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Anti-Spam: Partial Compliance is Not Good Enough

Yesterday, anti-spam enforcement came to Canada's mainstream businesses. In the first enforcement activity that did not involve a flagrant breach of Canada's anti-spam legislation, a well-known Canadian company has been criticized by Canada's anti-spam regulator, the Canadian Radio-television and Telecommunications Commission (CRTC), for sending a limited number of email messages that were not fully compliant.

The company agreed to pay \$150,000 for alleged violations of Canada's anti-spam legislation. It was alleged that the company sent some commercial emails that did not contain an unsubscribe mechanism, in some emails the unsubscribe mechanism was not clearly or prominently set out, and certain emails did not provide the required complete contact information. Also, "the company was unable to provide proof that it had obtained consent for each electronic address that received its commercial emails."

As a result of the CRTC investigation, the company undertook to, among other things, improve its existing

compliance program to ensure its activities will be fully compliant with Canada's anti-spam legislation, including increased training and education for staff and improved corporate policies and procedures. Nonetheless, the CRTC publicly named the company, issuing a press release trumpeting the \$150,000 the company is to pay.

This enforcement action appears to be a sign that the CRTC is not only focusing on bad actors, but also on companies that are partly but not fully compliant with anti-spam legislation. Accordingly, organizations should continue to ensure that they are compliant, including with respect to email mechanics and retaining proof that each person to whom a commercial electronic message is sent has consented to receiving such message.

For further information regarding Canada's anti-spam legislation, contact any member of our Privacy Law Group.