

EXHIBIT 2

1 ROBERT A. NAEVE (CA SBN 106095)
RNaeve@mofo.com
2 MORRISON & FOERSTER LLP
1990 MacArthur Blvd.
3 Irvine, California 92612-2445
Telephone: (949) 251-7500
4 Facsimile: (949) 251-0900

5 DAVID F. MCDOWELL (CA SBN 125806)
SARVENAZ BAHAR (CA SBN 171556)
6 MICHAEL J. BOSTROM (CA SBN 211778)
DMcDowell@mofo.com
7 SBahar@mofo.com
MBostrom@mofo.com
8 MORRISON & FOERSTER LLP
555 West Fifth Street, Suite 3500
9 Los Angeles, California 90013-1024
Telephone: (213) 892-5200
10 Facsimile: (213) 892-5454

11 STUART C. PLUNKETT (CA SBN 187971)
SPlunkett@mofo.com
12 MORRISON & FOERSTER LLP
425 Market Street
13 San Francisco, California 94105-2482
Telephone: (415) 268-7000
14 Facsimile: (415) 268-7522

15 Attorneys for Defendant
16 TARGET CORPORATION

17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA
19 SAN FRANCISCO DIVISION
20

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

24 Plaintiffs,

25 v.

26 TARGET CORPORATION,

27 Defendant.
28

Case No. C06-01802 MHP

**DECLARATION OF MICHAEL J.
BOSTROM IN SUPPORT OF
TARGET CORPORATION'S
SURREPLY BRIEF IN SUPPORT
OF OPPOSITION TO PLAINTIFF'S
MOTION FOR PRELIMINARY
INJUNCTION**

Date: July 24, 2006
Time: 2:00 p.m.
Jude: Hon. Marilyn Hall Patel

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Declaration of Michael J. Bostrom

I, Michael J. Bostrom, declare as follows:

I am an attorney licensed to practice law in the state of California, and admitted to the United States District Court for the Northern District of California. I am an attorney with Morrison & Foerster LLP, counsel for Defendant Target Corporation ("Target") in this action. I have personal knowledge of the facts set forth herein. If called as a witness, I would and could competently testify as follows:

1. I have listened to the recording of Plaintiff Bruce Sexton's June 23, 2006 telephone call to Target.com's 1-800 number. Attached hereto as Exhibit A is a true and correct transcript of that recording. Blanks are inserted in the transcript where the recording is inaudible.
2. Attached hereto as Exhibit B is a true and correct copy of relevant portions of the transcript from the May 23, 2006 deposition of Bruce Sexton.
3. Attached hereto as Exhibit C is a true and correct copy of relevant portions of the transcript from the June 21, 2006 deposition of Dawn Wilkinson.
4. Attached hereto as Exhibit D is a true and correct copy of relevant portions of the transcript from the June 21, 2006 deposition of Dave Wilkinson.
5. Attached hereto as Exhibit E is a true and correct copy of relevant portions of the transcript from the June 30, 2006 deposition of Suzanne Tritten.
6. Attached hereto as Exhibit F is a true and correct copy of relevant portions of the transcript from the June 19, 2006 deposition of Chris Polk.
7. Attached hereto as Exhibit G is a true and correct copy of relevant portions of the transcript from the July 5, 2006 deposition of Charles Letourneau.

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

Executed this 18th day of July, 2006, at Los Angeles, California.

/S/
Michael J. Bostrom

EXHIBIT A

TRANSCRIPT OF BRUCE SEXTON'S JUNE 23, 2006 TELEPHONE CALL
TO TARGET.COM'S 1-800 NUMBER

Vinson Thank you for calling Target.com, my name is Vinson, and how may I assist you today?

Sexton Hi Vinson, I tried to make some purchases online.

Vinson OK. And what would you like to know what the product _____?¹

Sexton I'd like to see if you could help me look through the products online to find some products like, Tide and get some business apparel, and a couple of things.

Vinson OK, and what exactly—do you have the names of what you're looking for?

Sexton Some Tide soap. Laundry soap, the largest that you have.

Vinson I don't think we sell products like that on Target here.

Sexton You don't sell Tide?

Vinson No. I've had some Tide _____ I'm not showing anything here.

Sexton OK. Then I would like to buy some—do you sell jeans and maybe some slacks?

Vinson OK. And what type of jeans are you looking for?

Sexton I want a pair of black jeans and a pair of blue jeans.

Vinson OK. It's hard to specify what kind of jeans you have, because we have a lot of jeans on Target here.

Sexton Uh huh. Could you tell me what they have?

Vinson One moment, here. [long pause] OK, looks like the only jeans that we carry right now at the moment is the men's Masimo Duke jeans, light antique; Levi Strauss, signature regulars, fit _____ stone-washed jeans; men's Wrangler, relaxed fit bleached jeans; Levi Strauss signature relax fit like stone washed jeans; men's Masimo _____ mechanical—mechanic jeans; Levis light stone washed jeans; Levi's mechanic shorts—jean shorts; Levi's stone washed jeans.

Sexton What are stone washed jeans? Are they blue or ...

Vinson Yes, they're like blue.

Sexton Like blue and spotted or blue --

Vinson It's like dark blue.

Sexton Dark blue?

Vinson Yes.

Sexton OK. Can I get a—so, what's the difference between the stone washed ones, if

¹ Blanks indicate that the tape is inaudible.

there're 2 different stone washed ones, they're like 2 different ones, or...

Vinson They're just different brands. I'm not exactly too sure what's the difference between them.

Sexton But they're not the same color, or...

Vinson Yeah, they look the same color.

Sexton OK. So they're 2 different brands. That's the difference.

Vinson Yeah. There's different brands, like Levi's, Masimo, and all that.

Sexton One's Levi's and one's what?

Vinson Masimo. One's Levi's, one's Wranglers.

Sexton Oh, one's regular fit and one's relaxed?

Vinson Relaxed fit—we have a regular fit, carpenter antique stone washed jeans.

Sexton OK, so you—do they have sizes on them? How do you...

Vinson You would select sizes on the page here.

Sexton Oh, OK, OK. All right, well, I want to buy some 32-30s that are Levi's and I want to buy some that are dark blue and I want to buy one that's light blue.

Vinson One is dark blue, and one is light blue in Levi's. And what size did you want for the Levi's? Relaxed fit, dark stone washed jeans?

Sexton Yeah. Relaxed fit, that are 32-30s.

Vinson The only sizes we have is 34—30 in waist and 30 in length—34 in waist and 30 in length; 34, 32 in length.

Sexton You don't have 32 in the waist?

Vinson No. I'm looking and I'm not seeing that here. We must be out of stock on those.

Sexton So, if I want to buy 32/30s—so you're on the regular Target.com website?

Vinson Yes, that's correct.

Sexton And they don't—they just don't carry—you guys just don't carry 32/30s, or ...

Vinson If it's not showing on our sites here like I'm seeing see right now, that 32s and 30 in length that means we're out of stock here.

Sexton So, that's kind of odd. Isn't 32 a popular size?

Vinson Yeah, it is a popular size. That's why we—I'm assuming that's why it's sold out here.

Sexton OK. So, OK, well then, how about let's look at some pants that are—that are dress pants, same size.

Vinson Just pants—OK—we have the Merona flat front pants in khaki; Merona mini-stripe flat front pant, black; sheersucker straight cotton suit pants; flat front wool pants, black; Merona pin stripe, navy; Merona pinstripe, flat front wool pants,

brown; pinstripe ...

Sexton I want some black pants that—that will work—I don't know, I guess there's some way to tell how long they'll last if—if I don't like the ones that come, can I send them back?

Vinson Yes. You can send them back.

Sexton Well, what I'm looking for is some durable black pants that will keep their blackness for a long time and not fade. Like, I know there's Dockers sometimes they fade away.

Vinson Dockers.

Sexton Yeah, so, I'm looking—now flat is a brand?

Vinson The only dress pants I see here on our site here is that mostly by Merona here.

Sexton Merona?

Vinson And I don't see any Dockers. I don't have any Dockers, so.

Sexton That's OK. Does Merona have just a black pair of pants?

Vinson We've got the Merona flat front wool pants in black.

Sexton So, there's one pair of black—do they have 32/30s?

Vinson I can't tell, I'll look here, one moment. Just 32/30s is a really popular size here. Because I also wear 32/30s.

Sexton Hmmm

Vinson ____ 32/30s ____ and they come and go.

Sexton Yes. It seems like, though, on line you'd be able to reorder them. You know what I mean? Like, you could order and then when it got in stock, you would get it, but I guess not.

Vinson No. We have Merona solid color flat front trousers in black, which ____ 32/30. What else, here.

Sexton So, there is one?

Vinson Yeah. In 32 and 30.

Sexton In the black?

Vinson Yes.

Sexton OK. So, I guess I will put that in the shopping cart.

Vinson OK, so is there anything else you'd like to order?

Sexton Yeah. Let's see. How much are they, by the way?

Vinson \$24.99.

Sexton All right. I got a way to go then. So you guys don't sell laundry soap at all.

Vinson No, not from what I see here on Target.com here. You'll want to check the Target stores, because we don't sell like groceries or products like that. We only sell like furniture, like clothing, and sports utilities, electronics, DVDs...

Sexton I'm not—let's see. Well, let's see, how could I browse around the site. Is there a way to like, could you tell me some of the products that are around. Maybe it'll give me some idea of what I want to buy, I'm not sure yet.

Vinson I'm not exactly too sure what you want to shop here, but if you go onto our site, and there should be a category at the top, go into the men's, there should be like clothes, suits, suit separates, active wear, swim wear, young men's, Masimo. _____ all these categories to shop and look in. They are all on Target.com. Just to see for yourself when you're purchasing _____. And if you wanted to look at, like, electronics, you just go into the—you just scroll there cursor over the electronic bar and just pick whatever you want to look there. They give you a whole list of items for you to browse around here.

Sexton Well, the problem is that I can't see. And you're site's not very accessible, so I was told that I could call here and browse with you, so.

Vinson I see. Hmmm.

Sexton So, that being right but unfortunately _____.

Vinson I see. Yeah, 'cause we don't sell any like laundry soap here. I've tried searching under Tide and it didn't really bring me anything here, I mean like--

Sexton _____ I guess so you said there's a category called men's clothing. So, why don't we go there and maybe you can—you can see what's on the page _____.

Vinson We have a category in, like, khakis, dress shirts...

Sexton Do you have like khakis that are cargo pants, or they have like the pockets _____

Vinson I'll have a look here, it'll just be one moment.

Sexton Oh, that'd be great.

Vinson We have cargo shorts. I do not see any cargo pants here.

Sexton Do you have cargo shorts that have 32 waist?

Vinson I'll have a look here, one moment.

Sexton What I'm looking for is the khakis with like pockets on the outside or, you know, ones that are ...

Vinson Yeah. The only khakis I see that come in full length along the top are ____ the waist is only regular khakis with the little 2 side pockets, like what you put your hands in. I do see that we have cargo shorts. Let's see here. We do have 32s. And they'll be coming 4 different colors right now, camouflage, bt. olive, navy and dark brown.

Sexton The dark brown—so that's—you don't have the light, like, khaki color, like that

you normally would associate with khaki?

Vinson I can have a look here, so one moment.

Sexton That'd be great.

Vinson Yeah, it looks like that color's been sold out here.

Sexton Sold out.

Vinson Yeah. And that's the only 4 colors we have available right now, camouflage, navy, bt. olive and dark brown. The other ones...

Sexton [indistinguishable]

Vinson ...sorry?

Sexton Does the dark brown look like ugly—I don't really like dark browns unless it's like, I don't know how to explain it.

Vinson It's really dark brown, pretty much like really dark.

Sexton All right, well how about the regular khakis with the 2 pockets on the sides. Do they have 32/30s in that?

Vinson I can have a look here, hold on one moment.

Sexton Usually you won't have 32/29s, 'cause really, 29s would be better.

Vinson I see. It looks like we have 32/30 here. And khaki color is available here, which is a tan color.

Sexton Yeah. That's what I want. Let me put one of those in my cart.

Vinson OK. And what else would you be looking for here?

Sexton So there was—how much were those?

Vinson Those khakis are actually \$19.99 here.

Sexton Oh, that's a good price. So there were no jeans whatsoever in 32/30s?

Vinson Not at the moment. I can have another look here, though.

Sexton Yeah, let's look at that. Let's see if there's any other colors, maybe black or a different brand maybe.

Vinson OK.

Sexton You're being very helpful, thank you so much.

Vinson No problem. Let's see here. You're looking for black jeans here _____. I also see Levi's cargo shorts and 32 is available, it's in gray.

Sexton You don't have any blue or black or...

Vinson No. It's like a signature cargo shorts, so it comes in only gray.

Sexton So, but they're jean gray—they're not like gray, gray, right?

Vinson It looks—from one of the picture it looks like it's just gray, gray—the cargo

shorts I'm looking at right now.

Sexton So it's a light gray or dark gray?

Vinson Light gray.

Sexton Light gray. I don't like light gray that much.

Vinson I see.

Sexton Picky blind guy. I could see at one time. My mom's also blind and she learned a lot of color matching from my grandma.

Vinson I see, well.

Sexton OK, so, yeah, are there any pants, jeans _____

Vinson I'm looking at the Wrangler relaxed fit black jeans right now.

Sexton Uh huh.

Vinson From what I see here, they only carry a 30/30 and a 42/30 which, yeah,

Sexton laughs

Vinson It kind of sucks. That's the only size ____ at the moment.

Sexton OK.

Vinson Of the black jeans. Let me just see if I can find any other black jeans.

Sexton Yeah, Wrangler is a good brand.

Vinson It seems like that's the only pair of black jeans we have from Wrangler and we are out of stock on that one.

Sexton Oh, OK. So, dark blue, light blue, black, nothing, huh?

Vinson I can double check those. Just give me another moment here.

Sexton Sure.

Vinson Levi's . . . we've got the Levi's dark stone washed jeans regular fit in 32s and 30s for \$19.99.

Sexton In dark stone—you said the dark blue.

Vinson Yeah, dark blue.

Sexton For \$19.99?

Vinson Yes.

Sexton All right, let's throw that in the cart.

Vinson OK.

Sexton Do they have any other colors, not really except for black, blue, dark blue?

Vinson Any other colors?

Sexton Yeah. I don't know of really any jeans that come in many different colors. I

don't want white. And I don't probably want really anything like, I don't want a tan. I don't know if that come...any other...

Vinson Let me have a look here at what _____ jeans.

Sexton So, we got those other jeans _____.

Vinson We've got the Masimo Duke jeans light antique jeans.

Sexton OK.

Vinson They're like light blue.

Sexton Sure.

Vinson Those come in 32/30s. \$24.99 but they are light blue—antique white or light blue.

Sexton Oh, so they have a light blue?

Vinson Yeah, it's like a light antique blue. But they're kind of worn in.

Sexton _____?

Vinson From what the picture looks like.

Sexton Oh. They have like _____

Vinson Yeah, it has like worn in--it looks like it's been worn a lot pretty much.

Sexton Oh, like in the knees _____

Vinson Yeah. It's like an antique light--_____ it's like antique--_____ I think explains everything, well _____ antique light blue. And it comes in 32/30 also from what I see. So, what else do we have here.

Sexton But that's the color?

Vinson It's like light blue, antique light blue.

Sexton Oh, OK. But that looks like a regular light blue jean, right, except that it has an older look to it?

Vinson Yeah. Pretty much.

Sexton OK. And they have those in 32/30?

Vinson Yes.

Sexton How much are those?

Vinson \$24.99 here.

Sexton Oh, wow. Yeah. Let's throw those in the cart. A pair of those. And how much are we at right now—total?

Vinson A subtotal is at \$89.96 right now.

Sexton OK, let's look for some other stuff. Can we go to electronics and look around?

Vinson Certainly, what would you like to look around in the electronics area, we have

digital cameras, camcorders, TVs, Target photo center, TVs, DVD players and video, home theater, MP3 players, satellite radio, home audio, car audio plus video, instruments plus karaoke, telephones and communications, home office, video games, home safety plus security. What would you like to have, or browse?

Sexton Home office, let's look at that.

Vinson OK. OK, and we also have a bunch of other subcategories here. We have telephone communications, computer plus accessories, computer software, office accessories, home office furniture. What would you like to browse in?

Sexton The last one was home office furniture?

Vinson Yes, that's correct.

Sexton Let's look at that.

Vinson We have other categories hold on—we have other categories in that category—we have desks, bookcase, file cabinets, office chairs. What would you like to look at here?

Sexton Does it have more?

Vinson Yes, there is more here. Hold on.

Sexton What category?

Vinson They have computer armoires, computer carts, computer workcenters, desk hutches, desk lamps, desk entertainment centers, file cabinets plus more, laptop carts, modular office furniture.

Sexton What's a laptop cart?

Vinson Umm, hold on a sec ... I'm not too sure myself, maybe I should take a look here. Oh, it's like a little desk with wheels on it and there's a little platform where you can adjust your laptop where you want your laptop to be.

Sexton Hmm. A little tiny desk?

Vinson It has like three wheels at the bottom here so you can move around easily. There's a spot for you to put your papers on, on the left side, light spot, you have a little platform that sticks out from the bar that comes up. There's a little platform for you to put your laptop on there.

Sexton Now can I, now do you know if it can like be removed from the wheels? Like are the wheels at desk level? Like, so if I sat down at a chair would it be at ...?

Vinson It's adjustable here, like a chair.

Sexton It's adjustable? Oh, okay. So the actual desk is adjustable. Now, do you know if I'd be able to take the wheels off and then just use it as a ...?

Vinson I'm pretty sure that it's assembly required here and you can choose to not have wheels here, have wheels or not.

Sexton So, do you know like if I had the wheels off, would it look like it could fit on

your lap like a laptop, like could you put it in a backpack, do you know? What are the dimensions? Does it have ...?

Vinson Well, it's like a little desk pretty much for a laptop like for your home. It's not really portable, it's like when you're at home, you don't have a desk for your laptop, you can pretty much roll around your house that type of thing.

Sexton Yeah, cause what I'm looking for is something that is kind of a hard surface so that I can bring around with me but anyway, okay, well, I guess we'll go back to electronics and maybe the furniture part and maybe look at the chairs.

Vinson Okay.

Sexton Office chairs.

Vinson We actually have a large selection here. You're looking for chairs with wheels?

Sexton Yeah, a nice, a nice comfortable like padded chair with wheels, arm rest.

Vinson Are you looking for leather or any material in particular or?

Sexton Um, probably, well, leather would work if it looks kind of like a soft leather that would be comfortable to sit in, kind of like, the biggest idea something that has good support for everything, everything.

Vinson Well, from the back to the neck, correct? Like?

Sexton Yeah.

Vinson So pretty much they have big, a big backing from your head to your bottom pretty much. _____, uh, back to it ...

Sexton Yeah, that ...

Vinson Like lean against?

Sexton Yeah, something like that. Or something that looks comfortable even if its not all the way, it could be pretty much all the way or ... hmm ... What are the prices also like around?

Vinson Like around a hundred here if you're looking at the really good ones with thick padding and all that. Um ...

Sexton Okay, so the ones, the ones that are around a \$100, they, uh, and they look like they have nice padding and ...

Vinson We actually had, we had one of those – it was called the Comfort Product-Sized Executive Office Chair with five motor massage and that was only for \$149.99, but currently right now, it's on back order here, so that was a really good looking chair there – I saw a while ago, but currently that's placed on back order right now . . . at the moment.

Sexton You could actually order it?

Vinson Uh, you could order it, but there could be a chance that it might be cancelled to us by our systems here because of the lack of inventory here.

Sexton Oh, okay. Okay, well, I'm looking for something for around a \$100 though, um.

Vinson Okay, see what I can find here. Looking at a chair right now – the High Star or the Office Star High Black Executive Leather Chair with padded head rests in black that's for a \$129.99. It looks pretty comfortable.

Sexton What's _____? A \$129 is pretty good. Well ...

Vinson Any of a variety of chairs here, like the, but they're usually high, like a high price here though.

Sexton Well, why don't we, we can put that one in the cart and then take it out later, right?

Vinson Yeah, we can save _____, but we have a large selection of chairs here so why don't we just browse through it first here.

Sexton Okay.

Vinson We have the High Black Executive Leather chair \$9.99, \$99, I mean, and 99 ¢.

Sexton Okay.

Vinson That doesn't look too bad also. It's hard to see if it's comfortable because all of them look like they have a lot of cushion on it, but it's hard to really tell if it's good or not, I mean, um ...

Sexton Right, they like to make the picture look ...

Vinson Yeah, it's always like the, yeah, they always make the picture look like extra better than the one you get for some reason, it's kind of like commercials in fast food restaurant or any commercial. [Laughter] Um, that's _____. Yeah, _____, but um, yeah, this chair I currently see at is on back order also, but let's see if we can't find another chair here since that's on back order. I'm pretty sure we can find something here, we have a lot of chairs. Let's see here ... Boss Executive, um, fabric chair in grey \$69.99, ships in 3-5 days here it says.

Sexton What is it?

Vinson Um, Boss Executive Mid-Back Fabric chair in grey, \$69.99.

Sexton The color is grey.

Vinson Yeah, it's not leather, it's a fabric chair here, \$69.99.

Sexton Fabric is nice, too. Does it look big and square or does it look like curved kind of like rounded or like I don't want a huge, huge chair, I mean, you know, a college dorm room, well, actually, it's kind of a small room anyway, I don't want a huge chair, but I want a comfortable ...

Vinson I see, um, that chair looks like round, like rounded, it has like a square top, but the _____ makes it look round.

Sexton Okay.

Vinson We also have another one here, a mid-back manager's chair, fix arms back.

Sexton Now that sounds nice.

Vinson It's for a \$109.99.

Sexton Does it kind of lower back kind of stuff?

Vinson Yeah, it's like a mid-back, like only the back support is only to the middle, it doesn't support the neck, assuming from what it looks like here.

Sexton Yeah.

Vinson And that the, let's see here, the seat height adjustment back height adjustment, tilt tension, tilt walk, in black fabric and that chair right now I'm currently looking at is \$109.99 here.

Sexton Oh, yeah? Well, that one sounds nice, so there's that one that we saw first for \$129 and then there was that \$99 one and now there's a ...

Vinson Pretty much the first two that we were looking at were pretty, they have like the full back one, the full back support and those are leather chairs and this one that we're currently looking at is a fabric chair, a mid back one.

Sexton The other ones look kind of big _____

Vinson Yes.

Sexton Okay. Yeah, I guess, I guess, _____. Maybe something like that. So it looks like a regular kind of office chair with wheels, it has wheels, right?

Vinson Yes. Let's see what else I can pull up here.

Sexton I like that tilt feature, too.

Vinson Let's see, uh, let's see here ... let's see here ... It's a mid-back manager's chair in black leather.

Sexton That's the same one or that's a different one?

Vinson It's a different one, but it's mid-back also in leather for \$199.99. It's [an]office chair in leather black includes seat height adjustment, 300 degree swivel, _____ controls and adjustable tilt tension also in black leather, split leather, and that price, the price of that chair is \$99.99 and there's a flat shipping charge of \$12.99. So you're paying around \$110 for that chair. It's shipped and that's like for the total price there.

Sexton So the shipping on the pants and stuff like that, how does that work?

Vinson It'll go on one shipment here, so it's pro-shipment charge and weight here. And then to order the chair itself, it most likely will come in a different shipment due to the size of it and they'll only be like a ... from what I see for mid-back managers like \$12 for the shipping for that one. The clothing itself won't be that much.

Sexton Okay, and what about the other one? The other back, the manager, the mid-back manager one?

Vinson The one with the fabric, the gray fabric?

Sexton Yeah, yeah.

Vinson One moment here. Shipping for that one will be \$33.33, \$33.99 here for this one here.

Sexton Wow.

Vinson So it's more expensive for some odd reason here. Not exactly too sure.

Sexton That's kind of weird, huh?

Vinson Yeah, it is. [Laughter]

Sexton So how much was the price on that one? For the actual price?

Vinson For the mid-back leather one?

Sexton No, no, no the gray one.

Vinson The gray one was like \$69.99, I think.

Sexton So, really, its going to be the same price for the shipping.

Vinson Yeah, that's pretty much almost the same price with the leather one here. I'm not exactly too sure how they work out the shipping here, but that's what they ask.

Sexton Well, you know what they did, is they looked at the other one and they said well, how do we make it the same price? I'm just kidding.

Vinson [Laughter] _____ noticing here.

Sexton [Laughter] Alright, well, let's put the leather one in the shopping cart and let's move on to a different department and see if I can look at some other stuff around.

Vinson What would you like to, which one did you like to add? The leather one or the ...

Sexton The leather one, let's add the leather one, might as well. The same price practically.

Vinson And it says for this leather one, it usually ships in 5-7 days, so it might take a little longer.

Sexton Okay, well, let's put that in there then we'll deal with it when we shop, when we actually ...

Vinson Okay, and what would you also like to look at?

Sexton Okay, let's see ... um, well, what else, what else do you carry? What other categories ...

Vinson Uh, entertainment, electronics, toys, sports, patio, plus garden, furniture, bed and bath, home, kids, babies, men's, women's.

Sexton Uh, what's in men's?

Vinson Men's ... uh, clothing, suits, separates, active wear, swim wear, young men, Masimo, custom clothing.

Sexton You actually have suits? Okay, well, I don't think I want to _____.

Vinson _____?

Sexton I don't know what sizes I'd wear in a suit anyway, um.

Vinson Uh, I'm not exactly too sure, you might want to, usually if you want to get really good suit, you want to go to a tip top tailor place, and they get the exact size that you should get a perfect fit, cause it's really nice once you like get a perfect size for you.

Sexton Yeah, yeah, that's true. Uh, okay, um ...

Vinson 'Cause with pants, it's just like the way you spend in the length, with jackets it's like the upper chest, the waist size, you have to calculate a lot of things actually. Well, that's what I think. What else is also under men's is watches, personal care, luggage, outdoor sports, gifts for him.

Sexton Oh, um, how about personal care.

Vinson Let's look into that here ... Okay, we have other sub-categories here, it's massage, hand plus foot care, mental care, hair care, _____ plus fragrance, spa, men's health.

Sexton How about hair care? Do you have shampoo? Ha-ha.

Vinson Um, we have a ...

Sexton What do you have in hair care?

Vinson We got coloring, straightening, ironing, clippers and trimmers, uh, hair dryers, rollers, _____.

Sexton You have curling irons for men?

Vinson Um, I'm not exactly too sure.

Sexton [Laughter] that's kind of funny, okay, so ...

Vinson I, okay, _____ gave me to another sub-category like, as soon as I pressed Halton beauty, it brings me to the Halton beauty section, which was pretty much a category for women's and men's.

Sexton Oh.

Vinson Under men's health is shavers, trimmers, grooming, fragrances, body and bath and body.

Sexton Did you say health care or did you say hair care?

Vinson Uh, it was under men's health. Yeah, there's shavers and trimmers, grooming, fragrances, bath and body in that one. I'm guessing colognes and like, uh, shavers.

Sexton Okay, uh ... hmmm, do-de-do-de-do ... alright, let's maybe go to a different category. Hmmm, what other categories do you have? Where did you find the electronics category?

Vinson Um, electronics is on the right side of the page here and it says visual cameras, DVDs, DVD players, videos, home theater, MP3 players, _____ solid radio, home audio, car audio, instruments, telephone communications, home office, video games, and home safety, home safety, security.

Sexton Is it safety or security?

Vinson Safety, security – home safety plus security.

Sexton Oh.

Vinson Have a look into there like see ...

Sexton Umm, oh well, okay, so electronics, is that like a sub, I mean, that's a main category, right?

Vinson Yes.

Sexton So are there any other main categories that are around electronics? I mean, what other main categories are there?

Vinson What exactly are you looking for?

Sexton Um, let's see ... I'm not sure. I want to kind of browse around. Well, see you said men's, women's, and things like that, but you just, you said baby, _____ but you didn't say electronics, so I'm wondering what would be around that area? Like how did you get to that?

Vinson Um ...

Sexton ___ back to the ...

Vinson Cause our topic gives you a category bar and it says women's, men's, babies, kids, home, bed plus bath, furniture, patio plus garden, sports, toys, electronics and home entertainment. And under electronics, there's a whole bunch of other subcategories here.

Sexton Oh, okay. Huh, what else do I ...? Um, how much are we at right now?

Vinson Um, let me have a look here. With that chair in your shopping cart, your subtotal is \$189.95.

Sexton Okay, um, hmmm, I'm wondering if you guys have like any fans or air conditioner kind of, portable air conditioner or fans ...

Vinson Hmmm, let me see if I can find that here.

Sexton There's no way to shop shelf-by-shelf or anything _____ category?

Vinson Yes, categories. Let's see here ... We have air conditioners here. We have the something down air cooler and ionization, ionization, or Izoneer, I can't even pronounce that, uh, air conditioning, it cools air, I'm pretty sure it filters air so um...

Sexton It's an air condition air? Like, does it make the air cool or just conditions it just to make it more _____?

Vinson It's a portable air conditioner so I guess it cools the air, cooler works by drawing in air in cooling it with a water saturated wick. Shoots a stream of fresh air back out, cooling it by up to 12 degrees F. Uses much less energy than the air conditioner, _____ from room-to-room, includes air purifying controls.

Sexton That's cool. How much is that?

Vinson Uh, \$79.99 here. We also have a bunch more here.

Sexton Uh, how much is the cheapest one?

Vinson Uh, that is currently the cheapest one we have right now, \$79.99.

Sexton Uh, well, let's put that in the cart right now and we'll keep on looking.

Vinson Okay. Uh, so you still want to look into the air conditioning category?

Sexton No, we'll look at other stuff. I don't like to spend a lot of time in one place.

Vinson Okay. Uh, so what else would you like to look at here?

Sexton Um, can we go back to the home page and look at all the categories. There's got to be tons of 'em, there's got to be lots of things on that page. Ready to do that?

Vinson Yeah, back up on being page here.

Sexton Now, let's see what do they have besides all of the ones you've read before less the men, the women and the ...

Vinson Those are pretty much the main categories, um, and after those main categories, you get a bunch of other sub-categories here.

Sexton Oh, I see.

Vinson Let's see here.

Sexton Okay, well, I don't want to look for anything for babies and I don't want to look for anything for women. Anything that would be men-related, almost anything. I just want to look around.

Vinson Okay, on this home, kitchen appliances, dining home décor, rugs, lighting, window coverings, bed plus bath, patio plus garden, furniture, storage, organizations, vacuums and floor care, home improvements, pets, luggage, that's in the home, under bed plus bath, is bed in the bag, bedding collections, comforters, fashion beddings plus accessories, bedding basics, sheets, kids plus bedding and bath, teen bedding, mattress, baths, bath coordinates.

Sexton Mattress, bath?

Vinson Mattress and then bath.

Sexton Oh, oh, oh.

Vinson No, it's not a bath. You can't sleep in your bathtub. [Laughter]

Sexton It's not what's intended [laughter].

Vinson The bath towels, bathroom furniture, bathroom, bedroom furniture, bathroom furniture. Um, there's furniture, there's bath, bedroom, living room, kitchen plus dining, home office, patio furniture, media furniture, storage plus organization, _____ and furniture, kids furniture, dorm furniture.

Sexton Oh, what's in dorm furniture?

Vinson I'm not exactly too sure, let's have a look. There's _____ chairs, book cases, futons, seating, bean bags plus ottomans, kitchen carts, kitchen carts, uh, futons, tables, tables and chairs,

Sexton Nothing sounds good yet. Hmmm ...

Vinson I'll stay up here.

Sexton What about the organization _____ what's organization, organization storage?

Vinson Storage plus organization?

Sexton Yeah.

Vinson Um, let's see here ... um, it's just drawers, drawer carts, dining storage, hampers and sorters, _____ totes, storage boxes and bedroom, it's um, _____ system, folding _____, decorating, decorative shelving, garment racks, hanging storage, under bed storage, shoe organizers, shelving, that's under bedroom and then there's laundry room, basement, attic storage, living room, let's see here, dorm rooms, under bed storage, shoe organizers, soft-side storage.

Sexton Soft-side? What's that?

Vinson I'm not exactly sure, let's have a look here. Oh, it's just like, uh, little shelving units here. Trash cans.

Sexton Hmmm.

Vinson It's just like little mini storage units here.

Sexton _____ Target.com you guys don't sell like shampoo, bars of soap, you know, those kind of things?

Vinson Um, no, it doesn't look like we sell those kinds of things. We only sell like furniture and all that stuff. Uh, I could give you another site to shop on. Hold on one moment here. Uh, I think Amazon.com might sell those items, I'm not too sure, but I'll go look, cause we are affiliated with them. And if you go on to Amazon.com, they have sold products here, home needs, the thing is with them though, they, with Amazon.com, they can't order by phone here. You'd have to order it on your side there on the computer. And that's a policy they have on Amazon.com, but from what I see here, is that they do sell Tide products like soap products and all that on Amazon.com.

Sexton Okay, so, if I order with Amazon, would I be putting, I wouldn't be putting it in the same shopping cart, would I?

Vinson No, no, it would be like a different system here.

Sexton Oh, okay.

Vinson Cause they're like a different company. They're affiliated with us, but um, we don't handle their customer service here.

Sexton I see _____.

Vinson Yeah, separate companies here, but we are affiliated with them and Amazon.com does handle our site here. So it sounds pretty much Amazon's paying us.
[Laughter]

Sexton Oh, okay.

Vinson But, yeah, Target.com does not sell any soap products here.

Sexton Okay, that's kind of a bummer cause they sell it in the stores, I know that.

Vinson Yeah, we sell like food products, we sell a lot of stuff in the Target Stores, but online we, like we can't, we don't sell like products like that online here. Sometimes in stores, there's things we can like ship and all that stuff in stores, a lot of stuff in there. Can't ship online here.

Sexton Um, let's see, well, can we look around some more?

Vinson Yeah, we can look around some more here. Uh, what would you like to look at here?

Sexton Um, let's see ...

Vinson Anything in entertainment?

Sexton Yeah, what kind of sub-categories are in entertainment?

Vinson In entertainment, there's movies, music, books plus stationery, book mart, I don't know what that is, video games, home theater, electronics, game room, pretty much it in entertainment there.

Sexton What about, what about, let's go back to clothing.

Vinson Okay. Okay, I'm in clothing. What would you like to look at under? You have sub-categories of clothing, young men's, wear to work, ultimate collections, like khakis, golf t-shirts, custom clothing, and brands pretty much.

Sexton Um, do they have t-shirts?

Vinson T-shirts, uh, yeah, t-shirts here. What type of t-shirts are you looking for?

Sexton Um, I don't know, how ...

Vinson Like golf t-shirts, regular t-shirts, um, v-neck t-shirts, we have a lot of t-shirts here. Are you looking for like, just like regular t-shirts or the t-shirts that have the collars on them?

Sexton Um, I don't know, gosh, um, I don't know, just t-shirts, really, different colors, different styles.

Vinson Let's see. We have a lot of t-shirts here. Um, you got the Masimo, _____, pretty much plain, plain green. Uh, young men's Tokyo t-shirt in red, it says Tokyo on the front.

Sexton Well, the kind of t-shirts I like are, I mean, the kind of colors I kind of, mostly not like light colors, not like light blue necessarily, bright red, I don't like really bright colors, I like kind of, not too dark sometimes, maybe black, but sometimes, but not always, too, too dark _____.

Vinson Uh, okay, we have the utility, Colorado _____ green tee in navy, it says "Colorado" in the front, what else does it say? Uh, in the front, _____ it says like "How's your Aspen?" No clue what that means. What else do we have here? Gold Cup Mexico, soccer t-shirt, Masimo, Lanier T Academy. We've got the ice cold beer t-shirt in Navy, I don't know what that says here, has a truck and a, it says "Ice Cold Beer, Dreams Do Come True."

Sexton [Laughter]

Vinson _____ in navy. Let's see here. S, M, L and XL.

Sexton Yeah, I'm a medium.

Vinson Yeah, that t-shirt, what else do we have here? We have a deep brown Masimo t-shirt, it says "Freedom" at the top where the neck is, t says "Freedom."

Sexton Is it a big "Freedom" or a small?

Vinson No, it just says "Freedom" at the top there.

Sexton _____ small _____

Vinson Yeah, it just says "Freedom" at the top there, um, like near the neck.

Sexton Oh, like on the neckline?

Vinson Yeah, where the neckline is, it just says "Freedom."

Sexton Right below the neckline or on the neckline?

Vinson Uh, below the neckline.

Sexton Oh.

Vinson Can I place you on hold for a moment, please.

Sexton Okay.

Vinson Uh, thank you. *[music in background]* Hello?

Sexton Yes.

Vinson Yes, thank you for holding. Okay, um, I can only look up a couple more items here because I have other calls in the cue right now. I need to take them here, so, um, what else would you like to look at here? Hello?

Sexton Yeah, sorry, uh, oh, gosh, so you're going to have to take some other calls, huh?

Vinson Yeah, its starting to get busy here. I really apologize.

Sexton Oh, I guess it gets real busy at 2 in the morning.

Vinson Oh, yeah, sometimes it does cause we, I, I, yeah, we get busy sometimes here cause we _____ the whole United States here.

Sexton Oh, uh, your manager or something is telling you that you can't ...

Vinson Yeah, that's pretty much

Sexton Did you explain to him that he or her that you're helping a blind customer to look through ...?

Vinson Uh, yes, I do understand that but, um, . . . yeah, I'm not too sure what she was saying after that though. But, um how much, what else would you like to shop for here?

Sexton Uh, Uhhhhhh, gee, so . . . Do you have any solid color shirts that are . . .

Vinson Like t-shirts?

Sexton Yeah, t-shirts that are in the ____ range.

Vinson We have the men's Masimo charcoal heather t-shirt here, and it's pretty much like dark gray, dark grayish color here.

Sexton Is it like just solid dark gray?

Vinson Mmmmmm, yeah, pretty much, from what the picture looks like here

Sexton Okay. Um, what about a dark green or dark blue or black?

Vinson Um, it seems like on their site here, we have a lot of bright t-shirts, we have one from Italy, England, Brazil . . .

Sexton Is it alright if I get your name or your badge number maybe?

Vinson Um, no, unfortunately I can only take calls, whatever comes in here. But if you give us a call back we'll have, like, more — we'll have more _____ representatives here that can best ___ you also.

Sexton Oh, but I can't get your name or badge number just for a reference?

Vinson Oh, no, I can . . . my name is Vinson _____, I work at the Vancouver call center here.

Sexton How do you spell your name?

Vinson V-I-N-S-O-N

Sexton And you work at the what?

Vinson Vancouver Call Center.

Sexton How do you spell that . . . Vancouver?

Vinson V-A-N-C-O-U-V-E-R in Vancouver, British Columbia here.

Sexton And the manager that told you that you had to go, can I get their name please?

Vinson Unfortunately, I'm not authorized to give any of my names, because I'm not . . . because I'm not . . . I can't give their names here, but you could talk to her.

Sexton Yeah, I'd love to talk to her, thank you.

Vinson Okay. Okay, can I just put you on hold for one moment please?

Sexton Yeah, sure.

Vinson Thank you.

On Hold Recording: [Music plays in background] Thank you for calling, we'll be with you shortly . . . Your call is very important to us, we'll be with you shortly.

Vinson Hello?

Sexton Yes.

Vinson Yes, thank you for holding, okay, first of all what I'm going to have to do is I'm just going to get you to make an account first, because all the items you asked for, that will make an account for you and put the items in your account ____ or their going to be lost here. So why don't we make an account first here, and then put these items in your account here in your shopping cart, alright?

Sexton Okay, and then I'll be able to come back in?

Vinson Yeah, it will go come back to them here.

Sexton Okay.

Vinson Give me one moment here. Can I get you name please?

Sexton Hold on, I might have an account with you I'm not sure. My name is Bruce Sexton.

Vinson Can you spell that please?

Sexton Yeah, B-R-U-C-E Sexton, S-E-X-T-O-N

Vinson B-U . . . So the first name is B-U-C-E?

Sexton Oh, sorry, B-R-U-C-E.

Vinson Oh, Bruce. Okay. And an e-mail address please?

Sexton Yes, bjsexton@comcast.net

Vinson Okay. I see that you have an account with us already.

Sexton So I'll be able to call back, and have somebody help me purchase it, right?

Vinson Yes. Just give me one moment here. Okay. I have your shopping cart here, okay? So if I could just put you on hold for one moment while I transfer you?

Sexton Hold on, so there is no other identification other than "Vinson" for your name, there is no identification badge or . . . I don't know . . .

Vinson No, there won't be any identification, but there will be notes left on your account

here, and there will be an e-mail sent to you here saying if I've helped you or not here.

Sexton And you've been very helpful. I don't want to give you the wrong impression. You really have.

Vinson No problem. It's just that we are a call center here and there is only so long I can stay on the phone _____ you understand that.

Sexton I understand.

Vinson Would you like to still speak to someone hire up here, or . . . ?

Sexton Oh yes. Yes please the person [WAV file goes blank here]

EXHIBIT B

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 SAN FRANCISCO DIVISION



4 -----
5 NATIONAL FEDERATION OF THE) Case No.
6 BLIND, et al.,) C 06-01802 MHP
7 Plaintiffs,)
8 v.)
9 TARGET CORPORATION,)
10 Defendant.)
11 -----

12
13 DEPOSITION OF BRUCE F. SEXTON
14 TUESDAY, MAY 23, 2006
15
16
17
18
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21

22 BY: CHRISTINE L. JORDAN, CSR NO. 12262
23 1320 ADOBE DRIVE
24 PACIFICA, CALIFORNIA 94044
25 (650) 359-3201

1 Target.com in that context to try to get help
2 completing your purchase?")

3 THE WITNESS: I would say the only attempt I
4 have made is through the National Federation of the
5 Blind --

6 MR. PLUNKETT: All right.

7 THE WITNESS: -- to contact Target.

8 BY MR. PLUNKETT:

9 Q. If you had wanted to contact Target.com while
10 you were using the website to ask for help in
11 completing a purchase, would you know how to do that?

12 MR. KONECKY: Objection; incomplete
13 hypothetical, calls for speculation. It's also vague
14 and ambiguous given the prior testimony.

15 THE WITNESS: I'm pretty confident that I
16 could have found a way to contact Target to let them
17 know that I was having problems with their site if
18 that's what you're asking.

19 MR. PLUNKETT: That's what I'm asking.

20 BY MR. PLUNKETT:

21 Q. How would you go about contacting them?

22 MR. KONECKY: Other than through the NFB?

23 MR. PLUNKETT: Yes.

24 THE WITNESS: I don't know. I could call
25 them. I could e-mail them. I would have to do some

1 research on that.

2 BY MR. PLUNKETT:

3 Q. Did you ever do any research on that or, for
4 example, attempt to obtain their 800 number or an
5 e-mail address for customer support?

6 MR. KONECKY: Objection; vague and ambiguous.

7 THE WITNESS: I don't recall ever doing that
8 research, but I do know that I went through the NFB to
9 make a complaint and I assume they have that
10 information.

11 MR. PLUNKETT: Thank you very much for your
12 time today. Those are all the questions I have.

13 MR. KONECKY: Deposition is concluded.

14 (At 4:50 P.M., the deposition proceedings
15 concluded.)

16

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18

BRUCE F. SEXTON

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1 CERTIFICATE OF REPORTER
2

3 I hereby certify that the witness in the
4 foregoing deposition, BRUCE F. SEXTON, was by me duly
5 sworn to testify to the truth, the whole truth and
6 nothing but the truth, in the within-entitled
7 cause; that said deposition was taken at the time and
8 place herein named; that the deposition is a true
9 record of the witness's testimony as reported by me, a
10 duly certified shorthand reporter and a disinterested
11 person, and was thereafter transcribed into typewriting
12 by computer.

13 I further certify that I am not interested in
14 the outcome of the said action, nor connected with nor
15 related to any of the parties in said action, nor to
16 their respective counsel.

17 IN WITNESS WHEREOF, I have hereunto set my
18 hand this 26th day of May, 2006.

19
20
21 _____
CHRISTINE L. JORDAN, CSR #12262
22 STATE OF CALIFORNIA
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EXHIBIT C

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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

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

PLAINTIFFS)

V.) NO. C06-01802 MHP

TARGET CORPORATION,)
DEFENDANT)

ORAL DEPOSITION OF
DAWN WILKINSON

TAKEN IN LITTLE ROCK, ARKANSAS

JUNE 21, 2006

CERTIFIED COPY

ATKINSON-BAKER, INC.
COURT REPORTERS
(800) 288-3376
www.depo.com
FILE NO.: A00554A

REPORTED BY: TERESA IDEN, CCR NO. 646

1 A No.

2 Q You don't have any kind of training with related to
3 adaptive software?

4 A No.

5 Q Okay. How about in computer use, generally?

6 A No.

7 Q Okay. If I'm silent, by the way, it's because I'm
8 listening to my notes here, so --

9 A Oh.

10 Q -- don't -- don't worry about that. Have you had
11 any training in computer software?

12 A No, I have not.

13 Q How about web design?

14 A No. I'm clueless --

15 Q Okay.

16 A -- in web design.

17 Q Okay. Can you please describe your job history,
18 beginning with your current job and going backwards?

19 A Okay. That's easy. It's the only job I've had. I
20 started in the fall of '98 -- in August of 1998. And I
21 started as a Braille Instructor at the School for the
22 Blind, teaching elementary children K-6.

23 Q Okay.

24 A And I taught braille with the addition of -- one
25 year I think they added an Arkansas History course on

1 me, and one year I -- I taught a couple of math classes
2 with the only three students in there, as well. And
3 then, until August of this past year, when I began
4 teaching Adaptive Technology to secondary students. And
5 so, this is my first year working with 7-12. There were
6 one or two occasions where I had, like, one or two
7 students, during my braille instruction time that they
8 were students who had just come in and lost their
9 vision, you know, right recently within the last six
10 months or so. And just -- they wanted someone to help
11 them with braille and just sort of, you know, show them
12 a little bit about what they could still do on a
13 computer --very, very basic stuff, but other than that,
14 this is my first year of ever actually teaching adaptive
15 technology full-time.

16 Q And you said that you teach adaptive technology to
17 7th through 12th graders?

18 A Uh-huh.

19 Q Is that right?

20 A Uh-huh.

21 Q But not elementary school?

22 A No.

23 Q Is it a mixed classroom that you teach in?

24 A I have -- I usually have on average of three to
25 four students at a time, per class period. And they're

1 usually divided up, you know, grade-wise.

2 Q Okay. So, are you -- in teaching your adaptive
3 technology students, are you able to observe different
4 ranges of skill and ability?

5 A Uh-huh.

6 Q And what would you say about ranges?

7 A I still get a lot of students who come in from
8 public school who have either had no opportunity to have
9 exposure to the equipment, or who have just lost their
10 vision for various reasons. I get a lot of just the
11 basic, but then I also have some students who, because
12 they've been at the School for the Blind and they've had
13 exposure to computers and JAWS and things for several
14 years, that they're -- they're on a more higher skilled
15 level. There are probably -- oh probably, you know,
16 just intermediate, you know, JAWS users probably. They
17 are not -- we don't -- we don't teach anything advanced
18 like scripting or any of that kind of stuff. We're
19 pretty -- pretty basic on word processing, navigation in
20 Word, and you know, basic Internet, e-mail, how to get
21 your work done on the computer, that kind of thing.

22 Q Okay. So, --

23 A So, we're --

24 Q Go on if you're not finished with --

25 A Oh, no.

1 BY MR. BASRAWI:

2 Q Do you -- I'm sorry.

3 A Well, I just know that some links could be labeled
4 a little better than others. But --

5 Q So, you have gone to web pages that say, "Graphic,"
6 and then --

7 A Uh-huh.

8 Q -- has a label on it, correct?

9 A Uh-huh.

10 Q For a link?

11 A Uh-huh.

12 Q And does that make it easier than if there wasn't a
13 label on that graphic, to identify that link?

14 MR. PLUNKETT: Objection. Vague.

15 BY THE WITNESS:

16 A Well, for essence of time -- for essence of time
17 and you know, the speaking commands, on trying to figure
18 out what it is, you know, yes. It's obviously easier.

19 BY MR. BASRAWI:

20 Q Okay.

21 MR. BASRAWI: All right. Let's take a
22 break, if you want. Five minutes?

23 MR. PLUNKETT: Sure.

24 (WHEREUPON , a short break was taken, after
25 which the deposition proceedings resumed as

1 you know, "Okay, wow. Here's what's here. Here's
2 what's available." You know, five to ten minutes just
3 kind of reading, listening to it, tabbing, and seeing
4 what was there.

5 BY MR. BASRAWI:

6 Q And this time that you were on target.com, was this
7 on or about May 21st? Is this time, the time you're
8 talking about?

9 A Uh-huh.

10 Q Okay.

11 MR. PLUNKETT: Please try to answer "Yes"
12 or "No."

13 BY THE WITNESS:

14 A Yes.

15 BY MR. BASRAWI:

16 Q Okay. And when you visited the home page for the
17 first time, did you notice that there was a large number
18 of links that you were not able to identify?

19 MR. PLUNKETT: Objection. Assumes facts.
20 Lacks foundation.

21 BY THE WITNESS:

22 A Initially, when it first came up and it started
23 reading -- I'm trying to remember if that was the one --
24 I don't remember being just floored by any, "Oh, my
25 Gosh. I can't read it, I can't read it, I can't read

1 it." I just -- I remember seeing, you know, okay, there
2 were a few things that it was -- you know, I thought,
3 "Oh, that's probably a picture or whatever." But at
4 that point, I just began to tab and skip down to the
5 next -- the next table or next -- and then just went
6 from there. And I just saw the departments and, you
7 know, the Target Baby, Toys, whatever, and I thought,
8 "Well, gee. I don't know what that stuff is, but here's
9 everything I need." And I just -- I just went from
10 there.

11 BY MR. BASRAWI:

12 Q Were you curious as to what the stuff you couldn't
13 recognize was?

14 A Well honestly, not really.

15 Q Why not?

16 A I -- well, I -- once I saw the dep -- all the
17 departments and everything and, you know, the shopping
18 and how to -- I just didn't really think about it. I --
19 I don't know. I just --

20 Q Well, I'm --

21 A It didn't bother me.

22 Q Let me -- let me ask you this. Would it bother you
23 to learn that those links that you didn't identify could
24 have been specials or offers that you never became aware
25 of?

1 turn that Virtual PC cursor off, you're going to lose
2 that spot. You're going to have to tab to find it
3 again. Even if you were directly on that "Proceed to
4 Checkout" when you turn that cursor off, then you're
5 still going to have to go back and find it.

6 Q How long did it take you to figure out how to
7 activate the "Proceed to Checkout" button?

8 A What program? On JAWS?

9 Q On JAWS.

10 A Yeah. Just probably a couple of minutes. I
11 realized it wasn't going to work with the -- and then I
12 tried just routing the -- you know, routing the JAWS --
13 routing JAWS PC and then doing the left-click and
14 realized that wasn't going to work. And I thought,
15 "Okay. Let's just turn our Virtual PC cursor off." And
16 did it. And tabbed over and found my little "Proceed to
17 Checkout" button again, and hit Enter, and it worked.

18 Q And you said it took about two minutes?

19 A Uh-huh. At most.

20 Q Were you frustrated by the fact that it took two
21 minutes to figure it out?

22 A I was a little surprised, initially, that it didn't
23 work. But I thought, "Well, you know, there's gotta be
24 something JAWS isn't -- JAWS isn't telling it that it's
25 clicking. JAWS isn't doing something, here." And

1 again, I'm -- I'm on 7.0 and I do know that there are
2 later versions. There's, like, a beta version or
3 something, 7.1, 7.2 -- I'm trying to think -- anyway,
4 and I don't have it. So you know, I thought, "Well,
5 maybe this is the reason I should update or whatever."
6 I don't know, but -- but all the other buttons worked
7 fine. So, I don't know what it is about that one. It's
8 a little odd. But everything else works great. So,
9 once I got it going, you know, and then went back to my
10 normal Virtual Cursor Mode, it was fine. And so, I just
11 kept going.

12 Q Now, do you expect that a beginner screen reader
13 user would have been able to figure out how to activate
14 the button?

15 MR. PLUNKETT: Objection. Vague. Calls
16 for speculation.

17 BY THE WITNESS:

18 A Well, it depends on really how much -- you know, as
19 a beginner, how much initiative do you take? How much
20 are you going to read? And how much are you going to,
21 you know, how much are you going to look at it? And how
22 much are you going to try? I don't -- I am totally self
23 taught on what I've learned and I know that, you know,
24 when I got -- so many changes have happened since I
25 started JAWS. There wasn't even such a thing as, you

1 Q Would you like me to break it down?

2 A With -- you know, with the "Proceed to Checkout," -
3 - okay, if you just hit Enter would the JAWS work? And
4 JAWS may very well work. But like I said, I'm on 7.0,
5 so -- and I know it works on Freedom Box. So, my -- I
6 would say that the odds are it's probably a JAWS issue.
7 With the -- the newer version it'll probably work. I
8 mean, it worked fine on Freedom Box. So, I'm not real
9 sure how much that problem is, again, a JAWS thing. And
10 it'll be fixed just with -- with JAWS being updated,
11 like, using the beta or whatever. It's going to -- it's
12 going to depend on -- a lot of things fix themselves as
13 the screen reader fixes itself. And that's why I can't
14 specifically say that that's a website issue, because
15 the fact that it works for Freedom Box tells me that --
16 that that button works. That the fact that it didn't
17 work with my 7.0 on JAWS is kind of a fluke. And every
18 other button did.

19 Q Other than the button issue, how about if the links
20 were labeled? Would that make it easier for you to use?

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

23 BY THE WITNESS:

24 A Well, I -- I mean, I found all the links that I --
25 all the links that I needed, like, to the departments

1 and everything was all there. And so, the fact that I
2 didn't have -- you know, that I didn't use the other
3 links, I don't know how that would have impacted my
4 visit because I -- you know --

5 BY MR. BASRAWI:

6 Q Because you don't know what you were missing.

7 A I didn't need them. Yeah. I just -- everything I
8 -- you know, I searched for stuff and shopped and put
9 stuff in and bought. And it worked. So, I -- I didn't
10 find them necessary. That doesn't mean -- you know, --
11 other people might, but I was okay with it.

12 Q Would you have spent less time on the website if
13 the labels -- if all the links that you encountered were
14 properly labeled?

15 MR. PLUNKETT: Objection. Calls for
16 speculation. Assumes facts.

17 BY THE WITNESS:

18 A Personally, I would have -- I was almost relieved
19 to just kind of skip to the parts that had the different
20 departments and then, you know, go, "Okay. I want
21 music." So, I went to music. And then I searched for
22 CDs. And I mean, you know, once I found those
23 department links it was kind of -- I thought, "Boy, I
24 don't know what all that is, but good grief." You know,
25 at times it can almost be -- there can almost be too

1 Q Okay. I understand that you visited target.com on
2 May 23rd; is that correct?

3 A Yes.

4 Q Okay. And at that visit, you used Freedom Box; is
5 that correct?

6 A Yes.

7 Q Did you notice any differences in the way you were
8 able to access target.com on that occasion from previous
9 occasions?

10 A When it first comes up, the first thing it says is,
11 "Can I help you find something?" And where as, you
12 know, JAWS would start reading more of the, "Target.com,
13 duh, duh, duh, duh." You know, it would read the whole
14 thing and then it would get to the, "Can I help you find
15 something?" You know, it was -- Freedom Box, when it
16 comes up, it's kind of designed to kind of start at the
17 -- like you know, big catch phrase. And then, of course
18 with Freedom Box, when you -- a portion of the page --
19 you have to change that a little. I mean, the page is --
20 -- was going to be a little different that time because I
21 had been -- I had already created my account with JAWS
22 the time before. But I did actually log out and, you
23 know, tell it that I wasn't me at one point just to see
24 kind of how it came up and what it said. But other than
25 not having to enter, of course, Forms Mode when you fill

1 in -- like if you want to do a Search or if you're
2 entering your username or password or any of the other
3 stuff, the quantity. You -- of course, you don't have
4 those shortcuts. Like, there's certain shortcuts that
5 maybe JAWS might have that Freedom Box doesn't. I mean,
6 you can still use -- you can still use, like you know,
7 "E" to go to Edit for, you know, form fields and that
8 kind of thing. There are some things -- of course
9 Windows Find is going to work the same as it always
10 does. But, like, "B" for -- things like "B" for button
11 and things like that are -- you know, are different. It
12 uses -- you use a modifier key and "H" to do headings.
13 You can use your -- whatever your modifier key is
14 because you can customize that. You can have it either
15 be your Insert or your Shift key -- you can -- you have
16 control over what your modifier key is, with Freedom
17 Box. So, you can -- you can still do things, it's just
18 a little bit different. And then, like, the checkout --
19 the "Proceed to Checkout" button. With Freedom Box, you
20 hit Enter and it works great. So, with JAWS, when I got
21 to the "Proceed to Checkout" button -- and honestly,
22 every other button worked fine -- but "Proceed to
23 Checkout", you hit Enter -- and you can hit Enter all
24 day, and it just sits there.

25 Q And this is with which?

1 A With JAWS. And so, with JAWS, you -- you do your
2 Insert+Z and turn off your virtual cursor and then you
3 tab over to find that "Proceed to Checkout" button
4 again, with your Virtual PC cursor off, and hit Enter
5 and it works fine. And then you can turn your cursor
6 back on and everything works beautifully. But with
7 Freedom Box, you didn't have to do that. You just hit
8 Enter and it will --

9 Q And you're talking about the "Proceed to Checkout"
10 button when you're going to make a purchase?

11 A Uh-huh.

12 Q And do you know where that button was located, on
13 the page?

14 A It's after you -- you've got your "Contents of Your
15 Cart" and you've got -- it'll say, you know, "Quantity,"
16 "Update," "Delete," you know, for each item that's in
17 there. And you keep tabbing across and you'll see all
18 the stuff in your cart. And then there's something that
19 says -- you've got, like, a "Continue Shopping," button
20 and then there's -- and it's right -- right in that
21 vicinity when you're -- when you're tabbing across. And
22 when your Virtual PC cursor is off, your arrow keys do
23 not work so well. It jumps around the screen too much.
24 So, you have to tab to find it. Because even if you're
25 directly on it and you -- and you do that Insert+C, to

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

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

PLAINTIFFS

V.

NO. C06-01802 MHP

TARGET CORPORATION,

DEFENDANT

I, TERESA IDEN, Certified Court Reporter in and for the State of Arkansas, Supreme Court Certificate No. 646, do hereby certify that the proceedings of the oral deposition of DAWN WILKINSON, taken on behalf of the Plaintiffs for the case stated by me in the caption above are hereto true; that the foregoing transcript of the deposition proceedings and the testimony of said proceedings was taken by me in stenovoice and was thereafter reduced to typewritten form by me or under my direction and supervision; that the foregoing pages numbered 1 through 112 constitute a true and accurate record of the proceedings held to the best of my understanding and ability.

I FURTHER CERTIFY that I am neither counsel for, related to, nor employed by any of the parties to the action in which this proceeding was taken; and further, that I am not a relative or employee of any attorney or

counsel employed by the parties hereto, nor financially interested, or otherwise, in the outcome of this action; and that I have no contract with the parties, attorneys, or persons with an interest in the action that affects or has a substantial tendency to affect impartiality that requires me to relinquish control of an original deposition transcript or copies of the transcript before it is certified and delivered to the custodial attorney, or that requires me to provide and service not made available to all parties to the action.

WITNESS MY HAND AND SEAL as such Court Reporter
on this the 30th day of June, 2006.


TERESA EDEN, CCR
CERTIFIED COURT REPORTER
ARKANSAS SUPREME COURT CERTIFICATE NO. 646

EXPIRES: 12/31/2006

EXHIBIT D

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IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

NATIONAL FEDERATION OF THE BLIND,)

the NATIONAL FEDERATION OF THE)

BLIND OF CALIFORNIA, on behalf of)

their members, and Bruce F. Sexton,))

on behalf of himself and all others))

similarly situated,)

PLAINTIFFS)

V.) NO. C06-01802 MHP

TARGET CORPORATION,)

DEFENDANT)

ORAL DEPOSITION OF

DAVID HENRY WILKINSON

TAKEN IN LITTLE ROCK, ARKANSAS

JUNE 21, 2006

CERTIFIED COPY

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REPORTED BY: TERESA IDEN, CCR NO. 646

1 Project Assist in using Microsoft Word. And I was
2 enrolled in, but didn't attend on a regular basis, a
3 course in HTML a number of years ago.

4 Q Okay. Did you receive any kind of certification of
5 completion of these courses?

6 A No.

7 Q Okay. With respect to adaptive software, have you
8 had any kind of formal training?

9 A I have not.

10 Q How did you learn to use adaptive software?

11 A I read product manuals. I learned how to use the
12 Help System. I called tech support, and I fought and
13 slogged my way through it.

14 Q Okay. No one has ever taught you how to use
15 adaptive equipment --

16 A That is correct.

17 Q -- or software?

18 A That is correct.

19 Q Other than the HTML or Microsoft courses that
20 you've taken, have you had any other training or
21 instruction in computers, generally?

22 A I'm trying to think, to make sure I don't leave
23 anything out.

24 Q To the best of your recollection.

25 A I don't believe so. To the best of my

1 who wasn't home and whom I wouldn't have asked anyway.

2 The point was, I wanted to look around the website and

3 see what I could find, so I did.

4 Q Okay. You say in your declaration that you
5 encountered obstacles on target.com. Do you recall what
6 those obstacles were?

7 A Certainly a link that doesn't tell me where it's
8 going to go is a barrier to being able to get there. I
9 also -- well, I'm trying to think if that's -- that's
10 Target-specific. I think that it would be great if
11 those links -- I mean, if that -- if -- I'm -- and it
12 would be nice if they were labeled specifically. Could
13 it be probably designed a bit better? Okay. But it
14 certainly didn't keep me from using the site.

15 MR. BASRAWI: I'm sorry. Can you read back
16 that last answer, please?

17 COURT REPORTER: Answer, "Certainly the
18 link that doesn't tell me where it goes is a
19 barrier to being able to get there. I also
20 know -- I'm trying to think if those are
21 Target-specific. And it would be great if
22 those links -- it would be nice if they were
23 labeled. Could it be designed a bit better?
24 Okay. As for that, it didn't keep me from
25 using the site."

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

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

PLAINTIFFS

v.

NO. C06-01802 MHP

TARGET CORPORATION,

DEFENDANT

I, TERESA IDEN, Certified Court Reporter in and for the State of Arkansas, Supreme Court Certificate No. 646, do hereby certify that the proceedings of the oral deposition of DAVID HENRY WILKINSON, taken on behalf of the Plaintiffs for the case stated by me in the caption above are hereto true; that the foregoing transcript of the deposition proceedings and the testimony of said proceedings was taken by me in stenovoice and was thereafter reduced to typewritten form by me or under my direction and supervision; that the foregoing pages numbered 1 through 118 constitute a true and accurate record of the proceedings held to the best of my understanding and ability.

I FURTHER CERTIFY that I am neither counsel for, related to, nor employed by any of the parties to the action in which this proceeding was taken; and further, that I am not a relative or employee of any attorney or

counsel employed by the parties hereto, nor financially interested, or otherwise, in the outcome of this action; and that I have no contract with the parties, attorneys, or persons with an interest in the action that affects or has a substantial tendency to affect impartiality that requires me to relinquish control of an original deposition transcript or copies of the transcript before it is certified and delivered to the custodial attorney, or that requires me to provide and service not made available to all parties to the action.

WITNESS MY HAND AND SEAL as such Court Reporter
on this the 30th day of June, 2006.


TERESA IDEN, CCR
CERTIFIED COURT REPORTER
ARKANSAS SUPREME COURT CERTIFICATE NO. 646

EXPIRES: 12/31/2006

EXHIBIT E

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

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

Plaintiffs,

-vs-

No. C06-01802 MHP

TARGET CORPORATION,

Defendant.

CERTIFIED
COPY

VIDEOTAPED DEPOSITION OF SUZANNE TRITTEN

OKLAHOMA CITY, OKLAHOMA

FRIDAY, JUNE 30, 2006

REPORTED BY:
TRENA K. BLOYE
CSR

JOB No. 49610

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**For the Plaintiffs: Camilla L. Roberson
SCHNEIDER & WALLACE
180 Montgomery Street
Suite 2000
San Francisco, California 94104
415-421-7100**

**For the Defendant: Stuart C. Plunkett
MORRISON FOERSTER
425 Market Street
San Francisco, California 94105
415-268-6145**

Videographer: Bruce Rodgers

Also Present: Curtis Chong

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PLAINTIFF'S EXHIBITS

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S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED BY and
between the parties hereto, through their respective
attorneys, that the videotaped deposition of SUZANNE
TRITTEN may be taken on behalf of the Plaintiffs on
the 30th day of June, 2006 in Oklahoma City,
Oklahoma, by Trena K. Bloye, Certified Shorthand
Reporter for the State of Oklahoma, by agreement
pursuant to the Federal Rules of Civil Procedure.

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01:17:05 1 Q With respect to the adaptive software
01:17:16 2 that you use, JAWS, have you had any training?

01:17:18 3 A I am largely self-taught.

01:17:21 4 Q Did you ever use any training manuals
01:17:29 5 or --

01:17:29 6 A I use the -- my two primary sources for
01:17:35 7 learning Windows were the project assist training
01:17:39 8 materials and Windows 95 Explained.

01:17:47 9 Q Have you had any training in any other
01:17:50 10 type of computer software?

01:17:56 11 A No official training.

01:17:58 12 Q So, does that mean you have taught
01:18:00 13 yourself that as well?

01:18:01 14 A Yes.

01:18:01 15 Q Okay. Which software?

01:18:03 16 A I can use Microsoft Word. I have used
01:18:10 17 Word Perfect. I can use the America Online
01:18:16 18 software. I can use Outlook 2000. My experience
01:18:25 19 with the Office Suite is Office 2000, and Outlook
01:18:31 20 Express.

01:18:31 21 Q Okay. And have you had any training in
01:18:34 22 web design or programming?

01:18:35 23 A No.

01:18:36 24 Q What is your occupation?

01:18:41 25 A I am an adaptive technology consultant

01:18:47 1 and braille translator.

01:18:48 2 Q And how long have you been doing that?

01:18:57 3 A The consulting since 2000. And the
01:19:03 4 braille translation since 1999. And I have done
01:19:10 5 some training using teaching others to use JAWS as
01:19:17 6 well.

01:19:17 7 Q Where did you do that training?

01:19:19 8 A It's all been just as people have
01:19:22 9 contacted me. I did some work for the State of
01:19:25 10 Oklahoma as well as a trainer.

01:19:32 11 Q And where do you currently work?

01:19:34 12 A From my home.

01:19:39 13 Q Before you began working as a consultant,
01:19:44 14 what did you do?

01:19:45 15 A I was a housewife and mother.

01:19:54 16 Q Okay. Does your current job require
01:19:58 17 expertise in computers?

01:20:01 18 A It requires me to know how to use them.
01:20:07 19 But I don't -- I don't qualify it as expertise.

01:20:14 20 Q Do you have to know how to use them well
01:20:17 21 enough to be able to teach others, though? Is that
01:20:21 22 correct?

01:20:21 23 MR. PLUNKETT: Objection. Vague.

01:20:30 24 Can I interrupt? Do you need me to
01:20:32 25 put the microphone on?

01:20:38 1
01:20:45 2
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01:22:33 25

VIDEOGRAPHER: (Nods head.)

Q (By Ms. Roberson) Did you understand the question?

A Yes. I didn't know if you were ready to continue or not.

Q Oh, okay.

A I don't believe expertise is required to teach another person the basics of how to use a computer.

Q Okay. Would you say that you are very proficient with computers?

A I would say I'm proficient. I know -- you know, I know what I'm -- how do I say this? I know how to use a computer well enough to accomplish the basic tasks required.

Q And which tasks would those be?

A Word processing, some internet surfing. I'm not a programmer.

Q Um-hum. As a consultant, what are some of your duties? What kind of things do you do?

A I test software to see if a visually impaired person can use it.

Q Which software?

A At this time, the main work I am doing I cannot say, due to non-disclosure agreements.

01:53:18 1 website before?

01:53:19 2 A No.

01:53:19 3 Q So, that was your very first time going?

01:53:22 4 A That was my very first visit.

01:53:25 5 Q Okay. And when you visited target.com,

01:53:29 6 did you receive advice, assistance, or instruction

01:53:32 7 from anyone?

01:53:33 8 A No.

01:53:33 9 Q So I'm to understand all you are told is

01:53:38 10 to look over it and see if you could make a

01:53:41 11 purchase?

01:53:42 12 A Correct.

01:53:42 13 Q About how much time did you spend on the

01:53:52 14 site on the 13th?

01:53:53 15 A On the 13th, all total I spent about four

01:53:57 16 hours.

01:53:59 17 Q Did the target.com website pose any

01:54:08 18 initial confusion for you when you accessed their

01:54:11 19 home page?

01:54:12 20 A Confusion is not the appropriate term.

01:54:17 21 Q I'm looking at Plaintiff's Exhibit A

01:54:24 22 (sic.), which is your declaration --

01:54:24 23 A Well --

01:54:27 24 Q Let me just read it to you. And I'm sure

01:54:30 25 counsel will tell me if I have it incorrect.

01:54:33 1 In paragraph four of your declaration,
01:54:35 2 you state, "On or about May 13, 2006, I accessed
01:54:39 3 target.com with the intention of navigating the
01:54:42 4 website and purchasing merchandise. This was the
01:54:44 5 first time I ever visited target.com. I spent a
01:54:49 6 little more than two hours on target.com exploring
01:54:53 7 the various functions and features on the website.
01:54:55 8 Because this was my first visit to target.com, I
01:54:56 9 did run into some initial confusion." Is that
01:55:00 10 correct?

01:55:00 11 A Well, that's the way we put it. It was
01:55:04 12 put -- or that's the way we -- okay. I had some
01:55:11 13 problems --

01:55:19 14 Q Okay.

01:55:21 15 A -- getting -- okay. I had some problems
01:55:23 16 because I simply did not understand the way things
01:55:25 17 were laid out initially.

01:55:29 18 Q Well, what happened -- walk me through
01:55:34 19 that first visit. You accessed target.com.
01:55:38 20 Correct?

01:55:38 21 A Yes.

01:55:38 22 Q Okay. What happened when you accessed
01:55:41 23 target.com?

01:55:42 24 A The first thing that caught my ear and
01:55:46 25 definitely got my attention is JAWS announced that

02:04:19 1 instance, the group of links that -- the group of
02:04:28 2 image map links was larger than pretty much
02:04:33 3 anything I had encountered before.

02:04:47 4 Q (By Ms. Roberson) I'm just looking at my
02:04:49 5 notes. That's why I'm silent. I'm sorry.

02:04:52 6 A Um-hum.

02:04:53 7 Q Do you have any idea what was on those
02:05:01 8 links?

02:05:03 9 A I have no idea, because I never asked
02:05:05 10 anyone to tell me.

02:05:07 11 Q Does that --

02:05:09 12 A My guess is that they are pictures of
02:05:12 13 things that Target is advertising.

02:05:20 14 Q Okay. Does it bother you that you
02:05:23 15 couldn't tell what those were?

02:05:25 16 A No.

02:05:28 17 Q So you're on the home page. You realize
02:05:32 18 that there are all of these image links and that's
02:05:38 19 it's easier to go back up to the top of the home
02:05:41 20 page, correct, or the beginning of the home page?

02:05:46 21 A Correct.

02:05:47 22 Q Okay. What did you do next?

02:05:48 23 A I found the home link and pressed enter.

02:05:55 24 Q And what happened?

02:05:56 25 A A new page loaded. And below the links

02:06:01 1 at the top and the little search form there were
02:06:04 2 all kinds of links that referred to -- well, there
02:06:12 3 was like a shop by room link, there was all kinds
02:06:20 4 of links that would point you to various things
02:06:23 5 that you might find in the home section of a
02:06:25 6 department store.

02:06:26 7 Q And were all of those marked clearly?

02:06:29 8 A Yes.

02:06:29 9 Q And what did you do after that?

02:06:39 10 A I found a link called "Shop by room," and
02:06:42 11 I clicked it, or pressed enter on it.

02:06:45 12 Q And how did you find that link?

02:06:47 13 A Using the arrow keys.

02:06:49 14 Q Now, when you were on this page did you
02:06:58 15 find any links that were not readable by --
02:07:04 16 withdrawn.

02:07:05 17 Did you find any links that were
02:07:07 18 confusing?

02:07:09 19 A There were a few more of the image map
02:07:14 20 links similar to those on the home page, but they
02:07:19 21 were very few and far between.

02:07:32 22 Q And then what did you do?

02:07:34 23 A Like I said, I activated the shop by room
02:07:38 24 link. On the next page I found a link for
02:07:44 25 kitchens, since my intent was to look at dish

02:12:00 1 A Correct.

02:12:01 2 Q Is that generally what you do when you
02:12:07 3 are familiarizing yourself with a site, look for
02:12:10 4 shortcuts?

02:12:11 5 A You have to, because most sites these
02:12:19 6 days are large. You know, there aren't many sites
02:12:26 7 that have less than -- especially the home pages
02:12:29 8 anyway, that have less than 100 links anymore. And
02:12:36 9 you have to -- you have to familiarize yourself
02:12:39 10 with -- I mean, it's like if you go into a house,
02:12:42 11 the first time you go in you're going to have to
02:12:46 12 look around to find the rooms. But, eventually, as
02:12:51 13 you visit that house more often you're going to
02:12:56 14 learn, "I don't have to walk all the way around the
02:13:00 15 walls. I can walk through the middle of this
02:13:03 16 room." Do you understand what I'm saying?

02:13:05 17 Q Um-hum.

02:13:06 18 A As you get familiar you can take short
02:13:09 19 cuts or you can -- you know, familiarity, you just,
02:13:15 20 it happens.

02:13:16 21 Q Sounds about right. There is one thing.
02:13:21 22 Let's go back to the home page. About how much
02:13:24 23 time did you spend on the home page before you
02:13:26 24 decided to go back up to the links at the top?

02:13:29 25 A Probably about ten, fifteen minutes at

02:13:37 1 the most.

02:13:39 2 Q And I am correct in saying that that's a
02:13:46 3 little longer than what you would normally have to
02:13:50 4 spend listening to image links and lots of weird
02:13:58 5 code?

02:13:59 6 MR. PLUNKETT: Objection. Vague.
02:14:02 7 Mischaracterizes the record.

02:14:04 8 A In this case, probably, actually, it was
02:14:06 9 less time.

02:14:09 10 Q (By Ms. Roberson) Okay.

02:14:10 11 A Because I determined that there wasn't
02:14:13 12 any need or serious use in exploring the rest of
02:14:18 13 the page.

02:14:19 14 Q If you hadn't been asked to explore the
02:14:31 15 whole website, would you have stayed on this page,
02:14:35 16 or on this website, on Target's website?

02:14:38 17 MR. PLUNKETT: Objection. Calls for
02:14:42 18 speculation.

02:14:43 19 A If I had not been asked, in all honesty,
02:14:55 20 I don't know that I would have visited the site.

02:14:58 21 Q (By Ms. Roberson) Okay.

02:14:58 22 A Target -- I guess I had always assumed --
02:15:04 23 I've always shopped online for things like
02:15:09 24 electronics, things where the specs. are right in
02:15:15 25 front of you, like 500 megabytes or -- of memory or

02:23:19 1 A But, no, not websites. I wouldn't try.

02:23:23 2 Q Why not?

02:23:23 3 A Because, for one thing, what you hear and
02:23:30 4 probably what are seen -- is seen on the screen, I
02:23:33 5 can't guarantee they are going to be the same.

02:23:38 6 Q And why is that?

02:23:40 7 A Because some graphics have what they call
02:23:47 8 alt tags, which means that while there is a nice,
02:23:51 9 pretty little picture on the screen, in the
02:23:54 10 underpinnings of the programming there is text.

02:23:58 11 Q Okay. And is that what you would hear?

02:24:08 12 A And that's what I would hear.

02:24:11 13 Q Okay. Now, if there is isn't alt tags,
02:24:17 14 what would you hear?

02:24:18 15 A If there aren't alt tags I would here
02:24:23 16 sometimes, usually the URL, like we -- like I
02:24:27 17 mentioned on the home page.

02:24:31 18 Q Okay. So on the home page, all of those
02:24:34 19 image maps where you heard the URL did not have alt
02:24:39 20 tags; is that correct?

02:24:41 21 MR. PLUNKETT: Objection. Calls for
02:24:42 22 speculation.

02:24:43 23 A All I can say is that's my guess.

02:24:46 24 Q (By Ms. Roberson) Okay. Based on what
02:24:47 25 the screen reader was --

02:53:14 1 A Here, this page, I pressed the add to bag
02:53:18 2 button. This page came up and it said, "People who
02:53:20 3 bought these wind chimes also bought this."

02:53:24 4 Q Um-hum.

02:53:24 5 A And we had all kinds of wonderful
02:53:27 6 advertisements, and I had to find -- you know, I
02:53:32 7 had to locate the "Proceed to checkout" button,
02:53:38 8 because I didn't want any of these other things.

02:53:40 9 Q Okay.

02:53:41 10 A And --

02:53:55 11 Q Are you --

02:53:56 12 A And when I found it, I found out that --
02:54:08 13 I guess I'm going to go on here. I found out that
02:54:13 14 this button did not activate by pressing enter.

02:54:18 15 Q The "Proceed to checkout" button?

02:54:20 16 A Um-hum.

02:54:21 17 Q So what did you do?

02:54:22 18 A I used a standard work around.

02:54:31 19 Q Okay. What was that standard work
02:54:34 20 around?

02:54:34 21 A I routed the JAWS cursor --

02:54:39 22 Q I'm sorry?

02:54:40 23 A Okay.

02:54:43 24 Q Please bring it to --

02:54:45 25 A Okay. Let's do this in --

02:54:48 1 Q You can use the same terms, just slowly.

02:54:51 2 A Okay. What I did is -- you know, you
02:54:55 3 asked me about the virtual cursor early on.

02:54:59 4 Q Right.

02:55:00 5 A That's what I'm using at the time I press
02:55:03 6 enter on that button.

02:55:04 7 Q Okay.

02:55:05 8 A It didn't work. That doesn't mean --
02:55:10 9 there's something there, it didn't activate. So I
02:55:13 10 simulated using the mouse by pressing a keyboard
02:55:19 11 command that moved the JAWS cursor, or the mouse,
02:55:26 12 to that button where the virtual cursor was.

02:55:34 13 Q Um-hum.

02:55:35 14 A And then I pressed the simulated -- I
02:55:42 15 pressed a button on the keyboard that simulates a
02:55:45 16 left mouse click.

02:55:47 17 Q And what button is that? I could bring
02:55:53 18 out a computer if you --

02:55:54 19 A No. Just give me a second. The slash on
02:55:58 20 the number pad.

02:55:59 21 Q Just the slash on the number pad?

02:56:02 22 A Um-hum.

02:56:02 23 Q Okay.

02:56:07 24 A No. I'm sorry. It's the star.

02:56:08 25 Q So the star on the number pad?

02:56:10 1 A Yeah. I'm sorry. It's the star.

02:56:16 2 Q Okay. So you simulated using the -- and
02:56:19 3 what did you call this process? You used a term I
02:56:23 4 didn't understand.

02:56:24 5 A Route the JAWS cursor to the PC cursor.

02:56:29 6 Q Okay.

02:56:29 7 A And, actually, in this case it's the
02:56:32 8 Virtual PC cursor.

02:56:39 9 Q And this a standard work around, you
02:56:44 10 said?

02:56:44 11 A Excuse me. Yes.

02:56:46 12 Q That's all right. Just out of curiosity,
02:56:57 13 how did you learn about this particular command?

02:57:05 14 A Through the tutorials I had read over
02:57:09 15 time.

02:57:10 16 Q Okay. Okay. So you routed the JAWS
02:57:18 17 cursor to the PC cursor, and then what happened?

02:57:25 18 A When I pressed the star on the number
02:57:29 19 pad, I heard the click, meaning that the link had
02:57:32 20 activated, or the button had activated, and I was
02:57:36 21 on my way.

02:57:40 22 Q How long did it take you to figure out to
02:57:42 23 do this once you found the "Proceed to checkout"
02:57:47 24 out button?

02:57:50 25 A About ten seconds, at most.

C E R T I F I C A T E

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STATE OF OKLAHOMA)
) SS:
COUNTY OF OKLAHOMA)

I, Trena K. Bloye, Certified Shorthand Reporter for the State of Oklahoma, certify that the above-named SUZANNE TRITTEN was by me first duly sworn to testify the truth; that the above and foregoing videotaped deposition taken by me in stenotype and thereafter transcribed is a true and correct transcript of the testimony of the witness; that the deposition was taken on June 30, 2006, at 1:12 p.m., at D&R Reporting & Video, Suite 650, 119 North Robinson Avenue, Oklahoma City, State of Oklahoma; that I am not an attorney for nor a relative of any said parties, or otherwise interested in the event of said action.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office on this the 5th day of July, 2006.

Trena K. Bloye
Oklahoma Certified Shorthand Reporter
Certificate No. 1522
Exp. Date: December 31, 2006

Trena K. Bloye
Certified Shorthand Reporter
for the State of Oklahoma

EXHIBIT F

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

--oOo--

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

CERTIFIED COPY

Plaintiffs,

vs.

No. C06-01802 MHP

TARGET CORPORATION,

Defendant.

Videotaped Deposition of

CHRISTOPHER POLK

Monday, June 19, 2006

Reported by:
SHARON CABELLO, RPR
CSR No. 3080
Job No. 2758CC

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C. Polk

6-19-06

03:07:27 1

have any other degree?

03:07:28 2

A. I have certificates and A Plus certification

03:07:37 3

in Network Plus. I have the JAWS Trainer

03:07:41 4

Certification, and the Assistant Technology Trainer

03:07:44 5

Certification from Lion's World in Little Rock,

03:07:48 6

Arkansas.

03:07:49 7

Q. Other than what you just described, have you

03:07:52 8

any other formal educational training?

03:07:53 9

A. No, I have not.

03:07:54 10

Q. With respect to adaptive software you just

03:07:58 11

testified that you've had certification in JAWS

03:08:01 12

training. Can you describe that?

03:08:02 13

A. It was a course basically where you went to

03:08:08 14

Freedom Scientific for a week and learned the

03:08:11 15

fundamentals of teaching JAWS. I was mainly there to

03:08:15 16

get the certification, to get the piece of paper saying

03:08:20 17

that I was certified so I could continue to teach in

03:08:24 18

the State of Louisiana.

03:08:25 19

Q. Okay. And what is Freedom Scientific?

03:08:29 20

A. Freedom Scientific is the company that makes

03:08:32 21

JAWS for windows screen reading software that I use.

03:08:35 22

Q. Okay. And how long was this training program?

03:08:37 23

A. Five days.

03:08:38 24

Q. Okay. Is there any other training that you've

03:08:43 25

had with respect to adaptive software?

C. Polk

6-19-06

03:08:48	1	A.	No, there is not.
03:08:49	2	Q.	Okay. Have you had training in computers or
03:08:53	3		software generally?
03:08:55	4	A.	Yes.
03:08:56	5	Q.	And what is that training?
03:08:57	6	A.	I took classes at New Horizons in Louisiana to
03:09:04	7		obtain my A Plus and my Network Plus certifications.
03:09:09	8	Q.	And can you describe what those certifications
03:09:12	9		are?
03:09:13	10	A.	The A Plus certification basically says that I
03:09:18	11		can effectively physically build a computer, configure
03:09:22	12		all the hardware peripherals, install the software, and
03:09:25	13		maintain it in an office environment.
03:09:28	14		The Network Plus basically states that I am
03:09:32	15		competent in the different types of topology of
03:09:36	16		different networks and I am able to effectively
03:09:39	17		administer security.
03:09:41	18	Q.	Okay. Other than that training which you just
03:09:44	19		described, have you had any other formal training in
03:09:49	20		software?
03:09:50	21	A.	No, I have not.
03:09:51	22	Q.	Okay. Have you had any training on web
03:09:54	23		design?
03:09:55	24	A.	No, I have not.
03:09:56	25	Q.	Or programming, web programming?

C. Polk

6-19-06

03:09:58 1 A. No, I have not.

03:09:59 2 Q. Okay. Can you please describe your job
03:10:04 3 history beginning with your current job and going
03:10:06 4 backwards?

03:10:07 5 A. Right now I am the systems administrator for
03:10:12 6 HumanWear. I am responsible for the entire U.S.'s
03:10:19 7 network. Before that I was involved in the technical
03:10:24 8 support area the -- of HumanWear with the products.

03:10:29 9 Next in line is the Society For the Blind
03:10:33 10 where I was an instructor of JAWS doing office
03:10:37 11 applications, JAWS the Internet. I was also
03:10:42 12 responsible for building computers and maintaining a
03:10:45 13 senior outreach programs computer site that they had.

03:10:51 14 Before then I was a contract employee for
03:10:54 15 Louisiana Rehab for a company called Touch Technical,
03:10:58 16 Incorporated, that is no longer in business. I went to
03:11:01 17 the clients of rehab's homes and did training and
03:11:07 18 computer installation.

03:11:08 19 And before that I was contracted with
03:11:11 20 Lighthouse for the Blind out of Washington, D.C., who
03:11:14 21 had a contract with the IRS to go around and train the
03:11:18 22 IRS's blind employees on how to use JAWS and the IRS's
03:11:25 23 -- well, I will just say their databases, because I
03:11:28 24 shouldn't talk about that, but their databases that
03:11:32 25 they use internally.

04:23:54 1 Q. Have you ever encountered a Web site that you
04:24:07 2 personally could not use?
04:24:22 3 A. Yes.
04:24:23 4 Q. Do you recall what that web site is?
04:24:25 5 A. I don't recall the exact URL, but it was the
04:24:30 6 web site to download ring tones for a cell phone.
04:24:42 7 Q. And why couldn't you use that web site?
04:24:46 8 A. It was a Java based application.
04:24:50 9 Q. How do you know that?
04:24:52 10 A. How do I know?
04:25:02 11 Q. Yeah.
04:25:04 12 A. I know the behavior of my screen reader when
04:25:08 13 it encounters Java based applications. I did some more
04:25:14 14 investigation into it and actually found out that it
04:25:17 15 was Java based by looking at the code myself.
04:25:22 16 Q. And would you say that you personally are a
04:25:30 17 very Web savvy computer user, Web savvy user?
04:25:35 18 MR. PLUNKETT: Objection, vague.
04:25:36 19 THE WITNESS: I am having a hard time with
04:25:54 20 this scale of being Web savvy versus not.
04:25:57 21 Q. MR. BASRAWI: You are saying that it requires
04:25:58 22 a person to be Web savvy in order to access certain Web
04:26:03 23 sites.
04:26:04 24 A. Right.
04:26:04 25 Q. So I am asking you are you Web savvy?

04:26:08 1 A. I definitely think that I have really good
04:26:16 2 skills, but I know that there is people that have more,
04:26:18 3 and people that have less than I.

04:26:22 4 Q. You train people on how to use the web,
04:26:25 5 correct?

04:26:25 6 A. Yes, I did.

04:26:26 7 Q. So would you say you are more savvy than the
04:26:34 8 people that you train?

04:26:37 9 A. In most cases, yes.

04:26:46 10 Q. Okay. Are you an expert in that area?

04:26:50 11 MR. PLUNKETT: Objection, vague.

04:26:51 12 THE WITNESS: How would you define "expert"?

04:26:56 13 Q. MR. BASRAWI: How would you define expert as
04:27:01 14 you understand the term?

04:27:03 15 A. I don't know whether I would consider myself
04:27:08 16 a, quote, "expert" or not. I definitely have more
04:27:15 17 skills than a lot of people, and less skills than some
04:27:19 18 people. I have never put myself on a scale to rate my
04:27:24 19 savviness or expertise on the web.

04:27:28 20 Q. Okay. You have certification in screen reader
04:27:32 21 use and in various computer skills, correct?

04:27:39 22 MR. PLUNKETT: Objection, mischaracterizes
04:27:41 23 testimony.

04:27:41 24 THE WITNESS: Yes, I do.

04:27:44 25 Q. MR. BASRAWI: Okay. Going back to a web site

C. Polk

6-19-06

04:48:45 1 THE WITNESS: Yes, I have.

04:48:50 2 Q. MR. BASRAWI: And what was -- do you recall

04:48:55 3 what those were?

04:48:59 4 MR. PLUNKETT: Objection, vague.

04:49:00 5 THE WITNESS: What do you mean what they were?

04:49:04 6 Q. MR. BASRAWI: What those buttons that you were

04:49:06 7 unable to use were, on which web sites?

04:49:12 8 MR. PLUNKETT: Objection, vague.

04:49:14 9 THE WITNESS: I see buttons every day that I

04:49:18 10 can't click that don't describe what they do.

04:49:21 11 Q. MR. BASRAWI: Okay. Can you tell me about

04:49:24 12 your experience with the Proceed to Checkout button on

04:49:26 13 target.com?

04:49:31 14 MR. PLUNKETT: Objection, lacks foundation.

04:49:39 15 THE WITNESS: One of the checkout buttons at

04:49:41 16 the top of the page did actually click and bring me to

04:49:43 17 a new page. The one at the bottom did not.

04:49:46 18 Q. MR. BASRAWI: Okay. Let's talk about the one

04:49:49 19 at the top of the page. When you said it did take you

04:49:54 20 to the next page, another page, what steps did you take

04:49:58 21 in order to activate the button to make it to go to

04:50:01 22 another page?

04:50:02 23 A. I pressed Enter on it.

04:50:04 24 Q. You pressed Enter on it?

04:50:05 25 A. I did.

04:50:06 1 Q. Were you in forms mode at the time?

04:50:08 2 A. No, I was not.

04:50:09 3 Q. Okay. And the one at the bottom of the page,

04:50:11 4 what steps did you attempt to use to activate that

04:50:15 5 button?

04:50:16 6 A. I tried Enter on it, space bar, forms mode,

04:50:23 7 and routing my JAWS to the PC and clicking.

04:50:27 8 Q. And none of these techniques worked?

04:50:30 9 A. No, I could not get that button to activate.

04:50:32 10 Q. Okay. Was that frustrating to you at all?

04:51:09 11 A. It was more of a curiosity type of thing to

04:51:13 12 me. I am of the mind set that I want to know why it

04:51:19 13 doesn't work.

04:51:19 14 So frustrating, I was not really frustrated,

04:51:23 15 but I had my interest piqued about why.

04:51:25 16 Q. Do you think that's because your field is

04:51:29 17 computers that piqued your curiosity?

04:51:35 18 A. I don't know how I would feel if my field was

04:51:37 19 not computer, so I don't know how to answer that.

04:51:39 20 Q. Okay. If you were trying to buy something

04:51:46 21 would it frustrate you if you could not activate the

04:51:50 22 checkout button?

04:51:51 23 MR. PLUNKETT: objection, incomplete

04:51:53 24 hypothetical.

04:51:53 25 THE WITNESS: Maybe a little, yes.

05:46:05 1 THE WITNESS: Can you explain that a little
05:46:10 2 better? I'm sorry.

05:46:12 3 Q. MR. BASRAWI: You have been testifying that
05:46:13 4 all you can testify to is whether a JAWS user or a
05:46:18 5 screen reader user has the requisite advanced training,
05:46:28 6 such as that which you have, and what that person would
05:46:32 7 be able to do; is that correct?

05:46:35 8 MR. PLUNKETT: Objection, vague,
05:46:37 9 mischaracterizes the evidence.

05:46:38 10 THE WITNESS: I can't really say that because
05:46:45 11 there could be someone less skilled than I am at JAWS
05:46:50 12 that can learn to figure things out, also.

05:46:54 13 Q. MR. BASRAWI: So somebody would have to
05:46:57 14 problem solve, troubleshoot in order to overcome
05:46:59 15 barriers on target.com?

05:47:02 16 A. Yes.

05:47:02 17 MR. PLUNKETT: Objection, calls for
05:47:03 18 speculation, incomplete hypothetical.

05:47:04 19 THE WITNESS: Yes, as in with any web site or
05:47:10 20 any application.

05:47:10 21 Q. MR. BASRAWI: Do you find troubleshooting
05:47:13 22 challenging?

05:47:15 23 MR. PLUNKETT: Objection, vague, lacks
05:47:17 24 foundation.

05:47:17 25 THE WITNESS: Can you explain a little better,

C. Polk

6-19-06

05:47:20 1

please?

05:47:21 2

Q. MR. BASRAWI: I mean, do you enjoy

05:47:23 3

troubleshooting?

05:47:26 4

A. Yes.

05:47:27 5

Q. Okay. Do you find troubleshooting to be a

05:47:30 6

challenge?

05:47:33 7

MR. PLUNKETT: Same objections.

05:47:34 8

THE WITNESS: Do you mean to get over a

05:47:37 9

challenge, or do I find it a challenge for myself to

05:47:40 10

troubleshoot?

05:47:41 11

Q. MR. BASRAWI: I'm not even sure I understand

05:47:46 12

the distinction there.

05:47:49 13

Do you find troubleshooting to be challenging?

05:47:58 14

MR. PLUNKETT: Same objections.

05:47:58 15

THE WITNESS: Yes.

05:47:59 16

Q. MR. BASRAWI: Okay. And do you enjoy being

05:48:02 17

challenged?

05:48:05 18

A: Yes.

05:48:05 19

Q. Okay. So you don't know how anybody else with

05:48:16 20

any other level of skill would be -- would react to

05:48:20 21

target.com?

05:48:23 22

MR. PLUNKETT: Objection, calls for

05:48:24 23

speculation.

05:48:24 24

THE WITNESS: I don't know how to predict what

05:48:32 25

one person's experience would be over mine, no.

REPORTER'S CERTIFICATE

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I certify that the witness in the foregoing deposition was by me duly sworn to testify in the within-entitled cause; that said deposition was taken at the time and place therein named; that the testimony of said witness was reported by me, a duly Certified Shorthand Reporter of the State of California authorized to administer oaths and affirmations, and said testimony was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for either or any of the parties to said deposition, nor in any way interested in the outcome of the cause named in said deposition.

IN WITNESS WHEREOF, I have hereunto set my hand this 26th day of June, 2006.



SHARON CABELLO
Certified Shorthand Reporter
State of California
Certificate No. 3080

EXHIBIT G

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

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

Plaintiff,

vs.

No. C06-01802 MHP

TARGET CORPORATION, et al.,
Defendants.

-----/
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DEPOSITION OF
CHARLES LETOURNEAU
SAN FRANCISCO, CALIFORNIA
JULY 5, 2006

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

- - -

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

Plaintiff,

vs. No. C06-01802 MHP
TARGET CORPORATION, et al.,
Defendants.

-----/

Deposition of CHARLES LETOURNEAU, taken on
behalf of Plaintiffs, at San Francisco, California,
commencing at 9:30, Wednesday, July 5, 2006, before
Danuta Krantz, CSR No. 4782.

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FOR THE PLAINTIFF:
LAW OFFICES OF DISABILITY RIGHTS ADVOCATES
2001 Center Street
Third Floor
Berkeley, California 94704

BY: LAURENCE W. PARADIS, ESQUIRE

FOR THE DEFENDANTS:

LAW OFFICES OF MORRISON & FOERSTER
425 Market Street
Suite 3300
San Francisco, California 94105

BY: STUART C. PLUNKETT, ESQUIRE

Also Present: Christopher Springer, Heather
Akers-Healy.
James Thatcher was present via speakerphone.

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1 websites -- that you have been developing standards for
2 website accessibility. What standards are those?

3 A. I was involved in the development of the
4 Web Content Accessibility Guidelines, Version 1.0.

5 Q. For -- to make our day a little easier, can
6 we call that WCAG 1.0?

7 A. WCAG, yes.

8 Q. WCAG 1.0?

9 A. Yes.

10 Q. What is WCAG 1.0?

11 A. It is a recommendation of the World Wide
12 Web Consortium's Web Accessibility Initiative, which
13 contains guidelines that people can use to develop more
14 accessible websites.

15 Q. Does it contain several different priority
16 levels?

17 A. Yes, it does.

18 Q. And what does Priority One represent under
19 WCAG 1.0?

20 A. Priority One, the checkpoint, if not met,
21 would be inaccessible to a person who is affected by
22 that particular guideline.

23 Q. Okay. And what kind of people are affected
24 by that particular guideline?

25 A. Depends on the which guideline. That is --

1 you have to be more specific.

2 Q. Okay. Is it concerning people with various
3 types of disabilities?

4 A. There are -- yes.

5 Q. And so for -- if a website does not meet
6 Priority One, to that extent it is inaccessible to some
7 people with disabilities? Is that your understanding?

8 MR. PLUNKETT: Objection. Incomplete
9 hypothetical.

10 THE WITNESS: It may be.

11 MR. PARADIS: Q. You say "may." Why do
12 you qualify that?

13 A. Because the question was not specific
14 enough to answer simply.

15 Q. What about Priority Two, what does that
16 represent?

17 A. Priority Two would -- complying with
18 Priority Two checkpoints would make a website easier
19 for people with certain disabilities to use.

20 Q. To the extent a website does not meet
21 Priority Two checkpoints, what does that mean in your
22 mind?

23 A. That someone would have more difficulty
24 using the website than a website that complied with
25 Priority Two.

1 Q. Again, Priority Two is also directed at
2 making websites accessible for people with various
3 types of disabilities; is that right?

4 A. Yes.

5 Q. And then Priority Three, what does that
6 represent?

7 A. Priority Three are an extra distance that
8 one can go to make the website experience further,
9 again, easier for someone to use.

10 Q. Okay. Would you say that you are an expert
11 in the field of web accessibility for people with
12 disabilities?

13 A. Yes.

14 Q. What was your first contact from any person
15 relating to this litigation?

16 A. What was it?

17 Q. Yes.

18 A. It was a phone call.

19 Q. Okay. About how long ago?

20 A. I would have to see my correspondence to
21 remember the exact date, but it was, I think, in June,
22 beginning of June.

23 Q. Okay. June of 2006, so about a month ago?

24 A. I think so.

25 Q. And who was that call from?

1 Q. And have you, up through now, gone and
2 inspected target.com?

3 A. No, I have not.

4 Q. Why not?

5 A. I was not asked to.

6 Q. I take it you provide services to website
7 designers and authors in helping them make their
8 websites accessible; is that right?

9 A. Yes, among other things.

10 Q. What standards do you apply when you assist
11 a website designer or author in making its website
12 accessible?

13 A. Primarily I use the standards or guidelines
14 that I am asked to use by the client.

15 Q. Have you assisted any retailer in making a
16 retailer's website accessible?

17 A. No, I have not.

18 Q. Have you assisted any business entity that
19 is not a government entity in making its website
20 accessible?

21 A. No, I have not.

22 Q. What types of entities have you assisted in
23 helping make their websites accessible?

24 A. Federal government of Canada primarily, and
25 a number of nongovernmental organizations, such as

1 MR. PARADIS: Q. So I take it you were not
2 asked to render an opinion as to whether or not
3 target.com is accessible; is that right?

4 A. That's correct.

5 Q. Did you ever ask anyone why you were not
6 being asked to address that issue?

7 A. No.

8 Q. You know who Dr. Thatcher is, correct?

9 A. Yes, I do.

10 Q. And is he an expert in the same field as
11 you?

12 MR. PLUNKETT: Objection. Calls for legal
13 conclusion.

14 THE WITNESS: Jim, I would say, is a very
15 well respected person in his field, yes.

16 MR. PARADIS: Q. And just so we are clear,
17 we are talking about the field of web accessibility for
18 people with disabilities?

19 A. Yes.

20 Q. Would you say that Dr. Thatcher is one of
21 the preeminent experts in that field?

22 MR. PLUNKETT: Objection. Calls for legal
23 conclusion.

24 You can answer.

25 THE WITNESS: I have great respect for Jim

1 A. For certain people's ability to access a
2 website.

3 Q. And the features that are relevant to blind
4 users that are listed as Priority One, would you agree
5 that those features are essential for website access by
6 the blind?

7 MR. PLUNKETT: Objection. Calls for
8 speculation. Incomplete hypothetical.

9 THE WITNESS: That is the definition of
10 Priority One. If it doesn't meet Priority One, then
11 some people with some disabilities would have -- would
12 be unable to access that particular feature of a
13 website.

14 Q. And to the extent a website lacks the
15 Priority One elements needed by blind people, that
16 website would by definition be inaccessible to blind
17 people?

18 MR. PLUNKETT: Objection. Incomplete
19 hypothetical. Calls for speculation.

20 THE WITNESS: I will answer that by saying
21 that it would be noncompliant.

22 MR. PARADIS: Q. Now, Priority Two, to the
23 extent -- what was your intent in designating certain
24 elements as Priority Two?

25 A. You mean what were the working groups?

1 A. Yes.

2 Q. What does that mean?

3 MR. PLUNKETT: Objection. Vague.

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

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

11 A. For structured documents, yes.

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

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

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

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

22 Was there a WCAG working group?

23 A. Yes.

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

1 A. Yes.

2 Q. Was it the consensus of the WCAG working
3 group that providing headers as a navigation feature
4 was necessary in order to make websites easily usable
5 by some disabled people?

6 A. I think the actual intent of that was to
7 provide information about the structure of documents so
8 that people could discover the structure of documents.
9 I don't recall in 1997 that it was actually a
10 significant navigation tool.

11 Q. How about today, do you consider providing
12 headers on complex web pages, websites, an important
13 navigation tool to make the web page or the website
14 accessible to blind people?

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

17 THE WITNESS: I would speculate that -- I
18 would say that it is important to make a website more
19 usable, not necessarily -- it's not accessible or
20 inaccessible. It's more accessible, more usable.

21 MR. PARADIS: Q. In terms of making a
22 website more usable, is it your understanding that it's
23 important to provide headings on a complex website?

24 MR. PLUNKETT: Same objection.

25 MR. PARADIS: Q. And I am talking about in

1 terms of making the website accessible to blind people.

2 MR. PLUNKETT: Same objection.

3 THE WITNESS: Headers are important to
4 delineate the structure of a structured document, a
5 structured website that has content in it. Again,
6 it's -- there are other ways to make a web page usable
7 and accessible without using headings if the page is
8 designed properly.

9 MR. PARADIS: Q. What are those other
10 ways?

11 A. The --

12 MR. PLUNKETT: Objection. Incomplete
13 hypothetical.

14 THE WITNESS: There are many, many ways to
15 design and lay out a web page, as many as there are
16 people's different ideas about how to lay out a web
17 page. Some of them are easier to follow than others.
18 Some pages don't lend themselves to structure in that
19 way.

20 MR. PARADIS: Q. Are there basic page
21 navigation techniques that you recommend to your
22 clients when developing websites, when designing
23 websites?

24 A. That depends on the type of website, on the
25 content, on the -- of the page. It varies depending on

1 the design.

2 Q. Have you ever been to a website of a
3 retailer?

4 A. Yes.

5 Q. That type of a website, are there basic web
6 page navigation techniques that you would recommend to
7 a client to make such a website accessible to blind
8 people?

9 MR. PLUNKETT: Objection. Vague.
10 Incomplete hypothetical.

11 THE WITNESS: I can't speculate. I mean,
12 there are just -- I have not reviewed a commercial
13 website to look at that type of feature.

14 MR. PARADIS: Q. Let me ask you to refer
15 again to your website printout, exhibit -- Plaintiff's
16 Exhibit F, that box, No. 1.

17 Where you -- do you have that in front of
18 you?

19 A. Yes, I do.

20 Q. So in here, where you say that, "A website
21 can be made inaccessible to a very large audience,"
22 what are the basic site navigation tools that you
23 considered necessary for a blind user back when you
24 authored this?

25 MR. PLUNKETT: Objection. Assumes facts.

1 Vague.

2 THE WITNESS: That is going back a long
3 way, but probably -- I have already mentioned the --
4 simply making sure that all of the mechanisms were
5 there to move around in the site.

6 At the time, a lot of people made web pages
7 that didn't have any links for going backwards or
8 forwards or going back to the home page, and some
9 people still do. And you can't -- if you come into
10 that page, you can't move around the site.

11 MR. PARADIS: Q. Would you consider the
12 use of header elements to convey document structure in
13 a complex website another basic site navigation
14 element?

15 A. No.

16 Q. Would you consider the use of header
17 elements to convey document structure a basic access
18 feature needed by blind people for a complex website?

19 MR. PLUNKETT: Objection. Incomplete
20 hypothetical.

21 THE WITNESS: No.

22 MR. PLUNKETT: Why don't we take a
23 five-minute break.

24 MR. PARADIS: Off the record for five
25 minutes.

1 THE WITNESS: Headers are one mechanism
2 that screen reader users can use to navigate a page if
3 it has headers.

4 MR. PARADIS: Q. Do you consider it a --
5 if there are no headings on a complex web page, how is
6 a blind user supposed to get around -- supposed to be
7 able to navigate around the page?

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

10 THE WITNESS: A person can navigate by link
11 to link, by table to table, form to form, paragraph by
12 paragraph, word by word. There are many ways to
13 navigate a web page using a screen reader.

14 MR. PARADIS: Q. I take it -- well, back
15 to your website where you said in box 1 that, "A web
16 designer can make a web page inaccessible by failing to
17 include basic site navigation tools."

18 You have mentioned the next page, previous
19 page. What are the other basic site navigation tools
20 that failing to include in a website would make it
21 inaccessible to blind people?

22 MR. PLUNKETT: Objection. Asked and
23 answered. Calls for speculation. Incomplete
24 hypothetical.

25 THE WITNESS: I think the one that I

1 mentioned was it, being able to move from page to page
2 through the site.

3 MR. PARADIS: Q. Not -- what about moving
4 within a page, are there any basic site navigation
5 tools that failing to include in a website would make
6 the page inaccessible to blind users?

7 MR. PLUNKETT: Objection. Calls for
8 speculation. Incomplete hypothetical.

9 THE WITNESS: In my opinion, no.

10 MR. PARADIS: Q. You are familiar with the
11 Section 508, Guidelines for Web Accessibility; is that
12 right?

13 A. Yes.

14 Q. Are you familiar with the requirements in
15 Section 508 that websites be designed so that users can
16 skip repetitive navigation links?

17 A. Yes.

18 Q. And what is the mechanism for blind users
19 that is needed so they can skip repetitive navigation
20 links?

21 A. There are many possible mechanisms that
22 someone can use to skip repetitive navigation links.

23 Q. Within a web page, can you give me one
24 mechanism that is -- that screen-reading software
25 relies upon so that blind users can skip repetitive

1 Q. It is a set of guidelines developed by the
2 World Wide Web Consortium to aid web designers in how
3 to make their website accessible to people with
4 disabilities; is that correct?

5 A. Yes.

6 Q. It is a consensus set of guidelines; is
7 that right?

8 MR. PLUNKETT: Objection. Vague.

9 THE WITNESS: It was a consensus of the
10 working group, yes.

11 MR. PARADIS: Q. And you felt comfortable
12 referring people to WCAG 1.0 for guidance on how to
13 make their websites accessible when you drafted this
14 paragraph, correct?

15 A. That sounds reasonable. Yes.

16 Q. And do you still refer people to WCAG 1.0
17 for guidance on how to make their websites accessible?

18 A. It's amongst the tools that I refer people
19 to.

20 Q. Within WCAG 1.0, is the use of headings --
21 I am sorry. Is the use of headers for in-page
22 navigation an important access feature?

23 A. I believe it's a Priority Two --

24 MR. PLUNKETT: Asked and answered.

25 THE WITNESS: -- Priority Two checkpoint.

1 access the site. Therefore, it was totally
2 inaccessible.

3 Q. Have you encountered web pages that you
4 considered inaccessible because they lacked header
5 elements?

6 A. No.

7 Q. Have you encountered any web pages that, in
8 fact, lacked header elements?

9 A. Yes.

10 Q. Did you consider those pages accessible
11 despite that?

12 A. I considered those pages to be
13 noncompliant. They were, however, usable.

14 Q. How about pages that are complex pages, I
15 believe that is the term you were using, have you
16 encountered complex web pages that lacked header
17 elements?

18 A. Yes.

19 Q. Did you consider those pages inaccessible?

20 A. I considered them noncompliant. They were
21 usable, not as usable perhaps as they would have been
22 with header elements.

23 Q. Now, we have talked that the use of header
24 elements is a Priority Two item under WCAG. That means
25 they are -- that the lack of such header elements in a

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

6 A. Thank you.

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

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

13 Do you see that?

14 A. Yes.

15 Q. Do you agree with that?

16 A. Yes.

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

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

21 A. Yes.

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

25 MR. PLUNKETT: Objection. Calls for

1 speculation. Incomplete hypothetical.

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

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

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

9 Q. Sure.

10 A. Yes. Priority Two.

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

13 MR. PLUNKETT: Objection. Vague.

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

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

24 A. It would aid that, yes.

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

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

3 A. Yes.

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

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

15 A. I can't --

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

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

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

22 A. Yes.

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

25 A. Company called Future Shop.

1 providing labeling for forms?

2 A. Yes.

3 Q. And do you agree that those are the two
4 ways that forms should be labeled?

5 A. I agree that those are two ways to provide
6 explicit linking of labeled text to form fields.

7 Q. Do you agree that one or the other such
8 mechanism should be provided so that blind users can
9 fill out forms easily?

10 A. They will make it easier for people using
11 screen readers that recognize those constructs.

12 Q. Are there any other ways to enable blind
13 people to fill out forms easily and with confidence?

14 A. Yes.

15 Q. What are they?

16 A. By proper design and placement of labeling
17 text.

18 Q. What do you mean by that?

19 A. I mean that if -- if labeled text is placed
20 in close proximity adjacent to form fields, and most
21 screen readers in my experience will get it right, it
22 is possible to design a form so that people get it
23 wrong, as Jim points out in his statement. But it is
24 possible to not use the label text or title text, label
25 or title elements, and yet still have a usable form.

1 MR. PARADIS: Q. What about Section 508?
2 Is it the recommended method under 508?

3 A. I don't remember the exact wording of 508.
4 I would have to read it to refresh my memory.

5 Q. Is some form of form labeling required
6 under Section 508?

7 A. I would have to read the web section of
8 that again. I don't have that in front of me.

9 Q. Back to Dr. Thatcher's assessment report.
10 He then says, in the summary paragraph, "Nothing has
11 been done to improve navigation for screen reader or
12 keyboard users," as part of his critique of target.com.

13 Assuming hypothetically that target.com
14 lacks navigation features to enable blind users to move
15 around within the home page easily, would you consider
16 that home page to be inaccessible to blind users?

17 A. I would have to --

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

20 THE WITNESS: I would really have to
21 evaluate the website to give a complete and honest
22 answer to that.

23 MR. PARADIS: Q. Why didn't you evaluate
24 target.com?

25 A. I was not asked to.

1 Q. Do you find it odd that you are being
2 designated as an expert on web access in this case and
3 have not even looked at the website at issue?

4 MR. PLUNKETT: Objection. Argumentative.

5 Do you find it odd?

6 MR. PARADIS: Q. The question is to you.

7 Do you find that odd?

8 A. I was asked three specific questions, and I
9 provided my expertise on those answers. You are asking
10 me a lot of extra questions, but I was not asked by the
11 lawyers on this side.

12 Q. Do you only evaluate the specific issues
13 you are asked to address when you are called upon as an
14 expert on web access?

15 A. I evaluate what the client has asked me to
16 evaluate.

17 Q. Did you ever find it's curious, in your own
18 mind, hey, is target.com actually accessible to blind
19 people or not?

20 MR. PLUNKETT: Objection. Asked and
21 answered.

22 THE WITNESS: I don't spend my time
23 wondering about all of the websites that are out there
24 in the world as to whether they are accessible or not.
25 There are 75 million websites nowadays. No, I don't

1 ask myself that question.

2 MR. PARADIS: Q. This is the only website
3 where you have been asked to -- strike that.

4 Are there any other websites that you have
5 been asked to address in any way as part of a
6 litigation?

7 A. No.

8 Q. Did your client in this case ask you to
9 address only those three questions?

10 A. Yes.

11 Q. The next item in Dr. Thatcher's summary
12 paragraph says, "As a rough estimate, 80 percent of the
13 images lack text equivalent."

14 Assuming hypothetically that that is
15 correct, would you consider this a significant access
16 barrier on target.com?

17 MR. PLUNKETT: Objection. Assumes facts.
18 Calls for speculation.

19 THE WITNESS: I would have to look at the
20 website to completely answer that question.

21 MR. PARADIS: Q. You mentioned earlier the
22 phrase, critical images. Let me ask you to turn to
23 page 6 of Dr. Thatcher's report. He has got a section
24 here labeled Detailed Results. And he has got a
25 summary box under 6.1. Do you see that?

1 Dr. Thatcher's report. He mentioned one spot in the
2 shopping process where he found it was impossible to
3 move forward without using the mouse.

4 Do you see that, page two, at the end of
5 that first paragraph?

6 A. Yes.

7 Q. Assuming hypothetically that -- first of
8 all, do you have any reason to dispute Dr. Thatcher's
9 finding that there was one point in the shopping
10 process on target.com where it was impossible to move
11 forward without using a mouse?

12 MR. PLUNKETT: Objection. Vague. Counsel,
13 I am sure you are not going to like me making speaking
14 objections, but when this witness has already said they
15 have not looked at the website, for you to ask him
16 whether he has a reason to believe or disbelieve
17 something Dr. Thatcher said about the website, is
18 inappropriate.

19 MR. PARADIS: You are right, that is a
20 speaking objection.

21 Q. So the question is, do you have any basis
22 to dispute this finding?

23 A. I can neither confirm nor deny anything
24 Dr. Thatcher has said about this website.

25 Q. So that would apply generally to all of

1 Dr. Thatcher's findings?

2 A. That's correct.

3 Q. Assuming hypothetically that there was this
4 one spot in the shopping process where a mouse click
5 was required to proceed with the shopping process,
6 would you consider that to be a significant access
7 barrier to blind users?

8 MR. PLUNKETT: Objection. Assumes facts.
9 Incomplete hypothetical. Calls for speculation.

10 THE WITNESS: Again, without seeing and
11 evaluating it for myself, I can't answer that.

12 MR. PARADIS: Q. Let me ask you this.
13 WCAG requires that every interaction with a web page
14 must be possible without using a mouse, correct?

15 A. I believe that is the sense of the wording
16 in one of those checkpoints, yes.

17 Q. And the same requirement exists under
18 Section 508, correct?

19 A. Mm-hmm. I think, again, without having
20 reviewed 508 in the past few days.

21 Q. So, why are you hesitant to say that this
22 is, in fact -- that this would be a significant access
23 barrier if, in fact, it exists on target.com?

24 MR. PLUNKETT: Objection. Argumentative.
25 Mischaracterizes the testimony. Vague.

1 Q. And is it your understanding that all of
2 the Priority One -- strike that.

3 Let me ask you to assume hypothetically
4 that there were 74 such image map images on 15 randomly
5 selected pages on target.com during Dr. Thatcher's
6 inspection.

7 Would you consider those to be a
8 significant access barrier to blind users?

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

12 THE WITNESS: I would really have to see
13 the website to answer that.

14 MR. PARADIS: Q. Going down to No. 4 on
15 this chart, it says, "Form controls require a label
16 element for title attributes."

17 Do you see that?

18 A. Yes.

19 Q. Those are Priority One or Priority --
20 strike that.

21 Are those Priority One or Priority Two
22 requirements under WCAG?

23 A. I believe they are Priority Two.

24 Q. Let me ask you to assume hypothetically
25 that Dr. Thatcher found 59 such situations on

1 target.com when he inspected 15 pages where there were
2 form controls that lacked either label elements or
3 title attributes.

4 Would you consider those instances to be
5 significant access barriers to blind users?

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

9 THE WITNESS: As I mentioned earlier, there
10 are other ways of associating forms with labels that
11 might in this case make that not an issue, but I don't
12 know. I haven't seen the site.

13 MR. PARADIS: Q. You described one other
14 way, and let me ask. Is there more than one other way?

15 MR. PLUNKETT: Objection. Asked and
16 answered.

17 THE WITNESS: There may be. I don't know.
18 I can't recall offhand.

19 MR. PARADIS: Q. Let me call that the
20 third way for indicating the -- let me call that the
21 third way for facilitating the filling out of forms by
22 blind users. Okay?

23 Let me ask you to assume hypothetically
24 that in the 15 pages that Dr. Thatcher looked at there
25 were 59 instances where there were form controls that

1 lacked all three. There was no label element, there
2 was no title attribute, and there was no third way to
3 facilitate blind users to fill out the form with
4 confidence.

5 Would you consider those instances to be
6 significant access barriers to blind users?

7 MR. PLUNKETT: Objection. Assumes facts.
8 Incomplete hypothetical. Calls for speculation.
9 Vague.

10 THE WITNESS: I don't know whether there
11 are any other possible ways of having that form
12 completed on the website. There may be an accessible
13 alternative. I don't know.

14 MR. PARADIS: Q. Let me go back to the alt
15 text requirement for, say, an image link.

16 What happens when a blind user is using a
17 screen-reading program such as JAWS and encounters an
18 image link that lacks alt text?

19 A. Generally, what is read, if there is no alt
20 text, it will read -- it may read the title text if
21 there is title text. If there is no title text, it may
22 read the URL of the page that it's linking to.

23 Q. What happens when a blind user using a
24 screen-reading program such as JAWS encounters an image
25 map area that lacks alt text?

1 MR. PLUNKETT: Objection. Asked and
2 answered. Incomplete hypothetical. Calls for
3 speculation. Vague.

4 THE WITNESS: Quite possibly.

5 MR. PARADIS: Q. The next page of
6 Dr. Thatcher's report, page 7, his box continues,
7 summary box. And the next item he mentions is,
8 "Provide navigation methods for keyboard users." And
9 he described the barrier that he found as critical
10 because a shopper was unable to continue in the
11 shopping process without using a mouse.

12 Would you also consider such a barrier
13 critical?

14 MR. PLUNKETT: Objection. Lacks
15 foundation. Incomplete hypothetical. Assumes facts.
16 Asked and answered. Vague.

17 THE WITNESS: I would have to see the
18 construct in particular to know whether it was --
19 whether it really was inaccessible or not.

20 MR. PARADIS: Q. Would you agree that the
21 very essence of web access for blind users is designing
22 a website so that the blind user can navigate through
23 and interact with the site using their keyboard rather
24 than a mouse?

25 MR. PLUNKETT: Objection. Vague. Calls

1 for speculation. Lacks foundation.

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

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

10 A. That's the intent, yes.

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

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

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

20 A. Ideally, yes.

21 MR. PLUNKETT: Objection. Vague.

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

1 being used, correct?

2 MR. PLUNKETT: Objection. Vague.

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

5 (Record read.)

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

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

10 A. I am sorry?

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

13 A. Yes.

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

17 A. Yes.

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

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

25 A. Yes.

1 definitely change the perception of overall
2 accessibility of the website, actual accessibility as
3 opposed to compliance accessibility.

4 Q. Is there a point at which the number of
5 access barriers that a blind person encounters
6 increases on a website that you would say that website
7 is inaccessible to a blind user?

8 MR. PLUNKETT: Objection. Incomplete
9 hypothetical.

10 THE WITNESS: I would have to actually
11 evaluate an actual case to answer that completely.

12 MR. PARADIS: Q. I take it each instance
13 where such an image lacks alt text is considered a
14 barrier under all of the applicable guidelines,
15 correct?

16 A. Yes.

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

19 MR. PARADIS: Q. I take it you are
20 hesitant -- I am correct that as more -- as more and
21 more such images -- let me start again.

22 Am I correct that as the percentage of such
23 images which lack alt text increases, you would say
24 that website is more and more difficult for a blind
25 user to interact with easily?

1 A. Yes.

2 Q. And as part of the updating process, the
3 working group, WCAG, is looking at, among other things,
4 Section 508 standards relating to website design; is
5 that correct?

6 A. I don't know.

7 Q. Are you involved in the working group on
8 the revisions to WCAG?

9 A. No.

10 Q. So, assuming hypothetically you have been
11 asked by a private business in the United States, not a
12 government agency, but a private business, that has a
13 website already, and you have been asked to assist it
14 in making its website more accessible, how would you go
15 about that?

16 A. I would review their website, according to
17 my methodology, which involves using the WCAG
18 checkpoints, it involves using any other applicable
19 factors relating to accessibility that I have become
20 familiar with over the last ten years.

21 Q. What are those other items that you are
22 thinking of? What other than WCAG are you thinking of?

23 A. Mostly, usability factors that have come
24 from experience and watching and working with people
25 who use screen readers and other assistive technologies

1 to move around and navigate and use a website.

2 So it's personal experience.

3 Q. Can you describe these navigation features?

4 MR. PLUNKETT: Objection. Mischaracterizes
5 the testimony.

6 THE WITNESS: Perhaps I misspoke there when
7 I said navigation features. Techniques that are not
8 included in the web content guidelines or their
9 technical support materials because those things were
10 created back in 1997 through '99, and the technologies
11 and techniques have evolved, so things that are not
12 specifically written.

13 I have would to review my own documents to
14 come up with an exact example.

15 MR. PARADIS: Q. Can you think of any
16 examples, any techniques?

17 A. If you have give me a minute, I might be
18 able to.

19 Q. Okay. Let's go off the record.

20 (Short recess.)

21 MR. PARADIS: Q. Have you had -- been able
22 to think of any such techniques that go beyond WCAG?

23 A. Actually, no, I was not able to.

24 Q. Now, you were also involved in the
25 development of the Section 508 standards as an

1 That allows the user to skip things without
2 the use of other structural navigation elements, such
3 as headers.

4 Tab index is a technique that allows the
5 author to define the order that links on the page or
6 other elements on the page will be reached when using
7 the tab key to move through a page.

8 Q. Do you recommend that clients use one or
9 the other form of these, or headings, as ways to
10 provide in-page navigation?

11 A. Depending on the content of the site.

12 Q. Do you recommend that some one of these
13 three, some form within this group of three be used?

14 A. As appropriate to the content of the page.

15 Q. Are there any situations in which you
16 recommend none of these three be used?

17 A. I can't think of any offhand, but there is
18 no reason why there couldn't be a page that wouldn't
19 benefit from any of those.

20 Q. Looking at your website again -- actually,
21 let me show you what we have marked as Exhibit M. This
22 was produced to us today along with some of your other
23 documents. It's a two-page article from California
24 Disability -- I mean, from Canadian Disability, spring
25 of 2004.

1 Q. So, notwithstanding the three differences
2 you mentioned, lack of alt text on image links, image
3 buttons and image map areas remains a barrier under
4 both sets of guidelines; is that correct?

5 MR. PLUNKETT: Objection. Vague.
6 Incomplete hypothetical. Lacks foundation.

7 THE WITNESS: It would be noncompliant and
8 not necessarily unusable.

9 MR. PARADIS: Q. But would you agree that
10 it would be a barrier to a blind person?

11 A. It might be.

12 MR. PLUNKETT: Objection. Vague.
13 Incomplete hypothetical.

14 MR. PARADIS: Q. Is there any reason
15 why --

16 MR. PLUNKETT: Calls for speculation. I am
17 sorry, the witness answered sooner than I could get my
18 objection.

19 You should try to wait for me to do that.

20 MR. PARADIS: Q. Looking at -- the second
21 category of barriers Dr. Thatcher noted are form
22 controls that lacked label elements or title
23 attributes.

24 That would be noncompliant with both sets
25 of standards, correct?

1 A. Yes.

2 Q. You are familiar with that requirement?

3 A. Yes.

4 Q. And under that requirement -- let me ask
5 you again.

6 Dr. Thatcher noted that target.com, all of
7 the forms lacked label elements or title attributes.

8 Would that be noncompliant under both WCAG
9 and 508 guidelines?

10 MR. PLUNKETT: Objection. Assumes facts.
11 Calls for speculation. Incomplete hypothetical.

12 THE WITNESS: I am uncomfortable talking
13 about a website I have not seen. You are asking me to
14 differentiate between compliance and usability of a
15 website. And if someone is wanting to comply with
16 either of these standards or both of these standards,
17 and -- that's there.

18 MR. PARADIS: Q. If a website is brought
19 into compliance, strict compliance with WCAG 1.0, would
20 you say it is generally accessible for blind users?

21 A. I would have to evaluate any particular
22 website on its own merits.

23 Q. Is there any reason -- you recommend
24 following WCAG 1.0 in your website.

25 Is there any reason why you hesitate to say

1 that following WCAG 1.0 scrupulously would be anything
2 less than access?

3 A. Certainly, because you have to know how
4 people with disabilities use the web, how they use
5 their technology, and most web designers out there, in
6 my opinion, do not know that.

7 So strictly following the guidelines for
8 compliance does not necessarily mean you will have an
9 accessible website, nor does it mean if you don't
10 follow the web guidelines you won't have an accessible
11 website.

12 Q. Can you give me an example of a website
13 that doesn't follow WCAG or Section 508 that you
14 consider accessible?

15 A. Not offhand, no. There are any number of
16 websites that do not comply with those guidelines that
17 are still usable to a person with a screen reader or
18 other assistive technology.

19 Q. What do you mean by usable as distinct from
20 accessible?

21 A. In general, I -- accessibility is the
22 technical accessibility of a website. In other words,
23 does it comply with whatever guidelines you are being
24 asked to follow. Usability means can you in any way,
25 shape or form accomplish the purpose of the website or

1 the web page or the web construct for that application.

2 Q. Now, in your website you talk about access
3 to you means that a website is usable by a broad range
4 of people. Do you remember that?

5 A. Yes.

6 Q. And in that regard, are you including blind
7 people who may have only basic familiarity with
8 screen-reading software?

9 A. Ideally, in an ideal world, yes.

10 Q. And a website -- and are you including
11 blind people who may not have -- strike that.

12 What about when you -- let me start again.

13 When you say usable, in your mind, does
14 that mean something less than equivalent usability as a
15 sighted person has when it comes to blind people and
16 websites?

17 MR. PLUNKETT: Objection. Vague.

18 THE WITNESS: That is pretty vague.

19 MR. PARADIS: Q. How do you measure
20 usability? Do you measure it in terms of it is
21 equivalent usability as a sighted person would have?

22 A. How do I measure usability? I measure
23 usability by performing usability tests with subjects
24 who are going to be using the website. So it's a
25 formal process.

1 A. Superlatives of any sort are uncomfortable.

2 Q. There are common requirements involved, and
3 some differences, correct?

4 A. Yes.

5 Q. Would you agree that the common elements --
6 well, let me ask it this way. Would you agree that the
7 differences are just a few?

8 MR. PLUNKETT: Objection. Vague. The
9 documents speak for themselves.

10 THE WITNESS: Yeah.

11 MR. PARADIS: Q. Can you quantify to what
12 extent the guidelines are similar versus different in
13 terms of defining whether it's an accessible website?

14 MR. PLUNKETT: Same objections.

15 THE WITNESS: I could go through both
16 documents and read each point by point.

17 MR. PARADIS: Q. Do you have any rough
18 sense in your own head of -- to what extent they are
19 really overlapping requirements and to what extent
20 there are actually significant differences between the
21 two sets of standards or guidelines?

22 MR. PLUNKETT: Same objections. Asked and
23 answered.

24 THE WITNESS: I am not going to do mental
25 arithmetic on the spot here.

1 Q. In fact, you may advise a client to meet
2 both sets of standards in some situations; is that
3 correct?

4 A. That's correct.

5 Q. In fact, Section 508 advisory notes tell
6 readers what components of WCAG 1.0 are met and what
7 components are additional requirements, correct?

8 A. That's correct.

9 Q. So what was your point in identifying the
10 few differences between WCAG 1.0 and Section 508 in
11 your declaration?

12 MR. PLUNKETT: Objection. Vague.

13 THE WITNESS: Yeah. You are asking for my
14 opinion on my opinion?

15 MR. PARADIS: Q. Why did you say this in
16 your declaration? What is the point you were trying to
17 make other than that there are some differences?

18 A. I was asked if there were differences
19 between the two standards.

20 Q. Do you find those differences significant
21 to you in any way in terms of evaluating whether
22 target.com is accessible or not?

23 A. I am not evaluating target.com.

24 MR. PLUNKETT: Objection. Assumes facts.
25 Lacks foundation. Argumentative.

1 MR. PARADIS: Q. The court is being asked
2 to evaluate this. And do you find those differences
3 between -- that you identified between 508 and WCAG to
4 be significant in terms of an evaluation of whether
5 target.com is accessible to blind users?

6 A. I don't know. I have not looked at --

7 MR. PLUNKETT: Objection. Foundation.
8 Calls for speculation.

9 THE WITNESS: I have not looked at it.

10 MR. PARADIS: Q. Did you ever ask Target
11 or its lawyers why they cared if there were some
12 differences between 508 and WCAG?

13 MR. PLUNKETT: Counsel, objection. Asked
14 and answered. Argumentative.

15 THE WITNESS: I didn't ask.

16 MR. PLUNKETT: Did you promise to finish by
17 1:00?

18 MR. PARADIS: 1:30.

19 Q. How difficult would you say it is to make a
20 website compliant with 508 or WCAG 1.0?

21 MR. PLUNKETT: Objection. Calls for
22 speculation. Incomplete hypothetical. Lacks
23 foundation.

24 THE WITNESS: There is no way to answer
25 that question.

1 there any recent technological changes that -- well,
2 let me ask you this. What changes are you talking
3 about?

4 A. I am -- in the first place, it would be
5 more correct to say that the techniques documents of
6 the WCAG guidelines don't reflect many of the recent
7 changes in technology. The techniques were very
8 specifically aimed at HTML. And there are many more
9 web technologies out there now that are being used
10 besides HTML that are not covered in the techniques.

11 So there would be no guidance whatsoever
12 for practical implementation, practical use of those
13 things.

14 Q. So what do you advise your clients to do if
15 they want to make their website more accessible, given
16 this development?

17 MR. PLUNKETT: Objection. Vague.

18 THE WITNESS: Yeah.

19 MR. PARADIS: Q. Well, in your website you
20 say that you will help a client make their existing
21 website more accessible.

22 How does that factor in with the statement
23 that there are -- that WCAG and 508 don't reflect
24 certain recent developments in techniques? What do you
25 do?

1 A. I --

2 MR. PLUNKETT: Objection. Vague.

3 THE WITNESS: I rely on my own experience
4 on -- and work that has been done subsequently that has
5 not been encoded into ratified standards and ratified
6 documents.

7 MR. PARADIS: Q. I take it that -- well,
8 have you ever talked with Dr. Thatcher about the
9 approach he follows?

10 A. We never had that level of discussion, no.

11 Q. You never compared notes about how you go
12 about this?

13 A. No.

14 Q. Have you ever seen his work before?

15 A. Seen his work?

16 Q. Yes. Any assessments he has done?

17 A. No.

18 Q. Have you ever talked with him, Hey, what do
19 you think we should advise our clients to do, given
20 that the codes are still in development?

21 A. No. I think the last time we talked we
22 talked about bird watching.

23 Q. And I take it the fact the codes are still
24 evolving does not keep you from advising your clients
25 on how to make their websites accessible; is that fair

1 out is, in your mind, what is the role, what is the
2 import of the fact that WCAG and 508 are being revised?
3 Does it, in your mind, mean that a website designer or
4 manager can simply -- should simply wait until that
5 process is over before taking any action to make their
6 website accessible?

7 MR. PLUNKETT: Objection. Lacks
8 foundation. Vague.

9 THE WITNESS: That -- yeah. I don't know
10 how to answer that.

11 MR. PARADIS: Q. Would it be fair to say
12 that you advise clients that the access standards, WCAG
13 and 508, the guidelines are being -- are evolving, but
14 that they in their current state do provide good
15 guidance on how to make websites accessible?

16 MR. PLUNKETT: Objection. Asked and
17 answered. Vague.

18 THE WITNESS: Depends on what I have been
19 contracted to do. I mean --

20 MR. PARADIS: Q. If a client comes to you
21 and says, I have a website. I saw your website, and
22 you say you can advise me on how to make my website
23 more accessible, that's what I want to do. Do you
24 advise your clients, you should meet -- part of the
25 process is you should meet one or the other of these

1 guidelines, 508 or WCAG?

2 MR. PLUNKETT: Objection. Asked and
3 answered. Calls for speculation. Vague.

4 THE WITNESS: I generally ask if there are
5 any standards or guidelines to which they legally must
6 apply. And if not, then I use whatever is in my range
7 of experience to help them make their website more
8 accessible.

9 MR. PARADIS: Q. Part of that is, I think
10 you have -- let me ask you.

11 In your website you reference WCAG, and I
12 think you said you primarily look to WCAG if it's not
13 an entity governed by 508; is that correct?

14 A. As the basis, yes.

15 Q. Then you say there are some techniques that
16 have changed and that you use your experience.

17 Would you say that these are methods that
18 you use that build upon compliance with WCAG?

19 A. That seems fair to say, yes.

20 Q. Now, in terms of whatever changes you are
21 referring to in paragraph 12, whatever they are, do any
22 of them affect -- in your understanding, do they --
23 start again.

24 Do any of the changes that you referred to
25 in paragraph 12 affect the requirements under 508 and

1 508 require some form of navigation aid so that blind
2 users can easily navigate around within a page?

3 MR. PLUNKETT: Objection. Leading. The
4 document speak for itself.

5 THE WITNESS: Yes.

6 MR. PARADIS: Q. Are you aware of any
7 differences between 508 and WCAG when it comes to
8 navigation within a page?

9 MR. PLUNKETT: Objection. Asked and
10 answered.

11 MR. PARADIS: Q. I am still not sure
12 myself, so I am asking you.

13 Are there any differences between 508 and
14 WCAG 1.0 as far as navigation aids that are required?

15 MR. PLUNKETT: Same objections.

16 THE WITNESS: I am sure we have been
17 through this.

18 MR. PARADIS: Q. Can you indicate to me
19 one way or another, yes or no?

20 MR. PLUNKETT: You need to review the
21 standards?

22 THE WITNESS: Yeah. Actually, 508 doesn't
23 specifically require the use of -- it doesn't name the
24 use of structural markup.

25 MR. PARADIS: Q. Does it have some

1 requirement for aid for in-page navigation?

2 A. Skip repetitive links. A method should be
3 provided that permits users to skip repetitive
4 navigation links.

5 Q. When advising companies regarding their
6 compliance, their website -- strike that.

7 When advising a company that seeks to make
8 its website accessible, do any of the differences
9 between Section 508 and WCAG 1.0 change the advice you
10 would give the client in terms of the problems
11 Dr. Thatcher identified?

12 MR. PLUNKETT: Objection. Vague. Lacks
13 foundation. Calls for speculation.

14 MR. PARADIS: Q. I will rephrase it.

15 Assuming hypothetically you were advising a
16 company regarding the types of access issues that
17 Dr. Thatcher identified, and there were four, lack of
18 alt text, lack of labeling on forms, keyboard -- being
19 able to interact with a keyboard, and in-page
20 navigation.

21 Would the differences between WCAG 1.0 and
22 Section 508 affect the advice you would give a client?

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

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CERTIFICATE OF REPORTER

I, DANUTA KRANTZ, a Certified Shorthand Reporter, hereby certify that the witness in the foregoing deposition was by me duly sworn to tell the truth, the whole truth and nothing but the truth in the within-entitled cause;

That said deposition was taken down in shorthand by me, a disinterested person, at the time and place therein stated, and that the testimony of the said witness was thereafter reduced to typewriting, by computer, under my direction and supervision.

I further certify that I am not of counsel or attorney for either or any of the parties to the said deposition nor in any way interested in the event of this cause and that I am not related to any of the parties thereto.

DATED: July 7, 2006

Danuta Krantz

DANUTA KRANTZ, CSR 4782