

## Formal warning

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

TO: Aussie Web Tech Pty Ltd ACN 145 769 204  
OF: C/- Morris Cohen, Glen & Co  
Level 1, 18 Camberwell Road  
Hawthorn East VIC 3123

ATTENTION: Mr Roger Vinod, Director

I, Vince Humphries, delegate of the Australian Communications and Media Authority (**ACMA**), being satisfied that Aussie Web Tech Pty Ltd ACN 145 769 204 (**Aussie Web Tech**) has contravened subsection 18(1) of the *Spam Act 2003* (**Spam Act**):

HEREBY issue Aussie Web Tech a formal warning under section 41 of the Spam Act for eleven contraventions of subsection 18(1) of the Spam Act, being a civil penalty provision.

#### **ACMA investigation**

On 23 April 2012, the ACMA commenced an investigation into allegations that Aussie Web Tech 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

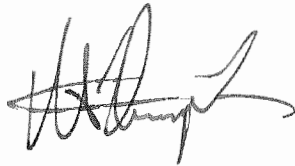
- (f) the electronic address is legitimately obtained; and
- (g) the electronic address complies with the condition or conditions (if any) specified in the regulations.

### **Details of the contraventions**

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

- a. Aussie Web Tech sent 11 electronic messages, with an Australian link;
- b. the messages were commercial electronic messages as defined by 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 24<sup>th</sup> day of August 2012



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