

Not so optimal: Search engine optimisation failure

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An internet-based business was unsuccessful in its claim for almost \$1 million in damages against the providers of search engine optimisation services.

Yesterday, in the matter of *Oneflare Pty Ltd v Chernih* [2016] NSW 1271, Justice McDougall of the Supreme Court of New South Wales found that providers of search engine optimisation services that implemented a strategy to improve the search engine “page ranking” of a company were not liable for the loss and damage suffered by the company as a result of Google demoting the site on its search engine results page.

In this matter, the plaintiff, Oneflare, sought to improve its web page ranking by creating “linkbuilding services” to its website (essentially, creating artificial or unnatural links pointing to the site to improve its ranking). The strategy included buying aged domains and posting material onto the websites of those domains with links back to the plaintiff’s website. Google’s guidelines for webmasters discourage this technique and penalise sites, through demotion in their ranking, where such techniques are detected. This happened to Oneflare.

As a result of Google detecting Oneflare’s linkbuilding services and the subsequent demotion of the site on its results page by Google, the amount of traffic to Oneflare’s site, and the amount of revenue generated from that traffic, diminished substantially. Oneflare sued the providers of the search engine optimisation services for the loss and damage it suffered.

Justice McDougall found that, on the facts, that the providers of search engine optimisation services had acted within their retainer and had warned Oneflare of the risks of the strategy to be put into place. In essence, his Honour found that Oneflare stipulated the strategy and the defendants assisted in its execution. In the circumstances, there was no breach of retainer and therefore no loss and damage could be recovered.

While the facts of this case were such that the providers of the search engine optimisation services were not in breach of their retainer, the possibility remains open that in certain circumstances such providers could be liable. Justice McDougall undertook an assessment of damages in the event that the matter was successfully appealed. His Honour found that if damages were to be awarded, he would assess them in the sum of \$673,560.00.

This case is a timely reminder that whether businesses are engaging providers to perform “digital age” services or more traditional services, a thorough understanding of what is being provided, by whom and the consequences that could flow from it, is vital or serious repercussions could follow.

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