

Marketing and Public Accommodation: A Retrospective on Title III of the Americans with Disabilities Act

Stacey Menzel Baker and Carol Kaufman-Scarborough

The Americans with Disabilities Act was implemented with the desire to make society inclusive for people with disabilities. This attempt at social engineering has fundamentally changed the way Americans perceive disability, however much work remains to be done. This article, which focuses on Title III of the Americans with Disabilities Act, begins with an overview of the statute. Next, it highlights some of the relevant marketing issues of Title III, made salient by case studies and court cases. The article concludes with a discussion of marketing and public policy implications for increasing accessibility to public facilities.

We are keeping faith with the spirit of our ... forefathers who wrote ... "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable rights." This Act is powerful in its simplicity. It will ensure that people with disabilities are given the basic guarantees ... (of) freedom of choice, control of their lives, the opportunity to blend fully and equally into the ... mosaic of the American mainstream.

—President George Herbert Walker Bush at the signing of the Americans with Disabilities Act, July 26, 1990

The Americans with Disabilities Act (ADA) was signed into law with the promise of bringing people with disabilities into the mainstream of the U.S. economy, to be accomplished, in part, by providing greater accessibility to a wide variety of public facilities, including shopping, dining, recreation, and travel. Heralded as a new era in civil rights, the ADA was celebrated by many people with disabilities and their advocates as a long-overdue development of accessibility guidelines and procedures. More than ten years have passed since this historic enactment; therefore, it seems fitting at this juncture to analyze the effectiveness of the ADA. Has the ADA lived up to its promises? Has it opened doors and provided accessibility for persons with disabilities? Has it brought people with disabilities into the mainstream of the economy?

The purpose of this article is to examine the accomplishments of the ADA, as well as what remains to be done to achieve the statute's primary goal of accessibility. There are five titles of the ADA. Title I covers employment, Title II deals with public entities and transportation, Title III addresses private entities that provide public products, Title IV speaks to telecommunications, and Title V handles mis-

cellaneous issues (ADA Technical Assistance Program 2001b). In this article, we place specific emphasis on Title III of the ADA, which has the greatest impact on marketers (Stephens and Bergman 1995).

Understanding this public policy is important to marketers for several reasons. First, public accommodation is a global issue. Officials at the United Nations and the World Health Organization have urged nations to provide equal access and inclusive societies for people with disabilities (Annan 1999). Therefore, U.S. retail and service businesses that hope to tap markets overseas may be confronted with similar policies on accessibility.

Second, consumers increasingly reward businesses that they perceive as supporting their causes and concerns. Because people with and without disabilities support the rights of people with disabilities, increased patronage should be forthcoming for stores that actively promote accessibility as a routine practice. In addition, customers are increasingly willing to voice their dissatisfaction, not only by complaining to the business, other consumers, and the media but also by taking their complaints to the courts (Gelb 1995).

Third, in 1997, approximately 53 million people had some level of disability (roughly 20% of the U.S. population), and 33 million (approximately 12% of the population) had a severe disability (McNeil 1997). To give some perspective on what these numbers mean, the number of people with disabilities in the United States is more than the populations of California, Florida, and Iowa combined; slightly less than the population of France or the United Kingdom; more than the black population of the United States (12.4%); more than the Hispanic population of the United States (12.5%); and about equal to the number of Protestants in the United States (56 million) (U.S. Census Bureau 2000). In addition, the number of people with disabilities is escalating with the graying of America, with increasing ability to prolong lives, with increasing abilities to test and identify learning disabilities, and with increasing longevity of the disabled. Thus, people with disabilities represent a significant proportion of the U.S. market that should not be overlooked, not only for economic reasons but for social and political reasons as well.

STACEY MENZEL BAKER is Assistant Professor of Marketing, College of Business Administration, Bowling Green State University. CAROL KAUFMAN-SCARBOROUGH is Associate Professor of Marketing, School of Business, Rutgers University. The authors thank Ron Hill for his encouragement on this article and their other work in this area. The first author also acknowledges the insights of her colleagues with whom she has discussed these issues on several occasions, including Debra Lynn Stephens, Elaine Menzel, William Redmond, and Judi Washburn.

The article begins with an historic overview of the ADA. Next, it highlights some of the major issues of the ADA, which are made salient by case studies and court cases. The article concludes with a discussion of marketing and policy implications for increasing accessibility to public facilities.

Background of the ADA

Although the Civil Rights legislation of the 1960s did not specifically mention people with disabilities as a protected class, Disability Rights Law originates in the civil rights era, in both the political and the legal sense. Politically, people actively engaged in the Disability Rights Movement were inspired by the African American struggle and the Women's Movement. Legally, the ADA is based in theory on two statutes, the Civil Rights Act of 1964 and the Rehabilitation Act of 1973 (ADA Technical Assistance Program 2001a). The Civil Rights Act of 1964 prohibits discrimination on the basis of race, religion, and national origin and provides a foundation for coverage and enforcement of the ADA. Title V of the Rehabilitation Act of 1973 prohibits discrimination on the basis of disability and provides a basis for what constitutes discrimination under the ADA. Title V was the first legislation that linked disability to mainstream civil rights law, followed shortly after by the Education for all Handicapped Children Act (IDEA), which mandates that all children with disabilities receive a free education in the "least restrictive" environment possible. Together, Title V and IDEA made it clear that public policymakers were reevaluating the role of people with disabilities in society, and integration was a major impetus in this movement (ADA Technical Assistance Program 2001a).

In 1990, the ADA, which was much more comprehensive than previous legislation, was passed, providing statutory and regulatory protection to people with disabilities in employment, public accommodations/facilities, transportation, state and local government services, and telecommunications. The fundamental philosophy underlying Title III of the ADA is that accessibility is a basic right for all people and accommodations must be made in public facilities, including retail facilities and services such as hotels, theaters, stadiums, grocery stores, shopping centers, pharmacies, hospitals, restaurants, and public transportation. Title III requires existing buildings of public facilities, when modified, as well as newly constructed ones to be accessible to people with disabilities. Title III also prohibits the imposition of eligibility criteria that prevent people with disabilities from participating in the "full and equal enjoyment of the goods, services, privileges, and advantages of any public place," unless the criteria are necessary for provision of the goods and services offered (Equal Employment Opportunity Commission and U.S. Department of Justice 1991, III-41). In other words, service providers are required to accommodate people with disabilities, as long as the accommodation does not "fundamentally alter" the goods, services, or operations of the commercial facility. Because disabilities are diverse, ranging from functional limitations to health conditions, physically invisible ailments such as circulatory problems, and psychological or perceptual impairments, different accommodations are necessary for different needs (Reedy 1993).

The U.S. Department of Justice is responsible for enforcing the ADA through litigation and formal and informal set-

tlement agreements. Violators of Title III may be taken to federal court and required to pay civil penalties, but before court proceedings are initiated, the Department of Justice attempts to settle a dispute through negotiation (U.S. Department of Justice 2001). The Department of Justice also may refer complainants to one of the 450 mediators available nationwide through the Key Bridge Foundation, a professional dispute resolution and training provider. These mediators, who are trained in ADA requirements, successfully resolve 80% of the cases they receive (U.S. Department of Justice 2001). The ADA also requires the Department of Justice to provide technical assistance to people who have questions about compliance. Assistance is provided through a Web page, an information line, and fax on demand, all of which are available 24 hours a day, seven days a week.

Major Issues of the ADA

Theoretical Models Underlying Disabilities-Related Legislation

Two predominant models have characterized much work in disabilities studies and legal development: the medical model and the social model. The medical model focuses on the disability as the cause of the limitations faced by people with disabilities. The social model, however, considers society itself disabling. These models may be described as two major analytical frameworks (Humphrey 2000; Oliver 1990; Paar and Butler 1999).

The medical model defines a disability as an impairment in the mind or body of a person. Thus, people are disabled when an environment is not designed for their participation. To "help" people with disabilities, the medical community attempts to diagnose, treat, and possibly "cure" their disabilities, often resulting in the stigmatization of disabilities. If such corrections are not possible, people with disabilities are often isolated into asylums or care facilities, in an enforced segregation. Such an approach takes the perspective of people with disabilities as tragic victims whose imperfections prevent them from fitting into the mainstream of society. Society is designed for able-bodied persons, who are not limited in their life abilities, following a perspective called "ableism," perpetuated through what Imrie (1999, p. 25) calls "discriminatory architectural design." "Ableism entails a way of being that takes mobility, thinking, speech, and the senses for granted, and which includes largely 'unconscious' aversion to people and bodies that remind us that the able-bodied norm is an ideal" (Chouinard 1997, p. 380).

In contrast, the social model considers that a disabling environment limits people with impairments. People with disabilities are considered people with rights who naturally belong in the mainstream of society, not in isolation and not as "partial" participants. Therefore, efforts are focused on identifying barriers in the environment that restrict some people from full participation in all activities. As a result, the misconstrued portions of the environment need to be redesigned. The ADA seems to have been designed using this model as a guiding philosophy.

Other theorists and activists argue that both models are incomplete for several reasons (e.g., Baker, Stephens, and

Hill 2001b; Gleeson 1999; Kaufman-Scarborough 2001; Stone and Colella 1996). First, there is a predominant mindset that assumes that people with disabilities are the exception, rather than participants to be expected and anticipated. Second, many disabilities cannot be remedied, despite scientific and therapeutic efforts. Third, architectural changes and urban redesign address part but not all of the problems encountered by people with disabilities. The consideration of changed attitudes, planned participation, and accessibility to entire sequences of behaviors requires a much more comprehensive model than either the medical or social model presents. Social interaction within the environment, acceptance and anticipation of disabled people's full range of feelings, wide ranges of available activities, and simply being expected to participate are also part of the full meaning of "reasonable access" (Gleeson 1999).

Such an approach is found in models of the treatment of people with disabilities in retail environments (Baker, Stephens, and Hill 2001b; Kaufman-Scarborough 2001) and in organizations (Stone and Colella 1996). In contrast to the two models described previously, Baker, Stephens, and Hill's (2001b) model suggests that the response of people with disabilities, specifically visual impairments, to a business encounter will depend on environmental factors (e.g., physical, logistical, interpersonal), the person's perceived ability to influence the environment (e.g., adaptive strategies used), and the perceived costs (e.g., emotional, social, time, effort) of requesting an accommodation. Similarly, Stone and Colella's (1996) model considers both the attributes of the person with a disability and the attributes of other people in the environment. Also included are the nature of the job, the characteristics of the organization, the observers' treatment of the person, and the responses of the person with disabilities. Applying Stone and Colella's approach, Kaufman-Scarborough's (2001) model suggests that shoppers with mobility impairments negotiate a "consumer identity" based on their perceptions and reactions to categorization and stereotyping by retail personnel, the consumer abilities they are expected to have, and their stigma management skills. These models demonstrate that the expectancies, behaviors, feelings, and human interactions of all parties are likely to provide an extremely complex setting to analyze whether accessibility has been achieved.

Defining Disabilities

Disabilities are difficult to define. Such definitions may derive from people's cultural value systems, societal norms, or governmental priorities or from specific health organizations (Ingstad and Whyte 1995). Western concepts of disability attempt to define and categorize people with infirmities so that political decisions can be made about the distribution of social goods, which is often mandated by law.

The ADA's definition of "disability" is derived from the Rehabilitation Act of 1973; however, the ADA uses "disability" rather than "handicap" in its terminology. To be classified as a disability by the ADA, three criteria must be met: (1) a person has a physical or mental impairment that substantially limits one or more of the major life activities, such as walking, speaking, seeing, hearing, breathing, learning, working, and caring for oneself; (2) a person has a record of an impairment; and (3) a person is regarded as

having an impairment (ADA Technical Assistance Program 2001b). Disabilities currently identified as covered under the ADA include physical impairments such as physiological disorders, cosmetic disfigurement, or anatomical losses that affect body systems and mental impairments such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. In addition, certain types of stress and depression may be considered impairments, and contagious diseases such as HIV/AIDS and some cases of tuberculosis are also impairments as defined by the ADA and further clarified through the courts (ADA Technical Assistance Program 2001b).

Some analysts have argued that the ADA's definition of a disability is not easily understandable, because "covered disabilities are not clearly listed in the language of the act," which makes eligibility difficult to determine (Oyez and Koenig 1998, p. 471). In other civil rights cases, the classification is easier: woman, African American, Jewish, and so forth. Whether or not a particular physical or mental impairment is considered a disability is often decided on a case-by-case basis. For example, mobility disabilities may be readily identified, whereas psychological and learning disabilities can be prone to subjective evaluations. Such "hidden" or "invisible" disabilities are frequently overlooked in establishing precedent for accommodations.

In a similar vein, estimates of the disabled populations can also vary given the lack of definitional exactness. Moreover, given increased longevity and improved health care, Zola (1993, p. xix) argues, "the empirical reality is that everyone, unless they experience sudden death, will in fact acquire one or more disabilities with all their consequences."

Defining Reasonable Access

Title III ensures reasonable access to people with disabilities, yet again the definition of reasonable access is not straightforward. The elusiveness of the term may be the result of reasonable access meaning different things to different people, even those with the same disability. For example, in a study on marketplace experiences of consumers with visual impairment, Baker, Stephens, and Hill (2001b) find that people vary greatly in their styles and preferences in asking for help (or accommodations) and accepting it. Therefore, it may not be possible to develop a universal definition, because people approach situations with their own unique blends of independence and dependency (Baker, Stephens, and Hill 2001b). When the ADA was written, lawmakers realized the murkiness of the term and decided that its interpretation would be best battled out in court.

Reasonable access in the language of ADA and in subsequent court cases suggests a schema of themes for what reasonable access means, including the right to receive a service, the right to effective forms of communication, the right to architectural access to a facility, and the right to be served in a barrier-free environment or receive alternative delivery arrangements. All of these rights must also be weighed in conjunction with the rights of businesses, which are protected from an undue burden in compliance.

Right to Receive a Service

The eligibility requirements of the ADA specify that businesses may not deny services on the basis of a disability.

Such a refusal constitutes discrimination under the ADA. Several court cases illustrate the denial of health care by dentists, doctors, and hospitals to people with disabilities (for a comprehensive review, see U.S. Department of Justice 2000). For example, in *U.S. v. Neurological Surgery Inc.* (2000), a complaint was filed against a physicians group for allegedly refusing to provide services to a person with AIDS. A settlement agreement enjoined the defendant against engaging in practices that discriminate against people with disabilities, including people with AIDS.

Similarly, when a nine-year-old girl was denied the opportunity to attend a Sears Model's Club program because she used a wheelchair for mobility, her mother filed a complaint with the U.S. Department of Justice. The settlement between the Department of Justice and Sears, Roebuck and Co. and Coordinated Corporate Programs Inc. was based on access opportunities defined by the ADA, specifically that "no individual will be discriminated against on the basis of a disability" (Settlement Agreement 1995).

A recent case brought to federal court by the U.S. Department of Justice charges that Norwegian Cruise Lines (NCL) has discriminated against passengers who are blind. In one case, NCL did not allow a passenger who was blind to board because he was traveling unassisted. In another case, NCL refused to return a deposit to a couple planning their honeymoon when the couple would not sign a waiver against future lawsuits (the cruise line feared the couple would be injured on the ship because both were blind, and it did not want to face future liability) (U.S. Department of Justice 2001).

These cases illustrate that people with all types of disabilities are protected from discrimination under the ADA. There is little murkiness on the point of eligibility, but as mentioned previously, there is murkiness on the definition of disabilities, as well as other rights related to reasonable access.

Right to Effective Forms of Communication

Discrimination under Title III includes the failure of public facilities to offer alternative forms of effective communication or auxiliary aids of some type. For example, interviews with color-deficient consumers indicate that retailers and manufacturers fail to provide access to important color-coded information used in safety warnings and assembly instructions unless it is also provided in black-and-white print format (Kaufman-Scarborough 2000). Similarly, if a Braille menu is not available, waiters should be prepared to read the menu to their customers with visual impairments. A formal settlement agreement with Smith Barney, in which the company agreed to provide account statements in large print to customers even though it was already providing them in Braille, demonstrates another acceptable response to a customer with a visual impairment (U.S. Department of Justice 2000).

Several cases illustrate appropriate forms of alternative, effective communication for people with hearing impairments. In 1997, the Hotel Bel-Air in Los Angeles settled with the United States, agreeing to make services accessible to people who are deaf or hard of hearing. The hotel had been unable to provide closed captioning equipment to a vacationing family, even after the family made repeated requests to receive the equipment over a two-day period (U.S. Department of Justice 1997). In another case, Davis Hospital and Medical Center settled with the United States

for refusing to provide a qualified sign language interpreter for a couple, both of whom are deaf (Settlement Agreement 2001). Similarly, Disney has agreed to provide interpreters, captioning, and assistive listening systems to resolve several complaints regarding its failure to offer auxiliary aids in its theme parks (U.S. Department of Justice 2000).

Right to Architectural Access

In most cases, reasonable access has been defined in terms of architectural standards and the design of physical facilities rather than in terms of offering solutions to the non-environmental problems faced by disabled persons. Many successful cases of structural compliance can be cited, such as Days Inn's agreement to implement a nationwide accessibility initiative and Yankee Stadium's recent announcement of a plan to increase wheelchair seating locations throughout the lower levels of the stadium, creating access and affordability for people with disabilities (ADA Technical Assistance Center 2000). Moreover, Greyhound promised to put more accessible buses on the road and to train its bus drivers in working with riders who are disabled. However, the reality of each success story is minimized to a degree, because each case was the result of a formal complaint and/or lawsuit.

More significant are the failures, such as the judgment against Macy's West, whose flagship store in San Francisco was found to be in violation of the ADA and was required to come into compliance with it in 1999 (Wilson 1999). The decision came after three class-action suits had been brought against 83 Macy's West stores, alleging that the chain failed to widen its aisles, preventing access by people using wheelchairs, walkers, and motorized carts. In response to these actions, Macy's argued that spacing the racks further apart would decrease display units, thus decreasing customer choices and causing Macy's to lose sales if aisles were widened to 36 inches. Macy's failed to note that its response ignores overall consumer dissatisfaction with crowded aisles and cluttered merchandise, regardless of disabilities.

Basically, certain store designs can disable people who have some limitations in a life ability. People with attention deficit disorder, for example, often report feeling lost and overwhelmed when sensory stimuli overload their capacities for attention, making it impossible to shop effectively (Kaufman-Scarborough and Cohen 2000). For them, the demands posed by the environment interfere with their abilities and aggravate the impact of their learning disability. Similarly, people with epilepsy, who may be sensitive to flashing strobe light effects, may find that such trendy décor will induce a seizure and thereby pose a health hazard (Kaufman-Scarborough 1999). Indeed, store atmospheres that are safe and accessible for many can create hazards and considerable discomfort to others when ableist assumptions are used in store and mall design.

The Right to a Barrier-Free Environment or Alternative Delivery Arrangements

The ADA requires the removal of physical barriers to existing facilities when "readily achievable." If removal is not readily achievable, alternative delivery arrangements must be made. Both concepts have some ambiguity, which has been clarified somewhat by the courts. For example, Avis,

the rental car company, is now required to provide vehicles with hand controls in most major airports (U.S. Department of Justice 2000). Similarly, Hawaii has agreed to allow the service animals of people with disabilities to forgo quarantine requirements, provided that the owners can provide pre-certification papers (U.S. Department of Justice 2000). Appropriate alternative delivery arrangements were clarified in the resolution of a lawsuit against Venture Department stores, which agreed to change its check cashing policy. Customers were then allowed to pay with a personal check using a nondriver state identification card or a driver's license. The previous policy only allowed a driver's license (U.S. Department of Justice 2000).

Undue Burden—The Rights of the Public Facility

Title III states that changes to existing facilities must be readily achievable and not place an "undue burden" on the provider. That is, the ADA's language notes that the rights of public facilities must be weighed in determining the definition of reasonable access. A settlement agreement between the U.S. government and the Omaha Zoological Society provides some direction on the ambiguity of the undue burden concept. Although the Omaha Zoological Society was required to make some parts of a rainforest jungle accessible, it was not required to make all parts accessible, because the changes would close the facility for a year and cost approximately \$5 million. The Justice Department determined that this was not readily achievable (U.S. Department of Justice 1994).

Another unexplored issue is the relationship between the right of access and a firm's ability to choose the customers for whom products and services are designed. Perhaps these rights are acknowledged in the language of the ADA, which specifies that reasonable accommodation should not "fundamentally alter" the business's offering, but exactly what does "fundamentally alter" mean? Businesses increasingly focus on niche markets and their most profitable customers, recognizing that they cannot be all things to all people and that they are more profitable when they do not try to be. Quite simply, there are businesses whose core products would not appeal to consumers with certain disabilities for their personal use. For example, fragrance stores are not likely to be patronized by some consumers with allergies, asthma, or multiple chemical sensitivities. Requiring in-store access to consumers with these disabilities may not be practical or desirable. However, access through other channels, such as the Internet, catalog, or telephone, may meet the sense of access to purchase without undue burden to the retailer or to the customer. Thus, it may be possible for a person with a disability to be viewed as a profitable customer without causing undue hardship. Customers on the periphery, able-bodied or disabled, are not as likely to receive the excellence in service they desire unless their needs are understood. If the ADA requires a business to be all things to all people, is that an undue burden? It may be if the business is not permitted to focus on its most profitable customers, who may or may not have disabilities.

Accessibility from the Perspectives of People with Disabilities

Shoppers with disabilities have specific access criteria and sequences of activities that render a public setting accessi-

ble. For them, accessibility is often defined through the activities that users of any environment desire to accomplish without asking for help. That is, patrons with disabilities want to believe that their needs have been anticipated and provided for in advance. Specifically, "reasonable access is related to the disabled person's state of mind as well as to their physical surroundings" (Kaufman-Scarborough 1999, p. 501). Not all people with disabilities desire or need extra services at the point of sale. Many people with disabilities have developed their own strategies for adapting to their environment and are more than happy to use them. Still, what is important is that there is equal access to public accommodations (i.e., nondiscrimination).

A case study by Baker and Redmond (2001) illustrates why equal access is important to customers with disabilities. This study reveals additional benefits of participating in the marketplace, beyond those mentioned by customers without disabilities. Specifically, having access to the marketplace makes people feel like normal or worthy members of the social body, allows them to be independent in making their own choices, and allows them to maintain an identity when an impairment develops during their lives (e.g., continuing to perform their expected role of shopping for groceries).

A Harris Poll shows that many people with disabilities report improved conditions in recent years. Attributions for these perceptions are made to greater accessibility in society (National Organization on Disability 2000), some of which may be related to technology. For example, another recent survey suggests that adults with disabilities spend more time online than adults without disabilities and are much more likely than adults without disabilities to report that the Internet has significantly improved their lives (Taylor 2000). Attributions for these enhancements in quality of life are related to being better informed about the world, feeling connected to the world, and being able to reach out to people with similar interests.

Other sources indicate that accessibility is still an uphill battle in many sectors, such as voting, recreation, religious participation, telecommunications, and transportation, even since the ADA's implementation. Rather than proactively redesign existing environments and plan access into new construction, products, and messages, organizations often create accessible designs because of lawsuits and protests. As a result, disability groups often report feeling patronized and set apart from society (e.g., American Association of People with Disabilities 2001). Having to claim and prove that discrimination exists is not accessibility or being accepted in the "mosaic of the American mainstream."

Other symptoms of closed doors are found in the low percentage of home ownership among disabled persons, low voter turnout due to inaccessibility of polling places and inadequate voting technologies, higher workplace absence due to unavailable transportation, inability to afford assistive technologies, playgrounds that provide limited access for children with disabilities, and Web sites and computer software that are not adapted for ADA compliance (e.g., Bush 2001).

Responses of Retailers and Service Providers

Most retail facilities today are designed with the assumption that consumers will serve themselves (Baker and Redmond

2001). Customers are expected to make choices from displays and take them to a cashier to complete the transaction. Under the ADA, such expectations are acceptable provided that the retailer can demonstrate that it provided a clerk to retrieve merchandise, that it contracts with vendors that require it to maintain accessible layouts, or that improving access would not fundamentally alter the nature of the retail establishment (Silbergeld 2000). Regardless of the choice of store design, self-serve or accommodative, the retailer should prepare for people with disabilities and is required to do so by law.

Many businesses have embraced the spirit of the ADA. The banking industry has been particularly proactive in providing various access services (e.g., providing bank statements in Braille at no extra charge), as well as employing people with disabilities. Members of the industry have met with representatives of the disabled community to foster their education and determine what types of services add value for their customers, and banks have trained their employees to recognize the needs of people with disabilities (Williams 1999).

Another positive example is provided by Cannondale's recent action. Driven by a desire to facilitate recreation opportunities for people with mobility impairments, the bicycle manufacturer recently began producing lightweight, or racing, wheelchairs. Thus, Cannondale has entered a market controlled by manufacturers of traditional, heavier wheelchairs. Not only are these racing wheelchairs being made more functional for the users, but they are also being sold through bicycle shops, because the company believes that people with mobility impairments want to shop at the same stores as their ambulatory peers (Fost 1998).

Other informal agreements reached with the Department of Justice reveal that many public accommodations desire to be in compliance. Several examples exist: Two Texas physicians agreed to provide sign language interpreters to ensure effective communication with patients, a Texas restaurant posted a notice and notified staff that service animals are welcome, and an Alabama cab company notified drivers in writing that they are required to provide service to wheelchair users (U.S. Department of Justice 2001).

However, as shown in many of the cases cited in this article, including Days Inn, Greyhound, and Yankee Stadium, the ADA is often addressed in a reactive manner when violations are found. That is, compliance with ADA directives appears to be a penalty if the business is caught. Case after case reported in the popular press appears to document actual accommodations, when a closer look indicates that the accommodations are forced, claims and complaints are necessary, and compliance is generally after the fact. Thus, in many cases the ADA is working as a coercive law, not as a signal to build access to public environments.

It may be that the reactive stance of retailers is a result of not understanding the needs of their customers with disabilities. Many retailers have been found to have a vague understanding of the ADA, often in terms of disability stereotypes rather than real solutions (Kaufman-Scarborough 1998). When a sample of retailers was interviewed about their understanding of the ADA, the majority had some knowledge about providing access. Some responded in terms of readily observable aspects of their stores, such as having

ramps, special parking spaces, and automatic doors. Many retailers claimed that they were hindered simply by a lack of knowledge or training to work effectively with customers with disabilities rather than by lack of interest. Predominant themes in their responses were that (1) their customers would need help; (2) the retailer would try to provide that help when asked; (3) retailers could anticipate needs such as ramps, but other needs would be responded to in a specific situation; (4) the ADA "meant" expensive ramps and doors that they could not afford; and (5) they did not have many disabled customers, so few changes were needed. Notably, such responses run counter to the spirit of accessible design, in which the needs of disabled persons are anticipated first because disabled persons are a significant proportion of the population. That is, if Census figures are accurate, retailers might expect one of every five customers to be disabled.

A proposed amendment to the ADA, spearheaded by actor Clint Eastwood and introduced in the House of Representatives by Representative Mark Foley, is founded on the basis that it is inappropriate to assume that retailers would know how to make their facilities 100% accessible. The amendment, the ADA Notification Act, suggests that a business be given advance notice of customer intentions to file suit (not currently required in Title III), giving the business an opportunity to come into compliance (U.S. House of Representatives 1999-2000). One justification for this suggested grace period is that noncompliance with the ADA may not be intentional. That is, if a business does not know it is broken, how can it be fixed? Fox (2000) notes that organizations understand that Title I of the ADA applies to employers with 15 or more employees, but they may not understand that Title III has no limitation on number of employees. In addition, organizations may not understand the lines between public and private space. This amendment, H.R. 3590, was referred to House Judiciary Committee during the 106th Congress and is being examined by the Constitutional Subcommittee. This proposed legislation is not based on the assumption that customers with disabilities should be anticipated in public facilities; instead, the rights of the business are under consideration.

Conclusion

The ADA promised a lot to people with disabilities. It promised to open doors and afford the opportunity to become part of the economic mainstream. It promised reasonable access and accommodation, allowing people with disabilities to feel a greater degree of independence and freedom of choice. Thus, expectations are high. Can the ADA do all of these things? Has it brought people with disabilities into the mainstream of the economy? The results are mixed. As the issues discussed previously illustrate, great strides have been made in accomplishing Title III's goal of public accommodation; however, not all doors have been opened for people with disabilities. Do the court cases and case studies examined here indicate that the ADA has failed? Absolutely not. However, they do illustrate that there is still work to be done on increasing accessibility for people with disabilities.

The goal of marketing is to add value and create satisfaction in customers' lives. To make businesses truly accessible to people with disabilities, marketers must proactively

1. ensure that people with disabilities recognize that they are welcome and expected;
2. become informed on the rights of people with disabilities and engage in marketing research that includes people with various types of disabilities in the sample, to understand how to prepare to meet their needs;
3. train frontline employees to expect people with disabilities to be among their customers;
4. provide effective communication in alternative forms; and
5. recognize that each customer has his or her own set of needs (i.e., all people with disabilities are not the same).

Indeed, in many cases the courts and the U.S. Department of Justice have already mandated that some of these actions be taken. To avoid court costs, which are often greater than the cost of the accommodation actions required, marketers must anticipate the needs of all their customers. Such anticipation is likely to benefit all customers, because service providers will learn to determine customer preferences on an individual basis and learn that different people value different things. At present, retailers often approach customers with disabilities using a one-size-fits-all tactic (Baker, Stephens, and Hill 2001a). The problem this presents is that a person with a visual impairment does not desire the same accommodative efforts as a person with a mobility impairment and vice versa. People with different disabilities have different needs, as do people with the same disability; a person with a hearing impairment may not want an auxiliary aid to be provided by a business, but another may expect and desire it.

There is a tremendous need for education on why the ADA is necessary and why marketplace accessibility is important to people with disabilities. Often, the focus of training and discussions on the ADA is structural compliance issues and what should be done, not why it should be done and in what situations. It seems unrealistic to expect people without disabilities or with different types of disabilities to know what it is like to live with a particular disability. Many managers of modern businesses may have never had the opportunity to interact with people with disabilities. Disability was a taboo topic for centuries and therefore not often spoken of in the classroom or in the home. Does any of this mean that business leaders have a right to be ignorant of such issues today? Absolutely not. However, it does mean that information on why accommodation is important and when to provide it, not just how it is to be done, should be readily available. There is limited access to pertinent information on reasonable access under Title III of the ADA. This constitutes a problem for businesses in understanding and complying with the ADA. The meaning of accessibility can be unfolded through in-depth case studies related to specific public facilities and/or specific disabilities. Such case studies are few in fields such as marketing and consumer sciences but could greatly enhance these education efforts. The benefits to society and to the business (including profits) that can be achieved must be readily apparent.

If the ADA were fully implemented, people with disabilities would be expected to participate fully in society. Their needs would be anticipated and taught in schools of architecture, business, medicine, and so forth. Store design and arrangement would be automatically created to accommodate consumers with disabilities who are expected to shop. Business plans would automatically account for disabilities

in designing employee work and customer transaction tasks and interactions. Doctors would be taught to expect that many of their patients would be or would become disabled and that science cannot necessarily rehabilitate all people.

The ADA, like other forms of civil rights legislation, was created not with the intent to punish businesses but to protect people with disabilities and guarantee equality. The legislation would not have been necessary if people with disabilities had been consistently treated as equals and empowered to make free choices (Dart 1993). Society would benefit if the ADA were unnecessary, but for now, the social engineering is not complete and the ADA is necessary.

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