



## Compliance and Enforcement Decision CRTC 2012-641

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Ottawa, 23 November 2012

### **Royal Style Windows and Doors Inc. – Application to review and vary Telecom Decision 2012-194 regarding violations of the Unsolicited Telecommunications Rules**

File number: 8662-R43-201205659

*In this decision, the Commission determines that Royal Style Windows and Doors Inc. (Royal Style Windows) has failed to demonstrate that there is substantial doubt as to the correctness of Telecom Decision 2012-194. Accordingly, the Commission denies Royal Style Windows' application to review and vary Telecom Decision 2012-194, and maintains a total administrative monetary penalty of \$4,000 imposed on Royal Style Windows in that decision.*

1. The Commission received an application from Royal Style Windows and Doors Inc. (Royal Style Windows), dated 29 April 2012, requesting that the Commission review and vary Telecom Decision 2012-194. In that decision, the Commission imposed a total administrative monetary penalty (AMP) in the amount of \$4,000 on Royal Style Windows for violations of the Unsolicited Telecommunications Rules (the Rules).
2. In its application, Royal Style Windows stated that it only makes telemarketing calls to existing clients and to potential customers who requested to be contacted, that two of the four telecommunications numbers mentioned in the Request for Information (RFI) letter dated 10 November 2011 never belonged to the company, and that it cannot afford to pay the AMP of \$4,000.

#### **Background**

3. On 15 February 2012, a Notice of Violation was issued to Royal Style Windows pursuant to section 72.07 of the *Telecommunications Act* (the Act). The notice informed Royal Style Windows 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 6 of the Rules;<sup>1</sup> and

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<sup>1</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.

- two telemarketing telecommunications without being registered with, and having provided information to, the National DNCL operator, in violation of Part III, section 2 of the Rules.<sup>2</sup>
4. Royal Style Windows was given until 15 March 2012 to either pay the AMP set out in the Notice of Violation or make representations to the Commission with respect to the violations. The Commission received representations from Royal Style Windows dated 14 March 2012.
  5. After considering the evidence and the representations before it, the Commission found in Telecom Decision 2012-194 that Royal Style Windows had violated the Rules as stipulated in the Notice of Violation, and imposed an AMP totaling \$4,000.

### **Criteria to review and rescind, or vary Commission Telecom decisions**

6. In Telecom Information Bulletin 2011-214, the Commission outlined the criteria it would apply in considering whether to review and vary applications filed pursuant to section 62 of the Act. Specifically, the Commission stated that applicants must demonstrate that there is substantial doubt as to the correctness of the original decision, due to, for example, one or more of the following: (i) an error in law or in fact, (ii) a fundamental change in circumstances or facts since the decision, (iii) a failure to consider a basic principle which had been raised in the original proceeding, or (iv) a new principle which has arisen as a result of the decision.
7. The Commission interprets Royal Style Windows' review and vary application as an assertion that there were errors in fact or in law in Telecom Decision 2012-194 resulting from the Commission's findings that (i) on a balance of probabilities, Royal Style Windows did not have an existing business relationship with, or obtain express consent from, the consumers who submitted witness statements; (ii) Royal Style Windows had made the telemarketing telecommunications in question; and (iii) an AMP of \$4,000 is reasonable.

### **Is there substantial doubt as to the correctness of the original decision?**

#### **a) Did the Commission err in finding that Royal Style Windows did not have an existing business relationship with, or obtain express consent from, the consumers who had submitted witness statements?**

8. Under Part II, subsection 3(b) of the Rules, the National DNCL Rules do not apply to telecommunications made to a person (i) with whom the person making the telecommunication, or the organization on whose behalf the telecommunication is made, has an existing business relationship, and (ii) who has not made a do not call request in respect of the person or organization on whose behalf the telecommunication is made.

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<sup>2</sup> 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.

9. Under Part II, section 4 of the Rules, 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.
10. Royal Style Windows submitted that it does not make cold telemarketing calls, and that it only calls previous customers or those who have contacted the company.
11. The Commission notes that the Notice of Violation issued to Royal Style Windows was supported by two witness statements in which consumers indicated that they did not have an existing business relationship with Royal Style Windows and had not given express consent to be contacted by the company.
12. The Commission also notes that in Telecom Decision 2012-194, it found, on a balance of probabilities, that Royal Style Windows did not demonstrate that the existing business relationship exemption applied or that the consumers who provided witness statements had given express consent to be called by Royal Style Windows for telemarketing purposes.
13. The Commission further notes that Royal Style Windows did not submit any evidence to dispute the correctness of the Commission's determinations in Telecom Decision 2012-194.
14. Accordingly, the Commission concludes that it did not err in finding that Royal Style Windows did not have an existing business relationship with, or obtain express consent to call, the consumers who submitted witness statements, in contravention of the Rules that apply to the telemarketing calls at issue in this case.

**b) Did the Commission err in finding that Royal Style Windows made the telemarketing telecommunications in question?**

15. Royal Style Windows submitted that two of the telephone numbers (416-225-0708 and 416-635-0126) set out in the RFI letter dated 10 November 2011 never belonged to the company.
16. In Telecom Decision 2012-194, the Commission noted that the two telephone numbers included in the RFI letter and mentioned by Royal Style Windows were not the ones identified in the witness statements and violations at issue. The Commission further noted that Royal Style Windows did not deny using the telephone numbers that were actually identified in the witness statements. The Commission therefore concluded, on a balance of probabilities, that Royal Style Windows made the telemarketing telecommunications in question.
17. The Commission notes that Royal Style Windows did not submit any new evidence in its review and vary application that was not already before the Commission in the proceeding leading to Telecom Decision 2012-194 to dispute the Commission's finding in that decision.

18. Accordingly, the Commission finds that it did not err by finding that Royal Style Windows made the telemarketing telecommunications in question, in contravention of the Rules. The Commission further finds that it did not err in Telecom Decision 2012-194, in determining that Royal Style Windows had failed to comply with the requirements set out at Part II, Section 6 and Part III, section 2 of the Rules.

**c) Did the Commission err in finding the quantum of the AMP to be reasonable?**

19. Royal Style Windows submitted that it is not in a financial position to pay an AMP of \$4,000.
20. The Commission notes that purpose of the AMP is to ensure compliance with the Rules. In Telecom Decision 2007-48, the Commission noted that the Act provides flexibility in determining the amount of an AMP and listed examples of appropriate factors to be taken into consideration in determining the amount of the AMP, including the nature of the violation, the number and frequency of complaints and violations, the relative disincentive of the measures and the potential for future violation. The Commission also noted that AMPs should not be so low as to be financially advantageous for telemarketers to pay the amount and continue to violate the Rules.
21. In Telecom Decision 2012-194, the Commission imposed a first-time penalty of \$1,000 for each of the four violations in question. Royal Style Windows provided no evidence to substantiate why the Commission should deviate from this penalty and, given the examples of factors that it stated it would take into account, the Commission remains of the view that the AMP is appropriate in the present situation.
22. Accordingly, the Commission determines that it did not err in finding the quantum of the AMP to be appropriate.

**Conclusion**

23. In light of the above, the Commission finds that Royal Style Windows has failed to demonstrate that there is substantial doubt as to the correctness of Telecom Decision 2012-194. Accordingly, the Commission **denies** Royal Style Windows' application.

**Other matters**

24. The Commission notes that the AMP of \$4,000 imposed on Royal Style Windows in Telecom Decision 2012-194 continues to accumulate interest, calculated and compounded monthly at the average bank rate plus three percent from **30 March 2012**. The total amount payable includes the AMP plus the interest, which has accrued during the period beginning on **30 March 2012** and will end on the day before the date on which payment is received.

25. 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 this decision and registering it with the Federal Court.

Secretary General

### **Related documents**

- *Royal Style Windows and Doors Inc. – Violations of the Unsolicited Telecommunications Rules*, Telecom Decision CRTC 2012-194, 30 March 2012
- *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