

A NEW YEAR FOR ONLINE BUSINESSES: DOJ ENDS 2017 BY WITHDRAWING WEBSITE ACCESSIBILITY RULEMAKING

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2017 was a busy year for retailers and businesses with an online presence, as they faced a wave of demand letters and lawsuits alleging that their websites are inaccessible to the visually impaired and/or hearing impaired in violation of Title III of the Americans With Disabilities Act of 1990 (the “ADA”). As we have previously reported, courts across the country weighed in on the issue throughout the year. To bring an end to 2017, the Department of Justice (“DOJ”) withdrew its proposed rulemaking for accessible websites.

In July 2010, the DOJ announced an Advanced Notice of Proposed Rulemaking related to the issuance of new regulations to cover the accessibility of websites of public accommodations. While businesses with an online presence were waiting for those regulations to be promulgated, plaintiffs began taking the issue to the courts, resulting in a patchwork of conflicting decisions. As we previously reported, in July 2017, the DOJ placed the website accessibility regulations on its “Inactive List.” And now, most recently, the DOJ has withdrawn the proposed rulemaking. Its Notice withdrawing the website accessibility rulemaking states that the DOJ is “evaluating whether specific technical standards are necessary and appropriate to assist covered entities with complying with the ADA.”

The withdrawal of the rulemaking means that while the number of website accessibility lawsuits continues to rise, retailers and other businesses with an online presence will have to continue to look to the patchwork of decisions being issued by the Courts for guidance.

Included in the patchwork of decisions are the following noteworthy opinions we previously reported on:

- ***Access Now, Inc. v. Blue Apron, LLC***. In November, a New Hampshire federal court denied online food delivery servicer Blue Apron’s motion to dismiss, finding that Blue Apron’s website was a place of public accommodation – despite the fact that Blue Apron operates only online and has no traditional brick and mortar locations. More information regarding the decision can be found [here](#)

- ***Reed v. CVS Pharmacy, Inc.***: In October, in one of the first cases to hold that the ADA applies to mobile apps as well as websites, the U.S. District Court for the Central District of California rejected CVS's argument that it should dismiss the case because there are no legally binding standards for website and mobile accessibility, stating that the lawsuit "asks the court to make exactly the same sort of accessibility determinations that it regularly makes when evaluating the accessibility of physical locations." The ruling, which can be found [here](#), has fueled other complaints and settlements regarding mobile apps.
- ***Gil v. Winn-Dixie Stores, Inc.***: In June, the U.S. District Court for the Southern District of Florida ruled, following a bench trial, that Winn-Dixie's website violated the ADA even though no purchases can be made through the website. In so holding, the court applied the Website Content Accessibility Guidelines ("WCAG") 2.0, a standard developed by a private industry group. Winn-Dixie has appealed, and numerous retail and business associations have filed amicus curiae briefs, including the National Retail Federation, the Chamber of Commerce of the United States of America, and the American Bankers Association. More information can be found [here](#).
- ***Gorecki v. Hobby Lobby Stores, Inc.***: Also in June, the U.S. District Court for the Central District of California denied Hobby Lobby's motion to dismiss and held that the retailer's website constitutes a "public accommodation" under the 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 DOJ [regulations](#) requiring public accommodations to use auxiliary aids and services to "communicate effectively" with disabled customers. Additional analysis *can be found* [here](#).
- ***Robles v. Dominos Pizza LLC***: In March, the U.S. District Court for the Northern District of California held that it would violate Dominos' due process rights to find that its websites violate the ADA when the DOJ has still not promulgated regulations defining website accessibility. The plaintiff has filed an appeal. Further analysis can be found [here](#).
- ***Andres Gomez v. Bang & Olufsen America, Inc.*** In February, the U.S. District Court for the Southern District of Florida granted Bang & Olufsen's motion to dismiss. In doing so, the court relied on cases concluding that a website that is wholly unconnected to a physical location is generally not subject to ADA. More information can be found [here](#).

Bryan Cave has experience in defending against website accessibility claims, and has presented webinars on the issue of website accessibility. If you would like to schedule a similar webinar or presentation, or for more information, contact the authors listed.

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