



Infringement Notice

Spam Act 2003

I, Matthew Anderson, 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 Noah Rose trading as BetDeluxe ABN 66 578 068 647 (**BetDeluxe**), 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:

Noah Rose trading as BetDeluxe

at

432 St Kilda Rd
Melbourne VIC 3004

Details of Alleged Civil Contraventions

It is alleged that BetDeluxe contravened:

- subsection 17(1) of the Spam Act by sending commercial electronic messages (**CEMs**) that had an Australian link, and which were not designated CEMs, without accurate information about how the recipient can readily contact the sender
- subsection 18(1) of the Spam Act by sending CEMs that had an Australian link, and which were not designated CEMs, without a functional unsubscribe facility.

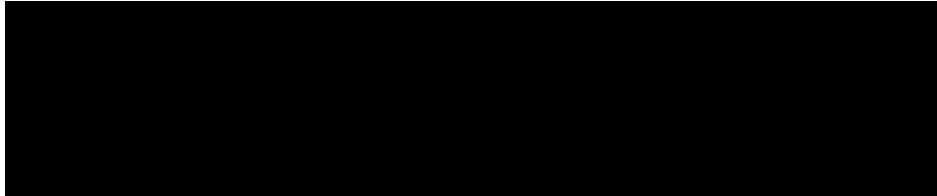
Schedule 1 to this Notice sets out brief details of the alleged civil contraventions.

Amount of Penalty

The total pecuniary penalty (**the penalty**) for the alleged civil contraventions is \$50,172. 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 February 2023. Please include the narration “BetDeluxe – 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 February 2023, 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 February 2023, 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 January 2023



Matthew Anderson
Acting 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. BetDeluxe is operated by Noah Rose as a sole trader, with a principal place of business of 432 St Kilda Road, Melbourne VIC 3004.
- 1.2. BetDeluxe is an online gambling website where customers can wager on sports and racing.
- 1.3. On 1 April 2022, the ACMA commenced an investigation into whether BetDeluxe had contravened the Spam Act.
- 1.4. Prior to commencing the investigation, the ACMA received complaints from consumers alleging they had received CEMs without consent and/or after they had made attempts to unsubscribe from CEMs. They also alleged they received CEMs without information about how to contact the sender and without the ability to unsubscribe.

2. Matters giving rise to the Infringement Notice

- 2.1. During the period between 22 December 2021 to 1 April 2022 (**the relevant period**), BetDeluxe sent electronic messages to consumers.
- 2.2. At least one of the purposes of the messages was to offer or promote BetDeluxe's gambling products and services to customers. 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 sent by BetDeluxe, whose central management and control is in Australia.
- 2.5. The CEMs were sent without accurate information about how the recipient can readily contact the sender, as required by subsection 17(1) of the Spam Act.
- 2.6. The CEMs did not contain a functional unsubscribe facility as required by subsection 18(1) of the Spam Act.

3. Relevant civil penalty provisions of the Spam Act

3.1. Subsection 17(1)

- 3.1.1. Subsection 17(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 message includes accurate information about how the recipient can readily contact that individual or organisation.
- 3.1.2. CEMs sent by BetDeluxe to electronic addresses during the relevant period were sent without accurate information about how the recipient can readily contact that individual or organisation.
- 3.1.3. The ACMA has reasonable grounds to believe that BetDeluxe contravened subsection 17(1) of the Spam Act during the relevant period, as set out in this Notice.
- 3.1.4. Subsection 17(1) of the Spam Act is a civil penalty provision (subsection 17(7) of the Spam Act).

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. CEMs sent by BetDeluxe to electronic addresses during the relevant period did not include a functional unsubscribe statement as described in paragraph 3.2.1 above.
- 3.2.3. The ACMA has reasonable grounds to believe that BetDeluxe contravened subsection 18(1) of the Spam Act during the relevant period, as set out in this Notice.
- 3.2.4. Subsection 18(1) of the Spam Act is 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 \$50,172 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 subsections 17(1) and 18(1) of the Spam Act

Date of contravention	Civil penalty provision allegedly contravened	Number of contraventions¹	Penalty units²	Penalty imposed
11 February 2022	Subsection 17(1) of the Spam Act	13	26	\$5,772
10 February 2022	Subsection 18(1) of the Spam Act	50	100	\$22,200
11 February 2022	Subsection 18(1) of the Spam Act	50	100	\$22,200
Total		113	226	\$50,172

¹ Contraventions by a person of subsections 17(1) and 18(1) are calculated under the table in subclause 5(2) in Schedule 3 of the *Spam Act 2003*.

² At the time of the alleged contraventions, the amount of a penalty unit was \$222, see section 4AA of the *Crimes Act 1914*.