



Telecom Decision CRTC 2010-817

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Ottawa, 4 November 2010

TopClass Home Services Inc. – Violations of the Unsolicited Telecommunications Rules

File number: PDR 9174-494

In this decision, the Commission imposes an administrative monetary penalty of \$3,000 on TopClass Home Services Inc. for initiating telemarketing telecommunications (a) to consumers whose residential telecommunications numbers were registered on the National Do Not Call List (DNCL), (b) when it had not registered as a telemarketer with the National DNCL operator, and (c) when it was not a registered subscriber of the National DNCL and had not paid all applicable fees to the National DNCL operator, in violation of the Unsolicited Telecommunications Rules.

Introduction

1. Between 2 November 2008 and 31 May 2010, the Commission received numerous complaints in relation to telemarketing telecommunications made by TopClass Home Services Inc. (TopClass Home).¹
2. On 17 August 2010, a notice of violation was issued to TopClass Home pursuant to section 72.07 of the *Telecommunications Act* (the Act). The notice informed TopClass Home that it had initiated
 - one telemarketing telecommunication to a person who was listed on the National Do Not Call List (DNCL), in violation of Part II, section 4² of the Commission's Unsolicited Telecommunications Rules (the Rules);
 - one telemarketing telecommunication when it was not registered as a telemarketer of the National DNCL, in violation of Part II, section 6³ of the Rules; and

¹ TopClass Home Services Inc., Scarborough, Ontario, 416-840-5427. Industry – Home Services

² Part II, section 4 of the Unsolicited Telecommunications Rules (the 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.

- one telemarketing telecommunication when it 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 III, section 2⁴ of the Rules.
3. TopClass Home was given until 17 September 2010 to pay the administrative monetary penalty (AMP) set out in the notice of violation or to make representations to the Commission regarding the violations.
 4. The Commission received representations from TopClass Home dated 14 September and 16 September 2010.
 5. In its representations, TopClass Home submitted that it was not involved in any telemarketing activities and, therefore, it was not required to register as a telemarketer or to purchase a subscription to the National DNCL. It indicated that the website www.topclasshomeservices.com and the associated phone number were not related to the company, and that TopClass Home was in no way related to TopClass Air Duct Cleaning Inc.

Did TopClass Home commit the violations?

6. The Commission notes that the complainant's telecommunications number had been registered on the National DNCL since 6 October 2008.
7. The Commission further notes that, according to the statement submitted by the complainant, the caller was calling on behalf of TopClass Home to inquire if the complainant wanted to have his ducts cleaned and that the call had originated from the phone number 416-840-5427.
8. The Commission notes that 416-840-5427 was found as the contact number on the TopClass Home website.
9. The Commission notes that while the website no longer exists, Commission staff captured a printout of the website including the phone number 416-840-5427 on 2 February 2010.
10. The Commission further notes that TopClass Home has never registered with the National DNCL operator nor subscribed to the National DNCL.
11. In light of the above, on balance, and given that (a) the caller identified himself as calling from TopClass Home and (b) that the call originated from a number found on the www.topclasshomeservices.com, the Commission finds that TopClass Home committed the violations contained in the notice of violation.

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.

Conclusion

12. In the circumstances of this case, the Commission considers that a penalty of \$1,000 for the violation of Part II, section 4 of the Rules; \$1,000 for the violation of Part II, section 6 of the Rules; and \$1,000 for the violation of Part III, section 2 of the Rules is appropriate. The Commission therefore imposes a total AMP of \$3,000 on TopClass Home.
13. The Commission hereby notifies TopClass Home 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 30 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.
14. The Commission reminds TopClass Home that it is required to comply with the Rules should it continue to initiate telemarketing telecommunications on its own behalf or engage telemarketers for the purposes of solicitation of its products and/or services. Examples of measures that TopClass Home should adopt to ensure compliance include, but are not limited to,
 - subscribing to the National DNCL; and
 - establishing and implementing adequate written policies and procedures to comply with the Rules, which includes 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.
15. The amount of \$3,000 is due by **6 December 2010** 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 **6 December 2010**, 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.
16. 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