



Telecom Decision CRTC 2012-89

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Ottawa, 13 February 2012

Les Distributions Triple A – Application to review and vary Telecom Decision 2011-582 regarding violations of the Unsolicited Telecommunications Rules

File number: 8662-L30-201113844

In this decision, the Commission determines that Les Distributions Triple A Inc. (Triple A) has failed to demonstrate that there is substantial doubt as to the correctness of Telecom Decision 2011-582. Accordingly, the Commission denies Triple A's application to review and vary Telecom Decision 2011-582, and maintains the administrative monetary penalty of \$6,000 imposed on Triple A in that decision.

1. The Commission received an application by Les Distributions Triple A Inc. (Triple A), dated 27 September 2011, requesting that the Commission review and vary Telecom Decision 2011-582. In that decision, the Commission imposed an administrative monetary penalty (AMP) totalling \$6,000 on Triple A for violations of the Unsolicited Telecommunications Rules (the Rules).
2. Triple A's application requested that the total AMP amount be annulled on the following grounds:
 - Triple A only initiates telecommunications for the purpose of conducting market research;
 - the calls it made may have been made based upon referrals from complainants' spouses; and
 - the AMP of \$6,000 is a substantial amount for a small business.

Background

3. 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 had been registered on the National Do Not Call List (DNCL), in violation of Part II, section 4 of the Rules;¹ and

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.

- initiated these telecommunications without having paid all applicable subscription fees to the National DNCL operator, in violation of Part II, section 6 of the Rules.²
4. Triple A was given until 18 April 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 Triple A dated 11 April 2011.
 5. After considering the evidence and the representations before it, the Commission found that Triple A had violated the Rules as stipulated in the notice of violation and imposed an AMP totalling \$6,000.

Criteria to review and rescind, or vary Commission Telecom decisions

6. In Telecom Public Notice 98-6, 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.
7. The Commission interprets Triple A's review and vary application as an assertion that there were errors in fact and law in Telecom Decision 2011-582 resulting from
 - the Commission's finding that the calls made by Triple A were telemarketing calls;
 - the Commission's alleged failure to consider whether the complainants may have been referred to Triple A by their spouses; and
 - the Commission's finding that the quantum of the AMP was reasonable.

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

a) Did the Commission err by finding that Triple A had initiated telemarketing telecommunications to consumers listed on the National DNCL?

8. The Commission notes that the investigation that led to the notice of violation relied on three separate telemarketing telecommunications, obtained from complainants whose residential telecommunications numbers were registered on the National DNCL, to establish that Triple A had initiated three telemarketing telecommunications in violation of the Rules.

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.

9. The Commission notes that in Triple A's 11 April 2011 representations and in the present application, the company submitted that it only initiated calls to residential numbers for the purpose of conducting market research. However, Triple A provided no evidence to dispute the correctness of the Commission's finding in Telecom Decision 2011-582 that Triple A was soliciting its products and services during the calls and that the calls were telemarketing telecommunications subject to the National DNCL Rules.
10. Accordingly, the Commission determines that it did not err in finding that Triple A had initiated three telemarketing telecommunications to residential numbers listed on the National DNCL.

b) Did the Commission err by allegedly failing to consider that the complainants may have been referred to Triple A by their spouses?

11. The Commission notes that in its original representations, Triple A submitted that it was possible that the complainants had been referred to the company by their spouses. However, it did not provide any evidence to support that possibility. As part of the current application, Triple A reiterated this suggestion. However, it provided no evidence to dispute the correctness of the Commission's finding in Telecom Decision 2011-582 that it had made three telemarketing telecommunications to residential numbers listed on the National DNCL without prior consent to do so. The Commission therefore considers Triple A's claim that the complainants may have been referred to the company by their spouses to be unsupported. Accordingly, the Commission finds that it did not err by allegedly failing to consider that the complainants may have been referred to Triple A by their spouses.

c) Did the Commission err in finding the quantum of the AMP to be reasonable?

12. As noted in Telecom Decision 2011-582, according to the information provided by the company when registering with the National DNCL operator, Triple A is a small company. Triple A provided no reason as to why the Commission should deviate from the panel's finding that a first-time penalty of \$1,000 for each of the six violations in question is appropriate in this case and in line with Commission practices for a first notice of violation for a small company.
13. Accordingly, the Commission determines that it did not err in finding the quantum of the AMP to be appropriate.

Conclusion

14. In light of the above, the Commission finds that Triple A has failed to demonstrate that there is substantial doubt as to the correctness of Telecom Decision 2011-582. Accordingly, the Commission denies Triple A's application.

Other matters

15. The Commission notes that the AMP of \$6,000 imposed on Triple A in Telecom Decision 2011-582 continues to accumulate interest, calculated and compounded monthly at the average bank rate plus three percent from **9 September 2011**. The AMP is payable on the total amount including interest and will accrue during the period beginning on **9 September 2011** and ending on the day before the date on which payment is received.
16. 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

- *Les Distributions Triple A Inc. – Violations of the Unsolicited Telecommunications Rules*, Telecom Decision CRTC 2011-582, 9 September 2011
- *Guidelines for review and vary applications*, Telecom Public Notice CRTC 98-6, 20 March 1998