

## Publications

### Client Alert: Historic Win for Plaintiff in First Ever ADA Public Accommodations Website Accessibility Trial

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This week a federal judge in Florida passed down one of the most historic Americans with Disabilities Act (ADA) website accessibility decisions to date, finding that Winn-Dixie was liable under Title III of the ADA because its website was inaccessible.[1] In the case, *Gil v. Winn-Dixie Stores, Inc.*, the plaintiff argued that Winn-Dixie's website was inaccessible to visually-impaired individuals and thus violated the ADA. More specifically, the plaintiff alleged that features such as the website's online coupons and pharmacy could not be accessed using a screen reader. The Court ruled in favor of the plaintiff on all issues and awarded injunctive relief and attorneys' fees.

During the two-day bench trial, the Court heard testimony from the plaintiff, the plaintiff's website accessibility expert, and a corporate executive from Winn-Dixie. Notably, Winn-Dixie did not offer any expert testimony on its website's accessibility. The issues presented to the Court were: (1) whether Winn-Dixie's website was subject to the ADA; and (2) whether the plaintiff's requested modifications were reasonable and readily achievable.

The Court found that the website was a "gateway to the physical store locations" because it was heavily integrated with the physical store locations. The Court noted that the services offered on Winn-Dixie's website—which included online coupons, store locators, and pharmacy services—were "undoubtedly services, privileges, advantages, and accommodations" and therefore Title III of the ADA applied.

After finding that the ADA applied to Winn-Dixie's website, the Court determined that the website was "inaccessible to visually impaired readers who must use a screen reader," relying almost exclusively on the plaintiff's expert as support for its finding. Plaintiff's expert did not employ a specific standard during his audit of the website but concluded that if World Wide Web Consortium Accessibility Guidelines (WCAG 2.0) were satisfied "all of the issues/problems found on the Winn-Dixie website" would be addressed. Based on this testimony, the judge ordered that Winn-Dixie make changes to its website to ensure compliance with the WCAG 2.0 standard.

The Court's decision to apply the ADA to a website because of a "substantial nexus" to a physical store location is not new, but courts are split on this issue. See e.g., *Nat'l Fed'd of the Blind v. Target Corp.*, 452 F. Supp.2d 946 (N.D. Cal. 2006) (holding that Target's website was covered by the ADA because it served as a key instrument that enabled shoppers to enjoy the benefits of the company's brick and mortar locations); See e.g., *Oullette v. Viacom*, No. CV 10-133-M-DWM-JCL (D. Mont. 2011) (dismissing ADA accessibility claims against various websites on the grounds that "neither a website nor its servers are 'actual, physical places where goods or services are open to the public,' putting them within the ambit of the ADA"); See contra *National Ass'n of the Deaf v. Netflix*, 869 F. Supp. 2d 196 (D. Mass. 2012) (holding that public accommodations do not require any physical location).

But, what is new and significant is that the judge in *Winn-Dixie* found that the WCAG 2.0 standard should apply when considering a website's ADA compliance. While the WCAG 2.0 standard has been endorsed by the Department of Justice, there are no federal regulations requiring that the WCAG 2.0 standard be met. Indeed, at least one federal court has struck down website accessibility claims where the plaintiff attempted to use the WCAG 2.0 as an appropriate measure of website accessibility. See *Robles v. Domino's Pizza, LLC*, No. CV-106599 SHO (SPx) (C.D. Cal. March 20, 2017) (holding that a request to impose a particular standard to a website's accessibility without any regulations "flies in the face of due process.") Here, the Court found exactly the opposite and required not only that the website become compliant with the WCAG 2.0 standard, but that website audits reoccur every three months to ensure WCAG 2.0 compliance.

While other website accessibility cases have been brought, all have either settled or been dismissed. The *Winn-Dixie* case represents the first instance where a case has gone to trial and is the first case where a judge has ordered compliance with a particular standard to comply with the ADA. The full 13-page opinion can be accessed [here](#).

If you have received a letter from a plaintiff's attorney alleging ADA violations or have not examined your website for accessibility under the ADA, please contact your Vorys attorney.

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[1] Title III of the ADA prohibits the owner of a place of public accommodation from discriminating "on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation. 42 U.S.C. §12182(a).