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NY District Court Rules ADA Does Not Apply to Internet-Only Businesses

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The U.S. District Court for the Eastern District of New York recently ruled that the Americans With Disabilities Act (ADA) does not apply to websites that maintain no connection to a brick-and-mortar retail location based on a strict construction of the statutory language. Currently, the circuits are split as to the standard to be met for the ADA to apply to a website, and it remains to be seen whether the Second Circuit or other federal district courts will adopt the same rationale to afford a safe harbor for web-only retailers.

In *Winegard v. Newsday LLC*, Case No. 19-CV-04420 (EK)(RER) (E.D.N.Y. Aug. 16, 2021), a hearing-impaired individual brought an action against a local newspaper company that distributes its print newspaper throughout New York and provides a website and web-based content — but maintains no retail locations. The plaintiff asserted that the newspaper's website offers video programming without closed captioning, making the content inaccessible due to his hearing impairment.

The court reviewed the ADA's history and the statutory language, noting that the ADA defines "public accommodation" using 12 subparagraphs with accompanying residual clauses, and it lists 50 specific examples, arguably all of which describing physical places. The court stated that these examples, coupled with the language of the statute, suggested that Congress intended ADA protections to apply to "physical places rather than business operations generally."

The court rejected the plaintiff's arguments that four residual clauses of the ADA — a "place of exhibition or entertainment," a "place of recreation," a "sales or rental establishment," and a "service establishment" — were applicable to internet-only businesses. According to the court, these clauses must be read in light of the specific lists that follow, concluding that the examples applicable to each of the cited residual clauses refer to brick-and-mortar locations. The court also cited the Eleventh Circuit's decision in *Gil v. Winn-Dixie Stores* decision to support its reading of the ADA's definition of "public accommodation." In April 2021, the Eleventh Circuit held that under "the plain language of Title III of the ADA, public accommodations are limited to actual, physical places," and "websites are not a place of public accommodation." The limited-use website operated by the grocery chain, which merely offered prescription refill and coupon services, did not otherwise present "an intangible barrier" to the grocery chain's physical stores because the plaintiff could partake in the same services at the grocery store's physical location. Finally, the court noted that the statute's use of the term "a place of" as a modifier for the term "public accommodation" "leaves no doubt that [the ADA] was not meant to reach the website of a business like [defendant]."

The court refused to follow other Second Circuit district court decisions, which reached the opposite conclusion, that the ADA was applicable to a website. In that regard, the court noted that most of these decisions cited the Second Circuit's holding in *Pallozzi v. Allstate Life Insurance Co.*, where the ADA was found to cover the sale of insurance policies offered through an insurance office. Contrasting the newspaper website with the insurance office in *Pallozzi,* the court noted that the physical place was a "condition precedent" as to whether the "place of public accommodation" test is satisfied. Unlike in *Pallozzi,* the place of public accommodation test was not satisfied by the complaint because it lacked allegations that the newspaper operated any public-facing, physical retail spaces. While the plaintiff argued that *Newsday* has its own television and video/internet studio in addition to its publishing and advertising production facilities and offices, he did not allege that any of these facilities were open to *Newsday's* customers or that *Newsday* sells its newspapers at those locations.

Despite finding in favor of the newspaper based on the fact that it does not have a physical place of public accommodation, the court denied the newspaper's arguments that the plaintiff lacked standing for absence of harm since its videos were alternatively made available on *YouTube*, which offered closed captioning. The court rejected the argument as analogous to asserting that a disabled person would not be injured by an alleged physical barrier, "so long as an accessible store down the block offer[ed] the same product."

This opinion further strengthens the continued development of law by a majority of federal circuits that a website must have some connection to a physical retail location for ADA protections to apply, leaving open possible factual defenses regarding the connection between a website and the goods and services offered by a company faced with one of these disputes.

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