

CLERK  
U.S. DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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)  
**COMMONWEALTH OF MASSACHUSETTS** )

*et al.*, )

**Plaintiffs,** )

v. )

**E\*TRADE ACCESS, INC. *et al.*,** )

**Defendants.** )  
\_\_\_\_\_)

Case No. 03 11206 MEL

**ANSWER AND AFFIRMATIVE DEFENSES OF E\*TRADE ACCESS, INC.  
AND E\*TRADE BANK TO PLAINTIFFS' THIRD AMENDED COMPLAINT**

Defendants E\*TRADE Access, Inc. and E\*TRADE Bank and (collectively "E\*TRADE"), by undersigned counsel, respond to the Third Amended Complaint as follows:

1. The allegations in Paragraph 1 state conclusions of law as to which no response is required.
2. The allegations in Paragraph 2 state conclusions of law as to which no response is required.
3. The allegations in Paragraph 3 state conclusions of law as to which no response is required.
4. E\*TRADE lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first two sentences of Paragraph 4. The remaining allegations in Paragraph 4 state conclusions of law as to which no response is required.
5. E\*TRADE lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the sentences one, two, four, five and six of Paragraph 5. The

allegations in sentence three of Paragraph 5 state conclusions of law as to which no response is required.

6. The allegations in the first sentence of Paragraph 6 state conclusions of law as to which no response is required. E\*TRADE lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 6.

7. The allegations in the first sentence of Paragraph 7 state conclusions of law as to which no response is required. E\*TRADE lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 7.

8. The allegations in the first sentence of Paragraph 8 state conclusions of law as to which no response is required. E\*TRADE lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 8.

9. The allegations in the first sentence of Paragraph 9 state conclusions of law as to which no response is required. E\*TRADE lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 9.

10. The allegations in the first sentence of Paragraph 10 state conclusions of law as to which no response is required. E\*TRADE lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 10.

11. The allegations in Paragraph 11 state conclusions of law as to which no response is required.

12. The allegations in Paragraph 12 state conclusions of law as to which no response is required.

13. The allegations in Paragraph 13 state conclusions of law as to which no response is required.

14. The allegations in Paragraph 14 state conclusions of law as to which no response is required.

15. The allegations in Paragraph 15 state conclusions of law as to which no response is required.

16. E\*TRADE admits on June 2, 2004 it entered into a Purchase and Sale Agreement with Cardtronics, the content of which speaks for itself. The remaining allegations in Paragraph 16 state conclusions of law as to which no response is required.

17. E\*TRADE denies the allegations in the first two sentences of Paragraph 17. E\*TRADE admits on June 9, 2003 it signed a partial settlement agreement with the Commonwealth of Massachusetts and the National Federation of the Blind, the content of which speaks for itself.

18. E\*TRADE denies the allegations in the first three sentences in Paragraph 18. The remaining allegations in Paragraph 18 state conclusions of law as to which no response is required.

19. The allegations in Paragraph 19 state conclusions of law as to which no response is required.

20. E\*TRADE denies the allegations in Paragraph 20.

21. E\*TRADE denies the allegations in Paragraph 21.

22. The allegations in Paragraph 22 state conclusions of law as to which no response is required.

23. The allegations in Paragraph 23 state conclusions of law as to which no response is required.

24. E\*TRADE denies the allegations in Paragraph 24. To the extent the allegations reference Cardtronics, E\*TRADE lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 24.

25. E\*TRADE denies the allegations in Paragraph 25. To the extent the allegations reference Cardtronics, E\*TRADE lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 25.

26. E\*TRADE denies the allegations in Paragraph 26. To the extent the allegations reference Cardtronics, E\*TRADE lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 26.

27. E\*TRADE denies the allegations in Paragraph 27. To the extent the allegations reference Cardtronics, E\*TRADE lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 27.

28. E\*TRADE denies the allegations in Paragraph 28. To the extent the allegations reference Cardtronics, E\*TRADE lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 28.

29. The allegations in Paragraph 29 state conclusions of law as to which no response is required.

30. Because the Court ruled in its Order entered on February 22, 2005 that the remedy of voice guidance technology is not required by the Americans with Disabilities Act, E\*TRADE is not required to provide an answer to the allegations in Paragraph 30.

31. Because the Court ruled in its Order entered on February 22, 2005 that the remedy of voice guidance technology is not required by the Americans with Disabilities Act, E\*TRADE is not required to provide an answer to the allegations in Paragraph 31.

32. The allegations in Paragraph 32 state conclusions of law as to which no response is required.

33. E\*TRADE incorporates its responses to Paragraphs 1-32 by reference as if fully set forth herein.

34. The allegations in Paragraph 34 state conclusions of law as to which no response is required.

35. The allegations in Paragraph 35 state conclusions of law as to which no response is required.

36. The allegations in Paragraph 36 state conclusions of law as to which no response is required.

37. E\*TRADE incorporates its responses to Paragraphs 1-36 by reference as if fully set forth herein.

38. The allegations in Paragraph 38 state conclusions of law as to which no response is required.

39. The allegations in Paragraph 39 state conclusions of law as to which no response is required.

40. E\*TRADE incorporates its responses to Paragraphs 1-39 by reference as if fully set forth herein.

41. The allegations in Paragraph 41 state conclusions of law as to which no response is required.

42. The allegations in Paragraph 42 state conclusions of law as to which no response is required.

43. E\*TRADE incorporates its responses to Paragraphs 1-42 by reference as if fully set forth herein.

44. The allegations in Paragraph 44 state conclusions of law as to which no response is required.

45. Because the Court ruled in its Order entered on February 22, 2005 that the remedy of voice guidance technology is not required by the Americans with Disabilities Act, E\*TRADE is not required to provide an answer to the allegations in Paragraph 45.

46. E\*TRADE incorporates its responses to Paragraphs 1-45 by reference as if fully set forth herein.

47. The allegations in Paragraph 47 state conclusions of law as to which no response is required.

48. The allegations in Paragraph 48 state conclusions of law as to which no response is required.

49. The allegations in Paragraph 49 state conclusions of law as to which no response is required.

50. E\*TRADE incorporates its responses to Paragraphs 1-49 by reference as if fully set forth herein.

51. The allegations in Paragraph 51 state conclusions of law as to which no response is required.

52. The allegations in Paragraph 52 state conclusions of law as to which no response is required.

53. The allegations in Paragraph 53 state conclusions of law as to which no response is required.

54. E\*TRADE incorporates its responses to Paragraphs 1-53 by reference as if fully set forth herein.

55. The allegations in Paragraph 55 state conclusions of law as to which no response is required.

56. The allegations in Paragraph 56 state conclusions of law as to which no response is required.

57. The allegations in Paragraph 57 state conclusions of law as to which no response is required.

### **AFFIRMATIVE DEFENSES**

#### **FIRST DEFENSE**

E\*TRADE does not own, operate or lease the ATMs at issue.

#### **SECOND DEFENSE**

The ATMs at issue are not places of public accommodation.

#### **THIRD DEFENSE**

Plaintiffs lack standing.

#### **FOURTH DEFENSE**

Plaintiffs failed to exhaust required administrative remedies.

#### **FIFTH DEFENSE**

Plaintiffs are not entitled to actual or punitive damages.

#### **SIXTH DEFENSE**

Plaintiffs' claims are barred by the statute of limitations.

#### **SEVENTH DEFENSE**

Plaintiffs have failed to state a claim upon which relief can be granted.

**EIGHTH DEFENSE**

Plaintiffs have failed to name necessary and indispensable parties.

**NINTH DEFENSE**

Requiring E\*TRADE to ensure the ATMs at issue have audio capabilities would be an undue burden under 42 U.S.C. § 12182(b)(2)(A)(iii) and applicable state law.

**TENTH DEFENSE**

E\*TRADE did not fail to remove a “communication barrier that [is] structural in nature” under 42 U.S.C. § 12182(b)(2)(A)(iv).

**ELEVENTH DEFENSE**

The removal demanded by Plaintiffs under 42 U.S.C. § 12182(b)(2)(A)(iv) is not “readily achievable.”

**TWELFTH DEFENSE**

Plaintiffs did not request a “reasonable modification” of any “policies, practices and procedures” under 42 U.S.C. § 12182(b)(2)(A)(ii).

**THIRTEENTH DEFENSE**

Plaintiffs were not denied any rights on the basis of their disability and good cause exists for any actions taken by E\*TRADE.

**FOURTEENTH DEFENSE**

E\*TRADE has not violated the Americans with Disabilities Act Bankability Guidelines, which apply only to certain ATMs.

**FIFTEENTH DEFENSE**

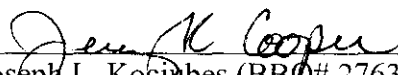
The Americans with Disabilities Act does not require E\*TRADE to provide audio capabilities or voice guidance technology on ATMs.



WHEREFORE, Defendant E\*TRADE respectfully requests that this Court:

1. dismiss with prejudice all claims against E\*TRADE;
2. enter judgment in favor of E\*TRADE;
3. award E\*TRADE its reasonable attorney's fees and costs pursuant to 42 U.S.C. §§ 12188 & 2000a-3(b); and
4. grant such other relief as the Court deems just and proper.

Respectfully submitted,

  
Joseph L. Kociubes (BBO# 276360)  
Rachael Splaine Rollins (BBO# 641972)  
Jenny K. Cooper (BBO# 646860)  
BINGHAM MCCUTCHEN LLP  
150 Federal Street  
Boston, Massachusetts 02110  
(617) 951-8000  
(617) 951-8736 (fax)

Douglas P. Lobel  
David A. Vogel  
ARNOLD & PORTER LLP  
1600 Tysons Boulevard  
Suite 900  
McLean, Virginia 22102  
(703) 720-7000  
(703) 720-7399 (fax)

*Counsel for Defendants  
E\*TRADE Access, Inc. and  
E\*TRADE Bank*

Dated: April 6, 2005

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

_____ )		
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<b>Plaintiffs,</b>	)	
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<b>v.</b>	)	<b>Case No. 03 11206 MEL</b>
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<b>E*TRADE ACCESS, INC.,</b>	)	
<i>et al.</i> ,	)	
	)	
<b>Defendants.</b>	)	
_____ )		

**CERTIFICATE OF SERVICE**

I, Jenny Cooper, hereby certify that on April 6, 2005, I caused a copy of the foregoing document to be served, via electronic and first class mail, upon the following counsel of record:

Patricia Correa, Esquire  
Assistant Attorney General  
Director, Disability Rights Project  
Office of the Attorney General  
One Ashburton Place  
Boston, MA 02108  
[patty.correa@ago.state.ma.us](mailto:patty.correa@ago.state.ma.us)  
Attorney for Plaintiff  
Commonwealth of Massachusetts

Douglas P. Lobel, Esq.  
David Vogel, Esq.  
Arnold & Porter  
1600 Tysons Blvd., Suite 1200  
McLean, VA 22102  
[Douglas.Lobel@aporter.com](mailto:Douglas.Lobel@aporter.com)  
[David.Vogel@aporter.com](mailto:David.Vogel@aporter.com)  
Attorneys for Defendants,  
E\*Trade Access, Inc., and  
E\*Trade Bank

Anthony M. Doniger, Esquire  
Christine M. Netski, Esquire  
Sugarman, Rogers, Barshak &  
Cohen, P.C.  
101 Merrimac Street  
Boston, MA 02114-4737  
[doniger@srbc.com](mailto:doniger@srbc.com)  
[netski@srbc.com](mailto:netski@srbc.com)  
Attorneys for Plaintiffs, National  
Federation of the Blind, Inc., National  
Federation of Blind of Massachusetts,  
Inc., Adrienne Asch, Richard Downs, Theresa  
Jeraldi and Philip Oliver

Daniel F. Goldstein, Esquire  
Sharon Krevor-Weisbaum, Esquire  
Brown, Goldstein & Levy, LLP  
120 E. Baltimore Street, Suite 1700  
Baltimore, MD 21202

[dfg@browngold.com](mailto:dfg@browngold.com)

[skw@browngold.com](mailto:skw@browngold.com)

*Attorneys for Plaintiffs, National  
Federation of the Blind, Inc., National  
Federation of Blind of Massachusetts, Inc.,  
Adrienne Asch, Richard Downs, Theresa  
Jeraldi and Philip Oliver*

  
Jenny K. Cooper