

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

FILED

MAY - 5 2009

CLERK, U.S. DISTRICT COURT

by _____ Deputy

AT&T MOBILITY LLC and AT&T
MOBILITY II LLC,

Plaintiffs,

v.

ARENA TRADING, INC., a Texas
Corporation; KHALID TAYOB;
RUBINA TARIQ, also known as RUBY
TARIQ; RUBYLINK; HAIDER KHOJA;
MURAD KHOJA; MEHBOOB KHOJA;
MUSKAAN INC., a Texas corporation; WALK
& TALK WIRELESS; GIDEON GIDANIAN;
WESTSIDE COMMUNICATIONS;
AMERICAS WIRELESS; JOHN DOES 1-50;
XYZ COMPANIES 1-50,

Defendants.

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CASE NO.: 3:08-cv-00330

JURY TRIAL DEMANDED

**FINAL JUDGMENT AND PERMANENT INJUNCTION
AGAINST DEFENDANTS**

Plaintiffs AT&T Mobility LLC and AT&T Mobility II LLC (collectively “AT&T”), brought the above-captioned lawsuit against, inter alia, Defendants Gideon Gidianian and Westside Communications (collectively referred to as “Defendants”), alleging that Defendants are engaged in an unlawful enterprise involving the acquisition, sale, and alteration of large quantities of AT&T wireless devices sold for the purpose of use with AT&T’s prepaid service (referred to herein as “GoPhones” or “Phones”) purchased from retail outlets, the solicitation and payment of others to bulk purchase Phones for Defendants’ benefit, computer hacking and erasing or otherwise disabling software installed in the Phones, or selling the Phones to others who disable the software, and ultimately selling or facilitating the sale of the altered Phones as

new under the AT&T trademarks for unauthorized use outside of the AT&T wireless system for profit and the SIM and/or PIN activation kits that come with the GoPhones to fraudulently obtain free airtime (the "Illicit Bulk Retail Scheme"). Defendants denied all allegations.

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 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 in violation of the Terms and Conditions.

As a result of Defendants' involvement in the Illicit Bulk Retail Scheme, AT&T asserted claims against Defendants for breach of contract; federal trademark infringement under 15 U.S.C. § 1114 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 advantages; tortious interference with contract; harm to AT&T's business reputation; civil conspiracy; and unjust enrichment.

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 AT&T's complaint.

2. The Court finds 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 AT&T and GOPHONE marks are valid, distinctive, protectable, famous, have acquired secondary meaning, and are associated exclusively with AT&T.

3. The Court finds that Defendants' involvement in the Illicit Bulk Retail Scheme, if proven, constitutes breach of contract; federal trademark infringement under 15 U.S.C. § 1114 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 advantages; tortious interference with contract; harm to AT&T's business reputation; civil conspiracy; and unjust enrichment.

4. The Court finds that the Terms and Conditions and the language on the GoPhone packaging constitute a valid binding contract enforceable against Defendants. The Court finds 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.

5. The Court further finds that Defendants' participation in the Illicit Bulk Retail Scheme, including, *inter alia* the purchase and sale of GoPhones and activation kits, if proven, would cause 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.

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

7. Final judgment is hereby entered against Defendant Westside Communications 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 in the principal amount of THREE MILLION DOLLARS AND ZERO CENTS (\$3,000,000.00 (U.S.)), which shall bear interest at the legal rate, for which let execution issue forthwith.

8. Gideon Gidianian and Westside Communications, and each and all of his 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/it or on his/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 handsets of a make and model sold by AT&T

as GoPhones, as reflected on the AT&T website (www.att.com) of which Defendants must keep themselves informed and of which they are charged with knowledge, all iPhones, and all “Activation Materials,” which consist of SIM Cards, GoPhone airtime cards, PIN numbers, and/or other mechanism, process or materials used to activate service or acquire airtime in connection with a new activation;

- b. accessing, altering, erasing, tampering with, deleting or otherwise disabling the software contained in any GoPhone;
 - c. 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;
 - d. 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
 - e. 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 Gideon Gidanian is 9636 Venice Boulevard, Culver City, California 90232.
10. The address of Defendant Westside Communications, an unregistered company, is 9636 Venice Boulevard, Culver City, California 90232.

11. The address of Plaintiffs AT&T Mobility LLC and AT&T Mobility II LLC is 5565 Glenridge Connector, Suite 1700, Atlanta, GA 30342.

12. 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 an amount of \$5,000 for each AT&T GoPhone or item of Activation Material that Defendants are 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 AT&T for its losses in the event Defendants violate the terms of this Order. 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 Gideon Gidanian.

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

DONE AND ORDERED in Dallas County, Texas, this 5th day of May,
2009.



UNITED STATES DISTRICT JUDGE

Copies furnished to:

All Counsel of Record