



Compliance and Enforcement Decision CRTC 2016-89

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Ottawa, 8 March 2016

File number: PDR 9174-1364

Ali Tariq – Violations of the Unsolicited Telecommunications Rules

The Commission finds that Ali Tariq has not committed violations of the Unsolicited Telecommunications Rules, and imposes no penalty.

Introduction

1. Between 1 January 2013 and 22 September 2014, the Commission received numerous complaints in relation to telemarketing telecommunications that appeared to have been made by or on behalf of a duct-cleaning business using the name Aqua Duct Cleaning Services (Aqua Duct).
2. These complaints were investigated and, on 6 February 2015, a notice of violation was issued to Ali Tariq, carrying on business as Aqua Duct, pursuant to section 72.07 of the *Telecommunications Act* (the Act).¹ The notice informed Mr. Tariq that the following had been initiated by him or on his behalf:
 - four 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);
 - four telemarketing telecommunications while Mr. Tariq was not a registered subscriber of the National DNCL and had not paid all applicable fees to the National DNCL operator, in violation of Part II, section 6³ of the Rules; and
 - four telemarketing telecommunications while he was not registered with, and had not provided information to, the National DNCL operator, in violation of Part III, section 2⁴ of the Rules.

¹ Subsection 72.07(1) of the Act states that a person authorized to issue notices of violation who believes on reasonable grounds that a person has committed a violation may issue, and shall cause to be served on that person, a notice of violation.

² Part II, section 4 of the Unsolicited Telecommunications 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.

³ 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.

3. The notice of violation set out administrative monetary penalties (AMPs) for 12 violations at \$750 per violation, for a total amount of \$9,000.
4. Pursuant to paragraph 72.07(2)(b) of the Act, Mr. Tariq had 30 days from the date he was served with the notice of violation to pay the AMPs set out in the notice, or to make representations to the Commission regarding the violations.
5. The Commission received representations from Mr. Tariq. These representations spoke to both the notice of violation issued to Mr. Tariq personally, as well as to a notice of violation issued concurrently to Toronto Breeze Air Duct Cleaning Services Inc. (Toronto Breeze), an incorporated duct-cleaning business directed by Mr. Tariq. The latter notice is addressed in Compliance and Enforcement Decision 2016-88, also released today.
6. Based on the record of this proceeding, the Commission has identified the following issues to be addressed in this decision:
 - Did Mr. Tariq commit the violations?
 - Is the amount of the AMPs reasonable?

Did Mr. Tariq commit the violations?

7. Mr. Tariq has consistently denied direct knowledge of Aqua Duct and its telemarketing activities.
8. The notice of violation was supported by four witness statements, each of which was provided by a consumer who indicated that they had received a call from a telemarketer identifying itself as, or calling on behalf of, Aqua Duct. Each of these consumers submitted that they were registered on the National DNCL when they received the telemarketing call, that they had no prior existing business relationship with Aqua Duct, and that their phone number is not associated with a business.
9. No business associated with the name Aqua Duct has ever subscribed to the National DNCL or registered with the National DNCL operator. There is no record of any incorporated entity matching or resembling Aqua Duct's name.
10. The investigation report indicates that a credit card registered to Mr. Tariq was billed once in association with a phone number listed on Aqua Duct's website. However, the subscriber of record for that phone number was identified by the wireless carrier as another individual at a non-existent address, and not Mr. Tariq.
11. The investigation report indicates that investigators met with Mr. Tariq in December 2013. While Mr. Tariq acknowledged operating Toronto Breeze, he denied knowledge of Aqua Duct, and denied authorizing any such credit card payment. At the time, Mr. Tariq

⁴ 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, and has paid all applicable fees charged by the Complaints Investigator delegate.

also identified and provided contact information for other family members involved in his business who he indicated might know about Aqua Duct. There is no indication that any follow-up or further inquiries were made with either those individuals or the subscriber name associated with the Aqua Duct phone number.

12. In his representations subsequent to the issuance of the notice of violation, Mr. Tariq continued to deny any knowledge of Aqua Duct or its telemarketing activities, and reiterated that he had never used his credit card to pay for the phone number associated with that business name. Mr. Tariq also provided a copy of an email conversation with an overseas telemarketer that he had employed which, while difficult to understand, appeared to lend support to the proposition that his payment information may have been used by this overseas telemarketer without his authorization. Beyond the one-time credit card charge, in the Commission's view, no other link has been made between Mr. Tariq and the name Aqua Duct.
13. Further, it is also unclear on what basis Mr. Tariq should be held personally liable for the violations at issue. Although there is at least one instance of Mr. Tariq's business responding to an appointment where a telemarketer identified themselves as a different company, the investigator concluded that Toronto Breeze, rather than Mr. Tariq personally, was responsible for that call. In the Commission's view, the available information does not support a conclusion that Mr. Tariq operated, in his personal capacity, another duct-cleaning business separate and distinct from the incorporated one that he is known to direct.
14. In addition, the unauthorized use of Mr. Tariq's financial information by an overseas telemarketer is a plausible alternative explanation for the sole link between Mr. Tariq and the name Aqua Duct. This explanation, coupled with potentially unexplored avenues of inquiry with respect to other individuals identified in the investigation report who might have knowledge of Aqua Duct and its activities, creates doubt as to the conclusions supporting the notice of violation.
15. In light of all the above, the Commission is not satisfied on a balance of probabilities that Mr. Tariq was engaged in telemarketing activities under the name Aqua Duct.
16. Accordingly, the Commission finds, on a balance of probabilities, that Mr. Tariq did not commit the 12 violations outlined in the notice of violation dated 6 February 2015.

Is the amount of the AMPs reasonable?

17. In the circumstances of this case, Mr. Tariq has been found not to have committed the violations. Therefore, no penalty is imposed.
18. Pursuant to subsection 72.08(4) of the Act, the Commission hereby notifies Mr. Tariq of his 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.⁵ 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.

Secretary General

Related documents

- *Toronto Breeze Air Duct Cleaning Services Inc. – Violations of the Unsolicited Telecommunications Rules*, Compliance and Enforcement Decision CRTC 2016-88, 8 March 2016
- *Revised guidelines for review and vary applications*, Telecom Information Bulletin CRTC 2011-214, 25 March 2011

⁵ 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.