



Compliance and Enforcement Decision CRTC 2013-542

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Ottawa, 8 October 2013

Canadian Choice Home Improvements Inc. – Violations of the Unsolicited Telecommunications Rules

File number: PDR 9174-1068

In this decision, the Commission imposes total administrative monetary penalties of \$10,000 on Canadian Choice Home Improvements Inc. for initiating, on its own behalf, eight telemarketing telecommunications to consumers whose telecommunications numbers were registered on the National Do Not Call List (DNCL), and for initiating two of these telecommunications using a version of the National DNCL obtained from the National DNCL operator more than 31 days before the date of the telecommunications, in violation of the Unsolicited Telecommunications Rules.

1. Between 1 April 2011 and 16 March 2013 the Commission received numerous complaints in relation to telemarketing telecommunications that appeared to have been initiated by the corporation Canadian Choice Home Improvements Inc. (Canadian Choice).¹
2. The Commission investigated the complaints and, on 28 March 2013, a notice of violation was issued to Canadian Choice pursuant to section 72.07 of the *Telecommunications Act* (the Act). The notice informed Canadian Choice that it had initiated, on its own behalf,
 - eight 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
 - two telemarketing telecommunications to consumers using a version of the National DNCL obtained from the National DNCL operator more than 31

¹ Canadian Choice Home Improvements Inc., Concord, Ontario, Tel.: 416-840-8533 and 416-848-6930. Industry – Home-related services, including window and door installation.

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.

days before the date of the telecommunications, in violation of Part II, section 13³ of the Rules.

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.
4. Canadian Choice was given until 27 April 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 received representations from Canadian Choice dated 11 April 2013.
6. Based on the information contained in the representations, the Commission has identified the following issues to be addressed in this decision:

- I. Did Canadian Choice commit the violations?
- II. Is the amount of the AMP reasonable?

I. Did Canadian Choice commit the violations?

7. In its representations, Canadian Choice admitted to having violated the Rules.
8. Accordingly, the Commission finds that Canadian Choice committed the violations set out in the notice of violation.

II. Is the amount of the AMP reasonable?

9. Canadian Choice claimed that the amount of the AMP is unreasonable because
 - a) it is a small company with only two employees,
 - b) it has limited funds but multiple payments on hand requiring immediate attention, and
 - c) the mistakes were caused by a neglectful employee in the past who was responsible for ensuring that the company followed the Rules.
10. The Commission notes that the notice of violation set out AMPs for 10 violations at \$1,000 per violation. The Commission further notes that under section 72.01 of the Act, an AMP of up to \$15,000 per violation can be issued for a corporation.
11. In Telecom Decision 2007-48, the Commission stated that the ability to pay the AMP was not an appropriate factor to be considered in the determination of the

³ Part II, section 13 of the Rules states that a telemarketer and a client of a telemarketer shall use a version of the National DNCL obtained from the National DNCL operator no more than thirty-one (31) days prior to the date that any telemarketing telecommunication is made.

amount of the AMP. The Commission considers that the way in which a business is managed, including its other financial obligations, should not have an impact on the amount of the AMP.

12. The Commission also stated in that decision 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.
13. 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 using a version of the National DNCL obtained from the National DNCL operator more than 31 days prior to the date of the telecommunications, 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.
14. 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 two of the eight telemarketing telecommunications in question.
15. In view of the information provided by Canadian Choice in its registration with the National DNCL operator and in its representations, the Commission considers the company to be a small-sized company for the purposes of determining the appropriate AMP amount.
16. Based on the size of the company and the fact that this is the first regulatory enforcement activity taken by the Commission against Canadian Choice, 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.
17. Concerning Canadian Choice's argument that the size of the AMPs should be reduced because the violations were a result of mistakes made by a neglectful employee, the Commission notes that, according to section 72.02 of the Act, a person is liable for violations committed by its employees.
18. In light of the above, the Commission considers that total AMPs of \$10,000 are reasonable and necessary to promote regulatory compliance.

Conclusion

19. In the circumstances of this case, the Commission considers that a penalty of \$1,000 for each of the eight violations of Part II, section 4 and for each of the two violations

of Part II, section 13 of the Rules is appropriate. The Commission therefore imposes total AMPs of \$10,000 on Canadian Choice.

20. The Commission hereby notifies Canadian Choice 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.
21. The Commission reminds Canadian Choice 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 Canadian Choice 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.
22. The Commission advises Canadian Choice that in order to ensure compliance with the Rules, the Commission may impose larger AMPs for subsequent violations.
23. 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 during the period beginning on the due date and ending on the day before the date on which payment is received.

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.

24. 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