

ADA REQUIRES ONLINE BUSINESSES TO MAKE THEIR WEBSITES USABLE BY THE DISABLED

A hard-hitting ruling last month by a Brooklyn federal judge may expose not just the online retailers offering goods and/or services, but also the agencies retained by them to build and design their websites, to a greater risk of litigation brought by disabled plaintiffs if the companies' websites are not accessible to the disabled, a violation of the Americans with Disabilities Act (ADA), state and local disability laws.

THE COMPLAINT

In August, usually the quietest time in most courthouses, Senior District Court Judge Jack B. Weinstein issued an affecting, 38-page opinion, denying a motion to dismiss the complaint filed by a blind plaintiff against Blick Arts Materials, LLC (Blick), a national seller of arts supplies. The complaint alleged that Blick had discriminated against the plaintiff due to his disability (visual impairment) because he was unable to use Blick's website to make purchases online.

THE DECISION

Blick fell flat in its effort to persuade the court that websites are not "places of public accommodation," such that businesses with an online presence must comply with federal, state and local disability laws to ensure that their websites are accessible to the disabled. In rejecting each of Blick's arguments, Judge Weinstein displayed sympathy to disabled shoppers and was not at all persuaded that only businesses with physical, "brick and mortar" locations qualify as operating

THE BOTTOM LINE

Businesses with an online presence, and those agencies designing and building websites for businesses who sell goods and/or services online, should review their websites for ADA compliance. Companies should further explore technology available to make their websites accessible to potential customers with disabilities, or risk being party to a class action brought by a class of disabled plaintiffs who can allege that they are deprived of a full and fair opportunity to buy the goods and/or services online.

"places" of public accommodation. The court reasoned that disabled individuals must not be denied a full and fair opportunity to enjoy goods and/or services that businesses, including those with only a cyber-presence, provide.

Addressing the split among the federal courts on the question of whether only physical structures, as opposed to websites, may be considered "places" of public accommodation for ADA purposes, Judge Weinstein sided with a broader reading of the ADA's requirements, plainly stating that to rule otherwise would produce "absurd" results. For example, disabled

individuals would have the right to "pre-shop" in their homes if buying from retail brick and mortar giants, like Target, but no right to actually make a purchase from Target in their homes. Indeed, the court noted, that if the ADA is read narrowly, disabled people would have no right to buy things from catalog-only companies, or home shopping channels, even though those businesses are built on the notion that customers will be shopping *only* from their homes.

NEXT STEPS

In concluding that the legally blind plaintiff had stated a prima facie case

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of disability discrimination under the ADA, as well as New York State and city disability laws, the court's next steps will be to determine the type and cost of modifications Blick would have to make to its website, without being overly burdensome to Blick, in order to allow the blind plaintiff full use and access to its website. Judge Weinstein ordered that a "Science Day" be held next month, on October 18 and 19, at which experts will demonstrate technologies to effect such changes so that the blind plaintiff, and other

potential class members, could gain access to the website to buy Blick's products.

According to *New York Law Journal*, the blind plaintiff in Blick also filed suit alleging ADA violations against 13 other companies that operate websites that he cannot use. In addition, other blind plaintiffs filed almost 30 similar suits in New York federal courts this summer against companies, including Shake Shack, Nordstrom and Sotheby's.

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