

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

Google, Inc.

Plaintiff

v.

Jim Hood, Attorney General of the
State of Mississippi, in his official
capacity

Defendant

No. 3:14-cv-981-HTW-LRA

**ATTORNEY GENERAL JIM HOOD'S MOTION TO DISMISS COMPLAINT BASED
ON JURISDICTION AND OTHER GROUNDS**

COMES NOW Jim Hood, Attorney General for the State of Mississippi in his official capacity (hereafter the "Attorney General" or "General Hood"), and files his motion to dismiss Google, Inc.'s ("Google") Complaint for Declaratory and Injunctive Relief pursuant to FRCP 12(b)(1) and 12(b)(6) and states:

1. Google filed suit against the Attorney General seeking declaratory and injunctive relief stemming from General Hood's investigation of Google under the Mississippi Consumer Protection Act, Miss. Code Ann. § 75-24-1, *et seq.* ("MCPA"), Complaint, Docket No. 1.

2. Google seeks a declaration that the Attorney General's on-going state-law investigation: (1) violates 47 U.S.C. § 230 of the Communications Decency Act ("CDA"); (2) violates Google's First and Fourteenth Amendment rights under the United States Constitution; (3) violates Google's Fourth and Fourteenth Amendment rights; and (4) is preempted under the Copyright Act, 17 U.S.C. §§ 301, 512, and the Food, Drug, and Cosmetic Act ("FDCA"), 21

U.S.C. § 337 (“FDCA”), and 42 U.S.C. § 1983. Complaint, pp. 28-32. Google claims this case presents a federal question under Article III and 28 U.S.C. §§ 1331 and 1343(a)(3). Complaint, ¶ 6. Google seeks remedies under 28 U.S.C. § 2201 and 2202, and 42 U.S.C. §§ 1983 and 1988.

Id.

3. Google’s declaratory judgment action should be dismissed for lack of subject matter jurisdiction. Google has not stated claims arising under 28 U.S.C. § 1331 but has asserted defenses to anticipated but not filed state law claims. As such, jurisdiction is lacking under Section 1331.

4. Google has also failed to establish subject matter jurisdiction pursuant to 28 U.S.C. § 1343(a)(3) as it has failed to state a claim against the Attorney General under 42 U.S.C. § 1983.

5. Alternatively, the case should be dismissed under the *Younger* abstention doctrine, set forth in *Younger v. Harris*, 401 U.S. 37 (1971), and its progeny.

6. Finally, the case should be dismissed because Google’s claims are not ripe for adjudication. *See Reno Catholic Social Services, Inc.*, 509 U.S. 43 (1993).

7. In further support of the motion to dismiss, the Attorney General relies on the following:

- A. Administrative Subpoena and Subpoena Duces Tecum [EXHIBIT A];
- B. Memorandum in Support of Motion to Dismiss Complaint Based on Jurisdiction and Other Grounds, filed separately.

This the 12th day of January, 2015.

Respectfully Submitted,

JIM HOOD, ATTORNEY GENERAL STATE OF
MISSISSIPPI, in his official capacity

By: JIM HOOD, ATTORNEY GENERAL, STATE OF
MISSISSIPPI

By: /s/ Douglas T. Miracle

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CERTIFICATE OF SERVICE

I, Douglas T. Miracle, Special Assistant Attorney General for the State of Mississippi, do hereby certify that on this date I electronically filed the foregoing document with the Clerk of this Court using the ECF system and sent a true and correct copy to counsel record:

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This the 12th day of January, 2015.

/s/ Douglas T. Miracle
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