

Formal Warning

Section 41 of the *Spam Act 2003*

TO: Ezystays Pty Ltd ACN 133 359 556
OF: Level 1, 146 Mason Street
NEWPORT VIC 3015

ATTENTION: Mr Greg Buckley, Director

I, Vince Humphries, delegate of the Australian Communications and Media Authority (**the ACMA**), being satisfied that Ezystays Pty Ltd ACN 133 359 556, (**Ezystays**) has contravened subsection 16(1) of the *Spam Act 2003* (**the Spam Act**):

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

ACMA Investigation

On 11 March 2011, the ACMA commenced an investigation into allegations that Ezystays 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) 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.

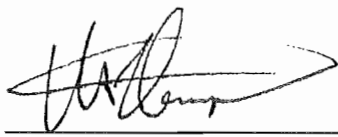
“Designated commercial electronic message” is defined in schedule 1 of the Spam Act.

If a commercial electronic message falls within the definition of “designated commercial electronic message” section 16(1) of the Spam Act 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 provided by Ezystays, the ACMA has concluded that:
 - a. Ezystays sent 56 electronic messages, with an Australian link, between 15 January 2011 and 18 May 2011;
 - b. the messages were commercial electronic messages as defined in section 6 of the Spam Act; and
 - c. the messages were sent by Ezystays without the consent of the electronic account-holder as required by subsection 16(1) of the Spam Act.

Dated this 23rd day of February 2012



Vince Humphries

Delegate of the Australian Communications and Media Authority