

Google successful in appeal against watchdog: Google Inc v ACCC

On 6 February 2013, the High Court of Australia handed down their decision in the matter of *Google Inc v Australian Competition and Consumer Commission* [2013] HCA 1.

Intellectual Property Update

The Court unanimously allowed Google Inc's appeal from the decision of the Full Court of the Federal Court of Australia, in which the Federal Court held that Google Inc had engaged in misleading and deceptive conduct contrary to section 52 of the *Trade Practices Act 1974* (Cth) (now schedule 2 section 18 of the *Competition and Consumer Act 2010* (Cth)).

In short, the ACCC claimed that, by publishing and displaying sponsored links (or advertisements) which contained misleading or deceptive conduct by the advertiser, Google Inc engaged in the same misleading and deceptive conduct, notwithstanding that Google Inc had not endorsed or adopted the content of the sponsored links and that the advertisers were the source of the sponsored links. Google Inc, on the other hand, contended that the fact that it displayed the sponsored links in response to users' search request was not sufficient to justify a finding that Google Inc had made the misleading representations conveyed by the sponsored links. They further contended that each aspect of the sponsored links was specified by the advertiser, and that Google Inc was merely implementing the advertiser's instructions.

Relevantly, the majority of the Court noted [at page 21]:

It is critical to appreciate that, even with the facility of keyword insertion, the advertiser is the author of the sponsored link. As Google correctly submitted, each relevant aspect of a sponsored link is determined by the advertiser. The automated response which the Google search engine makes to a users' search request by displaying a sponsored link is wholly determined by the keywords and other content of the sponsored link which the advertisers have chosen. Google does not create, in any authorial sense, the sponsored links that it publishes or displayed.

Ordinary and reasonable users of the Google search engine would have understood that the sponsored links were created by advertisers. Such users would also have

Who does this affect?

- Search engine providers
- Any publisher of advertisements

Article Highlights

- Google's appeal unanimously allowed by the High Court of Australia.
- The Court found the advertiser is the author of sponsored links, not Google.
- Users would have understood that representations made by sponsored links were those of advertisers and not Google.

understood that representations made by the sponsored links were those of the advertisers, and were not adopted or endorsed by Google.

Accordingly, the Court found that Google Inc did not engage in misleading and deceptive conduct.

This decision is relevant to search engine providers, and indeed any publisher of advertisements. Along with *Roadshow Films Pty Ltd v iiNet Ltd* [2012] HCA 16, the decision creates a line of authority that the suppliers of the means to engage in wrongdoing will not be liable for that wrongdoing provided that their activities do not endorse, adopt, encourage, promote or control the wrongdoing.

Disclaimer: This publication is intended to provide general information only and should not be relied upon as legal advice. If you require legal advice on a matter please contact us.

Contact Us

t +61 8 9426 6611 **f** +61 8 9321 2002 **e** jacmac@jacmac.com.au

a Level 25, 140 St Georges Terrace, Perth, Western Australia 6000
GPO Box M971, Perth, Western Australia 6843

www.jacmac.com.au

Contact



Dr. David Cox
PARTNER

t: +61 8 9426 6636

e: dcox@jacmac.com.au