

## **‘win’ Winn-Dixie or a journey to moral bankruptcy?**

Commentary on recent case (USCA11 Case: 17-13467) who was the winner? Review and clarification of statements made on firms websites vs their own compliance position.

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Associated Doc	None

I.	Introduction.	3
II.	Did Winn-Dixie really 'Win'?	4
III.	Was this the lawyers taking over?	7
IV.	Out in the open	8
A.	11 <sup>th</sup> Circuit – own ADA Page, opps...	8
V.	The case continues	9

## I. Introduction.

### Winn-Dixie or Lose Dixie? Is 'Win' really a 'loss' for supermarket chain and those with disabilities?

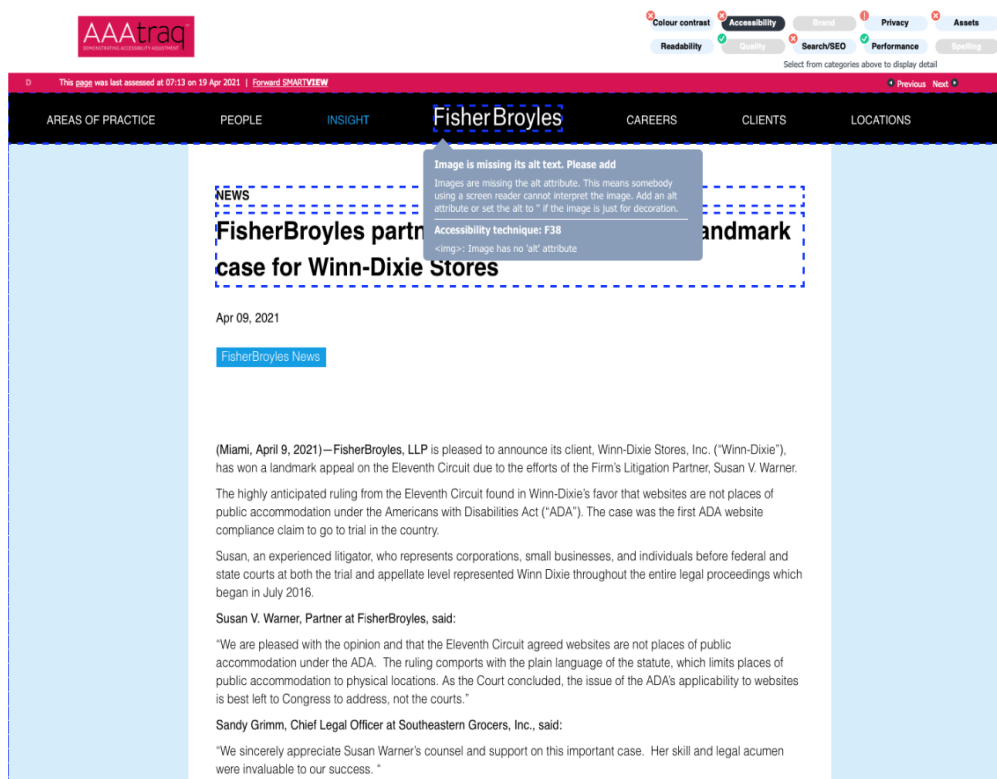
**The judgment in the Winn-Dixie case has finally been revealed: those hoping to see legal clarity, and the establishment and big business that support those with disabilities, will be less than satisfied. But who is the real loser and what will the medium to long-term effect be on how the Americans with Disabilities Act (ADA) upholds the rights of the disabled to freely access digital content?**

After several years, the US Eleventh Circuit Court finally delivered its ruling in the case against supermarket chain Winn-Dixie Stores Inc over its alleged breaches of the Americans with Disabilities Act (ADA).

To the dismay of many disability groups and plaintiff lawyers, the court found in Winn-Dixie's favour, ruling that websites are not places of public accommodation under the ADA. The ruling saw the court reverse the District Court's decision which found that the defendant, Winn-Dixie Stores Inc, violated Title III by failing to maintain a website that is accessible to individuals who are blind or have low vision.

The case, perhaps seen as one of the higher profile in terms of ensuring equal access for all, major brands not discriminating especially online, against the potential backlash of the news releases by a law firm involved patting themselves on the back, self-congratulation may not be the most appropriate direction.

Bearing in mind basics of accessibility, and after fighting a case – the adding *alt text* to key images like the logo on your website would be considered, by most – and from accessibility compliance point of view an improvement.



<https://www.fisherbroyles.com/insight/fisherbroyles-partner-susan-v-warner-wins-landmark-case-for-winn-dixie-stores>

Website page assessed APR 19<sup>th</sup> // numerous issues on the page – quick wins could be adding alt text to the logo.

## II. Did Winn-Dixie really 'Win'?

Winn-Dixie may have won the case, but the question remains: why did the company decide to fight this case? Not only is it costly and distracting, but it's been going on for years!

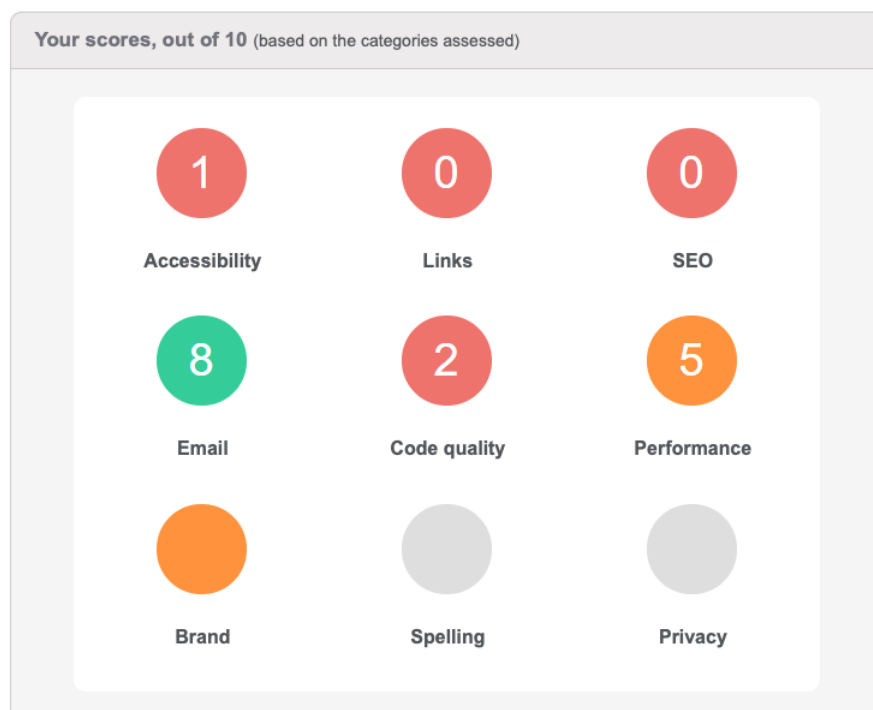
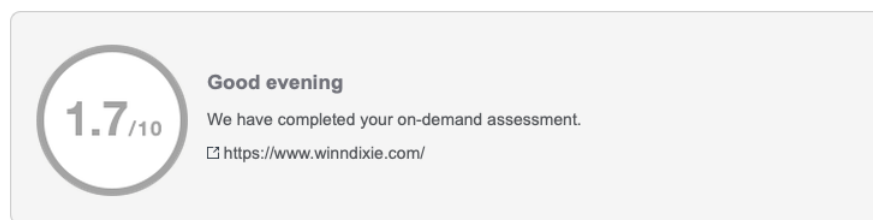
Furthermore, the ruling states that certain types of website and digital content CAN be discriminatory against those with a disability. This surely isn't an outcome that Winn-Dixie will feel is positive for their brand and loyal customers, many of whom will have disabilities.

Many believe Winn-Dixie should have worked to make their digital content accessible and comply with the spirit of the ADA. In all probability, this positive stance would have cost far less, and the resultant PR would have presented their brand in a positive light.

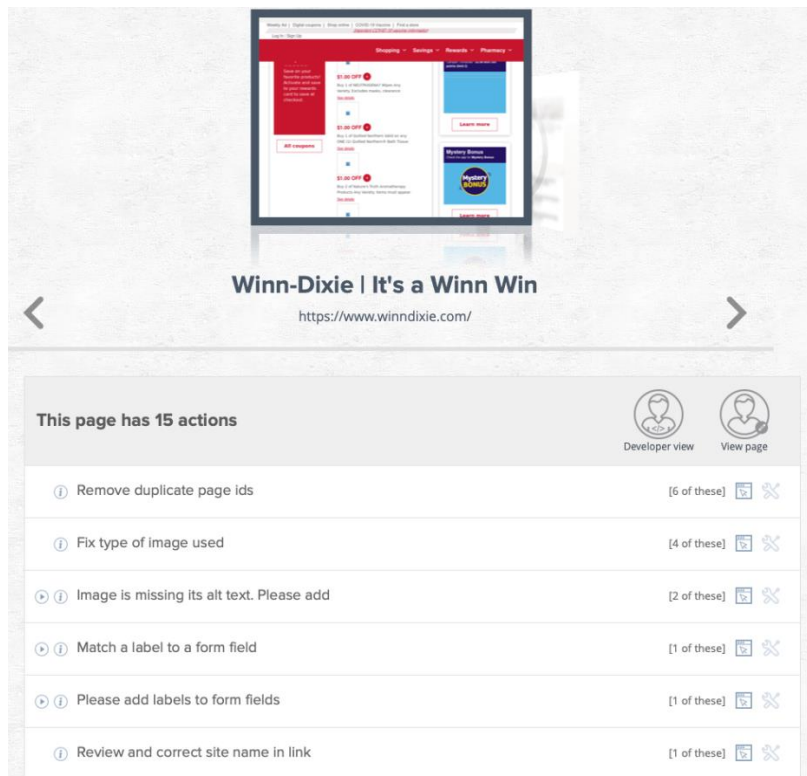
Some would say this was a lost opportunity to position themselves as champions of the ADA, rather than to oppose it.

Instead, they sought to fight, choosing to incur the resulting costs, time and distraction from day-to-day business operations. In the eyes of many their actions have demonstrated a lack of empathy with disabled customers and prove they position on accommodating all, regardless of ability in relation to their online needs.

Analysis demonstrates that the Winn-Dixie website scores 1 out 10 on accessibility:



Further analysis illustrates a number of items that can be beneficial to all if resolved and make the site more accessible:



Given that Winn-Dixie is a supermarket operator selling essential items, including prescriptions, it would be reasonable to expect their online operations to fully accommodate customers with all abilities.

What is adding to the confusion over Winn-Dixie's stance is the comprehensive website [accessibility policy](https://www.winndixie.com/about/accessibility-statement)<sup>1</sup> on the website of firm's owners, SE Grocers.

<sup>1</sup><https://www.winndixie.com/about/accessibility-statement>

In their words:

*"At SE Grocers, we're committed to accessibility. It is our policy to ensure that everyone, including persons with disabilities, has full and equal access to our digital offerings."*



### Website Accessibility Statement

Southeastern Grocers is committed to facilitating the accessibility and usability all of its digital properties, including "WinnDixie.com", for all people with disabilities. Southeastern Grocers has implemented the relevant portions of the World Wide Web Consortium's Web Content Accessibility Guidelines 2.0 Level AA (WCAG 2.0 AA) as its web accessibility standard. Our website is tested on a periodic basis with assistive technology such as screen readers and screen magnifiers, and with users with disabilities who use these technologies.

### Contact Southeastern Grocers With Your Accessibility Questions

Please be aware that our efforts are ongoing. If at any time you have specific questions or concerns about the accessibility of any particular web page owned by Southeastern Grocers, please contact us:

**Email:** [accessibility@segrocers.com](mailto:accessibility@segrocers.com)  
**Phone:** (844) 745-0463  
**Address:** Customer Support  
 PO Box B  
 Jacksonville, FL 32203-0297

If you do encounter an accessibility issue, please be sure to specify the web page, and we will make all reasonable efforts to make that page accessible for you. Email communication will be responded to within 5 business days.

[SE Grocers Website Accessibility Policy](#)

## SE Grocers Website Accessibility Policy

### 1. Our policy.

At SE Grocers, we're committed to accessibility. It is our policy to ensure that everyone, including persons with disabilities, has full and equal access to our digital offerings.

### 2. The standards we strive to meet.

SE Grocers and our digital offerings strive to meet the following accessibility standards: [Web Content Accessibility Guidelines \(WCAG\) 2.0 A & AA](#), [PDF/Universal Accessibility \(PDF/UA\)](#) to ensure our digital offerings are ADA Compliant.

### 3. What we are doing to meet the above standards.

Here are just some of the many ways that SE Grocers and our digital offerings are accessible and meets the above accessibility standards:

- [Descriptive alt text is assigned to every meaningful image on our website](#)
- Our website is navigable without a mouse, by keyboard only
- We use a focus indicator to highlight interactive elements on our website
- Closed captioning is auto-generated on all videos on our externally hosted Youtube channels

Full details of the above extract can be seen [here](#)<sup>2</sup>.

<sup>2</sup><https://www.segrocers.com/-/media/media/weekly-bau-content/wk30-2020/SE-Grocers-Website-Accessibility-Policy.pdf>

The policy spells out how the firm is meeting the requirements to ensure ADA compliance and is clear evidence of 'prior knowledge' of the requirement to make their website accessible.

***It's seems like a scenario that flies in the face of the firm's strenuous legal fight to justify why they are not required to do exactly what SE Grocers proudly boast they are already doing.***

### III. Was this the lawyers taking over?

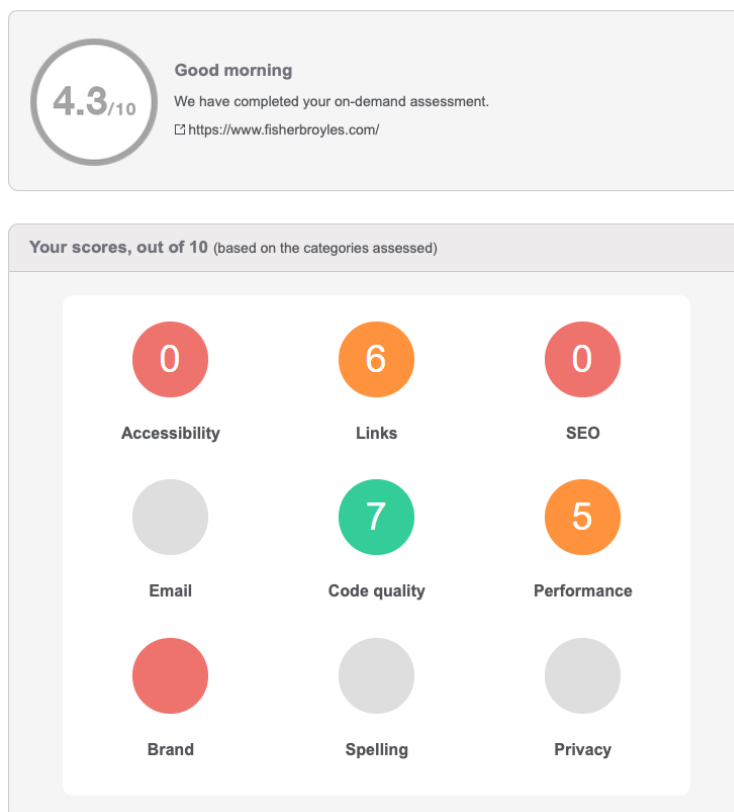
Winn-Dixie was represented by law firm, FisherBroyles, which was quick to celebrate the victory, hailing the appeal decision as a win for businesses. Those celebrations, and now possible confusion or even excuses for brands mark the fact they have made it more difficult (in the short term, at least) for those with disabilities to access information and services online.

As a law firm, are they effectively patting themselves on the back, but one has to question:

*.....is this inherently wrong, heading towards moral bankruptcy?*

Ironically, given the years FisherBroyles has fought the case, they should be well versed in the ADA's regulations. However, the law firm's website displays the most basic of accessibility failures.

AAAtraq's analysis shows a zero-accessibility score for the FisherBroyles website pages, and simple failures that include no Alt-text on the company logo (as shown on page 3):



In a world where dependency on digital information and services is rising exponentially, this debate will not simply go away. The ruling could be seen as supporting a view that ADA does not apply online. However, we are now so dependent on digital technology and content, and there is more than enough precedent from prior court rulings to encourage plaintiff lawyers to continue to bring cases under the premise that firms cannot (and should not) discriminate.

Federal legislators will be under increased pressure to adapt the ADA rules to encompass online activity. Firms cannot afford to ignore the financial or brand risk, and they should be ready for when Congress expands the reach and authority of the ADA to ensure full and barrier-free access to all.

## IV. Out in the open

A thin silver lining in this cloud for those seeking clarity on the issue is: had Winn-Dixie decided to simply have settled the case, the issue of the ADA and how it relates to online content would have been left to fester.

Perhaps now the matter will be dealt with at a Congressional level as the ruling suggested. If that happens, it is likely that the medium to long-term will bring more certainty and finality in the approach by legislators which can only benefit both sides.

In the meantime, the Eleventh Circuit has simply pushed the issue to Congress, leaving other courts with little or no real technical basis for how they should approach future cases.

This case will remind many of the arguments that occurred when the ADA was initially introduced. In the early days, organizations argued against the need to install ramps and light switches at accessible levels and other such systems. The result was those companies which fought the rules and eventually lost suffered not only financial penalties, but badly undermined their brands and will forever be known as the ones who fought against disabled rights. Now, it is inconceivable for a new building not to have the necessary and ADA-compliant physical systems in place.

Eventually this will be understood, accepted and seen as normal for the online environment too, but will Winn-Dixie and Dominos be remembered as brands that fought against accessibility for all – no matter what someone's disability?

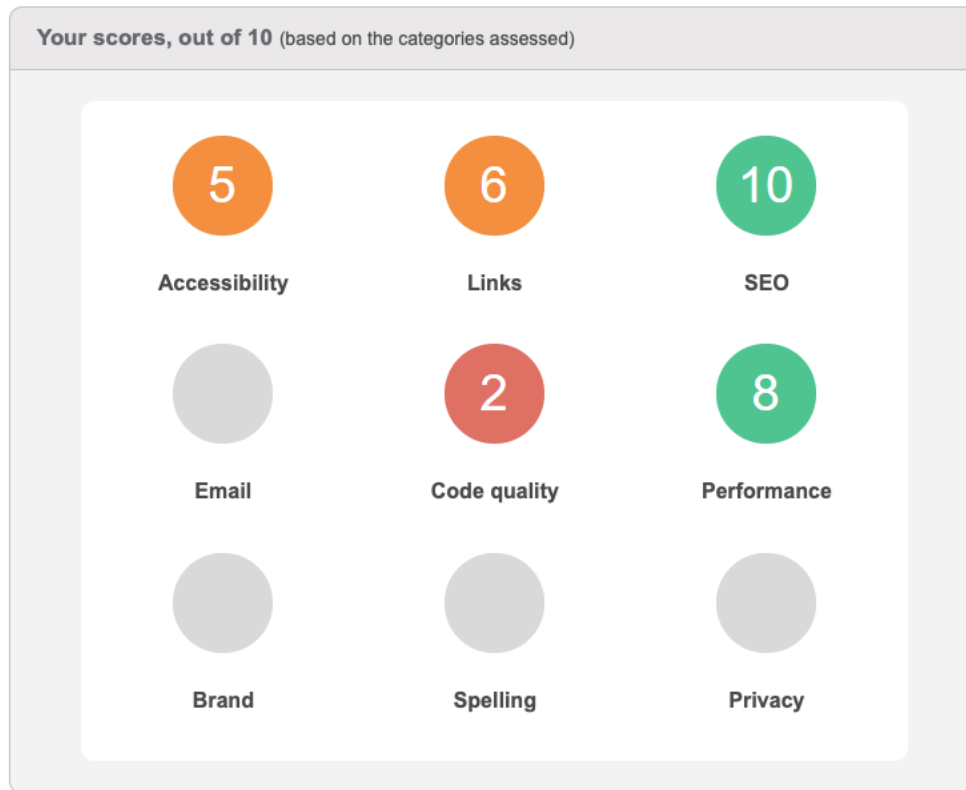
### A. 11<sup>th</sup> Circuit – own ADA Page, opps...

The screenshot displays the Eleventh Judicial Circuit of Florida's website, specifically the page dedicated to the Americans with Disabilities Act (ADA). The page layout includes a header with the AAAtraq logo and various navigation links. The main content area is divided into sections: 'Related Information' with links to ADA Notice Requirement, ADA Request for Accommodations, ADA Grievance Procedures, ADA Grievance Statement, and FAQs for Americans with Disabilities Act; 'ADA Coordinator' with contact information; and a sidebar with 'Resource Center' and 'About the Court' links. The footer contains 'Courthouse Locations', 'Top Links', and a copyright notice. A small error message at the bottom right states: "Image is missing its alt text. Please add alt text to this image. Images are missing the alt attribute. This means somebody using a screen reader cannot interpret the image. Add an alt attribute or set the alt to \"\" if the image is just for decoration. Accessibility technique: F38".



## V. The case continues

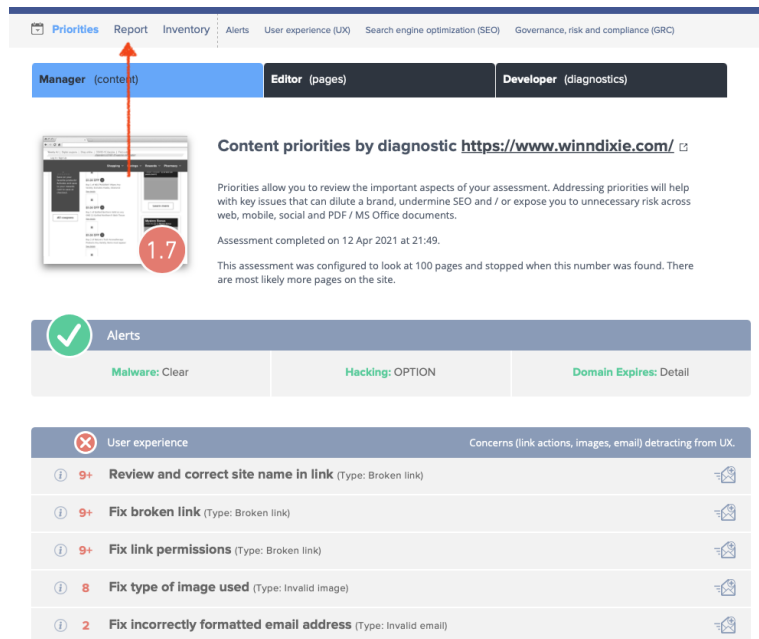
There has been a lot of talk in the media regarding the ongoing case both in terms of court hearings and various statements being made as to how much Winn-Dixie has improved. We've re analysed the website and the report is below.



Full access to the report can be found at:

[https://secure.sitemorse.com/summary-priority.html?id=1470485315&smeax\\_reportkey=e6cd090b](https://secure.sitemorse.com/summary-priority.html?id=1470485315&smeax_reportkey=e6cd090b)

## Navigating the results (audit provided Sitemorse [Sitemorse.com])



The screenshot shows the Sitemorse dashboard with the 'Report' tab selected. The top navigation bar includes 'Priorities', 'Report', 'Inventory', 'Alerts', 'User experience (UX)', 'Search engine optimization (SEO)', and 'Governance, risk and compliance (GRC)'. Below the navigation bar, there are three main sections: 'Manager (content)', 'Editor (pages)', and 'Developer (diagnostics)'. The 'Manager (content)' section is highlighted with a red arrow pointing to a 'Content priorities by diagnostic' section. This section shows a diagnostic for 'https://www.winndixie.com/' with a score of 1.7. It includes a brief explanation of priorities, the completion date (12 Apr 2021 at 21:49), and a note about the assessment configuration (100 pages).

**Content priorities by diagnostic <https://www.winndixie.com/>**

Priorities allow you to review the important aspects of your assessment. Addressing priorities will help with key issues that can dilute a brand, undermine SEO and / or expose you to unnecessary risk across web, mobile, social and PDF / MS Office documents.

Assessment completed on 12 Apr 2021 at 21:49.

This assessment was configured to look at 100 pages and stopped when this number was found. There are most likely more pages on the site.

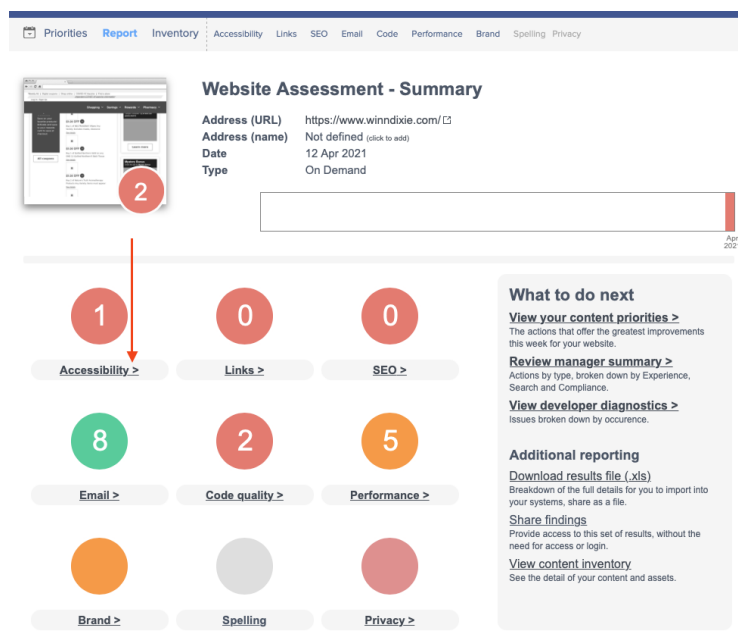
**Alerts**

- Malware: Clear
- Hacking: OPTION
- Domain Expires: Detail

**User experience** Concerns (link actions, images, email) detracting from UX.

- 9+ Review and correct site name in link (Type: Broken link)
- 9+ Fix broken link (Type: Broken link)
- 9+ Fix link permissions (Type: Broken link)
- 8 Fix type of image used (Type: Invalid image)
- 2 Fix incorrectly formatted email address (Type: Invalid email)

Click 'Report'



The screenshot shows the 'Website Assessment - Summary' page. The top navigation bar includes 'Priorities', 'Report', 'Inventory', 'Accessibility', 'Links', 'SEO', 'Email', 'Code', 'Performance', 'Brand', 'Spelling', and 'Privacy'. The 'Report' tab is selected. The page displays the assessment details for 'https://www.winndixie.com/' and a grid of scores for various categories. A red arrow points to the 'Accessibility' category, which has a score of 1. The 'What to do next' section provides links to view content priorities, manager summary, developer diagnostics, and additional reporting options.

**Website Assessment - Summary**

Address (URL) <https://www.winndixie.com/>

Address (name) Not defined (click to add)

Date 12 Apr 2021

Type On Demand

**What to do next**

**View your content priorities >**  
The actions that offer the greatest improvements this week for your website.

**Review manager summary >**  
Actions by type, broken down by Experience, Search and Compliance.

**View developer diagnostics >**  
Issues broken down by occurrence.

**Additional reporting**

**Download results file (.xls)**  
Breakdown of the full details for you to import into your systems, share as a file.

**Share findings**  
Provide access to this set of results, without the need for access or login.

**View content inventory**  
See the detail of your content and assets.

Click 'Accessibility'