Excuse me?

1 Q. Of 2006?

2 A. Yes.

3 Q. About a month ago, month and a half, two  
4 months ago?

5 A. It might have been April. But early May.

6 Q. Early May or late April of 2006?

7 A. I believe so, yes.

8 Q. Other than the Target's Accessibilities  
9 Guideline that was put in Target in late April or early  
10 May of 2006 and this document from Amazon that we  
11 discussed and that you reviewed two to three weeks ago, is  
12 there any other effort that you are aware of with respect  
13 to making Target.com accessible to blind individuals?

14 MR. PLUNKETT: Excluding in your answer  
15 anything you've learned from attorneys.

16 THE WITNESS: No, there's nothing I'm  
17 aware of.

18 BY MR. KONECKY:

19 Q. So no projects in that regard that you've ever  
20 participated with?

21 MR. PLUNKETT: Same instruction.

22 THE WITNESS: Beyond what I mentioned?

23 Yes.

24 BY MR. KONECKY:

25 Q. All right. The Target Accessibilities

1 THE WITNESS: None that I'm aware of.

2 BY MR. KONECKY:

3 Q. What particular guidelines was SSB looking at  
4 when they were making their comments with respect to the  
5 structure of documentation?

6 A. They were looking at Section 508 and WCAG  
7 standards?

8 Q. Are those guidelines which Target is  
9 contemplating using?

10 MR. PLUNKETT: Objection, calls for  
11 speculation.

12 THE WITNESS: We are using those to  
13 inform our guidelines.

14 BY MR. KONECKY:

15 Q. Are there any particular aspects of the  
16 Section 508 guidelines which are impracticable or cost  
17 prohibitive or administratively burdensome for Target?

18 MR. PLUNKETT: Objection, calls for  
19 speculation.

20 THE WITNESS: I don't know. I don't  
21 know of any more.

22 BY MR. KONECKY:

23 Q. The WCAG guidelines, I assume that's the  
24 accessibility guidelines from the worldwide web  
25 consortium?

1 A. Yes.

2 Q. Are there any provisions in those guidelines  
3 which would be or create administrative or financial  
4 burdens for Target that would make it impractical or  
5 undesirable to implement?

6 MR. PLUNKETT: Objection, calls for  
7 speculation. Lacks foundation.

8 THE WITNESS: I don't -- I don't know of  
9 any.

10 BY MR. KONECKY:

11 Q. Are there any specific changes to either the  
12 508 or WCAG guidelines that Target has begun to draft or  
13 implement? In other words -- strike that.

14 Are there any -- you said before that you  
15 would be basing your guidelines on the 508 and WCAG  
16 guidelines. Are there any particular deviations from the  
17 guidelines that Target is completing?

18 MR. PLUNKETT: Objection,  
19 mischaracterizes testimony, calls for speculation, vague.

20 THE WITNESS: I said we were using those  
21 to inform our guidelines. I don't know of any substantive  
22 changes to those guidelines we are making or considering  
23 at this point.

24 BY MR. KONECKY:

25 Q. Okay. Is there any projected date that Target

1 A. Group manager is higher than a manager, yes.

2 Q. Do you know the extent to which Target.com is  
3 accessible to blind users today?

4 MR. PLUNKETT: Objection, vague, lacks  
5 foundation.

6 THE WITNESS: No, I have no knowledge  
7 about that.

8 BY MR. KONECKY:

9 Q. Do you know whether today any alt tag coding  
10 is provided?

11 MR. PLUNKETT: Objection, lacks  
12 foundation.

13 THE WITNESS: I believe there is some,  
14 but again, not consistent.

15 BY MR. KONECKY:

16 Q. Are you familiar with the checkout button on  
17 the Target.com website?

18 A. Yes, I am.

19 Q. Do you know if any work has been done to that  
20 in the past year with respect to accessibilities for blind  
21 people?

22 A. I don't know if anything has been done or not.

23 Q. Is that anything that has been addressed or  
24 talked about either in a document or verbally or e-mail or  
25 otherwise, other than your conversations with attorneys?

1 A. Generally they're kept on our network drive or  
2 our Share Point. It's a document management system.

3 Q. Online?

4 A. Yes.

5 Q. Back to that first issue, are you aware of any  
6 policies of Target with respect to providing disability  
7 access?

8 A. I'm not aware of any specific policies, no.

9 Q. Are there any documents that describe or  
10 reflect the management responsibilities for Target.com?

11 MR. PLUNKETT: Just object that this  
12 line of questioning is beyond the scope of the agreement  
13 to conduct this deposition.

14 MR. KONECKY: I'm almost done.

15 MR. PLUNKETT: Okay.

16 THE WITNESS: Nothing I would  
17 characterize as management responsibilities, no.

18 BY MR. KONECKY:

19 Q. What about organizational tree or decision  
20 making charts?

21 A. I've seen an organizational chart of  
22 Interactive Marketing, but generally Target doesn't like  
23 organizational charts for retention reasons.

24 Q. What do you mean?

25 A. Recruiter can get ahold of them and start



1 A. Works for Kelly Spychalla.

2 Q. Which department is that again?

3 A. That's part of Target.com.

4 Q. Okay.

5 A. David Flemming is someone who works on my  
6 team.

7 Q. Anybody else?

8 A. I can't remember who else would have been  
9 involved.

10 Q. Anyone else?

11 A. I don't recall anything else.

12 Q. Are there any next steps to review in terms of  
13 whether these things are going to be implemented or not?

14 A. I don't know what they are beyond what I've  
15 discussed with my attorneys.

16 Q. Are you aware of any efforts to address access  
17 for blind or vision disabled people to Target.com, other  
18 than this document from Amazon?

19 A. I'm aware of a team that is looking at the  
20 standards that are available regarding accessibility and  
21 how Target may going forward implement those standards.

22 Q. Does this team have a name?

23 A. Target Accessibility Guidelines.

24 Q. When was this team created?

25 A. I believe it was May.

1 Q. Of 2006?

2 A. Yes.

3 Q. About a month ago, month and a half, two  
4 months ago?

5 A. It might have been April. But early May.

6 Q. Early May or late April of 2006?

7 A. I believe so, yes.

8 Q. Other than the Target's Accessibilities  
9 Guideline that was put in Target in late April or early  
10 May of 2006 and this document from Amazon that we  
11 discussed and that you reviewed two to three weeks ago, is  
12 there any other effort that you are aware of with respect  
13 to making Target.com accessible to blind individuals?

14 MR. PLUNKETT: Excluding in your answer  
15 anything you've learned from attorneys.

16 THE WITNESS: No, there's nothing I'm  
17 aware of.

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19 Q. So no projects in that regard that you've ever  
20 participated with?

21 MR. PLUNKETT: Same instruction.

22 THE WITNESS: Beyond what I mentioned?

23 Yes.

24 BY MR. KONECKY:

25 Q. All right. The Target Accessibilities

1 Q. Independent or part of a different company?

2 A. I believe he's independent.

3 Q. Has Target ever obtained any experts in  
4 accessible web design to either review or make  
5 recommendations with respect to its website?

6 A. We have worked with a company called SSB.

7 Q. And what is SSB for the record?

8 A. They're a consulting company that works  
9 primarily with the government around accessibility.

10 Q. And when did you start working with them?

11 A. I started working with them at the time the  
12 team started.

13 Q. Way in April, early May of 2006?

14 A. Yes.

15 Q. Have you also been working with them with  
16 respect to this litigation?

17 A. No, I have not.

18 Q. Do you know whether anybody from Target has  
19 worked with SSB consulting company prior to April or May  
20 of 2006?

21 A. I only know what my attorneys have told me  
22 with regards to that.

23 Q. Other than your conversations with your  
24 attorneys in this litigation, you are not aware of anybody  
25 at Target consulting with any other experts from SSB or

1 otherwise on web access issues prior to April or May of  
2 2006; is that correct?

3 A. Yeah, I'm not aware of, outside of what I've  
4 been told by attorneys.

5 Q. Has SSB made any recommendations?

6 A. As far as?

7 Q. As far as web design or applications or  
8 anything else that might make the site more accessible to  
9 blind users?

10 MR. PLUNKETT: Objection, assumes facts,  
11 lacks foundation.

12 THE WITNESS: They've made some  
13 recommendations around process, mostly for their own  
14 business benefit. And some around the structure of  
15 document tags.

16 BY MR. KONECKY:

17 Q. What particular recommendations around  
18 process?

19 A. Basically to use their services more.

20 Q. And which particular services?

21 A. Consulting and testing.

22 Q. With respect to web access or something else?

23 A. No, with regards to web access.

24 Q. And are you going to use their services going  
25 forward or not?

1 THE WITNESS: None that I'm aware of.

2 BY MR. KONECKY:

3 Q. What particular guidelines was SSB looking at  
4 when they were making their comments with respect to the  
5 structure of documentation?

6 A. They were looking at Section 508 and WCAG  
7 standards?

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9 contemplating using?

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11 speculation.

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16 Section 508 guidelines which are impracticable or cost  
17 prohibitive or administratively burdensome for Target?

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19 speculation.

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21 know of any more.

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24 accessibility guidelines from the worldwide web  
25 consortium?

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3 which would be or create administrative or financial  
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5 undesirable to implement?

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7 speculation. Lacks foundation.

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9 any.

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12 508 or WCAG guidelines that Target has begun to draft or  
13 implement? In other words -- strike that.

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15 would be basing your guidelines on the 508 and WCAG  
16 guidelines. Are there any particular deviations from the  
17 guidelines that Target is completing?

18 MR. PLUNKETT: Objection,  
19 mischaracterizes testimony, calls for speculation, vague.

20 THE WITNESS: I said we were using those  
21 to inform our guidelines. I don't know of any substantive  
22 changes to those guidelines we are making or considering  
23 at this point.

24 BY MR. KONECKY:

25 Q. Okay. Is there any projected date that Target

1 has at which point it will be able to implement  
2 accessibility guidelines on Target.com?

3 MR. PLUNKETT: Objection, lacks  
4 foundation, assumes facts.

5 THE WITNESS: No, there is no date at  
6 this point.

7 BY MR. KONECKY:

8 Q. Do you have any estimate about how quickly it  
9 could be done?

10 MR. PLUNKETT: Objection, vague, lacks  
11 foundation, assumes facts.

12 THE WITNESS: No, I do not.

13 BY MR. KONECKY:

14 Q. Less than six months?

15 MR. PLUNKETT: Same objections.

16 THE WITNESS: I don't know.

17 BY MR. KONECKY:

18 Q. Less than three months?

19 MR. PLUNKETT: Same objections.

20 THE WITNESS: I don't know.

21 BY MR. KONECKY:

22 Q. So other than the Amazon document you reviewed  
23 two to three weeks ago, the guidelines team began in late  
24 April, early May of 2006, and the SSB consulting which at  
25 least you are aware of not starting until April or May of

1 2006, is there any other work with either outside  
2 consultants or experts or internal at Target other than  
3 your conversations with counsel that you are aware of that  
4 has addressed accessibility on Target.com for blind  
5 people?

6 MR. PLUNKETT: Objection, calls for  
7 speculation.

8 THE WITNESS: No, I'm not aware of any.

9 MR. KONECKY: Why don't we take another  
10 break.

11 (At this time a brief recess was taken from  
12 4:52 p.m. to 4:59 p.m.)

13 BY MR. KONECKY:

14 Q. How often do you navigate through Target.com?

15 A. Personally?

16 Q. Yes.

17 A. Once a week.

18 Q. How long have you been doing that for?

19 A. About a year and a half. Since I started this  
20 position.

21 Q. For what purposes? For your job or personal  
22 or both?

23 A. My job.

24 Q. What are you doing when you navigate through?

25 A. Generally I'm checking sites that I'm --



1 experience with respect to the issue of making a website  
2 accessible to people who have vision disabilities?

3 MR. PLUNKETT: Objection, calls for  
4 speculation.

5 THE WITNESS: I am not aware of anyone.

6 BY MR. KONECKY:

7 Q. Are you aware of it ever being a job  
8 requirement at Target for any particular job that the  
9 person who gets the job has training or experience or some  
10 level of expertise in ensuring that a website is  
11 accessible to blind users or users with other visual  
12 disabilities?

13 MR. PLUNKETT: Objection, calls for  
14 speculation, vague, lacks foundation.

15 THE WITNESS: I am not aware of a job  
16 description.

17 BY MR. KONECKY:

18 Q. That would even mention that, right?

19 MR. PLUNKETT: Same --

20 THE WITNESS: I don't know.

21 MR. PLUNKETT: You should wait for me to  
22 object. Same objections.

23 BY MR. KONECKY:

24 Q. You have never seen personally or heard of  
25 personally any job criteria, job description for any job

1 at Target which would include either as a requirement or  
2 desired characteristic the ability or experience or  
3 expertise in making a website accessible to blind users;  
4 is that correct?

5 MR. PLUNKETT: Objection, vague, lacks  
6 foundation.

7 THE WITNESS: I'm not aware of any.

8 BY MR. KONECKY:

9 Q. What is the purpose of Target.com?

10 MR. PLUNKETT: Objection, vague. Calls  
11 for speculation.

12 THE WITNESS: What do you mean by  
13 purpose?

14 BY MR. KONECKY:

15 Q. Well, in paragraph two of your declaration,  
16 you say Target.com is a separate merchandising channel  
17 through which Target Corporation sells goods and services  
18 through a website located at www.Target.com. Do you see  
19 where I am?

20 A. Uh-huh.

21 Q. So I think I understand that you're describing  
22 it as a separate merchandising channel, but before I get  
23 there, I'm wondering what your understanding of Target.com  
24 is to begin with? What's its function? What's its  
25 purpose for Target?

1 industry to use the Internet to provide users with the  
2 location of your stores if you have physical.

3 BY MR. KONECKY:

4 Q. Is it a convenience for the user? Is that  
5 part of the reason why it's done?

6 MR. PLUNKETT: Objection, calls for  
7 speculation.

8 THE WITNESS: It's another -- it's  
9 another channel providing information. Same information  
10 you can get in the phone book, call. Or you can call the  
11 1-800 number.

12 BY MR. KONECKY:

13 Q. Okay. Do you know whether or not Target  
14 provides the store locator function on Target.com in order  
15 to make it easier for customers to find convenient  
16 location to shop?

17 MR. PLUNKETT: Objection, calls for  
18 speculation, asked and answered.

19 THE WITNESS: I believe it is a service  
20 that Target Corporation provides to our users.

21 BY MR. KONECKY:

22 Q. And do you think that it is a service that  
23 Target Corporation provides to your users which can help  
24 your users to find or access one or more of the physical  
25 stores?

1 MR. PLUNKETT: Objection, calls for  
2 speculation, asked and answered.

3 THE WITNESS: I believe I've answered  
4 that that, yes, it's used to locate stores.

5 BY MR. KONECKY:

6 Q. In paragraph three of your declaration, you  
7 say that Target.com's website is an amalgam of different  
8 web pages -- by the way I'm going to stop there. How many  
9 different web pages?

10 A. I don't know.

11 Q. Do you have a range?

12 A. No, I do not.

13 Q. A lot?

14 A. What's a lot?

15 Q. Hundreds.

16 A. I really don't know.

17 Q. Target.com website is an amalgam of different  
18 web page that provide, among other things, information  
19 about Target.com's products and services, and the  
20 opportunity for guests to purchase merchandise online  
21 without visiting any of Target Corporation's brick and  
22 mortar retail stores.

23 I've read your declaration accurately up until  
24 that point, right?

25 A. Yes.

1 Q. Okay. What information does Target.com  
2 provide about the products?

3 A. It provides product descriptions and online  
4 pricing.

5 Q. Anything else?

6 A. It provides shipping information.

7 Q. Anything else?

8 A. Not that I can think of.

9 Q. And the products that it provides this  
10 information for, these are the products that are sold  
11 through Target.com; is that right?

12 A. Yes, they are purchased by users using  
13 Target's dot com, yes.

14 Q. Are some of these products also sold else  
15 where?

16 MR. PLUNKETT: Objection, vague, calls  
17 for speculation.

18 BY MR. KONECKY:

19 Q. Such as in Target stores?

20 MR. PLUNKETT: Same objection.

21 THE WITNESS: These would be sold at  
22 Target stores, some of them would be sold on other  
23 Internet sites, other physical stores.

24 BY MR. KONECKY:

25 Q. Am I correct that some of the products which

1 you are referring to here in your declaration as  
2 Target.com's products are products that are sold both  
3 through Target.com, but can also be bought at the Target  
4 store; is that correct?

5 MR. PLUNKETT: Objection, vague, lacks  
6 foundation.

7 THE WITNESS: Yes, they are products  
8 that are available both online and at Target stores.

9 BY MR. KONECKY:

10 Q. And those products are being described on  
11 Target.com; isn't that right?

12 MR. PLUNKETT: Objection, vague.

13 THE WITNESS: The product descriptions  
14 appear on Target.com.

15 BY MR. KONECKY:

16 Q. Tell me about the product description? How is  
17 the product description on Target.com?

18 MR. PLUNKETT: Objection, vague, lacks  
19 foundation.

20 THE WITNESS: You're really kind of  
21 moving outside of my area. Those would be questions that  
22 Trish would be able to answer for you.

23 BY MR. KONECKY:

24 Q. You also say that Target.com provides  
25 information about services. Which services are you

1 that link to or deal with the photo center?

2 A. No, I haven't.

3 Q. Does this refresh your recollection at all as  
4 to how the photo center works?

5 A. Yes.

6 Q. Do you know on the bottom of the first page  
7 here where it says print, it says, quote, order digital  
8 prints online and then up at your neighborhood Target in  
9 as little as one hour, end quote. I think there's a  
10 typo --

11 A. Typo.

12 Q. -- in the website. But am I correct to  
13 understand that one of the services provided by Target.com  
14 is that you can order digital prints on the website and  
15 then actually pick them up or have somebody else pick up  
16 the prints at the physical store in your location; is that  
17 right?

18 A. This is a service provided by a third-party  
19 vendor which Target Corporation uses to allow guests to  
20 print their -- send their photos to the store to be picked  
21 up.

22 Q. Am I correct that it provides a link between  
23 the guest, the website, and the store?

24 MR. PLUNKETT: Could you read that  
25 question back?

1 (Whereupon, the requested portion of the  
2 record was read aloud by the Court  
3 Reporter.)

4 MR. PLUNKETT: Objection, vague.

5 THE WITNESS: I can say it allows  
6 someone who goes online to perform a function that would  
7 result in an action of the store, yes.

8 BY MR. KONECKY:

9 Q. When you were referring before to photo  
10 processing in store, what were you referring to  
11 specifically?

12 A. That's the second part, which is just the  
13 in-store, traditional photo processing.

14 Q. Are you pointing to something specific on the  
15 exhibit?

16 A. Where it says in store. Look at the bottom of  
17 the first page.

18 Q. Bottom of the first page, I see, which then  
19 carries on to the second page.

20 So what does Target -- I take it that  
21 Target.com, for one, provides information to consumers  
22 about the in-store photo processing that occurs at the  
23 Target stores, is that right so far?

24 MR. PLUNKETT: Objection, document  
25 speaks for itself.



1 THE WITNESS: It provides the  
2 information in the document about what is available.

3 BY MR. KONECKY:

4 Q. What is available at the store itself?

5 A. Yes.

6 MR. PLUNKETT: Same objection.

7 THE WITNESS: Yes.

8 BY MR. KONECKY:

9 Q. Anything else in particular that you are  
10 referring to or you were referring to when you were  
11 talking about the photo processing in store than what we  
12 just talked about, about this in-store part of the web  
13 page?

14 A. No. That was it.

15 Q. All right. Gift registry, what are you  
16 referring to there?

17 A. Target Corporation has a wedding and  
18 children's registry, baby registry that provides for our  
19 guests.

20 Q. And how does Target.com interface with that?

21 MR. PLUNKETT: Objection, vague. Calls  
22 for speculation.

23 THE WITNESS: There's an online  
24 component for viewing -- creating and viewing registries  
25 and purchasing, and then there's an in-store component.

1 BY MR. KONECKY:

2 Q. And how is the online component linked up with  
3 or interacting with in-store? Can you describe that?

4 A. You can create a registry in a store and then  
5 view it online. You can make purchases online that will  
6 then be reflected in the registry.

---

7 Q. At the store?

8 A. Or online.

9 Q. Okay. Can you make purchases online for  
10 either wedding or baby registry and then have people come  
11 up and browse for and purchase the items at the store?

12 THE WITNESS: Can you read that back to  
13 me, please?

14 (Whereupon, the requested portion of the  
15 record was read aloud by the Court  
16 Reporter.)

17 MR. PLUNKETT: Objection, vague.

18 THE WITNESS: Well, you can create a  
19 registry online or make purchases and then people can view  
20 those in the store in the kiosks.

21 BY MR. KONECKY:

22 Q. And they can also purchase the products in the  
23 store that have been created -- that are on the registry  
24 that was created online?

25 A. If they are available, yes.