

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

AT&T MOBILITY LLC and AT&T
INTELLECTUAL PROPERTY II L.P.,

Plaintiffs

v.

IBRAHIM UMAR and H&I
COMMUNICATIONS, LLC a Florida limited
liability company,

Defendants.

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CASE NO.: 09-cv-61207
MARTINEZ/BROWN

**CONSENT DECREE ENTERING FINAL JUDGMENT
AND PERMANENT INJUNCTION AGAINST DEFENDANTS**

Plaintiffs AT&T Mobility LLC and AT&T Intellectual Property II L.P. (collectively “AT&T”), brought the above-captioned lawsuit against Defendants, Ibrahim Umar and H&I Communications, LLC (collectively referred to as “Defendants”), alleging that Defendants are engaged in an unlawful enterprise involving 1) the acquisition, sale, and alteration of large quantities of AT&T wireless devices sold for the purpose of use with AT&T’s prepaid service (referred to herein as “GoPhones” or “Phones”) and related activation materials, that were purchased from retail outlets, 2) the solicitation and payment of others to bulk purchase Phones for Defendants’ benefit, 3) computer hacking and erasing or otherwise disabling software installed in the Phones or selling the Phones to others who disable the software, 4) selling or facilitating the sale of the altered Phones as new under the AT&T trademarks for unauthorized use outside of the AT&T wireless system for profit, and 5) illicitly selling and/or fraudulently activating the SIM cards utilizing the PIN numbers that come with the prepaid devices to appropriate airtime (the “Illicit Bulk Retail Scheme”).

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 with 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 Defendants have violated 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 improperly unlock, repackage, and resell the phones, and by otherwise using the GoPhones in violation of the Terms and Conditions.

As a result of Defendants’ involvement in the Illicit Bulk Retail Scheme, AT&T asserted claims against Defendants for breach of contract; federal trademark infringement; federal trademark dilution; federal trademark infringement and false advertising under 15 U.S.C. § 1125(a)(1)(A) and (B); common law unfair competition; contributory trademark infringement; tortious interference with business relationships and prospective advantage; tortious interference with contract; unfair competition and false advertising under Florida Statutes; civil conspiracy; unjust enrichment; and conspiracy to induce breach of contract.

Based on the parties’ Stipulation for Entry of Final Judgment and Permanent Injunction (D.E. No. 3) and their agreement to the entry of this Order, 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. 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. The AT&T and GOPHONE marks are valid, distinctive, protectable, famous, have acquired secondary meaning, and are associated exclusively with AT&T.

3. Defendants' involvement in the Illicit Bulk Retail Scheme constitutes breach of contract; federal trademark infringement; federal trademark dilution; federal trademark infringement and false advertising under 15 U.S.C. § 1125(a)(1)(A) and (B); common law unfair competition; contributory trademark infringement; tortious interference with business relationships and prospective advantage; tortious interference with contract; unfair competition and false advertising under Florida Statutes; civil conspiracy; unjust enrichment; and conspiracy to induce breach of contract.

4. The Terms and Conditions and the language on the GoPhone packaging constitute a valid binding contract enforceable against Defendants. 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 constitute independent breaches of contract for which AT&T is entitled to relief.

5. Defendants' participation in the Illicit Bulk Retail Scheme, including, *inter alia* the purchase and sale of GoPhones and activation kits causes 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.

6. AT&T is entitled to damages and injunctive relief on the claims as set forth in the Complaint.

7. Final judgment is hereby entered, jointly and severally, against Defendants Ibrahim Umar and H&I Communications, LLC and in favor of the Plaintiffs AT&T Mobility LLC and AT&T Intellectual Property II L.P., on all claims set forth in AT&T's complaint in the principal amount of FIVE MILLION DOLLARS AND ZERO CENTS (\$5,000,000.00 (U.S.)), which shall bear interest at the legal rate, for which let execution issue forthwith.

8. Ibrahim Umar and H&I Communications, LLC¹ shall be and hereby are PERMANENTLY ENJOINED from:

- a. purchasing, selling, unlocking, reflashing, altering, advertising, soliciting and/or shipping, directly or indirectly, any AT&T GoPhones as well as related "Activation Materials" which consist of SIM Cards, GoPhone airtime cards, PIN numbers, and/or other mechanism, process or materials used to activate service or acquire airtime in connection with a new activation;
- b. purchasing, selling, unlocking, reflashing, altering, advertising, soliciting and/or shipping, directly or indirectly, any AT&T wireless handset that Defendants know or should know bears any AT&T or GoPhone Trademark, any other trademark owned or used by AT&T. Unless

¹ This Court cannot enjoin persons who are not parties to this action.

expressly authorized by AT&T in writing, Defendants are enjoined from purchasing and/or selling, directly or indirectly, all models of phones currently offered for sale by AT&T or that may be offered for sale in the future, as listed and updated from time to time on AT&T's website: <http://www.att.com>, regardless of whether such devices are in or out of their original packaging, or whether "locked," "unlocked," or otherwise modified in any way by any person;

- c. accessing, altering, erasing, tampering with, deleting or otherwise disabling the software contained in any GoPhone and/or fraudulently activating Activation Materials;
- d. facilitating or in any way assisting other persons or entities who Defendants know or should know are engaged in unlocking GoPhones and/or 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 Defendants know 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 fraudulently activating or selling Activation Materials for fraudulent activation; and
- f. knowingly using the AT&T or GoPhone Marks or any mark owned or used by AT&T, or that is likely to cause confusion with AT&T's marks, without AT&T's prior written authorization.

9. The address of Defendant Ibrahim Umar is 10482 Southwest 56th Street, Cooper City, Florida 33328.

10. The address of Defendant H&I Communications, LLC is 141 South State Road 7, Plantation, Florida 33317.

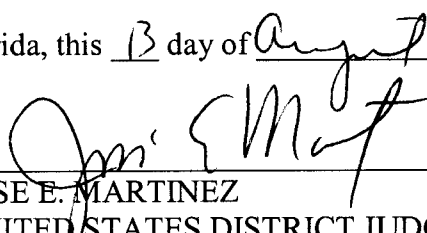
11. The address of Plaintiffs AT&T Mobility LLC and AT&T Intellectual Property II L.P. is 1025 Lenox Park Blvd., Atlanta, GA 30319.

12. 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. The parties have agreed that any violation of the Permanent Injunction will result in payment of compensatory damages to AT&T in an amount of \$5,000 for each AT&T GoPhone or item of Activation Material that Defendants are found to have purchased, sold or unlocked in violation of this Injunction. The Court also retains jurisdiction over this matter and the parties to this action to enforce the parties' settlement agreement.

13. This Case is **CLOSED** and all pending motions are **DENIED** as **MOOT**.

14. It is Plaintiffs' responsibility to immediately serve Defendants with a copy of this Order and to file a Certificate of Service stating that this Order was served on Defendants and listing the addresses where the Order was served.

DONE AND ORDERED in Miami, Florida, this 13 day of August, 2009.



JOSE E. MARTINEZ
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Magistrate Judge Brown
All Counsel of Record