



## Infringement Notice

### ***Do Not Call Register Act 2006***

I, Jeremy Fenton, an authorised officer for the purposes of clause 8, Schedule 3 to the *Do Not Call Register Act 2006* (**DNCR 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 2(1) of Schedule 3 to the DNCR Act to:

#### **The Wine Group Pty Ltd**

at

Roy Spagnolo & Associates  
193 Yambil Street  
Griffith NSW 2680

#### **Details of Alleged Contraventions of Civil Penalty Provision**

It is alleged that The Wine Group contravened subsection 11(1) of the DNCR Act by making telemarketing calls to numbers registered on the Do Not Call Register (**the Register**) between 2 February and 18 May 2021 without the 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 \$39,960. The penalty is calculated in accordance with subclause 4(1) of Schedule 3 to the DNCR 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, by deposit into the following account by 15 April 2022. Please include the narration "TWG DNCR-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 DNCR 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 DNCR 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 3 of Schedule 3 to the DNCR Act, brief details of each of the 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 DNCR Act.
- 1.4. Prior to commencing the investigation, the ACMA received complaints from consumers claiming to have received telemarketing calls to numbers on the Register from The Wine Group without having provided their consent.

### 2. Matters giving rise to the Notice

- 2.1. From 2 February to 18 May 2021 (**relevant period**), The Wine Group made telephone calls to Australian numbers (as defined in section 4 of the DNCR Act) on the Register for more than 30 days at the time that each of these calls were made.
- 2.2. 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 described at paragraph 2.1 were 'telemarketing calls', as defined in section 5 of the DNCR Act.
- 2.3. The calls were not 'designated' telemarketing calls as described in Schedule 1 to the DNCR Act.
- 2.4. The Wine Group has not demonstrated it had the consent of the relevant account-holders to make the telemarketing calls.
- 2.5. The telemarketing calls were made to numbers noted in paragraph 2.1 after the relevant account-holders had withdrawn consent for The Wine Group to make telemarketing calls to their number.
- 2.6. The Wine Group did not provide sufficient evidence to suggest a reasonable possibility that it took reasonable precautions and exercised due diligence to avoid the alleged contraventions.

### 3. Relevant civil penalty provision of the Act

- 3.1. Subsection 11(1) of the DNCR Act provides that a person must not make, or cause to be made, a telemarketing call to an Australian number if the number on the Register and the call is not a designated telemarketing call.
- 3.2. Subsection 11(2) of the DNCR Act provides that subsection (1) does not apply if the relevant account-holder consented to the making of the call.
- 3.3. For the purposes of the DNCR Act, consent is defined in Schedule 2 of that Act.
- 3.4. The telemarketing calls made by The Wine Group to Australian numbers on the Register during the relevant period were made without the consent of the relevant account-holders.
- 3.5. The ACMA has reasonable grounds to believe that The Wine Group contravened subsection 11(1) of the DNCR Act during the relevant period, as set out in this Notice.
- 3.6. Section 11(1) of the DNCR Act is a civil penalty provision (subsection 11(8) of the DNCR Act).

**4. The amount of the penalty**

4.1. The total penalty specified in the Notice is \$39,960, calculated in accordance with subclause 4(1) of Schedule 3 to the DNCR Act, as set out in the table below.

**Penalty for contraventions of subsection 11(1) of the DNCR Act**

<b>Date of contravention</b>	<b>Civil penalty provision allegedly contravened</b>	<b>Number of contraventions</b>	<b>Penalty units<sup>1</sup></b>	<b>Penalty imposed</b>
7 April 2021	Subsection 11(1)	1	20	\$4,440
26 April 2021	Subsection 11(1)	2	40	\$8,880
27 April 2021	Subsection 11(1)	2	40	\$8,880
17 May 2021	Subsection 11(1)	2	40	\$8,880
18 May 2021	Subsection 11(1)	2	40	\$8,880
<b>Total</b>		9		\$39,960

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