

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

Case No. 10-20522-Civ-COOKE/BANDSTRA

TRACFONE WIRELESS, INC.,

Plaintiff

vs.

RIZWAN MEMON,

Defendant.

DEFAULT JUDGMENT AND PERMANENT INJUNCTION

THIS CASE is before me on Tracfone Wireless, Inc.'s Motion for Entry of Default Final Judgment and Permanent Injunction Against Defendant, Rizwan Memon [D.E. 13]. I have reviewed the record, and note the default entered by the Clerk of the Court [D.E. 12], as to Mr. Memon , for failure to answer or otherwise respond to the Summons and Complaint.

Additionally, I issued an Order to Show Cause [D.E. 15] on April 27, 2010, giving Mr. Memon a final opportunity to demonstrate to the Court why a default judgment and permanent injunction should not be entered against him in this case. Mr. Memon has not responded to this Order.

A “defendant, by his default, admits the plaintiff's well-pleaded allegations of fact,” as set forth in the operative complaint.” *Eagle Hosp. Physicians, LLC v. SRG Consulting, Inc.*, 561 F.3d 1298, 1307 (11th Cir. 2009). Following the entry of a default judgment, damages may be awarded “without a hearing [if the] amount claimed is a liquidated sum or one capable of mathematical calculation,” so long as all essential evidence is a matter of record. *S.E.C. v. Smyth*, 420 F.3d 1225, 1231, 1232 n.13 (11th Cir. 2005) (quoting *Adolph Coors Co. v. Movement Against Racism & the Klan*, 777 F.2d 1538, 1544 (11th Cir. 1985)).

Evidence presented by TracFone demonstrates that Defendant sold and trafficked, at minimum, seventy TracFone Prepaid Phones in furtherance of a bulk resale scheme. (Compl. Ex. "D" (Drake Decl. ¶¶ 10-12)). Defendant's sale of these Phones has caused damage and substantial and irreparable harm to TracFone. (*See Id.* ¶¶ 65-71). Furthermore, Defendant's actions were willful and necessitate an award at the maximum statutory amount. *See Sony Computer Entm't Am., Inc. v. Filipiak*, 406 F. Supp. 2d 1068, 1075 (N.D. Cal. 2005) (awarding the maximum statutory award per circumvention based, in part, on defendant's willful violations of the Digital Millennium Copyright Act ("DMCA"), 17 U.S.C. §§ 1201 *et seq.*). Accordingly, TracFone is awarded statutory damages against Defendant in the maximum amount of \$175,000.00 for Defendant's violations of the DMCA. 17 U.S.C. 1203(c)(3)(A); *see also Sony Computer Entm't Am., Inc. v. Divineo, Inc.*, 457 F. Supp. 2d 957 (N.D. Cal. 2006); *Filipiak*, 406 F. Supp. 2d 1068; *Coxcom, Inc. v. Chaffee*, 2007 WL 1577708 (D.R.I. May 31, 2007)

It is therefore, **ORDERED and ADJUDGED** that:

1. Tracfone Wireless, Inc.'s Motion for Entry of Default Final Judgment and Permanent Injunction Against Defendant, Rizwan Memon [D.E. 13] is **GRANTED**. Final judgment is entered against Defendant, Rizwan Memon, and in favor of the Plaintiff, TracFone, on all of the claims set forth in TracFone's Complaint.

2. Pursuant to 17 U.S.C. 1203(c)(3)(A), TracFone is entitled to recover statutory damages "of not less than \$200 or more than \$2,500" for each TracFone Prepaid Phone Defendant altered, or sold as part of a conspiracy to alter, in furtherance of the bulk resale scheme. I find that Defendant altered, or sold as part of a conspiracy to alter, at minimum, seventy TracFone Prepaid Phones in furtherance of the bulk resale scheme in violation of the DMCA. Final Judgment is entered against Defendant, in the principal amount of \$175,000.00,

which shall bear interest at the legal rate, and for which sum let execution issue.

3. Defendant, Rizwan Memon, is **PERMANENTLY ENJOINED** from:

a. purchasing and/or selling any wireless mobile handset that they know, or should know, bears, or at one time bore, any TracFone, NET10, Straight Talk, or SafeLink trademark, any other trademark owned or used by TracFone, or any other model of wireless mobile phone sold or marketed by TracFone (“TracFone Handsets”). Defendant is enjoined from purchasing and/or selling all models of wireless phones 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, NET10’s, Straight Talk’s, and SafeLink’s websites, www.tracfone.com, www.net10.com, www.straighttalk.com and www.safelink.com, respectively, and including without limitation the following TracFone Handsets:

Kyocera K126C	Motorola C343	Nokia 1221
LG 100C	Motorola EM 326g	Nokia 1600
LG 1500	Motorola V60	Nokia 2126
LG 200C	Motorola V120C	Nokia 2126i
LG 200CM	Motorola V120T	Nokia 2285
LG 220C	Motorola V170	Nokia 2600
LG 290C	Motorola V171	Nokia 3390
LG 300G	Motorola RAZR V3a	Nokia 5125/5165
LG 300G AR	Motorola V176	Samsung T101G
LG 320G	Motorola W175g	Samsung T105G
LG 3280	Motorola W175g AR	Samsung T155G
LG 400G	Motorola W260g	Samsung T201G
LG 410G	Motorola W326g	Samsung T255G
LG 420G	Motorola W370	Samsung T301G
LG 600G	Motorola W375	Samsung T401G
LG 620G	Motorola W376g	Samsung R335C
LG CG225	Motorola W377g	Samsung R355C
Motorola C139	Motorola W385	Samsung R451C
Motorola C155	Nokia 1100	Samsung R810C
Motorola C261	Nokia 1112	Samsung 900G

b. rekitting, reflashing and/or unlocking of any TracFone Handset;

c. accessing, altering, erasing, tampering with, deleting or otherwise disabling TracFone's proprietary prepaid cellular software contained within any model of TracFone Handsets;

d. facilitating or in any way assisting other persons or entities who Defendant knows or should know are engaged in rekitting, reflashing and/or unlocking TracFone Handsets and/or hacking, altering, erasing, tampering with, deleting or otherwise disabling the software installed in TracFone Handsets;

e. 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 Permanent Injunction including, without limitation, the buying and/or selling of unlocked TracFone Handsets; and,

f. knowingly using the TracFone/NET10/Straight Talk/SafeLink Trademarks or any other trademark owned or used by TracFone, or that is likely to cause confusion with TracFone/NET10/Straight Talk/SafeLink Trademarks, without TracFone's prior written authorization.

4. This Court shall jurisdiction over this matter and the parties to this action in order to enforce any violation of the terms of this Permanent Injunction.

5. The Clerk is directed to **CLOSE** this matter.

DONE and ORDERED in chambers at Miami, Florida, this 17th day of May 2010.



MARCIA G. COOKE

United States District Judge

Copies furnished to:

Ted E. Bandstra, U.S. Magistrate Judge

Counsel of record

Rizwan Memon

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