

**COMPETITION TRIBUNAL**

**IN THE MATTER OF** the *Competition Act*, RSC 1985, c C-34;

**AND IN THE MATTER OF** a consent agreement under section 74.12 of the *Competition Act* regarding certain business practices of the Respondent pursuant to paragraph 74.01(1)(a) of the *Competition Act*.

**BETWEEN:**

**COMMISSIONER OF COMPETITION**

**Applicant**

- and -

**AMP ME INC.**

**Respondent**

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**CONSENT AGREEMENT**

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**WHEREAS** the Commissioner is responsible for the administration and enforcement of the Act;

**AND WHEREAS** the Respondent is a corporation incorporated under the *Canada Business Corporations Act* with its head office located in Montréal, Quebec;

**AND WHEREAS** the Respondent is responsible for the development and marketing of the Mobile Application (*Amp Me*), which enables the sound of music to be increased by synchronizing several devices together;

**AND WHEREAS** the Respondent offers the Mobile Application on the Apple App Store in Canada and the United States as a free download;

**AND WHEREAS** the free download of the Mobile Application allows users outside Quebec a free trial;

**AND WHEREAS** the free trial allows full use of the Mobile Application only once;

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**AND WHEREAS** the free trial allows full use of the Mobile Application for three (3) days if users provide their payment information and accept the automatic renewal of a subscription;

**AND WHEREAS** a subscription is necessary to continue fully using the Mobile Application once the free trial has finished;

**AND WHEREAS** the price of a subscription has fluctuated over time; for example, on August 1, 2022, a subscription for Canadian users outside Quebec cost \$10.99 in Canadian dollars per week;

**AND WHEREAS** the Respondent has promoted the Mobile Application to the public by making representations in Canada and the United States;

**AND WHEREAS** the Respondent retained the services of one or more third parties to publish positive reviews of the Mobile Application, such as reviews with a five-star rating in the Apple App Store in the United States (*astroturfing*);

**AND WHEREAS** the Respondent purchased positive reviews of the Mobile Application from third parties for a period from fall 2019 to winter 2022;

**AND WHEREAS** the positive reviews were not genuine reviews from consumers or users of the Mobile Application;

**AND WHEREAS** the purchased reviews positively affected the ranking and overall score of the Mobile Application in the Apple App Store in the United States;

**AND WHEREAS** the Respondent stopped purchasing reviews after a news article was published in January 2022;

**AND WHEREAS** the Respondent asserts that the purchased reviews no longer appear in the Apple App Store in the United States and no longer affect the ranking or overall score;

**AND WHEREAS** the Respondent has made or allowed representations to be made in Canada and the United States regarding the free nature of the Mobile Application through text and videos on social media in order to promote the use of the Mobile Application;

**AND WHEREAS** certain representations regarding the free nature of the Mobile Application included the words: “*completely free*”; “*it’s free*”; and “*free app*”;

**AND WHEREAS** the Respondent asserts that it stopped making or permitting any representations regarding the Mobile Application using the terms “*completely free*”; “*it’s free*”; and “*free app*”;

**AND WHEREAS** the Respondent asserts that it has implemented guidelines prohibiting the publication, in the name of or on behalf of the Respondent, of representations to the effect that the Mobile Application is completely free, and that these representations have made up only a minority of the representations promoting the Mobile Application in general;

**AND WHEREAS** the Respondent voluntarily modified the page on the Apple App Store to specify the functionalities offered by the free download and by the subscription;

**AND WHEREAS** the Commissioner opened an investigation on October 7, 2022, on the Respondent's marketing practices regarding the Mobile Application;

**AND WHEREAS** the Commissioner is of the opinion that testimonials and reviews are a significant source of information for consumers;

**AND WHEREAS** the Commissioner is of the opinion that price is an important criterion in consumers' choice with respect to products or services;

**AND WHEREAS** the Respondent asserts that warnings are made to users on several occasions regarding subscription fees charged outside Quebec after the free trial period expires, including in the Mobile Application;

**AND WHEREAS** the Commissioner concluded that the purchased positive reviews were false or misleading, considering the general impression given and the literal meaning, since the purchased positive reviews were not genuine reviews from consumers or users of the Mobile Application;

**AND WHEREAS** the Commissioner concluded that certain representations regarding the free nature of the Mobile Application through text and videos on social media were false or misleading, considering the general impression given and the literal meaning, since some representations regarding the free nature of the Mobile Application described it as "*completely free*", "*It's free*", and "*free app*", when this was a limited free trial;

**AND WHEREAS** the Commissioner concluded that the Respondent engaged in reviewable conduct contrary to paragraph 74.01(1)(a) of the Act;

**AND WHEREAS** the Respondent voluntarily collaborated to resolve this matter and implement the terms of the Consent Agreement;

**AND WHEREAS** the Respondent provided Records on its current financial situation (*Financial Statements*) to the Commissioner;

**AND WHEREAS** the Respondent does not agree with the Commissioner's conclusions, but nevertheless seeks to resolve the concerns identified by the Commissioner;

**AND WHEREAS IT IS UNDERSTOOD AND AGREED** that, for the purposes of the Consent Agreement only, including the signing, registration, application, variation or rescission of the Consent Agreement, and subject to paragraph 22 of the Consent Agreement, the Respondent does not dispute the Commissioner's conclusions, but there is nothing in the Consent Agreement that will be considered as an admission or acceptance by the Respondent of facts, wrongdoing, submissions, legal arguments or conclusions, nor will it prejudice the rights or defences of the Respondent, including the defences set out in the Act;

**AND WHEREAS** the Parties agree that this matter can be resolved by the registration of the Consent Agreement, which, upon its registration, will have the same force and effect as an order of the Tribunal;

**THEREFORE**, to address the Commissioner's concerns, the Parties agree as follows:

**I. INTERPRETATION**

1. The following definitions apply for the purposes of the Consent Agreement:
  - a. "**Act**" means the *Competition Act*, RSC 1985, c C-34;
  - b. "**Affiliate**" means an affiliated entity within the meaning of subsection 2(2) of the Act;
  - c. "**Commissioner**" means the Commissioner of Competition appointed under section 7 of the Act and his or her authorized representatives;
  - d. "**Compliance program**" has the meaning ascribed thereto in Part IV of the Consent Agreement;
  - e. "**Consent Agreement**" means this Consent Agreement entered into by the Parties under section 74.12 of the Act, including appendices A and B;
  - f. "**Effective date**" means the date on which the Consent Agreement is listed by the Tribunal as having been registered in accordance with section 74.12 of the Act;

- g. **“Financial Statements”** means the Records that report the Respondent’s current financial situation and ability to pay listed in the attached Appendix A;
- h. **“Interpretation Act”** means the *Interpretation Act*, RSC 1985, c I-21;
- i. **“Marketing staff”** means any director, officer or employee of the Respondent who participates significantly in the marketing or promotion of the Mobile Application;
- j. **“Mobile Application”** means the AmpMe mobile application developed by or for the Respondent, and/or belonging to the Respondent;
- k. **“Parties”** means the Commissioner and the Respondent collectively, and **“Party”** means one of them;
- l. **“Record”** means any record within the meaning of subsection 2(1) of the Act;
- m. **“Respondent”** means Amp Me Inc., a corporation incorporated under the *Canada Business Corporations Act*, and its successors and assigns;
- n. **“Senior Management”** means the current and future Chief Executive Officer, Chief Operating Officer, the General Manager, Financial Director, Chief Accounting Officer, President, Vice-Presidents, Secretary, Controller, Managing Director of the Respondent and any person assuming their duties; and
- o. **“Tribunal”** means the Competition Tribunal established by subsection 3(1) of the *Competition Tribunal Act*, RSC 1985, c 19 (2nd Supp.).

**II. COMPLIANCE WITH PARAGRAPH 74.01(1)(a) OF THE ACT**

2. Subject to paragraph 3 below, within the thirty (30) days following the Effective Date, the Respondent shall ensure that the representations to the public regarding the Mobile Application comply with the provisions of paragraph 74.01(1)(a) of the Act.
3. The Respondent, and any Affiliate of the Respondent, will not make or allow representations to be made to the public that convey a general impression that is false or misleading in a material respect regarding reviews of the Mobile Application and representations regarding the free nature of the Mobile Application.
  - a. Without limiting the generality of the foregoing, the Respondent shall not make or allow any representations to the public:
    - i. in the form of positive ratings or reviews of the Mobile Application that are not the genuine reviews of consumers or users of the Mobile Application; and
    - ii. that state or imply that the Mobile Application is free if any payment whatsoever is required to use the Mobile Application fully or on an ongoing basis.

**III. PAYMENTS**

**ADMINISTRATIVE MONETARY PENALTY AND PARTIAL SUSPENSION**

4. The Respondent shall pay an administrative monetary penalty in the amount of \$1,500,000.
5. Payment of the total amount is partially suspended. In partial satisfaction of the administrative monetary penalty, the Respondent shall pay an amount of \$310,000.
6. The Commissioner's agreement to the partial suspension is based on the truth and accuracy of the Financial Statements and the fact that there are no material omissions in them.
7. The Commissioner reserves the right to lift the suspension in the event of non-compliance with one or more clauses of Part III by the Respondent.
8. The suspension of payment of the balance will be lifted if the Commissioner concludes that the Respondent has not disclosed all its assets or if it turns out that it made false, misleading or incomplete

representations or any other material omissions or inaccuracies in the Financial Statements.

9. If the suspension of payment is lifted, the total amount specified in paragraph 4 becomes immediately payable, less any payment made pursuant to the same paragraph.

#### **COSTS**

10. The Respondent shall pay \$40,000 for the costs incurred by the Commissioner during the course of the investigation into this matter.

#### **FORM OF PAYMENT AND TIME LIMIT**

11. The amounts set out in paragraphs 5 and 10 shall be paid by the Respondent upon signing of the Consent Agreement, by way of certified cheque or bank transfer payable to the order of the Receiver General for Canada.

#### **IV. CORPORATE COMPLIANCE PROGRAM**

12. Within ninety (90) days following the Effective Date, the Respondent shall, as needed, enhance and, thereafter, maintain in relation to the Act its Corporate Compliance Program ("**Compliance Program**"), the purpose of which will be to promote the respondent's compliance with the Act generally, and with Part VII.1 of the Act in particular. The Compliance Program is formulated and implemented in accordance with the Commissioner's information bulletin entitled "Corporate Compliance Programs", as published on the Competition Bureau's website at <https://ised-isde.canada.ca/site/bureau-concurrence-canada/fr> on the Effective Date.
13. Members of the Respondent's Senior Management will fully support and enforce the Compliance Program and play an active and visible role in its implementation and maintenance.
14. Within twenty-one (21) days after the enhancement of its Compliance Program pursuant to paragraph 12 above, each member of Senior Management shall acknowledge his or her commitment to the Compliance Program by signing and submitting to the Commissioner a letter of commitment following the form set out in Appendix B of the Consent Agreement. Any person who becomes a member of Senior Management during the duration of the Consent Agreement must sign and submit to the Commissioner a letter of commitment following the form set out in Appendix B of the Consent Agreement within twenty-one (21) days after being appointed to Senior Management as a member.

**V. REPORTING AND COMPLIANCE MONITORING**

15. For the duration of the Consent Agreement, (i) the Respondent shall provide a copy of the Consent Agreement to all Marketing Staff within fourteen (14) days following the registration of the Consent Agreement, and (ii) all future Marketing Staff members will receive a copy of the Consent Agreement within fourteen (14) days of the commencement of their employment. Within fourteen (14) days of receipt of a copy of the Consent Agreement, the Respondent shall obtain from each of these persons a signed and dated statement acknowledging that he or she has read and understood the Consent Agreement and Part VII.1 of the Act.
16. The Respondent shall provide the Commissioner with written confirmation of receipt by Marketing Staff of a copy of the Consent Agreement, as required at paragraph 15, within twenty-one (21) days of registration of the Consent Agreement.
17. For the purposes of monitoring compliance with the Consent Agreement, the Respondent will provide the Commissioner with information relating to any matter addressed in parts II, III, IV and V of the Consent Agreement that the Commissioner requests, within thirty (30) days following a written request from the Commissioner, it being understood that the Commissioner can only request information regarding Part III of the Consent Agreement within five (5) years following the Effective Date.

**VI. GENERAL**

18. Notices, reports and other communications required or authorized under any of the terms of the Consent Agreement shall be in writing and will be considered to be submitted if they are sent in person or by registered mail to the Parties at the following addresses (notices can also be sent informally by email to the attention of the persons indicated below, but will not be formally considered given if they are sent by email):

**(a) The Commissioner**

Commissioner of Competition  
Competition Bureau  
21st Floor, Place du Portage Phase I  
50 Victoria Street  
Gatineau QC K1A 0C9

Attention: Deputy Commissioner of Competition, Cartels and Deceptive  
Marketing Practices Branch

Fax no.: 819-953-4792



Email: [josephine.palumbo@cb-bc.gc.ca](mailto:josephine.palumbo@cb-bc.gc.ca)

**With a copy to:**

Executive Director and General Counsel  
Competition Bureau Legal Services  
Department of Justice  
22nd Floor, Place du Portage, Phase II  
50 Victoria Street  
Gatineau QC K1A 0C9

**(b) The Respondent**

Amp Me Inc.  
Suite 680, 109 Viger Ave. West  
PO Box G04  
Montréal QC H2Z 1K6

Attention: Legal Services

**With a copy to:**

Dominic Thérien and Daphné Anastassiadis  
McCarthy Tétrault LLP  
Suite MZ400  
1000 de La Gauchetière Street West  
Montréal QC H3B 0A2

19. The Consent Agreement shall be binding for ten (10) years following its registration with the Tribunal.
20. The Parties agree to the immediate registration of the Consent Agreement with the Tribunal.
21. The Commissioner may, at his sole discretion and after informing the Respondent in writing, extend any of the time frames set out in parts III, IV, V and VI of the Consent Agreement, except for the period of five (5) years set out in paragraph 17. If delays occur due to factors beyond the Respondent's control, the Respondent will promptly inform the Commissioner of the delays and the factors that have led to the delays, and will apply to the Commissioner for an extension of time that shall not be denied without reasonable grounds.
22. Nothing in the Consent Agreement precludes the Respondent or the Commissioner from bringing an application under section 74.13 of the Act. The Respondent will not challenge, for the purposes of the Consent Agreement only, including the signing, registration, application, variation or rescission, the Commissioner's conclusions.

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23. The Respondent will not make any public statement that contradicts the terms of the Consent Agreement.
24. The Respondent attorns to the Tribunal's jurisdiction for the purposes of the Consent Agreement and any proceeding initiated by the Commissioner related to the Consent Agreement for variation or rescission.
25. In the event of a dispute regarding the interpretation or enforcement of the Consent Agreement, it will be open to either Party to request an order or instructions from the Tribunal. No dispute will have the effect of suspending any time limit provided in the Consent Agreement. The Parties agree that the Tribunal has jurisdiction to make any order necessary to give effect to the Consent Agreement.
26. The Consent Agreement may be signed in counterparts, each of which so signed shall constitute an original instrument. These counterparts taken together shall constitute one and the same instrument. In the event of any discrepancy between the English and French versions of the Consent Agreement, the French version shall prevail.

*[intentionally left blank]*

27. The computation of time periods contemplated by the Consent Agreement shall be in accordance with the *Interpretation Act*. For the purposes of the Consent Agreement, the definition of “holiday” in the *Interpretation Act* includes Saturday. For the purposes of establishing time limits, the date of the Consent Agreement is the last date on which the Consent Agreement is signed by a Party. The undersigned hereby consent to the filing of the Consent Agreement with the Tribunal for registration.

**DATED** at Montréal, in the Province of Quebec, this 27th day of November 2023.

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**Amp Me Inc.**

Sally Nguyen, authorized representative

By my signature above, I acknowledge that I have been authorized to sign on behalf of the Corporation and have the authority to bind the Corporation for the purposes hereof.

**DATED** at Ottawa, in the Province of Ontario, this 28th day of November 2023.

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**Commissioner of Competition**

Matthew Boswell

**APPENDIX A**

Following the definition of the term “Financial Statements”, the relevant Records are as follows:

1. The email dated February 24, 2023 from Dominic Thérien, including attachments:
  - a. Annexe D3 - AmpMe Inc-2021-ÉF - Protégé et confidentiel.pdf ;
  - b. LF Amp Me - Protégé et confidentiel - 2023-02-24.pdf ;
  - c. Annexe D1 - AmpMe Inc-2019-ÉF - Protégé et confidentiel.pdf ;
  - d. Annexe D2 - AmpMe Inc-2020-ÉF - Protégé et confidentiel.pdf ;
  
2. The email dated June 5, 2023 from Dominic Thérien, including attachments:
  - a. AMPME P&L Jan-Apr 2023.pdf ;
  - b. AMP ME - BS 04.2023.pdf ;
  - c. RS 2022.pdf ;
  - d. RS 2021.pdf ;
  - e. RS 2020.pdf ;
  
3. The email dated June 8, 2023 from Dominic Thérien, including the attachment:
  - a. AmpMe - 2022 financial statements.pdf ; et
  
4. The email dated September 1, 2023 from Dominic Thérien, including attachments:
  - a. Letter entitled “Amp Me - privilégié et confidentiel (1er sept. 2023)(48667230.3).pdf”;
  - b. EY report entitled “Amp Me\_EY\_AnnexeA(privilégié et confidentiel)(48681685.1).pdf”, excluding any financial forecasts for the period from October 1, 2023 to December 31, 2024.

**APPENDIX B**

**COMMITMENT BY SENIOR MANAGEMENT**

**Purpose: Commitment to establish and maintain a Compliance Program**

In accordance with paragraph 14 of the Consent Agreement between the Commissioner of Competition and Amp Me Inc. ("Amp Me") on **[DATE]**, I hereby commit to successfully implement the enhanced Corporate Compliance Program described in Part IV of the Consent Agreement, for the purpose of promoting compliance with the *Competition Act*, R.S.C., 1985, c. C-34 (the "**Act**"), including the provisions on deceptive marketing practices in Part VII.1 of the Act and, in particular, paragraph 74.01(1)(a) of the Act. I will take an active and visible role in Amp Me's enhanced Corporate Compliance Program.

Sincerely,

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**[Name and title]**

c.c.: Deputy Commissioner, Deceptive Marketing Practices Branch,  
Competition Bureau

Executive Director and Senior General Counsel, Competition Bureau  
Legal Services