

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

T-MOBILE USA, INC, a	§	
a Delaware Corporation,	§	
	§	
Plaintiff,	§	
	§	
V.	§	CIVIL ACTION NO. 3: 07-CV-1661-B
	§	
PHONES-N-PHONES, INC., et al.	§	
	§	
Defendants.	§	

**FINAL JUDGMENT AND PERMANENT INJUNCTION AGAINST  
DEFENDANTS PHONES-N-PHONES, INC. AND ASPAC, INC.**

Plaintiff T-Mobile USA, Inc. ("T-Mobile"), brought the above-captioned lawsuit against, inter alia, Defendants Phones-N-Phones, Inc., Celina Sayani, Aspac, Inc., Murad Velani, and Naushad M. Sayani, asserting that Defendants are engaged in an unlawful enterprise involving the acquisition, sale, and counterfeiting of large quantities of T-Mobile prepaid wireless telephones ("T-Mobile Prepaid Handsets" or "Handsets") that causes substantial and irreparable harm to T-Mobile (the "Pre-Paid Phone Bulk Resale Venture").

T-Mobile asserts that Defendants acquire bulk quantities of T-Mobile Prepaid Handsets from retail stores, such as Wal-Mart or Target. T-Mobile further asserts that Defendants solicit others to purchase T-Mobile Prepaid Handsets in bulk for their own benefit. T-Mobile asserts that Defendants acquire the T-Mobile Prepaid Handsets with the actual or constructive knowledge and intent that the Handsets will not be activated for use on the T-Mobile prepaid wireless network and that the Handsets will be computer-hacked. The purpose of this hacking,

known as "unlocking," is to erase, remove and/or disable proprietary software installed in the Handsets, which enables the use of the T-Mobile Prepaid Handsets exclusively on T-Mobile's prepaid wireless system. T-Mobile asserts that the unlocked Handsets are then trafficked and resold overseas, at a premium, under the T-Mobile trademarks for unauthorized use outside of Plaintiff's prepaid wireless system.

T-Mobile asserts that its Prepaid Handsets are sold subject to terms and conditions ("Terms and Conditions") which restrict and limit the sale and use of T-Mobile Prepaid Handsets. These Terms and Conditions are set forth in printed inserts that are included in the packaging with every T-Mobile Phone, and are also available to the public on T-Mobile's website. The existence of Terms and Conditions is contained in printed warnings that are placed on the outside of the retail packaging of the Handsets. T-Mobile asserts the Terms and Conditions and language on the packaging constitute a valid binding contract.

The Terms and Conditions provide that purchasers of T-Mobile Prepaid Handsets agree, among other things: not to use the Handsets for a fraudulent purpose that "negatively impact[s] [T-Mobile's] customers, employees, business, ability to provide quality service, [and] reputation." T-Mobile Terms and Conditions, 7.

As a result of the Defendants' actions, T-Mobile has asserted claims against Defendants for breach of contract; federal trademark infringement and false advertising under 15 U.S.C. § 1125(a)(1)(A) and (B); unfair competition; contributory trademark infringement; tortious interference with business relationships and prospective advantages; harm to T-Mobile's goodwill and business reputation; civil conspiracy; and unjust enrichment. The Court, having reviewed

the Verified Amended Complaint and file and being otherwise duly advised in the premises, it is hereby

**ORDERED, ADJUDGED and DECREED that:**

1. This Court has jurisdiction over 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. If proven that Defendants' use of the T-Mobile Marks was without authorization, such use 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. If Plaintiff's allegations of Defendants' activities were proven, such actions would 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). Defendants knew or should have known that T-Mobile is the exclusive licensee of the T-Mobile Marks, therefore, if Plaintiff's allegations of Defendants' use were proven, Defendants did not and do not have any legal right to use the T-Mobile Marks on infringing products.

3. The Court finds that if the allegations in Plaintiff's Complaint regarding the Terms and Conditions and the language on the packaging were proven, they would constitute a valid binding contract enforceable against Defendants. The Court finds that facilitating others to use T-Mobile Prepaid Handsets in conjunction with service providers other than T-Mobile; tampering with or altering T-Mobile Prepaid Handsets or the Handsets' software; and/or entering unauthorized PIN numbers in the Handsets for purposes of unlocking the Handsets or facilitating others in such acts, constitute independent breaches of contract for which T-Mobile is entitled to relief.

4. The Court finds that the conduct set forth in the Complaint, if proven, would violate the following statutes: 15 U.S.C. § 1125(a)(1)(A) and (B) (federal trademark infringement and false advertising). The Court further finds that the conduct alleged in the Complaint, if proven, would constitute unfair competition under Texas common law; contributory trademark infringement; tortious interference with T-Mobile's business relationships and prospective advantages; civil conspiracy; and unjust enrichment and has caused substantial and irreparable harm to T-Mobile, and would continue to cause substantial and irreparable harm to T-Mobile unless enjoined.

5. T-Mobile has suffered damages, including loss of goodwill and damage to its reputation, as a result of Defendants' conduct. T-Mobile is entitled to injunctive relief on the claims set forth in the Verified Amended Complaint.

6. Final judgment is hereby entered jointly and severally against Defendants Phones-N-Phones, Inc. and Aspac, Inc. and in favor of the Plaintiff, T-Mobile USA, Inc., on all

of the claims set forth in T-Mobile's Verified Amended Complaint in the principal amount of Six Million Four Hundred Ninety-One Thousand One Hundred Fifteen Dollars (US \$6,491,115.00) that shall bear interest at the legal rate for which let execution issue forthwith.

7. Further, Phones-N-Phones, Inc. and Aspac, Inc. and their successors, assigns, parents, subsidiaries, affiliates, related companies, predecessors-in-interest, representatives, agents, employees, independent contractors, servants, and any and all persons and entities, in active concert and participation with either of them, who receive notice of this order, shall be and hereby are PERMANENTLY ENJOINED from:

a. Purchasing, selling and/or shipping any wireless mobile device acquired by any means not expressly authorized by T-Mobile that they know or should know bears the 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 (collectively, the "T-Mobile Handsets"). Specifically, they are enjoined from purchasing, selling, and/or shipping, directly or indirectly, all models of T-Mobile Handsets, 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 unless expressly authorized by T-Mobile. This injunction applies to all currently available T-Mobile Handsets and those that may be offered for sale in the future.

b. unlocking of any T-Mobile Handset;

c. supplying T-Mobile Handsets not acquired in a manner expressly authorized by T-Mobile to or facilitating or in any way assisting other persons or entities who they know or should know are engaged in unlocking T-Mobile Handsets and/or hacking, altering, erasing, tampering with, deleting or otherwise disabling the software installed in T-Mobile Handsets;

d. supplying T-Mobile Handsets not acquired in a manner expressly authorized by T-Mobile to, or facilitating or assisting in any way, persons or entities who they know or should know are engaged in any of the acts prohibited under this permanent injunction including, without limitation, the buying, selling and/or shipping of locked or unlocked T-Mobile Handsets; and

e. 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, without T-Mobile's prior written authorization.

8. The purchase, sale or shipment of any T-Mobile Handsets not acquired in a manner expressly authorized by T-Mobile 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.

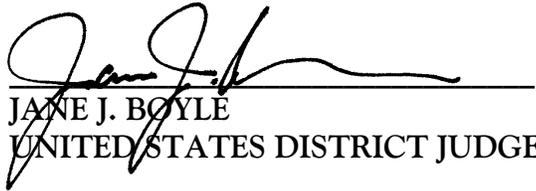
9. The last known address of Defendant Phones-N-Phones, Inc., a Texas corporation, is 1620 N. I-35E, Suite 307, Carrollton, Texas 75006.

10. The last known address of Defendant Aspac, Inc., a Texas corporation, is 1620 N. I-35E, Suite 307, Carrollton, Texas 75006.

11. The address of Plaintiff, T-Mobile USA, Inc. is 12920 S.E. 38th Street, Bellevue, Washington 98006.
12. Defendants waive their right to appeal from the entry of this Final Judgment.
13. The Court retains jurisdiction over this matter and the parties to this action in order to enforce the terms of this Final Judgment and Permanent Injunction.
14. The prevailing party in any proceeding to enforce compliance with the terms of this Final Judgment and Permanent Injunction shall be entitled to an award of its attorneys' fees and costs.
15. 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.

\_\_\_\_\_SO ORDERED.

SIGNED: July 30, 2008

  
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JANE J. BOYLE  
UNITED STATES DISTRICT JUDGE