



## Telecom Decision CRTC 2010-818

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Ottawa, 4 November 2010

### TopClass Air Duct Cleaning Inc. – Violations of the Unsolicited Telecommunications Rules

File number: PDR 9174-494

*In this decision, the Commission imposes an administrative monetary penalty of \$6,000 on TopClass Air Duct Cleaning Inc. for initiating telemarketing telecommunications (a) to consumers whose residential telecommunications numbers were registered on the National Do Not Call List (DNCL), and (b) initiating the telecommunications when it had not subscribed to the National DNCL and had not paid all applicable fees to the National DNCL operator, in violation of the Unsolicited Telecommunications Rules.*

1. Between 2 November 2008 and 31 May 2010, the Commission received numerous complaints in relation to telemarketing telecommunications made by TopClass Air Duct Cleaning Inc. (TopClass Air).<sup>1</sup>
2. On 17 August 2010, a notice of violation was issued to TopClass Air pursuant to section 72.07 of the *Telecommunications Act* (the Act). The notice informed TopClass Air that it had initiated
  - three telemarketing telecommunications to persons who were listed on the National DNCL, in violation of Part II, section 4<sup>2</sup> of the Commission's Unsolicited Telecommunications Rules (the Rules); and
  - three telemarketing telecommunications when it had not subscribed to the National DNCL and had not paid all applicable fees to the National DNCL operator, in violation of Part II, section 6<sup>3</sup> of the Rules.
3. TopClass Air was given until 17 September 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.

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<sup>1</sup> TopClass Air Duct Cleaning Inc., Scarborough, Ontario, 416-628-1070. Industry – Duct Cleaning Services  
<sup>2</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>3</sup> 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.

4. The Commission notes that TopClass Air neither paid the AMP specified in the notice of violation nor made representations in accordance with the notice. Accordingly, pursuant to subsection 72.08(3) of the Act, TopClass Air is deemed to have committed the violations outlined in the notice of violation dated 17 August 2010.
5. In the circumstances of this case, the Commission considers that a penalty of \$1,000 for each of the three violations of Part II, section 4 of the Rules; and for each of the three violations of Part II, section 6 of the Rules is appropriate. The Commission therefore imposes a total AMP of \$6,000 on TopClass Air.
6. The Commission hereby notifies TopClass Air 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.
7. The Commission reminds TopClass Air that it is required to comply with the Rules 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. Examples of measures that TopClass Air should adopt to ensure compliance include, but are not limited to:
  - subscribing to the National DNCL; and
  - establishing and implementing adequate written policies and procedures to comply with the Rules, which includes 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.
8. The amount of \$6,000 is due by **6 December 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 **6 December 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.
9. If payment of the debt 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