

October 10, 2024

***WEB-ONLY BUSINESS WINS IN THE SOUTHERN DISTRICT OF NEW YORK WITH
DISMISSAL OF WEBSITE ADA ACCESSIBILITY LAWSUIT***

By: John P. Campbell, Esq.

Web-only businesses should rejoice following a recent decision in the Southern District of New York (“SDNY”) that dismissed a “surf-by” lawsuit entitled *Mejia v. High Brew Coffee, Inc.*, a putative class action brought by a legally blind plaintiff alleging an American with Disabilities Act (“ADA”) violation due to plaintiff’s inability to access a business’s website using screen-reading software to make an online coffee purchase. The trial court decision is a step in the right direction to protect businesses from costly litigation permissible in only certain venues nationally.

“Surf-by” actions are cousins to “drive-by” lawsuits, where plaintiffs drive by businesses to identify minor and technical ADA violations. Where a “drive-by” plaintiff may allege a six-inch step-up into the store prohibits access to the physically disabled, a “surf-by” plaintiff may allege that website images without alt-text coding prohibits access to the visually impaired. AccessiBe, a business offering web accessibility solutions, reports that more than 4,500 web accessibility lawsuits were filed in 2023. Over the last few years, Mejia’s counsel filed more than 1,000 ADA lawsuits and Mejia has been a named Plaintiff in 50-75 separate, similar actions. New York, Florida, and California are the most common venues where the lawsuits are filed against businesses in numerous industries including education, retail, restaurants, art, insurance, hospitality, and recreation. The SDNY’s recent decision may cause the plaintiff’s bar to pause before filing in New York courts moving forward.

The ADA requires “places of public accommodation” to meet certain standards of accessibility for disabled visitors. “Surf-by” lawsuits claim websites are “places of public accommodation” requiring accessibility. Written in 1990, the ADA does not specifically address website accessibility and the Department of Justice (“DOJ”) has yet to promulgate regulations further defining the law. Nationally, the caselaw is unsettled with some decisions favoring plaintiffs and consumers, while others have favored defendants and businesses.

Florham Park

220 Park Avenue
Florham Park, NJ 07932
973-539-1000

Paramus

115 West Century Road
Suite 100
Paramus, NJ 07652
201-262-1600

Sparta

351 Sparta Avenue
Sparta, NJ 07871
973-295-3670

New York

9 East 40th Street
New York, NY 10016
646-652-7775

In the recently decided *Mejia* matter, the SDNY ruled in favor of web-only businesses finding that they cannot be sued for website accessibility claims under the ADA. The Court highlighted that most Federal Circuit Courts have found that a website constitutes a place of public accommodation only if it has a connection to a physical location and acknowledged that the Second Circuit (home to New York courts) has not squarely addressed the question of whether a website, absent a connection to a physical location, constitutes a place of public accommodation. Following a full evaluation of the facts and law, the Court determined that a standalone website does not qualify as a “place of public accommodation” as defined by Title III of the ADA and dismissed the lawsuit.

The Court also refused to exercise jurisdiction over Plaintiff Mejia’s state claims. Therefore, Plaintiff Mejia may refile those claims in a New York State Court. Plaintiff Mejia may also seek to appeal the trial court’s decision to the Second Circuit who has yet to rule on this issue.

Web-only businesses in every industry should be familiar with website accessibility lawsuits and this recent win in New York. Defending these actions can be expensive given the need for costly expert review and remediation, not to mention the threat of the ADA’s attorney fee-shifting provisions. Early “surf-by” lawsuits defenses include an aggressive, up-front motion to dismiss or calculated negotiations seeking *de minimis* settlement and an agreement to remediate the website at issue. The recent *Mejia* decision should assist Web-only businesses defend these matters in New York. For more information, contact John P. Campbell, Esq. (jpc@spsk.com).

Schenck Price Smith & King, LLP is experienced in defending website accessibility claims, negotiating the settlement of website accessibility actions, and working with experts in the website coding industry who can assist in the prevention of website accessibility lawsuits.

DISCLAIMER: This Alert is designed to keep you aware of recent developments in the law. It is not intended to be legal advice, which can only be given after the attorney understands the facts of a particular matter and the goals of the client.