

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

T-MOBILE USA, INC., a Delaware
corporation,

vs.

Case No. 2:11-cv-35-FtM-29SPC

PETER BRONSON, MAX RAY, JOHN DOES 1-
10, XYZ COMPANIES 1-10,

Defendants.

ORDER

This matter comes before the Court on plaintiff's Motion for Entry of Final Judgment and Permanent Injunction Against Max Ray and Peter Bronson (Doc. #25) filed on July 5, 2011, and plaintiff's Notice of Voluntary Dismissal Without Prejudice of Does 1-10 and XYZ Companies 1-10 (Doc. #26) filed on July 6, 2011. No responses have been filed and the time to respond has expired. The Court finds that an evidentiary hearing is not required in this case and will render a decision based on the documents submitted.

I.

"A defendant, by his default, admits the plaintiff's well-pleaded allegations of fact, is concluded on those facts by the judgment, and is barred from contesting on appeal the facts thus established. [] A default judgment is unassailable on the merits, but only so far as it is supported by well-pleaded allegations. [] A default defendant may, on appeal, challenge the

sufficiency of the complaint, even if he may not challenge the sufficiency of the proof.” Eagle Hosp. Physicians, LLC v. SRG Consulting, Inc., 561 F.3d 1298, 1307 (11th Cir. 2009) (internal quotations and citations omitted). On January 27, 2011, plaintiff T-Mobile USA, Inc. (T-Mobile or plaintiff) filed a Complaint (Doc. #1) against Peter Bronson (Bronson), Max Ray (Ray), and other unidentified individuals and companies for damages and injunctive relief arising out of defendants’ business enterprises that defraud and willfully infringe T-Mobile’s trademark and other rights related to plaintiff’s wireless service. (Doc. #1, ¶ 1.)

Plaintiff alleges that defendants are involved in the unauthorized and unlawful acquisition, purchase, and sale of T-Mobile Subscriber Identity Module (SIM) cards and airtime, the fraudulent activation of same for use on T-Mobile’s FlexPay service using plaintiff’s unlawfully obtained proprietary codes, the unlawful bulk purchase and resale of T-Mobile prepaid wireless telephones, the unlawful computer unlocking of T-Mobile Prepaid Phones, alteration of plaintiff’s proprietary software computer code, and trafficking of the Phones and SIM cards for profit. (Id., ¶ 2.) In support, Ryan T. Boyle, a co-conspirator, provided a Declaration (Doc. #1-1, Exh. A) against defendants Bronson and Ray regarding the activities alleged in the Complaint and the www.ypaymor.info website run by defendants.

Plaintiff alleges twelve counts of trademark infringement and false advertising, contributory trademark infringement, trafficking in computer passwords, unauthorized access with intent to defraud, theft of computer data, unauthorized access, common law fraud, civil conspiracy, unjust enrichment, tortious interference with prospective economic advantage, conversion, and unfair competition/deceptive trade practices.

II.

As a preliminary matter, finding no response to the Complaint, plaintiff applied for and obtained a Clerk's Entry of Default (Docs. #16, #20) against Bronson and Ray. Therefore, the necessary prerequisites for a default judgment have been met. Upon review of the allegations in the Complaint, the Court finds that the allegations sufficiently support the entry of a default judgment in favor of plaintiff.

Plaintiff seeks a permanent injunction against defendant under the Lanham Act and Computer Fraud and Abuse Act. Plaintiff also seeks damages under the Lanham Act. In support, the Declaration of Javier Figueroa (Doc. #25-1, Exh. A) provides that plaintiff lost at minimum \$106 in lost revenue associated with each fraudulent activation. Plaintiff's fraud investigators determined that at least 10 fraudulent lines of service, per dealer code sold, were activated on T-Mobile's wireless network, and 1,114 confidential dealer codes were used to do so. Using the minimum fraud loss, Mr.

Figueroa, a fraud analyst in the Risk Assessment Department for plaintiff, calculates minimum loss to total \$1,180,840.00 (1,114 x \$106 x 10). (Id., ¶¶ 7-8.) In addition to these actual damages, plaintiff seeks a multiplier of three times the actual damages for the willful violations, and attorney's fees. The Court will permit three times the amount of actual damages based on the "circumstances of the case", 15 U.S.C. § 1117(a), and allegations set forth in the Complaint and deemed admitted. The Court will also consider a motion for reasonable attorney's fees after the entry of judgment, and takes the request under advisement pending submission of a motion.

Plaintiff also seeks to have the Court retain jurisdiction over post-judgment discovery. Plaintiff argues that discovery is "needed to gauge the full scope of damage to T-Mobile and to determine the activities and identities of Defendants' co-conspirators." (Doc. #25, pp. 12-13.) The Court declines to retain specific jurisdiction over additional motions that may be filed for post-judgment discovery beyond the Court's jurisdiction over enforcement of the terms of the judgment to be entered. The Court is also not inclined to entertain a motion to modify the judgment after discovery regarding the extent of damages to T-Mobile.

Accordingly, it is now

ORDERED:

1. Plaintiff's Motion for Entry of Final Judgment and Permanent Injunction Against Max Ray and Peter Bronson (Doc. #25) is **GRANTED** in favor of plaintiff and against defendants Max Ray and Peter Bronson and the Clerk shall enter a default judgment as follows:

A. Plaintiff, T-Mobile USA, Inc. is awarded damages in the principal amount of Three Million Five Hundred Forty Two Thousand Five Hundred Twenty Dollars and Zero Cents **(\$3,542,520.00 U.S.) for monetary and exemplary damages** against Defendants May Ray and Peter Bronson, jointly and severally, which shall bear interest at the legal rate, for which let execution issue forthwith.

B. Defendants May Ray and Peter Bronson, and each and all of their past and present companies, agents, employees, heirs, personal representatives, beneficiaries, and all other persons or entities acting or purporting to act for them or on their 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 either Defendant or one of the Defendant's representatives, agents, assigns, employees, servants, affiliated entities, and any and all persons and entities in active concert and participation with either Defendant who receive notice of this Order, shall be and hereby are **PERMANENTLY ENJOINED** from:

i. purchasing, selling, altering, advertising, soliciting, using, transferring, trafficking, and/or

shipping, directly or indirectly, any T-Mobile "Activation Materials," which consist of SIM Cards, PIN numbers, dealer activation and/or 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;

ii. posting, displaying, blogging, and/or discussing, personally or through an agent, friend, employee, associate or any other third party, any information regarding T-Mobile Activation Materials, methods by which to defraud T-Mobile, and/or the Subsidy Theft, Dealer Code and FlexPay Fraud Scheme on the Internet or through any other digital and non-digital medium, including, but not limited to, the www.ypaymor.info website;

iii. purchasing, selling, unlocking, reflashing, altering, advertising, soliciting, using, and/or shipping, directly or indirectly, any T-Mobile Prepaid Phones.

iv. 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;

v. accessing, directly or indirectly, personally or through an agent or associate, any of T-Mobile's internal computers or computer systems;

vi. unlocking of any T-Mobile Phones;

vii. accessing, altering, erasing, tampering with, deleting or otherwise disabling the software contained in any T-Mobile Prepaid Phones;

viii. supplying T-Mobile Activation Materials or Phones 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 processes to defraud T-Mobile or unlocking T-Mobile Phones and/or hacking, altering, erasing, tampering with, deleting or otherwise disabling the software installed in T-Mobile Handsets;

ix. supplying T-Mobile Activation Materials or Phones 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 Phones; and

x. 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.

C. The purchase, sale, trafficking, use, or shipment of any T-Mobile Phones, 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.

D. Pursuant to the Lanham Act, Defendants shall deliver and turn over all T-Mobile SIM cards and products in their possession, or subject to their custody or control, bearing or infringing on any T-Mobile trademark or a confusingly similar copy thereof, to T-Mobile within **10 DAYS** of the date of this Final Judgment. The address of Plaintiff, T-Mobile USA, Inc. is 12920 S.E. 38th Street, Bellevue, Washington 98006.

E. 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, including 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 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 a Defendant violates the terms of this Order and the Court finds a Defendant in contempt.


2. The Clerk shall provide a copy of this Order to Max Ray and Peter Bronson. The address of Defendant Max Ray is Value Place Motel, 157 John R. Rice Blvd., Murfreesboro, TN 37129. The address of Defendant Peter Bronson is 506 NW 26th Place, Cape Coral, FL 33993.

3. Pursuant to plaintiff's Notice of Voluntary Dismissal Without Prejudice of Does 1-10 and XYZ Companies 1-10 (Doc. #26), Defendants John Does 1-10 and XYZ Companies 1-10 are dismissed without prejudice. The Clerk shall enter judgment accordingly.

4. The Clerk shall terminate all pending deadlines and close the file.

5. Plaintiff may file a motion for attorney's fees and costs within **FOURTEEN (14) DAYS** of the entry of judgment.

DONE AND ORDERED at Fort Myers, Florida, this 26th day of July, 2011.


JOHN E. STEELE
United States District Judge

Copies:
Counsel of record