CRTC Settles Alleged CASL Violation — Messages Sent Without Consent

September 01, 2016

On September 1, 2016, the Canadian Radio-television and Tele-communications Commission announced that Kellogg Canada Inc. paid $60,000 as part of a voluntary settlement of alleged violations of Canada's anti-spam legislation regarding the sending of commercial electronic messages without consent.

CASL

Canada's anti-spam legislation (commonly known as "CASL") creates a comprehensive regime of offences, enforcement mechanisms and potentially severe penalties (including personal liability for employers, corporate directors and officers) designed to prohibit unsolicited or misleading commercial electronic messages ("CEMs"), the unauthorized commercial installation and use of computer programs on another person's computer system and other forms of online fraud (such as identity theft and phishing).

For most organizations, the key parts of CASL are the rules for CEMs. Subject to limited exceptions, CASL creates an opt-in regime that prohibits the sending of a CEM unless the recipient has given consent (express or implied in limited circumstances) to receive the CEM and the CEM complies with prescribed formalities (including an effective and promptly implemented unsubscribe mechanism) and is not misleading. An organization that sends a CEM has the onus of proving that the recipient gave express or implied consent to receive the CEM.

An organization is liable for CASL violations by the organization's agents acting within the scope of their authority, including independent service providers engaged by the organization to send CEMs on the organization's behalf.

Violation of CASL's CEM rules can result in severe administrative penalties (up to $1 million per violation for individuals and up to $10 million per violation for organizations), civil liability through a private right of action (commencing July 1, 2017) and vicarious liability on employers, directors and officers. CASL gives the Canadian Radio-television and Tele-communications Commission ("CRTC") regulatory and enforcement authority regarding CEMs and other matters.

Investigation/Settlement

The CRTC investigation alleged that “Kellogg and/or its third party service providers” sent CEMs to recipients without consent during an 11-week period in late 2014. As part of a voluntary undertaking (settlement), Kellogg Canada Inc. paid a $60,000 fine, agreed to comply with CASL and ensure that independent service providers it engages to send CEMs comply with CASL, and agreed to review and update its CASL compliance program (including written policies and procedures, employee training programs, tracking of CEM complaints and subsequent resolution, and implementing updated compliance monitoring and auditing mechanisms). The voluntary undertaking fully resolved the CRTC’s investigation into alleged CASL violations by Kellogg Canada Inc. and its subsidiaries during the period October 1, 2014 to the date of the undertaking.

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BLG Offices

Calgary
Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa
World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver
1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal
1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto
Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

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