

Formal Warning

Section 41 of the *Spam Act 2003*

TO: Image Marketing Group Limited
NZ Company Number 1866021

OF: c/o C M Business Services Ltd, 3/15 Pannill Place, Albany, Auckland,
0632, New Zealand

ATTENTION: Mr Brendan Battles, Director

I, Vince Humphries, delegate of the Australian Communications and Media Authority (**the ACMA**), being satisfied that Image Marketing Group Limited, NZ Company Number 1866021, (**IMG**) has contravened subsection 16(1) of the *Spam Act 2003* (**the Spam Act**):

HEREBY issue IMG a formal warning under section 41 of the Spam Act for 44 contraventions of subsection 16(1) of the Spam Act being a civil penalty provision.

ACMA Investigation

On 26 February 2010, the ACMA commenced an investigation into allegations that IMG may have contravened section 16(1) of the Spam Act by sending, or causing to be sent, commercial electronic messages that were unsolicited.

Obligations imposed under subsection 16(1)

1. Subsection 16(1) of the 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 Act.

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

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

Details of the contraventions

2. As a result of its investigation into this matter, and taking into account complaints made to the ACMA and information and documents provided by IMG and others, the ACMA has concluded that:
 - a. IMG sent 44 electronic messages, with an Australian link, between 1 March 2010 and 31 November 2010;
 - b. the messages were commercial electronic messages as defined in section 6 of the Spam Act; and
 - c. the messages were sent by IMG without the consent of the electronic account holders as required by subsection 16(1) of the Spam Act.

Dated this 19th day of August 2011



Vince Humphries

Delegate of the Australian Communications and Media Authority