

ESTTA Tracking number: **ESTTA244336**

Filing date: **10/22/2008**

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

Proceeding	92050079
Party	Defendant Vallavista Corporation
Correspondence Address	Vallavista Corportion 3541 Wilkinson Lane Lafayette, CA 94549 UNITED STATES
Submission	Motion to Suspend for Civil Action
Filer's Name	Kevin R. Martin, Esq.
Filer's e-mail	trademarks@randicklaw.com
Signature	/ Kevin R. Martin, Esq. /
Date	10/22/2008
Attachments	Motion to Suspend Cancellation Proc.pdf ( 2 pages )(16211 bytes ) Memo of P&A's.pdf ( 4 pages )(21276 bytes ) Decl. of Kevin Martin.pdf ( 2 pages )(15898 bytes ) Exhibit A - Registration.pdf ( 2 pages )(810370 bytes ) Exhibit B - Complaint.pdf ( 15 pages )(548081 bytes ) Exhibit C - Answer.pdf ( 10 pages )(29897 bytes ) Proposed Order.pdf ( 1 page )(10081 bytes )

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

TARGET CORPORATION,

Petitioner,

v.

VALLAVISTA CORPORATION

Registrant.

Cancellation No.: 92050079

Registration No. 2008495

Mark: TAXI WALLET

**NOTICE OF MOTION AND MOTION TO  
SUSPEND PROCEEDINGS**

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

To Petitioner TARGET CORPORATION (“TARGET”) and to Timothy J. Cruz, Esq., its attorney of record:

NOTICE IS HEREBY GIVEN that Registrant VALLAVISTA CORPORATION (“VALLAVISTA”) will, and hereby does, move for an order suspending the cancellation proceedings pending termination of the civil action entitled VALLAVISTA CORPORATION v. AMAZON.COM, INC., et. al., including Petitioner in the cancellation proceeding herein, TARGET CORPORATION, presently pending in the United States District Court, Northern District of California, Case No. C07-05360 WHA MED.

The motion is made on the grounds that good cause exists to suspend the cancellation proceedings because the parties to this proceeding are parties in a civil action involving the same mark and issues of fact and law, which overlap with this matter. *See* 27 CFR 2.117.

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The motion will be based on this Notice of Motion and Motion, supporting Memorandum of Points and Authorities, and the Declaration of Kevin R. Martin, and served and filed herewith, on the papers and records on file herein, and on such other evidence as may be presented in connection with the motion.

Respectfully submitted,

Date: October 22, 2008

By:   
Kevin R. Martin, Esq.  
RANDICK O'DEA & TOOLIATOS, LLP  
5000 Hopyard Road, Suite 400  
Pleasanton, CA 94588  
Telephone: 925-460-3700  
Fax: 925-460-0969  
***Attorneys for Registrant***

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

TARGET CORPORATION,  
  
Petitioner,

v.

VALLAVISTA CORPORATION  
  
Registrant.

Cancellation No.: 92050079  
Registration No. 2008495  
Mark: TAXI WALLET

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION TO STAY PROCEEDINGS**

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

Registrant VALLAVISTA CORPORATION brings this motion to stay proceedings pending resolution of its action against Petitioner TARGET CORPORATION currently pending in United States District Court, Northern District of California, and set for trial on January 5, 2008.

**I. FACTUAL BACKGROUND**

Registrant VALLAVISTA CORPORATION (“VALLAVISTA”) is the owner of United States Trademark Registration No. 2,008,495 issued on October 15, 1996, for TAXI WALLET® (the design plus words, letters and/or numbers) used in connection with the sale of wallets, coin wallets, billfolds, credit card wallets, coin purses, change purses, coin pocket billfolds and business card wallets (collectively “Wallets”) in International Class 018 (“495 Registration”). ((Declaration of Kevin Martin (“Martin Decl.”) ¶ 2, Exh. A))

On October 19, 2007, VALLAVISTA filed a civil action against TARGET alleging trademark infringement, ilution, false designation of origin under the Trademark Act of 1946 (also known as The Lanham Act, 15 U.S.C. § 1051 et seq.) and unfair competition under

California Business & Professions Code Section 17200 et seq. based on TARGET'S use of the name and mark in connection with its own wallet products and other unlawful activities. (Martin Decl. ¶ 3) The civil action was filed in the United States District Court for the Northern District ("District Court"), Case No. C07-05360 WHA MED ("Civil Action") and is set for trial to begin January 5, 2009. (Martin Decl. ¶ 4, Exh. B). Petitioner TARGET CORPORATION answered the complaint, denying the allegations and setting forth various affirmative defenses, including failure to state a claim. (Martin Decl. ¶ 4, Exh. C). The parties have conducted discovery over the course of the last several months, have retained experts in connection with the matter, and have a trial date scheduled in the Civil Action for January 5, 2009. (Martin Decl. ¶ 4).

On or about October 15, 2008, TARGET filed this Cancellation proceeding against '495 Registration, alleging that Vallavista had not used the TAXI WALLET and design mark on various items as claimed in the application for registration, and that on that basis the 495 Registration should be cancelled. (Martin Decl. ¶ 5).

## **II. ARGUMENT**

### **A. THE TRIAL AND APPEAL BOARD SHOULD SUSPEND THE PROCEEDINGS PENDING THE OUTCOME OF THE CIVIL ACTION INVOLVING THE PARTIES**

Proceedings before the Trademark Trial and Appeal Board (the "Board") may be suspended whenever it comes to the attention of the Board that parties to a pending case are engaged in a civil action, and a final determination of such action may have a bearing on the pending case. 37 CFR § 2.117(a) (July 1, 2008). It is standard procedure for the Trademark Board to stay administrative proceedings pending the outcome of court litigation between the same parties involving related issues. *Whopper-Burger, Inc. v. Burger King Corp.*, 171 U.S.P.Q. 805, 1971 WL 16554 (TTAB 1971).

In addition to the proceedings before the Board, VALLAVISTA and TARGET are parties to a Civil Action regarding VALLAVISTA'S asserted trademark rights in the TAXI WALLET name and logo, including the '495 Registration. Moreover, a final determination of VALLAVISTA'S trademark rights in the Civil Action will resolve the issues raised in

TARGET'S Cancellation and eliminate the need for further proceedings before the Board. Thus, a final determination of VALLAVISTA'S trademark rights during the Civil Action has a bearing on the proceedings before the Board. As such, the proceedings regarding TARGET'S Cancellation should be suspended pending trial and determination of Vallavista's rights in the Civil Action.

**B. GOOD CAUSE EXISTS TO SUSPEND THE PROCEEDINGS PENDING THE OUTCOME OF THE CIVIL ACTION INVOLVING THE PARTIES**

Proceedings may be suspended, for good cause, upon motion or a stipulation of the parties, approved by the Board. 37 CFR § 2.117(c) (July 1, 2008).

In the present case, good cause exists to suspend the proceedings because the trial of the Civil Action is scheduled to begin on January 5, 2009 and a final determination of VALLAVISTA'S trademark rights at trial will resolve the need for further proceedings before the Board. A judgment of a federal court is clearly binding upon the Trademark Board, while an administrative decision may only have persuasive value in later court proceedings. *Whopper-Burger, Inc. v. Burger King Corp.*, 171 U.S.P.Q. 805, 1971 WL 16554 (TTAB 1971). Moreover, even if the Cancellation proceeding were to go forward, any decision here would not resolve all of the issues before the US District Court, and consequently the parties will incur duplicative costs litigating some of the issues here and then again in court. Suspension of the proceedings now will save the Board the time and resources of investigating the same claims set for presentation to the District Court and resolve this matter in January 2009 instead of late into 2009

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or beyond, when the Board will likely schedule trial on TARGET'S Cancellation proceeding. Based on the foregoing, good cause exists to suspend the proceedings.

### **III. CONCLUSION**

For all the reasons discussed above, VALLAVISTA respectfully requests the Board suspend the Cancellation proceedings pending final outcome of the Civil Action.

Date: October 22, 2008

By: \_\_\_\_\_



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***Attorneys for Registrant***

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

TARGET CORPORATION,

Opposer,

v.

VALLAVISTA CORPORATION

Registrant.

Cancellation No.: 92050079

Registration No. 2008495

Mark: TAXI WALLET

**DECLARATION OF KEVIN R. MARTIN  
IN SUPPORT OF MOTION TO SUSPEND  
PROCEEDINGS**

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

I, Kevin R. Martin, do declare as follows:

1. I am an attorney at law, duly admitted to practice in all the courts of the State of California, including the California Supreme Court, and I am a partner in the law offices of Randick O'Dea & Tooliatos, LLP, attorneys of record in this action for the Registrant VALLAVISTA CORPORATION ("VALLAVISTA").

2. VALLAVISTA is the owner of United States Trademark Registration No. 2,008,495 issued on October 15, 1996, for TAXI WALLET® (the design plus words, letters and/or numbers) used in connection with the sale of wallets, coin wallets, billfolds, credit card wallets, coin purses, change purses, coin pocket billfolds and business card wallets (collectively "Wallets") in International Class 018. A true and correct copy of the U.S. Patent and Trademark certificate of trademark registration is attached hereto and incorporated herein by reference as Exhibit A (" '495 Registration").

3. On October 19, 2007, VALLAVISTA filed a civil action against TARGET CORPORATION ("TARGET") for trademark infringement of its TAXI WALLET name and the



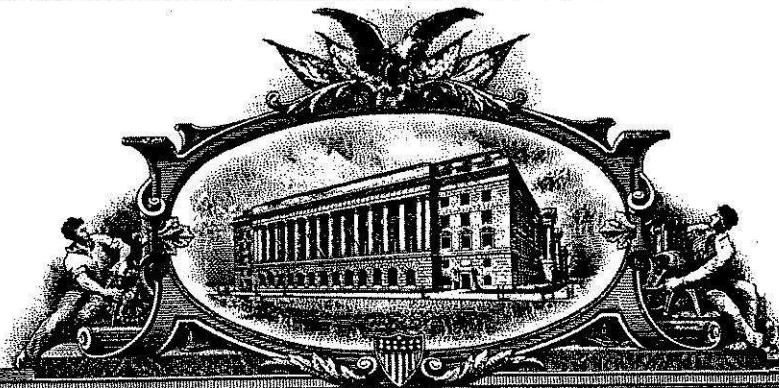
'495 Registration, dilution, false designation of origin under the Trademark Act of 1946 (also known as The Lanham Act, 15 U.S.C. § 1051 et seq.) and unfair competition under California Business & Professions Code Section 17200 et seq. based on TARGET'S use of the name and mark in connection with its own wallet products and other unlawful activities.

4. The civil action was filed in the United States District Court for the Northern District ("District Court"), Case No. C07-05360 WHA MED ("Civil Action"). A true and correct copy of the Civil Action is attached hereto and incorporated herein by reference as Exhibit B. TARGET answered the complaint, denying the allegations and setting forth various affirmative defenses, including failure to state a claim. A true and correct copy of TARGET'S Answer is attached hereto and incorporated herein by reference as Exhibit C. The parties have conducted substantial discovery over the course of the last several months, including depositions and exchange of written discovery, each has retained experts in connection with the matter, and have a trial date scheduled in the Civil Action for January 5, 2009.

5. On or about October 15, 2008, TARGET filed this Cancellation proceeding against the 495 Registration, alleging that Registrant had not used the TAXI WALLET and design mark on various items, namely, coin wallets, credit card wallets, coin purses, change purses, coin pocket billfolds, and business card wallets, as alleged in its application for the mark, and that on that basis the mark should be cancelled.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 22nd day of October 2008, in Pleasanton, California.

By:   
Kevin R. Martin, Esq.



# THE UNITED STATES OF AMERICA

**TO ALL TO WHOM THESE PRESENTS SHALL COME:**

**UNITED STATES DEPARTMENT OF COMMERCE**

**United States Patent and Trademark Office**

**September 29, 2008**

**THE ATTACHED U.S. TRADEMARK REGISTRATION 2,008,495 IS  
CERTIFIED TO BE A TRUE COPY WHICH IS IN FULL FORCE AND  
EFFECT WITH NOTATIONS OF ALL STATUTORY ACTIONS TAKEN  
THEREON AS DISCLOSED BY THE RECORDS OF THE UNITED STATES  
PATENT AND TRADEMARK OFFICE.**

**REGISTERED FOR A TERM OF 10 YEARS FROM *October 15, 1996***

**1st RENEWAL FOR A TERM OF 10 YEARS FROM *October 15, 2006***

**SECTION 8 & 15**

**SAID RECORDS SHOW TITLE TO BE IN:**

***REGISTRANT***

**By Authority of the**

**Under Secretary of Commerce for Intellectual Property**

**and Director of the United States Patent and Trademark Office**



*T. Wallace*  
**T. WALLACE**

**Certifying Officer**

**VAL10897**

Int. Cl.: 18

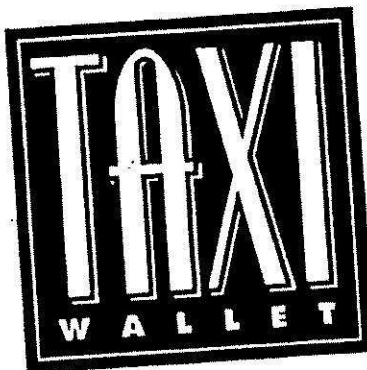
Prior U.S. Cls.: 1, 2, 3, 22 and 41

United States Patent and Trademark Office

Reg. No. 2,008,495

Registered Oct. 15, 1996

TRADEMARK  
PRINCIPAL REGISTER



VALLAVISTA CORPORATION (CALIFORNIA  
CORPORATION)  
3431 BLACKHAWK PLAZA CIRCLE  
DANVILLE, CA 94506

FOR: WALLETS, COIN WALLETS, BILL-  
FOLDS, CREDIT CARD WALLETS, COIN  
PURSES, CHANGE PURSES, COIN POCKET  
BILLFOLDS, BUSINESS CARD WALLETS, IN  
CLASS 18 (U.S. CLS. 1, 2, 3, 22 AND 41).

FIRST USE 7-6-1988; IN COMMERCE  
7-29-1988.

NO CLAIM IS MADE TO THE EXCLUSIVE  
RIGHT TO USE "WALLET", APART FROM  
THE MARK AS SHOWN.

SER. NO. 75-018,738, FILED 11-9-1995.

GEORGE LORENZO, EXAMINING ATTORNEY

E-filing

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10 Attorneys for Plaintiff Vallavista Corporation

11  
12 **UNITED STATES DISTRICT COURT**  
13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
14 **SAN FRANCISCO/OAKLAND DIVISION**

15 **VALLAVISTA CORPORATION, a**  
16 **California corporation,**

17 **Plaintiff,**

18 **vs.**

19 **AMAZON.COM, INC., a Delaware**  
20 **corporation, TARGET**  
21 **CORPORATION, a Minnesota**  
22 **corporation, EBAGS, INC., a**  
23 **Colorado corporation, EMPORIUM**  
24 **LEATHER COMPANY, INC., a New**  
25 **Jersey corporation, doing business as**  
26 **ROYCE LEATHER, and FASHION**  
27 **HANDBAGS, INC., a Nevada**  
28 **corporation, doing business as BO**  
**BO BAGS,**

**Defendants.**

Case No.:

**COMPLAINT FOR TRADEMARK**  
**INFRINGEMENT, DILUTION, UNFAIR**  
**COMPETITION, AND INJUNCTIVE**  
**RELIEF**

**[DEMAND FOR JURY TRIAL]**

Plaintiff Vallavista Corporation ("Plaintiff"), by and through its undersigned counsel, for its Complaint against Defendants Amazon.com Inc., a Delaware corporation ("Amazon"), Target Corporation, a Minnesota corporation ("Target"), eBags, Inc., a Colorado corporation ("eBags"), Emporium Leather Company Inc., a New Jersey corporation doing business as ROYCE LEATHER ("Royce"), and Fashion Handbags, Inc., a Nevada corporation, doing business as BO

**COMPLAINT FOR TRADEMARK INFRINGEMENT, DILUTION, UNFAIR COMPETITION AND**  
**INJUNCTIVE RELIEF**

152349\_6

**FILED**  
OCT 19 2007  
RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND

ADR

C07-05360PVT

91

1 BO BAGS ("Bo Bo Bags") (collectively "Defendants") states the following:

2 **I. PARTIES**

3 1. Plaintiff is a corporation organized under the laws of the State of California, with  
4 its principal place of business located at 3541 Wilkinson Lane, Lafayette, California 94549.

5 2. Upon information and belief, Amazon is a corporation organized under the laws  
6 of the State of Delaware and is conducting systematic and continuous business in California  
7 through its website: <http://www.amazon.com> and other interactions.

8 3. Upon information and belief, Target is a corporation organized under the laws of  
9 the State of Minnesota and is conducting systematic and continuous business through its more  
10 than 200 store locations in California and through its website: <http://www.target.com> and other  
11 interactions.

12 4. Upon information and belief, eBags is a corporation organized under the laws of  
13 the State of Colorado and is conducting systematic and continuous business in California through  
14 its website: <http://www.ebags.com> and other interactions.

15 5. Upon information and belief, Royce is a corporation organized under the laws of  
16 the State of New Jersey and is conducting systematic and continuous business in California  
17 through its website: <http://www.royceleathergifts.com/>, <http://www.amazon.com>,  
18 <http://www.ebags.com> and other interactions.

19 6. Upon information and belief, Bo Bo Bags is a corporation organized under the  
20 laws of the State of Nevada and is conducting systematic and continuous business in California  
21 through websites such as <http://www.amazon.com>, <http://www.ebags.com>,  
22 <http://www.shoebuy.com>, and other interactions.

23 **II. JURISDICTION**

24 7. This Court has subject matter jurisdiction over this action pursuant to 15 U.S.C. §  
25 1121 (actions arising under the Trademark Act of 1946), 15 U.S.C. § 1114 (registration of a  
26 mark is prima facie evidence of its validity), 15 U.S.C. § 1125 (false designation of origin and  
27 dilution), 28 U.S.C. 1338(a) (acts of Congress relating to trademarks), 28 U.S.C. 1338(b)

1 (pendent unfair competition claims) and 28 U.S.C. § 1332(a) (diversity of citizenship). The  
2 amount in question herein exceeds \$75,000.

3 8. Under 28 U.S.C. § 1391(a), venue is proper in the Northern District of California  
4 because a substantial part of the events giving rise to this action occurred here.

### 5 III. INTRADISTRICT ASSIGNMENT

6 9. Pursuant to Civil L.R. 3-2(d), assignment to either the San Francisco Division or  
7 Oakland Division is proper because a substantial part of the events giving rise to this action  
8 occurred in Contra Costa County, California.

### 9 IV. ALLEGATIONS COMMON TO ALL COUNTS

10 10. This is an action for trademark infringement, dilution, and false designation of  
11 origin under the Trademark Act of 1946 (also known as The Lanham Act, 15 U.S.C. § 1051 *et*  
12 *seq.*) and unfair competition under California Business & Professions Code Section 17200 *et seq.*  
13 and the common law based on the Defendants' use of the name and mark TAXI WALLET® and  
14 other unlawful activities conducted by Defendants in connection with such use.

15 11. Plaintiff is the owner of United States Trademark Registration No. 2,008,495  
16 issued on October 15, 1996, for TAXI WALLET® (the design plus words, letters and/or  
17 numbers) used in connection with the sale of wallets, coin wallets, billfolds, credit card wallets,  
18 coin purses, change purses, coin pocket billfolds and business card wallets (collectively  
19 "Wallets") in International Class 018. A true and correct copy of the U.S. Patent and Trademark  
20 certificate of trademark registration is attached hereto and incorporated herein by reference as  
21 Exhibit A ("Registration").

22 12. The Registration is in full force and effect and uncanceled. The Registration is  
23 incontestable and thus constitutes conclusive evidence of the validity of the TAXI WALLET®  
24 mark, Plaintiff's ownership thereof, and its exclusive right to use the TAXI WALLET® mark  
25 throughout the United States.

26 13. The mark TAXI WALLET® is inherently distinctive when used in connection  
27 with Plaintiff's Wallets.

1           14.     Continuously since on or about July 6, 1988, Plaintiff has been and now is  
2 extensively engaged in the business of selling Wallets under the mark TAXI WALLET  
3 throughout the United States. As a result of the widespread use and display of the TAXI  
4 WALLET trademark, the public and the trade use them to identify and refer to Plaintiff's  
5 products, the public and trade recognize that such designations refer to a high quality product  
6 emanating from a single source, and said trademark has built up secondary meaning and  
7 extensive goodwill. Together, plaintiffs registered trademark TAXI WALLET® and common  
8 law word mark TAXI WALLET are referred to as "Marks."

9           15.     Plaintiff has also created a distinctive design for Wallets sold under the Marks.  
10 Plaintiff's unique design is illustrated in the drawings attached hereto and incorporated herein by  
11 reference as Exhibit B ("Trade Dress").

12           16.     Plaintiff's Trade Dress is not essential to the functionality of Wallets and does not  
13 affect the quality or cost of Wallets.

14           17.     Continuously since on or about July 6, 1988, Plaintiff has been and now is  
15 extensively engaged in the business of selling Wallets under the Marks and Trade Dress.

16           18.     The Marks are used extensively on and in connection with the sales of Plaintiff's  
17 Wallets, including the packaging, promotional and marketing materials, and advertising on the  
18 Internet.

19           19.     Plaintiff has extensively promoted and marketed its Wallets nationwide through  
20 various forms of media, including the Internet, in connection with the Marks and Trade Dress.

21           20.     As a result of such promotional and marketing efforts, and the inherent quality of  
22 Plaintiff's Wallets, the Marks and Trade Dress have become widely and favorably known, have  
23 become symbols of Plaintiff's goodwill, and have acquired distinctiveness and secondary  
24 meaning.

25           21.     Plaintiff has continuously and vigorously preserved the strength of the Marks and  
26 Trade Dress and has actively guarded against infringement.

27           22.     Notwithstanding Plaintiff's continuous and exclusive use of and prior rights in the  
28



1 Marks, Defendants have sought to compete unfairly with Plaintiff by using the Marks on and in  
2 connection with selling Wallets.

3 23. In addition to the misappropriation of the Marks, Plaintiff is informed and  
4 believes that Defendants may have misappropriated other marks of Plaintiff. As such, this  
5 Complaint may be amended to include additional claims.

6 **V. CLAIMS FOR RELIEF**  
7 **COUNT ONE: TRADEMARK INFRINGEMENT UNDER 15 U.S.C. § 1114**

8 **As to All Defendants:**

9 24. Plaintiff hereby realleges and incorporates by reference the allegations of  
10 paragraphs 1 through 23 of this Complaint as if fully set forth herein.

11 25. Defendants have used designations identical or substantially similar to the Marks  
12 for the sale, offer for sale, advertisement, or promotion of Wallets.

13 26. Defendants' use of designations identical or substantially similar to the Marks, as  
14 described herein, is without permission or authority of Plaintiff and is likely to cause confusion  
15 and mistake or to deceive consumers as to the source or origin of goods. Defendants actions  
16 described herein constitutes infringement of Plaintiff's federally-registered trademark in  
17 violation of Lanham Act Section 32, 15 U.S.C. § 1114.

18 27. Upon information and belief, Defendants' infringing activities have caused and,  
19 unless enjoined by this Court, will continue to cause, irreparable injury and other damage to  
20 Plaintiff's business, reputation and goodwill in its federally registered TAXI WALLET®  
21 trademark. Plaintiff has no other adequate remedy at law.

22 28. By the reason of Defendants activities described herein, Plaintiff is entitled to  
23 injunctive relief against all Defendants restraining further acts of infringement, to attorneys fees,  
24 and trebled damages caused by Defendants' infringement of Plaintiff's TAXI WALLET®  
25 trademark.

26 **As To Defendant Bo Bo Bags:**

27 29. Bo Bo Bags is a merchant in the business of selling leather goods in the United  
28



1 States and in competition with Plaintiff.

2 30. Bo Bo Bags has sold and continues to sell in interstate commerce wallets  
3 designated as a "Taxi Wallet" with designs identical or confusingly similar to Plaintiff's Trade  
4 Dress through electronic commerce websites such as <http://www.amazon.com> and  
5 <http://www.ebags.com>.

6 31. Plaintiff has not given Bo Bo Bags any authorization to use the Marks or the  
7 Trade Dress.

8 32. Bo Bo Bags' actions described herein are likely to cause confusion and mistake or  
9 to deceive consumers as to the source or origin of goods.

10 33. Upon information and belief, Bo Bo Bags' acts described herein have been  
11 malicious, deliberate, willful, intentional, and in bad faith, committed with full knowledge and  
12 conscious disregard of Plaintiff's prior and superior rights in the Marks and Trade Dress and  
13 with an intent to trade on Plaintiff's substantial goodwill in the Marks and Trade Dress.  
14 Therefore, this is an exceptional case pursuant to Lanham Act Section 35(a), 15 U.S.C. § 1114.

15 **As To Defendant Royce:**

16 34. Royce is a merchant in the business of selling leather goods in competition with  
17 Plaintiff.

18 35. Royce has sold and continues to sell in interstate commerce wallets designated as  
19 a "Taxi Wallet" with designs identical or confusingly similar to Plaintiff's Trade Dress through  
20 its own electronic commerce website <http://www.royceleathergifts.com/> and through other  
21 electronic commerce websites such as <http://www.amazon.com> and <http://www.send.com>.

22 36. Plaintiff has not given Royce any authorization to use the Marks or the Trade  
23 Dress.

24 37. On May 30, 2007, Plaintiff sent a letter to Royce demanding that it cease and  
25 desist all use of the TAXI WALLET® mark, Trade Dress, or any other name or mark  
26 confusingly similar to the TAXI WALLET® mark or Trade Dress.

27 38. On July 13, 2007, Royce, through its attorney, acknowledged receipt of Plaintiff's  
28

1 cease and desist demands but did not agree to comply.

2 39. Despite receiving notice of its infringement of Plaintiff's TAXI WALLET® mark  
3 and Trade Dress, Royce continues to sell, in interstate commerce, wallets identical in style and  
4 design to Plaintiff's Trade Dress that are packaged and labeled as "Taxi Wallet" or "Royce  
5 Leather Taxi Wallet". These actions are likely to cause confusion and mistake or to deceive  
6 consumers as to the source or origin of goods.

7 40. Upon information and belief, Royce's acts described herein have been malicious,  
8 deliberate, willful, intentional, and in bad faith, committed with full knowledge and conscious  
9 disregard of Plaintiff's prior and superior rights in the Marks and Trade Dress and with an intent  
10 to trade on Plaintiff's substantial goodwill in the Marks and Trade Dress. Therefore, this is an  
11 exceptional case pursuant to Lanham Act Section 35(a), 15 U.S.C. § 1114.

12 **As to Defendant Target:**

13 41. As recent as May 16, 2007, Target was advertising and selling wallets called  
14 "Isaac Mizrahi for Target Taxi Wallet with Turn Lock".

15 42. Plaintiff has not given Target any authorization to use the Marks.

16 43. On May 22, 2007, Plaintiff sent a letter to Target protesting its infringement of the  
17 mark TAXI WALLET® in connection with the promotion and sale of wallets.

18 44. On May 31, 2007, Plaintiff received a response letter from Target indicating that  
19 it removed the word "taxi" from the website <http://www.target.com>.

20 45. On or about September 28, 2007, counsel for Plaintiff browsed the website  
21 <http://www.target.com> and conducted a website search using the keyword "taxi wallet". This  
22 search resulted links to purchase directly online the same wallets that Target formerly designated  
23 as "Isaac Mizrahi for Target Taxi Wallet with Turn Lock."

24 46. Upon information and belief, Target is using "taxi wallet" as a keyword in its  
25 website to sell, offer for sale, promote and advertise Wallets that do not originate from Plaintiff.

26 47. Target's acts described herein are not authorized by Plaintiff and are likely to  
27 cause confusion and mistake or to deceive consumers as to the source or origin of goods.

28

1           48. Upon information and belief, Target's acts described herein have been malicious,  
2 deliberate, willful, intentional, and in bad faith, committed with full knowledge and conscious  
3 disregard of Plaintiff's prior and superior rights in the Marks and with an intent to trade on  
4 Plaintiff's substantial goodwill in the Marks. Therefore, this is an exceptional case pursuant to  
5 Lanham Act Section 35(a), 15 U.S.C. § 1114.

6 **As to Defendant Amazon:**

7           49. Amazon operates retail electronic commerce websites for nationwide businesses  
8 such as Target, the NBA, Sears Canada, Sears UK, Benefit Cosmetics, Bebe Stores, Timex  
9 Corporation, Marks & Spencer, Mothercare, Bombay Company and others.

10           50. Upon information and belief, Amazon has used and is using "taxi wallet" as a  
11 search keyword in its website to sell, offer for sale, promote and advertise Wallets that do not  
12 originate from Plaintiff and are designated with the Marks.

13           51. On or about March 19, 2007, Plaintiff notified Amazon of the infringing products  
14 sold on the Amazon.com website and demanded that Amazon cease sales of such products.

15           52. On or about October 8, 2007, counsel for Plaintiff browsed the website  
16 <http://www.amazon.com> and conducted a website search using the keyword "taxi wallet". This  
17 search resulted links to purchase Wallets designated with the Marks that did not originate from  
18 Plaintiff adjacent to links that sell Plaintiff's authentic TAXI WALLET goods.

19           53. Amazon's acts described herein are not authorized by Plaintiff and are likely to  
20 cause confusion and mistake or to deceive consumers as to the source or origin of goods.

21           54. Upon information and belief, Amazon's acts described herein have been  
22 malicious, deliberate, willful, intentional, and in bad faith, committed with full knowledge and  
23 conscious disregard of Plaintiff's prior and superior rights in the Marks and with an intent to  
24 trade on Plaintiff's substantial goodwill in the Marks. Therefore, this is an exceptional case  
25 pursuant to Lanham Act Section 35(a), 15 U.S.C. § 1114.

26 **As to Defendant eBags:**

27           55. eBags operates a retail electronic commerce website selling bags, luggage, travel  
28

1 accessories, and wallets.

2 56. Upon information and belief, eBags has used and is using "taxi wallet" as a search  
3 keyword in its website to sell, offer for sale, promote and advertise Wallets that do not originate  
4 from Plaintiff.

5 57. On or about October 10, 2007, counsel for Plaintiff browsed the website  
6 <http://www.ebags.com> and conducted a website search using the keyword "taxi wallet". This  
7 search resulted links to purchase Wallets designated with the Marks that did not originate from  
8 Plaintiff. The eBags.com website offered for sale Wallets that are designed exactly or  
9 confusingly similar to Plaintiff's Trade Dress and designated "Perlina Taxi Wallet," "Bo Bo  
10 Bags Turbo Diesel Italian Taxi Wallet," "Tony Perotti Prima Traditional Taxi Wallet," or "Bo  
11 Bo Bags Italian Taxi Wallet."

12 58. Upon information and belief, eBags has sold and is selling Wallets that originate  
13 from Defendant Bo Bo Bags.

14 59. eBags' acts described herein are not authorized by Plaintiff and are likely to cause  
15 confusion and mistake or to deceive consumers as to the source or origin of goods.

16 60. Upon information and belief, eBags' acts described herein have been malicious,  
17 deliberate, willful, intentional, and in bad faith, committed with full knowledge and conscious  
18 disregard of Plaintiff's prior and superior rights in the Marks and with an intent to trade on  
19 Plaintiff's substantial goodwill in the Marks. Therefore, this is an exceptional case pursuant to  
20 Lanham Act Section 35(a), 15 U.S.C. § 1114.

21  
22 **COUNT TWO: UNFAIR COMPETITION AND FALSE DESIGNATION**  
23 **OF ORIGIN UNDER 15 U.S.C. § 1125(a)**  
**(AS TO ALL DEFENDANTS)**

24 61. Plaintiff hereby realleges and incorporates by reference the allegations of  
25 paragraphs 1 through 60 of this Complaint as if fully set forth herein.

26 62. By engaging in the acts described herein, Defendants have made and are making  
27 false, deceptive, and misleading statements constituting unfair competition, false representations,  
28

1 false designations of origin, and false advertising made in connection with goods distributed in  
2 interstate commerce in violation of Lanham Act Section 43(a), 15 U.S.C. § 1125(a).

3 63. Upon information and belief, Defendants' acts described herein have caused, and  
4 unless enjoined by this Court will continue to cause, irreparable injury and other damage to  
5 Plaintiff's business, reputation and good will in its trademarks, trade dress, and trade names.  
6 Plaintiff has no other adequate remedy at law.

7 64. By the reason of Defendants' acts described herein, Plaintiff is entitled to  
8 injunctive relief against all Defendants restraining further acts of unfair competition, false  
9 representations, false designations of origin, and false advertising, to attorneys fees, and trebled  
10 damages caused by Defendants' unlawful actions.

11 **COUNT THREE: TRADEMARK DILUTION UNDER 15 U.S.C. § 1125(C)**  
12 **(AS TO ALL DEFENDANTS)**

13 65. Plaintiff hereby realleges and incorporates by reference the allegations of  
14 paragraphs 1 through 64 of this Complaint as if fully set forth herein.

15 66. Plaintiff's Marks are highly recognized and widely used in interstate commerce in  
16 the United States.

17 67. Plaintiff's Marks are "famous" as defined in 15 U.S.C. § 1125(c)(1) for the  
18 reasons stated above.

19 68. Defendants used designations identical or substantially similar to Plaintiff's  
20 Marks in interstate commerce after Plaintiff's Marks became famous.

21 69. The acts of Defendants as described herein are commercial uses that dilute and  
22 tarnish Plaintiff's Marks in violation of the Federal Trademark Dilution Act of 1996, 15 U.S.C. §  
23 1125(c).

24 70. By the reason of Defendants' acts described herein, Plaintiff is entitled to  
25 injunctive relief against all Defendants restraining further acts of dilution, to attorneys fees, and  
26 trebled damages caused by Defendants' dilution of the Marks.

**COUNT FOUR: COMMON LAW UNFAIR COMPETITION  
(AS TO ALL DEFENDANTS)**

71. Plaintiff realleges and incorporates by reference the allegations of paragraphs 1 through 70 of this Complaint as if fully set forth herein.

72. Defendants' acts described herein constitute unfair competition within the State of California and are in violation of California law.

73. Upon information and belief, Defendants' unfair competition have caused, and unless enjoined by this Court will continue to cause, irreparable injury and other damage to Plaintiff's business, reputation and good will in its trademarks, trade dress, and trade names. Plaintiff has no other adequate remedy at law.

74. By the reason of Defendants' acts described herein, Plaintiff is entitled to injunctive relief against all Defendants restraining further acts of unfair competition, to attorneys fees, and damages caused by Defendants' unlawful actions.

**COUNT FIVE: UNFAIR COMPETITION UNDER CALIFORNIA BUSINESS AND  
PROFESSIONS CODE SECTION 17200 *ET SEQ.*  
(AS TO ALL DEFENDANTS)**

75. Plaintiff realleges and incorporates by reference the allegations of paragraphs 1 through 74 of this Complaint as if fully set forth herein.

76. Defendants' activities as stated herein constitute false advertising and unfair and deceptive acts and practices in the conduct of its trade and business in violation of the California Business and Professions Code Section 17200 *et seq.*

77. Upon information and belief, Defendants' wrongful and deceptive activities have caused, and unless enjoined by this Court will continue to cause, irreparable injury and other damage to Plaintiff's business, reputation and good will in its trademarks, trade dress, and trade names. Plaintiff has no other adequate remedy at law.

**PRAYER FOR RELIEF:**

WHEREFORE, Plaintiff prays for judgment to be entered in its favor and against Defendants, jointly and severally, as follows:



1           a.     That Defendants, their agents, servants, employees, representatives, attorneys  
2 subsidiaries, related companies, successors, assigns, and all others in active concert or  
3 participation with Defendants, be preliminarily and permanently enjoined and restrained from  
4 using in any manner the TAXI WALLET® or TAXI WALLET marks, any colorable imitation of  
5 the Marks, or any mark, name, or designation confusingly similar to the Marks in connection  
6 with the sales, advertising or promotion of goods that do not originate from Plaintiff.

7           b.     That Bo Bo Bags, Royce, their agents, servants, employees, representatives,  
8 attorneys subsidiaries, related companies, successors, assigns, and all others in active concert or  
9 participation with the defendants referenced in this paragraph, be preliminarily and permanently  
10 enjoined and restrained from using in any manner Plaintiff's Trade Dress, any colorable  
11 imitation of Plaintiff's Trade Dress, or any design confusingly similar to Plaintiff's Trade Dress.

12           c.     That Defendants, their agents, servants, employees, representatives, attorneys  
13 subsidiaries, related companies, successors, assigns, and all others in active concert or  
14 participation with Defendants, be preliminarily and permanently enjoined and restrained from  
15 unfairly competing with Plaintiff, from engaging in unfair and deceptive trade practices, and  
16 from injuring Plaintiff's goodwill or business reputation;

17           d.     That Defendants, their agents, servants, employees, representatives, attorneys  
18 subsidiaries, related companies, successors, assigns, and all others in active concert or  
19 participation with Defendants, be ordered to take affirmative steps to dispel any and all false  
20 impressions that have been created by Defendants' use of designations, names, marks, or designs  
21 identical or confusingly similar to Plaintiff's Marks and Trade Dress.

22           e.     That Defendants be ordered to deliver up for impoundment during the pendency  
23 of this action all products, fixtures, writings, signage, artwork, nameplates, labels,  
24 advertisements, and other materials incorporating or reproducing Plaintiff's Marks and Trade  
25 Dress;

26           f.     That Defendants, upon final disposition of this matter, destroy all products,  
27 fixtures, writings, signage, artwork, nameplates, labels, advertisements, and other materials  
28

1 incorporating or reproducing the infringement on Plaintiff's Marks or Trade Dress, pursuant to  
2 Lanham Act Section 36 (15 U.S.C. § 1118), Section 17200 *et seq.* of the California Business and  
3 Professions Code, and the equitable power of this Court to enforce the laws of the State of  
4 California.

5 g. That Defendants be required to account to Plaintiff for any and all money, profits  
6 and advantages wrongfully received by Defendants, including any and all profits derived from  
7 the sale of goods bearing or sold under the infringing marks and trade dress, and interest thereon;

8 h. That Plaintiff be awarded its damages in an amount to be determined at trial;

9 i. That Plaintiff's recovery be trebled pursuant to Lanham Act Section 35, 15 U.S.C.  
10 § 1117;

11 j. That Plaintiff be awarded punitive damages pursuant to the laws of the State of  
12 California in view of Defendants' intentional and willful infringement and unfair competition;

13 k. That Plaintiff be awarded attorneys' fees, expenses and costs incurred in this  
14 action pursuant to Lanham Act Section 35, 15 U.S.C. § 1117; and

15 l. For such other and further relief as may be just and equitable.

16 **VI. JURY DEMAND**

17 Plaintiff hereby requests a jury trial for all claims and causes of action triable by jury.

18 Respectfully Submitted,

19 Date: October 18, 2007

RANDICK O'DEA & TOOLIATOS, LLP

21 By: 

22 Patrick E. Guevara

23 Attorneys for Plaintiff Vallavista Corporation  
24  
25  
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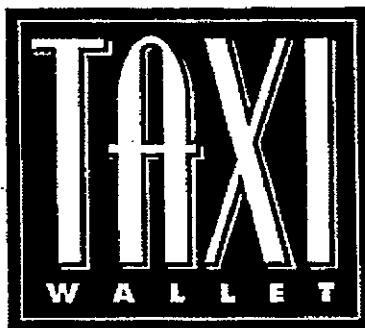


Int. Cl.: 18

Prior U.S. Cls.: 1, 2, 3, 22 and 41

**United States Patent and Trademark Office** Reg. No. 2,008,495  
Registered Oct. 15, 1996

**TRADEMARK  
PRINCIPAL REGISTER**



VALLAVISTA CORPORATION (CALIFORNIA  
CORPORATION)  
3431 BLACKHAWK PLAZA CIRCLE  
DANVILLE, CA 94506

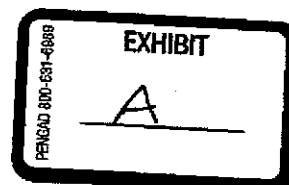
FOR: WALLETS, COIN WALLETS, BILL-  
FOLDS, CREDIT CARD WALLETS, COIN  
PURSES, CHANGE PURSES, COIN POCKET  
BILLFOLDS, BUSINESS CARD WALLETS, IN  
CLASS 18 (U.S. CLS. 1, 2, 3, 22 AND 41).

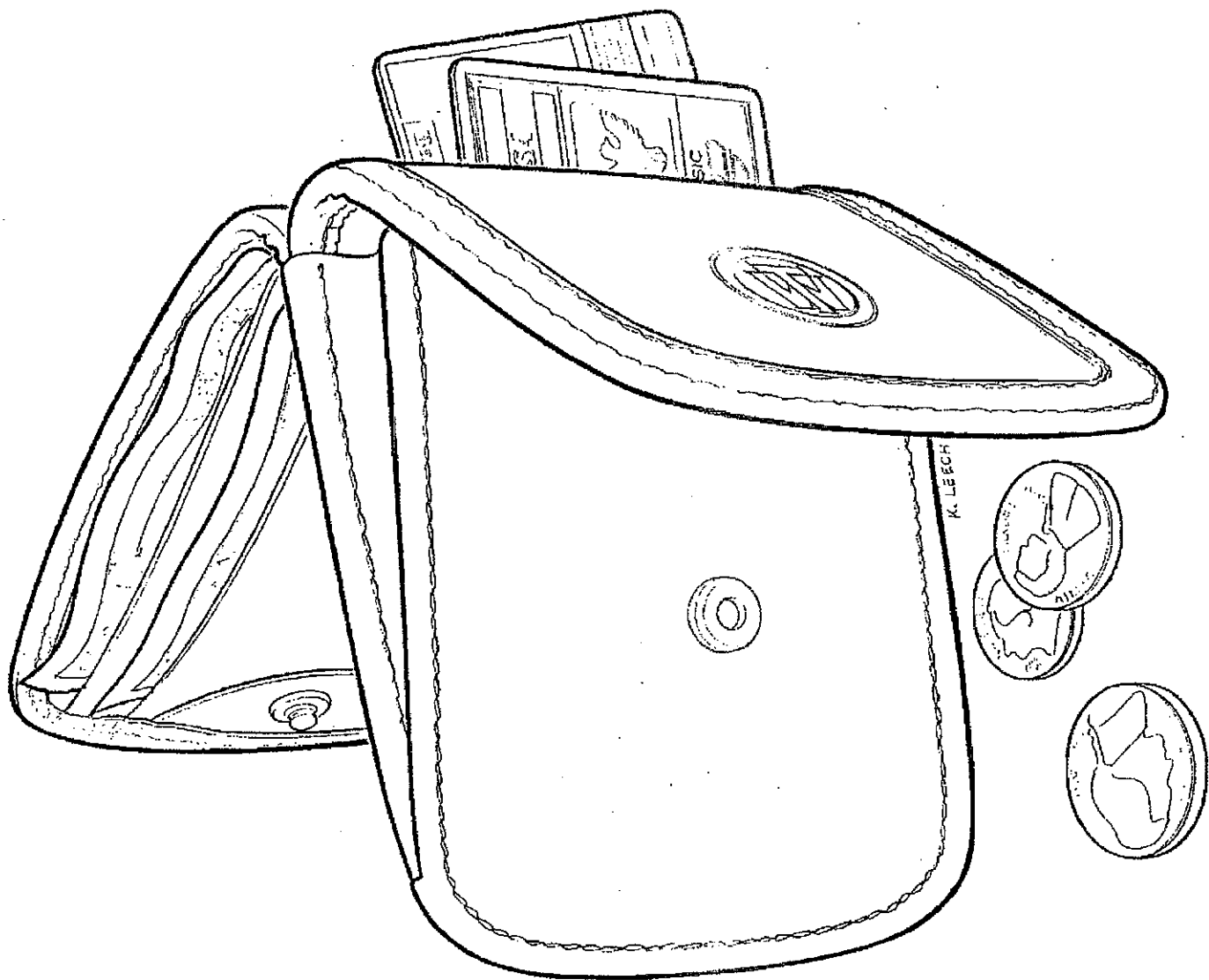
FIRST USE 7-6-1988; IN COMMERCE  
7-29-1988.

NO CLAIM IS MADE TO THE EXCLUSIVE  
RIGHT TO USE "WALLET", APART FROM  
THE MARK AS SHOWN.

SER. NO. 75-018,738, FILED 11-9-1995.

GEORGE LORENZO, EXAMINING ATTORNEY





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4 San Francisco, California 94105-2482  
Telephone: 415.268.7000  
5 Facsimile: 415.268.7522

6 Attorneys for Defendant  
TARGET CORPORATION  
7

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN JOSE DIVISION  
11

12 VALLAVISTA CORPORATION, a California  
corporation,

13 Plaintiff,  
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15 v.

16 AMAZON.COM, INC., a Delaware corporation,  
17 TARGET CORPORATION, a Minnesota  
corporation, EBAGS, INC., a Colorado  
18 corporation, EMPORIUM LEATHER  
COMPANY, INC., a New Jersey corporation,  
19 doing business as ROYCE LEATHER, and  
FASHION HANDBAGS, INC., a Nevada  
corporation, doing business as BO BO BAGS,

20 Defendants.  
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Case No. C-07-05360-PVT

**SEPARATE ANSWER OF  
DEFENDANT TARGET  
CORPORATION TO  
COMPLAINT**

1 As its Answer to the Complaint of plaintiff Vallavista Corporation ("Plaintiff"), defendant  
2 Target Corporation ("Target") makes the following answers, statements and allegations. Except  
3 as hereinafter expressly admitted, qualified, or otherwise answered, Target denies each and every  
4 allegation and assertion made in the Complaint.

5 **(Parties)**

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

8 2. Target is without knowledge or information sufficient to form a belief as to the  
9 truth of the allegations of paragraph 2 of the Complaint.

10 3. Answering paragraph 3 of the Complaint, Target admits that it is a corporation  
11 organized under the laws of the State of Minnesota, that Target operates more than 200  
12 TARGET® retail stores in California, and that Target operates the internet website at  
13 <http://www.target.com>.

14 4. Target is without knowledge or information sufficient to form a belief as to the  
15 truth of the allegations of paragraph 4 of the Complaint.

16 5. Target is without knowledge or information sufficient to form a belief as to the  
17 truth of the allegations of paragraph 5 of the Complaint.

18 6. Target is without knowledge or information sufficient to form a belief as to the  
19 truth of the allegations of paragraph 6 of the Complaint.

20 **(Jurisdiction)**

21 7. Answering paragraph 7 of the Complaint, Target admits that the Court has subject  
22 matter jurisdiction over the action.

23 8. Answering paragraph 8 of the Complaint, Target denies that venue is proper in the  
24 Northern District of California under 28 U.S.C. § 1391(a).

25 **(Intradistrict Assignment)**

26 9. Target denies the allegations of paragraph 9 of the Complaint.  
27  
28

**(Allegations Common to All Counts)**

10. Target denies the allegations of paragraph 10 of the Complaint, except states that the Complaint speaks for itself.

11. Target is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 11 of the Complaint, except states that the document attached to the Complaint as Exhibit "A" speaks for itself.

12. Target is without knowledge or information sufficient to form a belief as to the truth of the allegations of the first sentence of paragraph 12 of the Complaint. Target denies the allegations of the second sentence of paragraph 12 of the Complaint.

13. Target denies the allegations of paragraph 13 of the Complaint.

14. Target is without knowledge or information sufficient to form a belief as to the truth of the allegations of the first sentence of paragraph 14 of the Complaint. Target denies the remaining allegations of paragraph 14 of the Complaint upon information and belief.

15. Target denies the allegations of paragraph 15 of the Complaint upon information and belief, except states that the document attached to the Complaint as Exhibit "B" speaks for itself.

16. Target is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 16 of the Complaint.

17. Target is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 17 of the Complaint.

18. Target is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 18 of the Complaint.

19. Target is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 19 of the Complaint.

20. Target denies the allegations of paragraph 20 of the Complaint upon information and belief.

21. Target is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 21 of the Complaint.

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

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

**(Count One)**

24. Answering paragraph 24 of the Complaint, Target repeats, realleges and incorporates by reference the foregoing paragraphs of this Answer.

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

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

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

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

29. Target is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 29 of the Complaint.

30. Target is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 30 of the Complaint.

31. Target is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 31 of the Complaint.

32. Target is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 32 of the Complaint.

33. Target is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 33 of the Complaint.

34. Target is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 34 of the Complaint.

35. Target is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 35 of the Complaint.

36. Target is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 36 of the Complaint.

37. Target is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 37 of the Complaint.

1           38. Target is without knowledge or information sufficient to form a belief as to the  
2 truth of the allegations of paragraph 38 of the Complaint.

3           39. Target is without knowledge or information sufficient to form a belief as to the  
4 truth of the allegations of paragraph 39 of the Complaint.

5           40. Target is without knowledge or information sufficient to form a belief as to the  
6 truth of the allegations of paragraph 40 of the Complaint.

7           41. Answering paragraph 41 of the Complaint, Target states that on or around May 16,  
8 2007, a product sold by Target was described as "Isaac Mizrahi for Target Taxi Wallet with Turn  
9 Lock."

10          42. Target is without knowledge or information sufficient to form a belief as to the  
11 truth of the allegations of paragraph 42 of the Complaint.

12          43. Answering paragraph 43 of the Complaint, Target admits that Plaintiff sent Target  
13 correspondence dated May 22, 2007, and further states that the correspondence speaks for itself.

14          44. Answering paragraph 44 of the Complaint, Target admits that it sent  
15 correspondence dated May 31, 2007, and further states that the correspondence speaks for itself.

16          45. Target is without knowledge or information sufficient to form a belief as to the  
17 truth of the allegations of paragraph 45 of the Complaint.

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

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

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

21          49. Target is without knowledge or information sufficient to form a belief as to the  
22 truth of the allegations of paragraph 49 of the Complaint.

23          50. Target is without knowledge or information sufficient to form a belief as to the  
24 truth of the allegations of paragraph 50 of the Complaint.

25          51. Target is without knowledge or information sufficient to form a belief as to the  
26 truth of the allegations of paragraph 51 of the Complaint.

27          52. Target is without knowledge or information sufficient to form a belief as to the  
28 truth of the allegations of paragraph 52 of the Complaint.

53. Target is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 53 of the Complaint.

54. Target is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 54 of the Complaint.

55. Target is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 55 of the Complaint.

56. Target is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 56 of the Complaint.

57. Target is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 57 of the Complaint.

58. Target is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 58 of the Complaint.

59. Target is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 59 of the Complaint.

60. Target is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 60 of the Complaint.

**(Count Two)**

61. Answering paragraph 61 of the Complaint, Target repeats, realleges and incorporates by reference the foregoing paragraphs of this Answer.

62. Target denies the allegations of paragraph 62 of the Complaint.

63. Target denies the allegations of paragraph 63 of the Complaint.

64. Target denies the allegations of paragraph 64 of the Complaint.

**(Count Three)**

65. Answering paragraph 65 of the Complaint, Target repeats, realleges and incorporates by reference the foregoing paragraphs of this Answer.

66. Target denies the allegations of paragraph 66 of the Complaint upon information and belief.

67. Target denies the allegations of paragraph 67 of the Complaint.



1 68. Target denies the allegations of paragraph 68 of the Complaint.

2 69. Target denies the allegations of paragraph 69 of the Complaint.

3 70. Target denies the allegations of paragraph 70 of the Complaint.

4 **(Count Four)**

5 71. Answering paragraph 71 of the Complaint, Target repeats, realleges and  
6 incorporates by reference the foregoing paragraphs of this Answer.

7 72. Target denies the allegations of paragraph 72 of the Complaint.

8 73. Target denies the allegations of paragraph 73 of the Complaint.

9 74. Target denies the allegations of paragraph 74 of the Complaint.

10 **(Count Five)**

11 75. Answering paragraph 75 of the Complaint, Target repeats, realleges and  
12 incorporates by reference the foregoing paragraphs of this Answer.

13 76. Target denies the allegations of paragraph 76 of the Complaint.

14 77. Target denies the allegations of paragraph 77 of the Complaint.

15 **FIRST AFFIRMATIVE DEFENSE**

16 The Complaint fails, in whole or in part, to state a claim against Target upon which relief  
17 can be granted.

18 **SECOND AFFIRMATIVE DEFENSE**

19 Plaintiff's alleged damages, if any, may have been caused by Plaintiff's own conduct  
20 and/or failure to mitigate damages, or by others beyond the control of Target.

21 **THIRD AFFIRMATIVE DEFENSE**

22 Plaintiff's claims may be barred in whole or in part by the doctrines of waiver, estoppel,  
23 and/or laches.

24 **FOURTH AFFIRMATIVE DEFENSE**

25 Plaintiff has not suffered injury in fact and has not lost money or property as a result of  
26 any alleged acts of Target.

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**FIFTH AFFIRMATIVE DEFENSE**

Plaintiff is not entitled to any injunctive or equitable relief because it will not suffer irreparable harm.

**SIXTH AFFIRMATIVE DEFENSE**

Plaintiff is not entitled to any injunctive or equitable relief because it has an adequate remedy at law.

**WHEREFORE**, defendant Target respectfully prays that the Court enter a judgment:

- (a) On Plaintiff's claims against Target, in favor of Target and against Plaintiff;
- (b) Awarding Target its costs of suit herein and any available attorneys' fees; and
- (c) Awarding Target such other relief as the Court may deem just and equitable under the circumstances.

Dated: December 3, 2007

ANGELA L. PADILLA  
LINDSAY T. BRAUNIG  
MORRISON & FOERSTER LLP

By: /s/ Angela L. Padilla  
Angela L. Padilla  
  
Attorneys for Defendant  
TARGET CORPORATION

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Telephone: 415.268.7000  
Facsimile: 415.268.7522

Attorneys for Defendant  
TARGET CORPORATION

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

VALLAVISTA CORPORATION, a California  
corporation,

Plaintiff,

v.

AMAZON.COM, INC., a Delaware corporation,  
TARGET CORPORATION, a Minnesota  
corporation, EBAGS, INC., a Colorado  
corporation, EMPORIUM LEATHER  
COMPANY, INC., a New Jersey corporation,  
doing business as ROYCE LEATHER, and  
FASHION HANDBAGS, INC., a Nevada  
corporation, doing business as BO BO BAGS,

Defendants.

Case No. C-07-05360-PVT

**CERTIFICATE OF SERVICE BY  
MAIL**

**CERTIFICATE OF SERVICE BY MAIL**  
(Fed. R. Civ. Proc. rule 5(b))

I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address is 425 Market Street, San Francisco, California 94105-2482; I am not a party to the within cause; I am over the age of eighteen years and I am readily familiar with Morrison & Foerster's practice for collection and processing of correspondence for mailing with the United States Postal Service and know that in the ordinary course of Morrison & Foerster's business practice the document described below will be deposited with the United States Postal Service on the same date that it is placed at Morrison & Foerster with postage thereon fully prepaid for collection and mailing.

I further declare that on the date hereof I served a copy of:

**SEPARATE ANSWER OF DEFENDANT TARGET CORPORATION TO COMPLAINT**

on the following by placing a true copy thereof enclosed in a sealed envelope addressed as follows for collection and mailing at Morrison & Foerster LLP, 425 Market Street, San Francisco, California 94105-2482, in accordance with Morrison & Foerster's ordinary business practices:

Andrew Hartman, Esq.	<i>Pro Hac Vice</i> for Defendant
Cooley Godward LLP	eBags, Inc.
2595 Canyon Boulevard, Suite 250	
Boulder, CO 80302	

I declare under penalty of perjury that the above is true and correct.

Executed at San Francisco, California, this 3rd day of December, 2007.

s/Linda I. Methven  
Linda I. Methven

**GENERAL ORDER 45 ATTESTATION**

I, Angela L. Padilla, am the ECF User whose ID and password are being used to file this Certificate of Service by Mail. In compliance with General Order 45, concurrence in the filing of this document has been obtained from each of the other signatories and I shall maintain records to support this concurrence for subsequent production for the Court if so ordered or for inspection upon request by a party.

Dated: December 3, 2007.

/s/ Angela L. Padilla

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

TARGET CORPORATION,

Petitioner,

v.

VALLAVISTA CORPORATION

Registrant.

Cancellation No.: 92050079

Registration No. 2008495

Mark: TAXI WALLET

**[PROPOSED] ORDER GRANTING  
MOTION TO SUSPEND PROCEEDINGS**

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

Having reviewed the motion, the supporting papers and any opposition thereto, and on proof made to the satisfaction of the Board:

IT IS ORDERED that the motion be, and it hereby is, granted. This proceeding is suspended pending final resolution of the civil action involving the parties.

Date: October \_\_\_, 2008

By: \_\_\_\_\_