



Telecom Decision CRTC 2010-591

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Ottawa, 18 August 2010

Aloplast Duke Windows & Doors Inc. – Application to review and vary Telecom Decision 2010-263 regarding violations of the Unsolicited Telecommunications Rules

File number: 8662-A103-201009621

In this decision, the Commission determines that Aloplast has failed to demonstrate that there is substantial doubt as to the correctness of Telecom Decision 2010-263. Accordingly, the Commission denies Aloplast's application to review and vary Telecom Decision 2010-263, and maintains the administrative monetary penalty of \$6,000 imposed on Aloplast in that decision.

1. The Commission received an application from legal counsel for Aloplast Duke Windows & Doors Inc. (Aloplast), dated 4 June 2010, requesting that the Commission review and vary Telecom Decision 2010-263 (the initial proceeding). In that decision, the Commission imposed an administrative monetary penalty (AMP) totalling \$6,000 on Aloplast for violations of the Unsolicited Telecommunications Rules (the Rules).
2. In its application, Aloplast asserted that another company, 2094051 Ontario Inc. (2094051), and not Aloplast, had initiated the telemarketing telecommunications for which Aloplast was found liable in the initial proceeding. In support of its application, Aloplast submitted new evidence that was not presented during the initial proceeding— an affidavit of Sima Weig, principal of 2094051 and employee of Aloplast, sworn 4 June 2010 (the affidavit).

Background

3. On 30 November 2009, a notice of violation was issued to Aloplast pursuant to section 72.07 of the *Telecommunications Act* (the Act). The notice informed Aloplast that it had
 - initiated two telemarketing telecommunications to consumers whose numbers had been registered on the National Do Not Call List (DNCL), in violation of Part II, section 4 of the Rules;¹

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.

- initiated these telecommunications without having paid all applicable subscription fees to the National DNCL operator, in violation of Part II, section 6 of the Rules;² and
 - failed to register with the National DNCL operator, in violation of Part III, section 2 of the Rules.³
4. Aloplast was given until 30 December 2009 to either pay the AMP set out in the notice of violation or make representations to the Commission with respect to the violations.
 5. The Commission received representations dated 30 December 2009 from legal counsel for Aloplast. In those representations, Aloplast submitted that it did not conduct telemarketing on its own behalf and that any telemarketing was conducted on its behalf by 2094051.
 6. On 12 January 2010, Commission staff sent a letter to legal counsel for Aloplast, requesting that Aloplast provide evidence that 2094051 conducted telemarketing on behalf of Aloplast.
 7. Commission staff received correspondence from Aloplast's legal counsel, dated 20 January 2010, indicating that further written information was forthcoming from Aloplast no later than 26 January 2010.
 8. Having received no further information from Aloplast, Commission staff forwarded a reminder letter to Aloplast's legal counsel on 2 February 2010. Commission staff received no further contact, information, or representations from Aloplast.
 9. In the absence of further representations, the Commission found that Aloplast had violated the Rules as stipulated in the notice of violation and imposed an AMP totalling \$6,000.

Criteria to review and rescind, or vary Commission Telecom decisions

10. As a preliminary matter, the Commission notes that Aloplast submitted new evidence in support of its review and vary application that, through reasonable diligence, could have been put forward during the initial proceeding. While the public interest in the finality of Commission decisions does not normally permit the admissibility of such evidence, the Commission is prepared in this specific instance to accept and review the substantive merits of the new evidence.

² Part II, section 6 of the Rules provides that a telemarketer shall not initiate telemarketing telecommunications 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.

³ Part III, section 2 of the Rules provides that a telemarketer must register, and provide information to, the National DNCL operator, whether or not the telemarketing telecommunications made by such telemarketer are exempt from the National DNCL Rules.

11. In Telecom Public Notice 98-6, the Commission outlined the criteria to consider review and vary applications filed pursuant to section 62 of the Act. Specifically, the Commission stated that applicants must demonstrate that there is substantial doubt as to the correctness of the original decision, due to, for example, one or more of the following: i) an error in law or in fact, ii) a fundamental change in circumstances or facts since the decision, iii) a failure to consider a basic principle which had been raised in the original proceeding, or iv) a new principle which has arisen as a result of the decision.
12. Considering the foregoing, the Commission interprets Aloplast's review and vary application as an assertion that there was an error in fact in the original decision resulting from the Commission's finding that Aloplast, and not 2094051 on behalf of Aloplast, had initiated two telemarketing telecommunications to consumers whose numbers were registered on the National DNCL.
13. The Commission notes that the burden of proof rests with the applicant, Aloplast, to establish that the Commission erred in its original finding in Telecom Decision 2010-263.

Is there substantial doubt as to the correctness of the original decision?

14. Aloplast submitted that 2094051, and not Aloplast, had initiated the two telemarketing telecommunications identified in the 30 November 2009 notice of violation.
15. Aloplast offered the affidavit in support of its claim. In the affidavit, Sima Weig states that she is the principal of 2094051 and acknowledges that 2094051 initiated the two telemarketing telecommunications in question. Ms. Weig further states that 2094051 began telemarketing on behalf of Aloplast on 17 January 2007. Attached to the affidavit are exhibits of unaudited QuickBooks excerpts that indicate that sums of money were transferred between Aloplast and 2094051 between 2 February 2009 and 30 March 2010. Ms. Weig states that the transfers of money consisted of payments for telemarketing services rendered by 2094051 for Aloplast.
16. With respect to the affidavit, the Commission notes that
 - in the affidavit, Ms. Weig states that in addition to acting as principal of 2094051, she is "an administrative assistant for Aloplast Duke Windows and Doors"; and
 - the unaudited QuickBooks excerpts attached as exhibits to the affidavit provide no details about the reason for the transfers of funds between Aloplast and 2094051.
17. Further, from the record of the initial proceeding the Commission notes that
 - the Ontario Corporation Profile Reports for Aloplast and 2094051 indicate that both companies share the same registered office address in Toronto, Ontario;

- the outbound telemarketing telecommunications number identified in the complaints against Aloplast is 416-663-7972, a number that Aloplast confirmed in a 15 April 2009 email belonged to Aloplast; and
 - on 1 December 2009, 2094051 registered with the National DNCL operator under the operating name “Aloplast Duke Windows & Doors.”
18. Considering the totality of the foregoing, the Commission determines that it did not err in finding that Aloplast had initiated two telemarketing telecommunications to consumers whose numbers were registered on the National DNCL.
19. In light of the above, the Commission finds that Aloplast has failed to demonstrate that there is substantial doubt as to the correctness of Telecom Decision 2010-263. Accordingly, the Commission **denies** Aloplast’s application.

Other matters

20. The Commission notes that the AMP of \$6,000 imposed on Aloplast in Telecom Decision 2010-263 continues to accumulate interest, calculated and compounded monthly at the average bank rate plus three percent from **7 June 2010**. The AMP is payable on the total amount including interest and will accrue during the period beginning on **7 June 2010** and ending on the day before the date on which payment is received.
21. If payment of the debt 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

- *Aloplast Duke Windows & Doors Inc. – Violations of the Unsolicited Telecommunications Rules*, Telecom Decision CRTC 2010-263, 7 May 2010
- *Guidelines for review and vary applications*, Telecom Public Notice CRTC 98-6, 20 March 1998