



Compliance and Enforcement Decision CRTC 2018-482

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

The Commission imposes a total administrative monetary penalty of \$18,000 on Toronto Breeze Air Duct Cleaning Services Inc. for telemarketing telecommunications initiated on its behalf (i) to consumers whose telecommunications numbers were registered on the National Do Not Call List (DNCL), (ii) while it was not registered with the National DNCL operator, and (iii) while it was not a registered subscriber of the National DNCL, in violation of the Unsolicited Telecommunications Rules.

Introduction

1. On 13 June 2016, the Commission received one complaint in relation to telemarketing telecommunications that appeared to have been initiated on behalf of Toronto Breeze Air Duct Cleaning Services Inc. (Toronto Breeze). The Commission subsequently obtained records of 102 potential sales leads that were believed to have been generated through telemarketing calls initiated on behalf of Toronto Breeze between 12 June and 27 July 2016.
2. The complaint and leads were investigated and, on 5 April 2017, a person designated by the Commission issued a notice of violation¹ to Toronto Breeze pursuant to section 72.07 of the *Telecommunications Act* (the Act).² 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 on its behalf:
 - two telemarketing telecommunications to consumers whose numbers were registered on the National Do Not Call List (DNCL), in violation of Part II, section 4 of the Commission's Unsolicited Telecommunications Rules (the Rules);³

¹ Paragraph 72.004(a) of the *Telecommunications Act* states that the Commission may designate a person, or a class of persons, that is authorized to issue notices of violation or accept an undertaking.

² 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.

³ Part II, section 4 of the 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.

- two telemarketing telecommunications while Toronto Breeze was not a registered subscriber of the National DNCL and had not paid all applicable fees to the National DNCL operator, in violation of Part II, section 7 of the Rules;⁴ and
 - two telemarketing telecommunications while Toronto Breeze was not registered with the National DNCL operator, in violation of Part III, section 3 of the Rules.⁵
3. The notice of violation set out administrative monetary penalties (AMPs) for six violations at \$3,000 per violation, proposing a total penalty amount of \$18,000.
 4. Toronto Breeze was given until 6 May 2017 to pay the total AMP amount set out in the notice of violation or to make representations to the Commission regarding the violations. The company did not respond to the notice of violation.

Did Toronto Breeze commit the violations?

5. Toronto Breeze neither paid the AMP nor made representations in accordance with the notice of violation. Accordingly, pursuant to subsection 72.08(3) of the Act,⁶ Toronto Breeze is deemed to have committed the violations outlined in the notice of violation dated 5 April 2017 and the Commission may impose the penalty.

Is the total amount of the AMP reasonable?

6. The purpose of a penalty is to promote compliance, not to punish. The Commission has previously stated that the appropriate factors to be considered in determining the amount of an AMP for violations of the Rules include the nature of the violations, the number and frequency of complaints and violations, the relative disincentive of the measure, the potential for future violations, and the person's ability to pay the penalty.⁷

⁴ 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.

⁵ 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.

⁶ 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.

⁷ In Telecom Decision 2007-48, the Commission identified four factors: 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. In Compliance and Enforcement Regulatory Policy 2015-109, the Commission further identified ability to pay as a factor to be considered in determining the amount of an AMP.

7. Regarding the nature of the violations, the making of unsolicited telemarketing telecommunications by a telemarketer to consumers whose numbers are registered on the National DNCL is a serious violation. These calls cause significant inconvenience and nuisance to consumers by violating the expectation that they will not receive unsolicited telemarketing calls by registering their numbers on the National DNCL. Additionally, Toronto Breeze's failure to purchase a subscription to the National DNCL and to register with the National DNCL operator reflects significant breaches of the Rules. Registering and subscribing are two of the core responsibilities of clients of telemarketers under the National DNCL regime. Furthermore, using the services of telemarketers to engage in unsolicited telemarketing while having no subscription increases the likelihood that unwanted calls will be made to consumers whose numbers are registered on the National DNCL.
8. Leads records obtained from Toronto Breeze during the investigation confirm that the company relied on the leads provided to them by the telemarketer to contact potential customers and complete sales. As a result, Toronto Breeze was routinely benefiting from telemarketing activity occurring on its behalf.
9. Toronto Breeze did not demonstrate any intent to comply with the Rules, and the company's lack of co-operation indicates there is a strong potential for future violations. Thus, the AMP is necessary to ensure that Toronto Breeze complies with the Rules.
10. Toronto Breeze also demonstrated no efforts toward self-correction. On 8 March 2016, the Commission issued Compliance and Enforcement Decision 2016-88, in which an AMP of \$39,000 was imposed on Toronto Breeze for 39 previous contraventions of the same sections of the Rules. After that decision was issued, Toronto Breeze still failed to register with the National DNCL operator and subscribe to the National DNCL, while acknowledging that it continued to use a telemarketer to find potential clients. Toronto Breeze's failure to change its behaviour in response to the investigation or the previous decision indicates a significant potential for future violations, which justifies the increased severity of the penalty from \$1,000 per violation to \$3,000 per violation.
11. Regarding ability to pay, Toronto Breeze had an opportunity to produce financial information with respect to its ability to pay as part of its representations to the Commission, but chose not to file any representations.
12. In Compliance and Enforcement Regulatory Policy 2015-109, the Commission noted that analysis of this factor was not limited to direct financial information, and could proceed based on other indicia of a company's revenue-generating capabilities, including the size of a business, the scope of its operations, and the number of people it employs. An interview between investigators and the directors of Toronto Breeze during the investigation revealed that Toronto Breeze was receiving daily leads on new business through a telemarketer and that the company had two employees. Based on the area codes in the sample of the leads provided to the investigators, Toronto Breeze's operations appear to have been confined to the Greater Toronto Area and southern Ontario. Based on the limited information available, the

Commission considers that the proposed penalty would not exceed Toronto Breeze's ability to pay.

13. Regarding the relative disincentive of the measure, the Commission must strive to 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. Accordingly, AMPs must not be set so low as to make it financially advantageous for a telemarketer or a client of a telemarketer to pay the amount as a cost of doing business.
14. In light of the above considerations, the Commission considers that the total penalty amount of \$18,000 is reasonable and necessary to promote compliance with the Rules.

Conclusions

15. Pursuant to subsection 72.08(3) of the Act, having neither paid the penalty nor made any representations, Toronto Breeze is deemed to have committed the six violations of the Rules set out in the notice of violation.
16. In the circumstances of this case, the penalty amount proposed in the notice of violation is appropriate. The Commission therefore imposes a total AMP of \$18,000 on Toronto Breeze.
17. 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.
18. The Commission reminds Toronto Breeze that, should it initiate telemarketing telecommunications in the future or engage a telemarketer 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;

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.

- downloading the National DNCL at least once every 31 days prior to the date of a telemarketing telecommunication;
 - ensuring that the telemarketer making telemarketing telecommunications on its behalf is using a version of the National DNCL obtained from the National DNCL operator no more than 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 (i) prevent the initiation of telemarketing telecommunications on its behalf to any telecommunications number that has been registered for more than 31 days on the National DNCL, and (ii) honour consumers' requests that they not be contacted by way of telemarketing telecommunications.
19. The Commission advises Toronto Breeze that to ensure compliance with the Rules, the Commission may continue to impose larger AMPs for subsequent violations.
20. The amount of \$18,000 is due by **18 January 2019** 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 **18 January 2019**, interest calculated and compounded monthly at the average bank rate plus 3% will be payable on the 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

Related documents

- *Toronto Breeze Air Duct Cleaning Services Inc. – Violations of the Unsolicited Telecommunications Rules*, Compliance and Enforcement Decision CRTC 2016-88, 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