



Infringement Notice

Telecommunications Act 1997

I, Jeremy Fenton, an authorised infringement notice officer for the purposes of section 572L of the *Telecommunications Act 1997* (**Telecommunications Act**), having reasonable grounds to believe The Wine Group Pty Ltd ACN 613076734 (**The Wine Group**) has committed one or more contraventions of a particular civil penalty provision,

HEREBY give an infringement notice (**the Notice**) under subsection 572E(1) of the Telecommunications Act to:

The Wine Group Pty Ltd

at

Roy Spagnolo & Associates
193 Yambil Street
Griffith NSW 2680

Details of Alleged Contraventions of Civil Penalty Provisions

It is alleged that The Wine Group contravened subsection 128(1) of the Act between 3 February and 27 April 2021 by failing to comply with paragraph 13(1)(b) of the *Telecommunications (Telemarketing and Research Calls) Industry Standard 2017* (the Telemarketing Industry Standard).

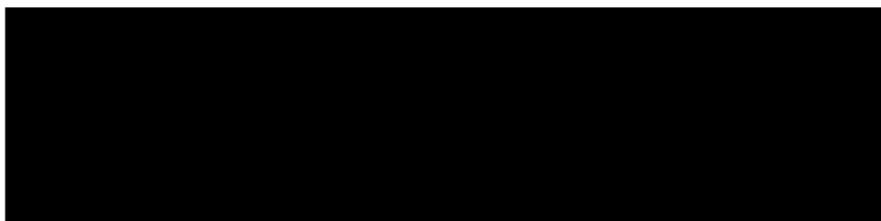
Schedule 1 to this Notice sets out brief details of the alleged civil contraventions.

Amount of Penalty

The total pecuniary penalty (**the penalty**) for the alleged civil contraventions is \$39,960. The penalty is calculated in accordance with section 572G of the Telecommunications Act, as set out in the table 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 15 April 2022. Please include the narration "TWG TIS-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 15 April 2022, the matters outlined in the 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 15 April 2022, the ACMA may take action for the alleged contraventions.

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 570 of the Telecommunications 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 as soon as practicable setting out the basis/reasons for this position. Your application should be addressed to me in the first instance. 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 section 570 of the Telecommunications Act, for the alleged contraventions, the subject of this Notice.

DATE: 18 March 2022



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

SCHEDULE 1

In accordance with section 572F of the Telecommunications Act, brief details of each of the contraventions are set out below.

1. Background

- 1.1. The Wine Group is a company registered under the *Corporations Act 2001*, with a registered office at Roy Spagnolo & Associates, 193 Yambil Street, Griffith NSW 2680.
- 1.2. The Wine Group is an online wine retailer based in Camberwell, Victoria.
- 1.3. On 18 May 2021, the ACMA commenced an investigation into whether The Wine Group had contravened the Telecommunications Act by failing to comply with the Telemarketing Industry Standard.
- 1.4. Prior to commencing the investigation, the ACMA received complaints from consumers claiming to have received telemarketing calls from The Wine Group that failed to comply with the Telemarketing Industry Standard.

2. Matters giving rise to the Notice

- 2.1. The Telemarketing Industry Standard is made by the ACMA under section 125A of the Telecommunications Act and applies to participants in each section of the telemarketing industry (section 5 of the Telemarketing Industry Standard). Pursuant to subsection 110B(2) of the Telecommunications Act, all of the persons carrying on, or proposing to carry on, telemarketing activities constitute a single section of the telemarketing industry.
- 2.2. From 3 February to 27 April 2021 (**relevant period**), The Wine Group made telephone calls. The purpose of the calls was to offer to supply, or to advertise or promote the Wine Group's products or services. Specifically, calls were made to offer The Wine Group's wine products to consumers. Therefore, the calls were telemarketing calls, as defined in section 7 of the Telecommunications Act.
- 2.3. It follows that there are reasonable grounds to believe that The Wine Group is a participant in the telemarketing industry as it carried on a telemarketing activity as defined in subsection 109B(1) of the Telecommunications Act. As such, The Wine Group must comply with the Telemarketing Industry Standard in accordance with subsection 128(1) of the Telecommunications Act.
- 2.4. The relevant calls set out in this Notice were the subject of complaints received at the ACMA. The complainants state that The Wine Group did not immediately terminate a call, or ensure that a call was immediately terminated when the call recipient asked for the call to be terminated or otherwise indicated that they did not want the call to continue (paragraph 13(1)(b) of the Telemarketing Industry Standard).
- 2.5. The ACMA has reasonable grounds to believe that during the relevant period, The Wine Group did not comply with paragraph 13(1)(b) of the Telemarketing Industry Standard.
- 2.6. The Wine Group therefore contravened subsection 128(1) of the Telecommunications Act.

3. Relevant civil penalty provision of the Telecommunications Act – section 128(1)

- 3.1. Paragraph 13(1)(b) of the Telemarketing Industry Standard specifies that a person making a telemarketing call must immediately terminate a call, or ensure that a call is immediately terminated when the call recipient asks for the call to be terminated or otherwise indicates they do not want the call to continue.
- 3.2. As a result of its investigation, the ACMA has reasonable grounds to believe that The Wine Group has contravened paragraph 13(1)(b) of the Telemarketing Industry Standard during the relevant period, as set out in this Notice.

3.3. Subsection 128(1) of the Telecommunications Act is a civil penalty provision (subsection 128(3) of the Telecommunications Act).

4. The amount of the penalty

4.1. The total penalty specified in the Notice is \$39,960, calculated in accordance with section 572G the Telecommunications Act, as shown in the table below.

Penalty for contraventions of subsection 128(1) of the Telecommunications Act

Date of contravention	Civil penalty provision allegedly contravened	Number of contraventions	Penalty units¹	Penalty imposed
7 April 2021	Subsection 128(1)	1	60	\$13,320
26 April 2021	Subsection 128(1)	1	60	\$13,320
27 April 2021	Subsection 128(1)	1	60	\$13,320
Total		3		\$39,960

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