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18 **UNITED STATES DISTRICT COURT**
CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION

19	TRACFONE WIRELESS, INC., a)	Case No. EDCV 07-01355 SGL (JCRx)
20	Delaware corporation,)	Assigned to Judge Stephen Larson
21	Plaintiff,)	
22	v.)	Proposed
23)	Final Judgment and Permanent
24	RAYAHI HAIFA a/k/a KIKI H.;)	Injunction
25	IBRAHIM M. HAIFA; HAIFA A.)	
26	HAIFA; and DOES 1-10,)	
27	Defendants.)	

1 FINAL JUDGMENT AND PERMANENT INJUNCTION

2 Plaintiff, TracFone Wireless, Inc. (“TracFone”), brought the above-
3 captioned lawsuit against, among others, Defendants Rayahi Haifa a/k/a Kiki H.
4 (“Rayahi Haifa”), Ibrahim M. Haifa (“Ibrahim Haifa”) and Haifa A. Haifa (“Haifa
5 Haifa”)(collectively the “Defendants”), alleging that defendants are engaged in an
6 unlawful scheme involving the acquisition, sale, and counterfeiting of large
7 quantities of TracFone and/or NET10 prepaid wireless telephones
8 (“TracFone/NET10 Prepaid Phones” or “Phones”) that causes substantial and
9 irreparable harm to TracFone and to consumers.
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11 Defendants’ scheme as alleged in the Complaint (the “Bulk Resale
12 Scheme”) involves the unauthorized and unlawful bulk purchase and resale of
13 TracFone/NET10 Prepaid Phones, unauthorized and unlawful computer unlocking
14 of Tracfone/NET10 Prepaid Phones, alteration of TracFone’s copyrighted and
15 proprietary software computer code installed in the Phones, and ultimate sale of
16 counterfeited Phones to unsuspecting end users, often in foreign countries, for
17 profit.
18

19 TracFone alleges that Defendants perpetrated the Bulk Resale Scheme
20 by acquiring bulk quantities of TracFone/Net10 Prepaid Phones from retail stores
21 such as Wal-Mart, Target or Sam’s Club, and by soliciting others to purchase
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1 TracFone/NET10 Prepaid Phones in bulk for the benefit of Defendants.
2 Defendants acquired the TracFone/NET10 Prepaid Phones with the actual or
3 constructive knowledge and intent that the Phones would not be activated for use
4 on the TracFone prepaid wireless system and that the Phones would be computer-
5 hacked. The purpose of this hacking, known as “reflashing” or “unlocking,” is to
6 erase, remove and/or disable TracFone’s copyrighted and proprietary software
7 installed in the Phones, which enables the use of the TracFone/NET10 Prepaid
8 Phones exclusively on TracFone’s prepaid wireless system. The reflashed Phones
9 were then trafficked and resold still bearing TracFone’s trademarks, and at a
10 premium, for unauthorized use outside of the TracFone prepaid wireless system.
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15 TracFone/NET10 Prepaid Phones are sold subject to terms and
16 conditions (“Terms and Conditions”) which conspicuously restrict and limit the
17 sale and use of TracFone/Net10 Prepaid Phones. These terms and conditions are
18 set forth in printed inserts that are included in the packaging with every
19 TracFone/NET10 Prepaid Phone, and are also available to the public on
20 TracFone’s and NET10’s websites. The Terms and Conditions are also referenced
21 in printed warnings that are placed on the outside of the retail packaging of the
22 Phones. The Terms and Conditions and language on the packaging constitute a
23 valid binding contract.
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1 Pursuant to the Terms and Conditions and the language on the
2 packaging, purchasers of TracFone/NET10 Prepaid Phones agree: (a) to use the
3 Phones only in conjunction with the TracFone/NET10 prepaid wireless service, (b)
4 not to tamper with or alter TracFone/NET10 Prepaid Phones or the Phones'
5 software, enter unauthorized PIN numbers in the Phones, engage in any other
6 unauthorized or illegal use of the Phones or the TracFone/NET10 service, or assist
7 others in such acts, and (c) not to export any TracFone/NET10 Prepaid Phones
8 outside the TracFone/NET10 wireless system coverage area ("Coverage Area").
9
10 In violation of the Terms and Conditions, Defendants have, among other things,
11 unlawfully exported TraFone/NET10 Prepaid Phones to foreign countries outside
12 of the Coverage area or knowingly facilitated others who have done so; have
13 facilitated others to use the Phones without the TracFone/NET10 prepaid wireless
14 service; and have altered TracFone/NET10 Prepaid Phones and the Phones'
15 software or have facilitated others who have done so.

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18 As a result of the Bulk Resale Scheme, TracFone asserted claims
19 against the Defendants for breach of contract; federal trademark infringement
20 under 15 U.S.C. § 1114; federal unfair competition under 15 U.S.C. § 1125(a);
21 violation of Cal Bus. & Prof. Code §17200 *et seq.*; contributory trademark
22 infringement; copyright infringement under Title 17 of the United States Code;
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1 circumvention of technological measures that control access to copyrighted
2 software, and trafficking in services that circumvent technological measures
3 protecting copyrighted software, under 17 U.S.C. § 1201, *et seq.*, as violations of
4 the Digital Millennium Copyright Act (“DMCA”); interference with business
5 relationships and prospective advantage; and interference with contract; and
6 dilution of trademarks under Cal. Bus. & Prof. Code § 14200, *et seq.*
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10 The Court having reviewed the Complaint and file and being
11 otherwise duly advised in the premises, it is hereby:

12 **ORDERS, ADJUDGES and DECREES** that:

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14 1. This Court had jurisdiction over TracFone and Defendants and all of
15 the claims set forth in TracFone’s Complaint.

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17 2. The Court finds that TracFone owns all right, title, and interest in and
18 to United States Trademark Registration No. 2,114,692, issued on November 18,
19 1997 and based on a first use date of June 30, 1996; United States Trademark
20 Registration No. 2,761,017, issued on September 9, 2003 and based on a first use
21 date of December 2000; United States Trademark Registration No. 3,224,929,
22 issued on April 3, 2007 and based on a first use date of December 31, 2005; United
23 States Trademark Registration No. 3,222,623, issued on March 27, 2007 and based
24 on a first use date of December 31, 2005; United States Trademark Registration
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1 No. 3,118,250, on July 18, 2006 and based on a first use date of March 1, 2005;
2 United States Trademark Registration No. 3,255,754, issued on June 26, 2007 and
3 based on a first use date of December 31, 2005; United States Trademark
4 Registration No. 3,253,506, issued on June 19, 2007 and based on a first use date
5 of December 31, 2005; and United States Trademark Registration No. 3,251,389,
6 issued on June 12, 2007 and based on a first use date of December 31, 2005
7 (collectively the "Registered TracFone Trademarks").
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11 3. The Registered TracFone Trademarks are valid, distinctive,
12 protectable, famous, have acquired secondary meaning and are associated
13 exclusively with Tracfone. The Court finds that the trademark registered under
14 Registration No. 2,114,692 is incontestable.
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17 4. The Court further finds that TracFone holds a valid and enforceable
18 copyright registration, TX 6-515-894, on the TracFone Prepaid Software.
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20 5. The Court finds that the Terms and Conditions constitute a valid
21 binding contract enforceable against Defendants. The Court finds that (a)
22 facilitating others to use TracFone/NET10 Prepaid Phones in conjunction with
23 service providers other than TracFone, (b) tampering with or altering
24 TracFone/NET10 Prepaid Phones or the Phones' software, entering unauthorized
25 PIN numbers in the Phones for purposes of unlocking or reflashing the Phones, or
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1 facilitating others in such acts, and/or (c) exporting TracFone/NET10 Prepaid
2 Phones outside of the Coverage Area, or assisting others in such acts, respectively,
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4 constitute independent breaches of contract for which TracFone is entitled to relief.

5 6. The Court finds that Defendants' conduct constitutes breach of
6 contract; federal trademark infringement under 15 U.S.C. § 1114; federal unfair
7 competition under 15 U.S.C. § 1125(a); violation of Cal Bus. & Prof. Code §17200
8 *et seq.*; contributory trademark infringement; copyright infringement under Title
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10 17 of the United States Code; circumvention of technological measures that control
11 access to copyrighted software, and trafficking in services that circumvent
12 technological measures protecting copyrighted software, under 17 U.S.C. § 1201,
13 *et seq.*, as violations of the Digital Millennium Copyright Act ("DMCA");
14 interference with business relationships and prospective advantage; and
15 interference with contract; and dilution of trademarks under Cal. Bus. & Prof.
16 Code § 14200, *et seq.*

17 7. The Court finds Defendants' conduct, independently, in the Bulk
18 Resale Scheme, has caused substantial harm to TracFone and the public interest,
19 and will continue to cause substantial harm to TracFone and the public interest,
20 unless enjoined. Consequently, TracFone is entitled to injunctive relief on the
21 claims set forth in its Complaint.
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1 8. On November 27, 2006, the Librarian of Congress, upon the
2 recommendation of the Register of Copyrights, issued a Final Rule setting forth six
3 (6) classes of copyrighted works that are exempt from the provisions of the DMCA,
4 including:
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6 Computer programs in the form of firmware that enable wireless
7 telephone handsets to connect to a wireless telephone communication
8 network, when circumvention is accomplished for the sole purpose of
9 lawfully connecting to a wireless telephone communication network.

10 71 Fed. Reg. 68472 (Nov. 27, 2006) (amending 37 C.F.R. § 201.40(b)). The Court
11 finds that this new exemption does not absolve the Defendants of liability for their
12 violations of the DMCA as alleged in TracFone's Complaint, because the
13 Defendants' conduct as alleged in this case does not come within the scope of the
14 new exemption. The Defendants' misconduct and involvement in unlocking
15 TracFone handsets was for the purpose of reselling those handsets for a profit, and
16 not "for the sole purpose of lawfully connecting to a wireless telephone
17 communication network." Because the exemption does not apply to the conduct
18 alleged in this case, there is no need for the Court to address the validity of the
19 exemption or the circumstances surrounding its enactment.
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24 9. Final judgment is hereby entered against Defendants, Rayahi Haifa,
25 Ibrahim Haifa and Haifa Haifa, jointly and severally, and in favor of the Plaintiff,
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1 TracFone Wireless, Inc., on all the claims set forth in TracFone's Complaint and
2 a permanent injunction imposed against Defendants as set out below.
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4 10. Defendants Rayahi Haifa, Ibrahim Haifa and Haifa Haifa, and each
5 and all of their representatives, agents, assigns, employees, independent
6 contractors, relatives, associates, servants and any and all persons and entities in
7 active concert in participation with them who receive notice of this Order shall be
8 and hereby are PERMANENTLY ENJOINED from:
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- 11 a. Purchasing, selling and/or shipping any wireless mobile
12 phone that they know or should know bears any Registered
13 TracFone Trademark, any other trademark owned by
14 TracFone, or any other model of wireless mobile device sold
15 or marketed by TracFone or any of its affiliated or related
16 entities, such as America Movil, bearing any Registered
17 TracFone Trademark ("TracFone/NET10 Handsets").
18 Specifically, the Defendants are enjoined from purchasing,
19 selling and/or shipping, directly or indirectly, all models of
20 TracFone/NET10 Handsets, regardless of whether such
21 devices are new or used, whether in or out of their original
22 packaging, or whether "locked," "unlocked," "reflashed," or
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1 otherwise altered or modified in any way by any person.
2 This injunction applies to all TracFone/NET10 Handsets
3 currently or previously offered for sale by TracFone, or that
4 may be offered for sale in the future, as listed and updated
5 from time to time on TracFone's websites,
6 <http://www.tracfone.com> and www.net10.com, including
7 without limitation the following models of TracFone/NET10
8 Handsets:

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11 Handsets:

12 Motorola W370	Motorola C343	Nokia 1600
13 Motorola W375	Motorola V60i	Nokia 2285
14 Motorola C261	Nokia 2126	LG 3280
15 Motorola C139	Nokia 2126i	LG CG225
16 Motorola V176	Nokia 2600	LG 1500
17 Motorola V170	Nokia 1100	LG 200C
18 Motorola V171	Nokia 1112	Kyocera K126C
19 Motorola C155	Nokia 1221	

20 b. reflashing and/or unlocking of any TracFone/NET10
21 Handset;

22 c. accessing, altering, erasing, tampering with, deleting or
23 otherwise disabling TracFone's proprietary prepaid cellular
24 software contained within any and all models of
25 TracFone/NET10 Handsets;
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- 1 d. supplying TracFone/NET10 Handsets to or facilitating or in
2 any way assisting other persons or entities who Defendants
3 know or should know are engaged in reflashing and/or
4 unlocking TracFone/NET10 Handsets and/or hacking,
5 altering, erasing, tampering with, deleting or otherwise
6 disabling the software installed in TracFone/NET10
7 Handsets;
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11 e. supplying TracFone/NET10 Handsets to, or facilitating or
12 assisting, in any way, other persons or entities who
13 Defendants know or should know are engaged in any of the
14 acts prohibited under this permanent injunction including,
15 without limitation, the buying, selling and/or shipping of
16 locked or unlocked TracFone/NET10 Handsets; and
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20 f. knowingly using the Registered TracFone Trademarks or
21 any other trademark owned or used by TracFone now or in
22 the future, without TracFone's prior written authorization.
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24 11. Defendants, pursuant to the Lanham Act, shall deliver and turn over
25 all Phones in their possession, or subject to their custody or control, bearing or
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1 infringing any of the Marks or a confusingly similar copy thereof, to TracFone
2 immediately upon entry of this Order.
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4 12. The shipment of any TracFone/NET10 Handset by any Defendant
5 within or outside of the continental United States is and shall be deemed a
6 presumptive violation of this permanent injunction.
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8 13. The last known address of Rayahi Haifa is 2817 West Rosarita Street,
9 San Bernardino, California 92405.
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11 14. The last known address of Ibrahim Haifa is 2817 West Rosarita Street,
12 San Bernardino, California 92405.
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14 15. The last known address of Haifa Haifa is 2817 West Rosarita Street,
15 San Bernardino, California 92405.
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17 16. The address of TracFone Wireless, Inc. is 9700 N.W. 112th Avenue,
18 Miami, FL 33178.
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20 17. Defendants Rayahi Haifa, Ibrahim Haifa and Haifa Haifa each waive
21 their right to appeal from the entry of this Final Judgment.
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23 18. The Court retains jurisdiction over this matter and the parties to this
24 action in order to punish any violation of the terms of this Permanent Injunction by
25 a finding of contempt and a payment of damages to TracFone Wireless, Inc. in an
26 amount of not less than \$5,000 for each TracFone Handset that a Defendant is
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1 found to have purchased, sold, unlocked, altered in any way, or shipped in
2 violation of this injunction.
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4 19. The prevailing party in any proceeding to enforce compliance with the
5 terms of this Permanent Injunction shall be entitled to an award of its attorneys'
6 fees and costs.
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11 Dated: 2-22-08


UNITED STATES DISTRICT JUDGE

STEPHEN G. LARSON
UNITED STATES DISTRICT JUDGE

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13
14 Copies furnished to:

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16 Maria Montenegro,
17 Megan Wagner,
18 Sarah Kohut,
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19 William J. Kolegraff,
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