



Compliance and Enforcement Decision CRTC 2012-667

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Ottawa, 6 December 2012

Les Aliments S.R.C. Inc. – Application to review and vary Telecom Decision 2012-173 regarding violations of the Unsolicited Telecommunications Rules

File number: 8662-L33-201207085

In this decision, the Commission determines that Les Aliments S.R.C. Inc. (Les Aliments S.R.C.) has failed to demonstrate that there is substantial doubt as to the correctness of Telecom Decision 2012-173. Accordingly, the Commission denies Les Aliments S.R.C.'s application to review and vary Telecom Decision 2012-173, and maintains the administrative monetary penalty of \$24,000 imposed on Les Aliments S.R.C. in that decision.

1. The Commission received an application by Les Aliments S.R.C. Inc. (Les Aliments S.R.C.), dated 22 May 2012, requesting that the Commission review and vary Telecom Decision 2012-173. In that decision, the Commission imposed an administrative monetary penalty (AMP) totalling \$24,000 on Les Aliments S.R.C. for violations of the Unsolicited Telecommunications Rules (the Rules).
2. In its application, Les Aliments S.R.C. did not contest the findings that the violations had occurred but requested that the AMP amount be reduced from \$6,000 to \$2,000 per violation. It submitted that the Commission had committed errors of law in (i) incorrectly taking into account the company's previous behaviour, and (ii) not having proper regard to previous Commission decisions when determining the amount of the AMP.

Background

3. On 18 June 2010, Commission staff issued a Citation stating that Les Aliments S.R.C. did not have a valid subscription to the National Do Not Call List (DNCL), and that consumers whose numbers were registered on the National DNCL had complained about receiving telemarketing calls from the company. After receiving the Citation, the company committed to complying with the Rules and taking corrective measures.
4. On 29 September 2011, a Notice of Violation was issued to Les Aliments S.R.C. pursuant to section 72.07 of the *Telecommunications Act* (the Act). The notice informed Les Aliments S.R.C. that it had initiated, between 3 January and 17 March 2011,

- three telemarketing telecommunications to consumers whose telecommunications numbers were registered on the National DNCL, in violation of Part II, section 4 of the Rules;¹ and
 - three telemarketing telecommunications without having paid all applicable subscription fees to the National DNCL operator, in violation of Part II, section 6 of the Rules.²
5. Les Aliments S.R.C. was given until 31 October 2011 to either pay the AMP set out in the Notice of Violation or make representations to the Commission with respect to the violations. The Commission received representations from Les Aliments S.R.C. dated 27 October 2011.
 6. After considering the evidence and the representations presented before it, the Commission, in Telecom Decision 2012-173, found that Les Aliments S.R.C. had violated the Rules in relation to two of the three telemarketing telecommunications that were the subject of the Notice of Violation. The Commission concluded that Les Aliments S.R.C. had committed four violations, and imposed an AMP amount of \$6,000 per violation, totalling \$24,000.

Les Aliment S.R.C.'s review and vary submissions

7. In support of its submission that the Commission had incorrectly taken into account its previous behaviour, Les Aliments S.R.C. argued that the Commission had mistakenly characterized the violations that were the subject of the Notice of Violation as a second series of violations. Les Aliments S.R.C. argued that the activities that the Commission purported to treat as the first set of violations were not violations in law but simply allegations. Further, Les Aliments S.R.C. submitted that the Commission erred in characterizing the company as having demonstrated an absence of good faith by failing to submit its compliance procedures to the Commission. Les Aliments S.R.C. argued that it had submitted these procedures to its legal counsel, and that to the extent that there had been an omission on the company's part, it was minor in nature.
8. With respect to its argument that the Commission failed to have proper regard to its own jurisprudence when determining the amount of the AMP, Les Aliments S.R.C. relied on a number of decisions in which the Commission had imposed on companies in situations similar to Les Aliments S.R.C. AMP amounts ranging from \$1,000 to \$3,000 per violation. Against this backdrop, the company submitted that the AMP amount of \$6,000 imposed on Les Aliments S.R.C. was clearly unreasonable.

¹ Part II, section 4 of the Rules states 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.

² 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.

Criteria to review and rescind, or vary Commission Telecom decisions

9. In Telecom Information Bulletin 2011-214, the Commission outlined the criteria it would apply in considering whether to 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.

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

Factual Context

10. By letter dated 1 April 2010, the Commission informed Les Aliments S.R.C. that it had received numerous complaints regarding the company's apparent failure to comply with the Rules. Les Aliments S.R.C. was given an opportunity to comment on these allegations. By letter dated 20 April 2010, signed by its legal counsel, Les Aliments S.R.C. stated that due to the fact that the company did not have calling logs, it was not in a position to confirm that the calls had been made, nor that the consent of those called had been obtained.
11. In light of the company's response, Commission staff held a conference call with Les Aliments S.R.C. on 18 May 2010 to provide the company with guidance to put in place procedures to follow to bring itself into regulatory compliance. Further, by letter dated 29 June 2010, signed by its legal counsel in response to the Citation of 18 June 2010, the company identified the various measures it had taken to bring itself into compliance and assured the Commission that it would respect the Rules.
12. Despite the company's assurances, the Commission continued to receive complaints regarding calls made by the company from July 2010 to June 2011. As a result of these complaints, Commission staff undertook an investigation and issued the report which led to the Notice of Violation issued on 29 September 2011.

a) Did the Commission err in law by taking into account Les Aliments S.R.C.'s prior behaviour when determining the amount of the AMP?

13. The Commission agrees with Les Aliments S.R.C. that the set of violations that were the subject of the Notice of Violation were not a second set of violations at law given that the violations noted in the Citation letter of 18 June 2010 were not the subject of a Notice of Violation and/or a Commission finding. However, the Commission disagrees with the thrust of Les Aliments S.R.C.'s argument to the effect that the Commission may only have regard to the activities that formed the basis for violations that are the subject of a Notice of Violation and/or a Commission finding when determining the amount of the AMP. In this regard, as more fully discussed in Telecom Decision 2007-48, the Commission notes that it has discretion under the Act when determining the amount of an AMP. In Telecom Decision 2007-48, the Commission stated that the factors it would have regard to included

- the nature of the violation (minor, serious, very serious, negligent, or intentional);
 - the number and frequency of complaints and violations;
 - the relative disincentive of the measure; and
 - the potential for future violation.
14. Accordingly, the Commission concludes that it did not err in law by taking Les Aliments S.R.C.'s prior behaviour into account when determining the amount of the AMP. The Commission notes that the Notice of Violation of 29 September 2011 was issued subsequent to the Citation issued by Commission staff on 18 June 2010, as a result of which the company committed to complying with the Rules.

b) Has Les Aliments S.R.C. discharged its onus of demonstrating that the amount of the AMP per violation is unreasonable?

15. As noted above, the Commission has discretion when determining the AMP amount. Further, and contrary to Les Aliments S.R.C.'s submission, the Commission is not bound by its previous decisions but is obliged to consider the specific circumstances of each case. With respect to the case of Les Aliments S.R.C., the Commission took into account, among other things, the size of the company's operations and the fact that, contrary to the assurances given, the company chose to disregard its regulatory obligations and, in doing so, failed to comply with the Rules.
16. The Commission notes that as set out in the Act, a corporation such as Les Aliments S.R.C. is liable to an AMP amount of up to \$15,000 per violation. In light of the specific circumstances applicable to Les Aliments S.R.C., including the company's behaviour prior to the issuance of the Notice of Violation and the size of its operations, the Commission is not persuaded that the company has discharged its onus of demonstrating, in the context of a review and vary application, that the AMP amount per violation set out in Telecom Decision 2012-173 is unreasonable.

Conclusion

17. In light of the above, the Commission finds that Les Aliments S.R.C. has failed to demonstrate that there is substantial doubt as to the correctness of Telecom Decision 2012-173. Accordingly, the Commission **denies** Les Aliments S.R.C.'s application.

Other matters

18. The Commission notes that, on 15 May 2012, following the issuance of Telecom Decision 2012-173, Les Aliments S.R.C. established a payment plan with the Commission and has been paying the AMP of \$24,000 in monthly instalments.

Secretary General

Related documents

- *Les Aliments S.R.C. Inc. – Violations of the Unsolicited Telecommunications Rules*, Telecom Decision CRTC 2012-173, 23 March 2012
- *Revised guidelines for review and vary applications*, Telecom Information Bulletin CRTC 2011-214, 25 March 2011
- *Unsolicited Telecommunications Rules framework and the National Do Not Call List*, Telecom Decision CRTC 2007-48, 3 July 2007, as amended by Telecom Decision CRTC 2007-48-1, 19 July 2007