



Infringement Notice

Spam Act 2003

I, Jeremy Fenton, 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 DoorDash Technologies Australia Pty Ltd ACN 634 446 030 (**DoorDash**) has committed one or more contraventions of a particular civil penalty provision,

HEREBY give an infringement notice (**the Infringement Notice**) under subclause 3(1) of Schedule 3 to the Spam Act to:

DoorDash Technologies Australia Pty Ltd

at

Level 8, 222 Exhibition St Melbourne VIC 3000.

Details of Alleged Civil Contraventions

It is alleged that DoorDash contravened:

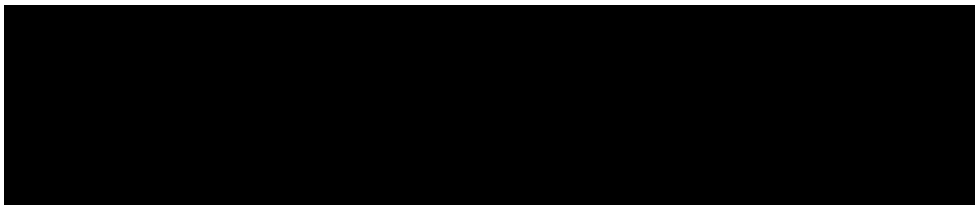
- subsection 16(1) of the Spam Act by sending commercial electronic messages (CEMs) that had an Australian link and which were not designated commercial electronic messages, without the consent of the relevant electronic account holder
- subsection 18(1) of the Spam Act by sending CEMs that had an Australian link, and which were not designated CEMs, without a functional unsubscribe facility.

Amount of Penalty

The total pecuniary penalty (**the penalty**) for the alleged civil contraventions is \$2,011,320. 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 "DOORDASH-UCES" with your payment:



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 DoorDash, 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 **27 July 2023** 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: 29 JUNE 2023



Jeremy Fenton
Executive Manager
Consumer, Consent and Numbers Branch
Australian Communications and Media Authority

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. DoorDash Technologies Australia Pty Ltd (DoorDash) is a registered company under the *Corporations Act 2001*, with a registered office at Level 8, 222 Exhibition St Melbourne VIC 3000.
- 1.2. On 13 October 2022, the ACMA commenced an investigation into whether DoorDash 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 DoorDash without consent and/or without a functional unsubscribe facility.

2. Matters giving rise to the Infringement Notice

- 2.1. During the period 1 March to 13 October 2022, (**the relevant period**), DoorDash sent CEMs to consumers and to prospective Dashers (prospective independent contractors).
- 2.2. Information provided by DoorDash showed that the purpose of the messages was to:
 - 2.2.1. offer to supply, or to advertise or promote products and services sold by DoorDash to consumers
 - 2.2.2. offer, or to advertise or promote a business opportunity to prospective Dashers.
- 2.3. Therefore, the messages described at paragraph 2.2 were CEMs, as defined in section 6 of the Spam Act.
- 2.4. The CEMs were not 'designated' commercial electronic messages as described in Schedule 1 to the Spam Act.
- 2.5. The CEMs had an Australian link as defined in section 7 of the Spam Act. They were sent by DoorDash, an organisation whose central management and business registration is in Australia.
- 2.6. Specific CEMs were sent without consent as prohibited by subsection 16(1) of the Spam Act, as the relevant electronic account-holders had withdrawn consent in accordance with clause 6 of Schedule 2 to the Spam Act.
- 2.7. Specific CEMs did not contain a functional unsubscribe facility as required by subsection 18(1) of the Spam Act.
- 2.8. The ACMA's investigation found that the alleged contraventions were due to systems and procedural failures, and a mischaracterisation of CEMs as designated commercial electronic messages, that occurred between 1 March and 13 October 2022.

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 commercial electronic message 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 DoorDash to electronic addresses 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 has reasonable grounds to believe that DoorDash contravened section 16(1) of the Spam Act during the relevant periods as set out in this notice.

3.1.6. Section 16(1) of the Spam Act is a civil penalty provision (see subsection 16(11)).

3.2. *Subsection 18(1)*

3.2.1. Subsection 18(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, unless the CEM contains a functional unsubscribe facility whereby the electronic address is reasonably likely to be capable of receiving the recipient's unsubscribe message and the electronic address complies with the condition or conditions (if any) specified in the regulations.

3.2.2. The CEMs sent by DoorDash to electronic addresses during the relevant period did not include a functional unsubscribe facility as described in paragraph 3.2.1 above.

3.2.3. The ACMA has reasonable grounds to believe that DoorDash contravened subsection 18(1) of the Spam Act during the relevant period, as set out in this Notice.

3.2.4. Subsection 18(1) of the Spam Act is a civil penalty provision (see subsection 18(8)).

4. The amount of the penalty

4.1. The total penalty specified in this Notice is \$2,011,320, 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 subsections 16(1) and 18(1) of the Spam Act

Date of contravention	Civil penalty provision allegedly contravened	Number of contraventions of subsection	Penalty units¹	Penalty imposed
Section 16(1) Contraventions				
1 August 2022	Subsection 16(1) of the Spam Act	50	1000	\$222,000
4 August 2022	Subsection 16(1) of the Spam Act	50	1000	\$222,000
5 August 2022	Subsection 16(1) of the Spam Act	50	1000	\$222,000
11 August 2022	Subsection 16(1) of the Spam Act	50	1000	\$222,000
12 August 2022	Subsection 16(1) of the Spam Act	50	1000	\$222,000
14 August 2022	Subsection 16(1) of the Spam Act	50	1000	\$222,000
17 August 2022	Subsection 16(1) of the Spam Act	50	1000	\$222,000
27 August 2022	Subsection 16(1) of the Spam Act	19	380	\$84,360
11 September 2022	Subsection 16(1) of the Spam Act	20	400	\$88,800
Total s.16(1)		389	7,780	\$1,727,160
Section 18(1) Contraventions				
19 July 2022	Subsection 18(1) of the Spam Act	50	500	\$111,000
25 July 2022	Subsection 18(1) of the Spam Act	28	280	\$62,160
7 October 2022	Subsection 18(1) of the Spam Act	50	500	\$111,000
Total s.18(1)		128	1,280	\$284,160
Grand Total		517	9,060	\$2,011,320

¹ At the time of the alleged contraventions, the amount of a penalty unit was \$222, as set by section 4AA of the *Crimes Act 1914*.