

ACMA accepts undertakings after Spam Act investigation

In early November, the ACMA accepted enforceable undertakings from three companies—Vodafone Hutchison Australia Pty Ltd (VHA), New Dialogue Pty Ltd (New Dialogue) and Big Mobile Pty Ltd (Big Mobile)—and issued a formal warning to Coca-Cola South Pacific Pty Ltd (CCSP) after investigating alleged breaches of the *Spam Act 2003* arising from a marketing campaign that promoted certain Coca-Cola products through SMS.

On 2 October 2008, 50,000 SMS messages promoting certain Coca-Cola products were sent.

The ACMA alleged that the messages did not contain information about how a recipient could unsubscribe from receiving further messages, or about how the recipient could contact CCSP, the authorising organisation.

The message read:

'Take a hint from your PC and reboot. You'll work faster. Reclaim your lunch hour with a friend. Escape with a Coca-Cola lunch break.'

On 9 October 2008, a further 50,000 SMS messages were sent containing the same message text.

'The ACMA considers that well resourced companies should be compliance leaders,' said Chris Chapman, Chairman of the ACMA. 'There is no excuse for them to fall short in their obligations under the Spam Act for SMS marketing campaigns.'

The ACMA has accepted an enforceable undertaking from VHA, which includes a financial component of \$110,000. The undertaking was offered by VHA in response to three ACMA investigations into alleged breaches of the Spam Act (including the Coca-Cola marketing campaign). VHA has undertaken to appoint an independent auditor to monitor and make recommendations to improve Spam Act compliance. VHA has also undertaken to provide Spam Act training for all employees.

The ACMA has also accepted enforceable undertakings from media agency New Dialogue and content aggregator Big Mobile in relation to the Coca-Cola marketing campaign. In accordance with its enforceable undertaking, New Dialogue has paid

'VHA, New Dialogue and Big Mobile are businesses which by their very nature are heavily involved in SMS marketing campaigns,' said Mr Chapman.

'The ACMA nonetheless notes their commitment to the process of achieving compliance with the requirements of the Spam Act. I would keenly hope that their actions and responses provide a sobering reminder to all of the players in the SMS marketing industry about the importance of compliance.'

Also as a result of the ACMA's findings, a formal warning has been issued to CCSP for causing commercial electronic messages to be sent without an unsubscribe facility and for not providing contact information, as required under the Spam Act. ☛

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an amount of \$22,000. Big Mobile has undertaken to pay compensation to each recipient of any SMS message that breaches the Spam Act during the term of the enforceable undertaking (12 months).

The enforceable undertakings provided by VHA, New Dialogue and Big Mobile are available on the ACMA's website at www.acma.gov.au/undertakings.

Complaints about spam can be made by calling the ACMA on 1300 855 180 or at www.spam.acma.gov.au.