



Telecom Decision CRTC 2012-330

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Ottawa, 12 June 2012

9184-8630 Québec Inc., carrying on business as Ramonage Plus – Violations of the Unsolicited Telecommunications Rules

File number: PDR 9174-1175

In this decision, the Commission imposes, on a de novo basis, an administrative monetary penalty of \$4,000 on 9184-8630 Québec Inc., carrying on business as Ramonage Plus, for initiating, on its own behalf, two telemarketing telecommunications without being registered with, and having provided information to, the National Do Not Call List (DNCL) operator, and without being a registered subscriber of the National DNCL and having paid all applicable fees to the National DNCL operator, in violation of the Unsolicited Telecommunications Rules.

1. Between 13 January 2010 and 6 February 2012, the Commission received numerous complaints in relation to telemarketing telecommunications made by 9184-8630 Québec Inc., carrying on business as Ramonage Plus (Ramonage Plus).¹
2. On 15 February 2012, a Notice of Violation was issued to Ramonage Plus, pursuant to section 72.07 of the *Telecommunications Act* (the Act). The notice informed Ramonage Plus that it had initiated, on its own behalf,
 - two telemarketing telecommunications to consumers without being a registered subscriber of the National Do Not Call List (DNCL) and having paid all applicable fees to the National DNCL operator, in violation of Part II, section 6² of the Commission's Unsolicited Telecommunications Rules (the Rules); and
 - two telemarketing telecommunications without being registered with, and having provided information to, the National DNCL operator, in violation of Part III, section 2³ of the Rules.

¹ 9184-8630 Québec Inc., carrying on business as Ramonage Plus, Québec, Quebec, Tel.: 418-841-0790. Industry – Chimney cleaning, repair, and installation.

² Part II, section 6 of the Unsolicited Telecommunications 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.

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.

3. The Notice of Violation set out an administrative monetary penalty (AMP) for four violations at \$1,000 per violation, for a total amount of \$4,000.
4. Ramonage Plus was given until 15 March 2012 to pay the AMP set out in the Notice of Violation or to make representations to the Commission regarding the violations.
5. The Commission received representations from Ramonage Plus on 23 March 2012.
6. The Commission inadvertently did not take into account these representations, which were received after the deadline stipulated in the Notice of Violation, when reviewing Ramonage Plus's file.
7. In Telecom Decision 2012-191, the Commission imposed an AMP of \$4,000 on Ramonage Plus for the four violations described in the Notice of Violation.
8. The Commission sent a letter dated 30 April 2012 to Ramonage Plus, informing the company that it would review the file on a *de novo* basis in order to take into account the representations received on 23 March 2012.
9. In light of the information contained in the representations, the Commission has identified the following issues to be addressed in its determinations:
 - I. Has Ramonage Plus established a defence of due diligence?
 - II. Is the amount of the AMP reasonable?

III. Has Ramonage Plus established a defence of due diligence?

10. The Commission notes that Ramonage Plus did not deny having initiated telemarketing calls without being registered with the National DNCL operator and having a valid subscription to the National DNCL.
11. The Commission notes that subsection 72.1(1) of the Act states that "it is a defence for a person in a proceeding in relation to a violation to establish that the person exercised due diligence to prevent the violation."
12. The Commission also notes that in *Unsolicited Telecommunications Rules framework and the National Do Not Call List*, Telecom Decision CRTC 2007-48, 3 July 2007, as amended by Telecom Decision CRTC 2007-48-1, 19 July 2007, it established a partial list of criteria that should be used as a guide when assessing a defence of due diligence. These criteria are set out in Part VII of the Rules.
13. Ramonage Plus addressed these criteria by submitting the following:
 - it was unaware of the existence of the National DNCL or of its related obligations;

- it believed that the StreetSmart list purchased from Cole Information Services⁴ was verified;
 - it had begun the process of registering with the National DNCL but first had to obtain a registration number from Dun & Bradstreet⁵ (D-U-N-S number); and
 - it tried several times to register with Dun & Bradstreet but found the procedure very complex.
14. The Commission considers that the absence of knowledge of the Rules is not a valid defence under the Rules or the Act.
15. The Commission notes that even if the StreetSmart list obtained from Cole Information Services had been scrubbed, the purchase and use of such a list does not meet the requirement to register with the National DNCL operator and subscribe to the National DNCL.
16. The Commission notes that between 10 November 2011 and the issuing of the Notice of Violation on 15 February 2012, it communicated with Ramonage Plus a number of times by letter, email, and telephone, and that it provided the business with explanations as to the content of the Rules and its related obligations.
17. However, Ramonage Plus did not register with the National DNCL operator and did not subscribe to the National DNCL.
18. The Commission therefore considers that, on a balance of probabilities, there is insufficient evidence for Ramonage Plus to rely on a defence of due diligence against the violations contained in the Notice of Violation.
19. In light of the above, the Commission finds that Ramonage Plus has not established a defence of due diligence.

IV. Is the amount of the AMP reasonable?

20. Ramonage Plus claimed that a total AMP of \$4,000 is excessive for the following reasons:
- the company was not familiar with the National DNCL; and
 - the company had not been informed of its obligation to register with the National DNCL operator by the other parties with which it had registered and obtained the permits required for its activities.

⁴ Cole Information Services is a business that sells telephone directories, including the StreetSmart directory.

⁵ To register with the National DNCL, a telemarketer must provide its Dun & Bradstreet registration number to enable the National DNCL operator to verify its identity.

21. The Commission considers that the absence of knowledge of the Rules is not a relevant factor in this case and that the Commission is independent of the other parties that Ramonage Plus had contacted. Moreover, the Commission considers that Ramonage Plus had been informed of its obligations through the content of the discussions that took place between the company and the Commission between November 2011 and February 2012.
22. The Commission also notes that Ramonage Plus is neither registered with the National DNCL operator nor a subscriber to the National DNCL, and thus has avoided paying the required subscription fees since at least 13 January 2010.
23. In light of the above, and given the size of the company and that it is the first Notice of Violation issued to the business, the Commission considers that a penalty of \$1,000 per violation for the four violations cited in the Notice of Violation is appropriate

Conclusion

24. In the circumstances of this case, the Commission considers that a penalty of \$1,000 for each of the violations of Part II, section 6 and Part III, section 2 of the Rules is appropriate. The Commission therefore imposes a total AMP of \$4,000 on Ramonage Plus.
25. The Commission hereby notifies Ramonage Plus 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 90 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.
26. The Commission reminds Ramonage Plus that, should it continue to initiate telemarketing telecommunications on its own behalf or engage telemarketers for the purpose of solicitation of its products and/or services, it is required to comply with the Rules. Examples of measures that Ramonage Plus should adopt to ensure compliance with the Rules include, but are not limited to, the following:
 - registering with the National DNCL operator
 - subscribing to the National DNCL;
 - downloading the National DNCL at least once every 31 days prior to the date of the telemarketing telecommunication; and
 - establishing and implementing adequate written policies and procedures to comply with the Rules, which include documenting a process to (a) prevent the initiation of telemarketing telecommunications to any telecommunications

number that has been registered for more than 31 days on the National DNCL, and (b) honour consumers' requests that they not be contacted by way of telemarketing telecommunications.

27. The Commission advises Ramonage Plus that in order to ensure compliance with the Rules, the Commission may impose larger AMPs for subsequent violations.
28. The amount of \$4,000 is due by 12 July 2012 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 12 July 2012, 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.
29. If payment 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

Related documents

- *9184-8630 Québec Inc., carrying on business as Ramonage Plus – Violations of the Unsolicited Telecommunications Rules*, Telecom Decision CRTC 2012-191, 30 March 2012
- *Unsolicited Telecommunications Rules framework and the National Do Not Call List*, Telecom Decision CRTC 2007-48, 3 July 2007, as amended by Telecom Decision CRTC 2007-48-1, 19 July 2007