

Enforceable Undertaking

This enforceable undertaking (Undertaking) is given by EventsHQ Pty Ltd (ACN 118 063 666) to the Australian Communications and Media Authority (the ACMA) pursuant to section 38 of the *Spam Act 2003* (Cth)

1. Definitions and interpretation

In this Undertaking:

- a. The **ACMA** means the Australian Communication and Media Authority;
- b. **Affiliates** means entities that are permitted to use the NPL Brand and EventsHQ Pty Ltd systems in nominated territories for a flat fee;
- c. **Business Day** means a day that is not a Saturday, Sunday, public holiday or bank holiday in Melbourne or Sydney;
- d. **Commencement Date** has the meaning effected by clause 2;
- e. **CEM** means 'commercial electronic message' as that phrase is defined in the Spam Act;
- f. **CEM Campaign** means a CEM with a distinct content sent by SMS to one or more recipients (whether or not sent at the same time), that has an Australian link within the meaning of section 7 of the Spam Act;
- g. **EventsHQ** means EventsHQ Pty Limited (ACN 118 063 666) of Unit 3/3-11 Primrose Ave; Rosebery NSW 2018;
- h. **Licensees** means entities that are licensed to conduct poker events under the NPL brand by EventsHQ Pty Ltd in nominated territories on commission basis;
- i. **NPL** means the brand National Poker League that is licensed to EventsHQ Pty Ltd by SystemsHQ Pty Ltd for the purpose of running poker events;
- j. **Quarter** means the three month period commencing on 15 January, 15 April, 15 July and 15 October of the relevant year
- k. **SMS** means Short Message Service;
- l. **Spam Act** means the *Spam Act 2003* (Cth); and
- m. **Telecommunications Act** means the *Telecommunications Act 1997* (Cth).

Word and expressions defined in the Spam Act have the same meaning in this Undertaking, unless otherwise specified.

A reference to legislation includes any modification or re-enactment of it, and any regulations made under it.

2. Commencement Date

This Undertaking commences when:

- a. it has been executed by EventsHQ, and
- b. so executed, it has been accepted by the ACMA and written notification of the acceptance has been given to EventsHQ.

3. Background

EventsHQ Pty Ltd is incorporated in New South Wales and carries on a business in Australia as a provider of poker events to pubs and club under the NPL brand.

The ACMA's Investigation

- a. On 31 March 2011, the ACMA commenced an investigation into EventsHQ for alleged contraventions of the Spam Act. The Investigation concerned
 - I. whether EventsHQ had contravened section 16 of the Spam Act by sending, or causing to be sent, CEMs that were unsolicited;
 - II. whether EventsHQ had contravened section 17 of the Spam Act by sending, or causing to be sent, CEMs that did not contain clear and accurate sender information;
 - III. whether EventsHQ had contravened section 18 of the Spam Act by sending, or causing to be sent, CEMs that did not have a functional unsubscribe facility; and
 - IV. whether EventsHQ had contravened any other requirements of the Spam Act.
- b. The ACMA had received 5 complaints during the period 23 June 2010 and 20 December 2010, alleging that EventsHQ has contravened the Spam Act. In addition, 12 reports were received by the ACMA of potential contraventions.
- c. Some complainants alleged that attempts to unsubscribe from SMS messages promoting NPL events were not actioned and that subsequent SMS messages were sent by EventsHQ without consent.
- d. On the basis of documents and information obtained during the course of the investigation, the ACMA advised EventsHQ on 23 September 2011 that it had formed the preliminary view that EventsHQ may have contravened sections 16 and 17 of the Spam Act by:
 - i. Sending, or causing to be sent, 91 CEMs without the consent of the recipient (after consent to receive CEMs was withdrawn), in contravention of subsection 16 (1) of the Spam Act; and
 - ii. Sending, or causing to be sent, 62,987 CEMs without clear and accurate identification of who authorised the sending of the message, in contravention of paragraph 17(1)(a) of the Spam Act; and

- iii. Sending, or causing to be sent, 110,330 CEMs without contact details of the authoriser of the CEMs, in contravention of paragraph 17(1)(b) of the Spam Act.

4. Acknowledgement of the ACMA's concerns

- a. EventsHQ acknowledges that, on the basis of the documents and information obtained during the course of its investigation, the ACMA believes that EventsHQ has contravened the Spam Act.
- b. EventsHQ notes that the ACMA has a number of enforcement options available to it in response to alleged contraventions of sections 16 and 17 of the Spam Act, including the giving of an infringement notice and applying to the Federal Court for civil penalty orders.
- c. In response to the ACMA's concerns regarding EventsHQ's compliance with the Spam Act, EventsHQ offers this undertaking to the ACMA.

5. Undertakings

Under section 38 of the Spam Act, EventsHQ has given, and the ACMA has accepted, the following undertakings to ensure compliance with the Spam Act.

5.1 Undertaking to make payment

EventsHQ undertakes to pay to the ACMA an amount of \$22,000 in relation to the CEMs that were the subject of the investigation. The total amount is to be paid no later than 2 March 2012.

5.2 Undertaking with respect to training

- a. Within 3 months after the Commencement Date EventsHQ undertakes to develop and submit to the ACMA for approval a detailed written copy of its training program, which will at a minimum provide training on the requirements of all provisions of the Spam Act (including sections 16, 17 and 18 of the Spam Act) and the EventsHQ complaint handling policy developed in accordance with clause 5.5 of this Undertaking.
- b. Within 2 months after receiving notification of the ACMA's approval of the training program, EventsHQ undertakes to provide the approved training program to all its employees, licensees, contractors and affiliates who are involved in any activity for EventsHQ that results, or is likely to result, in the sending of CEMs after the Commencement Date.
- c. EventsHQ undertakes to provide to the ACMA, within 10 Business Days after the completion of the approved training program, written confirmation of that completion.
- d. EventsHQ undertakes to provide the approved training program to all new employees, contractors, licensees and affiliates who are involved in any activity in connection with the business of EventsHQ that results, or is likely to result, in the sending of CEMs within 2 months of the new employee, contractor, licensee or affiliate commencing their employment with EventsHQ or commencing such activity in connection with the business of EventsHQ.

- e. The training program must incorporate a requirement that employees, contractors, licensees and affiliates who are required to complete the training program are provided with a copy of this Undertaking.

5.3 Undertaking with respect to quality assurance

- a. Within 3 months of the Commencement Date, EventsHQ undertakes to review and submit to the ACMA for approval a detailed written copy of its relevant quality assurance processes to ensure that the sending of CEMs by EventsHQ, or by any other party in connection with the business of EventsHQ is compliant with sections 16, 17 and 18 of Spam Act.
- b. The quality assurance process will include a requirement that EventsHQ will:
 - I. comply with section 16 of the Spam Act by ensuring that each relevant electronic account-holder within the list of proposed recipients of CEMs has consented to the receipt of the proposed message;
 - II. comply with section 17 of the Spam Act by reviewing the proposed message to ensure that the content of the message does contain accurate information about how the recipient of the message could readily identify and contact the organisation who authorised the message; and
 - III. comply with section 18 of the Spam Act by reviewing the proposed message to be sent to ensure that the content of the message contains a functional unsubscribe facility.
- c. Within 1 month after receiving notification of the ACMA's approval of EventsHQ's quality assurance processes, those processes must be implemented by EventsHQ.
- d. EventsHQ undertakes to provide to the ACMA, within 10 Business Days after the implementation of the approved quality assurance process, written confirmation of the commencement date of its quality assurance processes.

5.4 Undertaking with respect to auditing

- a. EventsHQ undertakes from the Commencement Date to audit 10 per cent of all CEM campaigns sent, or caused to be sent, by or on behalf of EventsHQ for compliance with sections 16, 17 and 18 of the Spam Act, no later than 10 business days after the quarter in which the CEMs were sent.
- b. EventsHQ undertakes to provide the ACMA with a report, no later than 10 Business Days after the completion of the first quarter, detailing the results of the audit.
- c. EventsHQ undertakes to provide the ACMA with a report, no later than four weeks after a written request from the ACMA, detailing the outcomes of its quarterly audit for the previous quarter.
- d. EventsHQ undertakes to provide the ACMA with a template for the reports detailed in (b) and (c), for approval, no later than 1 month after the commencement date.

5.5 Undertaking with respect to Complaints handling

EventsHQ undertakes to establish a complaints handling policy no later than 3 months after the Commencement Date.

5.6 General Undertakings

In addition to the specific obligation set out in the Undertaking, EventsHQ undertakes to do all things reasonably necessary to give effect to this Undertaking.

6. Expiration of this Undertaking

Unless otherwise stated above with respect to particular undertakings, this Undertaking continues for a period of 24 months from the Commencement Date (paragraph 2) or until it is withdrawn or varied by EventsHQ, with the consent of the ACMA, pursuant to section 38(2) of the Spam Act, whichever is the earlier.

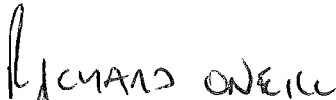
7. Acknowledgment of EventsHQ

EventsHQ acknowledges that:

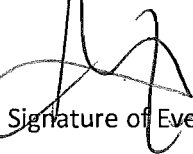
- a. the ACMA may make this Undertaking available for public inspection; and
- b. acceptance by the ACMA of this Undertaking does not derogate from any rights and remedies available to any other person arising from the conduct described in the Undertaking.

Date accepted by EventsHQ Pty Limited

Name and position of EventsHQ representative authorised to sign this Undertaking



Richard O'Neill, Managing Director



Signature of EventsHQ representative authorised to sign this Undertaking

Name and position of EventsHQ representative authorised to sign this Undertaking



Steve Putsey, Chief Technology Officer



Beryl Moya



Witness

The Undertaking offered by EventsHQ Pty Limited is accepted by the Australian Communications and Media Authority pursuant to section 38 of the Spam Act 2003 (Cth)

Date Accepted by ACMA 13 January 2012

Name and position of ACMA representative authorised to sign this Undertaking



Vince Humphries

Signature of ACMA representative authorised to sign this Undertaking

Executive Manager, Unsolicited Communications

Title:

Elizabeth Archer



Witness