

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

SPRINT NEXTEL CORPORATION and)
SPRINT COMMUNICATIONS COMPANY,)
L.P.,)

Plaintiffs,)

v.)

NICHOLAS A. CARANGI, an individual,)
and MAJD JABBARIN, an individual,)

Defendants.)

Civil Action No. 2:12-cv-06473

JURY TRIAL DEMANDED

FILED

FEB 12 2014

MICHAEL E. KUNZ, Clerk
By _____ Dep. Clerk

**FINAL JUDGMENT AND PERMANENT INJUNCTION
AGAINST DEFENDANT NICHOLAS A. CARANGI**

Plaintiffs Sprint Nextel Corporation and Sprint Communications Company, L.P. (“Plaintiffs”) brought the above-captioned lawsuit against Defendant Nicholas A. Carangi (“Defendant”), alleging that Defendant is engaged in an unlawful enterprise involving the unauthorized and deceptive bulk purchase and resale overseas of specially-manufactured wireless telephones designed for use on Sprint’s wireless service, including the Sprint iPhone (collectively, “Sprint Phones” or “Sprint Handsets” or “Phones” or “Handsets”), 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 trademarks (collectively, the “Bulk Handset Trafficking Scheme” or the “Scheme”).

Sprint alleges that Defendant and his co-conspirators perpetrate the Bulk Handset Trafficking Scheme by acquiring large quantities of Sprint Phones from Sprint and/or Sprint authorized retailers and dealers, and by soliciting others to purchase Sprint Phones in large

quantities for the benefit of Defendant. Sprint's Complaint states that Defendant and his co-conspirators acquire the Sprint Phones with the knowledge and intent that the Phones will not be used on the Sprint wireless network (as required by the Sprint contracts). Instead, Sprint alleges that the Phones are trafficked and the vast majority are resold as new overseas where the Phones are not subsidized by wireless carriers (as they are in the United States) and where the Phones are not as readily available. In some cases, Sprint contends that Defendant and his co-conspirators acquire the Sprint Phones with the knowledge and intent that the Phones will be computer-hacked. The purpose of this hacking, known as "unlocking," is to disable software installed in the Phones by the manufacturers at the request and expense of Sprint, which enables the activation of the Sprint Phones exclusively on Sprint's wireless system. The purpose of the software is to allow Sprint to offer the Phones at a discount to the consumer while protecting Sprint's subsidy investment in the Phone. The illegally unlocked Phones are trafficked and resold as new by Defendant and his co-conspirators, 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 monthly service charges and other related fees; (b) to pay an Early Termination Fee ("ETF") for each line of service that is terminated before the contract term is concluded; (c) to activate the Sprint Phones on the Sprint CDMA network; (d) not to resell the Sprint Phones and related products and services; and (e) not to use the Phones for a purpose that could damage or adversely affect Sprint.

Sprint has asserted claims against Defendant for breach of contract, unfair competition, tortious interference with business relationships and prospective advantage, civil conspiracy, unjust enrichment, conspiracy to induce breach of contract, common law fraud, fraudulent misrepresentation, violations of the federal trademark infringement provisions of 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, and injury to business or reputation/dilution of trademarks in violation of 54 Pa.C.S.A. §1124. 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 Sprint's Complaint.
2. Based on the parties' agreement, the Court finds that Sprint has the right to use and enforce rights in the standard character Sprint® mark and stylized Sprint® 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. Based on the parties' agreement, the Court finds that the Terms and Conditions and the language in and on the packaging constitute a valid and binding contract enforceable against Defendant. Based on the parties' agreement, the Court finds that (a) failing to pay for monthly service charges; (b) failing to pay ETF fees; (c) failing to activate the Phones on the

Sprint wireless network; (d) reselling and exporting the Sprint Phones and related products and services; and (e) using the Phones for a purpose that could damage or adversely affect Sprint, constitute independent breaches of contract for which Sprint is entitled to relief.

4. Based on the parties' agreement, the Court finds that the conduct set forth in the Complaint constitutes violations of 15 U.S.C. §§ 1114 and 1125(a)(1)(A) and (B) (federal trademark infringement and false advertising). Based on the parties' agreement, the Court further finds that the conduct also constitutes breach of contract, unfair competition, tortious interference with business relationships and prospective advantage, civil conspiracy, unjust enrichment, conspiracy to induce breach of contract, common law fraud, fraudulent misrepresentation, violations of the federal trademark infringement provisions of 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, and injury to business or reputation/dilution of trademarks in violation of 54 Pa.C.S.A. §1124

5. Based on the parties' agreement, the Court finds that Sprint has suffered damages, including loss of goodwill and damage to its reputation, as a result of Defendant's conduct and Sprint is entitled to damages and injunctive relief on the claims as set forth in the Complaint.

6. Based on the parties' agreement, the Court finds that final judgment is hereby entered against Defendant Nicholas A. Carangi, and in favor of the Plaintiffs, on all of the claims set forth in Plaintiffs' Complaint.

7. Based on the parties' agreement, the Court finds that Defendant and all of his past and present agents, employees, heirs, personal representatives, beneficiaries, relatives, 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, proprietorship or entity of any type that is in any way

affiliated or associated with Defendant or Defendant's representatives, agents, assigns, employees, independent contractors, associates, servants, 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, 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 Defendant knows or should know are engaged in the purchase or sale of Sprint Phones 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 "Bulk Handset Trafficking Scheme;"
- d. supplying Sprint 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 Permanent Injunction, including, without limitation, the buying and/or selling of Sprint Phones; and
- e. 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.

8. Based on the parties' agreement, the Court finds that the purchase, sale or shipment of any Sprint Phones without Sprint'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.

9. The address of Defendant Nicholas A. Carangi is 1713 Powerhorn Road, Newtown, PA 18940.

10. Based on the parties' agreement, the Court finds that Defendant waives his right of appeal from the entry of this Final Judgment.

11. Based on the parties' agreement, the Court finds that the Court retains jurisdiction over this matter and the parties to this action for a period of one year in order to enforce any violation of the terms of this Permanent Injunction by, *inter alia*, a finding of contempt, an order for payment of compensatory damages to Plaintiffs in an amount of \$5,000 for each Sprint Phone that Defendant is found to have purchased, sold or unlocked in violation of this Injunction, an order expediting discovery in order to determine the amount of damages to be awarded for Defendant's violations, and awarding additional damages to Plaintiffs. Based on the parties' agreement, the Court finds that the Court finds that the amounts stated in this paragraph are compensatory and will serve to compensate Sprint for its losses in the event Defendant violates the terms of this Order.

12. Based on the parties' agreement, the Court finds that, 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.

DONE AND ORDERED this 12 day of February, 2014.

L Restrepo
UNITED STATES DISTRICT JUDGE
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