



Retail Detail

First Federal Court Rules That Having An Inaccessible Website Violates Title III Of The ADA

By Minh N. Vu

Seyfarth Synopsis: *The first impression trial verdict finding retailer Winn-Dixie liable under Title III of the ADA for having an inaccessible website suggests that public accommodations should focus on their website accessibility efforts now.*

On June 13, 2017, Florida federal District Court Judge Robert Scola issued a 13-page [Verdict and Order](#) finding that grocer Winn-Dixie violated Title III of the ADA by having a website that was not useable by plaintiff Juan Carlos Gil to download coupons, order prescriptions, and find store locations. Mr. Gil is blind and uses screen reader software to access websites. Judge Scola ordered injunctive relief, including a draft three-year injunction we have included below, and awarded Mr. Gil his attorneys' fees and costs

Although the decision is not binding on any other federal courts or judges – not even in the same judicial district – it is significant for a number of reasons.

First, it is the first decision to hold, after a full trial, that a public accommodation violated Title III of the ADA by having an inaccessible website. To the extent that businesses are considering whether to settle or litigate these cases, this decision makes the possibility of an adverse verdict much more real.

Second, the draft injunction adopts the Web Content Accessibility Guidelines (WCAG) 2.0 as the accessibility standard that Winn-Dixie must meet in making its website accessible. WCAG 2.0 AA is a set of guidelines developed by a private group of accessibility experts and has not been adopted as the legal standard for public accommodation websites, although it has been incorporated into many consent decrees, settlement agreements, and is the standard the Department of Justice referenced in the Title II rulemaking process. The court's adoption of this set of guidelines further points to WCAG 2.0 AA as the de facto standard for website accessibility.

Third, the court did not consider the \$250,000 cost of making the website accessible to be an undue burden. The court said this cost "pales in comparison to the \$2 million Winn-Dixie spent in 2015 to open the website and the \$7 million it spent in 2016 to remake the website for the Plenti program."

Fourth, commenting on an issue causing many businesses concern, the court held Winn-Dixie responsible for the entire website's lack of accessibility even though parts of the website are operated by third party vendors. It stated: "[M]any, if not most, of the third party vendors may already be accessible to the disabled and, if not, Winn-Dixie has a legal obligation to require them to be accessible if they choose to operate within the Winn-Dixie website."

The court issued the following draft injunction, and ordered the parties to confer about the deadlines to be inserted in the blanks.

Pursuant to the terms of this Order and Injunction, Winn-Dixie, Inc.:

1. Shall not, no later than _____(date) _____, deny individuals with disabilities, including the Plaintiff, the opportunity to participate and benefit from the goods, services, facilities, privileges, advantages, and accommodations provided through its website www.winndixie.com. The website must be accessible by individuals with disabilities who use computers, laptops, tablets, and smart phones.
2. Shall not, no later than _____(date) _____, provide individuals with disabilities, including the Plaintiff, an unequal opportunity to participate and benefit from the goods, services, facilities, privileges, advantages, and accommodations provided through its website www.winndixie.com. The website must be accessible by individuals with disabilities who use computers, laptops, tablets and smart phones.
3. No later than _____(date) _____, shall adopt and implement a Web Accessibility Policy which ensures that its website conforms with the WCAG 2.0 criteria.
4. No later than _____(date) _____, shall require any third party vendors who participate on its website to be fully accessible to the disabled by conforming with WCAG 2.0 criteria.
5. No later than _____(date) _____, shall make publicly available and directly link from the www.winndixie.com homepage, a statement of WinnDixie's Accessibility Policy to ensure the persons with disabilities have full and equal enjoyment of its website and shall accompany the public policy statement with an accessible means of submitting accessibility questions and problems.
6. No later than _____(date) _____, and at least once yearly thereafter, shall provide mandatory web accessibility training to all employees who write or develop programs or code for, or who publish final content to, www.winndixie.com on how to conform all web content and services with WCAG 2.0 criteria.
7. No later than _____(date) _____, and at least once every three months thereafter, shall conduct automated accessibility tests of its website to identify any instances where the website is no longer in conformance with WCAG 2.0.
8. If the Plaintiff believes the Injunction has been violated, he shall give notice (including reasonable particulars) to the Defendant of such violation. The Defendant shall have 30 days from the notice to investigate and correct any alleged violations. If the Defendant fails to correct the violation, the Plaintiff may then seek relief from the Court.
9. In light of what the Court has already found to be the Defendant's sincere and serious intent to make its website accessible to all, this Injunction will expire in three years.

In the absence of any regulations setting forth the requirements for a website accessibility program, this injunction, once finalized, will provide a judicially-approved framework for such a program for those public accommodations that want to adopt one.

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