



Telecom Decision CRTC 2010-263

Ottawa, 7 May 2010

Aoplast Duke Windows & Doors Inc. – Violations of the Unsolicited Telecommunications Rules

File number: PDR 9174-445

In this decision, the Commission imposes administrative monetary penalties totalling \$6,000 on Aoplast Duke Windows & Doors Inc. for telemarketing telecommunications initiated on its behalf to consumers whose telecommunications numbers were registered on the National Do Not Call List (DNCL), and for initiating the telecommunications without having registered and having paid all applicable subscription fees to the National DNCL operator, in violation of the Unsolicited Telecommunications Rules.

Introduction

1. Between 4 November 2008 and 20 October 2009, the Commission received numerous complaints in relation to telemarketing calls made by Aoplast Duke Windows & Doors Inc. (Aoplast).
2. On 30 November 2009, a notice of violation was issued to Aoplast pursuant to section 72.07 of the *Telecommunications Act* (the Act). The notice informed Aoplast that it had
 - initiated two telemarketing telecommunications to consumers whose numbers were registered on the National Do Not Call List (DNCL), in violation of Part II, section 4¹ of the Commission's Unsolicited Telecommunications Rules (the Rules);
 - initiated these telecommunications without having paid all applicable subscription fees to the National DNCL operator, in violation of Part II section 6² of the Rules; and

¹ Part II, section 4 of the Rules states that a telemarketer shall not initiate, and a client of a telemarketer shall make all reasonable efforts to ensure that the telemarketer does not initiate, a telemarketing telecommunication to a consumer's telecommunications number that is on the National DNCL, unless express consent has been provided by such consumer to be contacted via a telemarketing telecommunication by that telemarketer or the client of that telemarketer.

² Part II, section 6 of the Rules states that a telemarketer shall not initiate a telemarketing telecommunication on its own behalf unless it is a registered subscriber of the National DNCL and has paid all applicable fees to the National DNCL operator.

- failed to register with the National DNCL operator, in violation of Part III, section 2³ of the Rules.
3. Aoplast was given until 30 December 2009 to pay the administrative monetary penalties (AMPs) set out in the notice of violation or to make representations to the Commission regarding the violations.
 4. The Commission received representations by Aoplast dated 30 December 2009.
 5. In its representations, Aoplast stated that it did not and does not conduct telemarketing. It further stated that because any telemarketing for Aoplast is conducted by 2094051S Ontario Inc., it could not have made the telemarketing telecommunications in question to consumers.
 6. By letter dated 12 January 2010, the Commission requested that Aoplast provide information that would confirm that 2094051 Ontario Inc. had made the telemarketing telecommunications referenced in the notice of violation on behalf of Aoplast.
 7. The Commission received no further correspondence from the company.
 8. On 20 January 2010, William Friedman, B.C.L., L.L.B., of the law firm Friedman and Associates, on behalf of Aoplast, indicated that written confirmation from 2094051 Ontario Inc. was forthcoming and that Aoplast's financial condition was tenuous, such that the penalty would result in further deterioration of its financial condition.
 9. The Commission received no written confirmation from 2094051 Ontario Inc.
 10. The Commission has identified the following issues to be addressed in its determinations:
 - I. Did Aoplast commit the violations?
 - II. Is the penalty amount reasonable?

I. Did Aoplast commit the violations?

11. Aoplast stated that 2094051 Ontario Inc. is responsible for any telemarketing activity related to Aoplast and, therefore, Aoplast could not have made the telemarketing telecommunications to consumers.
12. The Commission notes that it requested, but did not receive, confirmation from Aoplast that 2094051 Ontario Inc. had made the telemarketing telecommunications referenced in the notice of violation on behalf of Aoplast.

³ Part III, section 2 of the Rules states that a telemarketer shall not initiate a telemarketing telecommunication on its own behalf unless it has registered with, and provided information to, the National DNCL operator, and has paid all applicable fees charged by the Complaints Investigator delegate.

13. The Commission further notes that the complainants stated in their affidavits that the caller was calling on behalf of Aloplast and that the calls originated from phone number 416-663-7972, a number listed on Aloplast's website as its contact number.
14. In light of the above, the Commission finds that Aloplast made the calls on its own behalf.

II. Is the penalty amount reasonable?

15. The Commission notes that Aloplast was given several written reminders that it needed to be a registered subscriber and pay all applicable fees to the National DNCL operator in order to achieve compliance with the Rules.
16. The Commission notes that the notice of violation issued to Aloplast explicitly stated that a representation relating to the amount of the penalty must include the most recent audited financial statements of the entity named in the notice or, where that is unavailable, unaudited financial statements signed by a senior officer. The Commission also notes that although Mr. Friedman indicated that Aloplast's financial condition was tenuous, he failed to provide any documentation to support this claim.
17. Consequently, the Commission finds that the penalty amount set out in the notice is appropriate.

Conclusion

18. The Commission has reviewed Aloplast's representations and concludes that the company initiated two telemarketing telecommunications on its own behalf to telecommunications numbers registered on the National DNCL when it was not registered with the National DNCL operator, and without having subscribed to the National DNCL.
19. In the circumstances of this case, the Commission considers that a penalty of \$1,000 for each of the two violations of Part II, section 4 of the Rules; each of the two violations of Part II, section 6 of the Rules; and each of the two violations of Part III, section 2 of the Rules is appropriate. The Commission hereby imposes AMPs totalling \$6,000 on Aloplast.
20. The Commission hereby notifies Aloplast of its right to apply to the Commission to review and rescind or vary this decision under section 62 of the Act and to appeal this decision to the Federal Court of Appeal under section 64 of the Act. Any review and vary application under section 62 must be made within 30 days of the date of this decision and the Commission will place all related documentation on its website to allow public participation in accordance with Part VII of the *CRTC Telecommunications Rules of Procedure*. An appeal from this decision may be brought in the Federal Court of Appeal with the leave of that Court. Leave to appeal must be applied for within 30 days of the date of this decision or within such further time as a judge of the Court grants in exceptional circumstances.
21. The amount of \$6,000 is due by **7 June 2010** and is to be paid in accordance with the instructions contained in the notice of violation. For any amount owing that is not paid by **7 June 2010**, interest calculated and compounded monthly at the average bank rate plus three percent will be payable on that amount and will accrue during the period beginning on the due date and ending on the day before the date on which payment is received.

22. If payment of the debt has not been received within 30 days of the date of this decision, the Commission intends to take measures to collect the amount owing, which may include certifying the unpaid amount and registering the certificate with the Federal Court.

Secretary General

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