

## THE INTERNET - THE NEXT FRONTIER FOR THE ADA: WILL YOUR WEBSITE COMPLY?

By Kimberly M. Colonna

The Americans With Disabilities Act (“ADA”) prohibits discrimination against people with disabilities and requires public accommodations to be accessible. Most of us see the ADA in action every day when we encounter ramps at store entrances, Braille signage at elevators, and parking spaces reserved for individuals with disabilities.

The ADA, however, was adopted in 1990, long before the Internet was commonly used to purchase airline tickets, obtain music, or file tax returns. The ADA does not mention the Internet at all. Less than a decade after the ADA was adopted, however, Internet usage had greatly increased. Beginning in the late 1990’s, several ADA lawsuits were filed asserting that websites were not accessible. In some of the cases, courts ruled that the ADA was intended to regulate actual physical locations. In other cases, courts ruled that the ADA required that disabled persons be provided “access” and that included access to “electronic spaces” just as much as “physical spaces.” Early on, the Department of Justice (“DOJ”), the federal agency tasked with enforcing the ADA, took the position that the ADA does require Internet sites to be accessible.

Now the DOJ is taking more formal steps to require websites to become accessible. On July 26, 2010 the DOJ published a notice that it is considering adopting accessibility rules that would apply to most businesses’ websites. Some “barriers to accessibility” that the DOJ has identified are:

- websites that do not allow font color and size to be adjusted to accommodate the visually impaired;
- websites that rely heavily on images without captions, such that “screen readers” or other assistive technology cannot read the information aloud to persons who cannot see the images;
- websites that require timed responses from users, but do not provide an option for a user to indicate that more time is needed; and

- CAPTCHAs (Completely Automated Public Turing Test to Tell Computers and Humans Apart), the distorted text that websites may require a user to input before completing a transaction, which may be impossible for a person with a visual impairment.

The DOJ has stated that most of these barriers can be removed without difficulty or cost, and without changing the appearance of a website.

From now until January 24, 2011, the DOJ will accept public comments in reaction to nineteen questions that the DOJ has posed about what the DOJ should include in the rules, how the rules should be put into effect, and how broadly the rules should apply. Although the DOJ’s formal action is just starting, businesses should be aware that in the future their websites will have to comply with accessibility requirements. Businesses that want to have input into the rule-making process can see the full text of the DOJ’s notice and submit comments by visiting [www.regulations.gov](http://www.regulations.gov) and searching for “CRT Docket No. 110.” Don’t you wonder how accessible that website is?

If you have questions about the ADA’s requirements for public accessibility or how to structure your company’s website in anticipation of the expected ADA regulations, please contact McNees Wallace & Nurick LLC for assistance. ■



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## INJUNCTIONS AS A BUSINESS TOOL

By Alan R. Boynton, Jr.

With the advent of e-mail, Blackberries, cell phones, instant messaging and other technologies, business today moves at an incredibly fast pace. Decisions are made and strategies implemented quickly and efficiently. Unfortunately, the deliberate pace of the traditional lawsuit has not kept pace.

We are a society which seeks to resolve disputes in courtrooms, not on the street. Unfortunately for most businesses initiating litigation, however, what they hoped to be a blitzkrieg strike often bogs down into trench warfare, with attrition and endless delays seemingly the norm. By the time that the case is finally resolved, many initial participants are gone, the initial reasons for fighting largely forgotten and the costs of continuing the battle disproportionate to the likely gain. Yet, there seem to be few viable alternatives when parties are at an impasse. One approach to consider is the possibility of seeking injunctive relief from a court.

Injunctions are court orders either compelling a party to do something or prohibiting it from doing something. They can be powerful devices, up to and including shutting down a competing business (such as in the Napster case a few years ago). Common situations calling out for injunctions are those in which even a brief delay will render any litigation useless, such as when a salesman walks out the door with a customer list and new product specs, or the strikers are blocking the entrances to the plant, or a competitor is wrongfully using a trademark to compete.

There are many reasons to seek injunctive relief: (1) it expedites the process by forcing all involved, including the court, to focus on the case very quickly. This attention will, alone, often result in early substantive settlement discussions, thus significantly reducing overall

litigation costs and generating a faster ultimate disposition; (2) the entire case could be resolved within a month or two since, in most instances, the grant or denial of injunction effectively disposes of the case; and (3) the mere existence of the case compels the defendant to commit considerable time and resources into defending a matter where there is likely little or no "upside." The need to defend against a request, combined with the pressures of the threatened injunction, will often expedite serious settlement discussions.

The McNees Injunction Group was created to serve clients' needs for immediate resolution of important disputes. The Group, consisting of ten litigators from various practice groups in the firm (such as Business Litigation, Intellectual Property, Labor and Employment, and Construction) is uniquely poised to represent clients in these types of cases. They can utilize extensive firm resources dedicated to this practice area and can draw on our relationship with the American Law Firm Association to be in court anywhere in the country within an extremely short time, moving almost as fast as the client can convey the needed information.

As disputes arise, and options are considered, then, businesses should not forget to weigh the possibility of seeking injunctive relief. In doing so, the McNees Injunction Group stands ready to assist in deciding how to proceed. ■

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