Website Accessibility Ruling Leaves Circuit Split Unresolved

By **Joshua Bauchner and Karen Chen** (November 5, 2024)

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A recent decision in the U.S. District Court for the Southern District of New York, captioned Jose Mejia v. High Brew Coffee Inc., and issued on Sept. 30, held that stand-alone websites are not a "public accommodation" subject to the protections of the Americans with Disabilities Act.[1]

Notably, the U.S. Court of Appeals for the Second Circuit Court has held that the ADA applies to websites — unlike, for example, the Third, Fifth, Sixth and Ninth Circuits, which have held it does not.

But the Southern District of New York's further winnowing of the ADA's scope points to a recent trend away from broad applicability, likely as a result of the tremendous increase in ADA cases over the past decade — even as the circuit split leaves the ultimate distinction between websites and physical locations unclear.

In 1990, many years before the widespread introduction of online retail into the lives of everyday Americans, Congress passed the ADA. Under the ADA, state and local governments, as well as private businesses, are prohibited from discriminating against individuals with disabilities.

The ADA states that persons with disabilities must be provided with "full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation."[2] However, circuits have long been split on whether stand-alone websites not connected to a physical location can be considered places of public accommodation.

In defining "places of public accommodation," the ADA lists 12 categories of locations, such as restaurants, museums and hotels.[3] According to the U.S. Department of Justice, any business that "serve[s] the public" is considered a public accommodation — and is therefore covered by the ADA, and must comply with ADA accessibility requirements.[4]

The First and Seventh Circuits have ruled that websites can be a place of public accommodation, while the Third, Fifth, Sixth and Ninth Circuits have ruled that places of public accommodation are limited to physical spaces.[5]

While the Second Circuit previously found that the full access and benefits guaranteed by the ADA could not be limited to physical places, it has not definitively ruled on whether stand-alone websites with no physical nexus are considered places of public accommodation under the ADA.[6]

District courts within the Second Circuit remain split on the issue. Most have taken the position that a stand-alone website constitutes a place of public accommodation under the ADA, regardless of its nexus to a physical location.[7]

In 2022, U.S. District Judge Kimba Wood of the Southern District of New York found in Romero v. 88 Acres Foods Inc. that the term "public accommodation" in the ADA

encompasses private commercial websites that affect commerce, regardless of whether they have nexus to physical places.[8]

Recently, however, in Mejia v. High Brew Coffee, U.S. District Judge Laura Taylor Swain ruled that a website with no physical storefront location is not subject to the requirements of the ADA.[9] The court noted that although the ADA does not explicitly define the term "public accommodation," it does provide examples of public accommodations that are all physical places.[10]

The court found that "in the antidiscrimination context, the phrase 'a place of public accommodation' has long referred to businesses with public-facing physical facilities."[11] Therefore, the court found that by listing the physical places, "Congress indicated an intent to limit public accommodations to entities with physical locations."[12]

This decision, and others like it, may have been brought about by a growing frustration in the courts with serial filers seeking incentive fees and attorney fees. ADA lawsuits have surged by 320% since 2013, often being brought on behalf of "straw person" plaintiffs by counsel looking for quick settlements.[13]

In 2022, about 2,387 lawsuits were filed in federal court concerning the accessibility of websites.[14] Yet, despite the increase in nuisance ADA lawsuits, the distinction between websites and physical locations remains unclear. Along with the circuit split revealing this ambiguity in the ADA, "public accommodation" arguably has no plain meaning in itself.

Today, the meaning of "public" or "place" may very well include something beyond a physical space. Numerous businesses listed in the ADA's named categories of accommodations are now capable of existing without operating in a physical space.

Pursuant to the law of unintended consequences, a large national retailer, with only an online presence, may not have to incur the cost and expense of ensuring its website complies with the ADA, while a small, local brick-and-mortar retailer with a limited presence on the web — perhaps not even offering items for sale — might have to comply.

The ruling also raises the question of whether a plaintiff must be proximate to the defendant's brick-and-mortar location to justify application of the ADA to its website. For example, if the defendant's "public-facing physical facilities" are in California, and the plaintiff is ordering goods online while in New York, does the ADA apply to the website, recognizing the plaintiff is unlikely to ever access the physical location?

Taking this one step further, if the public-facing physical facilities are in London, and the plaintiff is in New York, does that permit extraterritorial jurisdiction over the foreign company regularly conducting business in New York — and, presumably, globally — thereby subjecting its website to the ADA? Or does the plaintiff have to be in the same judicial circuit as the business's physical location? The same state? The same city? Within 10 miles?

These questions are further complicated by a defendant operating a physical location in a jurisdiction that does not apply the ADA to websites, while a plaintiff is located in one that does. Indisputably, the internet has been a force for globalization, by breaking down physical boundaries. But according to this recent decision, physical boundaries are critical to determining the ADA's application to the internet — which is without physical location.[15]

While many courts, including the Southern District of New York, believe that the ADA's definition of public accommodations refers primarily to physical places, it seems unlikely

that Congress intended to reach this distinction in drafting the ADA in the late 1980s — well before the advent of the internet as we know it.

And in the face of nuisance suits looking to pursue websites demonstrating any form of noncompliance, achieving compliance with the decades-old ADA is rendered even more difficult given that the generally accepted benchmarks for website accessibility are the Web Content Accessibility Guidelines — which are not a law, but simply a set of accessibility standards. One's head spins.

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[1] No. 1:22-CV-03667-LTS, 2024 WL 4350912 at *6 (S.D.N.Y. Sept. 30, 2024); 42 U.S.C. § 12101 et seq.

[2] Id. § 12182(a).

[3] Id. § 12181.

[4] Businesses That Are Open to the Public, U.S. Dep't of Justice, https://www.ada.gov/topics/title-iii/ (last visited Oct. 18, 2024).

[5] See Carparts Distrib. Ctr. Inc. v. Auto. Wholesaler's Ass'n of New England, 37 F.3d 12 (1st Cir. 1994); Doe v. Mut. of Omaha Ins. Co., 179 F.3d 557 (7th Cir. 1999); Ford v. Schering–Plough Corp., 145 F.3d 601 (3d Cir. 1998); Magee v. Coca-Cola Refreshments USA Inc., 833 F.3d 530 (5th Cir. 2016); Parker v. Metro. Life Ins. Co., 121F.3d1006 (6th Cir. 1997); Weyer v. Twentieth Century Fox Film Corp., 198 F.3d 1104 (9th Cir. 2000).

[6] See Pallozzi v. Allstate Life Ins. Co., 198 F.3d 28, 32 (2d Cir. 1999).

[7] See Jose Mejia v. High Brew Coffee Inc., No. 1:22-CV-03667-LTS, 2024 WL 4350912 at *6 (S.D.N.Y. Sept. 30, 2024).

[8] See Romero v. 88 Acres Foods Inc., 580 F. Supp. 3d 9, 21 (S.D.N.Y. 2022).

[9] See Mejia, No. 1:22-CV-03667-LTS, 2024 WL 4350912 at *13.

[10] Id. at *4.

[11] Id. at *9.

[12] Id.

[13] See Minh Vu, Kristina Launey & Susan Ryan, ADA Title III Federal Lawsuit Filings Hit an All Time High, Seyfarth (Feb. 17, 2022), https://www.adatitleiii.com/2022/02/ada-title-iii-federal-lawsuit-filings-hit-an-all-time-high; New ILR Research Shows Abusive ADA Lawsuits Skyrocketed, U.S. Chamber of Com. Inst. for Legal Reform (June 20,

2023), https://instituteforlegalreform.com/blog/research-shows-abusive-ada-lawsuits-skyrocketed/.

[14] Complete Report: 2022 Website Accessibility Lawsuit Recap, Accessibility.com, https://www.accessibility.com/complete-report-2022-website-accessibility-lawsuits (last visited Oct. 24, 2024).

[15] Joshua S. Bauchner, State Sovereignty and the Globalizing Effects of the Internet: A Case Study of the Privacy Debate, 26 Brook.J.Int'lL.(2017).