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Financial Services Industry Targeted in Wave of Lawsuit Threats Over Websites Allegedly Inaccessible to the Visually Impaired

Legal Update

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In a trend that began several years ago and has migrated through several industries, investment firms are among those being targeted by enterprising plaintiffs' lawyers alleging that the firms' website are inaccessible to blind or otherwise disabled users. The claim is that the firms are violating the Americans with Disabilities Act (ADA).

Department of Justice Supports Plaintiffs' Position

The position taken by these plaintiff firms is supported by the U.S. Department of Justice as well as multiple courts. As a result, we see the trend of litigation and demands growing, as well as a trend of businesses taking pro-active action to reduce the risk of being targeted and subject to a suit or demand.

Demand Letters

Activist law firms such as Carlson Lynch, KamberLaw and Lee Litigation Group have been sending aggressive demand letters to companies in industries such as retail, medical and financial services, including investment management firms (e.g., Schwab, E-Trade, Wells Fargo and others). You may know, or may have heard about, someone receiving such a demand letter.

In the letters, the plaintiff typically alleges that the recipient's website is inaccessible to blind or otherwise disabled users, and that such inaccessibility violates the ADA and raises privacy concerns. The demand letter is typically over 10 pages in length, attaches a proposed settlement agreement, and invites the recipient to engage in settlement negotiations with the law firm. The proposed settlement agreement typically includes provisions requiring that the recipient take remedial measures concerning website accessibility, that it allow the plaintiff's firm to "assist" the recipient in addressing subsequent claims by others, and that it pay an unspecified amount of attorney's fees in exchange for a release of claims.

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The financial services industry is just one of many sectors targeted since a dramatic increase in lawsuits and demands in the last few years. Other sectors targeted include: online retail, restaurants and education. In the past 12 months we estimate that Carlson Lynch and similar law firms have sent thousands of demand letters and have filed approximately 100 federal ADA lawsuits related to websites, mobile applications and similar technology.

Act Now to Reduce Risk of Suit or Demand

This is an issue to address on a “clear day” before receiving a demand letter. If done right, and the appropriate website technical enhancements are made, it will save companies legal fees and settlement dollars they would otherwise spend if they are targeted for a non-compliant website. Compliance also involves posting an appropriate Accessibility Statement and adopting corresponding internal policies and procedures to “bake” accessibility into the standard process, just as privacy and security have become standard processes.

If you receive a demand letter alleging ADA violations and offering a settlement, contact legal counsel. Some demand letters are of a “robo-sign” variety and may lack the requirements for a valid ADA claim, while others may raise more significant legal or reputational concerns.

Takeaways

- Now is the time to take steps to protect your firm from ADA claims related to website accessibility (and mobile application accessibility) for the visually impaired. Actions should address (1) technical improvements and (2) adoption of appropriate policies.
- Do not ignore or throw away demand letters from Carlson Lynch or others related to website accessibility and the ADA. Work with legal counsel on any response.
- If you receive a demand letter, consider whether your website developer or website service provider may have a duty to defend you or may have breached a warranty to comply with laws.
- Consider engaging a specialized website accessibility testing or consulting firm to improve the accessibility of your website.

Fredrikson & Byron. is working with numerous clients on these issues, from assistance with WCAG 2.0 AA compliance, to third-party vendor compliance, to litigation and dispute resolution. Should you have any questions, please contact Matt Boos, Steven Helland or Karla Reyerson.