



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* (the **Spam Act**), having reasonable grounds to believe that Telco First Pty Ltd ACN 606963955 (**Telco First**) (formerly known as Lead My Way Pty Ltd), 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:

Telco First Pty Ltd (ACN 606963955)

at

C/o NS & Associates Pty Ltd
Suite 1230, 1 Queens Road
Melbourne VIC 3004

Details of Alleged Civil Contraventions

It is alleged that Telco First contravened:

- > subsection 16(1) of the Spam Act by causing to be sent commercial electronic messages that had an Australian link, and which were not designated commercial electronic messages, without the consent of the relevant electronic account holder.
- > subsection 17(1) of the Spam Act by causing to be sent commercial electronic messages that had an Australian link and which did not clearly and accurately identify the organisation which authorised the sending of the message and/or include accurate information about how the recipient can readily contact that organisation.
- > subsection 18(1) of the Spam Act by causing to be sent commercial electronic messages that had an Australian link, and which were not designated commercial electronic messages, and which did not contain a clear and conspicuous unsubscribe statement.

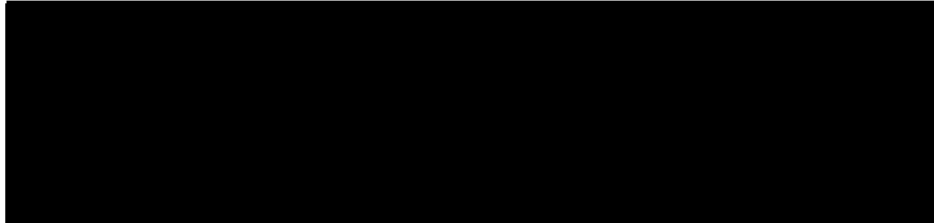
Schedules 1 and 2 to this Infringement Notice set out brief details of the alleged civil contraventions.

Amount of Penalty

The total pecuniary penalty (**the penalty**) for the alleged civil contraventions is \$79,800. 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 (the **ACMA**), on behalf of the Commonwealth, into the following account by 20 November 2020. Please include the narration "Telco First –UCES" with your payment:



If the penalty is paid

If the penalty specified in the Notice is paid to the ACMA, on behalf of the Commonwealth, by 20 November 2020, this matter 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.

If the penalty is not paid

If you do not pay the penalty within the time for payment the ACMA may take action for the alleged contravention(s).

That action may include the institution of civil penalty proceedings in the Federal Court of Australia. The penalties that the Court can impose are potentially significantly higher than that in an Infringement Notice (see section 25 of the Spam Act).

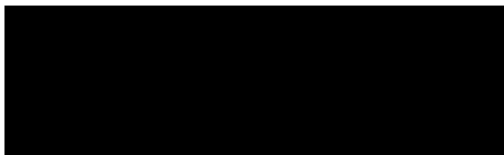
Withdrawal of the Infringement Notice

The ACMA may withdraw this Infringement Notice. It may do so of its own volition or upon your request. To be effective the withdrawal must occur within 28 days after the Infringement Notice was given.

If you wish to apply for withdrawal of the Infringement Notice, you should write as soon as practicable setting out the basis/reasons for the request. Your application should be addressed to me in the first instance.

If the Infringement Notice is withdrawn after the penalty is paid, the penalty will be refunded.

DATE: 21 July 2020



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 penalty contraventions are set out below.

1. Background

- 1.1. Telco First is a registered company under the *Corporations Act 2001*, with a registered office at c/o NS & Associates Pty Ltd, Suite 1230, 1 Queens Road, Melbourne VIC 3004.
- 1.2. On 20 September 2019, the ACMA commenced an investigation into whether Telco First had contravened the Spam Act.
- 1.3. Prior to commencing the investigation, the ACMA had received a complaint from a consumer claiming to have received a commercial electronic message from Telco First without giving consent to receive such messages, and where the message did not include information to identify and/or provide contact details for the sender, or an unsubscribe statement.
- 1.4. The ACMA found it had reasonable grounds to believe that, between 14 March 2019 and 9 August 2019, Telco First caused to be sent commercial electronic messages to electronic addresses without consent, without identifying the sender and/or contact information of the sender or without an unsubscribe statement.

2. Matters giving rise to the Infringement Notice

- 2.1. Information provided by Telco First showed that between 23 July 2019 and 26 July 2019, it caused electronic messages to be sent to the electronic addresses at Schedule 2 to this Notice, being phone numbers.
- 2.2. Telco First provided the content of each message to the ACMA, which showed that the purpose of the messages was to offer to supply, or to advertise or promote the services of Telco First. 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 defined 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. They were caused to be sent by Telco First, an organisation whose central management and control is in Australia.
- 2.5. Information provided by Telco First indicates that it could not provide evidence of the consent it relied upon where third-parties were involved in the obtaining of that consent.
- 2.6. The ACMA found Telco First could not provide information to demonstrate that it had adequate compliance processes in place so that the messages it caused to be sent contained the information required under the Spam Act.

3. Relevant civil penalty provisions of the Spam Act

3.1. Subsection 16(1)

- 3.1.1. 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 commercial electronic message.
- 3.1.2. 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.
- 3.1.3. The commercial electronic messages caused to be sent by Telco First to each of the electronic addresses identified in Schedule 2 were sent without the consent of the relevant electronic account-holder.

3.1.4. There are, therefore, reasonable grounds to believe that Telco First has contravened subsection 16(1) of the Spam Act on seven occasions on 26 July 2019, as set out in Schedule 2 to this Notice.

3.1.5. Subsection 16(1) of the Spam Act is a civil penalty provision.

3.2. *Subsection 17(1)*

3.2.1. Subsection 17(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 unless the message clearly and accurately identifies the organisation who authorised the sending of the message and the message includes accurate information about how the recipient can readily contact the organisation (**sender identification and contact information**).

3.2.2. The commercial electronic messages caused to be sent by Telco First to each of the electronic addresses identified in Schedule 2 to this Notice did not include sender identification and/or contact information.

3.2.3. There are, therefore, reasonable grounds to believe that Telco First has contravened subsection 17(1) of the Spam Act on 12 occasions on 23 July 2019, as set out in Schedule 2 to this Notice.

3.2.4. Subsection 17(1) of the Spam Act is a civil penalty provision.

3.3. *Subsection 18(1)*

3.3.1. Subsection 18(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 commercial electronic message, unless the message includes 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 organisation who authorised the sending of the message (**an unsubscribe statement**).

3.3.2. The commercial electronic messages caused to be sent by Telco First to each of the electronic addresses identified in Schedule 2 to this Notice did not include an unsubscribe statement.

3.3.3. There are, therefore, reasonable grounds to believe that Telco First has contravened subsection 18(1) of the Spam Act on 12 occasions on 25 July 2019, as set out in Schedule 2 to this Notice.

3.3.4. Subsection 18(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 \$79,800, calculated in accordance with the table in subclause 5(1) of Schedule 3 to the Spam Act, as shown in the table below.

Penalties for contraventions of the Spam Act

Relevant subsection	Date of contravention	Number of contraventions	Penalty units per contravention	Total penalty units¹	Penalty imposed
Subsection 16(1) of the Spam Act	26 July 2019	7	20	140	\$29,400
Subsection 17(1) of the Spam Act	23 July 2019	12	10	120	\$25,200
Subsection 18(1) of the Spam Act	25 July 2019	12	10	120	\$25,200
Total penalty					\$79,800

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