

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

AT&T MOBILITY LLC and AT&T MOBILITY II LLC,	§	
	§	
	§	
Plaintiffs,	§	
	§	CASE NO.: 3:08-cv-00330-P
v.	§	
	§	JURY TRIAL DEMANDED
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.	§	

**FINAL JUDGMENT AND PERMANENT INJUNCTION
AGAINST DEFENDANT AMERICAS WIRELESS**

Plaintiffs AT&T Mobility LLC and AT&T Mobility II LLC (collectively “AT&T”), brought the above-captioned lawsuit against Defendant Americas Wireless, among others, alleging that Defendants are engaged in an unlawful enterprise involving 1) 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”) and related activation materials, that were purchased from retail outlets, 2) the solicitation and payment of others to bulk purchase Phones for Defendant’s benefit, 3) computer hacking and erasing or otherwise disabling software installed in the Phones or selling the Phones to others who disable the software, 4) 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 5) illicitly selling and/or fraudulently

activating the SIM cards utilizing the PIN numbers that come with the prepaid devices to appropriate airtime (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 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 (the Lanham Act), federal trademark dilution under 15 U.S.C. § 1125(c), federal unfair competition under 15 U.S.C. 1125(a), unfair competition under the common law of the State of Texas, contributory trademark infringement, tortious interference with business relationships and prospective advantage, tortious interference with contract, dilution of AT&T’s trademarks under Tex. Code Ann. § 16.29, civil conspiracy, and unjust enrichment.

Based on the positions advocated by the parties and having reviewed the Amended 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 Amended 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 Americas Wireless' involvement in the Illicit Bulk Retail Scheme constitutes breach of contract, federal trademark infringement under 15 U.S.C. § 1114 (the Lanham Act), federal trademark dilution under 15 U.S.C. § 1125(c), federal unfair competition under 15 U.S.C. 1125(a), unfair competition under the common law of the State of Texas, contributory trademark infringement, tortious interference with business relationships and prospective advantage, tortious interference with contract, harm to AT&T's goodwill and AT&T business reputation under Tex. Code Ann. § 16.29, 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 Americas Wireless. 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 Americas Wireless' participation in the Illicit Bulk Retail Scheme, including, *inter alia* the purchase and sale of GoPhones and activation kits, causes 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, and concluding that there is no just reason for delay, the Court finds that AT&T is entitled to injunctive relief on the claims as set forth in the Amended Complaint.

7. Final judgment is hereby entered against Defendant Americas Wireless 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 Amended Complaint.

8. Americas Wireless, and each and all of its past and present officers, directors, successors, assigns, parents, subsidiaries, affiliates, related companies, predecessors-in-interest, companies, agents, employees, heirs, personal representatives, beneficiaries, relatives, and all other persons or entities acting or purporting to act for it or on 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 Americas Wireless or Americas Wireless' 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 Americas Wireless 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 as well as related "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. 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, Defendant Americas Wireless is 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 and/or fraudulently activating Activation Materials;
- d. facilitating or in any way assisting other persons or entities who Defendant Americas Wireless knows 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 Defendant Americas Wireless 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 GoPhones and fraudulently activating or selling Activation Materials for fraudulent activation; 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 last known address of Defendant Americas Wireless is 12763 Capricorn Drive, Suite 700, Stafford, Texas 77477.
10. The address of Plaintiffs AT&T Mobility LLC and AT&T Mobility II LLC is 1025 Lenox Park Blvd., Atlanta, GA 30319.
11. The Court retains jurisdiction over this matter and the parties to this action 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 Americas Wireless is 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 Defendant violates the terms of this Order.
12. 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 Defendant as set forth herein.

DONE AND ORDERED in Dallas, Texas, this 25th day of June, 2009.



JORGE A. SOLIS
UNITED STATES DISTRICT JUDGE

Copies furnished to All Counsel of Record and pro se parties