

Formal Warning Section 41 of the Spam Act 2003

To: Ooh Aah Productions Pty Ltd ACN 614 928 264 trading as Rainbow Flag Australia
Of: 5 Valentine Lane
Cranbourne North VIC 3977

I, Jeremy Fenton, delegate of the Australian Communications and Media Authority (ACMA), being satisfied that Ooh Aah Productions Pty Ltd ACN 614 928 264 trading as Rainbow Flag Australia (Rainbow Flag) has contravened section 16(1) of the Spam Act 2003 (the Spam Act), as described below;

HEREBY issue a formal warning under section 41 of the Spam Act, for contraventions of section 16(1) of the Spam Act, namely sending commercial electronic messages without consent.

ACMA Investigation

On 15 May 2020, the ACMA commenced an investigation into Rainbow Flag for alleged breaches of the Spam Act. Rainbow Flag did not demonstrate that it had consent from the relevant account-holder to send five commercial electronic messages to five email addresses.

Obligations

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.

Subsection 16(2) provides that subsection 16(1) does not apply if the relevant electronic account-holder consented to the sending of the message.

Details of the contraventions

The ACMA, after investigation, has reasonable grounds to believe that, between 29 October 2019 and 2 February 2020:

- (a) Rainbow Flag sent five commercial electronic messages to five electronic addresses;
- (b) The messages were commercial electronic messages as they were for the purpose of promoting the products and services of Rainbow Flag, being an offer to advertise on its online directory;
- (c) The commercial electronic messages have an Australian link as Rainbow Flag is a business registered in Australia;
- (d) The messages were not designated commercial electronic messages, as defined in Schedule 1 to the Spam Act;
- (e) Rainbow Flag did not demonstrate it had the consent of the relevant account-holders to send the relevant messages.

Dated this 4th day of September 2020



Jeremy Fenton
Delegate of the Australian Communications and Media Authority