

File No.

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 order pursuant to section 74.1 of the *Competition Act*.

B E T W E E N:

THE COMMISSIONER OF COMPETITION

Applicant

-and-

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

Respondents

NOTICE OF APPLICATION

TAKE NOTICE that the Applicant will make an application pursuant to section 74.1 of the *Competition Act* (the "Act") to the Competition Tribunal (the "Tribunal") for:

1. An order that the Respondents and all directors, officers, employees, agents or assigns of the Respondents or either of them, or any person or corporation acting on behalf of the Respondents or either of them shall cease from making, causing to be made, or permitting to be made any representations for the purpose of promoting or marketing, either directly or indirectly, the same or any substantially similar pay telephone business opportunity by any means whatsoever, for a period of ten (10) years from the date of such order;

2. In the alternative, an order that the Respondents and all directors, officers, employees, agents or assigns of the Respondents or either of them, or any person or corporation acting on behalf of the Respondents or either of them, shall cease to engage in certain reviewable conduct, as set out herein, and shall not engage in substantially similar reviewable conduct for a period of ten (10) years from the date the order is made. In particular, an order that the Respondents or either of them shall, for a period of ten (10) years from the date of such order:
 - a. cease making representations to the public that create a false or misleading impression about the Respondents as a business, including, without limiting the generality of the foregoing:
 - i. cease making representations which give the general impression that the Respondents or either of them, had developed expertise in the telecommunications industry generally, and in the payphone market in particular, through research or experience or any combination thereof, prior to the entry into this business;

- ii. cease making representations that create the general impression that the Respondents or either of them have been in the pay telephone or any other business for longer than the period between the Respondent Universal's date of incorporation, being January 28, 1999, and the date upon which the representation is made;
 - iii. cease making representations that create a false general impression as to the premises from which the Respondents or either of them carry on business; and
 - iv. cease making representations that create the general impression that the Respondents or either of them are members of any consumer protection agency or bureau that is not a fully independent agency, with documented procedures and dispute handling mechanisms, and without limiting the generality of the foregoing, shall cease making representations that create the general impression that the Respondents or either of them are members of any consumer protection agency or bureau that creates the general impression, through the use of similar names, trademarks, logos or other means, that it is the same as, part of, or affiliated with, the council of Better Business Bureaus or any of its member agencies or the National Business Opportunity Bureau;
- b. cease publishing testimonials with respect to the Respondents' payphone business opportunity where those testimonials were not

previously made or published and where such testimonials are not based on the actual experience of investors in the Respondents' pay telephone business opportunity;

- c. cease making representations to the public that create a false or misleading general impression that the pay telephones available for sale by the Respondents are different than the pay telephones that the Respondents actually supply;
- d. cease making representations to the public that create a false or misleading general impression that the Respondents or either of them will do all or substantially all of the work required or provide all the necessary start-up procedures to get investors' pay telephone businesses up and running, unless the Respondents adequately and fairly disclose to potential investors in writing, before investors have committed to a course of action, all of the steps required or reasonably required to be undertaken by the investor as well as any additional expenses which might reasonably be incurred by investors in order to make their payphone business operational;
- e. cease making representations to the public that create a false or misleading general impression that the Respondents or either of them will provide prime revenue-generating locations for all investor's pay telephones and which guarantee that the locations provided for investors' payphones will be satisfactory to investors, until such time as the Respondents satisfy all existing investors with respect to their locations;

- f. cease making any representations to the public whatsoever concerning the financial security, profitability, potential profitability, or revenue generating ability of the pay telephone business opportunity marketed by the Respondents, where such representations are not based on the average performance of all of the payphones sold by or on behalf of the Respondents in Canada between the date of incorporation of the company and the date of the representation; and further that the Respondents not make any representations of the nature set out herein without first providing to the Applicant a summary of the representations intended to be made, the methodology used by the Respondents to arrive at the average set out therein, and all data, records and documents that the Respondents relied upon to substantiate the claims in accordance with this provision;

- g. cease making false or misleading representations to the public that create the general impression that the Respondents or either of them will get an investor's payphone business up and running within a reasonable period of time and will provide ongoing support to investors once the investor's payphone business is up and running, unless the Respondents also provide in writing to potential investors, the average time between the date of purchase by investors and the date that the payphones are installed and fully operational;

- h. cease making representations to the public that guarantee investors a return on investment;

3. An order that the Respondents publish a notice in various media and distribute said notice to all current and potential investors of the Respondent in such manner and at such times as the Tribunal may specify;
4. An order that the Respondents pay an administrative monetary penalty as the court may specify;
5. Such further and other order as to this Honorable Tribunal seems just.

AND TAKE NOTICE that in support of this Application the Applicant will rely on the following Statement of Grounds and Material Facts.

STATEMENT OF GROUNDS AND MATERIAL FACTS

GROUND FOR APPLICATION

6. The Applicant states that, in connection with the promotion and sale of their payphone business opportunity to the public, the Respondents have engaged in and continue to engage in reviewable conduct contrary to paragraph 74.01(1)(a) of the *Competition Act* (the "Act"). Specifically, the Respondents have, for the purposes of promoting a business interest, made and continue to make representations to the public which are false or misleading in a material respect and which create a false or misleading general impression about the business opportunity being promoted by the Respondents.

7. The Applicant states that, in connection with the promotion and sale of their payphone business opportunity to the public, the Respondents have engaged in and continue to engage in reviewable conduct contrary to paragraph 74.01(1)(c) of the Act. Specifically, the Respondents have, for the purpose of promoting a business interest, made and continue to make representations to the public in the form of guarantees in circumstances where there is no reasonable prospect that such guarantees will be carried out.
8. The Applicant states that, in connection with the promotion and sale of their payphone business opportunity to the public, the Respondents have engaged in reviewable conduct contrary to paragraph 74.02(a) of the Act.
9. Specifically, the Respondents have, for the purpose of promoting a business interest, published testimonials with respect to their product where those testimonials were not previously given and did not represent the actual experiences of those giving the testimonials.

MATERIAL FACTS

Introduction

(i) The Parties

1. The Applicant is the Commissioner of Competition, appointed under section 7 of the *Competition Act* (the “Act”).
2. The Respondent Universal Payphone Systems Inc., (“Universal”) is a corporation incorporated under the *Ontario Business Corporations Act* on

January 28, 1999 and having its registered office at Unit C1, 1585 Britannia Road East, in Mississauga, Ontario.

3. The Respondent Mr. George Katsoulakis ("Mr. Katsoulakis"), also known as Mr. George Kats, is the President, and sole Director of the Respondent Universal, and has advised that he was solely responsible for devising, formulating and executing the marketing policies and practices of the company during the relevant period.

(ii) The De-regulation of the Canadian Payphone Market

4. On June 30, 1998, the Canadian Radio Television and Telecommunications Commission ("CRTC") issued Telecom Decision CRTC 98-8 (Decision 98-8"), in which the CRTC announced that it would forbear from regulation of the Canadian pay telephone market. Decision 98-8 had the effect of creating a competitive market for pay telephone service, in that it permits new market entrants to compete with the traditional carriers for the provision of payphone services across Canada.
5. In paragraph 101 of Decision 98-8, the CRTC set out "mandated safeguards" which it established as conditions for entering the pay telephone market. These conditions include provision of coinless and cardless access to 9-1-1 or access to other emergency medical service; provision of 6-1-1 service or other number for reporting telephone trouble; and, a requirement that standard information be made available to pay telephone users, such as the rates charged, long distance suppliers utilized, and remote coin return capabilities.

6. Decision 98-8 and the resulting deregulation of the Canadian pay telephone market has created a business opportunity for a variety of new entities. The entry requirements of a regulatory nature are set out in Decision 98-8.
7. Entry into the pay telephone market requires, *inter alia*:
 - a. a capital investment to purchase the necessary hardware,
 - b. access to telephone lines from an existing carrier,
 - c. arrangements to be made to acquire pay telephone locations,
 - d. the provision of essential services as dictated by the CRTC, and
 - e. long distance carrier alliances, as well as an alliance or arrangement with financial intermediaries for credit card and other forms of non-cash payments for phone charges.

(iii) The Respondent's Manner of Promoting its Payphone Business Opportunity

8. Commencing in or about January, 1999, and carrying through to the present, the Respondents have been advertising their payphone business to potential investors in the 'business opportunity' and general display sections of dozens of newspapers throughout Canada. Advertisements ran, and continue to run in various sources including national newspapers such as the Globe & Mail, the National Post, as well as in a number of local papers such as the Ottawa Sun, The Calgary Herald, The Edmonton Journal, The Halifax Daily News, Vancouver Sun, The Nanaimo Daily News, The Cranbrook Herald, The Calgary Sun, The Winnipeg Free Press, The Hamilton Spectator, The Toronto Star, and the Montreal Gazette.

9. During the same time frame, the Respondents have, from time to time and in various markets, including Montreal, Ottawa, Toronto, and London, ran various radio advertisements.
10. In or about October, 1999, the Respondents began to run television advertisements in some markets, including London and Ottawa, Ontario.
11. Between the period from January, 1999 to the present, the Respondents have promoted and offered a business opportunity for sale to the public. In simple terms, the Respondents have offered to sell self-contained payphone businesses to the public. Investors can elect to purchase one or more of five different 'packages' offered by the Respondents. The packages range from two payphones for \$9,600 to 32 phones for \$115,200. Phones purchased by investors were then to be installed in various locations. According to the Respondent's promotional material, investors would operate their phone "route" as a business and would collect coins from their phone's coin box and receive revenues in respect of long distance calls made from their phones.

(iv) Regulatory History of this Matter

12. As a result of complaints that it had received concerning the Respondent's marketing and promotion of its business opportunity, the Competition Bureau commenced an examination into the Respondent Universal's practices on August 12, 1999.
13. On September 15, 1999, the Applicant applied to the Tribunal for an order pursuant to section 74.11 of the Act, directing the Respondent Universal to

cease making a number of false or misleading representations to the public concerning its payphone business opportunity.

14. On September 24, 1999, Mr. Justice Alan Lutfy, sitting as a judicial member of the Tribunal, found that a “strong prima facie case” existed that the Respondent Universal had made false or misleading representations to the public; that serious harm was likely if an order under section 74.11 was not issued; and, that the balance of convenience favored issuing an order. On that basis Mr. Justice Lutfy issued an order under s. 74.11 of the Act directing the Respondent Universal, and its Directors, Officers, employees, or any person acting on behalf of Universal to cease making false or misleading statements to the public concerning its payphone business opportunity.
15. In the course of the proceeding before Mr. Justice Lutfy and in pleadings filed in that proceeding, the Respondent Universal indicated a willingness to work with the Applicant to correct any false or misleading representations contained within its promotional materials. However, the Applicant did not receive any materials from the Respondent after September 24, 1999, until October 21 1999, when the Applicant received a final version of the new promotional package from the Respondents’ counsel. In fact, the Respondents had already begun circulating these new promotional packages to the public as early as October 6, 1999.
16. Notwithstanding the fact that the Commissioner had not received this promotional package, the Respondents represented in a letter dated October 7, 1999 to a radio station upon which they wanted to advertise, that the Respondent Universal had fulfilled all requirements imposed by the Competition

Tribunal and that the Respondent's legal counsel had submitted all the marketing corrections to the Competition Bureau. In fact, the Applicant was never provided with new representations by the Respondent's counsel as of that date, was never provided any radio advertisements by the Respondents, and certainly never approved any such advertisements or promotional materials.

17. On October 29, 1999, the Applicant obtained an Order under s. 11 of the Act requiring the Respondent Universal to provide certain documents by 4:00 P.M. on November 3, 1999 and to provide a written return of information by 4:00 P.M. on November 10. The Respondent provided its responses to this Order on November 19, 1999.

FALSE OR MISLEADING REPRESENTATIONS TO THE PUBLIC

18. In the period from January, 1999 to September 24, 1999 (the "Pre-injunction Period"), the Respondents made a number of representations to the public, in connection with the promotion of their payphone business opportunity, which were false or misleading in a material respect.
19. In the period between September 24, 1999 and the present (the "Post-injunction Period"), in connection with the promotion of its payphone business opportunity, the Respondents have continued to make similar or identical representations to the public which were false or misleading in a material respect.

20. These false or misleading representations were (and are) contained in the advertisements that the Respondents ran (and are running) in the print and broadcast media and in the promotional packages provided to prospective investors by the Respondents. Certain other false or misleading representations were (and continue) to be made to the public by persons employed by the Respondents.

THE INITIAL REPRESENTATIONS IN ADVERTISEMENTS

21. The Respondent's advertisements appearing in newspapers in the Pre-injunction Period stated as follows:

"PAYPHONES

- now you can own them
- most financially secure home based bus. in the world
- \$250K yr. Potential
- Minimum investment \$10,000
- You investment is guaranteed
- Serious inquiries only
- Locations include 10 yr. contract and Installation

1-800-253-9779 (24 hrs)

All Canadian Company,

Established since 1981."

22. The radio advertisements run by the Respondents in the Pre-injunction Period had substantially the same content as the print advertisements.

23. The Respondent's Post-injunction print advertisements now provide as follows:

- "Payphones
- now you can own them
- most financially secure home based business in the world
- \$250K yr. Potential, dependant on number of Phones purchased
- Minimum investment \$10,000
- Your investment is guaranteed
- Serious inquiries only
- Locations include 10yr. Contract and installation
- 1-800-253-9779 (24hrs)
- Canada's Largest Independent Payphone Supplier"

The post-injunction radio commercials are similar in nature.

REPRESENTATIONS IN THE PROMOTIONAL PACKAGE

24. Prospective investors responding to the Respondent's print and radio advertisements prior to September 24, 1999, were sent a promotional package (the Pre-injunction Promotional Package"), which contained, *inter alia*:

- a brochure entitled "Connecting You to Bell and Profits - Millennium 2000" (the "Pre-injunction Brochure");
- a video entitled "Universal Payphone Systems Inc. Presents Millennium 2000", ("the Pre-injunction Video");
- an audiotape labelled "Universal Payphone Systems Inc. 1-888-320-3650 Millennium 2000";
- a document presentation folder with a cover page entitled "Millennium 2000", which contained, *inter alia*, the following documents:

- a letter to prospective investors signed by “George Kats”, which letter sets out what those who invest will receive;
- ‘certificates’ from the Canadian Business Bureau, or alternatively the Canadian Better Business Bureau, North American Business Opportunities Services, and the American Business Bureau;
- a five year warranty from Universal on all parts and service;
- a “Guaranteed Agreement on Investment”;
- a “Purchase Agreement”;
- a “Public Telephone Lease Agreement”;
- a “Confidential Application”; and
- a “Monthly Collection Report”.

The Post-injunction Promotional Package contains most of the same items listed above, though certain of the items, including the Brochure and Video, have been modified. Where relevant to these proceedings, those changes are noted below.

REVIEWABLE CONDUCT

25. The reviewable conduct engaged in by the Respondents falls into the following categories:
 - a. representations which give a false and misleading general impression about the Respondents as a business entity;
 - b. publication of testimonials that were not previously made or published;

- c. representations which give the false and misleading general impression relating to the actual payphones marketed by the Respondents as part of their business opportunity;
- d. representations which give a false and misleading general impression that the Respondents will do substantially all of the work required in order to get investors set up in a profitable payphone business;
- e. representations which give a false and misleading general impression that Universal will provide prime locations for investors payphones;
- f. representations that investor's satisfaction with the locations provided for the payphones by the Respondents is guaranteed, where there is no reasonable likelihood that the guarantee will be carried out;
- g. representations that the Respondents will get investors payphone businesses up and running within a reasonable period of time;
- h. representations which give a false and misleading general impression about the profitability, revenue-generating ability and financial security of the payphone business opportunity marketed by the Respondents; and
- i. representations which indicate that the revenue from the payphone business opportunity marketed is guaranteed, where there is no reasonable likelihood that the guarantee will be carried out.

26. Each of those representations is dealt with in detail below; however, the key facts may be summarized as follows.

- i. **Representations:** The Respondents have represented to the public that they have both the technical and the operational capability and the intention to provide functioning and profitable payphone businesses to investors in a timely manner and to support investors in the operation of their businesses. Representations relating to the Respondent Universal -- for example, regarding its years in business, its corporate location, its acceptance by accreditation agencies -- have lent credence to these representations concerning capability and intention. Representations relating to guarantees of earnings and locations were also made by the Respondents.

- ii. **Delivery of Business Opportunity:** Since beginning to market their payphone opportunity in January, 1999 the Respondents have sold over 1900 payphones. Of those 1900 payphones, as at November 3, 1999, 315 had been installed. Some investors who invested with the Respondents as early as March, 1999 have yet to receive their phones or have them installed. Of the 315 phones installed, a number are not currently functioning properly.

- iii. **Support:** Attempts by investors to contact persons in authority employed by the Respondents to remedy problems concerning locations, technical matters and other issues have been, for the most part, unsuccessful. Many problems experienced by investors have therefore gone unaddressed. Some investors, having failed in trying to contact the Respondents by telephone, facsimile or

personal attendance at the Respondent Universal's premises, have given up and are seeking redress in civil actions against the Respondents.

- iv. **Profits:** Those investors who have had their phones installed and in respect of whom the Applicant has been able to obtain information, are not generating net profits which begin to approach the net profits projected in the Respondents promotional material.
- v. **Guaranteed Return on Investment:** The Respondent's contingency plan to make good on its earnings guarantee is to "stay in business" and, notwithstanding the experience of investors, the Respondent is of the view that claims under its investment guarantee will not be substantial.

a. **Representations relating to the Respondent as a business entity:**

i) ***Research, experience and development of expertise in the telecommunications industry***

27. The Respondents make various representations in their promotional brochures, both before and after the injunction, which indicate that they have researched the telecommunication industry, have worked with large telecommunication and pay phone companies in the U.S. for years, and have developed "extensive knowledge and expertise". In both the Pre-injunction and Post-injunction Brochures, the Respondents represent that:

“For the past 30 months, we have been working with several large telecommunication and payphone companies in the United States. We took the best ideas and the best equipment from the best companies and incorporated it into our business system. Our business is tailored for Canada and Canadians. We have been doing our homework in the payphone business for the last two and a half years, and now this experience will pay off for you. This is a proven business, as the millions of payphones in the U.S. will tell you.”

The new promotional video states “We predicted that this opportunity would occur more than 2 years ago and started doing research”, and “our research has shown that approx. 50 calls per day are made from payphones”.

28. Elsewhere within the Respondents’ Pre and Post injunction Brochures, the business opportunity being marketed by the Respondent is described as a “Proven Opportunity”. The Respondent is described as having “extensive knowledge and expertise”. Finally, in the Pre and Post Brochures, the Respondent represents as follows with regard to the phones it will supply to investors:

“Universal Payphones Systems Inc. offers the best money-making payphones available on the market today. These unique phones, distributed by [Universal], have been tested through vigorous research and evaluation. Their design is based on dependability, reliability and profitability.”

29. Notwithstanding all of these claims, in the cross-examination of Mr. Katsoulakis on September 21, 1999 and again in his responses to the Order obtained pursuant to section 11, the Respondents have been unable to provide any accumulated research whatsoever to substantiate the Respondents' claims that it researched this aspect of the telecommunications market.

ii) Respondents's technical sophistication and abilities

30. The Respondents have further made representations that give the general impression that they have the technical sophistication to deliver this telecommunication business opportunity. Representations include the statement that "We install the phones", and elsewhere "Installations by Licenced Professionals". Investors are also given a five year warranty, and a promise of 24 hour "Customer Service and Technical Support Staff Line". In fact, the Respondents appear to have only one technical person still on staff in order to handle all of the payphones technical needs for investors.

31. Further, the Respondents have indicated that this individual only has one computer capable of monitoring and remotely programming all of the payphones sold. The evidence indicates that in fact investors have to wait weeks for such basic technical support as the downloading of rate tables so that the phone knows what to charge for calls. All installations and repairs are in fact ultimately conducted by other companies unrelated to Universal. At this point in time, some, if not all of the payphones that were installed do not have functioning card swipes.

32. Notwithstanding the foregoing representations by the Respondents as to their ability to deliver a payphone business, on the first page of the Pre-injunction and Post-injunction Starter Kits, which are provided to investors after they had made their investment, it states that investors “must be patient” and that “everybody and everything is new”. The industry is described as being in an “embryonic stage” and investors should resist the inclination to become “frustrated”.

33. In addition, the Pre-injunction Starter Kit states:

Phone manufacturers are already back-ordered because of the demand, phone companies are swamped by requests for Payphone Access Lines, the CRTC is inundated with inquiries, and our locators are working around the clock to secure satisfactory locations. But it will all be worth it in the end, we guarantee it!”

None of these delays or difficulties were disclosed to investors before they placed their investments.

iii) The Respondent’s Years in Business

34. In its Pre-injunction newspaper and radio advertisements, the Respondents represented that Universal had been in business since 1981. In its Pre-injunction Brochure, the Respondents represented that Universal had been in business for 16 years. Both these representations were false. The Respondent Universal was incorporated on January 28, 1999. This false representation no longer appears in the Respondent’s Post-injunction materials.

iv) The Respondent's Business Premises

35. On the Pre-injunction Video, prospective investors are introduced to Universal as a corporate entity. At that point, the video image is of a modern "glass-wall" office tower which appears to be approximately 20 stories tall. Printed on the screen beneath the building are the words, "North American Headquarters, Toronto, Canada." The audio component accompanying this shot states, "From their North American Headquarters in Toronto, Canada, [Universal] provides the most effective...". The clear impression created is that the office tower shown is Universal's North American Headquarters.
36. In cross-examination on his affidavit of September 21, 1999, Mr. Katsoulakis admitted that the Respondent had never had offices or any presence in the building featured on the Pre-injunction Video.
37. The Respondent's Canadian address, as set out in the Brochure and as revealed by its Articles of Incorporation, is Unit C1, 1585 Britannia Road East, Mississauga, Ontario, a single story brick strip industrial park. This false representation no longer appears on the Post-injunction Video.

v) The Respondent's Accreditation Agencies

38. The Pre-injunction Promotional Package provided by the Respondents to prospective investors contained certificates from three accreditation agencies: the Canadian Business Bureau, the American Business Bureau and North American Business Opportunity Services. The certificate from the Canadian Business Bureau certified that the Respondent Universal "has fulfilled all the

registration requirements established” by that organization and has “pledged to conduct its business activities in an ethical manner”. The two other certificates are similar in nature.

39. Beneath each of the certificates is a second certificate which describes the functions carried out by the respective organizations. Each of these certificates indicates, among other things, that the said organizations are independent entities dedicated to, among other things, the protection of the consumer. The certificates also indicate that these organizations do not recommend or endorse any business opportunity.
40. The representation in the documents that the agencies are independent organizations, dedicated to the protection of consumers, is false. The accreditation agencies are not independent from the Respondents and are not *bona fide* consumer protection agencies.
41. The documents from the accreditation agencies use art work which creates the general impression in the minds of prospective investors that the certificates originate with well known and nationally recognized accreditation agencies such as the Better Business Bureau. Investors reviewing this material concluded that the certificates were from well known and nationally recognized accreditation agencies. This impression was false.
42. In his affidavit filed in the proceeding under s. 74.11 Act in this matter, Mr. Katsoulakis indicated that the Respondent Universal had severed its relationship with the American Business Bureau and the Canadian Business Bureau. However, he indicated that the Respondents had established a relation with a new accreditation agency - the Canadian Better Business Bureau.

43. In his Order of September 24, 1999, Mr. Justice Lutfy directed the Respondent Universal to:

cease making false or misleading representations to the public that create the general impression that the Respondent is a Member of any consumer protection agency or bureau that creates the general impression, through the use of similar name, trademarks, logos or other means, that it is the same as, part of, or affiliated with, the Council of Better Business Bureaus or any of its member agencies.

44. The certificate of the Canadian Better Business Bureau is no longer contained in the package. However, among the materials contained in the Respondent's Post-injunction Promotional Package, is a certificate from the Canadian Better Business Service. The certificate of the Canadian Better Business Service is very similar to that of the Canadian Better Business Bureau. Moreover, Jocelyn Rafael who was the Director of the Canadian Better Business Bureau, appears as the President of the Canadian Better Business Service. In addition, the Respondent's Membership number in each agency is identical (#1291), and the address and phone number of the two agencies are identical.

b. Publication of Testimonials:

45. On the Pre-injunction Video, there are testimonials provided by a number of individuals. These individuals all indicate that they have purchased the Respondent's payphone business opportunity and are successfully operating their payphone businesses. These individuals speak of, among other things,

the ease of starting-up their business; the support they have received from the Respondent; and the excellent financial results they have obtained from operating their payphone businesses. The Video was produced in February of 1999.

46. In his affidavit sworn November 18, 1999, the Respondent Mr. Katsoulakis admits that all of the testimonials in the video were provided by actors, and that the Respondents had not installed any payphones at that time.

47. The Post-injunction Video contains no testimonials.

c. Representations regarding Payphones offered for sale by Respondent:

48. Throughout the Pre-injunction Brochure and Video, the payphone featured is identical in appearance to the payphones commonly used by Bell Canada at its payphone locations in Canada (i.e. the Nortel Inc. Millennium payphone). The impression created by the foregoing is that the payphone supplied by the Respondents in connection with its business opportunity is the Nortel Millennium 2000. This is false.

49. The payphones supplied by the Respondents as part of its payphone business are manufactured by Ernest Telecom, and are different in a number of ways from the Millennium 2000 manufactured by Nortel.

50. The Post-injunction Brochure and Video no longer feature the Nortel Millennium, but rather feature the Ernest payphone, labelled as the "Universal 2000".

51. Notwithstanding the fact that the Nortel Millennium and the Ernest phone are two completely different payphones, in a letter to an upset investor dated October 25, 1999, Ms. Marie Viverito, who holds herself out as being the office manager of the Respondent Universal, said that the only difference between the Millennium and the Universal 2000 is the “cosmetics of the exterior”, and that the “interior of the phone is still the same as the original design”. Moreover, the post injunction video states with respect to the payphones supplied by the Respondents, "These phones are exactly the same phones as people are used to using, the only difference is that you can put your logo on the phones".

d. Representations that the Respondents will do substantially all of the work required to get investor’s payphone businesses up and running profitably

52. Both the Pre-injunction and Post-injunction Promotional Packages contain a number of representations which create the general impression that the Respondents will do substantially all that is required to get their payphone businesses up and running, such that the investment being marketed by the Respondents will require a minimum amount of work by investors. The Respondent’s Brochures represent:

- “We acquire all locations (with your final approval), and completely set up your business for you. We even provide the software training. We are ready for you.” (Pre/Post)
- “**Easy Start-Up**” is listed as one of the 10 “Lifetime Benefits”. (Pre/Post)
- Business start-up kit which provides all pertinent “start-up” procedures (Post)

- We assist with Registration with Long Distance and Operator Service (Post)
 - We install the phones (Pre/Post)
 - “From the initial training to the ongoing support, we have developed the procedures and programs that will make all the difference in achieving your goals. (Pre/Post)
 - All you have to do is maintain the phones and collect the revenues. (Pre/Post)
53. Both the Pre and Post injunction Videos state “everything you need to get started is included in your investment.” These representations were echoed and reinforced by the Respondent’s salespeople on a continuing and consistent basis. These representations are false or misleading.
54. For investors to get their payphone businesses up and running, they have had to perform a number of tasks, including:
- registering with the CRTC and, as part of that registration exercise, ensuring that their business complies with the requirements set out in CRTC Decision 98-8, including the requirement to provide a toll-free phone number for complaints;
 - negotiating and entering into a contract with a long distance carrier, should the investor wish to obtain any long distance revenue from the payphones;
 - negotiating and entering into a contract for operator services; should the investor wish to provide operator services;

- negotiating and entering into a contract for credit card processing, should the investor wish to get any revenue from calling card and credit card calls;
 - arranging and paying for payphone access lines, security deposits and installation; and
 - negotiating and entering into a contract with the owner of the premises where their payphones are located.
55. None of these tasks are identified in the Pre-injunction or Post-injunction Promotional Packages. Investors are generally not made aware of any of these tasks by the Respondents or their agents prior to investing.
56. Finally, the experience of investors indicates that after the Respondents receive investors' money, the Respondents have little or no interest in setting up an investors' business or assisting investors in any way.
57. Investors indicate that while their pre-investment calls to the Respondents were always met with prompt and courteous attention; post-investment, when they call, they are rarely, if ever, able to speak to anyone in authority. Virtually all the time, investors are directed to electronic voice mail where they are asked to leave messages. Some investors have called the Respondents daily over a period of weeks without being able to speak to anyone in authority and without having anyone return their calls. Most of messages left with the Respondents by investors are never responded to. Some investors have resorted to sending correspondence to the company by facsimile. Again, very little, if any, of this correspondence receives a response.

In light of their experience, many investors have simply given up trying to contact the Respondent and are pursuing remedies in other fora.

e. Representations regarding the locations that the Respondents will provide for investors for their phones

58. Both the Pre-injunction and Post-injunction Brochures state “We acquire the locations”, and further indicate that each investor’s package will include “Locations - prime locations which you approve”.

59. In the promotional brochure, the Respondents state that “the secrets of this business are “Investment, Overhead and Location”, and “the keys to establishing success are establishing outstanding locations and offering you the most profitable products on the market”, thereby acknowledging the critical importance of location in determining profitability in the payphone industry.

60. It is widely acknowledged in the industry that approximately 20 percent of payphones generate the vast majority of payphone revenues. Therefore, payphone revenue is clearly location-dependant.

61. The investor’s salespeople consistently and regularly represent to prospective investors that, in light of the de-regulation of the telephone market and the higher “cut” provided by under the Respondent’s scheme to location-providers, investors can place their payphones in any location, including locations where there was an existing Bell Canada payphone. These locations included, for example, airports, leading hotels such as the Chateau Laurier, and other desirable, high traffic locations.

62. Notwithstanding the foregoing representations, investors have had great difficulty obtaining locations at all from the Respondents. Investors have typically had to wait weeks or even months before hearing from location providers, despite repeated requests to the Respondents.
63. Where potential locations were ultimately offered to investors, they have been typically small venues, such as restaurants, and are not high traffic areas such as hotels and shopping malls, as represented by Universal sales staff. As such, they tend to generate very few calls, either local or long distance.
64. When asked in the section 11 order to provide the method and criteria used by the company for the selection of locations for the payphones sold to investors by the company, Mr. Katsoulakis deposed that “The company hires a location firm to suggest possible locations for investors. The company does not involve itself in the selection of locations”.

f. Guarantee of Satisfaction with Locations

65. Investors who complain to the Respondents about the locations offered are ignored or at best offered other unsuitable locations.

g. Representations that the Respondents will get investor’s payphone businesses up and running in a reasonable period of time

66. The Respondent’s sales staff routinely tell prospective investors that they will get their businesses up and running, including installation of the payphones in suitable locations, in a matter of weeks.

67. Notwithstanding this claim, some investors who would have invested as early as February 1999 still did not have their phones installed as of November 1999.

68. Despite sales in excess of 1,900 phones, as of the present time, the Respondents have ordered only 1,000 phones from the manufacturer. Further, of the payphones sold, only approximately 315 have been installed to date.

h. Representations Relating to Profitability and Financial Security of the Payphone Business Opportunity offered by the Respondents

i) profit and revenue projections

69. The Respondent's Pre-injunction newspaper and print advertisements represented, *inter alia*, \$250,000 yr. potential, minimum investment required \$10,000. This representation helped to create in the minds of prospective investors the general impression that with an investment of \$10,000, they could earn up to \$250,000 per year.

70. Both the Pre-injunction and Post-injunction Brochure and Video contain "Profit Projections." The Pre-injunction materials project that investors could earn net profits of between \$4,617.75 and \$19,582 per phone per year. The Post-injunction materials project that investors could earn net profits of between \$3,007 and \$12,630 per phone per year.

71. These annual net profits appear to be made up of coin revenue, less 20%, plus additional revenue from third parties. The video indicates that the 20% is what is provided to the location provider for the payphones as a commission, and the revenue from third parties is such things as long distance revenue. However, the agreement designed to be entered into with the location providers entitles them to 20% of coin revenue and long distance, and not just coin revenue.
72. Further, the profit projections regarding revenue from third parties assumes that the investor will generate money from such things as long distance revenues. However, by their own admission, the Respondents no longer have any arrangements whatsoever for operator services, credit card processing, or long distance, nor does the post injunction starter package give investors any guidance, or even mention these issues. There is nothing in the promotional package which would indicate how the figures for third party revenue were generated, nor were any records forthcoming when ordered to be produced pursuant to section 11.
73. The profit projections contained in the promotional package are based upon a presumption that each payphone will generate between 25 and 75 calls a day. The post injunction video states "our research has shown that approx. 50 calls per day are made from payphones". However, the evidence will show that even for the large incumbents in the telecommunication industry, only a relatively small percentage of payphones generate even 25 calls a day.
74. Investors who have actually received their phones and been able to have them installed report that their earnings do not begin to approach the "Projections"

contained in any of the Respondent's Pre-injunction or Post-injunction materials.

ii) Representations Concerning Cash Flow

75. On page 14 of the Pre-injunction Brochure, the Respondents represented that the number one benefit investors would receive from investing with the Respondents would be "Immediate and Continuous Cash Flow". That representation is repeated on the Video. The representation was false.
76. As indicated previously, the vast majority of investors have never received their phones.
77. In the Post-injunction Brochure and Video, the Respondents now represents that investors can expect to receive, "Immediate Cash Flow upon installation." That representation must be viewed in light of the circumstances set out above with respect to the rates of installation.

iii) Representations Regarding Financial Security of the Business Opportunity

78. Newspaper advertisements, both pre and post injunction, claim that the Respondent's business opportunity is the most financially secure home based business in the world.
79. All investors interviewed by the Bureau are operating at a loss, either because they never received their phones, they never received their locations, or

because the revenue generated from the phones is insufficient to cover the operating costs. All investors interviewed have suffered severe financial losses to date as a result of the investment.

h. Guaranteed return on investment

80. Among the documents in the Document Folder within the Pre-injunction and Post-injunction Promotional Packages is a GUARANTEED AGREEMENT ON INVESTMENT (the “Guarantee”). The Guarantee provided to investors is signed by Mr. George Kats. The Guarantee provides that as the Respondent Universal “has such confidence in the quality and profitability of its products and marketing techniques, it will guarantee the satisfaction of the [investor].” The Guarantee goes on to provide, *inter alia*, as follows:

- if investors do not earn at least 100% of the purchase price of the “package deal”, excluding taxes and shipping, within 14 months (Pre-injunction) or 18 months (Post-injunction) after installation, the Respondents will reimburse to the investor the difference between the investor’s purchase price and the investors’s earnings; and
- to avail themselves of this guarantee, investors must submit monthly reports indicating their “exact net revenue”. Moreover, the Guarantee will lapse unless the reports are “verifiable and are sent as stated”.

81. With respect to the Guarantee, the s. 11 Order obtained by the Applicant required the Respondent Universal to provide all records pertaining to the Respondent’s plans to honour the Guarantee, including projections, plans,

insurance policies and monetary reserves set aside for that purpose. In its response to the s. 11 Order, the Respondents indicated that they have no documents meeting that description.

82. With respect to the Guarantee, the s. 11 Order obtained by the Applicant required the Respondent to provide:
- a. a description of its contingency plan, if any, to ensure that it will be able to honour the terms of the Guarantee; and
 - b. the projections that have been completed by the Respondent, if any, to gauge the rate at which the Guarantee will be triggered, and a description of the steps taken to create that projection.

In response to the foregoing questions, the Respondent indicated as follows:

“The contingency plan of the company to ensure it will be able to honour the terms of the guaranteed investments is to stay in business. It is not anticipated that the requests on the guarantees will be substantial”; and

“There have been no such projections other than informal monitoring. To recoup his or her investment, even an investor purchasing only one phone needs to make \$266.00 per month and it is anticipated that the vast majority of the payphones once installed will produce that.”

In the course of this matter, the Applicant has interviewed over 30 investors. Of those investors, as noted above, none of those investors has had “earnings” of \$266.00 per month from operating their payphone business.

PROCEDURAL MATTERS

83. The Commissioner requests that the hearing of this Application be held in the City of Ottawa, Ontario.
84. The Commissioner requests that this Application be held in the English language.
85. The address of Universal Payphone Systems Inc. is:
1585 Britannia Road East, Unit C1
Mississauga, Ontario
L4W 2M4
86. The address of Mr. George Katsoulakis is:
33 Rosemount Avenue
Toronto, Ontario
M6H 2M2
87. For purposes of this application, the address for service on the Commissioner is:
John L. Syme
Manon Lapointe
Department of Justice
Place du Portage, Phase 1
50 Victoria Street, 22st Floor
Hull, Quebec K1A 0C9
Telephone: (819) 997-3325
Facsimile: (819) 953-9267

88. For purposes of this application, the address for service on the Respondents is:

F. Scott Sievert,
Barrister & Solicitor
15 Belfield Road, Unit E
Rexdale, Ontario M9W 1E8

Telephone: (416) 243-8756
Facsimile: (416) 243-2990

Dated at Hull, Quebec, this 25th day of November, 1999.

Johanne D'Auray
Deputy Commissioner of Competition
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50 Victoria Street, 17th Floor
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