

Google not liable for misleading and deceptive ads

The High Court of Australia has held that Google did not engage in misleading or deceptive conduct merely by displaying search results generated by advertisers' wrongful use of third-party trademarks as Google AdWords (*Google Inc v Australian Competition and Consumer Commission* ([2013] HCA 1).

The Australian Competition and Consumer Commission (ACCC) initiated proceedings against Google, alleging that the results generated by its search engine conveyed misleading and deceptive representations

in contravention of Section 52 of the Trade Practices Act 1974.

The primary judge dismissed the ACCC's claim on the grounds that Google itself had not made the misleading and deceptive representations, but had merely acted as a "conduit". The Full Court of the Federal Court subsequently allowed the ACCC's appeal, finding that Google had contravened Section 52 of the act by publishing the search results. The Full Court believed that Google had created the results that it published and had therefore acted as a "principal".

The High Court subsequently overturned the Full Court's decision, holding that "Google did not author the sponsored links; it merely published or displayed, without adoption or endorsement, misleading representations made by advertisers". Therefore, it did not contravene Section 52.

Julian Gygell of Kepdowrie Chambers notes that the decision is "clearly good news for all online (and traditional) publishers of third-party content because it now seems clear that merely providing the

technology (or the platform) to enable third parties to create or display their content is not of itself a contravention of the act". However, Gygell warns that the decision was based on the particular circumstances of this case and, importantly, on the evidence of the "minimal level of involvement of Google in authoring or creating the content of the sponsored links". Therefore, "publishers that engage in a greater level of involvement in the content of an advertisement may be unable to rely on this decision".

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