PUBLICATION

Fourth Circuit Holds Website "Tester" Has Standing to Sue Under the ADA

Authors: Gillian M. Felix, Donna M. Glover
February 28, 2023

***Businesses take note*: In *Laufer v. Naranda Hotels, LLC*, No. 20-2384, decided February 15, 2023, the Court of Appeals for the Fourth Circuit decided that a self-professed 'tester' who has filed hundreds of similar lawsuits throughout the country under Title III of the Americans with Disabilities Act (the ADA) has standing to sue businesses under the public accommodation protections of Title III of the ADA.**

In brief, Title III of the ADA prohibits places of public accommodation from discriminating against individuals on the basis of a disability. Under the ADA, "places of public accommodation" include all businesses that serve the public, including but not limited to restaurants, places of lodging, theaters, shopping centers, and museums. Title III sets forth numerous requirements with which these businesses must comply; for example, ensuring effective communication with disabled individuals, making reasonable modifications to policies and practices to accommodate disabled individuals, and ensuring each public accommodation is accessible to disabled individuals.

In addition to ensuring that the physical property of a business is accessible, places of lodging, such as hotels, motels, and inns, must identify and describe the accessible features of the property through their room reservation systems. The description of the accessible features must be made with enough detail to enable an individual with a disability to decide whether the facility will meet their specific needs. In addition, places of lodging must also permit people with disabilities to make reservations for accessible guest rooms during the same hours and in the same ways that other people are able to do, such as via telephone, the business's website, or a third-party reservation vendor. Failure to comply with these requirements could subject places of lodging to liability and, given the recent Fourth Circuit Court of Appeals decision in *Laufer v. Naranda Hotels, LLC,* these businesses should immediately consider compliance with Title III as a top priority.

In *Laufer v. Naranda Hotels, LLC,* the Fourth Circuit Court of Appeals held that a tester of a hotel's Title III compliance has standing to sue the hotel for failing to abide by the ADA regulations, even when the tester had no intent to *ever* visit the hotel. The Plaintiff, Deborah Laufer, a Florida resident with a qualifying disability under the ADA, alleges she visited third-party vendor websites (such as orbit.com, expedia.com, and priceline.com) to monitor the ADA compliance of Naranda's Sleep Inn & Suites Downtown Inner Harbor in Baltimore, Maryland, owned by Defendant Naranda Hotels, LLC. Ms. Laufer claimed that upon review of the websites, none provided sufficient accessibility information for Naranda's property or allowed for reservations of accessible guest rooms at the hotel, in violation of Title III.

By failing to provide the information on its reservation sites, Ms. Laufer claims Naranda caused her to suffer an "informational injury" because she, as an individual with a disability, was entitled to information about Naranda's accessibility as specifically required under Title III. In her civil complaint, Ms. Laufer describes herself as a tester and "an advocate of the rights of similarly situated disabled persons." As a tester, she monitors businesses for ADA compliance for the purpose of asserting her civil rights. In doing so, Ms. Laufer has filed hundreds of lawsuits throughout the country against businesses for violations of the ADA.

After a motion to dismiss filed by Naranda, the United States District Court for the District of Maryland dismissed Ms. Laufer's complaint for lack of standing under Article III of the United States Constitution,

explaining that she failed to demonstrate an "injury in fact" to establish standing because she had no concrete plans to travel from Florida to Baltimore.

On February 15, 2023, however, the Fourth Circuit Court of Appeals reversed the lower court's dismissal, rejecting the argument that Ms. Laufer needed to demonstrate a credible plan to travel to the Baltimore area to establish standing to sue. Instead, the Fourth Circuit held that allegations of an "informational injury" alone will suffice to establish Article III standing. The Court compared Plaintiff's allegations to the Plaintiff in *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982), where the Supreme Court of the United States concluded that Sylvia Coleman, an African American tester posing as a would-be apartment renter, had standing to sue the Havens Realty Corporation for falsely telling her that it had no apartments for rent, in violation of the Fair Housing Act of 1968.

The *Naranda* decision creates an even split among the federal appellate courts on the issue of tester standing. For example, despite this ruling by the Fourth Circuit, other circuits have previously ruled against Ms. Laufer and other similarly situated Plaintiffs on the issue of standing. In *Harty v. W. Point Realty, Inc*., 28 F.4th 435 (2d Cir. 2022), the Second Circuit Court of Appeals determined that Plaintiff lacked Article III standing to sue a hotel operator for noncompliance with Title III, specifically requiring the hotel to identify and describe the accessible features of the hotel on its website, because the Plaintiff failed to show an interest to actually use the information missing on the website (*i.e*., to make meaningful choices for travel), and thus failed to establish an informational injury.

Similarly, in deciding subsequent cases filed by Ms. Laufer in the Court of Appeals for the Fifth and Tenth Circuits, both courts held that Ms. Laufer could not demonstrate standing to sue the hotels for similar ADA violations because she had no intent to use the information that she claimed was omitted from the websites.

The Fourth Circuit rejected the reasoning applied by the Second, Fifth, and Tenth Circuits and instead, agreed with the First and Eleventh Circuits, which both ruled for Ms. Laufer in similar cases and found that her admission that she had no intention or need to book a room at the defendant hotels was not a bar to standing. Given this recent decision by the Fourth Circuit, the federal appellate courts are now evenly split on this issue.

While we await possible intervention and guidance from the Supreme Court on this issue, places of lodging should act now to ensure their websites, including third-party vendor sites, are ADA-compliant. The *Laufer v. Naranda Hotels, LLC* decision has the immediate effect to affect all facially non-compliant places of lodging within the Fourth Circuit (Maryland, North Carolina, South Carolina, Virginia, and West Virginia), regardless of whether the potential plaintiff has an intent to visit the business.

As such, places of lodging must ensure each website used for reservation services describes the accessible features of the hotel and guest rooms with specific clarity to allow an individual with a disability to assess whether the accommodations meet their specific needs. The websites must also allow for reservations of these accessible guest rooms in a similar manner as non-accessible rooms. Businesses affected by the *Naranda* decision should immediately seek guidance from their counsel and assess their compliance with Title III of the ADA.