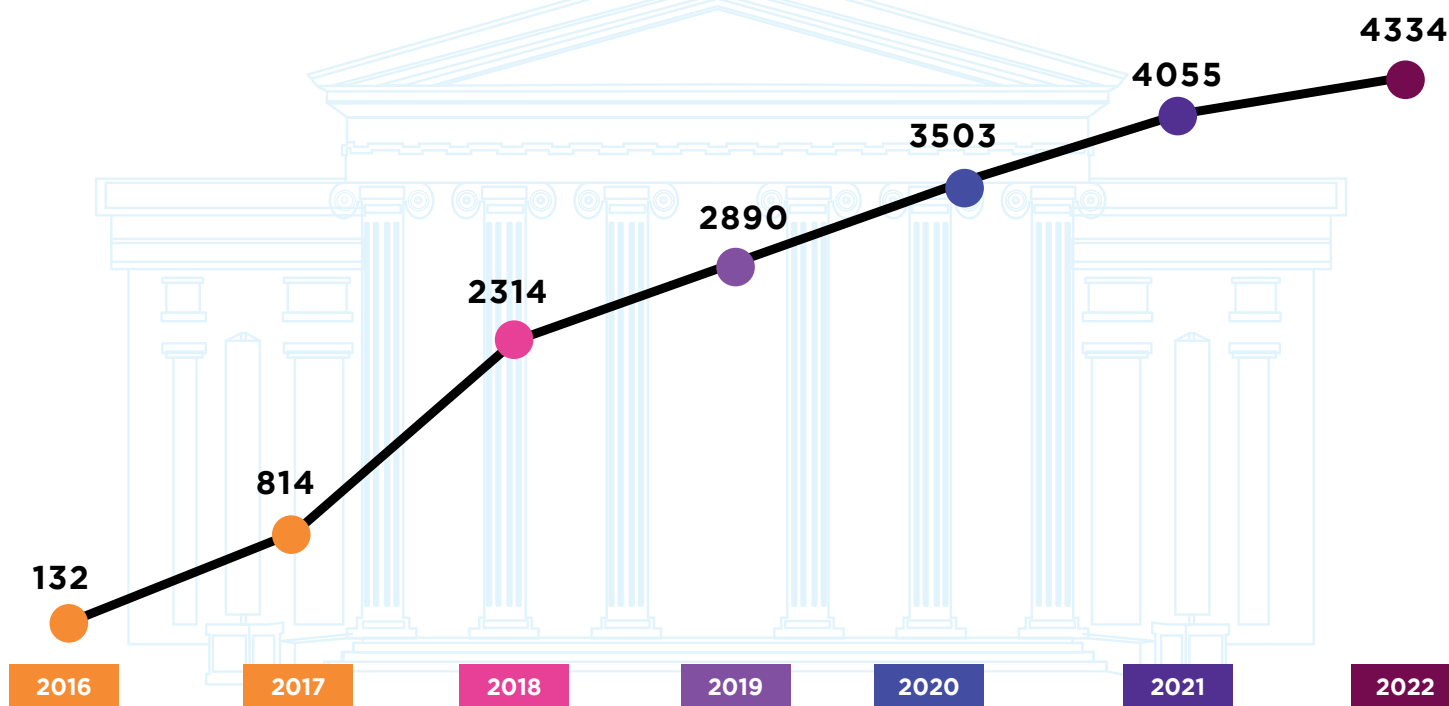




# ADA WEBSITE LAWSUITS REPORT 2022



**4334 WEBSITE ACCESSIBILITY  
LAWSUITS WERE FILED IN 2022**



# EXECUTIVE SUMMARY: 2022 WEBSITE ADA LAWSUITS REPORT

This report provides an overview of the current landscape of website ADA lawsuits in 2022. Courts don't have consensus on whether the Americans with Disabilities Act (ADA) requires businesses to make their websites accessible to people with disabilities. As a result, there has been a surge in lawsuits filed against websites.

The report highlights key trends and statistics, including the increasing number of lawsuits filed and the types of businesses being targeted. It also discusses the potential impact of recent court decisions and settlements on the legal landscape of website accessibility.

Furthermore, the report provides insights and recommendations for businesses seeking to avoid potential lawsuits and improve their website accessibility. It emphasizes the importance of proactive measures, such as regular accessibility audits and user testing, and provides resources for businesses seeking guidance on how to comply with the ADA.



Websites that are not accessible to people with disabilities can prevent them from accessing information, products, and services, which can lead to lost business opportunities, legal costs and penalties, and damage to brand reputation.

Having an accessible website ensures that businesses are providing equal access to all potential customers. Accessibility features such as alt text for images, clear and consistent headings, and keyboard navigation can also benefit all users by improving website usability and experience.

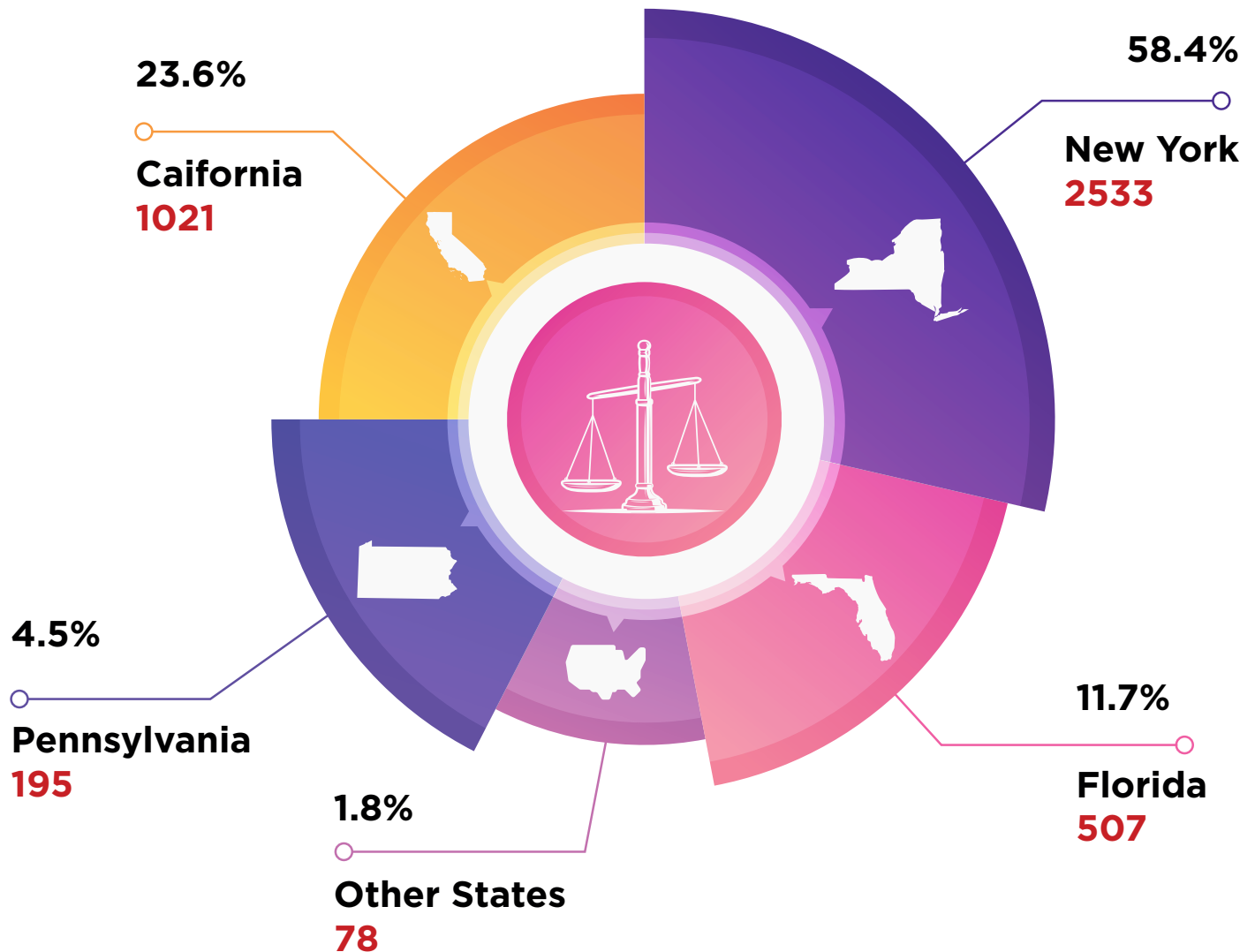
Overall, the report serves as a valuable resource for businesses seeking to navigate the complex legal and technical requirements of website accessibility.

## TOTAL ADA WEBSITE CASES FILED DURING 2022

According to available data, there have been a total of 4,334 ADA website cases filed in both federal and state courts.

The majority of these cases (3,525) were filed in federal courts. New York had the highest number of cases filed at 2,533, followed by Florida with 507, California with 212, Pennsylvania with 195, and 78 cases filed in other states.

Of the ADA cases filed in state courts, the majority were in California (809), highlighting the importance for businesses operating in the state to have an ADA-compliant website due to the state's Unruh statutes, which unlike the ADA, provide for statutory damages.



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## ADA DEMAND LETTERS

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### Hidden Threat: ADA / CA Unruh Demand Letters Targeting Small Businesses for Website Accessibility Compliance

Companies often receive demand letters before lawsuits are filed, providing them with an opportunity to address any accessibility issues on their websites. However, some defense lawyers have noted that some demand letters lack specific details about the plaintiff, their claimed disability, or the accessibility barriers they encountered. Instead, they may be designed to initiate settlement discussions.

Some businesses may choose to settle after receiving a demand letter to avoid the costs and potential negative publicity associated with a lawsuit. Due to California's Unruh statutes, which do not allow defendants to moot a case by making changes to their website or physical location, some plaintiff firms have sent out a large number of demand letters without necessarily following up with a lawsuit.

While there are no publicly available official statistics on the number of demand letters sent at this time, some defense firms suggest that the number of ADA claims in California may be similar to that in New York when demand letters are taken into account.

Under California law AB 2917, effective January 1, 2023, attorneys are required to submit demand letters and complaints alleging disability access violations (even for websites) to the California Commission on Disability Access (CCDA) through a standard format on the CCDA's internet website.

Here is an example of a demand letter by Pacific Trial Attorneys that many businesses we interviewed have received and as published on Karlin Law's website.

Via Federal Express

Website Company  
12345 Main Street, Your City, State  
Attention Legal Department

Re: Website Accessibility Lawsuit

To Whom It May Concern:

This law firm has been retained by a blind consumer to pursue a claim against you under the California Unruh Act.

In short, your website (website address) is not fully accessible to visually-impaired individuals. Indeed, the California Supreme Court recently confirmed that anti-discrimination laws apply to commercial websites. We urge you to consult your own counsel about your rights and obligations in this emerging area of law.

We plan to file suit in the near future. If you wish to discuss this matter, your counsel should promptly contact me.

Sincerely,  
Scott J. Ferrel, Esq.

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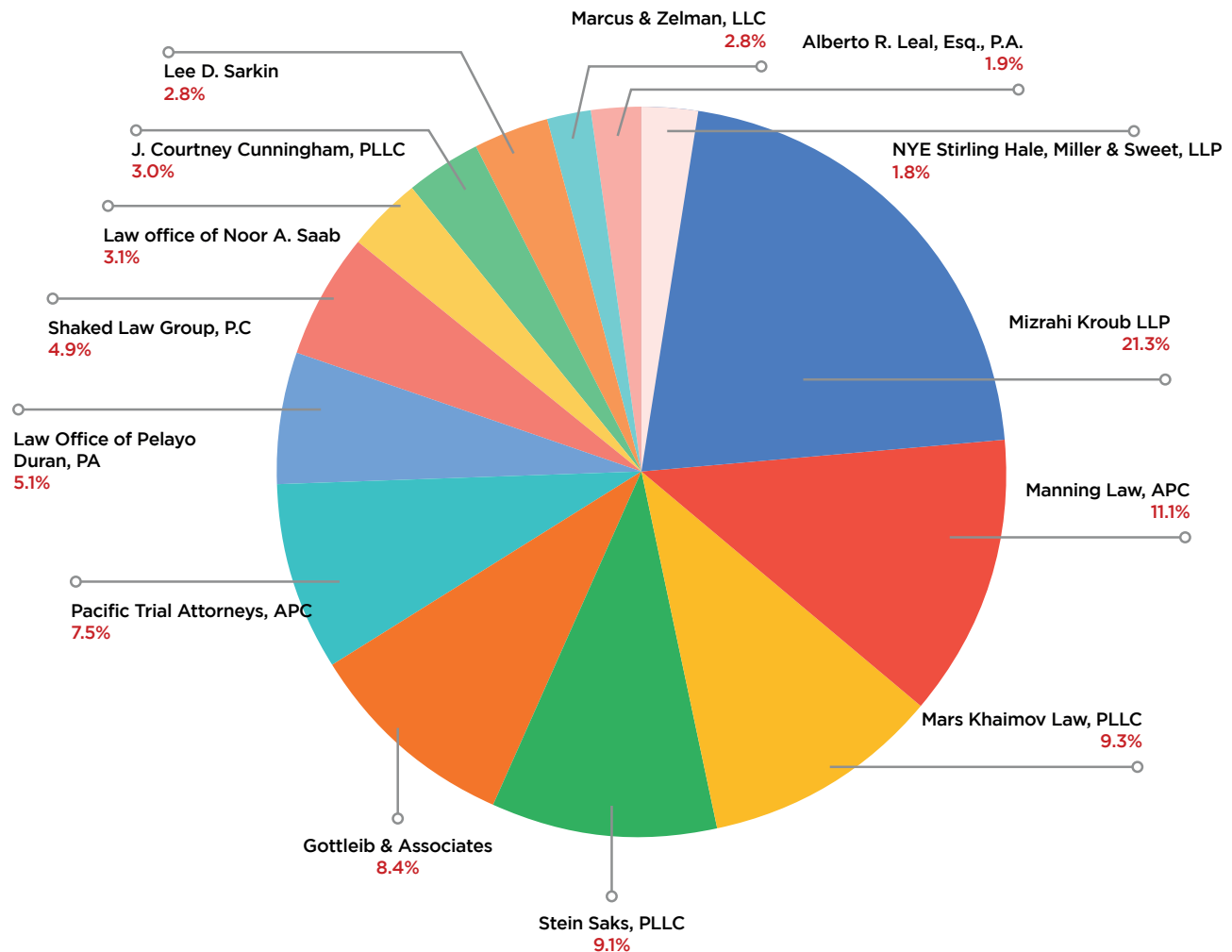
## 2022 LAWSUITS FILINGS BY PLAINTIFF FIRM

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The following are 20 Plaintiff law firms who filed the most ADA website cases in 2022 in either Federal or State courts, along with the number of cases each firm filed:

NO.	LAW FIRM	NO. OF CASES	COURT
1	Mizrahi Kroub LLP	876	Federal Court
2	Manning Law, APC	454	State Court
3	Mars Khaimov Law, PLLC	380	Federal Court
4	Stein Saks, PLLC	372	Federal Court
5	Gottlieb & Associates	347	Federal Court
6	Pacific Trial Attorneys, APC	308	State Court
7	Law Office of Pelayo Duran, PA	208	Federal Court
8	Shaked Law Group, P.C.	201	Federal Court
9	Law Office of Noor A. Saab	129	Federal Court
10	J. Courtney Cunningham, PLLC	123	Federal Court
11	Lee D. Sarkin	116	Federal Court
12	Marcus & Zelman, LLC	116	Federal Court
13	Alberto R. Leal, Esq., P.A.	78	Federal Court
14	NYE Stirling Hale, Miller & Sweet, LLP	74	Federal Court
15	Wilshire Law Firm	72	Federal Court
16	Lawrence H. Fisher, LawFirst	63	Federal Court
17	Lipsky Lowe LLP	57	Federal Court
18	Acacia Barros PA	46	Federal Court
19	Lynch Carpenter LLP	44	Federal Court
20	East End Trial Group LLC	43	Federal Court

## 2022 LAWSUITS PERCENTAGES BY PLAINTIFF FIRM



### Clogging the Courts

“A district judge in this circuit has explained the phenomenon like this: The scheme is simple: an unscrupulous law firm sends a disabled individual to as many businesses as possible, in order to have him aggressively seek out any and all violations of the ADA. Then, rather than simply informing a business of the violations, and attempting to remedy the matter through conciliation and voluntary compliance, a lawsuit is filed . . . . Faced with the specter of costly litigation and a potentially fatal judgment against them, most businesses quickly settle the matter.”

Source: Ninth Circuit Judges Express Displeasure with Serial Plaintiffs and Their Attorneys

Read here: <https://bit.ly/eb2022-10>

For more on the courts, we suggest these two articles:

The Law on Website and Mobile Accessibility Continues to Grow at a Glacial Pace Even as Lawsuit Numbers Reach All-Time Highs

Read here: <https://bit.ly/eb2022-1>

California Court Curbs Website Accessibility Claims Against Online-Only Businesses

Read here: <https://bit.ly/eb-2022-2>

## 2022 LAWSUITS NUMBERS BY PLAINTIFF

Below is the list of top 20 Plaintiffs who filed the most website accessibility cases in the year 2022 in either Federal and State courts, along with the number of cases each filed.

NO.	PLAINTIFF NAME	PLAINTIFF FIRM	NO. OF CASES	COURT
1	Perla Mageno	Manning Law, APC	199	State Court
2	Rebecca Castillo	Manning Law, APC	163	State Court
3	Richard Mejia	Mizrahi Kroub LLP	123	Federal Court
4	Daniel Lugo	Lee D. Sarkin	116	Federal Court
5	Victor Ariza	Law Office of Pelayo Duran, PA	102	Federal Court
6	Jasmine Toro	Mars Khaimov Law, PLLC	101	Federal Court
7	Rusty Rendon	Pacific Trial Attorneys, APC	100	State Court
8	Luis Licea	Pacific Trial Attorneys, APC	98	State Court
9	Lamar Brown	Mars Khaimov Law, PLLC	91	Federal Court
10	Nelson Fernandez	Law Office of Pelayo Duran, PA	90	Federal Court
11	Marina Iskhakova	Stein Saks, PLLC	89	Federal Court
12	Marta Hanyzkiewicz	Stein Saks, PLLC	88	Federal Court
13	Luigi Abreu	Mizrahi Kroub LLP	82	Federal Court
14	Bryan Velazquez	Stein Saks, PLLC	79	Federal Court
15	Andres Gomez	Alberto R. Leal, Esq., P.A.	78	Federal Court
16	Josue Paguada	Mizrahi Kroub LLP	76	Federal Court
17	Vanessa Jimenez	Mizrahi Kroub LLP	75	Federal Court
18	Milagros Senior	Gottlieb & Associates	72	Federal Court
19	Windy Lucius	J. Courtney Cunningham, PLLC	69	Federal Court
20	Veronica Maddy	Mars Khaimov Law, PLLC	68	Federal Court

Many critics of these lawsuits allege that some plaintiffs may not necessarily be individuals who have personally experienced accessibility barriers on the websites in question, or had any genuine intention of using the products or services of the business.

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## BIG NUMBERS: TOP 10 BUSINESS TYPES HIT BY WEBSITE LAWSUITS IN 2022

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Based on a sample size of 1850 cases, below is a list of the top industries hit by ADA website lawsuits in 2022:

Industry	Cases
Restaurant, Food, Drinks & Beverages (including coffee & ice cream shops)	442
Lifestyle, Fashion & Apparel	421
Health, Fitness and Medical Products (including rehabilitation centers & supplements)	153
Skin and Body Care (including hair products, spa centers)	153
Retail & General Store	135
Home Decor, Bedding & Furniture (including candles shops)	119
Toy, Gifts & Flower Shops	71
Sports Accessories	50
Travel, Hotel & Hospitality	45
Banking & Financial Services	39

**These industries have been sued due to inaccessible websites, highlighting the importance of ADA compliance for businesses across various sectors.**



## TOP 5 INDUSTRIES HIT WITH WEBSITE ACCESSIBILITY LAWSUITS

Some plaintiff firms have been observed to file lawsuits against certain types of businesses in clusters, using the same plaintiff in rapid succession. Analysis of the top categories sued in 2022 shows a pattern where a few plaintiffs target the same types of websites within days or weeks of each other. Critics claim that while some plaintiffs may have genuine intent to purchase goods and services, there is a possibility that some may misrepresent their true intent to the court.

### 1: RESTAURANT, FOOD, DRINKS & BEVERAGES

NO.	PLAINTIFF NAME	FIRM NAME	CASES
1	Mageno Perla	Manning Law, APC	43
2	Rebecca Castillo	Manning Law, APC	31
3	Richard Mejia	Mizrahi Kroub LLP	28
4	James Watson	J. Courtney Cunningham, PLLC	22
5	Ana Chalas	Mizrahi Kroub LLP	21
6	Janelys Hernandez	Law Office of Noor A. Saab	19
7	Ramon Fontanez	Mizrahi Kroub LLP	19
8	Windy Lucius	J. Courtney Cunningham, PLLC	19
9	Juan Ortega	Mizrahi Kroub LLP	17
10	Pedro Martinez	Shaked Law Group, P.C	16

### 2. LIFESTYLE, FASHION & APPAREL

NO.	PLAINTIFF NAME	FIRM NAME	CASES
1	Warren Zinnamon	Stein Saks, PLLC	21
2	Josue Paguada	Mizrahi Kroub LLP	15
3	Victor Ariza	Law Office of Pelayo Duran, PA	15
4	Luigi Abreu	Mizrahi Kroub LLP	13
5	Linda Slade	Shaked Law Group, P.C	13
6	Blair Douglass	East End Trial Group LLC	12
7	Rafia Lawal	Marcus & Zelman, LLC	12
8	Yelitza Picon	Gottlieb & Associates	12
9	Cristian Sanchez	Mizrahi Kroub LLP	11
10	Ramon Jaquez	Mizrahi Kroub LLP	11

### 3: SKIN AND BODY CARE

NO.	PLAINTIFF NAME	FIRM NAME	CASES
1	Luigi Abreu	Mizrahi Kroub LLP	24
2	Josue Paguada	Mizrahi Kroub LLP	14
3	Veronica Maddy	Mars Khaimov Law, PLLC	14
4	Lamar Brown	Mars Khaimov Law, PLLC	9
5	Juan Ortega	Mizrahi Kroub LLP	7
6	Linda Slade	Shaked Law Group, P.C	7
7	Richard Mejia	Mizrahi Kroub LLP	7
8	Marta Hanyzkiewicz	Stein Saks, PLLC	7
9	Robert Weekes	Mizrahi Kroub LLP	6
10	Edelmira Guerrero	Mizrahi Kroub LLP	5

### 4: HEALTH, FITNESS AND MEDICAL

NO.	PLAINTIFF NAME	FIRM NAME	CASES
1	Richard Mejia	Mizrahi Kroub LLP	21
2	Ana Chalas	Mizrahi Kroub LLP	9
3	Marta Hanyzkiewicz	Stein Saks, PLLC	6
4	Joyce Carrico	Nematzadeh PLLC	6
5	Luigi Abreu	Mizrahi Kroub LLP	5
6	Vanessa Jimenez	Mizrahi Kroub LLP	5
7	Edelmira Guerrero	Mizrahi Kroub LLP	4
8	Brian Fischler	Lipsky Lowe LLP	4
9	Linda Slade	Shaked Law Group, P.C	4
10	Luis Licea	Pacific Trial Attorneys, APC	4

## 5: RETAIL & GENERAL STORE

NO.	PLAINTIFF NAME	FIRM NAME	CASES
1	Bryan Velazquez	Stein Saks, PLLC	12
2	Rafia Lawal	Marcus & Zelman, LLC	10
3	Jasmine Toro	Mars Khaimov Law, PLLC	10
4	Christopher Loadholt	Marcus & Zelman, LLC	8
5	Richard Mejia	Mizrahi Kroub LLP	7
6	Joseph Ortiz	Gottlieb & Associates	7
7	Warren Zinnamon	Stein Saks, PLLC	6
8	Marina Iskhakova	Stein Saks, PLLC	5
9	Victoria Dicks	Mars Khaimov Law, PLLC	5
10	Rebecca Castillo	Manning Law, APC	4

### MOST COMMON FRUSTRATIONS WE HEAR FROM SMALL BUSINESSES

“I have an app that said  
my website is accessible!”

“My website is on Shopify,  
they should take care of this!”

“The ADA doesn’t  
cover the internet.”

The attorney only wants  
money. He asked for  
my profit-loss  
statement!

“What are the rules  
for compliance?”



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## HIGH COSTS OF LAWSUITS

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The average settlement can range from \$5000 to \$20,000 and as high six-figures depending on the business and how much "cost of litigation" settlement is negotiated.

Under the Americans with Disabilities Act (ADA), plaintiffs cannot receive statutory fines. However, in California, the Unruh Civil Rights Act (California Civil Code Section 51) provides for minimum damages of \$4,000 per incident, in addition to attorney's fees and costs. In New York, plaintiffs may receive up to \$500 in statutory damages for each violation of Section 40-c of the New York Civil Rights Law (NYCRL).

Curiously, most federal lawsuits filed in SDNY or EDNY include claims of violating NYCHRL when NYCHRL has its own separate complaints process. It is possible that, because the ADA does not allow for damages to the plaintiff, the NYCHRL allegations are also being made in those lawsuits for imposition of fines.

In addition, there are costs for hiring a defense attorney, filing fees if any, remediation costs, and so forth. The total cost to settle a case can range from \$10,000 to \$30,000 as reported by various small businesses and defense firms we have interviewed.

Bigger businesses who can afford to and choose to litigate could face costs in the tens of thousands or hundreds of thousands depending on how far the case proceeds.

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## BIG IMPACT ON SMALL BUSINESSES

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The substantial settlement "asks" and hard scare tactics such as alleging "intentional discrimination", class actions with just 1 serial plaintiff, and demands for financial disclosure leave small businesses in difficult situations as they may not have the financial resources to defend themselves in court.

As such, a handful of plaintiff firms have been able to extract **hundreds of millions of dollars** in "cost of litigation" settlement fees for themselves between 2017 and 2022 according to extensive research conducted by our team and other sources.

### What The Disabled Plaintiff Gets

Plaintiffs in New York, where most of the federal cases are filed often receive as little as \$500...

### What The Lawyer Gets

Meanwhile, the remaining \$5,000 to \$20,000+ in average settlement fee is pocketed by the law firm.



# BUSINESSES STARTING TO FIGHT BACK

Businesses are increasingly fed up with the barrage of ADA website lawsuits. The summary below offers a glimpse into the current legal landscape and how companies like Electric Bike Technologies are taking a stand.

**FILED: BRONX COUNTY CLERK 02/23/2023 10:50 PM**

NYSCEF DOC. NO. 22

INDEX NO. 815858/2022E  
RECEIVED NYSCEF: 02/23/2023

## Background

On Plaintiff's motion to dismiss, we take the allegations of the counterclaim as true. *Silverman v. Park Towers Tenants Corp.*, 206 A.D. 3d 417, 418 (1st Dept. 2022). In evaluating Plaintiff's motion to dismiss, it is important to put the factual dispute into context.

In a cut-and-paste complaint similar to over 1,500 other suits filed, but not litigated, by Plaintiff's counsel, Plaintiff sued Electric Bike in the Southern District of New York, incorrectly claiming that Defendant's website was inaccessible to blind people in violation of the Americans with Disabilities Act (ADA) and New York law. Counterclaim ¶¶ 59–62. Plaintiff and his counsel had no apparent intention of litigating the lawsuit against Electric Bike, but instead aimed to leverage the cost of defense to obtain a cost-of-litigation settlement. *Id.* ¶¶ 63–68.

On August 4, 2022, Plaintiff's counsel wrote to Electric Bike's counsel at the time offering to settle for less than the cost of fighting the federal lawsuit: "plaintiff's demand is \$4,950 plus website remediation." *Id.* ¶ 73. Plaintiff's counsel did not otherwise specify any of the terms of any proposed settlement. *Id.* Defense counsel responded: "[o]ur client accepts plaintiff's settlement demand of \$4,950;" did not respond to the additional demand of unspecified remediation of Defendant's website; and did not identify the other material terms of any proposed settlement, but added, significantly, "[w]e will draft the settlement agreement." *Id.* ¶ 74. In other words, the only term that had been agreed upon was the \$4,950 payment and the additional terms would be contained in a written settlement agreement to be drafted by Electric Bike's counsel.

The very next day, on August 5, 2022, defense counsel made plain that confidentiality was a material term, that Electric Bike did not agree to any confidentiality provision, and that if Plaintiff's counsel insisted upon it, there was no agreement on the \$4,950 settlement amount either....

**Read the Full Filing Here: <https://bit.ly/eb2022-4>**

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## CAUGHT ON CAMERA

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### 'Blind' ADA Plaintiff's Actions Investigated

The Karlin Law Firm recently pursued a court judgment against Andres Gomez, a Miami resident who has filed over 600 Americans with Disabilities Act (ADA) lawsuits against small businesses in California and Florida. The law firm requested that the court award costs to its client, Los Angeles-based Fast Toys Club, which puts its customers behind the wheels of high-powered race cars at race tracks, following the dismissal of a lawsuit brought by Gomez.

Fast Toys Club is among the hundreds of businesses sued by Gomez, alleging that their websites are inaccessible due to his vision impairment. The Karlin Law Firm alleged that Gomez's claims of significant blindness requiring special software to access websites are false, and that Gomez has used this claim to file numerous ADA website lawsuits in California and Florida.

Exhibits presented at a press-conference and filed with the court include a video compilation showing portions of Gomez's deposition, prior website accessibility filings, surveillance footage, and YouTube postings that highlight contradictions in his testimony.

Source: Karlin Law Firm seeks judgment against serial ADA website plaintiff Andres Gomez

Read here: <https://bit.ly/eb2022-5>



Watch the video: <https://bit.ly/eb2022-6>

### California Assembly Bill 950

Since the California Supreme Court ruled that a nexus is required between a physical location and a website, more and more small businesses such as restaurants are getting sued by California based plaintiff firms. The California Supreme Court has essentially said that websites for online only businesses are not covered under the Unruh statutes.

The Unruh Civil Rights Act is a California law that prohibits discrimination in all business establishments in the state, including on the basis of disability. The Act requires that all individuals be provided with "full and equal accommodations, advantages, facilities, privileges, or services" in all business establishments.

Recently, Assemblyman Brian Maienschein (D-San Diego) has proposed an amendment (Assembly Bill 950) to the Unruh that could have devastating consequences for businesses across the nation if they are selling to anyone in California, and create a billion-dollar windfall for plaintiff attorneys and their roster of serial-filer clients.

The bill proposes requiring strict compliance with WCAG 2.1 AA standards, but lacks understanding of fundamental principles of how the internet works. Moreover, it does not provide any safe harbors for technical bugs or issues beyond the website owner's control.

The well-meaning Assemblyman's own campaign website ([www.brianmaienschein.com](http://www.brianmaienschein.com)) has basic accessibility barriers like missing alt text on his logo and 24 contrast errors. Such a simple oversight could cost a small business thousands of dollars in fines and legal fees under his bill.

For more information, read this article on AB-950:

**Read here:** <https://bit.ly/eb2022-7>

### Kansas Senate Passes Bill to Help Businesses Fight Abusive Website Lawsuits

On the other hand, the Kansas Senate has approved a bill that aims to curb abusive lawsuits filed against businesses under the Americans with Disabilities Act (ADA) after facing initial backlash from disability rights advocates. The proposed legislation allows businesses to countersue plaintiffs alleging ADA violations, arguing the lawsuit is abusive, to prevent out-of-state plaintiffs from seeking quick settlements and high payouts.

The amended bill, which narrows the scope to website lawsuits only, includes provisions to address concerns raised by the disability rights advocates and would sunset once the U.S. Department of Justice issues standards for website accessibility.

Although some critics have argued that the bill could violate federal law, if passed, it could serve as a model for other states to curb thousands of cut-and-paste ADA website lawsuits instead of increasing them like Assemblyman Maienschein's amendment will do.

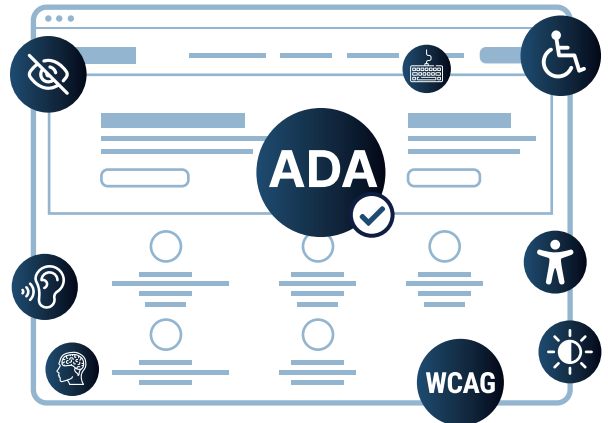
Source: Kansas Senate passes bill aiming to curb 'abusive' ADA suits after initial backlash

**Read the article:** <https://bit.ly/eb2022-8>

# CONFUSING COMPLIANCE

**The Americans with Disabilities Act (ADA) was enacted to provide equal access & opportunities to people with disabilities.**

The Department of Justice (DOJ)'s interpretation of the ADA covers the internet, even though the ADA doesn't mention the internet, and the DOJ has not created specific rules on what is digital compliance for over 30 years.



On March 18, 2022, under public pressure from various disability rights groups, the DOJ listed some ways businesses can offer accessibility and adhere to standards such as WCAG.

“Businesses and state and local governments have flexibility in how they comply with the ADA’s general requirements of nondiscrimination and effective communication. But they must comply with the ADA’s requirements.

The Department of Justice does not have a regulation setting out detailed standards, but the Department’s longstanding interpretation of the general nondiscrimination and effective communication provisions applies to web accessibility.

Businesses and state and local governments can currently choose how they will ensure that the programs, services, and goods they provide online are accessible to people with disabilities.

Existing technical standards provide helpful guidance concerning how to ensure accessibility of website features. These include the Web Content Accessibility Guidelines (WCAG) and the Section 508 Standards, which the federal government uses for its own websites.

Even though businesses and state and local governments have flexibility in how they comply with the ADA’s general requirements of nondiscrimination and effective communication, they still must ensure that the programs, services, and goods that they provide to the public— including those provided online—are accessible to people with disabilities.”

Read the DOJ’s position and guidance on website accessibility here:

<https://bit.ly/eb2022-9>

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## TOP 10 COMMON CRITICISMS OF ADA WEBSITE LAWSUITS

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After conducting extensive research and interviews, including with many disabled defendants in ADA website lawsuits, we have identified the top 10 criticisms of these lawsuits. It was not the intended goal of the disability rights movement to enable plaintiff lawyers to exploit the ADA for personal profit.

- 1) **Cut & Paste, Click-By Lawsuits:** Some plaintiff law firms are notorious for filing copy-and-paste cases on behalf of serial clients. This assembly-line practice has been criticized as a way to generate easy profits for these law firms, rather than serving the interests of the class of people they purport to represent, their clients, or promoting genuine accessibility.
- 2) **Abuse of Proxies:** Critics allege some of these "professional plaintiffs" or "serial plaintiffs" are often recruited to participate in lawsuits via questionable and unethical practices. Our extensive research of cases from 2017 to 2022 shows us that many plaintiffs are elderly and/or non-English-speaking disabled immigrants who may not even understand the complex legal documents that their names are printed on. It is our view that some of these disabled people are actually victims of exploitation and senior abuse by certain plaintiff lawyers.
- 3) **Scrutiny of Serial Plaintiff Claims:** Some plaintiff lawyers simply withdraw cases to avoid unfavorable rulings or scrutiny of their serial plaintiff client's claims when seasoned defense lawyers demand verification of disability, ask for depositions, and challenge false claims.
- 4) **Unfair Class Actions:** Disability rights advocates and disability lawyers with good reputations oppose fake class actions because they may not serve the interests of the disabled community and are designed mainly to scare businesses into secret settlements. It is to be noted, almost no real class actions have ever been certified in ADA cases because the ADA does not allow for monetary damages.
- 5) **Forum Shopping:** It is no secret the Southern District of New York (SDNY) is a favorite venue for ADA website lawsuits due to some favorable rulings by judges for the plaintiff's bar coupled with the questionable use of NYCHRC statutes in lawsuits.
- 6) **Frivolous Lawsuits:** Small business owners and mom-pop establishments use words like "frivolous," "scam" "shakedown," "legal extortion," and "mafia racket" to describe what they feel when asked to pony up thousands of dollars in settlements, especially because the ADA does not even allow for financial damages. As one business owner put it, "I am for accessibility and I am against extortion by a lawsuit."
- 7) **Unclear Rules:** The DOJ has punted when it comes to rule-making for digital accessibility for almost thirty years, perhaps because it knows how hard it is to do.
- 8) **Unfair Targets:** Why are the technology platforms that businesses use to create websites not being held accountable? They are the digital landlords who need to build accessible tools.
- 9) **Unfair Standards:** The accessibility standards used by the government are far lower than the standards that small businesses are expected to meet.
- 10) **One Sided Legal Fees:** ADA violations, if proven, require the business to pay the Plaintiff's legal fees, but if the claim turns out to be unwarranted, the Plaintiff is not required to reimburse the business for its attorney's fees. That is often seen as putting the Plaintiff in a "no lose" position that encourages the filing of very weak and sometimes meritless cases.

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## ACTION PLAN TO STOP ABUSIVE ADA WEBSITE LAWSUITS

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Our Action Plan to Stop Abusive ADA Website Lawsuits focuses on 15 key strategies to address the negative impact of such lawsuits on both small businesses and people with disabilities. The goal is to create a more accessible web while stopping abuse of the ADA. Share this with disability rights groups, chambers of commerce, bar associations, lawmakers, criminal justice authorities, judges, journalists, and accessibility experts in technology.

- 1) **Raise Awareness:** Highlight the negative impact of abusive ADA lawsuits on small businesses and people with disabilities, and pressure lawmakers for change.
- 2) **Identify and Penalize Bad Actors:** Punish plaintiff law firms engaging in unethical practices, including fines, sanctions, disbarment, and prison.
- 3) **Use RICO Statutes Against Racketeering and Extortion Practices:** Use Racketeer Influenced and Corrupt Organizations (RICO) statutes against lawyers who engage in unethical practices like recruiting straw/serial plaintiffs to file lawsuits and collecting secret settlements via pressure tactics. This would combat abusive ADA lawsuits and hold bad lawyers accountable.
- 4) **Demand Rule-Making:** DOJ needs to create clear rules for digital accessibility and "compliance."
- 5) **Hold Platforms Accountable:** Technology companies should be held accountable and required to provide accessible platforms for businesses to create websites. This will ensure that small businesses aren't solely responsible for website accessibility.
- 6) **Engage with Disability Rights Groups:** Disability rights advocates understand that suing businesses in the name of accessibility only alienates the disabled and creates a fear dynamic. It is important to engage with disability rights groups to ensure that their concerns are heard and that the needs of people with disabilities are met.
- 7) **Encourage Judicial Scrutiny:** Encourage judges to scrutinize the legitimacy of plaintiff claims and sanction lawyers who file frivolous lawsuits only to drop them for dubious reasons.
- 8) **Lobby for Legislative Changes:** Lobby for changes to existing laws, particularly in states where ADA website accessibility lawsuits are abused. This includes amendments to fee-shifting provisions, clearer guidelines on website accessibility, and penalties for lawyers who engage in questionable practices.
- 9) **Register Demand Letters:** The registration of ADA demand letters with the state or Department of Justice (DOJ) would provide an important level of accountability and transparency in the process of filing claims. Currently, anyone can send a demand letter alleging a violation of the ADA without any oversight or verification of the claim. This has led to a proliferation of abusive demand letters and lawsuits, which can have a devastating impact on small businesses. It would also provide an opportunity for the DOJ to collect data on demand letters and identify trends or bad actors, which could ultimately lead to more effective enforcement of the ADA.
- 10) **Amend the Fee-Shifting Provisions of the ADA:** Amend the one-sided attorney's fee provision of the ADA to hold plaintiffs accountable for legal fees incurred by defendants in meritless cases.

- 11) **Provide a Notice-to-Cure Period:** Until the DOJ issues rule-making on web accessibility, businesses should be granted a notice-to-cure period of 180 days to address accessibility issues before being subjected to legal action. This approach is more reasonable than current practices of selling settlements with a two-year window to fix websites.
- 12) **Standardize Testing of Accessibility Compliance:** Standardize testing protocols and tools to ensure consistency in the testing process and make it easier for businesses to identify and address accessibility issues.
- 13) **Provide Certification for Website Accessibility:** Establish a certification program for website accessibility to provide businesses with a clear and objective standard for compliance and promote genuine accessibility.
- 14) **Supreme Court Ruling on Testers:** Stay all accessibility lawsuits filed by serial plaintiffs until the US Supreme Court decides on the Deborah Laufer versus Acheson Hotels case, which will have a significant impact on the future of serial-filer accessibility lawsuits.
- 15) **Curb Serial-Filing of Lawsuits:** Some possible measures to achieve this include increasing filing fees for repeat filers, verification of disability, limiting the number of lawsuits that can be filed by a single plaintiff or firm in a given time period, and requiring that all demand letters include a list of specific accessibility barriers rather than just a general statement of non-compliance.

Lawmakers must act to protect the entrepreneurial spirit and hustle economy of American small businesses, especially those striving to recover from the pandemic, as they are frequently impacted by abusive ADA website lawsuits. Many of these small businesses are owned by immigrants, people of color, and individuals with disabilities, who are often disproportionately impacted by such lawsuits. Measures must be taken to support these businesses, including offering resources to enhance accessibility and financial assistance to implement necessary changes, in order to create a more inclusive and accessible society for all.

**Sign and Share Our Petition**

**change.org**

<https://www.change.org/p/stop-abusive-ada-website-lawsuits>

**Stop Abusive ADA Website Lawsuits**



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## A DOCUMENTARY ON WEB ACCESSIBILITY SUPPORTED BY ECOMBACK

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Join us in supporting, **BlindSighted**, a compelling documentary that delves into the complex world of digital accessibility, highlighting the challenges faced by people with disabilities, small businesses navigating the digital landscape, and the contrasting roles of two types of lawyers.

This film showcases the inspiring efforts of lawyers championing change and promoting digital equality, while simultaneously exposing those who exploit ADA laws to target vulnerable small businesses and enrich themselves.

It unravels the intricate battle for digital accessibility, spotlighting the urgent need for a more inclusive internet and the powerful forces driving both progress and exploitation in an increasingly connected world.



### SHARE YOUR STORY AND EXPERTISE

The creators of this documentary invite individuals who have experienced the negative impact of website accessibility lawsuits to participate in their efforts to promote a more accessible web. This includes those who have been recruited as serial plaintiffs, small business owners who have paid settlements, and experts in the field.

They also welcome input from disabled, blind, and deaf individuals who are passionate about improving digital accessibility. To participate, please send a confidential email to: [blindsightedmovie@gmail.com](mailto:blindsightedmovie@gmail.com)

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## THE REAL SOURCE-CODE OF DIGITAL ACCESSIBILITY PROBLEMS

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The fact is that no e-commerce or CMS platform has themes that are fully accessible by default. Shopify, Wordpress, Magento, Wix, Square, and so forth come with bugs, coding errors, and lack of accessibility prompts or functions.

Businesses are left on their own to try and "add an elevator to an existing building," while being maliciously accused of "intentional discrimination."

Until the platforms do a better job of web accessibility on their own themes, make drag-drop functionality accessible, and require third-party apps and plug-ins to conform to WCAG success criteria, well-intentioned businesses and developers are on their own to ensure they can provide accessible digital experiences to their customers.

That being said, there are things that businesses and developers can do to make their websites substantially accessible, and provide reasonable accommodations.

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## IS W3C'S WCAG THE ANSWER?

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The W3C's Web Content Accessibility Guidelines (WCAG) are often cited in lawsuits & settlement agreements related to website accessibility, and are treated as law by some courts, lawyers, and lawmakers due to the lack of clear regulations from the DOJ. However, the WCAG should have safe-harbors for bugs, automated test false-positive errors, and other issues which may not "pass" their success criteria, so that businesses offering a substantially accessible experience for users are safer from such lawsuits.

Moreover, it is important to note that the major platforms and plug-ins on which business websites are built, such as WordPress and Shopify, are not themselves fully accessible. This makes it even more challenging for small business owners to ensure full accessibility on their websites.

For instance, the California Unruh Civil Rights Act's Assembly Bill 950 proposes requiring WCAG 2.1 AA compliance, which includes the criteria for audio description for videos. However, this requirement is not feasible for a majority of the web's content, and any company with a YouTube video embedded on their website would fail this test.

Therefore, it is essential for the W3C to consider the practicality of accessibility requirements and to provide safe-harbors for businesses making good faith efforts towards accessibility.

# TOP COMMON ACCESSIBILITY BARRIERS STATED IN LAWSUITS



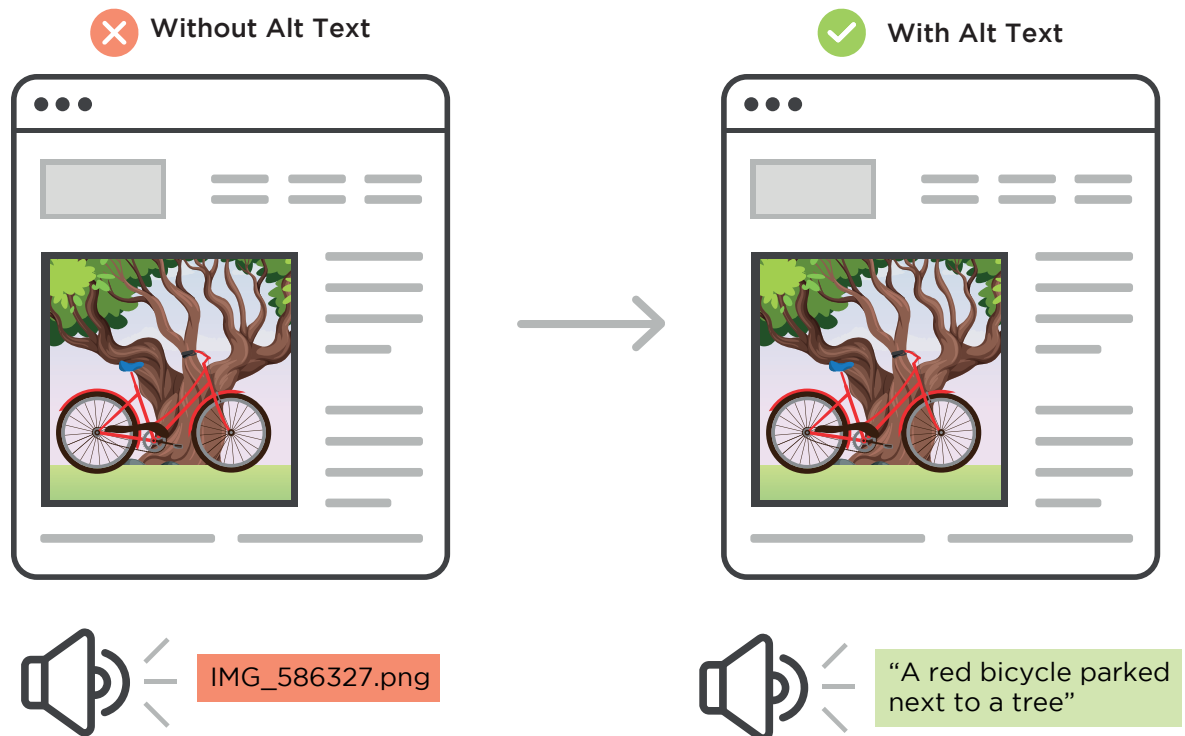
## 1. LACK OF ALTERNATIVE TEXT OR INACCESSIBLE IMAGES

To improve website accessibility, images should have descriptive alternative text (alt text) and buttons should have descriptive text. This allows people with visual impairments to understand the content and navigate the site effectively.

Example:

Non-descriptive image: ``

Descriptive image with alt text: ``



## 2. POOR OR LOW COLOR CONTRAST

One common accessibility mistake is using low contrast between the text and background colors. This can make it hard for people with poor vision or color blindness to read the text.

If the contrast is too low, the text may blend into the background and become unreadable. This can be a problem because some people need a high contrast to be able to read text. For example, light gray text on a light background is hard to read.

In order to be accessible, web designers must achieve a color contrast of 4.5:1 by having a solid-colored background.



### 3. ACCESSIBILITY OVERLAYS AND WIDGETS

Accessibility widgets and overlays are not recommended on websites by people with disabilities because they are often unreliable and do not provide a comprehensive solution for accessibility issues. While these tools may add some level of accessibility to a website, they may also introduce new barriers or interfere with assistive technologies that users with disabilities rely on.

Additionally, many of these tools do not comply with accessibility standards and do not provide a consistent experience for users. As a result, people with disabilities often prefer websites that are built with accessibility in mind from the ground up, rather than relying on unreliable widgets or overlays.



### 4. LACK OF KEYBOARD ACCESSIBILITY

Keyboard accessibility is essential for people who cannot use a mouse or trackpad. Ensuring that all functionality can be navigated using a keyboard improves the website's accessibility.



### 5. THIRD-PARTY APPS AND PLUG-INS

Most websites use plug-ins and other third-party apps to add features that go beyond what the content management system can do on its own. WordPress, Shopify, Magento, and a variety of other website building platforms all rely on external third parties to develop plug-ins that provide specific features such as reviews, event calendars, email capture, e-commerce, and an endless number of other features.

Unfortunately, a significant number of third-party widgets, plugins, and apps available on website platforms like WordPress and Shopify are currently inaccessible. This poses a challenge for businesses seeking to provide an inclusive user experience. Therefore, it is important for businesses to actively seek accessible alternatives or demand that these tools be made accessible or removed from app stores.



### 6. NEW WINDOWS WITHOUT VERBAL NOTIFICATION

It's important to provide a warning before automatically opening a new window or tab. Failing to do so can be confusing for people with visual or cognitive impairments. If they leave the current window, a warning can help them return to it.

Similarly, restaurants and businesses that use delivery services need to ensure that the external pages they link to are properly defined and labeled to state that a customer is leaving a website and entering, for example, ChowNow.com

When it comes to third-party apps and legal compliance, you would want to manually test whether they are accessible.



## 7. INACCESSIBLE FORMS

Forms that are not designed with accessibility in mind can be difficult for people with disabilities to use. To make forms accessible, clear instructions should be provided, labels should be easy to read, and the form should be operable with a keyboard.



## 8. INACCESSIBLE OR BROKEN LINKS

Using non-descriptive links on a website can make it hard for people with disabilities to understand the content. To improve accessibility, links should have descriptive text that accurately describes the destination of the link. Avoid using vague phrases like "click here," "more," or "go on." The link text should also be presented in a readable format to make it easier for people with disabilities to navigate the website.

Here's an example of how to improve link accessibility on a website:

**Button with descriptive text: <button>Read More</button>**

**It should be more specific in the voice-over like "Read More About Our Services"**

READ MORE

READ MORE ABOUT OUR SERVICES



READ MORE



READ MORE ABOUT  
OUR SERVICES



## 9. POP-UPS ARE POPPING UP IN LAWSUITS

Website pop-ups are a common issue in many ADA lawsuits against websites. To fix this, website developers and designers should prioritize accessibility when designing pop-ups. This includes ensuring that pop-ups have compatible visual elements, labeled buttons, alt text, accessible form fields and can be used with keyboard navigation.

Test pop-ups manually as automated tools may not provide proper results.



## 10. LACK OF ACCESSIBILITY POLICY

Having an Accessibility Statement and Equitable Use Policy on a website is crucial for several reasons. It demonstrates a commitment to inclusivity and ensures that people with disabilities can access and navigate the site with ease.

**Contact us if you need a free accessibility statement template.**

## There are a few other things that make websites hard to use that are often mentioned in ADA website lawsuits.

### MISSING HEADINGS

Headings give structure to the content and make it easier to navigate for people with disabilities. Using descriptive headings in a logical order improves the website's accessibility.

### INACCESSIBLE PDFS

PDFs are often used for documents such as user manuals, guides, and forms.

However, PDFs are not always accessible to people with disabilities.

### INACCESSIBLE OFFERS

Discount codes and offers should not be embedded in images on websites, as this can create accessibility barriers for users who rely on screen reading software. To ensure accessibility, discount codes and relevant offer text should be presented as readable elements on the webpage. This allows screen readers to detect and read the text, ensuring that all users can access the information equally.

### INACCESSIBLE VIDEO & AUDIO

People with hearing problems need transcripts or captions to accompany videos, or any audio content (podcasts, for example). Making transcripts or captions for audio content on a website makes sure that everyone can understand what is being said.

In conclusion, ensuring that a website is accessible to people with disabilities is essential. The common ADA compliance errors described above can be avoided. By making a website accessible, website owners can provide equal access and opportunities to people with disabilities.



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## NEW THREATS TO SMALL BUSINESSES: LAWSUITS OVER CHAT BOXES

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### **New claims allege chat boxes are illegal wiretapping.**

Small businesses already struggling with ADA website lawsuits are facing a new threat from a few plaintiff firms, and the claims are mounting quickly as other plaintiff firms take notice. Lawsuits and private demand letters in California and other states are hitting website owners who use chat box apps on their sites. Plaintiffs claim that recording and/or collection of user data without their consent through chat box apps may violate wiretapping laws.

California's Penal Code Sections 63.1 and 63.7, for example, outline regulations governing the interception of electronic communications, including telephone and internet conversations, prohibiting the recording or intercepting of any communication without the consent of all parties involved. Violations of these laws can lead to both civil and criminal penalties. Other states have similar statutes.

The Federal Electronic Communications Privacy Act (ECPA) is another relevant law regulating the interception of electronic communications. Recent lawsuits have impacted websites that use both automated and live chat box widgets to engage with potential customers, alleging that the business is recording user information without their consent.

This threat can interfere with businesses' rights to communicate effectively with customers, making it crucial for businesses to provide proper disclosure and obtain consent. Seeking the advice of an experienced law firm is recommended to install the correct language in the chat and/or website's terms of service.

It is alarming that businesses face lawsuits and demand letters over the use of chat boxes, which are commonly used to enhance customer engagement on websites, for the mutual benefit of both the business and its customers. The threat of violating wiretapping laws can create additional burdens for small businesses that are already struggling to comply with other accessibility regulations. After learning of this new threat, we have seen some businesses eliminate their chat box, which is a step backward for the public as well as for the business.

It is important to take action by contacting your congressperson and state assembly representative to stop these abusive chat box lawsuits or threats via unregistered demand letters. We must work together to protect the rights of businesses and ensure that they can continue to communicate effectively with their customers without fear of legal repercussions.

For more information on this issue, visit: <https://bit.ly/eb2022-13>



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# NEW THREATS TO SMALL BUSINESSES: LAWSUITS OVER VIDEOS

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## Websites with Videos Could be Breaking an '80s Privacy Law

Small businesses that embed videos from sites like YouTube or Vimeo on their websites and use tracking pixels from Google Analytics, Meta (Facebook), and other social media or third-party software providers are being threatened by an outdated privacy law.

The Video Privacy Protection Act (VPPA) was passed by Congress in 1988 to regulate video rentals and the disclosure of information about customers who rent or view certain types of videos.

Today, the VPPA is being invoked in consumer privacy lawsuits that claim websites that play videos and collect personally identifiable information (PII) data are violating the law, which is on its way to becoming a major new threat to small businesses that have any video content on their website and use marketing analytics or marketing tools. Our research alerted us to over 70 lawsuits asserting claims under the VPPA have been filed in the past year.

The VPPA prohibits "video tape service providers" from disclosing personally identifiable information about what people watch without their informed, written consent. The law seemingly applies to any medium through which video content is delivered, including websites, but this is a new frontier of consumer class actions and it is being tested through the courts with some courts denying motions to dismiss, while others allowing them to proceed to discovery.

Violations of the law could result in penalties of \$2,500 awarded to every plaintiff in a class-action suit, not counting potential punitive damages and attorney's fees. This is why you may have seen Facebook ads by certain law firms trying to recruit plaintiffs. Talk about irony.

Defense law firms interviewed tell us that some plaintiff firms who focus on ADA lawsuits are now exploiting the vague nature of the VPPA law to send private demand letters or file lawsuits against businesses. Of course, an early private settlement that would be under the radar is understood.

It has been argued that the information collected by the tracking pixels does not rise to the level of personally identifiable information (PII).

The application of the VPPA to digital media in recent lawsuits is unconstitutional and represents an outdated understanding of consumer privacy. As many technologists and lawyers have pointed out, consumers have ample options to limit cookie tracking and protect their own privacy through browser settings and private browsing options.

Furthermore, consumers who use digital platforms such as browsers, search engines, and social media websites would have agreed to terms and conditions regarding data collection and transmission from their own devices. As a result, businesses should not be held solely responsible for protecting consumer privacy under an outdated law that does not reflect the digital age. The application of the VPPA in these cases represents an unconstitutional burden on businesses and a failure to recognize the responsibility of consumers to protect their own privacy.

One way to protect your business is by setting up cookie consent preferences to receive consent for videos, as well as adding appropriate warnings and consents to the website's Terms of Service.

# ECOMBACK HELPS BUSINESSES ACHIEVE WEBSITE ACCESSIBILITY

We use standards such as Web Content Accessibility Guidelines (WCAG) as a starting point in our work.

EcomBack offers ADA/WCAG compliance services for a variety of website platforms, including Shopify, WordPress, Magento, Wix, Square, and more.



**Audited & Certified**

for accessibility & usability by disabled testers.

- ✓ **WE AUDIT**
- ✓ **WE FIX**
- ✓ **WE TRAIN**
- ✓ **WE MONITOR**
- ✓ **WE CERTIFY**



EcomBack provides website assessments, accessibility remediation, ongoing support, and tailored solutions. We pride ourselves on our rapid turnaround times, competitive pricing, and reputation for exceptional services.

To ensure that your website is accessible to everyone, we encourage you to take advantage of our complimentary website audit.

**TO BOOK A MEETING VISIT**

[www.calendly.com/ecomback](https://www.calendly.com/ecomback)

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## METHODOLOGY

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This report presents the findings on cases filed under the Americans with Disabilities Act (ADA) in US Federal and State courts for the period of January 01, 2022, to December 31, 2022, using CourtLink and PACER as the primary data sources. Keyword research was conducted by EcomBack's research team, focusing on cases related to digital accessibility.

The search criteria included specific keywords related to ADA-related cases, with a focus on those cases where digital properties were the subject of the claim. Our research team meticulously reviewed all relevant cases found through this search to ensure the accuracy and relevance of the data presented in this report.

EcomBack is a company that specializes in web development and is committed to making websites accessible. Our team conducts thorough research in all aspects of digital accessibility that affect disabled individuals and businesses. It is important to note that EcomBack is not a law firm and the information presented in this report is not intended to create, and receipt of it does not constitute, an attorney-client relationship. If you need legal advice or representation, please consult with an attorney licensed to practice law in your jurisdiction.

We take pride in presenting accurate and up-to-date information in this report, but we cannot guarantee its completeness or accuracy. Court records are subject to frequent updates, revisions, and amendments, and there may be cases that were not included in our search due to various reasons, including but not limited to clerical errors, data entry mistakes, or technical issues.

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