



Telecom Decision CRTC 2011-382

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Ottawa, 17 June 2011

TopClass Home Services Inc. – Application to review and vary Telecom Decision 2010-817 regarding violations of the Unsolicited Telecommunications Rules

File number: 8662-T139-201019159

In this decision, the Commission determines that TopClass Home has failed to demonstrate that there is substantial doubt as to the correctness of Telecom Decision 2010-817. Accordingly, the Commission denies TopClass Home's application to review and vary Telecom Decision 2010-817, and maintains the administrative monetary penalty of \$3,000 imposed on TopClass Home in that decision.

1. The Commission received an application by TopClass Home Services Inc. (TopClass Home), dated 24 November 2010, requesting that the Commission review and vary Telecom Decision 2010-817. In that decision, the Commission imposed an administrative monetary penalty (AMP) totalling \$3,000 on TopClass Home for violations of the Unsolicited Telecommunications Rules (the Rules).
2. In its application, TopClass Home submitted that neither the telephone number 416-840-5427, identified in Telecom Decision 2010-817 as the number from which the telemarketing call at issue in that decision had originated (the number), nor the website www.topclasshomeservices.com, on which the number was listed (the website), belonged to it.

Background

3. 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 alleged that TopClass Home had
 - initiated one telemarketing telecommunication to a consumer whose number had been registered on the National Do Not Call List (DNCL), in violation of Part II, section 4¹ of the Rules;

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 this telemarketing telecommunication when it was not a registered subscriber of the National DNCL, in violation of Part II, section 6² of the Rules; and
 - initiated this telemarketing telecommunication when it was not registered as a telemarketer with the National DNCL operator, in violation of Part III, section 2³ of the Rules.
4. TopClass Home was given until 17 September 2010 either to pay the AMP set out in the notice of violation or to make representations to the Commission with respect to the violations.
 5. TopClass Home filed representations, dated 14 and 16 September 2010, in which it submitted that it was not involved in any telemarketing activities and was therefore not required to register as a telemarketer or to purchase a subscription to the National DNCL. In addition, TopClass Home submitted that the number and the website were not related to the company.
 6. After considering the evidence and the representations before it, the Commission found that TopClass Home had initiated the telemarketing telecommunication in question, noting in particular that
 - i. the caller identified himself as calling from TopClass Home; and
 - ii. the call originated from the number (416-840-5427), which appeared on the website (www.topclasshomeservices.com).
 7. Based on the above findings, the Commission determined that TopClass Home had violated the Rules as stipulated in the notice of violation and imposed an AMP totalling \$3,000.

Criteria to review and rescind or vary Commission telecom decisions

8. 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

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 of 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 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.

raised in the original proceeding, or iv) a new principle which has arisen as a result of the decision.

9. The Commission interprets TopClass Home'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 the phone number and the website belonged to TopClass Home, and that, therefore, TopClass Home had initiated the telemarketing telecommunication in question.
10. The Commission notes that the burden of proof rests with the applicant, TopClass Home, to establish that the Commission erred in its original finding in Telecom Decision 2010-817.

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

11. The Commission notes that, in the proceeding that led to Telecom Decision 2010-817, TopClass Home asserted that the website and the associated phone number were not related to the company. Notwithstanding these submissions, the Commission concluded, on balance, that TopClass Home had committed the violations set out in the notice of violation.
12. The Commission also notes that TopClass Home has reiterated its assertions in the present application, while also providing evidence that the website was owned by an individual located in Lahore, Pakistan. The Commission considers that the evidence submitted by TopClass Home is insufficient to discharge its burden of proof that the Commission erred in its original decision. Having regard to the evidence that the website's domain name was identical to TopClass Home's corporate name, that it advertised duct cleaning services to consumers in a region of Ontario where TopClass Home acknowledged it offers those same services, and that the telephone number from which the call originated appeared on the website, the Commission is not convinced that it erred in its original decision.
13. The Commission further notes that TopClass Home failed to address the evidence submitted by the complainant that the caller stated that he was calling on behalf of TopClass Home and inquired about whether the complainant wanted to have his ducts cleaned.
14. Accordingly, the Commission determines that it did not err in finding that it is more likely than not that TopClass Home initiated the telemarketing call in question.

Conclusion

15. In light of the above, the Commission finds that TopClass Home has failed to demonstrate that there is substantial doubt as to the correctness of Telecom Decision 2010-817. Accordingly, the Commission **denies** TopClass Home's application.

Other matters

16. The Commission notes that the AMP of \$3,000 imposed on TopClass Home in Telecom Decision 2010-817 continues to accumulate interest, calculated and compounded monthly at the average bank rate plus three percent, from **6 December 2010**. The AMP is payable on the total amount including interest and will accrue during the period beginning on **6 December 2010** and ending on the day before the date on which payment is received.
17. 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

- *TopClass Home Services Inc. – Violations of the Unsolicited Telecommunications Rules*, Telecom Decision CRTC 2010-817, 4 November 2010, as amended by Telecom Decision CRTC 2010-817-1, 27 May 2011
- *Guidelines for review and vary applications*, Telecom Public Notice CRTC 98-6, 20 March 1998