



Compliance and Enforcement Decision CRTC 2022-320

PDF version

Ottawa, 24 November 2022

File number: PDR 9174-3137

9184-8630 Québec Inc., operating as Ramonage Plus – Violations of the Unsolicited Telecommunications Rules

Summary

The Commission imposes a total administrative monetary penalty of \$24,927.98 on 9184-8630 Québec Inc., operating as Ramonage Plus, for (i) telemarketing calls made on its behalf to consumers whose telephone numbers were registered on the National Do Not Call List (DNCL), (ii) telemarketing calls made while it was not a registered subscriber to the National DNCL operator and had not paid all applicable fees to the DNCL operator, and (iii) failing to maintain its own do not call list and keep a consumer's name and telecommunications number on the list for a period of 3 years and 14 days from the date of the consumer's do not call request, resulting in 16,187 violations of the Unsolicited Telecommunications Rules.

Introduction

1. Between 2013 and 2020, the Commission received 15 separate complaints from consumers about telemarketing calls that appeared to have been made by or on behalf of 9184-8630 Québec Inc., operating as Ramonage Plus (Ramonage Plus).
2. As a result of an investigation, on 21 February 2022 the Director of Telecommunications Enforcement (the designated person in this proceeding)¹ issued a notice of violation² to Ramonage Plus under the *Telecommunications Act* (the Act). The notice of violation was accompanied by supporting materials, including a cover letter setting out the reasons why the penalty proposed in the notice of violation was considered appropriate, copies of the evidence gathered during the investigation, and the investigation report detailing Commission enforcement staff's analysis of the evidence.

¹ The Director of Telecommunications Enforcement is designated under subsection 72.04(1) of the *Telecommunications Act* (the Act) to issue notices of violation.

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. The notice of violation informed Ramonage Plus that telemarketing calls made on its own behalf between 25 October 2018 and 25 October 2020 resulted in
 - 8,093 violations of Part II, section 4 of the Unsolicited Telecommunications Rules (the Rules), which states that a telemarketer and clients of telemarketers shall make all reasonable efforts to ensure that telemarketers do not initiate telemarketing telecommunications to consumers whose numbers are registered on the National Do Not Call List (DNCL), without the consumers' express consent;
 - 8,093 violations of Part II, section 6 of the Rules, which 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; and
 - 1 violation of Part III, section 8 of the Rules, which states that a telemarketer initiating a telemarketing telecommunication on its own behalf shall maintain its own do not call list and shall keep a consumer's name and telecommunications number on the list for a period of 3 years and 14 days from the date of the consumer's do not call request.
4. The notice of violation set out a total administrative monetary penalty (the penalty) of \$25,000 for 16,187 violations, at \$1.54 per violation.
5. Ramonage Plus neither paid the penalty nor made representations, according to the notice of violation.
6. According to subsection 72.08(3) of the Act, if a company does not pay the penalty or does not make representations in accordance with a notice of violation, the company is deemed to have committed the violations set out in the notice of violation and the Commission may impose the penalty.

Issue

7. Based on the record of this proceeding, the Commission has identified the following issue to be addressed:
 - Is the total penalty of \$25,000 set out in the notice of violation appropriate in the circumstances and consistent with the factors set out by the Commission in Telecom Decision 2007-48 and in Compliance and Enforcement Regulatory Policy 2015-109?

Is the total penalty of \$25,000 set out in the notice of violation appropriate in the circumstances and consistent with the factors set out by the Commission in Telecom Decision 2007-48 and in Compliance and Enforcement Regulatory Policy 2015-109?

8. The notice of violation set out a total penalty of \$25,000 for 16,187 violations at \$1.54 per violation. However, the Commission notes that 16,187 multiplied by \$1.54 amounts to \$24,927.98, not \$25,000.
9. Despite this miscalculation of the total amount of the penalty, the Commission must determine whether a penalty of \$1.54 per violation (for a total penalty amount of \$24,927.98), is appropriate in the circumstances of this case.
10. In order to determine what is an appropriate penalty, the Commission examines the nature of the violations, the number and frequency of complaints and violations, the potential for future violations, the relative disincentive of the measure, and the person's ability to pay the penalty.³

Nature of the violations

11. The Commission considers that making unsolicited marketing calls to consumers whose telephone numbers are registered on the National DNCL causes them significant inconvenience and nuisance by violating their expectation that they will not receive unsolicited telemarketing calls by registering their numbers on the National DNCL.
12. The Commission notes that Ramonage Plus breached the Rules by not subscribing to the National DNCL for the entire period covered by the notice of violation (25 October 2018 to 25 October 2020). The company instead only subscribed for a three-month period, from 20 January 2020 to 20 April 2020.
13. Furthermore, by not only making telemarketing calls without first filtering out numbers registered on the National DNCL, but by also failing to maintain its own internal list of excluded telephone numbers, Ramonage Plus increased the probability that unwanted calls would be made to consumers whose numbers are registered on the National DNCL.

Number and frequency of complaints and violations

14. While 15 complaints were received between 2013 and 2020 regarding calls that appeared to have been made by or on behalf of Ramonage Plus, the Commission notes that the notice of violation covers the period between 25 October 2018 and 25 October 2020.

³ See Telecom Decision 2007-48 and Compliance and Enforcement Regulatory Policy 2015-109.

15. Commission enforcement staff's analysis of the calls made by Ramonage Plus during the period covered by the notice of violation (between 25 October 2018 and 25 October 2020) indicated that 8,093 calls were made to consumers registered on the national DNCL.
16. The Commission further notes that Ramonage Plus only subscribed to the National DNCL for a period of 3 months, namely from 20 January 2020 to 20 April 2020, during the entire 24-month period covered by the notice of violation. Finally, the Commission notes that Ramonage Plus did not provide an internal list of excluded telephone numbers as requested.
17. All of the above resulted in 16,187 violations of the Rules.

Potential for future violations

18. The Commission notes that this is the second time a notice of violation has been issued to Ramonage Plus. In Telecom Decision 2012-191, the Commission imposed an administrative monetary penalty of \$4,000 for four violations, at \$1,000 per violation.
19. The Commission further notes that the investigation report related to this proceeding demonstrates that Ramonage Plus did not consistently put in place the measures recommended by the Commission in Telecom Decision 2012-191 to ensure compliance with the Rules. More specifically, the record indicates that Ramonage Plus only subscribed to the DNCL for a 3-month period, out of the 24 months covered by the notice of violation. Further, there is no evidence on the record that shows that Ramonage Plus downloaded the DNCL every 31 days prior to the date of its telemarketing telecommunications, nor that it established and implemented adequate written policies and procedures to comply with the Rules.
20. Furthermore, in a reply to Commission enforcement staff, Ramonage Plus indicated that it was not registered with the DNCL because the company uses its own list to make the telemarketing calls, which is the same violation of the Rules that led to Telecom Decision 2012-191. In that decision, the Commission found that Ramonage Plus had violated Part II, section 6 of the Rules, which 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.
21. The Commission considers that this repeated violation of the Rules demonstrates that Ramonage Plus did not fully put in place the measures suggested in Telecom Decision 2012-191 to ensure compliance with the Rules, nor did it fully understand what needed to be done to avoid future violations.

Relative disincentive of the measure

22. The Commission notes that the purpose of any penalty is to promote compliance with the Rules and not to punish. The amount of the penalty must therefore reflect the nature of the non-compliance and must serve as both a deterrent to future non-compliance and an incentive to comply with the Rules. For this reason, penalties must not be set so low as to make it financially advantageous for a telemarketer or a client of a telemarketer to pay the penalty as a cost of doing business.⁴ Accordingly, the amount per violation may vary significantly from one decision to another, as long as the amount per violation is within the limits of the Act, which, in the case of a corporation, is \$15,000.⁵
23. The Commission notes that the total penalty of \$24,927.98 as set out in this decision results in a significant increase from the total penalty of \$4,000 imposed on Ramonage Plus in Telecom Decision 2012-191.
24. As for the potential cost of doing business, the Commission considers that Ramonage Plus gained a financial benefit from its non-compliance with the Rules by avoiding the costs associated with the subscriptions it was required to purchase prior to making telemarketing calls. In this case, those costs would have been \$5,397⁶ for a 21-month subscription for one area code. As previously noted, Ramonage Plus had a valid subscription to the DNCL for a 3-month period, while the period covered by the notice of violation was 24 months.
25. In light of the above, the Commission finds that a penalty of \$1.54 per violation, for a total penalty of \$24,927.98, would serve as an appropriate disincentive given the circumstances of this case. The Commission considers that this amount would place the penalty in excess of the cost of doing business, without making the amount so large as to prevent Ramonage Plus from using telemarketing strategies in a manner that complies with the Rules.

Ability to pay

26. The Commission notes that despite a request for financial information from Commission enforcement staff, Ramonage Plus did not provide the requested information. Therefore, the investigation report included limited direct financial information to demonstrate whether the company has the ability to pay a total penalty of \$24,927.98 as set out in the notice of violation.

⁴ See Compliance and Enforcement Regulatory Policy 2015-109, paragraph 17.

⁵ Subsection 72.01(b) of the Act indicates that a person who commits any contravention of a Commission prohibition or requirement under section 41 is liable (in the case of a corporation) to a penalty of \$15,000.

⁶ Subscription fees to the National DNCL are set by the Commission and vary based on the length of the subscription and the number of area codes for which the subscription is made (see [Telemarketer Subscription Rates and File Formats for the National Do Not Call List](#)).

27. The Commission indicated in Compliance and Enforcement Regulatory Policy 2015-109 that its analysis of the ability to pay is not limited to direct financial information; it can also be based on other characteristics of a company's capacity to generate revenue, including its size, the scope of its operations, and the number of people it employs.
28. The Commission considers that while the limited information on the record of this proceeding suggests that Ramonage Plus has been conducting business operations for more than 10 years in the Greater Quebec City Area, there is not enough information to draw conclusions regarding Ramonage Plus' overall revenue-generating capabilities.
29. The designated person submitted limited evidence regarding Ramonage Plus' ability to pay the penalty. In the absence of information from Ramonage Plus addressing this factor, the Commission considers that nothing on the record of this proceeding demonstrates, on a balance of probabilities, that a total penalty of \$24,927.98 exceeds Ramonage Plus' ability to pay. The Commission notes that this determination is consistent with its approach in past Compliance and Enforcement decisions when examining the ability to pay of a telemarketer or a client of a telemarketer.⁷
30. In light of the above, the Commission finds that a total penalty of \$24,927.98 is appropriate, represents more than the cost of doing business, and is significant enough to promote compliance with the Rules.

Conclusions

31. As noted above, Ramonage Plus is deemed to have committed the **16,187 violations** of the Rules set out in the notice of violation since it neither paid the penalty nor made any representations.
32. The Commission finds, on a balance of probabilities and with regard to the circumstances of this case, that a penalty of \$1.54 per violation for 16,187 violations of the Rules is appropriate. The Commission therefore imposes a total penalty of **\$24,927.98** on Ramonage Plus.
33. The Commission hereby notifies Ramonage Plus of its right to apply to the Commission to review and rescind or vary this decision. Any review and vary application must be made within 90 days after the date of this decision (see section 62 of the Act).⁸

⁷ See for example, Compliance and Enforcement Decisions 2021-205 and 2021-387.

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.

34. Ramonage Plus can also seek leave of the Federal Court of Appeal to appeal this decision before that court. An application for leave to appeal must be made to the Federal Court of Appeal within 30 days after the date of this decision or within such further time as a judge of the Court grants in exceptional circumstances (see section 64 of the Act).
35. The Commission reminds Ramonage Plus that it is required to comply with the Rules should it make telemarketing telecommunications or authorize telemarketers to do so on its behalf in the future. Examples of measures that Ramonage Plus 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 (i) prevent the initiation of telemarketing telecommunications to any telecommunications number that has been registered for more than 31 days on the National DNCL, (ii) honour consumers' requests that they not be contacted by way of telemarketing telecommunications, and (iii) ensure that consumers receive telemarketing telecommunications only within the permitted hours.
36. The Commission advises Ramonage Plus that to ensure compliance with the Rules, the Commission may impose larger penalties for subsequent violations.
37. The amount of \$24,927.98 is due by **11 January 2023**. It must be paid in accordance with the instructions contained in the notice of violation. Any amount owing that is not paid by **11 January 2023** will accrue interest until the amount is paid in full.⁹
38. If payment has not been received by **11 January 2023**, 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

⁹ Interest is calculated and compounded monthly at the average bank rate plus 3% on the amount. Interest will accrue during the period beginning on the due date and ending on the day before the date on which payment is received.

Related documents

- *2442947 Ontario Inc., operating as Trust Windows Corp. – Violations of the Unsolicited Telecommunications Rules*, Compliance and Enforcement Decision CRTC 2021-387, 19 November 2021
- *2590054 Ontario Inc., operating as Top Tier Moving and Storage – Violations of the Unsolicited Telecommunications Rules*, Compliance and Enforcement Decision CRTC 2021-205, 16 June 2021
- *Administrative monetary penalties under the Voter Contact Registry*, Compliance and Enforcement Regulatory Policy CRTC 2015-109, 27 March 2015
- *9184-8630 Québec Inc., carrying on business as Ramonage Plus – Violations of the Unsolicited Telecommunications Rules*, Telecom Decision CRTC 2012-191, 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