



HIGH COURT OF AUSTRALIA

6 February 2013

GOOGLE INC v AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

[2013] HCA 1

Today the High Court unanimously allowed an appeal from a decision of the Full Court of the Federal Court of Australia, in which it was found that Google Inc ("Google") had engaged in misleading or deceptive conduct contrary to s 52 of the *Trade Practices Act 1974* (Cth) ("the Act") by displaying certain internet search results.

The Google search engine displayed two types of search results in response to a user's search request: "organic search results" and "sponsored links". Organic search results were links to web pages that were ranked in order of relevance to the search terms entered by the user. A sponsored link was a form of advertisement. Each sponsored link was created by, or at the direction of, an advertiser, who paid Google to display advertising text which directed users to a web site of the advertiser's choosing.

The Australian Competition and Consumer Commission ("the ACCC") claimed that particular sponsored links displayed by the Google search engine between 2005 and 2008 had conveyed misleading and deceptive representations. By publishing or displaying those search results, Google was said to have contravened s 52 of the Act, which provided that a corporation shall not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.

At first instance, the primary judge found that although the impugned representations were misleading and deceptive, those representations had not been made by Google. Ordinary and reasonable members of the relevant class of consumers who might be affected by the alleged conduct would have understood that sponsored links were advertisements and would not have understood Google to have endorsed or to have been responsible in any meaningful way for the content of those advertisements.

The ACCC successfully appealed to the Full Court of the Federal Court, which unanimously found that Google had itself engaged in misleading or deceptive conduct by publishing and displaying the sponsored links. By special leave, Google appealed to the High Court.

The High Court unanimously allowed the appeal. Google did not create the sponsored links that it published or displayed. Ordinary and reasonable users of the Google search engine would have understood that the representations conveyed by the sponsored links were those of the advertisers, and would not have concluded that Google adopted or endorsed the representations. Accordingly, Google did not engage in conduct that was misleading or deceptive.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*