

The
HOSPITALITY LAW
CONFERENCE

Website Litigation Under the ADA:
Protect Your Property from Lawsuits

Jordan B. Schwartz

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Jordan B. Schwartz

PARTNER, CONN MACIEL CAREY LLP

WASHINGTON, DC

Defends employers in litigation at both federal and state levels

Counsel employers on compliance with federal and state law


Advises unionized and non-unionized workplaces regarding the employer's rights under the National Labor Relations Act

Title III Obligations

Applies to hotels, resorts, spas, restaurants, etc.



Prohibits hotels from denying services and accommodations to individuals with disabilities.



Must remove barriers to access and modify policies, practices, and procedures – unless doing so fundamentally alters goods and services



There is no “grandfather” clause

ADA Legal Standing Requirements: *Laufer v. Acheson Hotels*

- A disabled individual sued a hotel company in Maine, alleging that its website contained insufficient information on disability accommodations.
- A five-minute telephone call to the Hotel could have answered all her accessibility questions. But she did not actually want or need this information—the purpose of visiting the website was to lay the groundwork for a lawsuit.
- The district court dismissed the suit for lack of “legal standing” (which means that the suit must be based on an actual or imminent concrete injury).
- In other words, the district court reached the common-sense conclusion that the plaintiff was not injured by the absence of information on the website of a hotel that she never planned to visit to begin with.

ADA Legal Standing Requirements: Laufer v. Acheson Hotels

- But the First Circuit reversed. It concluded that the denial of accessibility information was an actionable injury—and “[t]hat Laufer had no intent to use the information for anything but a lawsuit doesn’t change things.”
- The court further held that “Laufer’s feelings of frustration, humiliation, and second-class citizenry” are “‘downstream consequences’ and ‘adverse effects’ of the informational injury she experienced.”
- This ruling is in direct conflict with rulings from other Circuit Courts. Thus, in April 2023, the U.S. Supreme Court agreed to hear this case to determine whether a plaintiff is allowed sue a hotel under the ADA even though she does not plan to visit in the future.
- The outcome of this case will be crucial – it will either make it much easier or much more difficult for plaintiffs to bring viable ADA lawsuits against hotels. This includes website cases AND cases dealing with more traditional “brick and mortar” barriers to access allegations.

ADA and Website Accessibility

- There were more than 2,800 web accessibility lawsuits filed in Federal Court in 2021, a 14 percent increase from 2020. As this number continues to climb, the Department of Justice (DOJ) is FINALLY weighing in.
- In its latest guidance statement, the DOJ solidifies its position: Web accessibility is an ADA requirement for businesses open to the public. This guidance provides even more pressure for businesses to ensure their websites are accessible to individuals with disabilities. But the guidance stops short of articulating exactly how to do so.
- Instead, the guidance states that businesses “can currently choose how they will ensure” web accessibility. The DOJ does, however, identify the Web Content Accessibility Guidelines (WCAG) as “helpful guidance” for companies subject to Title III of the ADA.
- The DOJ further provides non-exhaustive examples of what businesses should do to make websites accessible, such as text alternatives for images, synchronized video captions, and providing users with a means for reporting accessibility issues.

ADA and Website Accessibility

I. Does your website need to be accessible for users with visual, hearing and physical impairments?

- Slightly more complicated and may depend on jurisdiction, but generally, yes

II. Does your website need to provide information regarding various accessibility features at your hotel?

- Yes



Must my website be accessible for those hard of hearing and seeing?

- Most Likely, yes! Tension exists in courts and DOJ whether title iii applies to websites
 - Courts have ruled on both sides of the issue
 - No universally recognized standard for achieving website accessibility
 - Trend is still for courts to find that websites are places of public accommodation
 - This, even in the absence of guidelines for private companies' websites, the trend is to comply with the gold standard – WCAG 2.1.

Robles v. Domino's Pizza (2019)

Case centered on the inability of individuals who had limited vision to use Domino's website to order pizzas online with the use of screen-reading software.

In March 2017, a California district court dismissed the lawsuit, holding that while Title III applied to the internet, allowing the case to proceed in the absence of clear web accessibility regulations from the DOJ would violate Domino's due process rights.

The 9th Circuit reversed. It held that Title III applies to websites and that the lack of official web accessibility regulations does not raise due process concerns. It also suggested that lower courts could reference WCAG 2.0 guidelines when structuring remedies.

Domino's petitioned the Supreme Court to hear this case, where it could prove to be a landmark battle over the rights of disabled people on the internet.

On Oct. 7, 2019, the Supreme Court denied Cert.





Gil v. Winn-Dixie (11th Circuit 2021)

- Customer alleged that Winn-Dixie's website was incompatible with technology software that assists the visually impaired, in violation of Title III of the ADA.
- Court held that a website that is heavily integrated with physical store location and operates as “a gateway to the physical store locations” constitutes a service of a public accommodation covered by the ADA
- The 11th Circuit reversed the District Court ruling and found that websites are NOT places of public accommodation and the website did not pose an intangible barrier to access goods and services of store.
- Court reasoned that the plain language of the statute limits places of public accommodation to actual physical places.
- Supreme Court will need to resolve Circuit split

Common Website Accessibility Issues

Users with visual impairments:

- Menus in PDF format
- Pictures, symbols, maps, diagrams, etc. with no written descriptions
- “Click here” links
- Text as an image file (as opposed to html)

Users with hearing impairments:

- Video and audio files with no captioning

Users with physical impairments:

- Navigating website without a mouse or a keyboard

Policy and Remediation

- Retain an accessibility consultant
 - They can help you build safeguards into your contracts to protect against client liability for inaccessible deliverables
 - Use legal counsel as well to preserve privilege
 - Using online accessibility widgets is not sufficient

Accessibility Statements

A prominently displayed accessibility statement on your website reduces your potential legal exposure for an ADA website claim

If you are an owner or operator of a place of public accommodation, hopefully your website already contains an accessibility statement.

At a minimum, it should include language that your website and your property are accessible to all guests.

It should also provide a phone number, email address, and contact person for questions regarding potential accommodations that can be made.



Question to End This Topic

- A business already has been sued for purported ADA violations relating to its website.
- Can that business be sued again for virtually the exact same issues?

Hotel Accessibility Information on Website

- Hotel websites are subject to the ADA because it provides information about their goods and services to the public
 - ADA regulations – 28 CFR 36.302(e)(I)
- A public accommodation that owns, leases, or operates a place of lodging shall:
 - i. Modify its policies, practices, or procedures to ensure that individuals with disabilities can make reservations for accessible guest rooms during the same hours and in the same manner as individuals who do not need accessible rooms;



Hotel Accessibility Information on Website

- ii. Ensure that **accessible guest rooms are held for use by individuals with disabilities until all other guest rooms of that type have been rented** and the accessible room requested is the only remaining room of that type;

Hotel Accessibility Information on Website

- iii. Reserve, upon request, accessible guest rooms or specific types of guest rooms and ensure that the guest room requested are blocked and removed from all reservations systems;
- iv. Guarantee that the specific accessible guest room reserved through its reservations service is held for the reserving customer, regardless of whether a specific room is held in response to reservations made by others;

Hotel Accessibility Information on Website

- v. Identify and describe accessible features in the hotels and guest rooms offered through its reservations service in enough detail to reasonably permit individuals with disabilities to assess independently whether a given hotel or guest room meets his or her accessibility needs.

Hotel Accessibility Information on Website

1. At a minimum, provide information regarding whether common areas of your hotel are accessible
2. Where should that information be provided?
 - May depend on specific website layout
3. Are there accessible routes to get to these areas?
4. If so, describe those as well.
 - Do not provide inaccurate information!





Hotel Accessibility Information on Website

1. You also need to provide sufficient information regarding the accessibility of your rooms.

2. What does that mean?

- Bed type, number of beds, type of bathroom (roll-in shower, tub with accessible seats), non-slip grab bars, etc.

3. How should this information be provided?

Be Extremely Careful with Online Travel Agencies

The current trend is for plaintiffs to bring lawsuits against hotels based on the failure of an OTA (e.g., Expedia or Orbitz) to provide sufficient accessibility related information about a hotel or allow a guest to reserve an accessible room directly through the OTA.

Although the allegations relate to information on Expedia or Orbitz, these lawsuits are against the Hotel, NOT against the OTA since, per the regs, this information is the responsibility of the Hotel.

Thus, it is critical for hotels to review these OTA websites and ensure that sufficient ADA information is provided. If the OTA does not provide this information, it is likely that you will be sued.



WE APPRECIATE YOUR
TIME AND ATTENTION!

Jordan B. Schwartz
202.909.2731
jschwartz@connmaciel.com

Thank you!