

1 Megan L. Wagner (California Bar No. 130752)
2 *megan@kohutlaw.com*
3 Sarah K. Kohut (California Bar No. 197655)
4 *sarah@kohutlaw.com*
5 KOHUT & KOHUT, LLP
6 600 Anton Blvd., Suite 1075
7 Costa Mesa, California 92626
8 Telephone: (714) 384-4130
9 Facsimile: (714) 384-4131

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8 James B. Baldinger
9 *jbaldinger@carltonfields.com*
10 CARLTON FIELDS, P.A.
11 P.O. Box 150
12 West Palm Beach, FL 33402-0150
13 Telephone: (561) 659-7070
14 Facsimile: (561) 659-7368
15 *Attorneys for TracFone Wireless, Inc.*

14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA

15 TRACFONE WIRELESS, INC., a)
16 Delaware Corporation,)
17 Plaintiff,)
18 v.)
19 C-TECH WHOLESALE INC., a)
20 California Corporation; HASSAN)
21 CHAALAN; and JOHN DOES 1-)
22 10, and XYZ COMPANIES 1-10,)
23 Defendants.)

Case No.: 8:08-CV-00964 SGL (JCRx)
**FINAL JUDGMENT AND
PERMANENT INJUNCTION
AGAINST DEFENDANTS C-TECH
WHOLESALE, INC. AND HASSAN
CHAALAN**

25 Plaintiff, TRACFONE WIRELESS, INC. (“TracFone”), brought the above-
26 captioned lawsuit against C-TECH WHOLESALE, INC., a California corporation,
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1 (“C-Tech”) and HASSAN CHAALAN, individually (collectively, “Defendants”),
2 alleging that the Defendants are engaged in an unlawful enterprise involving the
3 acquisition, sale and alteration of large quantities of TracFone and TracFone’s
4 NET10 and SafeLink branded prepaid wireless telephones (“TracFone/NET10
5 Prepaid Phones” or “Phones”) purchased from various retail outlets such as Wal-
6 Mart, Target and Sam’s Club, the solicitation and payment of others to bulk
7 purchase TracFone/NET10 Prepaid Phones for Defendants’ benefit, computer
8 hacking and erasing or otherwise disabling the prepaid software
9 (“TracFone/NET10 Prepaid Software”) installed in the Phones and essential for
10 consumers to access TracFone’s prepaid wireless network. The alleged unlawful
11 business practice involves the unauthorized and/or unlawful purchase, resale and/or
12 trafficking of TracFone/NET10 Prepaid Phones, the unauthorized and/or unlawful
13 unlocking and/or reflashing of TracFone/NET10 Prepaid Phones and/or alteration,
14 copying, and/or accessing of TracFone’s copyrighted and proprietary software
15 computer code installed in the Phones, or reselling the Phones to others who
16 disable the software, and ultimately sell the altered Phones as new to unsuspecting
17 consumers under the TracFone, Net10, or SafeLink trademarks for unauthorized
18 use outside of the TracFone prepaid wireless system for profit (the “Illicit Bulk
19 Resale Scheme”). Defendant is alleged to have participated in the Illicit Bulk
20 Resale Scheme.

21 TracFone/NET10 Prepaid Phones are sold subject to terms and conditions
22 (“Terms and Conditions”) which conspicuously restrict and limit the sale and use
23 of TracFone/NET10 Prepaid Phones. These Terms and Conditions are set forth in
24 printed inserts that are included in the packaging with every TracFone/NET10
25 Prepaid Phone, and are also available to the public on TracFone’s website. The
26 Terms and Conditions are also referenced in printed warnings that are placed on the
27 outside of the retail packaging of the Phones. TracFone alleges that the Terms and

1 Conditions and language on the packaging constitute a valid binding contract
2 between Defendants and TracFone.

3 Pursuant to the Terms and Conditions and the language on the packaging,
4 purchasers of TracFone/NET10 Prepaid Phones agree: (a) to use the Phones only in
5 conjunction with the TracFone or NET10 prepaid wireless service; (b) not to
6 tamper with or alter TracFone/NET10 Prepaid Phones or the Phones' software,
7 enter unauthorized PIN numbers in the Phones, engage in any other unauthorized
8 or illegal use of the Phones or the TracFone or NET10 service, or assist others in
9 such acts; and (c) not to export any TracFone/NET10 Prepaid Phones outside of the
10 TracFone or NET10 wireless system coverage area ("Coverage Area"). TracFone
11 alleges that Defendants have, in violation of the Terms and Conditions, among
12 other things, unlawfully exported TracFone/NET10 Prepaid Phones to foreign
13 countries outside of the Coverage area or knowingly facilitated others who have
14 done so; facilitated others to use the Phones without the TracFone or NET10
15 prepaid wireless service; and altered TracFone/NET10 Prepaid Phones and the
16 Phones' software or facilitated others who have done so.

17 As a result of Defendants' alleged involvement in the Illicit Bulk Resale
18 Scheme, TracFone asserted claims against the Defendants for Breach of Contract;
19 Federal Trademark Infringement in violation of 15 U.S.C. § 1114.; Federal Unfair
20 Competition in violation of 15 U.S.C. § 1125(A); Common Law Unfair
21 Competition; Contributory Trademark Infringement; Copyright Infringement of
22 Software in violation of Title 17 of the United States Code; Circumvention of
23 Technological Measures That Control Access to Copyrighted Software and
24 Trafficking in Services That Circumvent Technological Measures Protecting
25 Copyrighted Software in violation of the Digital Millennium Copyright Act, 17
26 U.S.C. § 1201, *et seq.* ("DMCA"); Dilution of TracFone's Marks, Tortious
27 Interference with Business Relationships and Prospective Advantage; Tortious

1 Interference with Contract; Dilution of Trademarks under Common Law Unfair
2 Competition; Conspiracy to Induce Breach of Contract; and Unfair Competition
3 and violation of California Business Code § 17200 *et seq.*

4 Accordingly, it is hereby,

5 **ORDERED, ADJUDGED and DECREED** that:

6 1. This Court has jurisdiction over all the parties and all of the claims
7 set forth in TracFone’s Complaint.

8 2. The Court finds that TracFone owns all right, title, and interest in
9 and to United States Trademark Registration No. 2,114,692, for “TracFone,” issued
10 on November 18, 1997 and based on a first use date of June 30, 1996; United
11 States Trademark Registration No. 2,761,017, for “TracFone,” issued on
12 September 9, 2003 and based on a first use date of December 2000; United States
13 Trademark Registration No. 3,224,929, for “TracFone,” issued on April 3, 2007
14 and based on a first use date of December 31, 2005; United States Trademark
15 Registration No. 3,222,623, for “TracFone,” issued on March 27, 2007 and based
16 on a first use date of December 31, 2005; United States Trademark Registration
17 No. 3,118,250, for “Net10,” on July 18, 2006 and based on a first use date of
18 March 1, 2005; United States Trademark Registration No. 3,255,754, for “Net10,”
19 issued on June 26, 2007 and based on a first use date of December 31, 2005;
20 United States Trademark Registration No. 3,253,506, for “Net10,” issued on June
21 19, 2007 and based on a first use date of December 31, 2005; United States
22 Trademark Registration No. 3,251,389, for “Net10,” issued on June 12, 2007 and
23 based on a first use date of December 31, 2005, and United States Trademark
24 Application Serial No. 77,506,332 for SafeLink Wireless and Design, in
25 International Class 38, application filed on June 24, 2008 (collectively the
26 “TracFone/Net10/SafeLink Trademarks”).

1 exporting TracFone/NET10 Prepaid Phones outside of the Coverage Area, or
2 assisting others in such acts, respectively, if proven, would constitute independent
3 breaches of contract for which TracFone is entitled to relief.

4 7. The Court further finds that the alleged Illicit Bulk Resale Scheme
5 has caused substantial and irreparable harm to TracFone, and will continue to cause
6 substantial and irreparable harm to TracFone unless enjoined.

7 8. TracFone is entitled to injunctive relief and damages on the claims
8 set forth in the Complaint.

9 9. On November 27, 2006, the Librarian of Congress, upon the
10 recommendation of the Register of Copyrights, issued a Final Rule setting forth six
11 (6) classes of copyrighted works that are exempt from the provisions of the
12 DMCA, including:

13
14 Computer programs in the form of firmware that enable wireless
15 telephone handsets to connect to a wireless telephone communication
16 network, when circumvention is accomplished for the sole purpose of
17 lawfully connecting to a wireless telephone communication network.

18 71 Fed. Reg. 68472 (Nov. 27, 2006) (amending 37 C.F.R. § 201.40(b)). The Court
19 finds that this exemption does not absolve any participants in the Illicit Bulk Resale
20 Scheme of liability for their violations of the DMCA, because the purchase and
21 resale of TracFone/NET10 Prepaid Phones for the purpose of reselling those
22 handsets for a profit, and not “for the sole purpose of lawfully connecting to a
23 wireless telephone communication network,” does not come within the scope of the
24 exemption. Because the exemption does not apply to the conduct alleged in this
25 case, there is no need for the Court to address the validity of the exemption or the
26 circumstances surrounding its enactment.

27 10. Final judgment is hereby entered against Defendants, jointly and
28 severally, and in favor of the Plaintiff, TracFone Wireless, Inc., a Delaware

1 corporation, on all of the claims set forth in TracFone’s complaint, in the principal
2 amount of FIVE MILLION DOLLARS AND ZERO CENTS (\$5,000,000.00),
3 which shall bear interest at the legal rate, and for which let execution issue
4 forthwith.

5 11. Defendant C-Tech, and each and all of its respective officers,
6 directors, successors, assigns, parents, subsidiaries, affiliates, related companies,
7 predecessors-in-interest, principals, agents, employees, investigators, and all other
8 persons or entities acting or purporting to act for him/her/it or on his/her/its behalf,
9 including but not limited to any corporation, partnership, proprietorship or entity of
10 any type that is in any way affiliated or associated with any Defendant or any
11 Defendant’s representatives, agents, assigns, parent entities, employees, associates,
12 servants, affiliated entities, and Chaalan and each of his assigns, personal
13 representatives, agents, employees, investigators, and all other persons and entities
14 acting or purporting to act for him or on his behalf, including but not limited to any
15 corporation, partnership, proprietorship or entity of any type that is in any way
16 affiliated or associated with Defendant, and any and all persons and entities in
17 active concert and participation with any Defendant, are hereby PERMANENTLY
18 ENJOINED from:

19 a. purchasing and/or selling any wireless mobile handset that they know
20 or should know bears, or at one time bore, any TracFone/Net10/SafeLink
21 Trademark, any other trademark owned or used by TracFone, or any
22 other model of wireless mobile phone sold or marketed by TracFone
23 (“TracFone/NET10 Handsets”). Specifically, the Defendants are
24 enjoined from purchasing and/or selling all models of wireless phones
25 currently offered for sale by TracFone, or that may be offered for sale in
26 the future, as listed and updated from time to time on TracFone’s and
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NET10's websites, www.tracfone.com, including without limitation the following TracFone/NET10 handsets:

Motorola W175	Nokia 1600	LG 225
Motorola W260g	Nokia 2126	LG 600G
Motorola C139	Nokia 2126i	LG 300G
Motorola C261	Nokia 2600	LG 400G
Motorola W260g	Nokia 1100	LG 3280
Motorola W370	Nokia 1112	LG CG225
Motorola W370R	Nokia 1221	LG 1500
Motorola W375g	Nokia 2285	LG 200C
Motorola W375		Kyocera K126C
Motorola V176		
Motorola V170		
Motorola V171		
Motorola C155		
Motorola C343		
Motorola V60		

- b. rekitting, reflashing and/or unlocking of any TracFone/NET10 Handset;
- c. accessing, altering, erasing, tampering with, deleting or otherwise disabling TracFone's proprietary prepaid cellular software contained within any model of TracFone/NET10 Handsets;
- d. facilitating or in any way assisting other persons or entities who Defendants know or should know are engaged in rekitting, reflashing and/or unlocking TracFone/NET10 Handsets and/or hacking, altering, erasing, tampering with, deleting or otherwise disabling the software installed in TracFone/NET10 Handsets;
- 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

1 limitation, the buying and/or selling of unlocked TracFone/NET10
2 Handsets; and

3 f. knowingly using the TracFone/Net10/SafeLink Trademarks or any
4 other trademark owned or used by TracFone, or that is likely to cause
5 confusion with TracFone/Net10/SafeLink's Trademarks, without
6 TracFone's prior written authorization.

7 12. If any defendant to this action violates the terms of this Permanent
8 Injunction, the Court will, upon TracFone's filing of an Affidavit or Declaration of
9 Violation, order the payment of compensatory damages to TracFone in the amount
10 of Five Thousand Dollars and No Cents (\$5,000.00 (U.S.)) for each Phone
11 purchased, sold, unlocked, reflashed, altered, rekitted, advertised, solicited and/or
12 shipped in violation of the Permanent Injunction, or a single damages award of One
13 Million Dollars and No Cents (\$1,000,000.00 (U.S.)), whichever is greater. The
14 Court finds that these amounts are compensatory and reasonable estimations of the
15 minimum damages suffered by TracFone for such a breach and will serve to
16 compensate TracFone for its losses in the event a Defendant violates the terms of
17 this Permanent Injunction.

18 13. The address of Defendant, C-Tech Wholesale, Inc. is 4141 Ball
19 Road, #103, Cypress, California 90630.

20 14. The address of Defendant, Hassan Chaalan is 4122 Elizabeth Court,
21 Cypress, California 90630.

22 15. The address of Plaintiff, TracFone Wireless, Inc. is 9700 NW 112th
23 Avenue, Miami, Florida 33178.

24 16. The Court retains jurisdiction over this matter and the parties to this
25 action in order to enforce any violation of the terms of this Permanent Injunction
26 and to enforce the terms of the parties' settlement agreement (including providing
27 any remedies contained therein). Upon TracFone's filing of an affidavit or

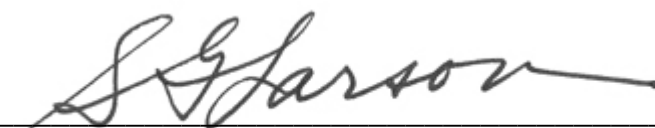
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declaration that any one or all of the Defendants have defaulted under the settlement agreement and/or violated the permanent injunction, the Court shall find the Defendants in contempt and shall award TracFone compensatory damages.

DONE AND ORDERED July 17, 2009.

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UNITED STATES DISTRICT JUDGE

Copies furnished to:

James B. Baldinger, *counsel for Plaintiff TracFone Wireless, Inc*
Michael L. Schack, *counsel for Defendants C-Tech Wholesale, Inc. and Hassan Chaalan*