



Telecom Decision CRTC 2009-606

Ottawa, 30 September 2009

Mouldaway Canada Inc. – Violations of the Unsolicited Telecommunications Rules

File number: PDR 9174-496 and PDR 9174-727

In this decision, the Commission imposes administrative monetary penalties totalling \$4,500 on Mouldaway Canada Inc. for initiating nine telemarketing telecommunications to consumers whose telecommunications numbers were registered on the National Do Not Call List (DNCL) and for initiating the telecommunications without paying all applicable subscription fees to the National DNCL operator, in violation of the Unsolicited Telecommunications Rules.

1. Between 9 November 2008 and 11 June 2009, the Commission received numerous complaints in relation to telemarketing telecommunications made by Mouldaway Canada Inc., carrying on business under the name Canadian Home Comfort (Mouldaway). On 6 July 2009, a notice of violation was issued to Mouldaway pursuant to section 72.07 of the *Telecommunications Act* (the Act). The notice alleged that Mouldaway had initiated nine telemarketing telecommunications to consumers whose numbers were registered on the National Do Not Call List (DNCL), in violation of Part II, section 4 of the Commission's Unsolicited Telecommunications Rules (the Rules),¹ and that the company had done so without having paid all applicable subscription fees to the National DNCL operator, in violation of Part II, section 6 of the Rules.²
2. Mouldaway was given until 4 August 2009 to pay the administrative monetary penalties (AMPs) set out in the notice of violation or to make representations to the Commission with respect to the violations.
3. The Commission notes that on 31 July 2009, Mouldaway made representations in accordance with the notice of violation.
4. In its representations Mouldaway stated its belief that it was exempt from the Rules because it did not directly sell products over the phone, but merely booked annual furnace inspections.

¹ Part II, section 4 of the Rules provides that a telemarketer shall 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.

² Part II, section 6 of the Rules provides that a telemarketer shall not initiate a telemarketing telecommunication on its own behalf unless it is a registered subscriber to the National DNCL and has paid all applicable fees to the National DNCL operator.

5. The Commission finds that because the nine telecommunications promoted a service offered by Mouldaway – that is, furnace and ventilation cleaning – the telecommunications were telemarketing telecommunications as defined in the Rules.³
6. The Commission also finds that the telemarketing telecommunications were initiated by Mouldaway on its own behalf.
7. In light of the above, the Commission finds that Mouldaway initiated the nine telemarketing telecommunications to telecommunications numbers registered on the National DNCL in violation of Part II, section 4 of the Rules.
8. Furthermore, the Commission notes that Mouldaway had not paid all applicable fees to the National DNCL operator at the time the telemarketing telecommunications were made. As such, the Commission finds that each of the nine telemarketing telecommunications were also initiated in violation of Part II, section 6 of the Rules.
9. Mouldaway submitted that a penalty of \$4,500 would severely affect the financial state of its business.
10. The Commission has examined the representations of Mouldaway, including the evidence provided with regard to the effect of a penalty of \$4,500 on the company. In the circumstances of this case, the Commission considers a penalty of \$250 to be appropriate for each of the nine violations of Part II, section 4 of the Rules and for each of the nine violations of Part II, section 6 of the Rules. The Commission therefore imposes AMPs totalling \$4,500 on Mouldaway.
11. The Commission hereby notifies Mouldaway 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 must be made within 30 days of the date of this decision. 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.
12. The amount of \$4,500 is due by **30 October 2009** 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 October 2009**, 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.

³ Part I of the Rules defines “telemarketing” to mean the use of telecommunications facilities to make unsolicited telecommunications for the purpose of solicitation. “Solicitation” is defined, in part, to mean the selling or promoting of a product or service, or the soliciting of money or money's worth, whether directly or indirectly, and whether on behalf of another person.

13. If payment of the debt has not been received within 30 days of the date of this decision, the Commission intends to certify the unpaid amount and register the certificate with the Federal Court in order to collect the amount owing.

Secretary General

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