

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF
FLORIDA

CASE NO.:

ACCESS NOW, INC., a Florida non-profit
Corporation, and ROBERT GUMSON

Plaintiffs,

v.

AMERICAN AIRLINES, INC., a Texas
Corporation,

Defendant.

COMPLAINT

Plaintiffs, ACCESS NOW, INC. ("ACCESS NOW"), and ROBERT GUMSON ("GUMSON"), by their undersigned counsel, sue the Defendant, AMERICAN AIRLINES, INC., A Texas corporation, ("AMERICAN") and states:

SUMMARY OF THE CASE

1. ACCESS NOW, a non-profit, access advocacy organization for disabled individuals, and GUMSON, who is a blind individual, bring this action for injunctive and declaratory relief to require AMERICAN to bring the internet website www.AA.com (the "AA.COM website") into compliance with the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§12101, et seq. GUMSON, as well as certain other members of ACCESS NOW are blind and therefore, can only navigate the internet by employing a screen access software program ("screen reader") that converts website content into synthesized speech. The AA.COM website is incompatible with screen readers, denying plaintiffs of their access to services offered through AA.COM.¹ Despite AMERICAN'S customer service plan which includes a statement that "American Airlines and American Eagle endeavor to provide passengers with disabilities dignified professional service at all times ... [and] has a team of employees who regularly consult with disability advisory groups on how AMERICAN can improve airline accessibility and the quality of their service," AMERICAN has failed to remove communications barriers inherent in the AA.COM website, thus denying the blind, independent access to purchase products in violation of Title III of the ADA, 42 U.S.C. §§12181, et seq.

JURISDICTION AND PARTIES

2. This is an action for declaratory and injunctive relief pursuant to Title III of the Americans With Disabilities Act, 42 U.S.C. §§12181, et seq. (hereinafter the ADA”) and 28 U.S.C. §§2201-02. This Court has jurisdiction pursuant to 28 U.S.C. §1331. Venue is proper in this district (Miami division), pursuant to 28 U.S.C. §§1391(b) and (c) in that a substantial part of the events giving rise to the action occurred and continue to occur in this district and/or the Defendant conducts substantial and regular business within this district. Defendant operates for profit, 24 hours a day, 7 days a week, an inter-active website(s) to solicit and sell their services to the public living within the district.

3. Plaintiff, ACCESS NOW, is a Florida not-for-profit corporation, with over 600 nationwide members, many of whom are disabled. One of the purposes of Access Now is to assure that public spaces, public accommodations and commercial premises/services are accessible to and useable by its members; to assure its members are not excluded from the enjoyment and use of the benefits and services, programs, and activities of public accommodations; and to assure that its members are not discriminated against because of their disabilities. ACCESS NOW and its blind members, including GUMSON, have suffered as a result of AMERICAN’S actions and/or inactions as stated herein.

4. Plaintiff, GUMSON is an individual, sui juris, with a disability defined by the ADA, 42 U.S.C. §12102(2), GUMSON has a computer on which he installed a screen reader and on which he uses the internet and has e-mail capabilities. He has attempted, prior to the filing of this lawsuit, to use the AA.COM website to purchase airline tickets and other products/services, however, he was/is unable to gain access to the goods and services offered by AA.COM as they are inaccessible to a blind person using a screen reader. AA.COM offers the sighted customer the promise of independence of on-line airline/hotel/rental car booking in the comfort and safety of their home. Yet, even if a blind person like GUMSON has a screen reader with a voice synthesizer on their computer, they are prevented from using the AA.COM website because of its failure to allow access. Moreover, although AMERICAN represents via its website, that it maintains a staff of special assistant coordinators who work with customers who have identified themselves as having disabilities, AMERICAN’S website nevertheless denies the blind independent access since they cannot be informed of the existence of these coordinators via the website.

5. To help its sighted customers tailor their searches, AA.COM provides tabs marked “Reservations, Travel Information, Net Saaver and Special Offers, AAdvantage Business Programs and Customer Service” thereby offering its sighted customers a customized and money saving booking experience.

6. Moreover, a blind person like GUMSON is precluded from participating in the “AA.COM Bonus Offer” enabling Aadvantage members who booked their round trip ticket via AA.COM to earn up to 1,000 extra bonus miles.

7. In fact, AMERICAN AIRLINES, via its website, states that it is among the leading travel sites on the Internet providing news, information and specials that

are personalized to passengers, preferred airports, destinations and AAdvantage program travel partners. Moreover, AMERICAN touts its website (AA.com) as having recently undergone a complete redesign offering customers fast, convenient travel reservations, booking capability and on-line management of their AAdvantage travel awards program accounts. Moreover, AMERICAN states that its AA.COM's flight status notification feature automatically sends current flight information to a person's cell phone, pager voicemail, e-mail account or wireless PDS. Unfortunately, this innovative technology present in this "award winning" website excludes plaintiffs as AA.COM fails to accommodate their disability despite the relative ease to accommodate.²

8. Specifically, AMERICAN states that in 1998 it unveiled a completely redesigned site that drew on existing customer information to instantaneously provide content tailored to the individual user's interest. In 2002, AMERICAN undertook another extensive site re-architecture. AMERICAN boasts the new and improved AA.COM features as a "sleek look" with "improved navigation, greater personalization, a comprehensive net saaver special offer section and helpful customer services resources." Unfortunately, in each of these redesigns, AMERICAN failed to take into account those individuals who are blind and their ability to lawfully access AA.COM and utilize the website to purchase goods and services.

FACTUAL BACKGROUND

9. In 1990, Congress enacted the ADA (42 U.S.C. §12101, et seq.) wherein commercial enterprises were provided one and a half years from the enactment of the statute to implement its requirements. The effective date of Title III of the ADA was January 26, 1993. 42 U.S.C. §12181; 28 C.F.R. §36.508(a).

10. The stated purpose of the ADA can best be surmised by Justice Kennedy's concurring opinion in the recent United States Supreme Court's opinion, *Board of Trustees of Univ. of Alabama v. Patricia Garrett*, 531 U.S. 356, 121 S.Ct. 955 (2001)(Kennedy, J., O'Connor, J. concurring).

Prejudice, we are beginning to understand, rises not from malice or hostile animus alone. It may result as well from insensitivity caused by simple want of careful, rational reflection or from some instinctive mechanism to guard against people who appear to be different in some respects from ourselves [k]nowledge of our own human instincts teaches that persons who find it difficult to perform routine functions by reason of some mental or physical impairment might at first seem unsettling to us, unless we are guided by the better angels of our nature. There can be little doubt, then, that persons with mental or physical impairments are confronted with prejudice which can stem from indifference or insecurity as well as from malicious ill will.

One of the undoubted achievements of statutes designed to assist those with impairments is that citizens have an incentive, flowing from a legal duty, to develop a better understanding, a more decent perspective, for accepting persons with impairments or disabilities into the larger society. The law

works this way because the law can be a teacher [T]he Americans with Disabilities Act of 1990 will be a milestone on the path to a more decent, tolerant, progressive society.

Id.

11. The AA.COM website is a public accommodation as defined by Title III of the ADA, 42 U.S.C. §12181(7), in that it is a place of exhibition, display and a sales establishment. AMERICAN has discriminated and continues to discriminate against Plaintiffs, and others who are similarly situated, by denying access to, and full and equal enjoyment of the goods, services, facilities, privileges, advantages and/or accommodations of their website (AA.COM) in derogation of the ADA.

12. Specifically, blind members of ACCESS NOW, including GUMSON do not have use of a monitor, nor a computer mouse due to their disability. Instead of reading web pages or viewing the images, they listen to the web through a software program known as a screen reader. A screen reader converts text into speech using an integrated voice synthesizer and the computer's sound card to output the content of a website to the computer's speakers.

13. Blind members of ACCESS NOW and GUMSON, in employing their screen readers, have been denied access to the AA.COM website based solely on their disability, prior to the filing of this lawsuit. Specifically, the AA.COM website fails to provide "alternative text" which would provide a "screen reader" program the ability to communicate via synthesized speech what is visually displayed on the website.

14. Additionally, the AA.COM website also fails to provide online forms which can be readily filled out by ACCESS NOW and GUMSON and fails to provide a "skip navigation link" which facilitates access for these blind consumers by permitting them to bypass the navigation bars on a website and proceed to the main content.

15. AA.COM accessibility barriers include, without limitation, the following:

- (a) Approximately 64 instances of failure to provide alternative text for all images on the home page alone ("unlabeled graphics");
- (b) Data tables are not adequately labeled with headers for the table rows and columns;
- (c) Online forms which cannot be completed by a blind consumer; and
- (d) Absence of "skip navigation link".

16. Accordingly, the AMERICAN.COM website does not allow screen readers to effectively monitor the computer screen and to fully convert the information into synthesized speech. AA.COM'S use of (a) unlabeled graphics, (b) inadequately

labeled data tables, (c) online forms not accessible to the blind and its lack of a (d) "skip navigation link" deny plaintiffs access to on-line bookings and other items offered through AA.COM. In fact, what often appears to be text—such as the tabs for reservations and schedules—are in fact unlabeled graphics. For example:

(a). Navigating: Although AMERICAN.COM'S home screen contains some text (i.e., "Reservations"), in actuality, the "text" is a graphic that while capable of being read by a screen reader does not allow proper navigation. Due to the lack of any alternative text, plaintiffs were/are forced to listen to a never ending recitation of text that cannot even be reduced to recognizable terms when they should hear a simple term such as "Reservations."

17. Specifically, while a sighted consumer sees a link labeled as "Reservation", plaintiffs hear "reservations/reservationshome.jhtml." Moreover, while a sighted customer sees "Travel Information", plaintiffs hear "travelinformation/travelinformationhome.jhtml." Also, a sighted customer sees "Net Saaver", while plaintiffs hear "netsaaver/netsaaverhome.jhtml." Lastly, while a sighted user can focus immediately to the main content of a page, the plaintiffs must listen to hundreds of items before arriving at the main content. Compounding the many navigational challenges facing plaintiffs when they visit AA.COM is the lack of a "skip navigation link." Once plaintiffs select a link to follow, the navigation bars from the home page are repeated. Accordingly, plaintiffs are forced to listen to the recitation of non-alternative text before hearing the main content of that particular webpage, i.e. the home page and/or ordering page.

(a) Reservations and Airport/City Codes. Plaintiffs found purchasing a ticket on the website to be extremely difficult and thereby they have been denied equal access. For example, a sighted customer goes to the visual prompt indicating "Reservations," however, airport and city codes are presented in a table. A blind person utilizing a screen reader program would be unable to identify correct city or airport codes using the table as Row and Column Headers are not labeled in such way that screen readers are able to identify them. Instead of a blind person being able to identify correct city or airport codes, they will simply hear "egroad12column1radiobuttonnotchecked" or the contents of that current cell. Another example would be the Net Saaver and Special Alert Chart, which are where a sighted person is able to determine special fares shown in the table. Nevertheless, the Row and Column Headers are not labeled and as a result, it is impossible for someone who is blind using a screen reader program to be certain about the information contained therein. For example, a blind person using a screen reader program would press Alt Ctrl number pad 5 for querying the current location in the table. Nevertheless, the information yielded by that command would be "Row 1, Column 2, Link Dollar 169."

18. Furthermore, there are interactions and links on the site that are not available to users who must use the keyboard instead of a mouse due to their disability.

19. Lastly, simply making a reservation, a person who is blind utilizing the screen reader and who attempts to choose a particular city will simply hear the screen reader state the following: "airport/city code/airport name/city name/state/province/country/yoj radio button not checked." Therefore, it is impossible to make the appropriate selections.

20. Without injunctive relief, GUMSON and other blind members of ACCESS NOW will continue to be discriminated against and unable to independently access and use Defendant's, AA.COM, website in violation of their rights under the ADA. Providing accessibility would neither fundamentally alter the nature of Defendant's website nor unduly burden Defendant. It is readily achievable.

21. Plaintiffs have no adequate remedy at law.

CLAIMS FOR RELIEF

COUNT I-VIOLATION OF THE ADA'S

COMMUNICATION BARRIERS REMOVAL MANDATE

22. Plaintiffs reallege paragraphs 1 through 21 as if fully set forth herein.

23. Defendant, AMERICAN'S website denies access to Plaintiffs through the use of a screen reader and therefore, violates the communication barriers removal provision of the ADA, 42 U.S.C. §12182(b)(2)(A)(iv), because it constitutes a failure to remove existing communication barriers from the website.

24. Redesigning the AA.COM website to permit the blind to use it through a screen reader is readily achievable and the requested modification is reasonable.

25. These remedial measures (AMERICAN redesigning the portions of the website to enable access through a screen reader) are effective, practical and financially manageable.

COUNT II-VIOLATION OF THE ADA'S

AUXILIARY AIDS SERVICES MANDATE

26. Plaintiffs reallege paragraphs 1 through 21, as it fully set forth herein.

27. Defendant's website violates the auxiliary aids and services provision of the ADA, 42 U.S.C. §12182(b)(2)(A)(iii), because it constitutes a failure to take steps to ensure that individuals who are blind are not denied access to the website, and does not provide an effective method of making this "visually delivered material available to individuals with visual impairments." 42 U.S.C. §12102(1)(b).

28. Providing auxiliary aids and services that would make Defendant's AA.COM website accessible to and independently usable by persons who are blind

would neither fundamentally alter the nature of Defendant's website, nor unduly burden Defendant.

COUNT III-VIOLATION OF ADA'S

REASONABLE MODIFICATION MANDATE

29. Plaintiffs reallege paragraphs 1 through 21, as if fully set forth herein.

30. Defendant's website denying access to the Plaintiffs to use it through a screen reader violates the reasonable modifications provisions of the ADA, 42 U.S.C. §12182(b)(2)(A)(ii), in that it constitutes a failure to make reasonable modifications to policies, practices and procedures necessary to afford access to the website to persons who are blind. Modifying its policies, practices and procedures to afford access to AA.COM by redesigning the website, would not fundamentally alter the nature of AA.COM'S website.

COUNT IV-VIOLATION OF THE ADA'S

FULL AND EQUAL EMPLOYMENT MANDATE

31. Plaintiffs reallege paragraphs 1 through 21, as if fully set forth herein.

32. Defendant's internet website violates the full and equal enjoyment and participation provisions of the ADA pertaining to access to goods and services and advantages offered by AA.COM (42 U.S.C. §§12182(a), 12182(b)(1)(A)(i), and 12182(b)(1)(A)(ii)), in that it constitutes a failure to make the website fully accessible and independently usable by individuals who are blind.

RELIEF

WHEREFORE, Plaintiffs, ACCESS NOW, INC. and ROBERT GUMSON, request this court grant the following relief:

(a) Declare that Defendant's, AMERICAN AIRLINES, INC. actions and inactions with respect to its AA.COM internet website violate Title III of the ADA, 42 U.S.C. §12182 as alleged in Counts 1-4;

(b) Enjoin Defendant, AMERICAN AIRLINES, INC. from continuing to violate the ADA and order Defendant to make its AA.COM website accessible and to take such other and further steps as are necessary to allow independent access through screen access programs by persons who are blind; and

(c) Grant Plaintiffs, ACCESS NOW, INC. and ROBERT GUMSON, such other relief as the court deems just, equitable, and appropriate, including without limitation, an award of reasonable attorneys' fees, litigation expenses and costs under 42 U.S.C. §12205.

TRIAL BY JURY IS DEMANDED ON ALL CLAIMS SO TRIABLE.

DATED this 12 day of July, 2002.

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Footnotes:

¹ AMERICAN, through its website, represents that it operates under its parent, AMR Corp. and is a publicly traded company on the New York Stock Exchange under symbol "AMR" with a total operating revenue through March 31, 2002 of 4.1 billion dollars. AMERICAN employs more than 122,000 employees and flies to 161 destinations throughout the world.

² AMERICAN, through its website, indicates that it has received many accolades including a 2002 Bronze Invoa Award in the corporate website category, a 2001 Smart Business 50 Recognition and a 2001 Standards of Excellence Web Award.