



Australian
Competition &
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Commission

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NEWS RELEASE

TELSTRA MISLED CONSUMERS ABOUT NEXT G COVERAGE: FEDERAL COURT

Telstra misled consumers about the coverage available on its Next G mobile network, the Federal Court found today.

The Australian Competition and Consumer Commission brought proceedings against Telstra in September, alleging that Telstra had engaged in misleading or deceptive conduct by representing that the Next G mobile network had "coverage everywhere you need it".

The ACCC also alleged that Telstra had engaged in misleading or deceptive conduct by claiming that Next G customers would get the same or better coverage as they did on the CDMA network.

Evidence provided by Telstra's technical experts revealed that coverage on the Next G network was limited by a variety of factors including terrain, physical structures and handset selection.

However, Justice Gordon said that these significant qualifications to the accuracy of the "everywhere you need it" coverage claim were not explicitly mentioned and could not have been inferred from Telstra's marketing.

In mid July Telstra introduced a "Blue Tick" program to rate handset performance.

Justice Gordon held this was "inconsistent with and demonstrates the misleading and deceptive character" of the earlier advertisements. In addition, Telstra continued to run advertisements for Next G without explaining to consumers the differences between handsets.

Justice Gordon stated that various Next G advertisements: "[Conveyed] the representation that a person [could] use the Next G network regardless of where the person was, what handset that person was using and whether that handset had an external antenna attached.

Telstra was found to have misled consumers because: "In fact, whether a user could obtain coverage depended in part upon where that person was, what handset that person was using and in some cases whether that handset had an external antenna attached."

Justice Gordon also found that Telstra had misled consumers by representing that Next G coverage was the same as or better than CDMA coverage. She concluded that Telstra engaged and continues to engage in conduct that is misleading or deceptive in contravention of sections 52, 53(aa) and 53(c) of the *Trade Practices Act 1974*.

ACCC Chairman, Mr Graeme Samuel, warned that all telecommunications companies should ensure, when promoting the coverage of their services, that claims reflect real-world experience.

"In light of today's judgment, the ACCC urges consumers to raise any concerns about poor Next G coverage performance or unsuitable handsets with Telstra. The ACCC considers that it is incumbent on Telstra to provide relief to consumers who have been misled into purchasing Next G handsets and services which do not deliver the promised coverage performance."

Justice Gordon found it unnecessary to make findings about other evidence adduced before the court relating to the specifics of handset performance. A number of items of evidence relating to handset performance were ordered to be confidential at Telstra's request and are not publicly available at this time without further orders of the court.

Relief orders have not yet been made. The ACCC will seek injunctions preventing further similar representations, and orders requiring Telstra to publish corrective advertisements.

Today's judgment was also significant in that it was handed down less than three months after the ACCC instituted proceedings. This rapid turnaround was made possible by the new Fast Track List in the Victorian Registry of the Federal Court.

Media inquiries

Mr Graeme Samuel, Chairman, (02) 6243 1131 or mobile/pager 0408 335 555

Mr Ed Willett, Commissioner, 0414 559 999

Ms Lin Enright, Director, Media Unit, (02) 6243 1108 or 0414 613 520

General inquiries

Infocentre: 1300 302 502

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BACKGROUND

Section 52 of the *Trade Practices Act 1974* states that a corporation shall not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.

Section 53 of the *Trade Practices Act 1974* refers to conduct of a corporation in trade or commerce in connexion with the supply or possible supply of goods, or the promotion of the supply of goods or services. Section 53(aa) prohibits a corporation from falsely representing that services are of a particular standard, value, or grade. Section 53(c) prohibits a corporation from representing that goods or services have sponsorship, approval, performance characteristics, accessories, uses or benefits they do not have.