



Telecom Decision CRTC 2012-193

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Ottawa, 30 March 2012

Mr. Réjean Beauchamp, carrying on business as Nettoyage Beauchamp.NET– Violations of the Unsolicited Telecommunications Rules

File number: PDR 9174-1208

In this decision, the Commission imposes an administrative monetary penalty of \$2,000 on Mr. Réjean Beauchamp, carrying on business as Nettoyage Beauchamp.NET, for initiating, on its own behalf, two telemarketing telecommunications without being registered with, and having provided information to, the National Do Not Call List (DNCL) operator, and without being a registered subscriber of the National DNCL and having paid all applicable fees to the National DNCL operator, in violation of the Unsolicited Telecommunications Rules.

1. Between 26 March 2010 and 6 February 2012, the Commission received numerous complaints in relation to telemarketing telecommunications made by Mr. Réjean Beauchamp, carrying on business as Nettoyage Beauchamp.NET (Nettoyage Beauchamp).¹
2. On 15 February 2012, a Notice of Violation was issued to Nettoyage Beauchamp pursuant to section 72.07 of the *Telecommunications Act* (the Act). The notice informed Nettoyage Beauchamp that it had initiated, on its own behalf,
 - two telemarketing telecommunications to consumers without being a registered subscriber to the National Do Not Call List (DNCL) and having paid all applicable fees to the National DNCL operator, in violation of Part II, section 6² of the Commission's Unsolicited Telecommunications Rules (the Rules); and
 - two telemarketing telecommunications without being registered with, and having provided information to, the National DNCL operator, in violation of Part III, section 2³ of the Rules.

¹ Mr. Réjean Beauchamp, carrying on business as Nettoyage Beauchamp.NET, Sainte-Therese, Quebec, Tel.: 450-818-5550. Industry – Cleaning services.

² Part II, section 6 of the Unsolicited Telecommunications Rules 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.

³ Part III, section 2 of the Rules states that a telemarketer shall not initiate a telemarketing telecommunication on its own behalf unless it has registered with, and provided information to, the National DNCL operator.

3. The Notice of Violation set out an administrative monetary penalty (AMP) for four violations at \$500 per violation, for a total amount of \$2,000.
4. Nettoyage Beauchamp was given until 15 March 2012 to pay the AMP set out in the Notice of Violation or to make representations to the Commission regarding the violations.
5. The Commission received representations from Nettoyage Beauchamp dated 5 March 2012.
6. Based on the information contained in the representations, the Commission has identified the following issues to be addressed in its determinations:
 - I. Did Nettoyage Beauchamp exercise due diligence?
 - II. Is the amount of the AMP reasonable?
- I. Did Nettoyage Beauchamp exercise due diligence?**
7. The Commission notes that Nettoyage Beauchamp admits to having made telemarketing calls without being registered with the National DNCL operator and having subscribed to the National DNCL.
8. The Commission notes that subsection 72.1(1) of the Act states that “it is a defence for a person in a proceeding in relation to a violation to establish that the person exercised due diligence to prevent the violation.”
9. The Commission also notes that in *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, it established a partial list of criteria that should be used as a guide when assessing a defence of due diligence. These criteria were incorporated into Part VII of the Rules.
10. Nettoyage Beauchamp addressed these criteria by submitting the following:
 - It had applied for a registration number with Dun & Bradstreet⁴ (DUNS number) before receiving the Notice of Violation, but the delay in obtaining that number prevented it from registering with the National DNCL operator before the Notice of Violation was issued;
 - Scrubbing its telephone lists is time-consuming and costly for a small business because the lists used by the business are in hard copy form where potential clients are identified by civic address while the National DNCL contains only telephone numbers;

⁴ To be able to register with the National DNCL operator, a telemarketer must provide its registration number with Dun & Bradstreet in order for the National DNCL operator to verify its identity.

- The business keeps an internal DNCL:
 - The consumer telephone numbers listed in the Request for Information (RFI) dated 21 November 2011 were subsequently taken off its calling list;
 - As soon as consumers indicate that their numbers are registered with the National DNCL and/or that they do not wish to receive calls, their names are taken off the business' telephone list;
 - It is a possibility that some numbers were dialed by mistake; and
 - Following the issuance of the RFI letter, some corrective measures were taken:
 - It reached an agreement with a telephone list provider;
 - It committed to purchasing computer equipment.
11. The Commission notes that Nettoyage Beauchamp registered with the National DNCL operator on 5 March 2012. According to the information received from Dun & Bradstreet, the business requested a DUNS number on 21 February 2012, after the issuance of the Notice of Violation dated 15 February 2012, and obtained it on 29 February 2012.
 12. The Commission acknowledges the effort made by Nettoyage Beauchamp to maintain an internal DNCL, but notes that the violations committed by Nettoyage Beauchamp are not related to maintaining an internal DNCL.
 13. The Commission recognizes that some telephone numbers may have been dialed by mistake, but notes that Nettoyage Beauchamp did not provide evidence of any measures that it took to avoid calling consumers whose numbers were registered on the National DNCL.
 14. The Commission notes that obtaining a scrubbed telephone list from a provider does not meet the requirement of being subscribed to the National DNCL. Moreover, the purchase of computer equipment mentioned by Nettoyage Beauchamp had not been made, according to the business' representations, as of 5 March 2012. The business had been informed of its registration and subscription obligations by the RFI letter issued on 21 November 2011.
 15. The Commission considers that, on a balance of probabilities, there is insufficient evidence for Nettoyage Beauchamp to rely on a defence of due diligence against the violations contained in the Notice of Violation.
 16. In light of the above, the Commission finds that Nettoyage Beauchamp has not established a defence of due diligence.

II. Is the amount of the AMP reasonable?

17. Nettoyage Beauchamp claimed that a total AMP of \$2,000 is excessive for the following reasons:

- It directly affects the personal finances of the owner of the business;
 - It is out of proportion when considering the seriousness of the violation;
 - The payment of an AMP of \$2,000 would jeopardize the business' survival; and
 - A warning or a smaller AMP would have allowed the business to meet the objective of complying with the Rules.
18. The Commission considers that, according to the information provided in response to the RFI letter, and according to the information also obtained by the Commission from the Quebec Enterprise Registrar, Nettoyage Beauchamp is a sole proprietorship.
19. In light of the above, and given the size of the business and that it is the first Notice of Violation issued to the business, the Commission considers that a penalty of \$500 per violation for the four violations cited in the Notice of Violation is appropriate.

Conclusion

20. In the circumstances of this case, the Commission considers that a penalty of \$500 for each of the violations of Part II, section 6 and Part III, section 2 of the Rules is appropriate. The Commission therefore imposes a total AMP of \$2,000 on Nettoyage Beauchamp.
21. The Commission hereby notifies Nettoyage Beauchamp of its right to apply to the Commission to review and rescind or vary this decision under section 62 of the Act and to appeal this decision to the Federal Court of Appeal 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. An appeal from this decision may be brought in the Federal Court of Appeal with the leave of that Court. Leave to appeal must be applied for within 30 days of the date of this decision or within such further time as a judge of the Court grants in exceptional circumstances.
22. The Commission reminds Nettoyage Beauchamp that, should it continue to initiate telemarketing telecommunications on its own behalf or engage telemarketers for the purpose of solicitation of its products and/or services, it is required to comply with the Rules. Examples of measures that Nettoyage Beauchamp should adopt to ensure compliance with the Rules include, but are not limited to, the following:
- subscribing to the National DNCL;
 - downloading the National DNCL at least once every 31 days prior to the date of the 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.

23. The Commission advises Nettoyage Beauchamp that in order to ensure compliance with the Rules, the Commission may impose larger AMPs for subsequent violations.
24. The amount of \$2,000 is due by 30 April 2012 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 30 April 2012, interest calculated and compounded monthly at the average bank rate plus three percent 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.
25. 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