



## HIGH COURT OF AUSTRALIA

Manager, Public Information

30 April 2009

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

v

CHANNEL SEVEN BRISBANE PTY LTD & ORS

The High Court today handed down a decision about the scope of what is sometimes called the "media safe-harbour" protecting media outlets from liability for misleading or deceptive conduct under the Trade Practices Act.

Section 52 of the Trade Practices Act prohibits a corporation from engaging in misleading or deceptive conduct, or in conduct that is likely to mislead or deceive. Section 65A of that Act exempts "prescribed information providers" from the application of section 52, except in certain circumstances. Television broadcasters holding licences under the Broadcasting Services Act 1992 are "prescribed information providers". Prescribed information providers do not have the benefit of the exemption where a misleading or deceptive publication concerns the supply or possible supply of goods or services and is made pursuant to a contract, arrangement or understanding with a person who supplies good or services "of that kind". Today a majority of the High Court allowed an appeal by the Australian Competition and Consumer Commission (the ACCC) against a decision of the Full Court of the Federal Court, which found that the media exemption under section 65A applied to members of the Channel Seven network. The High Court was required to determine what was meant by goods or services "of that kind". The case concerned the broadcast of two episodes of *Today Tonight* containing segments concerning a business called "Wildly Wealthy Women". The business offered to train women to make money out of real estate investment.

At the hearing of the appeal in the High Court, there was no dispute that the relevant *Today Tonight* episodes contained untrue claims about the wealth and assets of the two women who were offering the training. Nor was it in dispute that certain representations made in the episodes were misleading and deceptive. The main question to be determined was whether section 65A exempted the television stations which carried the broadcast from the operation of section 52. The ACCC argued that because of the arrangement made between the television stations and the two women to broadcast the program, the broadcast was not covered by the section 65A exemption. The primary judge had held that the television channels were not exempt from the operation of section 52 in these circumstances. The Full Court of the Federal Court, on the other hand, held that the benefit of the exemption did apply to the broadcasters. The High Court granted special leave to the ACCC to appeal the decision of the Full Court.

A majority of members of the High Court considered that the primary judge had properly construed section 65A. The exemption conferred by section 65A does not apply to situations in which a media outlet publishes matter in relation to goods or services where the publication is pursuant to an arrangement with a supplier of goods or services.

The High Court allowed the ACCC's appeal, set aside the Full Court's orders and restored the orders made by the primary judge.

- *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.*