

## Formal Warning

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

TO: Global Billing Solutions Pty Ltd ACN 135 029 748  
OF: Level 39, 'The Citigroup Centre'  
SYDNEY NSW 2000

ATTENTION: [REDACTED], Director

I, Vince Humphries, delegate of the Australian Communications and Media Authority (the **ACMA**), being satisfied that Global Billing Solutions Pty Ltd ACN 135 029 748 (**GBS**) has contravened subsections 16(1) and 18(1) of the *Spam Act 2003* (the **Spam Act**):

**HEREBY** issue GBS a formal warning under section 41 of the *Spam Act* for four contraventions of subsection 16(1) of the *Spam Act* and four contraventions of subsection 18(1) of the *Spam Act*, being civil penalty provisions.

#### **ACMA Investigation**

On 28 January 2011, the ACMA commenced an investigation into allegations that GBS may have contravened subsections 16(1) and 18(1) of the *Spam Act* by sending, or causing to be sent, commercial electronic messages that were unsolicited; and that did not contain a functional unsubscribe facility.

#### **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" subsection 16(1) of the Spam Act does not apply.

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

2. 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.

### **Details of the contraventions**

As a result of its investigation into this matter, and taking into account complaints made to the ACMA and information provided by GBS, the ACMA has concluded that:

- a. GBS sent four electronic messages, with an Australian link, between 1 July 2010 and 6 August 2010;
- b. the messages were commercial electronic messages as defined in section 6 of the Spam Act;
- c. the messages were sent by GBS without the consent of the electronic account-holder, as required by subsection 16(1) of the Spam Act; and
- d. the messages were sent by GBS without a functional unsubscribe facility, as required by subsection 18(1) of the Spam Act.

Dated this 23rd day of March 2012



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