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CALIFORNIA COURT OF APPEALS HOLDS ECOMMERCE ONLY WEBSITE NOT SUBJECT TO ADA

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The California Court of Appeals has held that websites operated by online only businesses are not "places of public accommodation" subject to Title III of the ADA, agreeing with the Ninth Circuit Court of Appeals, and bringing California state and federal courts into alignment on this issue.

In Martinez v, Cot'n Wash, Inc., the blind plaintiff alleged that the online only retailer had engaged in disability discrimination in violation of California's Unruh Act because he could not use its website at www.drops.com with his screen reader software. A plaintiff can prove a violation of the Unruh Act by demonstrating (1) intentional discrimination, or (2) a violation of Title III of the ADA. Martinez alleged both.

As to his ADA claim, the Court held that it could not rely on the plain language of the ADA's prohibition on discrimination in a "place of public accommodation" to address whether the ADA applies to websites, stating: "the plain meaning of the statute's language is not dispositive, because there is no "plain meaning" of this phrase. Decades of conflicting federal case law interpreting it establishes that, instead, the term is ambiguous."

The Court also noted that "Congress and the DOJ have long been aware of the confusion in the courts regarding whether and when a website can be considered a 'place of public accommodation,' but have chosen not to clarify the issue through amendments to the statute or additional rulemaking."

The Court therefore turned to what it called "the third and final step in the interpretive process." "In this phase of the process, we apply reason, practicality, and common sense to the language at hand. Where an uncertainty exists, we must consider the consequences that will flow from a particular interpretation. Based on such an analysis, we ultimately find dispositive that adopting Martinez's proposed interpretation of 'place of public accommodation' would mean embracing a view that Congress (through its inaction since the enactment of the ADA) and the DOJ (through its unwillingness to draft regulations) have both tacitly rejected."

As to whether the Court's holding will have an "absurd result" in treating retail websites differently than brick and mortar retailers, the Court stated "we do not view it as absurd or irrational for

Congress to address discrimination by online retailers in a different manner than it addresses discrimination by brick and mortar retailers. … Because brick and mortar stores conduct business differently than do retail websites, the type and extent of the burdens anti-discrimination measures impose on a business will necessarily differ depending on whether the business is operating through a physical storefront or a purely digital one."

With regard to the intentional discrimination theory, the Court held that the retailer's failure to take action in response to the plaintiff's demand letters complaining of the website's accessibility barriers do not prove intentional discrimination: "a failure to address known discriminatory effects of a policy" is not sufficient to establish intentional discrimination under the Unruh Act. Notably, the Court also affirmed that a disparate impact is insufficient to establish intentional discrimination, explaining that "[a] claimant may not rel[y] on the effects of a facially neutral policy on a particular group … to infer … a discriminatory intent."

The Court's decision is significant for online only businesses, as it brings California state courts into alignment with the Ninth Circuit holdings that ecommerce only businesses are not subject to the ADA. The decision is also certain to reduce the number of website accessibility cases filed in California, where the Unruh Act provides for statutory damages of $4,000 per violation.

For questions or more information, please contact the authors listed.

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