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Website Accessibility Litigation Surges in New York as Defendants Refine Early-Stage Strategies

The author discusses how, in 2025 website accessibility litigation continued to become one of the most active and operationally challenging areas of disability law for businesses with an online presence. This trend was especially pronounced in New York, where federal courts have seen a steady influx of lawsuits alleging that websites and mobile applications are inaccessible to visually impaired users. This article discusses the impact of this litigation and what comes next.

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Website Accessibility Litigation Generally

The typical website accessibility case follows a familiar pattern. A visually impaired plaintiff alleges that he or she attempted to access a business's website using screen-reader software and encountered barriers such as missing alterative text, unlabeled buttons, or inaccessible forms. In New York federal courts, complaints commonly assert overlapping claims under Title III of the Americans with Disability Act (ADA), the New York State Human Rights Law (NYSHRL), New York City Human Rights Law (NYCHRL), and occasionally New York General Business Law §349 (GBL §349). See e.g., *Young v. Am. Ulike Int'l Inc.*, 2025 WL 1912114, at *1 (S.D.N.Y. July 11, 2025). Complaints also frequently reference noncompliance with the Web Content Accessibility Guidelines (WCAG), although WCAG standards are not formally incorporated into the ADA, NYSHRL, or NYCHRL.

New York Continues to Lead Other States in the Number of Cases Filed

While these claims are not new, recent years have brought a notable increase in filings under the ADA, as well as the NYSHRL and NYCHRL. For example, according to one digital accessibility consultancy, although down significantly from its 2024 totals, New York still leads all other states, representing over 28% of all ADA website accessibility claims filed in 2025.

In responding to the steady stream of filings, federal courts in New York have grappled with how to handle these claims at the pleading stage and defendants have begun to refine early-stage strategies aimed at limiting exposure and controlling litigation costs.

Approaches in SDNY and EDNY

Recent web accessibility litigation in New York federal courts has highlighted a deepening split in the Second Circuit regarding whether a standalone website (i.e., one that is not attached to a brick-and-mortar shop) can constitute a place of public accommodation under the ADA.

To state a website accessibility claim under the ADA a plaintiff must allege "(1) that he is disabled within the meaning of the ADA; (2) that defendant owns, leases, or operates a place of public accommodation; and (3) that defendant discriminated against him by denying him full and equal opportunity to enjoy the services defendant provides" *Hernandez v. Janie & Jack, LLC*, 2025 WL 1898930, at *3 (E.D.N.Y. July 9, 2025) (citing *Camarillo v. Carrols Corp*., 518 F.3d 153, 156 (2d Cir. 2008)).

While many district court judges who have addressed the issue have concluded that commercial websites qualify as places of public accommodation independent of a nexus to a physical space, some courts within the Second Circuit have reached the opposite conclusion. See *Romero v. 88 Acres Foods, Inc.*, 580 F. Supp. 3d 9, 19 (S.D.N.Y. 2022) (collecting cases).

Fernandez v. Gainful Health, Inc., 2025 WL 3538339 (S.D.N.Y. Dec. 10, 2025), is one of the latest opinions to address whether purely digital businesses are subject to Title III of the ADA as public accommodations. In *Fernandez v. Gainful Health*, a blind plaintiff alleged that Gainful Health, a direct-to-consumer nutrition company operating exclusively online, maintained a website incompatible with screen-reader technology, thereby denying her equal access to its goods and services. Judge Arun Subramanian dismissed plaintiff's ADA claim (and an accompanying NYCHRL claim) with prejudice, holding that a standalone website is not a "place of public accommodation" under the statute.

The opinion expressly aligned with prior decisions such as *Winegard v. Newsday LLC* and *Sookul v. Fresh Clean Threads, Inc.,* holding that standalone websites do not fall within the meaning of a public accommodation in the ADA, while rejecting contrary southern district cases that have treated consumer-facing websites as covered public accommodations even in the absence of a brick-and-mortar nexus.

The *Fernandez v. Gainful Health* opinion is notable not only for its outcome but for its timing. Issued amid a surge of website accessibility filings in the past few years, the decision underscores the lack of uniformity within the Second Circuit and increases the likelihood of eventual appellate review.

Defense Strategies Evolve

In response to the growing volume of cases, defendants have increasingly adopted a proactive and coordinated approach to issues of website accessibility.

For example, defendants have found success by demanding greater specificity regarding how alleged barriers impeded access and whether plaintiffs genuinely intended to use the website's

services. As a result, at the motion to dismiss stage, courts have scrutinized standing allegations closely, emphasizing that plaintiffs must plead a concrete injury and a plausible intent to return to the defendant's website once the accessibility barriers are removed, making it more difficult for conclusory allegations by serial plaintiffs to survive. See *Rendon v. Extreme Networks, Inc.*, 2025 WL 1004733, at *4 (S.D.N.Y. Mar. 31, 2025) ("[I]t is not sufficient to plead the 'magic words' that a plaintiff 'intends to return' to the defendant's website.

A court must instead consider whether—given 'the totality of all relevant facts' that are pled – a plaintiff has plausibly alleged an intent to return that demonstrates 'a real and immediate threat of future injury.'") (quoting *Calcano v. Swarovski N. Am. Ltd.,* 36 F.4th 68, 74-75 (2d Cir. 2022)). Additionally, courts within the Second Circuit have permitted jurisdictional discovery when a plaintiff's jurisdictional allegations and surrounding circumstances were "questionable." *Fernandez v. Buffalo Jackson Trading Co., LLC*, 2025 WL 1101478, at *2, *5 (S.D.N.Y. Apr. 14, 2025) (allowing a deposition of plaintiff and a forensic examination of the devices used to search for and/or access defendant's website).

Another defense strategy has been early remediation. Since courts have allowed the filing of affidavits and similar documentation to show that a defendant has fixed accessibility issues on their website, some defendants have sought to have claims dismissed as moot on the basis that alleged accessibility barriers have been fully remediated and are unlikely to recur. See e.g., *Contreras v. TD Assocs., LLC,* 2025 WL 720516, at *3 (S.D.N.Y. Mar. 6, 2025). While such mootness arguments are fact-intensive and defendants face a "formidable burden" of showing that their actions have completely and irrevocably eradicated the effects of the alleged violations, it has become yet another component of defense playbooks. See *Martinez v. Pure Green NYC Wholesale Corp.*, 2025 WL 948168, at *6 (E.D.N.Y. Mar. 30, 2025) (holding that defendant, whose CEO submitted a declaration, had not met the "formidable burden" of showing that defendant's remedial actions "completely and irrevocably eradicated the effects of the alleged violations").

Companies are also shifting focus from reactive defense to risk and cost mitigation. In-house counsel are increasingly engaging accessibility consultants to conduct baseline audits, prioritizing high-risk website functions such as checkout flows and account portals, and documenting remediation efforts to preserve future defenses. Still, it is worth noting that many of these website accessibility cases settle early, with plaintiffs seeking nominal compensation and an agreement to ensure that the defendant's website is ADA Compliant.

Looking ahead

Website accessibility litigation shows no signs of slowing. The combination of repeat plaintiffs, low filing barriers, and the potential for damages via claims under state and city laws ensures that these cases will remain a fixture of federal dockets, at least for the near future.

For defendants, the trend has prompted a shift towards early, venue-specific defense strategies and practical compliance measures. As courts continue to refine the contours of digital accessibility obligations, businesses operating online will need to remain attentive, not only to evolving legal standards, but also to how different courts apply them.

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