

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

T-MOBILE USA, INC., a	§	
Delaware Corporation,	§	
	§	
Plaintiff,	§	
	§	
	§	Civil Action No: 4:08-cv-01260
v.	§	
	§	JURY TRIAL DEMAND
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.	§	

**FINAL JUDGMENT AND PERMANENT INJUNCTION AGAINST
DEFENDANT RAFIQ WAZIR ALI, INDIVIDUALLY AND D/B/A FONE XCHANGE**

Plaintiff T-Mobile USA, Inc. (“T-Mobile”), brought the above-captioned lawsuit against, *inter alia*, Defendant Rafiq Wazir Ali, individually and d/b/a Fone Xchange, asserting that Defendant is engaged in an unlawful enterprise involving the acquisition, sale, and counterfeiting of large quantities of T-Mobile prepaid wireless telephones (“T-Mobile Prepaid Handsets” or “Handsets”) that causes substantial and irreparable harm to T-Mobile (the “Subsidy Theft Scheme”).

T-Mobile asserts that Defendant perpetrates the Subsidy Theft Scheme by acquiring bulk quantities of T-Mobile Prepaid Handsets from retail stores such as Wal-Mart or Target. T-Mobile further asserts that Defendant solicits others to purchase T-Mobile Prepaid Handsets in bulk for his own benefit. T-Mobile asserts that Defendant acquires the T-Mobile Prepaid Handsets with the actual or constructive knowledge and intent that the Handsets will not be activated for use on the T-Mobile prepaid wireless network and that the Handsets will be computer-hacked. The purpose of this hacking, known as “unlocking,” is to erase, remove

and/or disable proprietary software installed in the Handsets, which enables the use of the T-Mobile Prepaid Handsets exclusively on T-Mobile's prepaid wireless system. T-Mobile asserts that the unlocked Handsets are then trafficked and resold overseas, at a premium, under the T-Mobile trademarks for unauthorized use outside of the T-Mobile prepaid wireless system.

T-Mobile Prepaid Handsets are sold subject to terms and conditions ("Terms and Conditions") which restrict and limit the sale and use of T-Mobile Prepaid Handsets. These Terms and Conditions are set forth in printed inserts that are included in the packaging with every T-Mobile Phone, and are also available to the public on T-Mobile's website. The Terms and Conditions are referenced in printed warnings that are placed on the outside of the retail packaging of the Handsets. The Terms and Conditions and language on the packaging constitute a valid binding contract.

Pursuant to the Terms and Conditions and the language on the packaging, purchasers of T-Mobile Prepaid Handsets agree, among other things: not to use the Handsets for a fraudulent purpose that "negatively impact[s] [T-Mobile's] customers, employees, business, ability to provide quality service, [and] reputation." T-Mobile Terms and Conditions, ¶ 7.

As a result of the Subsidy Theft Scheme, T-Mobile has asserted claims against Defendant for breach of contract; 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 advantages; harm to T-Mobile's goodwill and business reputation under TEX. BUS. & COM. CODE ANN. § 16.29 (Vernon 2007); civil conspiracy; unjust enrichment; and conspiracy to induce breach of contract. The Court, having reviewed the Complaint and file and being otherwise duly advised in the premises, it is hereby

ORDERED, ADJUDGED and DECREED that:

1. This Court has jurisdiction over the parties and all of the claims set forth in T-Mobile's Complaint.

2. The Court finds that T-Mobile has the right to use and enforce said rights in the standard character mark T-Mobile and a stylized T-Mobile Mark (collectively, the "T-Mobile Marks") as depicted below:

T-Mobile®

T-Mobile uses the T-Mobile Marks on and in connection with its telecommunications products and services. Defendant's use of the T-Mobile Marks without authorization in connection with the Subsidy Theft 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 T-Mobile 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 that T-Mobile is the exclusive licensee of the T-Mobile Marks and that Defendant had no legal right to use the T-Mobile Marks on infringing products.

3. The Court finds that the Terms and Conditions and the language on the packaging constitute a valid binding contract enforceable against Defendant. The Court finds that facilitating others to use T-Mobile Prepaid Handsets in conjunction with service providers other than T-Mobile; tampering with or altering T-Mobile Prepaid Handsets or the Handsets' software; and/or entering unauthorized PIN numbers in the Handsets for purposes of unlocking the Handsets or facilitating others in such acts, constitute independent breaches of contract for which T-Mobile is entitled to relief.

4. The Court finds that the conduct alleged in the Complaint, if proven would violate the following statutes: 15 U.S.C. § 1125(a)(1)(A) and (B) (federal trademark infringement and false advertising) and TEX. BUS. & COM. CODE ANN. § 16.29 (Vernon 2007) (harm to T-Mobile's goodwill and business reputation). The Court further finds that the conduct alleged in the Complaint, if proven, would constitute unfair competition under Texas common law; contributory trademark infringement; tortious interference with T-Mobile's business relationships and prospective advantages; civil conspiracy; unjust enrichment; and conspiracy to induce breach of contract, and has caused substantial and irreparable harm to T-Mobile, and would continue to cause substantial and irreparable harm to T-Mobile unless enjoined.

5. T-Mobile has suffered damages, including loss of goodwill and damage to its reputation, as a result of Defendant's conduct. T-Mobile is entitled to injunctive relief on the claims set forth in the Complaint.

6. Final judgment is hereby entered against Defendant Rafiq Wazir Ali, individually and d/b/a Fone Xchange, and in favor of the Plaintiff, T-Mobile USA, Inc., on all of the claims set forth in T-Mobile's Complaint.

7. Rafiq Wazir Ali, individually and d/b/a Fone Xchange, and his successors, assigns, parents, subsidiaries, affiliates, related companies, predecessors-in-interest, representatives, agents, employees, independent contractors, servants, and any and all persons and entities, including his relatives and associates, in active concert and participation with him, who receive notice of this order, shall be and hereby are PERMANENTLY ENJOINED from:

- a. Purchasing, selling and/or shipping any wireless mobile device that they know or should know bears the T-Mobile Marks or any marks likely to cause confusion with the T-Mobile Marks or any other trademark, service mark, trade name and/or trade dress owned or used by T-Mobile now or in the future

(collectively, the “T-Mobile Handsets”). Specifically, they are enjoined from purchasing, selling, and/or shipping, directly or indirectly, all models of T-Mobile Handsets, 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. This injunction applies to all currently available T-Mobile Handsets and those that may be offered for sale in the future.

- b. unlocking of any T-Mobile Handset;
- c. supplying T-Mobile Handsets to or facilitating or in any way assisting other persons or entities who they know or should know are engaged in unlocking T-Mobile Handsets and/or hacking, altering, erasing, tampering with, deleting or otherwise disabling the software installed in T-Mobile Handsets;
- d. supplying T-Mobile Handsets to, or facilitating or assisting in any way, persons or entities who they know or should know are engaged in any of the acts prohibited under this permanent injunction including, without limitation, the buying, selling and/or shipping of locked or unlocked T-Mobile Handsets; and
- e. knowingly using the T-Mobile Marks or any other trademark, service mark, trade name and/or trade dress owned or used by T-Mobile now or in the future, without T-Mobile’s prior written authorization.

8. The purchase, sale or shipment of any T-Mobile Handsets without T-Mobile’s prior written consent within and/or outside of the continental United States is and shall be deemed a presumptive violation of this permanent injunction.

9. The last known address of Rafiq Wazir Ali is 3202 San Salvador Place, Katy, Texas 77494.

10. The address of Plaintiff, T-Mobile USA, Inc. is 12920 S.E. 38th Street, Bellevue, Washington 98006.

11. Defendant waives his right to appeal from the entry of this Final Judgment.

12. The Court retains jurisdiction over this matter and the parties to this action in order to enforce the terms of this Permanent Injunction by a finding of contempt and an order for payment of compensatory damages to T-Mobile USA, Inc. in an amount of not less than \$5,000 for each T-Mobile Handset that a Defendant is found to have purchased, sold, altered, unlocked or shipped in violation of this injunction or a single damages award in the amount of \$1,000,000.00, which ever is greater.

13. 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.

14. The Court hereby finds, pursuant to Fed. R. Civ. P. 54(b), that there is no just reason for delay and orders that Judgment shall be entered against Defendant as set forth herein.

Signed on this 12 day of July, 2008.



UNITED STATES DISTRICT JUDGE

Copies furnished to:
James B. Baldinger, *counsel for Plaintiff*
Bassey Akpaffiong, *counsel for Defendant*