

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

T-MOBILE USA, INC., a Delaware Corporation,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No: 2:11-cv-12334-GCS-LJM
)	
MY WIRELESS WHOLESALE, INC.,)	
JAMES SALMAN; JOHN DOES 1-10; XYZ)	
COMPANIES 1-10,)	
)	
Defendants.)	

**FINAL JUDGMENT AND PERMANENT INJUNCTION
AGAINST DEFENDANTS**

Plaintiff T-Mobile USA, Inc. (“T-Mobile”), brought the above-captioned lawsuit against Defendants James Salman and My Wireless Wholesale, Inc. (“Defendants”), alleging that Defendants are engaged in, and knowingly facilitate and encourage others to engage in the unlawful bulk purchase, computer hacking, and trafficking in T-Mobile-branded Subscriber Identity Module (“SIM”) cards that have been improperly loaded with stolen airtime, trafficking in and/or using the confidential and proprietary T-Mobile codes that are required to access T-Mobile’s proprietary activation system and wireless telecommunications network, selling methods and processes to defraud T-Mobile, and illegally accessing T-Mobile’s computers for the purpose of defrauding T-Mobile. Plaintiff further alleges that this is part of a larger scheme involving the unauthorized and unlawful bulk purchase, trafficking, advertising, and resale of T-Mobile Prepaid Handsets, including the resale of Handsets to buyers in foreign countries, unauthorized and unlawful computer unlocking

of T-Mobile Prepaid Handsets, alteration of proprietary software computer codes installed in the Handsets to permit T-Mobile to subsidize the cost of the Handset, and trafficking of the Handsets and SIM cards for profit (collectively, the “Subsidy Theft and Activation Fraud Scheme”).

T-Mobile has alleged that Defendants and others perpetrate the Subsidy Theft and Activation Fraud Scheme by acquiring large quantities of T-Mobile Prepaid Handsets including SIM cards, from retail stores, and by soliciting others (“Runners”) to purchase T-Mobile Prepaid Handsets with SIM cards in large quantities. The T-Mobile Prepaid Handsets are then allegedly removed from their original packaging, along with the accessories, including copies of the written warranties and ownership manuals, and the Handsets are shipped, unlocked or to be unlocked, and the accompanying activation materials, including but not limited to SIM cards, are allegedly resold by Defendants and others at a substantial profit. It is alleged the T-Mobile Prepaid Handsets are acquired with the knowledge and intent that they will not be activated for use on the T-Mobile prepaid wireless network, as required by the terms of the T-Mobile contracts. Instead, T-Mobile asserts the Prepaid Handsets are computer-hacked. The purpose of this claimed hacking, known as “unlocking,” is to erase, remove, and/or disable the proprietary software installed in the Handsets by the manufacturers at the request and expense of T-Mobile, which enables the use of the T-Mobile Prepaid Handsets exclusively on T-Mobile’s prepaid wireless system. The Handsets are then allegedly trafficked and resold as new by Defendants and others, at a premium, under the T-Mobile trademarks and the SIM cards are allegedly sold fraudulently activated or to be fraudulently activated on the T-Mobile network.

It is asserted that Defendants and others use confidential and proprietary materials to illegally access T-Mobile’s secure computers to fraudulently activate SIM cards on T-Mobile’s

wireless telecommunications network. Allegedly, Defendants and others then traffic in the claimed illegally-acquired airtime, the confidential and proprietary activation materials, and the methods and processes to defraud T-Mobile.

As a result of the Defendants' alleged active participation in the Subsidy Theft and Activation Fraud Scheme, T-Mobile brought claims against Defendants for federal trademark infringement and false advertising under 15 U.S.C. § 1125(a)(1)(A) and (B); violation of the federal Computer Fraud and Abuse Act, 18 U.S.C. § 1030, *et seq.*, common law fraud, common law unfair competition, tortious interference with business relationships and prospective advantage, civil conspiracy, conspiracy to induce breach of contract, unjust enrichment, and conversion.

James Salman and My Wireless Wholesale, Inc. deny any and all liability associated with or in any way related to the claims set forth in the complaint filed by T-Mobile, identified by Case No. 2:11-CV-12334.

Based on the respective positions advocated by 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 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 uses the T-Mobile Marks on and in connection with its telecommunications products and services. T-Mobile alleges that Defendants' use of the T-Mobile Marks without authorization in connection with the Subsidy Theft and Activation Fraud Scheme 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 Defendants. T-Mobile alleges that Defendants' 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 Defendants knew or should have known that T-Mobile is the exclusive licensee of the T-Mobile Marks and that Defendants had no legal right to use the T-Mobile Marks on infringing products.

3. The Court finds that the conduct as alleged in the Complaint would constitute 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 would constitute a violation of the federal Computer Fraud and Abuse Act, 18 U.S.C. § 1030, *et seq.*, contributory trademark infringement, common law fraud, common law unfair competition, tortious interference with business relationships and prospective advantage, civil conspiracy, conspiracy to induce breach of contract, unjust enrichment, and conversion, and has caused substantial and irreparable harm to T-Mobile, and would continue to cause substantial and irreparable harm to T-Mobile unless enjoined.

4. T-Mobile asserts that it has suffered damages, including loss of goodwill and damage to its reputation, as a result of Defendants' alleged conduct that far exceeds the \$5,000 aggregate annual damages under the Computer Fraud and Abuse Act. 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 My Wireless Wholesale, Inc., in the principal amount of Four Million Dollars and Zero Cents (\$4,000,000.00 (U.S.)) and against Defendant James Salman in the principal amount of One Million Dollars and Zero Cents (\$1,000,000.00 (U.S.)), severally, 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 aggregate amount of Five Million Dollars and Zero Cents (\$5,000,000.00 (U.S.)), which shall bear interest at the legal rate, for which let execution issue forthwith.

6. Defendant James Salman, and each of his respective partners, agents, representatives, employees, servants, heirs, personal representatives, beneficiaries, relatives, contractors, companies, corporations, and each and all of My Wireless Wholesale, Inc.'s past and present respective officers, directors, successors, assigns, parents, subsidiaries, affiliates, related companies, predecessors-in-interest, companies, respective agents, and employees, and all other persons acting on behalf of or for the benefit of any Defendant or who are in active concert or participation with any Defendant, including but not limited to any corporation, partnership, association, proprietorship or entity of any type that is in any way affiliated or associated with a Defendant or a Defendant's representatives, agents, assigns, employees, servants, affiliated entities, and any and all persons and entities in active concert and participation with any Defendant who receive notice of this Order, and over whom Defendants have control, shall be and hereby are PERMANENTLY ENJOINED from:

- a. purchasing, selling, providing, altering, advertising, soliciting, using, and/or shipping, directly or indirectly, any T-Mobile “Activation Materials,” which consist of SIM cards, PIN numbers, activation and proprietary codes, and/or other mechanism, process or materials used to activate service or acquire airtime in connection with an activation on the T-Mobile network;
- b. purchasing, selling, unlocking, reflashing, altering, advertising, soliciting, using, and/or shipping, directly or indirectly, any T-Mobile Handsets.
- c. purchasing, selling, unlocking, reflashing, altering, advertising, soliciting and/or shipping, directly or indirectly, any Activation Materials or T-Mobile mobile device that Defendants know 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. accessing, directly or indirectly, personally or through an agent or associate, any of T-Mobile’s internal computers or computer systems;
- e. accessing, altering, erasing, tampering with, deleting or otherwise disabling the software contained in any T-Mobile Handset;
- f. supplying T-Mobile Activation Materials or Handsets to or facilitating or in any way assisting other persons or entities who Defendants know or should know are engaged in selling SIM cards, Activation Materials, and/or methods or processes to defraud T-Mobile or are unlocking T-Mobile

Handsets and/or hacking, altering, erasing, tampering with, deleting or otherwise disabling the software installed in T-Mobile Handsets;

- g. supplying T-Mobile Activation Materials or Handsets 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 T-Mobile Activation Materials or Handsets; and
- h. 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, trafficking, use, or shipment of any T-Mobile Handsets, SIM cards, or Activation Materials without T-Mobile'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.

8. The address of James Salman is 56884 Pinecone Blvd., Shelby Township, MI 48316.

9. The address of My Wireless Wholesale, Inc. is 35806 Van Dyke Avenue, Sterling Heights, MI 48312.

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

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

12. The Court retains jurisdiction over this matter and the parties to this action 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 a Defendant is found to have purchased, sold, advertised, activated, used, provided 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 any Defendant violates the terms of this Order.

13. 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 as set forth herein and directs the Clerk to close the file.

Dated: February 16, 2012

s/George Caram Steeh
GEORGE CARAM STEEH
UNITEDSTATESDISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on
February 16, 2012, by electronic and/or ordinary mail.

s/Josephine Chaffee
Deputy Clerk