

Request for Reconsideration after Final Action

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DESCRIPTION OF EVIDENCE FILE	Arguments, index of exhibits to arguments and Section 2(f) Declaration, exhibits 1-6 to arguments (Declaration and exhibits to Declaration being submitted in the Section 2(f) part of the form).
ADDITIONAL STATEMENTS SECTION	
SECTION 2(f) Claim of Acquired Distinctiveness, based on Use	The mark has become distinctive of the goods/services through the applicant's substantially exclusive and continuous use in commerce that the U.S. Congress may lawfully regulate for at least the five years immediately before the date of this statement.
SECTION 2(f)) Claim of Acquired Distinctiveness, BASED ON EVIDENCE	The mark has become distinctive of the goods/services, as demonstrated by the attached evidence.
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DECLARATION SIGNATURE	/Tamara A. Miller/
SIGNATORY'S NAME	Tamara A. Miller
SIGNATORY'S POSITION	Attorney for Applicant, IL bar member
SIGNATORY'S PHONE	

NUMBER	312-616-5600
DATE SIGNED	02/06/2015
RESPONSE SIGNATURE	/Tamara A. Miller/
SIGNATORY'S NAME	Tamara A. Miller
SIGNATORY'S POSITION	Attorney for Applicant, IL bar member
SIGNATORY'S PHONE NUMBER	312-616-5600
DATE SIGNED	02/06/2015
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	NO
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**Request for Reconsideration after Final Action
To the Commissioner for Trademarks:**

Application serial no. **75640000** DRUGSTORE.COM has been amended as follows:

EVIDENCE

Evidence in the nature of Arguments, index of exhibits to arguments and Section 2(f) Declaration, exhibits 1-6 to arguments (Declaration and exhibits to Declaration being submitted in the Section 2(f) part of the form). has been attached.

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[Evidence-8](#)

ADDITIONAL STATEMENTS

Section 2(f) Claim of Acquired Distinctiveness, based on Use

The mark has become distinctive of the goods/services through the applicant's substantially exclusive and continuous use in commerce that the U.S. Congress may lawfully regulate for at least the five years immediately before the date of this statement.

Section 2(f) Claim of Acquired Distinctiveness, based on Evidence

The mark has become distinctive of the goods/services, as demonstrated by the attached evidence.

Original PDF file:

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Original PDF file:

[e2f-3898140130-170013169 . Garcia Decl Exhibit D.pdf](#)

Converted PDF file(s) (4 pages)

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Converted PDF file(s) (4 pages)

[2\(f\) evidence-1](#)

[2\(f\) evidence-2](#)

[2\(f\) evidence-3](#)

[2\(f\) evidence-4](#)

Original PDF file:

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Converted PDF file(s) (1 page)

[2\(f\) evidence-1](#)

Original PDF file:

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Converted PDF file(s) (5 pages)

[2\(f\) evidence-1](#)

[2\(f\) evidence-2](#)

[2\(f\) evidence-3](#)

[2\(f\) evidence-4](#)

[2\(f\) evidence-5](#)

SIGNATURE(S)

Declaration Signature

DECLARATION: The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements and the like may jeopardize the validity of the application or submission or any registration resulting therefrom, declares that, if the applicant submitted the application or amendment to allege use (AAU) unsigned, all statements in the application or AAU and this submission based on the signatory's own knowledge are true, and all statements in the application or AAU and this submission made on information and belief are

believed to be true.

STATEMENTS FOR UNSIGNED SECTION 1(a) APPLICATION/AAU: If the applicant filed an unsigned application under 15 U.S.C. Section 1051(a) or AAU under 15 U.S.C. Section 1051(c), the signatory additionally believes that: the applicant is the owner of the trademark/service mark sought to be registered; the applicant or the applicant's related company or licensee is using the mark in commerce and has been using the mark in commerce as of the filing date of the application or AAU on or in connection with the goods/services in the application or AAU, and such use by the applicant's related company or licensee inures to the benefit of the applicant; the original specimen(s), if applicable, shows the mark in use in commerce as of the filing date of the application or AAU on or in connection with the goods/services in the application or AAU; and to the best of the signatory's knowledge and belief, no other person has the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion or mistake, or to deceive.

STATEMENTS FOR UNSIGNED SECTION 1(b)/SECTION 44 APPLICATION: If the applicant filed an unsigned application under 15 U.S.C. Section 1051(b), Section 1126(d), and/or Section 1126(e), the signatory additionally believes that: the applicant is entitled to use the mark in commerce; the applicant has a bona fide intention and has had a bona fide intention as of the application filing date to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the goods/services in the application; and to the best of the signatory's knowledge and belief, no other person has the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion or mistake, or to deceive.

Signature: /Tamara A. Miller/ Date: 02/06/2015
Signatory's Name: Tamara A. Miller
Signatory's Position: Attorney for Applicant, IL bar member
Signatory's Phone Number: 312-616-5600

Request for Reconsideration Signature

Signature: /Tamara A. Miller/ Date: 02/06/2015
Signatory's Name: Tamara A. Miller
Signatory's Position: Attorney for Applicant, IL bar member

Signatory's Phone Number: 312-616-5600

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is not filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 75640000

Internet Transmission Date: Fri Feb 06 17:46:34 EST 2015

TEAS Stamp: USPTO/RFR-38.98.140.130-2015020617463461

0157-75640000-530364515f2197e2628ec35854

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A-N/A-20150206170013169293

TRADEMARK

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of)	
)	
drugstore.com, inc.)	
	)	J. Brendan Regan
Serial No. 75/640,000	)	Trademark Examining Atty.
	)	Law Office 113
Filed: February 9, 1999)	
)	
Mark: DRUGSTORE.COM)	

REQUEST FOR RECONSIDERATION

This Request for Reconsideration answers the Office Action issued August 6, 2014 in the above-referenced application filed by drugstore.com, inc. (“Applicant”).

AMENDMENT

Please note that the services in this application are being amended to delete the word “pharmaceutical,” as follows:

on-line retail store featuring health, beauty, food, beverage, printed publications and personal electronic products.

These remaining services are hereinafter referred to as the “Services.”

REMARKS

I. Introduction

The Examiner has refused registration on the grounds that the mark “DRUGSTORE.COM” is merely descriptive of the Services in the application under Section 2(e)(1) of the Lanham Act. In response, Applicant submits that (1) the mark is capable of functioning as a source indicator; and (2) the mark has acquired distinctiveness and therefore *does* function as a source indicator in the marketplace. As such, Applicant respectfully requests that its application be allowed to proceed on to publication.

II. The Registrability of “.com” Trademarks Generally

In the Office Action, the Examiner did not find that “DRUGSTORE.COM” is generic for the Services, but rather that it is descriptive. An Examiner’s determination that a mark is merely descriptive under Section 2(e) of the Lanham Act can be overcome by a showing pursuant to Section 2(f) that the mark has acquired distinctiveness. 15 U.S.C. § 1052(f). In the case of *In re Owens-Corning Fiberglass Corp.*, 227 USPQ 417 (Fed. Cir. 1985), the court explained the latitude afforded an applicant attempting to register a mark under Section 2(f) as follows:

“[J]urisprudence under the Lanham Act developed in accordance with the statutory principle that if a mark is capable of being or becoming distinctive of applicant's goods in commerce, then it is capable of serving as a trademark.” *Id.* at 419.

In certain cases, marks consisting of a descriptive term together with a generic top level domain (“gTLD”) can signify a single source and be protected on the Principal Register. “[T]here is no bright-line, per se rule that the addition of a TLD to an otherwise descriptive mark will never, under any circumstances, operate to create a registrable mark.” TMEP § 1209.03(m), citing *In re Oppedahl & Larson LLP*, 71 USPQ2d 1370, 1374 (Fed. Cir. 2004). The Federal Circuit has held that in certain (albeit rare) circumstances, a term that is not distinctive by itself may acquire some additional meaning from the addition of a non-source indicating gTLD such as “.com.” TMEP § 1209.03(m), citing *In re Steelbuilding.com*, 75 USPQ2d 1420, 1422 (Fed. Cir. 2005). In the *Steelbuilding.com* case, the Federal Circuit held that the proposed mark “STEELBUILDING.COM” was not generic, but rather descriptive, for “computerized on-line retail services in the field of pre-engineered metal buildings and roofing systems.” Here, like in the *Steelbuilding* case, the mark “DRUGSTORE.COM” was found by the Examiner to be

descriptive, not generic. As such, the applied-for mark is capable of functioning as a source indicator.

“[W]hen examining domain name marks, it is important to evaluate the commercial impression of the mark *as a whole* to determine whether the gTLD may be capable of source-indicating significance, and *whether the composite mark conveys any distinctive source-identifying impression* apart from its individual components.” TMEP § 1209.03(m) (emphasis added). Trademark Examiners must “consider the significance of the composite to determine whether the addition of a gTLD has resulted in a mark that conveys a source-identifying impression.” *Id.*

III. **What “DRUGSTORE.COM” Actually Means to Consumers**

While the mark “DRUGSTORE.COM” may have started out as descriptive when it was first used 16 years ago, the evidence strongly supports a finding that the mark has acquired distinctiveness over time. Indeed, Applicant can present evidence that unquestionably establishes that consumers today view “DRUGSTORE.COM” as a service mark signifying a single internet retailer. Therefore, protection under Section 2(f) of the Lanham Act is appropriate.

Acquired distinctiveness can be established by direct evidence or circumstantial evidence from which consumer association may be inferred. *In re Emco Display Systems, Inc.*, 56 USPQ2d 1279, 1283 (TTAB 2000). Applicant herein submits both direct evidence in the form of consumer survey data, and circumstantial evidence relating to the length of use of the mark in commerce, advertising and promotional methods and expenditures, the sales revenues generated through use of the mark, the widespread consumer exposure to the mark, and the like. See Trademark Rule 2.41(a); 37 C.F.R. 2.41(a). This evidence is submitted in the form of a

Declaration by Adam Garcia (hereinafter the “Garcia Declaration”), which together with its exhibits is submitted herewith. Applicant also submits other evidence to corroborate its position that the mark “DRUGSTORE.COM” can and does function as a single source indicator.

A. Direct Evidence in the Form of Consumer Surveys

Direct evidence, in the form of two consumer surveys, proves that consumers have a very high level of awareness of the service mark “DRUGSTORE.COM.” This evidence supports a determination that that the majority of U.S. consumers view “DRUGSTORE.COM” not as a descriptor of a type of online retail store, but rather to refer to a *specific* internet retailer.

“In considering a claim of acquired distinctiveness, the issue is whether acquired distinctiveness of the mark in relation to the goods or services has in fact been established in the minds of the purchasing public, not whether the mark is capable of becoming distinctive.”

TMEP § 1212.06 (citations omitted). Indeed, “[t]he ultimate test in determining whether a designation has acquired distinctiveness is applicant’s success, rather than its efforts, in educating the public to associate the proposed mark with a single source.” TMEP § 1212.06(b).

While Applicant is not required to submit survey evidence in support of its claim, such evidence is one of the “most persuasive ways to prove secondary meaning.” *Vision Sports, Inc. v. Melville Corp.*, 12 USPQ2d 1740, 1744 (9th Cir. 1989); *Committee for Idaho’s High Desert v. Yost*, 39 USPQ2d 1705, 1711 (9th Cir. 1996). *See also, Yankee Candle Co., Inc. v. Bridgewater Candle Co., LLC*, 59 USPQ2d 1720, 1730 (1st Cir. 2001) (characterizing survey evidence as “a valuable method of showing secondary meaning”), quoting *I.P. Lund Trading ApS v. Kohler Co.*, 49 USPQ2d 1225, 1235 (1st Cir. 1998), *cited in* TMEP § 1212.06(d).

In August 2010, the Applicant commissioned Invoke Research to conduct an online survey to evaluate consumers’ awareness of the “DRUGSTORE.COM” brand. (Garcia

Declaration ¶ 24). A summary of the survey results is attached to the Garcia Declaration as Exhibit F.

To assess consumers' unaided awareness of the mark, the following question was asked:

Question: "Please tell me the names of all the websites you can think of that sell health, beauty, personal care and/or wellness products, including but not limited to over-the-counter medicine, vitamins/supplements, cosmetics, personal care items, make-up, etc."

The survey showed that when presented with the services at issue, consumers' unaided awareness of "DRUGSTORE.COM" was 23%. (Garcia Declaration ¶ 24). This places "DRUGSTORE.COM" in a similar league as well-known brands such as walgreens.com and walmart.com (32% each), amazon.com (29%), cvs.com (28%), and above brands such as target.com (16%) and riteaid.com (12%). (*Id.*)

Next, to assess consumers' aided awareness of the mark, the following question was asked:

Question: "Which of the following websites have you heard of that sell health, beauty, personal care, and wellness products? (Check all that apply)."

In terms of aided awareness, when asked if they had heard of "DRUGSTORE.COM", 61% replied in the affirmative. (*Id.*) Here again, this places "DRUGSTORE.COM" in a similar league as ebay.com (66%) and kmart.com (62%), and at a level above brands such as gnc.com (56%) and costco.com (50%). (*Id.*)

"It is not necessary that each and every member of the buyer class associate the mark with a single source. Nor is it necessary that a majority of that group do so. It is only necessary that a 'substantial part' of the buying class make such an association." J. THOMAS MCCARTHY, MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION ("MCCARTHY"), § 15:45 at 15-80.5 (9/2014) (citations omitted). "Other courts have used the term 'appreciable number' of the

relevant customer class,” *id.* at 15-80.6 (9/2014), or have set the threshold showing at “more than a ‘relatively small number of people.’” *Id.* at 15-80.7 (9/2014) (citations omitted).

Here, the results of the Invoke Research survey prove that “DRUGSTORE.COM” had already acquired distinctiveness in the minds of a substantial majority of the buying class more than four years ago. Applicant’s extensive nationwide advertising (discussed *infra*) has led to recognition of its mark by 61% of relevant consumers. (Garcia Declaration ¶ 24). Moreover, almost one out of every four consumers surveyed actually called to mind “DRUGSTORE.COM”, unaided, as an online seller in the field of health, beauty, personal care, and wellness products. (*Id.*).

Subsequently, in early 2014, Applicant’s parent company, Walgreen Co., commissioned Maritz Research to conduct an online survey into U.S. consumers’ attitudes toward, awareness of, and usage of, ecommerce services. (Garcia Declaration ¶ 25). Relevant excerpts of the report are attached to the Garcia Declaration as Exhibit G. (*Id.* at ¶ 26). The survey took place in mid-April 2014 and had over 4500 respondents. (*Id.*). The research report was completed in July 2014 and later updated on August 14, 2014. Respondents qualified to participate in the survey by having purchased at least one relevant item online in the past six months (*Id.*).

In the “Daily Living” category—defined to include items such as beauty and personal care products, healthcare products, contact lenses, vitamins, non-perishable food such as canned goods, household items such as cleaning supplies, baby care products, and seasonal products—“DRUGSTORE.COM” was identified as one of the “Top Brands” for online sales. (*Id.* at ¶ 27).

In terms of aided consumer awareness in the Daily Living category, the Maritz survey revealed that 75% of respondents were aware of the “DRUGSTORE.COM” online retail store, while 37% had shopped at the store (*Id.* at ¶ 28). The survey revealed that 25% of respondents

had purchased “Daily Living” items from the “DRUGSTORE.COM” online retail store, putting Applicant’s mark in a similar league as target.com (also 25%), and in the same category as amazon.com (69%), walmart.com (39%), and eBay.com (34%). (*Id.* at ¶ 27).

Applicant’s survey evidence is direct and persuasive evidence of acquired distinctiveness. See *Vision Sports*, 12 USPQ2d at 1744; MCCARTHY § 15:42 at 15-80.2 to 80.3 (9/2014).

B. Overwhelming Circumstantial Evidence

When the consumer survey results are viewed together with the considerable amount of circumstantial evidence presented *infra*, there can be no doubt that consumers view the applied-for mark as signifying a single source. “In any case, circumstantial evidence [alone] can be sufficient to meet a party’s burden of proof to establish a claim [of secondary meaning].” *Heartland Bank v. Heartland Home Finance Inc.*, 67 USPQ2d 1410, 1418 (8th Cir. 2003) (Smith, J., concurring).

1. Long Use of the Mark “DRUGSTORE.COM”

As stated in the Garcia Declaration filed herewith, the mark “DRUGSTORE.COM” has become distinctive of the Services through Applicant’s substantially exclusive and continuous use of the mark in U.S. commerce since at least as early as January 1999. (Garcia Declaration ¶¶ 3, 4, 29). Applicant’s nationwide use of the mark (*id.* at ¶ 5) for over 16 years constitutes *prima facie* evidence that the mark has become distinctive as used in connection with Applicant’s Services. See 15 U.S.C. § 1052(f) (stating that “[t]he Commissioner may accept as *prima facie* evidence that the mark has become distinctive, as used on or in connection with the applicant’s goods in commerce, proof of substantially exclusive and continuous use thereof as a mark by the applicant in commerce for the five years before the date on which the claim of distinctiveness is made.”). Applicant’s long period of use strengthens Applicant’s claim of registrability.

2. Extensive Advertising and Promotional Activities

Applicant has engaged in very extensive nationwide advertising and promotion of the Services under the mark “DRUGSTORE.COM” at considerable expense. (Garcia Declaration ¶¶ 6, 7, 8). “[I]t lies within the observation of all that a producer can, with the aid of successful advertising, obtain for himself and his product public recognition of national dimensions, comparatively overnight.” *Premier-Pabst Corp. v. Elm City Brewing Co.*, 23 USPQ 84, 88 (D. Conn. 1934).

Significantly, Applicant’s records indicate that from September 2005 to the present, Applicant has spent in excess of \$150,000,000 on advertising and promoting the Services under the mark “DRUGSTORE.COM.” (Garcia Declaration ¶ 8). By comparison, “SCHOOLSTORE.COM” (Reg. No. 4,073,046) proceeded to registration under Section 2(f) after a showing of \$800,000 in expenditures over two years, (See Exhibits 1 and 2).

The applied-for mark is consistently used by Applicant in advertising and promotional materials; this has been the case since the mark was first adopted. (*Id.* at ¶ 6). As noted commentator McCarthy reasoned:

The seller spent a large amount of money on advertising. The larger the amount spent, the greater the exposure of buyers to the symbol as a trademark: The greater the exposure, the greater the likelihood that buyers will associate this symbol with one seller in a trademark sense.

MCCARTHY § 15:51 at 15-86 (9/2010).

In order to strengthen the association between “DRUGSTORE.COM” and a single source, Applicant uses the mark consistently and repeatedly throughout its online retail store. (Garcia Declaration ¶ 9). Applicant invites the Examiner to visit Applicant’s website located at www.drugstore.com, which prominently features the applied-for mark in the upper-left corner of every page (including but not limited to the home page, category pages, and individual product

pages). (*Id.* at ¶ 9). Representative printouts showing how the mark “DRUGSTORE.COM” is featured on Applicant’s website are attached to the Garcia Declaration as Exhibit A.

In addition to its own website, Applicant employs many different types of advertising media to promote the Services under the mark “DRUGSTORE.COM” to consumers in every state. (Garcia Declaration ¶ 10). Because the Services are rendered over the internet, most of Applicant’s advertising is online. (*Id.* at ¶ 11). Examples of such advertising activities include the following:

- Applicant bids on key words to appear high in paid or sponsored results generated through search engines.
- Applicant engages consultants to help it achieve higher positions in free or organic search results.
- Applicant appears in comparison shopping engines, and pays when users click through to Applicant’s website at www.drugstore.com.

(*Id.* at ¶ 11). Results generated through search engines and comparison shopping engines will typically show the mark “DRUGSTORE.COM.” (*Id.*). Users who click on the links in the results lists will arrive at Applicant’s website that prominently features “DRUGSTORE.COM” repeatedly. (*Id.*).

Other types of internet advertising used by the Applicant feature the applied-for mark, such as the following:

- Applicant uses affiliates to promote the Services under the applied-for mark. Through their own websites, banner advertisements, or through other avenues, such affiliates drive traffic to Applicant’s website featuring the mark “DRUGSTORE.COM”, thereby earning a commission.
- Applicant utilizes display, banner, and pop-up advertisements featuring the mark “DRUGSTORE.COM.”
- Applicant has sent approximately 5 billion emails to customers and potential customers from January 1999 through August 2014 featuring the mark “DRUGSTORE.COM”; this

figure includes promotional emails as well as transactional emails generated through orders.

(Garcia Declaration ¶ 12).

Applicant advertises and promotes in other ways that consistently display the applied-for mark. Examples include direct mailings and print advertising (such as advertisements in magazines) (*id.* at ¶ 13); the insertion of print advertisements and coupons into boxes delivering goods to Applicant's customers (*id.* at ¶ 14); event sponsorship; attention-grabbing public displays such as bus and subway banners; and advertisements in trays used in conjunction with metal detectors in airport security lines. (*Id.* at ¶ 15).

3. Widespread Consumer Exposure to the Mark

Applicant's advertising efforts and expenditures have certainly paid off. Indeed, Applicant's records indicate that from October 1, 2007 through October 31, 2014, the total number of visits to Applicant's website prominently and repeatedly featuring the mark "DRUGSTORE.COM" have exceeded 535,000,000. (Garcia Declaration ¶ 16). The sheer number of visits to Applicant's website strongly demonstrates that Applicant and its house mark "DRUGSTORE.COM" have achieved a very strong market presence and widespread consumer recognition. (*Id.*). That has been the case since all the way back to 2006, since Applicant's records indicate the number of visits even that year exceeded 80,000,000. (*Id.*).

In addition to tracking the number of visits to the "DRUGSTORE.COM" online store, Applicant commissions outside provider Adobe to track the number of page views per visit. (*Id.* at ¶ 17). The mark "DRUGSTORE.COM" appears on every page of the website prominently in the upper left-hand corner. (*Id.*). According to the current average, each visitor to the online store views 7.8 different pages of the website, seeing the applied-for mark again and again on each page. (*Id.*). Based on the tracking records provided by Adobe and maintained by

Applicant, Applicant estimates that it facilitated over 10.5 billion commercial impressions for the mark “DRUGSTORE.COM” from 2006 through 2014. (*Id.* at ¶ 18).

“If the seller has featured the designation as a prominent symbol in advertising that has reached many potential customers, it could be a logical inference that buyers and viewers of the advertising came to associate the symbol with that seller.” MCCARTHY § 15:52 AT 15-87 (9/2010). By comparison, in the case of “SCHOOLSTORE.COM” (Reg. No. 4,073,046), a showing of acquired distinctiveness was accepted where applicant’s website had received approximately 400,000 views. (See Exhibits 1 and 2). In another case, the Trademark Office determined that the mark “CARDSTORE.COM & Design” (Reg. No. 3,770,053) had acquired distinctiveness where the “CARDSTORE.COM” website received over 753,933 web page visits, with 5.2 million web page “views,” over the course of a year. (See Exhibits 2 and 3). Applicant in the instant case far exceeds these third party showings, having had 535,000,000 website visits and over 10.5 billion commercial impressions for the mark “DRUGSTORE.COM”. (Garcia Declaration ¶¶ 16, 18).

4. Substantial Sales Revenues Generated Through the Mark

As a result of Applicant’s high quality Services and extensive advertising and promotion, the Services offered under the applied-for mark have enjoyed tremendous success. Indeed, Applicant’s records indicate that it received over 55,000,000 orders from January 1999 through October 2014 through its website prominently featuring “DRUGSTORE.COM” as a service mark. (Garcia Declaration ¶ 20). The number of orders in 2013 alone exceeded 7,000,000 orders. (*Id.*).

From January 1999 through October 2014, Applicant’s business records indicate that the total sales revenues generated through Services offered under the mark “DRUGSTORE.COM”

exceeded \$3 billion. (*Id.* at ¶ 19). The sales revenues in 2013 alone are believed to have exceeded \$390,000,000. (*Id.*). Again, by comparison, the mark “CARDSTORE.COM & Design” (Reg. No. 3,770,053) was found to have acquired distinctiveness after a showing of just \$7-8 million in annual sales over a period of time. (See Exhibits 2 and 3). Likewise, the mark “SCHOOLSTORE.COM” (Reg. No. 4,073,046) was accepted for registration under Section 2(f) after a showing of \$1,600,000 in sales per year. (See Exhibits 1 and 2) With sales revenues of over \$390,000,000 in 2013 alone, and over \$3 billion in sales since the first use of the mark “DRUGSTORE.COM”, (Garcia Declaration ¶ 19), Applicant far exceeds these third party showings.

An e-commerce business intelligence company called Internet Retailer has recognized Applicant in the past as one of the “Top 100 e-retailers.” (Garcia Declaration ¶ 21).¹ For example, Internet Retailer’s 2011 report ranked drugstore.com, inc. 46th out of the top 100 e-retailers, having had \$456,500,000 in web sales in 2010. (*Id.* at ¶ 22 and Exhibit B thereto). (This total includes revenues generated through the “DRUGSTORE.COM” store, as well as revenues generated through two of the Applicant’s other stores, beauty.com and visiondirect.com—although the majority of the sales are through the “DRUGSTORE.COM” store). Such a rank puts Applicant in the same league as BarnesandNoble.com (ranked 41st with \$573,000,000 in online sales in 2010), and higher than brands such as Peapod (ranked 47th with \$451,330,000 in online sales in 2010) and Crate and Barrel (ranked 55th with \$365,000,000 in online sales in 2010). (*Id.*).

¹ More recently, such as for 2014, Internet Retailer has grouped Applicant together with its parent company Walgreen Co., rather than identifying Applicant separately in the annual ranking report.

Internet Retailer also ranked the “Top 25 merchants ranked by category,” based on 2010 sales revenues. (*Id.*). In the “Web only” category, drugstore.com, inc. ranked 8th. (*Id.*).

Internet Retailer ranked the top 500 web retailers by principal market, based on 2010 sales revenues. (*Id.*). Notably, in the Health/Beauty category, drugstore.com, inc. ranked 3rd, just behind Amway Global and Avon Products, and above brands such as Diapers.com, 1-800 Contacts Inc., VitaminShoppe.com, and General Nutrition Centers Inc. (“GNC”). (*Id.*). Additional data about drugstore.com, inc. was set forth in Internet Retailer’s 2011 report, including that drugstore.com, inc. receives an estimated 10,000,000 visits per month and that the website is available 99.97% of the time. (*Id.*).

Internet Retailer’s reports from 2010, 2009, and 2008 contain similar rankings for drugstore.com, inc. based on revenues. (*Id.* at ¶ 23 and Exhibits C-E thereto). Again, the totals include revenue from the “DRUGSTORE.COM” store as well as the stores at beauty.com and visiondirect.com, although the majority of the yearly revenues come from “DRUGSTORE.COM” store sales. (*Id.* at ¶ 23).

- In the 2010 report, based on 2009 online sales, drugstore.com, inc. ranked 46th with \$412,832,000 in online sales; 8th in the “Web only” category; and 3rd in the “Health/Beauty” category. (*Id.* at ¶ 23 and Exhibit C thereto).
- In the 2009 report, based on 2008 online sales, drugstore.com, inc. ranked 48th with \$366,600,000 in online sales; 10th in the “Web only” category; and 3rd in the “Food/Drug” category. (*Id.* at ¶ 23 and Exhibit D thereto).
- In the 2008 report, based on 2007 online sales, drugstore.com, inc. ranked 41st with \$445,700,000 in online sales; 8th in the “Web only” category; and 1st in the “Food/Drug” category. (*Id.* at ¶ 23 and Exhibit E thereto).

All of these Internet Retailer rankings reflect the strong market presence of Applicant and its “DRUGSTORE.COM” Services.

C. **Wikipedia Entry Supports Single Source Meaning**

The Wikipedia entry for “drugstore.com” describes it not as a *type* of online store, but rather “*an* Internet retailer in health and beauty care products.” (emphasis added). (Exhibit 4). Internet evidence, including a Wikipedia entry such as this, is generally admissible and may be considered for purposes of evaluating a trademark. *See In re Bayer Aktiengesellschaft*, 82 USPQ2d 1828, 1833 (Fed. Cir. 2007) (internet evidence); *In re IP Carrier Consulting Group*, 84 USPQ2d 1028, 1032 (TTAB 2007) (Wikipedia entry), (citing TMEP § 710.01(b) (“Articles downloaded from the Internet are admissible as evidence of information available to the general public, and of the way in which a term is being used by the public. However the weight given to this evidence must be carefully evaluated because the source is often unknown”)); and *Alfa Corp. v. OAO Alfa Bank*, 475 F. Supp. 2d 357, 362 (S.D.N.Y. 2007) (stating that “the information provided there [Wikipedia] is not so inherently unreliable as to render inadmissible any opinion that references it,” especially when any opposing party may “apply the tools of the adversary system to his report.”). This Wikipedia entry strongly suggests that consumers view the Services provided by Applicant under the mark “DRUGSTORE.COM” as originating from a single source.

IV. **Third Party Marks Containing “store.com” Deemed Registrable**

Applicant acknowledges that the Examiner is not bound by the decisions of other Examiners. However, it is noteworthy that the Trademark Office has repeatedly acknowledged through its registrability determinations that trademarks containing “store.com” combined with other words are capable of functioning as trademarks and worthy of protection on the Principal Register.

Just by way of example, a number of marks containing “store.com” have been approved for registration on the Principal Register without even any showing of acquired distinctiveness, such as the following:

Mark	Reg. No.	Reg. Date	Disclaimer
FAMILYSTORE.COM	3,055,241	January 31, 2006	None
LAW ENFORCEMENT SUPPLIES OFFICERSTORE.COM & Design 	3,371,306	January 22, 2008	LAW ENFORCEMENT SUPPLIES
US FLAGSTORE.COM & Design 	3,637,861	March 31, 2009	US and the map of the United States
TURFSTORE.COM	2,779,346	November 4, 2003	None

TESS and TSDR (with prosecution history) printouts for the above-referenced marks are attached as Exhibit 5.

The following marks containing “store.com” have been granted registration on the Principal Register pursuant to Section 2(f) of the Lanham Act:

Mark	Reg. No.	Reg. Date	Disclaimer
CARDSTORE.COM & Design 	3,770,053	April 6, 2010	None

Mark	Reg. No.	Reg. Date	Disclaimer
AUTOMATIONSTORE.COM	4,038,519	October 11, 2011	None
SCHOOLSTORE.COM	4,073,046	December 20, 2011	None
SCHOOLSTORE.COM (stylized) 	4,069,633	December 13, 2011	None
CASHSTORE.COM	3,896,180	December 28, 2010	None

TESS and TSDR (with prosecution history) printouts for the above-referenced marks are attached as Exhibit 2. Like the above marks, “DRUGSTORE.COM” is capable of functioning as a source indicator and does exactly that in the minds of consumers.²

V. **Conclusion**

In sum, compelling direct and circumstantial evidence proves that “DRUGSTORE.COM” is recognized and understood by relevant consumers as a service mark indicating a single source. The applied-for mark is capable of distinguishing and in fact has acquired distinctiveness for Applicant's Services. Therefore, Applicant respectfully requests that the Examiner accept this evidence and allow registration under Section 2(f).

² Additionally, the Trademark Office has granted Supplemental Registrations to “GOURMETSTORE.COM” (Reg. No. 4,626,414) and “THEKITCHENSTORE.COM” (Reg. No. 2,920,239), indicating those marks are capable of functioning as source indicators if acquired distinctiveness could be established. TESS and TSDR (with prosecution history) printouts for these two marks are attached as Exhibit 6.

TRADEMARK

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of)	
)	
drugstore.com, inc.)	
	)	J. Brendan Regan
Serial No. 75/640,000	)	Trademark Examining Atty.
	)	Law Office 113
Filed: February 9, 1999)	
)	
Mark: DRUGSTORE.COM)	

REQUEST FOR RECONSIDERATION--INDEX OF EXHIBITS

Declaration of Adam Garcia

Exhibit A – Representative pages from the “DRUGSTORE.COM” online retail store

Exhibit B – Internet Retailer Report 2011

Exhibit C – Internet Retailer Report 2010

Exhibit D – Internet Retailer Report 2009

Exhibit E – Internet Retailer Report 2008

Exhibit F – Invoke Research Consumer Survey 2010

Exhibit G – Maritz Research Consumer Survey 2014

Other Exhibits

Exhibit 1 – Section 2(f) Response for “SCHOOLSTORE.COM”

Exhibit 2 – Group exhibit of TESS and TSDR registration details for marks containing “store.com” registered under Section 2(f)

Exhibit 3 – Section 2(f) Response for “CARDSTORE.COM & Design”

Exhibit 4 – Wikipedia entry for “drugstore.com”

Exhibit 5 – Group exhibit of TESS and TSDR registration details for marks containing “store.com” registered on the Principal Register with no Section 2(f) showing

Exhibit 6 – Group exhibit of TESS and TSDR registration details for marks containing “store.com” registered on the Supplemental Register

Exhibit 1

PTO Form 1957 (Rev 9/2005)
OMB No. 0651-0050 (Exp. 04/30/2011)

Response to Office Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	85183397
LAW OFFICE ASSIGNED	LAW OFFICE 106
MARK SECTION (no change)	
OWNER SECTION (no change)	
LEGAL ENTITY SECTION (no change)	
ARGUMENT(S)	
<p>The Examining Attorney has refused registration of the mark based on the allegation that the mark is merely descriptive of the services. The mark has acquired secondary meaning in the marketplace such that consumers now recognize the mark as designating the Applicant's services.</p> <p>The Applicant began using the SCHOOLSTORE.COM mark at least as early as September 11, 1996. The attached signed declaration shows Applicant's use of the mark has been extensive and continuous, and not a mere token use. The on-line catalogue receives approximately 400,000 views per year resulting in approximately \$1,600,000 in sales per year. Applicant has distributed approximately 1,300,000 printed catalogues through 3,932 schools. Applicant has also expended significant funds in advertising the mark, with well over \$800,000 being spent on advertising over the last two years.</p> <p>This trademark application was originally filed under section 1(b) as an "intent to use" application. The mark was in use when the application was filed, so filing the application as an "intent to use" application was an oversight. An allegation of Use has now been filed which lists the first date of use and the first date of use in commerce as September 11, 1996.</p> <p>The SCHOOLSTORE.COM mark has been in continuous use for over 14 years, which is well beyond the five year period that gives a presumption of secondary meaning. The mark has achieved secondary meaning based on the extensive use of the SCHOOLSTORE.COM mark over an extended period of time. Applicant respectfully requests the mark be approved for publication.</p>	
EVIDENCE SECTION	
EVIDENCE FILE NAME(S)	
ORIGINAL PDF FILE	evi_7424760238-135752267 . declaration_85183397.pdf
CONVERTED PDF FILE(S) (2 pages)	\\TICRS\EXPORT11\IMAGEOUT11\851\833\85183397\xml5\ROA0002.JPG

Exhibit 1

	\\TICRS\EXPORT11\IMAGEOUT11\851\833\85183397\xml5\ROA0003.JPG
DESCRIPTION OF EVIDENCE FILE	The evidence is a declaration from the Applicant stating the dates of use of the mark, and describing the extent of use of the mark in commerce.
SIGNATURE SECTION	
RESPONSE SIGNATURE	/Mark Swanson/
SIGNATORY'S NAME	Mark Swanson
SIGNATORY'S POSITION	Attorney of record, Alabama bar member
DATE SIGNED	08/04/2011
AUTHORIZED SIGNATORY	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Thu Aug 04 14:18:00 EDT 2011
TEAS STAMP	USPTO/ROA-74.247.60.238-2 0110804141800280588-85183 397-48059576484e448be2284 2a84469c75ba-N/A-N/A-2011 0804135752267617

PTO Form 1957 (Rev 9/2005)
OMB No. 0651-0050 (Exp. 04/30/2011)

Response to Office Action To the Commissioner for Trademarks:

Application serial no. **85183397** has been amended as follows:

ARGUMENT(S)

In response to the substantive refusal(s), please note the following:

The Examining Attorney has refused registration of the mark based on the allegation that the mark is merely descriptive of the services. The mark has acquired secondary meaning in the marketplace such that consumers now recognize the mark as designating the Applicant's services.

The Applicant began using the SCHOOLSTORE.COM mark at least as early as September 11, 1996. The attached signed declaration shows Applicant's use of the mark has been extensive and continuous, and not a mere token use. The on-line catalogue receives approximately 400,000 views per year resulting in approximately \$1,600,000 in sales per year. Applicant has distributed approximately 1,300,000 printed

Exhibit 1

catalogues through 3,932 schools. Applicant has also expended significant funds in advertising the mark, with well over \$800,000 being spent on advertising over the last two years.

This trademark application was originally filed under section 1(b) as an "intent to use" application. The mark was in use when the application was filed, so filing the application as an "intent to use" application was an oversight. An allegation of Use has now been filed which lists the first date of use and the first date of use in commerce as September 11, 1996.

The SCHOOLSTORE.COM mark has been in continuous use for over 14 years, which is well beyond the five year period that gives a presumption of secondary meaning. The mark has achieved secondary meaning based on the extensive use of the SCHOOLSTORE.COM mark over an extended period of time. Applicant respectfully requests the mark be approved for publication.

EVIDENCE

Evidence in the nature of The evidence is a declaration from the Applicant stating the dates of use of the mark, and describing the extent of use of the mark in commerce. has been attached.

Original PDF file:

[evi_7424760238-135752267 . declaration_85183397.pdf](#)

Converted PDF file(s) (2 pages)

[Evidence-1](#)

[Evidence-2](#)

SIGNATURE(S)

Response Signature

Signature: /Mark Swanson/ Date: 08/04/2011

Signatory's Name: Mark Swanson

Signatory's Position: Attorney of record, Alabama bar member

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

Serial Number: 85183397

Internet Transmission Date: Thu Aug 04 14:18:00 EDT 2011

TEAS Stamp: USPTO/ROA-74.247.60.238-2011080414180028

0588-85183397-48059576484e448be22842a844

69c75ba-N/A-N/A-20110804135752267617

Exhibit 1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE TRADEMARK EXAMINING OPERATION

In the Matter of:)	
Serial No.:	)	85/183,397
Service Mark:	)	SCHOOLSTORE.COM
Class:	)	035 and 036
Applicant:	)	ASD.com, Inc.
Filed:	)	November 23, 2010
Law Office:	)	106
Trademark Attorney:	)	Ada P. Han

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

DECLARATION

I, Michael J. Thomas, declare that I am General Manager of ASD.com, Inc., applicant corporation, and am authorized to make this declaration on behalf of the said corporation, and I hereby declare as follows:

1. That the Applicant has continuously used the above-identified mark in connection with its on-line retail and retail catalog shopping services, both featuring a wide variety of consumer goods and services of participating third-party merchants through printed and computerized on-line catalogues whereby orders are placed via mail, telecommunications; and its school fund raising program whereby a school designated by a customer receives a rebate on the price of goods and services offered by participating third-party merchants and ordered from a printed or computerized on-line catalogue in interstate commerce since at least as early September 11, 1996;

2. that Applicant currently employs 196 employees, including 36 managers and 160 hourly employees;

3. that the on-line catalogue available through Applicant's website has received approximately 400,000 views or hits resulting in \$1,600,000 in sales per year;

4. that Applicant has distributed approximately 1,300,000 printed catalogues through the 3,932 schools enrolled in the programs nationwide;

5. that Applicant advertises using the mark SCHOOLSTORE.COM. As a representative example over the last two years, Applicant has spent well over \$800,000 advertising its mark.

Exhibit 1

It is further declared that these statements were made with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of this application and any registration resulting therefrom.

Signed at Murfreesboro, Tennessee, this 3 day of August, 2011.

ASD.com, Inc.

By: 

Michael J. Thomas, General Manager



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Word Mark	CARDSTORE.COM
Goods and Services	IC 016. US 002 005 022 023 029 037 038 050. G & S: GREETING CARDS. FIRST USE: 20080121. FIRST USE IN COMMERCE: 20080121 IC 035. US 100 101 102. G & S: Addressing of envelopes. FIRST USE: 20080121. FIRST USE IN COMMERCE: 20080121 IC 039. US 100 105. G & S: Mail delivery services, namely, mailing greeting cards for others. FIRST USE: 20080121. FIRST USE IN COMMERCE: 20080121 IC 040. US 100 103 106. G & S: CUSTOM MANUFACTURING AND PRINTING OF GREETING CARDS OF ALL TYPES. FIRST USE: 20080121. FIRST USE IN COMMERCE: 20080121 IC 042. US 100 101. G & S: GRAPHIC DESIGN SERVICES, GENERAL DESIGN, AND CUSTOMIZED DESIGN FOR OTHERS OF GREETING CARDS OF ALL TYPES, FEATURING STANDARD GREETINGS, DESIGNS AND PHOTOGRAPHS AND CUSTOMERS' SELECTED CUSTOMIZED GREETINGS, DESIGNS, PHOTOGRAPHS, ADDRESSES AND SIGNATURES, VIA THE INTERNET AND THROUGH TRADITIONAL MEANS. FIRST USE: 20080121. FIRST USE IN COMMERCE: 20080121
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Search Code 05.05.25 - Daffodils; Iris (flower); Other flowers
 26.11.21 - Rectangles that are completely or partially shaded

Trademark Search Facility Classification Code NOTATION-SYMBOLS Notation Symbols such as Non-Latin characters, punctuation and mathematical signs, zodiac signs, prescription marks
 SHAPES-GEOMETRIC Geometric figures and solids including squares, rectangles, quadrilaterals and polygons
 VEG Plant life such as trees, flowers, fruits, grains, nuts, wreaths, and leaves

Serial Number 77682676

Filing Date March 3, 2009

Current Basis 1A

Original Filing Basis 1A

Published for Opposition January 19, 2010

Registration Number **3770053**

Registration Date April 6, 2010

Owner (REGISTRANT) CARDSTORE.COM, INC. CORPORATION CALIFORNIA 1195 PARK AVENUE, SUITE 211 EMERYVILLE CALIFORNIA 94608
 (LAST LISTED OWNER) CARDSTORE, INC. CORPORATION WASHINGTON ONE AMERICAN ROAD CLEVELAND OHIO 44144

Assignment Recorded ASSIGNMENT RECORDED

Attorney of Record Allyn Taylor

Description of Mark Color is not claimed as a feature of the mark. The mark consists of the words "cardstore.com" with a stylized flower design in front of the word, and ".com" is positioned vertically at the end of the horizontally placed "cardstore".

Type of Mark TRADEMARK. SERVICE MARK

Register PRINCIPAL-2(F)-IN PART

Live/Dead Indicator LIVE

Distinctiveness Limitation Statement as to "CARDSTORE.COM"

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Mark: CARDSTORE.COM



US Serial Number: 77682676

Application Filing Date: Mar. 03, 2010

US Registration Number: 3770053

Registration Date: Apr. 06, 2010

Register: Principal

Mark Type: Trademark, Service Mark

Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Status Date: Apr. 06, 2010

Publication Date: Jan. 19, 2010

Mark Information

Related Properties Information

Goods and Services

Basis Information (Case Level)

Current Owner(s) Information

Attorney/Correspondence Information

Prosecution History

Date	Description	Proceeding Number
Sep. 18, 2013	ASSIGNMENT OF OWNERSHIP NOT UPDATED AUTOMATICALLY	
Apr. 04, 2012	ASSIGNMENT OF OWNERSHIP NOT UPDATED AUTOMATICALLY	
Sep. 07, 2011	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
Jan. 26, 2011	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
Apr. 06, 2010	REGISTERED-PRINCIPAL REGISTER	
Jan. 19, 2010	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Jan. 19, 2010	PUBLISHED FOR OPPOSITION	

Dec. 16, 2009	ASSIGNMENT OF OWNERSHIP NOT UPDATED AUTOMATICALLY	
Dec. 11, 2009	LAW OFFICE PUBLICATION REVIEW COMPLETED	76984
Dec. 10, 2009	APPROVED FOR PUB - PRINCIPAL REGISTER	
Dec. 10, 2009	EXAMINER'S AMENDMENT ENTERED	88888
Dec. 10, 2009	NOTIFICATION OF EXAMINERS AMENDMENT E-MAILED	6328
Dec. 10, 2009	EXAMINERS AMENDMENT E-MAILED	6328
Dec. 10, 2009	EXAMINERS AMENDMENT -WRITTEN	76629
Dec. 09, 2009	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
Dec. 07, 2009	DIVISIONAL PROCESSING COMPLETE	
Dec. 04, 2009	DIVISIONAL REQUEST RECEIVED	
Dec. 07, 2009	CASE ASSIGNED TO INTENT TO USE PARALEGAL	76874
Dec. 07, 2009	TEAS/EMAIL CORRESPONDENCE ENTERED	76984
Dec. 07, 2009	CORRESPONDENCE RECEIVED IN LAW OFFICE	76984
Dec. 04, 2009	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Dec. 04, 2009	TEAS REQUEST TO DIVIDE RECEIVED	
Nov. 16, 2009	NOTIFICATION OF NON-FINAL ACTION E- MAILED	6325
Nov. 16, 2009	NON-FINAL ACTION E-MAILED	6325
Nov. 16, 2009	NON-FINAL ACTION WRITTEN	76629
Nov. 06, 2009	PREVIOUS ALLOWANCE COUNT WITHDRAWN	
Oct. 09, 2009	WITHDRAWN FROM PUB - OG REVIEW QUERY	61844
Sep. 29, 2009	LAW OFFICE PUBLICATION REVIEW COMPLETED	76984
Sep. 24, 2009	APPROVED FOR PUB - PRINCIPAL REGISTER	
Sep. 24, 2009	EXAMINER'S AMENDMENT ENTERED	88888
Sep. 24, 2009	NOTIFICATION OF EXAMINERS AMENDMENT E-MAILED	6328
Sep. 24, 2009	EXAMINERS AMENDMENT E-MAILED	6328
Sep. 24, 2009	EXAMINERS AMENDMENT -WRITTEN	76629
Sep. 24, 2009	TEAS/EMAIL CORRESPONDENCE ENTERED	76984
Sep. 24, 2009		76984

	CORRESPONDENCE RECEIVED IN LAW OFFICE	
Sep. 23, 2009	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Sep. 23, 2009	COMBINED EXAMINER'S AMENDMENT/PRIORITY ACTION ENTERED	76984
Sep. 23, 2009	ASSIGNED TO LIE	76984
Sep. 23, 2009	NOTIFICATION OF EXAMINER'S AMENDMENT/PRIORITY ACTION E-MAILED	6326
Sep. 23, 2009	EXAMINER'S AMENDMENT/PRIORITY ACTION E-MAILED	6326
Sep. 23, 2009	EXAMINERS AMENDMENT AND/OR PRIORITY ACTION - COMPLETED	76629
Aug. 07, 2009	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Aug. 06, 2009	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Aug. 06, 2009	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
May 29, 2009	ASSIGNED TO EXAMINER	76629
May 23, 2009	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
May 23, 2009	NON-FINAL ACTION E-MAILED	6325
May 23, 2009	NON-FINAL ACTION WRITTEN	82085
May 22, 2009	ASSIGNED TO EXAMINER	82085
Mar. 07, 2009	NOTICE OF DESIGN SEARCH CODE AND PSEUDO MARK MAILED	
Mar. 06, 2009	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Mar. 06, 2009	NEW APPLICATION ENTERED IN TRAM	

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automationstore.com

Word Mark AUTOMATIONSTORE.COM
Goods and Services IC 007. US 013 019 021 023 031 034 035. G & S: Hydraulic linear actuators; Pneumatic air preparation equipment, namely, airline filters, lubricators, and regulators, all being parts of machines; Pneumatic linear actuators. FIRST USE: 20050530. FIRST USE IN COMMERCE: 20050530

IC 009. US 021 023 026 036 038. G & S: Pneumatic and hydraulic directional control valves for use in automated production machinery. FIRST USE: 20050530. FIRST USE IN COMMERCE: 20050530

Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 85265057

Filing Date March 11, 2011

Current Basis 1A

Original Filing Basis 1A

Published for Opposition July 26, 2011

Registration Number 4038519
Registration Date October 11, 2011
Owner (REGISTRANT) Roger E. Ward INDIVIDUAL UNITED STATES 1025 Windermere Court Easley SOUTH CAROLINA 29642
Attorney of Record Marc Baumgartner
Prior Registrations 3283982
Type of Mark TRADEMARK
Register PRINCIPAL-2(F)
Live/Dead Indicator LIVE

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Mark: AUTOMATIONSTORE.COM

automationstore.com

US Serial Number: 85265057

Application Filing Date: Mar. 11, 2011

US Registration Number: 4038519

Registration Date: Oct. 11, 2011

Filed as TEAS Plus: Yes

Currently TEAS Plus: Yes

Register: Principal

Mark Type: Trademark

Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Status Date: Oct. 11, 2011

Publication Date: Jul. 26, 2011

Mark Information

Related Properties Information

Goods and Services

Basis Information (Case Level)

Current Owner(s) Information

Attorney/Correspondence Information

Prosecution History

Date	Description	Proceeding Number
Oct. 11, 2011	REGISTERED-PRINCIPAL REGISTER	
Jul. 26, 2011	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Jul. 26, 2011	PUBLISHED FOR OPPOSITION	
Jun. 15, 2011	APPROVED FOR PUB - PRINCIPAL REGISTER	
Jun. 10, 2011	ASSIGNED TO EXAMINER	78196
Mar. 18, 2011	NOTICE OF PSEUDO MARK MAILED	
Mar. 17, 2011		

Mar. 14, 2011

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SUPPLIED DATA ENTERED IN TRAM
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SCHOOLSTORE.COM

Word Mark SCHOOLSTORE.COM
Goods and Services IC 035. US 100 101 102. G & S: On-line retail and retail catalog shopping services, both featuring a wide variety of consumer goods and services of participating third-party merchants through printed and computerized on-line catalogues whereby orders are placed via mail, telecommunications, and on-line. FIRST USE: 19960911. FIRST USE IN COMMERCE: 19960911

IC 036. US 100 101 102. G & S: School fund raising program whereby a school designated by a customer receives a rebate on the price of goods and services offered by participating third-party merchants and ordered from a printed or computerized on-line catalogue. FIRST USE: 19960911. FIRST USE IN COMMERCE: 19960911

Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 85183397

Filing Date November 23, 2010

Current Basis 1A

Original Filing Basis 1B

Published for Opposition October 4, 2011
Registration Number 4073046
Registration Date December 20, 2011
Owner (REGISTRANT) ASD.com, Inc. CORPORATION DELAWARE 180 Freedom Avenue Murfreesboro TENNESSEE 37129
Attorney of Record Andrea C. Barach,
Type of Mark SERVICE MARK
Register PRINCIPAL-2(F)
Live/Dead Indicator LIVE

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Mark: SCHOOLSTORE.COM

SCHOOLSTORE.COM

US Serial Number: 85183397

Application Filing Date: Nov. 23, 2011

US Registration Number: 4073046

Registration Date: Dec. 20, 2011

Register: Principal

Mark Type: Service Mark

Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Status Date: Dec. 20, 2011

Publication Date: Oct. 04, 2011

Mark Information

Goods and Services

Basis Information (Case Level)

Current Owner(s) Information

Attorney/Correspondence Information

Prosecution History

Date	Description	Proceeding Number
Dec. 20, 2011	REGISTERED-PRINCIPAL REGISTER	
Oct. 04, 2011	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Oct. 04, 2011	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Oct. 04, 2011	PUBLISHED FOR OPPOSITION	
Aug. 29, 2011	LAW OFFICE PUBLICATION REVIEW COMPLETED	68552
Aug. 25, 2011	ASSIGNED TO LIE	68552
Aug. 11, 2011	APPROVED FOR PUB - PRINCIPAL REGISTER	
Aug. 11, 2011	EXAMINER'S AMENDMENT ENTERED	88888

Aug. 11, 2011	NOTIFICATION OF EXAMINERS AMENDMENT E-MAILED	6328
Aug. 11, 2011	EXAMINERS AMENDMENT E-MAILED	6328
Aug. 11, 2011	EXAMINERS AMENDMENT -WRITTEN	80819
Aug. 11, 2011	PREVIOUS ALLOWANCE COUNT WITHDRAWN	
Aug. 11, 2011	NOTICE OF ACCEPTANCE OF AMENDMENT TO ALLEGE USE E-MAILED	
Aug. 10, 2011	APPROVED FOR PUB - PRINCIPAL REGISTER	
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Aug. 05, 2011	AMENDMENT TO USE PROCESSING COMPLETE	88889
Aug. 05, 2011	USE AMENDMENT FILED	88889
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Feb. 08, 2011	NON-FINAL ACTION E-MAILED	6325
Feb. 08, 2011	NON-FINAL ACTION WRITTEN	80819
Feb. 07, 2011	ASSIGNED TO EXAMINER	80819
Nov. 30, 2010	NOTICE OF PSEUDO MARK MAILED	
Nov. 29, 2010	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Nov. 26, 2010	NEW APPLICATION ENTERED IN TRAM	

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SchoolStore.com

Word Mark SCHOOLSTORE.COM
Goods and Services IC 035. US 100 101 102. G & S: On-line retail and retail catalog shopping services, both featuring a wide variety of consumer goods and services of participating third-party merchants through printed and computerized on-line catalogues whereby orders are placed via mail, telecommunications, and on-line. FIRST USE: 20090805. FIRST USE IN COMMERCE: 20090805

IC 036. US 100 101 102. G & S: School fund raising program whereby a school designated by a customer receives a rebate on the price of goods and services offered by participating third-party merchants and ordered from a printed or computerized on-line catalogue. FIRST USE: 20090805. FIRST USE IN COMMERCE: 20090805

Mark Drawing Code (5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM

Serial Number 85162359

Filing Date October 27, 2010

Current Basis 1A

Original Filing Basis 1A

Published for Opposition September 27, 2011

Registration Number 4069633
Registration Date December 13, 2011
Owner (REGISTRANT) ASD.com, Inc. CORPORATION DELAWARE 180 Freedom Avenue Murfreesboro TENNESSEE 37129
Attorney of Record Andrea C. Barach
Description of Mark The color(s) blue, white and orange is/are claimed as a feature of the mark. The mark consists of the stylized wording "SchoolStore.com" where "SchoolStore" and "com" are shown in white outlined with blue; the "." is in the color orange outlined in blue.
Type of Mark SERVICE MARK
Register PRINCIPAL-2(F)
Live/Dead Indicator LIVE

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Mark: SCHOOLSTORE.COM



US Serial Number: 85162359

Application Filing Date: Oct. 27, 2011

US Registration Number: 4069633

Registration Date: Dec. 13, 2011

Register: Principal

Mark Type: Service Mark

Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Status Date: Dec. 13, 2011

Publication Date: Sep. 27, 2011

Mark Information

Goods and Services

Basis Information (Case Level)

Current Owner(s) Information

Attorney/Correspondence Information

Prosecution History

Date	Description	Proceeding Number
Dec. 13, 2011	REGISTERED-PRINCIPAL REGISTER	
Sep. 27, 2011	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Sep. 27, 2011	PUBLISHED FOR OPPOSITION	
Aug. 24, 2011	LAW OFFICE PUBLICATION REVIEW COMPLETED	70468
Aug. 24, 2011	ASSIGNED TO LIE	70468
Aug. 10, 2011	APPROVED FOR PUB - PRINCIPAL REGISTER	
Aug. 10, 2011	EXAMINER'S AMENDMENT ENTERED	88888
Aug. 10, 2011	NOTIFICATION OF EXAMINERS AMENDMENT E-MAILED	6328
Aug. 10, 2011	EXAMINERS AMENDMENT E-MAILED	6328

Aug. 10, 2011	EXAMINERS AMENDMENT -WRITTEN	80819
Aug. 09, 2011	APPLICANT AMENDMENT PRIOR TO EXAMINATION - ENTERED	88889
Aug. 09, 2011	TEAS VOLUNTARY AMENDMENT RECEIVED	
Aug. 04, 2011	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Aug. 04, 2011	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Aug. 04, 2011	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Feb. 08, 2011	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Feb. 08, 2011	NON-FINAL ACTION E-MAILED	6325
Feb. 08, 2011	NON-FINAL ACTION WRITTEN	80819
Feb. 07, 2011	ASSIGNED TO EXAMINER	80819
Nov. 03, 2010	NOTICE OF PSEUDO MARK MAILED	
Nov. 02, 2010	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Oct. 30, 2010	NEW APPLICATION ENTERED IN TRAM	

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CASHSTORE.COM

Word Mark	CASHSTORE.COM
Goods and Services	IC 036. US 100 101 102. G & S: Consumer lending services. FIRST USE: 20071101. FIRST USE IN COMMERCE: 20071101
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Trademark Search Facility Classification Code	NOTATION-SYMBOLS Notation Symbols such as Non-Latin characters,punctuation and mathematical signs,zodiac signs,prescription marks
Serial Number	77874593
Filing Date	November 17, 2009
Current Basis	1A
Original Filing Basis	1A

Published for October 12, 2010

Opposition

Registration Number 3896180

Registration Date December 28, 2010

Owner (REGISTRANT) Cottonwood Financial, Ltd. Cottonwood Financial Management, Inc., a Texas corporation LIMITED PARTNERSHIP TEXAS Suite 200 1901 Gateway Drive Irving TEXAS 75038

Attorney of Record Alexis C. Young

Prior Registrations 2270955;2461639;3542978;AND OTHERS

Type of Mark SERVICE MARK

Register PRINCIPAL-2(F)

Live/Dead Indicator LIVE

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Mark: CASHSTORE.COM

CASHSTORE.COM

US Serial Number: 77874593

Application Filing Date: Nov. 17, 2010

US Registration Number: 3896180

Registration Date: Dec. 28, 2010

Filed as TEAS Plus: Yes

Currently TEAS Plus: Yes

Register: Principal

Mark Type: Service Mark

Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Status Date: Dec. 28, 2010

Publication Date: Oct. 12, 2010

Mark Information

Related Properties Information

Goods and Services

Basis Information (Case Level)

Current Owner(s) Information

Attorney/Correspondence Information

Prosecution History

Date	Description	Proceeding Number
Dec. 28, 2010	REGISTERED-PRINCIPAL REGISTER	
Oct. 12, 2010	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Oct. 12, 2010	PUBLISHED FOR OPPOSITION	
Sep. 08, 2010	LAW OFFICE PUBLICATION REVIEW COMPLETED	70629
Aug. 29, 2010	APPROVED FOR PUB - PRINCIPAL REGISTER	
Aug. 04, 2010	EXAMINER'S AMENDMENT ENTERED	88888

Aug. 04, 2010	NOTIFICATION OF EXAMINERS AMENDMENT E-MAILED	6328
Aug. 04, 2010	EXAMINERS AMENDMENT E-MAILED	6328
Aug. 04, 2010	EXAMINERS AMENDMENT -WRITTEN	78428
Jul. 13, 2010	TEAS/EMAIL CORRESPONDENCE ENTERED	70629
Jul. 13, 2010	CORRESPONDENCE RECEIVED IN LAW OFFICE	70629
Jul. 13, 2010	ASSIGNED TO LIE	70629
Jun. 24, 2010	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Mar. 03, 2010	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Mar. 03, 2010	NON-FINAL ACTION E-MAILED	6325
Mar. 03, 2010	NON-FINAL ACTION WRITTEN	78428
Feb. 23, 2010	ASSIGNED TO EXAMINER	78428
Nov. 24, 2009	NOTICE OF PSEUDO MARK MAILED	
Nov. 23, 2009	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Nov. 20, 2009	NEW APPLICATION ENTERED IN TRAM	

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OMB No. 0651-0050 (Exp. 04/30/2011)

Response to Office Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	77682676
LAW OFFICE ASSIGNED	LAW OFFICE 105
MARK SECTION (no change)	
ARGUMENT(S)	
<p>This responds to the non-final Office Action issued on May 23, 2009.</p> <p>I. <u>IDENTIFICATION OF CLASS 42 SERVICES</u></p> <p>The Examining Attorney has objected to the wording "creation" in the class 42 services description. Accordingly, Applicant is requesting in and through this electronic response that the present class 42 services identification be deleted in its entirety and replaced with the following:</p> <ul style="list-style-type: none">• <u>Class 42</u>: Graphic design services, general design, and customized design for others of greeting cards of all types, featuring standard greetings, designs and photographs and customers' selected customized greetings, designs, photographs, addresses and signatures, via the internet and through traditional means <p>II. <u>DISCLAIMER REQUIREMENT</u></p> <p>The Examining Attorney is requiring that Applicant disclaim the exclusive right to use the wording "CARDSTORE.COM" apart from the mark as a whole because it allegedly merely describes the goods and services. However, Applicant respectfully requests that the Examining Attorney withdraw the disclaimer requirement on the basis that the wording CARDSTORE.COM has become distinctive of Applicant's goods and services through Applicant's substantially exclusive and continuous use in commerce over more than five years and Applicant's prior registration on the Principal Register for CARDSTORE.COM and Design (Registration No. 2700769).</p> <p>A. <u>CARDSTORE.COM has Acquired Distinctiveness</u></p> <p>CARDSTORE.COM has acquired the requisite level of distinctiveness to function as a trademark. Applicant is amending its application in and through this electronic response to claim such distinctiveness by way of Section 2(f) of the Trademark Act and seeks to support such a claim based on Applicant's substantially exclusive and continuous use in commerce of CARDSTORE.COM on its goods and services</p>	

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since at least as early as December 15, 1999 and as evidenced by Applicant's prior registration on the Principal Register for CARDSTORE.COM and Design (Registration No. 2700769).

1. Pursuant to T.M.E.P. §1212.04, Prior Registrations may be Accepted as Proof of Distinctiveness.

Trademark Rule 2.41(b), 37 C.F.R. § 2.41(b), provides that the Examining Attorney may accept as *prima facie* evidence of acquired distinctiveness, ownership by the Applicant of one or more prior registrations on the Principal Register of the same mark. Applicant claims such acquired distinctiveness based upon its ownership of U.S. Registration No. 2700769 for CARDSTORE.COM and Design, registered on March 25, 2003, which was claimed in the application as a prior registration of Applicant (the "Prior Registration").

The proper analysis of whether one can claim acquired distinctiveness based upon a prior registration is whether the prior mark and the mark at issue are "legal equivalents" such that they "create the same, continuing commercial impression that the consumer would consider both as the same mark." *In re Dial A Mattress Operating Corp.*, 52 U.S.P.Q. 2d 1910 (1999 T.T.A.B.); T.M.E.P. § 1212.04(b). The Examining Attorney should also determine whether the goods or services named in the application are sufficiently similar to the goods or services named in the prior registration and also whether the prior registration is in full force and effect and on the Principal Register. T.M.E.P. § 1212.04(c)-(d).

Here, Applicant's Prior Registration is in full force and effect on the Principal Register and is for identical goods and services.

In addition, the mark in Applicant's Prior Registration and mark in the subject application are nearly identical. Both contain the wording CARDSTORE.COM, and the only differences in the respective marks are the design elements and the configuration of the wording in the marks. Such minor differences result in the same, continuing commercial impression such that consumers consider them both the same mark.

Therefore, the mark in the Prior Registration and the mark in the subject application are "legal equivalents" and as such, the Prior Registration should be accepted as *prima facie* evidence of acquired distinctiveness.

2. Pursuant to 15 U.S.C.A. § 1056, No Disclaimer in a Prior Registration Shall Prejudice or Affect Applicant's Rights in the Disclaimed Matter in a Subsequent Application if the Disclaimed Matter Shall Have Become Distinctive the Goods or Services.

Applicant is submitting in and through this response that CARDSTORE.COM has acquired distinctiveness due to (a) Applicant's substantially exclusive and continuous use of CARDSTORE.COM in commerce for over five years (see below), and, as noted hereinabove, (b) Applicant's ownership of the Prior Registration. Applicant notes that the wording CARDSTORE.COM in the Prior Registration was disclaimed.

However, 15 U.S.C.A. § 1056(b) states:

No disclaimer shall prejudice or affect the applicant's or registrant's rights then existing or thereafter arising in the disclaimed matter, or his right of registration on another application if the disclaimed matter be or shall have become distinctive of his goods or services.

Because the wording CARDSTORE.COM has become distinctive of Applicant's goods and services described in the subject application (as amended herein), the disclaimer of the wording CARDSTORE.COM in the Prior Registration should not prejudice or affect Applicant's rights to CARDSTORE.COM in the subject application.

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Furthermore, in an analogous case, *Victor Tool and Machine Corp. v. Sun Control Awnings, Inc.*, 299 F.Supp. 868, 870 (E.D. Mich 1968), defendant Sun Control Awnings had disclaimed the words "Sun Control" in their original registration but then went on to use the words continuously for fifteen years after the original registration. In ruling that defendant Sun Control Awnings was the true owner of the trademark, the Court stated:

In view of this long and continuous use, these words have become distinctive of defendant's goods and services. There mere disclaimer of the words 'SUN CONTROL' in defendant's trademark registrations does not deprive defendants of any substantive rights in and to the trademark, as the words 'SUN CONTROL' have become distinctive of the goods of Sun Control Awnings, Inc.

Id.

Similarly in this case, because of Applicant's continuous and substantially exclusive use of CARDSTORE.COM for nearly ten years, there mere disclaimer of the wording CARDSTORE.COM in Applicant's mark in the Prior Registration should not deprive Applicant of any substantive rights in and to the wording CARDSTORE.COM as they have become distinctive of Applicant's goods and services.

3. Applicant's Prior Use Should be Tacked On such that the Mark has Acquired Distinctiveness.

As evidenced by the Prior Registration, Applicant has used the term CARDSTORE.COM to identify the source of Applicant's goods and services since at least as early as December 15, 1999. In *In re Flex-O-Glass, Inc.*, 194 U.S.P.Q. 203, 205-206 (T.T.A.B. 1977), the Board noted that if "[p]ersons exposed to Applicant's registered mark . would, upon encountering [the mark at issue] ., be likely to accept it as the same mark or as an inconsequential modification or modernization thereof. [Applicant] may 'tack on' to its use of the mark in question, the use of the registered mark . and therefore may properly rely upon its registration in support of its claim of distinctiveness herein." Like in *Flex-O-Glass*, because the mark in the Prior Registration and the mark in the subject application are virtually identical and cover the identical goods and services, Applicant's prior use of CARDSTORE.COM in the manner evidenced by Applicant's Prior Registration should be tacked on in this case.

In the *Flex-O-Glass* case, tacking on of the prior registration's acquired distinctiveness was allowed when the modernization of the mark was an apparent elongation of the already existing shape of the mark. *Flex-O-Glass*, 195 U.S.P.Q. at 204. Similarly, the court in *The Dreyfus Fund Inc. v. The Royal Bank of Canada* allowed such tacking on when the modernization of the mark was the change of a lion from realistic to stylized. 213 U.S.P.Q. 872, 878-879 (S.D.N.Y. 1981). The changes of the mark in the subject application for CARDSTORE.COM and Design result in a much more subtle difference from the mark in Applicant's Prior Registration for CARDSTORE.COM and Design than either of the changes allowed by the Court in *Flex-OGlass* and *Dreyfus*. As previously discussed, the two CARDSTORE.COM and Design marks are virtually identical. Both include the exact same wording (CARDSTORE.COM) and the only differences in the marks are the design elements and the configuration of the wording. Such minor changes are inconsequential and therefore, the acquired distinctiveness of the registered mark should be tacked on to the mark at issue.

By virtue of the nearly identical previous registration, it is respectfully submitted that Applicant's mark has acquired distinctiveness under Section 2(f).

4. Applicant's substantially exclusive and continuous use in commerce of CARDSTORE.COM

In addition to the above, Applicant has also had substantially exclusive and continuous use in commerce of CARDSTORE.COM on its goods and services since at least as early as December 15, 1999

Exhibit 3

and CARDSTORE.COM has consequently become distinctive of Applicant's goods and services in and through this use. Section 2(f) of the Trademark Act, 15 U.S.C. §1052(f), provides that, "proof of substantially exclusive and continuous use of a designation as a mark by the applicant in commerce for the five years before the date on which the claim of distinctiveness is made may be accepted as *prima facie* evidence that the mark has acquired distinctiveness as used with the applicant's goods in commerce." See *also* 37 C.F.R. §2.41(b). Pursuant to T.M.E.P. § 1212.02(f), a claim of acquired distinctiveness may apply to a portion of a mark. The standards for establishing acquired distinctiveness are the same whether the claim of distinctiveness pertains to the entire mark or to a portion of it. See T.M.E.P. §§ 1212.09 *et seq.*

Here, Applicant is claiming acquired distinctiveness only with respect to the wording CARDSTORE.COM in the mark in the subject application. Applicant has had almost ten (10) years of substantially exclusive and continuous use of CARDSTORE.COM in commerce. In accordance with 37 C.F.R. §2.20, Applicant is attaching hereto a Declaration of Marty Reed, the CEO of Applicant, as evidence showing duration, extent and nature of use of CARDSTORE.COM in commerce (identifying the types of media and attaching typical advertisements), and a Declaration of Applicant's attorney of record, Paul A. McLean of DLA Piper LLP (US), as evidence showing that based on an Internet search that CARDSTORE.COM distinguishes Applicant's goods and services.

In light of the foregoing, Applicant respectfully requests that the Examining Attorney withdraw her requirement for Applicant to disclaim the exclusive right to use CARDSTORE.COM apart from the mark as a whole, on the basis that CARDSTORE.COM has become distinctive of Applicant's goods and services through Applicant's substantially exclusive and continuous use in commerce over more than five years and Applicant's Prior Registration on the Principal Register for CARDSTORE.COM and Design (Registration No. 2700769).

CONCLUSION

The issues raised by the Examining Attorney having been fully addressed by the above remarks, Applicant requests that the subject Application be allowed to proceed to publication.

GOODS AND/OR SERVICES SECTION (016)(no change)

GOODS AND/OR SERVICES SECTION (035)(no change)

GOODS AND/OR SERVICES SECTION (039)(no change)

GOODS AND/OR SERVICES SECTION (040)(no change)

GOODS AND/OR SERVICES SECTION (042)(current)

INTERNATIONAL CLASS 042

DESCRIPTION

CREATION, GENERAL DESIGN, AND CUSTOMIZED DESIGN FOR OTHERS OF GREETING CARDS OF ALL TYPES, FEATURING STANDARD GREETINGS, DESIGNS AND PHOTOGRAPHS AND CUSTOMERS' SELECTED CUSTOMIZED GREETINGS, DESIGNS, PHOTOGRAPHS, ADDRESSES AND SIGNATURES, VIA THE INTERNET AND THROUGH TRADITIONAL MEANS

FILING BASIS Section 1(a)

FIRST USE

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ANYWHERE DATE	At least as early as 01/21/2008
FIRST USE IN COMMERCE DATE	At least as early as 01/21/2008
GOODS AND/OR SERVICES SECTION (042)(proposed)	
INTERNATIONAL CLASS	042
TRACKED TEXT DESCRIPTION	
<p style="color: red; text-decoration: line-through;">CREATION, GENERAL DESIGN, AND CUSTOMIZED DESIGN FOR OTHERS OF GREETING CARDS OF ALL TYPES, FEATURING STANDARD GREETINGS, DESIGNS AND PHOTOGRAPHS AND CUSTOMERS' SELECTED CUSTOMIZED GREETINGS, DESIGNS, PHOTOGRAPHS, ADDRESSES AND SIGNATURES, VIA THE INTERNET AND THROUGH TRADITIONAL MEANS; <u>GRAPHIC DESIGN SERVICES, GENERAL DESIGN, AND CUSTOMIZED DESIGN FOR OTHERS OF GREETING CARDS OF ALL TYPES, FEATURING STANDARD GREETINGS, DESIGNS AND PHOTOGRAPHS AND CUSTOMERS' SELECTED CUSTOMIZED GREETINGS, DESIGNS, PHOTOGRAPHS, ADDRESSES AND SIGNATURES, VIA THE INTERNET AND THROUGH TRADITIONAL MEANS</u></p>	
FINAL DESCRIPTION	
<p>GRAPHIC DESIGN SERVICES, GENERAL DESIGN, AND CUSTOMIZED DESIGN FOR OTHERS OF GREETING CARDS OF ALL TYPES, FEATURING STANDARD GREETINGS, DESIGNS AND PHOTOGRAPHS AND CUSTOMERS' SELECTED CUSTOMIZED GREETINGS, DESIGNS, PHOTOGRAPHS, ADDRESSES AND SIGNATURES, VIA THE INTERNET AND THROUGH TRADITIONAL MEANS</p>	
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 01/21/2008
FIRST USE IN COMMERCE DATE	At least as early as 01/21/2008
ADDITIONAL STATEMENTS SECTION	
SECTION 2(f), IN PART	CARDSTORE.COM has become distinctive of the goods/services through the applicant's substantially exclusive and continuous use in commerce for at least the five years immediately before the date of this statement.
SECTION 2(f), IN PART	CARDSTORE.COM has become distinctive of the goods/services as evidenced by the ownership on the Principal Register for the same mark for related goods or services of U.S. Registration No(s)2700769.
SECTION 2(f), IN PART BASED ON EVIDENCE	CARDSTORE.COM has become distinctive of the goods/services, as demonstrated by the attached evidence.
2(f) EVIDENCE FILE NAME(S)	
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Exhibit 3

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	\\TICRS\EXPORT7\IMAGEOUT7\776\826\77682676\xml3\ROA0048.JPG
SIGNATURE SECTION	
DECLARATION	The filing Attorney has elected not to submit the signed declaration,

Exhibit 3

SIGNATURE	believing no supporting declaration is required under the <i>Trademark Rules of Practice</i> .
RESPONSE SIGNATURE	/Paul A. McLean/
SIGNATORY'S NAME	Paul A. McLean, Esq., DLA Piper LLP (US)
SIGNATORY'S POSITION	Attorney of record, California bar member
DATE SIGNED	08/06/2009
AUTHORIZED SIGNATORY	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Thu Aug 06 19:10:31 EDT 2009
TEAS STAMP	USPTO/ROA-66.54.170.187-2 0090806191031350811-77682 676-430dfdd0962cf7f1a45e1 0c49e73653a37-N/A-N/A-200 90806184942008715

PTO Form 1957 (Rev 9/2005)
OMB No. 0651-0050 (Exp. 04/30/2011)

Response to Office Action To the Commissioner for Trademarks:

Application serial no. **77682676** has been amended as follows:

ARGUMENT(S)

In response to the substantive refusal(s), please note the following:

This responds to the non-final Office Action issued on May 23, 2009.

I. IDENTIFICATION OF CLASS 42 SERVICES

The Examining Attorney has objected to the wording "creation" in the class 42 services description. Accordingly, Applicant is requesting in and through this electronic response that the present class 42 services identification be deleted in its entirety and replaced with the following:

- Class 42: Graphic design services, general design, and customized design for others of greeting cards of all types, featuring standard greetings, designs and photographs and customers' selected customized greetings, designs, photographs, addresses and signatures, via the internet and through traditional means

Exhibit 3

II. DISCLAIMER REQUIREMENT

The Examining Attorney is requiring that Applicant disclaim the exclusive right to use the wording "CARDSTORE.COM" apart from the mark as a whole because it allegedly merely describes the goods and services. However, Applicant respectfully requests that the Examining Attorney withdraw the disclaimer requirement on the basis that the wording CARDSTORE.COM has become distinctive of Applicant's goods and services through Applicant's substantially exclusive and continuous use in commerce over more than five years and Applicant's prior registration on the Principal Register for CARDSTORE.COM and Design (Registration No. 2700769).

A. CARDSTORE.COM has Acquired Distinctiveness

CARDSTORE.COM has acquired the requisite level of distinctiveness to function as a trademark. Applicant is amending its application in and through this electronic response to claim such distinctiveness by way of Section 2(f) of the Trademark Act and seeks to support such a claim based on Applicant's substantially exclusive and continuous use in commerce of CARDSTORE.COM on its goods and services since at least as early as December 15, 1999 and as evidenced by Applicant's prior registration on the Principal Register for CARDSTORE.COM and Design (Registration No. 2700769).

1. Pursuant to T.M.E.P. §1212.04, Prior Registrations may be Accepted as Proof of Distinctiveness.

Trademark Rule 2.41(b), 37 C.F.R. § 2.41(b), provides that the Examining Attorney may accept as *prima facie* evidence of acquired distinctiveness, ownership by the Applicant of one or more prior registrations on the Principal Register of the same mark. Applicant claims such acquired distinctiveness based upon its ownership of U.S. Registration No. 2700769 for CARDSTORE.COM and Design, registered on March 25, 2003, which was claimed in the application as a prior registration of Applicant (the "Prior Registration").

The proper analysis of whether one can claim acquired distinctiveness based upon a prior registration is whether the prior mark and the mark at issue are "legal equivalents" such that they "create the same, continuing commercial impression that the consumer would consider both as the same mark." *In re Dial A Mattress Operating Corp.*, 52 U.S.P.Q. 2d 1910 (1999 T.T.A.B.); T.M.E.P. § 1212.04(b). The Examining Attorney should also determine whether the goods or services named in the application are sufficiently similar to the goods or services named in the prior registration and also whether the prior registration is in full force and effect and on the Principal Register. T.M.E.P. § 1212.04(c)-(d).

Here, Applicant's Prior Registration is in full force and effect on the Principal Register and is for identical goods and services.

In addition, the mark in Applicant's Prior Registration and mark in the subject application are nearly identical. Both contain the wording CARDSTORE.COM, and the only differences in the respective marks are the design elements and the configuration of the wording in the marks. Such minor differences result in the same, continuing commercial impression such that consumers consider them both the same mark.

Therefore, the mark in the Prior Registration and the mark in the subject application are "legal equivalents" and as such, the Prior Registration should be accepted as *prima facie* evidence of acquired distinctiveness.

2. Pursuant to 15 U.S.C.A. § 1056, No Disclaimer in a Prior Registration Shall Prejudice or

Exhibit 3

Affect Applicant's Rights in the Disclaimed Matter in a Subsequent Application if the Disclaimed Matter Shall Have Become Distinctive the Goods or Services.

Applicant is submitting in and through this response that CARDSTORE.COM has acquired distinctiveness due to (a) Applicant's substantially exclusive and continuous use of CARDSTORE.COM in commerce for over five years (see below), and, as noted hereinabove, (b) Applicant's ownership of the Prior Registration. Applicant notes that the wording CARDSTORE.COM in the Prior Registration was disclaimed. However, 15 U.S.C.A. § 1056(b) states:

No disclaimer shall prejudice or affect the applicant's or registrant's rights then existing or thereafter arising in the disclaimed matter, or his right of registration on another application if the disclaimed matter be or shall have become distinctive of his goods or services.

Because the wording CARDSTORE.COM has become distinctive of Applicant's goods and services described in the subject application (as amended herein), the disclaimer of the wording CARDSTORE.COM in the Prior Registration should not prejudice or affect Applicant's rights to CARDSTORE.COM in the subject application.

Furthermore, in an analogous case, *Victor Tool and Machine Corp. v. Sun Control Awnings, Inc.*, 299 F.Supp. 868, 870 (E.D. Mich 1968), defendant Sun Control Awnings had disclaimed the words "Sun Control" in their original registration but then went on to use the words continuously for fifteen years after the original registration. In ruling that defendant Sun Control Awnings was the true owner of the trademark, the Court stated:

In view of this long and continuous use, these words have become distinctive of defendant's goods and services. There mere disclaimer of the words 'SUN CONTROL' in defendant's trademark registrations does not deprive defendants of any substantive rights in and to the trademark, as the words 'SUN CONTROL' have become distinctive of the goods of Sun Control Awnings, Inc.

Id.

Similarly in this case, because of Applicant's continuous and substantially exclusive use of CARDSTORE.COM for nearly ten years, there mere disclaimer of the wording CARDSTORE.COM in Applicant's mark in the Prior Registration should not deprive Applicant of any substantive rights in and to the wording CARDSTORE.COM as they have become distinctive of Applicant's goods and services.

3. Applicant's Prior Use Should be Tacked On such that the Mark has Acquired Distinctiveness.

As evidenced by the Prior Registration, Applicant has used the term CARDSTORE.COM to identify the source of Applicant's goods and services since at least as early as December 15, 1999. In *In re Flex-O-Glass, Inc.*, 194 U.S.P.Q. 203, 205-206 (T.T.A.B. 1977), the Board noted that if "[p]ersons exposed to Applicant's registered mark . would, upon encountering [the mark at issue] ., be likely to accept it as the same mark or as an inconsequential modification or modernization thereof . [Applicant] may 'tack on' to its use of the mark in question, the use of the registered mark . and therefore may properly rely upon its registration in support of its claim of distinctiveness herein." Like in *Flex-O-Glass*, because the mark in the Prior Registration and the mark in the subject application are virtually identical and cover the identical goods and services, Applicant's prior use of CARDSTORE.COM in the manner evidenced by Applicant's Prior Registration should be tacked on in this case.

In the *Flex-O-Glass* case, tacking on of the prior registration's acquired distinctiveness was allowed when the modernization of the mark was an apparent elongation of the already existing shape of the

Exhibit 3

mark. *Flex-O-Glass*, 195 U.S.P.Q. at 204. Similarly, the court in *The Dreyfus Fund Inc. v. The Royal Bank of Canada* allowed such tacking on when the modernization of the mark was the change of a lion from realistic to stylized. 213 U.S.P.Q. 872, 878-879 (S.D.N.Y. 1981). The changes of the mark in the subject application for CARDSTORE.COM and Design result in a much more subtle difference from the mark in Applicant's Prior Registration for CARDSTORE.COM and Design than either of the changes allowed by the Court in *Flex-O-Glass* and *Dreyfus*. As previously discussed, the two CARDSTORE.COM and Design marks are virtually identical. Both include the exact same wording (CARDSTORE.COM) and the only differences in the marks are the design elements and the configuration of the wording. Such minor changes are inconsequential and therefore, the acquired distinctiveness of the registered mark should be tacked on to the mark at issue.

By virtue of the nearly identical previous registration, it is respectfully submitted that Applicant's mark has acquired distinctiveness under Section 2(f).

4. Applicant's substantially exclusive and continuous use in commerce of CARDSTORE.COM

In addition to the above, Applicant has also had substantially exclusive and continuous use in commerce of CARDSTORE.COM on its goods and services since at least as early as December 15, 1999 and CARDSTORE.COM has consequently become distinctive of Applicant's goods and services in and through this use. Section 2(f) of the Trademark Act, 15 U.S.C. §1052(f), provides that, "proof of substantially exclusive and continuous use of a designation as a mark by the applicant in commerce for the five years before the date on which the claim of distinctiveness is made may be accepted as *prima facie* evidence that the mark has acquired distinctiveness as used with the applicant's goods in commerce." See also 37 C.F.R. §2.41(b). Pursuant to T.M.E.P. § 1212.02(f), a claim of acquired distinctiveness may apply to a portion of a mark. The standards for establishing acquired distinctiveness are the same whether the claim of distinctiveness pertains to the entire mark or to a portion of it. See T.M.E.P. §§ 1212.09 *et seq.*

Here, Applicant is claiming acquired distinctiveness only with respect to the wording CARDSTORE.COM in the mark in the subject application. Applicant has had almost ten (10) years of substantially exclusive and continuous use of CARDSTORE.COM in commerce. In accordance with 37 C.F.R. §2.20, Applicant is attaching hereto a Declaration of Marty Reed, the CEO of Applicant, as evidence showing duration, extent and nature of use of CARDSTORE.COM in commerce (identifying the types of media and attaching typical advertisements), and a Declaration of Applicant's attorney of record, Paul A. McLean of DLA Piper LLP (US), as evidence showing that based on an Internet search that CARDSTORE.COM distinguishes Applicant's goods and services.

In light of the foregoing, Applicant respectfully requests that the Examining Attorney withdraw her requirement for Applicant to disclaim the exclusive right to use CARDSTORE.COM apart from the mark as a whole, on the basis that CARDSTORE.COM has become distinctive of Applicant's goods and services through Applicant's substantially exclusive and continuous use in commerce over more than five years and Applicant's Prior Registration on the Principal Register for CARDSTORE.COM and Design (Registration No. 2700769).

CONCLUSION

The issues raised by the Examining Attorney having been fully addressed by the above remarks, Applicant requests that the subject Application be allowed to proceed to publication.

CLASSIFICATION AND LISTING OF GOODS/SERVICES

Exhibit 3

Applicant proposes to amend the following class of goods/services in the application:

Current: Class 042 for CREATION, GENERAL DESIGN, AND CUSTOMIZED DESIGN FOR OTHERS OF GREETING CARDS OF ALL TYPES, FEATURING STANDARD GREETINGS, DESIGNS AND PHOTOGRAPHS AND CUSTOMERS' SELECTED CUSTOMIZED GREETINGS, DESIGNS, PHOTOGRAPHS, ADDRESSES AND SIGNATURES, VIA THE INTERNET AND THROUGH TRADITIONAL MEANS

Original Filing Basis:

Filing Basis: Section 1(a), Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 01/21/2008 and first used in commerce at least as early as 01/21/2008, and is now in use in such commerce.

Proposed:

Tracked Text Description: ~~CREATION, GENERAL DESIGN, AND CUSTOMIZED DESIGN FOR OTHERS OF GREETING CARDS OF ALL TYPES, FEATURING STANDARD GREETINGS, DESIGNS AND PHOTOGRAPHS AND CUSTOMERS' SELECTED CUSTOMIZED GREETINGS, DESIGNS, PHOTOGRAPHS, ADDRESSES AND SIGNATURES, VIA THE INTERNET AND THROUGH TRADITIONAL MEANS;~~ GRAPHIC DESIGN SERVICES, GENERAL DESIGN, AND CUSTOMIZED DESIGN FOR OTHERS OF GREETING CARDS OF ALL TYPES, FEATURING STANDARD GREETINGS, DESIGNS AND PHOTOGRAPHS AND CUSTOMERS' SELECTED CUSTOMIZED GREETINGS, DESIGNS, PHOTOGRAPHS, ADDRESSES AND SIGNATURES, VIA THE INTERNET AND THROUGH TRADITIONAL MEANS

Class 042 for GRAPHIC DESIGN SERVICES, GENERAL DESIGN, AND CUSTOMIZED DESIGN FOR OTHERS OF GREETING CARDS OF ALL TYPES, FEATURING STANDARD GREETINGS, DESIGNS AND PHOTOGRAPHS AND CUSTOMERS' SELECTED CUSTOMIZED GREETINGS, DESIGNS, PHOTOGRAPHS, ADDRESSES AND SIGNATURES, VIA THE INTERNET AND THROUGH TRADITIONAL MEANS

Filing Basis: Section 1(a), Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 01/21/2008 and first used in commerce at least as early as 01/21/2008, and is now in use in such commerce.

ADDITIONAL STATEMENTS

Section 2(f), in part, based on Use

CARDSTORE.COM has become distinctive of the goods/services through the applicant's substantially exclusive and continuous use in commerce for at least the five years immediately before the date of this statement.

Section 2(f), in part, Prior Registration(s)

CARDSTORE.COM has become distinctive of the goods/services as evidenced by the ownership on the Principal Register for the same mark for related goods or services of U.S. Registration No(s)2700769.

Section 2(f), in part, based on Evidence

CARDSTORE.COM has become distinctive of the goods/services, as demonstrated by the attached evidence.

Original PDF file:

[E2F-6654170187-184942008 . Declaration.pdf](#)

Exhibit 3

Converted PDF file(s) (3 pages)

[2\(f\) evidence-1](#)

[2\(f\) evidence-2](#)

[2\(f\) evidence-3](#)

Original PDF file:

[E2F-6654170187-184942008 . Exhibit A.pdf](#)

Converted PDF file(s) (10 pages)

[2\(f\) evidence-1](#)

[2\(f\) evidence-2](#)

[2\(f\) evidence-3](#)

[2\(f\) evidence-4](#)

[2\(f\) evidence-5](#)

[2\(f\) evidence-6](#)

[2\(f\) evidence-7](#)

[2\(f\) evidence-8](#)

[2\(f\) evidence-9](#)

[2\(f\) evidence-10](#)

Original PDF file:

[E2F-6654170187-184942008 . Exhibit B.pdf](#)

Converted PDF file(s) (9 pages)

[2\(f\) evidence-1](#)

[2\(f\) evidence-2](#)

[2\(f\) evidence-3](#)

[2\(f\) evidence-4](#)

[2\(f\) evidence-5](#)

[2\(f\) evidence-6](#)

[2\(f\) evidence-7](#)

[2\(f\) evidence-8](#)

[2\(f\) evidence-9](#)

Original PDF file:

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Converted PDF file(s) (8 pages)

[2\(f\) evidence-1](#)

[2\(f\) evidence-2](#)

[2\(f\) evidence-3](#)

[2\(f\) evidence-4](#)

[2\(f\) evidence-5](#)

[2\(f\) evidence-6](#)

[2\(f\) evidence-7](#)

[2\(f\) evidence-8](#)

Original PDF file:

[E2F-6654170187-184942008 . Exhibit D.pdf](#)

Converted PDF file(s) (3 pages)

[2\(f\) evidence-1](#)

[2\(f\) evidence-2](#)

[2\(f\) evidence-3](#)

Original PDF file:

[E2F-6654170187-184942008 . Exhibit E.pdf](#)

Exhibit 3

Converted PDF file(s) (1 page)

[2\(f\) evidence-1](#)

Original PDF file:

[E2F-6654170187-184942008 . McLean Declaration.pdf](#)

Converted PDF file(s) (13 pages)

[2\(f\) evidence-1](#)

[2\(f\) evidence-2](#)

[2\(f\) evidence-3](#)

[2\(f\) evidence-4](#)

[2\(f\) evidence-5](#)

[2\(f\) evidence-6](#)

[2\(f\) evidence-7](#)

[2\(f\) evidence-8](#)

[2\(f\) evidence-9](#)

[2\(f\) evidence-10](#)

[2\(f\) evidence-11](#)

[2\(f\) evidence-12](#)

[2\(f\) evidence-13](#)

SIGNATURE(S)

Declaration Signature

I hereby elect to bypass the submission of a signed declaration, because I believe a declaration is not required by the rules of practice. I understand that the examining attorney could still, upon later review, require a signed declaration.

Response Signature

Signature: /Paul A. McLean/ Date: 08/06/2009

Signatory's Name: Paul A. McLean, Esq., DLA Piper LLP (US)

Signatory's Position: Attorney of record, California bar member

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

Serial Number: 77682676

Internet Transmission Date: Thu Aug 06 19:10:31 EDT 2009

TEAS Stamp: USPTO/ROA-66.54.170.187-2009080619103135

0811-77682676-430dfdd0962cf7fla45e10c49e

73653a37-N/A-N/A-20090806184942008715

Exhibit 3

DECLARATION

I, Marty Reed, declare:

BACKGROUND

1. I am the CEO of ink2, Inc., a California corporation (formerly Touchpoint, Inc.) ("ink2"), and am authorized to execute this Declaration on behalf of said corporation pursuant to the Articles of Incorporation of ink2 dated 4/16/1999, and Bylaws dated 4/16/1999, both as may have been amended from time to time:

2. ink2 (and its predecessors in interest) has used the trademark CARDSTORE.COM (the "Mark") in the United States since at least as early as December 15, 1999 in connection with the goods and services offered by it, including:

Class 16: GREETING CARDS

Class 35: ONLINE ORDERING AND RETAIL SERVICES IN THE FIELD OF
STANDARD AND CUSTOMIZED GREETING CARDS; ADDRESSING OF ENVELOPES

Class 39: MAILING GREETING CARDS FOR OTHERS

Class 40: CUSTOM MANUFACTURING AND PRINTING OF GREETING CARDS
OF ALL TYPES

Class 42: GRAPHIC DESIGN SERVICES, GENERAL DESIGN, AND
CUSTOMIZED DESIGN FOR OTHERS OF GREETING CARDS OF ALL TYPES, FEATURING
STANDARD GREETINGS, DESIGNS AND PHOTOGRAPHS AND CUSTOMERS' SELECTED
CUSTOMIZED GREETINGS, DESIGNS, PHOTOGRAPHS, ADDRESSES AND SIGNATURES, VIA THE
INTERNET AND THROUGH TRADITIONAL MEANS

COMMENTARY

3. The Mark has become specifically distinctive of ink2's goods and services through ink2's substantially exclusive and continuous use in connection with these goods and services since at least as early as December 15, 1999.

ADVERTISING AND PROMOTING THE MARK

Exhibit 3

4. ink2 has promoted its services and goods in connection with the Mark, including press releases, online and print advertisements, strategic partnerships such as with the United States Postal Service, Laura K Design, and Carbonfund.org, and online coupons ("Promotions"). Examples of such promotions are included with this Declaration as Exhibit A.

5. Many people have visited and used (and continue to visit and use) ink2's web site at www.cardsstore.com (the "CARDSTORE.COM Website"), which prominently features the Mark. The CARDSTORE.COM Website has featured the Mark, has been active, publicly accessible, and highly trafficked for almost ten (10) years. For example, based on data collected for the one-year period from July, 2008 through June, 2009, the CARDSTORE.COM Website received over 753,933 web page visits, with 5.2M web page "views." For this time frame the weekly averages were 99,928 views and 62,834 visits, and daily averages were 14,236 views and 2065 visits.

6. ink2 advertises and promotes its goods and services in connection with the Mark on the global computer network or Internet on its CARDSTORE.COM Website. Printouts from ink2's web site from May 12, 2000, January 22, 2003, January 15, 2006 and June 5, 2009 featuring the Mark are attached to this Declaration as Exhibit B.

MEDIA COVERAGE

7. ink2's goods and services in connection with the Mark have received national press coverage in numerous print and online publications. Many of these publications have wide circulation. Publications providing press coverage for ink2's Mark include: Real Simple, Business Week, Newsweek, and Diablo Magazine. Copies of illustrative articles are attached as Exhibit C. Attached as Exhibit D is the ink2 CARDSTORE.COM Coverage Matrix identifying the dates, topics, publication name, and reporters of articles in various media, and attached as Exhibit D is the Nov.2008-July 2009 Media Coverage Summary for ink2.

8. ink2's goods and services in connection with the Mark have received press coverage in numerous broadcast, cable, and satellite television and radio shows, examples of which include THE VIEW FROM THE BAY AND CBS WEEKEND EARLY EDITION.

9. ink2's goods and services in connection with the Mark have been promoted by

Exhibit 3

celebrities. In particular, celebrities Marcia Gay Harden (Academy Award-Winning Actress) and Siri Pinter (wife of Carson Daly) have posted testimonials on the CARDSTORE.COM Web Site, copies of which are included with this Declaration as Exhibit E.

SALES AND REVENUES

10. ink2 is the leader in personally printed products, and ink2 has printed over 50 million pieces of personalized greeting cards for its customers since 1999. ink2's revenues in connection with the use of the Mark on ink2's goods and services have steadily risen over the past nine (9) years as a consequence of ink2's extensive promotion and media coverage of the Mark. Revenues for ink2 in connection with the use of the Mark for the past nine (9) years are as follows:

2000:	\$2,093,815
2001:	\$3,582,918
2002:	\$5,914,680
2003:	\$8,351,270
2004:	\$7,492,036
2005:	\$8,448,728
2006:	\$7,218,188
2007:	\$8,457,971
2008:	\$8,975,997

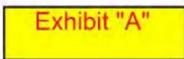
The facts set forth in this Declaration are true, except as to those stated to be upon information or belief, and as to those, I believe them to be true.

ink2

Date: August 6, 2009

By: 
Marty Reed
CEO

Exhibit 3



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Shipping & Mailing

Create Greeting Cards & Postcards!

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Mailing & Shipping Guidelines

Options for Receiving Mail

Prices

Shop at The Postal Store

Send Money

Insurance & Extra Services

Postage Options

Customer Service

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Quick, easy, convenient—sending your own cards is a snap!

- Create greeting cards, photocard, and postcards
- Find a card for any occasion in our collection or use your own digital images
- Personalize cards with your own message
- Never miss a birthday again! Use our birthday reminder tool.
- Store your address book and send invitations and holiday cards in just a few clicks



[Get Started >](#)

Businesses can use CardStore.com, too!
Add your logo, signature, and images to your postcards and folded cards.
[Learn More](#)



Exhibit 3

USPS - CardStore.com

Page 2 of 2

<http://www.usps.com/createmail/cardstore.htm>

6/5/2009

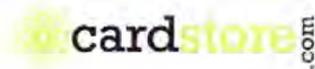
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SOURCE: Cardstore.com



May 29, 2009 06:00 ET

Cardstore.com Partners With Laura K Design

EMERYVILLE, CA--(Marketwire - May 29, 2009) - Cardstore.com (www.cardstore.com), an online [holiday cards](#) and [photo cards](#) retailer, is pleased to announce its partnership with Laura K Design. The line offers stylish birth announcements and wedding save the date cards. Laura K describes her collection on Cardstore.com as "beautifully different." The Canadian designer is pleased to be one of the newest additions to the Cardstore.com family. CEO Marty Reed says that his favorite aspect of Laura K's cards is their "unique styles and diverse range of colors and patterns."

The designer's birth announcements are perfect for any young couple with a flair for style. Laura K's unexpected color combinations allow for playful pairings with Cardstore.com's 18 fonts in 10 different colors. This same variety of texts can be applied to the artist's wedding save the date cards. Both styles utilize Cardstore.com's custom personalization tools that allow you to upload your own details like date, time, and place. The personal touch is key at Cardstore.com.

[About Cardstore.com](#)

Cardstore.com is an Emeryville, California-based personalized cards retailer and printer that combines the most advanced web technology with superior digital printing techniques. All artwork and printing are produced in the U.S. Since 1999, Cardstore.com has printed over 50 million personalized cards for industry leaders such as Snapfish, American Greetings, and Hallmark. Cardstore.com provides custom greeting cards and personalized stationery for all occasions; including birth announcements, party invitations, holiday photo cards, Christmas cards, thank you cards, and wedding cards.

Corporate Contact:
Tiffany Chan
Director of Marketing Communications
510.595.6141
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Cardstore.com Partners With Laura K Design

Page 2 of 2

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Carbonfund.org Blog

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[Hyundai & Carbonfund.org Announce Climate Grant Winners](#) »

Cardstore.com celebrates 10 years, and now a CarbonFree® Partner!

by [Sumayal Shrestha](#) on April 29th, 2009

Cardstore.com, an online retailer of personalized stationery products is now a CarbonFree® Partner. Conscious about the sustainability aspect of its business, Cardstore.com works to minimize its impact on the environment. This is why Cardstore.com decided to partner with Carbonfund.org to offset the remaining emissions from their electricity use for printing. Some of their efforts to green up the printing processes from cradle to grave include using FSC certified, 100% post-consumer waste paper; digital presses with reduced VOC emissions; and taking careful measures to minimize paper wastage. To learn more, please visit www.cardstore.com.



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Exhibit 3

Cardstore.com Discount Coupon Codes Promotional Codes Coupons Rebates Cardstore.c... Page 1 of 4

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Hot Retailers

Cardstore.com

Coupon Codes, Rebates & Free Shipping Codes

www.cardstore.com

Cardstore.com (cardstore.com) Cardstore.com, A personalized stationery re
has thousands of products to choose from. www.cardstore.com

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and Special Offers, Rebate Promotion Code, Promotional Codes, Gift Voucher, Free
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New Valid and Current Cardstore.com Rebates, Discount Codes, Voucher Code:
Off Vouchers, Promotional Coupon Codes can all be found and shared easily her

Some retailers do not offer discount codes, however we l
information to help save you money

Receive Email Alerts for the Latest Cardstore.com deals
giveaway!

Your Email Address

Online Discount Coupon Codes, Deal

Exhibit 3



Hot Coupon Codes

Save an Additional 15%
at Irv's Luggage using
this Coupon Code

 \$50 off \$275 at Medifast
using this Coupon Code

 20% off orders of \$250
on American Blinds
Super Value collection
plus free shipping at
American Blinds using
this Promo Code

 2% off Any Printer
Supplies, Inck, Toner
Paper and Kits at pcrush
using this Promo Code

 Spend \$25 and Get a
\$75 Gift Card for The
Company Store using
this Promo Code

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Friday 5th June 2009

Cardstore.com

Order by: [Newest](#) | [Oldest](#) | [Most Popular](#) | [Least Popular](#)

[Save 15% on all Mother's Day cards at Cardstore.c](#)

Exhibit 3

Cardstore.com Discount Coupon Codes Promotional Codes Coupons Rebates Cardstore.c... Page 3 of 4

Cardstore.com Coupons, Discount Codes, Discount Voucher Codes Money Vouchers, Promo Offers and Promotions (cardstore.com)

Cardstore.com Discount Codes, Coupon Codes cardstore.com Promotional Codes Printable Vouchers Cardstore.com Free Shipping Delivery Codes, Free Ground / Air Promo Code. Voucher Codes Hot deals

Cardstore.com Reviews will be available soon.

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Exhibit 3

Page 1 of 1

Greeting Cards

Greeting Cards Printing w/ Matching Envelopes. Great Prices. Order Now!

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Free Greeting Cards

Create Personalized Greetings For Free. Print Or Email To Friends!

EZtoCreate.com

Print Free Birthday Cards

Download & Print a Birthday Card. Birthday Cards - Fast, Fun, & Free!

Print-Birthday-Cards.com/Printable

V V

Ads by Google

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Exhibit "B"



[sign in] [register] | shopping basket |

business collection personal occasions custom design my cardstore help desk

Search

New to CardStore?
Click Here to register
and receive a free card.



Send custom printed cards the easy

CardStore Delivers

- ▶ Premium quality cards
- ▶ Printed, personalized and mailed on demand
- ▶ Directly from your desktop

take a tour

shop for cards



Corporate Services

- Build one-to-one relationships with your customers
- Communicate with style
- Launch a campaign from your desktop
- Receive personal service for mailings larger than 500.

CardStore Benefits

- Makes group mailings a breeze
- Your first card is free!
- Saves time! - We personal seal, stamp, and mail!
- Store your addresses online
- Free email reminders, calendar

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Exhibit 3

CardStore.com -- Design your own custom paper greeting cards -- We'll print and mail th... Page 1 of 2



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Design your own custom
paper greeting cards

We'll print and mail them for you

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Order a Photo Card

Order from Our Gallery

Membership Benefits

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- [Personal Reminders](#)
- [Order History](#)
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Exhibit 3



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[How it works](#)

[Create a card](#)

- [Greeting Cards](#)
- [Announcements](#)
- [Invitations](#)
- [Thank You Cards](#)
- [Photo Cards](#)
- [Cards for Business](#)
- [Gift Cards](#)

<p>Personalized Greeting Cards for All Occasions</p> <p>"Our personalized cocktail party invitations were out the door the next day." - B. May & T. Nolan</p> <p>Get Started</p>	<p>Personalized Greeting Cards for Business</p> <p>"It was easy to move announcements to all my clients." - L. Hughes Retail Store</p> <p>Get Started</p>
---	--

[Create a Photo Card](#)



Select a card or create your own photo card.

For quality greeting cards, gift cards and photo cards at great prices, shop Cardstore.com

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Exhibit 3

Greeting Cards, Gifts Cards & Photo Cards From Cardstore.com

Page 2 of 2

Reserved.

Exhibit 3

Welcome Guest Sign In or Register View Cart

cardstore.com TOLL FREE: 877-401-3849

Photo Cards Thank You Cards Birth Announcements Invitations Holiday Cards More Cards

new product!

create
chic and eco-friendly
wedding invitations
in minutes.

SHOP NOW

01 02 03 04

Favorites

- Photo Cards
- Personal Cards
- Father's Day Cards
- Thank You Cards
- Photo Graduation Cards
- Photo Birth Announcements
- Photo Birthday Invitations
- Wedding Cards

Shop by Designer
See over 50 different artists

Save 15% till June 15 on
Personal Calling Cards
Enter code PERSONAL15 at checkout

Make your own
Photo Cards & Postcards

Make their day happy
Birthday Cards

Photo cards, holiday cards, and custom greeting cards

Personalized **photo cards** are a great way to show you care. Choose from our printable **thank you cards, holiday cards, birth announcements, birthday cards, Christmas cards, wedding announcements**, or dozens of other greeting cards. Add your own photos and text - we'll print and mail your **custom photo cards** anywhere, with no minimum orders. Since 1999, we have printed over 50 million cards. Create your customized expression today!

Cardstore's gone green!
Click here to learn more about our eco-friendly paper and practices.

Exhibit 3

Wel

[Photo Cards](#)

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Corporate

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[In the Media](#)

Artist Center

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General Inquiries

Cardstore.com, Personalized Cards Retailer, Launches Updated

Emeryville, CA - October 15, 2008 -

Cardstore.com, an online [personalized cards](#) retailer, today announced the launch of their updated custom stationery store - just in time for the holidays. Cardstore.com is ready to print paper greetings for all those special holiday occasions - from stylish [holiday cards](#) and [photo cards](#), to party invites, thank-you notes and more. Users can easily add photos and messages to their favorite card designs, to create stunning mementos and keepsakes at an unbeatable price. And now through mid-January 2009, Cardstore.com is offering users a discount of 20% on all cards.

Cardstore.com offers over 2,500 cards from the collections of over 30 contemporary artists, available to customize, print and ship, all from the updated Cardstore.com site. The online card boutique features artwork from hip graphic designers and artists, including Anvil Modern Paperie, Driscoll Design, Giselle Potter, Lilla Rogers Studio, and Yiyong Lu Studio. Offering some of the best personalization tools on the Web, Cardstore.com makes it simple and fun for users to create custom paper greetings.

At Cardstore.com, users can make every card a



Whether planning
sending holiday greetings
create i



Personalize any card
and let Cardstore.

Exhibit 3

Cardstore.com Launch, Photo Cards, Holiday Cards, and Custom Greeting Cards

Page 2 of 3

Exhibit 3

Cardstore.com Launch, Photo Cards, Holiday Cards, and Custom Greeting Cards

Page 3 of 3

SteppingOut Communications
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carole@steppingoutcomm.com

SteppingOut Communications
925-253-8445
jisa@steppingoutcomm.com

Exhibit 3

Exhibit "C"

BusinessWeek

DECEMBER 14, 2005

NEWS AND FEATURES

By Stacy Perman

Close Window

Marketing with a Personal Touch

Sending personalized cards to clients is a great strategy. And online services let you create them with a few clicks

In order to maintain a personal connection with his clients, computer consultant Dennis Deery sends them cards several times a year. These aren't generic Christmas or thank-you cards; instead, Deery, who is also an accomplished photographer, mails out greetings that feature his shots of rural landscapes along with personalized messages inside. "As a one-man operation, one of the biggest things that I can provide is personal service," he says. "People know who they are dealing with, and I use cards to build on that."

Deery, based in Menomonie, Wis., used to create and print the greetings himself, using stock cards, a desktop software program, and an inkjet printer. But the effort involved in customizing and sending 300 to 400 cards a year was labor intensive. Moreover, the quality of the finished product was less than desired.

Three years ago, Deery began using the online services of Cardstore.com to make and deliver paper cards to his client base. "It's incredible," he says. "It takes me about five minutes to upload, and the quality of the output looks professional. I've had a number of people express surprise. They thought I had sent them a card from Hallmark."

MAIL MARKETING. With the rise, ease, and popularity of digital cameras and Internet programs, more consumers have eschewed sending traditional cards in favor of using online card services to send good wishes on special occasions. Indeed, industry giants Hallmark and American Greetings ([AM](#)) as well as smaller outfits such as Salt Lake City-based Send Out Cards now allow customers to write and send paper greetings using the Web.

The advent of online greeting card services has also presented an opportunity for small businesses to go that extra mile with their own customers. Many outfits use them as an affordable and convenient marketing tool to send thanks, news, and invitations. "We automate client relationships and make it easy for them to stay in touch in a very high quality way," says Al Hulvey, CEO of Cardstore.com, based in Emeryville, Calif.

"I don't advertise," says Deery. "My work is word of mouth, and the cards definitely lead to referrals. If something comes up from the front of their minds."

BRINGING PAPER ONLINE. While the overall market for online paper greeting cards is still only a fraction of the \$7.5 billion greeting-card market, according to the Greeting Card Assn., a Washington, D.C. trade group, the online greeting card segment is growing.

Cardstore.com is the consumer division of Touchpoint, a provider of personalized direct marketing and services. Touchpoint operates other online card stores, including [usps.com/cardstore](#) and custom Web sites for such large corporate clients as American Express ([AXP](#)), Macy's ([ED](#)), and Hewlett-Packard ([HPQ](#)). But when the company noticed a surge in small businesses wanting to use its services, management realized that the enterprise service in place was too big and bulky to suit the needs of small businesses.

So in November Touchpoint relaunched Cardstore.com in order to offer a quick, efficient, and affordable way for small businesses to create cards. It incorporated new features, such as more efficient address book uploads and more card selections. Within minutes, a customer can select from more than 2,000 different cards, choose an image, write a message, and send 10 cards or 1,000 cards with a turnaround time of one business day.

Images can be selected from Cardstore.com's own collection or users can upload their own digital photos. And Cardstore.com prints, addresses, stamps, and mails the cards.

BUSINESS CARDS. Since spinning off Cardstore.com, Touchpoint says its consumer business has grown 50%. The firm also reports that between April and November of this year, the number of small business users on the site has grown from 1,200 to 2,000.

According to Hulvey, Cardstore.com surveyed 1,000 small businesses that began sending out personalized cards and found that 30% reported a spike in business as a result. "The logic here is that no one will buy from you unless they remember you," says Hulvey. "You want to reach out and touch [clients] 6 to 12 times a year."

Exhibit 3

In fact, Cardstore.com says the number of occasions when small firms send cards has increased dramatically from one at Christmas to many throughout the year. Moreover, the ways in which small businesses are using the services of firms such as Cardstore.com to stay in touch with their clients are broadening.

For instance, Cardstore.com says that one of its customers, an immigration services outfit, sent out congratulation cards to all of its clients who successfully gained INS approval. And a wedding photographer created a set of cards using the pictures of a couple whose wedding he shot; he then resold the photos to the newlyweds, who used them as thank you notes.

GROWING BUSINESS. Organic farmer Ellen Broadhurst, who runs the Reynard Ridge Farm in New Brunswick, N.J., with her husband, sends customized cards as a friendly marketing device. The photos feature various aspects of the farm, where one of the main products is maple syrup. Broadhurst says that in the spring she sends out cards to her high volume of core customers to remind them that maple season is here by depicting the maple grove.

"It's really invaluable," she says. "I don't see my customers, for the most part, so dropping a photo in the mail is a way to maintain the relationship without having to pick up the phone." Broadhurst says within the next five years, as the farm's business grows, she expects to use the cards as part of a larger direct-mail campaign.

Cardstore.com is expanding, as well. The company says going forward they will introduce a subscription service and increasingly automate other aspects of the process. "The point," says Hulvey, "is to move to a higher value-added business solution around the idea of quick and easy." That card is in the mail.

Perman is a staff writer for BusinessWeek Online in New York.

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Diablo Magazine

December 2008

Holiday Gift Guide



CARDSTORE.COM

www.cardstore.com

This holiday, create one-of-a-kind photo cards from Cardstore.com. Simply choose from over 1500 artist designs, upload your photos and add text. You'll have a keepsake-quality card that's uniquely you. We'll even address, stamp and mail your cards. Create your own today at cardstore.com/diablo.

Valentine's Day

Launch Release

Holiday Trends
Dianna

Thanksgiving Day
Dianna

Holiday Photo
Dianna

Exhibit 3

Newsweek

PRINT THIS

Holiday Countdown

By Raina Kelley | NEWSWEEK
From the magazine issue dated Nov 28, 2005

The reason we loved holidays is kids isn't just because we got all those presents. It's because we didn't have to do anything! Children don't have to stay up writing cards while baking 12 dozen cookies for 13 different social events and wrapping gifts between batches. But neither do you. We're not going to tell that our Holiday Countdown is all-inclusive or a surefire way to take the stress out of getting your chores done, but it will help you get a little done every day and still have time to watch 'It's a Wonderful Life' one more time. We start with decorating and holiday cards, then gently move you into gift shopping and entertaining, and just when most people are panicking, you'll be checking your list twice and ordering your goose online. And in case you've forgotten the true meaning of the holidays, we've thrown in some charity suggestions and a little extra family time. SO calm down, take it day by day and have a Happy, Merry, Joyous Everything!

NOVEMBER

24 Happy Thanksgiving! Catch a football doubleheader while the bird cooks: the Atlanta Falcons play the Detroit Lions; the Denver Broncos go against the **Dallas Cowboys**. ^ TRIVIA: Dallas and Detroit are the only NFL teams that play every turkey day.

25 Got turkey? Go to foodtv.com for recipes. We like the Luxurious Turkey Tetrazzini by Michele Urvater; it doesn't even taste like leftovers. Skip the Black Friday madness and look for deals online, like L.L. Bean's pre-lit **Maine Balsam wreath** (\$39.50; llbean.com).

26 Start saving time now! Buy Holiday Cookie stamps online at usps.com/shop. Get in the spirit with holiday music from iTunes. Make a mix from **Bing Crosby** to Britney Spears. Even if you don't have an iPod, you can burn your playlist onto a CD and print labels (itunes.com).

27 Try moma.org for the **Holiday Air Stream card** (\$16 for eight). Or get Multiple Choice notes at knockknock.biz, and check sentiments like best wishes for a "Felicitous Kwanzaa" or "Depressed Drunken Binge" (\$14 for 12). **Design personalized cards at cardstore.com (\$3 each, plus stamp).**

28 Holiday weekends fill up fast, so send a save-the-date e-mail for your party at evite.com. Then get some perspective by buying "**Every Person on the Planet**," a hilarious book about a holiday party where every member of the human race is invited--and shows up (\$12; simonsays.com).

29 "**March of the Penguins**" comes out on DVD... perfect for the whole list. Buy a copy for yourself, and be grateful you don't spend Christmas in Antarctica. Stock up on batteries. Energizer e2 disposable lithium batteries last seven times longer than alkaline (energizer.com for stores).

30 Have your carpets cleaned (searsclean.com for estimates and stores), or get your house cleaned (\$150 an

Exhibit 3

Christmas tree, lights first, then garlands and then ornaments. Use themed ornaments like birds or icicles. And don't forget to decorate the inside and the tips of the tree for depth.

12 Order cut flowers from flowerbud.com (choose your own delivery date). And then, why not get hors d'oeuvres from Appetizers to Go for your party? The new Coney Island Combo includes everything from knishes to **pigs in a blanket** (\$65; appetizers.togo.com).

13 Santa Lucia Day, honoring the Swedish Queen of Lights. Order candles for a holiday glow (16 filled glass votives in white or ivory, \$24; potterybarn.com). We also like the **Good Tidings Candles** from Red Envelope (\$30 for HOPE, WISH, PEACE and LOVE; redenvelope.com).

14 Even the fanciest dinner can seem slapped together if it's served out of pots and pans. If you need serving pieces, go to surlatable.com for a **2.5-quart warming dish** (\$30), or get the Be Merry platter from Target (\$18; target.com for stores). It's a perfect cheese plate.

15 Full moon. Get that wrapping paper together. Order prewrapped gift boxes from holdeverything.com (\$22 for three), or go out to the **Container Store** or Kmart for cool paper at great prices. ^ TIP: Don't wait until the 24th. Wrap two gifts every night after the family's asleep.

16 Stop at your local **Starbucks** and donate a toy to its Holiday Angels joy drive. Or order some S.O.S. (Spicy Old Southern-Style Hot) pickles; proceeds go to Gulf Coast Hospitality Workers Disaster Relief (\$120 for a case of 12 jars; southernfoodways.com).

17 Take another look at your spending: keep close track of budget busters like **stocking stuffers**, end-of-year tips, shipping costs and hostess gifts. Run out of express-shipping money? Today is the last day to order from Amazon using free Super Saver Shipping.

18 Take a walk or a drive. Look at the lights and get back in the spirit of the holidays. Put "The Grinch Who Stole Christmas" on your Netflix list. Roasting chestnuts in the oven just isn't the same--get your fireplace blazing with **fatwood kindling** from L.L. Bean (\$14.50; llbean.com).

19 Make "busy bags" for the kids' table so you can eat your holiday dinner in peace. Print activity pages and buy **crayons, washable markers and stickers** from crayola.com. ^ TIP: Last day to send Express Mail to military personnel stationed overseas (usps.com).

20 Order **silver favor boxes** from Crate & Barrel (\$3; crateandbarrel.com), fill with red and green M&Ms or your favorite candy, tie on a place card (25 for \$26; smythson.com) and *voila*, you now have a festive name card and favor for everyone at your holiday table.

21 First day of winter. Send a bulb-forcing kit to a distant relative who won't be able to join you for the holidays, like the **paperwhites** in a bird's nest from Smith & Hawken (\$24; smithandhawken.com) or the Grand Trumpet Amaryllis Trio (\$50; jacksonandperkins.com).

22 UPS deadline for overnight mail by Christmas Eve (ups.com). Need something about Chanukah with more meaning than that Adam Sandler song? Pick up "**Stars of David: Prominent Jews Talk About Being**

Exhibit 3

hour; maids.com). The **Radio City Music Hall Christmas Spectacular** has shows in 10 cities (tickets vary from \$22 in Minneapolis to \$50 in N.Y.C.; ticketmaster.com).

DECEMBER

1 Each one of us is expected to blow \$681 on gifts this year. Stay out of debt by making a budget with Quicken personal-finance software (\$50; quicken.com). Then spend your dough on the new Fiorucci collection at Target. Get the **gold hobo bag** (\$35; target.com).

2 Order your tree. Go with the Fraser fir from homedepot.com (\$90 for 5 to 6.5 feet), or get the totally mod **tinsel tree** in silver, blue or gold from West Elm (\$39; westelm.com). If you decide to chop down your own, don't forget to make a fresh cut before you put it in the tree stand.

3 Dig out your holiday decorations, take an inventory of busted ornaments and get **Star-burst Holiday Boxes** (\$20; containerstore.com). Then decorate the outside of your house. Try lowes.com for ideas; go to christmasdepot.com for bubble lights (\$16.50) or snowball lights (\$23).

4 Holiday parties are starting, so gather some hostess gifts. How about **peppermint bark** (\$22.50; williams-sonoma.com), a money tree (\$38; redenvelope.com) or a bottle of Codorniu Brut Cava (a Spanish sparkler rated 85 by Wine Spectator; \$9) in a swank neoprene BYO Bag (\$15; builtny.com)?

5 Order specialty cuts from your local butcher; try smithfield ham.com (an 11-13lb. **ham** is \$73) or go to dartagnan.com for a goose (\$66 for 8-10lb.). Order baking spices like Vietnamese Cassia Cinnamon, Minced Lemon Peel and Anise Seeds from Penzey's (penzeys.com).

6 Make your holiday invitations at the Crane & Co. print center (crane.com). Make mailing labels and print two sets: one for your invites and one for Christmas cards (save the file). Now take a break! **"S Is for Silence"** by Sue Grafton hits bookshelves (\$19; bn.com).

7 It's **Pearl Harbor Remembrance Day** --go to www.usocares.org and send a personalized care package to a U.S. soldier abroad (\$25) or send a calling card via operationuplink.org. ^ TIP: The Department of Defense can no longer accept mail addressed to "Any Service Member."

8 Order gift baskets for your dentist or hairdresser (try the Holiday Jingle Basket, \$50 from mrsbeasleys.com, or the **Eight Nights of Hanukkah**, \$40 from harryanddavid.com). Write out a gift-recipient list. Making a plan now will keep you from overspending at the last minute.

9 Send out your holiday cards. Try getting a **family holiday photo** before the stampede. JCPenney still does it, and still offers funky backgrounds (jcportraits.com for studios, pricing and coupons). ^ TIP: The Smiles by Wire program lets you post pictures for family members to order.

10 Order a cookie press that really works from surlatable.com (Wilton Cordless Cookie Press; \$35). Need recipes? Try **"The All-American Dessert Book"** by Nancy Baggett (\$21; amazon.com). ^ TIP: Form dough into balls, freeze and then put in a freezer bag for drop cookies any time.

11 Trim the tree. Short on **ornaments**? Dash out to Kmart or Target for a great selection. ^ TIP: For a great

Exhibit 3

Holiday Countdown | Print Article | Newsweek.com

<http://www.newsweek.com/id/51160/output/print>

Jewish" by Abigail Pogrebin (\$15; borders.com).

23 **Set the table for dinner**, bake Santa's cookies, stuff the stockings and take a break! Still have a Hula Hoop and a hamster to wrap? Call the Scotch-tape wrapping hot line for tips (877-8-SCOTCH). ^ TIP: If you run out of gift wrap, a paper grocery bag with a pretty ribbon will work.

24 National Egg Nog Day. Buy some--we like the Southern Comfort brand--and play games with the family. Try Pick Two Deluxe (\$40; beehive.com.sg), Yahtzee Texas Hold 'Em (\$16; boardgames.com) or the Can You Beat Ken Trivia Game (\$20; amazon.com).

Find this article at

<http://www.newsweek.com/id/51160>

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Exhibit 3

home | HOLIDAY CARDS

If You Have No Time

A handful of online services will create custom cards for you, then address, seal, stamp, and mail them. About a dozen were tested to see which did the best job of letting you skip a few steps without skimping on quality. The winners:



Shutterfly

With a digital image and a few minutes, you can create a folding 3½-by-5- or 5-by-7-inch photo card or a flat 4-by-8-inch card. After you upload the photo, you can improve it if you like by using the site's easy editing tools (crop, fix red-eye, add color effects)—or just choose a border design and create your message. All along, the site shows excellent previews. Shutterfly's address-book feature was the only one of those tested that lets you give each person a nickname, so you get "Harriet Walker" on the envelope but "Dear Grandma," not "Dear Harriet Walker," inside. Bonus: Shutterfly is also a digital-photo sharing and storage service. **TO ORDER:** \$1.50 to \$2.50 per 5-by-7-inch card, \$10 per box of twelve 3½-by-5-inch cards, or 60 to 80 cents per flat card, plus mailing costs (prices go down with larger quantities); www.shutterfly.com. To ensure that your cards arrive by the 24th, place your order by December 13.



Cardstore.com

In addition to offering a photo-card service similar to Shutterfly's, Cardstore.com lets you customize nonphoto holiday (and other special-occasion) cards, then mails them off for you. In the Season's Greetings category, you can quickly browse through subcategories, from religious to whimsical, vintage to pets, even "Christmas-by-Region" (Santa's sleigh flying over San Francisco, anyone?). Bonus: To knock out the gift part of the season, enclose a gift card to one of 16 retailers, including Bass Pro Shop, Barnes & Noble, and Starbucks. **TO ORDER:** \$2 to \$3 per card, plus mailing, www.cardstore.com. Place your order by December 11 to ensure a Christmas Eve arrival.

Snap Happy

Remember your last holiday photo? A screaming toddler, placid Fido morphed into a hellhound with vermilion eyes, and what looked like a tree growing out of Grandpa's head. A few tips from the pros should help.

■ **Keep it simple.** "I just want to see a good, clear view of the people I care about," says Chuck DeLaney, dean of the New York Institute of Photography. Get in close, and don't have too much going on, so nix the roaring fireplace and brightly patterned clothing.

■ **Light it right.** Inside or out, the light source should be behind the photographer, says Barry Dowe of Barry Dowe Photography, in Lake Villa, Illinois. But bright sun is a minus. "On overcast days, the light is softer, and there are no harsh shadows on faces," says Dowe. For advice on avoiding red-eye, go to www.realsimple.com/cameraready.

■ **Construct a triangle.** For a more interesting shot, Dowe suggests, "think about levels. Have one person standing, one in a chair, one on the arm, one kneeling in front."

■ **Focus the kids.** The trick is not to drag the process out. Arrange the shot before you get them in the room, using big teddy bears as stand-ins if you need to, says DeLaney. Consider having a friend take the picture, so your kids are more likely to actually take direction.



Exhibit 3



Outlet	Date	Notes
Cardstore.com Media Coverage	11/2008--To Date	
View From the Bay	11/13/2008	Creative Holiday Cards
MonkeySeeMonkeyDo (craft site)	11/19/2008	http://kikimonkey.wordpress.com/2008/11/19/you-see-these/
Columbia Tribune	11/21/2008	http://blogs.columbiatribune.com/living/2008/11/holiday_greetings.html
Paper Crane	11/22/2008	http://papercrave.com/helen-dardik-holiday-cards/
Marin Momnies	11/22/2008	http://www.marinmomnies.com/content/special-offer-holiday-photo-cards-cardstore.com
Regarding Design	12/5/2008	http://regardingdesign.typepad.com/regardingdesign/2008/12/personalized-hipster-cards.html
Diablo Magazine: Best of Editor P	12/5/2008	Very favorable review
JewelsandPinstripes Blog	February	http://www.jewelsandpinstripes.com/blog/2009/02/03/celebrity-thank-you-brooke-burke/
Robin Zingone Blog	2/1/2009	http://robinzingone.blogspot.com/2009/02/pink-love.html
Montrends	2/1/2009	http://montrends.blogspot.com/2009/02/cardsore.com.html
Delphine Ephemera	2/10/2009	http://delphine-ephemera.blogspot.com/2009/02/baby-elephant.html
GoCityKids	3/3/2009	http://goctykids.parentconnect.com/attraction/Cardstore-com-1185-Park-Avenue-Emeryville-CA-94608-0000
Jewels & Pinstripes	3/25/2009	http://www.jewelsandpinstripes.com/blog/2009/03/25/celebrity-thank-you-cnns-kiran-chetry/
Miss Pickle Press	4/10/2009	http://misspicklespress.blogspot.com/2009/04/art-deco-strikes-again.html
Celebrity Baby Blog	4/12/2009	http://celebrity-babies.com/2009/04/13/win-jewels-pinstripes-birthday-bag-500-value/
Celebrity Baby Blog	5/1/2009	http://celebrity-babies.com/2009/05/01/brad-and-kimberly-paisley-auctioning-baby-swig-for-charity/
CakesandKids.com	5/3/2009	http://cakesandkids.blogspot.com/2009/05/adorable-photo-cards-as-party.html
Classic Bride	5/28/2009	http://classibride.blogspot.com/2009/05/invite-splendor.html
Consumer Electronics Net	5/15/2009	http://www.consumerelectronics.net/articles/viewarticle.jsp?id=746861
Gift Card Place	2/17/2009	http://giftcardplace.net/gift-card-news/photo-cards-retailer-cardstore.com-offers-5-mothers-day-gift-ideas-sys-con
Cakes and Kids	6/28/2009	http://cakesandkids.blogspot.com/2009/06/personalized-cakes-and-kids-notecards.html
Miscellaneous Finds 4 U	7 2009	http://www.miscellaneousfinds4u.com/blog/2009/07/cardstore-com-personalized-stationery-and-cards-to-keep-in
Babble.com	7.8.09	http://blogs.babble.com/droolicious/2009/07/08/mommy-cards-are-all-about-play/
Babble.com	7.13.09	
Make Money Online	7.11.2009	http://mymationonline.com/create-a-unique-christmas-card.html
MashKah	7.11.2009	http://www.mashkah.com/2009/07/make-every-come-of-your-garden-more.html
About.com	7.17.2009	http://entertaining.about.com/od/invitationsandthanks/gr/Cardstore.com.html
Top Ten Reviews	7.2009	http://online-greeting-card-review.tiptenreviews.com/cardstore-com-review.html
Red Tricycle		http://www.red-tri.com/sf7_21_09.html
Vegan Lifestyle	7.21.2009	http://theveganlifestyle.com/send-holiday-cards-loved-care
942JL.com	7.23.09	http://www.942jl.com/create-a-party-and-let-cardstore-com-handless-the-invitations.html
Postkan Komantiar	7.22.09	http://nsakkeji.blogspot.com/2009/07/give-greeting-cards-thank-you-to.html

Exhibit 3

Cardstore.com Media Coverage 11/2008-To Date		
Outlet	Date	Notes
View From the Bay	11/13/2008	Creative Holiday Cards
MonkeySeeMonkeyDo (craft site)	11/19/2008	http://kikimonkey.wordpress.com/2008/11/19/have-you-seen-these/
Columbia Tribune	11/21/2008	http://blogs.columbiatribune.com/living/2008/11/holiday_greetings.html
Paper Crave	11/21/2008	http://papercrave.com/helen-dardik-holiday-cards/
Marin Mommies	11/22/2008	http://www.marinmommies.com/content/special-offer-holiday-photo-cards-cardstore.com
Regarding Design	12/5/2008	http://regardingdesign.typepad.com/regardingdesign/2008/12/personalized-hipster-cards.html
Diablo Magazine: Best of Editor Picks	12/5/2008	Very favorable review
Jewels and Pinstripes Blog	February	http://www.jewelsandpinstripes.com/blog/2009/02/03/celebrity-thank-you-brooke-burke/
Robin Zingone Blog	2/1/2009	http://robinzingone.blogspot.com/2009/02/pink-love.html
Momtrends	2/1/2009	http://momtrends.blogspot.com/2009/02/cardstore.com.html
Delphine Ephemera	2/10/2009	http://delphine-ephemera.blogspot.com/2009/02/baby-elephant.html
GoCityKids	3/3/2009	http://gocitykids.parentsconnect.com/attraction/Cardstore-com-1195-Park-Avenue-Emeryville-CA-94608-0000
Jewels & Pinstripes	3/25/2009	http://www.jewelsandpinstripes.com/blog/2009/03/25/celebrity-thank-you-cnns-kiran-chetry/
Miss Pickle Press	4/10/2009	http://misspicklepress.blogspot.com/2009/04/art-deco-strikes-again.html
Celebrity Baby Blog	4/12/2009	http://celebrity-babies.com/2009/04/13/win-jewels-pinstripes-birthday-bag-500-value/
Celebrity Baby Blog	5/1/2009	http://celebrity-babies.com/2009/05/01/brad-and-kimberly-paisley-auctioning-baby-swag-for-charity/
CakesandKids.com	5/3/2009	http://cakesandkids.blogspot.com/2009/05/adorable-photo-cards-as-party.html
Classic Bride	5/28/2009	http://classicbride.blogspot.com/2009/05/invile-splendor.html
Consumer Electronics Net	5/15/2009	http://www.consumerelectronicsnet.com/articles/viewarticle.jsp?id=746861
Gift Card Place	2/17/2009	http://giftcardplace.net/gift-card-news/photo-cards-retailer-cardstore.com-offers-5-mothers-day-gift-ideas-sys-con-media.php
Cakes and Kids	6/28/2009	http://cakesandkids.blogspot.com/2009/06/personalized-cakes-and-kids-notecards.html
Miscellaneous Finds 4 U	7 2009	http://www.miscellaneousfinds4u.com/blog/2009/07/cardstore-com-personalized-stationery-and-cards-to-keep-in-touch/
Babble.com	7.8.09	http://blogs.babble.com/droolicious/2009/07/08/mommy-cards-are-all-about-play/
Babble.com	7.13.09	
Make Money Online	7.11.2009	http://mynationonline.com/create-a-unique-christmas-card.html
Masihkah	7.11.2009	http://www.masihkah.com/2009/07/make-every-corner-of-your-garden-more.html
About.com	7.17.2009	http://entertaining.about.com/od/invitationsandthanks/grr/Cardstore.com.html
Top Ten Reviews	7.2009	http://online-greeting-card-review.toptenreviews.com/cardstore-com-review.html
Red Tricycle	7.21.2009	http://www.red-tri.com/sf7_21_08.html
Vegan Lifestyle	7.23.09	http://theveganlifestyle.com/send-holiday-cards-loved-care

Exhibit 3

942JL.com	7.23.09	http://www.942jl.com/create-a-party-and-let-cardstore-com-handle-the-invitations.html
Poskan Komentari	7.22.09	http://makkeji.blogspot.com/2009/07/give-greeting-cards-thank-you-to.html

[Welcome Guest](#) | [Sign In or Register](#) | [View Ca](#)

- [Photo Cards](#)
- [Thank You Cards](#)
- [Announcements](#)
- [Invitations](#)
- [Holiday Cards](#)
- [More Cards](#)

Corporate

- [About Cardstore](#)
- [Sustainability](#)
- [Testimonials](#)
- [Company History](#)
- [Press Center](#)
- [Press Releases](#)
- [In the Media](#)
- [Artist Center](#)
- [Affiliate Center](#)
- [Affiliate FAQs](#)
- [General Inquiries](#)

Customer Testimonials

We are thankful to have many passionate and satisfied customers. See below for some recent comments. You can submit your own comments and feedback and we would love to hear from you!

Celebrity Comments

Thank you so much for giving my children your delightful personalized cards for their birthday. Not only are they adorable - they teach them good manners!

Marcia Gay Harden (Academy Award-Winning Actress)

We were sent personalized thank you cards for the birth of our son, Jackson, and we loved them so much that we ordered a set for Jack's new baby cousin the next day! We found an endless supply of cute cards to choose from, and the web site couldn't be easier to navigate through. The personalized touch they offer makes a great gift for any occasion! Just can't say enough good things about Cardstore.com, particularly due to the excellent customer service! Highly recommended!

Siri Pinter (wife of Carson Daly)

Exhibit "E"

Exhibit 3

Atty. Ref. No.: 350186-900117

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Trademark Application of:)	
Ink2, Inc.)	
Serial No.:	)	Attn: Kate DuBray
77682676	)	Trademark Examining Attorney
International Class(s):	)	Law Office 105
16, 35, 39, 40, 42)	
Filed:)	
March 3, 2009)	
Mark:)	
CARDSTORE.COM and)	
Design)	
)	
)	
)	

**DECLARATION OF PAUL A. MCLEAN
IN SUPPORT OF RESPONSE TO OFFICE ACTION**

I, Paul A. McLean, hereby declare:

1. I am an attorney at DLA Piper LLP (US), counsel for INK2 ("Applicant"), the applicant for the above-referenced trademark application ("Application") for the mark CARDSTORE.COM and Design (the "Mark"). I make this declaration in support of Applicant's Response to Office Action. I can testify competently and of my own personal knowledge as to the matters set forth herein.

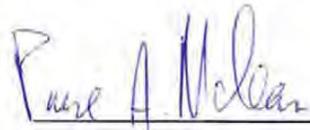
2. On June 5, 2009, I conducted an online search of the internet for the term CARDSTORE.COM using the Google search engine located at www.google.com. A true and correct copy of a printout of the listing of the first 50 "hits" taken from the aforementioned Google search is attached hereto as Exhibit "A".

Exhibit 3

3. I personally reviewed each of the 50 hits listed on the attached Google search results and found that 48 of the first 50 hits are references to Applicant and have noted such on the attached search results.

I declare under penalty of perjury that the foregoing is true and correct and this declaration was executed in East Palo Alto, California.

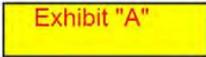
Dated: August 6, 2009

A handwritten signature in blue ink, reading "Paul A. McLean", written over a horizontal line.

Paul A. McLean

Exhibit 3

cardstore.com - Google Search



Page 1 of 3

Web Images Video Maps News Shopping Gmail more ▾

Sign in



cardstore.com

Search [Advanced Search](#)
[Preferences](#)

Web [Show options...](#) Results 1 - 10 of about 591,000 for **cardstore.com**. (0.08 seconds)

Official Cardstore Site Sponsored Link
www.cardstore.com We print and mail the next day! Over 46 million cards printed.

[Photo Cards, Holiday Cards, and Custom Greeting Cards at Cardstore.com](#)

Applicant

Tiny Prints Invitations Sponsored Links
Hip & modern invitations for you. Preview and Personalize Them Online!
www.tinyprints.com

Greetingcard?
Create a unique and personalized Greetz Greeting card!
greetz.com
California

Wedding Paper Divas
Premium paper without the price. We match any style, color or theme.
www.weddingpaperdivas.com

San Diego - Card Store
Looking for **Card Store** in San Diego? Find it here!
www.local.com
San Diego, CA

Coupons: Cardstore.com
Find Discounts & Coupons For Your Favorite Stores & Save!
www.RetailMeNot.com

Find chic, unique photo cards, holiday cards, and thank you notes at **Cardstore.com**. Over 50 million cards printed. We print and mail the next day!
www.cardstore.com/ - Cached - Similar pages

- | | |
|---------------------------------|--|
| Photo Cards | Full Bleed Photo Cards |
| Birthday Cards | Make Your Own Photo Cards |
| Invitations | Personalized Thank You Cards |
| Thank You Cards | Photo Holiday Cards |

[More results from cardstore.com »](#)

Photo Cards, Photo Greeting Cards and Picture Announcements at ...
Hip photo cards are easy to customize at **Cardstore.com**, where you can personalize your greeting cards with photos and custom notes.
www.cardstore.com/photo-cards.html - Cached - Similar pages

Applicant

[Greeting Cards, Invitations, Announcements, and Photocards](#)

Exhibit 3

Card Store is the easiest way to send custom greeting cards, photo cards, announcements, personalized invitations, and gift cards.

[beta.cardstore.com/card_detail.i2?imgid=63884&prodid=100863](#) - Cached - Similar pages

USPS - CardStore.com

Create and send your own cards online with **CardStore.com!**

[www.usps.com/createmail/cardstore.htm](#) - Cached - Similar pages

Applicant

Artist Center, Photo Cards, Holiday Cards, and Custom Greeting ...

Find **Cardstore.com** artist center information, as well as chic, unique photo cards, holiday cards, and thank you notes. We print and mail the next day!

[corporate.cardstore.com/artist-center/](#) - Cached - Similar pages

Applicant

Cardstore.com Launch, Photo Cards, Holiday Cards, and Custom ...

Oct 15, 2008 ... Find **Cardstore.com** launch press release, as well as chic, unique photo cards, holiday cards, and thank you notes at **Cardstore.com**.

[corporate.cardstore.com/press-releases/10_15_08.shtml](#) - Cached - Similar pages

Applicant

Cardstore.com Partners With Laura K Design

May 29, 2009 ... EMERYVILLE, CA--(Marketwire - May 29, 2009) - **Cardstore.com** ([www.cardstore.com](#)), an online holiday cards and photo cards retailer, ...

[www.marketwire.com/press-release/CardstoreCom-996579.html](#) - Cached - Similar pages

Applicant

Card Store Review 2009 - TopTenREVIEWS

Cardstore.com is divided evenly between personal and business cards for many occasions. No electronic cards here: this site offers only paper cards that can ...

[online-greeting-card-review.toptenreviews.com/cardstore-com-review.html](#) -

Cached - Similar pages

Applicant

Cardstore.com Discount Coupon Codes Promotional Codes Coupons ...

Cardstore.com USA find promotional codes, money off coupon codes for great discounts at **cardstore.com**. Find and share the best up to date **Cardstore.com** USA ...

[www.couponcodes4u.com/discounts/cardstore.com](#) - Cached - Similar pages

Applicant

Carbonfund.org Blog » Cardstore.com celebrates 10 years, and now a ...

Apr 29, 2009 ... **Cardstore.com**, an online retailer of personalized stationery products is now a CarbonFree® Partner. Conscious about the sustainability ...

[www.carbonfund.org/blog/carbonfree-partner/cardstorecom-10-years-carbonfree/](#) -

Similar pages

Applicant

News results for cardstore.com



Personal Cards That Make a Memorable Impression Now Available at ... - 4 hours ago

Holiday cards and photo cards retailer **Cardstore.com** now lets you create customized Personal ... With **Cardstore's** state of the art personalization features, ...

PR-USA.net (press release)

Applicant

1 2 3 4 5 6 7 8 9 10 **Next**

cardstore.com

Search

Search within results - Language Tools - Search Help - Dissatisfied? Help us improve - Try Google Experimental

Exhibit 3

cardstore.com - Google Search

Page 3 of 3

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Exhibit 3

Web Images Video Maps News Shopping Gmail more ▾

Sign in



cardstore.com

Search

Advanced Search Preferences

Web Show options...

Results 11 - 20 of about 591,000 for cardstore.com. (0.17 seconds)

Official **Cardstore** Site

www.cardstore.com
million cards printed.

Sponsored Link

We print and mail the next day! Over 46

Sponsored Links

Tiny Prints Invitations

Hip & modern invitations for you.
Preview and Personalize Them Online!
www.tinyprints.com

Cardstore.com Partners With Laura K Design

Applicant

Coupons: Cardstore.com

Find Discounts & Coupons For
Your Favorite Stores & Save!
www.RetailMeNot.com

Cardstore.com, an online holiday cards and photo cards retailer, is pleased to announce its partnership with Laura K Design. The line offers stylish birth ...

newsblaze.com/story/2009052903000200002.mwir/topstory.html - Cached - Similar pages

cardstore.com - Traffic Details from Alexa

A personalized stationery retailer, **Cardstore.com** has thousands of products to choose from. Customers can personalize greetings, invitations and ...

www.alexa.com/siteinfo/www.cardstore.com/ - Cached - Similar pages

Applicant

CardStore.com Personalized Greetings

Cardstore.com has thousands of cards and notes to choose from. Choose from photo cards, Thank You cards, announcements, invitations, holiday card and more!

mergemedia.net/offers/downloads/cardstore.com_personalized_greetings.html - Cached - Similar pages

Applicant

PR-USA.net - **Cardstore.com** Lets Graduates Mail Their Photo ...

Photo cards retailer **Cardstore.com** makes sending stylish graduation announcements and thank you cards easy for 2009 graduates, by offering an extensive ...

pr-usa.net/index.php?option=com_content&task=view&id=200186&Itemid=33 - Cached - Similar pages

Applicant

Cardstore.com Partners With Laura K Design | Product Design and ...

Laura K describes her collection on **Cardstore.com** as "beautifully different." The Canadian designer is pleased to be one of the newest additions to the ...

www.pddnet.com/news-ap-cardstorecom-partners-with-laura-k-design-052909/ - Cached - Similar pages

Applicant

Cardstore.com Lets Graduates Mail Their Photo Graduation ...

Apr 20, 2009 ... EMERYVILLE, CA, Apr 20 (MARKET WIRE) -- Photo cards retailer

Cardstore.com makes sending stylish graduation announcements and thank you ...

www.reuters.com/article/pressRelease/idUS82367+20-Apr-2009+MW20090420 - Cached - Similar pages

Applicant

Cardstore.com Coupon Codes - all coupons, discounts and promo ...

Exhibit 3

cardstore.com - Google Search

Page 2 of 2

Find and share **Cardstore.com** coupon codes and promo codes for great discounts. Get the best **cardstore.com** coupon at RetailMeNot.com.

www.retailmenot.com/view/cardstore.com - Cached - Similar pages

Applicant

\$\$ Card Store Coupons & CardStore.com Coupon Codes

Use **Card Store** coupons for special discounts online. Come to AllOnlineCoupons.com for **CardStore.com** coupons, **Card Store** coupon codes, promotion code offers ...

www.allonlinecoupons.com/st/card-store/ - Cached - Similar pages

Applicant

Latest Coupon Codes for CardStore.com

Cardstore.com is one of the largest online greeting card retailers, offering a unique way to send greeting cards that will save you time and money.

www.latestcouponcodes.com/Coupons/CardStore.com/ - Cached - Similar pages

Applicant

Simply Best Coupons for CardStore.com, CardStore.com promotion ...

Cardstore.com is one of the largest online greeting card retailers, offering a unique way to send greeting cards that will save you time and money.

www.simplybestcoupons.com/Coupons/CardStore.com/ - Cached - Similar pages

Applicant

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cardstore.com

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Exhibit 3

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Sign in



cardstore.com

Search

Advanced Search Preferences

Web Show options...

Results 21 - 30 of about 591,000 for **cardstore.com**. (0.22 seconds)

Official Cardstore Site

www.cardstore.com
million cards printed.

Sponsored Link

We print and mail the next day! Over 46

Sponsored Links

Tiny Prints Invitations

Hip & modern invitations for you.
Preview and Personalize Them Online!
www.tinyprints.com

Cardstore.com Coupon Codes, Cardstore.com

[Coupons, Promotion Codes ...](#)

Applicant

We provide a list of **Cardstore.com** coupons and **Cardstore.com** coupon codes for use at **Cardstore.com**. Save time and money using Quicktoclick.com for updated ...
www.quicktoclick.com/coupons/cardstore.asp - Cached - Similar pages

Cardstore.com Announces New Artist Partnership With Rubbergob ...

Cardstore.com Announces New Artist Partnership With Rubbergob from Market Wire provided by Find Articles at BNET.

findarticles.com/p/articles/mi_pwwi/is_200904/ai_n31531954/ - Cached - Similar pages

Applicant

CardStore.com Coupons - CardStore.com Coupon Codes, Free CardStore ...

CardStore.com Coupon Codes and Shipping Discounts. **CardStore.com** Coupon Codes, Free Shipping Discounts, and Special Discount Coupon Offers From **CardStore.com**.
www.couponcraze.com/coupons/cardstore/ - Cached - Similar pages

Applicant

Cardstore.com Offers Free Mother's Day Cards to Troops

WASHINGTON, April 28, 2005 - **Cardstore.com** joins the 'America Supports You' campaign, a nationwide Department of Defense program that showcases America's ...
www.ourmilitary.mil/Content.aspx?ID=16157550 - Cached - Similar pages

Applicant

Cardstore.com - Emeryville, CA

Jan 21, 2009 ... 2 Reviews of **Cardstore.com** "I love this website! They have tons of great card designs and you can customize each one with lots of photos, ...
www.yelp.com/biz/cardstore-com-emeryville - Cached - Similar pages

Applicant

CardStore.com Launches Corporate Card Service

CardStore.com Launches Corporate Card Service **CardStore.com**, the on-demand solution for personalized print communications, today launched a corporate card ...
www.internetretailer.com/internet/marketing-conference/11865928-cardstorecom-launches-corporate-card-service.html - Cached - Similar pages

Applicant

Coupons for CardStore.com - CardStore.com Coupon Codes and ...

Save with **CardStore.com** coupons - Get a discount or free shipping with free **CardStore.com** online coupons from Happy Coupons!
www.happycoupons.com/coupons/cardstore/ - Cached - Similar pages

Applicant

Coupon Code + Cardstore.com + JPSAVE25 | Jewels and Pinstripes

We have recently received some great thank you notes on **Cardstore.com** stationery from our It's Fun to be One Birthday Bags and Celebrity "BUMP" Bags! ...
www.jewelsandpinstripes.com/blog/tag/coupon-code-cardstorecom-jpsave25/ -

Applicant

Exhibit 3

cardstore.com - Google Search

Page 2 of 2

Cached - Similar pages

Cardstore.com Sales - Find and compare the best deals from ...
Updated daily, dealnews' writers compare sales at **Cardstore.com** against other merchants to find the best discounts, deals, and closeouts on the web.
dealnews.com/online-stores/Cardstore-com/858/ - Cached - Similar pages

Applicant

CardStore.com Coupons, 5% Cash Back, Promotional Codes and Reviews
Free **CardStore.com** coupons plus get 5% cash back on all of your **CardStore.com** orders. Save with **CardStore.com** coupons, promotional codes.
www.cashbaq.com/CardStore.com-coupons-1026.html - Cached - Similar pages

Applicant

Previous 1 2 3 4 5 6 7 8 9 10 11 12 Next

cardstore.com

Search

[Search within results](#) - [Language Tools](#) - [Search Help](#) - [Dissatisfied? Help us improve](#) - [Try Google Experimental](#)

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Exhibit 3

Web Images Video Maps News Shopping Gmail more ▾

Sign in



cardstore.com

Search

Advanced Search Preferences

Web Show options...

Results 31 - 40 of about 590,000 for **cardstore.com**. (0.61 seconds)

Official **Cardstore** Site

www.cardstore.com
million cards printed.

Sponsored Link

We print and mail the next day! Over 46

Sponsored Links

Tiny Prints Invitations

Hip & modern invitations for you.
Preview and Personalize Them Online!
www.tinyprints.com

Abstracts: **Cardstore.com** customizes direct mail. Credit union ...

Applicant

San Francisco, CA-based **Cardstore.com** has launched a direct marketing and direct mail customized printing service for individual and corporate customers. ...
www.faqs.org/abstracts/Construction-and-.../Cardstorecom-customizes-direct-mail-Credit-union-customers-can-e-mail-cash.html - Cached - Similar pages

CardStore.com Supplies Kodak With Photo Card Solution; Agreement ...

18, 2000 **CardStore.com**, the on-demand solution for personalized print communications, today announced an agreement with Eastman Kodak Company for the launch ...
www.allbusiness.com/retail/retailers-miscellaneous-store-retailers-gift/6588799-1.html - Cached - Similar pages

Applicant

CardStore.com coupons, deals and promotions at Any Coupons

Save money on **CardStore.com** with coupons at Any Coupons.
www.anycoupons.com/cardstore.html - Cached - Similar pages

Applicant

manic expresssive: **cardstore.com**

nate + I have some of our cards on **cardstore.com** under STUDIO SSS. oh yeah...nate is my awesome brother + studio partner...lots more about him ...
manicexpresssive.blogspot.com/2009/05/cardstore.html - Cached - Similar pages

Applicant

Cardstore Coupon Codes for **Cardstore.com** Greeting Cards and Gift ...

Cardstore coupon codes, free shipping discounts, online sales and special custom greeting card promotions for **Cardstore.com**.
www.shopping-bargains.com/stores/store/id/1695/Cardstore - Cached - Similar pages

Applicant

The Pet **Card Store** Launches «

The Pet **Card Store.com** is now open for business. This unique online **card store** was created by Scott and Karen Miller in response to requests from friends. ...
www.thepetcardstore.com/?p=332 - Cached - Similar pages

Case Studies: **Cardstore.com**

ROI.works Search Marketing, Inc. Case Study: **Cardstore.com**.
www.roiworks.com/case_studies_cardstore.php - Cached - Similar pages

Applicant

CardStore.com Coupons Promotional Discounts & Free Shipping

CardStore.com, **Card Store** Coupons Promotional Discounts & Free Shipping.
www.juicycoupons.com/Gifts---Flowers/CardStore-com-Coupons/index.html - Cached - Similar pages

Applicant

Exhibit 3

cardstore.com - Google Search

Page 2 of 2

CardStore.com Coupons and Coupon Codes - MyCoupons.com
Find all **CardStore.com** Coupons and Coupon Codes. Best Coupon: Save 15% off all Graduation Announcements at **Cardstore.com**.
www.mycoupons.com/coupons/cardstore.com - Cached - Similar pages

Applicant

Swing Card Store, 3-D Swing Cards from Santoro Graphics and More
Swing **Card Store** - Swing Cards by Santoro Treasures Pop-Up Cards Laini's Ladies Cards
Swing 'Ems Cards Tree Free Greetings The Little Extras™ Snow Globe ...
swingcardstore.com/ - Cached - Similar pages

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Exhibit 3

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Sign in



cardstore.com

Search

Advanced Search Preferences

Web Show options...

Results 41 - 50 of about 590,000 for **cardstore.com**. (0.18 seconds)

Official Cardstore Site

www.cardstore.com
million cards printed.

Sponsored Link

We print and mail the next day! Over 46

Sponsored Links

Tiny Prints Invitations

Hip & modern invitations for you.
Preview and Personalize Them Online!
www.tinyprints.com

Customize your greeting cards with **Cardstore.com** - Best Of Editor ...

Applicant

If you're tired of the same-old boxed cards and photo cards, check out Emeryville-based **Cardstore.com**, an online source for creating personalized, ...
www.diablog.com/D-blog/Best-Of-Editor-Picks/December-2008/Customize-your-greeting-cards-with-Cardstorecom/ - Cached - Similar pages

Guess What by Lori James Features Mother's Day Cards on **Cardstore.com**

EMERYVILLE, CA -- (Marketwire) -- 04/24/09 -- **Cardstore.com**, an online and.
www.itbusinessnet.com/articles/viewarticle.jsp?id=727000 - Cached - Similar pages

Applicant

Photo Cards Retailer **Cardstore.com** Offers 5 Mother's Day Gift ...

Feb 17, 2009 ... EMERYVILLE, CA, Feb 17 (MARKET WIRE) -- **Cardstore.com**, an online photo cards and thank you cards retailer of greetings for all occasions, ...
www.reuters.com/article/pressRelease/idUS116555+17-Feb-2009+MW20090217 - Cached - Similar pages

Applicant

Cardstore.com Helps President Honor Our Troops This 4th of July ...

Jun 29, 2005 ... **Cardstore.com** Helps President Honor Our Troops This 4th of July; Special Thank You Cards Can Be Personalized Online by Friends and Family; ...
findarticles.com/p/articles/mi_m0EIN/is_2005_June_29/ai_n14706379/ - Cached - Similar pages

Applicant

Guess What by Lori James Features Mother's Day Cards on **Cardstore** ...

Free Press Release distribution! We have over 3700 media contacts, and over 150 targeted industries.
www.pressmethod.com/releasestorage/94179.htm - Cached - Similar pages

Applicant

CardStore.com Supplies Kodak With Photo Card Solution; Agreement ...

Free Online Library: **CardStore.com** Supplies Kodak With Photo Card Solution; Agreement Establishes Customized Greeting Card Service Through Print@Kodak, ...
www.thefreelibrary.com/CardStore.com+Supplies+Kodak+With+Photo+Card+Solution%3B+Agreement...-a068141253 - Cached - Similar pages

Applicant

Idealog: Impressed with **CardStore.com** quality

I ordered some greeting cards with photos from my Antarctic and Iceland travels from **CardStore**. I am extremely impressed with the quality and speed of ...
www.idealog.us/2005/06/impressed_with_.html - Cached - Similar pages

Applicant

PR-USA.net - O+D Debuts Sassy Line on **Cardstore.com**

O+D, an established greeting card line, makes its debut on **Cardstore.com**, an online

Applicant

Exhibit 3

holiday cards and thank you cards retailer. The Los Angeles-based design ...
pr-usa.net/index.php?option=com_content&task=view&id=210558&Itemid=28 -
Cached - Similar pages

CardStore.com Coupons from Coupon Chief

CardStore.com Coupon :: CardStore.com services small businesses and consumers looking to create and send highly personalized print communications directly ...
www.couponchief.com/cardstore - Cached - Similar pages

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Cardstore.com Lets Graduates Mail Their Photo Graduation ...

Cardstore.com Lets Graduates Mail Their Photo Graduation Announcements Directly to Friends & Family.
www.pr-inside.com/cardstore-com-lets-graduates-mail-their-r1193096.htm -
Cached - Similar pages

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Exhibit 4

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drugstore.com

From Wikipedia, the free encyclopedia



This article **needs additional citations for verification**. Please help [improve this article](#) by [adding citations to reliable sources](#). Unsourced material may be challenged and removed. *(December 2014)*

Drugstore.com is an internet retailer in health and beauty care products. Its [web operations](#) were launched on February 24, 1999.

In June 1999, Rite Aid entered into a ten-year strategic relationship with Drugstore.com which allowed Drugstore.com customers to pick up prescriptions at [Rite Aid](#) stores, and enabled Drugstore.com to sell Rite Aid products, as well as vitamins from retailer [General Nutrition Center](#) (GNC). On September 3, 2008, Drugstore.com amended and restated both the main agreement and the pharmacy supply and services agreement dated June 17, 1999 between Rite Aid and Drugstore.com. Through those agreements with Rite Aid, Drugstore.com had access to Rite Aid customers through the RiteAid.com website and the Rite Aid online store, which was powered by the Drugstore.com website. Drugstore.com ended a sourcing deal with [Amazon.com](#) in 2005. In addition to the Drugstore.com website, the company also maintains storefronts at [Beauty.com](#) and [VisionDirect.com](#).

It is headquartered at 411 108th Ave. NE, Suite 1600; Bellevue, WA 98004; (425) 372-3200.

Its customer service centers are located in [Bellevue, Washington](#) and [Halifax, Nova Scotia](#).

DS Distribution, Inc., located in the [Pureland Industrial Complex](#) in [Logan Township, New Jersey](#), is its wholly owned subsidiary responsible for the distribution of OTC products, beauty.com products, and CNS (Custom Nutrition Services) products. Distribution of VisionDirect.com products is from a center in [Logan Township, New Jersey](#). Prescriptions are handled by [Walgreens](#).^[1]

It has an "FSA store" containing items that are likely to be eligible for purchase using a medical [flexible spending account](#), and by extension a [health reimbursement account](#) or [health savings account](#) as well. This in turn led to its invention of the very first [inventory information approval system](#) (IIAS) in 2005; it wasn't used in brick-and-mortar retailing until 2006 by [Walgreens](#). Under a 2006 [Internal Revenue Service](#) ruling, IIAS must be installed by every [grocery store](#), [discount store](#), and Internet pharmacy that accepts [FSA debit cards](#) by the end of 2007, and by most chain pharmacies by the end of 2008.

On December 28, 2009, Drugstore.com said that it would buy Salu Inc., the operator of [SkinStore.com](#), for \$36 million.

On March 24, 2011, Drugstore.com was acquired by [Walgreens](#) for \$409 million.^[2]

References [\[edit\]](#)

- ↑ "pharmacy services by Walgreens" [@ drugstore.com](#). Retrieved 11 December 2014.
- ↑ Robin Wauters, TechCrunch. "Boom! Walgreens Buys Online Retailer Drugstore.com For \$409 Million" [@](#) March 24, 2011.

External links [\[edit\]](#)

- [Drugstore.com website](#) [@](#)

Drugstore.com, Inc.



Web address	http://drugstore.com @
Commercial?	No
Type of site	Subsidiary Retail Online shopping
Registration	No
Available in	English
Created by	Walgreens of Deerfield, Illinois
Editor	Dawn G. Lepore, Chairman, President, and CEO 2004 - 2011, when Walgreens purchased the company
Launched	1997
Current status	No

Exhibit 4

- [Hoovers Fact Sheet](#)
- [Yahoo Finance - Drugstore.com will buy Salu Inc. for \\$36 million](#)

V · T · E	Walgreens Boots Alliance [hide]
Subsidiaries	Alliance Healthcare · Boots UK · Boots Contract Manufacturing · Boots Opticians (Dollond & Aitchison) · Drugstore.com · Duane Reade · Farmacias Benavides · Guangzhou Pharmaceuticals (50%) · Happy Harry's · Kerr Drug · Walgreens · Walgreens Health Services
Brands	17 Cosmetics
People	Stefano Pessina · Charles Rudolph Walgreen · Charles Rudolph Walgreen, Jr. · Gregory Wasson · Jim Skinner · John Boot · Ornella Barra · Yves Romestan
Related	Alliance Boots · Intercom Plus · Schoep's Ice Cream · Walgreen Drug Store Historic Site

Categories: [Online retail companies of the United States](#) | [Retail companies established in 1999](#)
[Internet properties established in 1999](#) | [Online companies](#)

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FamilyStore.com

Word Mark FAMILYSTORE.COM
Goods and Services IC 035. US 100 101 102. G & S: Online retail store services, retail store services, wholesale store services, and mail order catalog services, all featuring books, videos, DVDs, music, artwork, jewelry, lifebooks, scrapbooking supplies, apparel, cards and announcements, and other products to assist in building, creating, growing, nurturing, preserving, connecting and strengthening families. FIRST USE: 19991106. FIRST USE IN COMMERCE: 19991106

Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 78568502

Filing Date February 16, 2005

Current Basis 1A

Original Filing Basis 1A

Published for Opposition November 8, 2005

Registration Number 3055241

Registration Date January 31, 2006
Owner (REGISTRANT) Adoption Shop, LLC LIMITED LIABILITY COMPANY ARIZONA
459 N. Gilbert Rd., C-100 Gilbert ARIZONA 85234

(LAST LISTED OWNER) ELEVATI, LLC LIMITED LIABILITY COMPANY
DELAWARE 343 East 4th North SUITE 200 REXBURG IDAHO 83440
Assignment Recorded ASSIGNMENT RECORDED
Attorney of Record Michelle M. Morris
Type of Mark SERVICE MARK
Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR).
Live/Dead Indicator LIVE

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Mark: FAMILYSTORE.COM

FamilyStore.com

US Serial Number: 78568502

Application Filing Date: Feb. 16, 2012

US Registration Number: 3055241

Registration Date: Jan. 31, 2012

Register: Principal

Mark Type: Service Mark

Status: A Sections 8 and 15 combined declaration has been accepted and acknowledged.

Status Date: Feb. 15, 2012

Publication Date: Nov. 08, 2005

Mark Information

Goods and Services

Basis Information (Case Level)

Current Owner(s) Information

Attorney/Correspondence Information

Prosecution History

Date	Description	Proceeding Number
Jan. 31, 2015	COURTESY REMINDER - SEC. 8 (10-YR)/SEC. 9 E-MAILED	
Oct. 06, 2014	APPLICANT/CORRESPONDENCE CHANGES (NON-RESPONSIVE) ENTERED	88888
Oct. 06, 2014	TEAS CHANGE OF OWNER ADDRESS RECEIVED	
Oct. 09, 2013	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
Feb. 15, 2012	NOTICE OF ACCEPTANCE OF SEC. 8 & 15 - E-MAILED	
Feb. 15, 2012	REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK.	68973

Feb. 15, 2012	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	68973
Jan. 04, 2012	TEAS SECTION 8 & 15 RECEIVED	
Nov. 30, 2011	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
Jan. 31, 2006	REGISTERED-PRINCIPAL REGISTER	
Nov. 08, 2005	PUBLISHED FOR OPPOSITION	
Oct. 19, 2005	NOTICE OF PUBLICATION	
Sep. 22, 2005	LAW OFFICE PUBLICATION REVIEW COMPLETED	76869
Sep. 16, 2005	ASSIGNED TO LIE	76869
Sep. 15, 2005	APPROVED FOR PUB - PRINCIPAL REGISTER	
Sep. 15, 2005	EXAMINERS AMENDMENT E-MAILED	6328
Sep. 15, 2005	EXAMINERS AMENDMENT -WRITTEN	74814
Sep. 13, 2005	ASSIGNED TO EXAMINER	74814
Feb. 28, 2005	NEW APPLICATION ENTERED IN TRAM	

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Word Mark	OFFICERSTORE.COM
Goods and Services	IC 035. US 100 101 102. G & S: Retail store services featuring apparel used in connection with law enforcement services and performing emergency rescue services, products and tools used in connection with law enforcement services, and products and tools used in connection with performing emergency rescue services. FIRST USE: 20031000. FIRST USE IN COMMERCE: 20031000
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	24.01.02 - Shields or crests with figurative elements contained therein or superimposed thereon 24.03.25 - Badge, police; Badges; Police badge; Sheriff's badge; Ten Commandments 24.09.07 - Advertising, banners; Banners 26.03.21 - Ovals that are completely or partially shaded
Trademark Search Facility Classification Code	ART-24.07 Coins, medals NOTATION-SYMBOLS Notation Symbols such as Non-Latin characters,punctuation and mathematical signs,zodiac signs,prescription marks SHAPES-ASTRO Astronomical shapes consisting of celestial bodies, globes and geographical maps SHAPES-HERALDRY Marks with shields, crests, emblems, insignias, and crowns

SHAPES-OVALS Oval figures or designs including incomplete ovals and one or more ovals

Serial Number 77002049
Filing Date September 19, 2006
Current Basis 1A
Original Filing Basis 1A
Published for Opposition November 6, 2007
Registration Number 3371306
Registration Date January 22, 2008
Owner (REGISTRANT) Witmer Associates, Inc. CORPORATION PENNSYLVANIA 104 Independence Way Coatesville PENNSYLVANIA 19335

(LAST LISTED OWNER) WITMER PUBLIC SAFETY GROUP, INC. COMPOSED OF JAMES A. WITMER, PRESIDENT CORPORATION PENNSYLVANIA 104 INDEPENDENCE WAY COATESVILLE PENNSYLVANIA 19320

Assignment Recorded ASSIGNMENT RECORDED
Attorney of Record Andrew B. Katz
Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "LAW ENFORCEMENT SUPPLIES" APART FROM THE MARK AS SHOWN
Description of Mark Color is not claimed as a feature of the mark. The mark consists of the word OFFICERSTORE.COM set against a shield and an oval backdrop, with the wording LAW ENFORCEMENT SUPPLIES on the shield design.
Type of Mark SERVICE MARK
Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR).
Live/Dead Indicator LIVE

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Mark: OFFICERSTORE.COM



US Serial Number: 77002049

Application Filing Date: Sep. 19, 2007

US Registration Number: 3371306

Registration Date: Jan. 22, 2008

Register: Principal

Mark Type: Service Mark

Status: A Sections 8 and 15 combined declaration has been accepted and acknowledged.

Status Date: Jan. 30, 2014

Publication Date: Nov. 06, 2007

Mark Information

Goods and Services

Basis Information (Case Level)

Current Owner(s) Information

Attorney/Correspondence Information

Prosecution History

Date	Description	Proceeding Number
Jan. 30, 2014	NOTICE OF ACCEPTANCE OF SEC. 8 & 15 - E-MAILED	
Jan. 30, 2014	REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK.	76985
Jan. 20, 2014	REGISTERED - SEC. 8 (6-YR) & SEC. 15 FILED	76985
Jan. 30, 2014	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	76985
Jan. 20, 2014	TEAS SECTION 8 & 15 RECEIVED	
Feb. 16, 2011	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Sep. 16, 2009	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	

Sep. 09, 2009	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
Jan. 22, 2008	REGISTERED-PRINCIPAL REGISTER	
Nov. 06, 2007	PUBLISHED FOR OPPOSITION	
Oct. 17, 2007	NOTICE OF PUBLICATION	
Oct. 03, 2007	ASSIGNMENT OF OWNERSHIP NOT UPDATED AUTOMATICALLY	
Oct. 02, 2007	LAW OFFICE PUBLICATION REVIEW COMPLETED	68171
Oct. 01, 2007	APPROVED FOR PUB - PRINCIPAL REGISTER	
Sep. 12, 2007	TEAS/EMAIL CORRESPONDENCE ENTERED	68171
Sep. 12, 2007	CORRESPONDENCE RECEIVED IN LAW OFFICE	68171
Sep. 11, 2007	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Sep. 11, 2007	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Sep. 11, 2007	NON-FINAL ACTION E-MAILED	6325
Sep. 11, 2007	NON-FINAL ACTION WRITTEN	80804
Aug. 15, 2007	TEAS/EMAIL CORRESPONDENCE ENTERED	68171
Aug. 15, 2007	CORRESPONDENCE RECEIVED IN LAW OFFICE	68171
Aug. 15, 2007	ASSIGNED TO LIE	68171
Jul. 26, 2007	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Feb. 09, 2007	NON-FINAL ACTION E-MAILED	6325
Feb. 09, 2007	NON-FINAL ACTION WRITTEN	80804
Feb. 08, 2007	ASSIGNED TO EXAMINER	80804
Sep. 23, 2006	NOTICE OF DESIGN SEARCH CODE AND PSEUDO MARK MAILED	
Sep. 22, 2006	NEW APPLICATION ENTERED IN TRAM	

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Word Mark US FLAGSTORE.COM
Goods and Services IC 035. US 100 101 102. G & S: online retail store services featuring flags, banners and flagpoles. FIRST USE: 20060407. FIRST USE IN COMMERCE: 20060407
Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code 01.17.08 - Maps of the United States; United States, maps of 24.09.05 - American flags; Flags, American
Trademark Search Facility ART-01.17 Maps or outlines of continents, countries and other geographical areas" ART-24.09 Flags, banners LETS-2 US Two letters or combinations of multiples of two letters
Classification Code NOTATION-SYMBOLS Notation Symbols such as Non-Latin characters,punctuation and mathematical signs,zodiac signs,prescription marks SHAPES-ASTRO Astronomical shapes consisting of celestial bodies, globes and geographical maps SHAPES-COLORS-3-OR-MORE Design listing or lined for three or more colors SHAPES-GEOMETRIC Geometric figures and solids including squares, rectangles, quadrilaterals and polygons
Serial Number 77481656
Filing Date May 22, 2008

Current Basis 1A
Original Filing Basis 1A
Published for Opposition March 31, 2009
Registration Number 3637861
Registration Date June 16, 2009
Owner (REGISTRANT) Allied Products Corporation CORPORATION MISSOURI 1400 Kansas Avenue Kansas City MISSOURI 64127
Attorney of Record Thomas H. Van Hoozer
Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "US" OR THE DEPICTION OF THE MAP OF THE UNITED STATES APART FROM THE MARK AS SHOWN
Description of Mark The color(s) red, white, blue is/are claimed as a feature of the mark. The mark consists of the letters "US" in red outlined in white and blue on the left, on the right the outline in blue of a map of the continental United States of America, with red and white stripes and a blue field with white stars; underneath the "US" and the stylized map are the words "FLAGSTORE.COM" in white outlined in blue.
Type of Mark SERVICE MARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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Mark: US FLAGSTORE.COM



US Serial Number: 77481656

Application Filing Date: May 22, 2009

US Registration Number: 3637861

Registration Date: Jun. 16, 2009

Register: Principal

Mark Type: Service Mark

Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Status Date: Jun. 16, 2009

Publication Date: Mar. 31, 2009

Mark Information

Goods and Services

Basis Information (Case Level)

Current Owner(s) Information

Attorney/Correspondence Information

Prosecution History

Date	Description	Proceeding Number
Jun. 16, 2009	REGISTERED-PRINCIPAL REGISTER	
Mar. 31, 2009	PUBLISHED FOR OPPOSITION	
Mar. 11, 2009	NOTICE OF PUBLICATION	
Feb. 25, 2009	LAW OFFICE PUBLICATION REVIEW COMPLETED	68658
Feb. 25, 2009	ASSIGNED TO LIE	68658
Feb. 20, 2009	APPROVED FOR PUB - PRINCIPAL REGISTER	
Feb. 19, 2009	TEAS/EMAIL CORRESPONDENCE ENTERED	88889

Feb. 19, 2009	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Feb. 19, 2009	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Sep. 08, 2008	NON-FINAL ACTION MAILED	
Sep. 06, 2008	NON-FINAL ACTION WRITTEN	83187
Sep. 06, 2008	ASSIGNED TO EXAMINER	83187
May 28, 2008	NOTICE OF DESIGN SEARCH CODE AND PSEUDO MARK MAILED	
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Word Mark	TURFSTORE.COM
Goods and Services	IC 040. US 100 103 106. G & S: manufacturing for others of athletic and recreational surfacing products, namely, artificial and synthetic turf. FIRST USE: 20001103. FIRST USE IN COMMERCE: 20001103
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	05.13.03 - Grasses 27.03.04 - Plants forming letters or numerals 27.03.05 - Objects forming letters or numerals
Serial Number	76470814
Filing Date	November 27, 2002
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	August 12, 2003
Registration Number	2779346
Registration Date	November 4, 2003

Owner (REGISTRANT) Turfstore.com Inc. CORPORATION DELAWARE 237 Boling Industrial Way Calhoun GEORGIA 30701

Attorney of Record Rowland Richards

Description of Mark Color is not claimed as a feature of the mark.

Type of Mark SERVICE MARK

Register PRINCIPAL

Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20130930.

Renewal 1ST RENEWAL 20130930

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Mark: TURFSTORE.COM



US Serial Number: 76470814

Application Filing Date: Nov. 27, 2

US Registration Number: 2779346

Registration Date: Nov. 04, 2

Register: Principal

Mark Type: Service Mark

Status: The registration has been renewed.

Status Date: Sep. 30, 2013

Publication Date: Aug. 12, 2003

Mark Information

Goods and Services

Basis Information (Case Level)

Current Owner(s) Information

Attorney/Correspondence Information

Prosecution History

Date	Description	Proceeding Number
Sep. 30, 2013	NOTICE OF ACCEPTANCE OF SEC. 8 & 9 - MAILED	
Sep. 30, 2013	REGISTERED AND RENEWED (FIRST RENEWAL - 10 YRS)	76874
Sep. 30, 2013	REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED	76874
Sep. 23, 2013	REGISTERED - COMBINED SECTION 8 (10-YR) & SEC. 9 FILED	76874
Sep. 30, 2013	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	76874
Sep. 23, 2013	PAPER RECEIVED	
Mar. 11, 2009	REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK.	65765
Feb. 11, 2009	ASSIGNED TO PARALEGAL	65765

Jan. 30, 2009	REGISTERED - SEC. 8 (6-YR) & SEC. 15 FILED	
Jan. 30, 2009	PAPER RECEIVED	
Nov. 04, 2003	REGISTERED-PRINCIPAL REGISTER	
Aug. 12, 2003	PUBLISHED FOR OPPOSITION	
Jul. 23, 2003	NOTICE OF PUBLICATION	
Jun. 09, 2003	APPROVED FOR PUB - PRINCIPAL REGISTER	
Jun. 03, 2003	ASSIGNED TO EXAMINER	61700

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GOURMETSTORE.COM

Word Mark	GOURMETSTORE.COM
Goods and Services	IC 035. US 100 101 102. G & S: Online retail store services featuring food products and seasonings wherein consumers may examine food products and seasonings through product descriptions provided in the website prior to purchasing. FIRST USE: 20030205. FIRST USE IN COMMERCE: 20030205
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	85815883
Filing Date	January 4, 2013
Current Basis	1A
Original Filing Basis	1A
Date Amended to Current Register	September 16, 2014
Registration Number	4626414
	October 21, 2014

**Registration
Date**

Owner (REGISTRANT) Woodland Foods, Ltd. CORPORATION ILLINOIS 3751 Sunset
Avenue Waukegan ILLINOIS 60087

**Attorney of
Record** Scott W. Petersen

Type of Mark SERVICE MARK

Register SUPPLEMENTAL

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Mark: GOURMETSTORE.COM

GOURMETSTORE.COM

US Serial Number: 85815883

Application Filing Date: Jan. 04, 2014

US Registration Number: 4626414

Registration Date: Oct. 21, 2014

Register: Supplemental

Mark Type: Service Mark

Amended to Principal No

Date Amended to Current Sep. 16, 2014

Register:

Register:

Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Status Date: Oct. 21, 2014

Mark Information

Goods and Services

Basis Information (Case Level)

Current Owner(s) Information

Attorney/Correspondence Information

Prosecution History

Date	Description	Proceeding Number
Oct. 21, 2014	REGISTERED-SUPPLEMENTAL REGISTER	
Sep. 18, 2014	LAW OFFICE PUBLICATION REVIEW COMPLETED	69712
Sep. 16, 2014	APPROVED FOR REGISTRATION SUPPLEMENTAL REGISTER	
Sep. 16, 2014	EXAMINER'S AMENDMENT ENTERED	88888
Sep. 16, 2014	NOTIFICATION OF EXAMINERS AMENDMENT E-MAILED	6328
Sep. 16, 2014	EXAMINERS AMENDMENT E-MAILED	6328
Sep. 16, 2014	EXAMINERS AMENDMENT -WRITTEN	80805
Aug. 19, 2014	LIE CHECKED SUSP - TO ATTY FOR ACTION	69712

Feb. 11, 2014	REPORT COMPLETED SUSPENSION CHECK CASE STILL SUSPENDED	69712
Feb. 11, 2014	ASSIGNED TO LIE	69712
Jul. 29, 2013	NOTIFICATION OF LETTER OF SUSPENSION E-MAILED	6332
Jul. 29, 2013	LETTER OF SUSPENSION E-MAILED	6332
Jul. 29, 2013	SUSPENSION LETTER WRITTEN	80805
Jul. 04, 2013	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Jul. 03, 2013	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Jul. 03, 2013	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Feb. 19, 2013	NOTIFICATION OF NON-FINAL ACTION E- MAILED	6325
Feb. 19, 2013	NON-FINAL ACTION E-MAILED	6325
Feb. 19, 2013	NON-FINAL ACTION WRITTEN	80805
Feb. 12, 2013	ASSIGNED TO EXAMINER	80805
Jan. 16, 2013	NOTICE OF PSEUDO MARK MAILED	
Jan. 15, 2013	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Jan. 08, 2013	NEW APPLICATION ENTERED IN TRAM	

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THEKITCHENSTORE. COM

Word Mark THEKITCHENSTORE.COM
Goods and Services IC 035. US 100 101 102. G & S: retail store services featuring kitchen, dining and table top-related merchandise, namely, china, dinnerware, porcelain, stoneware, glassware, cookware, houseware, kitchenware, electrical appliances, crystal, flatware, flatware accessories, giftware, wicker, kitchen and dining linens, packaged gourmet food, specialty food items and cookbooks. FIRST USE: 20000700. FIRST USE IN COMMERCE: 20000700

Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 78322783

Filing Date November 4, 2003

Current Basis 1A

Original Filing Basis 1A

October 4, 2004

**Date Amended
to Current
Register**

**Registration
Number** 2920239

**Registration
Date** January 18, 2005

Owner (REGISTRANT) CALVERT RETAIL, INC. CORPORATION DELAWARE 100 W.
ROCKLAND ROAD, SUITE A P.O. BOX 302 MONTCHANIN DELAWARE 19710

**Assignment
Recorded** ASSIGNMENT RECORDED

**Attorney of
Record** Patricia Smink Rogowski

**Type of Mark
Register** SERVICE MARK
SUPPLEMENTAL

Affidavit Text SECT 8 (6-YR). SECTION 8(10-YR) 20141129.

Renewal 1ST RENEWAL 20141129

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Indicator** LIVE

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Mark: THEKITCHENSTORE.COM

THEKITCHENSTORE.
COM

US Serial Number: 78322783

Application Filing Date: Nov. 04, 2014

US Registration Number: 2920239

Registration Date: Jan. 18, 2015

Register: Supplemental

Mark Type: Service Mark

Amended to Principal No

Date Amended to Current Oct. 04, 2014

Register:

Register:

Status: The registration has been renewed.

Status Date: Nov. 29, 2014

Mark Information

Goods and Services

Basis Information (Case Level)

Current Owner(s) Information

Attorney/Correspondence Information

Prosecution History

Date	Description	Proceeding Number
Nov. 29, 2014	NOTICE OF ACCEPTANCE OF SEC. 8 & 9 - E-MAILED	
Nov. 29, 2014	REGISTERED AND RENEWED (FIRST RENEWAL - 10 YRS)	67603
Nov. 29, 2014	REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED	67603
Nov. 29, 2014	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	67603
Nov. 10, 2014	TEAS SECTION 8 & 9 RECEIVED	
May 12, 2014	ATTORNEY REVOKED AND/OR APPOINTED	

May 12, 2014	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	
Jan. 26, 2011	REGISTERED - SEC. 8 (6-YR) ACCEPTED	70132
Jan. 26, 2011	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	70132
Jan. 05, 2011	TEAS SECTION 8 RECEIVED	
Jan. 18, 2005	REGISTERED-SUPPLEMENTAL REGISTER	
Nov. 15, 2004	LAW OFFICE PUBLICATION REVIEW COMPLETED	71373
Nov. 05, 2004	ASSIGNED TO LIE	71373
Nov. 04, 2004	APPROVED FOR REGISTRATION SUPPLEMENTAL REGISTER	
Oct. 13, 2004	TEAS/EMAIL CORRESPONDENCE ENTERED	71373
Oct. 04, 2004	CORRESPONDENCE RECEIVED IN LAW OFFICE	71373
Oct. 04, 2004	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Jun. 04, 2004	NON-FINAL ACTION E-MAILED	6325
May 21, 2004	ASSIGNED TO EXAMINER	76795
Dec. 01, 2003	NEW APPLICATION ENTERED IN TRAM	

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TRADEMARK

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of)	
)	
drugstore.com, inc.)	
	)	J. Brendan Regan
Serial No. 75/640,000	)	Trademark Examining Atty.
	)	Law Office 113
Filed: February 9, 1999)	
)	
Mark: DRUGSTORE.COM)	

DECLARATION OF ADAM GARCIA
UNDER 37 C.F.R. §§ 2.20 AND 2.41

Adam Garcia, being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that all statements made of his own knowledge are true; and all statements made on information and belief are believed to be true:

1. I am a person with firsthand knowledge of the facts and I have implied authority to act on behalf of the owner of the application. I am the “Director Digital Marketing, Walgreens, Drugstore, Beauty” at Walgreen Co., which is the parent company of the Applicant drugstore.com, inc. (hereinafter “Applicant”). Certain employees at Walgreen Co., such as me, provide support services to Applicant.
2. I have knowledge of the Applicant’s services and the advertising and promotional activities employed relative to such services.
3. Since at least as early as January 1999, Applicant has used the mark

“DRUGSTORE.COM” in connection with all of the services identified in Application Serial No. 75/640,000 (hereinafter the “Application”), as amended with this Response, namely, on-line retail store featuring health, beauty, food, beverage, printed publications and personal electronic products (hereinafter the “Services”).

4. From January 1999 to the present, Applicant’s use of the mark “DRUGSTORE.COM” in U.S. commerce for the Services has been continuous and substantially exclusive.

5. Applicant renders the Services under the mark “DRUGSTORE.COM” to consumers in all 50 states.

6. The applied-for mark is consistently used by Applicant in advertising and promotional materials; this has been the case since the mark was first adopted 16 years ago.

7. Applicant has extensively advertised and promoted the Services under the mark “DRUGSTORE.COM” nationwide from January 1999 to the present. Such activities have led to widespread recognition of the applied-for mark among consumers.

8. Indeed, Applicant’s records indicate that from September 2005 to the present, over \$150,000,000 has been spent on advertising and promoting the Services under the mark “DRUGSTORE.COM”.

9. Applicant invites the Examiner to visit Applicant’s website at www.drugstore.com, which prominently features “DRUGSTORE.COM” as a service mark in the upper left-hand corner of every page (including but not limited to the home page, category pages, and individual product pages). Representative printouts showing how the mark “DRUGSTORE.COM” is featured as a service mark on Applicant’s

website are attached as Exhibit A.

10. In addition to its own website, Applicant employs many different types of advertising media to promote the Services under the mark “DRUGSTORE.COM” to consumers in every state.

11. Because the Services are rendered over the internet, most of Applicant’s advertising is online. Examples of such activities include the following:

- Applicant bids on key words to appear high in paid or sponsored results generated through search engines.
- Applicant engages consultants to help it achieve higher positions in free or organic search results.
- Applicant appears in comparison shopping engines, and pays when users click through to Applicant’s website at www.drugstore.com.

Results generated through search engines and comparison shopping engines will typically show the mark “DRUGSTORE.COM”. Users who click on the links in the results will arrive at Applicant’s website which prominently features “DRUGSTORE.COM” on every page as a service mark, not just a domain name.

12. Other types of internet advertising used by the Applicant include the following:

- Applicant uses affiliates to promote the Services under the applied-for mark. Through their own websites, banner advertisements, or through other avenues, such affiliates drive traffic to Applicant’s website featuring the mark “DRUGSTORE.COM”, thereby earning a commission.
- Applicant utilizes display, banner, and pop-up advertisements prominently featuring the mark “DRUGSTORE.COM”.
- Applicant has sent approximately 5 billion emails to customers and potential customers from January 1999 through August 2014 featuring the mark “DRUGSTORE.COM”; this figure includes promotional emails as well as transactional emails generated through orders.

13. Applicant also engages in more traditional advertising activities such as

direct mailings and print advertising (*e.g.*, advertisements in hard copy magazines) that extend to consumers in every state; these types of advertisements consistently include the mark “DRUGSTORE.COM”.

14. Applicant inserts print advertisements and coupons into boxes delivering goods to Applicant’s customers located in every state; these materials prominently feature the mark “DRUGSTORE.COM”.

15. Applicant advertises the mark “DRUGSTORE.COM” through event sponsorship, on attention-grabbing public displays such as bus and subway banners, and on advertisements in trays used in conjunction with metal detectors in airport security lines.

16. Applicant’s advertising and promotional efforts and expenditures have certainly paid off. Indeed, Applicant’s records indicate that from October 1, 2007 through October 31, 2014, the total number of visits to Applicant’s website prominently featuring “DRUGSTORE.COM” have exceeded 535,000,000. The sheer number of visits to Applicant’s website strongly demonstrates that Applicant and its mark “DRUGSTORE.COM” have achieved a very formidable market presence and widespread consumer recognition. Such has been the case since all the way back to 2006, since Applicant’s records indicate the number of visits in that year alone exceeded 80,000,000.

17. In addition to tracking the number of visits, Applicant commissions outside provider Adobe to track the number of page views per visit to the “DRUGSTORE.COM” online retail store. The mark “DRUGSTORE.COM” appears on every page of Applicant’s website prominently in the upper left-hand corner, among other places on the website. According to the current average, each visitor to Applicant’s

website views 7.8 different pages of the website, seeing the applied-for mark again and again on each page.

18. As such, based on the tracking records provided by Adobe and maintained by Applicant, Applicant estimates that it has facilitated over 10.5 billion commercial impressions for the mark “DRUGSTORE.COM” from 2006 through 2014.

19. Applicant’s business records indicate that the total sales revenues generated through Services offered under the mark “DRUGSTORE.COM” exceeded \$3.0 billion from January 1999 through October 2014. The sales revenues in 2013 alone are believed to have exceeded \$390 million.

20. Applicant’s records indicate that from January 1999 through October 2014, it received over 55,000,000 orders through its website prominently featuring “DRUGSTORE.COM” as a service mark. The number of orders in 2013 alone exceeded 7,000,000.

21. Internet Retailer (www.internetretailer.com), an e-commerce business intelligence company, has recognized Applicant in the past as one of the “Top 100 e-retailers”, as gauged by web sales as a percentage of total sales. (More recently, such as for 2014, Internet Retailer has grouped drugstore.com, inc. together with its parent company Walgreen Co., rather than identifying drugstore.com, inc. separately in the annual ranking report).

22. For example, Internet Retailer’s 2011 report (shown at Exhibit B) ranked Applicant 46th out of the top 100 e-retailers, having had \$456,500,000 in web sales in 2010. (This total includes revenues generated through the “DRUGSTORE.COM” store, as well as revenues generated through two of the Applicant’s other stores, accessible

through the domain names beauty.com and visiondirect.com—although the majority of the sales were through the “DRUGSTORE.COM” store). Such a rank put Applicant in the same league as BarnesandNoble.com (ranked 41st with \$573,000,000 in online sales in 2010), and higher than brands such as Peapod (ranked 47th with \$451,330,000 in online sales in 2010) and Crate and Barrel (ranked 55th with \$365,000,000 in online sales in 2010). (Exhibit B).

Internet Retailer also ranked the “Top 25 merchants ranked by category”, based on 2010 sales revenues. In the “Web only” category, Applicant ranked 8th. (Exhibit B).

Internet Retailer ranked the top 500 web retailers by principal market, based on 2010 sales revenues. Notably, in the Health/Beauty category, Applicant ranked 3rd, just behind Amway Global and Avon Products, and above brands such as Diapers.com, 1-800 Contacts Inc., VitaminShoppe.com, and General Nutrition Centers Inc. (“GNC”).

Additional data about Applicant was set forth in Internet Retailer’s 2011 report, including that Applicant received an estimated 10,000,000 visits per month and that the “DRUGSTORE.COM” website was available 99.97% of the time. (Exhibit B).

23. Internet Retailer’s reports from 2010, 2009, and 2008 contained similar rankings for Applicant based on revenues. Again, the totals included revenue from the “DRUGSTORE.COM” store as well as the stores accessible through beauty.com and visiondirect.com, although the majority of the yearly revenues came from sales by the “DRUGSTORE.COM” store.

In the 2010 report (Exhibit C), based on 2009 online sales, Applicant ranked 46th with \$412,832,000 in online sales; 8th in the “Web only” category; and 3rd in the “Health/Beauty” category.

In the 2009 report (Exhibit D), based on 2008 online sales, Applicant ranked 48th with \$366,600,000 in online sales; 10th in the “Web only” category; and 3rd in the “Food/Drug” category.

In the 2008 report (Exhibit E), based on 2007 online sales, Applicant ranked 41st with \$445,700,000 in online sales; 8th in the “Web only” category; and 1st in the “Food/Drug” category.

24. In August 2010, Applicant commissioned Invoke Research to conduct an online survey to evaluate consumers’ awareness of the “DRUGSTORE.COM” brand. A summary of the survey results is attached hereto as Exhibit F. To assess consumers’ unaided awareness of the mark, the following question was asked:

Question: “Please tell me the names of all the websites you can think of that sell health, beauty, personal care and/or wellness products, including but not limited to over-the-counter medicine, vitamins/supplements, cosmetics, personal care items, make-up, etc.”

The survey showed that when presented with the Services at issue, consumers’ unaided awareness of “DRUGSTORE.COM” was 23%. As indicated in Exhibit F, this places “DRUGSTORE.COM” in a similar league as well-known brands such as walgreens.com and walmart.com (32% each), amazon.com (29%), cvs.com (28%), and above brands such as target.com (16%) and riteaid.com (12%).

Next, to assess consumers’ aided awareness of the mark, the following question was asked:

Question: “Which of the following websites have you heard of that sell health, beauty, personal care, and wellness products? (Check all that apply).”

In terms of aided awareness, when asked if they had heard of “DRUGSTORE.COM”, 61% replied in the affirmative. Here again, this places “DRUGSTORE.COM” in a

similar league as ebay.com (66%) and kmart.com (62%), and above brands such as gnc.com (56%) and costco.com (50%).

25. In early 2014, Applicant's parent company, Walgreen Co., commissioned Maritz Research to conduct an online survey into U.S. consumers' attitudes toward, awareness of, and usage of, ecommerce services.

26. The survey took place in mid-April 2014 and had over 4500 respondents. The research report was completed in July 2014 and later updated on August 14, 2014. Relevant excerpts of the report are attached hereto as Exhibit G. Respondents qualified to participate in the survey by having purchased at least one relevant item online in the past six months (Maritz Report pp. 16).

27. In the "Daily Living" category—defined to include items such as beauty and personal care products, healthcare products, contact lenses, vitamins, non-perishable food such as canned goods, household items such as cleaning supplies, baby care products, and seasonal products (Maritz Report p. 222)—"DRUGSTORE.COM" was identified as one of the "Top Brands" for online sales (Maritz Report p. 16). More specifically, the survey revealed that 25% of respondents had purchased "Daily Living" items from the "DRUGSTORE.COM" online retail store, putting Applicant's mark in a similar league as target.com (also 25%), and in the same category as amazon.com (69%), walmart.com (39%), and eBay.com (34%) (Maritz Report p. 16).

28. In terms of aided consumer awareness in the Daily Living category, the Maritz survey revealed that 75% of respondents were aware of the "DRUGSTORE.COM" online retail store, and 37% had shopped at the store (while, as indicated above, 25% had actually purchased items from it) (Maritz Report p. 19).

29. The mark "DRUGSTORE.COM" has become distinctive of the services through Applicant's substantially exclusive and continuous use in commerce for at least the 16 years immediately before the date of this statement.

30. In sum, because of Applicant's (a) long, extensive, and substantially exclusive national use of the mark "DRUGSTORE.COM" for the Services; (b) significant nationwide advertising and promotional activities and expenditures; (c) prominent and consistent display of the applied-for mark on its website and in other advertising and promotions; (d) substantial sales revenues and numbers of orders; and (e) the astounding numbers of visits to Applicant's website and commercial impressions; the mark "DRUGSTORE.COM" has come to be immediately recognized and understood by relevant consumers as indicating that the Services provided under the mark originate from a single source, namely, Applicant. Thus, "DRUGSTORE.COM" has acquired distinctiveness and functions as a service mark worthy of protection.

Respectfully submitted,

2/5/15
Date


Adam Garcia

Garcia Declaration Exhibit A

[drugstore](#) | [BEAUTY.COM](#) | welcome: [sign in](#) | [account](#) | [help](#) | [your list™](#) | [auto-reorder & save](#) | 2 sites 1 bag | 0 items \$0.00 | [checkout](#)

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product spotlight

<p>Buy 2 select Reach & Listerine dental floss and save \$1!</p>	<p>Click & Save: Buy 1 Slim-Fast & get the 2nd 50% off</p>	<p>COUPON AVAILABLE Philips Sonicare - HX6211/04 2 Series Plaque Control Electric Toothbrush, Sky Blue, 1 ea</p>	<p>Save 10% off select Sensodyne & Pronamel items!</p>	<p>Save 15% on IMAN cosmetics.</p>
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Garcia Declaration Exhibit A

view offer >	view offer >	\$69.99 \$39.95 add to bag	view offer >	view offer >
				
Save 20% on Maybelline cosmetics view offer >	Save 20% on Physicians Formula cosmetics view offer >	Save up to 40% off Culturelle probiotics view offer >	Save up to 40% on Disney children's gummy vitamins view offer >	Shop Depend and Poise collection view offer >

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- 100% Pure (3)
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- ACT (20)
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- Airborne (4)

category

- acne care (126)
- antiperspirants & deodorants (707)
- clearance (66)
- cotton balls & swabs (62)
- ear care (97)
- feminine care (620)
- foot care (738)
- gift sets (46)
- hair care (6502)
- hair regrowth (228)
- lip balm (338)
- massage & relaxation (671)
- men's (2296)
- new products (134)
- oral care (1681)
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- sun care (1062)
- travel store (345)

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- \$10 - \$20 (3947)
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--	---	---	---	---

featured brands

Gillette sonicare | Oral-B | Crest | PHILIPS NORELCO | L'ORÉAL PARIS

product spotlight

<p>Online Coupon: Click & save \$2 on two select Gillette</p>	<p>Online Coupon: Click & save \$30 on one Oral-B</p>	<p>Online Coupon: Click & save an extra \$40 on one</p>	<p>COUPON AVAILABLE</p>
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Philips Sonicare - HX6211/04 2 Series Plaque Control Electric Toothbrush, Sky Blue, 1 ea

~~\$69.99~~ **\$39.95**

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Save 10% off select Sensodyne & Pronamel items!

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Buy 10 select Chapsticks for \$10

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Mix and Match: Buy 4 Blistex lip balms, save \$2!

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Philips Norelco - Click & Style YS524 with Bonus Travel Case & 1 month Gamefly Subscription, 1 ea

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Burt's Bees Essential Bees Kit 1 set

★★★★ (4)

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Gift Set Contains 5 Popular Trial Sizes of Burt's Bees Products

- Pamper Your Entire Body
- Soap Bark & Chamomile Deep Cleansing Cream (0.75 oz / 21.26 g)
- Hand Salve (0.30 oz / 8.5 g)
- Milk & Honey Body Lotion (1.0 oz / 28.35 g)
- Beeswax Lip Balm (0.15 oz / 4.25 g)
- Coconut Foot Cream (0.75 oz / 21.26 g)

Pamper someone special naturally, with the Burt's Bees Essential Gift Set. These beauty essentials include trial size portions of 5 perennial Burt's Bees favorites, all made with natural ingredients. Soap Bark and Chamomile Deep Cleansing Cream moisturizes and softens the face while effectively removing makeup and dirt. Hand Salve, Naturally Nourishing Milk and Honey Body Lotion and Coconut Foot Cream each work to moisturize and smooth dry skin. Finally, Beeswax Lip Balm soothes dry lips with naturally conditioning beeswax. This beauty set includes skin care products to nourish the entire body. Give the gift of natural, with Burt's Bees.

Made in USA

Product Ingredients:

Soap Bark & Chamomile Deep Cleansing Cream: Water, Helianthus Annuus (Sunflower) Seed Oil, Stearic Acid, Glycerin, Cocos Nucifera (Coconut) Oil, Cetearyl Alcohol, Polysorbate 60, Sodium Borate, Cetyl Alcohol, Silica, Glucose, Hamamelis Virginiana (Witch Hazel) Leaf Extract, Aloe Barbadosensis Leaf Extract,

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SALE
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 ★★★★★ (1)
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quantity
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For moms-to-be and new moms, hints and tips to help make motherhood easier and even sweeter.



Diet & Fitness >

Whether you're getting in shape, staying in shape or just want to make good nutrition changes, here's what you need to know.



Green & Natural >

The latest info to help you reach or maintain a state of green and naturalness.



Hair Care >

Beauty radiates from healthy hair. Give your hair the special treatment with products that build shine, body, and style.



Over-The-Counter >

We've done the research for you and compiled information based on common health concerns.



Makeup >

Look and feel positively glamorous with tips, trends and step-by-step instructions to help make up your face and nails like a pro.



Sex Toys & Joys >

Discover the ins and outs of sex toys. Our arousing articles are sure to help keep things hot and steamy in the bedroom.



Skin Care >

TOP 10 TIMELY ARTICLES

1. [Over-the-Counter Sunburn Relief Treatments](#)
2. [Over-the-Counter Treatments for Sunspots](#)
3. [Swimmer's Itch and Treatments](#)
4. [Traveler's Diarrhea](#)
5. [What is BB Cream?](#)
6. [Active Pregnancy, Healthy Pregnancy](#)
7. [What to Keep in Your Baby's Diaper Bag](#)
8. [Hangover Cures and Prevention](#)
9. [Over-the-Counter Treatments for Bug Bites](#)
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Top 100 e-retailers

(Web sales as a percentage of total sales)

Rank	2010 web sales	2010 total sales	2010 % of total sales	2009 % of total sales	Rank	2010 web sales	2010 total sales	2010 % of total sales	2009 % of total sales
1	Amazon.com Inc.	\$34,200,000,000	\$34,200,000,000	100%	100%				
2	Staples Inc.	\$10,200,000,000	\$24,500,000,000	42%	40%				
3	Apple Inc.	\$5,227,500,000 ¹	\$65,225,000,000	8%	10%				
4	Dell Inc.	\$4,801,800,000 ¹	\$61,494,000,000	8%	9%				
5	Office Depot Inc.	\$4,100,000,000	\$11,633,094,000	35%	34%				
6	Walmart.com	\$4,095,000,000 ¹	\$418,952,000,000	1%	1%				
7	Sears Holdings Corp. ²	\$3,107,145,001 ¹	\$43,326,000,000	7%	6%				
8	Liberty Media Corp. ³	\$3,040,000,000 ¹	\$8,900,000,000 ¹	34%	29%				
9	OfficeMax Inc.	\$2,858,618,343 ¹	\$7,150,000,000	40%	38%				
10	CDW Corp.	\$2,717,127,595 ¹	\$8,801,000,000	31%	30%				
11	Best Buy Co.	\$2,500,000,000	\$50,300,000,000	5%	5%				
12	Newegg Inc.	\$2,500,000,000	\$2,500,000,000	100%	100%				
13	Netflix Inc.	\$2,160,000,000	\$2,160,000,000	100%	100%				
14	SonyStyle.com	\$1,955,200,000 ¹	\$86,698,000,000	2%	2%				
15	W.W. Grainger Inc.	\$1,800,000,000	\$7,200,000,000	25%	22%				
16	Costco Wholesale Corp.	\$1,700,000,000	\$76,300,000,000	2%	2%				
17	Macy's Inc.	\$1,604,553,601 ¹	\$25,003,000,000	6%	5%				
18	Victoria's Secret Direct	\$1,563,490,000 ¹	\$9,813,000,000	16%	16%				
19	HP Home & Home Office Store	\$1,548,721,350 ¹	\$126,000,000,000	1%	1%				
20	J.C. Penney Co. Inc.	\$1,530,000,000	\$17,759,000,000	9%	9%				
21	L.L. Bean Inc.	\$1,373,201,775 ¹	\$1,440,000,000	NA	NA				
22	Target Corp.	\$1,330,129,152 ¹	\$65,786,000,000	2%	2%				
23	Systemax Inc.	\$1,322,100,000 ¹	\$3,590,000,000	37%	37%				
24	Gap Inc. Direct	\$1,265,600,000 ¹	\$14,660,000,000	9%	8%				
25	Williams-Sonoma Inc.	\$1,197,000,000	\$3,540,000,000	34%	30%				
26	HSN Inc.	\$1,174,745,600	\$2,990,000,000	39%	37%				
27	Overstock.com Inc.	\$1,090,000,000	\$1,090,000,000	100%	100%				
28	Amway Global	\$912,548,070 ¹	\$9,200,000,000	10%	10%				
29	Toys 'R' Us Inc.	\$782,000,000	\$13,860,000,000	6%	4%				
30	Avon Products Inc.	\$768,259,970 ¹	\$10,731,000,000	7%	7%				
31	Kohl's Corp.	\$743,400,000	\$18,400,000,000	4%	3%				
32	Buy.com Inc.	\$740,879,123 ¹	\$740,879,123 ¹	100%	100%				
33	Redcats USA ⁴	\$716,545,003	\$4,902,000,000	15%	15%				
34	Nordstrom Inc.	\$705,000,000 ¹	\$9,310,000,000	8%	8%				
35	Symantec Corp.	\$675,000,000 ¹	\$5,985,000,000	11%	10%				
36	Vistaprint Ltd.	\$670,030,000	\$670,030,000	100%	100%				
37	PC Connection Inc.	\$605,900,000	\$1,970,000,000	31%	30%				
38	Saks Direct	\$584,832,458 ¹	\$2,785,745,000	21%	16%				
39	The Neiman Marcus Group Inc.	\$574,100,000	\$3,692,768,000	16%	14%				
40	Cabela's Inc.	\$573,915,000 ¹	\$2,412,486,000	24%	22%				
41	BarnesandNoble.com Inc.	\$573,000,000	\$5,800,000,000	10%	9%				
42	Blockbuster Inc.	\$569,301,600 ¹	\$4,000,000,000 ¹	14%	14%				
43	The Home Depot Inc.	\$550,000,000 ¹	\$68,000,000,000	1%	1%				
44	Musician's Friend Inc. ⁵	\$546,113,591	\$2,750,000,000 ¹	20%	20%				
45	1-800-Flowers.com Inc.	\$469,900,000	\$667,700,000	70%	70%				
46	drugstore.com Inc.	\$456,500,000	\$456,500,000	100%	100%				
47	Peepod LLC	\$451,330,000 ¹	\$451,330,000 ¹	100%	100%				
48	Urban Outfitters Inc.	\$433,800,000	\$2,270,000,000	19%	17%				
49	Gilt Groupe	\$425,000,000 ¹	\$425,000,000 ¹	100%	100%				
50	J. Crew Group Inc.	\$397,295,280 ¹	\$1,722,000,000	23%	22%				
51	CSN Stores LLC	\$380,000,000	\$380,000,000	100%	100%				
52	PC Mail Inc.	\$379,000,000	\$1,138,061,000	33%	32%				
53	Foot Locker Inc.	\$375,000,000	\$5,040,000,000	7%	7%				
54	Scholastic Inc.	\$375,000,000	\$1,912,900,000	20%	19%				
55	Crate and Barrel	\$365,000,000	\$14,354,000,000	3%	3%				
56	Abercrombie & Fitch Co.	\$352,500,000	\$3,460,000,000	10%	8%				
57	American Eagle Outfitters Inc.	\$344,000,000	\$2,970,000,000	12%	12%				
58	Follett Higher Education Group	\$344,000,000	\$1,600,000,000	22%	22%				
59	U.S. Auto Parts Network ⁶	\$333,516,396	\$333,516,396	100%	100%				
60	Blue Nile Inc.	\$332,900,000	\$332,900,000	100%	100%				
61	Market America	\$332,207,948	\$332,207,948	100%	100%				
62	Recreational Equipment Inc.	\$318,508,353 ¹	\$1,660,000,000	19%	17%				
63	Nutrisystem Inc.	\$312,105,627	\$509,512,000	61%	58%				
64	Oriental Trading Co. Inc.	\$312,000,000 ¹	\$600,000,000 ¹	52%	52%				
65	Zones	\$309,000,000	\$309,000,000	100%	100%				
66	Shutterfly Inc.	\$307,700,000	\$307,700,000	100%	100%				
67	YOOX Group	\$304,700,000	\$304,700,000	100%	100%				
68	Microsoft Corp.	\$302,000,000 ¹	\$302,000,000 ¹	100%	100%				
69	Ancestry.com Inc.	\$300,931,000	\$300,931,000	100%	100%				
70	Ralph Lauren Media LLC	\$300,000,000	\$4,795,500,000	6%	2%				
71	FTD Group Inc.	\$292,240,000 ¹	\$554,576,000	53%	52%				
72	Diapers.com	\$292,000,000	\$292,000,000	100%	100%				
73	Walgreen Co.	\$278,300,000 ¹	\$67,420,000,000	0.4%	0.4%				
74	Disney Shopping Inc.	\$273,726,000 ¹	\$2,678,000,000	10%	10%				
75	FreshDirect LLC	\$268,800,000 ¹	\$268,800,000 ¹	100%	100%				
76	Signature Styles LLC	\$266,060,000 ¹	\$266,060,000 ¹	100%	100%				
77	Hayneedle Inc.	\$265,650,000 ¹	\$265,650,000 ¹	100%	100%				
78	Nike Inc.	\$260,000,000 ¹	\$19,014,000,000	1%	1%				
79	Orchard Brands Corp. ⁷	\$243,128,000	\$1,100,000,000	22%	22%				
80	Bulld.com Inc.	\$243,000,000	\$243,000,000	100%	100%				
81	Weight Watchers International Inc.	\$238,600,000	\$1,450,000,000	16%	16%				
82	RueLala.com	\$235,500,000 ¹	\$235,500,000 ¹	100%	100%				
83	CVS Caremark Corp.	\$232,887,946 ¹	\$96,413,000,000	0.2%	0.2%				
84	ShopNBC.com	\$231,656,000	\$562,300,000	41%	34%				
85	Northern Tool + Equipment Co.	\$225,000,000	\$800,000,000 ¹	28%	27%				
86	Bass Pro Outdoor Online LLC	\$222,983,605 ¹	\$2,800,000,000 ¹	8%	8%				
87	Shoebuy.com Inc.	\$219,912,000 ¹	\$219,912,000 ¹	100%	100%				
88	Sierra Trading Post Inc.	\$219,629,484 ¹	\$219,629,484 ¹	100%	100%				
89	Net-a-Porter LLC	\$219,420,749 ¹	\$219,420,749 ¹	100%	100%				
90	Vitacost.com Inc.	\$218,652,000 ¹	\$218,652,000 ¹	100%	100%				
91	Lowe's Cos. Inc.	\$198,654,500 ¹	\$48,800,000,000	0.4%	0.4%				
92	Eddie Bauer LLC	\$193,670,000 ¹	\$1,023,000,000 ¹	19%	19%				
93	Coldwater Creek Inc.	\$192,135,408 ¹	\$981,100,000	20%	19%				
94	Bluestem Brands Inc.	\$190,353,000 ¹	\$440,000,000 ¹	43%	43%				
95	Ann Inc.	\$189,500,000	\$1,990,000,000	10%	7%				
96	Army & Air Force Exchange Service	\$188,590,000	\$9,800,000,000	2%	2%				
97	Colony Brands Inc. ⁸	\$187,425,000 ¹	\$800,000,000	23%	17%				
98	Football Fanatics Inc.	\$186,300,000	\$186,300,000	100%	100%				
99	Green Mountain Coffee Roasters Inc.	\$184,000,000	\$1,356,775,000	14%	14%				
100	Etronics	\$182,000,000 ¹	\$182,000,000 ¹	100%	100%				
Top 100 retailers' 2010 web sales \$129,406,425,526									
Total 2010 U.S. e-commerce sales \$165,400,800,000									
Top 100 share of total 78.24%									
Top 500 retailers' 2010 web sales \$150,039,987,064									
Top 100 share of total 90.71%									

1. Internet Retailer estimate
 2. Sears Holdings Corp. includes Sears.com, Kmart.com, Craftsman.com, Kenmore.com and LandsEnd.com.
 3. Liberty Media Corp. includes QVC.com, ProFlowers.com, Backcountry.com, ShariBerries.com, Bodybuilding.com, RedEnvelope.com and CelebrateExpress.com.
 4. Redcats includes SportsmansGuide.com, WomanWithin.com, Roamans.com, JessicaLondon.com, KingSizeDirect.com, OneStopPlus.com, Avenue.com, 8COutlet.com, BrylaneHome.com, BoatingSavings.com, BargainOutfitters.com, TGW.com, Redcats.com, BaseballSavings.com and SoftballSavings.com.
 5. Musician's Friend Inc. includes MusiciansFriend.com, GuitarCenter.com, Music123.com, WWBW.com, Musician.com, MusicArts.com, GuitarSale.com, MiSupply.com and 4Lyons.com.
 6. U.S. Auto Parts Network acquired J.C. Whitney in August 2010.
 7. Orchard Brands Corp. includes Blair.com, NormThompson.com, Haband.com, Appleseds.com, Drapers.com, GoldViolin.com, Sshalle.com, Solutions.com, TogShop.com, WinterSilks.com, ShoptheBay.com, OldPuebloTraders.com, BedfordFair.com, CowardShoes.com, Willowridge.com, LewMagram.com and BrownstoneStudio.com.
 8. Colony Brands Inc. includes SwissColony.com, Wards.com, HomeVisions.com, SeventhAvenue.com, MidnightVelvet.com, Ginnys.com, CountryDoot.com, MonroelandMain.com, TenderFilet.com, Astro.com and RaceTeamGear.com.

Top 25 merchants ranked by category

Catalog/call center

Rank	2010 web sales	2009 web sales	Growth	
8	Liberty Media Corp.	\$3,040,000,000 ¹	\$2,580,000,000 ¹	17.8%
10	CDW Corp.	\$2,717,127,595 ¹	\$2,470,115,995 ¹	10.0%
21	L.L. Bean Inc.	\$1,373,201,775 ¹	\$1,064,497,500 ¹	29.0%
23	Systemax Inc.	\$1,322,100,000 ¹	\$1,170,000,000 ¹	13.0%
26	HSN Inc.	\$1,174,745,600	\$1,013,672,400	15.9%
30	Avon Products Inc.	\$768,259,970 ¹	\$738,711,509 ¹	4.0%
33	Redcats USA	\$716,545,003	\$714,892,000	0.2%
37	PC Connection Inc.	\$605,900,000	\$468,600,000	29.3%
40	Cabela's Inc.	\$573,915,000 ¹	\$536,369,000 ¹	7.0%
44	Musician's Friend Inc.	\$546,113,591	\$513,600,000	6.3%
45	1-800-Flowers.com Inc.	\$469,900,000	\$498,500,000	-5.7%
54	Scholastic Inc.	\$375,000,000	\$350,000,000	7.1%
63	Nutrisystem Inc.	\$312,105,627	\$308,618,241	1.1%
64	Oriental Trading Co. Inc.	\$312,000,000 ¹	\$305,000,000 ¹	2.3%
76	Signature Styles LLC	\$266,060,000 ¹	\$251,000,000 ¹	6.0%
79	Orchard Brands Corp.	\$243,128,000	\$255,132,000	-4.7%
81	Weight Watchers International Inc.	\$238,800,000	\$186,000,000	21.8%
84	ShopNBC.com	\$231,656,000	\$177,677,000	30.4%
85	Northern Tool + Equipment Co.	\$225,000,000	\$210,000,000	7.1%
88	Sierra Trading Post Inc.	\$219,629,484 ¹	\$205,261,200 ¹	7.0%
94	Bluestem Brands Inc.	\$190,353,000 ¹	\$177,900,000	7.0%
97	Colony Brands Inc.	\$187,425,000 ¹	\$178,500,000 ¹	5.0%
99	Green Mountain Coffee Roasters Inc.	\$184,000,000	\$166,392,162	10.6%
101	1-800 Contacts Inc.	\$179,817,352 ¹	\$168,053,600 ¹	7.0%
103	Harry and David Holdings Inc.	\$175,500,000	\$182,600,000	-3.9%
2010 Top 25 catalog/call center sales		\$16,648,282,996		
2010 Total catalog/call center sales		\$20,428,510,548		
2009 Top 25 catalog/call center sales		\$14,901,092,607		
Growth		11.7%		
Share of total		81.6%		

Consumer brand manufacturer

Rank	2010 web sales	2009 web sales	Growth	
3	Apple Inc.	\$5,227,500,000 ¹	\$4,250,000,000 ¹	23.0%
4	Dell Inc.	\$4,801,800,000 ¹	\$4,530,000,000 ¹	6.0%
14	SonyStyle.com	\$1,955,200,000 ¹	\$1,880,000,000 ¹	4.0%
19	HP Home & Home Office Store	\$1,548,721,350 ¹	\$1,482,030,000 ¹	4.5%
35	Symantec Corp.	\$675,000,000 ¹	\$650,000,000 ¹	3.8%
68	Microsoft Corp.	\$302,000,000 ¹	\$271,800,000 ¹	11.1%
70	Ralph Lauren Media LLC	\$300,000,000	\$200,000,000	50.0%
78	Nike Inc.	\$260,000,000 ¹	\$208,000,000 ¹	25.0%
137	Shoes.com Inc. (Brown Shoe Co.)	\$120,000,000	\$99,200,000	21.0%
138	VF Corp.	\$120,000,000	\$94,650,000	26.8%
139	NBTY Inc.	\$119,300,000	\$104,000,000	14.7%
143	LEGO Brand Retail Inc.	\$116,630,000 ¹	\$109,000,000 ¹	7.0%
149	The Estee Lauder Cos. Inc.	\$107,166,000 ¹	\$101,100,000 ¹	6.0%
164	Coach Inc.	\$93,253,500 ¹	\$81,090,000 ¹	15.0%
169	Deckers Outdoor Corp.	\$91,800,000	\$75,700,000	21.3%
179	Panasonic Corp. of North America	\$85,193,472 ¹	\$81,916,800 ¹	4.0%
190	Under Armour Inc.	\$77,000,000 ¹	\$52,850,000 ¹	45.7%
196	Fossil Inc.	\$75,475,500 ¹	\$50,250,000	50.2%
198	Cross Inc.	\$75,000,000	\$60,500,000	24.0%
203	Tempur-Pedic International Inc.	\$72,660,000 ¹	\$51,900,000 ¹	40.0%
204	Jones Retail Corp.	\$71,900,000	\$51,500,000	39.6%
205	adidas America Inc.	\$71,500,000 ¹	\$65,000,000 ¹	10.0%
219	Select Comfort Corp.	\$62,300,000	\$61,000,000	2.1%
243	NB Web Express	\$51,782,250 ¹	\$45,825,000	13.0%
248	Vera Bradley Retail Stores LLC	\$51,250,000 ¹	\$41,000,000 ¹	25.0%
2010 Top 25 consumer brand manufacturer sales		\$16,532,432,072		
2010 Total consumer brand manufacturer sales		\$17,410,116,102		
2009 Top 25 consumer brand manufacturer sales		\$14,698,311,800		
Growth		12.6%		
Share of total		84.8%		

Retail chain

Rank	2010 web sales	2009 web sales	Growth	
2	Staples Inc.	\$10,200,000,000	\$9,800,000,000	4.1%
5	Office Depot Inc.	\$4,100,000,000	\$4,100,000,000	0.0%
6	Walmart.com	\$4,095,000,000 ¹	\$3,500,000,000 ¹	17.0%
7	Sears Holdings Corp.	\$3,107,145,001 ¹	\$2,774,236,606 ¹	12.0%
9	OfficeMax Inc.	\$2,858,618,343 ¹	\$2,775,357,614 ¹	3.0%
11	Best Buy Co.	\$2,500,000,000	\$2,200,000,000	13.6%
15	W.W. Grainger Inc.	\$1,800,000,000	\$1,371,000,000	31.3%
16	Costco Wholesale Corp.	\$1,700,000,000	\$1,600,000,000	6.3%
17	Macy's Inc.	\$1,604,553,600 ¹	\$1,243,840,000 ¹	29.0%
18	Victoria's Secret Direct & Bath and Body Works	\$1,563,490,000 ¹	\$1,445,000,000	8.2%
20	J.C. Penney Co. Inc.	\$1,530,000,000	\$1,500,000,000	2.0%
22	Target Corp.	\$1,330,129,152 ¹	\$1,209,208,320 ¹	10.0%
24	Gap Inc. Direct	\$1,265,600,000 ¹	\$1,120,000,000	13.0%
25	Williams-Sonoma Inc.	\$1,197,000,000	\$943,000,000	26.9%
29	Toys 'R' Us Inc.	\$782,000,000	\$602,000,000	29.9%
31	Kohl's Corp.	\$743,400,000	\$491,500,000	51.3%
34	Nordstrom Inc.	\$705,000,000 ¹	\$563,000,000 ¹	25.2%
38	Saks Direct	\$584,832,458 ¹	\$430,023,866 ¹	36.0%
39	The Neiman Marcus Group Inc.	\$574,100,000	\$519,000,000	10.6%
41	BarnesandNoble.com Inc.	\$573,000,000	\$462,000,000	24.0%
42	Blockbuster Inc.	\$569,301,600 ¹	\$552,720,000 ¹	3.0%
43	The Home Depot Inc.	\$550,000,000 ¹	\$500,000,000	10.0%
48	Urban Outfitters Inc.	\$433,800,000	\$323,680,000	34.0%
50	J. Crew Group Inc.	\$397,295,280 ¹	\$346,680,000 ¹	14.6%
53	Foot Locker Inc.	\$375,000,000	\$344,000,000	9.0%
2010 Top 25 retail chain sales		\$46,139,265,434		
2010 Total retail chain sales		\$55,316,042,969		
2009 Top 25 retail chain sales		\$40,716,246,408		
Growth		10.9%		
Share of total		81.6%		

Web only

Rank	2010 web sales	2009 web sales	Growth	
1	Amazon.com Inc.	\$34,200,000,000	\$24,510,000,000	39.5%
12	Newegg Inc.	\$2,500,000,000	\$2,300,000,000	8.7%
13	Netflix Inc.	\$2,160,000,000	\$1,670,269,000	29.3%
27	Overstock.com Inc.	\$1,090,000,000	\$876,769,000	24.3%
28	Amway Global	\$912,548,070 ¹	\$885,969,000 ¹	3.0%
32	Buy.com Inc.	\$740,879,123 ¹	\$690,345,810 ¹	7.3%
36	Vistaprint Ltd.	\$670,030,000	\$515,826,000	29.9%
46	drugstore.com Inc.	\$456,500,000	\$375,600,000	21.5%
47	Peapod LLC	\$451,330,000 ¹	\$410,300,000 ¹	10.0%
49	Gift Groupe	\$425,000,000 ¹	\$170,000,000	150.0%
51	CSN Stores LLC	\$380,000,000	\$251,000,000	51.4%
52	PC Mall Inc.	\$379,000,000	\$301,000,000	25.9%
59	U.S. Auto Parts Network ²	\$333,516,396 ¹	\$176,288,000	89.2%
60	Blue Nile Inc.	\$332,900,000	\$302,100,000	10.2%
61	Market America	\$332,207,946	\$321,346,855	3.4%
65	Zones	\$309,000,000	\$270,000,000	14.4%
66	Shutterfly Inc.	\$307,700,000	\$246,400,000	24.9%
67	YOOX Group	\$304,700,000	\$216,400,000	40.8%
69	Ancestry.com Inc.	\$300,931,000	\$224,902,000	33.8%
71	FTD Group Inc.	\$292,240,000 ¹	\$281,000,000 ¹	4.0%
72	Diapers.com	\$292,000,000	\$182,000,000	60.4%
74	Disney Shopping Inc.	\$273,726,000 ¹	\$246,600,000 ¹	11.0%
75	FreshDirect LLC	\$268,800,000 ¹	\$240,000,000	12.0%
77	Hayneedle Inc.	\$265,650,000 ¹	\$241,500,000 ¹	10.0%
80	Build.com Inc.	\$243,000,000	\$166,320,000	46.1%
2010 Top 25 web only sales		\$48,221,658,537		
2010 Total web only sales		\$56,885,317,445		
2009 Top 25 web only sales		\$36,071,935,665		
Growth		33.7%		
Share of total		84.8%		

1. Internet Retailer estimate 2. U.S. Auto Parts Network acquired J.C. Whitney in August 2010

Garcia Declaration Exhibit B

THE TOP 500 WEB RETAILERS RANKED BY PRINCIPAL MARKET

Rank	Company	2010 Sales	2010 % Change	2009 Rank
6	Power Equipment Direct Inc.	\$49,700,000	1.48%	9
7	LumberLiquidators.com	\$46,305,000 ¹	1.38%	7
8	Tool King LLC	\$27,500,000	0.82%	11
9	National Trade Supply	\$25,819,000	0.77%	13
10	iRobot Corp.	\$25,000,000 ¹	0.74%	10
11	Rockler Woodworking and Hardware	\$23,500,000 ¹	0.70%	12
12	Tooltech.com LLC	\$21,000,000	0.62%	18
13	Vintage Tub and Bath	\$18,892,929	0.56%	16
14	Net Direct Merchants	\$16,650,000	0.49%	20
15	Toolup.com	\$15,000,000	0.45%	14
16	Air & Water Inc.	\$14,400,000 ¹	0.43%	19
17	DrillSpot.com	\$14,370,629	0.43%	24
18	Appliance Zone	\$12,700,000	0.38%	NA
19	Jack's Small Engine & Generator Service LLC	\$12,570,000	0.37%	NA
20	Bulbs.com	\$12,153,000	0.36%	23
21	Ace Hardware Corp.	\$12,101,022	0.36%	21
Total 2010 hardware/home improvement category sales		\$3,364,316,080		
Total 2009 hardware/home improvement category sales		\$2,739,028,831		
Growth			22.8%	
Category share of total 2010 Top 500 sales			2.2%	
Category share of total 2009 Top 500 sales			2.2%	

Health/Beauty

The Top 500 health and beauty category ended 2010 with a healthy glow—businesswise. Sales for the category grew year over year 11.7% to combined sales of \$4.14 billion from \$3.71 billion. Amway Global (No. 28) and Avon Products Inc. (No. 30) were once again the category leaders with collective sales of \$1.68 billion, which accounted for 40.5% of all sales in the segment. The number 3 retailer in the category—drugstore.com inc.—increased sales to 21.5% to \$456.5 million from \$375.6 million in 2009. More importantly, Walgreen Co. (No. 73) in March announced plans to buy drugstore.com in a deal valued at \$429 million.

Rank	Company	2010 Sales	2010 % Change	2009 Rank
1	Amway Global	\$912,548,070 ¹	22.00%	1
2	Avon Products Inc.	\$768,259,970 ¹	18.52%	2
3	drugstore.com Inc.	\$456,500,000	11.00%	3
4	Diapers.com	\$292,000,000	7.04%	5
5	Vitacost.com Inc.	\$218,652,000 ¹	5.27%	4
6	1-800 Contacts Inc.	\$179,817,352 ¹	4.33%	6
7	Beachbody LLC	\$160,000,000	3.86%	NA
8	Sephora USA Inc.	\$155,403,809 ¹	3.75%	8
9	Coastal Contacts Inc.	\$151,700,000	3.66%	7
10	FragranceNet.com Inc.	\$110,000,000	2.65%	10
11	The Estee Lauder Cos. Inc.	\$107,166,000 ¹	2.58%	9
12	iHerb Inc.	\$85,500,000 ¹	2.06%	11
13	VitaminShopper.com	\$75,205,356 ¹	1.81%	12
14	Dermstore LLC	\$62,125,000	1.50%	NA
15	General Nutrition Centers Inc.	\$59,000,000	1.42%	13
16	Follica Inc.	\$44,400,000 ¹	1.07%	14
17	Getam Inc.	\$38,556,618	0.93%	15
18	AC Lens	\$33,560,000	0.81%	16
19	Bare Escentuals Inc.	\$30,240,000 ¹	0.73%	NA
20	ULTA Salon, Cosmetics & Fragrance Inc.	\$26,096,874 ¹	0.63%	18
21	BlissWorld LLC	\$25,840,500 ¹	0.62%	17
22	Sally Beauty	\$23,000,000 ¹	0.55%	19
23	AED Superstore	\$22,336,832	0.54%	22
24	Beauty Encounter Inc.	\$21,200,000 ¹	0.51%	21
25	Lancome-USA.com	\$21,047,280 ¹	0.51%	20
26	AmericaRX.com	\$17,848,690	0.43%	26
27	Boston Green Goods Inc.	\$17,396,000	0.42%	23
28	SkinCareRX	\$17,392,205 ¹	0.42%	25
29	Scentsiments.com	\$15,810,000	0.38%	24
Total 2010 health/beauty category sales		\$4,148,602,555		
Total 2009 health/beauty category sales		\$3,715,190,550		
Growth			11.7%	
Category share of total 2010 Top 500 sales			2.8%	
Category share of total 2009 Top 500 sales			2.8%	

Housewares/Home Furnishings

The Top 500 housewares and home furnishings category is dominated by a single player—Williams-Sonoma Inc. And the biggest wants to get bigger. In 2010, Williams-Sonoma (No. 25), which accounted for 28.8% of all category sales, increased web sales year over year 26.2% to \$1.19 billion from \$943 million. Internet Retailer calculates the web accounted for 33.6% of total sales in 2010 for Williams-Sonoma compared with 30.4% in 2009. In comparison, runner-up CSN Stores LLC (No. 51) increased e-commerce revenue 51.4% to \$380 million in 2010 from \$251 million in 2009, but only accounted for 9.2% of all category sales.

Rank in category	Company	2010 Sales	2010 % Change	2009 Rank in category
1	Williams-Sonoma Inc.	\$1,197,000,000	28.83%	1
2	CSN Stores LLC	\$380,000,000	9.15%	3
3	Crate and Barrel	\$365,000,000	8.79%	2
4	Hanover Direct Inc.	\$170,000,000 ¹	4.09%	4
5	Art.com Inc.	\$166,321,273 ¹	4.01%	5
6	Restoration Hardware Inc.	\$160,680,000 ¹	3.87%	6
7	AJ Madison Inc.	\$97,818,000 ¹	2.36%	7
8	Lamps Plus Inc.	\$93,730,000 ¹	2.26%	8
9	Cymax Stores Inc.	\$92,000,000	2.22%	10
10	Bed Bath & Beyond Inc.	\$88,734,500 ¹	2.14%	9
11	Cooking.com Inc.	\$77,247,500 ¹	1.86%	12
12	Brookstone Inc.	\$77,109,760 ¹	1.86%	13
13	Replacements Ltd.	\$76,303,431	1.84%	11
14	Furniture.com Inc.	\$75,000,000 ¹	1.81%	14
15	Tempur-Pedic International Inc.	\$72,660,000 ¹	1.75%	35
16	Blinds.com	\$65,000,000	1.57%	20
17	Select Comfort Corp.	\$62,300,000	1.50%	26
18	Thompson and Co. of Tampa Inc.	\$53,972,000 ¹	1.30%	18
19	IKEA.com	\$53,000,000	1.28%	16
20	Rooms To Go Inc.	\$52,224,000 ¹	1.26%	19
21	Living Direct Inc.	\$49,000,000	1.18%	21
22	Miles Kimball Co.	\$47,900,000	1.15%	22
23	Bedding.com	\$42,000,000	1.01%	24
24	ivgStores LLC	\$39,350,392	0.95%	37
25	Lillian Vernon Corp.	\$35,900,000 ¹	0.86%	25
26	The Container Store Inc.	\$31,992,940	0.77%	32
27	CHEFS Catalog	\$31,216,731	0.75%	NA
28	Bellaacor Inc.	\$28,900,000 ¹	0.70%	27
29	1800Mattress.com	\$28,410,750 ¹	0.68%	28
30	Lakeside Collection	\$27,400,000 ¹	0.66%	29
31	Lifetime Brands	\$27,126,747 ¹	0.65%	31
32	Rugs USA	\$26,000,000 ¹	0.63%	30
33	Stacks and Stacks	\$25,334,000 ¹	0.61%	24
34	Rugs Direct	\$24,000,000 ¹	0.58%	34
35	Sur La Table Inc.	\$23,326,162 ¹	0.56%	33
36	Mattress USA Inc.	\$21,800,000	0.53%	43
37	Everything Furniture Inc.	\$20,900,000 ¹	0.50%	36
38	Touch of Class	\$19,413,851	0.47%	39
39	Cost Plus Inc.	\$17,207,927 ¹	0.41%	42
40	One Way Furniture Inc.	\$16,315,541	0.39%	47
41	Nebraska Furniture Mart	\$14,687,500 ¹	0.35%	49
42	Tupperware Brands Corp.	\$13,850,000 ¹	0.33%	45
43	Wisteria	\$13,800,000 ¹	0.33%	46
44	Everything2go.com LLC	\$13,000,000	0.31%	44
45	MaxFurniture.com	\$12,593,000	0.30%	48
46	Organize.com Inc.	\$12,500,000	0.30%	50
47	Gump's Inc.	\$12,000,000	0.29%	NA
Total 2010 housewares/home furnishings category sales		\$4,152,026,004		
Total 2009 housewares/home furnishings category sales		\$3,528,253,534		
Growth			17.7%	
Category share of total 2010 Top 500 sales			2.8%	
Category share of total 2009 Top 500 sales			2.8%	

¹ Internet Retailer estimate

Garcia Declaration Exhibit B

OPERATING DATA

FINANCIAL

2010 Sales: \$456,500,000
 2009 Sales: \$375,600,000
 2008 Sales: \$366,600,000
 2007 Sales: \$339,300,000
 2006 Sales: \$315,100,000
 2010 Growth Rate: 21.54%

OPERATIONS

Monthly Visits: 10,000,000¹
 Monthly Unique Visitors: 4,444,418⁴
 Conversion Rate: 5.50%¹
 Average Ticket: \$66
 Total SKUs on Web: 34,000,000
 Number of states sales tax collected in: 3

WEB SITE SUMMARY

URL: drugstore.com, Beauty.com
 Year Launched: 1999
 Category: Health/Beauty
 Merchant Type: Web Only
 Parent Company: drugstore.com Inc.

CUSTOMER SATISFACTION⁵

Browser Satisfaction: 79
 Purchase Intent Score: 83
 Multichannel Value Index: 81

PERFORMANCE⁶

Response Time: 3.93 seconds
 Site Availability: 99.97%
 Consistency: Fair

MARKETING

Search Engine Shoppers 2010: 37% of all traffic?
 Search Engine Shoppers 2009: 39% of all traffic?
 New Shoppers 2010: 74% of all traffic?
 Return Shoppers 2010: 26% of all traffic?
 Monthly E-Mail Campaigns: 5
 With Incentives: 4
 With Links to Social Networks: 4
 SEO Effectiveness: Excellent⁹
 Number of Affiliates: NA

SHOPPER PROFILE⁴

Male: 38% / Female: 62%
 Age 24 or less: 12% / 25 to 34: 19%
 35 to 44: 21% / 45 to 54: 20% / 55 and up: 27%
 Annual Household Income
 \$30,000 or less: 26%
 \$30,001 to \$60,000: 21%
 \$60,001 to \$100,000: 30%
 More than \$100,000: 23%

CORPORATE INFORMATION

Dawn Lepore, Chairman/CEO
 411 108th Ave. N.E., Suite 1400
 Bellevue, WA 98004
 425-372-3200

46. drugstore.com Inc.

In March, Walgreen Co. announced plans to buy drugstore.com in a deal valued at \$429 million. Under the terms of the deal, Walgreens was to pay \$3.80 per share for drugstore.com's common stock. Walgreens expected the deal to close by the end of June. Drugstore.com, retailer of health, beauty and vision products, says it expects annual revenue of at least \$750 million in 2013, with mobile and social media helping the company get there. The company, which operates drugstore.com, Beauty.com, SkinStore.com and VisionDirect.com, has historically posted strong and growing sales numbers, but has yet to report a consistent annual profit. The e-retailer projects net income of \$15 million and ongoing adjusted EBITDA, or earnings before interest, taxes, depreciation and amortization, of at least \$41 million for 2013. "Our market opportunity is expansive and although we are facing a competitive environment with margin pressure, I believe that we are executing on our strategy to strengthen and grow our leadership position," says chief executive Dawn Lepore. Outlining its growth strategy in a meeting with Wall Street analysts in New York, drugstore.com said it would focus on retaining and expanding its customer base, leveraging emerging marketing channels and increasing its reach into new market segments. The company plans to expand its use of mobile technology and social media, an effort that includes the Facebook store the retailer launched in January. "Ultimately, we are using social networking to drive business," said David Lonczak, chief marketing officer, during the event. "We have seen some very early positive signs that we can convert fans to customers." Drugstore.com's Facebook fan base went from 400 in June 2010 to more than 200,000 by late February.



WEB SITE SERVICES

Features & Functions

- 360-Degree Spin
- Affiliate Program
- Auction
- Blogs
- Catalog Quick Order
- Color Swatching
- Coupons/Rebates
- Customer Reviews
- Daily/Seasonal Specials
- Dynamic Imaging
- E-Mail a Friend
- Enlarged Product View
- Frequent Buyer Program
- Frequently Asked Questions
- Gadgets
- Guided Navigation
- Interactive Catalog
- Interactive Kiosks
- Mapping
- Mash-ups

- Microsites
- Mobile Commerce
- Mouseover
- Online Circular
- Online Gift Certificates
- Outlet Center
- Pre-Orders
- Product Comparisons
- Product Customization
- Product Ratings
- Product Recommendations
- Product Wikis
- Registry
- RSS Feed
- Site Personalization
- Social Networking
- Store Locator
- Syndicated Content
- Top Sellers
- Videocasts
- What's New

Widgets

- Wish List
- Zoom

Payments

- Amazon Checkout
- American Express
- Bill Me Later
- Deferred Payment
- Discover
- eBillme
- eLayaway
- Electronic Checks
- Google Checkout
- MasterCard
- PayPal
- PayPal Express Checkout
- Private Label Credit Card
- RevolutionCard
- Stored Value Cards
- Visa

Customer Service

- Account Status/History
- Buy Online/Pick Up In Store
- Click to Call/Click to Talk
- Currency Converter
- Estimated Shipping Date
- Express Checkout
- Free Return Shipping
- Live Chat/E-Mail
- Order Confirmation
- Order Status
- Pre-paid labels
- Rain Checks
- Real-Time Inventory Check
- Ship to Multiple Addresses
- Shipping Cost Calculator
- Shipment Tracking
- Toll-Free Number

For social networks, online marketplaces and e-mail marketing, see p. 54.

VENDORS

Affiliate Marketing: LinkShare, Commission Junction
Comparison Engine Feeds: ChannelAdvisor
Content Delivery: In-house, Adobe Scene7, Akamai
Content Management: In-house
CRM: In-house
Customer Reviews & Forums: PowerReviews
Customer Service Software: In-house, RightNow Technologies
E-Commerce Platform: In-house

E-Mail Marketing: In-house, Experian CheethaMail
Fulfillment: In-house, CommerceHub, UPS Connectship
Live Chat/Click to Call: RightNow Technologies
Marketplace Management: ChannelAdvisor
Order Management: In-house, UPS Connectship
Payment Security: VeriSign
Payment Systems: Chase Paymentech
Personalization: In-house

Rich Media: Adobe Scene7, LiveClicker
Search Engine Marketing: In-house
Security Certification: Anitian
Shipping Carrier: UPS, USPS
Site Design: In-house
Site Search: Endeca
Web Analytics: In-house, Adobe Omniture
Web Hosting: SAVVIS
Web Performance Monitoring: TrueSight

1. Internet Retailer estimate. 2. Internet Retailer estimate based on avg. daily visits as reported by comScore Inc. 3. Monthly avg. by comScore. 4. Monthly avg. by Compete Inc. ssa p. 105.
 5. ACSI Methodology by Forrester Results, see p. 88. 6. Jan. 2011, Compunware Gomez, see p. 87. 7. Jan. 2011, Experian Hitwise, see p. 105. 8. Jan. 2011, Silverpop Systems Inc., ssa p. 88. 9. Jan. 2011 by Conductor Inc., see p. 105.

Garcia Declaration Exhibit C

Top 100 e-retailers

(Web sales as a percentage of total sales)

Rank	2009 web sales	2009 total sales	2009 % of total sales	2008 % of total sales
1 Amazon.com Inc.	\$24,510,000,000	\$24,510,000,000	100%	100%
2 Staples Inc.	\$9,800,000,000	\$24,275,451,000	40%	33%
3 Dell Inc.	\$4,530,000,000 ¹	\$52,902,000,000	9%	8%
4 Apple Inc.	\$4,250,000,000 ¹	\$36,537,000,000 [*]	12%	11%
5 Office Depot Inc.	\$4,100,000,000	\$12,144,467,000	34%	33%
6 Walmart.com	\$3,500,000,000	\$405,000,000,000	1%	1%
7 OfficeMax Inc.	\$2,775,357,614 ¹	\$7,212,050,000	38%	37%
8 Sears Holdings Corp. ²	\$2,774,236,608 ¹	\$44,043,000,000	6%	6%
9 CDW Corp.	\$2,470,115,995 ¹	\$8,200,000,000 ¹	30%	30%
10 Best Buy Co.	\$2,458,523,604 ¹	\$49,700,000,000	5%	6%
11 Liberty Media Corp. ³	\$2,378,100,000 ¹	\$8,331,000,000	29%	27%
12 Newegg Inc.	\$2,300,000,000	\$2,300,000,000	100%	100%
13 SonyStyle.com	\$1,880,000,000 ¹	\$79,987,952,085	2%	2%
14 Netflix Inc.	\$1,670,269,000	\$1,670,269,000	100%	100%
15 Costco Wholesale Corp.	\$1,800,000,000	\$71,422,000,000	2%	2%
16 J.C. Penney Co. Inc.	\$1,500,000,000	\$17,556,000,000	9%	8%
17 HP Home & Home Office Store	\$1,482,030,000 ¹	\$114,600,000,000	1%	1%
18 Victoria's Secret	\$1,445,000,000 ¹	\$8,632,489,000	17%	15%
19 W.W. Grainger Inc.	\$1,371,000,000	\$6,221,991,000	22%	22%
20 Macy's Inc.	\$1,243,840,000 ¹	\$23,489,000,000	5%	4%
21 Target Corp.	\$1,209,208,320 ¹	\$83,435,000,000	2%	2%
22 Systemax Inc. ⁴	\$1,170,000,000 ¹	\$3,200,000,000	37%	35%
23 Gap Inc. Direct	\$1,120,000,000	\$14,200,000,000	8%	7%
24 L.L. Bean Inc.	\$1,064,497,500 ¹	\$1,400,000,000	76%	76%
25 HSN Inc.	\$1,015,000,000	\$2,740,000,000	37%	36%
26 Williams-Sonoma Inc. ⁵	\$943,000,000	\$3,100,000,000	30%	31%
27 Amway Global	\$885,969,000 ¹	\$1,100,000,000 ¹	81%	81%
28 Overstock.com Inc.	\$876,769,000	\$876,769,000	100%	100%
29 Nordstrom Inc.	\$784,100,000 ¹	\$8,258,000,000	9%	8%
30 Avon Products Inc.	\$738,711,509 ¹	\$10,382,800,000	7%	7%
31 Redcats USA ⁶	\$714,892,000	\$2,056,000,000	35%	35%
32 Buy.com Inc.	\$690,345,810 ¹	\$690,345,810 ¹	100%	100%
33 Symantec Corp.	\$650,000,000	\$6,200,000,000	10%	10%
34 Blockbuster Inc.	\$552,720,000 ¹	\$4,060,000,000	14%	10%
35 Cabela's Inc.	\$536,369,000 ¹	\$2,447,635,000	22%	19%
36 Vistaprint Ltd.	\$515,826,000	\$515,826,000	100%	100%
37 Toys 'R' Us Inc.	\$515,000,000 ¹	\$13,568,000,000	4%	4%
38 Musician's Friend Inc. ⁷	\$513,600,000	\$2,550,000,000 ¹	20%	23%
39 The Home Depot Inc.	\$500,000,000	\$66,200,000,000	1%	1%
40 1-800-Flowers.com Inc.	\$498,500,000	\$713,950,000	70%	70%
41 The Neiman Marcus Group Inc.	\$498,000,000	\$3,640,000,000	14%	13%
42 BarnesandNoble.com Inc.	\$493,000,000 ¹	\$5,776,000,000 ¹	9%	9%
43 Kohl's Corp.	\$491,500,000	\$17,170,000,000	3%	2%
44 PC Connection Inc.	\$468,600,000	\$1,570,000,000	30%	29%
45 Saks Direct	\$430,023,866 ¹	\$2,631,500,000	16%	13%
46 drugstore.com Inc.	\$412,832,000	\$412,832,000	100%	100%
47 Peapod LLC	\$410,300,000 ¹	\$410,300,000	100%	100%
48 Nike Inc.	\$376,671,165 ¹	\$19,176,100,000	2%	2%
49 Scholastic Inc.	\$350,000,000	\$1,849,300,000 [*]	19%	21%
50 J. Crew Group Inc.	\$346,680,000 ¹	\$1,578,000,000	22%	24%
51 American Eagle Outfitters Inc.	\$344,300,000	\$2,990,000,000	12%	10%
52 Foot Locker Inc.	\$344,000,000	\$4,850,000,000	7%	6%
53 Urban Outfitters Inc.	\$323,680,000	\$1,937,815,000	17%	15%
54 Market America	\$321,346,855	\$331,693,860	97%	97%
55 Follett Higher Education Group	\$315,000,000	\$14,000,000,000 ¹	2%	2%
56 Nutrisystem Inc.	\$308,618,241	\$527,700,000	59%	55%
57 Oriental Trading Co. Inc.	\$305,000,000 ¹	\$600,000,000 ¹	51%	51%
58 Blue Nile Inc.	\$302,100,000	\$302,100,000	100%	100%
59 FTD Group Inc.	\$281,000,000 ¹	\$585,845,000	48%	48%
60 Crate and Barrel	\$277,000,000	\$1,520,000,000 ¹	18%	21%
61 CSN Stores LLC	\$270,478,000 ¹	\$270,478,000 ¹	100%	100%
62 Recreational Equipment Inc.	\$259,160,580 ¹	\$1,460,000,000	18%	17%

Rank	2009 web sales	2009 total sales	2009 % of total sales	2008 % of total sales
63 Orchard Brands Corp. ⁸	\$255,132,000	\$1,100,000,000 ¹	23%	23%
64 Signature Styles LLC	\$251,000,000 ¹	\$300,000,000 ¹	84%	84%
65 Abercrombie & Fitch Co.	\$249,400,000	\$2,980,000,000	8%	8%
66 Disney Shopping Inc.	\$246,600,000 ¹	\$2,400,000,000	10%	10%
67 Shutterfly Inc.	\$246,400,000	\$246,400,000	100%	100%
68 Walgreen Co.	\$242,000,000 ¹	\$63,300,000,000	0.4%	0.4%
69 Hayneedle Inc.	\$241,500,000 ¹	\$241,500,000 ¹	100%	100%
70 FreshDirect LLC	\$240,000,000	\$240,000,000	100%	100%
71 Northern Tool + Equipment Co.	\$210,000,000	\$700,000,000 ¹	30%	25%
72 Bass Pro Outdoor Online LLC	\$208,395,893 ¹	\$2,800,000,000 ¹	7%	7%
73 CVS Caremark Corp.	\$207,757,095 ¹	\$98,729,000,000	0.2%	0.2%
74 Sierra Trading Post Inc.	\$205,261,200 ¹	\$255,000,000 ¹	80%	80%
75 Army & Air Force Exchange Service	\$201,301,000	\$9,800,000,000	2%	2%
76 Ralph Lauren Media LLC	\$200,000,000	\$5,020,000,000	4%	4%
77 Shoebuy.com Inc.	\$199,920,000 ¹	\$199,920,000 ¹	100%	100%
78 Coldwater Creek Inc.	\$198,077,740 ¹	\$1,038,600,000	19%	19%
79 Weight Watchers International Inc.	\$196,000,000	\$1,400,000,000	14%	12%
80 Vitacost.com Inc.	\$191,800,000	\$191,800,000	100%	100%
81 Lowe's Cos. Inc.	\$190,100,000 ¹	\$47,200,000,000	0.4%	0.4%
82 Etronics Inc.	\$184,000,000 ¹	\$184,000,000 ¹	100%	100%
83 Net-a-Porter LLC	\$182,850,624	\$182,850,624	100%	100%
84 Harry and David Holdings Inc.	\$182,600,000	\$489,600,000	37%	35%
85 Diapers.com	\$182,000,000	\$182,000,000	100%	100%
86 Eddie Bauer	\$181,000,000 ¹	\$1,023,000,000 ¹	18%	18%
87 The Swiss Colony Inc. ⁹	\$178,500,000 ¹	\$1,023,000,000 ¹	17%	17%
88 Bluestem Brands Inc.	\$177,900,000	\$584,100,000 ¹	30%	30%
89 ShopNBC.com	\$177,900,000	\$527,800,000	34%	32%
90 School Specialty Online	\$177,500,000	\$1,046,980,000	17%	17%
91 U.S. Auto Parts Network	\$176,288,000	\$176,288,000	100%	100%
92 Safeway Inc.	\$169,780,800 ¹	\$40,850,700,000	0.4%	0.4%
93 YOOX Group	\$169,508,482	\$169,508,482	100%	100%
94 Hanover Direct Inc. ¹⁰	\$169,200,000	\$400,000,000 ¹	42%	42%
95 1-800 Contacts Inc.	\$168,053,600 ¹	\$248,700,000 ¹	68%	68%
96 Green Mountain Coffee Roasters Inc.	\$166,392,162	\$803,000,000	21%	21%
97 Build.com Inc.	\$166,320,000	\$166,320,000	100%	100%
98 PC Mall Inc.	\$161,000,000	\$1,130,000,000	14%	15%
99 RealNetworks Inc.	\$160,900,000	\$562,300,000	29%	27%
100 Art.com Inc.	\$158,401,212 ¹	\$158,401,212	100%	100%
Top 100 retailers' 2009 web sales			\$108,931,011,476	
Total Internet retailing industry 2009 web sales			\$134,900,000,000	
Top 100 share of total			80.8%	

- Internet Retailer estimate *Figure is for fiscal year 2009
- Sears Holdings Corp. includes Sears.com, Kmart.com, Craftsman.com, Kenmore.com, LandsEnd.com, SearsPartsDirect.com and ManageMyHome.com.
- Liberty Media Corp. includes QVC.com, ProFlowers.com, Backcountry.com, ShansBerries.com, Bodybuilding.com, RedEnvelope.com and CelebrateExpress.com.
- Systemax Inc. includes TigerDirect.com, SystemaxPC.com, GlobalComputer.com, GlobalIndustrial.com, CompUSA.com, Systemax.com, CircuitCity.com and ProfitCenter.com.
- Williams-Sonoma Inc. includes Williams-Sonoma.com, PotteryBarn.com, PotteryBarnKids.com, PBTeen.com, WestElm.com and WSHome.com.
- Redcats USA includes SportsmansGuide.com, WomanWithin.com, Reamans.com, JessicaLondon.com, KingSizeDirect.com, OneStopPlus.com, Avenue.com, BCOtlet.com, BrylaneHome.com, BoatingSavings.com, BargainOutfitters.com, TGW.com, Redcats.com, BaseballSavings.com and SoftballSavings.com.
- Musician's Friend Inc. includes MusiciansFriend.com, GuitarCenter.com, Music123.com, WWBW.com, Musician.com, MusicArts.com, GuitarSale.com, MiSupply.com and 4Lyons.com.
- Orchard Brands Corp. includes Blair.com, NormThompson.com, Haband.com, Appleseeds.com, Drapers.com, GoldViolin.com, Sahalie.com, Solutions.com, TogShop.com, WinterSilks.com, ShopTheBay.com, OldPuebloTraders.com, BedfordFair.com, CowardShoes.com, Willowridge.com, LewMagram.com and BrownstoneStudio.com.
- The Swiss Colony Inc. includes SwissColony.com, Wards.com, HomeVisions.com, SeventhAvenue.com, MidnightVelvet.com, Ginnys.com, CountryDoor.com, MonroeAndMain.com, TenderFleet.com, Ashro.com and RaceTeamGear.com.
- Hanover Direct includes TheCompanyStore.com, Domestications.com, InternationalMale.com, Silhouettes.com, UnderGear.com, ScendialDown.com and CompanyKids.com.

Top 25 merchants ranked by category

Catalog/call center			
Rank	2009 web sales	2008 web sales	Growth
9	CDW Corp.	\$2,470,115,995 ¹	\$2,600,122,100 ¹ -5.00%
11	Liberty Media Corp.	\$2,378,100,000 ¹	\$2,763,361,800 ¹ -13.94%
22	Systemax Inc.	\$1,170,000,000 ¹	\$1,072,071,000 ¹ 9.13%
24	L.L. Bean Inc.	\$1,064,497,500 ¹	\$1,043,625,000 ¹ 2.00%
25	HSN Inc.	\$1,015,000,000	\$1,016,280,000 -0.13%
30	Avon Products Inc.	\$738,711,509 ¹	\$753,787,255 ¹ -2.00%
31	Redcats USA	\$714,892,000	\$616,947,716 15.88%
35	Cabela's Inc.	\$536,369,000 ¹	\$496,638,000 ¹ 8.00%
38	Musicians' Friend Inc.	\$513,600,000	\$530,618,387 -3.21%
40	1-800-Flowers.com inc.	\$498,500,000	\$584,100,000 -14.66%
44	PC Connection Inc.	\$468,600,000	\$515,700,000 -9.13%
49	Scholastic Inc.	\$350,000,000	\$455,000,000 -23.08%
56	Nutrisystem Inc.	\$308,618,241	\$376,121,706 -17.95%
57	Oriental Trading Co. Inc.	\$305,000,000 ¹	\$330,000,000 ¹ -7.58%
63	Orchard Brands Corp.	\$255,132,000	\$267,200,000 -4.52%
64	Signature Styles LLC	\$251,000,000 ¹	\$264,782,931 ¹ -5.21%
71	Northern Tool + Equipment Co.	\$210,000,000	\$200,000,000 5.00%
74	Sierra Trading Post Inc.	\$205,261,200 ¹	\$200,799,000 ¹ 2.22%
79	Weight Watchers International Inc.	\$196,000,000	\$185,800,000 5.49%
84	Harry and David Holdings Inc.	\$182,600,000	\$193,700,000 -5.73%
87	The Swiss Colony Inc.	\$178,500,000 ¹	\$175,000,000 ¹ 2.00%
88	Bluestem Brands Inc.	\$177,900,000	\$158,900,000 11.96%
89	ShopNBC.com	\$177,900,000	\$181,200,000 -1.82%
90	School Specialty Online	\$177,500,000	\$180,000,000 -1.39%
94	Hanover Direct Inc.	\$169,200,000 ¹	\$183,040,000 ¹ -7.56%
		2009 Top 25 catalog/call center sales	\$14,712,997,445
		2009 Total catalog/call center sales	\$18,325,630,824
		2008 Top 25 catalog/call center sales	\$15,344,794,895
		Growth	-4.1%
		Share of total	80.3%

Consumer brand manufacturer			
Rank	2009 web sales	2008 web sales	Growth
3	Dell Inc.	\$4,530,000,000 ¹	\$4,830,000,000 ¹ -6.21%
4	Apple Inc.	\$4,250,000,000 ¹	\$3,642,118,080 ¹ 16.69%
13	SonyStyle.com	\$1,880,000,000 ¹	\$1,827,577,534 ¹ 2.87%
17	HP Home & Home Office Store	\$1,482,030,000 ¹	\$1,497,000,000 ¹ -1.00%
33	Symantec Corp.	\$650,000,000	\$646,020,000 ¹ 0.62%
48	Nike Inc.	\$376,671,165 ¹	\$365,700,160 ¹ 3.00%
76	Ralph Lauren Media LLC	\$200,000,000	\$180,000,000 11.11%
127	LEGO Brand Retail Inc.	\$109,000,000 ¹	\$88,365,816 ¹ 23.35%
131	NBTY Inc.	\$104,000,000	\$92,800,000 12.07%
133	The Estee Lauder Cos. Inc.	\$101,100,000 ¹	\$99,000,000 ¹ 2.12%
151	Crocs Inc.	\$89,000,000	\$43,700,000 103.66%
162	Panasonic Corp. of North America	\$81,916,800 ¹	\$77,280,000 ¹ 6.00%
164	Coach Inc.	\$81,090,000 ¹	\$79,500,000 ¹ 2.00%
170	Deckers Outdoor Corp.	\$75,700,000	\$68,800,000 10.03%
182	Shoes.com inc.	\$68,100,000	\$74,200,000 -8.22%
186	adidas America Inc.	\$65,000,000 ¹	\$60,710,000 ¹ 7.07%
215	Under Armour Inc.	\$52,850,000 ¹	\$35,000,000 ¹ 51.00%
218	Tempur-Pedic International Inc.	\$51,900,000 ¹	\$47,597,000 ¹ 9.04%
219	Jones Retail Corp.	\$51,500,000	\$32,000,000 60.94%
226	Fossil Inc.	\$50,250,000	\$45,700,000 9.96%
241	NB Web Express	\$45,825,000	\$37,421,000 22.46%
248	Bose Corp.	\$43,500,000 ¹	\$42,282,000 ¹ 2.88%
249	Oakley Inc.	\$42,352,200 ¹	\$38,502,000 ¹ 10.00%
252	Vera Bradley Retail Stores LLC	\$41,000,000 ¹	\$38,902,500 ¹ 5.39%
262	Ges? Inc.	\$38,184,089 ¹	\$39,365,040 ¹ -3.00%
		2009 Top 25 consumer brand manufacturer sales	\$14,560,969,254
		2009 Total consumer brand manufacturer sales	\$15,306,935,536
		2008 Top 25 consumer brand manufacturer sales	\$14,029,541,130
		Growth	9.2%
		Share of total	95.1%

Retail chain			
Rank	2009 web sales	2008 web sales	Growth
2	Staples Inc.	\$9,800,000,000	\$7,700,000,000 27.27%
5	Office Depot Inc.	\$4,100,000,000	\$4,800,000,000 -14.58%
6	Walmart.com	\$3,500,000,000 ¹	\$2,922,500,000 ¹ 19.76%
7	OfficeMax Inc.	\$2,775,357,614 ¹	\$3,083,730,683 ¹ -10.00%
8	Sears Holdings Corp.	\$2,774,236,608 ¹	\$2,693,433,600 ¹ 3.00%
10	Best Buy Co.	\$2,458,523,604 ¹	\$2,049,000,000 ¹ 20.00%
15	Costco Wholesale Corp.	\$1,600,000,000	\$1,700,000,000 -5.88%
16	J.C. Penney Co. Inc.	\$1,500,000,000	\$1,500,000,000 0.00%
18	Victoria's Secret	\$1,445,000,000	\$1,333,000,320 ¹ 8.40%
19	W.W. Grainger Inc.	\$1,371,000,000	\$1,450,000,000 -5.45%
20	Macy's Inc.	\$1,243,840,000 ¹	\$1,040,000,000 ¹ 19.60%
21	Target Corp.	\$1,209,208,320 ¹	\$1,209,208,320 ¹ 0.00%
23	Gap Inc. Direct	\$1,120,000,000	\$1,030,000,000 8.74%
26	Williams-Sonoma Inc.	\$943,000,000	\$1,033,000,000 -8.71%
29	Nordstrom Inc.	\$784,100,000 ¹	\$686,200,000 ¹ 14.27%
34	Bloodbuster Inc.	\$552,720,000 ¹	\$526,400,000 ¹ 5.00%
37	Toys 'R' Us Inc.	\$515,000,000 ¹	\$500,000,000 ¹ 3.00%
39	The Home Depot Inc.	\$500,000,000	\$530,000,000 ¹ -5.66%
41	The Neiman Marcus Group Inc.	\$496,000,000	\$564,500,000 -12.13%
42	BarnesandNoble.com Inc.	\$493,000,000 ¹	\$466,000,000 5.79%
43	Kohl's Corp.	\$491,500,000	\$356,000,000 38.06%
45	Saks Direct	\$430,023,866 ¹	\$380,552,094 ¹ 13.00%
50	J. Crew Group Inc.	\$346,680,000 ¹	\$338,200,000 2.51%
51	American Eagle Outfitters Inc.	\$344,300,000	\$307,000,000 12.15%
52	Foot Locker Inc.	\$344,000,000	\$322,000,000 6.83%
		2009 Top 25 retail chain sales	\$41,137,490,013
		2009 Total retail chain sales	\$49,807,531,328
		2008 Top 25 retail chain sales	\$38,520,725,017
		Growth	6.8%
		Share of total	82.6%

Web only			
Rank	2009 web sales	2008 web sales	Growth
1	Amazon.com Inc.	\$24,510,000,000	\$19,170,000,000 27.86%
12	Newegg Inc.	\$2,300,000,000	\$2,100,000,000 9.52%
14	Netflix Inc.	\$1,670,269,000	\$1,364,661,000 22.30%
27	Amway Global	\$885,969,000 ¹	\$904,050,000 ¹ -2.00%
28	Overstock.com Inc.	\$876,769,000	\$829,850,000 5.65%
32	Buy.com Inc.	\$690,345,810 ¹	\$657,472,200 ¹ 5.00%
36	Vistaprint Ltd.	\$515,826,000	\$400,700,000 28.73%
46	drugstore.com Inc.	\$412,832,000	\$366,600,000 12.61%
47	Peapod LLC	\$410,300,000 ¹	\$373,000,000 10.00%
54	Market America	\$321,346,855	\$238,456,086 34.76%
58	Blue Nile Inc.	\$302,100,000	\$295,300,000 2.30%
59	FTD Group Inc.	\$281,000,000 ¹	\$265,200,000 ¹ 5.96%
61	CSN Stores LLC	\$270,478,000 ¹	\$262,600,000 ¹ 3.00%
66	Disney Shopping Inc.	\$246,600,000 ¹	\$246,671,040 ¹ -0.03%
67	Shutterfly Inc.	\$246,400,000	\$213,500,000 15.41%
69	Hayneedle Inc.	\$241,500,000 ¹	\$210,000,000 ¹ 15.00%
70	FreshDirect LLC	\$240,000,000	\$220,000,000 9.09%
77	Shoebuy.com Inc.	\$199,920,000 ¹	\$180,000,000 ¹ 11.07%
80	Vitacost.com Inc.	\$191,800,000	\$143,800,000 33.57%
82	Etronics Inc.	\$184,000,000 ¹	\$194,250,000 ¹ -5.28%
83	Net-a-Porter LLC	\$182,850,624 ¹	\$159,000,000 ¹ 15.00%
85	Diapers.com	\$182,000,000	\$89,000,000 104.49%
91	U.S. Auto Parts Network	\$176,288,000	\$153,400,000 14.92%
93	YOOX Group	\$169,508,482	\$117,365,992 44.43%
97	Build.com Inc.	\$166,320,000	\$102,000,000 63.06%
		2009 Top 25 web only sales	\$35,874,422,771
		2009 Total web only sales	\$42,940,041,028
		2008 Top 25 web only sales	\$29,256,676,318
		Growth	22.6%
		Share of total	83.5%

1. Internet Retailer estimate

Garcia Declaration Exhibit C

THE TOP 500 WEB RETAILERS RANKED BY PRINCIPAL MARKET

13 National Trade Supply	353	\$22,750,649	0.80%	15
14 Toolup.com	359	\$21,600,000	0.76%	11
15 Manufacturers Resource Network	389	\$18,800,000 ¹	0.66%	10
16 Vintage Tub and Bath	412	\$16,597,081	0.58%	17
17 W.E. Aubuchon Inc.	431	\$15,300,000 ¹	0.54%	16
18 Toolfetch.com LLC	441	\$14,500,000	0.51%	22
19 Air & Water Inc.	464	\$12,800,000 ¹	0.45%	NA
20 Net Direct Merchants	467	\$12,700,000	0.45%	NA
21 Ace Hardware Corp.	481	\$11,881,484	0.42%	23
22 KitchenSource.com	482	\$11,800,000	0.41%	18
23 Bulbs.com	485	\$11,500,000	0.40%	20
24 DrillSpot.com	495	\$10,754,617	0.38%	NA
Total 2009 hardware/home improvement category sales		\$2,845,528,831		
Total 2008 hardware/home improvement category sales		\$2,859,505,498		
Growth			-0.5%	
Category share of total 2009 Top 500 sales			2%	
Category share of total 2008 Top 500 sales			2%	

Health/Beauty

The online health and beauty segment is dominated by Amway Global (No. 27) and Avon Products Inc. (No. 30), which together accounted for 45.7% of all category sales. But the growth in the segment, which increased web sales 8% to \$3.55 billion in 2009 from \$3.28 billion in 2008, was driven by smaller companies, including Vitacost.com Inc. (No. 80), which grew web sales 33.6% to \$191.8 million in 2009 from \$143.6 million in the prior year, and drugstore.com (No. 46), which increased revenue 12.6% to \$412.8 million from \$366.6 million in 2008. The fastest-growing merchant was Diapers.com with a year over year increase of 104.5%.

Rank in category	Top 500 Rank	2009 web sales	Share	2008 rank in category
1 Amway Global	27	\$885,969,000 ¹	24.95%	1
2 Avon Products Inc.	30	\$738,711,509 ¹	20.80%	2
3 drugstore.com Inc.	46	\$412,832,000	11.62%	4
4 Vitacost.com Inc.	80	\$191,800,000	5.40%	5
5 Diapers.com	85	\$182,000,000	5.12%	8
6 1-800 Contacts Inc.	95	\$168,053,600 ¹	4.73%	3
7 Coastal Contacts Inc.	110	\$140,000,000	3.94%	6
8 Sephora USA Inc.	112	\$138,753,400 ¹	3.91%	4
9 The Estee Lauder Cos. Inc.	133	\$101,100,000 ¹	2.85%	7
10 FragranceNet.com Inc.	149	\$90,000,000	2.53%	9
11 iHerb Inc.	159	\$84,000,000	2.37%	11
12 VitaminShoppe.com	177	\$70,417,000 ¹	1.98%	10
13 General Nutrition Centers Inc.	237	\$47,000,000 ¹	1.32%	14
14 Folicia Inc.	253	\$40,788,000 ¹	1.15%	13
15 Galiam Inc.	265	\$37,686,448	1.06%	15
16 AC Lens	300	\$29,100,000	0.82%	16
17 BlissWorld LLC	336	\$24,610,000 ¹	0.69%	17
18 ULTA Salon, Cosmetics & Fragrance Inc.	356	\$22,115,995 ¹	0.62%	18
19 Sally Beauty	361	\$21,000,000 ¹	0.59%	NA
20 Lancome-USA.com	378	\$19,762,704 ¹	0.56%	19
21 Beauty Encounter Inc.	384	\$19,364,000 ¹	0.55%	20
22 AED Superstore	386	\$19,020,838	0.54%	21
23 Boston Green Goods Inc.	396	\$18,013,000	0.51%	22
24 Scentsiments.com	407	\$17,000,000	0.48%	23
25 SkinCareRX	418	\$16,254,397	0.46%	NA
26 AmericaRX.com	423	\$16,042,290	0.45%	24
Total 2009 health/beauty category sales		\$3,551,394,182		
Total 2008 health/beauty category sales		\$3,287,069,845		
Growth			8%	
Category share of total 2009 Top 500 sales			3%	
Category share of total 2008 Top 500 sales			3%	

Housewares/Home Furnishings

Combined web sales for all housewares/home furnishings web merchants declined 5% in 2009 to \$3.58 billion from \$3.77 billion in 2008. But results for the category leader, Williams-Sonoma (No. 26), which accounts for 26.3% of all sales, were looking up at year's end. For the year, internet revenue decreased about 8.4% to \$943.0 million from \$1.03 billion in fiscal 2008, but in the last quarter increased 14.9% to \$309 million from \$269 million in Q4 of 2008. Web sales also declined year over year for runner-up Crate and Barrel (No. 60), which represented about 8% of sales in the housewares/home furnishings category. Crate and Barrel's web sales declined 8.9% to \$277.0 million in 2009.

Rank in category	Top 500 Rank	2009 web sales	Share	2008 rank in category
1 Williams-Sonoma Inc.	26	\$943,000,000	26.31%	1
2 Crate and Barrel	60	\$277,000,000	7.73%	2
3 CSN Stores LLC	61	\$270,478,000 ¹	7.55%	3
4 Hanover Direct Inc.	94	\$169,200,000 ¹	4.72%	4
5 Art.com Inc.	100	\$158,401,212 ¹	4.42%	6
6 Restoration Hardware Inc.	104	\$156,000,000 ¹	4.35%	5
7 AJ Madison Inc.	141	\$95,900,000 ¹	2.68%	8
8 Lamps Plus Inc.	148	\$91,000,000 ¹	2.54%	10
9 Bed Bath & Beyond Inc.	154	\$86,150,000 ¹	2.40%	9
10 Cymax Stores Inc.	167	\$80,000,000	2.23%	18
11 Replacements Ltd.	171	\$75,037,906	2.09%	12
12 Cooking.com Inc.	178	\$70,225,000 ¹	1.96%	13
13 Brookstone Inc.	181	\$68,848,000 ¹	1.92%	11
14 Furniture.com Inc.	200	\$58,948,824 ¹	1.64%	14
15 AmericanBlinds.com	208	\$55,900,000 ¹	1.56%	17
16 IKEA.com	209	\$55,480,000 ¹	1.55%	NA
17 Thompson and Company of Tampa Inc.	216	\$52,400,000 ¹	1.46%	15
18 Tempur-Pedic International Inc.	218	\$51,900,000 ¹	1.45%	20
19 Rooms To Go Inc.	222	\$51,200,000 ¹	1.43%	16
20 Blinds.com	231	\$49,100,000	1.37%	19
21 Miles Kimball Co.	258	\$39,617,000	1.11%	21
22 Living Direct Inc.	259	\$39,000,000	1.09%	25
23 Instawares LLC	272	\$36,500,000 ¹	1.02%	23
24 Select Shops	275	\$35,943,000	1.00%	24
25 Lillian Vernon Corp.	276	\$35,832,388	1.00%	7
26 Select Comfort Corp.	303	\$29,000,000	0.81%	22
27 Bellacor Inc.	307	\$28,100,000 ¹	0.78%	29
28 1800Mattress.com	316	\$27,450,000 ¹	0.77%	26
29 Lakeside Collection	320	\$26,450,000 ¹	0.74%	27
30 Rugs USA	323	\$26,250,000 ¹	0.73%	28
31 Lifetime Brands	328	\$25,834,997	0.72%	NA
32 The Container Store Inc.	332	\$25,352,806	0.71%	30
33 Stacks and Stacks	343	\$23,900,000 ¹	0.67%	32
34 Rugs Direct	349	\$23,200,000 ¹	0.65%	33
35 Sur La Table Inc.	371	\$20,108,760 ¹	0.56%	51
36 Everything Furniture Inc.	376	\$19,850,000 ¹	0.55%	36
37 IvyStores LLC	380	\$19,700,000 ¹	0.55%	37
38 Ira Wood & Sons Inc.	390	\$18,700,000 ¹	0.52%	38
39 Touch of Class	394	\$18,491,385	0.52%	35
40 One Way Furniture Inc.	406	\$17,020,000 ¹	0.47%	36
41 Design Within Reach Inc.	409	\$16,900,000 ¹	0.47%	34
42 Cost Plus Inc.	414	\$16,546,084 ¹	0.46%	40
43 Mattress USA Inc.	458	\$13,300,000	0.37%	45
44 Everything2go.com LLC	460	\$13,000,000	0.36%	41
45 Tupperware Brands Corp.	469	\$12,600,000 ¹	0.35%	46
46 Wisteria	473	\$12,400,000 ¹	0.35%	NA
47 Artful Home	479	\$11,920,000 ¹	0.33%	44
48 MaxFurniture.com	480	\$11,900,000	0.33%	43
49 Nebraska Furniture Mart	483	\$11,750,000 ¹	0.33%	NA
50 Organize.com Inc.	486	\$11,500,000	0.32%	49
Total 2009 housewares/home furnishings category sales		\$3,584,285,362		
Total 2008 housewares/home furnishings category sales		\$3,769,888,395		
Growth			-5%	
Category share of total 2009 Top 500 sales			3%	
Category share of total 2008 Top 500 sales			3%	

1. Internet Retailer estimate Source: The Internet Retailer Top 500 Guide

TOP 100 WEB RETAILERS

OPERATING DATA

FINANCIAL

2009 Sales: \$412,832,000
 2008 Sales: \$366,600,000
 2007 Sales: \$339,300,000
 2006 Sales: \$315,100,000
 2005 Sales: \$303,300,000
 2009 Growth Rate: 12.61%

OPERATIONS

Monthly Visits: 9,524,000⁴
 Monthly Unique Visitors: 5,150,000⁴
 Conversion Rate: 5.50%¹
 Average Ticket: \$86
 Total SKUs on Web: 34,000,000
 Number of states sales tax collected in: 3

WEB SITE SUMMARY

URL: drugstore.com, Beauty.com
 Year Launched: 1999
 Category: Health/Beauty
 Merchant Type: Web Only
 Parent Company: drugstore.com Inc.

CUSTOMER SATISFACTION⁶

Browser Satisfaction: 80
 Purchase Intent Score: 83
 Multichannel Value Index: 82

PERFORMANCE⁶

Response Time: 2.82 seconds
 Site Availability: 99.85%
 Consistency: Good

MARKETING

Search Engine Shoppers 2009: 39% of all traffic⁷
 Search Engine Shoppers 2008: 37% of all traffic⁷
 New Shoppers 2009: 71% of all traffic⁷
 Return Shoppers 2009: 29% of all traffic⁷
 Monthly E-Mail Campaigns: 3⁸
 With Incentives: 3
 With Links to Social Networks: Yes
 SEO Effectiveness: Excellent⁹
 Number of Affiliates: NA

SHOPPER PROFILE¹⁰

Male: 36% / Female: 64%
 Age 24 or less: 13% / 25 to 34: 21%
 35 to 44: 25% / 45 to 54: 21% / 55 and up: 20%
 Annual Household Income
 \$30,000 or less: 17%
 \$30,001 to \$60,000: 22%
 \$60,001 to \$100,000: 34%
 More than \$100,000: 27%

CORPORATE INFORMATION

Dawn Lepore, Chairman/CEO
 411 108th Ave. N.E., Suite 1400
 Bellevue, WA 98004
 425-372-3200

46. drugstore.com Inc.

Drugstore.com, an online provider of health, beauty, vision and pharmacy products, finished 2009 with a strong uptick in sales, but costs related to its pending acquisition of Skinstore.com resulted in a net loss for the fourth quarter. For the quarter ended Jan. 3, 2010, drugstore.com reported sales increased about 25.6% to \$117.4 million from \$93.4 million in the fourth quarter of 2008. Sales for the web-only retailer's over-the-counter unit increased 31.9% to \$92.1 million from \$69.8 million, while sales for its contact lens and vision-related business grew year over year 13.0% to \$16.5 million from \$14.6 million. Net loss was \$1.6 million compared with net income of \$289,000 in the fourth quarter of 2008. Drugstore.com said \$1.4 million in costs related to its pending acquisition of SkinStore.com. Drugstore.com also accumulated about \$200,000 in expenses related to its new contact lens retailing deal with Luxottica Group S.p.A. Drugstore.com in December agreed to acquire Salu Inc., owner and operator of online beauty retailer SkinStore.com, in a stock-and-cash deal valued at \$36 million. The deal was expected to close in March 2010. "Our growth was driven by strong performance from our core business," says CEO Dawn Lepore. For the full year, drugstore.com also reported sales increased 12.6% to \$412.8 million from \$366.6 million in 2008. Sales for the over-the-counter unit increased 17.7% to \$306.9 million from \$260.8 million, while sales for the contacts and vision-related business grew year over year by 11.9% to \$68.7 million from \$61.4 million. Revenue for the mail-order pharmacy business decreased 16% to \$37.3 million from \$44.4 million. Net loss was \$1.4 million compared with a net loss of \$8.3 million in 2008.



WEB SITE SERVICES

FEATURES & FUNCTIONS:	Online Circular	PAYMENTS:	Order Confirmation
Affiliate Program	Online Gift Certificates	American Express	Order Status
Blogs	Outlet Center	Bill Me Later	Pre-Paid Labels
Color Swatching	Pre-Orders	Discover	Rain Checks
Coupons/Rebates	Product Ratings	Google Checkout	Real-Time Inventory
Customer Reviews	Product Recommendations	MasterCard	Check
Daily/Seasonal Specials	RSS Feed	PayPal	Shipment Tracking
Dynamic Imaging	Site Personalization	PayPal Express Checkout	Toll-Free Number
E-Mail a Friend	Social Networking	Visa	
Enlarged Product View	Syndicated Content	CUSTOMER SERVICE:	For this company's participation in social networks and online marketplaces and its site search functions, see p. 48.
Frequent Buyer Program	Top Sellers	Account Status/History	
Frequently Asked Questions	Videocasts	Estimated Shipping Date	
Guided Navigation	What's New	Express Checkout	
Microsites	Widgets	Live Chat/E-Mail	
Mobile Commerce	Zoom		

VENDORS

Affiliate Marketing: LinkShare	E-Mail Marketing: In-house, Experian CheetahMail	Search Engine Marketing: In-house
Comparison Engine Feeds: ChannelAdvisor	Fulfillment: In-house, CommerceHub,	Security Certification: Anitian
Content Delivery: In-house, Akamai, Adobe Scene7	UPS ConnectShip	Shipping Carrier: UPS, USPS
Content Management: In-house	Live Chat/Click to Call: RightNow Technologies	Site Design: In-house
CRM: In-house	Order Management: In-house, UPS ConnectShip	Site Search: Endeca
Customer Reviews & Forums: PowerReviews	Payment Security: VeriSign	Web Analytics: In-house, Adobe Omniture
Customer Service Software: In-house, RightNow Technologies	Payment Systems: Chase Paymentech	Web Hosting: SAVVIS
E-Commerce Platform: In-house	Personalization: In-house	Web Performance Monitoring: Truesight
	Rich Media: Adobe Scene7, LiveClicker	

1. Internet Retailer estimate. 2. Internet Retailer estimate based on avg. daily visits as reported by comScore Inc. 3. Monthly avg. by comScore. 4. Monthly avg. by Nielsen Online. 5. ACSI Methodology by PureSee Results, see p. 112. 6. Jan. 2010, Gomez, see p. 95. 7. Jan. 2010, Experian Hitwise, see p. 100. 8. Jan. 2010, Silverpop Systems Inc., see p. 101. 9. Jan. 2010 by Conductor Inc., see p. 113. 10. 2009 avg. per month, Compete Inc., see p. 113.

TOP 100 E-RETAILERS

(Web sales as a percentage of total sales)

Rank	2008 web sales	2008 total sales	2008 % of total sales	2007 % of total sales	
1	Amazon.com Inc.	\$19,170,000,000	\$19,170,000,000	100%	100%
2	Staples Inc.	\$7,700,000,000	\$23,100,000,000	33%	29%
3	Dell Inc.	\$4,830,000,000 ¹	\$61,101,000,000	8%	7%
4	Office Depot Inc.	\$4,800,000,000	\$14,500,000,000	33%	32%
5	Apple Inc.	\$3,642,118,080 ¹	\$32,479,000,000	11%	11%
6	OfficeMax Inc.	\$3,083,730,683 ¹	\$8,267,008,000	37%	35%
7	Sears Holdings Corp. ²	\$2,693,433,600 ¹	\$46,770,000,000	6%	5%
8	CDW Corp.	\$2,600,122,100 ¹	\$8,071,000,000	32%	30%
9	Newegg Inc.	\$2,100,000,000	\$2,100,000,000	100%	100%
10	Best Buy Co.	\$2,015,183,282 ¹	\$35,070,000,000	6%	5%
11	QVC Inc. ³	\$1,993,361,800 ¹	\$7,300,000,000	27%	25%
12	SonyStyle.com	\$1,827,577,534 ¹	\$70,303,000,000	3%	3%
13	Walmart.com	\$1,740,000,000 ¹	\$401,200,000,000	0.4%	0.4%
14	Costco Wholesale Corp.	\$1,700,000,000	\$72,500,000,000	2%	2%
15	J.C. Penney Co. Inc.	\$1,500,000,000	\$18,480,000,000	8%	8%
16	HP Home & Home Office	\$1,497,000,000 ¹	\$118,354,000,000	1%	1%
17	Circuit City Stores Inc.	\$1,414,000,000 ¹	\$11,743,691,000 ¹	12%	12%
18	Netflix Inc.	\$1,364,661,000	\$1,364,661,000	100%	100%
19	Victoria's Secret	\$1,333,000,320 ¹	\$9,042,681,000	15%	11%
20	Target Corp.	\$1,209,208,320 ¹	\$62,884,000,000	2%	2%
21	Systemax Inc.	\$1,072,071,000 ¹	\$3,062,961,000	35%	35%
22	L.L. Bean Inc.	\$1,043,625,000 ¹	\$1,500,000,000	70%	59%
23	Macy's Inc.	\$1,040,000,000 ¹	\$24,892,000,000	4%	3%
24	Williams-Sonoma Inc.	\$1,033,000,000	\$3,360,000,000	31%	28%
25	Gap Inc. Direct	\$1,030,000,000	\$14,520,000,000	7%	6%
26	HSN Inc.	\$1,016,280,000	\$2,820,000,000	36%	29%
27	Zappos.com Inc.	\$1,014,000,000	\$1,014,000,000	100%	100%
28	Amway Global	\$904,050,000 ¹	\$1,072,000,000 ¹	84%	80%
29	Overstock.com Inc.	\$834,367,000	\$834,367,000	100%	100%
30	Avon Products Inc.	\$753,787,255 ¹	\$10,588,900,000	7%	7%
31	1-800-Flowers.com Inc.	\$749,857,000	\$919,292,000	82%	82%
32	Nordstrom Inc.	\$686,200,000	\$8,272,000,000	8%	7%
33	Buy.com Inc.	\$657,472,200 ¹	\$657,472,200 ¹	100%	100%
34	Redcats USA ⁴	\$616,947,716	\$1,300,000,000 ¹	47%	42%
35	The Neiman Marcus Group	\$564,500,000	\$4,390,000,000	13%	11%
36	Musician's Friend Inc. ⁵	\$530,618,387	\$2,350,000,000 ¹	23%	21%
37	Blockbuster Inc.	\$526,400,000 ¹	\$5,290,000,000	10%	10%
38	PC Connection Inc.	\$515,700,000	\$1,750,000,000	29%	30%
39	Toys 'R' Us Inc.	\$500,000,000 ¹	\$13,724,000,000	4%	3%
40	Cabela's Inc.	\$496,638,000 ¹	\$2,552,721,000	19%	19%
41	BarnesandNoble.com	\$466,000,000	\$5,112,000,000	9%	9%
42	Scholastic Inc.	\$455,000,000	\$2,205,600,000 [*]	21%	18%
43	The Home Depot Inc.	\$436,735,264 ¹	\$71,288,000,000	1%	1%
44	VistaPrint Ltd.	\$400,700,000	\$400,700,000	100%	100%
45	Saks Direct	\$380,552,094 ¹	\$3,029,700,000	13%	10%
46	NutriSystem Inc.	\$376,121,706	\$687,700,000	55%	55%
47	Peapod LLC	\$373,000,000	\$373,000,000	100%	100%
48	Drugstore.com Inc.	\$366,600,000	\$366,600,000	100%	100%
49	Nike Inc.	\$365,700,160 ¹	\$18,600,000,000	2%	2%
50	Kohl's Corp.	\$356,000,000	\$16,390,000,000	2%	1%
51	J. Crew Group Inc.	\$338,200,000	\$1,420,000,000	24%	22%
52	Oriental Trading Co. Inc.	\$330,000,000 ¹	\$585,000,000 ¹	56%	56%
53	Foot Locker Inc.	\$322,000,000	\$5,230,000,000	6%	5%
54	American Eagle Outfitters	\$307,000,000	\$2,990,000,000	10%	8%
55	Crate and Barrel	\$304,000,000	\$1,420,000,000 ¹	21%	20%
56	Blue Nile Inc.	\$295,300,000	\$295,300,000	100%	100%
57	Urban Outfitters Inc.	\$272,472,000	\$1,830,000,000	15%	12%
58	Abercrombie & Fitch Co.	\$271,000,000	\$3,540,000,000	8%	7%
59	Orchard Brands Corp. ⁶	\$267,200,000	\$1,000,000,000 ¹	27%	24%
60	FTD Group Inc.	\$265,200,000 ¹	\$669,400,000	40%	40%
61	Spiegel Brands Inc.	\$264,782,931 ¹	\$460,000,000 ¹	58%	56%

Rank	2008 web sales	2008 total sales	2008 % of total sales	2007 % of total sales	
62	FreshDirect LLC	\$264,132,000 ¹	\$264,132,000 ¹	100%	100%
63	CSN Stores LLC	\$262,600,000 ¹	\$262,600,000 ¹	100%	100%
64	Follett Higher Education	\$252,000,000	\$1,900,000,000	13%	9%
65	Disney Shopping Inc.	\$246,671,040 ¹	\$37,843,000,000	1%	1%
66	Market America	\$238,456,086	\$282,275,000	84%	87%
67	Recreational Equipment Inc.	\$237,762,000	\$1,430,000,000	17%	17%
68	Walgreen Co.	\$220,492,800 ¹	\$59,034,300,000	0.4%	0.4%
69	Shutterfly Inc.	\$213,500,000	\$213,500,000	100%	100%
70	Coldwater Creek Inc.	\$210,721,000	\$1,020,000,000	21%	23%
71	Bioz.com Inc.	\$207,400,000	\$207,400,000	100%	100%
72	PC Mall Inc.	\$205,000,000	\$1,320,000,000	16%	15%
73	Sierra Trading Post Inc.	\$200,799,000 ¹	\$255,000,000 ¹	79%	79%
74	Northern Tool + Equipment	\$200,000,000	\$800,000,000	25%	23%
75	Army & Air Force Exchange	\$197,092,403	\$8,260,000,000 ¹	2%	2%
76	Lowe's Cos. Inc.	\$194,790,420 ¹	\$48,200,000,000	0.4%	0.4%
77	Etronics Inc.	\$194,250,000 ¹	\$194,250,000 ¹	100%	100%
78	Harry and David Holdings	\$193,700,000	\$545,100,000	36%	32%
79	YODX Group	\$192,100,000	\$192,100,000	100%	100%
80	Eddie Bauer	\$191,940,000 ¹	\$1,023,437,000	19%	19%
81	Bass Pro Outdoor Online	\$191,747,640 ¹	\$2,760,000,000 ¹	7%	7%
82	CVS Corp.	\$187,027,315 ¹	\$87,471,900,000	0.2%	0.2%
83	NetShops Inc.	\$186,300,000 ¹	\$186,300,000 ¹	100%	100%
84	Weight Watchers	\$185,800,000	\$185,800,000	100%	100%
85	Hanover Direct Inc. ⁷	\$183,040,000 ¹	\$400,000,000 ¹	46%	46%
86	Safeway Inc.	\$182,560,000 ¹	\$44,104,000,000	0.4%	0.4%
87	ShopNBC.com	\$180,800,000	\$565,000,000	32%	28%
88	Ralph Lauren Media LLC	\$180,000,000	\$4,670,700,000	4%	3%
89	School Specialty Online	\$180,000,000	\$1,087,903,000	17%	17%
90	Shoebuy.com Inc.	\$180,000,000 ¹	\$1,445,100,000	12%	11%
91	The Swiss Colony Inc. ⁸	\$175,000,000 ¹	\$600,000,000 ¹	29%	28%
92	Restoration Hardware	\$171,410,293 ¹	\$722,000,000 ¹	24%	23%
93	eBags.com	\$171,376,128 ¹	\$171,376,128 ¹	100%	100%
94	Fingerhut Direct Marketing	\$165,000,000	\$444,800,000 ¹	37%	33%
95	Market Day Corp.	\$163,215,000 ¹	\$163,215,000 ¹	100%	100%
96	RealNetworks Inc.	\$160,700,000	\$604,800,000	27%	26%
97	American Girl LLC	\$156,951,081 ¹	\$463,100,000	34%	33%
98	Charming Shoppes Inc. ⁹	\$156,367,489	\$2,470,000,000	6%	5%
99	Art.com Inc.	\$155,295,306 ¹	\$155,295,306 ¹	100%	100%
100	Drs. Foster and Smith	\$155,000,000	\$255,000,000 ¹	61%	58%
Top 100 retailers' 2008 web sales		\$98,603,471,431			
Total Internet retailing industry 2008 web sales		\$178,184,719,571			
Top 100 share of total		55.34%			

¹Internet Retailer estimate * Figure is for fiscal year 2008.

²Sears Holdings Corp. includes Sears.com, Kmart.com, Craftsman.com, Kenmore.com and LandsEnd.com.

³QVC Inc. includes QVC.com, ProFlowers.com, Backcountry.com, ShariBerries.com, BodyBuilding.com, RedEnvelope.com and CelebrateExpress.com.

⁴Redcats includes SportsmansGuide.com, WomanWithin.com, Romans.com, JessicaLondon.com, KingSizeDirect.com, OneStopPlus.com, Avenue.com, BCOOutlet.com, BrylanceHome.com, BoatingSavings.com, BargainOutfitters.com, TGW.com, Redcats.com, BaseballSavings.com and SoftballSavings.com.

⁵Musicians Friend Inc. includes MusiciansFriend.com, GuitarCenter.com, Music123.com, WWB.com, Musician.com, MusicArts.com, GuitarSale.com, MiSupply.com and 4Lyons.com.

⁶Orchard Brands Corp. includes Blair.com, NormThompson.com, Haband.com, Appleseeds.com, Drapers.com, GoldViolin.com, Sahalie.com, Solutions.com, TopShop.com, WinterSilks.com, ShopTheBay.com, OldPuebloTraders.com, BedfordFair.com, CowardShoes.com, Willowidge.com, LewMagram.com and BrownstoneStudio.com.

⁷Hanover Direct includes TheCompanyStore.com, Domestications.com, InternationalMale.com, Silhouettes.com, UnderGear.com, ScandiaDown.com and CompanyKids.com.

⁸The Swiss Colony Inc. includes SwissColony.com, Wards.com, HomeVisions.com, SeventhAvenue.com, MidnightVelvet.com, Ginnys.com, CountryDoor.com, MonroeAndMain.com, TenderFillet.com, Ashro.com and RaceTeamGear.com.

⁹Charming Shoppes Inc. includes LaneBryant.com, Catherines.com, FashionBug.com, PetiteSophisticate.com, ShoeTrader.com, LaneBryantCatalog.com and Figs.com.

TOP 25 MERCHANTS RANKED BY CATEGORY

CATALOG/CALL CENTER

Rank	2008 web sales	2007 web sales	Growth
8 CDW Corp.	\$2,600,122,100 ¹	\$2,407,520,463	8.00%
11 OVC Inc.	\$1,993,361,800 ¹	\$1,880,530,000 ¹	6.00%
21 Systemax Inc.	\$1,072,071,000 ¹	\$974,610,000 ¹	10.00%
22 L.L. Bean Inc.	\$1,043,625,000 ¹	\$948,750,000 ¹	10.00%
26 HSN Inc.	\$1,016,280,000	\$969,600,000	4.81%
30 Avon Products Inc.	\$753,787,255 ¹	\$673,024,334 ¹	12.00%
31 1-800-Flowers.com Inc.	\$749,857,000	\$749,238,000	0.08%
34 Redcats USA	\$616,947,716	\$801,000,000	-22.98%
36 Musician's Friend Inc.	\$530,618,387	\$470,512,563	12.77%
38 PC Connection Inc.	\$515,700,000	\$528,400,000	-2.40%
40 Cabela's Inc.	\$496,638,000 ¹	\$459,000,000 ¹	8.20%
42 Scholastic Inc.	\$455,000,000	\$397,000,000	14.61%
46 NutriSystem Inc.	\$376,121,706	\$424,321,434	-11.38%
52 Oriental Trading Co. Inc.	\$330,000,000 ¹	\$299,000,000	10.37%
59 Orchard Brands Corp.	\$267,200,000	\$235,000,000	13.70%
61 Spiegel Brands Inc.	\$264,782,931 ¹	\$259,591,109 ¹	2.00%
73 Sierra Trading Post Inc.	\$200,799,000 ¹	\$184,634,681 ¹	8.75%
74 Northern Tool + Equipment Co.	\$200,000,000	\$186,800,000	7.07%
78 Harry and David Holdings Inc.	\$193,700,000	\$176,800,000	9.56%
84 Weight Watchers International	\$185,800,000	\$151,600,000	22.58%
85 Hanover Direct Inc.	\$183,040,000 ¹	\$176,000,000	4.00%
87 ShopNBC.com	\$180,800,000	\$250,200,000	-27.74%
89 School Specialty Online	\$180,000,000	\$175,500,000	2.56%
91 The Swiss Colony Inc.	\$175,000,000 ¹	\$159,250,000 ¹	9.89%
94 Fingerhut Direct Marketing Inc.	\$165,000,000	\$144,000,000	14.58%
2008 Top 25 catalog/call center sales		\$14,746,251,895	
2008 Total catalog/call center sales		\$19,900,301,620	
2007 Top 25 catalog/call center sales		\$14,081,882,584	
Growth		4.7%	
Share of total		74.1%	

CONSUMER BRAND MANUFACTURER

Rank	2008 web sales	2007 web sales	Growth
3 Dell Inc.	\$4,830,000,000 ¹	\$4,200,000,000 ¹	15.00%
5 Apple Inc.	\$3,642,118,080 ¹	\$2,700,000,000 ¹	34.89%
12 SonyStyle.com	\$1,827,577,534 ¹	\$1,774,347,120 ¹	3.00%
16 HP Home & Home Office Store	\$1,497,000,000 ¹	\$1,407,180,000 ¹	6.38%
49 Nike Inc.	\$385,700,160 ¹	\$326,518,000	12.00%
88 Ralph Lauren Media LLC	\$180,000,000	\$150,000,000	20.00%
129 The Estee Lauder Cos. Inc.	\$99,000,000 ¹	\$73,000,000 ¹	35.62%
136 NBTY Inc.	\$92,800,000	\$73,710,880	25.90%
141 LEGO Brand Retail Inc.	\$88,365,816 ¹	\$84,157,920 ¹	5.00%
155 Coach Inc.	\$79,500,000 ¹	\$82,000,000	-3.05%
157 American Greetings Corp.	\$78,700,000	\$85,500,000	-7.95%
159 Panasonic Corp. of North America	\$77,280,000 ¹	\$69,000,000 ¹	12.00%
162 Shoes.com Inc.	\$74,200,000	\$78,600,000	-5.80%
206 Tempur-Pedic International Inc.	\$47,597,000 ¹	\$79,700,000 ¹	-40.28%
213 Fossil Inc.	\$45,700,000	\$37,190,000	22.88%
227 Bose Corp.	\$42,282,000 ¹	\$36,450,000 ¹	16.00%
236 American Apparel Inc.	\$39,400,000	\$25,400,000	55.12%
237 Guess? Inc.	\$39,365,040 ¹	\$30,280,800 ¹	30.00%
239 Callaway Golf Interactive	\$38,934,000 ¹	\$37,800,000 ¹	3.00%
240 Vera Bradley	\$38,902,500 ¹	\$26,648,213 ¹	45.99%
241 Oakley Inc.	\$38,502,000 ¹	\$34,651,800 ¹	11.11%
248 AX Armani Exchange	\$37,216,740 ¹	\$34,782,000 ¹	7.00%
247 Select Comfort Corp.	\$37,100,000	\$54,000,000	-31.30%
249 iRobot Corp.	\$37,000,000 ¹	\$32,300,000 ¹	14.55%
252 Bowflex.com	\$36,550,000 ¹	\$49,228,000 ¹	-25.75%
2008 Top 25 consumer brand manufacturer sales		\$13,410,790,870	
2008 Total consumer brand manufacturer sales		\$14,003,719,571	
2007 Top 25 consumer brand manufacturer sales		\$11,582,444,733	
Growth		15.8%	
Share of total		95.8%	

RETAIL CHAIN

Rank	2008 web sales	2007 web sales	Growth
2 Staples Inc.	\$7,700,000,000	\$5,800,000,000	37.50%
4 Office Depot Inc.	\$4,800,000,000	\$4,900,000,000	-2.04%
6 OfficeMax Inc.	\$3,083,730,883 ¹	\$3,162,800,700 ¹	-2.50%
7 Sears Holdings Corp.	\$2,693,433,600 ¹	\$2,589,840,000 ¹	4.00%
10 Best Buy Co.	\$2,015,183,282 ¹	\$1,760,833,285 ¹	13.16%
13 Walmart.com	\$1,740,000,000 ¹	\$1,574,999,975 ¹	10.48%
14 Costco Wholesale Corp.	\$1,700,000,000	\$1,200,000,000	41.67%
15 J.C. Penney Co. Inc.	\$1,500,000,000	\$1,500,000,000	0.00%
17 Circuit City Stores Inc.	\$1,414,000,000 ¹	\$1,400,000,000	1.00%
19 Victoria's Secret	\$1,333,000,320 ¹	\$1,111,712,000 ¹	19.91%
20 Target Corp.	\$1,209,208,320 ¹	\$1,153,916,993 ¹	4.79%
23 Macy's Inc.	\$1,040,000,000 ¹	\$812,200,000 ¹	28.05%
24 Williams-Sonoma Inc.	\$1,033,000,000	\$1,104,000,000	-6.43%
25 Gap Inc. Direct	\$1,030,000,000	\$903,000,000	14.06%
32 Nordstrom Inc.	\$686,200,000	\$633,000,000	8.40%
35 The Neiman Marcus Group Inc.	\$664,500,000	\$499,000,000	13.13%
37 Blockbuster Inc.	\$528,400,000 ¹	\$526,400,000 ¹	0.00%
39 Toys 'R' Us Inc.	\$500,000,000 ¹	\$407,358,000 ¹	22.74%
41 BarnesandNoble.com Inc.	\$466,000,000	\$477,000,000	-2.31%
43 The Home Depot Inc.	\$436,735,264 ¹	\$432,411,152 ¹	1.00%
45 Saks Direct	\$380,552,094 ¹	\$328,082,150 ¹	16.00%
50 Kohl's Corp.	\$356,000,000	\$224,000,000	58.93%
51 J. Crew Group Inc.	\$338,200,000	\$293,300,000	15.31%
53 Foot Locker Inc.	\$322,000,000	\$287,000,000	12.20%
54 American Eagle Outfitters Inc.	\$307,000,000	\$243,500,000	26.08%
2008 Top 25 retail chain sales		\$37,176,143,562	
2008 Total retail chain sales		\$46,112,705,219	
2007 Top 25 retail chain sales		\$33,144,334,255	
Growth		12.2%	
Share of total		82.4%	

WEB ONLY

Rank	2008 web sales	2007 web sales	Growth
1 Amazon.com Inc.	\$19,170,000,000	\$14,800,000,000	29.53%
9 Newegg Inc.	\$2,100,000,000	\$1,900,000,000	10.53%
18 Netflix Inc.	\$1,364,661,000	\$1,205,000,000	13.25%
27 Zappos.com Inc.	\$1,014,000,000	\$840,000,000	20.71%
28 Amway Global	\$904,050,000 ¹	\$861,000,000	5.00%
29 Overstock.com Inc.	\$834,367,000	\$765,902,000	8.94%
33 Buy.com Inc.	\$657,472,200 ¹	\$614,460,000 ¹	7.00%
44 VistaPrint Ltd.	\$400,700,000	\$255,900,000	56.58%
47 Peapod LLC	\$373,000,000	\$339,000,000	10.03%
48 Drugstore.com Inc.	\$366,600,000	\$339,300,000	8.05%
56 Blue Nile Inc.	\$295,300,000	\$319,300,000	-7.52%
60 FTD Group Inc.	\$265,200,000 ¹	\$260,000,000	2.00%
62 FreshDirect LLC	\$264,132,000 ¹	\$240,000,000	10.06%
63 CSN Stores LLC	\$262,600,000 ¹	\$202,000,000	30.00%
65 Disney Shopping Inc.	\$246,671,040 ¹	\$214,228,800 ¹	15.14%
66 Market America	\$238,456,086	\$229,813,629	3.76%
69 Shutterfly Inc.	\$213,500,000	\$186,700,000	14.35%
71 Bidz.com Inc.	\$207,400,000	\$187,000,000	10.91%
72 PC Mall Inc.	\$205,000,000	\$208,000,000	-1.44%
77 Etronics Inc.	\$194,250,000 ¹	\$185,000,000	5.00%
79 YODOX Group	\$192,100,000	\$121,700,000	57.85%
83 NetShops Inc.	\$186,300,000 ¹	\$172,500,000 ¹	8.00%
90 Shoebuy.com Inc.	\$180,000,000 ¹	\$153,000,000 ¹	17.65%
93 eBags.com	\$171,376,128 ¹	\$149,022,720 ¹	15.00%
96 RealNetworks Inc.	\$160,700,000	\$149,100,000	7.78%
2008 Top 25 web only sales		\$30,467,835,454	
2008 Total web only sales		\$36,841,810,452	
2007 Top 25 web only sales		\$24,897,927,149	
Growth		22.4%	
Share of total		82.7%	

¹ Internet Retailer estimate

Garcia Declaration Exhibit D

THE TOP 500 WEB RETAILERS RANKED BY PRINCIPAL MARKET

52 Shop4tech.com	444	\$12,072,000	0.05%	45
53 International Software Solutions Systems	449	\$11,844,000 ¹	0.05%	50
54 FirstStreet	454	\$11,700,000	0.05%	46
55 Dyscern LLC	477	\$10,500,000	0.04%	NA
Total 2008 computers/electronics category sales		\$23,687,399,296		
Total 2007 computers/electronics category sales		\$21,116,455,389		
Growth			12%	
Category share of total 2008 Top 500 sales			20%	
Category share of total 2007 Top 500 sales			20%	

FLOWERS / GIFTS

1-800-Flowers.com Inc. continues to command market share in the flowers and gifts category. The multichannel retailer reported flat sales growth in 2008, with a .08% increase to \$749.8 million from \$749.2 million in 2007, right in step with the market's 1% growth rate. Yet 1-800-Flowers still holds a 51.2% share of the market, followed by FTD Group Inc. at 18.1%. GourmetGiftBaskets.com was the third-fastest growing Internet retailer in the Top 500, rising 172.7% from \$4.4 million in 2007 to \$12 million in 2008.

Rank in category	Top 500 Rank	2008 web sales	2008 Share	2007 rank in category
1	31	\$749,857,000	51.23%	1
2	60	\$265,200,000 ¹	18.12%	2
3	131	\$97,643,354 ¹	6.67%	3
4	150	\$82,300,000	5.62%	6
5	157	\$78,700,000	5.38%	5
6	193	\$53,000,000	3.62%	8
7	194	\$52,530,000 ¹	3.59%	9
8	340	\$21,000,000 ¹	1.43%	10
9	392	\$16,100,000 ¹	1.10%	11
10	405	\$15,100,000 ¹	1.03%	12
11	446	\$12,000,000	0.82%	NA
12	465	\$11,000,000 ¹	0.75%	13
13	495	\$9,300,000 ¹	0.64%	14
Total 2008 flowers/gifts category sales		\$1,463,730,354		
Total 2007 flowers/gifts category sales		\$1,448,906,449		
Growth			1%	
Category share of total 2008 Top 500 sales			1%	
Category share of total 2007 Top 500 sales			1%	

FOOD / DRUG

The top three e-retailers in the food and drug category accounted for 34% of sales in the market. NutriSystem Inc. had an 11.4% web sales decline in 2008, but Peapod LLC a 10% web revenue increase and Drugstore.com an 8% lift. Together the three topped the \$1.1 billion mark in e-commerce revenue. Retail and grocery chain Meijer logged the second-fastest growth among Top 500 e-retailers at 242.8%, rising from \$2.8 million in web sales in 2007 to \$9.6 million in 2008. In late 2008 Meijer rolled out online bulk grocery ordering that offers 2,000 products.

Rank in category	Top 500 Rank	2008 web sales	2008 Share	2007 rank in category
1	46	\$376,121,706	11.48%	NA
2	47	\$373,000,000	11.39%	2
3	48	\$366,600,000	11.19%	1
4	62	\$264,132,000 ¹	8.06%	3
5	68	\$220,492,800 ¹	6.73%	4
6	78	\$193,700,000	5.91%	5
7	82	\$187,027,315 ¹	5.71%	7
8	84	\$185,800,000	5.67%	NA
9	86	\$182,560,000 ¹	5.57%	6
10	91	\$175,000,000 ¹	5.34%	20
11	95	\$163,215,000 ¹	4.98%	8
12	111	\$132,594,685 ¹	4.05%	9
13	120	\$111,300,000	3.40%	12
14	136	\$92,800,000	2.83%	10
15	218	\$44,550,000 ¹	1.36%	13
16	260	\$34,637,939 ¹	1.06%	14
17	322	\$23,935,000	0.73%	NA
18	331	\$22,000,000 ¹	0.67%	15
19	337	\$21,500,000	0.66%	17

20 K&L Wine Merchants	356	\$19,980,000 ¹	0.61%	16
21 The Original Honey/Baked Ham Co. of Georgia	395	\$15,965,530	0.49%	NA
22 Mrs. Fields Gifts Inc.	422	\$13,680,000 ¹	0.42%	19
23 Igourmet LLC	447	\$12,000,000	0.37%	18
24 MyMMs.com	455	\$11,532,000 ¹	0.35%	NA
25 King-Arthur Flour Co. Inc.	458	\$11,339,000	0.35%	NA
26 CoffeeForLess.com	483	\$10,000,000	0.31%	21
27 Meijer Inc.	489	\$9,600,000	0.29%	NA
Total 2008 food/drug category sales		\$3,275,062,976		
Total 2007 food/drug category sales		\$3,000,651,725		
Growth			9%	
Category share of total 2008 Top 500 sales			3%	
Category share of total 2007 Top 500 sales			3%	

HARDWARE / HOME IMPROVEMENT

The Home Depot Inc. felt the economic tremors down to its foundation, logging only a 1% web sales increase for 2008. But the hardware and home improvement chain kept its lock on market share for the second year in a row at 32.14%. Northern Tool + Equipment Co., with a 14.72% share of the market, reported a 7.07% e-commerce revenue increase, right in line with the market growth rate of 7%. Ace Hardware Corp. was among the fastest growing web retailers in the Top 500, reporting \$11.7 million in web sales for 2008, up by 40.2% from \$8.4 million in the prior year.

Rank in category	Top 500 Rank	2008 web sales	2008 Share	2007 rank in category
1	43	\$436,735,264 ¹	32.14%	1
2	74	\$200,000,000	14.72%	3
3	76	\$194,790,420 ¹	14.33%	2
4	127	\$102,000,000	7.51%	4
5	192	\$53,000,000 ¹	3.90%	6
6	234	\$39,666,000 ¹	2.92%	8
7	249	\$37,000,000 ¹	2.72%	9
8	251	\$36,720,000 ¹	2.70%	7
9	320	\$24,200,000	1.78%	10
10	342	\$20,800,000 ¹	1.53%	11
11	343	\$20,710,000	1.52%	13
12	346	\$20,439,216 ¹	1.50%	27
13	350	\$20,200,000	1.49%	22
14	354	\$20,000,000	1.47%	14
15	367	\$18,700,000	1.38%	15
16	409	\$15,000,000 ¹	1.10%	16
17	415	\$14,433,108	1.06%	20
18	427	\$13,142,250 ¹	0.97%	18
19	432	\$13,000,000 ¹	0.96%	17
20	441	\$12,200,000	0.90%	NA
21	443	\$12,100,000	0.89%	24
22	448	\$11,900,000	0.88%	21
23	451	\$11,780,760	0.87%	26
24	476	\$10,503,170	0.77%	23
Total 2008 hardware/home improvement category sales		\$1,359,020,187		
Total 2007 hardware/home improvement category sales		\$1,273,987,760		
Growth			7%	
Category share of total 2008 Top 500 sales			1%	
Category share of total 2007 Top 500 sales			1%	

HEALTH / BEAUTY

Health and beauty category retailers outperformed 2007's growth rate. For 2008, the sector growth rate was 14% compared with 11% in the prior year. Amway Global (formerly known as Quixtar) and Avon Products once again ruled the category with almost 57% of the market. Online vitamin, supplements and health products retailer Vitacost.com was among the fastest-growing merchants with sales rising 45.74% to \$126.5 million in 2008 from \$86.8 million in 2007.

Rank in category	Top 500 Rank	2008 web sales	2008 Share	2007 rank in category
1	28	\$904,050,000 ¹	31.05%	1
2	30	\$753,787,255 ¹	25.89%	2
3	104	\$148,720,000 ¹	5.11%	3
4	112	\$130,899,434 ¹	4.50%	4

¹ Internet Retailer estimate Source: The Internet Retailer Top 500 Guide

www.internetretailer.com



48. drugstore.com Inc.

2008 sales at Drugstore.com Inc., an online provider of health, beauty, vision and pharmacy products, grew 8% to \$366.6 million from \$339.3 million in 2007, while the online retailer's net loss narrowed to \$8.3 million from \$11.5 million, the company reports. Fourth quarter sales at Drugstore rose by 2.9% to \$93.8 million from \$91.3 million in Q4 2007, while net income was \$289,000 vs. a loss of \$2.3 million a year earlier. The company achieved record adjusted EBITDA income of \$5.2 million, up 243% over the fourth quarter of 2007. (Adjusted EBITDA is a non-GAAP financial measure defined as earnings before interest, taxes, depreciation, and amortization of intangible assets and non-cash marketing expense, adjusted to exclude the impact of stock-based compensation expense.) For the year, the company reported adjusted EBITDA of \$13.9 million, more than double the adjusted EBITDA reported in fiscal year 2007. "I am pleased to report record quarterly OTC revenues, net income, free cash flow and adjusted EBITDA, as we delivered a profitable fourth quarter and achieved positive free cash flow for the year for the first time in company history," says Dawn Lepore, chairman and CEO. OTC refers to sales of over the counter items, as opposed to prescriptions. "Importantly, while holiday sales were clearly impacted by the economy, we saw strong sales of our everyday OTC basics, reinforcing our belief that a large portion of our products are not considered discretionary by our customers." The company also reported: Total orders in the fourth quarter grew 6% to 1.4 million, while contribution margin dollars per order grew by 7% to approximately \$14, and average order in the quarter was \$67.

OPERATING DATA

FINANCIAL

2008 Sales: \$366,600,000
 2007 Sales: \$339,300,000
 2006 Sales: \$315,100,000
 2005 Sales: \$303,300,000
 2004 Sales: \$267,700,000
 2008 Growth Rate: 8.05%

OPERATIONS

Monthly Visits: 6,950,000¹
 Monthly Unique Visitors: 4,400,000¹
 Conversion Rate: 6.40%¹
 Average Ticket: \$69
 Total SKUs on Web: 40,000

WEB SITE SUMMARY

URL: drugstore.com, Beauty.com
 Year Launched: 1999
 Category: Food/Drug
 Merchant Type: Web Only
 Parent Company: drugstore.com Inc.

CUSTOMER SATISFACTION⁵

Browser Satisfaction: 77
 Purchase Intent Score: 80

PERFORMANCE⁶

Response Time: 3.74 seconds
 Site Availability: 99.89%
 Consistency: Good

MARKETING

Search Engine Shoppers 2008⁷: 37% of all traffic
 Search Engine Shoppers 2007⁷: 37% of all traffic
 New Shoppers 2008⁷: 71% of all traffic
 Return Shoppers 2008⁷: 29% of all traffic
 Monthly E-Mail Campaigns⁸: 5
 With Personalized Subject Line: 0
 With Incentives: 4
 Number of Affiliates: NA

CORPORATE INFORMATION

Dawn Lepore, Chairman/CEO
 411 108th Ave. N.E., Suite 1400
 Bellevue, WA 98004
 425-372-3200

WEB SITE SERVICES

FEATURES & FUNCTIONS	Site Personalization	Live Chat/E-Mail	Reviewer Tags
Affiliate Program	Social Networking	Order Confirmation	Reviews/Ratings
Blogs	Syndicated Content	Order Status	Relevancy
Color Swatching	Top Sellers	Rain Checks	Specialized Filters/Facets
Coupons/Rebates	Videocasts	Real-Time Inventory Check	What's New
Customer Reviews	What's New	Shipment Tracking	SHOPPING PORTALS
Daily/Seasonal Specials	Widgets	Toll-Free Number	Become.com
Dynamic Imaging	Zoom		Buzzillions.com
E-Mail a Friend	PAYMENTS	SITE SEARCH	Google Product Search
Enlarged Product View	American Express	Advanced Search	Like.com
Frequent Buyer Program	Discover	Best Sellers	Microsoft Live Search
Frequently Asked Questions	MasterCard	Brand	Cashback
Guided Navigation	Visa	Category/Department/Product Type	PriceGrabber.com Inc.
Mobile Commerce	Bill Me Later	Item Number	Pronto Inc.
Online Circular	Google Checkout	Keyword	SHOP.COM
Online Gift Certificates	PayPal	Price (High to Low)	Shopping.com
Outlet Center	PayPal Express Checkout	Price (Low to High)	Shopzilla Inc.
Pre-Orders	CUSTOMER SERVICE	Recently Viewed Items/Saved Results	Smarter.com
Product Ratings	Account Status/History	Recommended Items	Yahoo Shopping
Product Recommendations	Estimated Shipping Date	Refine Results	
RSS Feed	Express Checkout		

VENDORS

Affiliate Marketing: LinkShare
Content Delivery: In-house, Akamai, Adobe Scene7
Content Management: In-house
CRM: In-house
Customer Reviews & Forums: PowerReviews
Customer Service Software: In-house, RightNow Technologies
E-Commerce Platform: In-house
E-Mail Marketing: In-house, CheatahMail
Fulfillment: In-house, CommerceHub, Kewill Systems
Live Chat/Click to Call: RightNow Technologies
Order Management: In-house, Kewill Systems
Payment Systems: Chase Paymentech, PayPal, Bill Me Later
Personalization: In-house
Rich Media: Adobe Scene7, LiveClicker
Search Engine Marketing: In-house
Security Certification: TrustKeeper
Site Design: In-house
Site Search: Endeca
Web Analytics: In-house, Omniture
Web Hosting: SAVVIS
Web Performance Monitoring: Gomez, Truesight

1. Internet Retailer estimate. 2. Estimate by Internet Retailer based on average daily visits as reported by comScore Inc. 3. Monthly average by comScore Inc. 4. Monthly average by Nielsen Online. 5. ACSI Methodology by ForeSee Results, see p. 83. 6. January 2009, Gomez Inc., see p. 73. 7. January 2009, Hitwise, see p. 76. 8. January 2009, Silverpop Systems Inc., see p. 77.

Top 100 e-retailers

(Web sales as a percentage of total sales)

Rank	2007 web sales	2007 total sales	2007 % of total sales	2006 % of total sales	
1	Amazon.com Inc.	\$14,800,000,000	\$14,800,000,000	100%	100%
2	Staples Inc.	\$5,600,000,000	\$19,372,682,000	29%	27%
3	Office Depot Inc.	\$4,900,000,000	\$15,527,537,000	32%	29%
4	Dell Inc.	\$4,200,000,000 *	\$61,133,000,000	7%	7%
5	HP Home & Home Office	\$3,360,923,280 *	\$104,300,000,000	3%	3%
6	OfficeMax Inc.	\$3,162,800,700 *	\$9,061,962,000	35%	32%
7	Apple Inc.	\$2,700,000,000 *	\$24,006,000,000	11%	6%
8	Sears Holdings Corp.**	\$2,589,840,000 *	\$50,703,000,000	5%	4%
9	CDW Corp.	\$2,407,520,463	\$9,145,000,000	30%	29%
10	Newegg.com	\$1,900,000,000	\$1,900,000,000	100%	100%
11	QVC Inc.**	\$1,880,530,000 *	\$7,400,000,000	25%	18%
12	Best Buy Co.	\$1,780,833,285 *	\$13,420,000,000	13%	5%
13	SonyStyle.com	\$1,774,347,120 *	\$70,303,000,000	3%	3%
14	Walmart.com	\$1,574,999,975 *	\$374,526,000,000	0.4%	0.36%
15	J.C. Penney Co. Inc.	\$1,500,000,000	\$19,860,000,000	8%	7%
16	Circuit City Stores Inc.	\$1,400,000,000	\$11,743,691,000	12%	8%
17	Netflix Inc.	\$1,205,000,000	\$1,205,000,000	100%	100%
18	Costco Wholesale Corp.	\$1,200,000,000	\$63,090,000,000	2%	1%
19	Target Corp.	\$1,153,916,993 *	\$63,367,000,000	2%	2%
20	Victoria's Secret Direct	\$1,111,712,000 *	\$10,086,400,000	11%	10%
21	Williams-Sonoma Inc.	\$1,104,000,000	\$3,945,000,000	28%	25%
22	Systemax Inc.	\$974,610,000 *	\$2,800,000,000	35%	35%
23	L.L. Bean Inc.	\$948,750,000 *	\$1,620,000,000	59%	55%
24	Gap Inc. Direct	\$903,000,000	\$15,763,000,000	6%	5%
25	HSN**	\$871,200,000 *	\$2,992,400,000	29%	27%
26	Quixtar Inc.	\$861,000,000	\$1,072,000,000	80%	79%
27	Zappos.com Inc.	\$850,000,000	\$850,000,000	100%	100%
28	Macy's Inc.	\$812,200,000 *	\$26,313,000,000	3%	2%
29	Redcats USA**	\$801,000,000	\$1,300,000,000	62%	42%
30	Overstock.com Inc.	\$760,200,000	\$760,200,000	100%	100%
31	Avon Products Inc.	\$673,024,334 *	\$9,845,200,000	7%	7%
32	Nordstrom Inc.	\$633,000,000	\$8,826,000,000	7%	4%
33	Buy.com Inc.	\$614,460,000 *	\$614,460,000 *	100%	100%
34	PC Connection Inc.	\$528,400,000	\$1,785,379,000	30%	31%
35	Blockbuster Inc.	\$526,400,000 *	\$5,540,000,000	10%	6%
36	1-800-Flowers.com Inc.	\$501,900,000	\$912,600,000	55%	55%
37	Neiman Marcus Group	\$499,000,000	\$4,400,000,000	11%	10%
38	BarnesandNoble.com	\$477,000,000	\$5,411,000,000	9%	8%
39	Musician's Friend Inc.**	\$470,396,517	\$2,250,000,000	21%	12%
40	Cabela's Inc.	\$459,000,000 *	\$2,350,000,000	20%	7%
41	Drugstore.com Inc.	\$445,700,000	\$445,700,000	100%	100%
42	The Home Depot Inc.	\$432,411,152 *	\$77,349,000,000	1%	0.4%
43	Toys 'R' Us Inc.	\$407,358,000 *	\$13,050,000,000	3%	3%
44	Scholastic Inc.	\$397,000,000	\$2,179,000,000	18%	15%
45	Peapod LLC	\$339,000,000	\$339,000,000	100%	100%
46	Saks Direct	\$328,062,150 *	\$3,262,600,000	10%	9%
47	Nike Inc.	\$326,518,000	\$16,300,000,000	2%	1%
48	Blue Nile Inc.	\$319,300,000	\$319,300,000	100%	100%
49	Oriental Trading Co.	\$299,000,000	\$570,000,000	52%	60%
50	J. Crew Group Inc.	\$293,300,000	\$1,330,000,000	22%	16%
51	Foot Locker Inc.	\$287,000,000	\$5,437,000,000	5%	5%
52	Crate and Barrel	\$286,000,000	\$1,420,000,000	20%	21%
53	Coldwater Creek Inc.	\$267,200,000	\$1,150,000,000	23%	25%
54	Abercrombie & Fitch	\$260,000,000	\$3,750,000,000	7%	5%
55	FTD Group Inc.	\$260,000,000	\$613,012,000	42%	54%
56	Spiegel Brands Inc.	\$259,591,109 *	\$460,000,000	56%	50%
57	VistaPrint Ltd.	\$255,900,000	\$255,900,000	100%	100%
58	FreshDirect LLC	\$240,000,000	\$240,000,000	100%	100%
59	American Eagle Outfitters	\$240,000,000	\$3,050,000,000	8%	7%
60	Orchard Brands Corp.**	\$235,000,000	\$1,000,000,000	24%	NA
61	PC Mail Inc.	\$230,000,000	\$1,210,000,000	19%	17%

Rank	2007 web sales	2007 total sales	2007 % of total sales	2006 % of total sales	
62	Recreational Equipment	\$226,000,000	\$1,322,500,000	17%	17%
63	Kohl's Corp.	\$224,000,000	\$16,500,000,000	1%	1%
64	The Talbots Inc.**	\$223,412,000	\$2,289,000,000	10%	9%
65	ShopNBC.com	\$221,600,000	\$781,600,000	28%	24%
66	Army & Air Force Exchange	\$220,323,000	\$8,260,000,000	3%	2%
67	Disney Shopping Inc.	\$214,228,800 *	\$35,515,000,000	1%	1%
68	Follett Higher Education	\$205,320,000	\$2,370,000,000	9%	9%
69	CSN Stores Inc.	\$202,000,000	\$202,000,000	100%	100%
70	Walgreen Co.	\$201,724,992 *	\$53,762,000,000	0.38%	0.36%
71	Eddie Bauer	\$194,460,000 *	\$1,044,353,000	19%	21%
72	Lowe's Cos. Inc.	\$190,971,000 *	\$48,300,000,000	0.40%	0.37%
73	AbeBooks Inc.	\$190,000,000	\$190,000,000	100%	100%
74	Bidz.com Inc.	\$187,000,000	\$187,000,000	100%	100%
75	Northern Tool + Equip.	\$186,800,000	\$800,000,000	23%	22%
76	Shutterfly Inc.	\$186,700,000	\$186,700,000	100%	100%
77	Urban Outfitters Inc.	\$185,130,000	\$1,507,724,000	12%	11%
78	Etronics Inc.	\$185,000,000	\$185,000,000	100%	100%
79	Bass Pro Outdoor	\$180,894,000 *	\$2,660,000,000	7%	8%
80	Harry and David Holdings	\$176,800,000	\$561,000,000	32%	28%
81	Hanover Direct Inc.**	\$176,000,000	\$384,900,000	46%	40%
82	NetShops Inc.	\$172,500,000 *	\$172,500,000 *	100%	100%
83	Restoration Hardware	\$166,417,760 *	\$713,000,000	23%	17%
84	Safeway Inc.	\$163,000,000	\$42,286,000,000	0.39%	0.31%
85	CVS Corp.	\$162,632,448 *	\$76,300,000,000	0.21%	0.31%
86	Gateway Inc.	\$155,995,875 *	\$3,980,800,000	4%	6%
87	Ralph Lauren Media	\$150,000,000	\$4,300,000,000	3%	3%
88	Tiffany & Co.	\$150,000,000	\$2,930,000,000	5%	5%
89	RealPlayer Music Store	\$149,100,000	\$567,600,000	26%	31%
90	eBags.com	\$149,022,720 *	\$149,022,720 *	100%	100%
91	Drs. Foster and Smith	\$146,000,000	\$250,000,000	58%	58%
92	Market Day Corp.	\$145,925,928 *	\$145,925,928 *	100%	100%
93	Art.com Inc.	\$145,135,800 *	\$145,135,800	100%	100%
94	U.S. Auto Parts Network	\$145,000,000	\$145,000,000	100%	100%
95	J&R Electronics Inc.	\$144,000,000 *	\$400,000,000 *	36%	30%
96	Fingerhut Direct Marketing	\$144,000,000	\$440,000,000	33%	33%
97	American Girl LLC	\$143,073,000 *	\$431,300,000	33%	33%
98	1-800 Contacts Inc.	\$143,000,000 *	\$248,700,000	57%	50%
99	Sierra Trading Post	\$141,440,513 *	\$250,000,000	57%	49%
100	SmartBargains.com	\$140,044,608 *	\$140,044,608 *	100%	100%

Top 100 retailers' 2007 web sales \$87,713,957,421
 Total Internet retailing industry 2007 web sales \$165,900,000,000
 Top 100 share of total 52.87%

*Internet Retailer estimate
 **Sears Holdings includes Sears.com, Kmart.com, LandsEnd.com, Craftsman.com and Kammer.com.
 QVC includes QVC.com, ProFlowers.com, Backcountry.com, ShariBerries.com and Bodybuilding.com.
 HSN includes BallardDesigns.com, Frontgate.com, GarnetHill.com, ImprovementsCatalog.com, SmithandNoble.com, TerritoryAhead.com, TravelSmith.com, HomeFocusCatalog.com, Aisto.com and others.
 Redcats includes Chadwicks.com, Avenue.com, SportsmansGuide.com, MetroStyle.com, JessicaLondon.com, KingSizeDirect.com, Roomans.com, BrylaneHome.com, BrylaneHomeKitchen.com, LaRedoute.com, IntimatePromise.com, COBoutlet.com, BCOutlet.com, TGW.com, WomanWithin.com, BargainOutfitters.com, TheGolfWarehouse.com, and BaseballSavings.com.
 Musician's Friend includes MusiciansFriend.com, GuitarCenter.com, Musician.com, Giardinelli.com, PrivateReserveGuitars.com, Music123.com, WWBW.com, GuitarSale.com, MISupply.com and 4Lyons.com.
 Orchard Brands includes Blair.com, NormThompson.com, Haband.com, Appleseeds.com, Drapers.com, GoleViolin.com, Sahalie.com, Solutions.com, TopShop.com and WinterSilks.com.
 Talbots includes JJJill.com.
 Hanover Direct includes TheCompanyStore.com, Domestications.com, InternationalMale.com, Silhouettes.com, UnderGear.com, InternationalMale.com, ScandiaDown.com and CompanyKids.com.

Garcia Declaration Exhibit E

Top 25 merchants ranked by category

Catalog/call center

Rank	2007 web sales	2006 web sales	Growth
9 CDW Corp.	\$2,407,520,463	\$1,981,920,901	21.47%
11 QVC Inc.	\$1,880,530,000 *	\$1,645,463,750 *	14.29%
22 Systemax Inc.	\$974,610,000 *	\$819,000,000 *	19.00%
23 L.L. Bean Inc.	\$948,750,000 *	\$825,000,000 *	15.00%
25 HSN	\$871,200,000 *	\$792,000,000 *	10.00%
29 Redcats USA	\$801,000,000	\$720,000,000	11.25%
31 Avon Products Inc.	\$673,024,334 *	\$611,840,304 *	10.00%
34 PC Connection Inc.	\$528,400,000	\$514,300,000	2.74%
36 1-800-Flowers.com Inc.	\$501,900,000	\$430,300,000	16.64%
39 Musician's Friend Inc.	\$470,396,517	\$391,655,170	20.10%
40 Cabela's Inc.	\$459,000,000 *	\$399,000,000 *	15.04%
44 Scholastic Inc.	\$397,000,000	\$342,000,000	16.08%
49 Oriental Trading Co. Inc.	\$299,000,000	\$264,000,000 *	13.26%
56 Spiegel Brands Inc.	\$259,591,109 *	\$229,726,645	13.00%
60 Orchard Brands Corp.	\$235,000,000	NA	NA
75 Northern Tool + Equipment	\$186,800,000	\$165,200,000	13.08%
80 Harry and David Holdings Inc.	\$176,800,000	\$166,410,000	6.24%
81 Hanover Direct Inc.	\$176,000,000	\$166,000,000	6.02%
91 Drs. Foster and Smith	\$146,000,000	\$133,000,000	9.77%
92 Market Day Corp.	\$145,925,928 *	\$131,464,800 *	11.00%
96 Fingerhut Direct Marketing	\$144,000,000	\$82,000,000	75.61%
97 American Girl LLC	\$143,073,000 *	\$145,934,460 *	-1.96%
98 1-800 Contacts Inc.	\$143,000,000 *	\$127,270,000 *	12.36%
99 Sierra Trading Post Inc.	\$141,440,513 *	\$122,991,750 *	15.00%
104 Crutchfield Corp.	\$134,835,840 *	\$124,848,000 *	8.00%
Top 25 catalog/call center sales			\$13,244,797,704
Total catalog/call center sales			\$15,695,911,589
Share of total			84%

Consumer brand manufacturer

Rank	2007 web sales	2006 web sales	Growth
4 Dell Inc.	\$4,200,000,000 *	\$3,965,000,000 *	5.9
5 HP Home & Home Office	\$3,360,923,280 *	\$3,055,384,800 *	10.0
7 Apple Inc.	\$2,700,000,000 *	\$2,025,000,000 *	33.3
13 SonyStyle.com	\$1,774,347,120 *	\$1,689,854,400 *	5.0
47 Nike Inc.	\$326,518,000	\$224,323,000	45.5
86 Gateway Inc.	\$155,995,875 *	\$222,851,250 *	-30.0
87 Ralph Lauren Media LLC	\$150,000,000	\$120,000,000	25.0
140 LEGO Brand Retail Inc.	\$84,157,920 *	\$76,507,200 *	10.0
146 Coach Inc.	\$82,000,000	\$54,000,000	51.8
149 Shoes.com Inc.	\$78,600,000	\$63,000,000	24.7
155 NBTY Inc.	\$73,710,880	\$66,615,000	10.6
160 Panasonic Corp. of North America	\$69,000,000 *	\$60,000,000 *	15.0
175 Select Comfort Corp.	\$59,147,698	\$45,136,000	31.0
188 Under Armour Inc.	\$51,253,300 *	\$30,149,000 *	70.0
191 Palm Inc.	\$50,000,000 *	\$91,000,000 *	-45.0
204 Fossil Inc.	\$45,000,000 *	\$41,207,088 *	9.2
226 Callaway Golf Interactive	\$37,800,000 *	\$31,680,000 *	19.3
230 Bose Corp.	\$36,450,000 *	\$29,889,000 *	21.9
234 Barrie Pace	\$35,197,500 *	\$34,231,626 *	2.8
238 A/X Armani Exchange	\$34,782,000 *	\$29,295,000 *	18.7
248 iRobot Corp.	\$32,300,000 *	\$26,809,000 *	20.4
255 SmoothFitness.com	\$30,861,000	\$27,957,000	9.6
257 Guess? Inc.	\$30,280,800 *	\$15,378,480 *	96.9
262 AmericanApparel.net	\$29,317,000	\$13,282,000	120.0
274 Dooney & Bourke Inc.	\$27,007,200 *	\$25,063,500 *	7.7
Top 25 consumer brand manufacturer sales			\$13,554,449,573
Total consumer brand manufacturer sales			\$13,956,558,468
Share of total			97%

Retail chain

Rank	2007 web sales	2006 web sales	Growth
2 Staples Inc.	\$5,600,000,000	\$4,900,000,000	14.29%
3 Office Depot Inc.	\$4,900,000,000	\$4,300,000,000	13.95%
6 OfficeMax Inc.	\$3,162,800,700 *	\$2,849,370,000 *	11.00%
8 Sears Holdings Corp.	\$2,589,840,000 *	\$2,376,000,000 *	9.00%
12 Best Buy Co.	\$1,780,833,285 *	\$1,424,666,828 *	25.00%
14 Walmart.com	\$1,574,999,975 *	\$1,259,999,980 *	25.00%
15 J.C. Penney Co. Inc.	\$1,500,000,000	\$1,300,000,000	15.38%
16 Circuit City Stores Inc.	\$1,400,000,000	\$1,000,000,000	40.00%
18 Costco Wholesale Corp.	\$1,200,000,000	\$880,000,000	36.36%
19 Target Corp.	\$1,153,916,993 *	\$986,253,840 *	17.00%
20 Victoria's Secret Direct	\$1,111,712,000 *	\$1,097,400,000 *	1.30%
21 Williams-Sonoma Inc.	\$1,104,000,000	\$927,000,000	19.09%
24 Gap Inc. Direct	\$903,000,000	\$730,000,000	23.70%
28 Macy's Inc.	\$812,200,000 *	\$620,000,000 *	31.00%
32 Nordstrom Inc.	\$633,000,000	\$555,504,000	13.95%
35 Blockbuster Inc.	\$526,400,000 *	\$248,300,000	112.00%
37 The Neiman Marcus Group	\$499,000,000	\$405,700,000	23.00%
38 BarnesandNoble.com Inc.	\$477,000,000	\$433,000,000	10.16%
42 The Home Depot Inc.	\$432,411,152 *	\$404,122,572 *	7.00%
43 Toys 'R' Us Inc.	\$407,358,000 *	\$338,475,040 *	20.35%
46 Saks Direct	\$328,062,150 *	\$252,355,500 *	30.00%
50 J. Crew Group Inc.	\$293,300,000	\$218,600,000	34.17%
51 Foot Locker Inc.	\$287,000,000	\$270,000,000	6.30%
52 Crate and Barrel	\$286,000,000	\$236,000,000	21.19%
53 Coldwater Creek Inc.	\$267,200,000	\$263,656,000	1.34%
Top 25 retail chain sales			\$33,230,034,255
Total retail chain sales			\$40,607,754,241
Share of total			82%

Web only

Rank	2007 web sales	2006 web sales	Growth
1 Amazon.com Inc.	\$14,800,000,000	\$10,710,000,000	38.1
10 Newegg.com	\$1,900,000,000	\$1,500,000,000	26.6
17 Netflix Inc.	\$1,205,000,000	\$996,700,000	20.9
26 Quidtax Inc.	\$861,000,000	\$880,000,000	-2.1
27 Zappos.com Inc.	\$850,000,000	\$597,000,000	42.3
30 Overstock.com Inc.	\$760,200,000	\$788,150,000	-3.5
33 Buy.com Inc.	\$614,460,000 *	\$462,000,000	33.0
41 Drugstore.com Inc.	\$445,700,000	\$415,777,000	7.2
45 Peapod LLC	\$339,000,000	\$300,000,000	13.0
48 Blue Nile Inc.	\$319,300,000	\$251,600,000	26.9
55 FTD Group Inc.	\$260,000,000	\$249,000,000	4.4
57 VistaPrint Ltd.	\$255,900,000	\$152,100,000	68.2
58 FreshDirect LLC	\$240,000,000	\$200,000,000	20.0
61 PC Mall Inc.	\$230,000,000	\$182,400,000	26.1
65 ShopNBC.com	\$221,600,000	\$184,100,000	20.3
67 Disney Shopping Inc.	\$214,228,800 *	\$198,360,000 *	8.0
69 CSN Stores Inc.	\$202,000,000	\$110,000,000	83.6
73 AbeBooks Inc.	\$190,000,000	\$170,000,000	11.7
74 Bidz.com Inc.	\$187,000,000	\$132,000,000	41.6
76 Shutterfly Inc.	\$186,700,000	\$123,400,000	51.3
78 Etronics Inc.	\$185,000,000	\$169,000,000	9.4
82 NetShops Inc.	\$172,500,000 *	\$115,000,000	50.0
89 RealPlayer Music Store	\$149,100,000	\$123,000,000	21.2
90 eBags.com	\$149,022,720 *	\$124,185,600 *	20.0
93 Art.com Inc.	\$145,135,800 *	\$117,450,000 *	23.5
Top 25 web-only sales			\$25,082,847,320
Total web-only sales			\$31,419,481,972
Share of total			80%

Garcia Declaration Exhibit E

The Top 500 web sites ranked in the markets they serve

Rank	Top 500 Rank	2007 web sales	Share	2006 rank in category
FLOWERS / GIFTS				
1	36	\$501,900,000	37.17%	1
2	55	\$260,000,000	19.26%	2
3	127	\$92,993,670 *	6.89%	4
4	132	\$88,500,000	6.55%	3
5	136	\$85,265,000	6.32%	6
6	151	\$77,400,000	5.73%	5
7	163	\$64,700,000	4.79%	7
8	179	\$57,000,000	4.22%	8
9	189	\$51,000,000	3.78%	9
10	323	\$20,000,000 *	1.48%	15
11	367	\$16,097,400 *	1.19%	10
12	382	\$15,098,704	1.12%	NA
13	430	\$10,971,675 *	0.81%	12
14	461	\$9,207,000 *	0.68%	13
Total 2007 flowers/gifts category sales		\$1,350,133,449		
Total 2006 flowers/gifts category sales		\$1,215,291,011		
Growth				11%

Rank	Top 500 Rank	2007 web sales	Share	2006 rank in category
FOOD / DRUG				
1	41	\$445,700,000	18.79%	1
2	45	\$339,000,000	14.29%	2
3	58	\$240,000,000	10.12%	3
4	70	\$201,724,992 *	8.50%	4
5	80	\$176,800,000	7.45%	5
6	84	\$163,000,000	6.87%	12
7	85	\$162,632,448 *	6.86%	7
8	92	\$145,925,928 *	6.15%	8
9	106	\$126,280,652	5.32%	9
10	155	\$73,710,880	3.11%	10
11	168	\$60,000,000 *	2.53%	11
12	172	\$59,810,000	2.52%	16
13	207	\$43,096,990 *	1.82%	13
14	242	\$33,958,764 *	1.43%	14
15	304	\$22,000,000 *	0.93%	15
16	341	\$18,500,000 *	0.78%	17
17	370	\$16,000,000	0.67%	NA
18	395	\$13,750,000	0.58%	21
19	397	\$13,600,000	0.57%	18
20	454	\$9,430,200 *	0.40%	22
21	466	\$7,500,000	0.32%	NA
Total 2007 food/drug category sales		\$2,372,420,854		
Total 2006 food/drug category sales		\$2,125,304,759		
Growth				12%

Rank	Top 500 Rank	2007 web sales	Share	2006 rank in category
HARDWARE / HOME IMPROVEMENT				
1	42	\$432,411,152 *	31.65%	1
2	72	\$190,971,000 *	13.98%	2
3	75	\$186,800,000	13.67%	3
4	148	\$80,000,000	5.85%	4
5	178	\$57,153,600 *	4.18%	5
6	185	\$52,789,000	3.86%	6
7	241	\$34,000,000	2.49%	9
8	243	\$33,852,000 *	2.48%	10
9	248	\$32,300,000 *	2.36%	NA
10	305	\$22,000,000	1.61%	8
11	324	\$20,000,000	1.46%	19
12	330	\$19,465,920 *	1.42%	12
13	344	\$18,100,000	1.32%	20
14	358	\$17,000,000	1.24%	NA
15	378	\$15,400,000	1.13%	22
16	392	\$14,400,000 *	1.05%	15

Rank	Top 500 Rank	2007 web sales	Share	2006 rank in category
HOME IMPROVEMENT				
17	402	\$13,000,000	0.95%	13
18	406	\$12,800,000	0.94%	14
19	418	\$12,200,000	0.89%	16
20	420	\$12,100,000	0.89%	18
21	423	\$11,500,000	0.84%	27
22	431	\$10,907,000	0.80%	17
23	444	\$10,197,252	0.75%	21
24	452	\$9,500,000	0.70%	NA
25	466	\$8,784,108	0.64%	NA
26	473	\$8,379,720	0.61%	23
27	478	\$8,062,740 *	0.59%	28
28	480	\$8,000,000	0.59%	25
29	483	\$7,715,000	0.56%	24
30	498	\$6,600,000	0.48%	26
Total 2007 hardware/home improvement category sales		\$1,366,388,492		
Total 2006 hardware/home improvement category sales		\$1,206,042,530		
Growth				13%

Rank	Top 500 Rank	2007 web sales	Share	2006 rank in category
HEALTH / BEAUTY				
1	26	\$861,000,000	35.09%	1
2	31	\$673,024,334 *	27.43%	2
3	98	\$143,000,000 *	5.83%	3
4	108	\$122,335,920 *	4.99%	4
5	120	\$102,000,000	4.16%	5
6	142	\$84,000,000 *	3.42%	7
7	156	\$72,000,000	2.93%	8
8	186	\$51,800,000 *	2.11%	18
9	212	\$41,000,000	1.67%	10
10	217	\$40,000,000 *	1.63%	NA
11	231	\$36,000,000	1.47%	19
12	232	\$36,000,000	1.47%	11
13	278	\$26,700,000	1.09%	NA
14	318	\$20,646,000 *	0.84%	NA
15	321	\$20,100,000	0.82%	15
16	335	\$19,200,000	0.78%	12
17	340	\$18,630,000 *	0.76%	13
18	352	\$17,618,515 *	0.72%	14
19	354	\$17,427,000	0.71%	17
20	376	\$15,426,800	0.63%	16
21	415	\$12,232,633	0.50%	21
22	469	\$8,593,811	0.35%	NA
23	482	\$7,819,132 *	0.32%	20
24	494	\$7,145,000	0.29%	NA
Total 2007 health/beauty category sales		\$2,453,899,146		
Total 2006 health/beauty category sales		\$2,217,964,443		
Growth				11%

Rank	Top 500 Rank	2007 web sales	Share	2006 rank in category
HOUSEWARES / HOME FURNISHINGS				
1	21	\$1,104,000,000	28.37%	1
2	52	\$286,000,000	7.35%	2
3	69	\$202,000,000	5.19%	6
4	81	\$176,000,000	4.52%	17
5	83	\$166,417,760 *	4.28%	4
6	93	\$145,135,800 *	3.73%	5
7	105	\$131,000,000	3.37%	3
8	124	\$96,188,040 *	2.47%	9
9	131	\$89,000,000	2.29%	11
10	134	\$86,423,040 *	2.22%	8
11	139	\$84,915,000 *	2.18%	10
12	143	\$83,800,000	2.15%	7
13	154	\$75,000,000 *	1.93%	12

*Internet Retailer estimate Source: The Internet Retailer Top 500 Guide

41. Drugstore.com Inc.



FINANCIAL
2007 Sales: \$445,700,000 2006 Sales: \$415,777,000 2005 Sales: \$399,430,000 2004 Sales: \$360,100,000 2007 Growth Rate: 7.20%
OPERATIONS
Monthly Visits: 6,361,000 ⁴ Monthly Unique Visitors: 4,413,000 ⁴ Conversion Rate: 7.70% ¹ Average Ticket: \$75 Total SKUs on Web: 40,000
WEB SITE SUMMARY
URL: drugstore.com, Beauty.com Year Launched: 1999 Category: Food/Drug Merchant Type: Web Only
CUSTOMER SATISFACTION⁸
Browser Satisfaction: 78 Purchase Intent Score: 80
PERFORMANCE⁵
Response Time: 2.36 seconds Site Availability: 99.91% Consistency: Excellent
MARKETING
Search Engine Category Rank Paid: 62 / Natural: 2 (Food-Drug) Search Engine Shoppers 2007 ² : 37% of all traffic Search Engine Shoppers 2006 ² : 32% of all traffic New Shoppers 2007 ² : 72% of all traffic Return Shoppers 2007 ² : 28% of all traffic Monthly E-Mail Campaigns ³ : 7 With Personalized Subject Line: 0 With Incentives: 7 Number of Affiliates: NA
CORPORATE INFORMATION
Dawn Lepore, Chairman/CEO 411 108th Ave. North East, Suite 1400 Bellevue, WA 98004 425-372-3200

Drugstore.com spent 2007 rebuilding Beauty.com, the beauty products e-commerce site it operates, and diversifying—all part of an effort to achieve profitability. Beauty.com debuted in September with a new design featuring a more personalized look with Web 2.0 technologies such as product zoom and interactive choices of free samples. New features include product zoom that magnifies multiple product views to help with color cosmetics' different hues or textures, and shade matching tools that enable a product search by category, price, ingredient, or trend. Other features include customer reviews of top-rated products and a sample center where shoppers can interactively choose up to three free samples with any Beauty.com purchase. Beauty.com customers also can shop on Drugstore.com at the same time and use a single checkout. "Today's savvy beauty customers shop a variety of price points in both drug stores and high-end department stores. They trade up on products that they view as investments and trade down on items they may not use as frequently," says Kathleen McNeill, vice president of beauty for Beauty.com and Drugstore.com. "Our goal is to create the best beauty shopping experience online with features and tools to assist our customers in making the personal choices that are right for them," says CEO Dawn Lepore. "This is only the beginning of our plans to bring a department store makeup counter experience to our customers online." In October Drugstore.com agreed to aggregate its web site traffic with Revolution Health Network, a health-related portal site that features social networking, and use Revolution Health to develop new revenue from advertising sales. Drugstore.com reported its first-ever fourth quarter profit in the last three months of 2007 along with record quarterly revenue and gross margins. For the year, the online retailer reported sales of \$445.7 million, up 7.2% from \$415.8 million in 2006.

WEB SITE FEATURES & FUNCTIONS			
Advanced Search	Dynamic Imaging	Mobile Commerce	Site Personalization
Affiliate Program	E-Mail a Friend	Online Circular	Social Networking
Blogs	Enlarged Product View	Online Gift Certificates	Syndicated Content
Color Swatching	Frequent Buyer Program	Outlet Center	Top Sellers
Coupons/Rebates	Frequently Asked Questions	Pre-Orders	Videocasts
Customer Reviews	Guided Navigation	Product Ratings	What's New
Daily/Seasonal Specials	Keyword Search	Product Recommendations	Zoom
PAYMENTS		CUSTOMER SERVICE	
American Express	Bill Me Later	Account Status/History	Order Status
Discover	PayPal	Buy Online/Pick-Up	Rain Checks
MasterCard	Google Checkout	In-Store	Real-Time Inventory
Visa	PayPal Express Checkout	Estimated Shipping Date	Check
		Express Checkout	Shipment Tracking
		Live Chat/E-Mail	Toll Free Number
		Order Confirmation	

VENDORS	E-Mail Marketing: In-house, CheatahMail	Site Design: In-house
Affiliate Marketing: LinkShare	Fulfillment: In-house, CommerceHub, Kewill Systems	Site Search: Endeca
Content Delivery: Akamai, In-house	Order Management: In-house, Kewill Systems	Web Analytics: Omniture, In-house
Content Management: In-house	Payments Processor: Chase Paymentech	Web Hosting: SAWVIS
CRM: In-house	Rich Media: Scene7	Web Performance Monitoring: Gomez, Truesight
Customer Service: KANA Software, RightNow Technologies, In-house	Search Engine Marketing: In-house	
E-Commerce Platform: In-house	Security Certification: Trustwave	

1. Internet Retailer estimate. 2. Estimate by Internet Retailer based on average daily visitors as reported by comScore Inc. 3. Monthly average by comScore Inc. 4. Monthly average by Nielsen Online. 5. ACSI Methodology by ForeSee Results, see p. 22. 6. January 2006, Gomez Inc., see p. 28. 7. January 2006, Hitwise, see p. 32. 8. January 2006, Silverpop Systems Inc., see p. 34. NS: Not significant, see p.

Garcia Declaration Exhibit F

AIDED AND UNAIDED AWARENESS STUDY

Awareness

	Unaided	Aided
walgreens.com	32%	87%
walmart.com	32%	83%
amazon.com	29%	81%
cvs.com	28%	80%
drugstore.com	23%	79%
target.com	16%	73%
riteaid.com	12%	66%
avon.com	10%	62%
ebay.com	8%	61%
sephora.com	7%	56%
gnc.com	6%	55%
costco.com/samsclub.com	5%	50%
		41%
		39%
		23%
		10%
		10%
		8%
		7%
		5%
		4%
		4%

Base: online shoppers who made at least one online purchase within previous 12 months.

Q: Please tell me the names of all the websites you can think of that sell health, beauty, personal care and/or wellness products, including but not limited to over-the-counter medicine, vitamins/supplements, cosmetics, personal care items, make-up, etc.

Q: Which of the following websites have you heard of that sell health, beauty, personal care, and wellness products? (CHECK ALL THAT APPLY)

EXHIBIT G



eCommerce Attitude, Awareness and Usage Research

JULY 2014

UPDATED AUGUST 14, 2014

Walgreens
AT THE CORNER OF HAPPY & HEALTHY™

 Maritz RESEARCH

Methodology



Study Description

Online survey
Median completion time: 27 minutes
Fielded April 14 - 28



Qualification

Respondents were comprised of members of the CriticalMix online consumer Panel and High Value Customers (Everyday Loyals, Big Spenders and Steady Shoppers) from the Walgreens database

- Do not work in sensitive industries
- Ages 18+
- Have used the internet/visited websites in the past 3 months
- Purchased a Daily Living, Pharmacy or Photo item online in the past six months

Due to the length and complexity of the survey, all respondents completed the surveys on a desktop or laptop computer



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Completes

Line of Business	General Market Completes
Daily Living	n=1501
Pharmacy	n=1503
Photo	n=1504
Total	n=4508

REDACTED

The project was carried out in compliance with the ISO 20252 International Standard

Online Daily Living Shoppers Profile



86%
of Online Shoppers
Shop online for Daily
Living items

Shopping Behaviors

Top Daily Living Categories

*Purchased online in past 6 months,
among Daily Living shoppers*

Beauty	53%
Vitamins	49%
Personal Care	45%
Seasonal	42%

39% purchase only Daily Living online

25% Purchase Daily Living and Photo online

23% Purchase Daily Living and Pharmacy online

13% purchase all three (Daily Living, Photo, Pharmacy)

Top Brands

Have purchased Daily Living item(s) from

69%	amazon.com
39%	Walmart.com
34%	ebay
25%	drugstore
25%	Target.com

Compared to total online shoppers, Daily Living shoppers are slightly more likely to be female, are less likely to have Bachelor's/Master's degree, less likely to work full-time and/or make over \$75k per year. This group is also less likely to live with spouse and/or have children compared to total shoppers..

Demographics

68% Female

85% Caucasian
7% African-American
7% Hispanic

Age (mean) **49.3**



44% Bachelor's Degree or Higher



68% Live with Spouse/ Significant other

36% Have Children

51% Live in suburbs

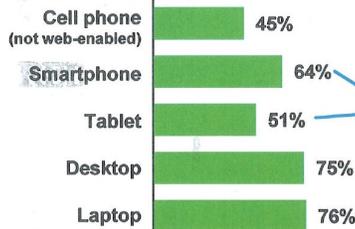
19% Provide Care



37% Work full-time
34% Salary \$75k +

REDACTED

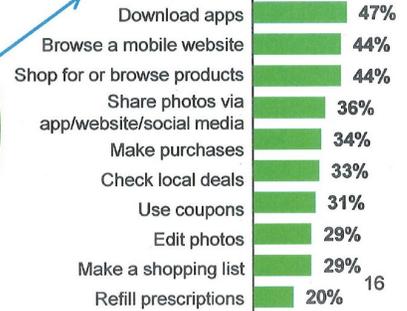
Device and Mobile Usage



28% Use Smartphone & Tablet & Desktop & Laptop

73% Smartphone and/or Tablet
42% Both Tablet & Smartphone

Activities done at least once per month – Smartphone/tablet owners



REDACTED

REDACTED



REDACTED

Website Awareness and Usage Funnels – Daily Living



Sorted by retailer category
Among total online daily living shoppers



REDACTED

FE1. Thinking only about shopping for [daily living items], please indicate your experience with each of the following websites.
Base: purchased daily living items online in past 6 months - n=3873



FE2b. At which of these providers do you purchase these products at most often? Base: purchased from one of the retail stores/websites listed - n=1429
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Category Definitions

Daily Living Products

- Beauty products such as cosmetics, skin care, hair care, fragrances
- Healthcare products such as health monitors, cough/cold medicine, first aid, pain relievers, allergy
- Home medical supplies and equipment such as wheel chairs, bath lifts, incontinence or other mobility products
- Personal care products such as bath, oral care, deodorants, soap, shaving and paper products
- Contact lenses and associated products (e.g., solutions)
- Seasonal products such as summer or back to school and/or holiday items such as Halloween, Christmas, Valentine's Day
- Vitamins, supplements, sports nutrition
- Household items such as cleaning supplies, etc.
- Non-perishable food such as canned soup, etc.
- Baby care items such as diapers, toys, breast pumps and furniture

REDACTED

