

Investigation report

Summary	
Entity	Lululemon Athletica Australia Pty Ltd (Lululemon)
Australian Company Number	110 186 233
Type of activity	Commercial electronic messaging
Relevant Legislation	<i>Spam Act 2003 (Spam Act)</i>
Findings	370,289 contraventions of subsection 18(1) [Commercial electronic messages must contain a functional unsubscribe facility].
Date	16 October 2025

Background

1. The Australian Communications and Media Authority (ACMA) commenced an investigation under paragraph 510(1)(ab) of the *Telecommunications Act 1997* into Lululemon Athletica Australia Pty Ltd's (Lululemon) compliance with the *Spam Act 2003 (the Spam Act)* on 15 April 2025.
2. The investigation concerned commercial electronic messages (CEMs) sent to electronic addresses during the period 1 December 2024 to 5 January 2025 (Relevant Period).
3. The ACMA's findings are based on information obtained from Lululemon on 28 May 2025 and 5 August 2025, in response to notices dated 16 April 2025 and 22 July 2025, given to it by the ACMA, and Lululemon's response to the ACMA's preliminary findings received on 3 October 2025.
4. The CEMs subject to contravention findings are collectively referred to as the 'investigated messages', specifically, 370,289 CEMs sent in the Relevant Period in contravention of subsection 18(1) of the Spam Act [REDACTED]
5. The reasons for the ACMA's findings, including the key elements which establish the contraventions, are set out below.

Relevant legislative provisions

Commercial electronic messages

6. Under section 6 of the Spam Act, a CEM is an electronic message where, having regard to:
 - a. the content of the message; and
 - b. the way in which the message is presented; and
 - c. the content that can be located using links, telephone numbers or contact information (if any) set out in the message:

it would be concluded that the purpose, or one of the purposes, of the message is:

- d. to offer to supply goods or services; or
- e. to advertise or promote goods or services [...]

Unsubscribe function in CEMs – subsection 18(1)

7. Under subsection 18(1) of the Spam Act, a person must not send, or cause to be sent, a CEM unless the message includes 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 individual or organisation who authorised the sending of the CEM (subparagraph 18(1)(c)(i)).

8. Subsection 18(1) does not apply if:
 - a. the message is a 'designated commercial electronic message' (paragraph 18(1)(b)),
 - b. a person did not know, or could not have ascertained, that a CEM has an Australian link (subsection 18(2)),
 - c. including an unsubscribe facility would be inconsistent with the terms of a contract or other agreement (subsection 18(3)), or
 - d. a person sent the CEM, or caused the CEM to be sent, by mistake (subsection 18(4)).

Designated commercial electronic message (DCEM)

9. The Spam Act allows for the sending of DCEMs with factual information only that contain the names, logos and contact details of businesses. There is no requirement to have consent or provide an unsubscribe for these types of messages under the Spam Act.
10. Under Schedule 1 to the Spam Act, an electronic message is a DCEM if:
 - a) The message consists of no more than factual information (with or without directly-related comment) and any or all of the following additional information:
 - i. The name, logo and contact details of the individual or organisation who authorised the sending of the message [...]
 - b) Assuming that none of that additional information had been included in the message, the message would not have been a CEM [...]

Evidential burden for exceptions

11. Under subsection 18(5) of the Spam Act, if an entity wishes to rely on any of the above exceptions, it bears the evidential burden in relation to that matter. This means that it needs to produce or point to evidence that suggests a reasonable possibility that the exception applies.

Reason for findings

Issue: CEMs must contain a functional unsubscribe facility – section 18

12. To determine Lululemon's compliance with section 18 of the Spam Act, the ACMA has addressed the following:
 - a. Is Lululemon 'a person' to which section 18 of the Spam Act applies?
 - b. If so, did Lululemon send or cause the investigated messages to be sent?
 - c. If so, were the investigated messages commercial?
 - d. If so, did the investigated messages have an Australian link?
 - e. If so, did the investigated messages fall within the definition of DCEM as outlined in Schedule 1 to the Spam Act?
 - f. If not, did the investigated messages include a functional unsubscribe facility?
 - g. If not, did Lululemon claim that the investigated messages were subject to any exceptions?
 - h. If so, did Lululemon meet the evidential burden in relation to these claims?

Is Lululemon a 'person' to which section 18 of the Spam Act applies?

13. Lululemon is a company registered under the *Corporation Act 2001* (Cth) (**Corporations Act**) and is therefore a 'person' for the purposes of the Spam Act.

Did Lululemon send, or cause to be sent, the investigated messages?

14. Lululemon admitted in its responses to the ACMA on 28 May 2025 and 5 August 2025 that it sent the investigated messages using specific content templates.

Were the investigated messages commercial?

15. Section 6 of the Spam Act defines a CEM as an electronic message, where having regard to a number of factors, one of the purposes of the message is to offer to supply, advertise or promote goods and services.
16. The ACMA assessed the templates and example messages used to send each of the investigated messages and each contains commercial content and embedded links to commercial content on Lululemon's websites. The links, for example, consist of tiles with graphics and phrases including 'shop women's', 'shop men's' and 'shop accessories'. The websites the links resolve to included content that advertised or promoted Lululemon's products.
17. Accordingly, the ACMA is satisfied that at least one of the purposes of the investigated messages was to advertise or promote Lululemon's products, such as womenswear, menswear, or accessories (see **Attachment A** for examples).
18. The investigated messages are therefore CEMs.

Did the investigated messages have an Australian link?

19. Lululemon's central management was based in Australia, and the company was registered under the Corporations Act when the investigated messages were sent. Therefore, the investigated messages had an Australian link.

Were the investigated messages designated?

20. In its submission to the ACMA's preliminary findings on 3 October 2025, Lululemon stated that *"...it considers that the investigated messages may instead be best characterised as 'designated commercial electronic messages' under the Spam Act"*.
21. The ACMA does not accept this characterisation. The investigated messages were not DCEMs because:
 - a. they contained more than factual information, that is commercial in nature (clause 2 of Schedule 1 to the Spam Act), and
 - b. Lululemon is not an entity of a type set out in clauses 3 or 4 of Schedule 1 to the Spam Act, i.e., a government body, registered charity, registered political party or an educational institution.

Did the investigated messages include a functional unsubscribe facility?

22. In response to the ACMA's preliminary findings, Lululemon admitted in its response on 3 October 2025, that the investigated messages *"..did not contain an unsubscribe facility. However, Lululemon contends that these messages do not breach s. 18 of the Spam Act on the basis that they are not CEMS (due to their lack of commercial content).."*
23. The ACMA has reviewed copies of the templates and sample messages obtained from Lululemon and is satisfied the investigated messages did not include an unsubscribe facility in contravention of subsection 18(1) of the Spam Act. Specifically, they did not include the following information required under paragraph 18(1)(c) of the Spam Act:
 - a. a statement to the effect that the recipient may use an electronic address set out in the message to send an unsubscribe message to the individual or organisation who authorised the sending of the first-mentioned message, or
 - b. a statement to similar effect.

Did Lululemon claim that any of the investigated messages were subject to any exceptions?

24. Lululemon claims that the investigated messages were subject to an exception as they were DCEMs. It submitted that while the investigated messages contained links to its website and social media pages, the mere presence of the links was not sufficient to render a commercial purpose. Lululemon asserted that given the message content was overwhelmingly factual and sent for transactional purposes, it would not be concluded that the messages were sent with a commercial purpose.

25. For the reasons discussed above in paragraphs 15-17 and 21, the ACMA does not accept Lululemon's claims that the investigated messages constituted DCEMs that were subject to any exceptions.

If so, did Lululemon meet the evidential burden in relation to these claims?

26. The ACMA is of the view that Lululemon did not meet the evidential burden in relation to the claim that the investigated messages were DCEMs for the reasons set out above.

Conclusion

27. The ACMA is of the view that Lululemon contravened the Spam Act in relation to 370,289 CEMs sent without an unsubscribe facility, in the Relevant Period.

Conclusion

28. The ACMA finds that there are reasonable grounds to believe that Lululemon contravened subsection 18(1) of the Spam Act on 370,289 instances by sending CEMs without a functional unsubscribe facility between 1 December 2024 to 5 January 2025.

Attachments

Attachment A – example Lululemon CEMs



Attachment A - Examples of Lululemon CEMs
Example 1

[REDACTED]

From: lululemon [REDACTED]
Sent: [REDACTED]
To: [REDACTED]
Subject: The waiting game is over

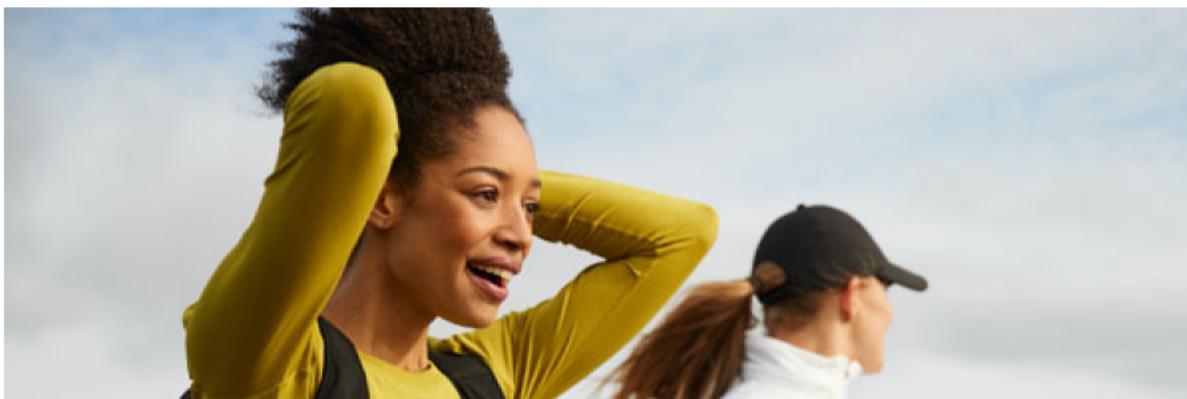
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[REDACTED]

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Tracking Number



Order Date



Items In This Shipment



Women's Fleece Restfeel Slide

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Size: 7

Quantity: 1



Lace Low-Rise Logo Hipster Underwear

Color: 0001

Size: US M (AU 12)

Quantity: 1

Final Sale





All Night Festival Bag *Micro 2L

Color: 0393

Size: ONE SIZE

Quantity: 1



Stretch Cotton Ribbed Logo Super-High-Rise Shortie Underwear

Color: 0001

Size: US M (AU 12)

Quantity: 1



City Adventurer Duffle Bag 29L

Color: 0001

Size: ONE SIZE

Quantity: 1



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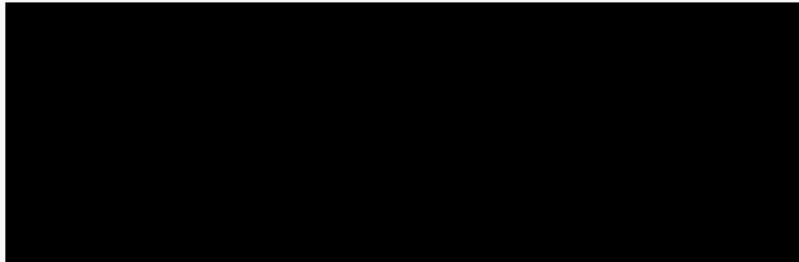
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