

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BEST CARPET VALUES, INC.;
THOMAS D. RUTLEDGE, on behalf
of themselves and all others similarly
situated,

Plaintiffs-Appellees,

v.

GOOGLE, LLC,

Defendant-Appellant.

No.22-15899

D.C. No.
5:20-cv-04700-
EJD

OPINION

Appeal from the United States District Court
for the Northern District of California
Edward J. Davila, District Judge, Presiding

Argued and Submitted September 13, 2023
San Francisco, California

Filed January 11, 2024

Before: J. Clifford Wallace, Sidney R. Thomas, and
Danielle J. Forrest, Circuit Judges.

Opinion by Judge Wallace

SUMMARY*

California Law

The panel reversed the district court's denial of Google, LLC's motion to dismiss plaintiffs' putative class action asserting California state-law claims arising from Google's placement of search results on copies of their websites.

Plaintiffs challenged the way Google displayed websites in Search App on Android phones from March 2018 to April 2020. Plaintiffs argued that by displaying frame and half-page digests, Google occupied valuable space on the websites of class members that Google should have paid for because it obtained all the benefits of advertising from use of that space. The district court certified for interlocutory review four questions that were potentially dispositive of the case.

Addressing plaintiffs' trespass to chattels claim and the first certified question, the panel held that *Kremen v. Cohen*, 37 F.3d 1024 (9th Cir. 2003), should not be extended to protect as chattel the copies of websites displayed on a user's screen. An application of *Kremen's* three-part test led to the conclusion that a cognizable property right did not exist in a website copy. Accordingly, plaintiffs' trespass to chattels claim must be dismissed.

Addressing plaintiffs' state-law implied-in-law contract and unjust enrichment claim and the third certified question, the panel held that website owners cannot invoke state law

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

to control how their websites are displayed on a user's screen without preemption by federal copyright law. The panel applied a two-part test to determine whether plaintiffs' state-law claim was preempted by the Copyright Act. Applying step one, the manner that plaintiffs' websites were displayed fell within the subject matter of federal copyright law. Applying step two, the rights asserted by plaintiffs' implied-in-law contract and unjust enrichment claim were equivalent to the rights provided by federal copyright law. In addition, plaintiff's state-law claim did not carry "an extra element" as compared to a federal copyright claim. Accordingly, the panel concluded that plaintiffs' state-law claim was preempted by federal copyright law.

Because the first and third question were dispositive, the panel did not reach the two remaining certified questions. The panel reversed the order denying Google's motion to dismiss, and remanded with instructions to dismiss.

COUNSEL

David Kramer, Dale R. Bish, Wilson Sonsini Goodrich & Rosati, Palo Alto, California; Victor Jih, Fred A. Rowley, Jr., Wilson Sonsini Goodrich & Rosati, Los Angeles, California; Paul N. Harold, Wilson Sonsini Goodrich & Rosati, Washington, District of Columbia, for Appellant.

J. Aaron Lawson, Edelson PC, San Francisco, California; Alexander Schmidt, Alexander H. Schmidt, Esq., Colts Neck, New Jersey, for Appellees.

OPINION

WALLACE, Circuit Judge:

Google, LLC (Google) appeals from the district court’s denial of its motion to dismiss Plaintiffs’ putative class action asserting California state-law claims arising from Google’s placement of search results on copies of their websites. We have jurisdiction over this timely interlocutory appeal pursuant to 28 U.S.C. § 1292(b). We reverse and remand with instructions to dismiss the Complaint.

I.

“At the motion to dismiss stage, we assume factual allegations stated in the Complaint filed by Plaintiff[s] to be true.” *Doe v. Internet Brands, Inc.*, 824 F.3d 846, 848 (9th Cir. 2016). Google provides internet services and products, most famously the google.com search engine, the Android mobile operating system, and the web browser Google Chrome. Google integrates “Search App” into its Android mobile operating system. The Search App enables a user to conduct internet searches directly from the home screen of their Android phone without opening a web browser. During the class period, Search App typically appeared as a search bar at the top of the Android home screen.

When a user typed a website address into the browser, Search App (like most web browsers) connected to the server hosting the website and “obtain[ed] a copy of the requested website page from the host web server.” Search App then “deliver[ed] the copy to the user by translating the website’s codes and recreating the website page on the user’s . . . mobile device screen.” If a user clicked a link on the page, the click was “transmitted back over the internet to the

host web server, from which the hosted website [could] then transmit responsive information,” such as a different website page. Plaintiffs explicitly alleged that “Google did not trespass on the source websites located on [Plaintiffs’] web servers.”

Plaintiffs challenge the way Google displayed websites in Search App on Android phones from March 2018 to April 2020. During this period, Search App displayed the requested website page with a “frame” at the bottom of the page stating, for example, “VIEW 15 RELATED PAGES.” The frame gave the user the option of clicking a button to expand the frame to display half-page banners advertising related websites, occupying up to eighty percent of the screen size and shadowing the remaining twenty percent. Alternatively, the user could scroll through the website to which they navigated as normal with the frame remaining in place at the bottom of the screen. The banners were not advertisements for which Google paid Plaintiffs, but instead results automatically generated by Google’s algorithms and placed there without Plaintiffs’ permission. Plaintiffs alleged that the “VIEW 15 RELATED PAGES” frame and (when expanded by the user) the half-page digests blocked important content on their websites. In the case of putative class representative Best Carpet Values, Inc. (Best Carpet), the results at times displayed in the frame included links to websites owned by Best Carpet’s direct competitors and negative news stories about Best Carpet’s owner. Plaintiffs argue that by displaying the frame and half-page digests, Google “occup[ied] valuable space” on the websites of class members that Google should have paid for because it “obtain[ed] all the benefits of advertising” from use of that space.

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