

## RETAILER LOSES ADA WEBSITE ACCESSIBILITY TRIAL

Jun 20, 2017

Retailers with both physical locations and a website should take note that a United States District Court has held that Winn-Dixie violated Title III of the Americans with Disabilities Act (“ADA”) because its website was inaccessible to the visually impaired plaintiff.

The Court’s decision in *Gil v. Winn-Dixie Stores, Inc.*, No. 16-cv-23020, Dkt. No. 63 (S.D. Fla. June 13, 2017) is significant for a number of reasons. First, *Gil* appears to be the first website accessibility lawsuit to go to trial.

Second, despite the fact that Winn-Dixie does not conduct sales through its website, the Court found that the website was “heavily integrated” with the physical store locations because customers can use the website to access digital coupons, find store locations, and refill prescriptions through the website.

Third, the Court considered the cost of making Winn-Dixie’s website accessible in light of the total cost to launch and upgrade a website. While the Court noted that Winn-Dixie’s estimate of \$250,000 “seems high,” the Court ultimately found that it “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.” *Gil*, Dkt. No. 63 at 7.

Finally, the Court’s decision includes the specific terms of an injunction. Included among those terms are that the Web Content Accessibility Guidelines (“WCAG”) 2.0 were set forth as the accessibility standard and that Winn Dixie shall require third party vendors who participate on its website to be fully accessible.

Retailers should take note that the Court’s decision is not binding on any other judges and that the defendant might appeal. Retailers should also note that the issue of website accessibility under the ADA remains a contested issue and that other federal courts have reached different conclusions. For example, as we reported in a previous [blog post](#), in March, the U.S. District Court for the Northern District of California granted a retailer’s motion to dismiss in a website accessibility case. In *Robles v. Dominos Pizza, LLC*, the Court held that it would violate Domino’s due process rights to find that its website violates the ADA because the DOJ still has not promulgated regulations defining website accessibility.

As we reported in a previous [blog post](#) and [alert](#), the Department of Justice (“DOJ”) has not yet issued regulations for website accessibility and is still in the process of developing those regulations. While it was expected that the DOJ would adopt the WCAG 2.0 level AA standard, there is no timetable for the issuance of such regulations. In the meantime, retailers can [take steps to improve website accessibility](#).

Bryan Cave has experience in defending against website accessibility claims and responding to demand letters alleging violation of the ADA, and has also presented webinars on the issue of website accessibility. If you would like to schedule a similar webinar or presentation, or for more information, please contact any of the Bryan Cave attorneys listed or any member of our [Retail Team](#).

## MEET THE TEAM



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