



**Australian  
Competition &  
Consumer  
Commission**

Our Ref: C2003/938  
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20 December 2005

Ms Jodie Sangster  
Director  
Legal & Regulatory Affairs  
Australian Direct Marketing Association  
Level 6, 50 Carrington Street  
SYDNEY NSW 2000

Dear Ms Sangster

**Australian Direct Marketing Association – application for revocation of  
authorisation A40077 and replacement by substitute authorisation A90876  
Draft Determination – Submissions**

I refer to the above application for revocation and substitution lodged with the Australian Competition and Consumer Commission (the ACCC) on 25 July 2003.

As you are aware, on 12 October 2005, the ACCC wrote to interested parties seeking submissions in relation to the application. On 28 October 2005, the ACCC again wrote to interested parties requesting written submissions to be provided by 16 December 2005.

To date, the ACCC has received submissions from the following interested parties:

- Chris Connolly, Financial Services Consumer Policy Centre, dated 19 October 2005;
- Robin Whittle, First Principles, dated 19 October 2005;
- Rod Stowe, NSW Office of Fair Trading, dated 27 October 2005;
- Berna Collier, Australian Securities and Investments Commission, dated 4 November 2005
- Sue-Anne Wallace, Fundraising Institute-Australia Ltd, dated 5 November 2005
- Frank Antonini, Royal Institute for Deaf and Blind Children, dated 8 November 2005;



- Robin Whittle, First Principles, dated 8 November 2005;
- Frank Antonini, Royal Institute for Deaf and Blind Children, dated 11 November 2005;
- Geoff Brown, Consumer Affairs Victoria, dated 14 November 2005;
- Andrew Soloman, Office of the Privacy Commissioner, dated 14 December 2005;
- Royal Institute for Deaf and Blind Children, dated 15 December 2005;
- Margaret Scott, Fundraising Institute-Australia Ltd, dated 15 December 2005;
- Alison So, Australian Consumers' Association, dated 19 December 2005;
- Nigel Waters, Australian Privacy Foundation, dated 19 December 2005;
- Robin Whittle, First Principles, dated 19 December 2005; and
- Chris Connolly, Financial Services Consumer Policy Centre, dated December 2005.

A copy of each of these submissions is attached. All publicly available submissions are also posted on the ACCC internet site at [www.accc.gov.au](http://www.accc.gov.au).

In addition to written submissions, a pre determination conference was held in Sydney on 14 November 2005, at which you were present. Please find enclosed a copy of notes taken during that conference.

*Request for further information*

I note that it has been submitted to the ACCC that the 2005 Code of Practice falls below the standards required by legislation in a number of areas, with cooling off periods having been specifically identified as an area of inconsistency. It has been submitted that, were the ACCC to authorise the 2005 Code as proposed by the draft determination, then a detriment to the public may arise to the extent that the Code may mislead ADMA members as to their legislative obligations.

So that the ACCC may consider this issue further ADMA is asked to provide an analysis of the 2005 Code vis-à-vis legislative requirements, in particular identifying areas where the Code imposes a requirement which differs (including imposing higher standards) from the requirements imposed by legislation.

As you are aware, the ACCC may grant authorisation subject to conditions where it can not be satisfied that arrangements result in a net benefit to the public. In this respect the ACCC may consider whether it is appropriate to impose an independent audit and reporting mechanism as a condition of authorisation. For example the ACCC may require: ADMA to engage an appropriately qualified independent auditor to assess the Code in light of legislative requirements; ADMA to provide a copy of the auditor's assessment; and ADMA to report to the ACCC on proposed amendments to the ADMA Code to rectify any areas of inconsistency identified by the independent auditor. I would welcome your comments regarding these issues.

So that this matter may be completed on a timely basis it is asked that ADMA respond to the matters outlined above and the additional matters raised by interested party submissions by **cob 30 January 2005.**

Thank you for your assistance. A copy of this letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please do not hesitate to contact Kerry Leigh Taylor on (02) 6243 1175.

Yours sincerely

A handwritten signature in black ink, appearing to read 'S Philp', written in a cursive style.

Susan Philp  
Director  
Adjudication Branch