

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

COMMONWEALTH OF MASSACHUSETTS, *et al.*,

Plaintiffs,

v.

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

Defendants.

CIVIL ACTION NO. 03-11206-MEL

**MOTION IN SUPPORT OF DEFENDANTS' RENEWED
MOTION FOR SUMMARY JUDGMENT ON THE GROUNDS THAT
PLAINTIFFS ARE NOT ENTITLED TO VOICE-GUIDANCE TECHNOLOGY**

Pursuant to Fed. R. Civ. P. 56 and the Court's Order filed February 21, 2006, Defendants E*TRADE Access, Inc., E*TRADE Bank, Cardtronics, Inc., and Cardtronics, LP ("Defendants") respectfully move for summary judgment on Counts I through V of Plaintiffs' Third Amended Complaint. (If the Court grants Plaintiffs' motion for leave to file the Fourth Amended Complaint, judgment is sought on Counts I through IV.) No genuine disputes of fact exist to warrant further litigation or trial. All eight current and proposed individual plaintiffs stated that only "voice-guidance" technology renders ATMs accessible to and independently useful by blind people. The two other solutions Plaintiffs' counsel proposed, refreshable Braille and remote operators connected via hardwired phones, are neither satisfactory to nor sufficient for the Plaintiffs. Consequently, Plaintiffs have not met their burdens under Counts III or IV of the Third Amended Complaint. Plaintiffs also are not entitled to an injunction under Count V requiring Defendants to make ATMs "independently usable" as that phrase is used in the ADA

Accessibility Guidelines (“ADAAG”) currently in force. Plaintiffs’ sworn testimony demonstrates that this standard is not achievable except through voice guidance technology, but this method is expressly not required by the ADAAG (as the Court has already twice ruled). Plaintiffs’ injuries are therefore based on an improper interpretation of the ADAAG and/or are not redressable with meaningful relief.

Defendants are filing concurrently with this Motion a supporting Memorandum with exhibits.

Dated: March 2, 2007

Respectfully submitted,

E*TRADE ACCESS, INC., E*TRADE BANK,
CARDTRONICS, INC. AND CARDTRONICS, LP
By their attorneys,

/s/ Douglas P. Lobel

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CERTIFICATE OF SERVICE

I, Douglas P. Lobel, hereby certify that on the 2nd day of March, 2007, the MOTION IN SUPPORT OF DEFENDANTS' RENEWED MOTION FOR SUMMARY JUDGMENT ON THE GROUNDS THAT PLAINTIFFS ARE NOT ENTITLED TO VOICE-GUIDANCE TECHNOLOGY, was filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF), and paper copies will be sent to those indicated as non-registered participants.

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