

DECONCINI McDONALD YETWIN & LACY, P.C.  
6909 East Main Street  
Scottsdale, Arizona 85251

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

T-Mobile USA, Inc., a  
Delaware Corporation,

Plaintiff,

v.

Jesus Soto,

Defendant.

NO. CV-11-01449-PHX-NVW

**FINAL JUDGMENT AND  
PERMANENT INJUNCTION**

Plaintiff T-Mobile USA, Inc. (“T-Mobile”), brought the above-captioned lawsuit against Defendants Jesus Soto and Brian Soto (“Defendants”), alleging that Defendants are engaged in, and knowingly facilitate and encourage 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, and 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. Plaintiff further

DECONCINI McDONALD YETWIN & LACY, P.C.  
6909 East Main Street  
Scottsdale, Arizona 85251

1 alleges that this is part of a larger scheme involving the unauthorized and unlawful bulk  
2 purchase, trafficking, advertising, and resale of T-Mobile Prepaid Handsets, including  
3 the resale of Handsets to buyers in foreign countries, unauthorized and unlawful computer  
4 unlocking of T-Mobile Prepaid Handsets, alteration of proprietary software computer codes  
5 installed in the Handsets to permit T-Mobile to subsidize the cost of the Handset, and  
6 trafficking of the Handsets and SIM cards for profit (collectively, the “Subsidy Theft and  
7 Flexpay Fraud Scheme”).

8 Plaintiff also alleges that Defendants perpetrate their Subsidy Theft and Flexpay Fraud  
9 Scheme by improperly accessing T-Mobile’s proprietary activation system and wireless  
10 telecommunications network and by using and/or trafficking in confidential and proprietary T-  
11 Mobile codes that are required to access the activation system, thereby illegally acquiring  
12 airtime intended for legitimate T-Mobile customers.

13 Based on the aforementioned allegations, T-Mobile asserted claims against  
14 Defendants for federal trademark infringement and false advertising under 15 U.S.C. §  
15 1125(a)(1)(A) and (B); violation of the federal Computer Fraud and Abuse Act, 18 U.S.C.  
16 § 1030, *et seq.*; contributory trademark infringement; common law fraud; tortious  
17 interference with business relationships and prospective advantage; civil conspiracy; unjust  
18 enrichment; and conversion.

19 The parties have agreed and hereby stipulate to the following:

20 1. The Court has jurisdiction over all the parties and all of the claims set forth  
21 in T-Mobile’s Complaint.

22 2. Brian Soto is seventeen (17) years old and, therefore, a minor. His father  
23 and legal guardian, Jesus Soto, has and continues to properly represent the best interests of  
24 his child, Brian Soto and, therefore, this matter can be resolved without appointing a  
25 guardian ad litem for Brian Soto.  
26

DECONCINI McDONALD YETWIN & LACY, P.C.  
6909 East Main Street  
Scottsdale, Arizona 85251

1           3.       Despite Brian Soto’s age of minority, he is old enough to understand his  
2 wrongdoings and be held accountable for his unlawful acts. Therefore, any disabilities or  
3 incapacities Brian Soto has or may have as a minor or infant shall be removed and Brian  
4 Soto shall be declared of full age for all legal intents and purposes.

5           4.       T-Mobile has the right to use and enforce said rights in the standard  
6 character mark T-Mobile and a stylized T-Mobile Mark (collectively, the “T-Mobile  
7 Marks”), as depicted below:



8  
9  
10 T-Mobile uses the T-Mobile Marks on and in connection with its telecommunications  
11 products and services. Defendants’ use of the T-Mobile Marks without authorization in  
12 connection with the Subsidy Theft and Flexpay Fraud Scheme has caused, and will further  
13 cause, a likelihood of confusion, mistake and deception as to the source of origin of the  
14 counterfeit products, and the relationship between T-Mobile and Defendants. Defendants’  
15 activities constitute false designation of origin, false descriptions and representations, and  
16 false advertising in commerce in violation of § 43(a) of the Lanham Act, 15 U.S.C.  
17 §1125(a)(1)(A) and (B). Defendants knew or should have known that T-Mobile is the  
18 exclusive licensee of the T-Mobile Marks and that Defendants had no legal right to use the  
19 T-Mobile Marks on infringing products.

20           5.       T-Mobile is entitled to damages and injunctive relief on the claims as set  
21 forth in the Complaint.

22           6.       T-Mobile has suffered damages, including loss of goodwill and damage to its  
23 reputation.

24           7.       Defendants’ conduct set forth in the Complaint constitutes violations of 15  
25 U.S.C. § 1125(a)(1)(A) and (B) (federal trademark infringement and false advertising),  
26 violation of the federal Computer Fraud and Abuse Act, 18 U.S.C. § 1030, *et seq.*;

DECONCINI McDONALD YETWIN & LACY, P.C.  
6909 East Main Street  
Scottsdale, Arizona 85251

1 contributory trademark infringement; common law fraud, tortious interference with  
2 business relationships and prospective advantage; civil conspiracy; unjust enrichment; and  
3 conversion, and has caused substantial and irreparable harm to T-Mobile, and will continue  
4 to cause substantial and irreparable harm to T-Mobile unless enjoined.

5 Based on the foregoing stipulations, it is hereby **ORDERED, ADJUDGED** and  
6 **DECREED** that:

7 1. Final judgment is hereby entered against Defendants Jesus Soto and Brian  
8 Soto, jointly and severally, and in favor of the Plaintiff T-Mobile USA, Inc., on all of the  
9 claims set forth in T-Mobile’s Complaint.

10 2. Defendants Jesus Soto and Brian Soto, and each and all of their legal  
11 guardians, heirs, successors, assigns, personal representatives, beneficiaries, relatives,  
12 agents, employees and all other persons and entities acting or purporting to act for them or  
13 on their behalf, including but not limited to any corporation, partnership, proprietorship or  
14 entity of any type that is in any way affiliated or associated with any Defendant or any  
15 Defendant’s representatives, agents, assigns, parent entities, employees, independent  
16 contractors, associates, servants, affiliated entities, and any and all persons and entities in  
17 active concert and participation with any Defendant who receive notice of this Order, shall  
18 be and hereby are PERMANENTLY ENJOINED from:

19 a. purchasing, selling, altering, advertising, soliciting, using,  
20 transferring, trafficking, and/or shipping, directly or indirectly, any T-  
21 Mobile “Activation Materials,” which consist of SIM Cards, PIN  
22 numbers, dealer activation and/or proprietary codes, and/or other  
23 mechanism, process or materials used to activate service or acquire  
24 airtime in connection with a new activation;

25  
26

DECONCINI McDONALD YETWIN & LACY, P.C.  
6909 East Main Street  
Scottsdale, Arizona 85251

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

- 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, T-Mobile's internal 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 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

DECONCINI McDONALD YETWIN & LACY, P.C.  
6909 East Main Street  
Scottsdale, Arizona 85251

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

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.

3. The purchase, sale 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.

4. The address of Defendant Jesus Soto is 6324 W. Coolidge Street, Phoenix, Arizona 85033.

5. The address of Defendant Brian Soto is 6324 W. Coolidge Street, Phoenix, Arizona 85033.

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

7. Defendants waive their right of appeal from the entry of this Final Judgment.

8. 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 any Defendant is found to have purchased, sold 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 any Defendant violates the terms of this Order.

