

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

AT&T MOBILITY LLC and AT&T  
MOBILITY II LLC,

Plaintiffs,

v.

RAFIQ WAZIR ALI, individually and d/b/a  
FONE XCHANGE, and various XYZ  
COMPANIES 1-50 and JOHN OR JANE  
DOES 1-50 (UNIDENTIFIED),

Defendants.

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CASE NO.: 08-cv-1247

JURY

**FINAL JUDGMENT AND PERMANENT INJUNCTION  
AGAINST DEFENDANT**

Plaintiffs AT&T Mobility LLC and AT&T Mobility II LLC (collectively “AT&T”), brought the above-captioned lawsuit against Defendant Rafiq Wazir Ali, individually and doing business as Fone Xchange (the “Defendant”), asserting that Defendant is engaged in, and knowingly facilitates and encourages others to engage in, unlawful business practices involving the unauthorized and unlawful bulk purchase and resale of AT&T’s GoPhone® wireless telephones (“GoPhones”), unauthorized and unlawful computer unlocking of GoPhones, alteration of proprietary software computer codes installed in the GoPhones, and trafficking of the GoPhones for profit (the “Illicit Bulk Resale Scheme”).

AT&T asserts that Defendant perpetrates his Illicit Bulk Resale Scheme by acquiring large quantities of GoPhones from retail stores, and by soliciting others (“Runners”) to purchase GoPhones in large quantities for the benefit of Defendant. Defendant removes the AT&T GoPhones’ original packaging and accessories, copies of the written warranties and ownership manuals, and ships the GoPhones, unlocked or to be unlocked, for resale for substantial profit.

AT&T further asserts that Defendant acquires the GoPhones with the knowledge and intent that the GoPhones will not be activated for use on the AT&T wireless network as required by the terms of the GoPhone contracts. Instead, the GoPhones are computer-hacked. The purpose of this hacking, known as “unlocking,” is to disable software installed in the GoPhones by the manufacturers at the request and expense of AT&T, which enables the use of the GoPhones exclusively on AT&T’s wireless system. The illegally unlocked GoPhones are trafficked and resold as new by Defendant, at a premium, under AT&T trademarks.

AT&T GoPhones are sold subject to terms and conditions (“Terms and Conditions”) which conspicuously restrict and limit the sale and use of the GoPhones. These Terms and Conditions are set forth in printed inserts that are included in the packaging of every AT&T GoPhone and are posted on AT&T’s website. The Terms and Conditions and language on the GoPhone packaging constitute a valid binding contract.

AT&T asserts that Defendant has breached the Terms and Conditions by, *inter alia*, purchasing AT&T GoPhones with the intent that such phones will not be activated and used on AT&T’s service, but instead with the intent to unlock, repackage, and resell the phones, and by otherwise using the GoPhones for a fraudulent purpose.

AT&T further claims the actions of Defendant violate federal and state laws and result in several causes of action, including but not limited to, breach of contract; infringement of federally registered trademarks under 15 U.S.C. § 1114; federal trademark dilution; federal trademark infringement and false advertising under 15 U.S.C. § 1125(a)(1)(A) and (B); unfair competition under Texas common law; contributory trademark infringement; tortious interference with business relationships and prospective advantage; tortious interference with contract; harm to AT&T’s goodwill and business reputation; civil conspiracy; and unjust

enrichment. Defendant takes the position that the factual conduct as alleged by AT&T, if demonstrated by a preponderance of the evidence, would prove the statutory and common law causes of action listed above.

Based on the respective positions advocated by the parties and having reviewed the Complaint and file and being otherwise duly and fully advised in the premises, it is hereby ORDERED, ADJUDGED and DECREED that:

1. This Court has jurisdiction over all the parties and all of the claims set forth in AT&T's complaint.
2. The Court finds that AT&T has the right to use and enforce said rights in the stylized AT&T and GOPHONE marks, which are used in connection with telecommunications products and services, as depicted below:



AT&T uses the AT&T Marks on and in connection with its telecommunications products and services. Defendant's use of the AT&T Marks without authorization in connection with the Illicit Bulk Resale Scheme has caused, and will further cause, a likelihood of confusion, mistake and deception as to the source of origin of the counterfeit products and the relationship between AT&T and Defendant. Defendant's activities constitute false designation of origin, false descriptions and representations, and false advertising in commerce in violation of § 43(a) of the Lanham Act, 15 U.S.C. §1125(a)(1)(A) and (B). Defendant knew or should have known he had no legal right to use the AT&T Marks on infringing products.

3. The Court finds that Defendant's participation in the Illicit Bulk Resale Scheme violates the federal and state laws identified in AT&T's complaint and constitutes breaches of contract; infringement of federally registered trademarks under 15 U.S.C. § 1114; federal trademark dilution; federal trademark infringement and false advertising under 15 U.S.C. § 1125(a)(1)(A) and (B); unfair competition under Texas common law; contributory trademark infringement; tortious interference with business relationships and prospective advantage; tortious interference with contract; harm to AT&T's goodwill and business reputation; civil conspiracy; and unjust enrichment.

4. The Court finds that the Terms and Conditions and the language on the GoPhone packaging constitute valid binding contracts enforceable against Defendant. The Court finds that facilitating others to use GoPhones in conjunction with service providers other than AT&T and tampering with or altering, or facilitating or assisting others to tamper with or alter, GoPhones or the GoPhones' software each constitute independent breaches of contract for which AT&T is entitled to relief.

5. The Court further finds that Defendant's participation in the Illicit Bulk Resale Scheme, if proven, has caused substantial and irreparable harm to AT&T for which there is no adequate remedy at law, and will continue to cause substantial and irreparable harm to AT&T unless enjoined. On review and consideration of all relevant factors, AT&T is entitled to injunctive relief on the claims seeking injunctive relief as set forth in the Complaint.

6. Final judgment is hereby entered against Defendant Rafiq Wazir Ali, individually and doing business as Fone Xchange, and in favor of the Plaintiffs AT&T Mobility LLC and AT&T Mobility II LLC, on all of the claims set forth in AT&T's Complaint.

7. Defendant Rafiq Wazir Ali, individually and doing business as Fone Xchange, and each and all of his past and present respective officers, directors, successors, assigns, parents, subsidiaries, affiliates, related companies, predecessors-in-interest, agents, employees, attorneys, accountants, investigators, consultants, heirs, personal representatives, beneficiaries, relatives, and all other persons or entities acting or purporting to act for him or on his behalf, including but not limited to any corporation, partnership, proprietorship or entity of any type that is in any way affiliated or associated with Defendant or Defendant's representatives, agents, assigns, parent entities, employees, independent contractors, accountants, attorneys, associates, servants, affiliated entities, and any and all persons and entities in active concert and participation with Defendant who receive notice of this Order, shall be and hereby are PERMANENTLY ENJOINED from:

- a. purchasing and/or selling any wireless mobile phone that they know or should know bears any AT&T or GoPhone Trademark, any other trademark owned or used by AT&T. Specifically, Defendant is enjoined from purchasing, selling, and/or shipping, directly or indirectly, all models of GoPhones, regardless of whether such devices are new or used, whether in or out of their original packaging, or whether "locked," "unlocked," or otherwise modified in any way by any person.
- b. unlocking or altering any GoPhone;
- c. accessing, altering, erasing, tampering with, deleting or otherwise disabling the software contained in any GoPhone;
- d. facilitating or in any way assisting other persons or entities who Defendant knows or should know are engaged in unlocking GoPhones and/or engaged in hacking,

altering, erasing, tampering with, deleting or otherwise disabling the software installed in GoPhones;

- e. facilitating or in any way assisting other persons or entities who Defendant knows or should know are engaged in any of the acts prohibited under this Permanent Injunction, including, without limitation, the buying and/or selling of unlocked GoPhones; and
- f. knowingly using the AT&T or GoPhone Marks or any other trademark, service mark, trade name and/or trade dress owned or used by AT&T now or in the future, without AT&T's prior written authorization.

8. The Court retains jurisdiction over this matter and the parties to this action in order to enforce any violation of the terms of this Permanent Injunction by a finding of contempt and an order for payment of compensatory damages to AT&T in an amount of \$5,000 for (a) each GoPhone that Defendant is found to have purchased, sold, or unlocked in violation of this injunction, and (b) each GoPhone for which Defendant is found to have facilitated or assisted in the purchase, sale, or unlocking in violation of this injunction; or in an amount of \$1,000,000.00, whichever is greater. The Court finds that these amounts are compensatory and will serve to compensate AT&T for its losses in the event Defendant violates the terms of this Order.

9. The prevailing party in any proceeding to enforce compliance with the terms of this Permanent Injunction shall be entitled to an award of its attorneys' fees and costs.

10. AT&T's address is General Counsel, AT&T Mobility LLC, 5565 Glenridge Connector, Suite 1700, Atlanta, GA 30342.

11. Defendant's address is Rafiq Wazir Ali, individually and d/b/a Fone Xchange 3202 San Salvador Place, Katy, Texas 77494.

SIGNED and ENTERED this 26<sup>th</sup> day of June, 2008.

  
UNITED STATES DISTRICT JUDGE