

# Google It: Federal Copyright Law Preempts California Causes of Action

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Addressing a state law-based challenge to the way search results are displayed on copies of websites, the US Court of Appeals for the Ninth Circuit held that copyright preemption precluded a website owner from invoking state law to control how the websites are displayed. *Best Carpet Values, Inc. v. Google LLC*, Case No. 22-15899 (9th Cir. Jan. 11, 2024) (**Wallace**, Thomas, Forrest, JJ.)

Best Carpet Values filed a class action against Google asserting California state law claims for trespass to chattels, implied-in-law contract and unjust enrichment based on the way Google's search app displayed their websites on Android phones. If an Android user used the search app to navigate to a website, the app delivered a copy of the website, which was displayed with a frame at the bottom of the page saying, for example, "VIEW 15 RELATED PAGES" and which allowed the user to click a button to expand the frame to display half-page banners advertising related websites. For Best Carpet (the class representative), these displayed results included websites for its direct competitors and even news stories about Best Carpet's owner. Best Carpet argued that Google thereby occupied valuable space on Best Carpet's websites, obtaining all the benefits of advertising from its use of that space without paying for such advertising.

Google moved to dismiss the complaint for failure to state a claim upon which relief could be granted. After the district court denied the motion to dismiss, Google moved to certify the order for interlocutory appeal. The district court granted Google's motion and certified four questions for interlocutory review that it believed were potentially dispositive. The Ninth Circuit found that only two of the interlocutory questions were dispositive:

- Whether prior Ninth Circuit authority, *Kremen* (2003), should be extended to protect as chattel the copies of websites displayed on a user's screen
- Whether preemption under copyright law precluded state law from controlling how websites are displayed on a user's screen.

On the issue of whether a website display can be protected as chattel, the Ninth Circuit agreed with the district court that the "chattels" at issue were copies of Best Carpet's websites. The Ninth Circuit reasoned, however, that they could not serve as the basis for a trespass claim because Best Carpet had no cognizable property interest in the website copies on an app user's Android phone. The Court reasoned that website copies – unlike a website's domain name – were not "capable of

precise definition” or “capable of exclusive control,” and there was no “legitimate claim to exclusivity” over the website copies (citing *Kremen*).

As for the copyright preemption issue, the Ninth Circuit considered the two-part test for determining whether the Copyright Act preempted the state law claims. The first prong assesses whether the subject matter of the state law claim falls within the subject matter of the relevant provisions of the Copyright Act. Here, the parties agreed that commercial websites are copyrightable, and after considering the body of precedent interpreting the relevant provisions of the Copyright Act, the Court concluded that “a commercial website, like computer software, may qualify for copyright protection.”

The second prong of the preemption test asks whether the state law rights asserted are equivalent to the rights provided under the Copyright Act. The Ninth Circuit, in assessing the implied-in-law contract and unjust enrichment claims, reasoned that the complaint only asserted rights equivalent to those provided under the Copyright Act. While the district court had found that Best Carpet’s state law claim had “extra elements” over a federal copyright claim, it failed to articulate what those extra elements were, and the Ninth Circuit found none.

The Ninth Circuit further noted that even if the asserted claims were considered as an allegation that Google exceeded the scope of its license by “superimposing non-consensual ads onto” their websites, Best Carpet failed to specify how the scope of Google’s license was conditioned as such to create a cognizable legal right.

Accordingly, the Ninth Circuit reversed and remanded with instructions to dismiss.

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