UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS:     Lina M. Khan, Chair
                   Rebecca Kelly Slaughter
                   Alvaro M. Bedoya
                   Melissa Holyoak
                   Andrew Ferguson

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| **In the Matter of**<br><br>**ACCESSIBE INC., a corporation, and**<br><br>**ACCESSIBE LTD., a limited liability<br>  company.** | **DOCKET NO.** |

## COMPLAINT

The Federal Trade Commission, having reason to believe that accessiBe Inc., a corporation, and accessiBe Ltd., a limited liability company (collectively "Respondents" or "accessiBe"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1.      Respondent accessiBe Inc. is a Delaware corporation, and licensed to do business in New York, with its principal office or place of business at 1140 Broadway, 14th floor, New York, NY 10001-7504. Its Delaware address is 1013 Centre Road Suite 403-B, Wilmington, DE 19805-1270. accessiBe Inc. is a wholly owned subsidiary of accessiBe Ltd.

2.      Respondent accessiBe Ltd. is an Israeli limited liability company with its principal place of business at Victoria House, 1st floor, 3 Ha'melacha Street, Tel Aviv 6721503, Israel.

3.      Respondents have operated as a common enterprise while engaging in the deceptive acts and practices and other violations of law alleged below. Respondents have conducted the business practices described below through interrelated companies that have common ownership, officers, managers, shareholders, business functions, employees, and office locations, and that have commingled funds. accessiBe Ltd. is the sole shareholder of accessiBe Inc. and its Board of Directors oversees the operations of both entities. Because Respondents have operated as a common enterprise, each of them is liable for the acts and practices alleged below.

4.      Respondents have advertised, marketed, offered for sale, sold, and distributed products and services to consumers, including their website "overlay," accessWidget, a software plug-in

marketed as a tool to correct website accessibility barriers. Accessibility overlays are not intended to permanently alter web code or design, but to permit temporary modifications to the user interface that may impact accessibility while visiting a web page – things like color contrast, text size, animated elements, and navigational components.

5.     The acts and practices of Respondents alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

**OVERVIEW**

6.     Nearly every aspect of modern life, particularly in a post-pandemic world, is online in some way – housing, banking, voting, medicine, government and safety resources, groceries, restaurant reservations and delivery, news, commerce, entertainment, and more. As the online world evolves, it is critical that online content also evolves in an inclusive way to ensure that people with disabilities – up to 1 in 4 adults in the United States, according to the CDC (https://www.cdc.gov/ncbddd/disabilityandhealth/infographic-disability-impacts-all.html) – have access to the information, services, and products they need, regardless of any vision, hearing, physical, cognitive, or other impairments.

7.     Since 2019, Respondents have advertised, marketed, and sold accessWidget, claiming that it is an "AI-powered web accessibility solution." Web accessibility is the practice of designing web content so that it is usable by persons with disabilities. The prevailing international standard for measuring web accessibility are the Web Content Accessibility Guidelines ("WCAG"). Respondents claim that installing accessWidget's "one line of code" makes a website compliant with 30% of WCAG's requirements immediately and initiates an AI process that makes the website fully compliant with the remaining 70% of WCAG requirements within 48 hours.

8.     accessiBe has made these advertising claims on its website and social media, as well as in paid advertisements that Respondents knew were deceptively formatted to appear like impartial reviews and articles.

9.     Contrary to accessiBe's promises, in a number of instances accessWidget fails or has failed to make basic and essential website components like menus, headings, tables, images, recordings, and more, compliant with WCAG and accessible to persons with disabilities.

**BACKGROUND – WCAG**

10.     WCAG is a detailed set of technical criteria published by the World Wide Web Consortium ("W3C"), an international stakeholders' forum. WCAG includes accommodations for blindness and low vision, deafness and hearing loss, limited movement, speech disabilities, photosensitivities, learning disabilities, and cognitive limitations.

11.     Accessibility laws and policies worldwide are based on WCAG standards, including Section 508 of the Rehabilitation Act, as amended, 29 U.S.C. § 794d ("Section 508"), and a United States Department of Justice rule designating technical standards for web content and mobile app accessibility under Title II of the Americans with Disabilities Act ("ADA"), 28 C.F.R. §§ 35.200–35.205 ("DOJ Web Content Accessibility Rule").

12.     WCAG standards derive from four foundational principles for providing web content:

content must be perceivable, operable, understandable, and robust, to persons with disabilities. WCAG establishes measurable "Success Criteria" for a variety of web content elements including: text; non-text elements; use of color; navigation elements like menus, tables, and carousels; and means of navigating web content and engaging with interactive elements, among others. These Success Criteria explain how to objectively test whether an element meets the WCAG standard and would be accessible to persons with disabilities.

13. For example, WCAG Success Criterion 2.1.1 requires that all web content must be operable using a keyboard without requiring use of a mouse, which allows a person with limited mobility to accurately navigate and experience the content. Success Criteria 1.1.1 and 1.3.1 specify that user interface elements like buttons, controls, and images have a text alternative ("alt text"), which must be equal to the information conveyed in the image. Success Criterion 1.3.1 also requires that tables be coded so that a screen reader—assistive software that converts on-screen content to speech—will read column and row headers to a blind person.

14. The most widely used version of WCAG, version 2.1, includes 72 Success Criteria. For a website to be compliant with WCAG, all elements on the website must satisfy all relevant Success Criteria.

15. In addition, each WCAG Success Criterion is categorized into one of three "conformance levels" based on how essential the Success Criterion is to achieving accessibility and how feasible it is for web developers to achieve it. The three conformance levels are A, AA, and AAA. Level A criteria are the easiest for web developers to achieve and address the most basic and fundamental accessibility requirements, though at this conformance level, web content will still likely contain some accessibility barriers. Level AA Success Criteria reflect a more comprehensive level of accessibility that is still achievable for most web developers. Level AAA Success Criteria provide enhancements for some users with disabilities and are the most difficult for web developers to achieve.

16. Conformance levels are cumulative. To conform with Level AAA, a website must satisfy all the applicable A, AA, and AAA Success Criteria. For Level AA conformance, a website must satisfy all the applicable A and AA Success Criteria. Conversely, if a website fails to satisfy any applicable Level A Success Criteria, it cannot achieve Level AA or AAA conformance, even if the website satisfies other Success Criteria at those levels.

17. The W3C does not recommend that Level AAA conformance be required as a general policy for entire websites because it is not possible to satisfy all Level AAA Success Criteria for some content. Rather, Level AA conformance is widely used as an appropriate conformance level for purposes of accessibility standards worldwide, is the applicable standard for web content of Federal agencies that are governed by Section 508, and is the standard adopted by the DOJ Web Content Accessibility Rule. The prevailing view of web accessibility experts is that Level AA conformance indicates overall accessibility and removal of significant barriers to accessing web content.

18. Therefore, a website that does not achieve Level AA conformance—*i.e.*, it fails to satisfy relevant Level A or Level AA Success Criteria—is not WCAG compliant.

## RESPONDENTS' BUSINESS ACTIVITIES

19.     accessiBe Ltd. was founded in 2018 in Israel. The company incorporated accessiBe Inc. in Delaware in 2020. accessiBe also obtained its license to do business in New York in 2021, and opened its New York office on or about September 29, 2021.

20.     Respondents sell or have sold accessWidget through their website, www.accessibe.com. The majority of accessWidget subscriptions sold are the "Standard" plan (for websites under 1,000 pages), which costs $49 monthly or $490 annually. Respondents also sell an "Advanced" plan (for websites with under 10,000 pages), which costs $149/month or $1,490/year; an "Advanced Plus" plan (websites under 100,000 pages), which costs $349/month or $3,490/year; and an "Enterprise" custom unlimited plan, which is priced by request. Each subscription applies to a single web domain.

21.     Respondents have also sold accessWidget through agency partners, typically web developers, web designers, and/or web agencies that offer accessWidget to their clients, either as an included or add-on service. Respondents offer agency partners a twenty percent discount on accessiBe's standard pricing, which agency partners may pass on to their clients or retain as a commission.

22.     Respondents claim that accessWidget provides an accessibility interface component that allows the website user to immediately correct user experience and design issues related to things like color contrast, cursors, and text fonts, size, and spacing, as well as pause animations that may trigger or distract users with epilepsy or cognitive disabilities.

23.     Respondents also represent that within 48 hours accessWidget's AI application scans a website and addresses the remaining WCAG requirements relating to keyboard navigation, pop-ups, drop-downs, forms, validations, menus, and buttons, and accurate descriptions of images.

24.     Moreover, Respondents promise that accessWidget ensures compliance even when web content is altered, by re-scanning the website every 24 hours.

25.     Respondents have devoted substantial resources to advertising and marketing. accessiBe advertises accessWidget on the company's website, www.accessibe.com, on social media, including YouTube, Instagram, Facebook, Twitter (now X), and LinkedIn, as well as through sales presentations to prospective clients and partners, promotional webinars, and more.

26.     Respondents have also engaged in a campaign to place advertisements disguised as impartial third-party reviews and articles when, in fact, Respondents paid third parties to publish those reviews and articles, often drafting or editing them before they were published. In some instances, Respondents amplified the reach of those advertisements by cross-promoting them on their social media.

## RESPONDENTS' ADVERTISING CLAIMS

27.     To induce consumers to purchase accessWidget, Respondents have disseminated or caused to be disseminated advertisements for accessWidget, including but not limited to the attached Exhibits A through P. These advertisements contain or have contained the following statements and depictions, among others:

## A. Website Claims

28. Throughout their website, www.accessibe.com, Respondents claim or have claimed that accessWidget's AI and other technology makes websites compliant with WCAG:

### i. Home Page

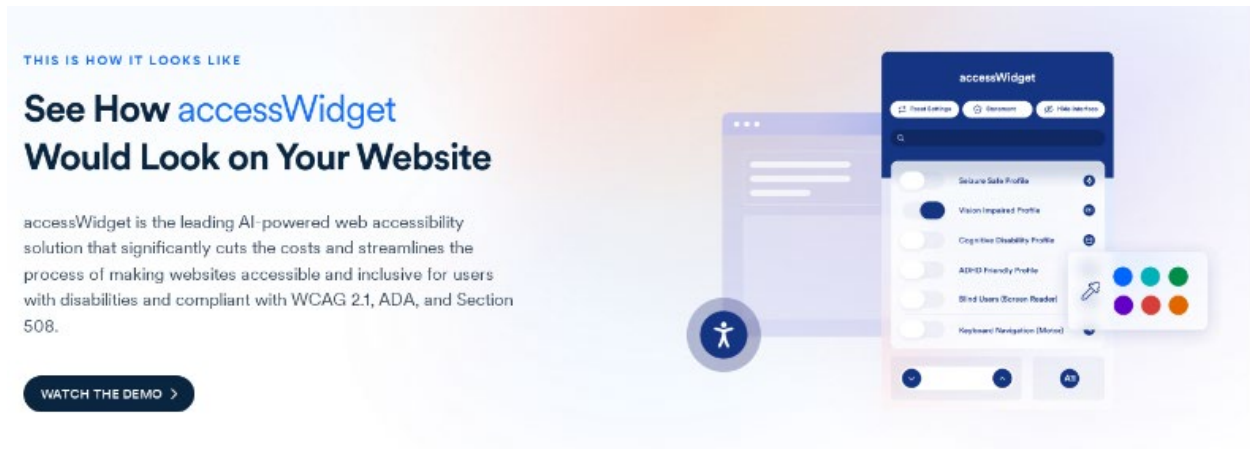29. accessiBe is the "#1 Web Accessibility Solution for WCAG" compliance.
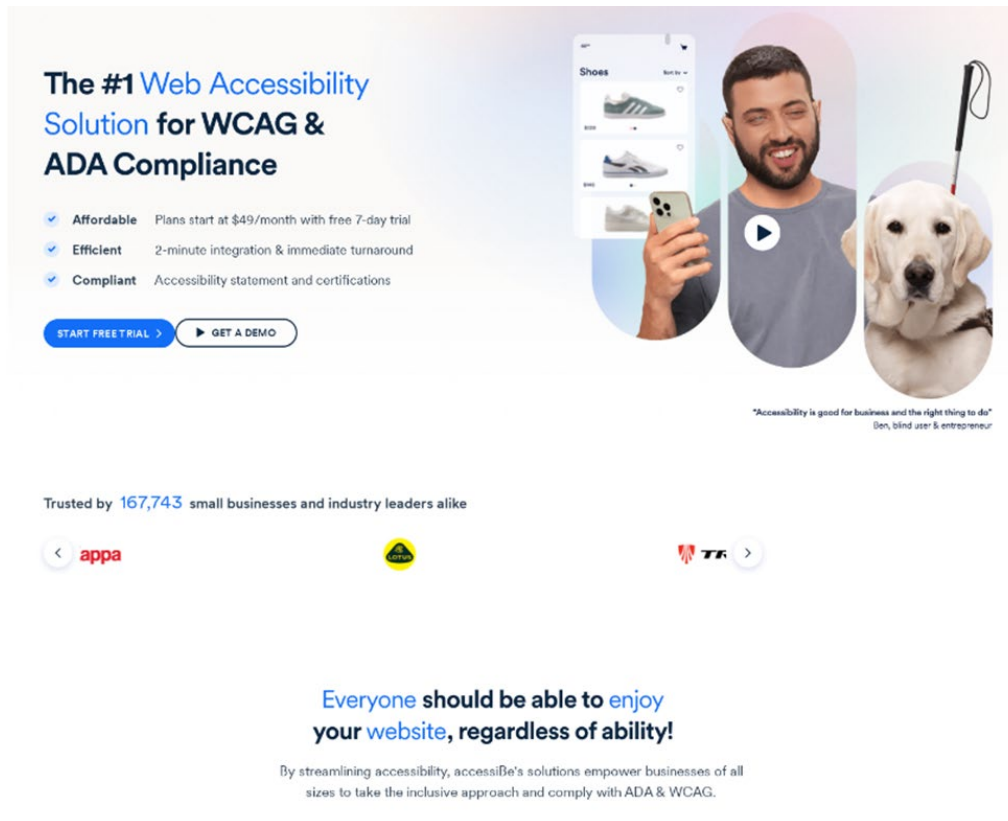


Ex. A, accessiBe Home Page, www.accessibe.com.

### ii. accessWidget Demo Page

30. "accessWidget is the leading AI-powered web accessibility solution."

31. accessWidget "significantly cuts the costs and streamlines the process of making websites accessible and inclusive for users with disabilities and compliant with WCAG 2.1 . . . ."

THIS IS HOW IT LOOKS LIKE

## See How accessWidget
## Would Look on Your Website

accessWidget is the leading AI-powered web accessibility solution that significantly cuts the costs and streamlines the process of making websites accessible and inclusive for users with disabilities and compliant with WCAG 2.1, ADA, and Section 508.

WATCH THE DEMO >

Ex. B, accessWidget Demo Page, www.accessibe.com/accesswidget/examples.

iii.   accessWidget Pricing Page

32.     accessWidget is "[t]he leading AI-Powered web accessibility, WCAG & ADA compliance solution."

33.     All accessWidget plan options include compliance with WCAG.
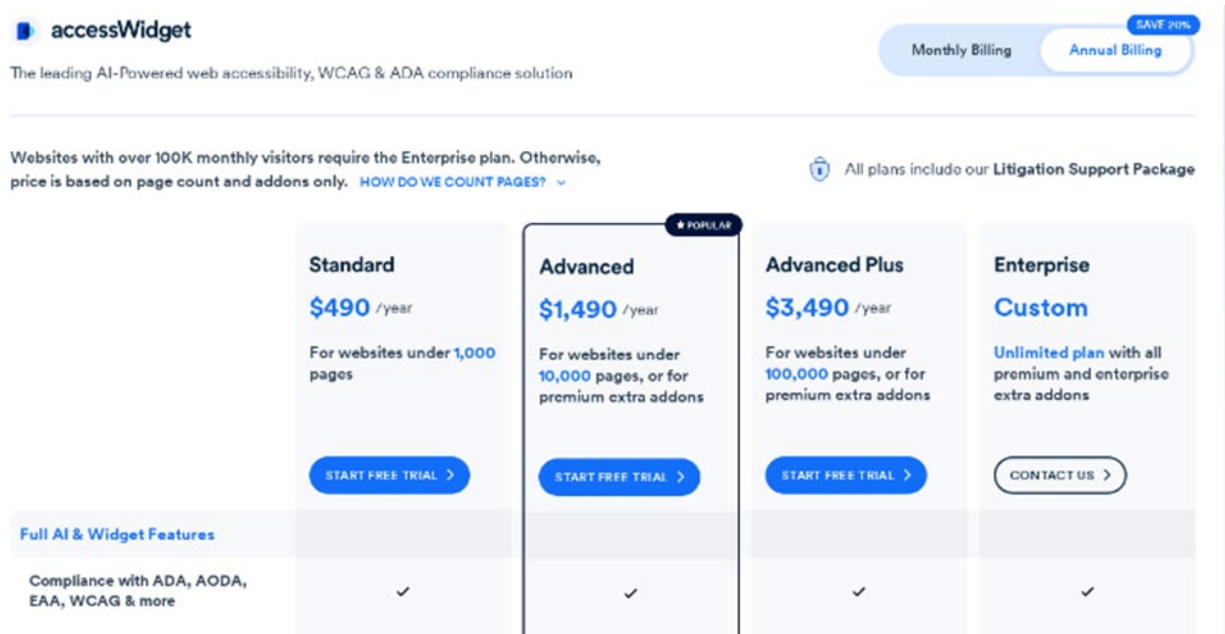


Ex. C, accessWidget Pricing Page, www.accessibe.com/pricing.

iv.   accessiBe vs. the Competition Page

34.     Compared to competitors, accessWidget is "[t]he only automatic solution" and offers compliance with WCAG 2.1.

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## #1 WEB ACCESSIBILITY SOLUTION

# accessiBe **VS the** Competition

accessWidget stands out by utilizing innovative technology to reduce business costs and time significantly and is a reliable source for your web accessibility needs.

| | | AccessiBe's AI Solution | | Accessibility Services | | Accessibility Plugins |
|---|---|---|---|---|---|---|
| Options | ✔ | The only automatic solution | ○ | AudioEye, User1st & more | ○ | MaxAccess, WP Access & more |
| Compliance | ✔ | WCAG 2.1, ADA, s508 & more | ○ | Depends on project scope | ○ | Do not comply with legislation |
| Pricing | ✔ | Price start at $490/year | ○ | $5,000 - $50,000/year | ○ | Free to low cost subscriptions |
| Turnaround | ✔ | Up to 48 hours from installation | ○ | Projects take 3-26 weeks | ○ | No full turnaround |
| Success Rate | ✔ | Industry highest success rate | ○ | Drops to 50% within 6 months | ○ | 5% - 15% of the requirements |
| Maintenance | ✔ | Re-scanning every 24 hours | ○ | Require additional services | ○ | No maintenance included |

Ex. D, Competitor Comparison Page, www.accessibe.com/accesswidget/competition.

v. <u>Former CEO Demo Video</u>

35.      Starting at 01:14: "What accessiBe does to make websites accessible is basically to utilize two different components that work simultaneously together to make websites accessible. 80% of this implementation is the AI-powered background process. And then the 20% that is related to UI and design adjustments is the accessibility interface."

7
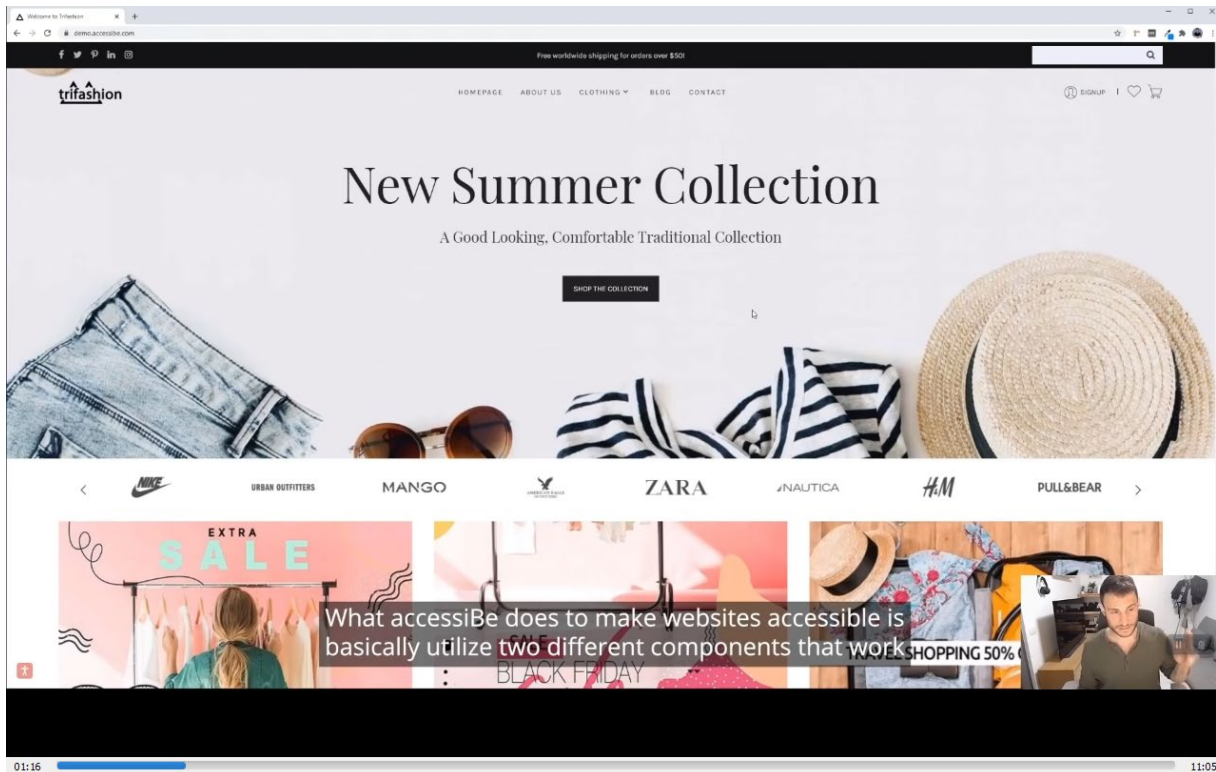
Former CEO Demo Video Screenshot at 01.16.
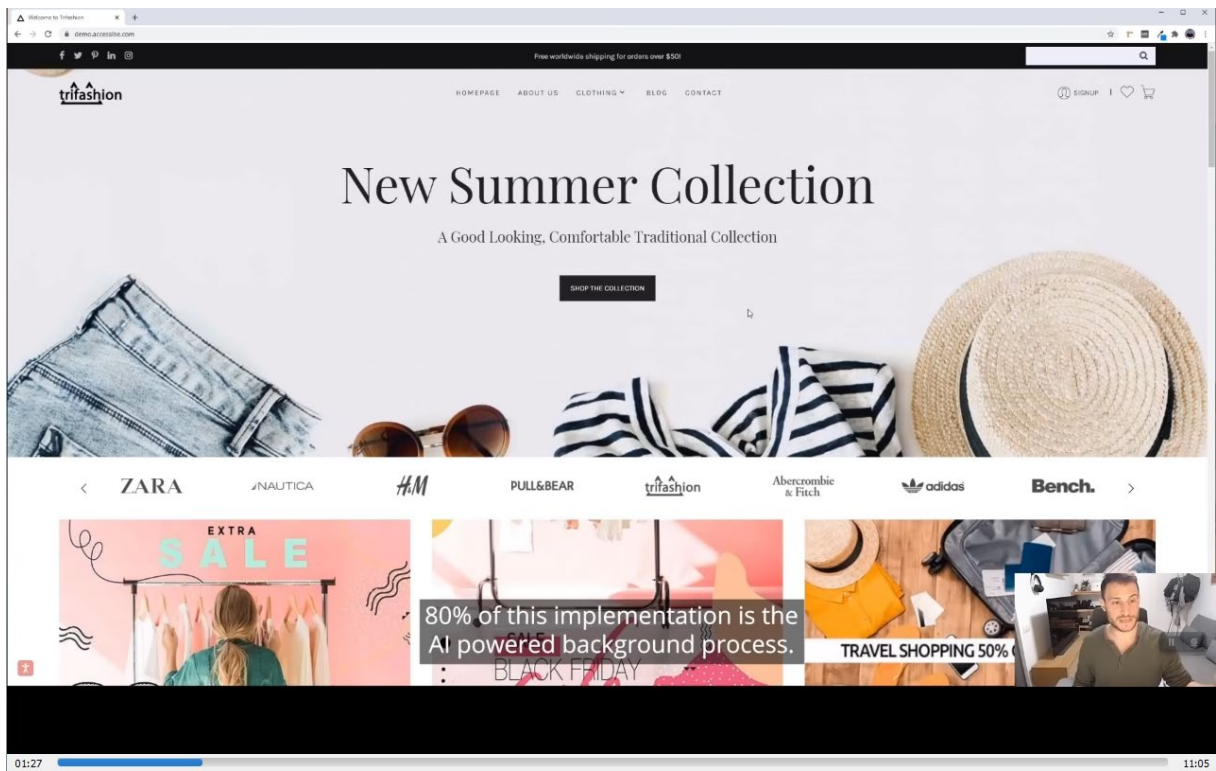


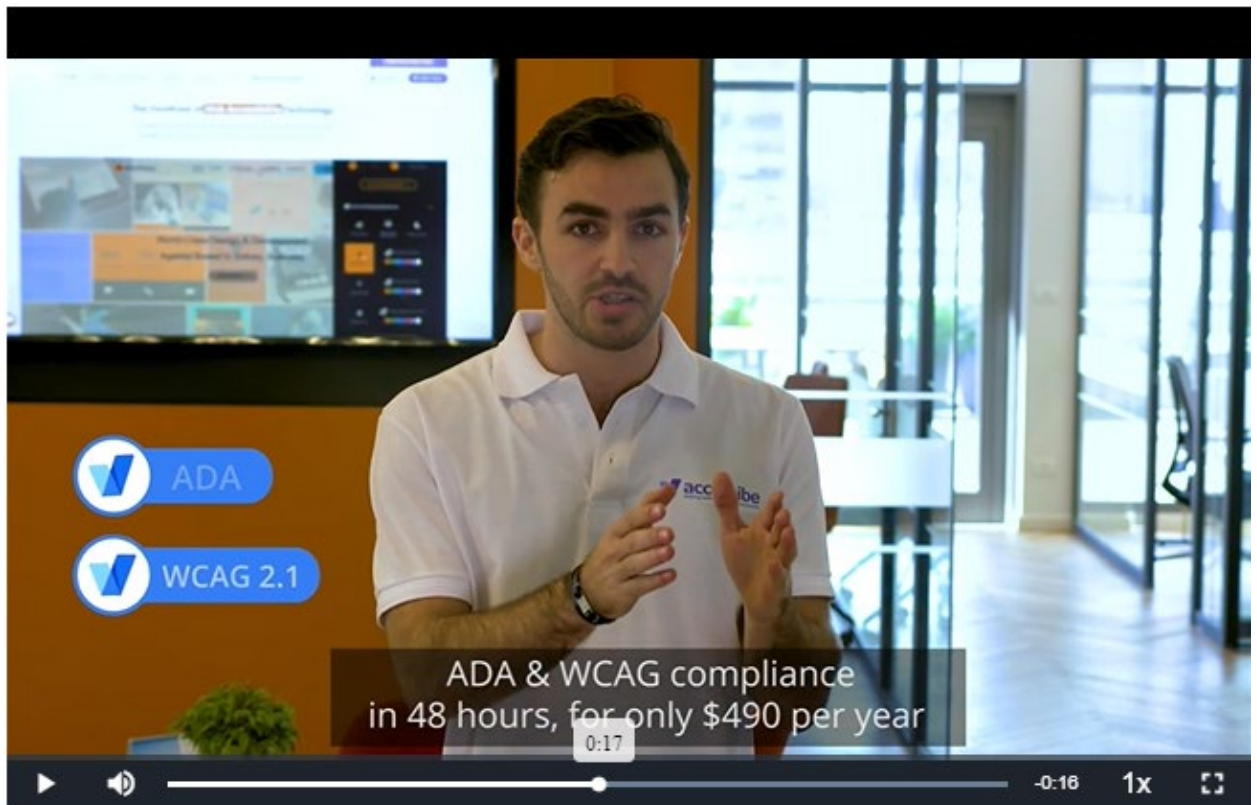Former CEO Demo Video Screenshot at 01:27.

Ex. E, Former CEO Demo Video Excerpt, www.accessibe.com/accesswidget, viewed on October 18, 2022.

**B.** **YouTube Video Claims**

i. 30-second Compliance Video

36.     accessWidget achieves WCAG compliance in 48 hours.

37.     Starting at 0:08: "accessiBe is the first and only AI-automated web accessibility solution that allows every business to meet ADA and WCAG compliance in 48 hours for only $490 per year."



30-second Compliance Video Screenshot at 0:17.

Ex. F, 30-second Compliance Video.

ii. 3-minute Demo Video

38.     Starting at 00:01: "accessiBe, the #1 fully automated ADA and WCAG compliance solution. In this video you will learn how accessiBe's AI-powered technology makes any website accessible and compliant with the WCAG 2.1 . . . ."

39.     Starting at 00:27: "accessiBe includes two different components that work simultaneously to achieve compliance."

40.     Starting at 00:31: accessiBe's accessibility interface "is mostly responsible for adjusting the user interface and website design. These cover about 30% of the WCAG requirements, and

include the adjustments for readable fonts, sizing, spacing, color contrasts, cursors, emphasis, and more."

41.	Starting at 01:06: accessiBe's AI application "is responsible for handling 70% of the WCAG requirements, which usually involves manual work in the process. This includes screen reader and keyboard navigation adjustments for the blind and the motor-impaired. . . . Pop-ups, drop-downs, forms, validations, menus, and buttons are also included."

42.	Starting at 01:41: "accessiBe automatically provide[s] accurate alternative text description for images."

43.	Starting at 01:57: "After the initial installation, which takes just a few minutes, our accessibility interface immediately appears on the site and the AI starts to make your website compliant."

44.	Starting at 02:14: "[T]he best part of our AI is that it's always ensuring compliance by re-scanning and re-analyzing your website every 24 hours to remediate new content, widgets, pages, and anything else you may add."
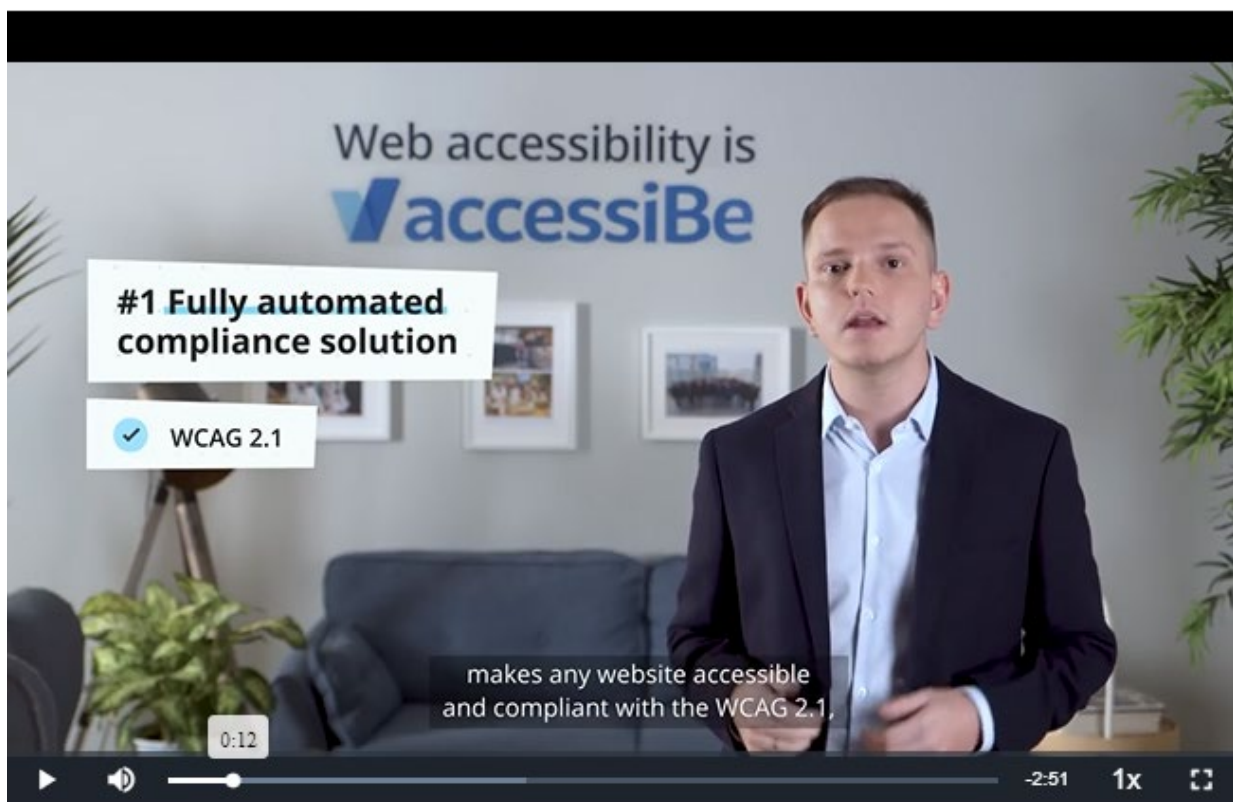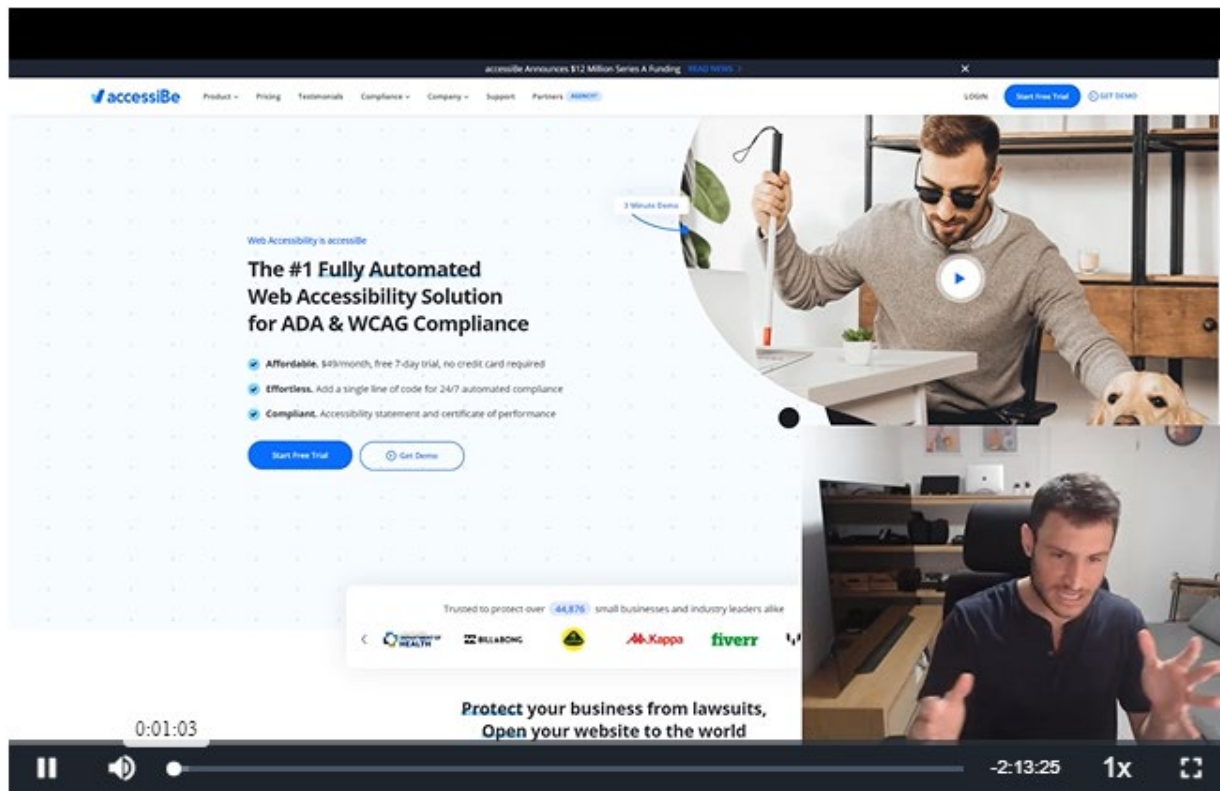


3-minute Demo Video Screenshot at 0:12.
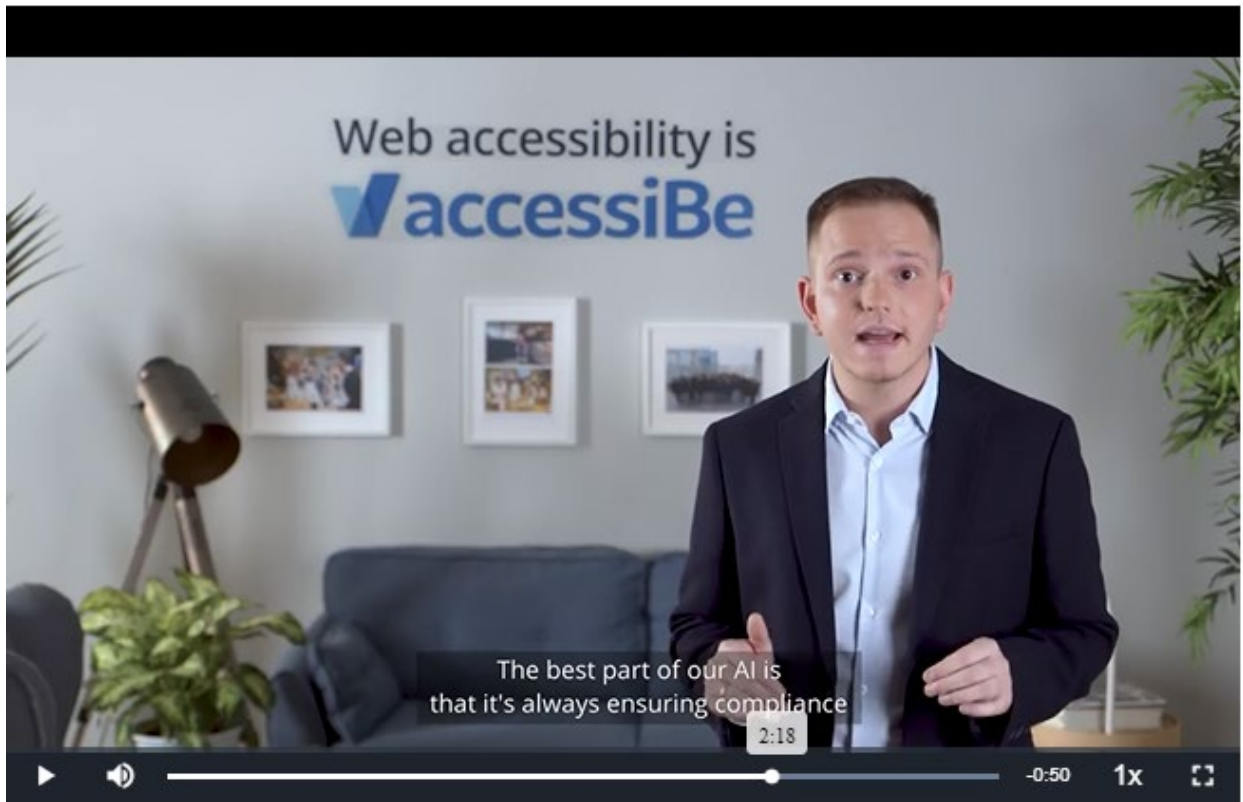
3-minute Demo Video Screenshot at 2:18.

Ex. G, 3-minute Demo Video; Ex. H, 3-minute Demo YouTube Post.

iii.  Former CEO Response Video

45.     accessiBe is the "#1 fully automated web accessibility solution" for WCAG compliance.

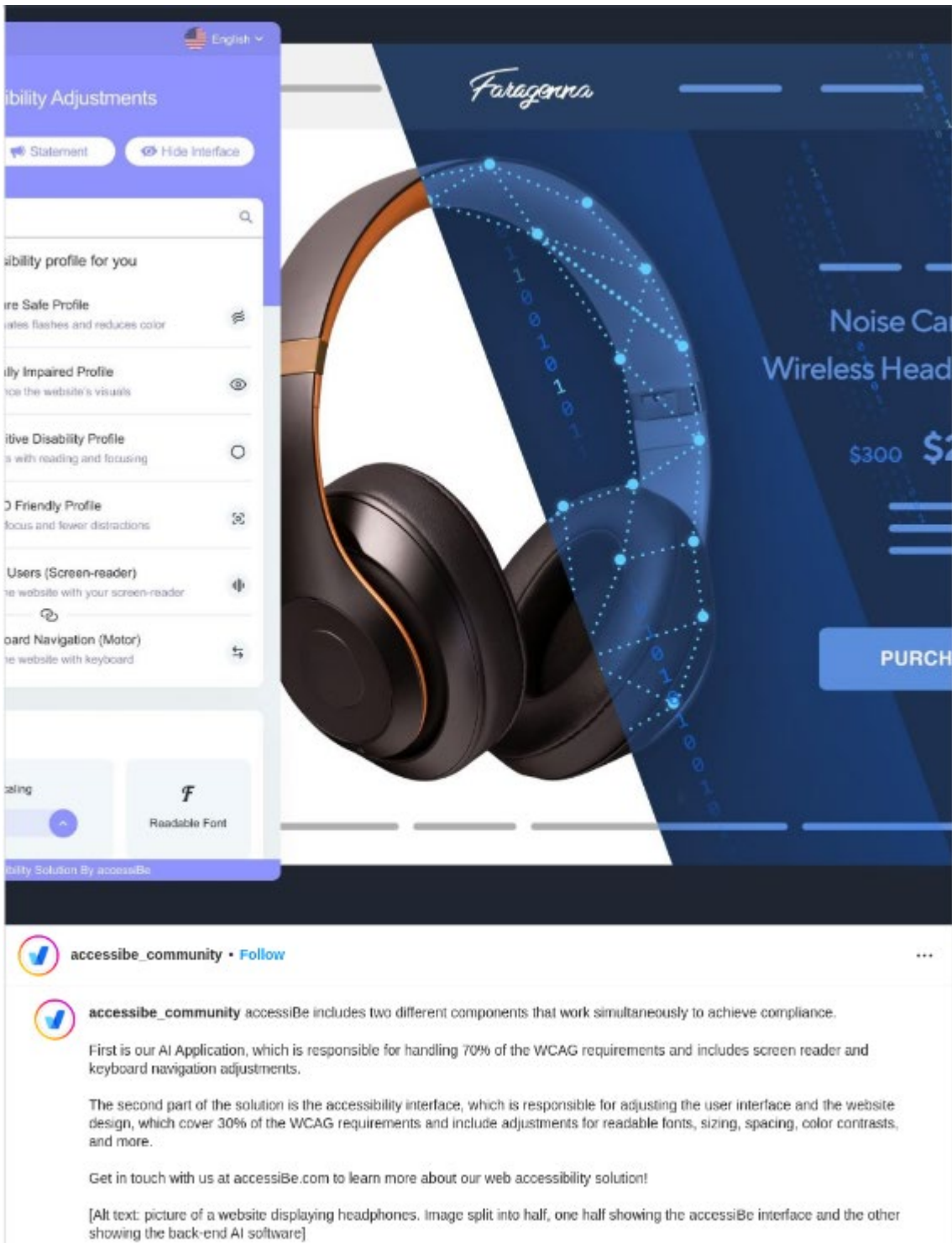Former CEO Response Video Screenshot at 0:01:03.

Ex. I, Former CEO Response Video.

### C.    Social Media

#### i.  Instagram

46.    accessiBe's "AI application . . .  is responsible for handling 70% of the WCAG requirements."

47.    The second part is "the accessibility interface . . . which cover [sic] 30% of the WCAG requirements."

Ex. J, Sept. 2, 2021 Instagram Post.

ii. <u>Facebook</u>

48.     You can "make your website accessible to all. Don't just do it because you'll get sued if you don't, do it because it's the right thing to do."

49.     "Automatically comply with the WCAG 2.1 at the AA level."



Ex. K, Mar. 17, 2020 Facebook Post.

### iii. Twitter

50.     "The #1 Fully Automated Web Accessibility Solution for ADA & WCAG Compliance."

← **Tweet**

**accessiBe**
@AccessiBe
...

#accessiBe 💙🤍
#WordPress #AI #accessibility #PWD

🌱 **GoWP — Helping agencies grow and scale** @GoWPservices · Nov 18, 2020
It's more important than ever to make sure your #WordPress site is accessible to the widest spectrum of the world's users. @AccessiBe helps you with the common accessibility pitfalls. The Complete Guide to WordPress #Accessibility & Why It's So Important buff.ly/3o4xGwN

✓ accessiBe   Product⌄  Pricing  Testimonials  Compliance⌄  Company⌄  Support  Partners  AGENCY⌄        LOGIN   Start Free Trial   ▶GET DEMO

Web Accessibility is accessiBe

**The #1 Fully Automated Web Accessibility Solution for ADA & WCAG Compliance**

✓ **Affordable.** $49/month, free 7-day trial, no credit card required
✓ **Effortless.** Add a single line of code for 24/7 automated compliance
✓ **Compliant.** Accessibility statement and certificate of performance

Start Free Trial        ▶ Get Demo
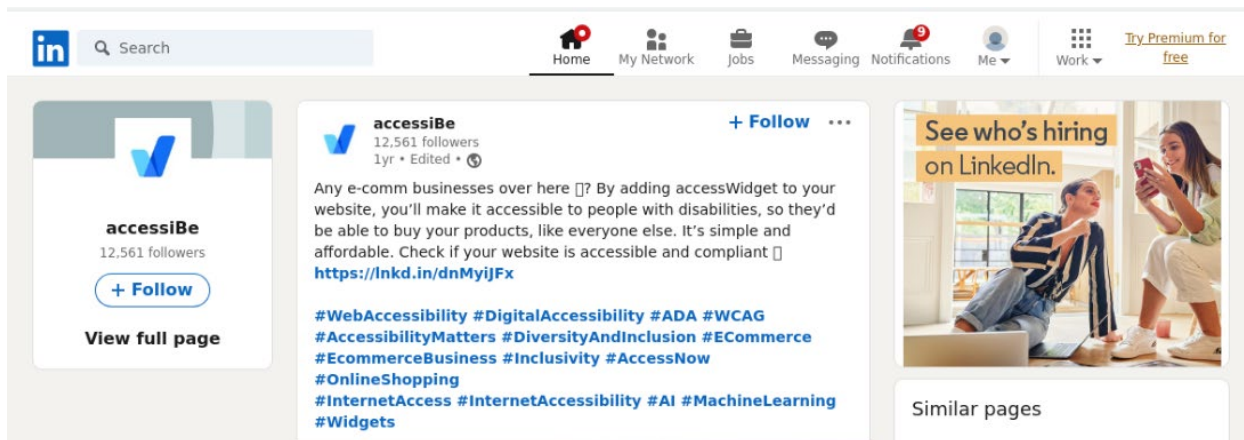
8:05 AM · Nov 18, 2020

1 Like

Ex. L, Nov. 18, 2020 Tweet.

iv. <u>LinkedIn</u>

51.    "By adding accessWidget to your website, you'll make it accessible to people with disabilities. . . . It's simple and affordable. . . . #WCAG"

15

Ex. M, LinkedIn Post.

## ADVERTISEMENTS DECEPTIVELY FORMATTED
## AS IMPARTIAL THIRD-PARTY REVIEWS

52.     In addition to the statements and depictions in Paragraphs 28 through 51, Respondents have also posted, or caused to be posted, reviews, articles, and blogs (collectively, "reviews") on third-party websites that are formatted to appear as though they are the opinions of impartial authors and publications.

53.     In fact, Respondents, or persons working on behalf of Respondents, paid for these reviews and/or participated in drafting, editing, or approving them. In some instances, Respondents, or persons working on behalf of Respondents, asked the reviewer to omit or remove any designation that such reviews were "sponsored" or paid for by accessiBe.

54.     In some instances, accessiBe cross-promoted the purported reviews on its social media, including Facebook, LinkedIn, Twitter (now X), and YouTube.

55.     In fact, the reviews are advertisements. These advertisements, and the related accessiBe social media posts, contain or have contained the following statements and depictions, among others:

> **A.     Webdesigner Depot Blog Post, titled "accessiBe Review 2020: Solving Web Accessibility with AI and Scalability"**

56.     "accessiBe is a web accessibility solution for ADA and WCAG compliance."

57.     "accessiBe is an automated solution that combines two applications to achieve full compliance."

58.     "Once the initial 48 hours have elapsed, your website is compliant."

59.     "By continuously scanning and fixing your website, accessiBe ensures that you stay compliant."

60.     "accessiBe, on the other hand, offers a 100% automated and ongoing compliance solution. The initial audit and remediation process is carried out – with no human intervention – in 48 hours (compared to weeks or months by a manual provider). Then, your website is scanned every 24 hours to identify and fix accessibility issues using accessiBe's AI technology. Meaning, compliance maintenance is constantly carried out 'in the background' keeping you ADA & WCAG compliant at all times."

61.     "accessiBe is an automated and comprehensive web accessibility solution that achieves ongoing compliance with ADA and WCAG regulations for your website."

Ex. N, Sept. 25, 2020 Blog Post on webdesignerdepot.com.

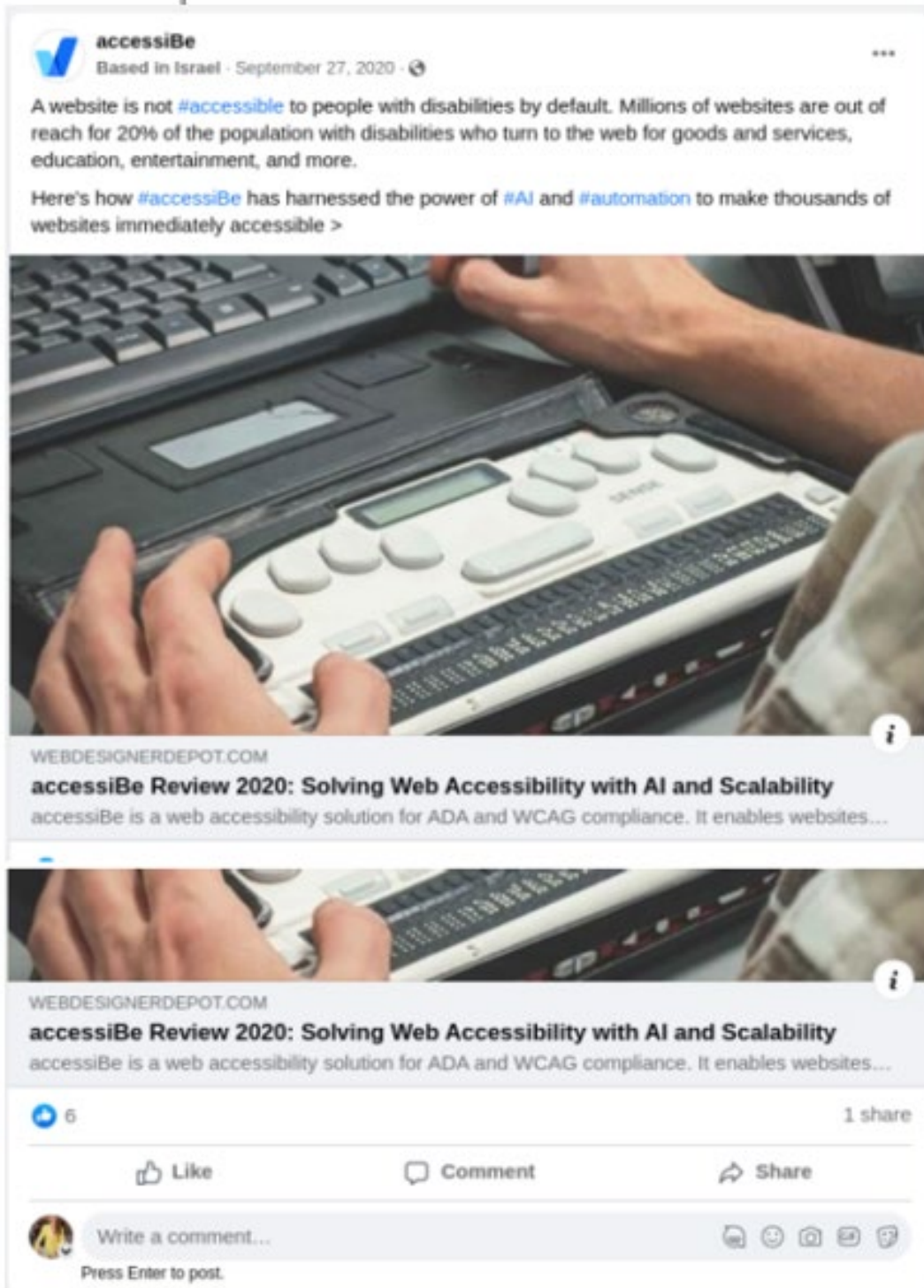### B.     accessiBe Tweet Cross-Promoting Webdesigner Depot "Review"

62.     accessiBe is "a web accessibility solution for ADA and WCAG compliance."
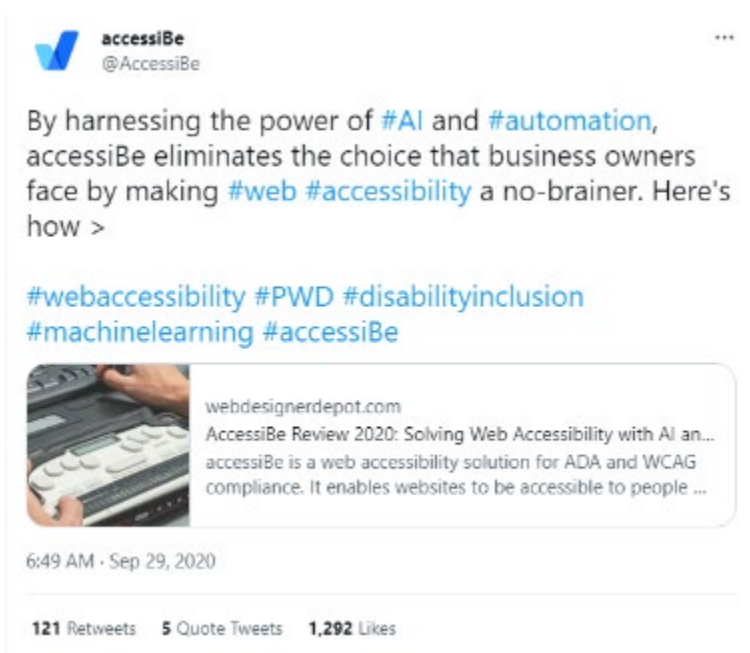


Ex. O, Sept. 29, 2020 Tweet.

### C.     accessiBe Facebook Post Cross-Promoting Webdesigner Depot "Review"

63.     "accessiBe is a web accessibility solution for ADA and WCAG compliance."

A website is not #accessible to people with disabilities by default. Millions of websites are out of reach for 20% of the population with disabilities who turn to the web for goods and services, education, entertainment, and more.

Here's how #accessiBe has harnessed the power of #AI and #automation to make thousands of websites immediately accessible >

WEBDESIGNERDEPOT.COM
accessiBe Review 2020: Solving Web Accessibility with AI and Scalability
accessiBe is a web accessibility solution for ADA and WCAG compliance. It enables websites...

WEBDESIGNERDEPOT.COM
accessiBe Review 2020: Solving Web Accessibility with AI and Scalability
accessiBe is a web accessibility solution for ADA and WCAG compliance. It enables websites...

Ex. P, Sept. 27, 2020 Facebook Post.

64.    Although the September 25, 2020, Webdesigner Depot blog post is formatted to appear as an independent review, Respondents paid $1,900 for the review and approved it prior to its publication. Webdesigner Depot, one of accessiBe's advertising partners, had also received accessWidget on its website, webdesignerdepot.com, and three others, in exchange for additional advertising in Webdesigner Depot publications and social media.

65.     The September 25, 2020 review initially did not disclose the relationship between accessiBe and Webdesigner Depot. Only after Webdesigner Depot readers posted negative comments in response to the review, Webdesigner Depot added, in small, easy-to-miss print at the end of the lengthy review, that the post "was published in partnership with our web accessibility partner, accessiBe."

66.     The Webdesigner Depot review was part of an advertising campaign by accessiBe.

67.     In addition, Respondents hired a marketing company to generate numerous similar reviews designed to appear as though they were from independent publications and to manipulate Google search results so that more positive content appeared, pushing negative content and user criticisms lower in the list of web search engine results.

**Respondents Had Actual Knowledge That Failure to Disclose accessiBe's Material Connections With Endorsers Is An Unfair or Deceptive Practice**

68.     Respondents had actual knowledge that failure to disclose accessiBe's material connections with endorsers is an unfair or deceptive practice.

69.     As described in Paragraphs 26 and 52 through 67, accessiBe engaged in a campaign to place third-party articles that appeared to be reviews from impartial and unbiased authors when, in fact, accessiBe paid for those reviews and, in some instances, reviewed or edited their content before the reviews were published. In a number of these instances, Respondents' employees or other individuals warned Respondents that failing to disclose their material connections in these reviews was deceptive.

70.     In some instances, Respondents, or others acting on Respondents' behalf, expressly requested that third parties remove or omit material connections disclosures when they published the reviews. In one such instance, in December 2020, Webdesigner Depot notified accessiBe that it could no longer omit a "sponsored" disclosure to its "accessiBe Review 2020," after the review received a negative comment. The comment stated in relevant part, "It is clearly an advertorial due to the partnership. That must be legally stated at the beginning and not simply buried until the byline," and "[m]any people in the web design industry trust this publication to be an accurate and unbiased resource."

71.     Similarly, a disability advocate notified accessiBe about an October 2020 Reddit comment that attributed the following "shady marketing practices" to accessiBe, among other companies: "There's a person or firm who is doing black-hat content marketing at scale. They either approach freelance bloggers to write articles about their clients (to be submitted to Medium-hosted and similar blogs as if written by unaffiliated users), or create Medium profiles for fake names and write the posts themselves." accessiBe's Chief Vision Officer brought this to the attention of Respondents in at least August 2021.

72.     accessiBe paid $850 to publish a September 1, 2020 "review" on uxplanet.org, titled "How to Make Your Website ADA Compliant Using accessiBe." accessiBe also implemented accessWidget on uxplanet.org for free. In or around December 2021, an accessibility advocate posted a screenshot of the uxplanet.org article on his website, Overlay False Claims, which outlined, among other things, "anti-competitive behavior" by website overlay companies. On the Overlay False Claims website, the advocate explained that articles like the uxplanet.org article

"look like a normal article for the publication," but are in fact "paid for by the advertiser." The advocate also cited an FTC Enforcement Policy Statement about such advertising, which states, "Such misleadingly formatted advertisements are deceptive even if the product claims communicated are truthful and non-misleading." Respondents had actual knowledge of the Overlay False Claims website since at least December 2021, tracking the website and tweets promoting it as part of efforts to monitor negative social media.

73.     In June 2022, accessiBe also evaluated its relationships with advertising agencies and third-party review disclosures. Subsequently, accessiBe terminated its relationship with some of those advertising agencies. Nonetheless, the company did not begin to review third-party reviews posted online until April 2023. At that time, Respondents requested, in only some limited instances, that websites containing accessiBe reviews disclose accessiBe's sponsorship of such reviews or that the websites remove the deceptively formatted advertisements.

74.     In many instances, however, articles containing Respondents' deceptive advertising claims are still viewable online, including the September 2020 uxplanet.org "review." In addition, in many instances where the articles remain online, they lack disclosures, or adequate disclosures, of the publisher's or author's material connection to accessiBe, and, therefore, are still deceptively formatted to appear as impartial reviews.

75.     The FTC has determined that it is an unfair or deceptive trade practice to fail to disclose a connection between an endorser and the seller of an advertised product or service, if such a connection might materially affect the weight or credibility of the endorsement and if the connection would not be reasonably expected by consumers. The FTC has issued widely publicized guidance to businesses and others to ensure that advertising using endorsements is truthful. The FTC Endorsement Guides state that if there is a connection between the endorser and the seller of the advertised product that might materially affect the weight or the credibility of the endorsement and that connection is not reasonably expected by the audience, such connection must be fully disclosed. In addition, the FTC has issued final cease and desist orders with respect to this practice.

76.     In November 2022, the FTC notified Respondents that the subject of its investigation was whether Respondents "made false or unsubstantiated representations regarding [their] product or services, the performance of [their] products or services, and/or ha[ve] engaged in deceptive or unfair practices in connection with [their] products, services, **or product reviews** in violation of [the] FTC Act, 15 U.S.C. § 45." (Emphasis added.)

### WCAG ERRORS
### IN WEBSITES USING RESPONDENTS' ACCESSWIDGET

77.     Despite Respondents' repeated claims that accessWidget makes websites compliant with WCAG, in a number of instances websites running the accessWidget software contain or have contained barriers that would make it difficult or impossible for persons with disabilities to use the web content for its intended purpose. These barriers include:  missing or inaccurate alt text for key images; a missing focus indicator (a colored border that shows which interactive element on a web page is currently selected or being viewed); keyboard traps (when a user cannot use the keyboard to move the focus, causing the user to be "trapped" on an element such as a drop-down menu, or an input box in a form); incorrect headings; and problems with menus, buttons, and tables, among other essential navigation components. All of these barriers correspond to level A

or AA Success Criteria and would render a website non-compliant with WCAG.

78.     According to web accessibility experts, including the W3C and Utah State University's Institute for Disability Research, Policy & Practice (developer of the WebAIM WAVE Web Accessibility Evaluation Tool), no automated testing tool alone can determine if a website meets accessibility standards. Rather, manual human testing is required. Based on manual testing, websites installed with accessiBe across a variety of industries, including e-commerce, banking, medicine, real estate, residential, restaurant, automobile dealers, education, recreation, and the arts, fail or have failed to satisfy Level A and AA WCAG Success Criteria.

79.     A number of websites that have accessWidget installed have or have had errors related to alt text in violation of WCAG Success Criterion 1.1.1 (non-text content/accessible labels, Level A). In some instances, alt text is or was missing entirely, including in multiple instances for all images appearing on a "gallery" page, a web page consisting almost entirely of images related to the business or product. In another instance, "featured book" images on a website selling e-books were coded as hidden so blind users would have had no way to know they were present. In some instances, the alt text fails or has failed to provide relevant or accurate descriptive information, instead providing alt text such as "Untitled design 30t212927," "img_4534 scaled," "Brown bread on white ceramic plate" (Fig. 1) or "gluten-free item" for images of filet mignon and bison filets, or "cooked food on green ceramic plate" for an image of lemon-Dijon chicken with asparagus and a grilled lemon on a white ceramic plate (Fig. 2):



Fig. 1, showing the text (highlighted in yellow) that a screen reader would read for the displayed image.

Fig. 2, showing the text (highlighted in yellow) that a screen reader would read for the displayed image.

In some instances the alt text provided for images is or was essentially gibberish, such as "Img_7885_b3ec1f5d704b 46c1 ae826030406dff52_300x" (Fig. 3), or 37924715" (Fig. 4):
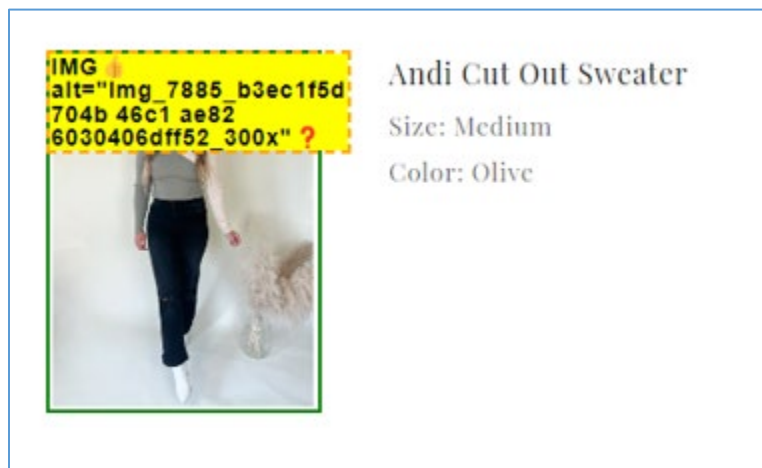


Fig. 3, showing the text (highlighted in yellow) that a screen reader would read for the displayed image.

Fig. 4, showing the text (highlighted in yellow) that a screen reader would read for the displayed image. (Address and house number redacted.)

80.     Some websites have or have had issues that prevent users from navigating the website with a keyboard, such as: keyboard traps that prevent a user from moving from one month to another in a reservation form, or from leaving the search box after it is entered; missing keyboard focus indicators; inaccurate labels; or inability to select a particular option in a form (*e.g.*, a mortgage term in a mortgage calculator form). In some instances, content has appeared via a pop-up that was not announced to a person using a screen reader; nor were the instructions for how to close or navigate the pop-up. These barriers would violate WCAG Success Criteria 2.1.1 (keyboard accessibility, Level A), 2.4.7 and 2.4.3 (visible focus, Level AA/focus order, Level A), 1.1.1 and 1.3.1 (non-text content/accessible labels, Level A), and 4.1.3 (status messages, Level AA).

81.     In other instances, pages have or have had additional flaws related to essential navigation elements that result in accessibility barriers. These include, but are not limited to:

- Indicating that a tab was selected when it was not, causing a disconnect between the identified tab topic and the subject matter of the actual content displayed (*e.g.*, a

menu dessert tab read as "selected" when it was not, and the corresponding content described appetizers rather than desserts);

- Inaccurate button labels that incorrectly indicated when website menu lists were expanded or collapsed, or failed to indicate whether a menu was expanded or collapsed at all;

- Improperly coded status or error messages, resulting in a screen reader's failure to read when an item was added to a shopping cart, or that a form required completion of a particular field before it could be submitted;

- Improperly coded labels, resulting in a screen reader incorrectly reading a 5-star rating graphic as a "previous" button;

- Inability to select certain product filters like color and size for clothing items, or number of bedrooms and bathrooms for real estate listings;

- Inability to adjust slider criteria ranges (*e.g.*, a price between $280K and $3M+) via keyboard, for real estate listings;

- Search criteria options that were not read by the screen reader; and

- Incorrect content labels (*e.g.*, incorrectly reading the percentage for a down payment in a mortgage calculator form as "text") (Figs. 5 and 6):
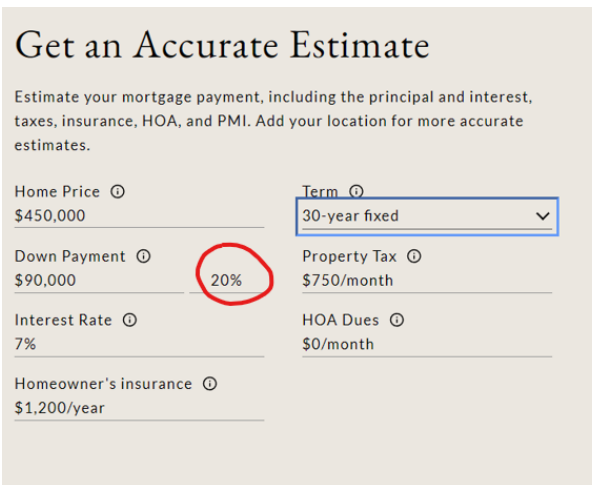


Fig. 5, showing the content a sighted user would see regarding down payment—a percentage set to 20%.
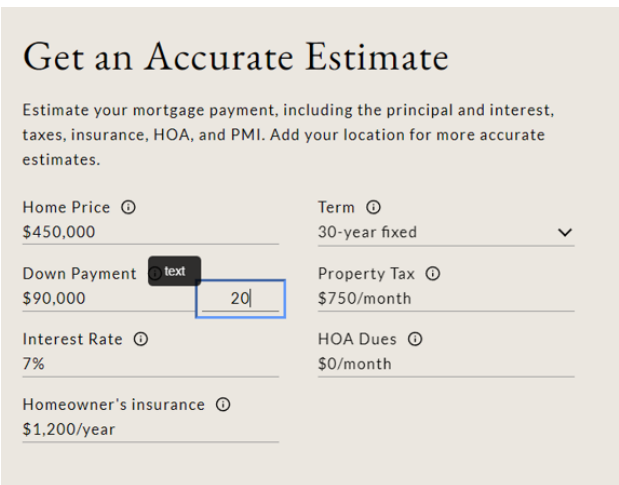
Fig. 6, showing that a screen reader would read the word "text," based on the coded label, instead of the actual content shown, which is "20%" or "down payment percentage, twenty."

These barriers violate WCAG Success Criteria 2.1.1 (keyboard accessibility, Level A), 1.1.1 and 1.3.1 (non-text content/accessible labels, Level A), 4.1.3 (status messages, Level AA), 3.3.1 (error handling, Level A), and 2.4.7 and 2.4.3 (visible focus, Level AA/focus order, Level A).

82.    In addition, in a number of instances websites that utilize or have utilized tables to

display data are not or have not been coded correctly. For example, some websites have or have had improperly coded table headers, making table data inaccessible to a blind user because the data cells were not read with the corresponding header. This barrier violates WCAG Success Criterion 1.3.1 (non-text content/info and relationships, Level A).

83. To the extent the websites include or have included links to audio or video, these items lack or have lacked adequate transcripts or captions in a number of instances. These barriers violate WCAG Success Criteria 1.2.1 and 1.2.2 (prerecorded audio and video/captions, Level A).

84. To the extent the websites include or have included PDF files, these files are not or have not been accessible in a number of instances. As a result, a user with a disability may not be able to access the content in the PDF files. WCAG requires that PDF files included on websites meet all relevant WCAG Success Criteria.

85. In addition, in some instances where the websites link or have linked to external, third-party web domains – for example, to complete an e-commerce transaction or reservation – those pages do not include or have not included accessiBe and are not or have not been accessible to a person with a disability. As a result, a user with a disability may ultimately have been unable to use the website for its intended purpose – the desired item could not be purchased, or the reservation could not be made.

86. Respondents fail to disclose, or disclose adequately, that, unless additional services are purchased, accessWidget does not make certain components of websites accessible, including documents, PowerPoint, Excel, Word, PDF, audio, video, certain graphic image files, embedded content, URL parameters, Canvas, or Flash. Respondents also fail to disclose, or disclose adequately, that accessWidget does not remediate website content hosted on third-party web domains or subdomains (unless the third party or subdomains also happen to use accessWidget). To the extent Respondents make these qualifications at all, they are or have been buried in accessiBe's Terms of Service, blog posts, or other sub-pages of accessiBe's website. No such disclosures appear in close proximity to, or are equally as prominent as, Respondents' hallmark claim that accessWidget will make any website compliant with WCAG, and that it will do so quickly and affordably.

87. In sum, despite accessiBe's advertising claims, in a number of instances websites running accessWidget do not conform with Level A and AA WCAG Success Criteria. Therefore, these websites are not WCAG compliant.

88. Further, the barriers discussed in Paragraphs 77 through 87 are consistent with errors identified during Respondents' internal testing. During these manual tests of websites with accessWidget, accessiBe's own testers identified errors on nearly all websites tested. These errors included issues with navigation, menus, carousels, and tables, and inaccurate labels, roles, and alt text.

## Count I
## False or Unsubstantiated Performance Claims

89. In numerous instances in connection with the advertising, marketing, promotion, offering for sale, or sale of accessWidget, including through the means described in Paragraphs 20

through 67 of this Complaint, Respondents represent or have represented, directly or indirectly, expressly or by implication, that:

A. accessWidget's artificial intelligence and other technology makes any website compliant with the Web Content Accessibility Guidelines (WCAG); and

B. accessWidget's artificial intelligence and other technology will continue to ensure accessibility and compliance with WCAG by automatically remediating any changes to a website.

90. The representations set forth in Paragraph 89 are false or misleading or were not substantiated at the time the representations were made.

## Count II
## Deceptively Formatted Advertising

91. In numerous instances, in connection with the advertising, marketing, promotion, offering for sale, or sale of accessWidget, including through the means described in Paragraphs 26 and 52 through 67 of this Complaint, Respondents represent or have represented, directly or indirectly, expressly or by implication, that the statements made about accessWidget in reviews, articles, or blog posts appearing on third-party websites are or were independent opinions by impartial authors or publications.

92. In fact, in numerous instances in which Respondents make or have made the representation set forth in Paragraph 91, the statements made about accessWidget in reviews, articles, or blog posts appearing on third-party websites are not or were not independent opinions by impartial authors or publications.

93. Therefore, Respondents' representation as set forth in Paragraph 91 is false or misleading.

## Count III
## Deceptive Failure to Disclose Material Connections

94. In numerous instances, in connection with the advertising, marketing, promotion, offering for sale, or sale of accessWidget, including through the means described in Paragraphs 26 and 52 through 67 of this Complaint, Respondents represent or have represented, directly or indirectly, expressly or by implication, that the statements made about accessWidget in reviews, articles, or blog posts appearing on third-party websites are or were opinions by those authors or publications.

95. In numerous instances in which Respondents make or have made the representation set forth in Paragraph 94, Respondents fail or have failed to disclose, or disclose adequately, to consumers that they paid for the reviews, articles, or blog posts, and/or participated in drafting, editing, or approving them prior to publication. This connection between Respondents and the author or publisher of the review, article, or blog post, would be material to consumers in evaluating the weight and credibility of the representations in the review, article, or blog post, and consumers would not reasonably expect this material connection between Respondents and the author or publisher.

96.     In light of Respondents' representation set forth in Paragraph 94, Respondents' failure to disclose, or disclose adequately, the material information as described in Paragraph 95 is a deceptive act or practice.

## **Violations of Section 5**

97.     The acts and practices of Respondents as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this _____ day of _____, 20___, has issued this Complaint against Respondents.

By the Commission.


[April J. Tabor]
Secretary


SEAL: