



Telecom Decision CRTC 2012-98

PDF version

Ottawa, 15 February 2012

Imperial Data Supply Corp. – Violations of the Unsolicited Telecommunications Rules

File number: PDR 9174-924

In this decision, the Commission imposes an administrative monetary penalty of \$18,000 on Imperial Data Supply Corp. for initiating six telemarketing telecommunications to consumers whose telecommunications numbers were or should have been on the company's internal do not call list, and for initiating these telecommunications without being registered with the National Do Not Call List operator, in violation of the Unsolicited Telecommunications Rules.

1. Between 3 November 2009 and 7 July 2011, the Commission received numerous complaints in relation to fax telemarketing telecommunications made by Imperial Data Supply Corp. (Imperial Data).¹
2. On 22 August 2011, a notice of violation was issued to Imperial Data pursuant to section 72.07 of the *Telecommunications Act* (the Act). The notice informed Imperial Data that it had initiated
 - six fax telemarketing telecommunications to consumers whose telecommunications numbers were or should have been on its internal do not call list, in violation of Part III, section 14 of the Commission's Unsolicited Telecommunications Rules (the Rules);² and
 - six fax telemarketing telecommunications without being registered with the National Do Not Call List (DNCL) operator, in violation of Part III, section 2 of the Rules.³
3. Imperial Data was given until 21 September 2011 to pay the administrative monetary penalty (AMP) set out in the notice of violation or to make representations to the Commission regarding the violations.

¹ Imperial Data Supply Corp., 301-2502 St. John's Street, Port Moody, British Columbia V3H 2B4. Tel.: 604-466-8794.

² Part III, section 14 of the Rules states that a telemarketer shall not initiate a telemarketing telecommunication to a consumer whose telecommunications number is or should be on its do not call list.

³ Part III, section 2 of the Rules states that a telemarketer shall not initiate a telemarketing telecommunication unless it has registered with, and provided information to, the National Do Not Call List operator.

4. The Commission received representations from Imperial Data dated 14 September 2011.
5. Based on the information contained in the representations, the Commission has identified the following issues to be addressed in its determinations:

- I. Has Imperial Data established a defence of due diligence?

- II. Is the amount of the AMP reasonable?

I. Has Imperial Data established a defence of due diligence?

6. 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.
7. 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, the Commission established criteria to provide guidance about the elements that it would generally consider in assessing a defence of due diligence. These criteria were incorporated into Part VII of the Rules.
8. In its representations Imperial Data submitted that it had not been properly informed of its obligation to renew its registration with the National DNCL operator, “that errors do occur,” and that these errors are not systemic. Imperial Data did not submit any evidence of other reasonable steps it had taken or business practices it had adopted that demonstrated due diligence in preventing calls to consumers whose numbers were or should have been on its internal do not call list.
9. Furthermore, the Commission notes that Imperial Data had been notified by Commission staff on several occasions about its obligation to renew its registration and that it continued to initiate telemarketing telecommunications after its registration had expired.
10. In light of the above, the Commission finds that Imperial Data has not established a defence of due diligence.

II. Is the amount of the AMP reasonable?

11. Imperial Data submitted that it is not in a financial position to pay the \$18,000 AMP set out in the notice of violation and asked the Commission to reconsider the AMP.
12. The Commission notes that the financial health of a corporation is not a factor in determining whether or not to impose or reduce a penalty contained in a notice of violation.
13. The Commission also notes that, according to the information the company provided when it first registered with the National DNCL operator, Imperial Data is a small company. The Commission further notes that a penalty of \$1,000 per violation for a first violation by a small company is in line with its current practices.

14. Accordingly, the Commission considers that the penalty of \$1,000 for each of the six telemarketing telecommunications made while the company was not registered with the National DNCL operator is appropriate.
15. In addition, the Commission notes that Imperial Data had been informed on several occasions, including via a request for information, a warning letter, and an official citation, about its obligations to properly maintain its internal do not call list as per the Rules. The Commission therefore considers that the penalty of \$2,000 for each of the six violations related to the faxes sent to telecommunications numbers that were or should have been on Imperial Data's internal do not call list is appropriate.
16. In light of the above, the Commission finds that the AMP is appropriate and should not be reduced or removed.

Conclusion

17. In the circumstances of this case, the Commission considers that a penalty of \$1,000 for each of the violations of Part III, section 2 of the Rules and a penalty of \$2,000 for each of the violations of Part III, section 14 of the Rules is appropriate. The Commission therefore imposes a total AMP of \$18,000 on Imperial Data.
18. The Commission hereby notifies Imperial Data 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.
19. The Commission reminds Imperial Data that, should it continue to initiate telemarketing telecommunications on its own behalf or engage telemarketers for the purposes of solicitation of its products and/or services, it is required to comply with the Rules. Examples of measures that Imperial Data should adopt to ensure compliance with the Rules include, but are not limited to, the following:
 - registering with the National DNCL operator; 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 or should have been on its internal do not call list for more than 31 days, and (b) honour consumers requests that they not be contacted by way of telemarketing telecommunications.

20. The amount of \$18,000 is due by **16 March 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 **16 March 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.
21. 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