

File No. CT-99/02

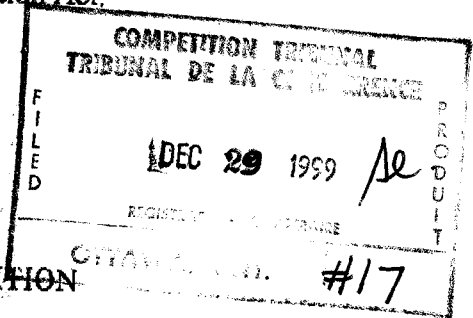
**THE COMPETITION TRIBUNAL**

**IN THE MATTER OF THE COMPETITION ACT, R.S. 1985, c.C-34, as amended;**

**AND IN THE MATTER OF** an inquiry pursuant to subsection 10(1)(b)(ii) of the Competition Act relating to the marketing practices of Universal Payphone Systems Inc.;

**AND IN THE MATTER OF** an Application by the Commissioner of Competition for an interim order pursuant to section 74.11 of the Competition Act.

BETWEEN;



THE COMMISSIONER OF COMPETITION

Applicant

and

UNIVERSAL PAYPHONE SYSTEMS INC. and  
GEORGE KATSOULAKIS, a.k.a. GEORGE KATS

Respondents

**RESPONSE TO APPLICATION**

**ORDER SOUGHT**

1. The Respondents deny the relief sought in paragraph 1, 2(a)(i), 2(e), 2(f), 2(g), 2(h), 3 and 4 of the Notice of Application.

2. The Respondents are content that an Order issue pursuant to paragraph 2(a)(ii), 2(a)(iii), 2(a)(iv), 2(b), 2(c) and 2(d) of the Notice of Application.

### GROUNDS

3. The Respondents deny the allegations in paragraphs 6 and 7 of the Notice of Application.

4. The Respondents admit the allegations in paragraph 8 of the Notice of Application and have ceased all such publications.

### MATERIAL FACTS

5. The Respondents admit the material facts set out in paragraphs 1, 2, 3, 4, 5, 6, 7, 8 and 9 of the Notice of Application.

6. The Respondents did, as alleged in paragraph 10, attempt to run television advertisements but these ceased almost immediately.

7. The Respondents admit the allegations in paragraphs, 12, 13, 14, 18, 21, 22, 23 and 24 of the Notice of Application.

8. The Respondents admit the allegations in paragraph 25(a) and 25(b) of the Notice of Application.

9. The Respondents state that, pursuant to paragraph 25(c), the initial pro-injunction material made it clear that the telephones were "not exactly as shown".

10. The Respondents admit the allegations in paragraph 32, 33, 34 and 35 of the Notice of Application but state that sales meetings were held in the "glass wall" office tower in the early stages.

11. The Respondents admit the allegations in paragraphs 36, 37, 38, 39, 42, 43, 45, 46, 47 and 50 of the Notice of Application.
12. The Respondents admit the allegations in paragraph 54 of the Notice of Application but state that the tasks were straightforward and in most cases consisted of one-time tasks.
13. The Respondents admit the allegations in paragraph 58, 59, 64, 68, 71, 76, 78, 80 and 81 of the Notice of Application.
14. The Respondents admit the allegations in paragraph 82 of the Notice of Application except that the Respondents have no knowledge of the results of interviews conducted by the Bureau.
15. The Respondents admit the allegations in paragraphs 83, 84, 85, 86, 87 and 88 of the Notice of Application.
16. The Respondents deny the allegations in paragraph 11 of the Notice of Application and specifically deny that the opportunity was offered as "self-contained".
17. The Respondents deny the allegations in paragraphs 15 and 16 of the Notice of Application.
18. The Respondents admit the allegations in paragraph 17 of the Notice of Application, but state that, for greater clarity, some responses were provided earlier and only the last Affidavit was delivered as late as November 19<sup>th</sup>, 1999.
19. The Respondents deny the allegations in paragraphs 19, 20, 25(d), 25(e), 25(f), 25(g), 25(h), 25(i), 30, 31, 40, 41, 44, 48, 49, 50, 51, 52, 53, 55, 56, 57, 60, 61, 62, 63, 65 and 66 of the Notice of Application.

20. With respect to the allegations in paragraph 67 of the Notice of Application, many of the investors who do not have their phones installed have chosen deliberately not to, or have slowed the process down by seeking different locations other than those offered, or have attempted to resile from the contracts entirely.

21. The Respondents deny the allegations in paragraph 69 of the Notice of Application.

22. The Respondents deny the allegations in paragraph 70 of the Notice of Application and state that the figures were not offered as projections but were examples only. This was made clear underneath the calculations.

23. The Respondents deny the allegations in paragraph 72 of the Notice of Application and state that arrangements for operator services, credit card processing and long distance are made directly between the investor and the service providers.

24. The Respondents deny the allegations in paragraph 73 of the Notice of Application. The figures are not based upon a "presumption" but are given as examples. The Respondents deny the allegations in paragraphs 74 and 75 of the Notice of Application. With respect to paragraph 75 of the Notice of Application, the Respondents state that it should have been obvious to investors that no revenue would commence until the payphone was installed. However, for greater clarity, the post-injunction material made this clear.

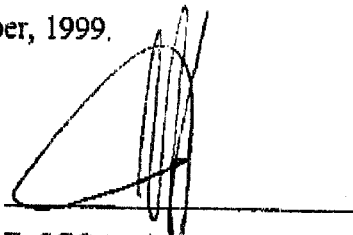
25. The Respondents deny the allegations in paragraphs 77 and 79 of the Notice of Application and specifically state that they have no knowledge of the results of interviews carried out by the Bureau.

#### **GROUNDS FOR OPPOSITION**

26. The Respondents admit that earlier pre-injunction promotional material was overly aggressive and have since modified it.

27. The Respondents state that the business opportunity presented to potential investors is a viable one.
28. The Respondents further state that the earlier problems encountered by the Respondent, Universal Payphone Systems Inc. ("Universal") were unanticipated but these problems could have been overcome.
29. The Respondents state that Universal suffered enormous setbacks following a broadcast on CTV in May of 1999. Following this broadcast, which generated unfair negative publicity, enormous time was spent by the employees of Universal attempting to appease worried investors.
30. As well, the adverse publicity generated by the within application resulted in the refusal of newspapers and radio stations to carry any further ads by Universal even those that had been modified after the injunction. By the end of October, 1999, Universal was unable to advertise effectively in any form.
31. The Respondents request that this proceeding take place in the English language.

DATED at Toronto, this 28<sup>th</sup> day of December, 1999.



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