

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

T-MOBILE USA, INC., a	)	
Delaware Corporation,	)	
	)	Civil Action No:
Plaintiff,	)	
v.	)	1:10-CV-02004-RMB-JS
	)	
	)	
	)	
JOHN J. CAPRIOTTI;	)	
JOHN DOES 1-10;	)	
XYZ COMPANIES 1-10,	)	
	)	
Defendants.	)	
	)	

**DEFAULT FINAL JUDGMENT AND PERMANENT INJUNCTION  
AGAINST DEFENDANT JOHN J. CAPRIOTTI**

Plaintiff T-Mobile USA, Inc. (“T-Mobile”) brought the above-captioned lawsuit against Defendant, John J. Capriotti (“Defendant” or “Capriotti”), alleging that Defendant engaged in a scheme to bulk purchase, computer hack, and traffic T-Mobile-branded SIM cards that have been improperly loaded with stolen T-Mobile airtime (the “FlexPay Fraud Scheme”). Capriotti perpetrates his FlexPay Fraud Scheme by acquiring large quantities of T-Mobile SIM cards and, through fraudulent means, activating those SIM cards on T-Mobile’s FlexPay service. He then falsely advertises to the public that the SIM cards for sale, which Capriotti has loaded with illegally-acquired airtime minutes, are authentic T-Mobile SIM cards

properly activated for use with T-Mobile's FlexPay wireless service when, in fact, they are not.

The FlexPay Fraud Scheme is part of a larger Subsidy Theft Scheme, in which Capriotti and/or his co-conspirators acquire large quantities of T-Mobile Prepaid Phones from retail stores such as Wal-Mart and Target. After acquiring the T-Mobile Prepaid Phones (the "Phones" or "Prepaid Phones"), the conspirators remove the original packaging and accessories, including copies of the written warranties and ownership manuals, sell the SIM cards for fraudulent activation as part of the FlexPay Fraud Scheme, and ship the Phones overseas, unlocked or to be unlocked, for resale.

Defendant's conduct, together with that of currently unknown civil and criminal co-conspirators, is causing T-Mobile to suffer substantial losses, and has caused immediate and irreparable injury to T-Mobile and the T-Mobile trademark.

As a result of the Defendant's involvement in the FlexPay Fraud and Subsidy Theft Schemes, T-Mobile has asserted claims against Defendant for Trademark Infringement; Trafficking in Computer Passwords, 18 U.S.C. § 1030(A)(6); Unauthorized Access With Intent To Defraud, 18 U.S.C. § 1030(A)(4); Theft Of Computer Data, 18 U.S.C. § 1030(A)(2); Unauthorized Access Resulting In Computer Damage, 18 U.S.C. § 1030(A)(5)(A); Common Law Fraud; Unfair Competition under N.J. Rev. Stat. § 56:4-1; Unjust

Enrichment; Civil Conspiracy; Tortious Interference With Prospective Economic Advantage; Conversion; violations of the New Jersey Computer Fraud and Abuse Act; and violations of the Federal cyber-squatting statute. 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 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. T-Mobile alleges that Defendant's use of the T-Mobile Marks without authorization in connection with the FlexPay Fraud and Subsidy Theft Schemes 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. T-Mobile alleges that 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). T-Mobile alleges that 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 conduct set forth in the Complaint constitutes violations of 15 U.S.C. § 1125(a)(1)(A) and (B) (federal trademark infringement and false advertising). The Court further finds that the conduct constitutes Contributory Trademark Infringement; Trafficking in Computer Passwords, 18 U.S.C. § 1030(A)(6); Unauthorized Access With Intent To Defraud, 18 U.S.C. § 1030(A)(4); Theft Of Computer Data, 18 U.S.C. § 1030(A)(2); Unauthorized Access Resulting In Computer Damage, 18 U.S.C. § 1030(A)(5)(A); Common Law Fraud; Unfair Competition under N.J. Rev. Stat. § 56:4-1; Unjust Enrichment; Civil Conspiracy; Tortious Interference With Prospective Economic Advantage; Conversion; violations of the New Jersey Computer Fraud and Abuse Act; and violations of the Federal Cyber-squatting statute, and has caused substantial and irreparable harm to T-Mobile, and will continue to cause substantial and irreparable harm to T-Mobile unless enjoined.

4. T-Mobile has suffered damages, including loss of goodwill and damage to its reputation, as a result of Defendant's alleged conduct. On review

and consideration of all relevant factors, T-Mobile is entitled to damages and injunctive relief on the claims as set forth in the Complaint.

5. Final judgment is hereby entered against Defendant John J. Capriotti and in favor of the Plaintiff T-Mobile USA, Inc., on all of the claims set forth in T-Mobile's Complaint in the principal amount of three million nine hundred seventy-eight thousand, four hundred eighty dollars and zero cents (\$3,978,480.00) for monetary and exemplary damages, which shall bear interest at the legal rate, for which let execution issue forthwith.

6. John J. Capriotti and each and all of his successors, assigns, agents, employees, 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 any of Defendant's representatives, agents, assigns, parent entities, employees, independent contractors, 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, selling, altering, advertising, soliciting, using, and/or shipping, directly or indirectly, any T-Mobile "Activation Materials," which consist of SIM Cards, PIN

- numbers, dealer activation codes, 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, using, and/or shipping, directly or indirectly, any T-Mobile Prepaid Handsets.
  - c. purchasing, selling, unlocking, reflashing, altering, advertising, soliciting and/or shipping, directly or indirectly, any Activation Materials or T-Mobile mobile device that Defendant knows or should know bears any 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;
  - d. purchasing, selling, advertising, soliciting, and/or shipping, directly, or indirectly, any T-Mobile dealer activation codes;
  - e. accessing, directly or indirectly, T-Mobile's internal computer systems;
  - f. unlocking any T-Mobile Handset;

- g. accessing, altering, erasing, tampering with, deleting or otherwise disabling the software contained in any T-Mobile Prepaid Handset;
- h. supplying T-Mobile Activation Materials or Handsets to or facilitating or in any way assisting other persons or entities who Defendant knows or should know are engaged in selling SIM cards or unlocking T-Mobile Handsets and/or hacking, altering, erasing, tampering with, deleting or otherwise disabling the software installed in T-Mobile Handsets;
- i. supplying T-Mobile Activation Materials or Handsets to or 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 Preliminary Injunction, including, without limitation, the buying and/or selling T-Mobile Activation Materials or Handsets; and
- j. 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, or that is likely to cause confusion with T-Mobile's marks, without T-Mobile's prior written authorization.

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

8. Defendant, pursuant to the Lanham Act, shall deliver and turn over all T-Mobile SIM cards and products in his possession, or subject to his custody or control, bearing or infringing on any T-Mobile trademark or a confusingly similar copy thereof, to T-Mobile immediately upon entry of this Final Judgment.

9. John J. Capriotti is hereby ordered, pursuant to the 15 U.S.C. § 1125(d) of the federal cybersquatting statute, to transfer ownership of his websites ([www.unlimitedtmobileservice.com](http://www.unlimitedtmobileservice.com) and <http://tmobileunlimited.blogspot.com>) to T-Mobile.

10. T-Mobile is awarded its attorneys' fees incurred as a result of this action, the amount of which shall be submitted by T-Mobile in a supplemental memorandum to be filed within 60 days of the date of this Final Judgment.

11. The last known address for Defendant John J. Capriotti is 238 Quince Street, Vineland, NJ 08360.

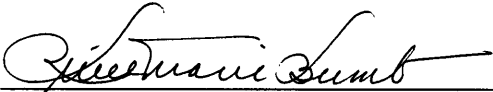
12. The address of Plaintiff, T-Mobile USA, Inc. is 12920 S.E. 38th Street, Bellevue, Washington 98006.



13. 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 T-Mobile in an amount of \$5,000 for each T-Mobile prepaid handset or item of Activation Material that Defendants are found to have purchased, sold or unlocked in violation of this Injunction. The Court finds that these amounts are compensatory and will serve to compensate T-Mobile for its losses in the event Defendants violate the terms of this Order.

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.

DONE AND ORDERED in Chambers, New Jersey, this 28<sup>th</sup> day of October, 2010.

  
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UNITED STATES DISTRICT JUDGE

Copies furnished to:

All Counsel of Record and pro se parties