

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

TRACFONE WIRELESS, INC.,	§	
	§	
Plaintiff,	§	
v.	§	Civil Action No.: 3:09-CV-0619-N
	§	
HAIDER KHOJA, <i>et al.</i> ,	§	
	§	
Defendants.	§	

**FINAL JUDGMENT AND PERMANENT INJUNCTION**

Plaintiff, TracFone Wireless, Inc. (“TracFone”), brought the above-captioned lawsuit against Defendants, Haider Khoja, individually, Murad Khoja, individually, Mehboob Khoja, individually and d/b/a Walk & Talk Wireless, and Muskaan, Inc., a Texas corporation (collectively “Defendants”), alleging that the Defendants are engaged in an unlawful enterprise involving the acquisition, sale, and alteration of large quantities of TracFone and TracFone’s NET10 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 Defendants’ benefit, computer hacking and erasing or otherwise disabling the prepaid software (“TracFone/NET10 Prepaid Software”) installed in the Phones essential for consumers to access TracFone’s prepaid wireless network, or reselling the Phones to others who disable the software, and ultimately selling the altered Phones as new under TracFone’s trademarks for the

unauthorized use outside of the TracFone prepaid wireless system for profit (the “Bulk Resale Scheme”).

TracFone/NET10 Prepaid Phones are sold subject to terms and conditions (“Terms and Conditions”) that 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 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.

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/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 service, or assist others in such acts; and (c) not to export any TracFone/NET10 Prepaid Phones outside of the TracFone/NET10 wireless system coverage area (“Coverage Area”). In violation of the Terms and Conditions, TracFone alleges that Defendants have, 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 prepaid wireless service; and altered TracFone/NET10 Prepaid Phones

FINAL JUDGMENT AND PERMANENT INJUNCTION – PAGE 2

and the Phones' software or facilitated others who have done so.

As a result of Defendants' involvement in the Bulk Resale Scheme, TracFone asserted claims against the Defendants 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"), 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 Tex. Code Ann. § 16.29; Civil Conspiracy; and Unjust Enrichment. Accordingly, 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 TracFone's complaint.

2. The Court finds that TracFone owns all right, title, and interest in and to United States Trademark Registration No. 2,114,692, issued on November 18, 1997 and based on a first use date of June 30, 1996; United States Trademark Registration No. 2,761,017, issued on September 9, 2003 and based on a first use date of December 2000; United States Trademark Registration No. 3,224,929, issued on April 3, 2007 and based on a first use date of December 31, 2005; United States Trademark Registration No.

3,222,623, issued on March 27, 2007 and based on a first use date of December 31, 2005; United States Trademark Registration No. 3,118,250, on July 18, 2006 and based on a first use date of March 1, 2005; United States Trademark Registration No. 3,255,754, issued on June 26, 2007 and based on a first use date of December 31, 2005; United States Trademark Registration No. 3,253,506, issued on June 19, 2007 and based on a first use date of December 31, 2005; and United States Trademark Registration No. 3,251,389, issued on June 12, 2007 and based on a first use date of December 31, 2005 (collectively the “TracFone Trademarks”).

3. The TracFone 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.

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

5. The Court finds that the Defendants’ involvement in the 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”), 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 Tex. Code Ann. § 16.29; Civil Conspiracy; and Unjust Enrichment.

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

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

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

9. 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 new exemption does not absolve the Defendants of liability for their violations of the DMCA as alleged in TracFone's complaint, because the Defendants' conduct as alleged in this case does not come within the scope of the new exemption. The Defendants' purchase and resale of the TracFone handsets 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.

10. Final judgment is hereby entered, jointly and severally, against Defendant, Muskaan, Inc., a Texas corporation, and in favor of the Plaintiff, TracFone Wireless, Inc., a Delaware corporation, on all of the claims set forth in TracFone's complaint, in the principal amount of FIVE MILLION DOLLARS AND ZERO CENTS (\$5,000,000.00), which shall bear interest at the legal rate, for which let execution issue forthwith.

11. Defendants, and each and all of their past and present respective officers, directors, successors, assigns, parents, subsidiaries, affiliates, related companies, predecessors-in-interest, agents, employees, attorneys, accountants, investigators, consultants, heirs, personal representatives, beneficiaries, relatives, and all other persons or entities acting or purporting to act for him/her/it or on his/her/its 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 or any Defendant's representatives, agents, assigns, parent entities, employees, independent contractors, accountants, attorneys, associates, servants, affiliated entities, and any and all persons and entities in active concert and participation with any Defendant who receive notice of this Order, shall be and hereby are PERMANENTLY ENJOINED from:

- a. purchasing and/or selling any wireless mobile phone that they know or should know bears any TracFone 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 TracFone/NET10 Handsets 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 and NET10's websites, [http://tracfone.com/activation\\_pick\\_brand.jsp](http://tracfone.com/activation_pick_brand.jsp) and [www.net10.com](http://www.net10.com), including without limitation the following TracFone/NET10 handsets:

Motorola W175	Motorola V171	Nokia 1112
Motorola W260g	Motorola C155	Nokia 1221
Motorola W376g	Motorola C343	Nokia 1600
Motorola W370R	Motorola V60i	Nokia 2285
Motorola W370	Nokia 2126	LG 400G
Motorola W375	Nokia 2126i	LG 3280
Motorola C261	Nokia 2600	LG CG225
Motorola C139	Nokia 1100	LG 1500
PINK Motorola C139	Nokia 1112	LG 200C
Motorola V176	Nokia 1221	LG300
Motorola V170	Nokia 1600	Kyocera K126C

- b. 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 and all models of TracFone/NET10 Handsets;
  - d. facilitating or in any way assisting other persons or entities who Defendants know or should know are engaged in 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 Trademarks or any other trademark owned or used by TracFone, or that is likely to cause confusion with TracFone's Trademarks, without TracFone's prior written authorization.
12. The address of Haider Khoja is 1309 Greenway Park Dr., Carrollton, TX 75007.
13. The address of Murad Khoja is 1309 Greenway Park Dr., Carrollton, TX 75007.
14. The address of Mehboob Khoja, individually and d/b/a Walk & Talk Wireless, is 1116 Creekstone Dr., Carrollton, TX 75010.

15. The address of Muskaan, Inc., a Texas corporation, c/o Mehboob Khoja, is 1116 Creekstone Drive, Carrollton, TX 75010.

16. The address of TracFone Wireless, Inc. is 9700 NW 112th Ave, Miami, FL 33178.

17. The Court retains jurisdiction over this matter and the parties to this action in order to enforce any violation of the terms of the parties' Settlement Agreement and/or this Permanent Injunction. The Court also retains jurisdiction over this matter and the parties to this action to enforce the terms of the parties' settlement agreement and to award damages in Plaintiff's favor against Defendants Murad Khoja, Haider Khoja, Mehboob Khoja, and Walk & Talk Wireless.

Signed June 2, 2009.

  
DAVID C. GODBEY  
UNITED STATES DISTRICT JUDGE