

WEBSITE ACCESSIBILITY UPDATE: CALIFORNIA FEDERAL COURT DENIES HOBBY LOBBY'S MOTION TO DISMISS

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Another website accessibility decision against a retailer, this time involving Hobby Lobby Stores, Inc. in the Central District of California, highlights the uncertainty of the law and of litigating such cases while courts continue to reach different conclusions.

In *Gorecki v. Hobby Lobby Stores, Inc.*, Case No. 2:17-cv-01131-JFW-SK (C.D. Cal. June 15, 2017), the district court denied Hobby Lobby's motion to dismiss and held that the retailer's website constitutes a "public accommodation" under Title III of the Americans With Disabilities Act ("ADA"). In so holding, the court noted that the website allows consumers to purchase products, search for store locations, view special pricing offers, obtain coupons, and purchase gift cards.

The court also relied on Department of Justice ("DOJ") regulations requiring public accommodations to use auxiliary aids and services to "communicate effectively" with disabled customers.

This decision was issued only two days after a federal judge in the Southern District of Florida handed down a trial verdict against retailer Winn-Dixie. As we recently reported in a [blog post](#) and [alert](#), *Gil v. Winn-Dixie Stores, Inc.*, No. 16-cv-23020, Dkt. No. 63 (S.D. Fla. June 13, 2017) was the first website accessibility case to go to trial. In that case, the Website Content Accessibility Guidelines ("WCAG") 2.0 were adopted as part of the injunctive terms of the decision.

The *Hobby Lobby* court's decision is in stark contrast with another recent website accessibility decision from the Northern District of California, which dismissed a website accessibility action under the "primary jurisdiction" doctrine. In *Robles v. Dominos Pizza LLC*, Case No. CV 16-06599 SJO (N.D. Cal. Mar. 20, 2017), Judge James Otero held it would violate Dominos' due process rights to hold that its website violates the ADA, since the DOJ has failed to issue website accessibility regulations despite issuing a notice of rulemaking seven years ago.

The *Hobby Lobby* court found *Dominos* inapposite on the grounds that plaintiff there sought to impose WCAG 2.0 even though the DOJ still has not issued regulations adopting those guidelines as legally binding, whereas the current plaintiff merely sought an order requiring Hobby Lobby to ensure disabled individuals have "full and equal enjoyment" of its website.

Bryan Cave has experience in defending against website accessibility claims, and has provided advice and webinars on [steps businesses can take to improve website accessibility](#). For more information or to schedule a similar webinar or presentation, please contact any of the Bryan Cave attorneys listed or any member of the [Retail](#) team.

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