



FILED:
May 4, 2023

STATE OF INDIANA
OFFICE OF ADMINISTRATIVE LAW PROCEEDINGS

Aaron Abadi, Complainant, V. Apple, Inc., Respondent.	Administrative Cause No.: ICRC-2203-000404 Underlying Agency Action No.: PAha21090390
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Subject to the Ultimate Authority of the Indiana Civil Rights Commission

RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Pursuant to IC 4-21.5 this Recommended Order is not final and shall be presented to the ultimate authority for issuance of a final order.

JURISDICTION

The Commission of the Indiana Civil Rights Commission ("ICRC") has subject matter jurisdiction over public accommodation discrimination complaints based on disability that are filed under the Indiana Civil Rights Law ("ICRL"). IND. CODE § 22-9-1-2; IND. CODE § 22-9-1-6. When a finding of cause is made under the ICRL, pursuant to the Commission's June 19, 2020, Finding of Necessity, the Office of Administrative Law Proceedings ("OALP") shall appoint an Administrative Law Judge ("ALJ") to preside over the matter and to conduct a hearing. IND. CODE § 22-9-1-6; IND. CODE § 4-15-10.5-12; IND. CODE § 4-15-10.5-13.

ISSUE

Should Respondent's Motion for Summary Judgment ("Motion") be granted?

PROCEDURAL HISTORY

Respondent filed Respondent's Motion for Summary Judgment on April 17, 2023. Complainant filed Complainant's Response in Opposition to Respondent's Motion for Summary Judgment ("Response" or "R.") on April 20, 2023.

FINDINGS OF FACT

1. In response to the spread of the COVID-19 pandemic, Respondent closed its retail stores. (Respondent's Exhibit 1)
2. Once stores re-opened, Respondent implemented various policies in the interest of customer and employee safety. These policies included limited occupancy to promote

physical distancing, temperature checks before entry, and the requirement that customers and employees wear masks. (Respondent's Exhibit 1)

3. With respect to masks, Respondent's policy stated as follows: "Face masks will be required for all of our teams and customers while visiting an Apple Store, and we will provide them to customers who don't bring their own. N95 masks with valves, and masks that do not cover your nose and extend below your chin—such as bandanas, are not permitted at Apple Stores. Replacement masks will be provided as needed." (Respondent's Exhibit 1)
4. If a customer were unable to wear a mask or preferred not to enter a Store for any other reason, Apple's website also advised that customers, "[could] get all the same great products and services from [Apple's] online store with free no contact delivery, and one-on-one shopping help from a Specialist via Chat, or by calling 1-800-MY-APPLE." Many stores also had pickup in front of the store or curbside pickup available for online orders. (Respondent's Exhibit 1)
5. The Apple store in the Fashion Mall at Keystone is a store located in Indianapolis, Indiana in Marion County. This store no longer requires the use of masks to enter. (Respondent's Exhibit 1)
6. Complainant has a "sensory processing disorder" or "sensory integration disorder" that results in "extreme sensitivity to touch, mostly in the area of his head," which prevents him from wearing a face mask. (Respondent's Exhibit 5)
7. On August 27, 2021, Complainant contacted the Apple store in the Fashion Mall at Keystone through telephone and spoke to employees from the store. Complainant recorded two telephone calls that he had with the Apple employees. (Respondent's Exhibits 6 and 7)
8. During these two telephone calls, Complainant was on his way to Respondent's store and inquired about Respondent's mask policy. Complainant informed the Apple employees that he could not wear a mask or face shield due to his sensory processing disorder. The Apple employees informed Complainant that he would not be allowed to enter the store without a mask. However, the Apple employees offered Complainant a variety of alternatives to shopping at the Apple Store, including shopping at Apple's online store, no-contact delivery, or visiting Best Buy or his cellphone carrier's retail stores, if he wanted to interact with Apple products before purchasing them. (Respondent's Exhibit 6 and 7)
9. Complainant did not want to take advantage of the alternatives that the Apple employees suggested above. Therefore, Complainant requested a modification for Apple employees to bring out iPhones to Complainant for Complainant to look at and purchase. The Apple employees informed Complainant that they were not going to take the iPhones out of the store for Complainant to look at. (Respondent's Exhibit 6 and 7)
10. At some time after his August 27, 2021, calls to Apple, Complainant used Apple's website to make an appointment at a Best Buy in New Jersey, where they "changed the battery [in his iPhone 7] and it's been working much better since." (Respondent's Exhibit 5)

11. When Complainant placed these calls to Apple, he was “on the highway on [his] way toward Indianapolis” driving back from Colorado to New York on Interstate 70. (Respondent’s Exhibit 5)
12. Complainant is a New York resident and has no plans to return to Indiana, or the Apple store in the Fashion Mall at Keystone. Prior to placing his calls on August 27, 2021, he had not been to Indianapolis in the last ten years, and he had never visited the Apple store in the Fashion Mall at Keystone. (Respondent’s Exhibit 5)
13. In 2021, at the time of Complainant’s interactions with the Apple store in the Fashion Mall at Keystone, the state of Indiana reported that, “Indiana is dealing with increased COVID-19 spread and resurgence of the dangerous virus, which means the fight against it is far from over. Wearing a face mask is one of the simplest, most effective ways to slow the virus’s spread. Wearing a mask provides some protection to you and also protects those around you, in case you are unknowingly infected with the virus that causes COVID-19. . . . We’re asking each of you to mask up[.]” (Respondent’s Exhibit 2)
14. The Center for Disease Control reported that Marion County, Indiana was a COVID-19 “High Transmission” community and recommended that “[e]veryone should wear a mask in public indoor settings.” (Respondent’s Exhibit 3)
15. On August 30, 2021, the Governor of Indiana issued an Executive Order for the Eighteenth Renewal of the Public Health Emergency Declaration for the COVID-19 Outbreak, in which he observed and ordered:

[T]hroughout the Hoosier state, we are seeing a significant and serious increase in new confirmed cases and hospitalization and tragically, continued deaths daily from COVID-19 that is based on a surge driven by the Delta variant which is much more transmissible[.] . . . in light of the above, it is necessary and proper to take further action to protect the health, safety and welfare of all Hoosiers in connection with COVID-19 and, specifically, to renew the state of disaster emergency.” (Respondent’s Exhibit 4)
16. The Governor renewed and extended the declaration of public health disaster emergency in that order through September 30, 2021. (Respondent’s Exhibit 4)
17. Any Conclusion of Law that should have been deemed a Finding of Fact is hereby adopted as such, and this Order’s statement of Procedural History is incorporated into these Findings of Fact.

CONCLUSIONS OF LAW

1. “[A]t any time after a matter is assigned to an administrative law judge...,” a Party to an administrative proceeding can “...move for a summary judgment...,” which an ALJ must consider under Indiana Rule of Trial Procedure 56 (“Rule 56”). IND. CODE § 4-21.5-3-23.
2. Rule 56 and the Indiana Administrative Orders and Procedures Act (“IAOPA”) provide for only a motion for summary judgment and a response. IND. R. TR. PRO. 56(c); IND. CODE § 4-21.5-3-23. Neither Rule 56 nor IAOPA specifically allows Parties to file a reply or sur-reply. IND. R. TR. PRO. 56(c); IND. CODE § 4-21.5-3-23.

3. Summary judgment is only appropriate where “...there is no genuine issue as to any material fact...” and “...the moving party is entitled to a judgment as a matter of law.” IND. R. TR. PRO. 56(c).
4. Material facts “...affect the outcome of the case...,” and genuine issues are disputes in narrative or conflicts in inferences that must be resolved before one Party’s version of events can be credited over the other Party’s. *Williams v. Tharp*, 914 N.E.2d 756, 761 (Ind. 2009). However, “[s]ummary judgment is not an appropriate vehicle for the resolution of questions of credibility or weight of the evidence, or conflicting inferences which may be drawn from undisputed facts.” *Bell v. Northside Fin. Corp.*, 452 N.E.2d 951, 953 (Ind. 1983).
5. When considering a motion for summary judgment, an ALJ draws all reasonable inferences in favor of the nonmoving party. *Hughley v. State*, 15 N.E.3d 1000, 1003 (Ind. 2014). Importantly, “[I]ndiana consciously errs on the side of letting marginal cases proceed to trial on the merits, rather than risk short-circuiting meritorious claims.” *Id.* at 1004.
6. To succeed on a motion for summary judgment, Respondent must “...affirmatively negate...” Complainant’s claims. *Id.* at 1003.
7. The ICRC has subject matter jurisdiction over complaints of public accommodation discrimination on the basis of disability. IND. CODE § 22-9-1-2; IND. CODE § 22-9-1-6.
8. The Indiana Civil Rights Law (“ICRL”) prohibits a public accommodation from excluding “...a person from equal opportunities because of...disability.” IND. CODE § 22-9-1-3. Importantly, “every discriminatory practice relating to...public accommodation... shall be considered unlawful unless it is specifically exempted by...” the ICRL, and Indiana courts look to federal law and precedent for guidance on interpreting the ICRL’s prohibition. *Id.*; *Indiana Civil Rights Comm’n v. Alder*, 714 N.E.2d 632, 636 (Ind. 1999); *Filter Specialists, Inc. v. Brooks*, 906 N.E.2d 835, 839 (Ind. 2009). Additionally, the ICRL instructs that the ICRL should be “...construed broadly to effectuate its purpose.” IND. CODE § 22-9-1-2(g).

Mootness

9. “The long-standing rule in Indiana courts [is] that a case is deemed moot when no effective relief can be rendered to the parties before the court.” *T.W. v. St. Vincent Hosp. & Health Care Ctr., Inc.*, 121 N.E.3d 1039, 1042 (Ind. 2019) (quoting *Matter of Lawrance*, 579 N.E.2d 32, 37 (Ind. 1991)), *reh’g denied*. “When the concrete controversy at issue has been ended or settled, or somehow disposed of so as to render it unnecessary to decide the question involved, the case will be dismissed.” *T.W.*, 121 N.E.3d at 1042.
10. In this case, Complainant’s claims are moot because Respondent’s mask policy at issue in August 2021 is no longer active. Customers, including Complainant, are now permitted to shop in-store at the Apple Fashion Mall at Keystone without a mask.

Standing

11. The party invoking a court’s jurisdiction bears the burden to prove standing. *Solarize Indiana, Inc. v. S. Indiana Gas & Elec. Co.*, 182 N.E.3d 212, 215 (Ind. 2022).

12. Indiana courts follow federal law principles when determining whether a litigant has standing. *City of Gary v. Nicholson*, 190 N.E.3d 349, 351 (Ind. 2022) (citing and applying *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992))
13. To establish standing under the Americans with Disabilities Act (“ADA”), a claimant must demonstrate “an intent to return to the building or facility in the near future.” *Ass’n. for Disabled Ams. v. Claypool Holdings*, No. IP00–0344–C–T/G, 2001 WL 1112109, at *20 (S.D. Ind. Aug. 6, 2001; *See Deck v. Am. Hawaii Cruises, Inc.*, 121 F.Supp.2d 1292, 1299 (D.Haw.2000) (concluding plaintiff lacked standing because she did not allege any plans to use the defendant’s ship in the future and her statement in her declaration that she would “look into” another cruise was too speculative and conditional).
14. In this case, Complainant is a New York resident and has no plans to return to Indiana, or the Apple store in the Fashion Mall at Keystone. Therefore, Complainant lacks standing to pursue his claims under the ADA and ICRL.

Apple’s mask policy

15. Title III of the ADA, which prohibits discrimination by a public accommodation on the basis of disability, does not “require an entity to permit an individual to participate in or benefit from the goods, services, facilities, privileges, advantages and accommodations of such entity where such individual poses a direct threat to the health or safety of others.” 42 U.S.C.A. § 12182. “The ADA’s direct threat provision stems from the recognition . . . of the importance of prohibiting discrimination against individuals with disabilities while protecting others from significant health and safety risks, resulting, for instance, from a contagious disease.” *Bragdon v. Abbott*, 524 U.S. 624, 648– 49 (1998). Title III regulations expressly provide that “[a] public accommodation may impose legitimate safety requirements that are necessary for safe operation.” 28 C.F.R. § 36.301(b).
16. Courts have applied the direct method and safety provisions under the ADA and have upheld a business’s mask policies that were implemented for the safety and welfare of their employees, customers, and the community at large. In *Giles v. Sprouts Farmers Mkt., Inc.*, No. 20-CV-2131-GPCJLB, 2021 WL 2072379, at *5 (S.D. Cal. May 24, 2021, the court dismissed ADA and California Civil Rights Act claims, holding that the retailer was entitled to exclude anyone refusing to wear a face mask from its store because, based on CDC guidance, any such individual posed a direct threat to the health and safety of others in the store based on individualized assessment of whether a customer wore a face mask or not. *Hernandez v. El Pasoans Fighting Hunger*, 2022 WL 18019437, at *6 (5th Cir. Dec. 30, 2022) (“[T]he ADA does not require Defendants to alter their mask policy for Plaintiff . . . when exempting Plaintiff from their mask policy would pose a direct threat to the health and safety of others, including Plaintiff himself, due to the COVID-19 pandemic.”)
17. In this case, Respondent implemented a mask policy to protect the health and safety of Apple’s employees and customers in accordance with guidance from national and local health agencies, and the Governor of Indiana. Respondent was not required to waive its mask policy to permit Complainant to enter the store without a face mask under the ADA.

18. Complainant requested to enter the Apple Store without a mask. When Respondent informed Complainant that he could not enter the store without a mask due to Respondent's mask policy, Complainant requested an accommodation for Apple employees to bring out iPhones to Complainant for Complainant to look at and purchase. Complainant argues that Respondent should have provided this modification.
19. Discrimination under Title III of the ADA includes "a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford . . . services . . . to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such . . . services." 42 U.S.C. § 12182(b)(2)(A)(ii)
20. To establish his claims, Complainant bears the burden to prove that his requested accommodation—entering the Apple Store without a mask—was both "reasonable" and "necessary." 42 U.S.C. § 12182(b)(2)(A)(ii); Ind. Code § 22-9-1-2(b)
21. In this case, Complainant's request to enter the Apple Store without a mask was not reasonable and necessary given the nature of the COVID-19 pandemic at that time. The health and safety of the employees and customers would have been put at risk if Complainant was allowed to enter the store without a mask. Furthermore, Complainant's requested modification for Apple employees to bring out iPhones for Complainant to look at and purchase was also not reasonable because it would have put the Apple employees and Complainant himself at risk of exposure to the COVID-19 virus.
22. In addition, Respondent offered various alternatives to Complainant to in-store shopping such as shopping at Apple's online store, no-contact delivery, or visiting Best Buy or his cellphone carrier's retail stores if he wanted to interact with Apple products before purchasing them.
23. Therefore, Complainant cannot demonstrate that his requested modification was necessary for him to access Apple's goods and services, as required to prove his claims.
24. Accordingly, Respondent has affirmatively negated required elements of Complainant's case, there is no genuine issue of material fact that exists, and summary judgment is therefore appropriate.
25. Ultimately, if the ICRC determines that no unlawful discriminatory practice has occurred, then the ICRC must dismiss the complaint. IND. CODE § 22-9-1-6.
26. Any Finding of Fact that should have been deemed a Conclusion of Law is hereby adopted as such, and this Order's Statement of Jurisdiction is incorporated into these Conclusions of Law.

DECISION

Having duly considered the above, the undersigned Administrative Law Judge ("ALJ") for the Office of Administrative Law Proceedings ("OALP") hereby orders as follows:

1. Respondent's Motion is GRANTED.

2. Aaron Abadi's September 30, 2021 Complaint is DISMISSED, with prejudice.

SO ORDERED: May 4, 2023



Hon. LaKesha Triggs, Administrative Law Judge
Indiana Office of Administrative Law Proceedings
100 North Senate Ave., Room N802
Indianapolis, IN 46204
(317) 234-6689

Distribution List:

The following distribution list includes the names and mailing addresses of all known Parties and other persons to whom notice is being given. IND. CODE § 4-21.5-3-18. A Party who fails to attend or participate in a prehearing conference, hearing, or other later stage of the proceeding may be held in default or have a proceeding dismissed. IND. CODE § 4-21.5-3-18(d)(8).

Aaron Abadi: 82 Nassau St., Apt. 140, New York, NY 10038

9214 8901 0661 5400 0186 3027 10

Apple Store: 8702 Keystone Crossing, Indianapolis, IN 46240

9214 8901 0661 5400 0186 3028 64

Laurie Martin*: 111 Monument Circle, Ste. 4400, Indianapolis, IN 46244

Chair Slash of the Indiana Civil Rights Commission – ultimate authority and served at
docketclerk@icrc.in.gov

**served in care of appearing attorney through ALP system at the email address on file with the Indiana Roll of Attorneys – all other service by mail.*

APPEAL RIGHTS AND ULTIMATE AUTHORITY REVIEW

You are hereby notified of your right to administrative review. If the parties to this action wish to have the ultimate authority administratively review this Recommended Order, the party requesting review must not be in default and must file written objections that:

- 1) Identify the basis of the objection with reasonable particularity; and,
- 2) Are filed with the Docket Clerk of the Indiana Civil Rights Commission on or before the 15th day after the date this order was issued by mail or in person at 100 North Senate Ave., Room N300, Indianapolis, IN 46204, by email at docketclerk@icrc.in.gov, or by fax at (317) 232-6580.

A Party shall serve copies of any filed item on all Parties.

ULTIMATE AUTHORITY

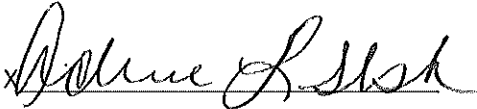
The below information is for the Ultimate Authority's use only. Circle, check, or fill in the blanks below.

Timely objections were/were not filed to the above Recommended Order. Timely briefs on objections (if any) were/were not filed. An oral argument on objections (if any) was/was not held.

On May 25th, 2023, the Indiana Civil Rights Commission decided, by the majority vote of 5 out of the 5 Commissioners present to:

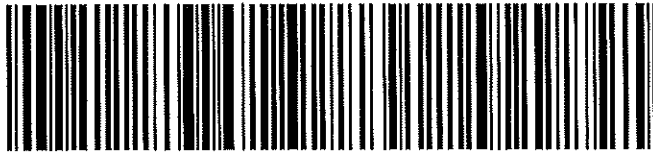
1. Affirm the above Recommended Order
2. Remand the above Recommended Order as further detailed in ICRC Attachment A.
3. Affirm the above Recommended Order with modifications as further detailed in ICRC Attachment A.

SO ORDERED this 25th day of May, 2023.

Chair: Adrienne L. Stash: 

Unless the ICRC remanded this matter to the ALJ, then **THIS IS A FINAL ORDER**. A Party to a dispute filed under IC 22-9 and/or IC 22-9.5 may, not more than thirty (30) days after the date of receipt of the Commission's final appealable order, appeal to the court of appeals under the same terms, conditions, and standards that govern appeals in ordinary civil actions. IC 22-9-8-1; IC 22-9.5-11-1.

MICHAEL C. LOSTUTTER
INDIANA CIVIL RIGHTS COMMISSIO
100 N SENATE AVE RM N300
INDIANAPOLIS, IN 46204-2208



9214 8901 0661 5400 0186 3027 10

RETURN RECEIPT (ELECTRONIC)

PAha21090390
AARON ABADI
82 NASSAU ST PMB 140
NEW YORK, NY 10038-3703

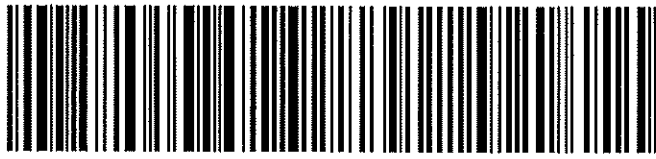
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MICHAEL C. LOSTUTTER
INDIANA CIVIL RIGHTS COMMISSIO
100 N SENATE AVE RM N300
INDIANAPOLIS, IN 46204-2208



9214 8901 0661 5400 0186 3028 64

RETURN RECEIPT (ELECTRONIC)

PAha21090390

APPLE STORE
8702 KEYSTONE XING
INDIANAPOLIS, IN 46240-7621

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Zone 1

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6'X9" ENVELOPE
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