

The Hospitality Law Conference Virtual Conference – June 30, 2020

Summary Paper by:

**Jordan Schwartz – Partner
Conn Maciel Carey LLP**

An abundance of lawsuits continue to be filed by plaintiffs across the country against hotels and resorts alleging their websites violate the Americans with Disabilities Act (“ADA”). These lawsuits allege two different types of ADA violations. Each of these violations will be addressed here:

The first type of website accessibility case deals with whether a property provides a sufficient amount of information on its website regarding accessible features of its property. ADA regulations require hotels to make reasonable modifications in their policies and practices to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities. According to these regulations, a hotel must identify and describe accessible features in the facilities and guest rooms offered through its reservations service in enough detail to reasonably permit individuals with disabilities to assess independently whether a given facility or guest room meets his or her accessibility needs. Thus, rather than alleging that the website itself is inaccessible to users with disabilities (which will be discussed below), these website accessibility lawsuits claim that a hotel’s website violates the ADA by failing to sufficiently identify and describe the physical “brick and mortar” accessibility features of the hotel.

The promulgation of these regulations has made it easier than ever for plaintiffs to file lawsuits against hotels. Previously, even a “drive by” plaintiff had to physically go to a hotel, experience some sort of an ADA violation, and then allege an intent to return to the Hotel in order to establish standing necessary to bring a lawsuit. Now, however, Plaintiffs can sue multiple hotels on the same day from the comfort of their own home. They can file these types of lawsuits simply by claiming that they wanted to visit a specific hotel (or multiple hotels), but were deterred from doing so and/or making a reservation because the hotel’s website failed to provide enough information for them to determine whether the accessibility features of the hotel meets their needs. Thus, a plaintiff can assert a claim against your hotel without ever visiting, without

ever making a reservation, and without contacting you first to notify you of the alleged deficiencies on your website.

The second type of accessibility case deals with a company's obligations to make its website accessible for individuals with visual, hearing and physical impairments. Although the ADA's implementing regulations do not specifically apply to websites, the Department of Justice ("DOJ") has emphasized that businesses should make websites accessible to disabled individuals by relying on a set of private industry standards developed by the World Wide Web Consortium known as the Web Content Accessibility Guidelines ("WCAG").

As a result, most of the law regarding website accessibility has resulted from court decisions. While at first courts ruled on both sides of the issue, the recent trend has been for courts to find that businesses are required to make their websites accessible, so long as the website has a significant "nexus" to a physical location. These decisions should put companies on notice of the potential for significant legal exposure for website accessibility issues. Therefore, hotels should immediately begin testing their website's accessibility and then implement any changes that are necessary to improve accessibility. It is essential for companies to involve legal counsel in conducting such website accessibility tests and remediation efforts in order to preserve attorney-client privilege, so that the results of these accessibility tests are shielded from discovery and cannot get into the hands of a potential plaintiff. Companies should also consider creating and/or adopting a website accessibility policy that is consistent with the requirements set forth in the WCAG, and require training and compliance with those requirements.