



Compliance and Enforcement Decision CRTC 2016-88

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Toronto Breeze Air Duct Cleaning Services Inc. – Violations of the Unsolicited Telecommunications Rules

The Commission imposes administrative monetary penalties totalling \$39,000 on Toronto Breeze Air Duct Cleaning Services Inc. for the initiation of telemarketing telecommunications on its behalf to consumers whose telecommunications numbers were registered on the National Do Not Call List (DNCL), while it was not a registered subscriber of the National DNCL and had not paid the applicable fees to the National DNCL operator, and while it was not registered with, and had not provided information to, the National DNCL operator.

Introduction

1. Between 1 January 2013 and 1 December 2014, the Commission received numerous complaints in relation to telemarketing telecommunications that appeared to have been made by or on behalf of Toronto Breeze Air Duct Cleaning Services Inc. (Toronto Breeze).
2. These complaints were investigated and, on 6 February 2015, a notice of violation was issued to Toronto Breeze pursuant to section 72.07 of the *Telecommunications Act* (the Act).¹ The notice informed Toronto Breeze that it was vicariously liable for the conduct of telemarketers whose services it had engaged, and that these telemarketers had initiated the following:
 - nine 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);
 - fifteen telemarketing telecommunications on behalf of a client that was not a registered subscriber of the National DNCL and had not paid all applicable

¹ 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.

² 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 DNCL, 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.

fees to the National DNCL operator, in violation of Part II, section 7³ of the Rules;

- fifteen telemarketing telecommunications on behalf of a client that was not registered with, and had not provided information to, the National DNCL operator, in violation of Part III, section 3⁴ of the Rules; and
 - one telemarketing telecommunication which did not display an originating telecommunications number where the telemarketer could be reached, in violation of Part III, section 25⁵ of the Rules.
3. The notice of violation set out administrative monetary penalties (AMPs) for 40 violations at \$1,000 per violation, for a total amount of \$40,000.
 4. Pursuant to paragraph 72.07(2)(b) of the Act, Toronto Breeze had 30 days from the date it was served with the notice of violation to pay the AMPs set out in the notice, or to make representations to the Commission regarding the violations.
 5. The Commission received representations from Ali Tariq, the director of Toronto Breeze, which spoke to both the notice of violation issued to the company as well as to a notice of violation issued concurrently to Mr. Tariq personally, which is addressed in Compliance and Enforcement Decision 2016-89, also released today.
 6. Based on the record of this proceeding, the Commission has identified the following issues to be addressed in this decision:
 - Did Toronto Breeze commit the violations?
 - Is the amount of the AMPs reasonable?

Did Toronto Breeze commit the violations?

7. The notice of violation was supported by information from consumers who attested to having received unsolicited telemarketing calls determined to have been placed on behalf of Toronto Breeze. Each of these consumers submitted that they were registered on the National DNCL when they received the telemarketing call, that they had no prior existing business relationship with Toronto Breeze, and that their phone number is not associated with a business. The calls were made on dates when Toronto

³ Part II, section 7 of the Rules states that a telemarketer shall not initiate a telemarketing telecommunication on behalf of a client unless that client is a registered subscriber of the National DNCL and the applicable fees to the National DNCL operator associated with that client's subscription have been paid.

⁴ Part III, section 3 of the Rules states that a telemarketer shall not initiate a telemarketing telecommunication on behalf of a client unless that client has registered with, and provided information to, the National DNCL operator, and all applicable fees charged by the Complaints Investigator delegate associated with that client have been paid.

⁵ Part III, section 25 of the Rules states that a telemarketer initiating a telemarketing telecommunication shall display the originating telecommunications number or an alternate telecommunications number where the telemarketer can be reached (except where the number display is unavailable for technical reasons).

Breeze was not registered with the National DNCL operator or subscribed to the National DNCL.

8. The notice of violation was further supported by a sample list of appointments booked as a result of telemarketing calls conducted on the company's behalf, which Toronto Breeze provided to investigators. These appointments were also booked during a period when Toronto Breeze was not registered with or subscribed to the National DNCL.
9. Pursuant to section 72.16 of the Act,⁶ a person is liable for a violation that is committed by an employee of the person acting in the course of the employee's employment, or by an agent or mandatary of the person acting within the scope of the agent's or mandatary's authority, whether or not the employee or agent or mandatary who actually committed the violation is identified or proceeded against.
10. During the investigation, and in its representations, Toronto Breeze admitted that it had hired telemarketers to initiate telemarketing calls on its behalf, and carried out service appointments booked as a result of those telemarketing calls. Given this arrangement, Toronto Breeze is vicariously liable for the nine violations of Part II, section 4; the fifteen violations of Part II, section 7; and the fifteen violations of Part III, section 3 of the Rules that were committed by telemarketers acting on its behalf.
11. The remaining violation related to a telemarketing telecommunication that did not display an originating telecommunications number where the telemarketer could be reached. The Commission notes an inconsistency between the notice of violation and the supporting evidence with respect to this violation. Specifically, the witness statement relied upon to support this violation states that the consumer did not have call display; therefore, the consumer could not have known whether or not an originating telecommunications number was being displayed. The Commission is therefore not satisfied that a violation of Part III, section 25 of the Rules occurred as set out in the notice of violation.
12. Accordingly, Toronto Breeze is found liable on a balance of probabilities to have committed 39 of the 40 violations outlined in the notice of violation dated 6 February 2015.

Is the amount of the AMPs reasonable?

13. 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.⁷

⁶ Formerly section 72.02 of the Act

⁷ In addition, the Commission stated in Compliance and Enforcement Regulatory Policy 2015-109 that the ability to pay is a factor to be considered when determining the amount of the AMP, because it relates to the relative disincentive of the measure.

14. Unsolicited telemarketing telecommunications made on behalf of clients that are not registered with the National DNCL operator and not subscribed to the National DNCL are serious violations that cause significant inconvenience and nuisance to consumers who have registered their telecommunications numbers on the National DNCL. Failure to use a subscription as required increases the likelihood that unsolicited telecommunications will be made to such consumers. These telecommunications, by their nature, violate the expectation of consumers not to receive them. In this case, Toronto Breeze was neither registered with the National DNCL operator nor subscribed to the National DNCL.
15. Regarding the number and frequency of complaints and violations, Toronto Breeze engaged telemarketers to conduct telemarketing telecommunications on its behalf from 1 January 2013 to 1 December 2014, with the non-compliant conduct observed taking place over a period of nearly two years.
16. Regarding the relative disincentive of the measure, the Commission must ensure that the AMPs it imposes serve as an incentive to comply with the Rules. This includes compliance by registering with the National DNCL operator and purchasing subscriptions to the area codes that will be called. AMPs must not be 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.
17. Investigators met with the director of Toronto Breeze in December 2013 and advised him of the company's obligations under the Rules. Nonetheless, the company did not register with the National DNCL operator or subscribe to the National DNCL, and continued using the services of telemarketers to book service appointments in 2014, thereby committing further violations. In light of Toronto Breeze's failure to comply with the Rules despite earlier warnings, the Commission considers that there is significant potential for future violations if a financial penalty is not imposed.
18. In this instance, the penalty of \$1,000 per violation is reasonable and necessary to promote compliance with the Rules by Toronto Breeze, and the total amount of the AMPs is not disproportionate to the company's status as an incorporated small business.

Conclusions

19. In the circumstances of this case, a penalty of \$1,000 for each of the nine violations of Part II, section 4 of the Rules; fifteen violations of Part II, section 7 of the Rules; and fifteen violations of Part III, section 3 of the Rules is appropriate. The Commission therefore imposes total AMPs of \$39,000 on Toronto Breeze.
20. The Commission hereby notifies Toronto Breeze 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, and the

Commission will place all related documentation on its website.⁸ 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.

21. The Commission reminds Toronto Breeze that, should it initiate telemarketing telecommunications in the future or engage another party to do so on its behalf, it is required to comply with the Rules. Examples of measures that Toronto Breeze 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; 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.

22. The Commission advises Toronto Breeze that in order to ensure compliance with the Rules, the Commission may impose larger AMPs for subsequent violations.

23. The amount of \$39,000 is due by **7 April 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 **7 April 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.

24. 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

⁸ 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.

Related documents

- *Ali Tariq – Violations of the Unsolicited Telecommunications Rules*, Compliance and Enforcement Decision CRTC 2016-89, 8 March 2016
- *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