

ARE YOUR GIFT CARDS ACCESSIBLE? LAWSUITS ASSERT GIFT CARDS SHOULD BE OFFERED IN BRAILLE

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In addition to concerns surrounding the accessibility of a business' website, retailers now have a new concern – the accessibility of their gift cards. Plaintiffs have recently filed a number of lawsuits alleging that the failure to sell gift cards containing writing in Braille is a denial of full and equal access to blind and visually impaired individuals, and thus is a violation of Title III of the Americans with Disabilities Act ("ADA").

On October 24, 2019, twelve lawsuits were filed in the United States District Court for the Southern District of New York against well-known retailers, restaurants, and other businesses. The complaints allege, in part, that because store gifts cards are generally the same size and texture as credit cards, they are indistinguishable by a blind person from credit cards and other gift cards.

To support this new theory of ADA liability, the complaints provide some background into the gift card market. They cite industry surveys stating that sales of store gift cards amount to \$400 billion in 2019 and that such sales grow annually at 10 percent. They also allege that store gift cards increase revenue for merchants because they foster communication and brand loyalty, increase sales, and because consumers often spend more money than the amount of the gift card.

The complaints allege claims for violation of the ADA, violation of the New York State Human Rights Law, and violation of the New York City Human Rights Law. For relief, the plaintiffs seek both declaratory and injunctive relief, including a permanent injunction requiring the defendants to "design, implement, distribute, and sell store gift cards integrated with the Defendant's retail stores that are embossed with Braille writing that identify the name of the merchant and the denomination of the gift card with Braille writing on the packaging of the store gift cards and additionally convey other pertinent information...."

The main question at issue in this line of cases will be whether the ADA requires businesses to offer gift cards with writing in Braille. Title III of the ADA prohibits discrimination against individuals "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). While the ADA includes an exemption "where compliance would 'fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in

an undue burden,” 42 U.S.C. § 12182(b)(2)(A)(iii)), the applicability of this exemption remains to be seen. Affecting the applicability of this exemption is the fact that there is a retailer with a gift card on the market that contains Braille, a fact that plaintiffs point out in their complaints.

Bryan Cave has substantial experience in defending against accessibility claims and complaints, and offers webinars on various issues related to ADA accessibility. If you would like to schedule a similar webinar or presentation, or for more information, please contact any of the attorneys listed.

RELATED CAPABILITIES

- Retail & Consumer Products

MEET THE TEAM



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