
Court Determines That Grocer's Website Not Used to Sell Goods Is Public Accommodation Under the ADA

JUNE 20, 2017

Last week, following a bench trial, a federal district judge in Florida concluded that the grocery store and pharmacy chain Winn-Dixie violated Title III of the Americans with Disabilities Act (ADA) because its website is not compatible with industry-standard screen-reading software used by visually impaired consumers. In *Gil v. Winn-Dixie Stores, Inc.*, the court held that “Winn-Dixie has violated the ADA because the inaccessibility of its website has denied [plaintiff] the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations that Winn-Dixie offers to its sighted customers.” The court required Winn-Dixie to (1) ensure that its website is accessible to individuals with disabilities who use computers, laptops, tablets, and smart phones; (2) develop an accessibility policy that ensures compliance with the Web Content Accessibility Guidelines (WCAG 2.0), a set of international standards for web accessibility; (3) post the accessibility policy online; (4) require third-party vendors to its website to conform to WCAG 2.0 standards; (5) conduct automated accessibility tests; (6) provide annual accessibility training to all employees who write or code for or publish final content to winndixie.com; and (7) pay plaintiff’s reasonable attorney’s fees.

Title III of the ADA prohibits discrimination “on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation....” Without reaching the question of whether a website standing alone is a place of public accommodation, the court held that “[w]here a website is heavily integrated with physical store locations and operates as a gateway to the physical store locations...the website is a service of a public accommodation and is covered by the ADA.” Notably, customers cannot make purchases on Winn-Dixie’s website; however, customers can manage prescriptions, link coupons to the customer’s rewards card, and find physical store locations. The court found that these functions “are undoubtedly services, privileges, advantages, and accommodations offered by Winn-Dixie’s physical store locations” and recognized that such services may have particular significance for visually impaired customers who are likely to have more difficulty than other customers locating stores, filling prescriptions, and identifying physical coupons. The court therefore held that Winn-Dixie’s “website is heavily integrated with Winn-Dixie’s physical store locations and operates as a gateway to the physical store locations.”

The law is unsettled as to whether a website on its own or by virtue of its integration with a physical location can be a “place of public accommodation” for purposes of Title III. While cases similar to *Winn-Dixie* have been filed throughout the country, this is the first case concerning the website of a brick-and-mortar company to go to trial under the ADA. Previously, courts addressing the issue at the motion to dismiss stage have been split.

Implications for Private Companies

In the absence of federal regulations, website and digital accessibility issues remain ripe for litigation. Over the past year there has been an increase in cases filed concerning web accessibility. Given the litigious environment and unsettled case law, companies that operate websites or other digital interfaces should consider ways to mitigate risk in this area. Companies may consider taking the following steps:

- Evaluate your website to determine whether it provides a gateway or mechanism for consumers to engage in commerce. As *Winn-Dixie* shows, even if a particular website is not used for selling goods or services, if it provides information or helps facilitate the shopping experience, a court may be more likely to determine that it is covered by Title III of the ADA. And, as noted, some courts have held that websites in and of themselves are places of public accommodation.
- Review your website to ensure that visually impaired or other disabled individuals can reasonably access the site, and consider implementing the standards set forth in WCAG 2.0.
- Provide employee training on ADA and accommodations issues, and ensure that your company's accessibility policy is made available to consumers.

Authors



Debo P. Adegbile

PARTNER

Chair, Anti-Discrimination
Practice

✉ debo.adegbile@wilmerhale.com

☎ +1 212 295 6717