Must Websites Comply With the ADA?

A look at caselaw.

BY PIERRE GROSDIDIER

Website Americans with Disabilities Act, or ADA, compliance litigation is all the rage, manifesting itself as an epidemic of "website surf-by lawsuits."[1] The issue is whether websites must be accessible to the visually impaired via screen reader software. Circuit courts are split. Title III of the ADA requires that "[n]o individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation."[2] The statute defines "public accommodation" through a laundry list of 12 characterizations that are all physical places that must affect commerce, e.g., hotels, restaurants, retail stores, theaters, and stadiums.[3] The substantive legal question whittles down to whether a website is a "place of public accommodation" under 42 U.S.C. § 12181(7), an expression that the statute leaves undefined.

One line of cases has construed § 12181(7)'s laundry list narrowly and held that a website need not comply with the ADA unless a sufficient nexus can be established with a corresponding physical space.[4] For example, in *Earll v. eBay, Inc.*, the 9th Circuit Court of Appeals held that eBay was not subject to the ADA because its services were "not connected to any 'actual physical place[ ].'"[5] Under this logic, streaming and social media sites are exempt from ADA compliance.[6] But, websites that are tied to a physical store may have to comply. In *Nat'l Fed'n of the Blind v. Target Corp.*, the court agreed with the plaintiffs that Target's website was inaccessible to the blind, who were denied "full and equal" access to the company's stores.[7] The court refused to dismiss the complaint to the extent that the website impeded the plaintiffs' access to the physical stores. It reasoned that § 12182(a) "applie[d] to the services *of* a place of public accommodation, not services *in* a place of public accommodation."[8] These California cases trace their roots to two 3rd and 6th Circuit cases that have also construed website ADA compliance narrowly—i.e., requiring a physical store nexus.[9]

Another line of cases has held that websites must comply with ADA Title III regardless of whether the website is tied into a physical store. In *Carparts Distrib. Ctr., Inc. v. Auto. Wholesaler's Ass'n of New England*, the 1st Circuit Court of Appeals rejected the defendants' attempt to narrow ADA Title III's scope to physical locations.[10] It held that Congress necessarily contemplated that Title III applied to more than services in physical places when it included "travel services" in § 12181(7)'s laundry list. Travel services are often transacted over the phone without the clients' in-store presence. Per the court, it would defy logic to conclude that the ADA protected in-store clients but not those who transacted over the phone. "Congress could not have intended such an absurd result."[11]

The 2nd and 7th Circuit Courts have followed *Carparts*.[12] In a detailed opinion, the district court in *Andrews v. Blick Art Materials, LLC* denied a motion to dismiss an ADA Title III claim against a company whose website the blind plaintiff could not use.[13] The court noted that Title III's title (see footnote 2) and the laundry list's heading both excluded the word "places," which indicated Congress' intent not to limit the statute's reach by this term. A broad interpretation of Title III's scope was consistent with "the ADA's broad remedial purpose" of fighting discrimination against disabled persons. The court specifically rejected as plainly unworkable the *Target* court's holding that a website's ADA compliance could be compartmentalized between information about a website and information related to the goods and services available through the website.

The 5th Circuit has not addressed the issue of ADA website compliance. But, it held in *Magee v. Coca-Cola Refreshments USA, Inc.*, that Title III did not apply to the owner of glass-front beverage vending machines.[14] The court reasoned that, plainly, a vending machine did not qualify as a "sales establishment" under § 12181(7)(E). The court acknowledged the circuit split and joined the 3rd, 6th, and 9th Circuit Courts of Appeals.[15] At the very least, *Magee* suggests that the 5th Circuit will look closely at the nexus between a website and a physical store in deciding whether to require ADA Title III compliance. TBJ

Notes

1. Drive-by lawsuit: a suit filed by someone who drove-by a business and spotted something (anything) not in compliance with the Americans with Disability Act (ADA, 42 U.S.C. § 12101 *et seq.*). A prevailing ADA plaintiff can expect equitable remedy and attorney fees; not so the defendant. 42 U.S.C. §§ 12188(a)(1), 12205.
2. 42 U.S.C. § 12181 *et seq.* (Subchapter III, Public Accommodations and Services Operated by Private Entities); *id.* § 12182(a).
3. *Id.* § 12181(7).
4. *See, e.g., Weyer v. Twentieth Century Fox Film Corp.*, 198 F.3d 1104, 1114 (9th Cir. 2000).
5. 599 Fed. Appx. 695, 696 (9th Cir. 2015) (mem. op.) (not appropriate for publication and not precedent) (citing *Weyer*, 198 F.3d at 1114).
6. *See Cullen v. Netflix, Inc.*, 880 F. Supp. 2d 1017, 1023–24 (N.D. Cal. 2012); *Ouellette v. Viacom*, No. CV 10-133-M-DWM-JCL, 2011 WL 1882780, at *4–5 (D. Mont. Mar. 31, 2011); *Young v. Facebook, Inc.*, 790 F. Supp. 2d 1110, 1114–16 (N.D. Cal. 2011).
7. 425 F. Supp. 2d 946, 949–50, 952 (N.D. Cal. 2006).
8. *Id.* at 953–56 (emphases in original).
9. *Ford v. Schering-Plough Corp.*, 145 F.3d 601 (3d Cir. 1998); *Parker v. Metropolitan Life Ins. Co.*, 121 F.3d 1006 (6th Cir. 1997). *Weyer*, *Ford*, and *Parker* are insurance cases but are cited to support the proposition that websites need a nexus to a physical place to require compliance with the ADA.
10. 37 F.3d 12, 19 (1st Cir. 1994) (insurance case).
11. *Id.*
12. *Morgan v. Joint Admin. Bd., Ret. Plan of the Pillsbury Co. and Am. Fed'n of Grain Millers, AFL–CIO–CLC*, 268 F.3d 456, 459 (7th Cir. 2001); *Pallozzi v. Allstate Life Ins. Co.*, 198 F.3d 28, 32–33 (2d Cir. 1999).
13. 268 F. Supp. 3d 381, 385 (E.D.N.Y 2017).
14. 833 F.3d 530, 535 (5th Cir. 2016).
15. *Id.* at 534 and note 23.

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