



September 22, 2011

**VIA FEDERAL EXPRESS**

Donald S. Clark  
Secretary  
Federal Trade Commission  
600 Pennsylvania Ave., NW  
Room 172  
Washington, DC 20580

Dear Secretary Clark,

This letter serves as a formal request to the Federal Trade Commission to initiate enforcement action against Target Corporation, for violations of the Commission's Appliance Labeling Rule ("the Rule"). 16 C.F.R. Part 305.

Since at least January 28, 2011, Target has been selling appliances covered by the Rule on its website, Target.com, without displaying the energy efficiency information as required for those products. See 16 C.F.R. § 305.20. At the time of this writing, Target.com still features widespread noncompliance. This includes 8 of the 14 listings for covered room air conditioners currently in stock and 63 of 65 listings for covered televisions.

Target has been aware of its noncompliance with the Rule for many months. In a certified letter postmarked April 22, Earthjustice notified Target of a number of violations on its site and on its Amazon.com channel and requested that the company bring its listings into compliance within 60 days. Target responded that it was aware of the Rule and would fix its listings when it launched its redesigned website "later this year." Earthjustice replied via e-mail on June 15, urging Target to address these instances of noncompliance in a timelier manner. Target did not respond.

Target's redesigned website finally launched on Tuesday, August 23. See "Target redesigns its e-commerce site," *Internet Retailer*, Aug. 23, 2011, available at <http://www.internetretailer.com/2011/08/23/target-redesigns-its-e-commerce-site>, last visited Sept. 21, 2011. In connection with that launch, the company removed dozens of noncompliant listings from Amazon.com and brought some listings on Target.com into compliance. However, several of the original noncompliant listings remained in place, and many other listings violated the newly effective provisions governing labeling of televisions. Earthjustice attempted to contact Target once more on September 8, 2011, sending an e-mail and leaving a voicemail for an attorney in the company counsel's office. These attempts once again received no response. Although Target has since made a handful of minor adjustments to its noncompliant listings—in particular, fixing thumbnail images of labels so that they would properly enlarge when

clicked upon—those adjustments have resulted in only two product listings coming into compliance.

By means of comparison, Earthjustice has sent similar letters to thirteen other online retailers since first alerting Target to its violations. Many of these retailers promptly addressed their violations, bringing hundreds of listings into compliance in the process.

We have enclosed a compact disc that includes an Excel file documenting Target's violations, as well as PDF copies of the offending webpages.<sup>1</sup> As documented in that spreadsheet, at least 71 product listings on Target.com failed to properly display the Energy Guide or the required alternative information. Several of those listings contain none of the required information. Most of the others contain a link labeled "Energy Guide information" or a thumbnail image of the Energy Guide, but even when those links and images work, are either buried in a way that requires consumers to scroll through a panel of images or a large amount of peripheral material in order to find them. In all but two cases, links and thumbnail images of television labels are neither in the form of an Energy Guide icon nor "displayed clearly and conspicuously, in close proximity to the television's price," as required by 16 C.F.R. Part 305.20(g).

The availability of energy efficiency information is a central feature of the Energy Policy and Conservation Act. See, e.g. 42 U.S.C. § 6201(5) (declaring statutory goal of "providing for improved energy efficiency of ... major appliances, and certain other consumer products,"); 42 U.S.C. § 6294 (directing FTC to issue labeling rules that enable and encourage consumers to comparison shop for energy-efficient appliances); *see also* 44 Fed. Reg. 66466 (Nov. 19, 1979). The statute specifically mandates that rules require that energy efficiency information is "displayed in a manner that the Commission determines is likely to assist consumers in making purchasing decisions." 42 U.S.C. § 6294(c)(3).

As more and more consumers shop or browse for products online, these goals are undermined when online retailers fail to provide the required information. This is particularly clear in the case of Target, which—despite selling relatively few covered products—ranked tenth in sales of major appliances in 2010. *See* "The Top 100 Major Appliance Retailers," *This Week In Consumer Electronics*, June 20, 2011, p. 24. The company's web presence is also significant: it placed twenty-second in Internet Retailer's Top 500 list for total online retail sales in 2010. "The Top 500 list," 2011 Top 500 Guide, available at <http://www.internetretailer.com/top500/list/>, last visited August 18, 2011.

Furthermore, none of the room air conditioners Target sells online are available in the company's brick-and-mortar stores. Those that are generally are sold in boxes and have no corresponding display model. As a result, Target's online listings may be the only opportunity Target customers have to see energy efficiency information about the room air conditioners they purchase. That information is particularly likely to be relevant to purchasing decisions for room

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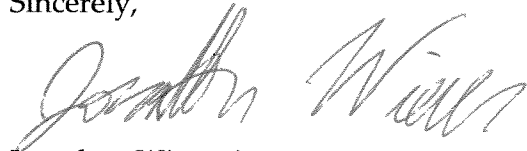
<sup>1</sup> These PDF copies were created on September 21, 2011, using a combination of Internet Explorer 8 and the screen capture program Snagit, and have not been edited.

air conditioners, many of which have estimated annual operating costs equivalent to one quarter or one third of the purchase price.

Earthjustice submits this citizen complaint on behalf of Public Citizen, a national nonprofit consumer advocacy organization. Among other efforts, Public Citizen works to strengthen laws designed to promote energy efficiency and seeks to ensure that consumers are provided with product information required by law so they can make informed choices in the marketplace. The organization believes that full compliance with FTC's labeling rules will save energy and reduce pollution by encouraging the purchase of energy-efficient products, and has been active in seeking to improve compliance among online retailers.

If you have any questions about this letter or the information on the enclosed CD, or wish to meet to discuss this matter, please contact Jonathan Wiener at the number provided below.

Sincerely,

A handwritten signature in cursive script that reads "Jonathan Wiener".

Jonathan Wiener\*

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\* Admitted only in California; practice in this matter supervised directly by David Baron.