



Infringement Notice

Spam Act 2003

I, Jeremy Fenton, an authorised person for the purposes of clause 9 of Schedule 3 to the *Spam Act 2003 (Spam Act)*, having reasonable grounds to believe that Singtel Optus Pty Limited ACN 052833208 (**Optus**), has committed one or more contraventions of a particular civil penalty provision, HEREBY give an infringement notice (**the Notice**) under subclause 3(1) of Schedule 3 to the Spam Act to:

Singtel Optus Pty Limited ACN 052833208

at

Building C, Level 4
1-7 Lyonpark Road
MAQUARIE PARK NSW 2113

Details of Alleged Civil Contraventions

It is alleged that Optus contravened subsection 16(1) of the Spam Act by sending, or causing to be sent, 193 commercial electronic messages to electronic addresses that had an Australian link and which were not designated commercial electronic messages without the consent of the relevant electronic account holder. Schedules 1 and 2 to this infringement notice set out brief details of the alleged civil contraventions.

Amount of Penalty

The total pecuniary penalty (**the penalty**) for the alleged civil contraventions is \$504,000. The penalty is calculated in accordance with item 2 of the table under subclause 5(1) of Schedule 3 to the Spam Act, as set out in paragraph 4.1 of Schedule 1 to this Notice.

Payment of Penalty

The penalty should be paid to the Australian Communications and Media Authority (ACMA), on behalf of the Commonwealth, into the following account within 28 days of receipt of the Notice. Please include the narration "Optus –UCES" with your payment:

[REDACTED]

If the penalty specified in the Notice is paid to the ACMA, on behalf of the Commonwealth, within 28 days after the Notice is given to Optus, the matters outlined in this Notice will not be dealt with by the Federal Court of Australia and any liability for the alleged contraventions that are the subject of this Notice is discharged.

DATE: 25 November 2019

[REDACTED]

Jeremy Fenton
Executive Manager
Consumer, Consent and Numbers Branch
Australian Communications and Media Authority

SCHEDULE 1

In accordance with Clause 4 of Schedule 3 to the Spam Act, brief details of each of the alleged civil contraventions are set out below.

1. Background

- 1.1. Optus is a registered company under the *Corporations Act 2001*, with a registered office at Building C, Level 4, 1-7 Lyonpark Road, Macquarie Park, NSW 2113.
- 1.2. On 9 October 2018, the ACMA commenced an investigation into whether Optus had contravened the Spam Act.
- 1.3. Before commencing the investigation, the ACMA had received complaints from consumers claiming that Optus sent commercial electronic addresses to electronic addresses without consent.

2. Matters giving rise to the Infringement Notice

- 2.1. Between 28 November 2018 and 4 December 2018, Optus sent or caused to be sent commercial electronic messages to electronic addresses.
- 2.2. Optus provided information that showed that one of the purposes of the messages was to offer to supply, or to advertise or promote goods or services sold by Optus. Therefore, the messages described at paragraph 2.1 were commercial electronic messages, as defined in section 6 of the Spam Act.
- 2.3. The commercial electronic messages were not 'designated' commercial electronic messages as described in Schedule 1 to the Spam Act.
- 2.4. The commercial electronic messages had an Australian link as defined in section 7 of the Spam Act. Optus, an organisation whose central management and control is in Australia, sent, or authorised the sending of the messages.
- 2.5. The commercial electronic messages were sent to the electronic addresses noted in paragraph 2.1 without the consent of the relevant electronic account-holders.
- 2.6. The electronic messages were sent after the relevant electronic account-holders had withdrawn consent for Optus to send, or cause to be sent, commercial electronic messages to the electronic account-holder's electronic address, and that withdrawal of consent had taken effect in accordance with clause 6 of Schedule 2 to the Spam Act.
- 2.7. Information provided by Optus indicates this was due to several system failures that occurred between November 2016 and November 2018. Optus did not provide information to the ACMA to demonstrate that it had adequate quality assurance processes in place at the time of the alleged contraventions.

3. Relevant civil penalty provisions of the Spam Act

- 3.1. Subsection 16(1) of the Spam Act provides that a person must not send, or cause to be sent, a commercial electronic message that has an Australian link and is not a designated message.
- 3.2. Subsection 16(2) of the Spam Act provides that subsection (1) does not apply if the relevant electronic account-holder consented to the sending of the message.
- 3.3. The commercial electronic messages sent or caused to be sent by Optus to each of the electronic addresses identified in Schedule 2 were sent without the consent of the relevant electronic account-holder, between 28 November and 4 December 2018.
- 3.4. There are, therefore, reasonable grounds to believe that Optus has contravened subsection 16(1) of the Spam Act between 28 November and 4 December 2018, as set out in Schedule 2 to this Notice.
- 3.5. Subsection 16(1) of the Spam Act is a civil penalty provision.

4. The amount of the penalty

4.1. The total penalty specified in this Notice is \$504,000, calculated in accordance with the table in clause 5(1) of Schedule 3 to the Spam Act, as shown in the table below.

Penalties for contraventions of subsections 16(1) of the Spam Act

Date of contravention	Number of contraventions of subsection 16(1)	Penalty units¹	Penalty imposed
28 November 2018	21	420	\$88,200
29 November 2018	46	920	\$193,200
30 November 2018	3	60	\$12,600
4 December 2018	123	1000	\$210,000
TOTAL	193		\$504,000

¹ At the time of the alleged contraventions, the amount of a penalty unit was \$210, as set by section 4AA of the *Crimes Act 1914*.