



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 Sportsbet Pty Ltd ACN 088 326 612 (**Sportsbet**) 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:

Sportsbet Pty Ltd

at

Level 17
367 Collins Street
Melbourne VIC 3000

Details of Alleged Civil Contraventions

It is alleged that Sportsbet contravened subsection 16(1) of the Spam Act by causing commercial electronic messages (**CEMs**) to be sent between 1 January 2020 and 29 March 2021 without consent of the relevant electronic account-holders. It is also alleged that Sportsbet contravened subsection 18(1) of the Spam Act by causing CEMs to be sent in the same period without containing a functional unsubscribe facility.

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 \$2,508,600. 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 by 20 January 2022. Please include the narration "Sportsbet – UCES" with your payment:

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

If the penalty is paid

If the penalty specified in the Notice is paid to the ACMA, on behalf of the Commonwealth, by 20 January 2022, 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.

If the penalty is not paid

If you do not pay the penalty by 20 January 2022, 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 infringement 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 Matthew Anderson – Acting Executive Manager Consumer, Consent and Numbers Branch at [REDACTED] by 20 January 2022 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: 23 December 2021

[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. Sportsbet is a registered company under the *Corporations Act 2001*, with a registered office at Level 17, 367 Collins Street Melbourne 3000.
- 1.2. Sportsbet carries on business throughout Australia as a wagering provider. Sportsbet is a subsidiary of Flutter Entertainment plc.
- 1.3. On 29 March 2021, the ACMA commenced an investigation into whether Sportsbet had contravened the Spam Act.
- 1.4. Prior to commencing the investigation, the ACMA received complaints from consumers claiming to have received **CEMs** from Sportsbet without having provided their consent.

2. Matters giving rise to the Notice

- 2.1. From 15 December 2020 to 29 March 2021 (**relevant period**), Sportsbet caused CEMs to be sent to electronic addresses.
- 2.2. Information provided by Sportsbet showed that the purpose of the messages was to offer to supply, or to advertise or promote, Sportsbet's products or services. Therefore, the messages described at paragraph 2.1 were CEMs, as defined in section 6 of the Spam Act.
- 2.3. The CEMs were not 'designated' CEMs as defined in Schedule 1 to the Spam Act.
- 2.4. The CEMs had an Australian link, as defined in section 7 of the Spam Act. They were caused to be sent by Sportsbet, an organisation whose central management and control is in Australia.
- 2.5. Sportsbet has not demonstrated it had the consent of the relevant account-holders to cause the CEMs to be sent.
- 2.6. Sportsbet has also not demonstrated that the CEMs contained a functional unsubscribe facility.
- 2.7. The ACMA's investigation indicates the failure to action unsubscribe requests was largely due to a manual unsubscribe process. Sportsbet did not demonstrate that it had adequate systems, processes and practices 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 CEM 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. For the purposes of the Spam Act, consent is defined in Schedule 2 of that Act.
- 3.4. Subclause 4(1) of Schedule 2 provides that, for the purposes of the Spam Act, the consent of the relevant electronic account-holder may not be inferred from the mere fact that the relevant electronic address has been published.
- 3.5. Subclause 4(2) of Schedule 2 to the Spam Act sets out an exception to the rule in subclause 4(1) where the electronic address to which the commercial electronic message was sent was conspicuously published. The requirements to be satisfied, in order to demonstrate this exception, are set out in that subclause.
- 3.6. The CEMs, caused to be sent by Sportsbet to electronic addresses during the relevant period, were sent without the consent of the relevant electronic account-holders, after the

relevant electronic account-holders had withdrawn consent in accordance with subclause 6(1) of Schedule 2 of the Spam Act.

- 3.7. There are, therefore, reasonable grounds to believe that Sportsbet contravened subsection 16(1) of the Spam Act during the relevant period, as set out in this Notice.
- 3.8. Subsection 18(1) of the Spam Act provides that a person must not send, or cause to be sent, a CEM that has an Australian link and is not a designated message, unless the CEM contains a statement to the effect that the recipient may use an electronic address set out in the CEM to send an unsubscribe message to the person who authorised the sending of the CEM.
- 3.9. Certain CEMs, caused to be sent by Sportsbet to certain electronic addresses during the relevant period, did not include a statement as described in paragraph 3.8 above.
- 3.10. There are, therefore, reasonable grounds to believe that Sportsbet contravened subsection 18(1) of the Spam Act during the relevant period, as set out in this Notice.
- 3.11. Subsection 16(1) of the Spam Act is a civil penalty provision (subsection 16(11) of the Spam Act) and subsection 18(1) of the Spam Act is also a civil penalty provision (subsection 18(8) of the Spam Act).

4. The amount of the penalty

- 4.1. The total penalty specified in this Notice is \$2,508,600 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 units¹	Penalty imposed
12/03/2021	Subsection 16(1)	100	1000	\$222,000
22/03/2021	Subsection 16(1)	61	1000	\$222,000
23/03/2021	Subsection 16(1)	57	1000	\$222,000
24/03/2021	Subsection 16(1)	64	1000	\$222,000
25/03/2021	Subsection 16(1)	66	1000	\$222,000
26/03/2021	Subsection 16(1)	161	1000	\$222,000
27/03/2021	Subsection 16(1)	181	1000	\$222,000
28/03/2021	Subsection 16(1)	57	1000	\$222,000
29/03/2021	Subsection 16(1)	64	1000	\$222,000
Total		811	9,000	\$1,998,000

Penalties for contraventions of subsection 18(1) of the Spam Act

Date of contravention	Civil penalty provision allegedly contravened	Number of contraventions of subsection 18(1)	Penalty units	Penalty imposed
25/03/2021	Subsection 18(1)	64	500	\$111,000
26/03/2021	Subsection 18(1)	129	500	\$111,000
27/03/2021	Subsection 18(1)	81	500	\$111,000
28/03/2021	Subsection 18(1)	55	500	\$111,000
29/03/2021	Subsection 18(1)	30	300	\$66,600
Total		359	2,300	\$510,600

¹ At the time of the alleged contraventions, the amount of a penalty unit was \$222, see section 4AA of the *Crimes Act 1914*.