



## Telecom Decision CRTC 2010-626

PDF version

Ottawa, 27 August 2010

### ActiveCast Global Ltd. – Violations of the Unsolicited Telecommunications Rules

File numbers: PDR 9174-204, 9174-483, 9174-652, 9174-653, and 9174-673

*In this decision, the Commission imposes an administrative monetary penalty totalling \$10,000 on ActiveCast Global Ltd. for initiating fax telemarketing telecommunications (a) to consumers whose residential telecommunications numbers were registered on the National Do Not Call List (DNCL), (b) on behalf of a client who was not a registered subscriber of the National DNCL, and (c) to health care facilities, in violation of the Unsolicited Telecommunications Rules.*

#### Introduction

1. Between 11 November 2008 and 2 October 2009, the Commission received numerous complaints in relation to fax telemarketing telecommunications made by ActiveCast Global Ltd. (ActiveCast).
2. On 18 March 2010, a notice of violation was issued to ActiveCast pursuant to section 72.07 of the *Telecommunications Act* (the Act). The notice informed ActiveCast that it had initiated
  - three fax telemarketing telecommunications to consumers whose residential telecommunications numbers were registered on the National Do Not Call List (DNCL), in violation of Part II, section 4<sup>1</sup> of the Commission's Unsolicited Telecommunications Rules (the Rules);
  - three fax telemarketing telecommunications on behalf of a client who was not a registered subscriber of the National DNCL, in violation of Part II, section 7<sup>2</sup> of the Rules; and
  - four fax telemarketing telecommunications to health care facilities, in violation of Part III, section 28<sup>3</sup> of the Rules.

---

<sup>1</sup> Part II, section 4 of the Unsolicited Telecommunications Rules (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.

<sup>2</sup> Part II, section 7 of the Rules states that a telemarketer shall not initiate a telemarketing telecommunication on behalf of a client unless that client is a registered subscriber of the National DNCL and the applicable fees to the National DNCL operator associated with that client's subscription have been paid.

3. ActiveCast was given until 19 April 2010 to pay the administrative monetary penalty (AMP) set out in the notice of violation or to make representations to the Commission regarding the violations.
4. The Commission granted a request from ActiveCast for an extension to the deadline and changed it to 6 May 2010. The Commission received representations from the company on that date.
5. In its representations, ActiveCast submitted that it was not required to register as a telemarketer because it was only conducting business-to-business telemarketing. It also submitted that the \$10,000 penalty should be removed because of ActiveCast's poor financial situation.
6. In support of its representations, ActiveCast also filed the company's unaudited financial statements for the last four months of 2009 and the first three months of 2010.
7. The Commission has identified the following issues to be addressed in its determinations:
  - I. Did ActiveCast commit the violations?
  - II. Should the penalty be removed?
- I. Did ActiveCast commit the violations?**
8. ActiveCast submitted in its representations that it only sent business-to-business fax telemarketing telecommunications and that it believed that it was exempt from the Rules.
9. The Commission notes that ActiveCast sent fax telemarketing telecommunications to consumers whose residential numbers were listed on the National DNCL and to health care facilities. It also sent fax telemarketing telecommunications on behalf of a client that was not a registered subscriber of the National DNCL.
10. The Commission also notes that if telemarketing telecommunications are being sent under the business-to-business exemption, it is the telemarketer's responsibility to ensure that the recipients of the telecommunications are businesses and not consumers registered on the National DNCL or health care facilities.
11. ActiveCast did not make representations regarding its client's failure to subscribe to the National DNCL.
12. In light of the above, the Commission finds that ActiveCast committed the violations contained in the notice of violation.

---

<sup>3</sup> Part III, section 28 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 any emergency line or healthcare facility.

## II. Should the penalty be removed?

13. ActiveCast submitted that the \$10,000 penalty should be removed due to its poor financial health and provided unaudited financial statements to support its representations.
14. The Commission notes that the financial health of a corporation is not a factor in determining whether to impose or reduce a penalty contained in a notice of violation.
15. In light of the above, the Commission finds that the penalty is appropriate and should not be removed.

## Conclusion

16. In the circumstances of this case, the Commission considers that a penalty of \$1,000 for each of the 10 violations of the Rules is appropriate. The Commission therefore imposes a total AMP of \$10,000 on ActiveCast.
17. The Commission hereby notifies ActiveCast 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 of the Act must be made within 30 days of the date of this decision and the Commission will place all related documentation on its website. 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.
18. The amount of \$10,000 is due by **27 September 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 **27 September 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.
19. If payment of the amount 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