



## 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 Kalkine Media Pty Ltd ACN 629 651 672 (**Kalkine Media**) 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:

#### **Kalkine Media Pty Ltd**

at

Suite 202  
234-242 George Street  
Sydney NSW 2000

#### **Details of Alleged Civil Contraventions**

It is alleged that Kalkine Media contravened subsection 16(1) of the Spam Act by causing commercial electronic messages to be sent on 30 June 2020 without the consent of the relevant electronic account-holders. Schedule 1 to this Notice sets out brief details of the alleged civil contraventions.

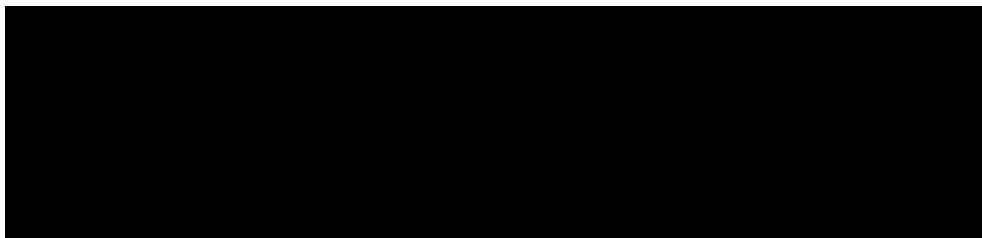
#### **Amount of Penalty**

The total pecuniary penalty (**the penalty**) for the alleged civil contraventions is \$100,800. The penalty is calculated in accordance with item 2 of the table under subclause 5(1) of Schedule 3 to the Spam Act.

#### **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 after the Notice is given**.

Please include the narration “Kalkine Media – UCES” with your payment:



### **If the penalty is paid**

If the penalty is paid to the ACMA, on behalf of the Commonwealth, **within 28 days after the Notice is given**, the 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 28 days after the Notice is given**, the ACMA may take action for the alleged contravention(s).

That action may include the institution of civil penalty proceedings in the Federal Court. 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**

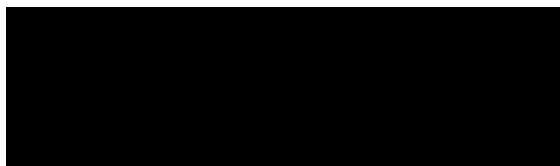
The ACMA may withdraw this Notice. To be effective, the withdrawal must occur within 28 days after the Notice was given.

If you believe that the Notice should be withdrawn, you should write to me by 13 May 2021 setting out the basis/reasons for this position. The ACMA may take this into consideration when deciding whether or not to withdraw this Notice.

If the Notice is withdrawn after the penalty is paid, the penalty will be refunded.

**Please note** that if this Notice is withdrawn, the ACMA may consider taking action, including under Part 4 of the Spam Act, for the alleged contravention(s), the subject of this Notice.

DATE: 15 April 2021



**Jeremy Fenton**  
**Acting General Manager**  
**Content and Consumer Division**  
**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. Kalkine Media is a registered company under the *Corporations Act 2001*, with a registered office at Suite 202, 234 - 242 George Street, Sydney NSW 2000.
- 1.2. On 22 September 2020, the ACMA commenced an investigation into whether Kalkine Media had contravened the Spam Act.
- 1.3. Prior to commencing the investigation, the ACMA received complaints from consumers claiming to have received commercial electronic messages from Kalkine Media without having provided consent.

### 2. Matters giving rise to the Notice

- 2.1. On 30 June 2020, Kalkine Media caused commercial electronic messages to be sent to electronic addresses.
- 2.2. The purpose of the messages was to offer to supply, or to advertise or promote, Kalkine Media's products or services. Specifically, the messages were electronic direct marketing sent on behalf of Kalkine Media's clients promoting or advertising their respective products and services. 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 Kalkine Media, an organisation whose central management and control is in Australia.
- 2.5. The ACMA's investigation established that Kalkine Media could not provide evidence of the consent it relied upon when it caused the commercial electronic messages at paragraph 2.1 to be sent.
- 2.6. Information provided by Kalkine Media during the investigation indicated it did not have adequate systems, processes and/or practices in place at the time of the alleged contraventions to prevent the commercial electronic messages at paragraph 2.1 from being caused to be sent to the electronic addresses without the consent of the relevant electronic account-holders.

### 3. Relevant civil penalty provision 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, caused to be sent by Kalkine Media to each of the electronic addresses on 30 June 2020, were sent without the consent of the relevant electronic account-holders.
- 3.4. There are, therefore, reasonable grounds to believe that Kalkine Media has contravened subsection 16(1) of the Spam Act on 30 June 2020, as set out in this Notice.
- 3.5. Subsection 16(1) of the Spam Act is a civil penalty provision (subsection 16(11) of the Spam Act).

**4. The amount of the penalty**

- 4.1. The total penalty specified in this Notice is \$100,800, calculated in accordance with the table in subclause 5(1) of Schedule 3 to the Spam Act, as set out in the table below.

**Penalties for contraventions of subsection 16(1) of the Spam Act**

Date of contravention	Civil penalty provision allegedly contravened	Number of contraventions of subsection 16(1)	Penalty units <sup>1</sup>	Penalty imposed
30 June 2020	Subsection 16(1)	24	480	\$100,800
<b>Total</b>		<b>24</b>	<b>480</b>	<b>\$100,800</b>

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<sup>1</sup> At the time of the alleged contraventions, the amount of a penalty unit was \$210, see section 4AA of the *Crimes Act 1914*.