

and insurance fraud (collectively, the “Bulk Handset Trafficking Scheme” or the “Scheme”).

According to Sprint, Defendants perpetrate the Bulk Handset Trafficking Scheme by acquiring large quantities of Sprint Nextel Phones from Sprint Nextel and/or Sprint Nextel authorized dealers, and by soliciting others to purchase Sprint Nextel Phones in large quantities for the benefit of Defendants. Sprint further alleges that Defendants acquire the Sprint Nextel Phones with the knowledge and intent that the Phones will not be used on the Sprint Nextel wireless network (as required by the Sprint Nextel contracts); instead, the Phones are trafficked and the vast majority are resold as new overseas where the Phones are not subsidized by wireless carriers (as they are in the United States) and where the Phones are not as readily available. In some cases, Sprint contends, Defendants acquire the Sprint Nextel Phones with the knowledge and intent that the Phones will be computer-hacked. The purpose of this hacking, known as “unlocking,” is to disable software installed in the Phones by the manufacturers at the request and expense of Sprint Nextel, which enables the activation of the Sprint Nextel Phones exclusively on Sprint’s wireless system. The purpose of the software is to allow Sprint Nextel to offer the Phones at a discount to the consumer while protecting Sprint’s subsidy investment in the Phone. The illegally unlocked Phones are trafficked and resold as new, at a premium, under the Sprint trademarks.

Sprint Nextel Phones are sold subject to terms and conditions (“Terms and Conditions”) which conspicuously restrict and limit the sale and use of the Phones. These Terms and Conditions are set forth in printed inserts that are packaged with each Phones and are posted on the Sprint-Nextel website. The Terms and Conditions and language on the packaging constitute a valid binding contract. Pursuant to the Terms and Conditions, purchasers of Sprint Nextel Phones agree, among other things: (a) to pay the monthly service charges and other related fees;

(b) to pay an Early Termination Fee (“ETF”) for each line of service that is terminated before the contract term is concluded; (c) to activate the Sprint Nextel Phones on the Sprint Nextel CDMA network; (d) not to resell the Sprint Nextel Phones and related products and services; and (e) not to use the Phones for a purpose that could damage or adversely affect Sprint Nextel.

As a result of Defendants’ alleged involvement in the Bulk Handset Trafficking Scheme, Sprint Nextel asserted claims against Defendants for breach of contract, common law unfair competition, tortious interference with business relationships, civil conspiracy, unjust enrichment, conspiracy to induce breach of contract, common law fraud, fraudulent misrepresentation, violations of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030 *et seq.*, federal trademark infringement and false advertising under 15 U.S.C. § 1125(a)(1)(A) and (B), and contributory trademark infringement. Based on the positions of the parties, and 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 Sprint Nextel’s Complaint.
2. The Court finds that Sprint Nextel has the right to use and enforce rights in the standard character mark Sprint and the stylized Sprint Mark (collectively, the “Sprint Nextel Marks”), as depicted below:



Sprint Nextel uses the Sprint Nextel Marks on and in connection with its telecommunications products and services. The Sprint Nextel Marks are valid, distinctive, protectable, famous, have acquired secondary meaning, and are associated exclusively with Sprint Nextel.

3. The Court finds that the Terms and Conditions and the language in and on the packaging constitute a valid and binding contract enforceable against Defendants. The Court finds that (a) failing to pay for monthly service charges; (b) failing to pay ETF fees; (c) failing to activate the Phones on the Sprint wireless network; (d) reselling the Sprint Nextel Phones and related products and services; and (e) using the Phones for a purpose that could damage or adversely affect Sprint, constitute independent breaches of contract for which Sprint Nextel is entitled to relief.

4. 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 also constitutes contributory trademark infringement, common law unfair competition, tortious interference with business relationships, civil conspiracy, unjust enrichment, conspiracy to induce breach of contract, common law fraud, fraudulent misrepresentation, and violations of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030 *et seq.*, and has caused substantial and irreparable harm to Sprint Nextel, and will continue to cause substantial and irreparable harm to Sprint Nextel unless enjoined.

5. Sprint Nextel has suffered damages, including loss of goodwill and damage to its reputation, as a result of Defendants' conduct. On review and consideration of all relevant factors, Sprint Nextel is entitled to damages and injunctive relief on the claims as set forth in the Complaint.

6. Final judgment is hereby entered against Defendant iBuy Express Inc., and in favor of the Plaintiff Sprint Nextel, on all of the claims set forth in Sprint Nextel's Complaint in the principal amount of Two Million Dollars and Zero Cents (\$2,000,000.00 (U.S.)), which shall bear interest at the legal rate, for which let execution issue forthwith.

7. Defendants and all of their past and present officers, directors, successors, assigns, parents, subsidiaries, affiliates, related companies, predecessors-in-interest, companies, respective agents, employees, heirs, personal representatives, beneficiaries, and all other persons or entities acting or purporting to act for them or on their behalf, including but not limited to any corporation, partnership, proprietorship or entity of any type that is in any way affiliated or associated with Defendants or Defendants' 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 Defendants or who receive notice of this Order, shall be and hereby are PERMANENTLY ENJOINED from:

- a. purchasing, selling, unlocking, reflashing, altering, advertising, refurbishing, soliciting and/or shipping, directly or indirectly, any wireless handset that was manufactured for use on any Sprint wireless network, including for wireless service provided by Sprint under the brands Sprint, Nextel, Boost Mobile, Virgin Mobile or Assurance Wireless, or any wireless handset that bears any of Sprint's logos or trademarks, regardless of whether such wireless handset is new or used (collectively referred to herein as "Sprint Phones");
- b. unlocking of any Sprint Phone;

- c. supplying Sprint Phones to or facilitating or in any way assisting other persons or entities who Defendants know or should know are engaged in the purchase or sale of Sprint Phones or hacking, altering, erasing, tampering with, deleting or otherwise disabling the software installed in Sprint Phones;
- d. supplying Sprint Phones to or 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 Sprint Phones;
- e. engaging in any conduct described in the Complaint as related to the “Bulk Handset Trafficking Scheme;” and
- f. knowingly using the Sprint Nextel Marks or any other trademark, service mark, trade name and/or trade dress owned or used by Sprint Nextel now or in the future, or that is likely to cause confusion with Sprint Nextel’s Marks, without Sprint Nextel’s prior written authorization.

8. The purchase, sale or shipment of any Sprint Phones without Sprint Nextel’s prior written consent within and/or outside of the continental United States is and shall be deemed a presumptive violation of this permanent injunction.

9. The address of Defendant iBuy Express Inc. is 10185 Telegraph Road, Taylor, Michigan.

10. The address of Defendants Athir Orahya Patto and Nadine Mawfek Patto is 1257 Loon Ridge, Commerce Township, MI 48390.

11. The address of Defendants Troy Patrick Haggard and Joshua Michael Haggard is 5393 Polk Street, Dearborn Heights, MI 48125.

12. The address of Plaintiff Sprint Nextel is 6200 Sprint Pkwy, Overland Park, Kansas 66251.

13. Defendants waive their right of appeal from the entry of this Final Judgment.

14. 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 Sprint Nextel in an amount of \$5,000 for each Sprint Handset that a Defendant is 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 Sprint Nextel for its losses in the event Defendants violate the terms of this Order.

15. The Court retains jurisdiction over this matter to enter a subsequent judgment for damages against Defendants Athir Oraha Patto, Nadine Mawfek Patto, Troy Patrick Haggard, and Joshua Michael Haggard.

16. 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 Defendants as set forth herein.

DONE AND ORDERED this 21st day of June, 2012.

s/ Denise Page Hood

UNITED STATES DISTRICT JUDGE

Copies furnished to:

All Counsel of Record and pro se parties