[NL] Google not liable for fake advertisements featuring Dutch celebrities

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On 18 May 2022, the *Rechtbank Amsterdam* (Amsterdam Court) () delivered a notable judgment regarding the liability of an internet platform for fake advertisements featuring the portrait or name of famous persons that seemingly promotes investment methods via cryptocurrencies. The case, which has received considerable media coverage, was brought to the Court by the Vladimir Foundation, founded by well-known Dutch figures. It aims to combat public deception by means of fake news or misleading advertisements featuring notable figures. The Court held that Google may not be held liable for these advertisements. The Court reasons that Google is not primarily responsible for the content of the advertisements, this is with the advertiser. There needs to be additional circumstances to make Google liable, which was not the case here.

Google offers services for advertising for advertisers through Google Ads, and for publishers of websites and apps, who offer advertisement space, through Google AdSense. Exploiters who wish to use the service must consent to the Terms of Service and policy of AdSense. This also involves a ban on misleading and fraudulent advertisements, as well as a ban on ‘clickbait’ (the usage of a ‘sensational’ title to nudge the user to click on it). Advertisers may create their advertisements as they wish.

The fake advertisements in question are for cryptocurrencies, or financial products, seemingly being promoted by different Dutch celebrities. When users click on the advertisements they are redirected to a ‘pre-landing page’. Here the user usually sees an article describing how the celebrity in question made lots of money with that particular investment. What follows is a link to the investment platform, which is the real ‘landing-page’. Here the user can leave his personal info and invest.

The main question before the Court was whether Google can be held liable for showing these advertisements. As Google is not the one primarily responsible for the content of the advertisements, Google was not liable unless there were additional circumstances in the case. First, the Court examined if Google offering these advertisement services, can be seen as such an additional circumstance. The Court held that to answer this question, the role played by Google is of importance. Google acts as an intermediary between advertisers on the one hand

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and exploiters on the other, offering diverse advertising possibilities. The applicant claimed that the mere offering of these services constitutes an unlawful act. The Court rejected this and held that the unlawfulness is determined by the content of the advertisements, in which Google does not play any part.

Furthermore, the Court examined if the precautions taken by Google were enough or if they can be categorised as an additional circumstance which may lead to liability. The Court held that the following factors may be weighed: the knowledge of Google of the unlawful actions of the advertisers, the burden of precautions taken by Google, the actual precautions taken by Google, the likelihood of negligence of the internet user in response to the advertisement and the probability and severity of damages.

The Court held that Google has knowledge of the circulation of fake advertisements, and acknowledges that it has a responsibility to combat these practices. The Court held that Google has its Terms of Service which users have to comply with. Furthermore, Google takes actions to combat the advertisements by using detection methods such as machine-learning and human checks. However, the methods are not fool-proof due to the methods the fake advertisers use. The Court holds that if Google were to check every advertisement this would result in a general filter order, which is prohibited. The Court also held that the probability of damage because of the advertisements is rather small.

The Court concluded that Google is not to be held liable for the showing of fake advertisements. The Court, however, did order Google to provide necessary personal information on the imposters to one of the claimants in order to pursue recovery of damages.

Rechtbank Amsterdam, 18 Mei 2022, ECLI:NL:RBAMS:2022:2638

https://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBAMS:2022:2638

Amsterdam District Court, 18 May 2022, ECLI:NL:RBAMS:2022:2638

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