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13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA
15

16 SPRINT NEXTEL
CORPORATION, BOOST
17 WORLDWIDE, INC., AND
18 VIRGIN MOBILE USA, L.P.,

Case No.: 12-CV-0222-JFW (VBKx)

Judge: Hon. John F. Walter
Courtroom: 16

19 Plaintiffs,

Complaint Filed: January 9, 2012

20 v.

Trial Date: January 29, 2013

21 EZCOM, INC. d/b/a TRICOM
22 COMMUNICATIONS, and
23 MICHAEL LI WU,

**FINAL JUDGMENT AND PERMANENT
INJUNCTION AGAINST DEFENDANTS
EZCOM, INC. D/B/A TRICOM
COMMUNICATIONS AND MICHAEL LI
WU; DAMAGES AWARDED AGAINST
DEFENDANT EZCOM, INC. D/B/A TRICOM
COMMUNICATIONS**

24 Defendants.
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1 Sprint Nextel Corporation, Boost Worldwide, Inc., and Virgin Mobile USA,
2 L.P. (“Sprint Nextel”), brought the above-captioned lawsuit against Defendants
3 EZCOM, Inc. d/b/a Tricom Communications and Michael Li Wu (“Defendants”),
4 alleging that Defendants are engaged in an unlawful enterprise involving the
5 acquisition, sale, and alteration of large quantities of Sprint Nextel, Boost Mobile,
6 and Virgin Mobile wireless telephones designed for use on Sprint affiliated wireless
7 service (collectively, “Sprint Nextel Handsets” or “Handsets”) and activation
8 materials, including but not limited to SIM cards, that causes substantial and
9 irreparable harm to Sprint Nextel (the “Bulk Handset Trafficking and Activation
10 Scheme”). Defendants perpetrate the Bulk Handset Trafficking and Activation
11 Scheme by acquiring bulk quantities of Sprint Nextel Handsets, which often include
12 Sprint Nextel SIM cards, from retail stores, such as Best Buy, Wal-Mart or Target.
13 Defendants solicit others to purchase Sprint Nextel Handsets and SIM cards in bulk
14 for their benefit. Defendants acquire the Sprint Nextel Handsets with the actual or
15 constructive knowledge and intent that the Handsets will not be activated for use on
16 the Sprint Nextel wireless network, but that the Handsets will be computer-hacked.
17 The purpose of this hacking, known as “unlocking,” is to erase, remove, and/or
18 disable proprietary software installed in the Handset, which enables the use of the
19 Sprint Nextel Handsets exclusively on Sprint Nextel’s wireless system. The
20 unlocked Handsets are then trafficked and resold overseas at a premium under the
21 Sprint Nextel trademarks for unauthorized use outside of Plaintiff’s wireless system,
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1 and the SIM cards that come with the handsets are illicitly sold and/or fraudulently
2 activated to misappropriate airtime.

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4 Sprint Nextel Handsets are sold subject to terms and conditions (“Terms and
5 Conditions”) which conspicuously restrict and limit the sale and use of the Sprint
6 Nextel Handsets. These Terms and Conditions are set forth in printed inserts that
7 are included in the packaging with every Sprint Nextel Handset and are also
8 available to the public on the Sprint Nextel websites. The Terms and Conditions are
9 also referenced in printed warnings that are placed on the outside of the retail
10 packaging of the Handsets. The Terms and Conditions and language on the
11 packaging constitute a valid and binding contract.
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14 Pursuant to the Terms and Conditions and the language on the packaging,
15 purchasers of Sprint Nextel Handsets agree, among other things, not to resell Sprint
16 Nextel products or services (including the Handsets), and not to use the Handsets for
17 any purpose that could damage or adversely affect Sprint Nextel.
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20 As a result of the Defendants’ involvement in the Bulk Handset Trafficking
21 and Activation Scheme, Sprint Nextel has asserted claims against Defendants for
22 breach of contract, federal trademark infringement and false advertising under 15
23 U.S.C. § 1125(a)(1)(A) and (B), contributory trademark infringement, tortious
24 interference with business relationships and prospective advantage, civil conspiracy,
25 unjust enrichment, conspiracy to induce breach of contract, false advertising in
26 violation of California Business & Professions Code § 17500 *et seq.*, unfair
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1 competition in violation of California Business & Professions Code § 17200 *et seq.*,
2 harm to Sprint Nextel’s goodwill and business reputation, and violations of the
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4 Computer Fraud and Abuse Act, 18 U.S.C. § 1030 *et seq.* Based on the respective
5 positions advocated by the parties, and having reviewed the Complaint and file and
6 being otherwise duly and fully advised in the premises, it is hereby

7
8 **ORDERED, ADJUDGED and DECREED** that:

9 1. This Court has jurisdiction over all the parties and all of the claims set
10 forth in Sprint Nextel’s Complaint.

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12 2. The Court finds that Sprint Nextel has the right to use and enforce said
13 rights in the standard character marks Sprint, Boost Mobile, payLo, Assurance, and
14 Virgin Mobile, and the stylized Sprint and Boost Mobile Marks (collectively, the
15 “Sprint Nextel Marks”), as depicted below:
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25 Sprint Nextel uses the Sprint Nextel Marks on and in connection with its
26 telecommunications products and services. The Sprint Nextel Marks are valid,
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1 distinctive, protectable, famous, have acquired secondary meaning, and are
2 associated exclusively with Sprint Nextel and Boost Mobile.

3
4 3. The Court finds that the Terms and Conditions and the language in and
5 on the packaging constitute a valid and binding contract enforceable against
6 Defendants. The Court finds that (a) facilitating others to use Sprint Nextel
7 Handsets in conjunction with service providers other than Sprint Nextel; (b) selling
8 Sprint Nextel Handsets, and (c) tampering with or altering Sprint Nextel Handsets,
9 SIM cards or the Handsets' software; and/or entering unauthorized activation codes
10 in the Handsets for purposes of unlocking the Handsets or facilitating others in such
11 acts, constitute independent breaches of contract for which Sprint Nextel is entitled
12 to relief.
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16 4. The Court finds that the conduct set forth in the Complaint constitutes
17 violations of 15 U.S.C. § 1125(a)(1)(A) and (B) (federal trademark infringement and
18 false advertising). The Court further finds that the conduct constitutes contributory
19 trademark infringement, tortious interference with business relationships and
20 prospective advantage, civil conspiracy, unjust enrichment, conspiracy to induce
21 breach of contract, false advertising in violation of California Business &
22 Professions Code § 17500 *et seq.*, unfair competition in violation of California
23 Business & Professions Code § 17200 *et seq.*, harm to Sprint Nextel's goodwill and
24 business reputation, and violations of the Computer Fraud and Abuse Act, 18 U.S.C.
25 § 1030 *et seq.*, and has caused substantial and irreparable harm to Sprint Nextel, and
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1 will continue to cause substantial and irreparable harm to Sprint Nextel unless
2 enjoined.

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4 5. Sprint Nextel has suffered damages, including loss of goodwill and
5 damage to its reputation, as a result of Defendants' conduct. On review and
6 consideration of all relevant factors, Sprint Nextel is entitled to damages and
7 injunctive relief on the claims as set forth in the Complaint.
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9 6. Final judgment is hereby entered only against Defendant EZCOM, Inc.
10 d/b/a Tricom Communications and in favor of the Plaintiff Sprint Nextel, on all of
11 the claims set forth in Sprint Nextel's Complaint in the principal amount of Five
12 Million Dollars and Zero Cents (\$5,000,000.00 (U.S.)), which shall bear interest at
13 the legal rate, for which let execution issue forthwith.
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16 7. Defendants and all of their past and present officers, directors,
17 successors, assigns, parents, subsidiaries, affiliates, related companies, predecessors-
18 in-interest, companies, agents, employees, heirs, personal representatives,
19 beneficiaries, relatives, and all other persons or entities acting or purporting to act
20 for it or on its behalf, including but not limited to any corporation, partnership,
21 proprietorship or entity of any type that is in any way affiliated or associated with
22 Defendants or Defendants' representatives, agents, assigns, parent entities,
23 employees, independent contractors, associates, servants, affiliated entities, and any
24 and all persons and entities in active concert and participation with Defendants who
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1 receive notice of this Order, shall be and hereby are PERMANENTLY ENJOINED

2 from:

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4 a. purchasing, selling, unlocking, reflashing, altering, advertising,
5 soliciting and/or shipping, directly or indirectly, any Sprint
6 Nextel Handsets or “Activation Materials,” which consist of SIM
7 cards, activation codes, and/or other mechanism, process or
8 materials used to activate service or acquire airtime in
9 connection with a new activation;

10
11 b. purchasing, selling, unlocking, reflashing, altering, advertising,
12 soliciting and/or shipping, directly or indirectly, any Sprint
13 Nextel mobile device or SIM card that Defendants know or
14 should know bears any Sprint Nextel Marks or any marks likely
15 to cause confusion with the Sprint Nextel Marks, or any other
16 trademark, service mark, trade name and/or trade dress owned or
17 used by Sprint Nextel now or in the future, including but not
18 limited to Sprint, Nextel, Boost Mobile, payLo, Assurance
19 Wireless, and Virgin Mobile. Specifically, Defendants are
20 enjoined from purchasing, selling, and/or shipping, directly or
21 indirectly, all models of Sprint Nextel Handsets and SIM cards
22 currently offered for sale by Sprint Nextel or that may be offered
23 for sale in the future, as listed and updated from time to time on
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the following websites: <http://www.sprint.com>,
<http://www.boostmobile.com>, <http://www.virginmobileusa.com>,
<http://www.assurancewireless.com>, and <http://www.paylo.com>,
regardless of whether such devices are new or used, whether in
or out of their original packaging, or whether “locked,”
“unlocked,” or otherwise modified in any way by any person;

- c. unlocking of any Sprint Nextel Handset;
- d. accessing, altering, erasing, tampering with, deleting or otherwise disabling the software contained in any Sprint Nextel Handset;
- e. supplying Sprint Nextel Handsets or SIM cards to or facilitating or in any way assisting other persons or entities who Defendants knows or should know are engaged in unlocking Sprint Nextel Handsets and/or hacking, altering, erasing, tampering with, deleting or otherwise disabling the software installed in Sprint Nextel Handsets;
- f. supplying Sprint Nextel Handsets or SIM cards 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,

1 the buying and/or selling of locked or unlocked Sprint Nextel
2 Handsets or SIM cards; and

3
4 g. knowingly using the Sprint Nextel Marks or any other trademark,
5 service mark, trade name and/or trade dress owned or used by
6 Sprint Nextel now or in the future, or that is likely to cause
7 confusion with Sprint Nextel's Marks, without Sprint Nextel's
8 prior written authorization.
9

10 8. The purchase, sale or shipment of any Sprint Nextel Handsets or SIM
11 cards without Sprint Nextel's prior written consent within and/or outside of the
12 continental United States and/or the sale of Activation Materials is and shall be
13 deemed a presumptive violation of this permanent injunction.
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16 9. The address of Defendants is 1060 N. Hacienda Blvd., La Puente, CA
17 91744.

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19 10. The address of Plaintiff Sprint Nextel is 6200 Sprint Pkwy, Overland
20 Park, Kansas 66251.


21 11. Defendants waive their right of appeal from the entry of this Final
22 Judgment.
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24 12. 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 by
26 a finding of contempt and an order for payment of compensatory damages to Sprint
27 Nextel in an amount of \$5,000 for each Sprint Nextel Handset or item of Activation
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1 Material that a Defendant is found to have purchased, sold or unlocked in violation
2 of this Injunction. The Court finds that these amounts are compensatory and will
3
4 serve to compensate Sprint Nextel for its losses in the event Defendants violate the
5 terms of this Order.

6 13. The Court hereby finds, pursuant to Fed. R. Civ. P. 54(b), that there is
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8 no just reason for delay and orders that Judgment shall be entered against
9 Defendants as set forth herein.

10 DONE AND ORDERED this 10th day of September, 2012.

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14 **HON. JOHN F. WALTER**
15 **UNITED STATES DISTRICT JUDGE**