

Alert | The ADA and Accessibility Law Group



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Beyond the Big Apple: ADA Litigation Over Gift Cards Without Braille Has Jumped to the West Coast

New York City has historically been one of the most popular forums in the country for filing Title III of the Americans with Disabilities Act (the ADA) lawsuits, and most recently is the site of hundreds of new ADA claims against businesses for failing to sell gift cards that contain writing in Braille.

About three years ago, there was a shift from almost all ADA cases containing allegations regarding the lack of architectural accessibility to a new generation of plaintiffs filing cases involving the auxiliary aids and service provisions of the ADA (i.e., provisions to accommodate persons with vision, hearing and speech limiting disabilities). Many of these new cases involve allegations of businesses' websites not being accessible to blind users. Perhaps caused in part by the availability of damages under New York State and New York City law, many hundreds of these website lawsuits have been filed in the Southern District of New York (SDNY) with additional lawsuits having been filed in the Eastern District of New York (EDNY) and New York State courts. Now the focus has shifted and over the past two weeks over 100 lawsuits have been filed in the New York City districts, mostly in the SDNY with a few in the EDNY, against businesses in the retail, restaurant and hospitality industries claiming violations of the ADA, New York State and New York City laws, for failing to sell gift cards that contain the issuing business' name and initial denomination in Braille. These cases are imposing a heavy legal burden, and an unfortunate, ill-timed distraction, for the affected industries who would otherwise be preparing for the upcoming holiday season.

While this large number of filings of gift card lawsuits have caused many national (and local) businesses to focus their attention on New York and New York courts, an oncoming storm of California litigation may be on its way with indications that the barrage of Braille gift card cases is no longer limited to New York. We are starting to see claims being made in California for violations of California's Unruh Act for businesses allegedly selling gift cards that do not contain Braille. California, like New York, has historically been considered a hot bed for ADA litigation, likely due in part to the availability of damages under its Unruh Act. Unlike New York, which has no minimum on the amount of damages that may be awarded, the Unruh Act provides for treble actual damages but no less than \$4000 per occurrence in addition to attorneys' fees for a prevailing plaintiff.

The fact that there is such a large number of these gift card lawsuits being filed does not mean that they have legal merit. The ADA and Accessibility Law Group at Greenberg Traurig is currently handling a number of these ADA gift card lawsuits and has the experience to counsel clients on strong potential defenses to these matters. Nevertheless, businesses should review their policies to ensure their goods and services are accessible to persons with vision impairments, consistent with their obligations under the ADA.

Authors

This GT Alert was prepared by **Robert S. Fine**, **Karin Bohmholdt**, **Eric B. Sigda**, and **Robert S. Galbo**. Questions about this information can be directed to:

- **Robert S. Fine** | +1 305.579.0826 | finer@gtlaw.com
- **Karin Bohmholdt** | +1 310.586.3819 | bohmholdtk@gtlaw.com
- **Eric B. Sigda** | +1 212.801.9386 | sigdae@gtlaw.com
- **Robert S. Galbo** | +1 305.579.0612 | galbor@gtlaw.com
- Or your **Greenberg Traurig** attorney

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