



## ALERTS

### Just In Time For The Holidays – Does The ADA Require Braille On Gift Cards?

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While litigation regarding accessibility of websites and mobile applications continues to swell, plaintiffs' counsel are now pursuing new claims in serial litigation. With the holidays quickly approaching, two counsel in New York have set their sights on gift cards.

Between Oct. 24-27, 2019, 33 putative nationwide class action cases were filed in two U.S. District Courts in New York against an array of retailers and restaurants alleging that they do not offer gift cards that include Braille. The complaints assert that failure to do so violates Title III of the Americans with Disabilities Act (ADA), the New York State Human Rights Law and the New York City Human Rights Law. In 12 of the cases, the plaintiffs are being jointly represented by Darryn G. Solotoff and Jeffrey M. Gottlieb, and in the remainder of the cases solely by Gottlieb.

Neither the federal courts nor the U.S. Department of Justice (DOJ), which enforces Title III of the ADA, have previously addressed the issue of whether the ADA requires that physical gift cards be offered with Braille. The plaintiffs contend that failure to provide Braille on gift cards denies individuals with vision impairments (defined in the complaints as those who are legally blind) equal access to the products and services offered by the place of public accommodation, as the gift cards are not "fully accessible to and independently usable by" individuals with vision impairments.

They assert that individuals with vision impairments cannot independently purchase gift cards, distinguish a particular merchant's gift cards from other gift cards or credit cards, ascertain the denomination of the card, or

## RELATED PEOPLE



### **Teresa L. Jakubowski**

Partner  
Washington, D.C.

P 202-371-6366  
F 202-289-1330  
[teresa.jakubowski@btlaw.com](mailto:teresa.jakubowski@btlaw.com)



### **Kenneth J. Yerkes**

Partner  
Indianapolis

P 317-231-7513  
F 317-231-7433  
[ken.yerkes@btlaw.com](mailto:ken.yerkes@btlaw.com)



### **John T.L. Koenig**

Partner  
Atlanta

P 404-264-4018  
F 404-264-4033  
[john.koenig@btlaw.com](mailto:john.koenig@btlaw.com)



### **David B. Ritter**

Partner  
Chicago

P 312-214-4862  
F 312-759-5646  
[david.ritter@btlaw.com](mailto:david.ritter@btlaw.com)

review other information provided on the card or included with its packaging, such as terms of use, restrictions on use, information for ascertaining card balance, etc.

While it appears that to date gift card claims have been filed only in the federal courts in New York, given the popularity of gift cards and the spread of serial ADA litigation, retailers, restaurants and other entities offering gift cards may be impacted by the outcome of these cases. The cases also may have impact beyond gift cards to other types of cards, such as credit cards, debit cards and fare cards.

The complaints are patterned to a degree on website accessibility cases filed by the same plaintiffs' counsel. They assert that defendants use gift cards as a form of communication and reference Title III's requirements that a public accommodation reasonably modify its policies, practices or procedures to afford equal access to individuals with vision impairments and provide auxiliary aids and services necessary for effective communication.

Notwithstanding the plaintiffs' effort to place their gift card claims in the same framework as website accessibility litigation, notable distinctions exist. Website accessibility litigation is premised on the DOJ's express position (first enunciated in 1996) that a public accommodation using a website to communicate information about its goods and services must provide such communications through accessible means. The DOJ has not previously opined on whether Title III requires that gift cards be offered with Braille. While its regulation implementing Title III includes "Brailled materials and displays" among the examples of auxiliary aids and services ([28 C.F.R. § 36.303](#)), it also states that a public accommodation need not "alter its inventory to include accessible or special goods that are designed for, or facilitate use by, individuals with disabilities" ([28 C.F.R. § 36.307](#)). Books in Braille are one of the examples provided.

The DOJ has long recognized that a public accommodation may choose between various auxiliary aids or services as long as effective communication is provided. For example, a restaurant need not provide menus in Braille, but can offer assistance in reading the menu. Similarly, price tags on products in a store are not required to be provided in Braille. Notably, the complaints focus on accessibility of "physical" gift cards. Certain of the defendants targeted offer physical and electronic gift cards. Electronic gift cards can be an accessible alternative to providing Braille on physical gift cards.

The plaintiffs in these numerous cases are seeking injunctive relief requiring the respective defendants to make the gift cards readily accessible to and usable by blind individuals; declaratory judgment that the defendants market, distribute and sell their gift cards in a manner that discriminates against individuals who are blind; compensatory damages for plaintiffs and proposed class members; and attorney's fees.

To obtain more information, please contact the Barnes & Thornburg attorney with whom you work, or Teresa L. Jakubowski at 202-371-6366 or [teresa.jakubowski@btlaw.com](mailto:teresa.jakubowski@btlaw.com).

You can also contact another member of the Labor and Employment Department:

Kenneth J. Yerkes, Chair, at 317-231-7513 or [ken.yerkes@btlaw.com](mailto:ken.yerkes@btlaw.com)



**Mark S. Kittaka**

Partner

Fort Wayne, Columbus

P 260-425-4616

F 260-424-8316

[mark.kittaka@btlaw.com](mailto:mark.kittaka@btlaw.com)



**Robert W. Sikkell**

Of Counsel (Retired)

P 616-742-3978

[robert.sikkell@btlaw.com](mailto:robert.sikkell@btlaw.com)



**Peter A. Morse, Jr.**

Partner

Indianapolis, Washington, D.C.

P 317-231-7794

F 317-231-7433

[pete.morse@btlaw.com](mailto:pete.morse@btlaw.com)



**Scott J. Witlin**

Partner

Los Angeles

P 310-284-3777

F 310-284-3894

[scott.witlin@btlaw.com](mailto:scott.witlin@btlaw.com)

John T.L. Koenig, Atlanta, at 404-264-4018 or [john.koenig@btlaw.com](mailto:john.koenig@btlaw.com)

David B. Ritter, Chicago, at 312-214-4862 or [david.ritter@btlaw.com](mailto:david.ritter@btlaw.com)

Mark S. Kittaka, Fort Wayne, at 260-425-4616 or  
[mark.kittaka@btlaw.com](mailto:mark.kittaka@btlaw.com)

Robert W. Sikkell, Grand Rapids, at 616-742-3978 or  
[Robert.sikkell@btlaw.com](mailto:Robert.sikkell@btlaw.com)

Peter A. Morse, Indianapolis, at 317-231-7794 or  
[pete.morse@btlaw.com](mailto:pete.morse@btlaw.com)

Scott J. Witlin, Los Angeles, at 310-284-3777 or [scott.witlin@btlaw.com](mailto:scott.witlin@btlaw.com)

Janilyn Brouwer Daub, South Bend/Elkhart, at 574-237-1130 or  
[janilyn.daub@btlaw.com](mailto:janilyn.daub@btlaw.com)

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**Janilyn Brouwer Daub**

Partner

South Bend, Elkhart

P 574-237-1139

F 574-237-1125

[janilyn.daub@btlaw.com](mailto:janilyn.daub@btlaw.com)

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