

**ENFORCEABLE UNDERTAKING GIVEN TO THE AUSTRALIAN COMMUNICATIONS AND
MEDIA AUTHORITY BY TYRE AND AUTO PTY LTD ABN 57 164 707 484 UNDER SECTION 38
OF THE SPAM ACT 2003**

1. Definitions

- 1.1. In this Undertaking:
 - 1.1.1. **ACMA** means the Australian Communications and Media Authority.
 - 1.1.2. **Board** means Tyre and Auto Pty Ltd ABN 57 164 707 484 Senior Leadership Team.
 - 1.1.3. **CEM** means commercial electronic message and has the same meaning as the Spam Act 2003.
 - 1.1.4. **CEM complaint** means a complaint to Tyre and Auto Pty Ltd that relates to a CEM sent, or alleged to have been sent, by Tyre and Auto Pty Ltd and includes complaints notified to Tyre and Auto Pty Ltd by the ACMA.
 - 1.1.5. **Commencement date** has the meaning given in clause 2.1.
 - 1.1.6. **independent consultant** means a qualified and independent consultant with expertise in audits relevant to auditing risk and compliance, processes, procedures, systems, governance and controls.
 - 1.1.7. **relevant period** means 12 January 2022 and 28 July 2022.
 - 1.1.8. **report** means the report produced by the independent consultant referred to in clause 6.1.
 - 1.1.9. **SLT** means Tyre and Auto Pty Ltd ABN 57 164 707 484 Senior Leadership Team comprising the Managing Director, Chief Customer Officer, Chief Technology Officer, Chief Financial Officer, and Chief People Officer.
 - 1.1.10. **Spam Act** means *Spam Act 2003* (Cth).
 - 1.1.11. **TAP** means Tyre and Auto Pty Ltd ABN 57 164 707 484.

2. Term of the Undertaking

- 2.1. This Undertaking commences when:
 - 2.1.1. it has been executed by TAP
 - 2.1.2. so executed, it has been accepted by the ACMA and written notification of that acceptance has been provided to TAP (**Commencement date**).
- 2.2. This Undertaking continues for a period of 36 months from the Commencement date or until it is withdrawn by TAP, with the approval of the ACMA, pursuant to section 38 of the Spam Act, whichever is earlier.
- 2.3. This Undertaking may be varied by TAP, with the consent of the ACMA, pursuant to subsection 38(2) of the Spam Act.
- 2.4. Any notice or approval required or permitted to be given by the ACMA under this Undertaking must be in writing and may be given by any ACMA Authority member or by any ACMA staff member who is a member, or acting member, of the Senior Executive Service.

3. Background

- 3.1. On 3 February 2023, the ACMA notified TAP that the ACMA has reasonable grounds to believe that, during the relevant period, TAP sent, or caused to be sent, commercial electronic messages without consent, in contravention of subsection

16(1), and without a functional unsubscribe facility, in contravention of subsection 18(1) of the Spam Act.

- 3.2. TAP acknowledges the ACMA's findings, and in response to the ACMA's concerns regarding TAP's compliance with the Spam Act, offers this Undertaking to the ACMA aimed at addressing future compliance with the Spam Act.

4. Undertaking

- 4.1. TAP undertakes to take the following specified actions to ensure TAP complies with the Spam Act and does not contravene the Spam Act in the future.

5. Remedial Action Already Undertaken

- 5.1. TAP has undertaken remedial actions prior to offering this undertaking. TAP commenced these actions on becoming aware of deficiencies in its systems and has continued these actions throughout the ACMA's investigations. Remedial actions taken by TAP include improvements to TAP's:
- 5.1.1. employee awareness of Spam Act compliance through training of all personnel responsible for creating or sending CEMs
 - 5.1.2. operating systems so a functional unsubscribe facility is provided in every authorised CEM
 - 5.1.3. procedures to ensure those who have opted-out have been removed from TAP marketing campaigns.
- 5.2. TAP acknowledges that while the remedial action described in clause 5.1 has been taken, an independent review of these actions and compliance systems and practices remains appropriate as provided in this Undertaking.

6. Independent Consultant

- 6.1. TAP undertakes to appoint an independent consultant to:
- 6.1.1. review TAP's current procedures, policies, training and systems, including remedial action already undertaken, relating to its compliance with the Spam Act and identify any deficiencies and/or improvements to ensure that:
 - a. as per subsection 16(1) of the Spam Act, all CEMs are sent, or caused to be sent, by TAP with the consent of the relevant account holder
 - b. TAP receives, records and actions all unsubscribe requests within the periods specified in Schedule 2 to the Spam Act for when withdrawal of consent takes effect
 - c. all CEMs sent, or caused to be sent, by TAP contain the information required by paragraphs 17(1)(a) and (b) of the Spam Act
 - d. all CEMs sent, or caused to be sent, by TAP contain a functional unsubscribe facility as required by subsection 18(1) of the Spam Act, including, by reference, that all CEMs sent, or caused to be sent, comply with the requirements set out in the Spam Regulations 2021
 - e. TAP classifies and analyses its records of CEM complaints to identify systemic and recurring problems and trends (**systemic problems**).
 - 6.1.2. produce a report (**the report**) making recommendations as to:

- a. ensuring TAP systems receive, record and action unsubscribe requests
 - b. improvements to policies and procedures that ensure compliance with the Spam Act, including but not limited to:
 - i. management oversight and quality assurance procedures for ensuring the ongoing integrity and functionality of relevant systems
 - ii. procedures for ensuring TAP personnel comply with policies and procedures
 - iii. procedures for ensuring continued compliance when process or system changes are implemented
 - c. ongoing training for TAP personnel on Spam Act compliance
 - d. ongoing monitoring of Spam Act compliance measures
 - e. ensuring TAP takes reasonable steps to address any identified systemic problems.
- 6.2. TAP undertakes to seek written approval from the ACMA for the appointment of the proposed independent consultant within 20 business days after commencement of these undertakings. If the ACMA does not approve the choice of independent consultant, TAP will repeat this process until it has the ACMA's written approval.
- 6.3. TAP undertakes to appoint the independent consultant, and to provide written notification of that appointment to the ACMA, within 10 business days after the ACMA has given its written approval.
- 6.4. The independent consultant will provide the report to TAP, and at the same time to the ACMA, within six months of their appointment.
- 6.5. The independent consultant will again review TAP procedures, policies, training and systems relating to its Spam Act compliance at 16 months and 32 months into this Undertaking, after they provide their report to TAP and the ACMA.
- 6.6. The independent consultant will provide the results of their review in writing to TAP, including the SLT, and, at the same time, the ACMA within 2 months of the commencement of each review, including a statement about whether they are satisfied that TAP procedures, policies, training and systems are effective in ensuring compliance with the Spam Act.
- 6.7. Subject to the ACMA's written agreement, TAP may remove the independent consultant at any time and replace the independent consultant with a new independent consultant approved by ACMA. If the ACMA does not approve the choice of independent consultant, TAP will repeat this process until it has the ACMA's approval.

7. Implementation Plan, Audit & Reporting

- 7.1. Within 40 business days of receiving the report TAP will:
- 7.1.1. develop an implementation plan setting out the steps TAP has taken, or will take, to implement all recommendations made by the independent consultant in the report, including timeframes (unless the ACMA specifically agrees that any recommendation need not be implemented upon written request from TAP)
 - 7.1.2. provide a copy of the SLT-approved implementation plan to the ACMA.
- 7.2. TAP undertakes to comply with the approved implementation plan in accordance with the timeframes specified in the plan.

- 7.3. The implementation plan may be modified at any time subject to the ACMA's written approval.
- 7.4. Every six months from the date the SLT approved implementation plan is provided to the ACMA, TAP will provide a compliance report, approved by the SLT, to the ACMA that covers the previous 6 months that includes:
 - 7.4.1. the status of actions it will take under the implementation plan
 - 7.4.2. a report of all de-identified consumer complaints made to TAP about alleged non-compliance with the Spam Act, including the date of the complaint and a unique identifier for each complaint
 - 7.4.3. action TAP has taken on each complaint the ACMA has notified TAP about or TAP has received directly from consumers.
- 7.5. TAP will report to the ACMA all identified instances of non-compliance with the Spam Act within 10 business days of identifying an instance of non-compliance, including the cause of any identified compliance issues and remediation action taken or proposed to be taken and applicable dates.

8. Training

- 8.1. Within 30 business days of the commencement date, TAP undertakes to train all personnel that may be, or are currently responsible for creating or sending CEMs that have not received training within the past 3 months, and their direct line manager, to ensure compliance with the Spam Act.
- 8.2. TAP undertakes to provide training similar to that described in clause 8.1, for all new personnel that may be, or are currently responsible for creating or sending CEMs within 6 weeks of their commencement in such roles.
- 8.3. TAP undertakes to repeat the training, described in clause 8.1, every 12 months after TAP has undertaken the training referred to in clause 8.1 for the term of this undertaking.
- 8.4. TAP undertakes to provide the ACMA with written notice when it has undertaken training referred to in clauses 8.1 and 8.2.

9. Record-keeping

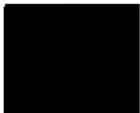
- 9.1. TAP undertakes to:
 - 9.1.1. keep accurate records of withdrawal of consent requests
 - 9.1.2. keep accurate records of CEM complaints
 - 9.1.3. provide copies of records referred to in this clause 9 to the ACMA upon request by the ACMA.

10. Acknowledgment of publication

- 10.1. TAP acknowledges that the ACMA may publish these undertakings.

EXECUTION

Signed by Tyre and Auto Pty Ltd ABN 57 164 707 484:



Adam Pay
Director and Authorised Representative of Tyre and Auto Pty Ltd

1.06.2023

Date of signing:

Signed for and on behalf of the Australian Communications and Media
Authority by its authorised representative(s):

TEREMY FENTON

Name of authorised representative

EXECUTIVE MANAGER, CONSUMER, CONTENT & NUMBER

Title of authorised representative



Signature of authorised representative

1 JUNE 2023

Date of signing