

## Enforceable Undertaking

This enforceable undertaking (**Undertaking**) is given by Best Buy Australia Pty Ltd to the Australian Communications and Media Authority, pursuant to section 38 of the *Spam Act 2003* (Cth).

### 1. Definitions and Interpretation

In this Undertaking:

**ACMA** means the Australian Communications and Media Authority.

**Business Day** means a day that is not a Saturday, Sunday, public holiday or bank holiday in Sydney.

**Company** means Best Buy Australia Pty Ltd (ACN 122 464 799) of 1414 Canterbury Road, Punchbowl NSW 2196.

**Person** means a natural person and any body or entity, whether incorporated or not.

**Spam Act** means the Spam Act 2003 (Cth).

Words 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 all regulations made under it.

## 2. Commencement Date

This undertaking commences when:

- a). It has been executed by the Company, and
- b). So executed, it has been accepted by the ACMA and written notification of that acceptance has been given to the Company.

## 3. Background

### 3.1. The Company

The Company is incorporated in New South Wales and carries on its business from premises situate at 1414 Canterbury Road, Punchbowl NSW 2196. The Company conducts an online shopping business for its clients.

### 3.2. The ACMA's Investigation

On 27 January 2009, the ACMA commenced an investigation into complaints made to the ACMA in December 2008 and January 2009 concerning commercial electronic messages sent by the Company without the recipient's consent, and without containing a functional unsubscribe facility.

The ACMA provided the Company with details of the alleged contraventions of the Spam Act on 15 April 2009. The Company met with the ACMA to discuss its compliance issues on 31 March 2009 and 18 August 2009. At the August meeting, the Company indicated that some rectification had been undertaken to address problems with its database and the unsubscribe facility, which was not functioning correctly.

On the basis of the documents and information obtained during the course of its investigation, the ACMA is of the view that the Company has contravened sections 16 and 18 of the Spam Act on a number of occasions.

The Company is continuing to work to ensure that its database and software are in compliance with the requirements of the Spam Act, particularly in relation to the provision of a functional unsubscribe facility.

### 3.3. The Company's Position

The Company wishes to continue working to ensure that its database and software comply with the requirements of the Spam Act and has voluntarily ceased all commercial electronic messaging from 20 July 2009.

The Company is continuing to work to ensure that its database and software are in a form that will comply with the requirements of the Spam Act, particularly in relation to the provision of a functional unsubscribe system.

The Company will only recommence the sending of commercial electronic messaging in accordance with the conditions set out hereunder.

## 4. **Undertaking to Make Payment**

The Company undertakes to pay to the ACMA on behalf of the Commonwealth an amount of \$8,000 in relation to the previous commercial electronic messages sent in contravention of the Spam Act. The total amount is to be paid in six monthly instalments, with the first instalment due one month after the Commencement Date, as follows:

28 February 2010	\$2,000
31 March 2010	\$2,000
30 April 2010	\$1,000
31 May 2010	\$1,000
30 June 2010	\$1,000
31 July 2010	\$1,000

## 5. Undertakings Regarding Conduct

### 5.1. Undertaking to cease sending commercial electronic messages

(a) The Company undertakes not to recommence the sending of commercial electronic messages until: (i) training has been provided in accordance with subsection 5.1(b); and (ii) a quality assurance program in accordance with subsection 5.3(a) has been approved.

(b) If the Company does not recommence the sending of CEMs for the duration of this undertaking, the Company is not obligated to comply with sections 5.2, 5.3 and 5.5 of this undertaking. *and section 5.4*

*NF*  
*Victor H*

### 5.2. Training

a). The Company undertakes to develop and submit to the ACMA for approval a training program designed to ensure compliance with the requirements of the Spam Act.

b). After receiving notification of the ACMA's approval of the training program, the Company undertakes to provide the approved training program to all its directors, employees and contractors.

c). The Company undertakes to provide the approved training program to any new employees or contractors who are involved in sending commercial electronic messages within 30 days of that new employee or contractor commencing their duties with the Company.

- d). The training program must include a requirement that all directors, employees and contractors who are involved in sending commercial electronic messages are provided with a copy of this Undertaking.
- e). In the six months after the date of provision of the first approved training program, the Company must provide to the ACMA two quarterly reports which detail all training provided to directors, employees and contractors, during the preceding three months, including names of attendees.

5.3. Quality Assurance

- a). The Company will submit to the ACMA for approval a Quality Assurance program designed to ensure compliance with sections 16, 17 and 18 of the Spam Act.
- b). The Quality Assurance Program referred to in 5.3(a) above is to be implemented before the resumption of the sending of commercial electronic messages by the Company.
- c). The Company undertakes to provide to the ACMA, within one month after the implementation of the approved quality assurance processes, written confirmation of that implementation.

5.4. Complaints Handling

- a). The Company undertakes to establish within 2 months of the Commencement Date, a complaints handling policy which complies with Australian Standard ISO 10002-2006 (Customer satisfaction — Guidelines for complaints handling in organisations).
- b). For the duration of this Undertaking, the Company shall provide to the ACMA a quarterly report which details any complaints received about commercial electronic messages sent, including the response to those complaints, during the preceding three months.

- c). The Company undertakes to provide each report to the ACMA no later than 10 Business Days after the end of the applicable reporting period.

#### 5.4 Auditing

- a). Upon Commencement of this Undertaking, the Company undertakes to review 10 per cent of commercial electronic messages sent by the Company on a monthly basis for the duration of the undertaking after the resumption of the sending of commercial electronic messages to examine those messages for compliance with sections 16, 17 and 18 of the Spam Act.
- b). For duration of the undertaking after the resumption of the sending of commercial electronic messages, the Company must provide to the ACMA a quarterly report which details the results of the audit for the preceding three months.
- c). The Company undertakes to provide each report to the ACMA no later than 10 Business Days after the end of the applicable reporting period.

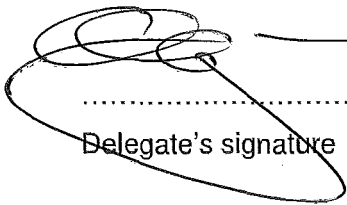
#### 5.5 Unsubscribe Facility

- a). The Company undertakes to ensure that any person who advises they do not wish to receive commercial electronic messages does not receive any further commercial electronic messages from the Company.
- b). At least 30 days prior to the resumption of the sending of commercial electronic messages, the Company undertakes to provide written advice to the ACMA setting out the action taken, the procedures implemented and any mechanisms by which those procedures are to be monitored or audited.
- c). The Company undertakes to ensure that each commercial electronic message sent contains a means for the recipient to communicate to the Company that they do not wish to receive commercial electronic messages, as required by section 18 of the Spam Act.



And

The undertaking, offered by the Company, is accepted by the Australian Communications and Media Authority pursuant to section 38 of the *Spam Act 2003*, by its delegate:

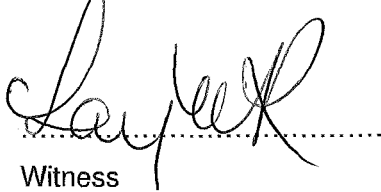


.....  
Delegate's signature

Grant SYMON

.....  
Delegate's name

In the presence of:



.....  
Witness

Mellanie Shaylor  
.....  
Name of witness