



Telecom Decision CRTC 2012-194

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Ottawa, 30 March 2012

Royal Style Windows and Doors Inc. – Violations of the Unsolicited Telecommunications Rules

File number: PDR 9174-1183

In this decision, the Commission imposes an administrative monetary penalty of \$4,000 on Royal Style Windows and Doors Inc. for initiating, on its own behalf, two telemarketing telecommunications without being registered with, and having provided information to, the National Do Not Call List (DNCL) operator, and without being a registered subscriber of the National DNCL and having paid all applicable fees to the National DNCL operator, in violation of the Unsolicited Telecommunications Rules.

1. Between 2 February 2010 and 6 February 2012, the Commission received numerous complaints in relation to telemarketing telecommunications made by Royal Style Windows and Doors Inc. (Royal Style Windows).¹
2. 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 to the National Do Not Call List (DNCL) and having paid all applicable fees to the National DNCL operator, in violation of Part II, section 6² of the Commission's Unsolicited Telecommunications Rules (the Rules); and
 - two telemarketing telecommunications without being registered with, and having provided information to, the National DNCL operator, in violation of Part III, section 2³ of the Rules.
3. The Notice of Violation set out an administrative monetary penalty (AMP) for four violations at \$1,000 per violation, for a total amount of \$4,000.

¹ Royal Style Windows and Doors Inc., North York, Ontario, Tel.: 416-665-0905. Industry – Sale and installation of windows and doors.

² Part II, section 6 of the Unsolicited Telecommunications 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 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.

4. Royal Style Windows was given until 15 March 2012 to pay the AMP set out in the Notice of Violation or to make representations to the Commission regarding the violations.
5. The Commission received representations from Royal Style Windows dated 14 March 2012.
6. Based on the information contained in the representations, the Commission has identified the following issues to be addressed in its determinations:
 - I. Did Royal Style Windows commit the violations?
 - II. Is the amount of the AMP reasonable?

I. Did Royal Style Windows commit the violations?

7. Royal Style Windows stated that:
 - the telemarketing calls were made to clients and potential customers who had requested to receive a call from the company;
 - two of the four telecommunication numbers mentioned in the Request for Information (RFI) letter dated 10 November 2011 (416-225-0708 and 416-635-0126), never belonged to the company; and
 - it would register with the National DNCL operator, if required.
8. The Commission notes that, in its response, Royal Style Windows admitted to making telemarketing calls.
9. The Commission further notes that under Part II, subsection 3(b) of the Rules, the National DNCL Rules do not apply to telecommunications to a recipient (i) with whom the person making the telecommunication 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.
10. In order for a telemarketing telecommunication to fall under this exemption, there must be, as set out in paragraph 41.7(2) of the Act,
 - a contract concluded or having expired in the 18-month period preceding the telecommunication; or
 - an inquiry or an application made in the 6-month period preceding the telecommunication.
11. The Commission notes that Royal Style Windows did not submit any proof that it had an existing business relationship with the two consumers who provided witness statements nor that these two consumers had given express consent to be called by Royal Style Windows for telemarketing purposes.

12. The Commission also notes that the two witnesses submitted, in their statements, that they did not:
 - give express consent to receive telemarketing calls made by, or on behalf of, Royal Style Windows;
 - conclude a contract with Royal Style Windows that was in existence at the time of the call or that expired in the 18-month period preceding the call; and
 - make an inquiry or an application with Royal Style Windows in the 6-month period preceding the call.
13. The Commission therefore considers that, on a balance of probabilities, 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.
14. As for the second argument, that the telecommunication numbers 416-225-0708 and 416-635-0126 never belonged to the company, the Commission notes that Royal Style Windows did not deny that they own the other two telecommunication numbers identified in the two witness statements at issue in this decision.
15. The Commission further notes that the two telecommunication numbers included in the RFI letter and mentioned by Royal Style Windows in its representations were not included in the violations set out in the Notice of Violation.
16. The Commission therefore considers that, on a balance of probabilities, Royal Style Windows made the telemarketing telecommunications referenced in the two witness statements.
17. Concerning the third argument, that the company would register with the National DNCL operator if required, the Commission also notes that the absence of knowledge of the Rules is not a defence or exemption set out in the Act or the Rules. Moreover, the Commission notes that Royal Style Windows was informed in the RFI letter that:
 - the complaints received and the information obtained from the National DNCL registration/subscription records indicate that it made telemarketing calls without being registered and subscribed; and
 - it had to comply with the Rules, which include the obligation to register with the National DNCL operator.
18. The Commission further notes that, as of the date of 22 March 2012, Royal Style Windows had failed to register with the National DNCL operator.
19. The Commission therefore considers that, on a balance of probabilities, Royal Style Windows knew it had the obligation to register with the National DNCL operator, but failed to do so.

20. In light of the above, the Commission concludes that Royal Style Windows has committed the two violations to Part II, section 6 of the Rules and the two violations of Part III, section 2 of the Rules cited in the Notice of Violation.

II. Is the amount of the AMP reasonable?

21. Royal Style Windows claimed that a total AMP of \$4,000 is excessive since it cannot afford to pay it.
22. The Commission notes that Royal Style Windows has not registered with the National DNCL operator and/or subscribed to the National DNCL and therefore has avoided paying the required subscription fee since at least 2 February 2010.
23. In light of the above, and given the size of the company and that it is the first Notice of Violation issued to the company, the Commission considers that a penalty of \$1,000 per violation for the four violations cited in the Notice of Violation is appropriate.

Conclusion

24. In the circumstances of this case, the Commission considers that a penalty of \$1,000 for each of the violations of Part II, section 6 and Part III section 2 of the Rules is appropriate. The Commission therefore imposes a total AMP of \$4,000 on Royal Style Windows.
25. The Commission hereby notifies Royal Style 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 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. 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.
26. The Commission reminds Royal Style Windows that, should it continue to initiate telemarketing telecommunications on its own behalf or engage telemarketers for the purpose of solicitation of its products and/or services, it is required to comply with the Rules. Examples of measures that Royal Style Windows 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 the 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.
27. The Commission advises Royal Style Windows that in order to ensure compliance with the Rules, the Commission may impose larger AMPs for subsequent violations.
 28. The amount of \$4,000 is due by 30 April 2012 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 30 April 2012, 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.
 29. 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