

MOTIONS TO DISMISS GRANTED IN ADA GIFT CARD CASES

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A New York federal court has granted motions to dismiss in four separate cases alleging that the failure to offer gift cards in Braille violates the ADA. The rulings by U.S. District Court Judge Gregory H. Woods (Southern District of New York) all hold that the plaintiffs in those cases failed to state a claim for violation of the ADA, and also lack standing. The rulings allow plaintiffs to file an amended complaint within 15 days.

As we previously reported, the lawsuits were among more than 100 such complaints alleging that failure to offer gift cards in Braille violates Title III of the Americans with Disabilities Act.

ADA Does Not Require Offering Braille Gift Cards

Judge Woods issued the first opinion last Thursday, and the following day issued rulings in the other three cases referencing that opinion. Judge Woods concluded that the complaints failed to state a claim because the ADA does not require retailers to create specialty goods for the visually impaired. In doing so, Judge Woods rejected the three theories advanced by plaintiff: (1) that gift cards are goods that need to be accessible; (2) that gift cards are places of public accommodation that must be independently accessible; and (3) that plaintiff was denied access to the defendant's services when it denied plaintiff a Braille gift card.

With respect to the first theory, Judge Woods concluded that Title III prohibits a public accommodation from discriminating based on disability when providing "access to" whatever goods and services the public accommodation ordinarily provides, but does not require the public accommodation to provide different goods or services.

In rejecting the second theory, Judge Woods concluded that gift cards are neither "public accommodations" nor "places." He noted that gift cards do not fall within any of the twelve enumerated categories of places of public accommodation, and that even if gift cards could be "shoehorned into" one of the categories, they are not "places." Judge Woods also noted that it is implausible that an inaccessible gift card could impede a blind person from enjoying all of the benefits of the defendant's retail locations, noting that the plaintiff would need to use a credit card,

debit card, cash or even an inaccessible gift card to purchase an accessible gift card – which are the same methods plaintiff could use to purchase any other goods in the store.

With respect to the third theory, Judge Woods concluded that the plaintiff was not denied an auxiliary aid or service, or effective communication, because the allegations in the complaints made clear that the plaintiff never asked for one: “It is unclear what part of the ADA requires that an employee magically divine, from the single question Plaintiff asked about Braille gift cards, that he was disabled and in need of an auxiliary aid or service.”

Plaintiffs Lack Standing

Judge Woods also concluded that the plaintiffs lacked standing under the ADA because the “generic, conclusory statements” that plaintiffs had visited defendants’ stores and reside nearby are “plainly insufficient” to demonstrate that they will be injured by the defendants’ failure to sell gift cards in the future. Judge Woods noted that the plaintiffs did not profess an interest in purchasing any specific products from the defendants, and stated that the “the greatest asset of copy-and-paste litigation can also be its greatest weakness,” concluding that “those who live by the photocopier shall die by the photocopier.”

In dismissing the plaintiffs’ ADA claims, Judge Woods also declined to exercise supplemental jurisdiction over their New York State Human Rights Law (NYSHRL) and the New York City Human Rights Law (NYCHR).

For questions or more information, contact the authors, [Merrit Jones](#) and [Steven Stimell](#).

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