

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

T-MOBILE USA, INC., a Delaware Corporation,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No: 1:10-cv-03846
)	
RYAN T. BOYLE, JOHN DOES 1-10, and XYZ COMPANIES 1-10,)	
)	
Defendants.)	
)	

**FINAL JUDGMENT AND PERMANENT INJUNCTION
AGAINST DEFENDANT**

Plaintiff T-Mobile USA, Inc. (“T-Mobile”), brought the above-captioned lawsuit against Defendant Ryan T. Boyle (“Boyle” or “Defendant”), alleging that Defendant is engaged in, and knowingly facilitates and encourages 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 Flexpay Fraud Scheme”).

Defendant perpetrates his Subsidy Theft and Flexpay 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 for the benefit of Defendant and his co-conspirators. Defendant’s co-conspirators remove the T-Mobile Prepaid Handsets’ original packaging and accessories, including copies of the written warranties and ownership manuals, and ship the Handsets, unlocked or to be unlocked, and the accompanying activation materials for resale at a substantial profit. 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, the T-Mobile Prepaid Handsets are computer-hacked. The purpose of this hacking, known as “unlocking,” is to disable the 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 illegally unlocked Handsets and accompanying SIM cards are trafficked and resold as new by Defendant and his co-conspirators, at a premium, under the T-Mobile trademarks.

Additionally, Defendant and his co-conspirators 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. Defendant and his co-conspirators then traffic in the illegally-acquired airtime, the confidential and proprietary activation materials, and the methods and processed by which to defraud T-Mobile.

As a result of the Defendant’s active participation in the Subsidy Theft and Flexpay Fraud Scheme, T-Mobile brought claims against Defendant for federal trademark infringement and false advertising under 15 U.S.C. § 1125(a)(1)(A) and (B); contributory trademark infringement; violations of the federal Computer Fraud and Abuse Act, 18 U.S.C. § 1030, *et*

seq.; common law fraud; violation of the Illinois Deceptive Trade Practices Act; civil conspiracy; unjust enrichment; tortious interference with economic advantage; and conversion. 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

T-Mobile uses the T-Mobile Marks on and in connection with its telecommunications products and services. T-Mobile alleges that Defendant's use of the T-Mobile Marks without authorization in connection with the Subsidy Theft and Flexpay 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 Defendant. T-Mobile alleges that Defendant's 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 Defendant knew or should have known that T-Mobile is the exclusive licensee of the T-Mobile Marks and that Defendant had no legal right to use the T-Mobile Marks on infringing products.

3. The Court finds that the conduct set forth in the Complaint constitutes 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 constitutes contributory trademark infringement; common law fraud; violation of the Illinois Deceptive Trade Practices Act; civil conspiracy; unjust enrichment; tortious interference with economic advantage; and conversion, and has caused substantial and irreparable harm to T-Mobile, and will continue to cause substantial and irreparable harm to T-Mobile unless enjoined.

4. T-Mobile has suffered damages, including loss of goodwill and damage to its reputation, as a result of Defendant's alleged conduct. 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 Ryan T. Boyle, 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 amount of Four Million Nine Hundred and One Thousand Six Hundred Dollars and Zero Cents (\$4,901,600.00 U.S.), which shall bear interest at the legal rate, for which let execution issue forthwith.

6. Defendant Ryan T. Boyle, and each and all of his past and present companies, agents, employees, heirs, personal representatives, beneficiaries, and all other persons or entities acting or purporting to act for him or on his behalf, including but not limited to any corporation, partnership, association, proprietorship or entity of any type that is in any way affiliated or associated with Defendant or Defendant's representatives, agents, assigns, employees, servants, affiliated entities, and any and all persons and entities in active concert and participation with Defendant who receive notice of this Order, shall be and hereby are PERMANENTLY ENJOINED from:

- a. purchasing, selling, 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 a new activation on the T-Mobile network;
- b. purchasing, selling, unlocking, reflashing, altering, advertising, soliciting, using, and/or shipping, directly or indirectly, any T-Mobile Prepaid Handsets.
- c. purchasing, selling, unlocking, reflashing, altering, advertising, soliciting and/or shipping, directly or indirectly, any Activation Materials or T-Mobile mobile device that Defendant knows 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. unlocking of any T-Mobile Handset;
- f. accessing, altering, erasing, tampering with, deleting or otherwise disabling the software contained in any T-Mobile Prepaid Handset;
- g. supplying T-Mobile Activation Materials or Handsets to or facilitating or in any way assisting other persons or entities who Defendant knows or should know are engaged in selling SIM cards, Activation Materials, and/or methods or process to defraud T-Mobile or unlocking T-Mobile

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

- h. supplying T-Mobile Activation Materials or Handsets to or facilitating or in any way assisting other persons or entities who Defendant knows or should know are engaged in any of the acts prohibited under this Preliminary Injunction, including, without limitation, the buying and/or selling T-Mobile Activation Materials or Handsets; and
- i. 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 Defendant Ryan T. Boyle is 315 Ridge Road, Barrington, IL 60010-2331.

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

10. Defendant waives his right of appeal from the entry of this Final Judgment.

11. 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 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 Defendant is found to have purchased, sold, advertised 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 Defendant violates the terms of this Order.

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

DONE AND ORDERED, this 4th day of January 2011.



HONORABLE ELAINE E. BUCKLO

Copies furnished to:

All Counsel of Record and pro se parties