



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 Uber Australia Pty Ltd ACN 160 299 865 (Uber), 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:

Uber Australia Pty Ltd

at
Level 30, 580 George St
Sydney NSW 2000

Details of Alleged Civil Contraventions

It is alleged that Uber 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.
- Subsection 18(1) of the Spam Act by sending CEMs that had an Australian link, and which were not designated commercial electronic messages, without a functional unsubscribe facility.

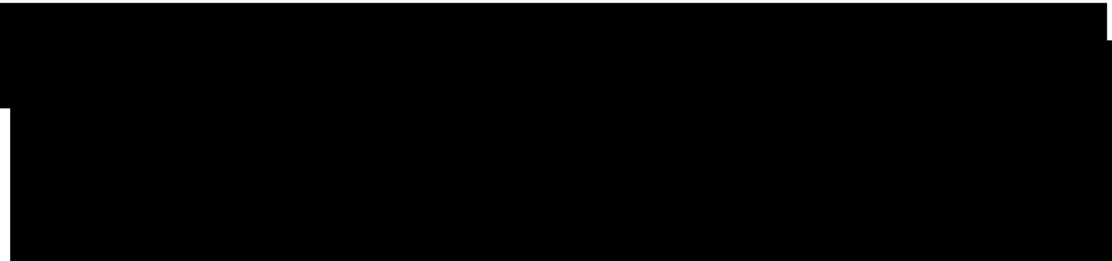
Schedule 1 to this infringement notice sets out brief details of the alleged civil contraventions.

Amount of Penalty

The total pecuniary penalty (**the penalty**) for the alleged civil contraventions is \$412,500. 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 "Uber-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, by **Tuesday 24 October 2023** 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 **Tuesday 24 October 2023** the ACMA may take action for the alleged contraventions.

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: 26 September 2023



Tanya Farrell

A/g Executive Manager

Unsolicited Communications and Scams 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. Uber is a registered company under the *Corporations Act 2001*, with a registered office at Level 30, 580 George St Sydney NSW 2000
- 1.2. Uber is an online rideshare and food delivery company.
- 1.3. On 4 May 2023, the ACMA commenced an investigation into whether Uber had contravened the Spam Act.
- 1.4. Prior to commencing the investigation, the ACMA received complaints from consumers alleging they had received CEMs without an unsubscribe statement and/or after they had withdrawn consent.

2. Matters giving rise to the Infringement Notice

- 2.1. On 18 January 2023, Uber sent electronic messages to consumers.
- 2.2. The purpose of the CEMs was to offer and/or promote a service, namely booking Uber's "Bar in a Car" service; a service whereby alcoholic beverages were offered outside a person's home. Therefore, the messages described at paragraph 2.1 were commercial electronic messages, 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 Uber, an organisation whose central management and control is in Australia.
- 2.5. Specific CEMs were sent after relevant account-holders withdrew their consent in accordance with clause 6 of Schedule 2 of the Spam Act.
- 2.6. Specific CEMs did not contain a functional unsubscribe facility as required by subsection 18(1) of the Spam Act.

3. Relevant civil penalty provisions of the Spam Act

3.1. Subsection 16(1)

- 3.1.1. Subsection 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. Subsection 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 Uber 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 Uber contravened subsection 16(1) of the Spam Act during the relevant periods, as set out in this Infringement Notice.

3.1.6. Subsection 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 statement to the effect that the recipient may use an electronic address set out in the CEM to send an unsubscribe message to the person who authorised the sending of the CEM (an unsubscribe statement).

3.2.2. The CEMs sent by Uber to electronic addresses during the relevant periods did not include an unsubscribe statement as described in subsection 18(1) of the Spam Act.

3.2.3. The ACMA has reasonable grounds to believe that Uber contravened subsection 18(1) of the Spam Act during the relevant periods, as set out in this Infringement 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 \$412,500, calculated in accordance with the table in clause 5(1) of Schedule 3 to the Spam Act, as shown in the table below.

Date of contravention	Civil penalty provision allegedly contravened	Number of Contraventions	Penalty units ¹	Penalty imposed
Section 16(1) contraventions				
18/01/2023	s16(1) of the Spam Act	501,164	1000	\$275,000
Total s.16(1)		501,164	1000	\$275,000
Section 18(1) contraventions				
18/01/2023	s18(1) of the Spam Act	2,035,640	500	\$137,500
Total s.18(1)		2,035,640	500	\$137,500
Grand Total		2,536,804	1,500	\$412,500

¹ At the time of the alleged contraventions, the amount of a penalty unit was \$275, see section 4AA of the *Crimes Act 1914*