

Four Class Actions in 14 Days: Quick Serve, Fast Casual, Restaurant Industry Targeted for Alleged Inaccessible Websites

Legal Update

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Between April 19 and May 3, 2016, Olive Garden, Domino's, Potbelly and Dean & DeLuca were each named as a defendant in four separate but similar class action lawsuits. The suits, all brought by the Lee Litigation Group, allege that the defendants' improperly designed websites are inaccessible to blind users and violate Title III of the Americans with Disabilities Act as well as state and local laws.

Trend: Rising Litigation, Demands and Enforcement

Since May 3, additional class action and individual-plaintiff lawsuits have been filed, targeting the quick serve, fast casual, and other restaurant industry businesses. This trend continues a dramatic increase in website-related ADA litigation and demands beginning in November, 2015. Other industry sectors under scrutiny include retail (e.g., Home Depot, JC Penny) and education (e.g., edX, Harvard) (U.S. Department of Education launches 350 investigations into website accessibility).

All Legally Blind Individuals in the U.S.

The Olive Garden complaint was filed on behalf of named-plaintiff Jose Del-Orden, a blind individual, and seeks class certification for "all legally blind individuals in the United States who have attempted to access Olivegarden.com and as a result have been denied access to the enjoyment of goods and services offered in Olive Garden Restaurants."

The central factual allegation is similar in all the complaints:

"Despite readily available accessible technology, such as the technology in use at other heavily trafficked retail websites, which makes use of alternative text, accessible forms, descriptive links, resizable text and limits the usage of tables and javascript, Defendant has chosen to rely on an exclusively visual interface, including pop-up forms that are inaccessible."

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Attorney Fees, Money Damages, Injunction

The complaints propose that the various website failures violate the ADA as well as New York state and city laws and regulations, and as a remedy seek money damages, reimbursement of attorney fees, and an injunction requiring improvements to the websites

Action-Items for Website Owners

Courts, lawyers and commentators disagree as to what the Americans with Disabilities Act specifically requires for website operators, and what standard, if any (e.g., Web Content Accessibility Guidelines 2.0) is relevant in measuring compliance. However, in light of this ambiguity, website owners and operators may wish to consider the following:

- (1) Investigate whether your website is accessible to blind or other disabled users. Consider hiring a blind or disabled consultant for this work!
- (2) Improve inaccessible portions of your website. Consider using WCAG 2.0 AA as a guide.
- (3) Adopt an Accessibility Policy.
- (4) Train your team, so that the website remains accessible in the future.

Additional Resources

To speak with an attorney about website accessibility issues, contact Steve Helland at 612.492.7113 or shelland@fredlaw.com.