



# 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 Investbybit Pty Ltd ACN 621 652 579 trading as Binance (**BINANCE**), has committed one or more contraventions of a particular civil penalty provision,

HEREBY give an infringement notice (**the Infringement Notice**) under subclause 3(1) of Schedule 3 to the Spam Act to:

### **Investbybit Pty Ltd**

at

S1, L15, 97 Creek Street  
Brisbane, QLD 4000

### **Details of Alleged Civil Contraventions**

It is alleged that BINANCE contravened:

- subsection 16(1) of the Spam Act by sending commercial electronic messages (**CEMs**) that had an Australian link and which were not designated commercial electronic messages, without the consent of the relevant electronic account holder
- subsection 18(1) of the Spam Act by sending CEMs that had an Australian link, and which were not designated commercial electronic messages, without a functional unsubscribe facility.

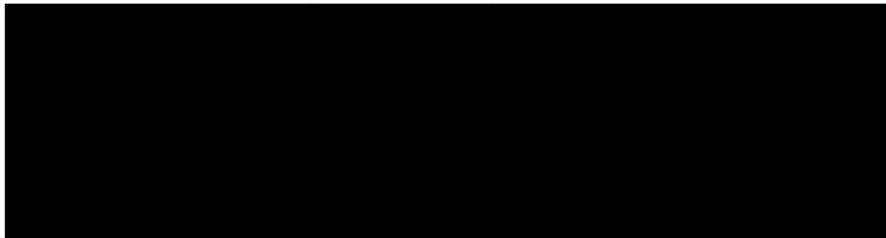
Schedule 1 of this Infringement Notice set out brief details of the alleged civil contraventions.

### **Amount of Penalty**

The total pecuniary penalty (**the penalty**) for the alleged civil contraventions is \$2,000,220. 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 within 28 days of receipt of the Infringement Notice. Please include the narration "Investbybit Pty Ltd – UCES" with your payment:



### **If the penalty is paid**

If the penalty specified in the Infringement Notice is paid to the ACMA, on behalf of the Commonwealth, by Thursday 8 December 2022, the matters outlined in this Infringement 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 Infringement Notice is discharged.

### **If the penalty is not paid**

If you do not pay the penalty by Thursday 8 December 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 Infringement Notice. To be effective the withdrawal must occur within 28 days after the Infringement Notice was given.

If you believe that the Infringement 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 Infringement Notice is withdrawn after the penalty is paid, the penalty will be refunded.

DATE: 10 November 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. BINANCE, is a registered company under the *Corporations Act 2001*, with a registered office at S1, L15, 97 Creek Street, Brisbane, QLD 4000.
- 1.2. BINANCE is an online cryptocurrency exchange.
- 1.3. On 3 May 2022, the ACMA commenced an investigation into whether BINANCE contravened the Spam Act.
- 1.4. Prior to commencing the investigation, the ACMA received complaints from consumers alleging they had received CEMs without an unsubscribe statement and/or after they had withdrawn consent. The ACMA notified BINANCE that it may have a problem with its Spam Act compliance on 5 occasions between 7 December 2021 and 5 April 2022.

### **2. Matters giving rise to the Infringement Notice**

- 2.1. During the period between 1 to 20 February 2022 and 1 to 20 March 2022 (the relevant period), BINANCE sent electronic messages to consumers.
- 2.2. At least one of the purposes of the messages was to advertise or promote BINANCE'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 CEM's were not 'designated' commercial electronic messages 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 BINANCE, an organisation whose central management and control is in Australia.
- 2.5. Specific CEMs were sent after account-holders withdraw their consent in accordance with clause 6 of Schedule 2 to the Spam Act.
- 2.6. Specific CEMs did not contain a functional unsubscribe facility as required by subsection 18(1) of the Spam Act.
- 2.7. The ACMA's investigation found that the alleged contraventions were due to BINANCE's internal processes not being followed.

### **3. Relevant civil penalty provisions of the Spam Act**

#### **3.1. Subsection 16(1)**

- 3.1.1. 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.
- 3.1.2. 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.
- 3.1.3. For the purposes of the Spam Act, consent is defined in Schedule 2 of that Act.
- 3.1.4. The CEMs sent by BINANCE 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.

3.1.5. The ACMA has reasonable grounds to believe that BINANCE contravened subsection 16(1) of the Spam Act during the relevant periods, as set out in this Infringement Notice.

3.1.6. Subsection 16(1) of the Spam Act is a civil penalty provision (see subsection 16(11)).

*3.2. Subsection 18(1)*

3.2.1. 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 (an unsubscribe statement).

3.2.2. The CEMs sent by BINANCE to electronic addresses during the relevant periods did not include an unsubscribe statement as described in subsection 18(1) of the Spam Act.

3.2.3. The ACMA has reasonable grounds to believe that BINANCE contravened subsection 18(1) of the Spam Act during the relevant periods, as set out in this Infringement Notice.

3.2.4. Subsection 18(1) of the Spam Act is a civil penalty provision (see subsection 18(8)).

**4. The amount of the penalty**

4.1. The total penalty specified in this Infringement Notice is \$2,000,220, calculated in accordance with the table in clause 5(1) of Schedule 3 to the Spam Act, as set out in the table below.

**Penalties for contraventions of subsections 16(1) and 18(1) of the Spam 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>
<b>Section 16(1) contraventions</b>				
18/01/2022	Subsection 16(1) of the Spam Act	1	20	\$4,440
28/01/2022	Subsection 16(1) of the Spam Act	1	20	\$4,440
31/01/2022	Subsection 16(1) of the Spam Act	1	20	\$4,440
9/02/2022	Subsection 16(1) of the Spam Act	1	20	\$4,440
10/02/2022	Subsection 16(1) of the Spam Act	1	20	\$4,440
11/02/2022	Subsection 16(1) of the Spam Act	1	20	\$4,440
14/02/2022	Subsection 16(1) of the Spam Act	1	20	\$4,440
11/03/2022	Subsection 16(1) of the Spam Act	1	20	\$4,440
18/03/2022	Subsection 16(1) of the Spam Act	1	20	\$4,440
19/03/2022	Subsection 16(1) of the Spam Act	1	20	\$4,440
22/03/2022	Subsection 16(1) of the Spam Act	1	20	\$4,440
30/03/2022	Subsection 16(1) of the Spam Act	1	20	\$4,440
1/04/2022	Subsection 16(1) of the Spam Act	1	20	\$4,440

<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*

14/04/2022	Subsection 16(1) of the Spam Act	1	20	\$4,440
23/04/2022	Subsection 16(1) of the Spam Act	1	20	\$4,440
28/04/2022	Subsection 16(1) of the Spam Act	1	20	\$4,440
29/04/2022	Subsection 16(1) of the Spam Act	1	20	\$4,440
2/05/2022	Subsection 16(1) of the Spam Act	1	20	\$4,440
<b>Total s.16(1)</b>		<b>18</b>	<b>360</b>	<b>\$79,920</b>
<b>Section 18(1) contraventions</b>				
3/02/2022	Subsection 18(1) of the Spam Act	37	370	\$82,140
4/02/2022	Subsection 18(1) of the Spam Act	37	370	\$82,140
5/02/2022	Subsection 18(1) of the Spam Act	37	370	\$82,140
6/02/2022	Subsection 18(1) of the Spam Act	37	370	\$82,140
7/02/2022	Subsection 18(1) of the Spam Act	37	370	\$82,140
8/02/2022	Subsection 18(1) of the Spam Act	37	370	\$82,140
9/02/2022	Subsection 18(1) of the Spam Act	37	370	\$82,140
10/02/2022	Subsection 18(1) of the Spam Act	37	370	\$82,140
11/02/2022	Subsection 18(1) of the Spam Act	37	370	\$82,140
12/02/2022	Subsection 18(1) of the Spam Act	37	370	\$82,140

13/02/2022	Subsection 18(1) of the Spam Act	37	370	\$82,140
14/02/2022	Subsection 18(1) of the Spam Act	37	370	\$82,140
15/02/2022	Subsection 18(1) of the Spam Act	37	370	\$82,140
16/02/2022	Subsection 18(1) of the Spam Act	37	370	\$82,140
17/02/2022	Subsection 18(1) of the Spam Act	37	370	\$82,140
18/02/2022	Subsection 18(1) of the Spam Act	37	370	\$82,140
19/02/2022	Subsection 18(1) of the Spam Act	37	370	\$82,140
20/02/2022	Subsection 18(1) of the Spam Act	37	370	\$82,140
1/03/2022	Subsection 18(1) of the Spam Act	2	20	\$4,440
2/03/2022	Subsection 18(1) of the Spam Act	37	370	\$82,140
3/03/2022	Subsection 18(1) of the Spam Act	1	10	\$2,220
7/03/2022	Subsection 18(1) of the Spam Act	1	10	\$2,220
9/03/2022	Subsection 18(1) of the Spam Act	37	370	\$82,140
10/03/2022	Subsection 18(1) of the Spam Act	37	370	\$82,140
11/03/2022	Subsection 18(1) of the Spam Act	37	370	\$82,140
13/03/2022	Subsection 18(1) of the Spam Act	1	10	\$2,220
16/03/2022	Subsection 18(1) of the Spam Act	1	10	\$2,200

18/03/2022	Subsection 18(1) of the Spam Act	37	370	\$82,140
19/03/2022	Subsection 18(1) of the Spam Act	7	70	\$15,540
20/03/2022	Subsection 18(1) of the Spam Act	1	10	\$2,220
<b>Total s.18(1)</b>		<b>865</b>	<b>8,650</b>	<b>\$1,920,300</b>
<b>Grand Total</b>		<b>883</b>	<b>9010</b>	<b>\$2,000,220</b>