

**IN THE COMMON PLEAS COURT
DELAWARE COUNTY, OHIO
CIVIL DIVISION**

STATE OF OHIO *ex rel.* DAVE YOST,
OHIO ATTORNEY GENERAL,
30 East Broad St.
Columbus, OH 43215

Plaintiff,

v.

GOOGLE LLC
1600 Amphitheatre Parkway
Mountain View, CA 94043

Also Serve:
Google LLC
c/o Corporation Service Co.
50 W. Broad St., Ste. 1330
Columbus OH 43215

Defendant.

Case No. 21 CV H _____

JUDGE _____

**COMPLAINT FOR
DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF**

Plaintiff, the State of Ohio, by and through its Attorney General, Dave Yost, (hereinafter “Ohio” or “the State”), upon personal knowledge as to its own acts and beliefs, and upon information and belief as to all matters based upon the investigation by counsel, brings this action seeking declaratory and injunctive relief against Google LLC (“Google” or “Defendant”), alleges as follows:

I. INTRODUCTION

The vast majority of Ohioans use the internet. And nearly all of those who do use Google Search. Google is so ubiquitous that its name has become a verb. A person does not have to sign a contract, buy a specific device, or pay a fee to use Good Search. Google provides its

search services indiscriminately to the public. To use Google Search, all you have to do is type, click and wait. Primarily, users seek “organic search results”, which, per Google’s website, “[a] free listing in Google Search that appears because it's relevant to someone’s search terms.” In lieu of charging a fee, Google collects user data, which it monetizes in various ways—primarily via selling targeted advertisements.

Google's mission statement is “to organize the world's information and make it universally accessible and useful”. What Google fails to disclose to its user is that it manipulates its presentation of that information to preference its own services, yielding search results that best benefit the interests of Google.

Google dominates internet search, globally and domestically. Nearly 90% of all internet searches are conducted through Google. Google’s dominance continues to trend upwards, particularly on mobile devices, where Google’s internet search share is near 95% or more.

There are high barriers to entry for Google’s search competitors. Unlike traditional markets where competitors can introduce equivalent but cheaper alternatives, consumers in the marketplace at issue here, i.e. internet searches, never pay a monetary fee. Thus, the nearly exclusive avenue for competitive entry is by creating a better search *result*. When internet search was new, the barriers to entry were low. However, by their nature, algorithmic search-results systematically improve with each successive search. That is to say, the more a search algorithm is used, the better it becomes at producing the most relevant search results. Google Search came to dominate the market. Because Google Search is the most used search engine, its algorithms are the most refined and is perceived to generate the most relevant results. And because Google Search is perceived to deliver the best search results, it becomes more used in the future, further refining the search relevancy algorithms. Thus, Google’s dominant market position allows it to

continue to refine its search algorithms to render Google with a competitive advantage over other search engines, leading to more market dominance by Google Search. This “virtuous cycle” for Google assures its market dominant position. It is extremely unlikely that Google Search will be displaced as the dominate provider of internet search in the foreseeable future.

This suit does not seek redress for Google’s dominance of internet search. This suit does not argue that Google’s dominance of internet search is good or bad when viewed in isolation. Those issues are left to be resolved elsewhere. This case accepts Google’s dominance of internet search as a fact (be it good or bad). Accepting this fact, the first claim is narrowly focused on establishing that Google’s provision of internet search is properly classified as a common carrier and/or public utility under Ohio common law.

Google operates more than just a search engine. It is a complex and multifaceted business. In addition to providing a general search engine, which it monetizes through an advertising business, Google engages in a range of business lines that compete with not just search engines and online advertisers, but with suppliers of information, products, and services. For its second count, Ohio requests injunctive relief to remedy the unfair advantages Google’s presentation of search results, have allowed it to create for its other business lines.

Google intentionally structures its Results Pages to prioritize Google products over organic search results. Google intentionally disadvantages competitors, by featuring Google products and services prominently on Results pages. It often features Google products and services in attractive formats at the top of the Results page above organic search results. Additionally, Google often presents Google products in enhanced ways in the search results that are designed to capture more clicks, including by integrating other Google business lines—such as specialized searches—into the Results page. It does so even when the Google product would

not be returned near the top of an organic search. It does not allow competitors to have similar access, thereby violating its duties as a common carrier.

Google knows that most search customers, particularly those customers using mobile devices like cellular phones, will click through to links that are on the highest positions on the Results Page, and/or are presented in enhanced ways. What Google Search users want to see—organic search results—are frequently downgraded to appear below Google products. Google’s Results Page architecture is therefore designed to provide Google’s own products, services, and platforms with an advantage over providers of similar products, services, and platforms, in turn, also limiting traffic to non-Google sites. Google does not afford other providers with access to these enhanced features.

As a result of Google’s self-preferencing Results-page architecture, nearly two-thirds of all Google searches in 2020 were completed without the user leaving Google owned platforms. Results of searches became what the Search Engine Optimization (“SEO”) industry calls “no-click searches,” but more accurately is described as “Captured Clicks”, meaning searches that ended either on the search engine result page (“Results Page”) or where a user clicked to other Google platforms, such as YouTube, Google Flights, Google Maps, Google News, Google Shopping, and Google Travel.

Justice Thomas recently stated, “[t]here is a fair argument that some digital platforms are sufficiently akin to common carriers or places of accommodation to be regulated.” *Biden v. Knight First Amendment Inst. at Columbia Univ.*, 593 U.S. ___, ___ (Slip. Op. at 6) (2021) (Thomas, J., concurring). Justice Thomas went on to explain, “[t]he analogy to common carriers is even clearer for digital platforms that have dominant market share. ... Google search—at 90%

of the market share—is valuable relative to other search engines because more people use it, creating data that Google’s algorithm uses to refine and improve search results.” *Id.* at 7.

Google’s fellow dominant technology companies agree with Justice Thomas. Mark Zuckerberg, CEO of Facebook, stated in a March 30, 2019 Washington Post editorial (<https://perma.cc/RKU8-GZZC>): “Technology is a major part of our lives, and companies such as Facebook have immense responsibilities. * * * I believe we need a more active role for governments and regulators. By updating the rules for the Internet, we can preserve what’s best about it — the freedom for people to express themselves and for entrepreneurs to build new things — while also protecting society from broader harms.” Zuckerberg also recognized that entities such as Google, can take actions that squelch innovation and entrepreneurs.

Ohio has an interest in ensuring that Google, its users, and the entities whose information Google carries are aware that Google Search is a common carrier under Ohio law. Ohio also has an interest in ensuring that as a common carrier Google Search does not unfairly discriminate against third party websites; that Google carries all responsive search results on an equal basis; and that it provides the public with ready access to organic search results that the Google Search algorithms produce.

When Google Search began, the public was reassured by Google’s famous first corporate motto: “Don’t be evil.” That motto was eventually retired and replaced with “Do the right thing.” This action is about making sure that Google does the right thing.

To partially remedy the harm caused by Google’s self-preferencing, Ohio, in its second count, is entitled to declaratory relief that, as a common carrier and public utility, Google cannot self-preference on its Results Pages. Ohio is also entitled to injunctive relief that ends Google’s

self-preferencing in Ohio by providing access to enhanced features on Results Pages that Google affords to its other business lines to other entities that may want to purchase such enhancements.

II. JURISDICTION AND VENUE

1. This Court has jurisdiction over this declaratory judgment matter pursuant to R.C. 2721.02(A), which authorizes the Court to “declare rights, status, and other legal relations whether or not further relief is or could be claimed.”

2. This Court has personal jurisdiction over Defendant as it conducts business in Ohio, purposefully directs or has directed its actions toward Ohio, and/or has the requisite minimum contacts with Ohio necessary to constitutionally permit the Court to exercise jurisdiction over it.

3. Venue is proper in Delaware County pursuant to Civ.R. 3(B)(2) and Civ.R. 3(B)(3). Google has conducted, is conducting, and will conduct, and/or has directed, is directing, and will direct, activity that gave rise to the State’s request for declaratory relief in Delaware County, and part of the need for declaratory relief arose in, and will have an impact in Delaware County.

4. The instant Complaint does not confer diversity jurisdiction upon the federal courts pursuant to 28 U.S.C. § 1332, as the State is not a citizen of any state, and this action is not subject to the jurisdiction of the Class Action Fairness Act of 2005.

5. Likewise, federal question subject matter jurisdiction pursuant to 28 U.S.C. § 1331 is not invoked by this Complaint, as the Complaint exclusively sets forth viable state law claims against Defendant. Nowhere herein does the State of Ohio plead, expressly or implicitly, any cause of action or request any remedy that arises under federal law. The issues presented in this Complaint for Declaratory Judgment do not implicate any substantial federal issues and do

not turn on the necessary interpretation of federal law. No federal issue is important to the federal system as a whole under the criteria set by the Supreme Court in *Gunn v. Minton*, 568 U.S. 251 (2013) (*e.g.*, federal tax collection seizures, federal government bonds).

6. The cause of action asserted, and the remedies sought herein, are founded upon the positive statutory, common, and/or decisional laws of Ohio. Further, the assertion of federal jurisdiction over the claims made in the Complaint would improperly disturb the balance of federal and state responsibilities. Accordingly, any exercise of federal jurisdiction is without basis in law or fact.

7. The State brings this action exclusively under the laws of the State of Ohio. No federal claims are being asserted, and to the extent that any claim or factual assertion set forth herein may be construed to have stated any claim for relief arising under federal law, such claim is expressly and undeniably disavowed and disclaimed by the State.

III. PARTIES

A. Plaintiff

8. This action is brought for and on behalf of the sovereign State, by and through Dave Yost, the duly-elected Attorney General and chief law officer for the State and all of its departments.

9. This action is also brought by the Attorney General to protect the well-being of Ohio citizens, both natural and corporate, under the State's *parens patriae* authority.

B. Defendant

10. GOOGLE LLC is a Delaware limited liability company with its principal place of business in Mountain View, California. GOOGLE LLC is a wholly owned subsidiary of Alphabet Inc., a Delaware corporation, with its principal place of business in Mountain View, California.

11. GOOGLE LLC was formerly known as GOOGLE INC.

12. GOOGLE INC formerly traded under the ticker symbol GOOG. Alphabet, Inc., now utilizes that ticker symbol, and has a market value that recently exceeded \$1.5 trillion.

IV. FACTUAL ALLEGATIONS

13. Google's mission statement is “to organize the world's information and make it universally accessible and useful.”

14. Google’s products, devices, and services include Google Search, Android mobile operating system, YouTube, YouTube music, Chromecast, Google Play Movies & TV, Nest Labs, Google Cloud/Drive, Adsense, Google Ads, Waze, Google Maps, Google Earth, Google TV, Google Flights, Gmail, Google Shopping, Docs/Sheets/Slides, Calendar, Photos, Chrome, Chrome OP, Pixel, Chromebook, Pixelbook Go, Connected Home, Google Wifi, Google Assistant, Android Auto, Fitbit, and Wear OS by Google, among others.

15. For purposes of this Complaint, Google Search is a general internet search engine, which is traditionally accessed via the search box on the homepage located at <http://www.google.com>.

16. Google Search is also accessed other ways, nonexclusively including by web browser integrated searches, mobile apps, digital voice assistants, and wearable devices.

17. Google often utilizes user location data to provide the most relevant search results.

18. Google can and does provide different search results based upon a user’s location.

Google Search Market Share

19. Google.com is the most visited website in the world.

20. Google.com is the most visited website in Ohio.

21. Per StatCounter Global Statistics (<https://perma.cc/GA9N-BS4B>), Google Search possessed over 80% of the total market share of all desktop, mobile, and tablet internet searches conducted in Ohio in the period 2010 through the present.

22. Per StatCounter Global Statistics (<https://perma.cc/GA9N-BS4B>), Google Search possessed over 85% of the total market share of all desktop, mobile, and tablet internet searches conducted in Ohio in 2017, 2018 and 2019.

23. Per StatCounter Global Statistics (<https://perma.cc/GA9N-BS4B>), Google Search possessed over 88% of the total market share of all desktop, mobile, and tablet internet searches conducted in Ohio in 2020.

24. Per StatCounter Global Statistics (<https://perma.cc/GA9N-BS4B>), Google Search possessed over 88% of the total market share of all desktop, mobile, and tablet internet searches conducted in Ohio thus far in 2021.

25. Per StatCounter Global Statistics (<https://perma.cc/NZ96-T98B>), from 2016 to the present, Google Search possessed over 90% of the market share of all mobile internet searches conducted in Ohio.

26. Google Search dominates the market for internet search in Ohio.

27. Google Search's dominance of the internet search market in Ohio has increased over the most recent three years.

28. Google provides Google Search without monetary charge, generally and indiscriminately to the public in Ohio.

29. More than 80% of Ohioans access the internet via hardwire (e.g., fiber-optic, coaxial, digital subscriber line), wireless fidelity ("WiFi"), and/or cellular networks.

30. Google Search serves such a substantial part of the public as to make its rates, charges, and methods of operations a matter of public concern, welfare, and interest in Ohio.

31. Google Search possesses substantial market power.

32. Google Search is monopolistic.

First Cause of Action
(Declaratory Judgment)

33. The State incorporates the above paragraphs as if fully reiterated herein.

34. A real and justiciable controversy exists between the State of Ohio and Google concerning whether Google's operation of Google Search is a common carrier and/or public utility and the duties Google owes as a common carrier and/or public utility to the State of Ohio, all of its component parts, and its citizens, journalists, and businesses.

35. The Public Utilities Commission of Ohio ("PUCO") does not exercise and has not exercised jurisdiction over Google or Google Search.

36. Under Ohio law, regulation by the PUCO is not necessarily required for an entity to be considered a common carrier or a public utility.

37. An entity can be a common carrier and/or public utility under Ohio common law, even if it is expressly excluded from regulation by PUCO.

38. The characteristic of a public utility often includes the provision of a product or service to the public generally and indiscriminately.

39. An entity may be characterized as a public utility if the nature of its operation is a matter of public concern and if membership is indiscriminately and reasonably made available to the general public.

40. A corporation's services subjects those services to public utility or common carrier status when it serves a substantial part of the public in a way that makes its methods of operations a matter of public concern, welfare, and interest.

41. Google's operation of Google Search is a public utility.

42. Google, in its operation of Google Search, is a common carrier.

43. Pursuant to Ohio Revised Code Chapter 2721, the State is entitled to a judgment declaring Google's Google Search to be classified as a common carrier and/or public utility, which subjects Google to the heightened duties that are required of such entities under common law.

Second Cause of Action
(Common Carrier Non-Discrimination
Declaratory Judgment & Permanent Injunctions)

44. The State incorporates the above paragraphs as if fully reiterated herein.

45. As a common carrier, Google, in its operation of Google Search, has a duty to carry information from all sources indiscriminately as compared to Google's own information.

46. As a common carrier, Google, in its operation of Google Search has a duty not to artificially prioritize Google services and links higher than they would be displayed as a result of Google's internet search algorithms in which the algorithm is not programmed to prioritize Google's owned products or services.

47. As a common carrier, Google, in its operation of Google Search has a duty not to feature Google products and services in a manner designed to steer search traffic to Google products and services instead of organic search results without providing equal access to such steering mechanisms to Google's competitors in business lines other than internet search.

48. Google became the dominant common carrier of internet search results by developing search algorithms that produced Results Pages with “10 blue links” that most reliably directed the consumer to the internet location that best met the search query.

49. Suppliers of products, services, and information in Ohio on the internet rely upon Google, as the dominant common carrier of internet search, to carry search result information reliably, neutrally, and without unreasonable discrimination.

50. Consumers of Google Search in Ohio rely upon Google to carry search results reliably, neutrally, and without unreasonable discrimination.

51. The State of Ohio, its agencies, universities, and political subdivisions are consumers of Google Search and suppliers of information, products, and services carried by Google Search.

52. A “captured-click search” occurs where after commencing a search, a user either does not click on a link or only clicks on links that lead to a Google product or page. That is to say that the information displayed by Google was placed and cast in such a way that the user conducting the query did not click on a link to a non-Google webpage.

53. Approximately 50% of non-mobile Google Searches conducted in Ohio in 2019 were “captured click” searches, meaning that the user did not click a link external to Google after conducting the search likely due to Google’s Result’s Pages structure of providing information without the need to click on external links.

54. Over 55% of mobile Google Searches conducted in Ohio in 2019 were “captured click” searches, meaning that the user did not click a link external to Google after conducting the search likely due to Google’s Result’s Pages structure of providing information without the need to click on external links.

Google Search Operations

55. When a user enters a keyword or a string of keywords (a “query”) in Google Search, Google Results Pages return different categories of search results, including organic search results, specialized search results, and online search advertisements.

56. When a user enters a query, Google Search essentially runs at least three sets of algorithms, including: organic search algorithms, specialized search algorithms, and AdWords search algorithms.

57. Google’s organic search algorithms are designed to rank pages containing any possible content. Google applies these algorithms to all types of pages, including the web pages of competing specialized search services, like Kayak.com.

58. Specialized search algorithms are specifically optimized for identifying relevant results for a particular type of information, such as news, local businesses, flights, shopping or product information.

59. AdWords search algorithms return search advertisements drawn from Google’s auction-based online search advertising platform, AdWords (“AdWords results”).

60. The results of these three sets of algorithms – the organic search results, the specialized search results, and the AdWords results – appear together on Google’s Results Pages.

61. The placement of a result on a Results Page significantly affects the likelihood of potential clicks on the result.

62. For example, the average click-through rate for the first position on a Google Results Page is nearly twice the click-through rate for second position.

63. Google designs its Results Pages in a way that disadvantages competitors to Google’s other lines of business.

64. Google places specialized search results, such as Google Shopping and Google Flights, in locations on its Results Pages to maximize the exposure of the specialized search results and to direct users to Google products and services.

65. A “knowledge panel” is an information box that appears on Google’s Results Pages when you search for certain people, places, organizations, and things.

66. Google has used suggested queries, knowledge panels, and featured snippets of information to increase the likelihood of captured-click searches.

67. Google Search captured-click searches have more than doubled since 2016.

68. According to a recent study, available at <https://perma.cc/54MQ-FHND>, “[f]rom January to December, 2020, 64.82% of searches on Google (desktop and mobile combined) ended in the search results without clicking to another web property.”

69. According to the same study, in calendar year 2020, only 33.59% of Google searches resulted in click-throughs to off-platform organic search results, and a mere 1.59% click through rate to sponsored advertisements.

70. Thus, Google itself has become the sole provider of answers to the vast majority of Google searches.

71. Google is duty bound, as a common carrier, not to structure Google Search Results in a manner that unfairly discriminates against providers of products, services and information with whom Google’s non-search components compete.

72. Google’s self-preference on Results Pages is unreasonable discrimination by a common carrier.

73. The State is specifically entitled to a declaration that Google, in its operation of Google Search, has a duty to carry information from other sources indiscriminately as compared

to Google's own information, including equal rights with Google to purchase advertisements, enhancements, knowledge boxes, direct answers, featured snippets, and other means of prioritizing the placement of information on a Results Page.

74. For example, other providers of a specialized search, e.g., airline flights, must be given equal rights as Google's non-search components, in this example Google Travel, has to have the competitor's specialized search results integrated into the Results Page, and at the same cost Google Search charges to other Google components.

75. Thus, if Google Flights is integrated into some Results pages, then competitors such as Orbitz, Travelocity, and Expedia, must also be allowed to purchase integration into the Results pages of similar searches.

76. Damages are an inadequate remedy for Google's impermissible self-preferencing on Results Pages.

77. The State of Ohio is entitled to an injunction prohibiting Google from prioritizing the placement of Google products, services, and websites over organic search results on Results Pages from Google Searches conducted in Ohio when equal rights to access prioritized placement are not afforded to non-Google entities.

78. The State of Ohio is entitled to an injunction prohibiting Google from including features on Results Pages from Google Searches conducted in Ohio that promote captured-click searches, without providing access to similar features to non-Google entities.

WHEREFORE, the State of Ohio respectfully requests that the Court grant judgment in its favor against Defendant Google LLC as follows:

- I. Declare Google LLC to be a Common Carrier;
- II. Declare Google LLC's Google Search to be a Public Utility;

- III. Declare that Google LLC, in its operation of Google Search in Ohio, has a duty to carry content from other sources without unfair discrimination as compared to comparable Google content;
- IV. Permanently enjoin Google LLC from prioritizing the placement of Google products, services, and websites on Results Pages from Google Searched in Ohio without providing equal opportunities for prioritization to non-Google entities;
- V. Permanently enjoin Google LLC from including features on Results Pages from Google Searches conducted in Ohio that promote captured-click searches, without providing access to similar features to non-Google entities.
- VI. Order such further relief under R.C. 2721.09 as the Court deems necessary to effectuate the judgment in favor of the State of Ohio; and,
- VII. The costs of this action, reasonable attorneys' fees, and such further relief as the Court deems just and equitable.

Dated: June 8, 2021

Respectfully Submitted,
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