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METROPCS, a brand of T-MOBILE USA, INC.

13  
14 **UNITED STATES DISTRICT COURT**  
15 **SOUTHERN DISTRICT OF CALIFORNIA**

16 METROPCS, a brand of T-MOBILE USA,  
Inc., a Delaware Corporation

17 Plaintiff,

18 v.

19 SD PHONE TRADER, a d/b/a of CARLOS  
ELIZONDO and RAMON ELIZONDO;  
20 CARLOS ELIZONDO a/k/a CARLOS  
ALBERTO ELIZONDO a/k/a CARLOS A.  
21 ELIZONDO a/k/a JOSE GOMEZ,  
individually and d/b/a EC WIRELESS, EC  
22 WIRELESS ONE TOUCH  
COMMUNICATIONS, and EC WIRELESS  
23 #3; and RAMON M. ELIZONDO a/k/a  
RAMON MANUEL ELIZONDO a/k/a  
24 RAMON ELIZONDO JR., individually and  
25 d/b/a EC WIRELESS, EC WIRELESS ONE  
TOUCH COMMUNICATIONS, and EC  
26 WIRELESS #3,

27 Defendants.

Case No.: 16CV0098-DMS-KSC

Assigned to Hon. Dana M. Sabraw

**FINAL JUDGMENT AND PERMANENT  
INJUNCTION AGAINST CARLOS  
ELIZONDO a/k/a CARLOS ALBERTO  
ELIZONDO a/k/a CARLOS A.  
ELIZONDO a/k/a JOSE GOMEZ,  
individually and d/b/a EC WIRELESS, EC  
WIRELESS ONE TOUCH  
COMMUNICATIONS, EC WIRELESS  
#3, and SD PHONE TRADER, and  
DYNAMIC SOCIAL MARKETING, LLC,**

Date:

Time:

Place:

Courtroom 13A, Suite 1310  
333 West Broadway  
San Diego, CA 92101

1 Plaintiff T-Mobile USA, Inc., a Delaware corporation (“T-Mobile”), for itself  
2 and its MetroPCS brand (collectively referred to hereafter as “MetroPCS” or  
3 “Plaintiff”) brought the above-captioned lawsuit against Defendants CARLOS  
4 ELIZONDO a/k/a CARLOS ALBERTO ELIZONDO a/k/a CARLOS A.  
5 ELIZONDO a/k/a JOSE GOMEZ, individually and d/b/a EC WIRELESS, EC  
6 WIRELESS ONE TOUCH COMMUNICATIONS, EC WIRELESS #3, and SD  
7 PHONE TRADER, and DYNAMIC SOCIAL MARKETING, LLC,  
8 (“Defendants”), alleging that Defendants are engaged in an unlawful enterprise  
9 involving the unauthorized and deceptive acquisition and bulk resale overseas of  
10 specially-manufactured handsets designed for use on Plaintiff’s wireless service  
11 offered under various brands, including MetroPCS, (“Handsets”), the theft of  
12 MetroPCS’s subsidy investment in the Handsets, the unlawful access of Plaintiff’s  
13 protected computer systems and wireless network, the trafficking of protected and  
14 confidential computer passwords, and the willful infringement of Plaintiff’s  
15 trademarks (collectively, the “Handset Theft and Trafficking Scheme” or the  
16 “Scheme”).

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21  
22 MetroPCS contends that Defendants and their co-conspirators perpetrated the  
23 Handset Theft and Trafficking Scheme by acquiring large quantities of Handsets from  
24 MetroPCS and/or MetroPCS authorized retailers and dealers and by soliciting others  
25 to purchase MetroPCS Handsets in large quantities for the benefit of Defendants.  
26  
27 MetroPCS asserts that Defendants and their co-conspirators acquired the MetroPCS  
28

1 Handsets with the knowledge and intent that the Handsets will not be used on the  
2 MetroPCS wireless network (as required by the MetroPCS terms and conditions), but  
3 instead, the Handsets are trafficked and the vast majority are ultimately resold as new  
4 overseas where the Handsets are not subsidized by wireless carriers (as they are in the  
5 United States). In some cases, MetroPCS asserts Defendants and their co-  
6 conspirators acquired the MetroPCS Handsets with the knowledge and intent that the  
7 Handsets will be computer-hacked or “unlocked,” to disable software installed in the  
8 Handsets by the manufacturers at the request and expense of MetroPCS, which  
9 enables the activation of the MetroPCS Handsets exclusively on MetroPCS’s wireless  
10 system. The purpose of the software is to allow MetroPCS to offer the Handsets at a  
11 discount to the consumer while protecting MetroPCS’s subsidy investment in the  
12 Handset. MetroPCS asserts that the illegally unlocked Handsets are trafficked and  
13 resold as new by Defendants, at a premium, under the MetroPCS trademarks.

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17  
18 MetroPCS Handsets are sold subject to terms and conditions (“Terms and  
19 Conditions”) which conspicuously restrict and limit the sale and use of the  
20 Handsets. The packaging of every MetroPCS Handset provides that by purchasing  
21 or opening the package, activating, using, or paying for MetroPCS service, the  
22 purchaser agrees to the MetroPCS Terms and Conditions posted on  
23 [www.metropcs.com](http://www.metropcs.com). Purchasers have the option to return the MetroPCS Handset in  
24 accordance with the return policy if they do not agree to the Terms and Conditions.  
25  
26  
27  
28 The methods used by MetroPCS for obtaining its customers’ agreement to the

1 Terms and Conditions are legally valid and appropriate, and the Terms and  
2 Conditions constitute a valid and binding contract between MetroPCS and each of  
3 its customers.  
4

5 MetroPCS has asserted claims against Defendants for unfair competition,  
6 tortious interference with business relationships and prospective advantage, civil  
7 conspiracy, unjust enrichment, conspiracy to induce breach of contract, common  
8 law fraud and fraudulent misrepresentation, violations of the federal Computer  
9 Fraud and Abuse Act, 18 U.S.C. § 1030, *et seq.*, federal trademark infringement  
10 under 15 U.S.C. § 1114, federal common law trademark infringement and false  
11 advertising under 15 U.S.C. § 1125(a)(1)(A) and (B), contributory trademark  
12 infringement, conversion, and unfair competition in violation of California Business  
13 & Professions Code § 17200, *et seq.*  
14  
15  
16

17 Defendants deny and do not admit that they have violated any law and deny  
18 and do not admit that they are liable to MetroPCS for any damages or non-monetary  
19 relief, or for any claim asserted by MetroPCS in this action.  
20

21 Based on the stipulation of the parties, and having reviewed the Complaint  
22 and file and being otherwise duly and fully advised in the premises, it is hereby:  
23

24 ORDERED, ADJUDGED and DECREED that:

25 1. This Court has jurisdiction over all the parties and all of the claims set  
26 forth in MetroPCS's First Amended Complaint.  
27  
28

1           2. MetroPCS has the right to use and enforce rights in the standard  
2 character and stylized MetroPCS® mark (collectively, the “MetroPCS Marks”), as  
3 depicted below:  
4

5                   **metro**PCS.

6                   **metro**PCS.

7 MetroPCS uses the MetroPCS Marks on and in connection with its  
8 telecommunications products and services. The MetroPCS Marks are valid,  
9 distinctive, protectable, famous, have acquired secondary meaning, and are associated  
10 exclusively with MetroPCS.  
11

12           3. The Terms and Conditions and the language in and on the packaging  
13 constitute a valid and binding contract enforceable between MetroPCS and each of  
14 its customers. The Court finds the Terms and Conditions set forth certain rights and  
15 restrictions on the use of MetroPCS Handsets. Among other things, the Terms and  
16 Conditions: (a) require that the customer pay applicable service charges and other  
17 related fees; (b) indicate that the Handset is designed to be activated on the  
18 MetroPCS network; (c) prohibit resale of MetroPCS Handsets and related products  
19 and services for profit; and (d) prohibit using the Handsets for a purpose that could  
20 damage or adversely affect MetroPCS, for which MetroPCS is entitled to relief.  
21

22           4. The conduct set forth in the First Amended Complaint, if proven,  
23 constitutes violations of the Lanham Act, 15 U.S.C. §§ 1114 and 1125(a)(1)(A) and  
24 (B) (federal trademark infringement and false advertising). The Court further finds  
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1 that the conduct, if proven, also constitutes unfair competition, tortious interference  
2 with business relationships and prospective advantage, civil conspiracy, unjust  
3 enrichment, conspiracy to induce breach of contract, common law fraud and  
4 fraudulent misrepresentation, violations of the federal Computer Fraud and Abuse  
5 Act, 18 U.S.C. § 1030, *et seq.*, contributory trademark infringement, conversion, and  
6 unfair competition in violation of California Business & Professions Code § 17200,  
7  
8 *et seq.*

10 5. MetroPCS asserts that it has suffered damages, including loss of  
11 goodwill and damage to its reputation, as a result of Defendants' alleged conduct.  
12 Pursuant to the stipulation of the parties, final judgment is hereby entered against  
13 Defendants. An award of damages is entered against DYNAMIC SOCIAL  
14 MARKETING, LLC, only and in favor of the Plaintiff, in the principal amount of  
15 Two Million Dollars and Zero Cents (\$2,000,000.00), which shall bear interest at  
16 the legal rate, for which let execution issue forthwith.  
17  
18

19 6. For all T-Mobile brands now and in the future, Defendants and all of their  
20 past and present agents, officers, directors, successors, assigns, parents, subsidiaries,  
21 affiliates, related companies, predecessors-in-interest, companies, agents, employees,  
22 heirs, personal representatives, beneficiaries, and all other persons or entities acting or  
23 purporting to act for them or on their behalf, including, but not limited to, any  
24 corporation, partnership, proprietorship or entity of any type that is in any way  
25 affiliated or associated with Defendants or Defendants' representatives, agents, assigns,  
26  
27  
28

1 parent entities, employees, independent contractors, associates, servants, affiliated  
2 entities, and any and all persons and entities in active concert and participation with  
3 Defendants who receive notice of this Order, shall be and hereby are  
4 PERMANENTLY ENJOINED from:  
5

- 6 a. acquiring, purchasing, selling, unlocking, reflashing, altering,  
7 advertising, soliciting and/or shipping, directly or indirectly, any new  
8 Handsets, as defined *supra*;
- 9  
10 b. supplying Handsets to or facilitating or in any way assisting other persons  
11 or entities who Defendants know or should know are engaged in the  
12 purchase or sale of Handsets or hacking, altering, erasing, tampering with,  
13 deleting or otherwise disabling the software installed in the Handsets;  
14
- 15 c. acquiring, advertising or reselling MetroPCS or T-Mobile services;
- 16  
17 d. engaging in any of the conduct described in the First Amended  
18 Complaint as the “Handset Theft and Trafficking Scheme;”
- 19  
20 e. accessing MetroPCS’s or T-Mobile’s computer networks either directly  
21 or through a MetroPCS or T-Mobile representative or customer or a  
22 third-party;
- 23  
24 f. supplying Handsets to or facilitating or in any way assisting other  
25 persons or entities who Defendants know or should know are engaged  
26 in any of the acts prohibited under this Permanent Injunction,  
27 including, without limitation, the buying and/or selling of Handsets;  
28

- 1 g. knowingly using the MetroPCS Marks or any other trademark, service  
2 mark, trade name and/or trade dress owned or used by MetroPCS now  
3 or in the future, or that is likely to cause confusion with MetroPCS's  
4 Marks, without MetroPCS's prior written authorization;  
5  
6 h. holding themselves out as being associated with, employed by or on  
7 behalf of, or acting as an agent, representative or authorized partner of  
8 MetroPCS; and  
9  
10 i. advertising any products or services that have any purported connection  
11 to MetroPCS or any of MetroPCS's affiliates.  
12

13 7. The acquisition, sale or shipment of any new Handsets within and/or  
14 outside of the continental United States without Plaintiff's prior written consent is  
15 and shall be deemed a presumptive violation of this permanent injunction.  
16

17 8. The address of Defendant Carlos Elizondo is 360 S. 38<sup>th</sup> Street, San  
18 Diego, CA 92113.  
19

20 9. The address of Defendant Dynamic Social Marketing, LLC is 3034  
21 Imperial Avenue, San Diego, California 92102.  
22

23 10. Defendants waive any and all rights to challenge the validity of this  
24 Final Judgment in this Court or in any other court, and specifically waives their right  
25 of appeal from the entry of this Final Judgment.  
26

27 11. The Court retains jurisdiction over this matter and the parties to this  
28 action to enter an award of damages against Defendant Elizondo and to enforce any

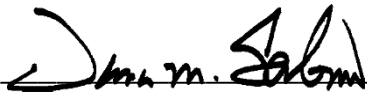


1 violation of the terms of this Permanent Injunction by a finding of contempt and an  
2 order for payment of compensatory damages to Plaintiff in an amount of \$5,000 for  
3 each new Handset, as defined *supra*, that Defendants are found to have acquired,  
4 purchased, sold and/or unlocked in violation of this Injunction. The Court finds that  
5 these amounts are compensatory and will serve to compensate Plaintiff for its losses  
6 in the event Defendants violate the terms of this Order.  
7  
8

9 12. The Court hereby finds, pursuant to Fed. R. Civ. P. 54(b), that there is  
10 no just reason for delay and orders that Judgment shall be entered against  
11 Defendants as set forth herein.  
12

13 13. Each side to bear their own attorneys' fees and costs to date.  
14

15 DONE AND ORDERED this 11th day of January, 2017.  
16

17   
18 \_\_\_\_\_  
19 UNITED STATES DISTRICT JUDGE

20 Copies furnished to:  
21 All Pro Se Parties and Counsel of Record  
22  
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