

Success for the ACMA in landmark SMS spam case

The ACMA has been successful in obtaining injunctions and declarations against a number of parties involved in its first SMS spam case before the Federal Court. The matter relates to the sending of unsolicited commercial SMS messages.

Justice Logan gave default judgment on 14 August 2009 against five respondents, Mobilegate Ltd, Winning Bid Pty Ltd, Mr Simon Anthony Owen, Mr Tarek Andreas Salcedo and Mr Glenn Christopher Maughan, concerning breaches of the *Spam Act 2003*.

'This is the first SMS spam case that the ACMA has brought before the courts,' said Chris Chapman, Chairman of the ACMA. 'The significant resources that the ACMA has put into this matter, again demonstrates our commitment to protecting Australians against illegal conduct.'

The ACMA instituted proceedings against eight respondents in the Federal Court in Brisbane in December 2008, alleging contraventions of the *Spam Act 2003* and the *Trade Practices Act 1974* 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.

Unsolicited messages were then sent to the mobile phone numbers, offering the opportunity to chat via SMS using services described as the 'Safe Divert' or 'Maybemeet' services. The chat was not offered by genuine members of dating websites but by employees of Mobilegate Ltd and Winning Bid Pty Ltd. Consumers were charged up to five dollars per message.

In delivering his judgment, Justice Logan noted that the conduct alleged disclosed 'sustained and systemic violation of statutory prohibitions rather than a mere isolated aberration.'

A hearing as to penalty is pending against the five respondents mentioned above.

A further hearing is scheduled to commence on 30 November 2009 against the remaining three respondents. ☎

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



How to complain about SMS spam scams:
Internet: www.spam.acma.gov.au Phone: 1300 855 180