

## Formal Warning

### Section 41 of the *Spam Act 2003*

TO: Moosta Pty Ltd ACN 149 983 264  
OF: c/- Borgeaud & Co  
Unit 2, 19 Railway Parade  
Darra, QLD 4076

ATTENTION: Mr Michael Glenn Lazarus, Director

I, Vince Humphries, delegate of the Australian Communications and Media Authority (**ACMA**), being satisfied that Moosta Pty Ltd ACN 149 983 264 (**Moosta**) has contravened subsection 18(1) of the *Spam Act 2003* (**Spam Act**):

**HEREBY** issue Moosta a formal warning under section 41 of the Spam Act for eight contraventions of subsection 18(1) of the Spam Act, being a civil penalty provision.

#### **ACMA Investigation**

On 30 January 2012, the ACMA commenced an investigation into allegations that Moosta may have contravened subsection 18(1) of the Spam Act by sending, or causing to be sent, commercial electronic messages that did not contain an unsubscribe facility.

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

1. 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 messageunless:
    - (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; and
    - (f) the electronic address is legitimately obtained; and

- (g) the electronic address complies with the condition or conditions (if any) specified in the regulations.

**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 Moosta, the ACMA has concluded that:
- a. Moosta sent eight electronic messages, with an Australian link, between 17 October 2011 and 10 January 2012;
  - b. the messages were commercial electronic messages as defined in section 6 of the Spam Act; and
  - c. the messages did not contain a functional unsubscribe message as required by subsection 18(1) of the Spam Act.

Dated this 4<sup>th</sup> day of April 2012



---

**Vince Humphries**  
**Delegate of the Australian Communications and Media Authority**