



Compliance and Enforcement Decision CRTC 2014-384

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Action Windows and Doors Ltd. – Violations of the Unsolicited Telecommunications Rules

The Commission imposes total administrative monetary penalties of \$24,000 on Action Windows and Doors Ltd. (Action Windows) for telemarketing telecommunications that were initiated on its behalf (1) to consumers whose telecommunications numbers were registered on the National Do Not Call List (DNCL), (2) when Action Windows was not a registered subscriber of the National DNCL, and (3) when Action Windows had not paid all applicable fees to the National DNCL operator, in violation of the Unsolicited Telecommunications Rules.

1. Between 20 September 2011 and 8 June 2013, the Commission received numerous complaints in relation to telemarketing telecommunications that appeared to have been made on behalf of Action Windows and Doors Ltd. (Action Windows).¹
2. These complaints were investigated and, on 19 September 2013, a notice of violation was issued to Action Windows pursuant to sections 72.01, 72.02, and 72.07 of the *Telecommunications Act* (the Act). The notice indicated that a telemarketer acting on behalf of Action Windows had initiated three telemarketing telecommunications to consumers whose telecommunications numbers were registered on the National Do Not Call List (DNCL), and had done so at a time when Action Windows was not a registered subscriber of the National DNCL and had not paid all applicable fees to the National DNCL operator, resulting in
 - three violations of Part II,² section 4³ of the Unsolicited Telecommunications Rules (the Rules); and
 - three violations of Part II, section 7⁴ of the Rules.

¹ Action Windows and Doors Ltd., North York, Ontario, Tel.: 647-287-4803. Industry – Sale and installation of windows and doors.

² The National DNCL Rules

³ 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.

⁴ Part II, section 7 of the Rules states that a telemarketer shall not initiate a telemarketing telecommunication on behalf of a client unless that client is a registered subscriber of the National DNCL and the applicable fees to the National DNCL operator associated with that client's subscription have been paid.

3. The notice of violation set out administrative monetary penalties (AMPs) for six violations at \$4,000 per violation, for a total amount of \$24,000.
4. Action Windows was given until 21 October 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 Action Windows neither paid the AMPs nor made representations in accordance with the notice of violation. Accordingly, pursuant to subsection 72.08(3) of the Act, Action Windows is deemed to have committed the violations set out in the notice of violation.
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 of telemarketing telecommunications by a telemarketer to consumers whose numbers are registered on the National DNCL to be a serious violation that violates the expectation of consumers that they will not receive telemarketing calls unless a valid exemption to Part II of the Rules applies.⁵
8. The Commission further considers that a client engaging a telemarketer to make telemarketing telecommunications when the client is not subscribed to the National DNCL is a significant breach of the Rules. Subscribing to the list is one of the core responsibilities of clients and telemarketers under the National DNCL regime – it not only ensures that certain types of telecommunications will not be made to numbers on the National DNCL, but the fees collected also provide for the sustainability of the regime.
9. Regarding the number and frequency of complaints and violations, 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.
10. In the present case, two violations occurred during each of the three telemarketing telecommunications in question. While the AMPs set out in the notice of violation were based upon only these three telecommunications, the Commission nevertheless considers that the numerous complaints received about the company underscore that the six violations are reflective of a more widespread problem with Action Windows' telemarketing compliance.

⁵ Part II, section 3 of the Rules sets out types of calls that are exempt from the National DNCL Rules, including calls to consumers with whom the telemarketer or its client has an existing business relationship, calls on behalf of registered charities, newspapers of general circulation, and political parties or candidates, as well as calls made for the sole purpose of collecting information for surveys of members of the public.

11. Regarding the relative disincentive of the measure, in view of the information Action Windows provided during the investigation of the matter, the Commission considers the company to be a small-sized business for the purpose of determining the appropriate amount of the AMPs.
12. Regarding the potential for future violations, the Commission previously imposed an AMP of \$3,000 on Action Windows for contacting consumers whose telecommunications numbers were registered on the National DNCL.⁶ This AMP was part of a larger series of enforcement actions taken against several related legal entities operating together that had been found to be in violation of the Rules, with AMPs imposed against the group totaling \$42,000.⁷
13. Despite this previous enforcement activity, Action Windows failed to bring its operations into compliance and again committed violations of Part II of the Rules. The Commission considers that a larger penalty is warranted in the circumstances in order to effectively promote future compliance.

Conclusion

14. In the circumstances of this case, the Commission finds that a penalty of \$4,000 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 7 of the Rules is appropriate. The Commission therefore imposes total AMPs of \$24,000 on Action Windows.
15. The Commission hereby notifies Action Windows of its right to apply to the Commission to review and rescind or vary this decision under section 62 of the Act and to seek leave of the Federal Court of Appeal to appeal this decision before that court 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.⁸ In accordance with section 64 of the Act, an application for leave to appeal must be made to the Federal Court of Appeal within 30 days of the date of this decision or within such further time as a judge of the Court grants in exceptional circumstances.
16. The Commission reminds Action Windows that, should it continue to engage telemarketers to make telemarketing calls on its behalf or should it do so on its own behalf, it is required to comply with the Rules. Examples of measures that it should adopt to ensure compliance with the Rules include, but are not limited to, the following:
 - registering with the National DNCL operator;

⁶ See Telecom Decision 2010-364.

⁷ See Telecom Decisions 2010-363 to 2010-370.

⁸ 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.

- subscribing to the National DNCL;
- downloading the National DNCL at least one 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.

17. The Commission advises Action Windows that in order to ensure compliance with the Rules, the Commission may impose larger AMPs for subsequent violations.

18. The amount of \$24,000 is due by 22 August 2014 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 22 August 2014, 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.

19. 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
- *Royal Deluxe Windows and Doors Industries Inc. – Violations of the Unsolicited Telecommunications Rules*, Telecom Decision CRTC 2010-370, 10 June 2010
- *Pride Windows and Doors Inc. – Violations of the Unsolicited Telecommunications Rules*, Telecom Decision CRTC 2010-369, 10 June 2010
- *2158519 Ontario Inc. (carrying on business as Lifetime Best Buy Windows and Doors) – Violations of the Unsolicited Telecommunications Rules*, Telecom Decision CRTC 2010-368, 10 June 2010
- *Evrca Enterprises Inc. – Violations of the Unsolicited Telecommunications Rules*, Telecom Decision CRTC 2010-367, 10 June 2010

- *Deluxe Pro Windows and Doors Inc. – Violations of the Unsolicited Telecommunications Rules*, Telecom Decision CRTC 2010-366, 10 June 2010
- *Casement Limited – Violations of the Unsolicited Telecommunications Rules*, Telecom Decision CRTC 2010-365, 10 June 2010
- *Action Windows and Doors Ltd. – Violations of the Unsolicited Telecommunications Rules*, Telecom Decision CRTC 2010-364, 10 June 2010
- *1686496 Ontario Ltd. (carrying on business as 2 The Point Global Marketing) – Violations of the Unsolicited Telecommunications Rules*, Telecom Decision CRTC 2010-363, 10 June 2010
- *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