

COURT DISMISSES WEBSITE ACCESSIBILITY CASE AS VIOLATING DUE PROCESS, SINCE DOJ STILL HAS NOT ISSUED REGULATIONS

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Recent court decisions from California and Florida may provide ammunition to retailers battling claims that their websites and mobile applications are inaccessible in violation of Title III of the Americans With Disabilities Act (the “ADA”). As we reported in a [previous blog post](#), retailers and other businesses have faced a wave of such demand letters and lawsuits. Most of these claims settled quickly and confidentially.

However, a California district court recently granted Dominos Pizza’s motion to dismiss under the primary jurisdiction doctrine, which allows courts to stay or dismiss lawsuits pending the resolution of an issue by a government agency. In *Robles v. Dominos Pizza LLC*, U.S. Dist. Ct. North Dist. Cal. Case No. CV 16-06599 SJO, the court held it would violate Domino’s due process rights to hold that its website violates the ADA, because the Department of Justice still has not promulgated regulations defining website accessibility – despite issuing a notice of proposed rulemaking back in 2010.

The court stated that the DOJ’s application of an industry standard, the [Website Content Accessibility Guidelines 2.0 \(WCAG 2.0\)](#), in statements of interest and consent decrees in other cases does not impose a legally binding standard on all public accommodations. It also noted that those consent decrees indicated flexibility to choose an appropriate auxiliary aid to communicate with disabled customers, and suggested that Domino’s provision of a telephone number for disabled customers may satisfy this obligation. Retailers that do not have an accessible website should therefore provide a toll-free number serviced by live customer service agents who can provide all the information and services available on the website.

The court rejected Dominos’ argument that the ADA simply does not apply to websites. It found distinguishable those cases holding that the ADA does not apply to retailers and service providers that operate solely on the internet, without a nexus to a brick and mortar location. It noted that Dominos “does not challenge the existence of a ‘nexus’ between its websites and its pizza franchises.”

In another website accessibility case, *Andres Gomez v. Bang & Olufsen America, Inc.*, the sole issue before a Florida district court was whether the retailer defendant's website was a place of public accommodation under the ADA. In granting the retailer's motion to dismiss, the court relied on cases concluding that a website that is wholly unconnected to a physical location is generally not subject to ADA. The court noted that the plaintiff had alleged that he could not purchase products online, but did not claim that the website's inaccessibility impeded his ability to go to a store, despite the fact that the website allowed users to make private appointments with sales representatives at a physical location.

Retailers should be aware that these district court decisions are not binding on any other judges, who may reach different conclusions, and that the plaintiffs may appeal.

For additional questions, or to schedule a presentation on website accessibility, contact the author, Merrit Jones, at Merrit.Jones@bryancave.com or (415) 675-3435.

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