

**Australian Competition and Consumer Commission v Google Inc [2012] FCAFC 49.**

**FACTS**

The case was on appeal from a single judgement of the Federal Court from September 2011, in which the Court found in favour of Google Inc. ACCC had alleged that Google Inc in providing "sponsored links" had engaged in misleading and deceptive conduct under the Trade Practices Act 1974 (Cth). Google had countered that it was merely a conduit and relied on the publisher's defence in s85(3) of the same Act.

**ISSUE**

Of issue in this appeal was whether or not Google Inc was a mere publisher of advertisements, or did Google Inc have a more active role in the conduct as alleged.

**FINDING**

The Full Court found that Google Inc was not a mere publisher of the misrepresentations by the advertisers due to the fact that the advertisements were in response to a keyword search by the user. Google Inc's claims of being a mere conduit of the information were unsuccessful, as Google Inc actively represented to the user that the advertisements were related to the search terms that had been entered into the Google Inc site, when in fact the advertisements related to competitors of the searched terms.

**QUOTE**

At [92]:

*"The conduct is Google's because Google is responding to the query and providing the URL. It is not merely passing on the URL as a statement made by the advertiser for what the statement is worth. Rather, Google informs the user, by its response to the query, that the content of the sponsored link is responsive to the user's query about the subject matter of the keyword." and at [93]:*

*"The enquiry is made of Google and it is Google's response which is misleading."*

**IMPACT**

The decision tightens the definition of publisher and reinforces the importance of not engaging in conduct which is misleading, or likely to mislead.

Those whom regularly rely on information from third parties to then supply to others must take reasonable steps to ensure that the information being passed on is accurate. The decision means that those who supply information cannot rely on being a passive conduit in passing on information that is misleading or likely to mislead if they are in the business of relying on such information to provide answers in response to queries from others.