



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 Tyre and Auto Pty Ltd trading as myCar Tyre & Auto ACN 164 707 484 (**myCar Tyre & Auto**) 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:

Tyre and Auto Pty Ltd trading as myCar Tyre & Auto

at

Level 12, 76-80 Clarence St, Sydney, NSW, 2000.

Details of Alleged Civil Contraventions

It is alleged that myCar Tyre & Auto 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 CEMs, without a functional unsubscribe facility.

Amount of Penalty

The total pecuniary penalty (**the penalty**) for the alleged civil contraventions is \$1,047,840. 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.

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. myCar Tyre & Auto is a registered company under the *Corporations Act 2001*, with a registered office at Level 12, 76-80 Clarence St, Sydney, NSW, 2000.
- 1.2. On 12 August 2022, the ACMA commenced an investigation into whether myCar Tyre & Auto had contravened the Spam Act.
- 1.3. Prior to commencing the investigation, the ACMA had received complaints from consumers claiming to have received CEMs from myCar Tyre & Auto without consent and/or without a functional unsubscribe facility.

2. Matters giving rise to the Infringement Notice

- 2.1. During the periods 1 January to 12 August 2022, (**the relevant period**), myCar Tyre & Auto sent CEMs to consumers.
- 2.2. Information provided by myCar Tyre & Auto showed that the purpose of the messages was to offer to supply, or to advertise or promote products and services sold by myCar Tyre & Auto. 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' 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 either sent by myCar Tyre & Auto or were caused to be sent through third party marketing agencies by myCar Tyre & Auto, an organisation whose central management and control is in Australia.
- 2.5. Specific CEMs were sent after the account-holders had withdrawn 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 systems and procedural failures that occurred between 12 January and 28 July 2022. These issues included the existence of duplicate customer records resulting in failures to unsubscribe customers when requested, and non-functional unsubscribe links in messages.

3. Relevant civil penalty provisions of the Spam Act

3.1. *Subsection 16(1)*

- 3.1.1. Section 16(1) of the Spam Act provides that a person must not send, or cause to be sent, a commercial electronic message that has an Australian link and is not a designated message.
- 3.1.2. Section 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 myCar Tyre & Auto 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 myCar Tyre & Auto contravened section 16(1) of the Spam Act during the relevant periods as set out in this notice.

3.1.6. Section 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 functional unsubscribe facility whereby the electronic address is reasonably likely to be capable of receiving the recipient's unsubscribe message and the electronic address complies with the condition or conditions (if any) specified in the regulations.

3.2.2. The CEMs sent by myCar Tyre & Auto to electronic addresses during the relevant period did not include a functional unsubscribe facility as described in paragraph 3.2.1 above.

3.2.3. The ACMA has reasonable grounds to believe that myCar Tyre & Auto 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 (see subsection 18(8)).

4. The amount of the penalty

4.1. The total penalty specified in this Notice is \$1,047,840, calculated in accordance with the table in clause 5(1) of Schedule 3 to the Spam Act, as shown in the table below.

Penalties for contraventions of subsections 16(1) and 18(1) of the Spam Act

Date of contravention	Civil penalty provision allegedly contravened	Number of contraventions of subsection	Penalty units¹	Penalty imposed
Section 16(1) Contraventions				
1 June 2022	Subsection 16(1) of the Spam Act	11	220	\$48,840
3 June 2022	Subsection 16(1) of the Spam Act	14	280	\$62,160
6 June 2022	Subsection 16(1) of the Spam Act	50	1,000	\$222,000
8 June 2022	Subsection 16(1) of the Spam Act	22	440	\$97,680
2 July 2022	Subsection 16(1) of the Spam Act	14	280	\$62,160
12 July 2022	Subsection 16(1) of the Spam Act	50	1,000	\$222,000
13 July 2022	Subsection 16(1) of the Spam Act	50	1,000	\$222,000
Total s.16(1)		211	4,220	\$936,840
Section 18(1) Contraventions				
8 June 2022	Subsection 18(1) of the Spam Act	50	500	\$111,000
Total s.18(1)		50	500	\$111,000
Grand Total		261	4,720	\$1,047,840

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