

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

IDT DOMESTIC TELECOM, INC., a	§	
Delaware Corporation, IDT WIRELESS, INC.,	§	
a Delaware Corporation, and IDT	§	
NETHERLANDS B.V., a foreign corporation,	§	
	§	CASE NO.: 4:08-cv-1547
Plaintiffs,	§	
	§	
v.	§	JURY
	§	
RAFIQ WAZIR ALI, individually and d/b/a	§	
FONE XCHANGE, and various XYZ	§	
COMPANIES 1-50 and JOHN OR JANE	§	
DOES 1-50 (UNIDENTIFIED),	§	
	§	
Defendants.	§	

**FINAL JUDGMENT AND PERMANENT INJUNCTION
AGAINST DEFENDANT**

Plaintiffs IDT Domestic Telecom, Inc., IDT Wireless Inc. and IDT Netherlands B.V. (collectively “IDT”), brought the above-captioned lawsuit against Defendant Rafiq Wazir Ali, individually and doing business as Fone Xchange (the “Defendant”), asserting that Defendant is engaged in, and knowingly facilitates and encourages others to engage in, unlawful business practices involving the unauthorized and unlawful bulk purchase and resale of IDT’s TúYo wireless telephones (“TúYo Phones”), unauthorized and unlawful computer unlocking of TúYo Phones, alteration of proprietary software computer codes installed in the TúYo Phones, and trafficking of the TúYo Phones for profit (the “Illicit Bulk Resale Scheme”).

IDT asserts that Defendant perpetrates his Illicit Bulk Resale Scheme by acquiring large quantities of TúYo Phones from retail stores, and by soliciting others (“Runners”) to purchase TúYo Phones in large quantities for the benefit of Defendant. Defendant removes the IDT TúYo

Phones' original packaging and accessories, copies of the written warranties and ownership manuals, and ships the TúYo Phones, unlocked or to be unlocked, for resale for substantial profit.

IDT further asserts that Defendant acquires the TúYo Phones with the knowledge and intent that the TúYo Phones will not be activated for use on the IDT wireless network as required by the terms of the TúYo Phone contracts. Instead, the TúYo Phones are computer-hacked. The purpose of this hacking, known as "unlocking," is to disable software installed in the TúYo Phones by the manufacturers at the request and expense of IDT, which enables the use of the TúYo Phones exclusively on IDT's wireless system. The purpose of the software is to allow IDT to offer the TúYo Phones at a discount to the consumer while protecting IDT's subsidy investment in the TúYo Phone. The illegally unlocked TúYo Phones are trafficked and resold as new by Defendant, at a premium, under IDT trademarks.

TúYo Phones are sold subject to terms and conditions ("Terms and Conditions") which conspicuously restrict and limit the sale and use of the TúYo Phones. These Terms and Conditions are set forth on the TúYo website, which is referenced on the outside of the TúYo Phone packaging. Further, the outside of the packaging states TúYo Phones are sold exclusively for use with the TúYo Wireless Service and each purchaser agrees not to resell the TúYo Phone or the TúYo SIM card. The Terms and Conditions and language on the TúYo Phone packaging constitute a valid binding contract.

IDT asserts that Defendant has breached the Terms and Conditions by, *inter alia*, purchasing IDT TúYo Phones with the intent that such phones will not be activated and used on IDT's service, but instead with the intent to unlock, repackage, and resell the phones, and by otherwise using the TúYo Phones for a fraudulent purpose.

IDT further claims the actions of Defendant violate federal and state laws and result in several causes of action, including but not limited to, breach of contract; infringement of federally registered trademarks under 15 U.S.C. § 1114; federal trademark dilution; federal trademark infringement and false advertising under 15 U.S.C. § 1125(a)(1)(A) and (B); unfair competition under Texas common law; contributory trademark infringement; tortious interference with business relationships and prospective advantage; tortious interference with contract; harm to IDT's goodwill and business reputation; civil conspiracy; and unjust enrichment. Defendant takes the position that the factual conduct alleged by IDT, if demonstrated by a preponderance of the evidence, would prove the statutory and common law causes of action listed above.

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 IDT's complaint.

2. The Court finds that IDT has the right to use and enforce its rights in its trademarks (the "IDT Marks"). IDT uses the IDT Marks on and in connection with its telecommunications products and services. Defendant's use of the IDT Marks without authorization in connection with the Illicit Bulk Resale Scheme has caused, and will further cause, a likelihood of confusion, mistake and deception as to the source of origin of the counterfeit products and the relationship between IDT and Defendant. Defendant's activities constitute false designation of origin, false descriptions and representations, and false advertising in commerce in violation of § 43(a) of the Lanham Act, 15 U.S.C. §1125(a)(1)(A) and (B).

Defendant knew or should have known he had no legal right to use the IDT Marks on infringing products.

3. The Court finds that Defendant's participation in the Illicit Bulk Resale Scheme violates the federal and state laws identified in IDT's complaint and constitutes breaches of contract; infringement of federally registered trademarks under 15 U.S.C. § 1114; federal trademark dilution; federal trademark infringement and false advertising under 15 U.S.C. § 1125(a)(1)(A) and (B); unfair competition under Texas common law; contributory trademark infringement; tortious interference with business relationships and prospective advantage; tortious interference with contract; harm to IDT's goodwill and business reputation; civil conspiracy; and unjust enrichment.

4. The Court finds that the Terms and Conditions and the language on the TúYo Phone packaging constitute valid binding contracts enforceable against Defendant. The Court finds that facilitating others to use TúYo Phones in conjunction with service providers other than IDT and tampering with or altering, or facilitating or assisting others to tamper with or alter, TúYo Phones or the TúYo Phones' software each constitute independent breaches of contract for which IDT is entitled to relief.

5. The Court further finds that Defendant's participation in the Illicit Bulk Resale Scheme, if proven, has caused substantial and irreparable harm to IDT for which there is no adequate remedy at law, and will continue to cause substantial and irreparable harm to IDT unless enjoined. On review and consideration of all relevant factors, IDT is entitled to injunctive relief on the claims seeking injunctive relief as set forth in the Complaint.

6. Final judgment is hereby entered against Defendant Rafiq Wazir Ali, individually and doing business as Fone Xchange, and in favor of the Plaintiffs IDT Domestic Telecom, Inc., IDT Wireless Inc. and IDT Netherlands B.V., on all of the claims set forth in IDT's Complaint.

7. Defendant Rafiq Wazir Ali, individually and doing business as Fone Xchange, 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, parent entities, employees, independent contractors, accountants, attorneys, associates, servants, affiliated entities, 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 and/or selling any wireless mobile phone that they know or should know bears any IDT or TúYo Trademark, any other trademark owned or used by IDT. Specifically, Defendant is enjoined from purchasing, selling, and/or shipping, directly or indirectly, all models of TúYo Phones, regardless of whether such devices are new or used, whether in or out of their original packaging, or whether "locked," "unlocked," or otherwise modified in any way by any person.
- b. unlocking or altering any TúYo Phone;
- c. accessing, altering, erasing, tampering with, deleting or otherwise disabling the software contained in any TúYo Phone;
- d. facilitating or in any way assisting other persons or entities who Defendant knows or should know are engaged in unlocking TúYo Phones and/or engaged in

hacking, altering, erasing, tampering with, deleting or otherwise disabling the software installed in TúYo Phones;

- e. 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 unlocked TúYo Phones; and
- f. knowingly using any trademark, service mark, trade name and/or trade dress owned or used by IDT now or in the future, without IDT's prior written authorization.

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 IDT in an amount of \$5,000 for (a) each TúYo Phone that Defendant is found to have purchased, sold, or unlocked in violation of this injunction, and (b) each TúYo Phone for which Defendant is found to have facilitated or assisted in the purchase, sale, or unlocking in violation of this injunction; or in an amount of \$1,000,000.00, whichever is greater. The Court finds that these amounts are compensatory and will serve to compensate IDT for its losses in the event Defendant violates the terms of this Order.

9. The prevailing party in any proceeding to enforce compliance with the terms of this Permanent Injunction shall be entitled to an award of its attorneys' fees and costs.

10. IDT's address is 520 Broad Street, Newark, New Jersey 07102.

11. Defendant's address is Rafiq Wazir Ali, individually and d/b/a Fone Xchange, 3202 San Salvador Place, Katy, Texas 77494.

Signed this 9th day of July, 2008.

A handwritten signature in black ink, appearing to read "Nancy F. Atlas", written in a cursive style. The signature is positioned above a horizontal line.

Nancy F. Atlas
United States District Judge