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9 AT&T Mobility LLC and AT&T Intellectual Property II, L.P.

10 **UNITED STATES DISTRICT COURT**

11 **CENTRAL DISTRICT OF CALIFORNIA**

12 AT&T MOBILITY LLC and AT&T
13 INTELLECTUAL PROPERTY II,
14 L.P.,

15 Plaintiffs,

16 v.

17 DELTA GAMES, INC.; MOHAMAD
18 FARHAT; HASSAN MATAR; and
19 DOES 1-10,

20 Defendants.

) Case No. CV09-02581-ODW (JWJx)

) **PERMANENT INJUNCTION**
) **AGAINST ALL DEFENDANTS**
) **AND FINAL JUDGMENT**
) **AGAINST DELTA GAMES, INC.**
) **AND MOHAMAD FARHAT**

21 Plaintiffs AT&T Mobility LLC and AT&T Intellectual Property II L.P.
22 (collectively "AT&T"), brought the above-captioned lawsuit against Defendants
23 Delta Games, Inc., Mohamad Farhat, and Hassan Matar ("Defendants"), alleging
24 that Defendants are engaged in an unlawful enterprise involving the acquisition,
25 sale, and alteration of large quantities of AT&T wireless devices sold for the
26 purpose of use with AT&T's prepaid service (referred to herein as "GoPhones" or
27 "Phones") purchased from retail outlets, the solicitation and payment of others to
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1 bulk purchase Phones for Defendants’ benefit, computer hacking and erasing or
2 otherwise disabling software installed in the Phones, or selling the Phones to others
3 who disable the software, and ultimately selling or facilitating the sale of the altered
4 Phones as new under the AT&T trademarks for unauthorized use outside of the
5 AT&T wireless system for profit and illicitly selling and/or fraudulently activating
6 the Sim cards that come with the prepaid devices to appropriate airtime (the “Illicit
7 Bulk Retail Scheme”).
8

9
10 AT&T GoPhones are sold subject to terms and conditions (“Terms and
11 Conditions”) which conspicuously restrict and limit the sale and use of the
12 GoPhones. These Terms and Conditions are set forth in printed inserts that are
13 included in the packaging with every AT&T GoPhone and are posted on AT&T’s
14 website. The Terms and Conditions and language on the GoPhone packaging
15 constitute a valid binding contract.
16

17 AT&T asserts that Defendants have violated the Terms and Conditions by,
18 *inter alia*, purchasing AT&T GoPhones with the intent that such phones will not be
19 activated and used on AT&T’s service, but instead with the intent to improperly
20 unlock, repackage, and resell the phones, and by otherwise using the GoPhones in
21 violation of the Terms and Conditions.
22

23 As a result of Defendants’ involvement in the Illicit Bulk Retail Scheme,
24 AT&T asserted claims against Defendants for breach of contract; federal trademark
25 infringement and false advertising under 15 U.S.C. § 1125(a)(1)(A) and (B); unfair
26 competition under California common law; contributory trademark infringement;
27 tortious interference with business relationships and prospective advantage; harm to
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1 AT&T's goodwill and business reputation; civil conspiracy; unjust enrichment; and
2 conspiracy to induce a breach of contract.

3 Based on the respective positions advocated by the parties and having
4 reviewed the Complaint and file and being otherwise duly and fully advised in the
5 premises, it is hereby **ORDERED, ADJUDGED** and **DECREED** that:

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7 1. This Court has jurisdiction over all the parties and all of the claims set
8 forth in AT&T's Complaint.

9
10 2. The Court finds that AT&T has the right to use and enforce said rights
11 in the stylized AT&T and GOPHONE marks, which are used in connection with
12 telecommunications products and services, as depicted below:



18 AT&T uses the AT&T Marks on and in connection with its telecommunications
19 products and services. The AT&T and GOPHONE marks are valid, distinctive,
20 protectable, famous, have acquired secondary meaning, and are associated
21 exclusively with AT&T.

22
23 3. The Court finds that Defendants' involvement in the Illicit Bulk Retail
24 Scheme constitutes breach of contract; federal trademark infringement and false
25 advertising under 15 U.S.C. § 1125(a)(1)(A) and (B); unfair competition under
26 California common law; contributory trademark infringement; tortious interference
27 with business relationships and prospective advantage; harm to AT&T's goodwill
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1 and business reputation; civil conspiracy; unjust enrichment; and conspiracy to
2 induce a breach of contract.

3 4. The Court finds that the Terms and Conditions and the language on the
4 GoPhone packaging constitute a valid binding contract enforceable against
5 Defendants. The Court finds that (a) facilitating others to use GoPhones in
6 conjunction with service providers other than AT&T, and (b) tampering with or
7 altering, or facilitating or assisting others to tamper with or alter, GoPhones or the
8 GoPhones' software constitute independent breaches of contract for which AT&T
9 is entitled to relief.
10

11 5. The Court further finds that Defendants' participation in the Illicit
12 Bulk Retail Scheme, including, *inter alia* the purchase and sale of GoPhones and
13 activation kits would cause substantial and irreparable harm to AT&T for which
14 there is no adequate remedy at law, and will continue to cause substantial and
15 irreparable harm to AT&T unless enjoined.
16

17 6. On review and consideration of all relevant factors, AT&T is entitled
18 to damages and injunctive relief on the claims as set forth in the Complaint.
19

20 7. Final judgment is hereby entered, jointly and severally, against
21 Defendants Delta Games, Inc. and Mohamad Farhat, and in favor of the Plaintiffs
22 AT&T Mobility LLC and AT&T Intellectual Property II L.P. on all claims set forth
23 in AT&T's Complaint in the principal amount of FIVE MILLION DOLLARS
24 AND ZERO CENTS (\$5,000,000.00 (U.S.)), for which let execution issue
25 forthwith.
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1 8. Delta Games, Inc., Mohamad Farhat, Hassan Matar and each and all of
2 their past and present respective officers, directors, successors, assigns, parents,
3 subsidiaries, affiliates, related companies, predecessors-in-interest, agents,
4 employees, heirs, personal representatives, beneficiaries, relatives, and all other
5 persons or entities acting or purporting to act for him/it or on his/its behalf,
6 including but not limited to any corporation, partnership, proprietorship or entity of
7 any type that is in any way affiliated or associated with any Defendant or any
8 Defendant's representatives, agents, assigns, parent entities, employees,
9 independent contractors, associates, servants, affiliated entities, and any and all
10 persons and entities in active concert and participation with any Defendant who
11 receive notice of this Order, shall be and hereby are PERMANENTLY ENJOINED
12 from:
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14
15 a. purchasing, selling, unlocking, reflashing, altering, advertising,
16 soliciting and/or shipping, directly or indirectly, any AT&T GoPhones
17 as well as "Activation Materials" which consist of SIM Cards,
18 GoPhone airtime cards, PIN numbers, and/or other mechanism,
19 process or materials used to activate service or acquire airtime in
20 connection with a new activation;
21

22 b. purchasing, selling, unlocking, reflashing, altering, advertising,
23 soliciting and/or shipping, directly or indirectly, any AT&T wireless
24 handset or Activation Materials that Defendants know or should know
25 bears any AT&T or GoPhone Trademark, any other trademark owned
26 or used by AT&T. Unless expressly authorized by AT&T in writing,
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Defendants are enjoined from purchasing and/or selling, directly or indirectly, all models of phones currently offered for sale by AT&T or that may be offered for sale in the future, as listed and updated from time to time on AT&T's website: <http://www.att.com>, regardless of whether such devices are in or out of their original packaging, or whether "locked," "unlocked," or otherwise modified in any way by any person;

- c. accessing, altering, erasing, tampering with, deleting or otherwise disabling the software contained in any GoPhone;
- d. facilitating or in any way assisting other persons or entities who Defendants know or should know are engaged in unlocking GoPhones and/or hacking, altering, erasing, tampering with, deleting or otherwise disabling the software installed in GoPhones;
- e. 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 buying and/or selling of unlocked GoPhones; and
- f. knowingly using the AT&T or GoPhone Marks or any mark owned or used by AT&T, or that is likely to cause confusion with AT&T's marks, without AT&T's prior written authorization.

9. The address of Defendant Delta Games, Inc. is 7803 Telegraph Road, Suite J, Montebello, California 90640.

1 10. The address of Defendant Mohamad Farhat is 83256 Plaza De Oro,
2 Coachella, California 92236.

3 11. The address of Defendant Hassan Matar is 7020 Prospect Avenue,
4 Bell, California 90201

5 12. The address of Plaintiffs AT&T Mobility LLC and AT&T Intellectual
6 Property II L.P. is 1025 Lenox Park Blvd., Atlanta, GA 30319.

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8 13. The Court retains jurisdiction over this matter and the parties to this
9 action in order to enforce any violation of the terms of this Permanent Injunction by
10 a finding of contempt and an order for payment of compensatory damages to AT&T
11 in an amount of \$5,000 for each AT&T GoPhone or item of Activation Material
12 that Defendants are found to have purchased sold or unlocked in violation of this
13 Injunction. The Court finds that these amounts are compensatory and will serve to
14 compensate AT&T for its losses in the event Defendants violate the terms of this
15 Order. The Court also retains jurisdiction over this matter and the parties to this
16 action to enforce the terms of the parties' settlement agreement and to award
17 damages in Plaintiffs' favor against Defendant Hassan Matar.

18
19 14. The Court hereby finds, pursuant to Fed. R. Civ. P. 54(b), that there is
20 no just reason for delay and orders that Judgment shall be entered against
21 Defendants as set forth herein.

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24 DONE AND ORDERED in Chambers this 15th day of June, 2009.

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JUDGE, UNITED STATES DISTRICT COURT

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Copies furnished to all Counsel of Record and pro se parties.