

WHO OWNS YOUR PERSONAL DATA?

One of the more interesting and contentious aspects of the digital age in which we live revolves around the question of ownership of personal data in the public sphere. This was one of the issues on which the South Gauteng High Court was called upon to make a ruling in the recent case between Discovery and Liberty (Discovery Ltd & Others v Liberty Group Ltd (21362/2019)[2020] ZAGPJHC 67).

The essential facts of this case were that Discovery has for a number of years offered the Vitality membership to their clients, in terms of which Vitality members receive a range of benefits according to their particular “Vitality status”. Problems arose however when Liberty introduced their own Wellness Program, in terms of which they offered a discount on their life insurance policies to clients depending on the Vitality status of potential clients (coincidentally, the same offer was made to members of Momentum’s Multiply program, although Momentum did not join the legal proceedings).

The crux of the argument put forward by Discovery was that Liberty was infringing on the Discovery and Vitality trademarks, and essentially “piggybacking” on the success of the Vitality model. Furthermore, Discovery had collected the Vitality members’ data over a number of years and Liberty therefore had no right to simply utilise such data for its own means. Whilst Discovery has in the past entered into a number of arrangements with third parties to utilise Vitality data they have collected from their members, it was the fact that Liberty failed to first seek permission for such usage that prompted the Application before the Court.

Interestingly, in its judgment the High Court held that the data in question belonged to the Vitality members, who had paid for their status and accordingly should be entitled to have the choice of what they wish to use that status for. On this basis the Application by Discovery was dismissed.

This judgment is a massive positive for members of not only Vitality but also other wellness schemes, who can use their statuses across various offerings within the insurance sector.

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