

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE**

-----X		:	
AUDIOEYE, INC.,		:	
	Plaintiff,	:	Index No. 803054-2023
		:	
- against -		:	Justice _____
		:	Part ____
ADRIAN ROSELLI,		:	
	Defendant.	:	AMENDED COMPLAINT
		:	
-----X		:	

Plaintiff AudioEye, Inc. (“AudioEye” or “Plaintiff”), by and through its attorneys, Akin Gump Strauss Hauer & Feld LLP and Phillips Lytle LLP, as and for its amended complaint (the “Amended Complaint”) against Defendant Adrian Roselli (“Roselli” or “Defendant”), alleges as follows:

NATURE OF THE ACTION

1. AudioEye is a trailblazer in the digital-accessibility industry. For over a decade, AudioEye has provided market-defining services and technologies to thousands of clients to improve the accessibility of their websites. AudioEye’s technology and team of experts assist clients to achieve compliance with various laws and guidelines, including the Americans with Disabilities Act (the “ADA”). AudioEye’s mission from day one has been to make the Internet more accessible for individuals with disabilities.

2. After years of market and technological research, AudioEye has developed an approach to accessibility that is designed to address website-accessibility issues on a large scale. AudioEye’s proprietary software delivers coding scripts (sometimes referred to as “automated remediation” or “automation”) that can quickly and inexpensively address the most commonly

occurring accessibility issues. But, unlike many of its competitors, AudioEye’s offering goes further. In addition to offering its customers its already developed products, AudioEye also can be part of a more intensive manual remediation strategy, in which website-specific code (sometimes referred to as “manual remediation”) is written by developers who are subject-matter experts, following a review of the customer’s website. After implementing this remediation strategy, AudioEye then delivers full audit results similar to other consulting companies in the digital-accessibility industry.

3. With the rapidly growing scale of the Internet, AudioEye has found that the only way to tackle accessibility issues successfully is with an approach that combines automated remediation through its proprietary software *alongside* manual remediation. Although these are AudioEye’s core products and services, it also offers the use of a “toolbar” or “toolkit program,” which is a small piece of code that can be added to an existing website to produce tools that users may apply to adjust the website by, for example, changing the font or text size. AudioEye’s toolbar does not, by itself, ensure full accessibility—nor does AudioEye claim that it does so—but it can be a useful add-on in certain circumstances.

4. There are some in the digital accessibility industry who have advocated against the use of any remediation technology like AudioEye’s—automated or manual. These individuals and groups disparagingly refer to such technology as “overlays,” because the technology does not change the actual source code, but instead “overlays” on top of the existing code and fixes the way assistive technology interprets that existing code.

5. Some members of this community use the terms “toolkit” or “toolbar” interchangeably with the term “overlay,” though they are not synonymous. This tends to cause confusion, as the assertion that *overlays* do not ensure accessibility could be understood by some

to mean that *toolbars* do not ensure accessibility. However, while toolbars, alone, are not sufficient to ensure accessibility, automated and manual remediation, or “overlays,” such as what AudioEye offers, can ensure accessibility.

6. Particularly throughout the past two years, AudioEye’s detractors have publicly asserted that, instead of using automated technology, the only way to improve accessibility is the tedious and expensive manual approach of rewriting a website’s code and, due to the constantly evolving nature of websites, either maintaining an internal set of developers trained to code using assistive technology or retaining costly outside developers to do the same. However, this is an exceedingly simplistic view of how to ensure digital accessibility for all; it is not only impractical, but, in fact, it would be impossible to implement such a strategy on a large enough scale to effect meaningful change in digital accessibility.

7. Many of these critics have specifically targeted AudioEye, implying that AudioEye *only* provides ineffective automatic remediations, and smearing AudioEye’s name on their social media accounts, on business and personal websites, and in online articles. Throughout the past two years, these individuals have targeted AudioEye’s current and potential customers by spreading false, disparaging, and misleading information about AudioEye’s services and technology, which has tarnished AudioEye’s reputation and hampered its dealings with potential customers.

8. Adrian Roselli is one such individual. Over the past year, Roselli has posted countless false and malicious statements about AudioEye and its technology. He has even gone so far as to doctor purported videos of AudioEye’s toolkit program—a mere sliver of AudioEye’s suite of products and services—to give the false impression that AudioEye’s product, on the whole, “does not work.”

9. AudioEye attempted to engage with Roselli privately. Through letter correspondence directed only to Roselli, AudioEye explained the falsities in his claims and demanded that he retract his tortious statements. Needless to say, Roselli refused. Instead, he reached out directly to one of AudioEye's customers, this time in the middle of a contract-renewal negotiation between AudioEye and the customer. Roselli encouraged the public to "warn" the customer about AudioEye's technology. Since that time, Roselli has continued his unprompted attacks on AudioEye's business, recently posting a lie-laden blog post titled, "#AudioEye Will Get You Sued." Roselli has damaged AudioEye's reputation, and his insistence on harming AudioEye's business has forced AudioEye to file this lawsuit to bring an end to his malicious conduct.

PARTIES

10. Plaintiff AudioEye is a publicly traded corporation incorporated in Delaware with its headquarters and principal place of business in Tucson, Arizona. AudioEye is authorized to transact business in New York.

11. Defendant Adrian Roselli is an individual who, based upon information and belief, resides at -----.

JURISDICTION AND VENUE

12. This Court has jurisdiction over Defendant because Defendant resides within the State of New York and, upon information and belief, has committed tortious acts within the State of New York.

13. Venue is proper pursuant to CPLR § 503(a), as Erie County is the county of Defendant's residence.

FACTUAL ALLEGATIONS

I. AUDIOEYE'S SUCCESSFUL APPROACH TO ACCESSIBILITY

14. Founded in 2005, AudioEye has been involved in digital accessibility for more than fifteen years. What started as a research and development company has grown into a full-service market leader, offering one of the most trusted and robust technology platforms in the country. Since inception, AudioEye has been committed to eradicating barriers that prevent people with disabilities from having equal access to the Internet.

15. The Department of Justice has consistently taken the position that the ADA, 42 U.S.C. § 12101—the single most important legislation protecting the rights of people with disabilities—applies to websites operated by state and local governments, as well as businesses open to the public. *See Guidance on Web Accessibility and the ADA*, U.S. Dep't of Just. C.R. Div. (Mar. 18, 2022), <https://www.ada.gov/resources/web-guidance>. AudioEye offers its clients a unique solution to help make their websites ADA compliant, as well as compliant with other regulations and guidance, including the Web Content Accessibility Guidelines (“WCAG”). AudioEye provides both automated remediation technology on the one hand, and manual testing and remediation on the other, in addition to other products and services, as more fully described below.

16. AudioEye is proud to have served some of the top names in the retail and news-publishing industries, including Calvin Klein, Tommy Hilfiger, and Guitar Center. In total, over 81,000 websites have trusted AudioEye's products and services to enhance the digital accessibility of their websites.

17. Within the industry, there are two general approaches to website accessibility and remediation of accessibility barriers. AudioEye utilizes an approach that involves, at least at first, some level of what is referred to as “automation.” AudioEye employs automation through

its proprietary software, which, on day one, runs over 400 tests to detect accessibility errors and risks. AudioEye then automatically fixes the accessibility issues it detected. Additionally, AudioEye provides active monitoring, which refreshes with each site visitor, automatically fixing accessibility issues at a rapid cadence. Clients receive an “Accessibility Score,” which updates in real-time, so that they have a fast and accurate reflection of accessibility issues that their websites encounter.

18. The automation portion of AudioEye’s product operates quickly and is cost-effective for clients. To the extent that accessibility issues remain after running the automation and a client requests additional service, AudioEye offers manual remediation. As part of this manual remediation, AudioEye deploys a team of specialists—including individual testers with disabilities—who are experts at auditing, identifying, and manually remediating further issues. AudioEye also offers education and training resources, scheduled webinars, regular manual audits, and technical website-review services in the event a client is subject to a lawsuit or a demand letter. And an AudioEye helpdesk is always available to clients.

19. AudioEye fully understands that automation cannot fix every accessibility issue that a website may have. Indeed, automation can only address the issues that a program is able to detect. While automatic remediation may detect a mistake common to all or many websites, AudioEye’s manual remediation might detect an issue that occurs with features unique to a particular website. Although artificial intelligence and machine learning are consistently improving the capabilities of code for automatic detection and remediation, there is still room for growth. For that reason, AudioEye always advocates for its approach of pairing automation with manual testing and fixes.

20. The second approach to remediation is often referred to as the “ground-up” approach. This approach requires a customer to engage in a complete review of its entire website, which can involve thousands upon thousands of pages and content, in order to prevent the issues that arise when accessibility software interacts with the website code, and to continually account for constant updates to the website code. This can involve hiring consultants to advise on accessibility issues and to provide instruction to coders on how to recode the website at its source. Coders are then expected to be contracted or trained in-house to recode a client’s entire web presence manually from the ground up to detect and correct all potentially inaccessible web pages and features, and to continually update the website. This approach is often expensive, time consuming, and not sustainable. And as the standards and guidelines are often changing, the time-consuming manual work is never-ending. Additionally, AudioEye’s research has revealed that the traditional, manual-only approach to ensuring accessibility often still leaves websites severely inaccessible. In an AudioEye manual audit of 55 websites that use traditional audit and remediation services offered by consultants, 41 of the websites had one or more significant accessibility barriers. No website was issue-free. Moreover, AudioEye has found that many clients do not follow the additional step of hiring coders to follow through on the consultant’s advice, as doing so is time consuming and often prohibitively expensive.

21. Digital accessibility is still in its early stages and remains a large-scale problem. Indeed, recent market research has indicated that only approximately 3% of websites are fully accessible. With approximately 1.9 billion websites worldwide, and approximately 250,000 new websites going live every day, accessibility is a growing issue that requires a fast yet effective solution. If the industry applied only a “ground-up” approach to ensuring accessibility, AudioEye has estimated that it would take approximately 83.5 billion hours, requiring

approximately 40 million people per year, to get even half of the Internet fully accessible. The Internet is simply too big and fast changing for a manual-only approach to succeed. Those who insist on offering only a manual, ground-up approach cannot possibly keep pace with reality, and therefore they ultimately impede accessibility.

22. The reality is that some degree of automation is required to meet the fast-changing nature of the Internet and solve accessibility at scale. When paired with human expertise, automation can fix the majority of common accessibility issues, and can do so faster and in a more affordable way than can the “ground-up” approach.

II. THE “OVERLAY” SMEAR CAMPAIGN AGAINST AUDIOEYE

23. A growing community of digital-accessibility companies and individual consultants who support the “ground-up” approach have launched a tortious campaign against AudioEye. Defendant is a vocal member of this community, which has spread false, defamatory information about AudioEye’s services and has purposefully attempted to interfere with AudioEye’s business.

24. The crux of the smear campaign against AudioEye concerns AudioEye’s use of automation. These individuals falsely claim that automation does not work, and they falsely assert that AudioEye *only* provides automated remediation.

25. Proponents of the “ground-up” approach sometimes disdainfully refer to automated solutions as “overlays.” For the past few years, Karl Groves, an employee of an AudioEye competitor named Level Access, has maintained and promoted two websites: <http://www.overlayfactsheet.com> and <http://www.overlayfalseclaims.com>. The first website, the Overlay “Fact” Sheet, identifies AudioEye as a “web accessibility overlay” company and explicitly and implicitly maligns AudioEye as unethical and engaged in false advertising. Groves directly discourages consumers from using any vendors on a list of “overlay products,”

which includes AudioEye. Groves admits that a “non-trivial array of accessibility problems can be repaired” through automation, but he insists that “full compliance cannot be achieved with an overlay” and that newer overlay products “are preventing assistive technology from being used easily.” He also states that AudioEye’s marketing “preys” upon customers’ needs.

26. In response to Groves’s postings, many others have disseminated similarly false and disparaging information about AudioEye to AudioEye’s current and potential customers. For example, in response to a tweet on January 17, 2022, from the International Association for Accessibility Professionals posting a link to AudioEye’s best practices for accessibility, several individuals joined Groves in replying by tagging AudioEye’s Twitter account, and making statements about how AudioEye’s services do not work and actively harm the accessibility community, even referencing AudioEye’s services as “snake oil products.” Among these individuals were Alicia Jarvis (@A1lyAlicia), “Amélie FC” (@TheSlasherChick), Denis Boudreau (@dboudreau), “Minister of Mayhem” (@tyronem), Anna E. Cook (@annaecook), “Meg” (@RamblingMoth), Nick Colley (@NickColley), Janos Sitar (@Sitarj), and Darren Bates (@DLBLLC).

27. As an example of the level of deceit perpetrated throughout the industry, a *Tech Times* article posted on or about December 27, 2021, by a “David Thompson” stated false information about AudioEye’s involvement in a lawsuit against ADP TotalSource, Inc., described more fully below. Upon information and belief, this article served as the basis for false, tortious statements made on the website of Lainey Feingold, a disability rights lawyer in California. AudioEye has reason to believe that one of its competitors solicited and/or drafted the false and disparaging information about AudioEye in the *Tech Times* article. Once *Tech Times* published Mr. Thompson’s article, the article trended on search engines as paid advertising, including

through Google Ads. Neither Mr. Thompson nor anyone at *Tech Times* contacted AudioEye for comment prior to publishing the article, and AudioEye could not independently verify the identity of a “David Thompson” who worked for or with *Tech Times*. After becoming aware of the article, outside counsel for AudioEye sent a letter to *Tech Times* describing the false statements and demanding that it retract or clarify the statements regarding AudioEye. Although *Tech Times* did not provide a written response, it immediately retracted the entire article from its website.

28. The simple truth is that AudioEye’s automation *does* work—it does exactly what it purports to do. The limitations of automation are exactly why AudioEye offers more, including manual testing and remediation. The vitriol spewed at AudioEye by Groves and his followers, including the Defendant, and the deliberate attacks directed to AudioEye’s customers, have no basis in fact.

III. DEFENDANT’S UNLAWFUL CONDUCT

29. Groves’s aggressive tactics and unwarranted confidence have emboldened other individuals, including Defendant Adrian Roselli, to spread false and tortious information about AudioEye. The “ground-up” community of which Groves and Roselli are a part has even gone so far as to target AudioEye’s customers in a clear attempt to interfere with AudioEye’s existing and prospective contracts.

30. For months, AudioEye has attempted to address this harassment campaign by reaching out to tortfeasors, including Roselli, individually. AudioEye has explained how its services work, including its manual remediation, and the benefits that they provide to the accessibility community. AudioEye’s efforts to cease the harassment have been fruitless. Indeed, AudioEye’s efforts to engage tortfeasors like Roselli have seemed to motivate them to attack AudioEye even more viciously.

31. AudioEye is an advocate for its approach to accessibility, which has been supported by years of market research. Roselli's false and defamatory messages contribute to misleading beliefs about AudioEye's products and services, as well as the benefits of automation to address digital access. AudioEye is left with no choice but to bring this lawsuit to put an end to Roselli's harmful and destructive campaign.

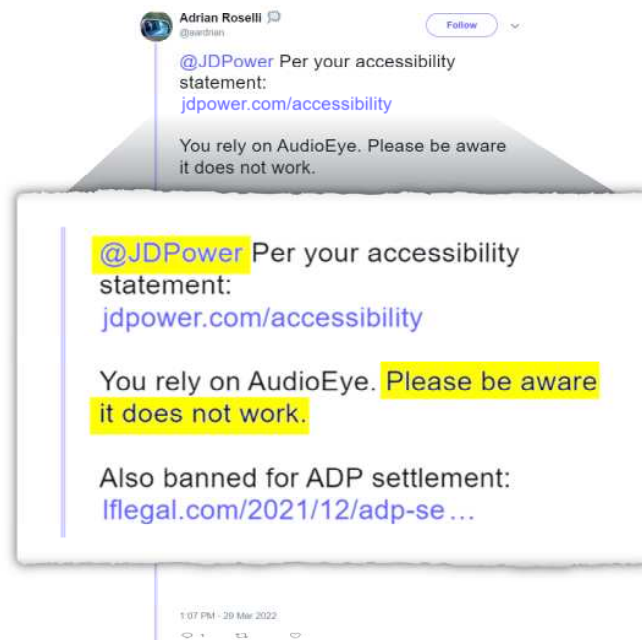
32. Roselli is a self-proclaimed consultant, writer, speaker, tester, and coach in the digital accessibility-software industry. Upon information and belief, Roselli resides in Buffalo, New York, and he earned a bachelor's degree in media study at the State University of New York at Buffalo. According to his website, <https://adrianroselli.com>, he has developed "effective user interfaces for the Web since 1993." Roselli has published articles and edited books on website "usability, accessibility, and interface design." He is also a founding member of evolt.org, which he describes on his website as "one of the very first communities (by its mailing list and web site dating back to 1998) made up of web professionals from around the globe who share their knowledge and experience in web development." Upon information and belief, Roselli's website, on which he frequently blogs about website accessibility, receives tens of thousands of visitors each month. Roselli has garnered a voice in the digital-accessibility industry, and on his website and in his publications, he holds himself out as a digital-accessibility expert.

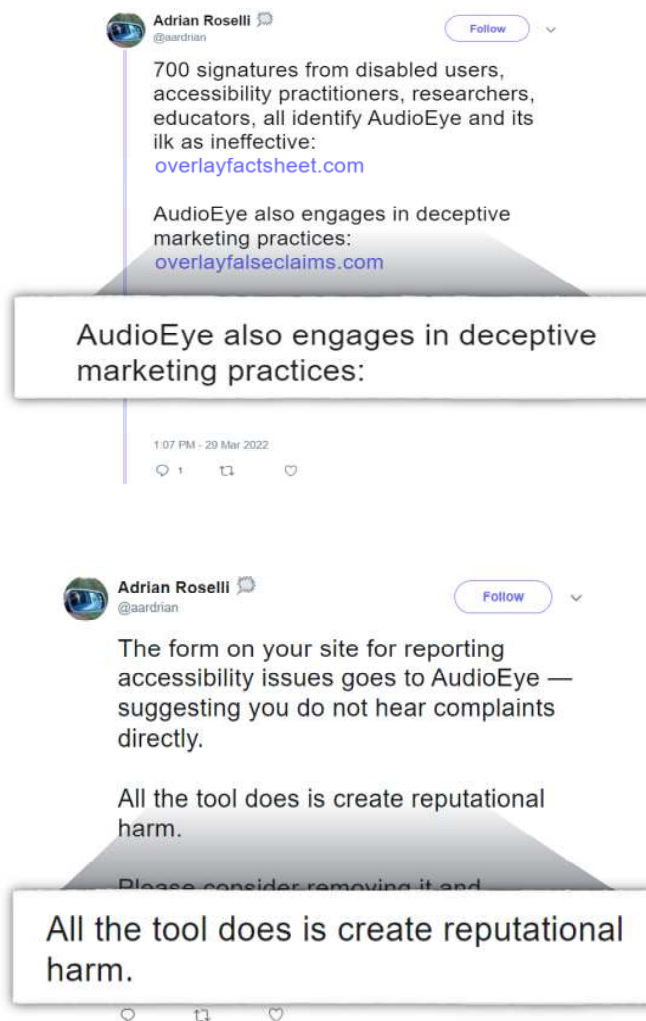
33. For at least the past year, Roselli has targeted AudioEye in a blatant attempt to sabotage AudioEye's success as a leader in the industry. Upon information and belief, Roselli's smear campaign against AudioEye began just after he became a signatory to the Overlay "Fact" Sheet. In early 2022, a few short months after Level Access hired Groves, and Groves began picking up the frequency of his false tweets about AudioEye, Roselli started spreading similarly false messages about AudioEye on his website and social media platforms.

34. Roselli's messages about AudioEye are as simple as they are false: he has repeatedly claimed that AudioEye's product does not work.

A. Tweets on March 29, 2022: Roselli Falsely Asserts That AudioEye "Does Not Work"

35. On or about March 29, 2022, Roselli posted a three-tweet thread concerning AudioEye that was accessible to the public, including his approximately 5,500 Twitter followers at the time. The thread was directed to one of AudioEye's important clients, J.D. Power, a leading consumer research, data, and analytics firm:





36. These tweets, in which Roselli tagged J.D. Power, are replete with false information. *First*, Roselli stated that AudioEye “does not work” and “all” that AudioEye does “is create reputational harm.” Both statements are wrong. As Roselli is aware, AudioEye offers its customers both automated and manual remediations, and the process of achieving maximum accessibility is iterative. AudioEye’s services work to enhance accessibility.

37. *Second*, Roselli’s statement that AudioEye was “banned for ADP settlement,” which Roselli has tweeted about since around February 2022, is also false. AudioEye has reason to believe that one of its competitors has spread this false and disparaging information about AudioEye in connection with the settlement, which Roselli has republished. The link provided

by Roselli led to the settlement agreement executed in the matter of *LightHouse v. ADP, Inc.*, No. 4:20-cv-09020 (N.D. Cal.) in October 2021 (the “ADP Settlement”). Contrary to Roselli’s statements (and similar statements by Lainey Feingold), the ADP Settlement **does not** ban ADP TotalSource, Inc. (“ADP”) from using AudioEye. Rather, the parties merely agreed that that the solutions on their own were not sufficient for ADP going forward. In other words, software automation could still be used, but it would need to be complemented by additional source-code fixes. Furthermore, for AudioEye’s approach to work, its clients (including ADP) ultimately must fully implement the full approach on their side. Thus, the ADP Settlement merely described a flawed implementation of AudioEye’s product, not that AudioEye’s products were banned. AudioEye has been working closely with ADP since 2015 and has supported ADP for nearly a decade on its accessibility journey. ADP has renewed its relationship with AudioEye since the ADP Settlement was reached.

38. *Third*, Roselli republished Groves’s Overlay “Fact” Sheet and <http://www.overlayfalseclaims.com> site, which, as described above, include false and disparaging statements about AudioEye as an “overlay” company, without actually understanding how AudioEye’s manual remediations fix complex accessibility issues.

39. By tagging J.D. Power, it is clear that Roselli intended to convince J.D. Power to end its relationship with AudioEye. And, by posting the messages publicly instead of reaching out to J.D. Power privately, Roselli set out to convince potential clients of AudioEye to avoid working with AudioEye in the future.

40. AudioEye took immediate action to protect its business. On or about April 1, 2022, legal counsel for AudioEye sent a letter to Roselli, explaining why his statements were

false and tortious, and demanding that Roselli take down his tweets and cease his tortious conduct. Roselli did not respond, and his tweets remained posted on Twitter.

41. On or about April 13, 2022, legal counsel for AudioEye sent a second letter to Roselli reiterating AudioEye's position, after which Roselli finally removed the tweets from March 29, 2022. Roselli also replied to AudioEye stating that "[d]eleting the tweets should in no way be taken as a sign that I agree with your client's assertions as laid out in the letter. It is still my genuine opinion and sincerely held belief that the tweets were accurate." But it is clear from the text that Roselli's statements were assertions of *fact*, and not a reflection of his personal opinions.

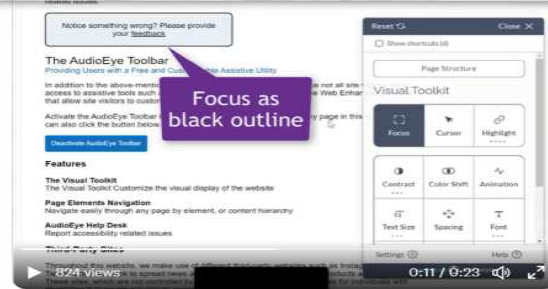
42. Roselli remained determined to harm AudioEye. Upon information and belief, on April 15, 2022, the same day that he sent his response to AudioEye, Roselli posted a copy of AudioEye's letters and his response on his website in a blog post titled, "My Cease & Desist from AudioEye." *My Cease & Desist from AudioEye*, Adrian Roselli (Apr. 15, 2022), <https://adrianroselli.com/2022/04/my-cease-desist-from-audioeye.html>. Within his post, Roselli included archival links where anyone can, to this day, access the now-deleted tweets—in effect broadcasting and reiterating all of his falsehoods about AudioEye once again to the public, including to a new audience of those who visit his website rather than his Twitter account.

B. Tweets and Videos in May 2022: Roselli's Doctored Videos Misrepresent AudioEye's Product

43. Roselli resumed his campaign against AudioEye in May 2022. On or about May 30 and May 31, 2022, Roselli launched into a fresh, falsehood-ridden Twitter rant in which he once again asserted that AudioEye does not work. Each of Roselli's tweets was accompanied by a brief video demonstration of AudioEye's apparent failures. The eight-tweet thread reads as follows:

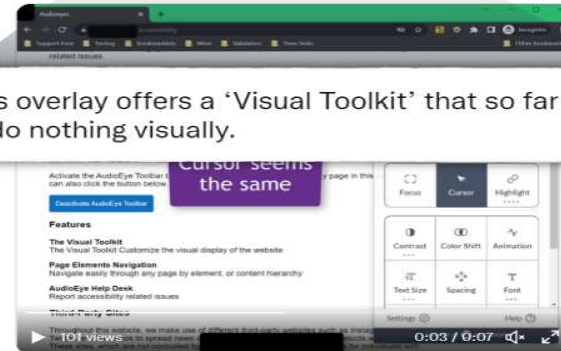
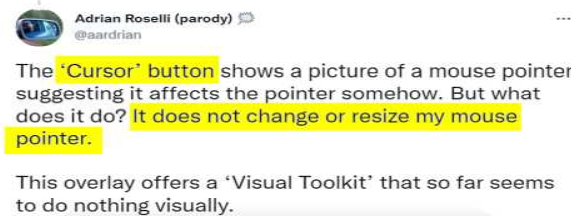


In this case, I get the same black outline both before and after activation.



8:59 AM · May 30, 2022

2 Retweets 1 Quote Tweet 4 Likes



9:07 AM · May 30, 2022

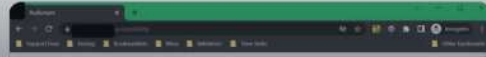
2 Retweets 1 Like



The "Highlight" button cycles through headings, links, and buttons (by changing the accName of the button).

Again, no visual change to elements which I demonstrate with dev tools are definitely headings, links, and buttons.

It is not clear what this overlay does so far.



Again, no visual change to elements



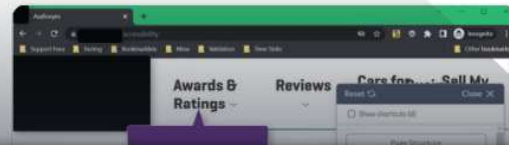
9:12 AM · May 30, 2022

1 Like



"Text Size" also cycles through three options, also by changing its accessible name.

And it also has no effect on the page content. However, it does scale the navigation and footer.



And it also has no effect on the page content.



6:32 AM · May 31, 2022

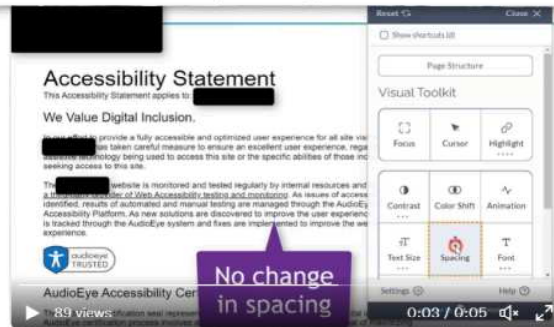
1 Like



"Spacing" only affects the letter spacing in the navigation and footer, having no effect on the page content (other than pushing it down a bit).

The page content for the accessibility statement. Which the overlay vendor provides.

navigation and footer, having no effect on the page content (other than pushing it down a bit).



11:16 AM · May 31, 2022



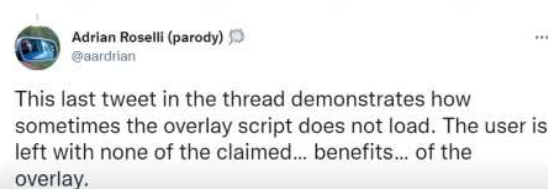
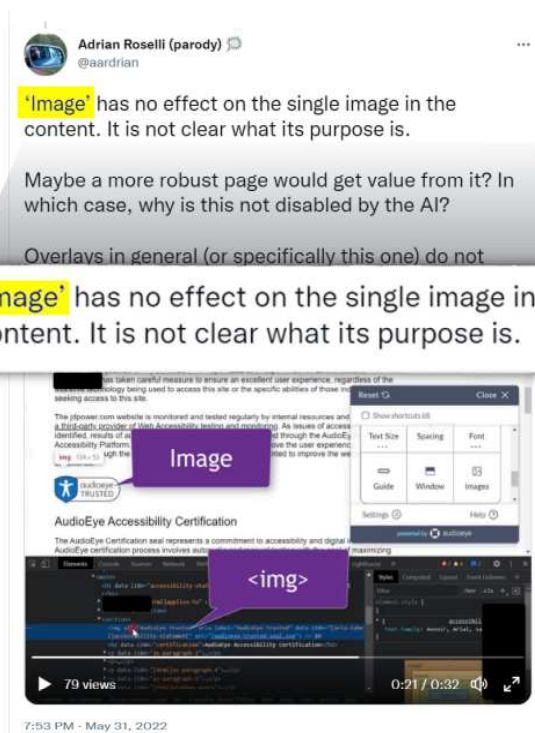
Also affecting only the navigation and footer, "Font" cycles through three options with the third being OpenDyslexic (or similar), which performs no better than any other typeface. Most overlays use it, and it is performative.

OpenDyslexic (or similar), which performs no better than any other typeface.



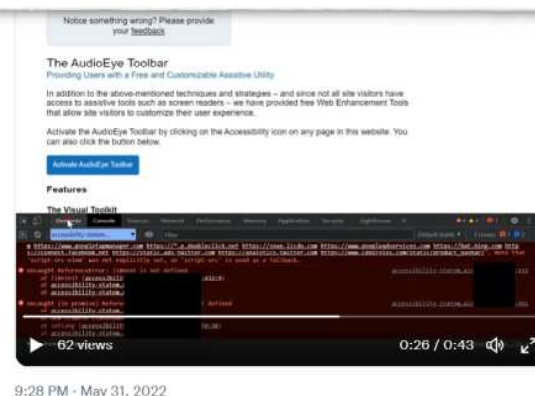
3:24 PM · May 31, 2022

1 Like



As we saw, the overlay failing to run seems to be no loss to the user.

sometimes the overlay script does not load. The user is left with none of the claimed... benefits... of the overlay.



44. Roselli stated that his videos and related tweets demonstrated that AudioEye's visual toolbar did not work, such as by not highlighting text, not increasing font size, and not increasing the size of the mouse pointer, among other things. Roselli's tweets are false, misleading, and disparaging.

45. As an initial matter, Roselli's videos concern solely the functionality of AudioEye's "Accessibility Statement" iFrame. An iFrame is an HTML element that loads an HTML page within another page; it essentially places one third-party webpage onto another. Roselli's videos show AudioEye's toolbar as it interacts on AudioEye's iFrame. This is a very small feature of what AudioEye offers, and Roselli uses this to bolster the flimsy claim that AudioEye does not work.

46. Furthermore, Roselli's videos do not show the toolbar actually working on a live website, and therefore Roselli's statements about AudioEye's functionality are false. As Roselli well knows, a website is never just an iFrame. It always includes logos, headers, footers, other portions of the website, among other things. Roselli's video are doctored and limited to a very specific (and often unused) portion of the website.

47. As an example, Roselli tweeted that "[t]he 'Cursor' button shows a picture of a mouse pointer suggesting it affects the pointer somehow. But what does it do? It does not change or resize my mouse pointer." This is false. Had Roselli provided a full video of the iFrame actually live within the webpage, the pointer would have increased dramatically in size once it was outside the iFrame. The same is true for all of his statements about AudioEye's toolbar. Roselli has taken a tiny error in a tool that few people would use, in the iFrame, which is a place few people would go, to insinuate that AudioEye's entire product, which includes far more than just this toolbar, "seems to do nothing visually."

48. In this same vein, throughout these tweets, Roselli only demonstrates the purported dysfunctionality of AudioEye’s toolbar—not the functionality of AudioEye’s automated or manual remediation, which compose the bulk of AudioEye’s offerings. Knowing full well that members of the community often conflate the term “overlay” with the terms “toolbar” or “toolkit,” Roselli refers to AudioEye’s *toolbar* as an *overlay* to mislead viewers and readers into believing that AudioEye’s entire product does not work.

49. But beyond this set of obfuscations, Roselli’s disparaging videos take his lies further. In each of the videos in these tweets, Roselli misleads viewers by cutting out the website on which he is testing AudioEye’s product and by obscuring the URL. This prevents viewers from locating the website on which Roselli is demonstrating and checking his work. Of course, if they were to check his work, they would find that, in fact, AudioEye’s product makes websites more accessible.

C. Orange County Tweets (December 2022): Roselli Targets Another AudioEye Client

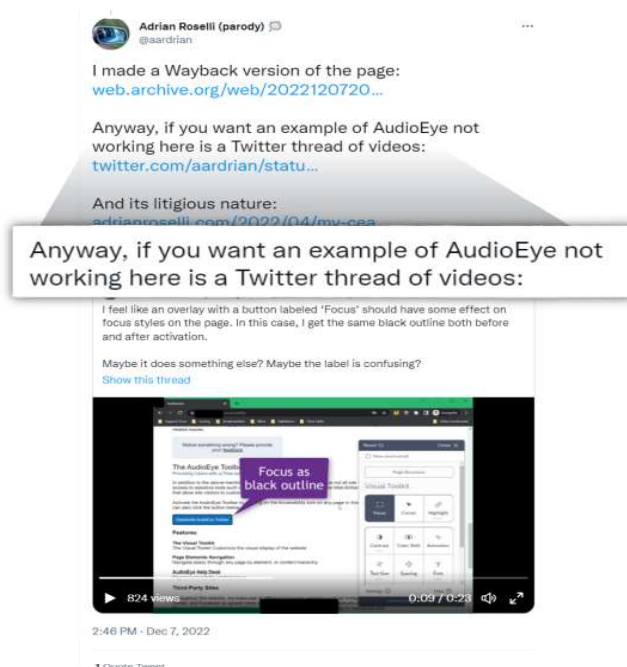
50. Several months later, Roselli embarked on yet another tweet thread filled with lies disparaging AudioEye. On this occasion, Roselli deliberately targeted Orange County, California (“Orange County”), a current client of AudioEye’s, to whom AudioEye had recently submitted a bid for a renewed contract.

51. On or around December 28, 2021, Orange County and AudioEye entered into a one-year contract through which AudioEye provided web-accessibility services to Orange County in exchange for \$24,500 for the duration of the contract. That contract was to terminate on or around December 28, 2022, but the parties anticipated negotiating new terms for a three-year contract going forward.

52. On or around December 6, 2022, Orange County posted information about its bid for a new contract for these services. Specifically, Orange County issued the following statement: “Orange County Information Technology (OCIT) is soliciting a bid for AudioEye Web Content Accessibility and Compliance tools. OCIT seeks to establish a three (3) year contract paid annually.” *Bid #IFB 017-2358301-OCIT-TS – AudioEye Web Content Accessibility and Compliance*, BidSync (last visited Dec. 22, 2022), <https://www.bidsync.com/bidsync-app-web/vendor/links/BidDetail.xhtml?bidid=2110276&roundId=null>. At the time of Roselli’s intrusion, AudioEye had submitted a bid to Orange County and was awaiting a decision after the bidding period ended on December 15, 2022.

53. Having seen Orange County’s bid posting and knowing that Orange County anticipated reviewing a bid from AudioEye for a three-year contract, Roselli did not hesitate to target his campaign toward Orange County. On or about December 7, 2022—just one day after the Orange County bidding period opened and eight days before it closed—Roselli posted the following two-tweet thread:





54. Roselli republished his prior tortious tweets and made further statements directly targeting AudioEye’s Orange County bid, suggesting that someone in California “warn the county.” He referenced the same doctored video for an iFrame that did not even exist on Orange County’s website.

55. Roselli’s disparaging statements were so clearly false that even other Twitter users commented to challenge Roselli’s lies. One such commenter stated, “You continue to blatantly misrepresent what the company does. It is not just a toolbar and overlay. The company pairs automated remediation effort with manual fixes.” Another commenter, a self-stated “screen reader” who tests AudioEye’s customer sites, called out Roselli’s obfuscations, explaining that “[t]he page you’re referencing doesn’t even exist on the [Orange County] website.”

56. Armed with the knowledge that AudioEye sought a new contract with Orange County, Roselli falsely implied that the website had the same issue from the doctored video and interfered with AudioEye’s efforts to obtain this contract by calling the county’s attention to

AudioEye’s purportedly faulty product while wondering—again, to his now over 7,000 Twitter followers—“if this 9 day fake-bid is fully locked in, or someone in CA can warn the county.”

D. Blog Post on February 26, 2023: Roselli Falsely Asserts That “#AudioEye Will Get You Sued”

57. On February 26, 2023, Roselli launched a new line of attack when he published a post on his website titled, “#AudioEye Will Get You Sued.” *#AudioEye Will Get You Sued*, Adrian Roselli (Feb. 26, 2023), <https://adrianroselli.com/2023/02/audioeye-will-get-you-sued.html>. Of course, the title of Roselli’s post, alone, is a blatant false assertion of fact. Working with AudioEye and using its products will not cause one to get sued. Roselli attempted to evade any responsibility for this lie by cramming in a “disclaimer” in small font in the middle of his post. The disclaimer says that “[t]his post and the headline is my opinion. I provide verifiable facts throughout to inform that opinion.” But Roselli’s declaration that the title of the post is a matter of opinion and not one of fact does not make it so. Whether AudioEye and its products will or will not get one sued is a matter of fact or fiction, and not one of opinion. And it is a fiction that Roselli has levied at serious detriment to AudioEye.

58. Continuing on into the body of this blog post, which Roselli himself tagged as a “rant,” he says that “AudioEye is one of many vendors that claims its accessibility product can make your site ‘accessible.’ Like the other overlay vendors, AudioEye’s overlay does not. . . . In fact, using AudioEye’s overlay can add demonstrable WCAG failures and in some cases have no impact for users.” Roselli has not, and cannot, point to an instance where AudioEye’s products have had “no impact for users,” for the plain reason that this statement is not true.

59. Later in the post, Roselli re-amplified the same false claims about the ADP Settlement as he had in his March 29, 2022, Twitter tirade. *See supra* ¶ 37. As “proof” of his statement that AudioEye caused ADP to get sued, Roselli cited one source, and one source

only—none other than the untrustworthy *Tech Times* article by the mysterious “David Thompson” that was immediately retracted after AudioEye confronted *Tech Times*. *See supra* ¶ 27.

60. Finally, Roselli embedded in the post the same or similar doctored videos from his May 2022 tweet thread to demonstrate the failures of AudioEye’s product, notwithstanding the misleading nature of these videos. *See supra* ¶¶ 43–49.

61. To close the post, Roselli made clear that his malicious efforts were not designed to promote his own business: “I want to stress that I am not trying to sell my services here. AudioEye and I do not compete. I have no overlay product. I do not do remediation.” Based on his own words, the motivation for Roselli’s tactics has never been a matter of business competition; it has always been nothing more than a malicious scheme to destroy AudioEye and its business.

62. Given Roselli’s nearly thirty years working in web accessibility and his expertise in the industry, Roselli’s months of spreading myriad lies, falsehoods, mistruths, and misrepresentations getting at the very core of AudioEye’s business demonstrate a deliberate, concerted effort to destroy AudioEye’s business.

63. By publishing false, disparaging information about AudioEye, Roselli has harmed AudioEye’s reputation and caused potential clients to question the reliability and effectiveness of AudioEye’s products.

64. Indeed, by spreading the false and disparaging information at issue to solicit AudioEye’s current customers and potential customers, Roselli has also jeopardized the trust and goodwill that AudioEye has instilled in its customers over the years. If the trust that AudioEye

has earned among customers is further eroded, the resulting damage to AudioEye may be impossible to repair.

65. AudioEye has spent nearly two decades promoting and enhancing web accessibility for people with disabilities. Supported by years of market research, AudioEye and its customers have found that the best approach to digital accessibility—particularly on such a large and fast-moving scale as the Internet—is to combine automation with manual remediation in a hybrid approach. AudioEye fiercely defends its business model, and it believes that advocating manual-only solutions ends up *harming* the users they seek to protect. AudioEye brings this lawsuit to defend its reputation and maintain its ability to serve its customers to the benefit of the accessibility community.

FIRST CAUSE OF ACTION
(Libel *Per Se*)

66. Plaintiff AudioEye repeats and realleges each and every allegation set forth in the preceding paragraphs of this Amended Complaint as if fully set forth herein.

67. The Overlay “Fact” Sheet which Roselli republished and onto which Roselli signed falsely states that AudioEye is an “overlay” company and that “[n]o overlay product on the market can cause a website to become fully compliant with any existing accessibility standard.”

68. Defendant Roselli published statements on his public Twitter account and public website about AudioEye and about its product’s efficacy.

69. Roselli’s statements falsely state that AudioEye’s products and services do not work.

70. Roselli’s statements falsely state that “#AudioEye will get you sued.”

71. Roselli's statements falsely state that "[a]ll [AudioEye's] tool does is create reputational harm."

72. Roselli's statements falsely state that the ADP Settlement "banned" AudioEye.

73. Roselli's statements falsely state that AudioEye engages in "deceptive marketing practices."

74. Roselli's statements falsely state that AudioEye's "Focus" tool produces "the same black outline both before and after activation."

75. Roselli's statements falsely state that AudioEye's "Cursor" tool "does not change or resize [his] mouse pointer."

76. Roselli's statements falsely state that AudioEye's "overlay offers a 'Visual Toolkit' that so far seems to do nothing visually."

77. Roselli's statements falsely state that AudioEye's "Highlight" tool "makes no visual change to elements."

78. Roselli's statements falsely state that AudioEye's "Text Size" tool "has no effect on the page content."

79. Roselli's statements falsely state that AudioEye's "Spacing" tool "only affects the letter spacing in the navigation and footer, having no effect on the page content."

80. Roselli's statements falsely state that AudioEye's "Font" tool "affect[s] only the navigation and footer" and "performs no better than any other typeface."

81. Roselli's statements falsely state that AudioEye's "Image" tool "has no effect on the single image in the content."

82. Roselli's statements falsely state that AudioEye's "overlay" "specifically . . . does not seem to offer much value" and that "sometimes the overlay script does not load," leaving the user "with none of the claimed . . . benefits . . . of the overlay."

83. Roselli's statements falsely state that "the overlay failing to run seems to be no loss to the user."

84. Roselli's statements falsely imply that Orange County rigged its bidding process for AudioEye by posting a "fully locked in" "9 day fake-bid."

85. Roselli's statements are libelous *per se* because they concern the core nature of AudioEye's business.

86. Roselli's statements are libelous *per se* because they would tend to cause, and, upon information and belief, actually caused, apprehension, concern, or doubt about the efficacy of AudioEye's product to current clients of AudioEye's and future clients of AudioEye's.

87. Based on Roselli's knowledge of AudioEye and its products, Roselli acted maliciously in posting his defamatory statements.

88. By reason of the foregoing, AudioEye has suffered damages in an amount to be determined at trial.

89. Roselli's conduct was so outrageous, wanton, willful, and malicious that AudioEye should be awarded punitive damages as awarded by the jury.

90. By reason of the foregoing, Plaintiff has been damaged in an amount in excess of the jurisdictional limits of all lower courts which would otherwise have jurisdiction of this matter, in an amount to be determined by the Court, and is entitled to punitive damages.

SECOND CAUSE OF ACTION**(Declaratory Judgment that Defendant's Statements Concerning Plaintiff
Constitute Libel *Per Se*)**

91. Plaintiff AudioEye repeats and realleges each and every allegation set forth in the preceding paragraphs of this Amended Complaint as if fully set forth herein.

92. CPLR § 3001 provides that the Court may render a declaratory judgment when an actual, justiciable controversy exists between adverse parties.

93. An actual, justiciable controversy exists between Plaintiff and Defendant regarding whether Defendant's statements concerning Plaintiff and Plaintiff's business constitute libel *per se* under New York law.

94. As discussed in the First Cause of Action above, Defendant's statements regarding Plaintiff and Plaintiff's business compose a multiyear defamation campaign against Plaintiff. Defendant has made a litany of statements concerning Plaintiff and Plaintiff's business in the form of blog posts, tweets, videos, and through other media falsely stating that Plaintiff's products do not work. Defendant's statements have been published, without Plaintiff's authorization, on his public website and on his public Twitter account, among other places. Defendant's false statements were made maliciously, in light of Defendant's years of self-proclaimed industry experience and purported familiarity with Plaintiff and Plaintiff's products. Defendant's defamatory statements go to the heart of Plaintiff's business and have a tendency to injure Plaintiff in its business and sully Plaintiff's reputation. Meanwhile, Defendant contends that his statements are either true or are matters of opinion.

95. Plaintiff is thus entitled to a declaration that Defendant's statements concerning Plaintiff constitute libel *per se*.

THIRD CAUSE OF ACTION
(Injunctive Relief)

96. Plaintiff AudioEye repeats and realleges each and every allegation set forth in the preceding paragraphs of this Amended Complaint as if fully set forth herein.

97. Defendant's numerous defamatory and disparaging statements concerning Plaintiff and the efficacy of Plaintiff's products violate Plaintiff's rights.

98. Plaintiff lacks an adequate remedy at law to redress the harm done by Defendant's defamatory statements.

99. Plaintiff will be seriously and irreparably harmed in the absence of an injunction enjoining Defendant from making defamatory and disparaging statements concerning Plaintiff and requiring Defendant to remove his past defamatory and disparaging statements. The continued publishing of Defendant's past defamatory statements, along with the specter of future defamatory statements, threaten to destroy Plaintiff's reputation and credibility within the digital accessibility industry and community in such a way that monetary relief could not fix.

100. The equities balance in favor of Plaintiff. In the absence of an injunction, Plaintiff will be seriously and irreparably harmed as described in the preceding paragraphs. Defendant, on the other hand, will suffer no harm by being enjoined from defaming Plaintiff.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendant for the following relief:

- (a) Awarding Plaintiff compensatory damages in an amount to be determined by the Court;
- (b) Awarding Plaintiff punitive damages against Defendant in an amount to be determined by the Court;
- (c) Declaring that Defendant's statements concerning Plaintiff constitute defamation *per se*;
- (d) Granting Plaintiff an injunction enjoining Defendant from making future defamatory or disparaging statements about Plaintiff and requiring Defendant to remove his prior defamatory or disparaging statements about Plaintiff, and including further injunctive relief as the Court deems just and proper;
- (e) Awarding Plaintiff its reasonable attorneys' fees and costs in bringing this action;
- (f) Granting such other and further relief as the Court deems just and proper under the circumstances of this case.

Dated: Buffalo, New York

May 11, 2023

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