

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

TRACFONE WIRELESS, INC., a
Delaware corporation,

Plaintiff,

v.

SKYNET WHOLESALE DISTRIBUTORS
INC., a Texas Corporation, d/b/a Skynet Wire
a/k/a Skynet Wireless; MARIO ARRATIA,
individually, and d/b/a Skynet Wire a/k/a
Skynet Wireless; DANIEL MATA a/k/a
Danny Mata a/k/a Dan Mata, individually,
and d/b/a Skynet Wire a/k/a Skynet Wireless;
JOHN DOES 1-50; and XYZ COMPANIES
1-50,

Defendants.

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CASE NO.: 4:08-CV-00546

**FINAL JUDGMENT AND
PERMANENT INJUNCTION AGAINST DEFENDANTS**

Plaintiff, TracFone Wireless, Inc. (“TracFone”), brought the above-captioned lawsuit against Defendants Skynet Wholesale Distributors, Inc., a Texas corporation d/b/a Skynet Wire a/k/a Skynet Wireless (“Skynet”), Mario Arratia, individually and d/b/a Skynet Wire a/k/a Skynet Wireless (“Arratia”), and Daniel Mata, individually and d/b/a Skynet Wire a/k/a Skynet Wireless (“Mata”) (Skynet, Arratia and Mata are collectively referred to herein as “Defendants”), alleging that Defendants were engaged in an unlawful enterprise involving the acquisition, sale and alteration of large quantities of TracFone and TracFone’s NET10 branded prepare wireless telephones (“TracFone/NET10 Prepaid Phones” or “Phones”) purchased from various retail outlets such as Wal-Mart, Target and Sam’s Club, the solicitation and payment of others to bulk

purchase TracFone/NET10 Prepaid Phones for Defendants' benefit, computer hacking and erasing or otherwise disabling the prepaid software ("TracFone/NET10 Prepaid Software") installed in the Phones essential for consumers to access TracFone's prepaid wireless network, or reselling the Phones to others who disable the software, and ultimate selling of the altered Phones as new under TracFone's trademarks for the unauthorized use outside of the TracFone prepaid wireless system for profit (the "Bulk Resale Scheme").

TracFone/NET10 Prepaid Phones are sold subject to terms and conditions ("Terms and Conditions") which conspicuously restrict and limit the sale and use of TracFone/NET10 Prepaid Phones. These Terms and Conditions are set forth in printed inserts that are included in the packaging with every TracFone Phone, and are also available to the public on TracFone's website. The Terms and Conditions are also referenced in printed warnings that are placed on the outside of the retail packaging of the Phones. The Terms and Conditions and language on the packaging constitute a valid binding contract.

Pursuant to the Terms and Conditions and the language on the packaging, purchasers of TracFone/NET10 Prepaid Phones agree: (a) to use the Phones only in conjunction with the TracFone/NET10 prepaid wireless service; (b) not to tamper with or alter TracFone/NET10 Prepaid Phones or the Phones' software, enter unauthorized PIN numbers in the Phones, engage in any other unauthorized or illegal use of the Phones or the TracFone/NET10 service, or assist others in such acts; and (c) not to export any TracFone/NET10 Prepaid Phones outside of the TracFone/NET10 wireless system coverage area ("Coverage Area"). In violation of the Terms and Conditions, Defendants have, among other things, unlawfully exported TracFone/NET10 Prepaid Phones to foreign countries outside of the Coverage area or knowingly facilitated others who have done so; facilitated others to use the Phones without the TracFone/NET10 prepaid

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wireless service; and altered TracFone/NET10 Prepaid Phones and the Phones' software or facilitated others who have done so.

As a result of Defendants' involvement in the Bulk Resale Scheme, TracFone asserted claims against Defendants for breach of contract; federal trademark infringement under 15 U.S.C. § 1114; federal unfair competition under 15 U.S.C. § 1125(a); common law unfair competition; contributory trademark infringement; copyright infringement under Title 17 of the United States Code; circumvention of copyrighted software protection systems and trafficking in circumvention technologies under 17 U.S.C. § 1201, *et. seq.* as a violation of the Digital Millennium Copyright Act ("DMCA"); tortious interference business relationships and prospective advantages; tortious interference with contract; dilution of TracFone's trademarks under Tex. Code Ann. § 16.29; civil conspiracy; conspiracy to induce breach of contract; and unjust enrichment. The Court, having reviewed the file and being otherwise duly 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 TracFone's complaint.

2. The Court finds that TracFone owns all right, title, and interest in and to United States Trademark Registration No. 2,114,692, issued on November 18, 1997 and based on a first use date of June 30, 1996; United States Trademark Registration No. 2,761,017, issued on September 9, 2003 and based on a first use date of December 2000; United States Trademark Registration No. 3,224,929, issued on April 3, 2007 and based on a first use date of December 31, 2005; United States Trademark Registration No. 3,222,623, issued on March 27, 2007 and based on a first use date of December 31, 2005; United States Trademark Registration No.

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3,118,250, on July 18, 2006 and based on a first use date of March 1, 2005; United States Trademark Registration No. 3,255,754, issued on June 26, 2007 and based on a first use date of December 31, 2005; United States Trademark Registration No. 3,253,506, issued on June 19, 2007 and based on a first use date of December 31, 2005; and United States Trademark Registration No. 3,251,389, issued on June 12, 2007 and based on a first use date of December 31, 2005 (collectively the "TracFone Trademarks").

3. The TracFone Trademarks are valid, distinctive, protectable, famous, have acquired secondary meaning and are associated exclusively with TracFone. The Court finds that the trademark registered under Registration No. 2,114,692 is incontestable.

4. The Court further finds that TracFone holds a valid and enforceable copyright registration, TX 6-515-894, on the TracFone Prepaid Software.

5. The Court finds that the Defendants' conduct constitutes breach of contract; federal trademark infringement under 15 U.S.C. § 1114; federal unfair competition under 15 U.S.C. § 1125(a); common law unfair competition; contributory trademark infringement; copyright infringement under Title 17 of the United States Code; circumvention of copyrighted software protection systems and trafficking in circumvention technologies under 17 U.S.C. § 1201, *et. seq.* as a violation of the Digital Millennium Copyright Act ("DMCA"); tortious interference business relationships and prospective advantages; tortious interference with contract; dilution of TracFone's trademarks under Tex. Code Ann. § 16.29; civil conspiracy; conspiracy to induce breach of contract; and unjust enrichment. Defendants have caused substantial and irreparable harm to TracFone, and will continue to cause substantial and irreparable harm to TracFone unless enjoined.

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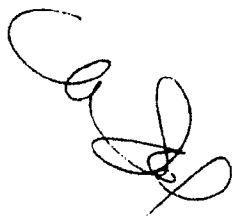
6. On November 27, 2006, the Librarian of Congress, upon the recommendation of the Register of Copyrights, issued a Final Rule setting forth six (6) classes of copyrighted works that are exempt from the provisions of the DMCA, including:

Computer programs in the form of firmware that enable wireless telephone handsets to connect to a wireless telephone communication network, when circumvention is accomplished for the sole purpose of lawfully connecting to a wireless telephone communication network.

71 Fed. Reg. 68472 (Nov. 27, 2006) (amending 37 C.F.R. § 201.40(b)). The Court finds that this new exemption does not absolve the Defendants of liability for their violations of the DMCA as alleged in TracFone's complaint, because the Defendants' conduct as alleged in this case does not come within the scope of the new exemption. The Defendants' purchase and resale of the TracFone/NET10 Prepaid Phones was for the purpose of reselling those handsets for a profit, and not "for the sole purpose of lawfully connecting to a wireless telephone communication network." Because the exemption does not apply to the conduct alleged in this case, there is no need for the Court to address the validity of the exemption or the circumstances surrounding its enactment.

7. TracFone has suffered damages, including loss of goodwill and damage to its reputation, as a result of the Defendants' conduct. TracFone is entitled to injunctive relief and damages on the claims set forth in the Complaint.

8. Final judgment is hereby entered, jointly and severally, against the Defendants, Skynet Wholesale Distributors, Inc., a Texas corporation d/b/a Skynet Wire a/k/a Skynet Wireless, Mario Arratia, individually and d/b/a Skynet Wire a/k/a Skynet Wireless, and Daniel Mata, individually and d/b/a Skynet Wire a/k/a Skynet Wireless, and in favor of the Plaintiff, TracFone Wireless, Inc., on all of the claims set forth in TracFone's complaint.

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9. Defendants, Skynet Wholesale Distributors, Inc., a Texas corporation d/b/a Skynet Wire a/k/a Skynet Wireless, Mario Arratia, individually and d/b/a Skynet Wire a/k/a Skynet Wireless, and Daniel Mata, individually and d/b/a Skynet Wire a/k/a Skynet Wireless, and each and all of their respective representatives, successors, assigns, relatives, associates, servants, personal representatives, beneficiaries, agents, independent contractors, employees, attorneys, accountants, investigators, consultants, parents, subsidiaries, affiliates, related companies, predecessors-in-interest all other persons or entities acting or purporting to act for any Defendant or on any Defendant's 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 who receive notice of this Order (collectively, the "Enjoined Parties") shall be and hereby are PERMANENTLY ENJOINED from:

- a. purchasing and/or selling any wireless mobile phone that they know or should know bears any TracFone Trademark, any other trademark owned or used by TracFone, or any other model of wireless mobile phone sold or marketed by TracFone ("TracFone/NET10 Handsets"). Specifically, the Enjoined Parties are enjoined from purchasing and/or selling all models of TracFone/NET10 Handsets currently offered for sale by TracFone, or that may be offered for sale in the future, as listed and updated from time to time on TracFone's and NET10's websites, http://tracfone.com/activation_pick_brand.jsp and www.net10.com, including without limitation the following TracFone/NET10 handsets:

Motorola W370	Nokia 2126	LG 3280
Motorola C261	Nokia 2126i	LG CG225
Motorola C139	Nokia 2600	LG 1500
Motorola V176	Nokia 1100	
Motorola V170	Nokia 1112	
Motorola V171	Nokia 1600	



Motorola C155
Motorola C343

Nokia 2285

- b. reflashing and/or unlocking of any TracFone/NET10 Handset;
- c. accessing, altering, erasing, tampering with, deleting or otherwise disabling TracFone's proprietary prepaid cellular software contained within any and all models of TracFone/NET10 Handsets;
- d. facilitating or in any way assisting other persons or entities who the Enjoined Parties know or should know are engaged in reflashing and/or unlocking TracFone/NET10 Handsets and/or hacking, altering, erasing, tampering with, deleting or otherwise disabling the software installed in TracFone/NET10 Handsets;
- e. facilitating or in any way assisting other persons or entities who the Enjoined Parties 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 TracFone/NET10 Handsets; and
- f. knowingly using the TracFone Trademarks or any other trademark owned or used by TracFone, or that is likely to cause confusion with TracFone's Trademarks, without TracFone's prior written authorization.

10. The last known address of Defendant Skynet Wholesale Distributors, Inc., a Texas corporation d/b/a Skynet Wire a/k/a Skynet Wireless is 119 E. Pecan Blvd., Suite B, McAllen, Texas 78501-9607.

11. The last known address of Defendant Mario Arratia, individually and d/b/a Skynet Wire a/k/a Skynet Wireless is 3500 TORONTO ST., McALLEN TX 78501.



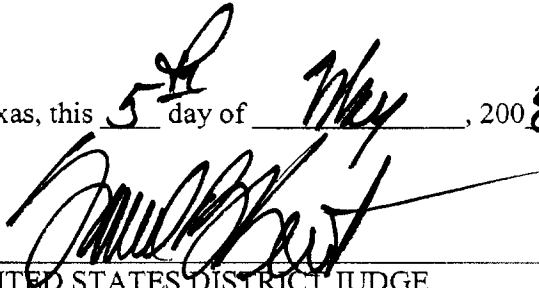
12. The last known address of Defendant Daniel Mata, individually and d/b/a Skynet Wire a/k/a Skynet Wireless is 718 Buchanan St., Alton, Texas 78573.

13. The address of Plaintiff, TracFone Wireless, Inc. is 9700 N.W. 112th Avenue, Miami, Florida 33178.

14. The Court retains jurisdiction over this matter and the parties to this action in order to punish any violation of the terms of this Permanent Injunction by a finding of contempt and a payment of damages to TracFone Wireless, Inc. in an amount of not less than \$5,000 for each TracFone/NET10 Handset that a Defendant is found to have purchased, sold, or unlocked in violation of this injunction, or \$1,000,000.00, whichever is greater.

15. The prevailing party in any proceeding to enforce compliance with the terms of this Permanent Injunction shall be entitled to an award of its attorneys' fees and costs.

DONE AND ORDERED in Houston, Texas, this 5th day of May, 2008


UNITED STATES DISTRICT JUDGE

Copies furnished to:

Steven R. Selsberg, *Counsel for TracFone Wireless, Inc.*
Victor W. Zhao, *Counsel for TracFone Wireless, Inc.*
James B. Baldinger, *Counsel for TracFone Wireless, Inc.*

Skynet Wholesale Distributors, Inc.
Mr. Mario Arratia
Mr. Daniel Mata