



ACT DEPARTMENT OF JUSTICE
& COMMUNITY SAFETY

POLICY & REGULATORY DIVISION

Your Reference: C2003/938

Our Reference: 03/8893

Mr Tim Grimwade
General Manager
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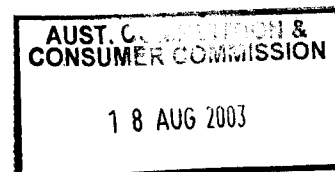
Dear Mr Grimwade

I refer to the letter of 29 July 2003 from Mr Scott Gregson, Director Adjudication Branch, concerning the application for revocation and substitution of authorisation A40077 by the Australian Direct Marketing Association Limited (ADMA). Please find attached a submission from the Department of Justice and Community Safety in relation to the application by ADMA.

Yours sincerely

Elizabeth Kelly
Executive Director &
Commissioner for Fair Trading

13 August 2003





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Application for revocation and substitution of authorisation A40077 by the Australian Direct Marketing Association Limited (ADMA).

Submission by the ACT Department of Justice and Community Safety

The ACT does not oppose the application by the Australian Direct Marketing Association for revocation and substitution of authorisation A40077; however, the ACT takes this opportunity to provide some comments on ADMA's application and the ADMA Code.

The ACT notes that the changes to the ADMA Code appear to be, for the most part, minor in nature and do not dramatically increase the compliance burden currently carried by ADMA members under the current version of the ADMA Code. It is pleasing to see the introduction of paragraphs 43 to 47 in Part B of the Code concerning internal complaint handling systems. These new paragraphs provide ADMA members with further guidance on their responsibility to provide consumers with efficient and effective dispute handling processes.

It is noted that the focus of the ADMA Code appears to be on promoting good customer relations between consumers and ADMA members, rather than preventing competition between industry participants. While it is acknowledged that the ADMA Code does have the potential to result in a level of anti-competitive conduct by removing the impetus for achieving higher standards in customer relations, the benefits to consumers that flow from having direct marketers comply with specific standards of conduct may outweigh this fetter on competition. These benefits include increased confidence in the direct marketing industry, access to dispute handling mechanisms, the application of sanctions against ADMA members who infringe against the Code and consumer representation on the Code Authority.

While the ACT would support in-principle any measures that result in increased levels of consumer protection, it should also be noted that it is important that the standards in the

ADMA Code be appropriately enforced in order to ensure that the protection provided to consumers by the ADMA Code is not illusory. It may be appropriate to include a condition in any authorisation granted to the effect that ADMA must make publicly available on its website de-identified data and statistics on its dispute resolution activities and the imposition of sanctions against ADMA members who breach the Code.

It is noted that the ADMA Code states that ADMA will publish in its annual report information about the number of complaints received by the Code compliance officer, the number of breaches established during the year, an analysis of enforcement action taken during the year and a statistical analysis of complaints by company. However, this information does not appear to be freely available on the ADMA website and therefore is not readily accessible by the majority of individuals. Making this information freely available in a public forum would assist in determining the true effectiveness of the ADMA Code as an instrument of consumer protection. This information would also allow an accurate measure of the consumer benefit provided by the ADMA Code, as compared to its level of anti-competitive detriment, to be taken.

ADMA notes in its application that it receives a relatively low level of complaints. It should be noted that this might in fact reflect, a lack of consumer awareness of where to go to lodge a complaint about this industry, rather than an indication that the market is performing well or that industry members are complying closely with the ADMA Code. Indeed, the fact that various State Privacy Commissioners are receiving a significant number of complaints about the practices of participants in the direct marketing industry might indicate that there is a large number of consumers who are unaware of ADMA's existence and where a complaint can be lodged. Available statistics would suggest that there is a reasonable level of consumer concern about the practices of this industry; for example, the ACT Office of Fair Trading received 31 complaints about unsolicited commercial email (spam) in the period January to June this year.

A central feature of any effective industry self-regulatory code is the willingness of the industry to apply effective sanctions against members who breach the Code. While it is recognised that the ADMA Code Authority can apply a range of sanctions, including recommending expulsion from the Association, ADMA has not provided any information about whether these powers have ever been exercised. As noted earlier, the publication of data concerning complaints and the imposition of sanctions against ADMA members would be useful in this regard.