

# Batten Down the Hatches:

## CRTC Issues First Enforcement Action Under CASL

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COX & PALMER

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In its first enforcement action under Canada's newly minted Anti-Spam Legislation (the "Act" or "CASL")<sup>1</sup>, the Canadian Radio-television and Telecommunications Commission ("CRTC") issued a Notice of Violation in March pursuant to section 22 of the Act against 3510395 Canada Inc. ("Compu-Finder") for its alleged violations of CASL.

Compu-Finder was found by the CRTC to have committed the following alleged violations of the Act:

- three violations of paragraph 6(1)(a) of the Act for sending, or causing or permitting to be sent, commercial electronic messages without the consent of the recipient;
- one violation of paragraph 6(2)(c) of the Act for sending, or causing or permitting to be sent, commercial electronic messages containing an unsubscribe mechanism that did not function properly;
- failing to ensure the unsubscribe mechanism was valid for a minimum of 60 days after the commercial electronic message is sent as required by paragraphs 6(2)(c) and 11(1)(b) and subsection 11(2) of the Act, contrary to paragraph 6(1)(b) of the Act; and
- failing to give effect to an indication sent by a recipient in accordance with subsection 11(1), contrary to subsection 11(3) of the Act.

The CRTC assessed a \$1.1 million administrative monetary penalty against Compu-Finder pursuant to section 20 of the Act stating, in part "... [d]espite the CRTC's efforts, Compu-Finder flagrantly violated the basic principles of the law by continuing to send unsolicited commercial electronic messages after the law came into force to email addresses it found by scouring websites. .... We take violations [of] the law very seriously and expect businesses to be in compliance."<sup>2</sup>

While it is important to note that this case represents an egregious violation of the Act – Compu-Finder represented 26% of all complaints submitted to the Spam Reporting Centre for its industry sector – this enforcement action nevertheless sends a clear message that the CRTC is expecting compliance with the provisions of CASL and is prepared to assess serious monetary penalties (and other sanctions) to ensure that there is compliance with the Act.

For questions on Canadian intellectual property law, including Canada's evolving anti-spam regime, acquiring, registering, transferring or licensing trade-marks and copyrights, or other aspects of Canadian intellectual property law, please contact Kristen Murphy, Athar Malik, or another member of Cox & Palmer's Intellectual Property & Technology team.

<sup>1</sup> Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act, S.C. 2010, c. 23.

<sup>2</sup> CRTC News Release: CRTC Chief Compliance and Enforcement Officer issues \$1.1 million penalty to Compu-Finder for spamming Canadians (March 5, 2015).

*This Cox & Palmer publication is intended to provide information of a general nature only and not legal advice.*

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