



Contact Officer David Byrne
Telephone (07) 3119 0015
Our File Ref OFT/04533

Department of
Tourism, Racing and Fair Trading

incorporating
Liquor Licensing

Mr Tim Grimwade
General Manager, Adjudication Branch
Australian Competition & Consumer Commission
PO Box 1199
DICKSON ACT 2602

FAXED
10.09.03

By Facsimile No. (02) 6243 1211 and By Ordinary Post

FILE No:
DOC:
MARS/PRISM:

Dear Mr Grimwade

Australian Direct Marketing Association Limited Application for Revocation and Substitution of Authorisation A40077

Thank you for your letter dated 14 August 2003. Having had the opportunity to consider your correspondence, the earlier letter dated 29 July 2003 from Mr Scott Gregson from your office and the various attachments to that earlier letter, I make the following submissions on behalf of the Queensland Office of Fair Trading:-

- It appears that the Amended Direct Marketing Code of Practice ("the Amended Code") lodged by the Australian Direct Marketing Association Limited ("ADMA") differs very little from the Direct Marketing Code of Practice ("the Present Code"), which is currently being used by ADMA and which is the subject of Authorisation A40077.
- Both the Present Code and the Amended Code are not inconsistent with the provisions of the most recent version of the Direct Marketing Model Code of Practice ("the Model Code"), which was endorsed by the Ministerial Council on Consumer Affairs in June 2003.
- Accordingly it is difficult to see why the reasoning enunciated in Authorisation A40077 would not apply to the Amended Code, and the Queensland Office of Fair Trading therefore does not oppose ADMA's present Application for Revocation and Substitution of Authorisation A4007.

Whilst the Queensland Office of Fair Trading does not oppose the present Application for Revocation and Substitution of Authorisation A40077, I would like to take this opportunity to make the following submissions in relation to the Amended Code per se:-

- Clause 21.1 of Part B of the Amended Code, which relates to the commencement of the seven day cooling-off period, states inter alia that "*The consumer will be deemed to have received the goods **two clear business days** after the goods were dispatched...*" (emphasis added). The corresponding provisions in the Present Code and the Model Code refer to "*three business days*" and "*three days*" respectively. It appears that the Amended Code therefore potentially reduces the cooling-off period by one day, and ADMA should be queried as to the justification for this diminution.

- Clause 36 of Part B of the Amended Code begins with the words “*Subject to clause 33...*”, which is identical to the wording found at the beginning of clause 34 of Part B of the Present Code. Given the insertion of (new) clauses 33 and 34 into Part B of the Amended Code, it is presumed that clause 36 of Part B of the Amended Code should actually commence with the words “*Subject to clause 35...*”.
- The second dot point of clause 38 of Part B of the Amended Code begins with the words “*during the time period referred to in clause 34...*”, which is identical to the wording found at the beginning of the second dot point of clause 36 of Part B of the Present Code. Given the insertion of (new) clauses 33 and 34 into Part B of the Amended Code, it is presumed that the second dot point of clause 38 of Part B of the Amended Code should actually commence with the words “*during the time period referred to in clause 36...*”.
- (New) clause 44 of Part B of the Amended Code contains a number of typographical/grammatical errors. It is presumed this clause should either read “*Members must have an effective in house procedure for handling complaints and, where possible, have a named individual who is responsible for...*” or “*Members must have effective in-house procedures for handling complaints and, where possible, have named individuals who are responsible for complaints/enquiries and who have the authority...*” or some combination of the two.
- Clause 21 of Part D of the Amended Code contains a typographical/grammatical error (which also appears in clause 21 of Part D of the Present Code). It is presumed that the clause should read “*...and provided in a manner that gives consumers...*”.
- Part E of the Amended Code, entitled “Fair Conduct Relevant to Consumer Data Protection”, is the area of greatest concern for the Queensland Office of Fair Trading. Whilst Part E has been amended only slightly from the version of that Part which appears in the Present Code, it appears that:-
 - Part E of the Amended Code is simply a reprint (with the addition of a new clause 1.6) of the National Privacy Principles from Schedule 3 of the Commonwealth *Privacy Act 1988* (as amended by the *Privacy Amendment (Private Sector) Act 2000*).
 - No effort has been made to tailor the Privacy Principles for the Amended Code. This leads to some absurdities, for example references to “*this Act*” in clause 10 of Part E, and the inclusion of provisions which would rarely (if ever) be relevant to ADMA members.
 - Insufficient care has been taken with the formatting of the Privacy Principles, for example the omission of the numeral for subclause 6(j)(i) of Part E.
 - The term “organisation” is used throughout Part E of the Amended Code without ever being defined, whereas section 6C of the *Privacy Act 1988* defines the term for the purposes of that Act.
 - The legislative language reproduced in Part E is not easily understood. It is the view of the Queensland Office of Fair Trading that ADMA members would be better served by the sort of (more relevant and simplified) information, including footnotes, found in “*Part 3 Privacy Requirements*” of the Model Code.

- In the third paragraph of Part F of the Amended Code the words "...or suppress..." have been added. ADMA should be queried as to any justification for why the consumer's name might be retained (although suppressed), when the Present Code requires the ADMA member to remove the consumer's name.
- Clause 1 of Part G of the Amended Code, in detailing the scope of ADMA's enforcement procedures, states "*It does extend to...*". When recourse is had to the equivalent provision in the Present Code, it is presumed that clause 1 of Part G of the Amended Code should read "*It does not extend to...*".
- It appears that there are typographical errors in the numbering used in Part H of the Amended Code. It is presumed that there are supposed to be four subclauses of clause 1, rather than the numbering "1, 11, 12, 13, 14" that presently appears.
- Generally the formatting throughout the Amended Code could use attention, as it appears that "cutting and pasting" from the Present Code has created some anomalies. By way of example only:-
 - the clauses of Part D of Amended Code frequently have inappropriate sentence breaks;
 - in clause 8 of Part D of the Amended Code an unnecessary hyphen appears in the word "*characteristics*"; and
 - Clause 24.4 of Part D of the Amended Code should appear on a new line, separate from the preceding clause.
- The Amended Code does not include any footnotes, such as those found in the Present Code. The footnotes in the Present Code frequently contain additional, useful information (for example the information included in footnote 6 to clause 11 in Part C of the Present Code, which reminds members to check individual State regulation on permitted calling hours for telemarketing). ADMA should be queried as to any possible justification for removing the footnotes in the Amended Code.
- It is the Queensland Office of Fair Trading's view that these issues should be addressed, and rectified where appropriate, before revocation and substitution of Authorisation A4007 is approved.

I thank you for providing me with this opportunity for comment, and I trust the above submissions will be of assistance. Please do not hesitate to contact me if anything herein requires clarification or elaboration.

Yours sincerely



Jan Archer
A/Commissioner for Fair Trading

101 9 1 03