

# How to Handle ADA Website Accessibility Claims

## The Bottom Line

- When faced with an ADA website accessibility claim, there are defenses that can be raised, either with the court or as part of settlement negotiations.
- Companies should carefully review any such claim, particularly the allegations concerning whether the plaintiff visited the relevant website with the intent to make a purchase, and whether the plaintiff intends to return to the website.
- In defending against ADA website claims, companies should seek the advice of legal counsel to arrive at an appropriate response.

In recent years, there has been an explosion of lawsuits brought under the Americans with Disabilities Act (ADA) against website operators, alleging that their websites discriminate against blind or visually impaired persons. Although these cases often end in quick settlements, there are defenses available to those hit with such claims. A recent federal court decision demonstrates that these defenses can be effective in court or in settlement negotiations.

## The ADA's Applicability to Websites

Title III of the ADA prohibits discrimination “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.” In deciding if the ADA applies to websites, courts have focused on the critical language: “any place of public accommodation.” Courts are divided on whether and to what extent a website counts as a place of “public accommodation,” such that it is covered by the ADA.

Courts have ruled in a variety of ways:

- Some courts have found that the ADA generally applies to all websites.
- Some courts have taken a middle view and held that the ADA only applies to websites that have a “nexus” to an ADA-covered physical facility, often referred to as a “brick and mortar” nexus.

- Some courts have held that the ADA does not apply to websites at all.

Although there are no official rules or statutes governing whether a website is ADA compliant, the regularly applied current standard is the Web Content Accessibility Guidelines (WCAG) 2.1. The WCAG measures three levels of compliance, including A (minimal compliance), AA (acceptable compliance), and AAA (optimal compliance).

### Website Operators May Have Defenses to ADA Website Claims

Companies faced with ADA website claims often pursue a settlement – which is often the most prudent course of action. However, a company faced with an ADA website claim may have several potential defenses. For example, if the company is sued in a jurisdiction that does not apply the ADA to websites, or that limits the ADA to websites with a brick and mortar nexus, a company may potentially argue that its website is not governed by the ADA.

But regardless of the jurisdiction, an ADA website claim is subject to dismissal if the plaintiff fails to adequately allege “standing.” Standing is a constitutional requirement – if a plaintiff does not have standing, they cannot bring a claim. To demonstrate standing in an ADA website case, a plaintiff must sufficiently allege an “injury in fact.” That is, a plaintiff must specifically allege that they visited the relevant website intending to make a purchase – it is not enough that the plaintiff merely browsed the website. In addition, a plaintiff must plausibly allege a “real and immediate threat of future injury,” meaning that the plaintiff intends to return to the subject website.

A recent U.S. District Court for the Southern District of New York decision, *Tavarez v. Moo Organic Chocolates*, demonstrates the risk to a plaintiff who fails to adequately allege standing. In *Moo Organic Chocolates*, which involved a website that sold chocolates, the court considered the plaintiff’s standing even though it was not raised by the parties (referred to as *sua sponte*). While the plaintiff alleged that he had “browsed” the defendant’s website, he had not indicated the “frequency of his visits [to the website], when the visits occurred, that he has some particular interest in purchasing chocolate from this particular vendor, or any other facts from which the Court could plausibly infer he intends to return to the website.” On this basis, the court found that the plaintiff had failed to adequately allege standing and dismissed the case, with the opportunity for the plaintiff to amend the complaint to sufficiently plead such facts. *Moo Organic Chocolates* demonstrates that defendants in ADA website cases may be able to attack a complaint that fails to adequately allege that the plaintiff intended to make a purchase and intends to return to the website.

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## For More Information

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