

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Dreamstime.com, LLC v. Google LLC

No. No. 20-16472, United States Court of Appeals for the Ninth Circuit (December 6, 2022)

SUMMARY

Dreamstime.com, LLC v. Google LLC, 9th Cir. 2022, addresses Sherman Act §2 monopolization claims. The Ninth Circuit affirmed dismissal of Dreamstime's claim that Google maintained a monopoly in the online search advertising market, holding that Dreamstime waived any claim based on the online search market by repeatedly disavowing that market below. The court further held that allegations of Google mistreating Dreamstime as a customer, demoting its organic search results, and collecting user data did not plausibly allege anticompetitive conduct harming competition in the online search advertising market, and dismissal with prejudice was proper.

CASE DETAILS

COURT	United States Court of Appeals for the Ninth Circuit
WRITING FOR THE COURT	Ronald M. Gould; Johnnie B. Rawlinson; Jennifer G. Zipps
JURISDICTION	Federal
DECIDED	December 6, 2022
DOCKET	No. 20-16472
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the United States District Court for the Northern District of California, William Alsup, District Judge, Presiding. The district court dismissed Dreamstime's Section 2 claim with prejudice.
STANDARD OF REVIEW	De novo review of dismissal under Rule 12(b)(6).
PRECEDENTIAL VALUE	Published
PARTIES	Dreamstime.com, LLC v. Google LLC

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether Dreamstime defined the relevant market to include the online search market in addition to the online search advertising market.
2. Whether Dreamstime sufficiently alleged anticompetitive conduct in the online search advertising market.
3. Whether the district court erred in dismissing the Section 2 claim with prejudice and without leave to amend.

HOLDINGS

1. Dreamstime waived any Section 2 claim arising from the online search market because it expressly and repeatedly disavowed including that market in its definition of the relevant market before the district court.
2. Dreamstime failed to allege anticompetitive conduct because the alleged acts (mistreatment of Dreamstime as a customer, demotion in organic search results, data collection) did not harm competition in the online search advertising market.
3. The district court did not abuse its discretion because Dreamstime had multiple opportunities to amend and chose to maintain its theory.

KEY QUOTATIONS

“A Section 2 claim includes two elements: (1) the defendant has monopoly power in the relevant market, and (2) the defendant has willfully acquired or maintained monopoly power in that market.” (8)

“The mere possession of monopoly power, and the concomitant charging of monopoly prices, is not only not unlawful; it is an important element of the free-market system.” (9)

“Anticompetitive conduct consists of acts that 'tend[] to impair the opportunities of rivals' and 'do[] not further competition on the merits or do[] so in an unnecessarily restrictive way.'” (10)

“Harm to a single customer does not, by itself, constitute 'harm [to] the competitive process' that 'thereby harm[s] consumers' as a whole.” (18)

FACTUAL BACKGROUND

Google operates the most used search engine, monetized through advertising via Google Ads. Dreamstime is an online supplier of stock images that relies heavily on user traffic from search engines. Dreamstime began advertising on Google in 2004 and agreed to Google's Ads Agreement. In 2015, Google revised its search algorithm, which Dreamstime alleges caused its organic search ranking to decline, leading to a 30% drop in new customers by April 2016. Dreamstime raised the issue with Google's support team, which recommended an SEO expert who concluded the weak content of Dreamstime's site was the cause. Dreamstime invested millions to improve its ranking but continued to decline. Dreamstime's ranking on other search engines did not decline. The parties dispute whether the algorithm revision caused the decline.

PROCEDURAL HISTORY

Dreamstime sued Google in March 2018 asserting four claims: violation of Section 2 of the Sherman Act, breach of contract, breach of implied covenant, and California UCL. Google moved to dismiss. The district court permitted Dreamstime to file a First Amended Complaint. After further briefing, the district court dismissed the Section 2 claim with prejudice. The remaining state law claims were later dismissed in Rule 12 and summary judgment proceedings. Dreamstime timely appealed the dismissal of its Section 2 claim.

DISPOSITION

affirmed

CASES CITED

- United States v. Grinnell Corp., 384 U.S. 563 (1966)
- Verizon Commc'ns Inc. v. L. Offs. of Curtis V. Trinko, LLP, 540 U.S. 398 (2004)
- Image Tech. Servs., Inc. v. Eastman Kodak Co., 125 F.3d 1195 (9th Cir. 1997)
- Cascade Health Sols. v. PeaceHealth, 515 F.3d 883 (9th Cir. 2008)
- Fed. Trade Comm'n v. Qualcomm Inc., 969 F.3d 974 (9th Cir. 2020)
- Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc., 429 U.S. 477 (1977)
- Ashcroft v. Iqbal, 556 U.S. 662 (2009)
- Cont. Ore Co. v. Union Carbide & Carbon Corp., 370 U.S. 690 (1962)
- Cal. Computer Prods., Inc. v. Int'l Bus. Machs. Corp., 613 F.2d 727 (9th Cir. 1979)
- United States v. Colgate & Co., 250 U.S. 300 (1919)
- Blue Shield v. McCready, 457 U.S. 465 (1982)
- Coal. to Defend Affirmative Action v. Brown, 674 F.3d 1128 (9th Cir. 2012)
- Nguyen v. Endologix, Inc., 962 F.3d 405 (9th Cir. 2020)
- Glen Holly Ent., Inc. v. Tektronix, Inc., 352 F.3d 367 (9th Cir. 2003)
- Cost Mgmt. Servs., Inc. v. Wash. Nat. Gas Co., 99 F.3d 937 (9th Cir. 1996)
- Wojciechowski v. Kohlberg Ventures, LLC, 923 F.3d 685 (9th Cir. 2019)
- Movie 1 & 2 v. United Artists Commc'ns, 909 F.2d 1245 (9th Cir. 1990)
- United States v. Sineneng-Smith, 140 S. Ct. 1575 (2020)
- In re Mortg. Elec. Registration Sys., Inc. v. Amer. Home Mortgage, 754 F.3d 772 (9th Cir. 2014)
- USA Petroleum Co. v. Atl. Richfield Co., 13 F.3d 1276 (9th Cir. 1994)

CITED IN

- Dreamstime.com, LLC v. Google LLC, Dreamstime.com, LLC v. Google LLC, 54 F.4th 1130, 1143 (9th Cir. 2022)