



Telecom Decision CRTC 2012-75

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Ottawa, 7 February 2012

Mr. Ed Barna, carrying on business as Byo Steem – Violations of the Unsolicited Telecommunications Rules

File number: PDR 9174-1033

In this decision, the Commission imposes an administrative monetary penalty of \$8,000 on Mr. Ed Barna, carrying on business as Byo Steem (Byo Steem), for initiating four telemarketing telecommunications to consumers whose telecommunications numbers were registered on the National Do Not Call List (DNCL), and for initiating these telecommunications without having paid all applicable fees to the National DNCL operator, in violation of the Unsolicited Telecommunications Rules.

1. Between 10 October 2010 and 21 June 2011, the Commission received numerous complaints in relation to telemarketing telecommunications made by Byo Steem.¹
2. On 10 August 2011, a notice of violation was issued to Mr. Ed Barna, carrying on business as Byo Steem (Byo Steem) pursuant to section 72.07 of the *Telecommunications Act* (the Act). The notice informed Byo Steem that it had initiated
 - four telemarketing telecommunications to consumers whose telecommunications 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
 - four telemarketing telecommunications without having paid all applicable fees to the National DNCL operator, in violation of Part II, section 6³ of the Rules.
3. Byo Steem was given until 12 September 2011 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 Byo Steem dated 18 September 2011.

¹ Byo Steem, London, Ontario, Tel.: 519-439-2411. Industry – Steam cleaning.

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

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.

5. Based on the information contained in the representations, the Commission has identified the following issues to be addressed in its determinations:
 - I. Has Byo Steem established a defence of due diligence?
 - II. While operating under the Byo Steem name, did the company make telemarketing telecommunications and did the company use or display certain telephone numbers?

I. Has Byo Steem established a defence of due diligence?

6. The Commission notes that subsection 72.1(1) of the Act states that it is a defence for a person in a proceeding in relation to a violation to establish that the person exercised due diligence to prevent the violation.
7. In *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, the Commission established criteria to provide guidance about the elements that it would generally consider in assessing a defence of due diligence. These criteria were incorporated into Part VII of the Rules.
8. Byo Steem addressed these criteria and submitted that it had
 - registered with the National DNCL operator;
 - attempted to obtain a valid subscription to the National DNCL, but was unable to purchase one because it does not own or use credit cards, and was therefore unable to make any online payments; and
 - brought the payment issue to the attention of a CRTC officer, who told the company that alternative arrangements would be made available; however, it never received information about an alternative payment method.
9. The Commission notes that the CRTC officer in question contacted Byo Steem employees by phone and email to assist them in subscribing to the National DNCL. The Commission also notes that the National DNCL operator contacted Byo Steem on several occasions to help the company subscribe and to explain the different payment options available, such as electronic funds transfer. Further, the Commission considers that Byo Steem could have reviewed information on the National DNCL website or called the National DNCL operator to understand the different payment options that a company has when subscribing to the National DNCL.
10. The Commission notes that Byo Steem continued to make telemarketing telecommunications to consumers whose numbers were registered on the National DNCL after it had received several warning letters and the notice of violation.⁴ The Commission also notes that Byo Steem provided no evidence prior to or since the issuance of the notice of violation that it had developed a process to prevent unwanted calls.

⁴ Byo Steem was sent two warning letters and a citation prior to the notice of violation.

11. The Commission considers that, on a balance of probabilities, Byo Steem failed to establish a defence of due diligence to prevent the violations contained in the notice of violation.
12. In light of the above, the Commission finds that Byo Steem has not established a defence of due diligence.

II. While operating under the Byo Steem name, did the company make telemarketing telecommunications and did the company use or display certain telecommunications numbers?

13. In letters dated 26 November 2009 and 7 January 2010, Commission staff requested that Byo Steem confirm whether it used certain telephone numbers, including 519-963-0610 and 519-439-2411, for telemarketing telecommunications. The Commission notes that Byo Steem did not reply to these letters.
14. In its representations in response to the notice of violation, Byo Steem submitted that, during the time period referred to in the letter dated 26 November 2009 (30 June 2009 to 15 October 2009), it did not own, use, or display several of the telephone numbers listed in the letter.
15. The Commission notes that Byo Steem did not dispute initiating calls from the 519-963-0610 telephone number noted in the witness statements. Consumers also confirmed that they received telemarketing calls from a second number, which is listed as Byo Steem's main phone number online on Canada 411.
16. Consequently, the Commission finds, on a balance of probabilities, that the telephone numbers the consumers confirmed in their witness statements are valid, and that Byo Steem used or displayed these telephone numbers when initiating telemarketing telecommunications.

Conclusion

17. 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 \$8,000 on Mr. Ed Barna, carrying on business as Byo Steem. The Commission hereby notifies Byo Steem 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.
18. The Commission reminds Byo Steem 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 Byo Steem 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.
19. The Commission advises Byo Steem that in order to ensure compliance with the Rules, the Commission may impose larger AMPs for subsequent violations.
 20. The amount of \$8,000 is due by 7 March 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 7 March 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.
 21. 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