

DBULLETIN

E-COMMERCE

Website Disclaimers – Landmark Court of Appeal Ruling

Landmark Court of Appeal case confirms website disclaimers mitigate liability for mistakes on websites. Is your disclaimer robust enough? This important decision makes it a good time to review.

In the first case of its type, the Court of Appeal has said that website owners can, by virtue of a disclaimer, mitigate liability for mistakes contained on a site. It is the first case to effectively test website disclaimers.

Unsurprisingly, the court confirmed that a website can owe a duty of care to its visitors. More interesting however was how easily a website could escape liability arising out of such duty of care by directing its users to seek further information before placing any reliance on material contained on the website.

The case of Patchett and Patchett v Swimming Pool & Allied Trades Association Ltd involved a couple, the Patchetts who wanted to install a swimming pool in the garden of their home. The Patchetts visited the website of Swimming Pool & Allied Trades Association (SPATA), a trade body for pool installers, which they had found through a google search. The SPATA website listed a company called Crown on its website as being a member.

The SPATA website identified various vetting procedures in place (including financial checks) to protect anyone engaging a SPATA member. However, the website contained a mistake by not stating that there were different levels of membership and that the safeguards referred to only applied to full members. Crown was in fact only an affiliate member and when they became insolvent the Patchetts sued SPATA to recover a loss of £44,000.

The court held that SPATA made negligent misstatements (in that they were inaccurate and misleading) by representing that Crown was a member of SPATA, that members have high standards, that Crown had been checked for creditworthiness and the quality of its work and that Crown was a member of SPATASHIELD, which was described as SPATA's unique bond and warranty scheme offering customers peace of mind that their installation will be completed fully to SPATA standards, "come what may!".

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SPATA avoided liability because the page entitled "About Us" on its website contained a statement urging visitors to obtain one of its information packs before entering into any contract with a supplier, which included among other things a Contract Check List setting out questions that a customer should ask of a would be supplier.

The court reviewed the case of *Hedley Byrne v Heller* which set out a test for ascertaining whether a duty of care exists between advisor and advisee stating that a duty does not exist unless it is known, either actually or inferentially, that a statement is likely to be acted upon by the advisee "without independent enquiry".

The court found that the reader's attention was drawn to the information pack at which a potential customer would be expected to look and which furnished the relevant information. The court held that SPATA's recommendation to visitors to obtain the pack and make independent enquiry in essence was its disclaimer and accordingly SPATA did not owe the claimants a duty of care in the circumstances of the case.

In light of this case companies seeking to minimise their exposure risk should take this opportunity to review their own website disclaimers to mitigate their liability. Where possible, companies should take all available steps to ensure that their own disclaimers are as robust as possible and that they are brought to the website users' attention.

The content of this article is intended to provide a general guide to the subject matter and does not constitute legal advice. Specialist advice should be sought about your specific circumstances.

For further information or if you require assistance in reviewing your website disclaimer please contact:

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