

CRTC Serves Notice That It's Serious About Spam

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Following a 14-month investigation, on March 29, 2021 the Canadian Radio-television and Telecommunications Commission (CRTC) issued a Notice of Violation (NOV) under Canada's anti-spam legislation (CASL) to Scott William Brewer (Brewer) for allegedly sending or causing or permitting the sending of commercial electronic messages (CEMs) over the course of three separate incidents without the consent of the recipients. The NOV is noteworthy because it includes an administrative monetary penalty of **\$75,000** against Mr. Brewer in his personal capacity.

CASL prohibits the transmission of any type of commercial electronic messages without the prior consent of the recipient, unless an exception applies. The CRTC investigated three of a number of spam campaigns that it attributes to Brewer. According to the CRTC, the three investigated spam campaigns involved 671,342 commercial electronic messages sent over the course of three years. The CRTC maintains that Brewer used a "hailstorm" type of spam technique to send a high volume of CEMs, where the messages are sent out over a short time span before the fastest traditional anti-spam defense mechanisms can be updated to stop them. The CRTC further posits that there were millions of failed email delivery attempts, all attributable to Mr. Brewer and that it was not able to uncover any records of consent.

According to the CRTC, included in the substantial number of messages that Mr. Brewer caused to be sent in a short period of time were:

- o 829 messages between December 1, 2015 and January 20, 2016;
- o 72,944 messages between February 24, 2016 and March 20, 2016; and
- o 597,569 messages between May 18, 2018 and May 23, 2018.

The NOV alleges that the majority of these messages contained embedded links to Mr. Brewer's blog which promoted four online casinos and that these links, if used, would directly benefit Mr. Brewer financially. The CRTC further alleges that all of the email messages were sent by email accounts using alias addresses from major email service providers.

Although the substantial administrative monetary penalty against Brewer is newsworthy, the mere announcement of this NOV is also significant. A NOV is not a final judgment; Brewer is still entitled to make representations to the CRTC to rebut the allegations of fact and to argue for a lower administrative monetary penalty. Brewer also has the right to appeal the final decision to the Federal Court of Appeal. The CRTC points out in the NOV that: "*A person who is served with an NOV has also the opportunity to enter into an Undertaking in connection to these acts and omissions pursuant to subsection 21(4) of the Act, under the conditions provided by subsection 21(2) of the Act.*"

Could this publication tactic be a way of naming and shaming supposed spammers into signing Undertakings with the CRTC? Time will tell.

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