



# SUPREME COURT OF NORWAY

## J U D G M E N T

given on 28 November 2019 by the Supreme Court composed of

Justice Bergljot Webster  
Justice Wilhelm Matheson  
Justice Henrik Bull  
Justice Wenche Elizabeth Arntzen  
Justice Kine Steinsvik

**HR-2019-2213-A, (case no. 19-087366SIV-HRET)**  
Appeal against Borgarting Court of Appeal's judgment 5 April 2019

Video Communication Services AS (Counsel Magnus Hauge Greaker)

v.

Appear TV AS (Counsel Henrik Felix Reimers)

- (1) Justice **Arntzen**: The case concerns a request for transfer of a domain name due to trademark infringement. The question is whether a foreign domain name used globally can be ordered transferred to the Norwegian owner of the trademarks to prevent further infringement, see section 59 of the Trademarks Act.
- (2) Appear TV AS was incorporated in 2004. The company engages in development and sale of communication products and services as well as equipment transmitting TV signals to the viewers, including video service tools.
- (3) In August 2009, the company acquired a trademark right for the combined sign APPEAR TV, which has a particular visual form, with protection for classes 9, 38 and 42. The registration for class 9 includes “[a]pparatus for transmission or reproduction of sound or images, magnetic data carriers, data processing equipment”, class 38 includes “[t]ransmission of radio and television programs”, and class 42 includes “[d]esign and development of computer and software services”. Furthermore, in September 2014, the company registered a trademark right for the word mark APPEAR with protection for the same classes, but with the difference that class 38 includes “[c]ommunication services”.
- (4) According to information provided, Appear TV AS has also acquired trademark rights for APPEAR TV and/or APPEAR in a number of other countries, including the USA and India.
- (5) The predecessor of Video Communication Services AS, Telenor Digital AS, was incorporated in 2011. The company’s registered objective was “[c]ommunication services, with development and distribution of Internet-based services”. In august 2013, the company launched a video conference service operated from the website “appear.in”. The domain name “appear.in” is Indian and was registered through The National Internet Exchange of India (NIXI) in July 2013. The company also acquired a trademark right for the Norwegian domain name “appear.no” through Norid AS. This domain name, which first led directly to the website “appear.in”, was removed in late 2016 and subsequently transferred to Appear TV AS.
- (6) In August 2017, the video conference service, with all rights and obligations marketed under the designation “appear.in”, was demerged into a separate company named Video Communication Services AS. Telenor Digital AS owns 30 percent of the shares in that company. A transfer of the rights related to the domain name “appear.in” was formalised by notifications and registration in relevant registers. The video conference service is the sole product offered by Video Communication Services AS.
- (7) In short, the service involves setting up video conferences with simple means by the help of platforms like email, chat and SMS. The software is offered in three versions: a free version allowing up to eight participants and two premium versions subject to a fee. The service is offered to countries all over the world, and approximately 93 percent of the revenues in 2019 generated from foreign users.
- (8) In the autumn of 2016, Appear TV AS approached Telenor Digital AS claiming that the use of “appear.in” and “appear.no” interfered with the company’s exclusive right to the trademark APPEAR. The parties did not reach an agreement, and in November 2015, Appear TV AS brought an action in Oslo District Court requesting that Telenor Digital AS be prohibited from using the sign “appear” in connection with video conferencing. Appear TV AS also requested a transfer of the domain names as well as damages for the illegitimate use. Telenor Digital AS

submitted a counterclaim demanding that the registered trademarks APPEAR and APPEAR TV be declared invalid for services under classes 9 and 38.

- (9) Oslo District Court's judgment 16 June 2017 declared the registration of the trademark "APPEAR" invalid for "[c]ommunication services" in class 38 and the products "[a]pparatus for transmission and reproduction of sound and images; magnetic data carriers; data processing equipment" in class 9. Apart from that, the court ruled in favour of both Appear TV AS and Telenor Digital AS.
- (10) Both parties appealed the judgment to Borgarting Court of Appeal. Video Communication Services AS was later brought into the case on Telenor Digital AS's side. The parties disagreed whether Telenor Digital AS would still be a party in the appeal.
- (11) On 5 April 2019, Borgarting Court of Appeal gave a judgment and an order – incorrectly referred to as a judgment only – with the following conclusion:
- " 1. Video Communication Services AS is prohibited from using 'appear' as a sign in any form, including 'appear.no' and 'appear.in', in its communication services.**
  - 2. The claim for prohibition directed against Telenor Digital AS is dismissed.**
  - 3. Video Communication Services AS is ordered to implement necessary measures to transfer the domain names 'appear.no' and 'appear.in' to Appear TV AS.**
  - 4. The case is dismissed with regard to the request that Telenor Digital AS transfer domain names to Appear TV AS.**
  - 5. Telenor Digital AS will pay a fee for trademark infringement to Appear TV AS in the amount of NOK 5 000 – fivethousand – within two weeks of the service of this judgment with the addition of default interest from the due date until payment is made.**
  - 6. Video Communication Services AS will pay a fine for trademark infringement to Appear TV AS in the amount of NOK 68 000 – sixtyeightthousand – within two weeks of the service of this judgment with the addition of default interest from the due date until payment is made.**
  - 7. The claim against Appear TV AS that the trademark 'Appear' be declared invalid is dismissed.**
  - 8. The appeal from Telenor Digital AS and Video Communication Services AS is dismissed with regard to the claim that the trademark 'Appear TV' be declared invalid.**
  - 9. The appeal from Telenor Digital AS and Video Communication Services AS is dismissed with regard to the claim that the trademark 'Appear TV' be deleted.**
  - 10. Telenor Digital AS and Video Communication Services AS will jointly and severally pay costs in the District Court to Telenor Digital AS and Video Communication Services AS of NOK 508 060.50 – fivehundredandeightthousandandsixty 50/100 – to Appear TV AS within two weeks of service of this judgment.**
  - 11. Telenor Digital AS will pay costs in the District Court of NOK 375 745 – threehundredandseventyfivethousandsevenhundredandfortyfive – to Appear TV AS within two weeks of service of this judgment."**

- (12) Video Communication Services AS and Telenor Digital AS have appealed points 1, 3, 5–8 and 10–11 in the Court of Appeal’s conclusion to the Supreme Court. The appeal against item 3 only concerns the transfer of the domain name “appear.in” and the application of law and the assessment of evidence. Appear TV AS has replied by a derivative appeal against item 2 of the conclusion. Video Communication Services AS was granted leave to appeal by the Supreme Court's Appeals Selection Committee on 18 July 2019 on the issue regarding the transfer of the domain name "appear in". Leave to appeal was otherwise refused.
- (13) This entails that it is finally decided that Video Communication Services AS, through its use of the domain name “appear.in”, has infringed the trademark right for APPEAR and APPEAR TV, and that further use is prohibited for communication services. It is also finally decided that Telenor Digital AS no longer has a role in the case. The company did not claim costs for its work in connection with the derivative appeal from Appear TV AS, and the parties agree that it is Video Communication Services AS, if any, that is liable for costs in the Supreme Court.
- (14) Video Communication Services AS has taken measures to comply with the legally binding part of the Court of Appeal’s judgment. The company has changed the name of the video conference service from “appear.in” to “Whereby”, and issued information to customers that the video conferences will now be available on the website “whereby.com”.
- (15) Norwegian users that entered “appear.in” were, from late July 2019, automatically passed on to “whereby.com”. Since 26 August 2019, these users are no longer automatically passed on to “whereby.com”, but to a website containing information on the trademark dispute and with a link to “whereby.com”.
- (16) Appear TV AS holds that the measures taken by Video Communication Services AS are not sufficient to comply with the prohibition in the Court of Appeal’s judgment, see item 1 of the conclusion. In a petition of 31 July 2019 to Sogn og Fjordane District Court, the company requested enforcement in the form of a security deposit of up to NOK 3 million in accordance with section 13-16 of the Enforcement Act. In an order of 10 October 2019, the request was dismissed. The order has been appealed. The dispute has no direct relevance to the Supreme Court’s hearing of the case at hand.
- (17) The appellant – *Video Communication Services AS* – contends:
- (18) Section 59 of the Trademarks Act is not a legal basis for imposing Video Communication Services AS to transfer the domain name “appear.in” to Appear TV AS as long as it is mainly used in the global marketing and operation of the video conference service. The provision must be read in context with the territorial principle, which implies that a Norwegian-registered trademark is protected in Norway only. In any case, a transfer of the domain name in such a situation would be unreasonable and disproportionate under section 59 subsections 1 and 2. It is *the use of* the domain name that is crucial, not whether it is registered under a Norwegian or a foreign top-level domain.
- (19) Moreover, Appear TV AS’s Norwegian trademark rights are protected through the prohibition expressed in the Court of Appeal’s judgment, which implies that Video Communication Services AS may not use the signs “appear” and “appear.in” in marketing targeted at Norwegian users. The video conference service has been renamed to “Whereby”, and Norwegian users have already been barred from entering “appear.in”.

(20) Video Communication Services AS needs to ensure that foreign users may still conduct video conferencing through the relevant links, and is therefore dependent on controlling the domain name to be able to redirect these users to the website “whereby.com”. A transfer of the domain name will damage the video conference service and create problems for the users.

(21) Video Communication Services AS has invited the Supreme Court to pronounce the following judgment:

**“1. Judgment is given in favour of Video Communication Services AS with regard to the request that Video Communication Services AS implement necessary measures for transferring the domain ‘appear.in’ to Appear TV AS.**

**2. Appear TV AS will pay Video Communication Services AS’s costs in the Supreme Court.”**

(22) The respondent – *Appear TV AS* – contends:

(23) Section 59 of the Trademarks Act is a legal basis for ordering the transfer of domain names when this is deemed reasonable and necessary. The provision cannot be interpreted to mean that the measures to prevent infringements are limited by the territorial principle. The right to transfer domain names cannot be limited to Norwegian.no domains or domain names mainly targeted at Norwegian users. In that case, there would be no adequate measures available to prevent infringements by use of foreign domain names. In a situation like the present, where the use of the domain name “appear.in” constitutes the infringement, a transfer is in fact the only measure to prevent further infringements.

(24) The domain name “appear.in” is still active in the sense that it redirects Norwegian users to an information site with a link to the new website “whereby.com”. This amounts to an infringement of Appear TV AS’s trademark rights, and necessitates a transfer.

(25) In the assessment of proportionality under section 59 subsection 2 of the Trademarks Act, it must be emphasised that Video Communication Services AS has taken a conscious risk by offering and marketing the video conference service under a sign to which Appear TV AS holds the rights in Norway and in a number of other jurisdictions, including India. The risk of practical and economic disadvantages of changing the domain name from “appear.in” to “whereby.com” must thus be borne by the company. If the domain name is not transferred, “appear.in” will be available again at any time.

(26) Appear TV AS has submitted this prayer for relief:

**“1. The appeal is to be dismissed.**

**2. Video Communication Services AS is to pay Appear TV AS’s costs in the Supreme Court.”**

(27) *My view on the case*

(28) Domain names are unique user-friendly website addresses. They are also used as names of the website itself. These websites are global information systems that are made available over the Internet. In addition to the address function, domain names also function as signs, see the

Supreme Court judgment HR-2019-1743-A *Popcorn-time.no* paragraph 29.

- (29) The question is whether Video Communication Services AS should be ordered to transfer the domain name “appear.in” to Appear TV AS to prevent new trademark infringements. A legal basis for such a measure must be sought in section 59 subsections 1 and 2 of the Trademarks Act “Measures to prevent infringements” which reads:

**“In order to prevent an infringement, the court may, insofar as this is deemed to be reasonable, order preventive measures to be taken in relation to products that constitute an infringement of a trademark right, and in relation to materials and implements that are principally used, or intended to be used, for the manufacture of such products. Such measures can, among other things, entail products and materials and implements being:**

- a. recalled from the channels of commerce,**
- b. definitively removed from the channels of commerce,**
- c. destroyed, or**
- d. handed over to the rightholder.**

**The decision concerning whether such measures shall be imposed and the choice between possible measures shall be made on the basis of an assessment of proportionality. Among other things, account shall be taken of the gravity of the infringement, the effects of the measures and third party interests.”**

- (30) The provision thus requires both objective and reasonableness, which is specified through an assessment of proportionality under subsection 2. The provision’s listing of measures is not exhaustive, but the court is bound by the parties’ submissions.
- (31) The current wording of the provision was adopted by an Act of 31 May 2013 no. 25. The amendment was a step in the coordination and strengthening of enforcement provisions in various Acts relating to industrial legal protection.
- (32) The wording of section 59 is similar to the measures provision in Directive 2004/48/EC “on the enforcement of intellectual property rights”, Article 10. The Directive is not part of the EEA Agreement, but out of consideration for Norwegian commerce, the legislature wished to implement enforcement provisions in IPR law “which as a minimum match the provisions of the Directive”, see Proposition to the Storting 81 L (2012–2013) page 13. In several ways, the new enforcement provisions are intended to provide better protection for the rightholders than what follows from EU regulations.
- (33) Until the amendment in 2013, section 59 subsection 2, expressed the following with regard to domain name measures:
- “The court may also order other measures to prevent new trademark infringements, including imposing the infringer to delete or transfer the domain name to the owner of the infringed trademark.”**
- (34) According to the preparatory works to this provision, the specification was initiated by the Supreme Court judgment in Rt-2004-1474 *Volvo*, stating in paragraph 32 that “the more general provisions of the Act will also apply to domain names”, see Proposition to the Odelsting No. 98 (2008–2009) pages 24 and 83.
- (35) The possibility of ordering deletion or transfer of domain names is expected to be continued in the new measures provision. The following is stated in Proposition to the Storting 81 L

(2012–2013) page 121 with regard to the objective of section 59:

**“Although these options are no longer mentioned, it will still be possible to order deletion or transfer of domain names. When the use of a domain name constitutes the infringement, deletion or transfer will generally be the most expedient measure.”**

- (36) Deletion or transfer is thus considered the most expedient measure when it is the use of a domain name that constitutes the infringement. On page 22 of the Proposition, a transfer of a domain name is mentioned to illustrate that the rightholder’s position is stronger than that under the EU Directive.
- (37) Despite the starting point that the general provisions on trademark protection are applicable to domain names, the trademark right must be exercised within the scope of the territorial principle. In short, this principle entails that the trademark right only applies in Norway. When a sign is used on the Internet, the online activity must also be targeted at the Norwegian market in order to establish infringement, see Birger Stuevold Lassen and Are Stenvik, *Kjennetegnsrett* [law of signs], 3<sup>rd</sup> edition, page 294 et seq.
- (38) The appellant contends that the territorial principle also limits which *measures* may be imposed under section 59 of the Trademarks Act to prevent further infringement. An order to transfer the domain name “appear.in” to Appear TV AS has a global effect and is therefore claimed to be far more extensive than what the infringement in Norway suggests.
- (39) The possibility to order the deletion or transfer of domain names, is, as mentioned, assumed in the preparatory works to section 59, and is not disputed by the appellant. The question is nonetheless whether the preparatory works only cover domain names mainly targeted at the Norwegian market.
- (40) In support of the need for such a territorial limitation, the appellant has referred to a joint resolution prepared in 2001 by the UN’s World Intellectual Property Organization (WIPO) and the states bound by the Paris Convention for the Protection of Industrial Property. This “Joint Recommendation Concerning Provisions on the Protection of Marks, and Other Industrial Property Rights in Signs, on the Internet” gives recommendations on enforcement measures in connection with, among other things, trademark infringements on the Internet. Although the recommendations are not binding under international law, they may still “offer inspiration and guidance”, see Lassen and Stenvik, page 296.
- (41) Chapter VI of the resolution calls for prudence when it comes to the choice of enforcement measures against trademark infringements on the Internet. Article 13 contains a more general principle that the enforcement measure must be in proportion to the “commercial effect” of the infringement in the state where it is taking place. The principle of proportionality is also expressed in the subsequent provisions. Article 15 advises most clearly against measures with a global effect. The following is stated under the heading “Limitation on Prohibition to Use a Sign on the Internet”:

**“(1) Where the use of a sign on the Internet in a Member State infringes a right, or amounts to an act of unfair competition, under the laws of that Member State, the competent authority of the Member State should avoid, wherever possible, imposing a remedy that would have the effect of prohibiting any future use of the sign on the Internet.**

**(2) The competent authority shall not, in any case, impose a remedy that would prohibit future use of the sign on the Internet, where**

- (i) the user owns a right in the sign in another Member State, uses the sign with the consent of the owner of such a right, or is permitted to use the sign, in the manner in which it is being used on the Internet, under the law of another Member State to which the user has a close connection; and
- (ii) any acquisition of a right in the sign, and any use of the sign, has not been in bad faith.”

- (42) It is item 2 – with “not, in any case” – which appears as absolute. However, I cannot see that our case falls under the types referred to here. Video Communication Services AS does not have a right to use the sign “appear” in another member state, and has not claimed to have close connections to India where the domain name is registered. Furthermore, questions can be raised whether the company has used the domain name in “bad faith”, as this criterion is specified in Article 4. According to these recommendations, too, it is thus the individual assessment of proportionality that indicates which enforcement measures to use in a case like the one at hand.
- (43) Which enforcement measures the courts may implement relating to foreign domain names, is discussed in Knud Wallberg, *“Brug af andres varemærker in digitale medier: Et bidrag til afklaring af varemærkerettens indhold and grænseflader”* [the use of someone else’s trademarks in digital media: A contribution to clarification of the contents and interfaces of the trademark right], 2015, pages 316–317, which concludes:
- “If a Danish court finds that the use of a domain name infringes a right applicable in Denmark, the court may impose any measures permitted by the relevant legal bases.”**
- (44) Based on the context, it is clear that the author means transfer of a domain name to the rightholder, which, under the circumstances, may be used in addition to the “prohibition measure under trademark law”.
- (45) In prolongation of this, the author also refers to the “Registrar Accreditation Agreement” (ICANN), see Uniform Domain Name Dispute Resolution Policy (UDRP) for generic top domains, where the domain owners undertake to accept court decisions on deletion and transfer of domain names implying infringement of the right of someone else.
- (46) Against this background, I do not see any basis for a restrictive interpretation of section 59 based on the territorial principle. As a starting point, Norwegian trademarks must be secured within the scope provided in the Trademarks Act, also where the infringement takes place by use of domain names on the Internet.
- (47) This brings me to the assessment of objective and proportionality under section 59 of the Trademarks Act, where the global aspect will be included.
- (48) The question is primarily whether it is expedient to transfer the domain name “appear.in” to Appear TV AS to prevent further infringement.
- (49) The parties disagree whether the measures implemented by Video Communication Services AS are sufficient to comply with the prohibition in the Court of Appeal’s conclusion item 1 against the use of “‘appear’ as a mark in any form, including ... ‘appear in’, in connection with communication services”.
- (50) As I have already mentioned, Norwegian users who enter “appear.in” will now be redirected to a website with the following text:



**“As a result of trademark dispute the video conference service appear.in offered by Video Communication Services AS has changed its name. The new name is Whereby and the domain is whereby.com.**

**Take me to whereby.com.”**

- (51) Thus, the users are informed of the trademark dispute and of the fact that the new name of the video conference service is “Whereby”. Users reading this are not likely to perceive “appear.in” as an indication of the commercial origin of the video conference service, see the Supreme Court judgment HR-2019-1743-A *Popcorn-time.no* paragraph 29.
- (52) On the other hand, the domain name “appear.in” redirects the user to a website with information on the new name of the video conference services as well as a link to the website “whereby.com” where the service is available. In my view, this constitutes a clear infringement of Appear TV AS’s trademarks. As for the relationship between information on commercial origin and misuse of someone else’s trademarks, I refer to the Supreme Court judgment Rt-2004-1474 *Volvo* paragraph 46:

**“Admittedly, it is firmly expressed on Hoppestad’s website that he is an independent importer. But this is not clear until after one has entered the website. Then – as emphasised by the respondent – there has already been an abuse of goodwill.”**

- (53) As mentioned, the prohibition in item 1 of the Court of Appeal’s conclusion has been brought before the courts for enforcement under section 13-16 of the Enforcement Act. This provision concerns enforcement of duties to abstain or sustain, and enforcement takes the form of a deposit of security. The prohibition does not give any actual control over the future use of the domain name. In Proposition to the Storting 81 L (2012–2013) item 5.1 on applicable law, the Ministry states that precaution measures under section 59 have the same aim as a prohibition judgment, “but functions as a supplement to such a judgment, as the measures make it difficult to commit new infringements”. In other words, it is not a question of alternative, but of complementary reactions.
- (54) Against this background, I agree with the respondent that a transfer of the domain name “appear.in” to Appear TV AS promotes the objective of preventing continued trademark infringements in Norway.
- (55) The question next is whether such a transfer is reasonable, as this criterion is specified through the assessment of proportionality in section 59 subsection 2. A discretionary balancing must be carried out based on the gravity of the infringement, the effects of the measure and the third-party interests.
- (56) The appellant has referred to the so-called TRIPS Agreement – Agreement on Trade-Related Aspects of Intellectual Property Rights – whose Article 46 on enforcement procedures instructs a similar assessment of proportionality. The Agreement is part of the WTO Agreement, by which Norway is bound under international law. The TRIPS Agreement contains minimum requirements for protection of intellectual property rights. The initial general enforcement provision in Article 41, which is emphasised in particular by the appellant, reads:

**“1. Members shall ensure that enforcement procedures as specified in this Part are available under their law so as to permit effective action against any act of infringement of intellectual**

**property rights covered by this Agreement, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements. These procedures shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.”**

- (57) In other words, while the measure must not create barriers to “legitimate trade”, it must be efficient enough to prevent future infringements. Similar formulations are used in the EU Directive, Article 3 (2).
- (58) Bearing this in mind, I now turn to the individual assessment of proportionality.
- (59) When it comes to the gravity of the infringement, I confine myself to establishing that a continued use of the domain name to redirect Norwegian users to the website “whereby.com” amounts to a perpetual illegitimate infringement of Appear TV AS’s trademarks. According to information provided, between 300 and 500 Norwegian users enter “appear.in” daily. The domain name also redirects the users to information regarding the services of Video Communication Services AS, which in itself constitutes misuse. An order to transfer the domain name will effectively prevent new infringements.
- (60) At the same time, it is undisputed that the domain name has a commercial value, see the Supreme Court judgment Rt-2009-1011 paragraphs 24 to 26. The effects of the domain name being transferred to Appear TV AS, is that “appear.in” can no longer be used in the sale and marketing of the video conference service in other countries. Video Communication Services AS’s international revenues are generated both in countries where the trademarks APPEAR and APPEAR TV are protected, and in countries where they are not. There is no doubt that the transfer of the domain name is a disadvantage to the company’s business.
- (61) However, a transfer does not necessarily imply that Video Communication Services AS will be unable to engage in “legitimate trade”. The business may be continued in all countries, but under a different name. The company now seems to take the consequences of this through the global name change of the video conference service from “appear.in” to “Whereby”. The user information states that the video conference service is available on “whereby.com”, with the following explanation for the name change:
- “While appear.in is a great name and has served us well, there were complications preventing us from using it going forward. In addition to the legal trademark issue, many users find it confusing. Are we Appear? Appearin? Appear dot in? Now it’s easy: we’re Whereby.”**
- (62) I cannot see that a third party’s potential difficulties with carrying out already scheduled video conferences makes a transfer of the domain name disproportionate.
- (63) The trademark dispute has been pending since the autumn of 2016, and the domain name has been used all along with knowledge of Appear TV AS’s registered trademarks. Also after the Court of Appeal’s judgment became binding with regard to the prohibition against further infringements, the company has continued its illegitimate use of the domain name. In my opinion, any transitional problems created by a transfer of the domain name is a risk to be borne by Video Communication Services AS.
- (64) As long as it is the domain name itself that constitutes the infringement, I have difficulties seeing that the global effect makes the measure disproportionate. That would have made it impossible in practice to stop infringements by use of domain names. The extraterritorial effect

may be invoked in all countries where the domain name represents a trademark infringement. Unless the domain name is removed, the choice is, in reality, between a transfer to the rightholder or continued trademark infringements.

- (65) My conclusion is therefore that the appeal should be dismissed.
- (66) Item 3 of the Court of Appeal's conclusion orders Video Communication Services AS to "implement necessary measures" to transfer the domain name to Appear TV AS. According to information provided, there is nothing in Indian registration regulations that prevents compliance with a transfer request from Video Communication Services AS.
- (67) The appellant has not succeeded, and Appear TV AS is entitled to full compensation for costs under the main rule in section 20-2 subsection 1 of the Dispute Act. Appear TV AS claims NOK 264 562 to cover legal fees. The court considers the costs necessary and the costs claim is accepted, see section 20-5 subsection 1.
- (68) In vote for the following

#### J U D G M E N T :

- 1. The appeal is dismissed.
  - 2. Video Communication Services AS will pay costs in the Supreme Court of NOK 264 562 – twohundredandsixtyfourthousandfivehundredandsixtytwo – to Appear TV AS within 2 – two – weeks of service of this judgment.
- (69) Justice **Matheson:** In agree with Justice Arntzen in all material respects and with her conclusion.
  - (70) Justice **Bull:** Likewise.
  - (71) Justice **Steinsvik:** Likewise.
  - (72) Justice **Webster:** Likewise.
  - (73) Following the voting, the Supreme Court gave this

#### J U D G M E N T :

- 1. The appeal is dismissed.
- 2. Video Communication Services AS will pay costs in the Supreme Court of NOK 264 562 – twohundredandsixtyfourthousandfivehundredandsixtytwo – to Appear TV AS within 2 – two – weeks of service of this judgment.