

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

SPRINT SOLUTIONS, INC. and SPRINT)
COMMUNICATIONS COMPANY L.P.,)

Plaintiffs,)

) Civil Action No.: 3:15-CV-00110-C

v.)

ANGEL MORENO RODRIGUEZ and)
ROBERT MORENO ESCOBAR)

Defendants.)
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**FINAL DEFAULT JUDGMENT AND
PERMANENT INJUNCTION AGAINST DEFENDANTS
ANGEL MORENO RODRIGUEZ AND ROBERT MORENO ESCOBAR**

Plaintiffs Sprint Solutions, Inc. and Sprint Communications Company L.P. (collectively "Sprint" or "Plaintiffs"), brought the above-captioned lawsuit against Defendants Angel Moreno Rodriguez and Robert Moreno Escobar ("Defendants") alleging that Defendants engaged in unlawful enterprise involving the unauthorized and deceptive bulk acquisition and resale of specially-manufactured wireless telephones designed for use on Sprint's wireless service, which Sprint offers under various Sprint brands, including Sprint, Sprint Prepaid, Boost Mobile, Virgin Mobile, PayLo and Assurance Wireless (collectively, "Sprint Phones" or "Sprint Handsets" or "Phones" or "Handsets"), through various methods, including account fraud; the theft of Sprint's subsidy investment in the Phones; the unlawful access of Sprint's protected computer systems and wireless network; the trafficking of Sprint's protected and confidential computer passwords;

and the willful infringement of Sprint's trademark rights (collectively, the "Handset Theft and Trafficking Scheme" or the "Scheme").

Defendants perpetrate the Scheme by, *inter alia*, targeting small businesses and using fraudulently opening Sprint business accounts in their names to on which they activate lines of service and obtain new Sprint Phones, which they resell for profit. Defendants' Scheme causes tremendous harm to both Sprint and Sprint's legitimate consumers and local small businesses. In some cases, Defendants acquire the Sprint Phones with the knowledge and intent that the Phones will be computer-hacked. The purpose of this hacking, known as or "unlocked," is to disable software installed in the Phones by the manufacturers at the request and expense of Sprint, which enables activation of the Sprint Phones exclusively on Sprint's wireless system. Plaintiffs further allege that the illegally unlocked Phones are trafficked and resold as new by Defendants, at a premium, under the Sprint trademarks.

Sprint Phones are sold subject to terms and conditions ("Terms and Conditions") which conspicuously restrict and limit the sale and use of the Phones. These Terms and Conditions are set forth in printed inserts that are packaged with each Phone and are posted on Sprint's website. Pursuant to the Terms and Conditions of Sprint Phones, purchasers agree, among other things: (a) to pay the service charges and other related fees; (b) to activate the Sprint Phones on the Sprint CDMA network; (c) not to resell the Sprint Phones and related products and services; and (d) not to use the Phones for a purpose that could damage or adversely affect Sprint.

As a result of Defendants' participation in the Scheme, Sprint asserted claims against Defendants for unfair competition, tortious interference with business relations, tortious interference with contractual relations, civil conspiracy, unjust enrichment, common law fraud and fraudulent misrepresentation, violations of the Computer Fraud and Abuse Act, 18 U.S.C. §

1030, *et seq.*, federal trademark infringement under 15 U.S.C. § 1114, federal common law trademark infringement and false advertising under 15 U.S.C. § 1125(a)(1)(A) and (B), contributory trademark infringement, conversion, and injury to business or reputation; dilution of trademarks under Tex. Bus. & Com. Code Ann. § 16.103. Based on the undisputed positions advocated by Plaintiffs, 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 Sprint's Complaint.
2. The Court finds that Sprint has the right to use and enforce rights in the standard character Sprint® mark and stylized Sprint® Virgin Mobile, payLo, Assurance Wireless and Boost Mobile trademarks (collectively, the "Sprint Marks"), as depicted below:



Sprint uses the Sprint Marks on and in connection with its telecommunications products and services. The Sprint Marks are valid, distinctive, protectable, famous, have acquired secondary meaning, and are associated exclusively with Sprint.

3. The Court finds that the Terms and Conditions and the language in and on the packaging constitute a valid and binding contract enforceable between Sprint and each of its

customers. The Court finds the Terms and Conditions set forth certain rights and restrictions on the use of Sprint Phones. Among other things, the Terms and Conditions: (a) require that the customer pay applicable service charges and other related fees; (b) indicate that the Phone is designed to be activated on the Sprint CDMA network; (c) prohibit resale of Sprint Phones and related products and services; and (d) prohibit using the Phones for a purpose that could damage or adversely affect Sprint, for which Sprint is entitled to relief.

4. The Court finds that the conduct set forth in the Complaint constitutes the following violations: unfair competition (Count 1); tortious interference with business relations (Count 2); tortious interference with contractual relations (Count 3); civil conspiracy (Count 4); unjust enrichment (Count 5); common law fraud and fraudulent misrepresentation (Count 6); trafficking in computer passwords, 18 U.S.C. § 1030(a)(6) (Count 7); unauthorized access, 18 U.S.C. § 1030(a)(5)(C) (Count 8); unauthorized access with intent to defraud, 18 U.S.C. § 1030(a)(4) (Count 9); federal trademark infringement, 15 U.S.C. § 1114 (Count 10); federal common law trademark infringement and false advertising, 15 U.S.C. § 1125(a)(1)(A) and (B) (Count 11); contributory trademark infringement (Count 12); conversion (Count 13); and injury to business or reputation; dilution of trademarks under Tex. Bus. & Com. Code Ann. § 16.103 (Count 14), and such conduct has caused substantial and irreparable harm to Sprint, and will continue to cause substantial and irreparable harm to Sprint unless enjoined.

5. Sprint has suffered damages, including loss of goodwill and damage to its reputation, as a result of Defendants' conduct that far exceeds the \$5,000 aggregate annual damages under the Computer Fraud and Abuse Act.

6. On review and consideration of all relevant factors, Sprint is entitled to damages and injunctive relief on the claims as set forth in the Complaint.

7. The Court finds that Defendants unlawfully trafficked in at least 399 new Sprint Phones. Sprint suffers at least \$1,919 in losses for the unauthorized acquisition and resale of each new Sprint smart phone and \$961 in losses for the unauthorized acquisition and resale of each new Sprint feature phone. Sprint's damages from lost profits from new Sprint Phones that were fraudulently ordered and obtained by Defendants add up to: $(\$1,919 \times 393 \text{ smart phones}) + (\$961 \times 6 \text{ feature phones}) = \$759,933.00$. In light of Defendants' willful violations of the Lanham Act and affirmative absence from this case, and because Defendants have caused damage significantly greater than that actually confirmed by Sprint's investigation, the Court will treble these damages to \$2,279,799.00.

8. Sprint is also entitled to an award of its reasonable attorneys' fees in the amount of \$21,301.00.

9. Sprint is also entitled to an award of its reasonable costs in the amount of \$1,302.50.

10. Sprint is also entitled to an award of reasonable investigation fees in the amount of \$27,959.95.

11. Final default judgment is hereby entered against Defendants Angel Moreno Rodriguez and Robert Moreno Escobar, jointly and severally, and in favor of Sprint, on all of the claims set forth in Sprint's Complaint in the principal amount of \$2,330,362.45 which shall bear interest at the legal rate, for which let execution issue forthwith.

12. For all Sprint brands, now and in the future, including but not limited to Sprint, Sprint Prepaid, Virgin Mobile, Boost, PayLo, and Assurance Wireless, Defendants and all of their past and present agents, employees, heirs, personal representatives, beneficiaries, relatives, 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, proprietorship or entity of any type that is in any way affiliated or associated with Defendants or Defendants' representatives, agents, assigns, employees, independent contractors, associates, servants, and any and all persons and entities in active concert and participation with Defendants who receive notice of this Order, shall be and hereby are PERMANENTLY ENJOINED from:

- a. purchasing, selling, unlocking, reflashing, altering, advertising, soliciting and/or shipping, directly or indirectly, any Sprint Phones;
- b. supplying Sprint Phones to or facilitating or in any way assisting other persons or entities who Defendants know or should know are engaged in the purchase or sale of Sprint Phones or Products or hacking, altering, erasing, tampering with, deleting or otherwise disabling the software installed in Sprint Phones;
- c. engaging in any of the conduct described in the Complaint as the "Handset Theft and Trafficking Scheme;"
- d. supplying Sprint Phones or Products to or 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 acquisition, buying and/or selling of Sprint Phones;
- e. contacting Sprint Customer Service and/or Sprint Business Care and/or Sprint Business Credit Department and/or Sprint National Sales Support and/or any other Sprint business, service or customer assistance

departments (directly or indirectly) for the purposes of obtaining Sprint Phones and/or Sprint Products and/or Sprint services;

- f. knowingly using the Sprint Marks or any other trademark, service mark, trade name and/or trade dress owned or used by Sprint now or in the future, or that is likely to cause confusion with Sprint's Marks, without Sprint's prior written authorization.

13. Pursuant to the Lanham Act, Defendants shall deliver and turn over all Sprint Phones and Products in their possession, or subject to their custody or control, bearing or infringing any Sprint trademark or confusingly similar copy thereof, to Sprint within ten (10) days of the date of this Final Default Judgment.

14. The acquisition, sale or shipment of any Sprint Phone or Product without Sprint's prior written consent within or outside of the continental United States shall be deemed a presumptive violation of this injunction.

15. The Court retains jurisdiction to enforce any violation of the terms of this Final Judgment and Permanent Injunction. Any violation shall result in an order finding the Defendants in contempt and requiring payment of compensatory damages to Sprint in an amount of \$5,000 for each Sprint Phone or Product that Defendants are found to have acquired, sold or unlocked in violation of this Injunction. The Court finds that these amounts are compensatory and will serve to compensate Sprint for its losses in the event Defendants violate the terms of this Order.

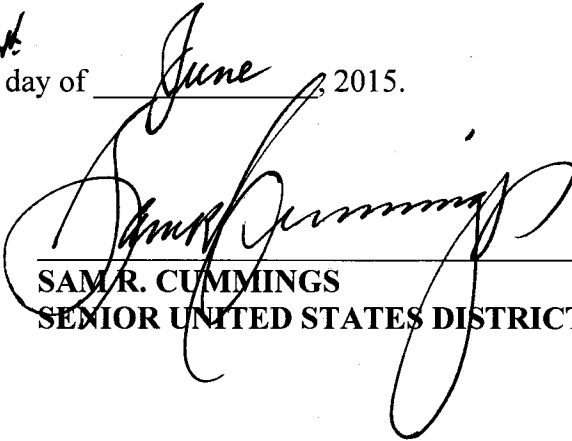
16. The address of Plaintiffs is 6200 Sprint Parkway, Overland Park, Kansas 66251.

17. The last known address of Defendant Angel Moreno Rodriguez is 3129 Cedar Glenn, Fort Worth, Texas 76244.

18. The last known address of Defendant Robert Moreno Escobar is 2736 W. Davis Street, Dallas, Texas 75211.

19. 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.

DONE AND ORDERED this 17th day of June, 2015.



SAM R. CUMMINGS
SENIOR UNITED STATES DISTRICT JUDGE