

Formal warning

Section 41 of the *Spam Act 2003*

TO: McDonald's Australia Limited ACN 008 496 928
OF: 21 Central Avenue
Thornleigh NSW 2120

ATTENTION: The Directors

I, Julia Cornwell McKean, delegate of the Australian Communications and Media Authority (**ACMA**), being satisfied that McDonald's Australia Limited ACN 008 496 928 (**McDonald's**) has contravened subsections 16(1) and 18(1) of the *Spam Act 2003* (**Spam Act**):

HEREBY issue McDonald's a formal warning under section 41 of the Spam Act for one or more contraventions of subsection 16(1) of the Spam Act and one or more contraventions of subsection 18(1) of the Spam Act, each being a civil penalty provision.

ACMA investigation

On 24 November 2011, the ACMA commenced an investigation into whether McDonald's may have contravened subsection 16(1) of the Spam Act by sending, or causing to be sent, commercial electronic messages without the consent of the electronic account-holder and 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 16(1) of the Spam Act

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

16 Unsolicited commercial electronic messages must not be sent

- (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.

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

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

18 Commercial electronic messages must contain a functional unsubscribe facility

- (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; 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

As a result of its investigation into this matter, and taking into account information provided by McDonald's, the ACMA has concluded that:

- a. McDonald's sent, or caused to be sent, one or more electronic messages, with an Australian link, between 19 September 2011 and 2 February 2012;
- b. the messages were commercial electronic messages as defined by Section 6 of the Spam Act;
- c. the messages were sent without the consent of the electronic account-holder as required by subsection 16(1) of the Spam Act; and
- d. the messages did not contain a functional unsubscribe message as required by subsection 18(1) of the Spam Act.

Dated this 13th day of December 2012



Julia Cornwell McKean
Delegate of the Australian Communications and Media Authority