

Attention hotel operators: Have you been served with an ADA website reservation system lawsuit?



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As you gear up for the 2021 travel season, your website reservation system's compliance with Title III of the Americans with Disabilities Act (ADA) is probably one of the last things on your mind. Unless, of course, you've been hit with one of the many ADA lawsuits that have recently befallen hotels around the U.S.

Claims under Title III of the Americans with Disabilities Act (ADA) take many forms, but all stem from the same principle: places of public accommodation, like hotels, motels and other places of lodging, cannot discriminate against disabled individuals. Lawsuits concerning website reservation systems allege that hotel owners violate the ADA because their websites, including third-party websites that allow users to reserve rooms, such as Hotels.com, Booking.com and Expedia, do not allow for reservation of accessible rooms and fail to identify accessible features of guest rooms, common areas and amenities. Without the ability to book accessible rooms or to determine whether a hotel has accessible features that accommodate their disabilities, the logic goes, disabled individuals are denied the full and equal enjoyment of the hotel's services that non-disabled individuals enjoy.

Four considerations for hotel owners faced with an ADA lawsuit

When threatened or served with this type of lawsuit, you should consider these questions:

1. What are the plaintiff's motives?

Most Title III ADA cases are "drive-by" lawsuits. That is, they are brought in high volumes across many jurisdictions by serial plaintiffs. These plaintiffs make boilerplate allegations plus a few additional allegations tailored to each defendant. These plaintiffs cannot obtain damages under the ADA, but instead seek injunctive relief, attorney fees, costs and other litigation expenses. Serial plaintiffs typically seek to settle quickly. In settlements, defendants usually agree to pay plaintiffs' attorneys a small nuisance sum and sometimes also agree to take remedial measures to comply with the ADA. Often, the costs of defending the lawsuit exceed the sums for which the case can be settled, which is why serial plaintiffs often achieve settlements. The elephant in the room is that serial plaintiffs and their attorneys likely share the settlement proceeds, which explains the "business" of drive-by lawsuits.

In cases not involving serial plaintiffs, the plaintiffs are more than likely individuals who have a genuine interest in pursuing the merits of their claims and achieving a result that includes remediation and ADA compliance rather than simply monetary payment. In these cases, the complaint will ordinarily be more robust and contain detailed factual allegations that identify how the plaintiff has suffered a concrete injury, why the defendant's website is deficient and what specific injunctive relief is sought. When cases are not of the serial variety, the plaintiffs' objectives may substantially differ and the strategy to defend these cases may accordingly change.

The information contained herein is based on a summary of legal principles. It is not to be construed as legal advice and does not create an attorney-client relationship. Individuals should consult with legal counsel before taking any action based on these principles to ensure their applicability in a given situation.

2. What are the hotel owner's objectives in defending the lawsuit?

The costs of defending against an ADA lawsuit should be at the forefront of every hotel owner's mind when threatened or served with a lawsuit. In most cases, especially those involving serial plaintiffs, the cost of defense will exceed the cost of settling, so hotel owners that are cost-sensitive may consider whether it is in their best interest to settle the lawsuit at its initial stages without mounting a strong defense and regardless of the merits.

Instead of settling early, there are various reasons why hotel owners may want to mount a more vigorous defense: to avoid setting a precedent, to establish favorable case law, to deter future lawsuits, to obtain a decision declaring the hotel owner's website reservation system compliant with the ADA, to avoid onerous remediation terms in a settlement or to achieve other strategic objectives. Determining what defense strategy best achieves a hotel owner's objectives largely depends on the law and facts of each case.

Ultimately, understanding the law and facts of the case—the merits—will drive the hotel owner's decision to either settle, attempt to achieve immediate dismissal of the lawsuit or defend the lawsuit on the merits.

3. Is your hotel's website compliant, and what about third-party websites?

Hotel owners must evaluate whether their websites comply with the ADA. In other words, are the lawsuit's allegations true, in whole or in part? Knowing where you stand as to the specific allegations in the lawsuit is critical in deciding how to defend a lawsuit. When assessing compliance, hotel owners should put themselves in the shoes of a disabled individual attempting to book a room at their hotels. Can accessible rooms be booked? Are accessible features of the hotel's rooms and common areas listed such that a disabled person can identify whether the hotel fits their needs?

When assessing the merits of a lawsuit, hotel owners should bear in mind that plaintiffs are naturally less inclined to sue defendants that are likely to prevail on the merits. This reluctance is due in part to the fact that, in certain circumstances, a defendant may be awarded their attorney fees, costs and other litigation expenses if they prevail on the merits. Thus, both sides of the lawsuit face risk, and plaintiffs usually choose who they sue carefully.

Prior to filing a website reservation lawsuit, plaintiffs will have visited the hotel's website and related third-party websites that allow reservations to determine whether accessible rooms can be booked and whether accessible features are sufficiently identified. When hotel owners are sued with this type of claim, it is likely that the hotel's website is either plainly or arguably deficient in some respect. In this regard, plaintiffs benefit from the vagueness of the regulation underlying website reservation system lawsuits, which does not specify exactly what information hotels are required to disclose.

Some courts have relied on guidance from the U.S. Department of Justice (DOJ), which has independent authority to enforce the ADA, to interpret the requirements of the regulation. Yet, DOJ guidance acknowledges that the DOJ cannot specify what information must be included in every instance given the wide variations in accessibility that travelers will encounter. Thus, while some guidance exists as to what the regulation requires, there is no perfect guide. Without clear expectations as to what this regulation requires, hotels are left in the dark as to what they must do to comply, and plaintiffs may make colorable claims of non-compliance more easily.

As to third-party websites, hotel owners should consider what, if any, control they have over the content that third-party web domains post about their hotels. Hotel owners should also consider the parameters of their business relationship with third-party domains. What, if any, contract or terms and conditions exist between the third-party domain and the hotel owner? If terms exist, what do they say? Which party bears responsibility regarding information posted about the hotel owner's hotel on the third-party domain? Has the hotel owner provided the third-party domain(s) with information about the hotel's accessibility features?

Hotel owners benefit from promptly asking these questions, as the answers will inform defense strategy. The answers will also allow hotel owners to assess what short-term steps can be taken to address the lawsuit's allegations and what long-term steps can be taken to ensure compliance with the ADA.

4. How will the hotel owner deter or prevent future ADA lawsuits?

No matter how a hotel owner resolves an ADA lawsuit, there is always a risk that the hotel owner will face a copycat or substantially similar lawsuit in the future. It is possible that such a lawsuit could be brought by the same law firm that represented the first plaintiff. With respect to future lawsuits, hotel owners should hope for the best and prepare for the worst.

In parallel to defending the ADA lawsuit, hotel owners should actively take steps to cure any deficiencies they have under the ADA. Hotel owners should not only ensure compliance with the website reservation system regulation, but they should also survey other ADA regulations that apply to their hotels as places of public accommodation and that might underlie future lawsuits. As examples, ADA lawsuits against hotel owners may concern physical or architectural barriers, website accessibility, mobile app accessibility, point-of-sale or kiosk designs, transportation accommodations, or parking issues. It may be that a website reservation ADA lawsuit is the spark a business needs to conduct an honest assessment of broader ADA compliance.

Complying with the ADA in all applicable areas will deter future lawsuits and, if one arises, better position hotel owners to achieve a favorable result.

Bottom line: Consult with experienced counsel

Hotel owners can better respond to ADA website reservation system lawsuits by making cost-benefit and merits evaluations early, and by considering the specific questions posed above. The answers to these questions will assist hotel owners in determining what steps to take next.

Of course, when faced with a lawsuit or the threat of one, there is no replacement for consulting experienced legal counsel, which can guide hotel owners down the legal path that best achieves the business' objectives.

For more information on this topic, or to learn how Godfrey & Kahn can help, contact a member of our Litigation Practice Group.