



# Infringement Notice

## *Spam Act 2003*

I, Tanya Farrell, 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 Pizza Pan Group Pty Ltd (ACN 614 499 213) (**Pizza Hut**), 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:

**Pizza Pan Group Pty Ltd**

at

**Level 2, 61-65 Epping Road, Macquarie Park NSW 2113**

### Details of Alleged Civil Contraventions

It is alleged that Pizza Hut contravened subsection 16(1) of the Spam Act by sending or causing to be sent 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. 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 \$2,502,500. 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 Notice. Please include the narration "[REDACTED]" with your payment:

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

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

If the penalty specified in the Notice is paid to the ACMA, on behalf of the Commonwealth, within 28 days after the Notice is given to Pizza Hut, 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 **18 April 2024** the ACMA may take action for the alleged contravention(s).

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 570 of the *Telecommunications Act 1997*).

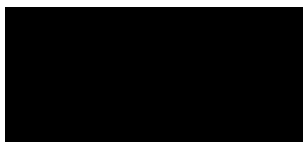
### **Withdrawal of the infringement notice**

The ACMA may withdraw this Infringement Notice. It may do so of its own volition or upon your request. To be effective the withdrawal must occur within 28 days after the Infringement Notice was given.

If you wish to apply for withdrawal of the Infringement Notice, you should write as soon as practicable setting out the basis/reasons for the request. Your application should be addressed to me in the first instance.

If the Infringement Notice is withdrawn after the penalty is paid, the penalty will be refunded.

DATE: 21 March 2024



**Tanya Farrell**  
**A/g Executive Manager**  
**Unsolicited Communications and Scams Branch**  
**Australian Communications and Media Authority**

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## 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. Pizza Hut is a registered company under the *Corporations Act 2001*, with a registered office at Level 2, 61-65 Epping Road, Macquarie Park NSW 2113.
- 1.2. On 4 May 2023, the ACMA commenced an investigation into whether Pizza Hut 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 Pizza Hut without consent and/or after consumers had made attempts to unsubscribe and/or without a functional unsubscribe facility.

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

- 2.1. During the period 1 January 2023 and 4 May 2023 (investigation period) Pizza Hut sent electronic messages.
- 2.2. Information provided to the ACMA showed that the purpose of the messages was to offer to supply, or to advertise or promote products sold by Pizza Hut. Therefore, the messages described at paragraph 2.1 were commercial electronic messages (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 sent by Pizza Hut, an organisation whose central management and control is in Australia.
- 2.5. Specific CEMs were sent after the relevant electronic account-holders had withdrawn consent in accordance with clause 6 of Schedule 2 of the Spam Act.

### **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 CEM 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 Pizza Hut to address 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, therefore, has reasonable grounds to believe that Pizza Hut has contravened section 16(1) of the Spam Act during the relevant periods as set out in this Infringement Notice.
  - 3.1.6. Section 16(1) of the Spam Act is a civil penalty provision (see subsection 16(11)).

### **4. The amount of the penalty**

- 4.1. The total penalty specified in this Notice is \$2,502,500, 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 subsection 16(1) of the Spam Act

Date of contravention	Number of contraventions of subsection 16(1)	Penalty units <sup>1</sup>	Penalty imposed
21/04/2023	11,291	1,000	\$275,000
22/04/2023	11,382	1,000	\$275,000
23/04/2023	11,395	1,000	\$275,000
24/04/2023	10,542	1,000	\$275,000
25/04/2023	12,067	1,000	\$275,000
26/04/2023	12,476	1,000	\$275,000
27/04/2023	12,612	1,000	\$275,000
28/04/2023	13,039	1,000	\$275,000
29/04/2023	13,161	1,000	\$275,000
30/04/2023	5	100	\$27,500
<b>Total</b>	<b>107,970</b>	<b>9,100</b>	<b>\$2,502,500</b>

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<sup>1</sup> At the time of the alleged contraventions, the amount of a penalty unit was \$275, as set by section 4AA of the *Crimes Act 1914*.