

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

TRACFONE WIRELESS, INC.,
a Delaware corporation,

Plaintiff,

CA # 3:08-cv-1501-P

v.

ATARICOM, INC., a Texas corporation; RUBINA
TARIQ, individually and d/b/a RUBY LINK;
TARIQ NABIL SULEIMAN, individually;
SALINA TARIQ a/k/a SALINA SULEIMAN,
individually; SEBRINA TARIQ,
individually; SARAH TARIQ a/k/a SARAH SYED
a/k/a NIDA TARIQ, individually; ASSEM A.
AICHA a/k/a ESSEM ASSEM, individually;
SLYVIA GARCIA; JOHN DOES 1-50 and XYZ
COMPANIES 1- 50;

Defendants.

**FINAL JUDGMENT AND PERMANENT INJUNCTION AGAINST
DEFENDANT RUBINA TARIQ, INDIVIDUALLY AND D/B/A RUBY LINK**

Plaintiff, TRACFONE WIRELESS, INC. (“TracFone”), brought the above-captioned lawsuit against ATARICOM, INC., a Texas corporation (“Ataricom”), RUBINA TARIQ, individually and d/b/a RUBY LINK (“Rubina”), TARIQ NABIL SULEIMAN, individually, SALINA TARIQ a/k/a SALINA SULEIMAN, individually, SEBRINA TARIQ, individually, SARAH TARIQ a/k/a SARAH SYED a/k/a NIDA TARIQ, individually, and ASSEM A. AICHA a/k/a ESSEM ASSEM, individually, (collectively, “Defendants”), alleging Defendant is engaged in an unlawful enterprise involving the acquisition, sale and alteration of large quantities of TracFone, NET10, Straight Talk and SafeLink 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 Defendant's benefit, and computer hacking and erasing or

otherwise disabling the prepaid software (“TracFone/NET10 Prepaid Software”) installed in the Phones and essential for consumers to access TracFone’s prepaid wireless network. This unlawful business practice involves the unauthorized and/or unlawful purchase, resale and/or trafficking of TracFone/NET10 Prepaid Phones, the unauthorized and/or unlawful unlocking and/or reflashing of TracFone/NET10 Prepaid Phones and/or alteration, copying, and/or accessing of TracFone’s copyrighted and proprietary software computer code installed in the Phones, or reselling the Phones to others who disable the software, and ultimately sell the altered Phones as new to unsuspecting consumers under the TracFone, NET10, Straight Talk, or SafeLink trademarks for unauthorized use outside of the TracFone prepaid wireless system for profit (the “Illicit 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/NET10 Prepaid 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 between Defendant and TracFone.

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 or 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, Straight Talk or SafeLink service, or assist others in such acts; and (c) not to export any TracFone/NET10

Prepaid Phones outside of the TracFone, NET10, Straight Talk or SafeLink wireless system coverage area (“Coverage Area”). In violation of the Terms and Conditions, Defendant has, 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, Straight Talk or SafeLink prepaid wireless service; and altered TracFone/NET10 Prepaid Phones and the Phones’ software or facilitated others who have done so.

As a result of Defendant's involvement in the Illicit Bulk Resale Scheme, TracFone asserted claims against Defendant 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”); dilution of TracFone’s marks, 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 common law unfair competition; conspiracy to induce breach of contract; unfair competition unfair competition and false advertising under Fla. Stat. 501.204; civil conspiracy; and unjust enrichment.

Accordingly, it is hereby,

ORDERED, ADJUDGED and DECREED that:

This Court has jurisdiction over all the parties and all of the claims set forth in TracFone’s Amended Complaint.

The Court finds that TracFone owns all right, title, and interest in and to United States Trademark Registration No. 2,114,692, for “TracFone,” issued on November 18, 1997 and based on a first use date of June 30, 1996; United States Trademark Registration No. 2,761,017, for “TracFone,” issued on September 9, 2003 and based on a first use date of December 2000; United States Trademark Registration No. 3,224,929, for “TracFone,” issued on April 3, 2007 and based on a first use date of December 31, 2005; United States Trademark Registration No. 3,222,623, for “TracFone,” issued on March 27, 2007 and based on a first use date of December 31, 2005; United States Trademark Registration No. 3,118,250, for “NET10,” on July 18, 2006 and based on a first use date of March 1, 2005; United States Trademark Registration No. 3,255,754, for “NET10,” issued on June 26, 2007 and based on a first use date of December 31, 2005; United States Trademark Registration No. 3,253,506, for “NET10,” issued on June 19, 2007 and based on a first use date of December 31, 2005; United States Trademark Registration No. 3,251,389, for “NET10,” issued on June 12, 2007 and based on a first use date of December 31, 2005; United States Trademark Registration No. 3,630,321 for “SafeLink Wireless” and Design, issued on June 2, 2009 and based on a first use date of September 12, 2008; United States Trademark Application No. 77/740,346 for “SafeLink”, filed on May 19, 2009; United States Trademark Application No. 77/685,281 for “Straight Talk”, filed on March 6, 2009; United States Trademark Application No. 77/685,279 for “Straight Talk”, filed on March 6, 2009; United States Trademark Application No. 77/685,274 for “Straight Talk”, filed on March 6, 2009; United States Trademark Application No. 77/691,921 for “Straight Talk Wireless”, filed on March 16, 2009; United States Trademark Application No. 77/691,917 for “Straight Talk Wireless”, filed on March 16, 2009; and United States Trademark Application No. 77/691,925 for “Straight Talk Wireless”, filed on March 16, 2009 (collectively the “TracFone/NET10/Straight Talk/SafeLink Trademarks”).

The TracFone/NET10/Straight Talk/SafeLink 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.

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

The Court finds that Defendant's involvement in the Illicit 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"); dilution of TracFone's marks, 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 common law unfair competition; conspiracy to induce breach of contract; unfair competition; unfair competition and false advertising under Fla. Stat. 501.204; civil conspiracy; and unjust enrichment.

The Court finds that the Terms and Conditions constitute a valid binding contract enforceable against Defendant. 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.

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

TracFone is entitled to injunctive relief and damages on the claims set forth in the Amended Complaint.

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 exemption does not absolve the Defendant of liability for their violations of the DMCA as alleged in TracFone's Amended Complaint, because Defendant's conduct as alleged in this case does not come within the scope of the exemption. Defendant's purchase and resale of TracFone/NET10 Prepaid Phones 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.

I. Final judgment is hereby entered against Defendant Rubina Tariq, individually, and d/b/a Ruby Link, 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, and for which let execution issue forthwith.

2. Defendant Rubina, and each of her heirs, assigns, personal representatives, beneficiaries, relatives, agents, employees, attorneys, accountants, investigators, consultants and all other persons and 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 any Defendant, and any and all persons and entities in active concert and participation with any Defendant, are hereby 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/SafeLink 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 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 and SafeLink’s websites, www.tracfone.com, www.net10.com and www.safelink.com, respectively, and including without limitation the following TracFone/NET10 handsets:

Motorola W175	Motorola V171	Nokia 2285
Motorola W260g	Motorola C155	LG 225
Motorola C139	Motorola C343	LG 600G
Motorola C261	Motorola V60	LG 300G
Motorola W260g	Nokia 1600	LG 400G
Motorola W370	Nokia 2126	LG 3280
Motorola W370R	Nokia 2126i	LG CG225

Motorola W375g	Nokia 2600	LG 1500
Motorola W375	Nokia 1100	LG 200C
Motorola V176	Nokia 1112	Kyocera K126C
Motorola V170	Nokia 1221	

- b. rekitting, 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 model of TracFone/NET10 Handsets;
- d. facilitating or in any way assisting other persons or entities who Defendants know or should know are engaged in rekitting, 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/Net10/SafeLink Trademarks or any other trademark owned or used by TracFone, or that is likely to cause confusion with TracFone/Net10/SafeLink's Trademarks, without TracFone's prior written authorization.

3. 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 or the parties' settlement. If Defendant Rubina 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/NET10 Handset purchased, sold, unlocked, reflashed, altered, rekitted, advertised, solicited and/or shipped in violation of the Permanent Injunction, or a single damages award of Five Million Dollars and No Cents (\$5,000,000.00 (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.

4. The last known address of Defendant, Rubina is 1700 Plantation Road, Frisco, Texas 75025.

5. The address of Plaintiff, TracFone Wireless, Inc. is 9700 Northwest 112th Avenue, Miami, Florida 33178.

6. This case remains pending against the other defendants named in TracFone's Amended Complaint. The Court finds that there is no just reason for delay of the entry of judgment against Defendant Rubina Tariq, individually, and d/b/a Ruby Link, and therefore, pursuant to Fed. R. Civ. P. 54(b), directs the Clerk to enter Judgment as set forth herein.

IT IS SO ORDERED this th24 day of November 2009.



JORGE A. SOLIS
UNITED STATES DISTRICT JUDGE