

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

TRACFONE WIRELESS, INC.,

Plaintiff,

vs.

Case No. 3:09-cv-1164-J-34TEM

NATIONAL WIRELESS WHOLESALE,
INC., a Florida corporation, IGOR S.
BABICHENKO, and NATALYA
BABICHENKO,

Defendants.

**STIPULATED FINAL JUDGMENT AND PERMANENT INJUNCTION AGAINST
DEFENDANTS IGOR S. BABICHENKO AND NATALYA BABICHENKO**

Plaintiff, TRACFONE WIRELESS, INC. (“TracFone”), brought the above-captioned lawsuit against IGOR S. BABICHENKO, individually, and NATALYA BABICHENKO, individually, (together, “Defendants”) alleging that Defendants are engaged in unlawful business practices involving the unauthorized and unlawful bulk purchase and resale of TracFone Prepaid Phones (the “Phones”),¹ unauthorized and unlawful computer unlocking or reflashing of TracFone Prepaid Phones, alteration of TracFone’s copyrighted and proprietary software installed in the Phones, trafficking of the TracFone Prepaid Phones for profit, and for other violations of Federal statutory law.

¹ As defined in the Complaint for Damages, Injunctive Relief and Demand for Jury Trial (Doc. No. 1; Complaint), “TracFone Prepaid Phones” refers to specially manufactured wireless telephone handsets that are designed for use exclusively on the prepaid wireless service provided by Plaintiff under the brand names TracFone Wireless, NET10, Straight Talk, and SafeLink Wireless in the United States, Puerto Rico and the U.S. Virgin Islands.

TracFone alleges that Defendants have, among other things, unlawfully exported TracFone Prepaid Phones to foreign countries or knowingly facilitated others who have done so; facilitated the use of TracFone Prepaid Phones without the TracFone prepaid wireless service; and altered TracFone Prepaid Phones and the Phones' software or facilitated such conduct by others (such conduct is referred to herein as the "Bulk Resale Practice").

TracFone and Defendants have filed a Consent Motion for Entry of Stipulated Final Judgments and Permanent Injunctions (Doc. No. 39; Motion). The Court has reviewed the Motion, and being otherwise fully advised in the premises, hereby,

ORDERS, ADJUDGES and DECREES 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 Defendants' participation in the Bulk Resale Practice has caused substantial and irreparable harm to TracFone, and will continue to cause substantial and irreparable harm to TracFone unless enjoined.

3. TracFone is entitled to injunctive relief on the claims set forth in the Complaint.

4. Final judgment is hereby entered against Defendants Igor S. Babichenko, individually, and Natalya Babichenko, individually, and in favor of Plaintiff, TracFone Wireless, Inc., a Delaware corporation.

5. Defendants Igor S. Babichenko and Natalya Babichenko, and each of his/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/her or on his/her 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, who receive actual notice of this Order, are hereby PERMANENTLY ENJOINED from:

a. purchasing and/or selling any TracFone Prepaid Phone that they know, or should know, bears, or at one time bore, any TracFone, NET10, Straight Talk, SafeLink, Spiracle mark or any other trademark owned or used by TracFone, or any other wireless handset sold or marketed by TracFone (“TracFone Handsets”). Specifically, 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, SafeLink’s, and Straight Talk’s websites, www.tracfone.com, www.net10.com, www.safelink.com, and, www.straighttalk.com respectively, and including without limitation the following handsets:

Kyocera K126C	Motorola C139	Nokia 1100
LG 100C	Motorola C155	Nokia 1112
LG 220C	Motorola C261	Nokia 1600
LG 290C	Motorola C343	Nokia 2126
LG 1500	Motorola EM326g	Nokia 2126i
LG 200C	Motorola RAZR V3a	Nokia 2285
LG 200CM	Motorola V170	Nokia 2600
LG 300G	Motorola V171	Nokia 3390
LG 3280	Motorola V176	Samsung R451C
LG 400G	Motorola W175g	Samsung T101G
LG 410G	Motorola W260g	Samsung T201G
LG 600G	Motorola W370	Samsung T301G
LG CG225	Motorola W375	Samsung T401G
	Motorola W376g	

Motorola W377g
Motorola W385

- b. rekitting, reflashing and/or unlocking any TracFone Handset;
- c. accessing, altering, erasing, tampering with, deleting or otherwise disabling TracFone's proprietary prepaid cellular software contained within any model of TracFone 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 any TracFone Handsets and/or hacking, altering, erasing, tampering with, deleting or otherwise disabling the software installed in any TracFone 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 Handsets; and,
- f. knowingly using any TracFone, NET10, Straight Talk, SafeLink, Spiracle mark or any other trademark owned or used by TracFone, or that is likely to cause confusion with any TracFone, NET10, Straight Talk, SafeLink, Spiracle mark or any other trademark owned or used by TracFone, without TracFone's prior written authorization.

6. The last known address of Defendant, Igor S. Babichenko is 13780 Shady Woods Street North, Jacksonville, Florida 32224.

7. The last known address of Defendant, Natalya Babichenko is 13780 Shady Woods Street North, Jacksonville, Florida 32224.

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

9. The Clerk of the Court is directed to terminate all pending motions and deadlines, and to close this case.

10. The Court retains jurisdiction over this matter and the parties to this action in order to enforce any violation of the terms of this Stipulated Final Judgment and Permanent Injunction Against Defendants Igor S. Babichenko and Natalya Babichenko.

DONE AND ORDERED at Jacksonville, Florida, this 13th day of August, 2010.


MARCIA MORALES HOWARD
United States District Judge

Copies furnished to:

Counsel of Record