

**THE COMPETITION TRIBUNAL**

**IN THE MATTER OF** the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

**IN THE MATTER OF** an application by the Commissioner of Competition pursuant to section 79 of the *Competition Act*;

**AND IN THE MATTER OF** certain rules, policies and agreements relating to the multiple listing service of the Toronto Real Estate Board.

**BETWEEN:**

**THE COMMISSIONER OF COMPETITION**

Applicant

- and -

**THE TORONTO REAL ESTATE BOARD**

Respondent

- and -

**THE CANADIAN REAL ESTATE ASSOCIATION and  
REALTYSELLERS REAL ESTATE INC.**

Intervenors

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**WITNESS STATEMENT OF SAM PROCHAZKA**

**SAM & ANDY INC.**

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I, Sam Prochazka, of the City Edmonton, in the province of Alberta, state as follows:

1. I am the Founder and Chief Executive Officer of Sam & Andy Inc. ("Sam & Andy"), a real estate software company that builds websites for real estate professionals.

2. In my career as an entrepreneur, I have founded four successful technology companies in various industries, including healthcare, e-commerce, international trade and real estate. I have worked in the real estate industry for the past ten years. I have a degree in computer engineering from the University of Alberta.

### **The Business of Sam & Andy**

3. I founded Sam & Andy in 2002 because real estate professionals demanded websites for their businesses. We operate out of offices in Edmonton, Alberta and have roughly 1,500 real estate professional clients to whom we offer Virtual Office Website-based products at a very reasonable cost. Agents and brokers are the majority of our clients but we also serve office managers and real estate developers. Canadian real estate professionals represent almost all of our revenues, with the small remainder earned in the United States.

4. Sam & Andy operates two brands, RealPageMaker and Clicksold. Both offer complete website packages that use local MLS data. Our packages include Internet Data Exchange ("IDX") and Virtual Office Website ("VOW") solutions that utilize and display local MLS data in combination with other technology solutions such as map-based searches, agent marketing, real time trending statistics, and mortgage calculators.

5. RealPageMaker launched in 2002 and sells websites using realpagemaker.com. RealPageMaker products include hands-on customer service via phone, email and instant message chat. We offer RealPageMaker in Western Canada and several markets in the United States. We do not intend to offer RealPageMaker in the Greater Toronto Area ("GTA").

6. We launched Clicksold in 2011 to help expand our business into new markets outside of RealPageMaker's operating territories, including the GTA. Clicksold websites are available at

clicksold.com and do not include the extensive one-on-one phone support offered through RealPageMaker (although they do offer support online).

7. Creating a Clicksold website is easy. GTA agents and brokers can visit clicksold.com, provide the required information and their own website will be up and running within minutes. It's that simple.

8. Clicksold websites are also affordable. There are no initial start up costs and we offer four website packages to meet our clients' needs at different price points:

- (a) Our basic website package is free and enables brokers to display 5 active listings and 5 photos per listing.
- (b) Our silver package is \$9/month and enables 10 active listings, 10 photos per listing, and 1 custom domain.
- (c) Our gold package is \$24/month and enables an unlimited number of active listings, photos per listing and custom domains.
- (d) Our platinum package is \$45/month and enables an unlimited number of active listings, photos per listing and custom domains but also includes IDX and VOW capability and some additional technical features.

9. If requested, we also build custom websites, which usually cost between \$150 and \$6,000, depending on our client's needs.

10. Despite the easy creation process and low cost, Clicksold websites are sophisticated, customizable and very functional. They use IDX, VOW, mapping, statistics, and website

management technologies to help real estate professionals market themselves and their brands, and provide some of their services through the Internet. Two examples of highly customized websites are [www.kylerossiter.com](http://www.kylerossiter.com) (Edmonton) and [www.paula.clicksold.com](http://www.paula.clicksold.com) (GTA).

11. Clicksold websites are built on the WordPress platform, a commonly used open-source content management system. Because WordPress is so popular, we can outsource aspects of the website creation to businesses close to our clients. For example, our clients can work with local graphic designers who are familiar with WordPress to design and build their websites and then deploy them on our servers in Edmonton.

12. Because we understand the importance of having a website in the real estate industry, we train our clients to use their websites to reduce costs and maximize revenues. Our websites save our clients time and money because they provide them with a low-cost way to showcase listings, automate services to customers, maintain social networks, and generate new customers.

13. Sam & Andy also understands that our clients want a website to display information about their local real estate market to their customers, because that is what their customers want. In active real estate markets, transactions happen quickly and consumers need the most up to date information available to remain informed. Our websites with IDX and VOW technologies enable agents and brokers to provide their customers with new or updated property listings up to a full day before they are available on [realtor.ca](http://realtor.ca), the Canadian Real Estate Association's public MLS website. IDX technology has revolutionized real estate websites by permitting participating agents and brokers to share their active listings and display listings of other participating agents and brokers. In contrast, VOWs require registration and are password protected but may provide access to additional information not displayed on an IDX. Since IDX

data is usually a subset of VOW data we offer both technologies simultaneously on each website. We have successfully combined these two technologies into a relatively simple package for our customers.

#### **Obtaining MLS data**

14. In order to provide our products and services we must have access to local MLS data. To obtain access, we establish relationships with local real estate boards (in Canada) or local private MLSs (in the United States). Local real estate boards in Canada control access to and use of MLS data by third party service providers, such as Sam & Andy. We currently have access to MLS data from real estate boards in Edmonton, Red Deer, Calgary, Vancouver, Fraser Valley, Chilliwack, Prince George, Northern British Columbia, Toronto, Chicago, Nashville, Northeast Georgia and locations in California.

15. The number of listings we can offer to display for our clients is critical. The more an agent or broker can display on a website, the easier it is for us to sell our products to them. Without all of the listings, there is little point offering our products to real estate professionals. For instance, in 2004, we explored entering the GTA market given that TREB permitted IDXs. However, we discovered that our competitors had already developed relationships with many GTA real estate professionals and had created IDX reciprocity data pools. Through the pools, these competitors could offer to display a large number of listings for their clients. In contrast as a potential new entrant, we did not have such an established pool of GTA listings and were seriously disadvantaged as a result. Thus, we decided not to enter the GTA market at that time.

16. However, we remained interested in one day entering the GTA market. Between 2005 and 2011, we contacted TREB up to twice per year to explore obtaining access to its MLS data

so that we could offer our services to GTA agents and brokers as we did for our clients out West. We did not obtain access and only now with the recent introduction of TREB's VOW policy and data feed has the GTA real estate market become a place to expand our business.

### **TREB's VOW Policy**

17. TREB's VOW policy sets out the terms on which the MLS data is accessible to brokers and third parties, such as Sam & Andy. Some of the VOW policy's requirements both increase our operating costs and create barriers for agents who wish to purchase our products and services. For example, Sam & Andy is registered as what is defined in TREB's VOW policy as an Affiliated VOW Partner ("AVP"). To access TREB's MLS data as an AVP, we must sign agreements with i) TREB, ii) the agent or broker that desires a website, and iii) the agent's supervising broker. TREB is the only real estate board/association in Canada that I am aware of that requires a contract to be signed for every website.

18. Requiring three permissions adds to our start-up costs when acquiring a new client. It has also prevented some agents from purchasing our services. Since the VOW data feed has been available in the GTA, supervising brokers have refused to permit about twenty agents from purchasing a Clicksold website. These agents told us that their brokers wanted to see what everyone else in the market would do. For the moment, these agents and others in their brokerages cannot have a Clicksold website with IDX and VOW technologies.

19. Despite this impediment, Sam & Andy is a registered AVP for two GTA brokers and we have roughly two-dozen other brokers registered for our basic website package (which does not require the use of either the VOW or IDX data feeds).

### **Problems with TREB's VOW and IDX Data Feeds**

20. We access TREB's MLS data by "pulling" it from their server using a protocol called Real Estate Transaction Standard. Using this protocol, a request is submitted to TREB's server to provide all of the updated active listing content since our previous request. Once the request has been processed we receive a list of all applicable listings and download listing information and photos one-by-one thereafter. Requests for updates are made on an hourly basis to ensure that our clients have the most up to date content available on their websites.

21. Since being registered for TREB's VOW data feed in April 2012, I have contacted TREB about various issues relating to the VOW and IDX data feeds including:

22. **Agent identification codes:** TREB's MLS data contains an agent identification code, or agent ID, that is associated with each individual broker and their listings. This field is not provided in the VOW or IDX data feeds. Excluding the agent ID data makes it very difficult to automate the identification of a given broker's listings in the MLS data. Most agents like to have a "Feature Listings" page on their website and doing this with the current data feed is more cumbersome than is necessary. We had to create a workaround at a cost, including 3 years of maintenance, of about \$10,000. This workaround solution still requires our clients to manually associate themselves with their listings. Our clients could save time and money if we had the agent ID and could automate this process.

23. **Listing status changes:** When we request updates from TREB's server we receive a data feed that includes all of the listing content that has changed since our last request. Unfortunately, we don't receive a field with listing status changes. That is, if the current data contains a listing at 123 Main Street in Toronto and we request an update from TREB's server and this listing is no

longer in the data feed, we do not know whether it has been sold, expired, or otherwise. It is just no longer in the data feed. The absence of this information is a problem because our clients insist on tracking changes in the status of their listings to display listings that they have sold on their website. To do this we have been forced to create a workaround manual solution, which requires brokers to manually identify the properties that have sold from others that are no longer on the market. If this process could be automated it would save brokers time and increase the accuracy of the listing content on their websites.

24. **Mapping coordinates** (sometimes called geo-codes) are necessary to plot listings on a map. Most real estate websites, like the ones we supply, use map based search tools, as consumers find this to be an effective way to search for a new home. TREB does not provide mapping coordinates in its VOW or IDX data feeds. If available, TREB's mapping coordinates would mean listings could be mapped accurately and consistently. This would ensure greater quality and integrity of the MLS data when displayed on brokers' websites in the GTA.

25. Joanne Barker, a systems analyst at TREB, informed me via phone in early May that the earliest solutions would be available, if any at all, would be the Fall of 2012, after the peak real estate season has passed.

#### **Comparison to the United States**

26. The American MLSs that I have interacted with are privately owned and controlled. They provide third parties with greater access to property listing data than TREB does. For instance, American MLSs that I deal with include historical listing information, mapping coordinates, status changes and agent identification codes in their VOW data feed.



27. If historical listing data were available in the GTA, Sam & Andy would offer our clients more products and services for their websites such as statistical neighbourhood analysis, listing price history, and automatic property valuations.

SIGNED THIS 22 DAY OF JUNE, 2012.



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SAM PROCHAZKA  
SAM & ANDY INC.