



Infringement Notice

Do Not Call Register Act 2006

I, Jeremy Fenton, an authorised officer for the purposes of clause 8 of Schedule 3 to the *Do Not Call Register Act 2006* (**the Act**), having reasonable grounds to believe that Kalkine Pty Limited ACN 154 808 312 (**Kalkine**) has committed one or more contraventions of a particular civil penalty provision,

HEREBY give an infringement notice (**the Notice**) under clause 2 of Schedule 3 to the Act to:

Kalkine Pty Limited

at

Suite 202
234-242 George Street
Sydney, NSW 2000

Details of Alleged Contraventions of Civil Penalty Provision

It is alleged that Kalkine contravened subsection 11(1) of the Act between 27 May 2020 and 7 August 2020 (inclusive), by causing telemarketing calls to be made to Australian numbers registered on the Do Not Call Register (**the Register**), where the calls were not designated telemarketing calls. Schedule 1 to this Notice sets out brief details of the alleged contraventions of the civil penalty provision.

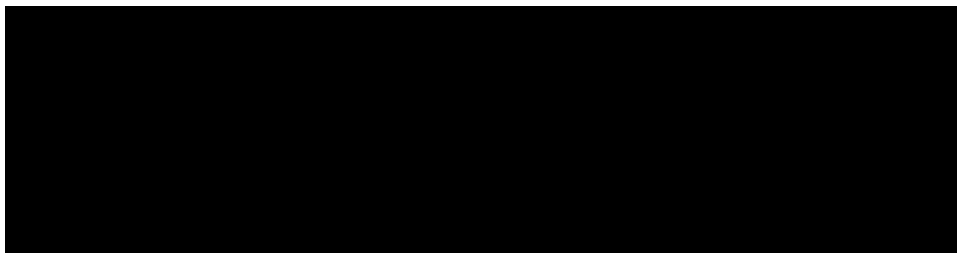
Amount of Penalty

The total pecuniary penalty (**the penalty**) for the alleged contraventions is \$251,400. The penalty is calculated in accordance with subclause 4(1) of Schedule 3 to the Act.

Payment of Penalty

The penalty should be paid to the Australian Communications and Media Authority (**ACMA**), on behalf of the Commonwealth, by deposit into the following account **within 28 days after the Notice is given**.

Please include the narration “Kalkine - 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**, this matter will not be dealt with by the Federal Court of Australia and any liability for the 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 Act).

Withdrawal of the Notice

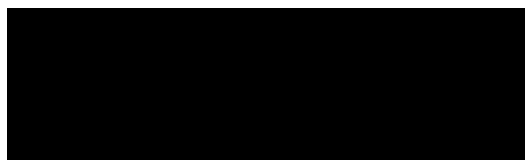
The ACMA may withdraw this Notice. To be effective, the withdrawal must occur within 28 days after the Notice was given.

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 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 3 of Schedule 3 to the Act, brief details of each of the alleged civil contraventions are set out below.

1. Background

- 1.1. Kalkine 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 had contravened the Act.
- 1.3. Prior to commencing the investigation, the ACMA received complaints from consumers claiming that telemarketing calls promoting Kalkine's services had been made to numbers on the Do Not Call Register (**the Register**).

2. Matters giving rise to the Notice

- 2.1. Information provided by Kalkine showed that between 27 May 2020 and 7 August 2020 (inclusive), Kalkine caused telephone calls to be made to 'Australian numbers' (as defined in section 4 of the Act).
- 2.2. The numbers had been on the Register for more than 30 days at the time that each of these calls were made.
- 2.3. The purpose of the calls referred to in paragraph 2.1 was to offer to supply, or to advertise or promote, its products or services. Specifically, calls were made to generate prospective consumer interest in Kalkine products or convert interested persons into paying customers. Therefore, the calls described at paragraph 2.1 were 'telemarketing calls', as defined in section 5 of the Act.
- 2.4. The calls were not 'designated' telemarketing calls as defined in Schedule 1 to the Act.
- 2.5. The ACMA's investigation established that Kalkine could not provide evidence of the consent it relied upon when it caused the telemarketing calls to be made at paragraph 2.1.
- 2.6. Information provided by Kalkine 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 calls at paragraph 2.1 from being made to numbers on the Register.

3. Relevant civil penalty provision of the Act

- 3.1. Subsection 11(1) of the Act provides that a person must not make, or cause to be made, a telemarketing call to an Australian number if the number is on the Register and the call is not a designated telemarketing call.
- 3.2. The telemarketing calls, caused by Kalkine to each of the Australian numbers between 27 May 2020 and 7 August 2020 (inclusive), were made without the consent of the relevant account-holders.
- 3.3. There are, therefore, reasonable grounds to believe that Kalkine has contravened subsection 11(1) of the Act between 27 May 2020 and 7 August 2020 (inclusive), as set out in this Notice.
- 3.4. Subsection 11(1) of the Act is a civil penalty provision (subsection 11(8) of the Act).

4. The amount of the penalty

- 4.1. The total penalty specified in the Notice is \$251,400, calculated in accordance with subclause 4(1) of Schedule 3 to the Act, as set out in the table below.

Penalties for contraventions of subsection 11(1) of the Act

Date of contraventions	Civil penalty provision allegedly contravened	Number of contraventions of subsection 11(1)	Penalty units¹	Penalty imposed
27 May 2020	Subsection 11(1)	2	40	\$8,400
23 June 2020	Subsection 11(1)	1	20	\$4,200
25 June 2020	Subsection 11(1)	1	20	\$4,200
26 June 2020	Subsection 11(1)	1	20	\$4,200
30 June 2020	Subsection 11(1)	2	40	\$8,400
7 August 2020	Subsection 11(1)	1216	1000	\$222,000
Total		1223	1140	\$251,400

¹ For the contraventions that occurred from 27 May 2020 to 30 June 2020, the amount of the penalty unit at the time of these alleged contraventions was \$210, see section 4AA of the *Crimes Act 1914*. For the contraventions that occurred on 7 August 2020, the amount of the penalty unit at the time of these contraventions was \$222, see section 4AA of the *Crimes Act 1914*.