



Telecom Decision CRTC 2011-582

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Ottawa, 9 September 2011

Les Distributions Triple A Inc. – Violations of the Unsolicited Telecommunications Rules

File numbers: PDR 9174-820 and 9174-996

In this decision, the Commission imposes an administrative monetary penalty of \$6,000 on Les Distributions Triple A Inc. for initiating three telemarketing telecommunications to consumers whose telecommunications numbers were registered on the National Do Not Call List (DNCL) and for initiating these telecommunications without being a registered subscriber or having paid all applicable subscription fees to the National DNCL operator, in violation of the Unsolicited Telecommunications Rules.

1. Between 6 August 2009 and 21 January 2011, the Commission received numerous complaints in relation to telemarketing telecommunications made by Les Distributions Triple A Inc. (Triple A).¹
2. On 17 March 2011, a notice of violation was issued to Triple A pursuant to section 72.07 of the *Telecommunications Act* (the Act). The notice informed Triple A that it had initiated
 - three telemarketing telecommunications to consumers whose 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); and
 - three telemarketing telecommunications without being both a registered subscriber or having paid all applicable subscription fees to the National DNCL operator, in violation of Part II, section 6³ of the Rules.

¹ Les Distributions Triple A Inc., 3244 Beaubien Street East, suite 203-204, Montréal, Quebec, H1Y 1H7, Tel.: 514-721-8222. Industry: Distribution of meats and groceries.

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.

3. In accordance with section 72.07 of the Act, Triple A was given 30 days, to 18 April 2011, to either 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 Triple A dated 11 April 2011.
5. In its representations, Triple A stated that the purpose of its calls was to conduct surveys to gather information about people's consumption and food habits in a given area, not to ask people to buy its products. The company submitted that it believes the complaints were based on an incorrect interpretation by consumers of the surveys or opinion requests. Triple A also submitted that the amount of the AMP (\$6,000) is considerable for a small company and requested that it be revoked.
6. The Commission identified the following issues to be addressed in its determinations:
 - I. Do the calls made by Triple A qualify for a survey exemption under the Act?
 - II. Is the amount of the AMP reasonable?

I. Do the calls made by Triple A qualify for a survey exemption under the Act?

7. As provided for in paragraph 41.7(1)(f) of the Act and Part II, section 3(f) of the Rules, the National DNCL Rules do not apply in respect of a telecommunication made for the sole purpose of collecting information for a survey of members of the public.
8. The Commission notes that it received and reviewed the scripts that Triple A indicated its representatives used during the calls. The Commission considered that the calls would qualify on a prima facie basis for the exemption set out in paragraph 41.7(1)(f) of the Act had they followed the scripts as submitted.
9. The Commission further notes, however, that the complainants indicated in their consumer statements that the company had offered its products and services for sale during these calls. Some complainants indicated that while the company's representatives said they were conducting a survey, the complainants were asked if they wanted to purchase Triple A's products and services.
10. The Commission notes that, in its initial registration with the National DNCL operator, Triple A describes itself as a meat and grocery company and not a survey company.
11. In light of the above, the Commission finds that the calls made by Triple A were not made for the sole purpose of collecting information for a survey; therefore, the survey exemption is not applicable. Furthermore, the Commission finds that Triple A was soliciting its products and services during the calls. Accordingly, the Commission finds that the calls were telemarketing telecommunications and that the National DNCL Rules are applicable.

II. Is the amount of the AMP reasonable?

12. Triple A asked that the \$6,000 penalty be revoked.
13. The Commission notes that, according to the information provided by the company when registering with the National DNCL operator, Triple A is a small company. The Commission considers that a first-time penalty of \$1,000 per violation for the six violations in question is appropriate in this case, and is in line with the Commission's practices for a first notice of violation for a small company.
14. In light of the above, the Commission finds that the penalty is appropriate.

Conclusion

15. In the circumstances of this case, the Commission considers that a penalty of \$1,000 for each of the violations of Part II, sections 4 and 6 of the Rules is appropriate. The Commission therefore imposes a total AMP of \$6,000 on Triple A.
16. The Commission hereby notifies Triple A 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.
17. The Commission reminds Triple A 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 Triple A should adopt to ensure compliance with the Rules include, but are not limited to, the following:
 - 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.

18. The amount of \$6,000 is due by 11 October 2011 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 11 October 2011, 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.
19. 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