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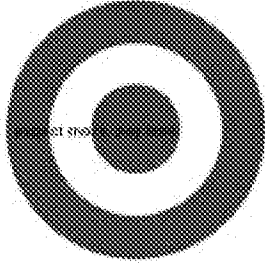
Filing date: **11/27/2007**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91174936
Party	Plaintiff Payless ShoeSource Worldwide, Inc.
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Signature	/jka/
Date	11/27/2007
Attachments	2007-11-27 PSS Rsp TTAB Order.pdf ( 2 pages )(16898 bytes ) 2007-11-27 PSS Rsp TTAB Order_Attchmt 1.pdf ( 10 pages )(681108 bytes ) 2007-11-27 PSS Rsp TTAB Order_Attchmt 2.pdf ( 10 pages )(471915 bytes ) 2007-11-27 PSS Rsp TTAB Order_Attchmt 3.pdf ( 9 pages )(470917 bytes )

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Application of TARGET BRANDS, INC.  
Serial No. 78/794492  
Filed January 19, 2006  
for mark "EXPECT MORE. PAY LESS."



Published for opposition September 5, 2006

PAYLESS SHOESOURCE  
WORLDWIDE INC. and PAYLESS  
SHOESOURCE, INC.

Opposers,

Opposition No. 91174936

v.

TARGET BRANDS, INC.

Applicant.

United States Patent and Trademark Office  
Trademark Trial and Appeal Board P.O. Box 1451  
Alexandria, VA 22313-1451

RESPONSE TO BOARD'S ORDER DATED OCTOBER 30, 2007

In response to the Board's Order dated October 30, 2007, Opposer Payless ShoeSource Worldwide, Inc., ("Payless") hereby submits the First Amended Complaint, Answer of Target Brands, Inc. to First Amended Complaint, and Answer of Target

Corporation to First Amended Complaint all relating to the District of Kansas, Civil  
Action No. 05-4023-JAR litigation.

If the Board should need anything further, please contact the undersigned.

Respectfully submitted,

Dated: November 27, 2007

LATHROP & GAGE L.C.

By: /s/ Joan K. Archer  
Joan K. Archer  
2345 Grand Boulevard  
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Kansas City, Missouri 64108-2684  
Telephone: (816) 292-2000  
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jarcher@lathropgage.com

Attorneys for Opposer

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on November 27, 2007, a true and correct copy of the above and foregoing RESPONSE TO BOARD'S ORDER DATED OCTOBER 30, 2007 was forwarded to counsel for Applicant via U.S. first class mail, postage prepaid, addressed as follows:

James R. Steffen  
Timothy J. Cruz  
2200 Wells Fargo Center  
90 South Seventh Street  
Minneapolis, MN 55402

/s/ Joan K. Archer

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF KANSAS

PAYLESS SHOESOURCE WORLDWIDE, )  
INC., a Kansas Corporation )  
700 SW Jackson Street, Suite 202 )  
Topeka, KS 66611, )  
 )  
Plaintiff, ) Civil Action No. 05-4023-JAR  
 )  
v. ) **JURY TRIAL DEMANDED**  
 )  
TARGET CORPORATION, )  
a Minnesota Corporation )  
777 Nicollet Mall )  
Minneapolis, MN 55403 )  
 )  
and )  
 )  
TARGET BRANDS, INC., )  
a Minnesota Corporation )  
777 Nicollet Mall )  
Minneapolis, MN 55403, )  
 )  
Defendants. )

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**FIRST AMENDED COMPLAINT**

Plaintiff Payless ShoeSource Worldwide, Inc. ("Payless WW" or "Plaintiff"), by and through its attorneys, alleges and states:

1. Plaintiff Payless WW is a corporation organized and existing under the laws of the State of Kansas, having its principal place of business in Topeka, Kansas.

2. Defendant Target Corporation ("Target") is a corporation organized and existing under the laws of the State of Minnesota, having its principal place of business in Minnesota. Target is doing business in this District, including the distribution, sale and marketing of footwear products within the State of Kansas, and licenses trademarks from its affiliated co-defendant Target Brands, Inc. ("Target Brands").

3. Defendant Target Brands is a corporation organized and existing under the laws of the State of Minnesota, having its principal place of business in Minnesota. Target Brands is an

affiliate of Target that owns and licenses trademarks to Target. The trademarks licensed by Target Brands at issue in this dispute are used in this District.

### **JURISDICTION AND VENUE**

4. This is an action for trademark infringement, dilution, unfair competition and false designation of origin under the Trademark Act of 1946, 15 U.S.C. §§ 1051-1127 and the common and statutory law of the State of Kansas, for breach of an agreement, and for specific performance of that agreement.

5. Subject matter jurisdiction for this action is based upon federal question jurisdiction under 28 U.S.C. §§ 1331 and 1338, and under 15 U.S.C. § 1121, in that this case arises under the trademark laws of the United States (the "Lanham Act"). Subject matter jurisdiction is further founded upon diversity jurisdiction under 28 U.S.C. § 1332 in that this action is between citizens of different states and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

6. Venue is proper in this District under 28 U.S.C. § 1391(a)-(c), in that Defendants are subject to personal jurisdiction in this District, and/or a substantial part of the acts or omissions giving rise to these claims occurred in this District.

### **ALLEGATIONS COMMON TO ALL CLAIMS**

7. Payless WW supplies footwear to its affiliate Payless ShoeSource, the largest specialty family footwear retailer in North America, with approximately 4,700 Payless ShoeSource retail stores. In 2003, Payless ShoeSource sold over 200 million pairs of shoes, with sales of \$2.78 billion.

8. Payless WW owns and licenses trademarks and other intellectual property used in connection with Payless ShoeSource stores and merchandise, including the mark PAYLESS for retail shoe store services (the "PAYLESS Mark").

9. Since at least 1983 and continuously since that time, Payless WW and/or its licensee has used the PAYLESS Mark in interstate commerce in the United States in connection with retail shoe store services, in order to distinguish the goods and services of Payless ShoeSource from those

of its competitors. Payless WW and/or its licensee has extensively promoted the PAYLESS Mark, and many billions of dollars of footwear and other products have been sold under the PAYLESS Mark in Payless ShoeSource shoe stores.

10. Payless WW owns an incontestable United States trademark registration for the PAYLESS Mark for use in connection with retail shoe store services, U.S. Reg. No. 1949546, a copy of which is attached as Exhibit A. In addition, Payless WW owns numerous U.S. registrations for the mark PAYLESS SHOESOURCE in connection with retail shoe store services, shoes and related products and services, and Payless WW owns U.S. registrations for the marks LOOK SMART. PAYLESS. (U.S. Reg. No. 2812839) and BUY MORE, PAYLESS (U.S. Reg. No. 2172019) for retail shoe store services, copies of which are attached as Exhibits B and C, respectively. The marks described in this paragraph are hereafter collectively referred to as the "Payless WW Marks."

11. Target operates Target discount stores, which sell merchandise that includes men's, women's and kid's footwear that competes directly with footwear sold at Payless ShoeSource stores.

12. Target Brands is the owner, and Target is the licensee, of a United States Trademark Registration No. 2256194 for the mark EXPECT MORE. PAY LESS. in connection with retail department store services, and Target uses this mark in its advertising ("EMPL Mark").

13. Plaintiff initially opposed the application for the EMPL Mark. Plaintiff and Target Brands (formerly named Dayton Hudson Brands, Inc.) resolved this dispute with an agreement dated March 29, 1999, a copy of which is attached as Exhibit D ("Agreement").

14. By its terms, Target Brands is required to enforce the restrictions set forth in the Agreement upon its licensees, including Target.

15. Plaintiff has learned that, in breach of the Agreement and in violation of Plaintiff's rights, Target has modified the EMPL Mark to EXPECT MORE. **PAY LESS.**, using a font many times bolder and wider for the PAY LESS portion of this mark than for the EXPECT MORE portion of this mark.

16. Plaintiff has learned that, in breach of the Agreement and in violation of Plaintiff's rights, Target has used the PAY LESS portion of the EMPL Mark as a single word and/or in a manner that indicates to an average observer that the words "PAY LESS" are meant to appear as the single word "Payless."

17. Plaintiff has learned that, in breach of the Agreement and in violation of Plaintiff's rights, Target has used the unaccompanied words "PAY LESS" in a trademark sense by placing signage in its stores that states PAY LESS, accompanied by a trademark registration notice.

18. Plaintiff has learned that, in breach of the Agreement and in violation of Plaintiff's rights, Target has used in a trademark sense the words "pay less" accompanied by other words, by adopting new slogans that include "EAT WELL. PAY LESS." and "PARTY MORE. PAY LESS".

19. Plaintiff delivered its written objections to the foregoing acts of Defendants by written facsimile letter dated December 10, 2004. Defendants have failed and refused to meet Plaintiff's demands for compliance with the Agreement or to cease and desist from further infringement of Plaintiff's rights. A copy of Plaintiff's demand letter with attachments is attached as Exhibit E.

### **FIRST CLAIM FOR RELIEF**

#### **[Trademark Infringement under the Lanham Act 15 U.S.C. § 1125 et seq.]**

20. Plaintiff restates and realleges the allegations of Paragraphs 1 through 19 of this First Amended Complaint.

21. Payless WW owns all rights and interest in the Payless WW Marks (the PAYLESS Mark, the PAYLESS SHOESOURCE Mark, the LOOK SMART. PAYLESS. Mark, and the BUY MORE, PAYLESS Mark), including the right to prevent use of later-adopted confusingly similar marks.

22. Target is selling, offering and/or advertising retail store services and products in interstate commerce using various PAY LESS marks ("Target PAY LESS Marks") that are confusingly similar to the Payless Marks.

23. Plaintiff has not granted permission or otherwise authorized Target's use of the Target PAY LESS Marks in the manner in which Target is currently using such marks, and Target's use of the Target PAY LESS Marks is likely to cause confusion, mistakes and deception regarding the source, sponsorship or affiliation of Target's products and services.

24. Target's use of the Target PAY LESS Marks constitutes trademark infringement and unfair competition under the Lanham Act, 15 U.S.C. §1125.

25. Target Brands has contributorily infringed the Payless WW Marks by allowing its licensee Target to infringe the Payless WW Marks.

26. By intentionally disregarding the terms of the Agreement that limited use of the Target PAY LESS Marks to prevent a likelihood of confusion, Defendants have demonstrated an intent to willfully infringe the Payless WW Marks.

27. Defendants' acts threaten to undermine the Payless WW Marks, established over many years and with the expenditure of millions of dollars on research, development, advertising and promotion.

28. Defendants' acts have caused and will cause damage to Plaintiff in an amount to be proven at trial.

29. Defendants' acts have also caused and will cause severe and irreparable injury to the reputation and goodwill symbolized by the Payless WW Marks and, unless enjoined by this Court, the irreparable harm to Plaintiff will continue.

30. Plaintiff has no adequate remedy at law.

### **SECOND CLAIM FOR RELIEF**

#### **[Common Law Unfair Competition]**

31. Plaintiff restates and realleges the allegations of Paragraphs 1 through 30 of this First Amended Complaint.

32. Defendants' acts constitute unfair competition and trademark infringement under the common law of Kansas.



33. Defendants' acts were willful, wanton, and in conscious disregard of Plaintiff's rights and warrant the imposition of punitive damages under Kansas law.

### **THIRD CLAIM FOR RELIEF**

#### **[Violation of the Federal Antidilution Act, 15 U.S.C. § 1125(c)]**

34. Plaintiff restates and realleges the allegations of Paragraphs 1 through 33 of this First Amended Complaint.

35. Through long and extensive national use, the investment of millions of dollars in promotion, and the sale of billions of dollars of footwear using these marks, Plaintiff's distinctive PAYLESS Mark has become famous in connection with retail shoe store services.

36. Defendants began commercially using the Target PAY LESS Marks after the PAYLESS Mark became famous.

37. Target's use of the Target PAY LESS Marks is diluting the distinctive quality of the PAYLESS Mark and, unless enjoined by this Court, will continue to dilute the distinctive quality of the PAYLESS Mark.

38. Target Brands has contributorily diluted the Payless WW Marks by allowing its licensee Target to dilute the Payless WW Marks.

39. By intentionally disregarding the terms of the Agreement that limited use of the Target PAY LESS Marks to prevent dilution of the PAYLESS Mark, Defendants have demonstrated an intent to willfully dilute the PAYLESS Mark.

40. Defendants' acts constitute trademark dilution under 15 U.S.C. §1125(c).

### **FOURTH CLAIM FOR RELIEF**

#### **[Violation of Revised Kansas Trademark Act, Kan. Stat. Ann. § 81-214]**

41. Plaintiff restates and realleges the allegations of Paragraphs 1 through 40 of this First Amended Complaint.

42. The PAYLESS Mark is famous in Kansas, and Defendants began use of the Target PAY LESS Marks after the PAYLESS Mark achieved its fame.

43. Defendants' acts constitute violations of the antidilution provisions of the Revised Kansas Trademark Act, Kan. Stat. Ann. § 81-214.

### **FIFTH CLAIM OF RELIEF**

#### **[Breach of Trademark Rights Contract and Specific Performance]**

44. Plaintiff restates and realleges the allegations of Paragraphs 1 through 43 of this First Amended Complaint.

45. Defendants have breached the express terms of the Agreement, including but not limited to the breaches set forth in Paragraphs 15 through 18 of this First Amended Complaint.

46. In addition, Defendants have violated their implied duty of good faith and fair dealing in connection with their performance of the Agreement.

47. The Agreement relates to unique and irreplaceable assets—Payless WW Marks- and Plaintiff has suffered irreparable harm from Defendants' breaches of the Agreement for which Plaintiff has no adequate remedy at law.

48. Plaintiff has suffered damages as a result of Defendants' breaches of the Agreement in an amount that is not yet ascertained.

49. Plaintiff is entitled to specific performance of the terms of the Agreement.

### **PRAYER**

WHEREFORE, Plaintiff demands a judgment against Defendants and prays that this Court:

1. Preliminarily and permanently enjoin Defendants, their agents, servants, employees, affiliates, licensees, attorneys and all persons in active concert or participation with it or acting for, with, by, through, or under it, from infringing the Payless WW Marks; from unfair competition with Payless WW or its affiliates; from falsely designating the origin of Target's goods and services; and specifically from:

(a) Using the Payless WW Marks or any other mark, name or term confusingly similar thereto, including the Target PAY LESS Marks, alone or in combination with any other

letters, words or marks, as a trademark on or in connection with the advertising, offering for sale, or actual sale of products or services of Target;

(b) Continuing use of the Target PAY LESS Marks, or any other marks confusingly similar to the Payless WW Marks, in connection with footwear, footwear related products, accessories, retail shoe store services, or any related goods or services;

(c) Committing any other acts calculated to cause purchasers to believe that Target's goods and services are goods and services of Payless WW or any of its affiliates or are in any manner sponsored, endorsed, licensed or approved by Plaintiff or associated with Payless ShoeSource products or services;

(d) Further diluting and infringing the rights of Plaintiff in and to the PAYLESS Mark and damaging Plaintiff's goodwill;

(e) Using the EMPL Mark, the Target PAY LESS Marks, or any other mark or words in violation of the Agreement; and

(f) Otherwise competing unfairly with Plaintiff or its affiliates in any manner.

2. Require Defendants to deliver up for destruction any products, equipment, catalogs, price lists, circulars, signs, prints, advertising and packaging material, labels, wrappers or any other materials in the possession of Defendants or under their control and bearing the Target PAY LESS Marks or any other mark confusingly similar to the Payless WW Marks;

3. Grant to Plaintiff an order for Specific Performance of the terms of the Agreement, specifically including enforcement of the restrictions set forth in Paragraphs 1 through 4 of the Agreement.

4. Grant to Plaintiff an accounting and award and recovery of Defendants' profits, any damages sustained by Plaintiff and the costs of this action, including attorneys' fees, together with a

judgment for a sum above the amount found as actual damages, not exceeding three times such amount as provided by 15 U.S.C. § 1117;

5. Award punitive damages as may be determined just and equitable by the Court;

6. Require Defendants to account for all gains, profits, and advantages derived from their acts of infringement, violations of the Agreement and for their other violations of law and that all gains, profits and advantages so derived by Defendants be deemed to be held in constructive trust for the benefit of Plaintiff;

7. Grant to Plaintiff interest on the damages so awarded; and

8. Grant to Plaintiff such further relief as may be equitable under the circumstances.

### **JURY DEMAND**

Plaintiff demands a trial by jury on all counts.

DATED: October 3, 2005

Respectfully submitted,

s/ David V. Clark

David V. Clark                      KS #70014

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**LATHROP & GAGE L.C.**

2345 Grand Blvd., Suite 2500

Kansas City, Missouri 64108-2684

Tel: (816) 292-2000    Fax: (816) 292-2001

*Attorneys for Plaintiff*

*Payless ShoeSource Worldwide, Inc.*

### **CERTIFICATE OF SERVICE**

I hereby certify that on the 3rd day of October, 2005, I electronically filed the foregoing **FIRST AMENDED COMPLAINT** with the clerk of the court by using the CM/ECF system which will send a notice of electronic filing to counsel for Target Corporation as follows:

Brian K. O'Bleness - bobleness@stinsonmoheck.com  
Stinson Morrison Hecker LLP  
1201 Walnut Street  
Kansas City, MO 64106

James R. Steffen - jrsteffen@faegre.com  
Michelle A. Paninopoulos - mpaninopoulos@faegre.com  
Faegre & Benson LLP  
90 South 7th Street  
Minneapolis, MN 55402

s/ David V. Clark  
David V. Clark KS #70014  
*Attorneys for Plaintiff*  
*Payless ShoeSource Worldwide, Inc.*

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

PAYLESS SHOESOURCE	)	
WORLDWIDE, INC.,	)	
	)	
Plaintiff,	)	Civil Action No. 05-4023-JAR-KGS
	)	
v.	)	
	)	
TARGET CORPORATION and	)	
TARGET BRANDS, INC.,	)	
	)	
Defendants.	)	

SEPARATE ANSWER OF TARGET BRANDS, INC.  
TO FIRST AMENDED COMPLAINT

Defendant Target Brands, Inc. (“Target Brands”) hereby makes its Separate Answer to the First Amended Complaint of Plaintiff Payless ShoeSource Worldwide, Inc. (“Payless WW” or “Plaintiff”) (“Amended Complaint”). Except as hereafter expressly admitted, qualified, or otherwise stated, Target Brands denies each and every averment, allegation and assertion made in the Amended Complaint.

(The Parties)

1. Target Brands is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1 of the Amended Complaint.

2. Answering paragraph 2 of the Amended Complaint, Target Brands admits upon information and belief that Target Corporation (“Target”) is a Minnesota corporation with its principal place of business located in Minnesota; admits upon information and belief that Target operates retail stores within the State of Kansas that

offer for sale and sell a wide variety of goods, including, among other things, footwear; states that Target Brands is a subsidiary of Target; and admits that Target licenses trademarks from Target Brands.

3. Answering paragraph 3 of the Amended Complaint, Target Brands admits that Target Brands is a Minnesota corporation with its principal place of business in Minnesota; states that Target Brands is a subsidiary of Target; admits that Target Brands owns trademarks; admits that Target Brands licenses trademarks to Target; and admits upon information and belief that the marks EXPECT MORE. PAY LESS.®, EAT WELL. PAY LESS.<sup>SM</sup> and PARTY MORE. PAY LESS.<sup>TM</sup> are used within this District.

(Jurisdiction and Venue)

4. Answering paragraph 4 of the Amended Complaint, Target Brands admits that the Amended Complaint purports to state the causes of action listed in paragraph 4 of the Amended Complaint.

5. Answering paragraph 5 of the Amended Complaint, Target Brands admits that the Court has subject matter jurisdiction over the action.

6. Answering paragraph 6 of the Amended Complaint, Target Brands admits that venue is proper in this District because Target and Target Brands are corporations and neither Target nor Target Brands contests personal jurisdiction in this District for purposes of this action.

(Common Allegations)

7. Target Brands is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 7 of the Amended Complaint.

8. Target Brands is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 8 of the Amended Complaint.

9. Target Brands is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 9 of the Amended Complaint.

10. Answering paragraph 10 of the Amended Complaint: Target Brands denies that Payless WW is the owner of a U.S. Registration for the mark BUY MORE, PAYLESS; Target Brands admits upon information and belief that Payless WW is the owner of record of U.S. Reg. No. 1949546; Target Brands admits that a copy of a Trademark Electronic Search System (“TESS”) record for U.S. Reg. No. 1949546 current as of January 24, 2005 was attached to the Complaint as Exhibit A; Target Brands admits upon information and belief that U.S. Trademark Reg. No. 1949546 is “incontestable” within the meaning of 15 U.S.C. § 1065; Target Brands admits upon information and belief that Payless WW is the owner of record of U.S. Reg. No. 2812839; Target Brands admits that a copy of a TESS record of U.S. Reg. No. 2812839 current as of January 24, 2005 was attached to the Complaint as Exhibit B; and Target Brands admits that a copy of a TESS record of U.S. Reg. No. 2172019 current as of January 24, 2005 was attached to the Complaint as Exhibit C. Target Brands further admits on information and belief that Payless WW owns U.S. registrations for the mark PAYLESS SHOESOURCE for use in connection with retail shoe service and with shoes.



11. Answering paragraph 11 of the Amended Complaint, Target Brands admits upon information and belief that Target operates TARGET® discount department stores that sell a wide variety of goods, including, among other things, footwear for men, women and children.

12. Answering paragraph 12 of the Amended Complaint, Target Brands admits that it is the owner of U.S. Reg. No. 2256194 for the mark EXPECT MORE. PAY LESS.®, admits that Target Brands has licensed the EXPECT MORE. PAY LESS.® mark to Target, and admits upon information and belief that Target uses the service mark EXPECT MORE. PAY LESS.® in its advertising.

13. Answering paragraph 13 of the Amended Complaint, Target Brands admits upon information and belief that Plaintiff on or about June 1, 1998 filed with the Trademark Trial and Appeal Board of the United States Patent and Trademark Office an opposition to the application that ultimately matured into U.S. Reg. No. 2256194, and admits that Plaintiff and Dayton Hudson Brands, Inc. (now known as Target Brands, Inc.) on or about March 29, 1999 entered into a Trademark Agreement And Consent To Registration And Use Of Marks, a copy of which was attached to the Amended Complaint as Exhibit D.

14. Answering paragraph 14 of the Amended Complaint, Target Brands states that the Trademark Agreement And Consent To Registration And Use Of Marks speaks for itself.

15. Target Brands denies the allegations of paragraph 15 of the Amended Complaint.

16. Target Brands denies the allegations of paragraph 16 of the Amended Complaint.

17. Target Brands denies the allegations of paragraph 17 of the Amended Complaint.

18. Target Brands denies the allegations of paragraph 18 of the Amended Complaint.

19. Target Brands denies the allegations of paragraph 19 of the Amended Complaint, but admits that a copy of a December 10, 2004 letter to Target Brands was attached to the Complaint as Exhibit E and states upon information and belief that that letter was received by Target Brands on or about December 10, 2004.

(First Claim For Relief)

20. Answering paragraph 20 of the Amended Complaint, Target Brands re-alleges and incorporates by reference the foregoing.

21. Target Brands denies the allegations of paragraph 21 of the Amended Complaint upon information and belief.

22. Target Brands denies the allegations of paragraph 22 of the Amended Complaint.

23. Target Brands denies the allegations of paragraph 23 of the Amended Complaint.

24. Target Brands denies the allegations of paragraph 24 of the Amended Complaint.

25. Target Brands denies the allegations of paragraph 25 of the Amended Complaint.

26. Target Brands denies the allegations of paragraph 26 of the Amended Complaint.

27. Target Brands denies the allegations of paragraph 27 of the Amended Complaint.

28. Target Brands denies the allegations of paragraph 28 of the Amended Complaint.

29. Target Brands denies the allegations of paragraph 29 of the Amended Complaint.

30. Target Brands denies the allegations of paragraph 30 of the Amended Complaint.

(Second Claim For Relief)

31. Answering paragraph 31 of the Amended Complaint, Target Brands re-alleges and incorporates by reference the foregoing.

32. Target Brands denies the allegations of paragraph 32 of the Amended Complaint.

33. Target Brands denies the allegations of paragraph 33 of the Amended Complaint.

(Third Claim For Relief)

34. Answering paragraph 34 of the Amended Complaint, Target Brands re-alleges and incorporates by reference the foregoing.

35. Target Brands denies the allegations of paragraph 35 of the Amended Complaint.

36. Target Brands denies the allegations of paragraph 36 of the Amended Complaint.

37. Target Brands denies the allegations of paragraph 37 of the Amended Complaint.

38. Target Brands denies the allegations of paragraph 38 of the Amended Complaint.

39. Target Brands denies the allegations of paragraph 39 of the Amended Complaint.

40. Target Brands denies the allegations of paragraph 40 of the Amended Complaint.

(Fourth Claim For Relief)

41. Answering paragraph 41 of the Amended Complaint, Target Brands re-alleges and incorporates by reference the foregoing.

42. Target Brands denies the allegations of paragraph 42 of the Amended Complaint.

43. Target Brands denies the allegations of paragraph 43 of the Amended Complaint.

(Fifth Claim For Relief)

44. Answering paragraph 44 of the Amended Complaint, Target Brands re-alleges and incorporates by reference the foregoing.

45. Target Brands denies the allegations of paragraph 45 of the Amended Complaint.

46. Target Brands denies the allegations of paragraph 46 of the Amended Complaint.

47. Target Brands denies the allegations of paragraph 47 of the Amended Complaint.

48. Target Brands denies the allegations of paragraph 48 of the Amended Complaint.

49. Target Brands denies the allegations of paragraph 49 of the Amended Complaint.

#### AFFIRMATIVE DEFENSES

1. The Amended Complaint fails, in whole or in part, to state a claim upon which relief can be granted.

2. Plaintiff's claims are barred, in whole or in part, by the doctrines of waiver, estoppel, acquiescence and/or laches.

3. Plaintiff's claims are barred, in whole or in part, by the doctrine of unclean hands.

4. Plaintiff's claims are barred, in whole or in part, by accord and satisfaction.

#### PRAYER FOR RELIEF

WHEREFORE, Target Brands prays for the following relief:

a. that Payless WW's Amended Complaint be dismissed with prejudice and on the merits;

- b. that Target Brands be awarded its costs and disbursements herein;
- c. that Target Brands be awarded its attorney's fees herein to the extent permitted by law or in equity; and
- d. that Target Brands be awarded such other and further relief as the Court may deem just and equitable.

Dated: October 14, 2005

Respectfully submitted,

By: /s/ Brian K. O'Bleness

Brian K. O'Bleness (#77892)

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ATTORNEYS FOR DEFENDANT  
TARGET BRANDS, INC.

M2:20747479.02

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing was filed electronically with the U.S. District Court for the District of Kansas, with notice of case activity to be generated and sent electronically this 14th day of October, 2005 to:

Stephen J. Horace  
William A. Rudy  
David V. Clark  
David R. Barnard  
LATHROP & GAGE L.C.  
2345 Grand Avenue, Suite 2800  
Kansas City, MO 64108-2684  
*Attorneys for Plaintiff Payless ShoeSource Worldwide, Inc.*

*/s/ Brian K. O'Bleness*

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

PAYLESS SHOESOURCE	)	
WORLDWIDE, INC.,	)	
	)	
Plaintiff,	)	Civil Action No. 05-4023-JAR-KGS
	)	
v.	)	
	)	
TARGET CORPORATION and	)	
TARGET BRANDS, INC.,	)	
	)	
Defendants.	)	

SEPARATE ANSWER OF TARGET CORPORATION TO FIRST AMENDED COMPLAINT

Defendant Target Corporation (“Target”) hereby makes its Separate Answer to the First Amended Complaint of Plaintiff Payless ShoeSource Worldwide, Inc. (“Payless WW” or “Plaintiff”) (“Amended Complaint”). Except as hereafter expressly admitted, qualified, or otherwise stated, Target denies each and every averment, allegation and assertion made in the Amended Complaint.

(The Parties)

1. Target is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1 of the Amended Complaint.

2. Answering paragraph 2 of the Amended Complaint, Target admits that Target is a Minnesota corporation with its principal place of business located in Minnesota; admits that Target operates retail stores within the State of Kansas that offer for sale and sell a wide variety of goods, including, among other things, footwear; states



that Target Brands, Inc. (“Target Brands”) is a subsidiary of Target; and admits that Target licenses trademarks from Target Brands.

3. Answering paragraph 3 of the Amended Complaint, Target admits that Target Brands is a Minnesota corporation with its principal place of business in Minnesota; states that Target Brands is a subsidiary of Target; admits that Target Brands owns trademarks; admits that Target Brands licenses trademarks to Target; and admits that the marks EXPECT MORE. PAY LESS.®, EAT WELL. PAY LESS.<sup>SM</sup> and PARTY MORE. PAY LESS.<sup>TM</sup> are used within this District.

(Jurisdiction and Venue)

4. Answering paragraph 4 of the Amended Complaint, Target admits that the Amended Complaint purports to state the causes of action listed in paragraph 4 of the Amended Complaint.

5. Answering paragraph 5 of the Amended Complaint, Target admits that the Court has subject matter jurisdiction over the action.

6. Answering paragraph 6 of the Amended Complaint, Target admits that venue is proper in this District because Target and Target Brands are corporations and neither Target nor Target Brands contests personal jurisdiction in this District for purposes of this action.

(Common Allegations)

7. Target is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 7 of the Amended Complaint.

8. Target is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 8 of the Amended Complaint.

9. Target is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 9 of the Amended Complaint.

10. Answering paragraph 10 of the Amended Complaint: Target denies that Payless WW is the owner of a U.S. Registration for the mark BUY MORE, PAYLESS; Target admits upon information and belief that Payless WW is the owner of record of U.S. Reg. No. 1949546; Target admits that a copy of a Trademark Electronic Search System (“TESS”) record for U.S. Reg. No. 1949546 current as of January 24, 2005 was attached to the Complaint as Exhibit A; Target admits upon information and belief that U.S. Trademark Reg. No. 1949546 is “incontestable” within the meaning of 15 U.S.C. § 1065; Target admits upon information and belief that Payless WW is the owner of record of U.S. Reg. No. 2812839; Target admits that a copy of a TESS record of U.S. Reg. No. 2812839 current as of January 24, 2005 was attached to the Complaint as Exhibit B; and Target admits that a copy of a TESS record of U.S. Reg. No. 2172019 current as of January 24, 2005 was attached to the Complaint as Exhibit C. Target further admits on information and belief that Payless WW owns U.S. registrations for the mark PAYLESS SHOESOURCE for use in connection with retail shoe service and with shoes.

11. Answering paragraph 11 of the Amended Complaint, Target admits that Target operates TARGET® discount department stores that sell a wide variety of goods, including, among other things, footwear for men, women and children.

12. Answering paragraph 12 of the Amended Complaint, Target admits upon information and belief that Target Brands is the owner of U.S. Reg. No. 2256194 for the mark EXPECT MORE. PAY LESS.®, admits that Target Brands has licensed the EXPECT MORE. PAY LESS.® mark to Target, and admits that Target uses the service mark EXPECT MORE. PAY LESS.® in its advertising.

13. Answering paragraph 13 of the Amended Complaint, Target admits upon information and belief that Plaintiff on or about June 1, 1998 filed with the Trademark Trial and Appeal Board of the United States Patent and Trademark Office an opposition to the application that ultimately matured into U.S. Reg. No. 2256194, and admits upon information and belief that Plaintiff and Dayton Hudson Brands, Inc. (now known as Target Brands, Inc.) on or about March 29, 1999 entered into a Trademark Agreement And Consent To Registration And Use Of Marks, a copy of which was attached to the Amended Complaint as Exhibit D.

14. Answering paragraph 14 of the Amended Complaint, Target states that the Trademark Agreement And Consent To Registration And Use Of Marks speaks for itself.

15. Target denies the allegations of paragraph 15 of the Amended Complaint.

16. Target denies the allegations of paragraph 16 of the Amended Complaint.

17. Target denies the allegations of paragraph 17 of the Amended Complaint.

18. Target denies the allegations of paragraph 18 of the Amended Complaint.

19. Target denies the allegations of paragraph 19 of the Amended Complaint, but admits that a copy of a December 10, 2004 letter to Target Brands was attached to the

Complaint as Exhibit E and states upon information and belief that that letter was received by Target Brands on or about December 10, 2004.

(First Claim For Relief)

20. Answering paragraph 20 of the Amended Complaint, Target re-alleges and incorporates by reference the foregoing.

21. Target denies the allegations of paragraph 21 of the Amended Complaint upon information and belief.

22. Target denies the allegations of paragraph 22 of the Amended Complaint.

23. Target denies the allegations of paragraph 23 of the Amended Complaint.

24. Target denies the allegations of paragraph 24 of the Amended Complaint.

25. Target denies the allegations of paragraph 25 of the Amended Complaint.

26. Target denies the allegations of paragraph 26 of the Amended Complaint.

27. Target denies the allegations of paragraph 27 of the Amended Complaint.

28. Target denies the allegations of paragraph 28 of the Amended Complaint.

29. Target denies the allegations of paragraph 29 of the Amended Complaint.

30. Target denies the allegations of paragraph 30 of the Amended Complaint.

(Second Claim For Relief)

31. Answering paragraph 31 of the Amended Complaint, Target re-alleges and incorporates by reference the foregoing.

32. Target denies the allegations of paragraph 32 of the Amended Complaint.

33. Target denies the allegations of paragraph 33 of the Amended Complaint.

(Third Claim For Relief)

34. Answering paragraph 34 of the Amended Complaint, Target re-alleges and incorporates by reference the foregoing.

35. Target denies the allegations of paragraph 35 of the Amended Complaint.

36. Target denies the allegations of paragraph 36 of the Amended Complaint.

37. Target denies the allegations of paragraph 37 of the Amended Complaint.

38. Target denies the allegations of paragraph 38 of the Amended Complaint.

39. Target denies the allegations of paragraph 39 of the Amended Complaint.

40. Target denies the allegations of paragraph 40 of the Amended Complaint.

(Fourth Claim For Relief)

41. Answering paragraph 41 of the Amended Complaint, Target re-alleges and incorporates by reference the foregoing.

42. Target denies the allegations of paragraph 42 of the Amended Complaint.

43. Target denies the allegations of paragraph 43 of the Amended Complaint.

(Fifth Claim For Relief)

44. Answering paragraph 44 of the Amended Complaint, Target re-alleges and incorporates by reference the foregoing.

45. Target denies the allegations of paragraph 45 of the Amended Complaint.

46. Target denies the allegations of paragraph 46 of the Amended Complaint.

47. Target denies the allegations of paragraph 47 of the Amended Complaint.

48. Target denies the allegations of paragraph 48 of the Amended Complaint.

49. Target denies the allegations of paragraph 49 of the Amended Complaint.

AFFIRMATIVE DEFENSES

1. The Amended Complaint fails, in whole or in part, to state a claim upon which relief can be granted.
2. Plaintiff's claims are barred, in whole or in part, by the doctrines of waiver, estoppel, acquiescence and/or laches.
3. Plaintiff's claims are barred, in whole or in part, by the doctrine of unclean hands.
4. Plaintiff's claims are barred, in whole or in part, by accord and satisfaction.

PRAYER FOR RELIEF

WHEREFORE, Target prays for the following relief:

- a. that Payless WW's Amended Complaint be dismissed with prejudice and on the merits;
- b. that Target be awarded its costs and disbursements herein;
- c. that Target be awarded its attorney's fees herein to the extent permitted by law or in equity; and

d. that Target be awarded such other and further relief as the Court may deem just and equitable.

Dated: October 14, 2005

Respectfully submitted,

By: /s/ Brian K. O'Bleness

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ATTORNEYS FOR DEFENDANT

TARGET CORPORATION

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing was filed electronically with the U.S. District Court for the District of Kansas, with notice of case activity to be generated and sent electronically this 14th day of October, 2005 to:

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*/s/ Brian K. O'Bleness*