Website Accessibility Lawsuits – A Tangled Web

By Carlton Hilson and Caroline Page October 2019

This week, the Supreme Court denied Domino's Pizza's petition for review of a Ninth Circuit decision permitting a blind plaintiff's claim to proceed under the Americans with Disabilities Act ("the ADA"). In the case, the plaintiff alleged that Domino's violated Title III of the ADA, which governs places of public accommodation, because the pizza chain's website and app do not support JAWS screen-reading software.

The plaintiff filed the lawsuit against Domino's in September of 2016 in a California federal district court after unsuccessfully attempting to order customized pizzas online from a nearby Domino's location. Though Domino's argued that its website and app were not "places" of public accommodation under Title III of the ADA, the district court found that the ADA still applied because the website and app were "auxiliary aids and services" that places of public accommodation must provide to make sure that people with disabilities are not excluded from accessing the business's services. On appeal the Ninth Circuit agreed with the district court and held that Domino's website and app facilitate access to its goods and services at places of public accommodation – the physical restaurants. The Ninth Circuit noted that this conclusion is in line with other district courts confronting similar questions in California, Florida, and Ohio.

Notably, in both the district court case and the Ninth Circuit appeal, Domino's argued that forcing it to comply with the WCAG 2.0 accessibility standards for its website and app denied it due process because WCAG 2.0 is not a governing law or regulation. The district court agreed with Domino's, but the Ninth Circuit found that even in the absence of specific accommodation standards set by the Department of Justice, Domino's had fair notice that the website and app needed to be accessible. The Ninth Circuit clarified that businesses are not required to meet the WCAG 2.0 standards. Rather, a court can order compliance with the standards as a form of equitable relief.

Because the Supreme Court denied certiorari, the Ninth Circuit decision stands, and the case against Domino's can proceed. For employers in some jurisdictions, there is still question over whether a website is a place of public accommodation, and if so, what the standards are for accessibility. Practically, although the Ninth Circuit was clear that employers are not required to meet WCAG 2.0 accessibility, employers will likely find themselves trying to meet these standards anyway. Plaintiffs' attorneys and expert witnesses will likely continue to use the WCAG 2.0 standards as a benchmark to argue inaccessibility, and courts have the option to order compliance with the standards as equitable relief. Accordingly, many employers will preventatively toe the line of standards not yet adopted by the Department of Justice.

Meanwhile, as ADA Title III website accommodation claims skyrocket across the country, the Eleventh Circuit has not yet issued its decision in Gil v. Winn-Dixie Stores, an extremely similar case out of the Southern District of Florida. In the case, the Florida court held that where a website is heavily integrated with the business's brick and mortar stores, the website is covered by Title III of the ADA. Winn-Dixie appealed to the Eleventh Circuit, which heard oral arguments in October 2018. Though the Eleventh Circuit has not decided the issue of whether websites are places of public

accommodation, it has ruled that the ADA covers "intangible barriers" that restrict a disabled person's ability to gain access to a business's goods and services. We will monitor this case closely, as the ruling will likely impact the amount of website accessibility cases filed in Eleventh Circuit district courts.

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