

DOMINO'S PETITIONS SUPREME COURT FOR REVIEW OF UNFAVORABLE WEBSITE ACCESSIBILITY DECISION

Jun 17, 2019

Domino's Pizza LLC has submitted a petition asking the U.S. Supreme Court to review and reverse a decision from the Ninth Circuit Court of Appeals that allowed a website accessibility case to proceed against Domino's. The question presented to the Supreme Court by Domino's is "[w]hether Title III of the ADA requires a website or mobile application that offers goods or services to the public to satisfy discrete accessibility requirements with respect to individuals with disabilities." *Domino's Pizza LLC v. Guillermo Robles*, Petition for a Writ of Certiorari, at 2.

As we previously reported, in June 2019, the Ninth Circuit held in *Robles v. Domino's Pizza, LLC*, that the ADA applies to the Domino's website and mobile application, rejecting the due process and primary jurisdiction arguments that had led the district court to stay the action.

Title III of the ADA applies to "physical places of public accommodation." 42 U.S.C. § 12182(a). Circuit Courts are split over whether the ADA thus applies to websites, with some courts holding that it applies to all websites that offer goods and services to the public, and other courts holding that it only applies to websites with a nexus to a physical location open to the public.

In its *Domino's* decision, the Ninth Circuit continued to follow the rule it had established in prior cases – that a public accommodation under Title III must be or have a connection to a physical location – "reinforcing the existing circuit split." (Petition at 16.) Domino's urges the Court to take up the case to resolve that split.

The petition argues that the Ninth Circuit's *Domino's* decision took the issue further, holding that since physical restaurants are public accommodations, "each method of ordering a pizza, in isolation, must be accessible to customers with disabilities. That holding effectively treated Domino's website and app as standalone public accommodations that must themselves comply with Title III." (*Id.* at 16.)

The petition also argues that it would be a violation of Domino's due process rights to hold it liable for the inaccessibility of its website or mobile app, noting that "Congress legislated at length and in hyper-specific detail about which physical places must be accessible, and how those 'places of

public accommodation’ can ensure accessibility,” but that “Title III says nothing about websites or applications on smart phones.” (*Id.* at 14.)

As previously reported , the Department of Justice initiated rulemaking concerning website accessibility in 2010, but still had not issued regulations seven years later, and abandoned the effort in 2017. The petition states that “in the face of this uncertainty, plaintiffs have stepped in to fill the void,” and asserts that in 2018 alone, litigants filed over 2,250 federal lawsuits asserting ADA violations based on website inaccessibility, nearly tripling the number in 2017. (*Id.* at 15.) “Left undisturbed, the Ninth Circuit’s decision would turn that flood of litigation into a tsunami,” the petition states. (*Id.* at 16.)

Robles has 30 days to file a response to the petition, after which Domino’s will file a reply. The Supreme Court generally acts on a petition within six weeks.

For questions or more information, contact any of the authors listed.

RELATED PRACTICE AREAS

- Retail & Consumer Products

MEET THE TEAM



Merrit M. Jones

San Francisco

merrit.jones@bclplaw.com

[+1 415 675 3435](tel:+14156753435)

This material is not comprehensive, is for informational purposes only, and is not legal advice. Your use or receipt of this material does not create an attorney-client relationship between us. If you require legal advice, you should consult an attorney regarding your particular circumstances. The choice of a lawyer is an important decision and

should not be based solely upon advertisements. This material may be “Attorney Advertising” under the ethics and professional rules of certain jurisdictions. For advertising purposes, St. Louis, Missouri, is designated BCLP’s principal office and Kathrine Dixon (kathrine.dixon@bclplaw.com) as the responsible attorney.