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The Americans With Disabilities Act: A Mandate for Marketers

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The most striking fact about the [disability population] ... is that it is the most inclusive. There is a sense that we live in the antechamber of [this] community. I will never be black and I will never be a woman. But I could become [disabled] on the drive home tonight (comment by George Will at a seminar sponsored by the National Organization on Disability, cited in Hopkins 1994).

An estimated 49 million Americans (nearly one in five) have a physical or mental disability, which makes people with disabilities the country's largest minority (Hopkins 1994). More than one in six individuals of working age (16 to 64 years of age) has a disability; two-thirds of these 29 million are not currently employed, though 79% state that they would like to work (Louis Harris and Associates 1994). In July 1990, the Americans with Disabilities Act (ADA), hailed by many as landmark legislation, was signed into effect by President George Bush. The ADA prohibits discrimination against persons with disabilities in hiring and promotion decisions and provides access to public transportation and public accommodations and services, as well as to telecommunications (Fersh and Thomas 1993). Our intent is to examine how the ADA affects marketers, both directly in regulating their activities and indirectly by raising awareness of a sizable group that marketers have heretofore largely ignored.

The next section provides a brief description of the provisions of the ADA, followed by a discussion of the issue of access. This issue directly affects marketers because they must make provisions for accommodating customers with a variety of disabilities. The final section calls on marketers to venture beyond *de minimis* compliance with the letter of the ADA and attend to its spirit as well, by approaching people with disabilities with the sensitivity and respect every consumer deserves.

The Americans with Disabilities Act

Although the ADA is not the first federal legislation to address the needs of people with disabilities, it does represent the first attempt to stop discrimination encountered in the private sector (Fersh and Thomas 1993). The Architectural Barriers Act of 1968 prohibited barriers to the disabled in federally funded buildings. The Rehabilitation Act of 1973 prohibited discrimination against people with disabilities only in federal agencies and organizations that received federal funds (Fersh and Thomas 1993).

The ADA's Definition of Disability

The definition of disability in the ADA of 1990 is based on that in the Rehabilitation Act of 1973. However, the ADA uses the term "disability" rather than "handicap." A disability is considered as such if it meets three criteria:

1. It is 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. The individual has a record of such an impairment.
3. The individual is regarded or perceived to have such an impairment (Americans with Disabilities Act of 1990, Section 3).

The Provisions of the ADA

The ADA prohibits discrimination in the private sector against persons with disabilities; excluded from compliance are religious organizations, Native American tribes, certain private membership organizations, and the federal government, except in limited circumstances (Fersh and Thomas 1993). The Act consists of five titles. Title I involves nondiscrimination in employment. Specifically, the title prohibits discrimination against disabled individuals in hiring, testing, selection, and promotion. As of July 26, 1994, all companies with more than 15 employees were required to comply with this title.

Title II provides access to buses and trains and prohibits discrimination by state and local governments. Title II, which went into effect on January 26, 1991, does not require retrofitting of existing equipment, but does mandate the installation of accommodation devices on newly-built vehicles. We discuss Title III, which provides access to public accommodations and services, subsequently. Title IV requires access to telecommunications and became effective on July 26, 1993. Title V is a miscellaneous section that addresses ADA's relationship to other laws, such as the Rehabilitation Act of 1973, and special topics, such as historical buildings.

Providing Access to Consumers with Disabilities

Title III of the ADA affects marketers the most immediately and directly. This section guarantees individuals with disabilities nondiscriminatory access to public accommodations that are classified into twelve categories:

1. hotels, motels, and other places of lodging;
2. restaurants and bars;
3. theaters, concert halls, stadiums, and other places of entertainment;
4. auditoriums, convention centers, concert halls, and other places of public gatherings;
5. bakeries, grocery stores, hardware stores, shopping centers, and other retail establishments;

6. laundromats, dry-cleaners, banks, barber shops, beauty shops, travel services, shoe repair services, gas stations, funeral parlors, pharmacies, hospitals, offices of lawyers, accountants, and other professionals, and other service establishments;
7. public transportation terminals, depots, and stations;
8. museums, libraries, galleries, and other places of public display or collection;
9. parks, zoos, amusement parks, and other places of recreation;
10. private schools;
11. day care and senior citizen centers, homeless shelters, food banks, adoption agencies, and other social service centers; and
12. gymnasiums, health spas, bowling alleys, golf courses, and other places of exercise or recreation.

Title III's accessibility and nondiscrimination mandate also covers places of public accommodation in private residences (*Equal Employment Opportunity Commission and U.S. Department of Justice* 1991).

Title III requires businesses to make existing buildings, as well as newly constructed buildings, accessible to people with disabilities after January 26, 1993. If the necessary modifications to buildings are not "easily accomplishable" and require substantial structural change that would affect the nature of the business operation, businesses must make "alternative delivery arrangements" (*Americans with Disabilities Act Handbook* 1991, III-3). Businesses may take a \$15,000 tax deduction for such modifications. The Disabled Tax Credit is available for small businesses (defined as organizations with fewer than 30 full-time employees and gross receipts not exceeding \$1 million) and comprises 50% of expenditures for the removal of architectural barriers and reasonable accommodation over \$250 and less than \$10,250.

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). For example, a restaurant may not use its "no pets" policy to refuse service to an individual who uses a guide dog (Fersh and Thomas 1993). A bank may not require a driver's license as the sole means of identification, because persons with severe visual impairments or other disabilities cannot obtain a license (Feddis 1992). And a physician or other service provider may not deny services to a person with disabilities. In contrast, an amusement park may impose height restrictions for certain rides if such requirements are necessitated by safety considerations. But such safety requirements must be based on fact rather than speculations, generalizations, or stereotypes (Fersh and Thomas 1993).

Violations of the ADA's accessibility requirement have led to a number of lawsuits. Jujamcyn Theatres in Manhattan agreed to install a wheelchair ramp as part of their settlement of a suit filed by ABC News correspondent John Hockenberry (*The Disability Rag* 1993). Disabled in Action sued the Spectrum, the Philadelphia sports arena, for failing to provide accessible seating in all levels of the stadium. This case, too, was settled, with the arena agreeing to pro-

vide such seating (*The Disability Rag* 1993). After lawsuits were filed under the ADA for violations of the eligibility provision, including a private action against Venture Stores, Inc., for requiring customers to show a driver's license in order to cash checks, Venture agreed to accept state identification cards from customers whose disabilities make them ineligible for driver's licenses (*The Disability Rag* 1993).

In *Ability* magazine (1994) there is a listing of national and regional support centers for people with a wide range of disabilities. The list also includes organizations specializing in ADA compliance studies, plans, and programs. The Department of Justice has required that the Architectural and Transportation Barriers Compliance Board in Washington, D.C. offer free technical assistance to firms attempting to comply with the portions of the ADA that deal with accessibility. In addition, there are 10 regional disability and business accommodation centers operating as programs of the Department of Education National Institute on Disability and Rehabilitation Research (Fersh and Thomas 1993).

Fersh and Thomas (1993, p. 93) express the spirit of the ADA and Title III, in particular, in their comments on the legislation's positive impact on business:

What many business owners may fail to realize is that the Americans with Disabilities Act will bring a large new segment of American consumers into the marketplace. Presumably, over the course of the next decade, an important new market segment will emerge, composed of workers with disabilities entering the work force. This new market segment will be patronizing facilities and businesses that comply with the ADA's accessibility and nondiscrimination mandates in order to purchase goods and services. In addition, untold billions of dollars may be saved by enabling people with disabilities to break the cycle of isolation and dependency on government benefits and entitlements. Resources will be devoted to enabling people with disabilities to become productive taxpayers instead of disenfranchised tax consumers. American business owners, in complying with the public accommodation provisions of the ADA, are making a long-term human investment in workers with disabilities and a long-term investment in a new market segment of over 22 million adult consumers.

Marketing to People with Disabilities

In addition to its direct effect on marketers, the ADA exerts an indirect influence as well: It serves as a "wake-up" call to those who have never considered people with disabilities a market significant enough on which to focus resources. An estimated 20% of the United States population is disabled (Hopkins 1994). If spouses, relatives, and caregivers for a person with disabilities are included in the estimation, marketers using a promotional program that features a person with a disability could reach as many as four in 10 consumers. Additionally, one in six Americans experiences a disabling activity limitation at some point in his or her life (Reedy 1993). And as age increases, disabilities relative to age rise as well. One in three persons between 55 and 64 years of age has a functional limitation. As baby boomers swell the ranks of the over-55 market, there will be more Americans with disabilities than ever before (Reedy 1993). Not only does it make good business sense to focus more on the needs and wants of consumers with disabilities, but

doing so may also forestall future legislation or self-regulation.

We provide five guidelines for marketing to consumers with disabilities. The purpose of the guidelines is to help marketers conform to the spirit of the ADA and, in the process, enhance the efficacy of their marketing programs.

Guideline 1: Remember that Different Disabilities Result in Different Consumer Needs

The 49 million Americans with disabilities are a diverse group. Reedy (1993, pp. xix-xx) suggests that disabled consumers be classified *physiographically*, that is, by their physical or sensory-limiting attributes. He proposes the following four categories:

- *Mobility impairments:* These are limitations to movement, ranging from restricted upper body motions such as reaching, typing, or grasping to restricted lower body motions such as walking or climbing. Mobility impairments may result from many conditions such as injury or disease ... these limitations might reduce the ability of customers in accessing, handling, or responding to your advertisements or getting to your location or around in your store.
- *Hearing impairments:* These include diminished hearing abilities ranging from deafness to being hard of hearing.... Sensitivity to the audio element of television or radio messages must be considered.
- *Sight impairments:* These are visual limitations ranging from blindness to other severe sight restrictions such as retinitis pigmentosa. Sight impairments can be doubly restrictive in that they can cause both a visual disability and a reduction in freedom of mobility. Vision limitations affect the impact of print media's graphics and typography elements, but the audio portion of television and radio strengthens communications with consumers who are blind.
- *Speech impairments:* These are limitations of intelligible speech resulting from many causes, such as congenital deafness to childhood illness to psychologically induced stuttering.

As Reedy notes, each consumer segment has different needs that depend, at least in part, on the nature of the disability. Reedy's segmentation scheme does not specifically incorporate people with mental impairments in the categories; however, the guidelines presented here are intended to apply to mentally impaired consumers, as well as those who fit into one or more of Reedy's categories.

Guideline 2: Use Language That Conveys Respect

The word "disability" refers to a physical or mental condition (e.g., a visual impairment, a learning disability). A "handicap," on the other hand, refers to a physical or attitudinal constraint imposed on a person by the physical or social environment. For example, the typical print size used in a posted menu is too small for many, if not most, visually impaired people to read. Thus, the small print size constitutes a handicap to those with visual impairments. Removing the handicap might involve offering large-print or audio versions of the menu to those who need such accommodations. In other words, consumers with visual impairments can make full use of the menu if its physical presentation does not handicap them. Travel is, for the mobility impaired, fraught with handicaps. One glaring example is the outhouse in Grand Teton National Park, which has a wheelchair-accessible sign that its cement step contradicts (Hirsch 1994).

In this example, a physical obstacle handicaps wheelchair users; if the barrier were removed, they could use the toilet facilities.

In recent years, many euphemisms have been substituted for the word "disability." Among those still being used are "physically challenged" and "differently abled," as in the Toys 'R Us catalogue entitled *Toy Guide for Differently-Abled Kids*. Such terms imply that having a *disability* is unacceptable or is a condition too shameful or embarrassing to be spoken of directly, or even acknowledge (Reedy 1993). "I didn't even notice that you're visually impaired (in a wheelchair)" is an often-heard well-intentioned but ultimately condescending remark. To understand the condescension, try substituting "African American" or "a woman" for the disability in question.

Another common practice uses labels that describe people solely in terms of their disability: the epileptic, the paraplegic, the deaf woman. Such labelling is dangerously myopic, because it assumes that no other aspect of the person affects their consumption of the product in question. Just as demographics provide an incomplete description of consumers, so also do disabling conditions. An example of an advertisement that (happily) avoids such labelling was placed in *Advertising Age* (1992) by the Screen Actors Guild. The copy reads as follows:

GET REAL. 43 million people were left out of your last commercial. There are 43 million people with disabilities in America—mothers, fathers, children, executives, secretaries, teachers, lawyers, scientists, musicians—all consumers, spending billions of dollars every year.

A good start. Unfortunately, the advertiser forgot that these millions are a diverse group; the advertisement goes on to state: "One performer with a disability can reflect those 43 million people."

Guideline 3: Portray People with Disabilities in a Respectful and Accurate Manner

Increasing numbers of marketers are including people with disabilities in their advertisements. The Target clothing store chain, a pioneer in showing children with disabilities in its advertisements, has received a very positive response, in terms of both sales and verbal feedback. Advertisers ranging from McDonald's to Citibank and from Kmart to Nordstrom's have begun portraying people with disabilities in their advertisements (Roberts and Miller 1992). Although no formal study has been done, it appears that individuals with mobility impairments are most often selected, perhaps because they are most easily identified and, hence, are most likely to win consumer goodwill. Because different impairments lead to different experiences and needs, marketers cannot and should not assume that showing one individual with a disability will "take care of" the "disabled community."

When people with disabilities are portrayed, care should be taken to ensure that they appear not just as professionals and friends, but also as parents and/or romantic partners. All too often the assumptions are made that a person with a disability is inadequate to the task of raising children and will never be involved in a romantic relationship. Such assumptions are erroneous and narrow-minded, as well as bad mar-

keting: People do not like being stereotyped. Compassion, love, and sexuality reside in the soul, not in the limbs or the senses.

A Nordstrom's Anniversary Sale catalogue appearing in *Glamour* magazine (1993) depicts a woman in a wheelchair wearing "lounge-wear"—a high-necked, bright-colored, shapeless two-piece ensemble. She is sitting up straight-backed and primly smiling. The other two photos of lounge-wear show models wearing white, feminine pieces that are lower cut; these models are posing in a relaxed, "whole-some-but-sexy" manner, smiling invitingly at the camera. There is nothing wrong with Nordstrom's portrayal of a woman in a wheelchair in this particular catalogue issue. Such depictions do become problematic, however, if a person with a disability never appears in a sexy photo or romantic commercial.

Guideline 4: Beware of Your Own Biases About the Quality of Others' Lives

The subsequent three examples depict how biases about the quality of others' lives can be demeaning. First, a campaign to promote the use of seat belts reads simply, "If you think seatbelts are confining, think about a wheelchair" (Wang 1992, p. 1098). Second, a public education advertisement to promote the use of folate to prevent spina bifida reads, "Nothing could be more devastating than to have a spina bifida baby.... My heart goes out to the mother who has just been told that she has a spina bifida baby" (The Disability Rag & Resource 1994, p. 46).

Third, Jerry Lewis, host of the annual Labor Day Muscular Dystrophy Telethon, wrote an article for *Parade* magazine, allegedly from the vantage point of a child with muscular dystrophy. He referred to a wheelchair as a "steel imprisonment," and added, "When I sit back and think a little more rationally, I realize my life is half ... I just have to learn to try to be good at being half a person" (Del Valle 1992, p. 36).

The seatbelt campaign equates a wheelchair with imprisonment. To understand the message of the public education advertisement, substitute "girl" for "spina bifida" as the implied disability and imagine "sympathetic" strangers offering their condolences: "I was so sorry to hear about your baby...." If the picture is still not clear, imagine that you are that child, that "tragedy" about which people whisper, the invisible person to whom they do not speak. This is how parents of children with disabilities and the children themselves are commonly treated.

But a disability is only tragic in the eyes of a culture that does not accept the evidence that accidents do happen. People have no control over some aspects of their lives, and humans are, ultimately, vulnerable to uncontrollable elements. American culture places a premium on control—control of one's life, health, career, aging process, and more. Americans view people with disabilities as unwelcome reminders of their ultimate lack of control. People with disabilities arouse both fear and its antidote, pity. Pity helps chase away fear and provides distance from its object; it is also totally devoid of respect for the other's dignity and autonomy. Those professing pity feel, "The pitiable need our help; they are not one of us." Hence, when people with disabilities refuse to play the patient role and instead assert themselves

and their rights, the self-appointed helpers often feel resentful (DeAngelis 1993).

Finally, one of Jerry Lewis' former "kids," disability activist Laura Hershey comments on Lewis' telethon:

Despite progress in the areas of legal protection and accessibility, there's still a lingering attitude that what people with disabilities really need is to be cured. Society wants the problem to go away, so it won't have to accommodate people with long-term disabling conditions.

The idea of a cure is at least in part an effort to homogenize, to make everyone the same....

We all have our own assumptions about which human condition is best, based on our own assumptions about other people's lives. These assumptions don't always jibe with reality. People who assume I live for the day when a cure is found, when I (or future generations) can live disability-free, simply don't understand my reality.... There's an issue of pride involved. Disability is a part of my whole identity, one I'm not eager to change—especially not at the cost of my dignity and personhood, as the Telethon implicitly demands (Hershey 1992, p. 16).

To create effective marketing programs, one must be able to experience the consumer's version of reality and shed preconceptions and cultural biases, even if only momentarily. This empathic stance is nowhere more critical than when the consumer in question has not traditionally been welcomed by society as an equal and a human with dignity, hopes and dreams, and the right to choose.

Guideline 5: Teach Your Employees How to Show Respect to People with Disabilities.

Recently, a bus driver for the Southeastern Pennsylvania Transit Authority (SEPTA) was charged with assaulting a deaf passenger. Witnesses stated that the passenger was attempting to show the driver his disability card; when she would not look at it, he touched her shoulder repeatedly. In response, she drew out a knife and slashed him across the face (Fazlolla and Gibbons 1994). A SEPTA spokesperson was quick to note that all vehicle operators receive sensitivity and diversity training (Gambaccini 1994). Either SEPTA's recruiting process is faulty or the training offered is grossly inadequate; otherwise, such an incident would not have occurred.

Such events are thankfully rare. But anecdotal evidence suggests that people with disabilities are commonly treated as less than equal. When a salesperson addresses questions about the person with disabilities to the person's companion, he or she is, in effect, communicating his or her ignorance of and disdain for people with disabilities. When a bus driver cannot operate the wheelchair lift, he or she is showing an incompetence that is countenanced by public transportation officials. When a fast-food restaurant server responds surlily to an individual who cannot read the posted menu, he or she displays the company's inadequate (or lack of) training given on serving persons with sensory impairments. Employees' conduct reflects—and reflects *on*—the organization they represent. Excuses offered after the fact do not win back consumers who have been poorly treated. Nor should they.

Conclusion

Marketers have much to gain both financially and in consumer goodwill by becoming attuned to the wants, needs, and concerns of the increasing numbers of persons with disabilities. The letter of the ADA mandates that marketers make their goods and services accessible to consumers with disabilities. The spirit of the Act instigated the five guidelines we have presented here. The guidelines have a common theme, which is to treat consumers with disabilities as the marketer would treat any valued customer—with empathy, respect, and a sincere interest in building a long-term mutually satisfying relationship. Not only does this stance make good marketing sense, but it may also forestall further regulation.

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