



Telecom Decision CRTC 2010-136

Ottawa, 5 March 2010

Application to review and vary Telecom Decision 2009-680 regarding violations of the Unsolicited Telecommunications Rules by Groupe CC

File number: 8662-G45-200916307

1. The Commission received an application by 9121-1920 Québec inc., carrying on business as Groupe CC (Groupe CC), dated 30 November 2009, requesting that the Commission review and vary Telecom Decision 2009-680. In that decision, the Commission imposed administrative monetary penalties (AMPs) totalling \$9,000 on Groupe CC.
2. Groupe CC submitted that the application was based on the following grounds: (1) the telephone number 514-316-2979, identified in Telecom Decision 2009-680 as a number from which telemarketing calls had originated, did not belong to Groupe CC; (2) the telephone number 450-678-6903, identified in Telecom Decision 2009-680 as a number from which telemarketing calls had originated, did not belong to Groupe CC and a competitor could be fraudulently providing the telephone number to complainants; and (3) Groupe CC was registered with the National Do Not Call List (DNCL) operator.

Background

3. On 12 August 2009, the Commission issued a notice of violation to Groupe CC pursuant to section 72.07 of the *Telecommunications Act* (the Act). The notice informed Groupe CC that it had initiated three telemarketing telecommunications to consumers whose numbers had been registered on the National DNCL, in violation of Part II, section 4¹ of the *Unsolicited Telecommunications Rules* (the Rules); it had initiated such telemarketing telecommunications when it was not a registered subscriber of the National DNCL, in violation of Part II, section 6² of the Rules; and it had failed to properly identify the name of the telemarketer when it initiated such telemarketing telecommunications, in violation of Part III, section 16³ of the Rules.
4. Groupe CC was given until 14 September 2009 to pay the AMPs set out in the notice or to make representations to the Commission with respect to the violations.
5. Groupe CC filed representations, dated 14 September 2009, in which it argued that
 - i. the telephone number 514-316-2979 did not belong to Groupe CC, and

¹ Part II, section 4 of the Unsolicited Telecommunications Rules (the 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.

² Part II, section 6 of the Rules provides that a telemarketer shall not initiate a telemarketing telecommunications 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.

³ Part III, section 16 of the Rules provides that a telemarketer initiating a telecommunication on its own behalf shall provide the name of the telemarketer in a clear manner upon reaching the intended party.

- ii. the telephone number 450-678-6903 was provided to a complainant by a person who did not work for Groupe CC.
6. After considering the evidence and the representations before it, the Commission found that Groupe CC had initiated the telemarketing telecommunications because
 - i. the telephone number 514-316-2979 belonged to a Groupe CC employee who sold products on behalf of Groupe CC, and
 - ii. the telephone number 450-678-6903 belonged to Groupe CC because this was the number provided to the National DNCL operator when Groupe CC registered.
7. The Commission found that Groupe CC had violated the Rules as stipulated in the notice of violation and imposed AMPs totalling \$9,000.

Criteria to review and rescind, or vary Commission telecom decisions

8. 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, for example, 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.
9. The Commission interprets Groupe CC's review and vary application as an assertion that there was an error of fact in the original decision resulting from the Commission's findings that Groupe CC had initiated the telemarketing telecommunications because: (1) the telephone number 514-316-2979 belonged to a Groupe CC employee who sold products on behalf of Groupe CC, and (2) the telephone number 450-678-6903 belonged to Groupe CC. The Commission also considers that Groupe CC is asserting that the Commission failed to consider a fact in its original decision, namely that Groupe CC was registered with the National DNCL operator at the time the telemarketing telecommunications were initiated.

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

- a) **Did the Commission err in finding that Groupe CC initiated the telemarketing telecommunications because the telephone number 514-316-2979 belonged to a Groupe CC employee who sold products on behalf of Groupe CC?**
10. Groupe CC submitted that the telephone number 514-316-2979, identified in Telecom Decision 2009-680 as a number from which telemarketing calls had originated, did not belong to Groupe CC. Further, Groupe CC provided the Commission with a copy of a record of employment (ROE) indicating that the person to whom the telecommunications number belonged had ceased to be an employee of Groupe CC on 10 April 2009.
11. The Commission notes that as late as June 2009, Groupe CC staff confirmed by telephone that the employee to whom the telephone number 514-316-2979 belonged then worked for Groupe CC. The Commission also notes that a complainant confirmed in an affidavit that the

complainant received a telemarketing call originating from 514-316-2979 on behalf of Groupe CC on 13 April 2009. Finally, the Commission notes that an ROE is not determinative of whether a person works for an employer; it is only evidence of an employer-employee relationship, but a person may still work in a different capacity for that person regardless of an ROE.

12. Accordingly, the Commission determines that it did not err in finding that the telephone number 514-316-2979 belonged to an employee of Groupe CC who sold products on behalf of Groupe CC or that it was used to initiate telemarketing telecommunications by Groupe CC.

b) Did the Commission err in finding that the telephone number 450-678-6903 belonged to Groupe CC and that it was used to initiate telemarketing telecommunications?

13. Groupe CC submitted that the telephone number 450-678-6903, identified in Telecom Decision 2009-680 as a number from which telemarketing calls had originated, did not belong to Groupe CC. Groupe CC also questioned whether it was possible that a competitor was fraudulently giving out Groupe CC's telephone number to complainants.
14. The Commission notes that 450-678-6903 was the number Groupe CC provided when it registered with the National DNCL operator.
15. The Commission also notes that a complainant identified 450-678-6903 as the number from which a telemarketing call for the sale of Maytag products had originated. The Commission further notes that Groupe CC sells, amongst other consumer name brands, Maytag products.
16. Finally, the Commission notes that Groupe CC provided no evidence that a competitor was fraudulently giving out Groupe CC's telephone number to complainants.
17. Accordingly, the Commission determines that it did not err in finding that the telephone number 450-678-6903 belonged to Groupe CC or that it was used by Groupe CC to initiate telemarketing telecommunications.

c) Did the Commission err in finding that Groupe CC was registered with the National DNCL operator at the time the telemarketing telecommunications were initiated?

18. Groupe CC submitted that it had registered with the National DNCL operator on two separate occasions: on 27 January 2009 as "9121-1920 Québec inc." and on 17 August 2009 as "Groupe CC."
19. The Commission notes that the Rules require a telemarketer to both register with the National DNCL operator and to purchase a subscription to the National DNCL. The Commission acknowledges that Groupe CC did register with the National DNCL operator. However, the Commission notes that the applicable violations listed in the notice of violation relate solely to Groupe CC's failure to purchase a subscription to the National DNCL.
20. Accordingly, the Commission determines that it is irrelevant to the disposition of this application whether Groupe CC was registered with the National DNCL operator at the time the telemarketing telecommunications were initiated.

Conclusion

21. In light of the above, the Commission finds that Groupe CC has failed to demonstrate that there is substantial doubt as to the correctness of the original decision.
22. Accordingly, the Commission **denies** Groupe CC's application.

Other matters

23. The Commission notes that the AMPs of \$9,000 imposed on Groupe CC in Telecom Decision 2009-680 continue to accumulate interest calculated and compounded monthly at the average bank rate plus three percent from **30 November 2009**. The AMPs are payable on the total amount including interest and will accrue during the period beginning on **30 November 2009** and ending on the day before the date on which payment is received.
24. 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

- *Groupe CC – Violations of the Unsolicited Telecommunications Rules*, Telecom Decision CRTC 2009-680, 30 October 2009
- *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
- *Guidelines for review and vary applications*, Telecom Public Notice CRTC 98-6, 20 March 1998

This document is available in alternative format upon request, and may also be examined in PDF format or in HTML at the following Internet site: <http://www.crtc.gc.ca>.