



Compliance and Enforcement Decision CRTC 2014-89

PDF version

Ottawa, 28 February 2014

Lev Olevson, carrying on business as Capital Windows and Doors and Advantage Pro – Violations of the Unsolicited Telecommunications Rules

File number: PDR 9174-1368

In this decision, the Commission imposes total administrative monetary penalties of \$8,000 on Lev Olevson for initiating telemarketing telecommunications to consumers whose telecommunications numbers were registered on the National Do Not Call List (DNCL), and for doing so when he was not a registered subscriber of the National DNCL and had not paid all applicable fees to the National DNCL operator, in violation of the Unsolicited Telecommunications Rules.

1. Between 26 April 2012 and 30 January 2013, the Commission received numerous complaints in relation to telemarketing telecommunications that appeared to have been made by Mr. Lev Olevson, carrying on business as both Capital Windows and Doors¹ (Capital Windows) and Advantage Pro.²
2. These complaints were investigated and, on 24 May 2013, a notice of violation was issued to Mr. Olevson pursuant to section 72.07 of the *Telecommunications Act* (the Act). The notice informed Mr. Olevson that he had initiated, on his own behalf,
 - four telemarketing telecommunications to consumers whose telecommunications numbers were registered on the National Do Not Call List (DNCL), in violation of Part II, section 4³ of the Commission's Unsolicited Telecommunications Rules (the Rules); and
 - four telemarketing telecommunications to consumers without being a registered subscriber of the National DNCL and having paid all applicable

¹ Lev Olevson, carrying on business as Capital Windows and Doors, Ottawa, Ontario, Tel.: 613-680-0492. Industry – Sale and installation of windows and doors.

² Lev Olevson, carrying on business as Advantage Pro, Ottawa, Ontario, Tel.: 613-321-1283. Industry – Sale and installation of windows and doors.

³ Part II, section 4 of the Unsolicited Telecommunications Rules states that a telemarketer shall not initiate a telemarketing telecommunication to a consumer's telecommunications number that is registered on the National DNCL, unless express consent has been provided by such consumer to be contacted via a telemarketing telecommunication by that telemarketer.

fees to the National DNCL operator, in violation of Part II, section 6⁴ of the Rules.

3. The notice of violation set out administrative monetary penalties (AMPs) for eight violations at \$1,000 per violation, for a total amount of \$8,000.
4. Mr. Olevson was given until 24 June 2013 to pay the AMPs set out in the notice of violation or to make representations to the Commission regarding the violations.
5. The Commission notes that Mr. Olevson neither paid the AMPs nor made representations in accordance with the notice of violation. Accordingly, pursuant to subsection 72.08(3) of the Act, Mr. Olevson is deemed to have committed the violations outlined in the notice of violation dated 24 May 2013.
6. In Telecom Decision 2007-48, the Commission stated that appropriate factors to be considered in determining the amount of an AMP include the nature of the violations, the number and frequency of complaints and violations, the relative disincentive of the measure, and the potential for future violations.
7. The Commission considers the making of unsolicited telemarketing telecommunications by a telemarketer to consumers whose numbers are registered on the National DNCL, and doing so while not being subscribed to the National DNCL, a serious violation that causes significant inconvenience and nuisance to consumers. These telecommunications, by their nature, violate the expectation of consumers expressed through registration of their numbers on the National DNCL not to receive them.
8. Regarding the number and frequency of complaints and violations, the Commission notes that initiating a single telemarketing telecommunication may, in some circumstances, result in multiple violations of the Rules. Therefore, proof of the occurrence of a telemarketing telecommunication may be used to support the finding of more than one violation of the Rules when multiple violations relate to that telecommunication. In the present case, two violations occurred during each of the four telemarketing telecommunications in question.
9. Regarding the relative disincentive of the measure, in view of the information provided by Mr. Olevson in his registrations with the National DNCL operator, the Commission considers his companies to be small-sized businesses for the purpose of determining the appropriate AMP amount.
10. Regarding the potential for future violations, the Commission notes that it previously imposed total AMPs of \$2,000 on Mr. Olevson for telemarketing telecommunications conducted while he was carrying on business as Capital Windows and Doors.⁵ The

⁴ 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 See Telecom Decision 2012-195.

Commission further notes that Mr. Olevson was issued a citation, published on 6 March 2012, for telemarketing telecommunications conducted while he was carrying on business as Advantage Pro.

11. The Commission notes that these previous actions did not result in Mr. Olevson bringing his businesses into compliance with the Rules, and considers that a larger penalty is warranted in the circumstances.
12. In light of the above, the Commission considers that total AMPs of \$8,000 are reasonable and necessary to promote regulatory compliance with the Rules.

Conclusion

13. In the circumstances of this case, the Commission considers that a penalty of \$1,000 for each of the four violations of Part II, section 4 of the Rules and for each of the four violations of Part II, section 6 of the Rules is appropriate. The Commission therefore imposes total AMPs of \$8,000 on Mr. Olevson.
14. The Commission hereby notifies Mr. Olevson of his right to apply to the Commission to review and rescind or vary this decision under section 62 of the Act and to seek leave of Federal Court of Appeal to appeal this decision before that court 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.⁶ In accordance with section 64 of the Act, an application for leave to appeal must be made to the Federal Court of Appeal within 30 days of the date of this decision or within such further time as a judge of the Court grants in exceptional circumstances.
15. The Commission reminds Mr. Olevson that, should he continue to initiate telemarketing telecommunications on his own behalf or engage telemarketers for the purpose of solicitation of his products or services, he is required to comply with the Rules. Examples of measures that he 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 a 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

⁶ In Telecom Information Bulletin 2011-214, the Commission issued, pursuant to the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure*, revised guidelines for review and vary applications to reflect the modified time limit in which such applications must be made.

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.

16. The Commission advises Mr. Olevson that in order to ensure compliance with the Rules, the Commission may impose larger AMPs for subsequent violations.
17. The amount of \$8,000 is due by 31 March 2014 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 31 March 2014, 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.
18. 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

Related documents

- *Mr. Lev Olevson, carrying on business as Capital Windows and Doors – Violations of the Unsolicited Telecommunications Rules*, Telecom Decision CRTC 2012-195, 30 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