

DATAFLOW COMPUTERS PTY LTD V. GOODMAN [1999] FCA 1625

Federal Court of Australia – 25 November 1999

FACTS

Goodman, a former employee of Dataflow, sent anonymous emails to various people including franchisees of the Harvey Norman chain of retail stores. Dataflow was the supplier of various software packages to software retailers including Harvey Norman stores. The email from Goodman alleged that Dataflow intended to compete against Harvey Norman and other software retailers by selling software directly to consumers. This allegation upset Dataflow because Harvey Norman had a policy of not selling software that the manufacturers sold directly to consumers.

The allegation by Goodman was incorrect. Dataflow identified Goodman as the author of the email after court proceedings to obtain his details from his ISP and then sued Goodman for misleading and deceptive conduct. Dataflow was able to sue Goodman personally as the alleged conduct had involved the use of “postal, telegraphic or telephonic services.”

ISSUES

Had Goodman engaged in misleading and deceptive conduct in trade or commerce?

FINDING

The conduct of Goodman in sending the email was misleading and deceptive conduct.

The conduct of Goodman was not in trade or commerce as Goodman was not engaged in business or commercial dealings with Dataflow or Harvey Norman.

QUOTE

Healy JA said:

“Whether conduct is in trade or commerce is largely a factual question. At the edges, fine lines may have to be drawn, if only because the line between in, on the one hand, and in connection with on the other, is itself a fine one.

The fact that the conduct in question is not that of a participant in the relevant trade or commerce may be highly relevant in determining whether it is in trade or commerce, but in my respectful opinion it cannot, as a matter of construction of s 52, be conclusive of the question.” – para 19 of [1999] FCA 1625 “Goodman’s conduct is more appropriately characterised as that of a bystander commenting on the trade or commerce in which others are engaged, rather than something done in that, or any other, trade or commerce.” – para 23 of [1999] FCA 1625

IMPACT

The sending of an email may expose an individual to liability for a breach of section 52 of the Trade Practices Act. In this case, Goodman was not liable, as he was not involved in the relevant business dealings. However, if Goodman had a financial interest or could have benefited from his conduct then his behaviour could have been found to be in trade or commerce.

It is important to remember that it is very easy to send emails. The sending of a careless email which relates to commercial activity may lead to liability for misleading and deceptive conduct.

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