



## Telecom Decision CRTC 2009-523

Ottawa, 26 August 2009

### Roofing by Peerless Mason Ltd. – Violations of the Unsolicited Telecommunications Rules

File number: 8665-C12-200601626

*In this decision, the Commission imposes administrative monetary penalties totalling \$10,000 on Roofing by Peerless Mason Ltd. for initiating five fax telemarketing telecommunications to consumers whose telecommunications numbers were registered on the National Do Not Call List (DNCL) and for initiating the telecommunications without being a registered subscriber or having paid all applicable subscription fees to the National DNCL operator, in violation of the Unsolicited Telecommunications Rules.*

1. On 20 July 2009, a notice of violation was issued to Roofing by Peerless Mason Ltd. (Roofing by Peerless Mason) pursuant to section 72.07 of the *Telecommunications Act* (the Act). The notice alleged that Roofing by Peerless Mason had initiated five fax telemarketing telecommunications to consumers whose 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), and that the company had done so without being a registered subscriber or having paid all applicable fees to the National Do Not Call List operator, in violation of Part II, section 6<sup>2</sup> of the Rules.
2. Roofing by Peerless Mason was given until 19 August 2009 to pay the administrative monetary penalties (AMPs) set out in the notice of violation or to make representations to the Commission with respect to the violations.
3. The Commission notes that on 17 August 2009, Roofing by Peerless Mason made representations in accordance with the notice of violation.
4. In its representations, Roofing by Peerless Mason denied the allegations in the 20 July 2009 notice of violation, asserting that (1) it is not a telemarketer and (2) it did not send the fax telemarketing telecommunications.
5. The Commission finds that, as the five faxes advertised and directly promoted services, the faxes were fax telemarketing telecommunications as defined in the Rules.<sup>3</sup>

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<sup>1</sup> Part II, section 4 of the Unsolicited Telecommunications Rules provides that a telemarketer shall 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.

<sup>2</sup> Part II, section 6 of the Unsolicited Telecommunications Rules provides that a telemarketer shall not initiate telemarketing telecommunications on its own behalf unless it is a registered subscriber to the National DNCL and has paid all applicable fees to the National DNCL operator.

<sup>3</sup> Part I of the Rules defines "telemarketing" to mean the use of telecommunications facilities to make unsolicited telecommunications for the purpose of solicitation. "Solicitation" is defined, in part, to mean the selling or promoting of a product or service, or the soliciting of money or money's worth, whether directly or indirectly and whether on behalf of another person.

6. With respect to whether the faxes were initiated by Roofing by Peerless Mason, the Commission notes that the faxes promote roofing repair services offered by “Peerless Mason.” The Commission further notes that the telecommunications numbers provided to consumers in the faxes in order to obtain the services offered or to prevent more faxes from being sent are registered to a Mr. Wayne Gould at the same address as the registered office address for Roofing by Peerless Mason. The Commission also notes that Mr. Gould is registered pursuant to the *Canada Business Corporations Act*, S.C. R.S.C. 1985, c. C-44 as the sole director of Roofing by Peerless Mason.
7. In light of the above, the Commission finds that Roofing by Peerless Mason initiated the five faxes to telecommunications numbers registered on the National DNCL in violation of Part II, section 4 of the Rules.
8. Furthermore, the Commission notes that Roofing by Peerless Mason was not a registered subscriber to the National DNCL and had not paid all applicable fees to the National DNCL operator at the time the faxes were sent. As such, the Commission finds that each of the five faxes was also initiated in violation of Part II, section 6 of the Rules.
9. 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 of the Rules and for each of the five violations of Part II, section 6 of the Rules to be appropriate. The Commission therefore imposes AMPs totalling \$10,000 on Roofing by Peerless Mason.
10. The Commission hereby notifies Roofing by Peerless Mason 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 thirty days after the date of this decision. 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 thirty days after the date of this decision or within such further time as a judge of the Court grants in exceptional circumstances.
11. The amount of \$10,000 is due by **25 September 2009** 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 **25 September 2009** interest calculated and compounded monthly at the average bank rate plus 3 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.
12. If payment of the debt has not been received within thirty days of the date of this decision, the Commission intends to certify the unpaid amount and register the certificate with the Federal Court in order to collect the amount owing.

13. The Commission notes that in a related decision issued today, the Commission has also imposed AMPs totalling \$10,000 on Waterproofing by Peerless Mason Inc. for violations of the Rules. See *Waterproofing by Peerless Mason Inc. - Violations of the Unsolicited Telecommunications Rules*, Telecom Decision CRTC 2009-524.

Secretary General

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