

## Target Corporation Suit Alleges Website Not Accessible by Blind

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A picture may be worth a thousand words, but many websites fail to include even rudimentary textual descriptions of images included on a page. For a website's content to be accessible to a blind person through screen-reading software, each image must be accompanied by "alt-text" (alternate text). If you pass a mouse cursor over a photo or other graphic image on a website, the alt-text will display.

As one author noted, "All images are replacements for text. Or rather, both text and images are replacement for 'meaning.' That is to say, one can always be used instead of the other – both can be used to convey meaning – but sometimes one is much better at conveying a particular meaning than the other."<sup>1</sup> Properly written alt-text is much more than a caption or title of the image; rather, it is a "textual alternative for the meaning of the image [which] should convey the same thing as the image."<sup>2</sup> Some websites do an excellent job of providing alt-text. For example, Yahoo news typically contains extensive and useful textual descriptions of photos that are not even available in the accompanying story.

Websites can present numerous obstacles to blind visitors beyond unlabeled graphics. A website may contain "inadequately labeled data tables, online forms inaccessible to the blind, and lack of a 'skip navigation link' [that] make it all but impossible for . . . visually impaired individuals to access the features and services of [the website]."<sup>3</sup>

On February 7, 2006, the National Federation of the Blind filed a class action suit against Target Corporation in a California state court.<sup>4</sup> The complaint alleges that Target denies blind customers equal access to the goods and services Target provides to those without disabilities. The complaint says that the website ([www.target.com](http://www.target.com)) "contains thousands of access barriers that make it difficult if not impossible for blind customers to use the website"<sup>5</sup> and that Target "thus excludes the blind from full and equal participation in the growing internet economy that is increasingly a fundamental part of daily life."<sup>6</sup> The suit argues that Target's website does not allow blind customers to navigate freely, does not include alt-text on all graphics, contains inaccessible image maps, and requires users to

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<sup>1</sup> Ian Hickson, *Mini Faq about the Alternate Text of Images*, available at <http://hixie.ch/advocacy/alttext> (last visited Feb. 15, 2006).

<sup>2</sup> *Id.*

<sup>3</sup> *Access Now, Inc. v. Southwest Airlines Co.*, 385 F.3d 1324, 1326 (11th Cir. 2004).

<sup>4</sup> *National Federation of the Blind v. Target Corporation*, No. RC06254127 (Cal. Superior Ct. Alameda County, filed Feb. 7, 2006). A copy of the complaint is available at [http://www.dralegal.org/downloads/cases/target/nfb\\_v\\_target\\_complaint.pdf](http://www.dralegal.org/downloads/cases/target/nfb_v_target_complaint.pdf) (last visited Feb. 15, 2006).

<sup>5</sup> *Id.* at 1.

<sup>6</sup> *Id.*

complete transactions by using a mouse without suitable keyboard alternatives.<sup>7</sup> Therefore, blind customers are not able to make purchases independently on the website.<sup>8</sup>

The plaintiffs allege that Target's conduct violates California's Unruh Civil Rights Act and Disabled Persons Act as well as the federal Americans with Disabilities Act ("ADA").<sup>9</sup> The suit seeks declaratory and injunctive relief together with unspecified money damages and attorneys' fees.<sup>10</sup>

The Unruh Civil Rights Act<sup>11</sup> provides that "[a]ll persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever."<sup>12</sup> The plaintiffs allege that [www.target.com](http://www.target.com) is a "business establishment" within the meaning of the statute and that blind patrons of [www.target.com](http://www.target.com) are "denied full and equal access to Target.com"<sup>13</sup> or have been provided inferior services compared to non-disabled patrons. The plaintiffs indirectly allege that Target's conduct violates the ADA, arguing that such conduct "constitutes a violation of various provisions of the [ADA]"<sup>14</sup> because the California statute provides that "[a] violation of the right of any individual under the [ADA] shall also constitute a violation of [the California statute]."<sup>15</sup>

The California Disabled Persons Act<sup>16</sup> provides that "[i]ndividuals with disabilities or medical conditions have the same right as the general public to the full and free use of the streets, highways, sidewalks, walkways, public buildings, medical facilities, including hospitals, clinics, and physicians' offices, public facilities, and other public places."<sup>17</sup> The plaintiffs argue that Target stores are "public places" within the meaning of the statute and services provided through [www.target.com](http://www.target.com) are "integrated with these brick-and-mortar stores."<sup>18</sup> The plaintiffs therefore allege that, because services provided through [www.target.com](http://www.target.com) are inaccessible to blind patrons, Target is in violation of the Disabled Persons Act.<sup>19</sup>

The plaintiffs' decision to sue Target primarily for violation of the two California statutes rather than under the ADA is clearly a strategic decision based partly on the fact that the law is unclear as to whether the ADA applies to websites. In *Access Now, Inc. v.*

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<sup>7</sup> *Id.* at 5.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 5-7.

<sup>10</sup> *Id.* at 8.

<sup>11</sup> CAL. CIV. CODE §§ 51 et seq. (2006).

<sup>12</sup> *Id.* at § 51(b).

<sup>13</sup> Complaint, *supra* note 3 at 6.

<sup>14</sup> *Id.*

<sup>15</sup> CAL. CIV. CODE § 51(f) (2006).

<sup>16</sup> *Id.* at §§ 54 et seq.

<sup>17</sup> *Id.* at § 54(a).

<sup>18</sup> Complaint, *supra* note 3 at 7.

<sup>19</sup> *Id.*

*Southwest Airlines*<sup>20</sup> the plaintiffs alleged that Southwest violated the ADA because the services offered on the website were inaccessible to blind patrons.<sup>21</sup> The ADA prohibits discrimination in places of public accommodation.<sup>22</sup> The plaintiffs argued that [www.southwest.com](http://www.southwest.com) is a “place of public accommodation”<sup>23</sup> under the ADA. The court dismissed the case, holding that the ADA did not apply to “virtual” spaces and that the plaintiffs did not establish a nexus between [www.southwest.com](http://www.southwest.com) and a physical place of public accommodation such as an airline ticket counter.<sup>24</sup> On appeal, the Court of Appeals dismissed the case on procedural grounds, saying, “Unfortunately, we are unable to reach the merits of this case, however, because none of the issues on appeal are properly before us. Accordingly, we are constrained to dismiss the appeal.”<sup>25</sup> Rather than appealing from the district court’s holding that [www.southwest.com](http://www.southwest.com) is not a place of public accommodation, the plaintiffs had argued on appeal “that Southwest Airlines as a whole is a place of public accommodation because it operates a ‘travel service,’ and that it has violated Title III precisely because of the web site’s connection with Southwest’s ‘travel service.’”<sup>26</sup> Because that issue had not been argued or briefed in the trial court, the appellate court dismissed the appeal.<sup>27</sup>

In addition to avoiding unnecessary legal exposure, it would seem that commercial websites such as Target and Southwest would have a strong economic incentive for making their websites accessible to visually impaired customers. Resources are available to make websites accessible. Pursuant to 1998 amendments to Section 508 of the Rehabilitation Act<sup>28</sup> the federal government requires governmental websites to be accessible to visually impaired persons unless such requirement would impose an “undue burden” on the federal agency.<sup>29</sup> The law requires that individuals with disabilities have access to and use of information that is comparable to the access and use of individuals without disabilities.<sup>30</sup> A governmental website (<http://www.buyaccessible.gov/>) provides federal employees and members of the public access to “resources for understanding and implementing the requirements of Section 508.”<sup>31</sup>

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<sup>20</sup> *Access Now, Inc. v. Southwest Airlines Co.*, 227 F. Supp. 2d 1312 (D. Fla. 2002).

<sup>21</sup> *Id.* at 1316.

<sup>22</sup> 42 U.S.C. § 12182(a) (2006).

<sup>23</sup> *Id.* at § 12181(7).

<sup>24</sup> *Access Now*, 227 F. Supp. 2d at 1317-18.

<sup>25</sup> *Access Now, Inc. v. Southwest Airlines Co.*, 385 F.3d 1324, 1325 (11th Cir. 2004).

<sup>26</sup> *Id.* at 1328.

<sup>27</sup> *Id.* at 1334.

<sup>28</sup> 29 U.S.C. § 794d (2006).

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> Buy Accessible Govt., available at <http://www.buyaccessible.gov/> (last visited Feb. 17, 2006).