



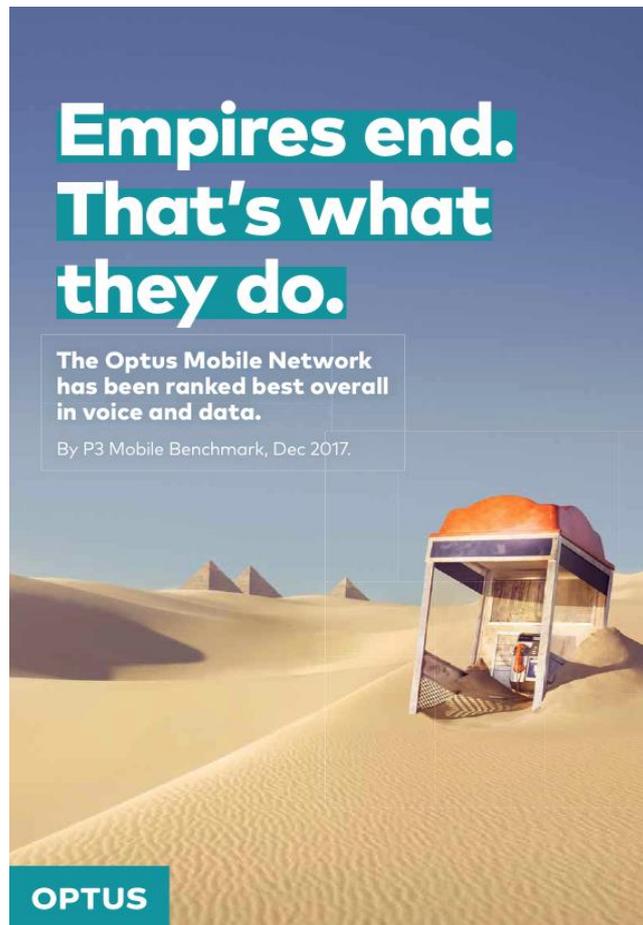
Summary of Judgment

TELSTRA CORPORATION LTD V SINGTEL OPTUS PTY LTD

[2018] VSCA 347

18 DECEMBER 2018

The Court of Appeal (The Chief Justice, Justice Whelan and Justice McLeish) has refused to grant Telstra leave to appeal a decision of a trial judge that the respondent, Optus, did not breach section 18 of the *Australian Consumer Law* by publishing the advertisement depicted below.



Telstra submitted that Optus's advertisement conveyed the representation to current or potential mobile customers that there had been a significant and permanent change in the relationship between Telstra and Optus and that Optus was now undisputedly operating a better mobile network overall than Telstra. This representation was said to be false, misleading or deceptive or likely to mislead or deceive contrary to the *Australian Consumer Law*.

The trial judge found that the representation Telstra alleged would not be conveyed to a reasonable member of the relevant class of consumers, and he accordingly did not need to decide whether the representation was false or misleading or deceptive or likely to mislead or deceive.

Telstra sought leave to appeal on four grounds: that the trial judge misconstrued the representation Telstra had alleged; that the trial judge failed to consider whether 'nuances' of the representation would have been conveyed by the advertisement; that the trial judge incorrectly excluded certain persons from the relevant class of consumers; and that the trial judge failed to consider the dominant overall impression conveyed by the advertisement.

The Court of Appeal refused leave to appeal on all grounds. The trial judge was required to engage with the representation alleged by Telstra, and did so. There was no material difference between the trial judge's finding that a representation that Telstra's position had been 'permanently destroyed' would not be conveyed by the advertisement and the language used by Telstra that 'there had been a significant and permanent change'. The trial judge was not required to consider whether 'nuances' of the representation would be conveyed. By identifying outliers in the class of consumers, the trial judge did not exclude those persons from the relevant class. The trial judge did not fail to consider the dominant overall impression conveyed by the advertisement.

NOTE: This summary is necessarily incomplete. It is not intended as a substitute for the Court's reasons or to be used in any later consideration of the Court's reasons. The only authoritative pronouncement of the Court's reasons and conclusions is that contained in the published reasons for judgment.