



Compliance and Enforcement Decision CRTC 2013-541

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Ottawa, 8 October 2013

Les Fenêtres et Portes Deluxe de Montréal Inc. – Violations of the Unsolicited Telecommunications Rules

File number: PDR 9174-970

In this decision, the Commission imposes total administrative monetary penalties of \$10,000 on Les Fenêtres et Portes Deluxe de Montréal Inc. for initiating, on its own behalf, telemarketing telecommunications to consumers whose telecommunications numbers were registered on the National Do Not Call List (DNCL), and for initiating these telemarketing telecommunications 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 1 April 2011 and 20 November 2012, the Commission received numerous complaints in relation to telemarketing telecommunications that appeared to have been initiated by the corporation Les Fenêtres et Portes Deluxe de Montréal Inc. (Deluxe).¹
2. The Commission investigated the complaints and, on 28 March 2013, a notice of violation was issued to Deluxe pursuant to section 72.07 of the *Telecommunications Act* (the Act). The notice informed Deluxe that it had initiated, on its own behalf,
 - five telemarketing telecommunications to consumers whose telecommunications numbers were registered on the National Do Not Call List (DNCL), in violation of Part II, section 4² of the Commission's Unsolicited Telecommunications Rules (the Rules); and
 - five telemarketing telecommunications to consumers without being a registered subscriber to the National DNCL and having paid all applicable fees to the National DNCL operator, in violation of Part II, section 6³ of the Rules.

¹ Les Fenêtres et Portes Deluxe de Montréal Inc., Saint-Laurent, Quebec, Tel.: 514-388-1717. Industry – Windows and doors.

² Part II, section 4 of the Unsolicited Telecommunications Rules states that a telemarketer shall not initiate a telemarketing telecommunication to a consumer's telecommunications number that is registered on the National DNCL, unless express consent has been provided by such consumer to be contacted via a telemarketing telecommunication by that telemarketer.

³ 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.

3. The notice of violation set out administrative monetary penalties (AMPs) for 10 violations at \$1,000 per violation, for a total amount of \$10,000. Under section 72.01 of the Act, an AMP of up to \$15,000 per violation can be issued in respect of violations committed by a corporation.
4. Deluxe was given until 6 May 2013 to pay the AMPs set out in the notice of violation or to make representations to the Commission regarding the violations.
5. The Commission notes that Deluxe neither paid the AMPs nor made representations in accordance with the notice of violation. Accordingly, pursuant to subsection 72.08(3) of the Act, Deluxe is deemed to have committed the violations outlined in the notice of violation dated 28 March 2013.
6. In Telecom Decision 2007-48, the Commission stated that appropriate factors to be considered in determining the amount of an AMP include the nature of the violations, the number and frequency of complaints and violations, the relative disincentive of the measure, and the potential for future violations.
7. The Commission considers the making, by a telemarketer, of unsolicited telemarketing telecommunications to consumers whose numbers are registered on the National DNCL, and doing so while not being subscribed to the National DNCL, a serious violation that causes significant inconvenience and nuisance to consumers. These telecommunications, by their nature, violate the expectation of consumers expressed through registration of their numbers on the National DNCL not to receive them.
8. Regarding the number and frequency of complaints and violations, the Commission notes that initiating a single telemarketing telecommunication may, in some circumstances, result in multiple violations of the Rules. Therefore, proof of the occurrence of a telemarketing telecommunication may be used to support the finding of more than one violation of the Rules when multiple violations relate to that telecommunication. In the present case, two violations occurred during each of the five telemarketing telecommunications in question.
9. In view of the information provided by Deluxe in its registration with the National DNCL operator, the Commission considers the company to be a small-sized company for the purposes of determining the appropriate AMP amount.
10. Based on the size of the company and given that this is the first regulatory enforcement activity taken by the Commission against Deluxe, the Commission considers that an AMP of \$1,000 per violation, for total AMPs of \$10,000, is reasonable to incent compliance and deter future violations of the Rules.
11. In light of the above, the Commission considers that total AMPs of \$10,000 are reasonable and necessary to promote regulatory compliance with the Rules.

Conclusion

12. In the circumstances of this case, the Commission considers that a penalty of \$1,000 for each of the five violations of Part II, section 4 and for each of the five violations of Part II, section 6 of the Rules is appropriate. The Commission therefore imposes total AMPs of \$10,000 on Deluxe.
13. The Commission hereby notifies Deluxe 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.⁴ 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.
14. The Commission reminds Deluxe that, should it continue to initiate telemarketing telecommunications on its own behalf or engage telemarketers for the purpose of solicitation of its products or services, it is required to comply with the Rules. Examples of measures that Deluxe 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 a 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.
15. The Commission advises Deluxe that in order to ensure compliance with the Rules, the Commission may impose larger AMPs for subsequent violations.
16. The amount of \$10,000 is due by 7 November 2013 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 November 2013, interest calculated and compounded monthly at the average bank rate plus three percent will be payable on that amount and will accrue

⁴ In Telecom Information Bulletin 2011-214, the Commission issued, pursuant to the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure*, revised guidelines for review and vary applications to reflect the modified time limit in which such applications must be made.

during the period beginning on the due date and ending on the day before the date on which payment is received.

17. 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

- *Revised guidelines for review and vary applications*, Telecom Information Bulletin CRTC 2011-214, 25 March 2011
- *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