



Telecom Decision CRTC 2012-197

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Ottawa, 30 March 2012

Mr. Michel Lévesque, carrying on business as Nettoyage Mirage Inc. – Violations of the Unsolicited Telecommunications Rules

File number: PDR 9174-1217

In this decision, the Commission imposes an administrative monetary penalty of \$4,000 on Mr. Michel Lévesque, carrying on business as Nettoyage Mirage Inc., for initiating, on its own behalf, two telemarketing telecommunications to consumers whose telecommunication numbers were registered on the National Do Not Call List (DNCL) without being registered with, and having provided information to, the National DNCL operator, without being a registered subscriber of the National DNCL and having paid all applicable fees to the National DNCL operator, and having used an automatic-dialing-announcing device to make those telecommunications without having obtained the express consent of the consumers to be contacted by this medium, in violation of the Unsolicited Telecommunications Rules.

1. Between 20 January 2010 and 10 February 2012, the Commission received numerous complaints in relation to telemarketing telecommunications made by Mr. Michel Lévesque, carrying on business as Nettoyage Mirage Inc. (Mr. Lévesque).¹
2. On 15 February 2012, a Notice of Violation was issued to Mr. Lévesque pursuant to section 72.07 of the *Telecommunications Act* (the Act). The notice informed Mr. Lévesque that it had initiated, on his own behalf,
 - two telemarketing telecommunications to consumers whose telecommunication 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);
 - two telemarketing telecommunications to consumers without being a registered subscriber to the National DNCL and having paid all applicable fees to the National DNCL operator, in violation of Part II, section 6³ of the Rules;

¹ Mr. Michel Lévesque, carrying on business as Nettoyage Mirage Inc., Quebec, Quebec, Tel.: 418-805-5400. Industry – Carpet and upholstery cleaning, painting, and renovation services.

² Part II, section 4 of the Unsolicited Telecommunications Rules states that a telemarketer shall not initiate a telemarketing telecommunication to a consumer's telecommunication 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.

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.

- two telemarketing telecommunications without being registered with, and having provided information to, the National DNCL operator, in violation of Part III, section 2⁴ of the Rules; and
 - two telemarketing telecommunications via automatic dialing-announcing device (ADAD) without having obtained the express consent from consumers to be contacted by this medium, in violation of Part IV, section 2⁵ of the Rules.
3. The Notice of Violation set out an administrative monetary penalty (AMP) for eight violations at \$500 per violation, for a total amount of \$4,000.
 4. Mr. Lévesque 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 Mr. Lévesque on 7 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 Mr. Lévesque commit the violations?
 - II. Did Mr. Lévesque have the opportunity to present a defence in order to avoid having to pay an AMP?
 - III. Is the amount of the AMP reasonable?

I. Did Mr. Lévesque commit the violations?

7. Mr. Lévesque stated there is no formal proof that he made telemarketing calls.
8. The Commission notes that two statements were obtained from consumers stating that they had received a telemarketing telephone call via an ADAD from Mr. Lévesque.
9. The Commission also notes that the two consumers stated that they:
 - Had not given express consent to be contacted by Mr. Lévesque for telemarketing purposes;
 - Had not purchased a service or purchased, leased, or rented a product within the 18-month period immediately preceding the date of the call from Mr. Lévesque; and
 - Had not made any inquiries or applications with Mr. Lévesque in the 6 month-period immediately preceding the date of the call.

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.

⁵ Part IV, section 2 of the Rules states that a telemarketer shall not initiate a telemarketing telecommunication via ADAD without having obtained the express consent of the consumer to be contacted by this medium.

10. The Commission further notes that Mr. Lévesque did not deny having made telemarketing calls.
11. The Commission notes also that Mr. Lévesque did not raise any of the exemptions provided in the Rules.
12. The Commission considers that, on a balance of probabilities, Mr. Lévesque made the telemarketing calls cited in the Notice of Violation.
13. In light of the above, the Commission concludes that Mr. Lévesque committed two violations of Part II, section 4, two violations of Part II, section 6 of the Rules, two violations of Part III, section 2, and two violations of Part IV, section 2 of the Rules.

II. Did Mr. Lévesque have an opportunity to present a defence in order to avoid having to pay an AMP?

14. Mr. Lévesque stated that:
 - He never received the Request for Information (RFI) letter dated 29 November 2011, which was sent to his Bell Sympatico email address;
 - He ended his subscription to Bell Sympatico a short time after having subscribed to Bell's service; and
 - He was unaware of the email and considers that communications made by email or by telephone are not official.
15. The Commission notes that the RFI letter was sent by email because there was no postal address found for Mr. Lévesque. The email address used to contact Mr. Lévesque was published in one of his business' advertisements.
16. The Commission also notes that when the RFI letter was sent by email, the Commission did not receive any notice of unsuccessful delivery to the recipient.
17. The Commission further notes that Bell Sympatico confirmed that the email address used to send the RFI letter belongs to Mr. Lévesque. The postal address of Mr. Lévesque was obtained from Bell Sympatico.
18. The Commission also notes that the sending of a document by email is a valid means of communicating with a business.
19. The Commission also notes that Commission staff had tried to contact Mr. Lévesque by phone on many occasions and was only able to reach him on 2 February 2012. During that conversation, Mr. Lévesque had the opportunity to answer Commission staff's questions, but, after having said that his business did not make telemarketing calls, he refused to answer any other questions. Following the conversation of 2 February 2012, an email was sent to the same email address as the one used in November 2011 and a delivery confirmation was received. In this email, Commission staff told Mr. Lévesque to contact them if he wished to obtain more information.

20. The Commission also notes that in the Notice of Violation, Mr. Lévesque was given the opportunity to submit representations and that Mr. Lévesque did make representations to the Commission.
21. In light of the above, the Commission considers that Mr. Lévesque had the opportunity to present a defence in order to avoid having to pay an AMP.

III. Is the amount of the AMP reasonable?

22. Mr. Lévesque stated that a total AMP of \$4,000 was excessive because he did not have the funds to pay it. He also indicated that he would not pay the AMP.
23. The Commission considers that, according to the information obtained by the Commission from the Quebec Enterprise Registrar, Mr. Lévesque's business is a sole proprietorship.
24. In light of the above, and given the size of the business and that it is the first Notice of Violation issued to the business, the Commission considers that a penalty of \$500 per violation for the eight violations cited in the Notice of Violation is appropriate.

Conclusion

25. In the circumstances of this case, the Commission considers that a penalty of \$500 for each of the violations of Part II, sections 4 and 6, Part III, section 2, and Part IV, section 2 of the Rules is appropriate. The Commission therefore imposes a total AMP of \$4,000 on Mr. Lévesque.
26. The Commission hereby notifies Mr. Lévesque 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.
27. The Commission reminds Mr. Lévesque 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 Mr. Lévesque 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.
28. The Commission advises Mr. Lévesque that in order to ensure compliance with the Rules, the Commission may impose larger AMPs for subsequent violations.
 29. 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.
 30. 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