



## Telecom Decision CRTC 2012-192

PDF version

Ottawa, 30 March 2012

### **Mr. Hugo Charron, carrying on business as Bionet Nettoyage – Violations of the Unsolicited Telecommunications Rules**

File number: PDR 9174-1185

*In this decision, the Commission imposes an administrative monetary penalty of \$2,000 on Mr. Hugo Charron, carrying on business as Bionet Nettoyage, for initiating, on its own behalf, two telemarketing telecommunications without being registered with, and having provided information to, the National Do Not Call List (DNCL) operator, and without being a registered subscriber of the National DNCL and having paid all applicable fees to the National DNCL operator, in violation of the Unsolicited Telecommunications Rules.*

1. Between 12 January 2010 and 6 February 2012, the Commission received numerous complaints in relation to telemarketing telecommunications made by Mr. Hugo Charron, carrying on business as Bionet Nettoyage (Bionet Nettoyage).<sup>1</sup>
2. On 15 February 2012, a Notice of Violation was issued to Bionet Nettoyage pursuant to section 72.07 of the *Telecommunications Act* (the Act). The notice informed Bionet Nettoyage that it had initiated, on its own behalf,
  - two telemarketing telecommunications to consumers without being a registered subscriber to the National Do Not Call List (DNCL) and having paid all applicable fees to the National DNCL operator, in violation of Part II, section 6<sup>2</sup> of the Commission's Unsolicited Telecommunications Rules (the Rules); and
  - two telemarketing telecommunications without being registered with, and having provided information to, the National DNCL operator, in violation of Part III, section 2<sup>3</sup> of the Rules.
3. The Notice of Violation set out an administrative monetary penalty (AMP) for four violations at \$500 per violation, for a total amount of \$2,000.

---

<sup>1</sup> Mr. Hugo Charron, carrying on business as Bionet Nettoyage, Levis, Quebec, Tel.: 418-304-1504. Industry – Carpet, upholstery, and post construction cleaning services.

<sup>2</sup> Part II, section 6 of the Unsolicited Telecommunications 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.

<sup>3</sup> 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.

4. Bionet Nettoyage was given until 22 March 2012 to pay the AMP set out in the Notice of Violation or to make representations to the Commission regarding the violations.
5. The Commission received representations from Bionet Nettoyage dated 22 March 2012.
6. Based on the information contained in the representations, the Commission has identified the following issues to be addressed in its determinations:

- I. Did Bionet Nettoyage commit the violations?

- II. Is the amount of the AMP reasonable?

### **I. Did Bionet Nettoyage commit the violations?**

7. Bionet Nettoyage stated that:
  - It understands, from reading the documents provided with the Notice of Violation, that of the 35 complaints received by the Commission, only two witnesses were able to identify Bionet Nettoyage;
  - Mr. Charron is an honest person who has little education and schooling; therefore, he did not know that Bionet Nettoyage had the obligation to subscribe to the National DNCL; and
  - When it received the Notice of Violation on 15 February 2012, Bionet Nettoyage ceased its telemarketing activities and will not be making any telemarketing calls until it has met all the requirements to comply with the Act. This, it argued, causes a financial prejudice on the business since it is a small business.
8. The Commission notes that it did not investigate all 35 complaints regarding Bionet Nettoyage. Rather, the Commission focussed on two witness statements in proving that Bionet Nettoyage violated the Rules.
9. The Commission also notes that Bionet Nettoyage admitted to making telemarketing calls, and that it was neither registered with the National DNCL operator nor subscribed to the National DNCL.
10. The Commission also notes that the absence of knowledge of the Rules is not a valid defence under the Rules or the Act.
11. The Commission acknowledges, however, the decision made by Bionet Nettoyage to cease making telemarketing calls until it has met the requirements to comply with the Rules.
12. In light of the above, the Commission finds that, on a balance of probabilities, Bionet Nettoyage has committed the two violations of Part II, section 6 and the two violations of Part III, section 2 of the Rules cited in the Notice of Violation.

## **II. Is the amount of the AMP reasonable?**

13. Bionet Nettoyage stated that:

- The amount of the AMP was too high and that it had been established in a discretionary manner; and
- In the event that the Commission concludes that Bionet Nettoyage should pay an AMP, the total amount should be reduced to \$1,000.

14. The Commission notes that Bionet Nettoyage has not registered with the National DNCL operator and/or subscribed to the National DNCL and therefore has avoided paying the required subscription fee since at least 12 January 2010.

15. The Commission considers that, according to the information obtained by the Commission from the Quebec Enterprise Registrar, Bionet Nettoyage is a sole proprietorship.

16. In light of the above, and given the size of the business and that it is the first Notice of Violation issued to the business, the Commission considers that a penalty of \$500 per violation for the four violations cited in the Notice of Violation is appropriate.

### **Conclusion**

17. In the circumstances of this case, the Commission considers that a penalty of \$500 for each of the violations of Part II, section 6, and Part III, section 2 of the Rules is appropriate. The Commission therefore imposes a total AMP of \$2,000 on Bionet Nettoyage.

18. The Commission hereby notifies Bionet Nettoyage 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 90 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.

19. The Commission reminds Bionet Nettoyage 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 Bionet Nettoyage should adopt to ensure compliance with the Rules include, but are not limited to, the following:

- registering with the National DNCL operator;
- 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.
20. The Commission advises Bionet Nettoyage that in order to ensure compliance with the Rules, the Commission may impose larger AMPs for subsequent violations.
  21. The amount of \$2,000 is due by 30 April 2012 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 April 2012, 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.
  22. 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