

Ref: C2003/938
Contact Officer: Tania Mayrhofer
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14 August 2003

Ms Jodie Sangster
Manager – Legal and Regulatory Affairs
Australian Direct Marketing Association
Suite 1, Level 5
100 William Street
EAST SYDNEY NSW 2011

Dear Ms Sangster

Australian Direct Marketing Association Limited Application for Revocation and Substitution of Authorisation A40077 - request for interim authorisation

I refer to your application for revocation and substitution of authorisation A40077 and request for interim authorisation. Your application seeks to extend the period of the existing authorisation in relation to your current Code of Practice ('the Code') and, subject to amendments being approved by the ADMA Board of Directors, to substitute the current Code with an amended Code.

Interim authorisation protects the arrangements for which authorisation is sought from legal action under the *Trade Practices Act 1974* ('the Act') while the Commission considers and evaluates the merits of the application.

The Australian Competition and Consumer Commission ('the Commission') has considered the request for interim authorisation, and has decided to suspend the operation of authorisation A40077 and to grant interim authorisation to the current Code and proposed amendments in substitution to enable due consideration to be given to the merits of the application for revocation and substitution. In assessing the request for interim authorisation, the Commission gave consideration to the following:

- granting interim authorisation would not permanently alter the state of the market or inhibit it from returning to its pre interim authorisation state if final authorisation is later denied; and
- granting interim authorisation would not disturb the existing position pending a final decision as the status quo would be maintained.

The decision to grant an interim authorisation is conditional upon the following:

- that interim authorisation is not held out to be an endorsement or approval of the Code by the Commission, and
- that interim authorisation only extends to the amendments already notified to the Commission.

Further, the Commission proposes to reassess the application for interim authorisation at the stage it releases a draft determination.

Please be advised that the Commission's decision in relation to interim authorisation should not be taken to be indicative of whether or not final authorisation will be granted by the Commission, nor should it be held to be an endorsement of the Code.

Please also note that under subsection 91(2AB) of the Act, the Commission may revoke an interim authorisation at any time.

I attach for your information a copy of the letter sent to interested parties informing them of the Commission's decision.

The Commission requires further information to be supplied by ADMA to assist in assessing the application for revocation and substitution. This information will also be forwarded to interested parties. You are requested to provide the following information to the Commission by **22 August 2003**:

1. All Code Authority Annual Reports.
2. Information from non-ADMA sources about ADMA's market share. Specifically, what percentage of direct marketing activity in Australia, including telemarketing, direct mail, television shopping and email and mobile phone messaging, comes from ADMA members?
3. Information about whether or not independent reviews of the Code, as outlined in Provision H of the ADMA Code, have been conducted on a regular basis, and the outcomes of those reviews (including reviews which have been presented to the ADMA Board). If such reviews have not been conducted please provide reasons.
4. Evidence that the conditions of the original authorisation A40077 as set out in section 9 of the Determination have been complied with including, but not limited to, sub-sections 9.3 and 9.4.

I have advised interested parties that submissions are sought by 12 September 2003. After that date, I will provide you with any submissions for your comments. Should you wish to respond to any submissions, please do so by **26 September 2003**. I cannot guarantee that any submissions received after this date will be taken into consideration by the Commission.

Further, I attach for your information two submissions received to date from interested parties.

If you have any questions please contact Tania Mayrhofer on (02) 6243 1070.

Yours sincerely

Tim Grimwade
General Manager - Adjudication Branch