

Federal Lawsuit Alleging Google Improperly Censored Search Results Clears Hurdle

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A federal judge is allowing a company to proceed with a lawsuit alleging that Google Inc. improperly censored search results, marking a rare instance in which the Internet giant's First Amendment defense in such a case failed to win a dismissal.

The judge in Florida ruled that the company's allegations that Google had "anti-competitive, economic" reasons to manually exclude its websites from Google search results were plausible enough to warrant a more rigorous hearing. The alleged business motives, the judge concluded, made the case a dispute about commercial practices and not the First Amendment fight Google wanted.

The lawsuit was brought by e-ventures Worldwide LLC, a Florida-headquartered company that markets "SEO" services that help companies improve their visibility in non-ad Google search results.

Google says it banned hundreds of e-ventures-affiliated websites because some of the pages violated Google's "guidelines aimed at preventing the manipulation of search rankings." The restriction, Google says, was a good-faith effort to protect the integrity of its unpaid search results that rely on algorithms.

Legally, Google lawyers argue, the company is shielded by both the First Amendment and by a federal law that protects the right of Internet companies to restrict content they find objectionable.

Google, represented by Zuckerman Spaeder LLP, cited what it described was an "unbroken line of cases holding that the First Amendment protects Google's opinions about what material to include in its search results."

A decision to exclude particular pages "is an expression of a search engine's editorial opinion about the value of a given website," Google lawyers wrote in support of its motion to dismiss. "A newspaper just as much makes an editorial judgment when it declines to run an article as when it buries it on the back page," they said.

Lawyers for e-ventures countered that Google delisted websites "solely based upon [their] affiliation with e-ventures," a punishment it says was inconsistent with policies Google promises to follow.

And e-ventures alleges Google had good reason to do so.

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"The 'SEO' services advertised on e-ventures' websites reduce Google's revenues," its complaint alleges, "because if companies are successful in achieving website prominence in Google's unpaid search listings, then there is less of a need for those companies to purchase Google's 'AdWords' advertising services."

U.S. District Judge John E. Steele of Florida's Middle District on May 12 said he found Google's First Amendment argument unpersuasive:

While a claim based upon Google's PageRanks or order of websites on Google's search results may be barred by the First Amendment, plaintiff has not based its claims on the PageRanks or order assigned to its websites. Rather, plaintiff is alleging that as a result of its pages being removed from Google's search results, Google falsely stated that e-ventures' websites failed to comply with Google's policies.

The case, the judge concluded, doesn't involve "protected pure opinion speech" but allegations "capable of being proven true or false."

E-ventures' complaint alleges violations of federal and state laws against deceptive trade practices. The judge hasn't decided whether Google conduct actually violated those laws.

A Google spokesman declined to comment.