

# BUSINESSES 'SITTING DUCKS' FOR LAWSUITS BECAUSE WEBSITES AREN'T ADA COMPLIANT

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TAMPA (WLFA) – The disabled plaintiffs call themselves activists working to improve society for the disabled, one lawsuit at a time.

Critics call it “legal extortion,” now targeting small business owners who feel they are “sitting ducks” for ADA lawsuits regarding their websites that are not accessible to some with disabilities.

Last year, there were 2,285 ADA website lawsuits filed in federal courts across the nation, an increase of a 181 percent from 2017, according to website accessibility company UsableNet. The majority of lawsuits originate in Florida and New York.

“The attorneys are telling us, ‘You can’t fight this. There’s nothing you can do, just write them a check,’” said Ben Tundis, owner of Island Comfort Footwear in the Westfield Countryside Mall in Clearwater.

Tundis is one of 175 business owners sued by Emily Fuller, of Broward County, a visually-impaired woman holding businesses accountable if they have websites that are not ADA compliant. Fuller, in her lawsuit filed Jan. 4, claims that she was not able to use the recently launched website of Tundis’ shoe store.

Fuller uses a screenreader to use the Internet and claims the shoe store’s website lacked coding that would communicate with her software. This excluded her from shopping on the website, which is a violation

of the Americans with Disabilities Act, according to the lawsuit.

Lawsuits like this one are being filed by the stackful, typically by one plaintiff working with a handful of lawyers who are gaining notoriety for these types of cases.

South Florida attorneys Pelayo Duran and Roderick Hannah represent Fuller. Duran tells 8 On Your Side’s Better Call Behnken that clients like Fuller are providing a needed service for society to insure that websites are ADA compliant and accessible to all.

“It’s a very good thing for society that plaintiffs like Ms. Fuller are providing,” Duran said. “I want to make sure you understand that it’s not about attacking small businesses.”

Fuller has gone after big names, such as Sephora, Helzberg Diamonds, The Home Depot and Chick-fil-A, claiming their websites are not ADA compliant. Some of her recent cases are against the Clearwater shoe store, an active wear boutique in Orlando called Sassy Pants and Tampa Sportservice Inc, the company that runs a store that sells Tampa Bay Lightning apparel inside Amalie Arena.

In most cases, private businesses can’t be sued for damages, under the ADA, says Anastasia Protopapadakis, an ADA defense attorney with the Miami firm Gray-Robinson. Businesses are sued for attorney fees and compliance. Businesses who agree to settlements or lose their cases must pay attorney fees and agree to become ADA compliant within a set amount of time, she said.

Some legal experts, and even some advocates for the disabled, say plaintiff lawyers are taking advantage of businesses that don’t realize they are doing anything wrong. Instead of reaching out to the businesses and asking for compliance, they sue.

Protopapadakis calls these lawsuits, “corporate extortion” and urges business owners to take a serious look at their websites and make sure that a person with visual or hearing disabilities can use their site.

She said most businesses faced with this type

of lawsuit settle the case for attorney fees and compliance. That's because that is cheaper than litigation.

Experts say these lawsuits are typically settled for between a couple of thousand dollars and \$20,000, but could cost much more if defendants chose to fight in court.

"Any case appealed to the 11th Circuit has not gone the defendants' way," Protopapadakis said.

Protopapadakis said while plaintiffs don't receive money for damages, some do receive money in exchange for keeping settlement details confidential.

Further frustrating businesses, there are no federal regulations to give businesses a check list of what they must do to make their websites ADA accessible. The ADA was established in 1990, before websites like we have today. One thing is clear, though, courts have ruled that most websites must be accessible under the ADA.

While there are no clear regulations pertaining to websites in the ADA, courts have recognized web accessibility standards called Web Content Accessibility Guidelines 2.0 (WCAG), created by an international consortium of volunteers.

Some of the requirements:

- Content must be coded for audio translation by screen-reader software.
- There must be on-screen captions in videos for screen-reader software to read to the blind and descriptions for the deaf.
- Sites must include accessible drop-down menus for those who use a keyboard as an alternative to a mouse.

These are requirements that every website should have under the ADA, said Chris Danielsen, of the National Federation of the Blind.

Danielsen, who is blind, said he uses screen-reader software every day to access the Internet and runs into problems on a regular basis because websites lack the appropriate coding.

However, he said mass lawsuits, especially those filed by one plaintiff with an attorney, concern him. He said negotiation and education should come first. He also feels that settlements should not be confidential, so the public knows the terms and knows the plan for accessibility for each site.

"Rather than spraying businesses with a firehose of litigation, a much more thoughtful and transparent approach would be a better form of advocacy," Danielsen said.

Danielsen recommends business owners make sure their website developers know how to make your website compatible. There are several companies that specialize in website compatibility. The National Federation of the Blind has resources on its website to help businesses. Locally, the Lighthouse for the Blind can review websites and offer guidance.

So, who must be accessible? That depends on where the business is located. In the 11th Judicial Circuit, which includes Florida, websites that are connected to a physical store must be accessible to those who are visually and hearing impaired.

Accessibility can get costly, depending on what type of website you have, and whether you do it when you first develop the website or later, said Teresa Huber, president of Get ADA Accessible, which focuses on website accessibility.

She said a simple, 10-page website would cost about \$1,600 for a firm like hers to audit and identify accessibility issues. The cost of fixing the website would depend on deficiencies, she said.

One small business recently sued by Emily Fuller is Sassy Pants Active Wear Boutique in Orlando. Owner Donna Anthony says she hasn't been served the lawsuit yet, but she is concerned.

"I never in my wildest dreams thought a website would have to have accommodations," Anthony said. "My builder knew about ADA compliance for my physical location. My web developer did not."