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Is your hotel ready for an ADA Class Action because visually impaired do not have accessibility?

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Target Corporation was sued under the ADA for inaccessibility of its website

We gave you an early heads up about how lawsuits brought under the Americans with Disabilities Act (ADA) can target your website or online reservation system . . . and what you should do about it now.

Now there is much more.

For those of us who have been studying the development of the newly proposed ADA guidelines, we fully expect more stringent access regulations for those doing business with the public like hotels and restaurants. In National Federation of the Blind vs. Target Corporation, one of the first cases of its kind, plaintiffs alleged that Target's website was an extension of its retail stores, and that its online offerings were not accessible to and useable by visually impaired customers. The same arguments apply equally well to hospitality properties.

**ADA website claim certified as a class action**

After protracted and expensive litigation and rulings on class certification, Target and the plaintiffs deemed settlement rather than continued, uncertain litigation, to be in everyone's best interest. Although the trial court's rulings and the settlement are not binding legal precedent for future litigations, for those of us working in the ADA area, we believe this case has blazed some trails that will be easier to

follow for other courts, and likely raised the mark to follow.

Importantly, the trial court determined that a website is an extension of the retail store operations. Because retail outlets, like hotels, are places of "public accommodation," the court found that the ADA's protections require the website to be similarly accessible to the public, including the visually impaired. The courts have not seen it that way previously.

Furthermore, the court certified the case for a national class action by visually impaired visitors to the company's web site, greatly expanding the potential magnitude of damages.

Target agreed to perform additional work on its website to accommodate visually impaired and blind customers, making its website one of the most accessible of any retailer. Target also agreed to create a \$6 million fund against which plaintiffs can make claims.

**If you use the Internet, be sure you comply with ADA interpretations**

Why is the Target case and settlement important to the hospitality industry? Simply put, a court that would accept the principles of this case, would likely determine that such principles apply equally to hotels and restaurants. Hotels are perhaps the classic example of places of "public accommodation." And once you reach that conclusion, it is hard to distinguish the rest of the Target case implications. How are hotel web sites any less of an extension of hotel operations than Target's website and retail outlets?

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But the certification of a national class of visually impaired visitors to a company's website is a wakeup call to all businesses which provide online services to their customers.

Specifically, for those in the hospitality industry who rely on their online reservation services, and for third-party reservation providers, the Target case has widespread implications for liability. It suggests that such websites must be accessible to all visually (and hearing?) impaired visitors.

### More ADA changes are coming with important impact on the hotel industry

The American Hotel & Lodging Association (AH&LA) has been working with the Department of Justice (DOJ) concerning the newly proposed revisions to the Americans with Disabilities Act/Accessibility Guidelines ("ADAAG"), the first revisions since 1994, dealing with online

reservation requirements. The DOJ's June 17, 2008 "Notice of Proposed Rulemaking" would fundamentally rewrite the accessibility guidelines applicable to hotel accommodations and construction. The new guidelines, if adopted (as is likely the case), will affect reservations policies and procedures throughout the industry.

The AH&LA has advised the Justice Department that the proposed renovated guidelines will be both technologically difficult to implement, and that the attendant costs will be substantial, with uncertain results in ensuring disabled guests will be able to reserve accessible guestrooms. The AH&LA has asked Main Justice to clarify that the new ADAAG guidelines will not apply to third-party reservation providers. However, in light of the Target case and the fact that the proposed ADAAG guidelines have been under extensive consideration for the past five years, it is likely that strict accessibility requirements will be placed on the industry in general and online reservation systems in particular. Beware



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