



High Court upholds finding of misleading advertising in back and forth stoush between TPG and ACCC

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The High Court has restored a \$2 million penalty punishment awarded to TPG in relation to fine print in its advertisements for ADSL2+ broadband services. The advertisements stated that customers could purchase 'Unlimited ADSL 2+' for \$29.95 per month. The fine print however stated further conditions whereby the customer would also incur set up costs and the bundle with internet plan was an additional \$30 per month for phone line rental.

The ACCC brought proceedings against TPG for false or misleading representations in the Federal Court where TPG was fined \$2 million for the advertisements which were published on TV, radio, newspaper and various websites.

TPG appealed to the Full Federal Court where it was held that the relative prominence of the conditions was not important because advertisements needed to be read as a whole, not just for their 'dominant message'. The penalty was reduced from \$2 million to \$50,000.

In response, ACCC appealed to the High Court where the majority restored the \$2 million penalty and the approach of the original Federal Court decision – that a customer would take in the dominant message and may not take in further message regarding additional charges, leaving the customer with the impression that the total cost of the service was \$29.95 per month.

When publishing advertisements for your business you should ensure that any conditions or qualifications are not hidden within the fine print or written in a way that would confuse or mislead customers.

For commercial, contract or business law advice contact the commercial law team at Matthews Folbigg Lawyers, located in Parramatta.

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