

TO GOOGLE OR NOT TO GOOGLE



In the first action of its kind globally, The Australian Competition and Consumer Commission (ACCC) instituted legal proceedings in July 2007 in the Federal Court, Sydney, against Trading Post Australia Pty Ltd, Google Inc, Google Ireland Limited and Google Australia Pty Ltd. The matter had been listed for a directions hearing in the Federal Court, Sydney, on 21 August 2007 before Justice Allsop, and alleged that Google had engaged in misleading or deceptive conduct by publishing eleven advertisements on Google's search results page. The advertisements in question comprised business names, product names or web addresses of competitor's business. The ACCC alleges that business names "Kloster Ford" and "Charlestown Toyota" appeared in the title of Google sponsored links to Trading Post's website are in actuality Newcastle car dealerships who compete against Trading Post in automotive sales. The ACCC alleges that Google engaged in misleading and deceptive conduct in breach of section 52 of the Act. (Sections 52 and 53(d) of the Trade Practices Act 1974 in 2005.) The ACCC also says that by failing to adequately distinguish sponsored links from "organic" search results Google has engaged and continues to engage in misleading and deceptive conduct in breach of section 52 of the Act. Subsequently, The Federal Court dismissed allegations by the Australian Competition and Consumer Commission against Google. According to Justice Nicholas, the use of the word "sponsored links" rather than "advertisement", would be understood by most users as in fact advertisements. Google has been previously scrutinized over trademark use in the United States, France and Belgium concerning its search results business. ACCC Chairman Rod Sims said, "This case is important in relation to clarifying advertising practices in the internet age". "All businesses involved in placing advertisements on search engines must take care not to mislead or deceive consumers." In the latest and controversial development on Tuesday 3 April 2012, Chief Justice Keane, Justice Jacobson, and Justice Lander. i.e. The Full Court of the Federal Court of Australia, handed down a joint decision overturning the earlier decision of Justice Nicholas on 22 September 2011. The full court concluded that Google could not disclaim responsibility for what gets displayed on its pages. Google does not merely repeat or pass on statements made by advertisers; it is Google's technology which creates that which is displayed. While is significant is that previous Federal Court decisions considered by Justice Nicholas related to publishers of advertisements in the print and television media. Logic in those cases is not easily translated to the practices of search engine providers such as Google in publishing sponsored entries as part of search results. Another important outcome said ACCC chairman Rod Sims in a statement, is that it makes it clear that Google and other search engine providers which use similar technology to Google will be directly accountable for misleading or deceptive paid search results. Google has not yet commented on the matter but Australian media has reported that Google will appeal in the High Court. To quote; "Google is poised to launch a High Court challenge to a Federal Court finding that it engaged in false and misleading advertising, fearing the decision could have global implications for the search advertising market, worth tens of billions of dollars."

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