



AT&T trademarks for unauthorized use outside of the AT&T wireless system for profit (the "Illicit Bulk Retail Scheme").

AT&T GoPhones are sold subject to terms and conditions ("Terms and Conditions") which conspicuously restrict and limit the sale and use of the GoPhones. These Terms and Conditions are set forth in printed inserts that are included in the packaging with every AT&T GoPhone and are posted on AT&T's website. The parties agree that the Terms and Conditions and language on the GoPhone packaging constitute a valid binding contract.

AT&T asserts that Defendants have violated the Terms and Conditions by, *inter alia*, purchasing AT&T GoPhones with the intent that such phones will not be activated and used on AT&T's service, but instead with the intent to improperly unlock, repackage, and resell the phones, and by otherwise using the GoPhones.

As a result of Defendants' alleged involvement in the Illicit Bulk Retail Scheme, AT&T asserted claims against Defendants for breach of contract; federal trademark infringement and false advertising under 15 U.S.C. § 1125(a)(1)(A) and (B); unfair competition under New York common law; contributory trademark infringement; tortious interference with business relationships and prospective advantages; tortious interference with contract; unfair competition, unconscionable acts or practices, and/or unfair or deceptive acts or practices in violation of General Business Law sections 349 and 350; and unjust enrichment.

Upon agreement of the parties, 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 AT&T's complaint.

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



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

3. As agreed by the parties, the Terms and Conditions and the language on the GoPhone packaging constitute a valid binding contract enforceable against Defendants. The parties further agree that (a) facilitating others to use GoPhones in conjunction with service providers other than AT&T, and (b) tampering with or altering, or facilitating or assisting others to tamper with or alter, GoPhones or the GoPhones' software constitute independent breaches of contract for which AT&T is entitled to relief.

4. The parties agree that the facts as alleged in the Complaint constitute substantial and irreparable harm to AT&T for which there is no adequate remedy at law, and will continue to cause substantial and irreparable harm to AT&T unless enjoined.

5. Based on the consent of the parties, AT&T is entitled to damages and injunctive relief for the claims set forth in the Complaint.

6. Final judgment is hereby entered in the principal amount of FIVE MILLION DOLLARS AND ZERO CENTS (\$5,000,000.00 (U.S.)), which shall bear interest at the legal

rate, for which let execution issue forthwith, jointly and severally, against Defendants DK Wireless Inc., d/b/a Wireless Touch and Talk 2 Me and IA Communication, Inc. and in favor of the Plaintiffs AT&T Mobility LLC and AT&T Mobility II LLC, on all claims set forth in AT&T's complaint.

7. If, after the Judgment is entered, it is discovered that the parties to this action have violated the terms of this Permanent Injunction, on consent of the parties, the Court will order the payment of compensatory damages to AT&T in the amount of Five Thousand Dollars and No Cents (\$5,000.00 (U.S.)) for each AT&T phone and/or item of GoPhone-related materials or accessories purchased, sold, unlocked, reflashed, altered, advertised, solicited and/or shipped, or a single damages award of Five Hundred Thousand Dollars and No Cents (\$500,000.00 (U.S.)), whichever is greater. The parties agree that these amounts are compensatory and reasonable estimations of the minimum damages suffered by AT&T for such a breach and will serve to compensate AT&T for its losses in the event a Defendant violates the terms of this Permanent Injunction.

8. DK Wireless Inc., d/b/a Wireless Touch and Talk 2 Me, Ajay Mehta, and IA Communication, Inc., and each and all of his, her and its past and present respective officers, directors, successors, assigns, parents, subsidiaries, affiliates, related companies, predecessors-in-interest, agents, employees, heirs, personal representatives, beneficiaries, relatives, and all other persons or entities acting or purporting to act for him/her/it or on his/her/its behalf, including but not limited to any corporation, partnership, proprietorship or entity of any type that is in any way affiliated or associated with any Defendant or any Defendant's representatives, agents, assigns, parent entities, employees, independent contractors, associates, servants, affiliated entities, and any and all persons and entities in active concert and participation with

any 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 AT&T GoPhones or GoPhone-related materials or accessories, including activation kits, PIN numbers, user guides, and SIM cards;
- b. purchasing, selling, unlocking, reflashing, altering, advertising, soliciting and/or shipping, directly or indirectly, any AT&T wireless handset that Defendants know or should know bears any AT&T or GoPhone Trademark, any other trademark owned or used by AT&T. Unless expressly authorized by AT&T in writing, Defendants are enjoined from purchasing and/or selling, directly or indirectly, all models of GoPhones 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 DK Wireless Inc. d/b/a Wireless Touch and Talk 2 Me is 1777 Grand Avenue, Baldwin, New York, 11510.

10. The address of Defendant Ajay Mehta is 8217 248th Street, Apartment PH, Bellerose, New York 11426.

11. The address of Defendant IA Communication, Inc. is 459 Old Country Road, Westbury, New York, 11590.

12. The address of Plaintiffs AT&T Mobility LLC and AT&T Mobility II LLC is 1025 Lenox Park Blvd., Atlanta, GA 30319.

13. 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 AT&T in accordance with paragraph 8 of this Judgment. The Court also retains jurisdiction over this matter and the parties to this action to enforce the terms of the parties' settlement agreement and to award damages in Plaintiffs' favor against Defendant Ajay Mehta.

DONE AND ORDERED in Kings County, New York, this 19 day of May,  
2009.

s/NG

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UNITED STATES DISTRICT JUDGE

Copies furnished to:

James B. Baldinger, *counsel for Plaintiffs AT&T Mobility LLC and AT&T Mobility II LLC*

Jaspreet S. Mayall, *counsel for Defendants DK Wireless Inc., d/b/a Wireless Touch and Talk 2 Me, Ajay Mehta, and IA Communication, Inc.*