



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 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 subclause 3(1) of Schedule 3 to the Spam Act to:

The Wine Group Pty Ltd

at

Roy Spagnolo & Associates
193 Yambil Street
Griffith NSW 2680

Details of Alleged Civil Contraventions

It is alleged that The Wine Group contravened subsection 16(1) of the Spam Act by sending commercial electronic messages (**CEMs**) between 1 February and 17 May 2021 without consent of the relevant account-holders.

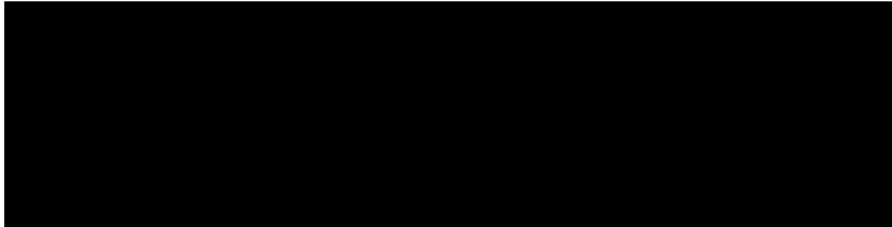
Schedule 1 to this Notice sets out brief details of the alleged civil contraventions.

Amount of Penalty

The total pecuniary penalty (**the penalty**) for the alleged civil contraventions is \$124,320. The penalty is calculated in accordance with subclause 5(1) of Schedule 3 to the Spam 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 SPAM-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 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 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 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If you believe that the Notice should be withdrawn, you should write as soon as practicable setting out the basis/reasons for this position.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 Part 4 of the Spam 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 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. 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 Spam Act.
- 1.4. Prior to commencing the investigation, the ACMA had received complaints from consumers claiming to have received commercial electronic messages to their electronic addresses from The Wine Group without having provided their consent.

2. Matters giving rise to the Infringement Notice

- 2.1. From 1 February to 17 May 2021 (**relevant period**), The Wine Group sent electronic messages to electronic addresses.
- 2.2. The purpose of the messages was to offer to supply, or to advertise or promote The Wine Group's products or services. Specifically, messages were sent to offer The Wine Group's wine products to consumers. Therefore, the messages described at paragraph 2.1 were commercial electronic messages (**CEMs**), as defined in section 6 of the Spam Act.
- 2.3. The CEMs were not 'designated' CEMs as described 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 sent by The Wine Group, an organisation whose central management and control is in Australia.
- 2.5. The CEMs were sent to the electronic addresses noted in paragraph 2.1 after the relevant electronic account-holders had withdrawn consent for The Wine Group to send CEMs to their electronic addresses, and the withdrawal of consent had taken effect in accordance with clause 6 of Schedule 2 to the Spam Act. Therefore, The Wine Group sent the CEMs without the consent of the relevant electronic account-holders.
- 2.6. Information provided by The Wine Group indicates that it failed to action unsubscribe requests due to system errors.

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. The CEMs sent by The Wine Group to electronic addresses during the relevant period were sent after the relevant electronic account-holders had withdrawn consent in accordance with subclause 6(1) of Schedule 2 of the Spam Act.
- 3.5. The ACMA has reasonable grounds to believe that The Wine Group contravened subsection 16(1) of the Spam Act during the relevant period, as set out in this Notice.
- 3.6. 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 \$124,320, 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 subsections 16(1) of the Spam Act

Date of contravention	Civil penalty provision allegedly contravened	Number of contraventions	Penalty units¹	Penalty imposed
2 April 2021	Subsection 16(1)	2	40	\$8,880
5 April 2021	Subsection 16(1)	2	40	\$8,880
8 April 2021	Subsection 16(1)	2	40	\$8,880
11 April 2021	Subsection 16(1)	2	40	\$8,880
15 April 2021	Subsection 16(1)	2	40	\$8,880
19 April 2021	Subsection 16(1)	2	40	\$8,880
22 April 2021	Subsection 16(1)	2	40	\$8,880
26 April 2021	Subsection 16(1)	2	40	\$8,880
29 April 2021	Subsection 16(1)	2	40	\$8,880
3 May 2021	Subsection 16(1)	2	40	\$8,880
6 May 2021	Subsection 16(1)	2	40	\$8,880
10 May 2021	Subsection 16(1)	2	40	\$8,880
13 May 2021	Subsection 16(1)	2	40	\$8,880
17 May 2021	Subsection 16(1)	2	40	\$8,880
Total		28		\$124,320

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