

## **The Law Firm Hitting Businesses With Thousands of Disability Suits**

### **Entrepreneurs face allegations that their websites aren't accessible to visually impaired people**

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Bob Kramer long relied on his website to auction off his intricate handcrafted knives and to educate consumers about his craft. How he uses the website changed after a visually impaired New Yorker sued Kramer Knives, saying its site wasn't accessible.

"It came out of the blue," said Kramer, who can spend a month or more creating a single knife. In the lawsuit, the plaintiff said she was unable to purchase a knife case. She never called or emailed, said Kramer, who has one employee at the Bellingham, Wash., company.

The lawsuit was one of more than 1,100 web-accessibility cases brought in the U.S. last year by Mizrahi Kroub. The New York law firm, which has nine lawyers, is the largest filer of these cases, accounting for roughly one-quarter of digital ADA cases, according to UsableNet, a provider of web-accessibility services.

Bob Kramer, owner of Kramer Knives in Bellingham, Wash., was sued by a visually impaired New Yorker who said his company's website wasn't accessible. PHOTO: BOB KRAMER

Mizrahi Kroub often files dozens of lawsuits on behalf of a single plaintiff, against businesses that sell everything from electric bicycles to cooking kits for children. Defense lawyers criticize the firm for what they say are cut-and-paste pleadings designed to extract quick settlements and not make websites more accessible.

"The demands are priced at less than it would cost to respond to the complaint. That's the business model," said Peter Brann, a lawyer in Lewiston, Maine, who has defended businesses sued by Mizrahi Kroub.

Joseph Mizrahi, a partner at Mizrahi Kroub, said a legally blind uncle gave him an appreciation of the need for accessibility. Mizrahi said he isn't sure how many website cases his firm has filed.

"There are millions of websites that are not accessible," he said. "If you say my number is 3,000, I'm probably not doing enough."

Mizrahi and his partner, Edward Kroub, declined to comment on specific cases. They said the law firm hires experts to determine whether a website is accessible and has protocols to ensure and monitor compliance once a case is settled.

The law firm takes the size of the business and other factors into account when structuring its settlements, he added. "We are not looking to financially hurt anybody," Kroub said.

## A cottage industry

Mizrahi Kroub is part of a cottage industry that has sprung up around website accessibility. It includes plaintiffs who bring these lawsuits and their lawyers; defense lawyers who represent those sued; and consulting firms and software vendors that monitor and update websites.

The growth of this ecosystem reflects, in part, the structure of the ADA, which largely relies on private parties, not the government, to make sure that businesses and others are complying with its provisions. It also highlights the challenges facing small businesses, which might not be aware of web-accessibility requirements or know how to meet them.

More than three-quarters of web-accessibility lawsuits are aimed at companies with less than \$25 million in revenue, UsableNet estimates.

“There are clearly enough inaccessible websites in the world to keep a lawyer very busy,” said Eve Hill, a disability-rights lawyer in Baltimore. It would be much simpler if internet web designers included accessibility as a standard feature, she said.

“My biggest problem with the cut-and-paste lawsuits is when they settle them for cash and don’t fix the problem,” Hill said.

Electric Bike Technologies was sued by Mizrahi Kroub in U.S. District Court in 2022. A day after the lawsuit was filed, the Croydon, Pa., company received an unsolicited email from a defense lawyer offering his services.

“The lawyer for the plaintiff in this case, Edward Kroub, is one of several opportunistic lawyers in the New York City area who files these kinds of cases *en masse*,” wrote the lawyer, David Stein. “[T]heir rampage has continued into the new year, including another 7 cases filed today! Totally insane!”

In 2022 and 2023, Stein, a partner at Stein & Nieporent, was the most active lawyer representing defendants in federal class-action lawsuits, with nearly 400 cases, according to Lex Machina.

“These cases have exploded on the dockets over the last several years,” Stein said. “There’s a need for people to defend them.” He declined to comment on the Electric Bike litigation.

Electric Bike hired Stein, who brokered an agreement to settle the case for \$4,950. The deal fell apart over the bicycle company’s refusal to sign a nondisclosure agreement, according to court filings. Chief Executive Jason Kraft then hired a different lawyer to handle the case as well as a second web-accessibility lawsuit.

The bicycle company spent roughly \$46,000 in legal fees, Kraft said. Updating its websites cost another \$13,000. “Some days, I feel like I should have settled,” he said.

## Importance of such lawsuits

Congress enacted the Americans with Disabilities Act in 1990 to prevent discrimination against people with disabilities. The Justice Department and federal courts later interpreted the law's [protections to include online activity](#).

The ADA allows plaintiffs to collect attorney fees but not damages. Some states and localities, including New York and New York City, have their own laws that provide similar protections.

Advocates for the visually impaired say the legal protections offered by the ADA and similar state and local laws are vital at a time when the web is crucial for everything from hunting for a job to making banking transactions.

“There is rarely a day that goes by when a blind person does not encounter some kind of accessibility barrier on a website or a mobile app,” said Chris Danielsen, a spokesman for the National Federation of the Blind, a membership and advocacy group.

The group files a handful of ADA lawsuits each year, typically in an effort to create broader changes, Danielsen said. It typically issues a demand letter beforehand that provides an opportunity to fix the problem before going to court.

“It is unfortunate that the remedy is being misappropriated,” he said.

The Justice Department has requirements on how to make government websites accessible, but private companies aren't required to follow the government's lead. PHOTO: GRAEME SLOAN/BLOOMBERG NEWS

Determining whether a website is accessible is more complicated than, say, measuring whether a doorway is wide enough to accommodate a wheelchair. The Justice Department issued a final rule for state and local government websites in April that [has specific requirements](#) on how to make websites accessible, with exceptions for certain webpages.

For instance, visually impaired people often rely on screen readers to convert visual information on a website into speech. Websites and apps must include alternative text-based descriptions of images and videos so that they can be described for visually impaired people. Color contrast must be sufficient for people with limited vision or color blindness to read the text; color alone shouldn't be used to convey information.

Private companies aren't required to follow the government's lead. Instead, businesses have flexibility on how they can comply.

“Part of the problem we keep raising is that there's no standard governing [website] accessibility under the ADA [for private businesses],” said Robert Thorpe, a lawyer in Syracuse, N.Y., who has defended web-accessibility cases. “It's created this niche market for these type of

cases.”

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WebAIM, a nonprofit based at Utah State University, prohibits the use of its web-accessibility evaluation tool in litigation. Automated tools can help identify weaknesses in a website, but determining whether the website is discriminatory requires a human assessment and most lawsuits don't go that far, said Executive Director Jared Smith.

Small businesses often don't know whether they are in compliance and what to do when they are sued. Plaintiffs' lawyers “can get away with telling somebody that they're breaking the law and that person has no way to know,” says Lucy Greco, an accessibility evangelist at the University of California, Berkeley.

### **Costs to the business**

A victory in the courtroom can still be costly for a small business.

Extract Labs, a maker of CBD and cannabinoid products with about 25 employees, spent roughly \$40,000 in legal fees after it was sued by Mizrahi Kroub; it also paid \$6,500 to a consulting firm and a contractor.

A federal judge in Manhattan dismissed the lawsuit last year, finding that Extract Labs had significantly redesigned its website to comply with disability requirements. In March, the judge denied Extract Labs' request for attorney fees, holding that the litigation wasn't “frivolous,” but allowed the Lafayette, Colo., company to request roughly \$1,000 in other costs.

It opted not to pursue the claim, said Michael Laszlo, Extract's lawyer. “The potential recovery was outweighed by expense.”

The plaintiff in that case had filed more than 100 web-accessibility lawsuits against entities such as a preteen pop musician, a bikini store and beer manufacturers, among others, according to court filings.

Defense lawyers say that Mizrahi Kroub would rather drop a case than put its plaintiffs on the stand. When Senior.com attempted to depose Mizrahi Kroub's client, the law firm said she had moved out of state and asked the judge to dismiss the case. The lawsuit was voluntarily dismissed. The federal magistrate judge found that the law firm “acted in bad faith” in stating its reason for requesting the dismissal and ordered it to pay a \$500 civil monetary penalty to the court.

Mizrahi declined to comment on the Senior.com case. He said the firm has put plaintiffs in

website cases under oath, but declined to provide an example. “We are absolutely not afraid of that,” he said.

Kramer Knives said, in court filings, that its website-accessibility lawsuit was one of 78 “nearly identical, boilerplate complaints filed within the last year” by the same plaintiff.

Mizrahi Kroub offered to settle the case, filed in New York Supreme Court in Queens, for \$20,000, Kramer said. It later agreed to dismiss the lawsuit. Kramer said he spent about \$16,000 in legal fees and \$3,000 on his website.

Kramer said because of the suit, he stripped his website of outside links and other material he didn’t fully control.

“That’s not serving the public,” he said.

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