



Telecom Decision CRTC 2009-711

Ottawa, 20 November 2009

Application to review and vary Telecom Decision 2009-522 regarding violations of the Unsolicited Telecommunications Rules by Rob Sugar

File number: 8662-S89-200912916

1. The Commission received an application by Rob Sugar, dated 11 September 2009, requesting that it review and vary Telecom Decision 2009-522. In that decision, the Commission imposed administrative monetary penalties (AMPs) totalling \$4,000 on Mr. Sugar.
2. In his application, Mr. Sugar requested that the Commission remove the imposed penalty, submitting that he had not received adequate notice about the violation. Mr. Sugar submitted, for example, that a neighbour had accepted delivery of the 6 July 2009 notice of violation (the notice) on his behalf at Mr. Sugar's address, and that the package was never brought to his attention.

Background

3. On 6 July 2009, the Commission issued the notice to Mr. Sugar pursuant to section 72.07 of the *Telecommunications Act* (the Act). The notice informed Mr. Sugar that fax telemarketing telecommunications had been initiated on his behalf to consumers whose numbers had been registered on the National Do Not Call List (DNCL), in violation of Part II, section 4¹ of the Commission's Unsolicited Telecommunications Rules (the Rules).
4. Mr. Sugar was given until 5 August 2009 to pay the AMPs set out in the notice or to make representations to the Commission with respect to the violations.
5. However, Mr. Sugar neither paid the AMPs specified in the notice nor made representations in accordance with the notice. Accordingly, pursuant to subsection 72.08(3) of the Act, Mr. Sugar was deemed to have committed the violations outlined in the notice and the Commission subsequently issued Telecom Decision 2009-522 imposing AMPs totalling \$4,000 on Mr. Sugar.

¹ Part II, section 4 of the Unsolicited Telecommunications Rules provides that a telemarketer shall 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.

Criteria to review and rescind, or vary Commission Telecom Decisions

6. In Telecom Public Notice 98-6, the Commission outlined the criteria to consider review and vary applications filed pursuant to section 62 of the Act. Specifically, the Commission stated that applicants must demonstrate that there is substantial doubt as to the correctness of the original decision, due to one or more of the following: i) an error in law or in fact, ii) a fundamental change in circumstances or facts since the decision, iii) a failure to consider a basic principle which had been raised in the original proceeding, or iv) a new principle which has arisen as a result of the decision.
7. The Commission interprets Mr. Sugar's submission as an assertion that there was an error in law in the original decision resulting from a denial of procedural fairness prior to the issuance of the decision.

Is there substantial doubt as to the correctness of the original decision?

8. The Commission notes that Commission staff had been in contact with Mr. Sugar by telephone, email, and mail for several months prior to issuing the notice, and had informed him that he could be subject to a notice of violation and an AMP if he did not comply with the Rules.
9. The Commission further notes that Commission staff forwarded the notice to the sole contact address that Mr. Sugar had provided when he registered on the National DNCL. Commission staff successfully used this address when communicating with Mr. Sugar prior to the issuance of the notice. Finally, a Preliminary Investigation Report, the notice, and Telecom Decision 2009-522 were all accepted and signed for at the same address.
10. The Commission finds that the process leading to Telecom Decision 2009-522 was procedurally fair and provided Mr. Sugar with sufficient notice and opportunity to participate fully. Accordingly, the Commission finds that Mr. Sugar has failed to demonstrate that there is substantial doubt as to the correctness of the original decision.
11. In light of the above, the Commission **denies** Mr. Sugar's application.

Other matters

12. The Commission notes that the AMP of \$4,000 imposed on Mr. Sugar in Telecom Decision 2009-522 continues to accumulate interest calculated and compounded monthly at the average bank rate plus three percent from **25 September 2009**. The AMP is payable on the total amount including interest and will accrue during the period beginning on **25 September 2009** and ending on the day before the date on which payment is received.
13. As part of its collection activities, the Commission intends to certify the unpaid amount and register the certificate with the Federal Court.

Secretary General

Related documents

- *Rob Sugar – Violations of the Unsolicited Telecommunications Rules*, Telecom Decision CRTC 2009-522, 26 August 2009
- *Guidelines for review and vary applications*, Telecom Public Notice CRTC 98-6, 20 March 1998

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