

**ENFORCEABLE UNDERTAKING GIVEN TO THE AUSTRALIAN COMMUNICATIONS AND
MEDIA AUTHORITY BY PIZZA PAN GROUP PTY LTD (ACN 614 499 213) 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. **Additional Review** has the meaning given in clause 5.5.
 - 1.1.3. **Board** means the Board of Directors or equivalent management body of PPG.
 - 1.1.4. **Business Day** means a day that is not a Saturday, Sunday, or public holiday in NSW, Australia.
 - 1.1.5. **CEM** means commercial electronic message and has the same meaning as the Spam Act 2003.
 - 1.1.6. **CEM complaint** means a complaint to PPG that relates to a CEM sent or caused to be sent, or allegedly sent or caused to be sent, by PPG and includes complaints notified to PPG by the ACMA.
 - 1.1.7. **Commencement date** has the meaning given in clause 2.1.
 - 1.1.8. **Implementation Plan** has the meaning given in subclause 6.1.2.
 - 1.1.9. **Independent Consultant** means a qualified and independent consultant with expertise in audits relating to risk and compliance, processes, procedures, systems, governance, and controls.
 - 1.1.10. **PPG** means Pizza Pan Group Pty Ltd [ACN 614 499 213].
 - 1.1.11. **Refresher Training** has the meaning given in clause 7.3.
 - 1.1.12. **Relevant Period** means 1 January 2023 until 4 May 2023.
 - 1.1.13. **Relevant Personnel** means all PPG personnel that may be or are currently responsible for creating or sending CEMs or may cause CEMs to be sent, and their direct line manager.
 - 1.1.14. **Report** means the report produced by the Independent Consultant referred to in clause 5.1.2.
 - 1.1.15. **Spam Act** means *Spam Act 2003* (Cth).
 - 1.1.16. **Waived Recommendation** means a recommendation which the ACMA agrees in writing need not be implemented in accordance with subclause 6.1.1.

2. Term of the Undertaking

- 2.1. This Undertaking commences when:
- 2.1.1. it has been executed by PPG
 - 2.1.2. so executed, it has been accepted by the ACMA and written notification of that acceptance has been provided to PPG (**Commencement date**).
- 2.2. This Undertaking continues for a period of 36 months from the Commencement date or until it is withdrawn by PPG (**Term**), with the approval of the ACMA, pursuant to section 38 of the Spam Act, whichever is earlier.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 PPG, 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. PPG acknowledges the ACMA's Investigation Report findings of 30 October 2023 that the ACMA has reasonable grounds to believe that, during the Relevant Period, PPG sent, or caused to be sent, commercial electronic messages in contravention of Subsections 16(1), 17(1) and 18(1) of the Spam Act, and in response to the ACMA's concerns regarding PPG'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. PPG undertakes to take the following specified actions to ensure PPG's processes, procedures and systems complies with the Spam Act so that PPG does not contravene the Spam Act in the future.

5. Independent Consultant

- 5.1. PPG undertakes to appoint an Independent Consultant to:
- 5.1.1. review PPG current procedures, policies, training and systems relating to its compliance with the Spam Act and identify any deficiencies and/or improvements to ensure that:
- a. all CEMs are sent, or caused to be sent, by PPG with the consent of the relevant account holder
 - b. PPG 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 PPG 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 PPG contain a functional unsubscribe facility as required by subsection 18(1) of the Spam Act, and, by reference, the *Spam Regulations 2021*, and
 - e. PPG classifies and analyses its records of CEM complaints to identify systemic and recurring problems and trends (**systemic problems**).
- 5.1.2. produce a report (**the Report**) making recommendations as to:
- a. ensuring PPG systems receive, record and action unsubscribe requests;
 - b. improvements to policies and procedures that ensure compliance with the Spam Act by PPG, including but not limited to:
 - i. quality assurance procedures for ensuring the ongoing integrity and functionality of relevant systems
 - ii. procedures for ensuring Relevant Personnel comply with

- policies and procedures used for sending CEMs and that there is appropriate management oversight and assurance of the policies and procedures, and
- iii. procedures for ensuring continued compliance when process or system changes are implemented;
 - c. ongoing training for PPG Relevant Personnel on Spam Act compliance;
 - d. ongoing monitoring of Spam Act compliance measures;
 - e. ensuring PPG takes reasonable steps to address any identified systemic problems.
- 5.2. PPG undertakes to seek written approval from the ACMA for the appointment of the proposed Independent Consultant within 20 Business Days after the Commencement date. If the ACMA does not approve the choice of Independent Consultant, PPG will repeat this process until it has the ACMA's written approval.
- 5.3. PPG 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.
- 5.4. PPG undertakes to direct the Independent Consultant to provide the Report to PPG and its Board, and at the same time to the ACMA, within six months of their appointment.
- 5.5. PPG undertakes to direct the Independent Consultant to conduct an additional review of PPG procedures, policies, training and systems relating to compliance with the Spam Act every 12 months after the Report is provided to PPG and the ACMA while this undertaking is in force (each an **Additional Review**).
- 5.6. PPG undertakes to direct the Independent Consultant to provide the results of their Additional Review in writing to PPG, the Board and the ACMA at the same time, within 2 months of the commencement of each Additional Review. The results are to include a statement about whether they are satisfied that PPG procedures, policies, training and systems are effective in ensuring compliance with the Spam Act.
- 5.7. Subject to the ACMA's written agreement, PPG 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, PPG will repeat this process until it has the ACMA's approval.

6. Implementation Plan, Audit & Reporting

- 6.1. Within 3 months of receiving the Report, PPG will:
- 6.1.1. where applicable, request in writing approval from the ACMA not to implement any recommendations made by the Independent Consultant in the Report. Such a request will be accompanied by a reason it is not required to be implemented in the view of PPG. If the ACMA specifically agrees that any recommendation need not be implemented by PPG, then such recommendation need not form part of any implementation plan (**Waived Recommendations**);
 - 6.1.2. develop an implementation plan, approved by the Board, setting out the steps PPG has taken, or will take, to implement all recommendations made by the Independent Consultant in the Report, including timeframes, excluding any Waived Recommendations (**Implementation Plan**);
 - 6.1.3. provide a copy of the Board-approved implementation plan to the ACMA.

- 6.2. PPG undertakes to comply with the approved Implementation Plan in accordance with the timeframes specified in the plan.
- 6.3. The Implementation Plan may be modified at any time subject to the ACMA's written approval.
- 6.4. Every six months during the Term, from the date of provision of the Implementation Plan to the ACMA, PPG will provide a compliance report, approved by the Board, to the ACMA that covers the previous 6 months that includes:
 - 6.4.1. the status of actions it will take under the Implementation Plan;
 - 6.4.2. a report of all de-identified consumer complaints made to PPG about alleged non-compliance with the Spam Act, including the date of the complaint and a unique identifier for each complaint;
 - 6.4.3. action PPG has taken on all complaints the ACMA has notified PPG about or received by PPG directly from consumers.
 - 6.4.4. all identified instances of non-compliance with the Spam Act, including the cause of any identified compliance issues and remediation action taken or proposed to be taken.

7. Training

- 7.1. Within 30 Business Days of the Commencement date, PPG undertakes to train all PPG Relevant Personnel that may be or are currently responsible for creating or sending CEMs or may cause CEMs to be sent, and their direct line manager, to ensure compliance with the Spam Act.
- 7.2. PPG undertakes to provide training similar to that described in clause 7.1, for all new PPG Relevant Personnel that may be, or are, responsible for creating or sending CEMs or may cause CEMs to be sent, within 6 weeks of their commencement in such roles.
- 7.3. PPG undertakes to repeat the training, described in clause 7.1, every 12 months after PPG has undertaken the training referred to in clause 7.1 for the term of this undertaking (**Refresher Training**). Any new PPG Relevant Personnel that undertook training as described in clause 7.2, will not be required to undertake the Refresher Training if they received training within 6 months prior to date that the Refresher Training is provided.
- 7.4. PPG undertakes to provide the ACMA with written notice when it has undertaken training referred to in clauses 7.1 and 7.2.

8. Record-keeping

- 8.1. PPG undertakes to:
 - 8.1.1. keep accurate records of the consent given by electronic account-holders to the sending, or causing to be sent, of CEMs by PPG to those account-holders, including the terms and conditions associated with that consent;
 - 8.1.2. keep accurate records of withdrawal of consent requests received by PPG;
 - 8.1.3. keep accurate records of CEM complaints, and
 - 8.1.4. provide copies of records referred to in this clause 8 to the ACMA upon request by the ACMA.

9. Acknowledgment of publication

9.1. PPG acknowledges that the ACMA may publish these undertakings.

10. Execution

SIGNED by an authorised representative for
PIZZA PAN GROUP PTY LTD



Signature of Authorised Representative

Philip Allister Dagois Reed

Name of Authorised Representative

President

Title of Authorised Representative

12/5/2024 | 8:13:22 PM PDT

Date of Signature

SIGNED by an authorised representative for the
**AUSTRALIAN COMMUNICATIONS AND
MEDIA AUTHORITY**



Signature of Authorised Representative

Jeremy Fenton

Name of Authorised Representative

Executive Manager, Unsolicited Communications
and Scams Branch

Title of Authorised Representative

13 May 2024

Date of Signature