

BUSINESS | LAW

Companies Face Lawsuits Over Website Accessibility For Blind Users

More than 240 businesses nationwide have been sued in federal court since the start of 2015



Legally blind para-athlete Juan Carlos Gil, seen here at a rowing training session in Miami in 2014, has sued more than 30 businesses this year claiming their websites aren't accessible to the blind. PHOTO: LYNNE SLADKY/ASSOCIATED PRESS

By **SARA RANDAZZO**

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The disability lawsuits started hitting the Pittsburgh federal courthouse last July, all claiming corporations' websites violated the law by not being accessible to the blind. The first round came against household names such as Foot Locker Inc., Toys "R" Us, Brooks Brothers Group Inc., and the National Basketball Association. Later suits targeted lesser-known retailers including Family Video Movie Club Inc. and Rue21 Inc.

All told, about 40 nearly identical cases have landed in front of the same federal judge, Arthur Schwab, all brought by one local law firm, Carlson Lynch Sweet Kilpela & Carpenter LLP.

Nationwide, more than 240 businesses have been sued in federal court since the start of 2015, concerning allegedly inaccessible websites, according to law firm Seyfarth Shaw LLP. Most settle quickly, for between \$10,000 and \$75,000, lawyers involved say, with the money typically going toward plaintiffs' attorneys' fees and expenses.

The suits named above have been dismissed, according to court dockets, which don't reflect if a private settlement was reached. Toys "R" Us said it is looking for ways to make its website more accessible. The other companies had no comment or didn't respond to a request for comment.

The Justice Department, which enforces the Americans with Disabilities Act, has delayed since 2010 releasing technical guidelines as to how websites should comply, most recently putting it off until 2018. The delay has led to "complete mayhem," said Minh Vu, a Seyfarth Shaw partner who represents companies in disability-access cases.

A Justice Department spokesman declined to comment on the guidelines, but noted public settlements the agency has reached with companies, including tax-preparation service H&R Block and online grocer Peapod, requiring them to make websites accessible.

Equal Access

The number of lawsuits brought by plaintiffs' firms claiming business websites aren't accessible to the blind is on the rise.

Website lawsuits by industry (since the beginning of 2015)*



*Federal court filings through Oct. 20, 2016 Source: Seyfarth Shaw LLP

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Disability-rights advocates and plaintiffs' lawyers say the litigation points to a real issue: making sure those with disabilities have the same freedom to enjoy the internet as everyone else.

"Blind people are not going to be able to thrive and live the lives they want to live if they don't have equal access to websites," said Christopher Daniels, spokesman for the National Federation of the Blind. He said most websites have barriers for the blind, who rely on software to read the content of webpages aloud. Such services can be free or cost upward of \$1,000, depending on the sophistication.

Defense lawyers and industry groups counter that while the underlying issues are important, the suits are a legal-fee shakedown and don't help improve accessibility. "You find entrepreneurial lawyers who are always looking for the next great cause of action," said Steven Solomon, a defense lawyer at GrayRobinson PA in Miami.

Public businesses have long been required to be accessible to the disabled under the ADA, signed into law in 1990. Websites, however, weren't expressly included in the law as a place of "public accommodation."

Federal appellate courts have been divided on the issue, with some finding that all websites must comply with disability standards, and others contending that websites only fall under the ADA if they have a "nexus" to a brick-and-mortar business. Mr. Daniels said there is no data as to how many websites don't accommodate blind users.

Miami-area resident Juan Carlos Gil, who is legally blind and wheelchair-bound because of cerebral palsy, isn't content to wait for the legal landscape to clear. Mr. Gil has sued more than 30 businesses this year alleging their websites violate the law, including women's retailer Anthropologie Inc., grocery chain Winn Dixie Stores Inc., and Burger King Corp. "These are big corporations...that honestly they don't care," the 34-year-old said.

Winn-Dixie said it doesn't comment on open litigation. Anthropologie and Burger King didn't respond to a request for comment.

Mr. Gil said he faces obstacles online 90% of the time. When websites aren't coded correctly, screen readers get stuck, simply saying "image" or "blank" aloud, without continuing across the page. Proper headers and text embedded behind images help blind users navigate sites.

Retrofitting websites that aren't built correctly can run into the tens of thousands of dollars or more for companies, experts say.

A para athlete, Mr. Gil said he recently spent \$200 on wheels for his racing wheelchair while competing in London, only to later realize he had ordered the wrong item because the website was difficult to use.

Mr. Gil is represented by Miami attorney Scott Dinin, who has sued at least 108 mall retailers, restaurants, banks and others during the past year in the Southern District of Florida. "All we're looking for is, are you going to be inclusive, or exclude people?" Mr. Dinin said.

He and other plaintiffs' lawyers, including Bruce Carlson of Carlson Lynch and C.K. Lee in New York, are quick to note that the website suits aren't big moneymakers, but decline to discuss the economics.

For every company sued, several more receive letters seeking an out-of-court settlement.

A restaurant trade group recently alerted its members to a typical Carlson Lynch demand letter that invites companies to call the law firm before hiring experts "to

explore a far more cost-effective and pragmatic approach to resolving these issues.” The letters include a report of red flags on a company’s website derived from a disability-access scanning program.

Mr. Carlson said his firm has sent “many hundreds of letters” and only targets larger companies, because he believes that is more likely to make industries aware of the issues than suing mom-and-pop businesses.

Judges often push the lawsuits into mediation, which then are resolved in private settlements, according to a review of nationwide court dockets. The settlements frequently include a timeline in which a company agrees to improve its website and undergo future monitoring, lawyers involved say, but some entail little more than paying attorneys fees. So far, the suits primarily target websites, but lawyers expect claims against mobile applications could be on the horizon.

Mr. Danielsen with the National Federation of the Blind said the organization has filed some lawsuits but prefers to work collaboratively with companies. “There are millions of websites, literally,” he said. “Nobody is going to sue everybody.”

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