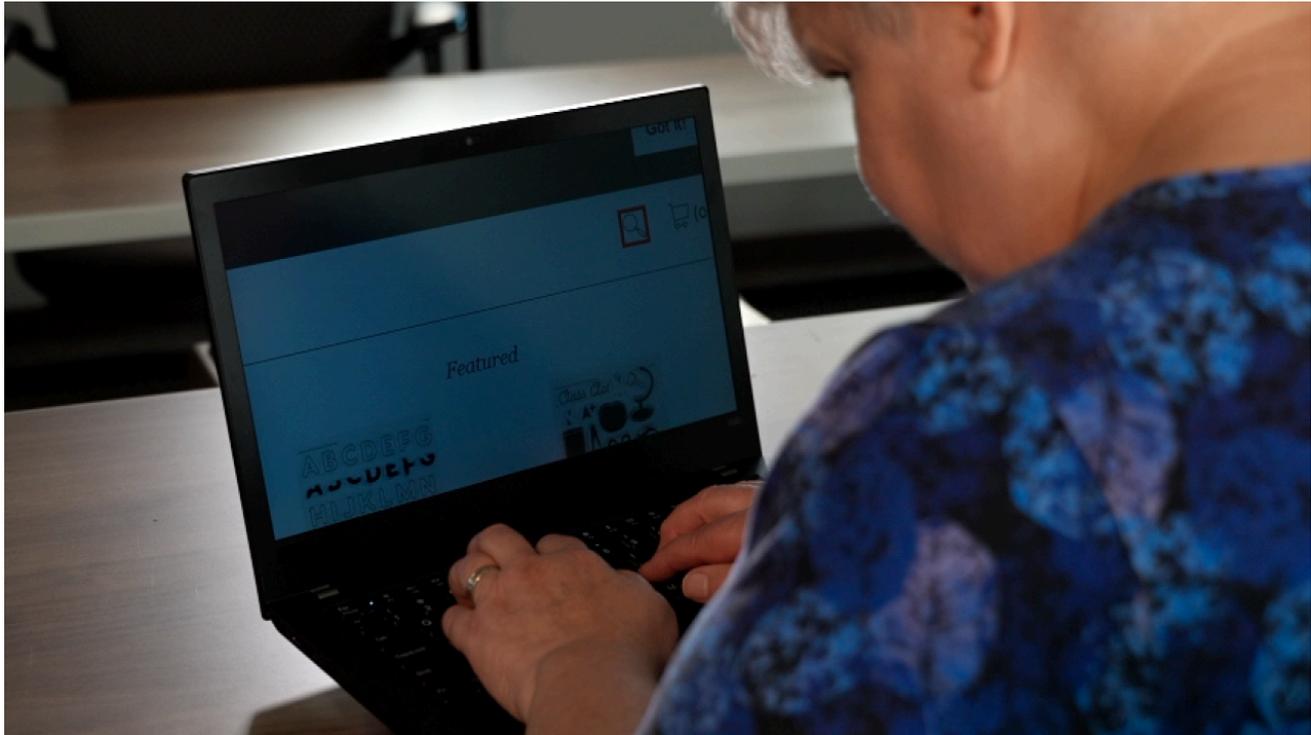


Legally blind Racine woman accused of filing 'frivolous' ADA lawsuits

www.tmj4.com/about-us/lighthouse/it-gets-under-my-skin-businesses-frustrated-with-what-they-call-frivolous-ada-website-lawsuits

By: Ben Jordan

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A legally blind Racine woman is suing several online retailers claiming their websites violate the Americans with Disabilities Act.

MILWAUKEE — A legally blind Racine woman is suing several online retailers claiming their websites violate the Americans with Disabilities Act.

Are these cases a service to society or a small business shakedown? TMJ4's Lighthouse team learned it depends on who you ask.

The civil lawsuits claim a woman named Melissa McCabe was unable to use screen reading software to navigate more than twenty retail websites. Not only are the lawsuits seeking compliance, but they're also after lots of cash to cover attorney fees.

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Businesses frustrated with 'frivolous' ADA website lawsuits filed by Racine woman

"I would have sent her a truckload of washi tape for free to not have to do this," said April Foster.

This \$4 decorative tape Foster sells online ended up costing her thousands in court.



April Foster
Washi tape

"Frivolous, frivolous litigation and lawsuits, it gets under my skin," she said.

Foster was served a federal lawsuit in May. It claims her arts and crafts website doesn't provide equal access to its products, particularly for those who are blind and depend on software that takes text and turns it into audio.

"It is in my heart to never stand in the way of anybody with a disability to help them engage with our brand or as an employee or anything like that, Foster said. "I would want to fix that problem. There is no clear standard about ADA which is allowing this to go on."



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April Foster and her small business are the subject of an ADA compliance lawsuit.

According to court records, the homepage of Foster's website contained "several unlabeled or mislabeled elements" that prevented McCabe, a blind woman from Racine, from not knowing what the product looked like.

"Ours was out of compliance with the text that is written kind of embedded within the image to read to the person," Foster said.

Foster says she settled the lawsuit for \$7,500. After attorney fees, she says it cost her around \$20,000.

"Why not fight this lawsuit rather than settle," TMJ4 reporter Ben Jordan asked.

"I would love to, but the reason is it's way too costly," Foster replied.

Foster's website is far from the only one McCabe took issue with. Court records show she sued over the same problem while shopping online for items like car ties, musical instruments, and a sewing machine chair.

Watch: Businesses frustrated with what they call frivolous ADA lawsuits.

'It gets under my skin': Businesses frustrated with what they call frivolous ADA website lawsuits

McCabe agreed to a phone interview with TMJ4, but she immediately hung up after Jordan's first question.

Her attorney, Benjamin Sweet of Pennsylvania, didn't want to talk either. He responded to Jordan's email saying, "It is our policy not to comment on active litigation."

"What we have here is essentially a perfect storm between a vague area of law that's undefined and perhaps a handful or a group of plaintiffs that have questionable motives," said Dan Danet.

Danet is an attorney in California who is not connected to this case, but he has defended more than 500 businesses against ADA website lawsuits. Danet says cases are often settled out of court.

"The truth is from a cost management perspective, fighting the case all the way through trial is often very challenging and the cost to do that can often be five, six, seven, eight times the cost of early settlement," he said.

A record 4,630 website accessibility lawsuits were filed last year according to usablenet.com. That's up from 4,035 the year before. Danet says many of them are filed under the same name.

"I've seen it where some plaintiffs are filing 150, 200 lawsuits per year," he said. "It's absolutely astounding. And I can see why some people see it as predatory."

Denise Jess knows the importance of online retailers being ADA-compliant. Jess has been legally blind her whole life. She advocates for others like her as the leader of the Wisconsin Council of the Blind and Visually Impaired.

"What do you make of these ADA website lawsuits?" Jordan asked.

"You can't do better if you don't know better," Jess replied.

Jess believes compliance should start with education, not litigation.

"The first thing we advocate is have you reached out to the business directly," Jess said.

"Have you opened up communication? Are you working with them to help them understand the issues and if they haven't done that, we highly encourage them to do that."

Not only does Jess worry the lawsuits hurt small businesses, but she believes they can also be harmful to the blind community.

"It cements in the minds of small business owners and the public, negative stereotypes about those of us who are blind and low vision and we really want to portray ourselves in a positive and empowered light," she said.

Foster wants the federal government to set clear ADA compliance standards for online retailers to follow. She would also like to see a grace period implemented for businesses to be able to fix the problem before they're taken to court.

"Something's going to have to change," she said.