

Daily Journal

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TOP VERDICTS OF 2024

Best Carpet Values Inc. et al. v. Google LLC

In a significant legal victory for Google, the 9th Circuit Court recently ruled in favor of the tech giant. The case, led by a team from Wilson Sonsini and spearheaded by Fred A. Rowley, centered around allegations that Google had violated the property rights of U.S.-based website owners by superimposing ads on their sites through the Google Search app on Android devices.

The plaintiffs sought to represent a nationwide class of website owners, bringing forth state-law claims for trespass to chattels, unjust enrichment and unfair competition. Initially, Google's motion to dismiss these claims was denied. *Best Carpet Values, Inc. v. Google, LLC*, 22-15899 (9th Cir.)

However, the Wilson Sonsini team successfully secured certification for an interlocutory appeal, obtained a stay of proceedings and gained permission to proceed with the appeal.

"The case raised novel questions about the application of state property law to the internet and carried potentially sweeping ramifications for Google's core business and the broader landscape

of internet services," Rowley said. "Under the plaintiffs' theory, website owners possess the right to control how their sites are displayed on any phone, tablet, or computer. This could lead to potential liability if an internet browser's settings or a user's device settings modified the way a website was displayed in any way."

After extensive briefing, Rowley delivered an oral argument before an active 9th Circuit panel. The court was persuaded to reverse the district court's decision, issuing a unanimous 21-page opinion. The 9th Circuit ruled that the plaintiffs had no "possessory interest" or "cognizable property interest" in the copies of their websites generated on users' devices. Furthermore, the court concluded that the plaintiffs' remaining state-law claims were preempted by federal copyright law.

The ruling has already influenced six district court decisions concerning property rights in digital content and copyright preemption. Rowley emphasized the importance of convincing the 9th Circuit that adopting the plaintiffs' claims would create chaos by distorting

established property law principles and allowing plaintiffs to circumvent the limitations of copyright law. The team had to demonstrate that the plaintiffs' state property law claims extended to the copies of websites displayed on devices, not just the source websites stored on servers and that such an approach would represent a radical expansion of common law property claims.

Rowley's co-counsel in the case, David Kramer, said whenever technology is at issue, it can be challenging to explain it accurately, concisely and effectively in terms that courts can quickly and easily understand.

"When your practice focuses on technology-related matters, familiarity and fluency with the technology can be easy to take for granted," Kramer said. "Here, we took pains to be clear about how websites are displayed, how our client's service functioned and the technological context for browsing the internet on a mobile device. We also made effective use of images in our briefing to illustrate how the websites appeared and how their display would change."



FRED A. ROWLEY

Rowley said he and his team successfully argued that the plaintiffs lacked a possessory interest in the copies of websites displayed on users' devices, as these copies were too indefinite to be protected by state property law.

"When a user visits a website, the rendered copy displayed on their device belongs to the user, not the website owner, and can vary based on the user's internet browser, apps, and settings," Rowley said. "Since website owners have no exclusive control over these copies, they can be displayed in countless ways."

Rowley said the plaintiffs filed a petition for rehearing and rehearing *en banc* in the 9th Circuit, but no judge called for a response and the petition was denied. The plaintiffs did not seek review in the Supreme Court. The case was remanded to the district court. Plaintiffs sought leave to amend to file a new complaint, which we successfully opposed, Rowley said. The district court denied leave to amend and entered judgment against the plaintiffs, he added.

CASE DETAILS

CASE NAME	Best Carpet Values Inc. et al. v. Google LLC
TYPE OF CASE	Class Action
COURT	9th U.S. Circuit Court of Appeals
JUDGE(S)	Clifford Wallace, Sidney R. Thomas, and Danielle J. Forrest
APPELLANT LAWYERS	Wilson Sonsini Goodrich & Rosati, Fred A. Rowley Jr., David H. Kramer, Victor Jih, Paul N. Harold, Dale Bish
APPELLEE LAWYERS	Edelson PC, J. Aaron Lawson, Ryan D. Andrews, Roger Perlstadt; Alexander H. Schmidt Esq., Alexander H. Schmidt; Mastando & Artrip LLC, Eric J. Artrip, D. Anthony Mastando; Mashiri Law Firm, Asil A. Mashiri