



Telecom Decision CRTC 2012-196

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Ottawa, 30 March 2012

Nature Carpet Cleaning Inc. – Violations of the Unsolicited Telecommunications Rules

File number: PDR 9174-1168

In this decision, the Commission imposes an administrative monetary penalty of \$9,000 on Nature Carpet Cleaning Inc. for initiating, on its own behalf, three telemarketing telecommunications to consumers whose telecommunication numbers were registered on the National Do Not Call List (DNCL) without being registered with, and having provided information to, the National 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 6 January 2010 and 6 February 2012, the Commission received numerous complaints in relation to telemarketing telecommunications made by Nature Carpet Cleaning Inc. (Nature Carpet).¹
2. On 15 February 2012, a Notice of Violation was issued to Nature Carpet pursuant to section 72.07 of the *Telecommunications Act* (the Act). The notice informed Nature Carpet that it had initiated, on its own behalf,
 - three telemarketing telecommunications to consumers whose telecommunication numbers were registered on the National Do Not Call List (DNCL), in violation of Part II, section 4² of the Commission's Unsolicited Telecommunications Rules (the Rules);
 - three telemarketing telecommunications to consumers without being a registered subscriber to the National DNCL and having paid all applicable fees to the National DNCL operator, in violation of Part II, section 6³ of the Rules; and

¹ Nature Carpet Cleaning Inc., Calgary, Alberta, Tel.: 403-863-6896. Industry – Carpet Cleaning.

² Part II, section 4 of the Unsolicited Telecommunications Rules state that a telemarketer shall not initiate a telemarketing telecommunication to a consumer's telecommunication 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.

³ Part II, section 6 of the 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.

- three telemarketing telecommunications without being registered with, and having provided information to, the National DNCL operator, in violation of Part III, section 2⁴ of the Rules.
3. The Notice of Violation set out an administrative monetary penalty (AMP) for nine violations at \$1,000 per violation, for a total amount of \$9,000.
 4. Nature Carpet 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 Nature Carpet dated 14 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 Nature Carpet commit the violations?
 - II. Is the amount of the AMP reasonable?
- I. Did Nature Carpet commit the violations?**
7. Nature Carpet stated that:
 - It makes telemarketing calls using pages from the telephone book;
 - It is a small business that would be handicapped by the labour involved in scrubbing the DNCL-registered numbers from the telephone book;
 - While it does have plans to grow its operation to the point that it could realistically comply with the Rules as the Commission has chosen to implement them, it is simply not possible for it to do so at this time;
 - After having sent a response to the Request for Information (RFI) letter, it called the investigator, asked if it had to do anything else to be in compliance with the Rules, and was told that its response was satisfactory; and
 - It has re-registered with the National DNCL operator and paid all applicable fees.
 8. The Commission notes that while Nature Carpet acknowledges that it makes telemarketing calls, it stated that, at this time, it is not possible for the company to comply with the Rules.
 9. The Commission also notes that while Nature Carpet has re-registered with the National DNCL operator, it has not paid any fees related to purchasing a subscription.

⁴ 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.

10. The Commission notes that when a company has been told that its response to the RFI letter was complete in the sense that all the information requested in the RFI letter had been provided, it does not directly or indirectly mean that the company has taken all the appropriate measures to comply with the Rules.
11. In light of the above, the Commission finds that on a balance of probabilities, Nature Carpet made the telemarketing telecommunication cited in the Notice of Violation to consumers whose telecommunication numbers were registered on the National DNCL without being registered with the National DNCL operator and without being a subscriber of the National DNCL and having paid all the appropriate fees to the National DNCL operator.

II. Is the amount of the AMP reasonable?

12. Nature Carpet stated that it cannot afford to pay an AMP of \$9,000, particularly when it is imposed with only one month to pay.
13. The Commission notes that Nature Carpet has not registered with the National DNCL operator before receiving the RFI letter and/or subscribed to the National DNCL and therefore has avoided paying the required subscription fee since at least 6 January 2010.
14. 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 \$1,000 per violation for the nine violations cited in the Notice of Violation is appropriate.

Conclusion

15. In the circumstances of this case, the Commission considers that a penalty of \$1,000 for each of the violations of Part II, sections 4 and 6, and Part III, section 2 of the Rules is appropriate. The Commission therefore imposes a total AMP of \$9,000 on Nature Carpet.
16. The Commission hereby notifies Nature Carpet 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.
17. The Commission reminds Nature Carpet 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 Nature Carpet 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.
18. The Commission advises Nature Carpet that in order to ensure compliance with the Rules, the Commission may impose larger AMPs for subsequent violations.
 19. The amount of \$9,000 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.
 20. 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