

Formal Warning

Section 41 of the *Spam Act 2003*

TO: SThree Australia Pty Ltd ACN 126 409 103
OF: Level 9, 1 Market Street
SYDNEY NSW 2000

ATTENTION: Messrs Stephen Hornbuckle, Stuart Hugo Luke Foster,
Neil Andrew Willis-Stovold, Directors

I, Julia Cornwell McKean, delegate of the Australian Communications and Media Authority (the **ACMA**), being satisfied that SThree Australia Pty Ltd ACN 126 409 103, (**SThree**) has contravened subsection 16(1) and 18(1) of the *Spam Act 2003* (the **Spam Act**):

HEREBY issue SThree a formal warning under section 41 of the Spam Act for six contraventions of subsections 16(1) and 18(1) of the Spam Act, being a civil penalty provision.

ACMA Investigation

On 10 November 2011, the ACMA commenced an investigation into allegations that SThree may have contravened subsections 16(1) and 18(1) of the Spam Act by sending, or causing to be sent, commercial electronic messages that were unsolicited, and that did not contain an unsubscribe facility.

Obligations imposed under subsection 16(1) of the Spam Act

1. Subsection 16(1) of the Spam Act provides that:

- (1) a person must not send, or cause to be sent, a commercial electronic message that:
 - (a) has an Australian link; and
 - (b) is not a designated commercial electronic message.

“Commercial electronic message” is defined in section 6 of the Spam Act.

“Designated commercial electronic message” is defined in schedule 1 of the Spam Act.

If a commercial electronic message falls within the definition of “designated commercial electronic message” subsection 16(1) of the Spam Act does not apply.

Obligations imposed under subsection 18(1) of the Spam Act

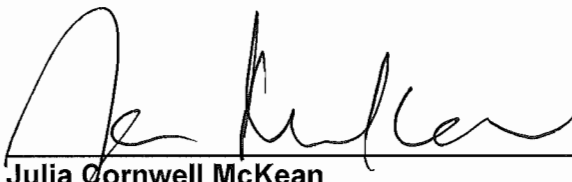
2. Subsection 18 (1) of the Spam Act provides that:

- (1) a person must not send, or cause to be sent, a commercial electronic message that:
- (a) has an Australian link; and
 - (b) is not a designated commercial electronic message
- unless:
- (c) the message includes:
 - (i) a statement to the effect that the recipient may use an electronic address set out in the message to send an unsubscribe message to the individual or organisation who authorised the sending of the first-mentioned message; or
 - (ii) a statement to similar effect.
 - (d) The statement is presented in a clear and conspicuous manner; and
 - (e) The electronic address is reasonably likely to be capable of receiving:
 - (i) The recipient's unsubscribe message (if any); and
 - (ii) A reasonable number of similar unsubscribe messages sent by other recipients (if any) of the same message;at all times during a period of at least 30 days after the message is sent

Details of the contraventions

- (ii) As a result of its investigation into this matter, and taking into account complaints made to the ACMA and information provided by SThree, the ACMA has concluded that:
- a. SThree sent five electronic messages, with an Australian link, between 22 June 2011 and 14 September 2011;
 - b. the messages were commercial electronic messages as defined in section 6 of the Spam Act;
 - c. the message sent by SThree on 22 June 2011 was sent without the consent of the relevant electronic account-holder as required by subsection 16(1) of the Spam Act; and
 - d. the five messages sent between 22 June 2011 and 14 September 2011 did not contain a functional unsubscribe message as required by section 18 of the Spam Act.

Dated this 6th day of January 2012



Julia Cornwell McKean
Delegate of the Australian Communications and Media Authority