

Million dollar penalties issued in first SMS spam case

In a landmark decision made on 23 October, the Federal Court in Brisbane imposed a total of \$15.75 million in penalties for contraventions of the *Spam Act 2003* following the ACMA's first court action taken against unsolicited SMS messages.

'This is a significant outcome for all mobile phone users,' said Chris Cheah, Acting Chair of the ACMA. 'The maximum penalties provided for under the Spam Act are very high. The ACMA considers the substantial penalties imposed by the court in this case show that spam will not be tolerated in Australia.'

The ACMA instituted proceedings against eight respondents in the Federal Court in December 2008, alleging contraventions of both acts in relation to premium SMS chat services. The ACMA alleged that the respondents were engaged in a complicated scheme to obtain mobile phone numbers from members of dating websites, using fake member profiles, in order to send commercial electronic messages by SMS.

In the ACMA's view the conduct of these respondents was particularly malicious and deceitful as it deliberately and systematically preyed upon vulnerable people, offering false hope and expectations.

In August 2009, two companies — Mobilegate Ltd and Winning Bid Pty Ltd — and three individuals — Simon Anthony Owen, Tarek Andreas Salcedo and Glenn Christopher Maughan — were found, by default judgment of the court, to have contravened the Spam Act and the *Trade Practices Act 1974*.

'In the ACMA's view the conduct of these respondents was particularly malicious and deceitful as it deliberately and systematically preyed upon vulnerable people, offering false hope and expectations,' Mr Cheah said.

The ACMA alleged that:

- > after the numbers were obtained, unsolicited messages were sent to the mobile phones offering the opportunity to chat via SMS using services described as 'Safe Divert' or 'Maybemeet'
- > the chat was not offered by genuine members of dating websites but by employees of Mobilegate and Winning Bid
- > consumers were charged up to five dollars per message
- > when users questioned whether the messages were from a real person, they were told that it was a real person who was using the 'Safe Divert' service to keep their mobile phone number private.

The ACMA believes the scheme generated more than \$2 million in proceeds.

As the time of publication, a further hearing was due to commence in relation to the allegations against the remaining three respondents, Jobspy Pty Ltd, Scott Mark Moles and Scott Gregory Phillips. 📧

Australians are encouraged to report spam to the ACMA by visiting the website www.spam.acma.gov.au or calling 1300 855 180.

The court handed down the following penalties in relation to these companies and individuals:

	Penalty (\$ million)
Mobilegate Ltd	5
Winning Bid Pty Ltd	3.5
Simon Anthony Owen	3
Tarek Andreas Salcedo	3
Glenn Christopher Maughan	1.25

