ADA Defense Lawyer: ADA Website Litigation Update — serial plaintiff rebuffed

29 June 2020

See how JMBM’s Global Hospitality Group® can help you. Click here for the latest articles on ADA Compliance and Defense.

ADA website cases continue to be filed against hotels nationwide, but some courts are pushing back against serial plaintiffs. My partner, Marty Orlick, shares the news below from a website case filed in the Northern District of New York.

ADA Website Litigation Update — Serial Plaintiff Gets No “Lucky Charm” from New York Federal Judge
by Martin Orlick, Chair, JMBM’s ADA Compliance & Defense Group

In a case indicating that courts may be weary of serial plaintiffs filing multiple cookie-cutter lawsuits, a United States District Judge in the Northern District of New York has ordered a plaintiff to show that she has standing to bring ADA hotel website accessibility lawsuits to federal court.

The disabled plaintiff, who resides in Florida, has filed 29 nearly identical ADA website cases in the Northern District of New York seeking injunctive relief, damages, and attorneys’ fees. In this specific case, Deborah Laufer v. 1110 Western Albany LLC and Ryan LLC, the plaintiff sought an unopposed default judgement when the defendant failed to respond to the complaint.

The Court, however, determined the plaintiff failed to establish Article III standing to bring the lawsuit and refused to enter the default judgment.

Achieving Article III standing in federal court

To have standing to seek injunctive relief in federal court, plaintiffs must establish they have sustained (or are in immediate danger of sustaining) a direct injury as the result of the alleged wrongdoing, and that the injury is concrete and particularized, not hypothetical or speculative.

In this case, the plaintiff claimed injury due to the alleged lack of information on a hotel’s website about accommodations for disabled guests, as is required under the ADA’s 28 C.F.R. Section 36.302(e).

But Hon. Brenda K. Sannes, of the United States District Court of the Northern District of New York states in an Order dated May 8, 2020:

“There appears to be a serious question as to whether Plaintiff has established standing, in this, or any of her other cases, and thus whether the Court has subject matter jurisdiction over these actions. See, e.g. Laufer v. Laxmi & Sons LLC, 1:19-cv-01501 (BKS/L) (Dkt. No. 15, at 7. May 6, 2020). (“There are no facts in the Complaint or Plaintiff’s affidavit indicating
that she has ever traveled to Rensselaer, New York, or anywhere in New York, or that she has any reason to travel anywhere in New York or any reason to seek lodging anywhere in New York.”)

The Judge has ordered the Plaintiff to file briefs in 29 actions, addressing whether she has standing, and to specifically reference the legal issues and case law discussed in the Memorandum-Decision and Order the Court entered in *Laufer v. Laxmi & Sons, LLC.*

**What does this mean for hotels?**

The 29 lawsuits filed by the plaintiff in the Northern District of New York, are among the more than 235 nearly identical lawsuits she has filed nationally.

Laufer, like many serial ADA plaintiffs, claims she searches the internet largely as a “tester”, looking for hotel websites and the websites of third-party booking portals to see if they technically comply with 28 C.F.R. Section 36.302(e), which outlines information that hotels are required to provide on their websites for disabled guests. Those requirements are covered in our blog, [ADA Requires Hotels to Describe Accessibility Features on Website](#).

While there are statutes in Florida and elsewhere, that allow tester standing, courts in some jurisdictions are taking the position that the plaintiff must nevertheless suffer an injury to have standing.

*As we reported earlier,* the United States Court of Appeals for both the Fourth Circuit and the Seventh District have dismissed website accessibility lawsuits in 2019 for lack of Article III standing.

In addition to addressing issues of constitutional standing, courts are also continuing to interpret 28 C.F.R. Section 36.302(e). Hotels are advised to make good faith efforts to follow the requirements.

This serial plaintiff found no lucky charm or decoder ring in the Northern District of New York.

---

**Martin H. Orlick** is one of the top ADA defense lawyers in the country. He has helped hotels, restaurants, retailers, banks and other commercial property owners defend more than 600 ADA cases. In addition to defending lawsuits and governmental investigations, Marty’s team of ADA specialists focuses on enterprise-wide ADA compliance and litigation prevention, including facilities, website and operational compliance.
Marty is the Chair of JMBM’s ADA Compliance & Defense Group, a Partner in JMBM’s Real Estate Group, and a member of the American College of Real Estate Lawyers (ACREL). For more information about ADA compliance and defense, contact Marty Orlick at 415.984.9667 or morlick@jmbm.com.

This is Jim Butler, author of www.HotelLawBlog.com and founding partner of JMBM and JMBM’s Global Hospitality Group®. We provide business and legal advice to hotel owners, developers, independent operators and investors. This advice covers critical hotel issues such as hotel purchase, sale, development, financing, franchise, management, ADA, and IP matters. We also have compelling experience in hotel litigation, union avoidance and union negotiations, and cybersecurity & data privacy.

JMBM’s Global Hospitality Group® has been involved in more than $87 billion of hotel transactions and more than 3,900 hotel properties located around the globe. Contact me at +1-310-201-3526 or jbutler@jmbm.com to discuss how we can help.