



## Compliance and Enforcement Decision CRTC 2015-572

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Ottawa, 22 December 2015

*File number: PDR 9174-1482*

### **Blue Dream HT Ltd. – Violations of the Unsolicited Telecommunications Rules**

*The Commission imposes total administrative monetary penalties of \$21,000 on Blue Dream HT Ltd. (Blue Dream) for initiating telemarketing telecommunications to consumers whose telecommunications numbers were registered on the National Do Not Call List (DNCL), and for initiating some of those telecommunications (i) outside of the permitted hours, (ii) when it was not registered with the National DNCL operator, (iii) when it was not subscribed to the National DNCL, or (iv) while relying on a version of the National DNCL that was more than 31 days old.*

#### **Introduction**

1. Between 28 July 2013 and 2 February 2015, the Commission received numerous complaints in relation to fax telemarketing telecommunications that appeared to have been made by Blue Dream HT Ltd. (Blue Dream). These faxes advertised a variety of services marketed under various business names used by Blue Dream, which included Mass Media, Canadian Windows, Customers Choice, Door to Door Flyer Distribution, We Insure All, and Windows by Installer.
2. These complaints were investigated and, on 18 March 2015, a notice of violation was issued to Blue Dream pursuant to section 72.07 of the *Telecommunications Act* (the Act).<sup>1</sup> The notice informed Blue Dream that it had initiated ten telemarketing telecommunications resulting in
  - ten violations of Part II, section 4<sup>2</sup> of the Commission's Unsolicited Telecommunication Rules (the Rules), which prohibits the initiation of telemarketing telecommunications to consumers whose telecommunications numbers are registered on the National Do Not Call List (DNCL);
  - one violation of Part II, section 6 of the Rules, which prohibits the initiation of a telemarketing telecommunication while the telemarketer is not a registered

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<sup>1</sup> Subsection 72.07(1) of the Act states that a person authorized to issue notices of violation who believes on reasonable grounds that a person has committed a violation may issue, and shall cause to be served on that person, a notice of violation.

<sup>2</sup> Part II, section 4 of the Unsolicited Telecommunications Rules states that a telemarketer shall not initiate, and a client of a telemarketer shall make all reasonable efforts to ensure that the telemarketer does not initiate, a telemarketing telecommunication to a consumer's telecommunications number that is on the National Do Not Call List, unless express consent has been provided by such consumer to be contacted via a telemarketing telecommunication by that telemarketer or the client of that telemarketer.

subscriber of the National DNCL and has not paid the applicable fees to the National DNCL operator;

- one violation of Part II, section 13<sup>3</sup> of the Rules, which requires that telemarketers that initiate telemarketing telecommunications use a version of the National DNCL that is no more than 31 days old;
  - one violation of Part III, section 2 of the Rules, which prohibits the initiation of telemarketing telecommunications unless the telemarketer has registered with, and provided information to, the National DNCL operator, and has paid all applicable fees charged by the Complaints Investigator delegate; and
  - one violation of Part III, section 23<sup>4</sup> of the Rules, which restricts the initiation of telemarketing telecommunications to specific hours.
3. The notice of violation set out administrative monetary penalties (AMPs) for 14 violations at \$1,500 per violation, for a total amount of \$21,000.
  4. Blue Dream was given until 18 April 2015, subsequently amended to 30 August 2015, to pay the AMPs set out in the notice of violation or to make representations to the Commission regarding the violations.
  5. Based on the record of this proceeding, the Commission has identified the following issues to be addressed in this decision:
    - Did Blue Dream commit the violations?
    - Is the amount of the AMPs reasonable?

### **Did Blue Dream commit the violations?**

6. Blue Dream neither paid the AMPs specified in the notice of violation nor made representations in accordance with the notice. Accordingly, pursuant to subsection 72.08(3)<sup>5</sup> of the Act, Blue Dream is deemed to have committed the violations outlined in the notice of violation.

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<sup>3</sup> Part II, section 13 of the Rules states that a telemarketer and a client of a telemarketer shall use a version of the National DNCL obtained from the National DNCL operator no more than 31 days prior to the date that any telemarketing telecommunication is made.

<sup>4</sup> Part III, section 23 of the Rules states that a telemarketing telecommunication is restricted to the following hours: 9:00 a.m. to 9:30 p.m. on weekdays (Monday to Friday); and 10:00 a.m. to 6:00 p.m. on weekends (Saturday and Sunday). The hours refer to those of the consumer receiving the telemarketing telecommunication.

<sup>5</sup> Subsection 72.08(3) of the Act states that a person who neither pays the penalty nor makes representations in accordance with the notice is deemed to have committed the violation and the Commission may impose the penalty.

## **Is the amount of the AMPs reasonable?**

7. In Telecom Decision 2007-48, the Commission stated that the 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.<sup>6</sup>
8. A telemarketer's failure to register with the National DNCL operator and subscribe to the National DNCL, and to download the list at least once every 31 days during telemarketing campaigns as required, is a significant breach of the Rules. Registering and subscribing are among the core responsibilities of telemarketers under the National DNCL regime; however, Blue Dream initiated telemarketing telecommunications during periods in July and October 2014 where there were gaps in its registration and subscription, and during a period in October 2014 where, even when it was registered and subscribed, it had not downloaded the list for more than 31 days.
9. In addition, Blue Dream initiated telemarketing telecommunications to consumers whose telecommunications numbers were registered on the National DNCL, even during periods where it was a registered subscriber. This is a serious violation that causes significant inconvenience and nuisance to consumers, and violates the expectation of consumers expressed through their registration with the National DNCL that they will receive fewer telemarketing telecommunications.
10. Regarding the number and frequency of complaints, Blue Dream sent unsolicited fax telecommunications over a period of more than one and a half years, resulting in a significant volume of complaints from Canadian consumers.
11. Regarding the relative disincentive of the measure, the Commission must ensure that the AMPs it imposes are not set so low as to be financially advantageous for a telemarketer or a client of a telemarketer to pay the amount as a cost of doing business.
12. With respect to the potential for future violations, Blue Dream has received both warning letters and citations from Commission staff in the past for similar violations, and has not corrected its conduct.
13. Further, although Blue Dream did not file representations in response to the notice of violation, it did respond to a request for information letter sent during the investigation period. In its response, the company asserted that its procedures were in compliance with the Rules, but did not explain or address how or why it continued to contact consumers whose telecommunications numbers were registered on the National DNCL. Such consumers continued to file complaints about receiving unsolicited faxes from Blue Dream after the company's exchange of correspondence with the Commission. As a result, the Commission considers that non-financial measures have been proven insufficient to bring Blue Dream into compliance.

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<sup>6</sup> In addition, the Commission stated in Compliance and Enforcement Regulatory Policy 2015-109 that the ability to pay is a factor which may be considered when determining the amount of an AMP, because it relates to the relative disincentive of the measure.

14. In light of the above, total AMPs of \$21,000 are reasonable and necessary to promote compliance with the Rules by Blue Dream.

## Conclusions

15. In the circumstances of this case, a penalty of \$1,500 for each of the ten violations of Part II, section 4 of the Rules; one violation of Part II, section 6 of the Rules; one violation of Part II, section 13 of the Rules; one violation of Part III, section 2 of the Rules; and one violation of Part III, section 23 of the Rules is appropriate. The Commission therefore imposes total AMPs of \$21,000 on Blue Dream.

16. The Commission hereby notifies Blue Dream of its 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 the 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, subject to the *Canadian Radio-television and Telecommunications Commission Rules of Practice and Procedure* (the Rules of Procedure), and the Commission will place all related documentation on its website.<sup>7</sup> 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 Federal Court of Appeal grants in exceptional circumstances.

17. The Commission reminds Blue Dream that, should it initiate telemarketing telecommunications in the future, it is required to comply with the Rules. Examples of measures that Blue Dream should adopt to ensure compliance with the Rules include 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;
- not initiating telemarketing telecommunications to a consumer's telecommunications number that is on the National DNCL unless express consent has been provided by that consumer;
- not initiating telemarketing telecommunications to a consumer's telecommunications number outside of the permitted hours; 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

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<sup>7</sup> In Telecom Information Bulletin 2011-214, the Commission issued, pursuant to the Rules of Procedure, revised guidelines for review and vary applications to reflect the modified time limit in which such applications must be made.

National DNCL, and (b) honour consumers' requests that they not be contacted by way of telemarketing telecommunications.

18. The Commission advises Blue Dream that in order to ensure compliance with the Rules, the Commission may impose larger AMPs for subsequent violations.
19. The amount of \$21,000 is due by **21 January 2016** 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 **21 January 2016**, interest calculated and compounded monthly at the average bank rate plus 3% 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.
20. 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**

- *Administrative monetary penalties under the Voter Contact Registry*, Compliance and Enforcement Regulatory Policy CRTC 2015-109, 27 March 2015
- *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