

Competition Tribunal



Tribunal de la Concurrence

CT - 99 / 2

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

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 a temporary order pursuant to section 74.11 of the *Competition Act*.

B E T W E E N:

The Commissioner of Competition

Applicant

- and -

Universal Payphone Systems Inc.

Respondent



**ORDER**

**Date of Hearing:**

September 23, 1999

**Presiding Member:**

The Honourable Mr. Justice Allan Lutfy

**Counsel for the Applicant:**

**The Commissioner of Competition**

John L. Syme  
Manon Lapointe

**Counsel for the Respondent:**

**Universal Payphone Systems Inc.**

Richard P. Bowles

## COMPETITION TRIBUNAL

### ORDER

*The Commissioner of Competition*

v.

*Universal Payphone Systems Inc.*

FURTHER TO the application of the Commissioner of Competition pursuant to section 74.11 of the *Competition Act*, R.S.C. 1985, c. C-34, for an order directing that the respondent Universal Payphone Systems Inc. (“Universal”) and its directors, officers, employees, or any person acting on behalf of the respondent cease to engage in certain reviewable conduct, as set out herein, and cease to engage in substantially similar reviewable conduct for a period of fourteen days from the date the order is made;

UPON review of the notice of application dated September 15, 1999, the affidavit dated September 15, 1999 of Larry Bryenton, an officer in the Fair Business Practices Branch of the Competition Bureau, the affidavit dated September 20, 1999 of George Katsoulakis (“Katsoulakis”), the president of Universal, the transcript of the cross-examination of Katsoulakis on September 21, 1999 with respect to his affidavit and the parties’ written submissions;

UPON hearing counsel for the Commissioner and for the respondent on September 23, 1999 in Ottawa, Ontario and by telephone conference calls on September 24, 1999;

WHEREAS the business operations of Universal include the sale, distribution and installation of pay telephones;

WHEREAS Universal has sold over 2000 pay telephones with sales more or less equally spaced between February 1999 and September 1999;

WHEREAS the sale of 2000 pay telephones would represent gross revenues for Universal, according to its principal promotional brochure (“Brochure”), in excess of \$7 million;

WHEREAS only 86 of these pay telephones sold by Universal are currently “fully installed and operable”;

### **The Bell Canada and Millennium Payphones Issue**

UPON the respondent’s consent to the terms in subparagraph 2(i) of this order;

### **The Accreditation Issue**

UPON Universal’s past representations that it was a member of the Canadian Business Bureau and the American Business Bureau;

UPON the representation in Universal's promotional materials that the Canadian Business Bureau and the American Business Bureau were consumer protection organizations that did "not recommend, approve, or endorse any Franchise, Business Opportunity or Business Venture of any type";

UPON the confirmation by Katsoulakis of information from a Universal customer that one of Universal's employees on one occasion responded to a telephone request on behalf of the Canadian Business Bureau;

UPON the evidence from the same Universal customer that a representative of the Canadian Business Bureau "recommended Universal's operations, indicating that it was a great company, and that it was on the cutting edge";

UPON the report of the Better Business Bureau of Mainland B.C. that "Universal Payphone Systems Inc. [has] an unsatisfactory record with the Better Business Bureau system. This rating is due to their unauthorized use of a Canadian Council logo and their lack of response to Bureau and consumer complaints";

UPON Universal no longer being a member of the Canada Business Bureau and the American Business Bureau;

UPON the Tribunal's finding that Universal has made false or misleading representations in a material respect in creating the general impression that Universal was a member of credible consumer protection organizations;

### **The Universal Identity Issue**

UPON the respondent's representation that "[f]or the last 16 years at Universal Payphone Systems Inc., we have prided ourselves in providing the most effective, well-structured, entrepreneurial programs in the market";

UPON the respondent's representation that "[f]or the last 18 years at Universal Payphone Systems Inc., we have prided ourselves in providing the most effective, well-structured, entrepreneurial programs in the market";

UPON the Certificate of the Ontario Ministry of Consumer and Commercial Relations, which establishes that Universal Payphone Systems Ltd. was incorporated effective January 28, 1999;

UPON the acknowledgement by Katsoulakis that Universal did not operate as a corporate entity prior to its pay telephone business operations;

UPON the statement by Katsoulakis that "this is a very new business in Canada ...";

UPON the information in Universal's promotional video that the modern, glass-tower commercial building is the "North American Headquarters, Toronto, Canada" for Universal;

UPON the acknowledgement by Katsoulakis that the building shown in Universal's promotional video is situated at 2 Robert Speck Parkway, Toronto, Ontario and is not the company's North American headquarters;

UPON the evidence that Universal's offices are actually situated at 1585 Britannia Road East, Unit C1 in Mississauga, Ontario in a single-storey building in an industrial mall;

UPON the Tribunal's finding that Universal has made false or misleading representations in a material respect concerning its years in business and the grandeur of its business premises;

### **The Profitability Issue**

UPON Universal's representation in national newspaper advertisements stating "250K yr. potential" and "Minimum investment \$10,000" that creates the impression that a Universal customer has the potential of earning an annual net revenue of \$250,000;

UPON Universal's sole documentary information in this proceeding, limited to only two of its pay telephones that have been installed, establishing gross income of approximately \$500 over the past month for each telephone, which projected annually would result in gross income of \$6,000;

UPON the “Third Party, Collect, Credit Cards” call revenues represented by the respondent failing to show the actual amount charged by the long distance telephone company, whereas the actual revenue that a payphone owner would receive from “Third Party, Collect, Credit Cards” calls would only be a portion of the actual amount charged by the long distance telephone company, which seriously discredits the profit projections represented by the respondent;

UPON a comparison of the respondent’s representations with respect to “Third Party, Collect, Credit Cards” and the respondent’s evidence of the toll revenue of Telus’ top twenty customers, which further discredits the profit projections in Universal’s Brochure;

UPON the respondent’s representation in its Brochure and promotional video that the pay telephone operator’s only expense is 20% of the gross coin revenue, which is intended to be the commission paid to the owner of the location where the pay telephone is installed;

UPON the respondent’s evidence that seven of Telus’ top twenty customers have apparent gross revenues less than \$300,000, including three of Telus’ top twenty customers with apparent gross revenues less than \$250,000, with the quantity of phones varying between 35 and 72 per customer;

UPON Universal’s locations at “restaurants, pizzerias, gas stations, variety stores, pubs night clubs, bakeries, taverns, grocery stores” and others such as an unidentified “major hamburger chain” and an unidentified “major pub chain”, which do not at all compare favorably



with Telus' best locations at correctional institutions, airports, hotels and government institutions;

UPON the current rate for a local telephone call being 25 cents, whereas Universal's promotional materials are based on 35-cent and 50-cent calls;

UPON the inference drawn from the responses of Katsoulakis on cross-examination (questions 41 and 158) that Universal's promotional materials, including its video, had been produced as early as April 1999;

UPON the statements made by persons purporting to be some of Universal's customers in its promotional video, produced as early as April 1999, that their investments in Universal's pay telephones had "paid off", were "incredible" and "an amazing thing" and "the performance far outstrips my expectations", can only have been patently false and misleading in a material respect in view of Katsoulakis' statements that none of Universal's pay telephones had been installed in the first quarter of 1999 (questions 348-351);

UPON Universal's profit projections in its promotional materials that range from \$9,235 for two pay telephones with 25 coin calls each per day to \$633,312 for thirty-two pay telephones with 75 coin calls each per day;

UPON the Tribunal's finding that Universal has made false or misleading representations in a material respect concerning the profitability of its pay telephones, inasmuch as its profit projections in its newspaper advertisements and promotional materials are completely unrealistic

when compared to the evidence of the revenues generated by the few phones it has installed to date and when compared to the evidence of revenues generated from pay telephones in substantially better locations than those available to Universal's customers;

### **The "Turnkey" Opportunity Issue**

UPON the installation of only 86 of the 2,000 payphones sold by Universal;

UPON the representations in the Brochure and promotional video that the benefit of the private payphone business is "Immediate and Continuous Cash Flow";

UPON the representations in the respondent's promotional material that "[w]e 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!";

UPON the evidence that the respondent's starter package, which is received only after an investment is actually made, shows that there is in fact a considerable list of tasks that the purchaser of Universal's pay telephones must complete;

UPON the information communicated by Universal to its customers only upon payment of their purchases (questions 53-55) that "[t]he complete process from 'start to install' will take anywhere from 6 to 8 weeks";

UPON the evidence that only 86 phones have been installed by Universal from over 2,000 sold, with sales equally spaced since February 1999, at least some of the respondent's customers have been waiting substantially longer than the waiting period represented to them by the respondent;

UPON the Tribunal's finding that Universal has made false or misleading representations in a material respect concerning the likelihood of having immediate and continuous cash flow from the purchase of its pay telephones, in view of its failure to supply and install in a timely fashion the phones that have been paid for by its customers;

## **Conclusion**

UPON subsections 74.11(1) and (2) of the *Competition Act*;

UPON the Tribunal's satisfaction, after carefully scrutinizing the evidence, that the applicant has met his burden of establishing, on a balance of probabilities, a strong *prima facie* case that the respondent is engaging in the reviewable conduct described in paragraph 74.01(1)(a) of the *Competition Act*;

UPON the Tribunal's satisfaction that serious harm is likely to ensue unless this order is issued and that the balance of convenience favors issuing the order;

UPON the respondent's agreement, without the respondent consenting to the substance of subparagraphs 2(ii), (iii), (iv) and (v) of this order, that the period of this order may extend for twenty-eight (28) days.

THE TRIBUNAL ORDERS THAT:

1. The respondent and its directors, officers, employees, or any person acting on behalf of the respondent 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 twenty-eight days from the date of this order.
  
2. In particular, it is ordered that the respondent, its directors, officers, employees, or any person acting on behalf of the respondent shall for a period of twenty-eight days from the date of this order:
  - (i) cease making false or misleading representations to the public that create the general impression that the pay telephones available for sale by the respondent are different than the pay telephones that the respondent actually supplies; and without limiting the generality of the foregoing, shall cease to make representations that display pictures or images of the pay telephones commonly utilized by Bell Canada at its pay telephone locations (i.e. Nortel's "Millennium" pay telephone) in all promotional materials distributed or made available by it, either directly or indirectly;

- (ii) 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 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;
- (iii) cease making false or misleading representations to the public concerning the profitability of its pay telephone business opportunity that are not based on truthful, accurate, relevant and verifiable data;
- (iv) cease making false or misleading representations to the public that create the impression that the pay telephone business opportunity being marketed by the respondent will generate an immediate and continuous cash flow for persons who invest in that opportunity and will require persons who decide to invest in that opportunity to do little or no preparatory or preliminary work in order to commence the operation of their business and begin generating revenue from that business;
- (v) cease making representations to the public that create a false or misleading impression about the respondent as a corporate entity, including, without limiting the generality of the foregoing:
  - (a) to cease making false or misleading representations to the public that create the impression that the respondent has been in the pay telephone or any other business for

longer than the period between the respondent's date of incorporation (January 28, 1999) and the date upon which the representation is made and;

(b) to cease making false or misleading representations to the public that create a false impression as to the premises from which the respondent carries on business.

DATED at Ottawa this 24<sup>th</sup> day of September, 1999.

SIGNED on behalf of the Tribunal by the presiding judicial member.

(s) Allan Lutfy  
Allan Lutfy