

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

TRACFONE WIRELESS, INC.,)	
a Delaware Corporation,)	
)	
Plaintiff,)	CIVIL ACTION NO.
)	
VS.)	3:08-CV-0628-G
)	
WIRELESS EXCLUSIVE USA, LLC,)	ECF
a Texas Corporation, ET AL.,)	
)	
Defendants.)	

**FINAL JUDGMENT AND
PERMANENT INJUNCTION AGAINST DEFENDANTS**

Plaintiff, TracFone Wireless, Inc. (“TracFone”), brought the above-captioned lawsuit against Wireless Exclusive USA, LLC, a dissolved Texas limited liability company (“Wireless Exclusive”), The Connections Communications, Inc., a Texas corporation (“Connection”), Moiz Khoja (“Khoja”), individually, and Sharjeel Surani (“Surani”), individually (Wireless Exclusive, Connection, Khoja and Surani are collectively referred to as “defendants”), alleging that the defendants are engaged in an unlawful enterprise involving the acquisition, sale and alteration of large quantities of TracFone and TracFone’s NET10 branded prepaid wireless telephones

(“TracFone/NET10 Prepaid Phones” or “Phones”) purchased from various retail outlets such as Wal-Mart, Target and Sam’s Club, the solicitation and payment of others to bulk purchase TracFone/NET10 Prepaid Phones for defendants’ benefit, computer hacking and erasing or otherwise disabling the prepaid software (“TracFone/NET10 Prepaid Software”) installed in the Phones essential for consumers to access TracFone’s prepaid wireless network, or reselling the Phones to others who disable the software, and ultimately selling the altered Phones as new under TracFone’s trademarks for the unauthorized use outside of the TracFone prepaid wireless system for profit (the “Bulk Resale Scheme”).

TracFone/NET10 Prepaid Phones are sold subject to terms and conditions (“Terms and Conditions”) which conspicuously restrict and limit the sale and use of TracFone/NET10 Prepaid Phones. These Terms and Conditions are set forth in printed inserts that are included in the packaging with every TracFone Phone, and are also available to the public on TracFone’s website. The Terms and Conditions are also referenced in printed warnings that are placed on the outside of the retail packaging of the Phones. 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 TracFone/NET10 Prepaid Phones agree: (a) to use the Phones only in conjunction with the TracFone/NET10 prepaid wireless service; (b) not to tamper

with or alter TracFone/NET10 Prepaid Phones or the Phones' software, enter unauthorized PIN numbers in the Phones, engage in any other unauthorized or illegal use of the Phones or the TracFone/NET10 service, or assist others in such acts; and (c) not to export any TracFone/NET10 Prepaid Phones outside of the TracFone/NET10 wireless system coverage area ("Coverage Area"). In violation of the Terms and Conditions, defendants have, among other things, unlawfully exported TracFone/NET10 Prepaid Phones to foreign countries outside of the Coverage area or knowingly facilitated others who have done so; facilitated others to use the Phones without the TracFone/NET10 prepaid wireless service; and altered TracFone/NET10 Prepaid Phones and the Phones' software or facilitated others who have done so.

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

Interference with Contract; Dilution of TracFone's Trademarks under Tex. Code Ann. § 16.29; Civil Conspiracy; and Unjust Enrichment.

Accordingly, 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 TracFone's amended complaint.
2. The court finds that TracFone owns all right, title, and interest in and to United States Trademark Registration No. 2,114,692, issued on November 18, 1997 and based on a first use date of June 30, 1996; United States Trademark Registration No. 2,761,017, issued on September 9, 2003 and based on a first use date of December 2000; United States Trademark Registration No. 3,224,929, issued on April 3, 2007 and based on a first use date of December 31, 2005; United States Trademark Registration No. 3,222,623, issued on March 27, 2007 and based on a first use date of December 31, 2005; United States Trademark Registration No. 3,118,250, on July 18, 2006 and based on a first use date of March 1, 2005; United States Trademark Registration No. 3,255,754, issued on June 26, 2007 and based on a first use date of December 31, 2005; United States Trademark Registration No. 3,253,506, issued on June 19, 2007 and based on a first use date of December 31, 2005; and United States Trademark Registration No. 3,251,389, issued on June 12, 2007 and based on a first use date of December 31, 2005 (collectively, the "TracFone Trademarks").

3. The TracFone Trademarks are valid, distinctive, protectable, famous, have acquired secondary meaning and are associated exclusively with TracFone. The Court finds that the trademark registered under Registration No. 2,114,692 is incontestable.

4. The court further finds that TracFone holds a valid and enforceable copyright registration, TX 6-515-894, on the TracFone Prepaid Software.

5. The court finds that the defendants' involvement in the Bulk Resale Scheme constitutes Breach of Contract; Federal Trademark Infringement in violation of 15 U.S.C. § 1114.; Federal Unfair Competition in violation of 15 U.S.C. § 1125(A); Common Law Unfair Competition; Contributory Trademark Infringement; Copyright Infringement of Software in violation of Title 17 of the United States Code; Circumvention of Technological Measures That Control Access to Copyrighted Software and Trafficking in Services That Circumvent Technological Measures Protecting Copyrighted Software in violation of the Digital Millennium Copyright Act ("DMCA"), 17 U.S.C. § 1201, *et seq.*; Tortious Interference with Business Relationships and Prospective Advantage; Tortious Interference with Contract; Dilution of TracFone's Trademarks under Tex. Code Ann. § 16.29; Civil Conspiracy; and Unjust Enrichment.

6. The court finds that the Terms and Conditions constitute a valid binding contract enforceable against defendants. The court finds that (a) facilitating

others to use TracFone/NET10 Prepaid Phones in conjunction with service providers other than TracFone, (b) tampering with or altering TracFone/NET10 Prepaid Phones or the Phones' software, entering unauthorized PIN numbers in the Phones for purposes of unlocking or reflashing the Phones, or facilitating others in such acts, and/or (c) exporting TracFone/NET10 Prepaid Phones outside of the Coverage Area, or assisting others in such acts, respectively, constitute independent breaches of contract for which TracFone is entitled to relief.

7. The court further finds that defendants' participation in the Bulk Resale Scheme has caused substantial and irreparable harm to TracFone, and will continue to cause substantial and irreparable harm to TracFone unless enjoined.

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

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

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

71 Fed. Reg. 68472 (Nov. 27, 2006) (amending 37 C.F.R. § 201.40(b)). The court finds that this new exemption does not absolve the defendants of liability for their violations of the DMCA as alleged in TracFone's amended complaint, because the defendants' conduct as alleged in this case does not come within the scope of the new exemption. The defendants' purchase and resale of the TracFone handsets was for the purpose of reselling those handsets for a profit, and not "for the sole purpose of lawfully connecting to a wireless telephone communication network." Because the exemption does not apply to the conduct alleged in this case, there is no need for the court to address the validity of the exemption or the circumstances surrounding its enactment.

10. Final judgment is hereby entered, jointly and severally, against defendants, WIRELESS EXCLUSIVE USA, LLC., a dissolved Texas limited liability company, and THE CONNECTIONS COMMUNICATIONS, INC., a Texas corporation, and in favor of the plaintiff, TracFone Wireless, Inc., a Delaware corporation, on all of the claims set forth in TracFone's amended complaint, in the principal amount of FIVE MILLION DOLLARS AND ZERO CENTS (\$5,000,000.00), which shall bear interest at the legal rate, for which let execution issue forthwith.

11. Defendants, WIRELESS EXCLUSIVE, CONNECTIONS, MOIZ KHOJA and SHARJEEL SURANI, and each and all of their 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/her/it or on his/her/its behalf, including but not limited to any corporation, partnership, proprietorship or entity of any type that is in any way affiliated or associated with any defendant or any 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 any 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 TracFone Trademark, any other trademark owned or used by TracFone, or any other model of wireless mobile phone sold or marketed by TracFone ("TracFone/NET10 Handsets"). Specifically, the Defendants are enjoined from purchasing and/or selling all models of TracFone/NET10 Handsets currently offered for sale by TracFone, or that may be offered for sale in the future, as listed and updated from time to time on TracFone's and NET10's websites, http://tracfone.com/activation_pick_brand.jsp and www.net10.com, including without limitation the following TracFone/NET10 handsets:

Motorola W175	M o t o r o l a	Nokia 1112
Motorola W260g	V171	Nokia 1221
Motorola W376g	M o t o r o l a	Nokia 1600
Motorola W370R	C155	Nokia 2285

Motorola W370	M o t o r o l a	LG 400G
Motorola W375	C343	LG 3280
Motorola C261	M o t o r o l a	LG CG225
Motorola C139	V60i	LG 1500
PINK Motorota C139	Nokia 2126	LG 200C
Motorola V176	Nokia 2126i	Kyocera K126C
Motorola V170	Nokia 2600	
	Nokia 1100	
	Nokia 1112	
	Nokia 1221	
	Nokia 1600	

- b. 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 and all models of TracFone/NET10 Handsets;
- d. facilitating or in any way assisting other persons or entities who defendants know or should know are engaged in 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 limitation, the buying and/or selling of unlocked TracFone/NET10 Handsets; and
- f. knowingly using the TracFone Trademarks or any other trademark owned or used by TracFone, or that is likely to cause confusion with TracFone's

Trademarks, without TracFone's prior written authorization.

12. If any defendant to this action violates the terms of this Permanent Injunction, the court will, upon TracFone's filing of an Affidavit or Declaration of Violation, order the payment of compensatory damages to TracFone in the amount of five thousand dollars and no cents (\$5,000.00 (U.S.)) for each TracFone and/or Net10 phone purchased, sold, unlocked, reflashed, altered, advertised, solicited and/or shipped in violation of the Permanent Injunction, or a single damages award of five hundred thousand dollars and no cents (\$500,000.00 (U.S.)), whichever is greater. The court finds that these amounts are compensatory and reasonable estimations of the minimum damages suffered by TracFone for such a breach and will serve to compensate TracFone for its losses in the event a defendant violates the terms of this Permanent Injunction.

13. The address of defendant, Wireless Exclusive USA, LLC, a dissolved Texas Corporation is c/o Moiz Khoja, 1309 Greenway Park Drive, Carrollton, Texas 75007 .

14. The address of defendant The Connections Communications, Inc., a Texas corporation, is c/o Moiz Khoja, 1309 Greenway Park Drive, Carrollton, Texas 75007.


15. The address of defendant Moiz Khoja is 1309 Greenway Park Drive, Carrollton, Texas 75007.

16. The address of defendant Sharjeel Surani is 1309 Greenway Park Drive, Carrollton, Texas 75007.

17. The address of plaintiff, TracFone Wireless, Inc. is 9700 NW 112th Avenue, Miami, Florida 33178.

18. The court retains jurisdiction over this matter and the parties to this action in order to enforce any violation of the terms of the parties Settlement Agreement and/or this Permanent Injunction by a finding of contempt and an order for payment of compensatory damages to TracFone Wireless, Inc. upon TracFone's filing of an affidavit or declaration that any one or all of the defendants have defaulted under the settlement agreement and/or violated the permanent injunction. The court also retains jurisdiction over this matter and the parties to this action to award damages in plaintiff's favor against defendants Moiz Khoja and Sharjeel Surani.

April 6, 2009.



A. JOE FISH
Senior United States District Judge