

## YOU AND THE LAW

# Golf Course Website: A Case Analysis of ADA Title III Website Compliance

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*Price v. Escalante – Black Diamond Golf Club LLC*  
United States District Court for the Middle District of Florida,  
Ocala Division  
April 20, 2019

### Facts of the Case

Joel Price identifies as a resident of Florida who is blind. After he came across the United States Blind Golf Association (USBGA), his interest in learning to play golf grew. Price decided to explore suitable golf courses where he could learn to play, one of which was Escalante - Black Diamond Golf Club LLC (Black Diamond) in Lecanto, Florida. When he researched Black Diamond's golf course website in December 2018, Price's attempt to access the website was thwarted. He alleged that certain parts of Black Diamond's website ([www.blackdiamondranch.com](http://www.blackdiamondranch.com)) were incompatible with his screen reader, an adaptive device needed for his blindness (*Note.* Price failed to identify what screen reader software he used).

Due to the incompatibility of Black Diamond's website with Price's screen reader, Price claimed that he was prevented from performing the following functions: learning about golf lessons and

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how to book a tee time, requesting membership, booking online a “stay and play” package or house rental, and acquiring information on monthly events, such as partaking of a meal at the club. While Price did not clarify what parts of Black Diamond’s website were inaccessible, he did indicate not being able to link to a newsletter. Nonetheless, Price alleged that the website became a virtual barrier to his interface with Black Diamond, consequently impeding access to the physical location of the golf club. Despite these issues, Price acknowledged his intent to begin golfing the first weekend of each month at Black Diamond, as of Spring 2019.

## Case History

Price filed a lawsuit against Black Diamond, claiming its inaccessible website impeded him full and equal enjoyment of Black Diamond’s golf course, on the basis of his disability (blindness). As such, Price argued Black Diamond’s website violated Title III of the Americans With Disabilities Act of 1990 (as amended, 42 U.S.C. §§ 12181–12189), and he sought an injunction to require Black Diamond to make its website accessible. In response, Black Diamond moved to dismiss the complaint, asserting two primary arguments: (1) Price lacked standing and 2) Price failed to state a claim in his complaint.

A requisite in federal cases is that the complainant must establish standing for the case to proceed in federal court. This requires three components, the first being suffering an “injury-in-fact.” Facts must support a threat to a protected interest, which is concrete and actual. Second, there is the need for a causal relationship between the claimed injury and the questioned action of the defendant. Third, the plaintiff must substantiate how a favorable decision will right the supposed wrong. Something stronger than a “some day premise” must exist; the plaintiff must illustrate a real and immediate injury.

Black Diamond’s counsel declared that a website with universal or total compatibility with all screen readers was not a reality. Therefore, a website could be ADA compliant or not, on the basis of the user’s software. Black Diamond argued the plaintiff had not suffered nor had immediate risk of injury, because he was able to schedule regular play starting Spring 2019, regardless of the accessibility of the website. Further, in their complaint, Black Diamond stated a challenge, regarding Price’s argument of suffering an “injury-in-fact”

(*Houston v. Marod Supermarkets, Inc.*, 2013), to enable the court to reference external facts beyond the four corners of the complaint. Specifically, going beyond the four corners of the complaint allows the court to consider other forms of evidence outside of what the parties have brought forward.

Known to be a serial filer, Price has filed more than 100 cases in Florida's Middle District with ADA claims—seven or more against golf courses. Some of these cases include *Price v. City of Ocala* (2019), *Price v. Town of Longboat Key* (2019), and *Price v. Everglades Coll. Inc.* (2018), to name a few. Upon review of Price's other lawsuits, Black Diamond found a point of conflict, noting Price's plans to play golf at TPC Tampa Bay (as indicated in a separate lawsuit) would have conflicted with his planned play time at Black Diamond. Black Diamond further purported the physical and financial likelihood of Price making the 110-mile trek, each way, to play Black Diamond with any regularity, was in question. This, compounded by conflicting statements regarding Price's plans to play golf, begs the question of whether Price has or will have been injured by Black Diamond. As such, Black Diamond contended that Price had not incurred an injury-in-fact nor faced immediate risk of future injury and therefore lacked standing.

To state a claim under Title III of the ADA, the plaintiff must establish three elements: (1) the plaintiff is disabled; (2) the defendant owns, leases, or operates a place of public accommodation; and (3) the plaintiff was denied access to public accommodation by the defendant on the basis of their disability. Price argued Black Diamond's website fell under a "place of public accommodation"—and therefore was subject to Title III of the ADA—as the website content provided information (access) to the physical location of the golf course (public accommodation). Moreover, Price alleged he was denied access to public accommodation due to the incompatibility of Black Diamond's website with his screen reader. While Black Diamond claimed a nexus between the website and golf course, they argued the alleged inaccessible information on their website was available through alternative means of communication, namely, calling Black Diamond.

## Case Analysis

Title III of the ADA “prohibits discrimination on the basis of disability in the activities of places of public accommodations . . . and requires newly constructed or altered places of public accommodation – as well as commercial facilities . . . to comply with the ADA Standards” (Civil Rights Division, 2012, “Enactment,” para. 3). A public place of accommodation can include environments such as restaurants, hotels, libraries, and private schools (ADA National Network, 2021). Establishments not included in a public place of accommodation include private clubs and religious organizations. Herein, the Department of Justice (DOJ) regulates implementation, supports explanation of covered individuals and institutions, and enforces Title III of the ADA in court (Americans With Disabilities Act, 1990, § 12181). As a precursor to claiming discrimination under the ADA, it must be determined that a plaintiff who is disabled was denied—due to their disability—the opportunity to use a “place of public accommodation” under the jurisdiction of the defendant. Within Title III of the ADA, golf courses are considered to be a “place of public accommodation” (Americans With Disabilities Act, 1990, § 12181).

Though the ADA does not explicitly discuss the internet, the DOJ has taken the position that the ADA applies to websites. Many ADA cases are initiated on the basis of website incompatibility with screen readers or lack of closed captioning for online videos. However, the DOJ has yet to establish definitive rules or regulations pertaining to website compliance with the ADA; therefore, consensus by the courts does not yet exist. In *Price v. Escalante – Black Diamond Golf Club LLC* (2019), the court focused their deliberation on Black Diamond’s motion to dismiss the case, which alleged Price lacked standing and failed to state a claim in his complaint.

To determine whether a plaintiff has standing, district courts have applied the *Houston* factors. These factors include “(1) the proximity of the defendant’s business to the plaintiff’s residence; (2) the plaintiff’s past patronage of the defendant’s business; (3) the definiteness of the plaintiff’s plan to return; and (4) the frequency of the plaintiff’s travel near the defendant’s business” (*Houston v. Marod Supermarkets, Inc.*, 2013). Regarding the first *Houston* factor, the court determined that there was not an immediate risk of

future injury to Price because the distance between Black Diamond Golf Club and Price's residence was over 100 miles. Next, the court decided that there was no immediate risk of future injury regarding the second factor because Price had never played golf nor had previously been a guest at Black Diamond Golf Club. Regarding the third factor, the court's decision was neutral because they could not determine if Price planned to return to the establishment in the future. Last, the court ruled that there was no immediate risk of future injury toward the fourth factor because Price did not deliberately state plans to travel around this geographic location in the future. Overall, the court determined Price's argument, of Black Diamond's website violating Title III, was not supported by the Houston factors.

To determine whether a plaintiff states a claim on which relief can be granted, district courts consider whether a website is a "place of accommodation" and whether there is a nexus between a website and a place of public accommodation. In this case, the court referenced case law that determines websites are not "places of public accommodation," requiring the plaintiff to prove a nexus between the website and the place of public accommodation. When considering whether a nexus exists, courts distinguish "an inability to use a website to gain information about a physical location and an inability to use a website that impedes access to enjoy a physical location" (*Price v. Everglades Coll. Inc.*, 2018). To state a claim, Price alleged the inaccessibility of a July 2017 newsletter hindered full use and enjoyment of Black Diamond's golf course. The court believed this information was no longer relevant due to its date and that it did not prohibit Price from being a guest at Black Diamond. The court also found no risk of immediate future harm as Price did not provide other inaccessible parts of the website outside of the member newsletter. Therefore, the court concluded Price failed to state a claim.

For the case of *Price v. Escalante - Black Diamond Golf Club LLC* (2019), when taken to trial, the court ruled that "Price failed to adequately plead his standing" and "failed to state a claim," stating there was an absence of proof that Black Diamond's website restricted Price's opportunity to utilize the golf club. Therefore, the District Court granted Black Diamond's motion to dismiss the plaintiff's complaint without prejudice. Price was allowed to amend his complaint to identify the inaccessible parts of Black Diamond's website

and explain how they impeded his ability to access and enjoy Black Diamond's golf course.

## Implications

There are recommendations for practitioners in the field of sport to limit legal liability pertaining to discrimination against individuals with disabilities. Because website compatibility with the ADA is an issue, it seems appropriate for website development to incorporate an assessment of interface with assistive devices, such as screen readers for the visually impaired. While it may not be realistic to test all assistive devices, perhaps some of the most common devices, such as Non-Visual Desktop Access (NVDA) and Job Access With Speech (JAWS), can be tested. Furthermore, sport organizations can hire ADA consulting companies such as Accessibility Works or Hounder to test websites for ADA compliance and provide recommendations for modification. This assessment of website compatibility must be ongoing, with yearly modifications to these websites, as deemed appropriate.

To continue to evolve and improve their products and services for all consumers, the sport industry can incorporate direct involvement and input from individuals who identify with the blind or visually impaired community. Engagement of these individuals is critical because of their daily, lived experience.

As the Black Diamond site noted, information access can also be provided through other mediums, such as a phone call. These access points must be clearly defined. For sports organizations to accomplish this, an individual or department within the organization can be responsible for assisting individuals with disabilities. This centralizes ADA compliance in the organization and ensures staff receive proper training to support individuals with disabilities in a more responsive manner.

Finally, several resources are useful for sport organizations to facilitate increased ADA compliance. This begins with partnerships with agencies such as the American Foundation for the Blind (AFB), which supports individuals who encounter blindness or low vision (<https://www.afb.org/>). Such agencies, including the AFB, are more attuned to the needs of their target populations and how to serve them. Other companies and organizations that solely focus upon adaptive technology, such as the National Disability Institute and

Move United, can also be engaged in partnership. Further, ADA consultants, such as Accessibility.Works, can provide direction related to this legislation to sports organizations.

## References

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