

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

TRACFONE WIRELESS, INC., a
Delaware corporation,

Plaintiffs,

vs.

GCA ELECTRONICS, LLC d/b/a
UNLOCKCELLULAR.COM; GUNAWAN
LIE; DYNAMIC CELLULAR CORP.; various
JOHN and JANE DOES 1-10; and XYZ
COMPANIES 1-10 (UNIDENTIFIED),

Defendants.

CASE NO. 1:07-CV-3084

FILED IN CLERK'S OFFICE
U.S.D. Atlanta
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BY JAMES N. TAYLOR, Clerk
Deputy Clerk

FINAL JUDGMENT AND PERMANENT INJUNCTION

Plaintiff, TracFone Wireless, Inc. ("TracFone"), brought the above-captioned lawsuit against, among others, Defendants, GCA Electronics, LLC, a Georgia limited liability company d/b/a Unlockercellular.com ("GCA") and Gunawan Lie, individually ("Lie") (GCA and Lie are referred to herein as "Defendants"), alleging that Defendants are engaged in an unlawful enterprise (the "Bulk Resale Scheme", as further defined below) involving the acquisition, sale and alteration of large quantities of TracFone and TracFone's NET10 branded prepaid wireless telephones ("TracFone/NET10 Prepaid Phones" or "Phones", as further defined below) from retail stores such as Wal-Mart, Target or Sam's Club,

and through other resellers of such phones, and soliciting others to purchase TracFone/NET10 Prepaid Phones in bulk, with the knowledge and intent that the Phones will not be activated for use on the TracFone or NET10 prepaid wireless systems and instead, the Phones are to be unlocked and reflashed to erase, remove, alter and/or disable the TracFone Software as further defined below, installed in the Phones with the ultimate purpose of reselling the altered Phones outside of the TracFone and NET10 Wireless Systems' Coverage Area.

TracFone alleges that Defendants furthered the Bulk Resale Scheme by, among other means, using and/or selling computer hardware and software that alters, by unlocking and/or reflashing, TracFone/NET10 Prepaid Phones as well as other non-TracFone and non-NET10 models of phones (defined below as either TracFone C139 Unlocking Solution or TracFone/NET10 Unlocking Solutions”).

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/NET10 Prepaid 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 consisting of the United States, Puerto Rico and the U.S. Virgin Islands ("Coverage Area").

TracFone alleges that Defendants have, in violation of the Terms and Conditions, 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 wireless service; and altered TracFone/NET10 Prepaid Phones and the TracFone Software or facilitated others who have done so.

As a result of 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); federal trademark dilution under 15 U.S.C. § 1125(c); common law unfair competition; unfair

competition under O.C.G.A. § 23-2-55; unjust enrichment; deceptive trade practices under O.C.G.A. § 10-1-372 et seq.; contributory trademark infringement; interference with business relationships and prospective advantages; interference with contract; and civil conspiracy (the "Claims").

Defendants deny TracFone's allegations including but not limited to the allegation that the computer unlocking and reflashing of wireless phones and related equipment is unlawful.

The Court having reviewed the Complaint and file and being otherwise duly advised in the premises, it hereby:

ORDERS, ADJUDGES and DECREES that:

1. This Court has jurisdiction over TracFone and Defendants 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. 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 "Registered TracFone Trademarks").

3. The Registered 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/NET10 Prepaid Software.

5. The Court finds that the Terms and Conditions constitute a valid binding contract enforceable against Defendants. The Court finds that (a) facilitating others to use TracFone/NET10 Prepaid Phones in conjunction with service providers other than TracFone, (b) tampering with or altering TracFone/NET10 Prepaid Phones or TracFone Software, entering unauthorized PIN numbers in the Phones for purposes of unlocking or reflashing the Phones, or facilitating others in such acts, and/or (c) exporting TracFone/NET10 Prepaid

Phones outside of the Coverage Area, or assisting others in such acts, respectively, constitute independent breaches of contract for which TracFone is entitled to relief.

6. TracFone alleges, Defendants do not contest, and therefore, the Court adopts the finding that Defendants' alleged conduct, if proven, would constitute a breach of contract; federal trademark infringement under 15 U.S.C. § 1114; federal unfair competition under 15 U.S.C. § 1125(a); federal trademark dilution under 15 U.S.C. § 1125(c); common law unfair competition; unfair competition under O.C.G.A. § 23-2-55; unjust enrichment; deceptive trade practices under O.C.G.A. § 10-1-372 et seq.; contributory trademark infringement; interference with business relationships and prospective advantages; interference with contract; and civil conspiracy.

7. TracFone alleges, Defendants do not contest, and therefore, the Court adopts the finding that Defendants' alleged participation in the Bulk Resale Scheme, if proven, including but not limited to, Defendants' use and/or sale of TracFone C139 Unlocking Solution or TracFone/NET10 Unlocking Solutions, would cause substantial and irreparable harm to TracFone and the public interest, and will continue to cause substantial and irreparable harm to TracFone and the public interest, unless enjoined. Consequently, TracFone is entitled to injunctive relief on the claims set forth in its Complaint.

8. Final judgment is hereby entered, jointly and severally, against Defendants, GCA Electronics, LLC, a Georgia limited liability company d/b/a Unlockercellular.com and Gunawan Lie, individually, and in favor of the Plaintiff, TracFone Wireless, on all of the Claims set forth in TracFone's complaint.

9. The following terms shall have the stated meaning in this final judgment and permanent injunction:

- a. "Bulk Resale Scheme" refers to the practice of acquiring bulk quantities of TracFone/NET10 Prepaid Phones from retail stores such as Wal-Mart, Target or Sam's Club, and soliciting others to purchase TracFone/NET10 Prepaid Phones in bulk, with the knowledge and intent that the Phones will not be activated for use on the TracFone or NET10 prepaid wireless systems and instead, the phones are to be unlocked and reflashed to erase, remove, alter and/or disable the TracFone Software installed in the Phones with the ultimate purpose of reselling the altered Phones outside the Coverage Area.
- b. "TracFone Software" shall mean proprietary prepaid software, developed, copyrighted and owned by TracFone which prevents TracFone/NET10 Prepaid Phones from being used without loading TracFone or NET10 prepaid wireless airtime.

- c. "TracFone/NET10 Prepaid Phone" or "Phone" shall mean a TracFone or NET10 prepaid cellular phone and any other branded wireless telephone sold by TracFone or NET10 either in its original condition containing the TracFone Software or after having been reprogrammed or otherwise altered or tampered with.
- d. "Recycle Purchases" shall mean Defendants' purchase of bulk quantities of a variety of recycled/used phones which Defendants contend may include TracFone/NET10 Prepaid Phones, from vendors specifically selling recycled phones.
- e. "TracFone C-139 Unlocking Solution" shall refer to that certain unlocking box and software first offered for sale and sold by Defendants beginning in or about the end of November 2007 and originally sold for the price of \$10,000, for the purpose of unlocking and reflashing TracFone C139 and other Motorola C139 handsets.
- f. "TracFone/NET10 Unlocking Solutions" shall refer to any and all hardware and software solutions offered for sale by Defendants that Defendants know or should know, at the time of sale, have the capability, or may be upgraded to gain the capability, of unlocking and/or reflashing a TracFone/NET10 Prepaid Phone in addition to

the capability to unlock and/or reflash other non-TracFone and non-NET10 models of phones.

10. Defendant, Gunawan Lie, and any person or entity acting or purporting to act on his behalf, including employees, agents or independent contractors who receive notice of this Order, and Defendant GCA Electronics, LLC d/b/a Unlockcellular.com, and each and all of its officers, directors, shareholders, agents, employees, independent contractors, representatives and all other persons or entities acting or purporting to act on its behalf who receive notice of this Order; shall be and hereby are PERMANENTLY ENJOINED from:

- a. purchasing, selling, shipping, transferring, or altering in any way, including but not limited to, unlocking or reflashing, (i) any TracFone/NET10 Prepaid Phone, whether or not it bears a Registered TracFone Trademark or any other trademark owned by TracFone, (ii) or any other model of wireless mobile device sold or marketed by TracFone so long as such wireless mobile device contains, or originally contained when new, TracFone Software. Specifically, the Defendants are enjoined from purchasing, selling and/or shipping, directly or indirectly, all models of TracFone/NET10 Prepaid Phones regardless of whether such devices are new

or used, whether in or out of their original packaging, or whether "locked," "unlocked," "reflashed," or otherwise altered or modified in any way by any person. This injunction applies to all TracFone/NET10 Prepaid Phones currently or previously 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 websites, <http://www.tracfone.com> and www.net10.com, including without limitation the following models of TracFone/NET10

Prepaid Phones:

| | |
|--------------------|---------------|
| Motorola W175 | Nokia 2126 |
| Motorola W260g | Nokia 2126i |
| Motorola W376g | Nokia 2600 |
| Motorola W370R | Nokia 1100 |
| Motorola W370 | Nokia 1112 |
| Motorola W375 | Nokia 1221 |
| Motorola C261 | Nokia 1600 |
| Motorola C139 | Nokia 2285 |
| PINK Motorola C139 | LG 400G |
| Motorola V176 | LG 3280 |
| Motorola V170 | LG CG225 |
| Motorola V171 | LG 1500 |
| Motorola C155 | LG 200C |
| Motorola C343 | Kyocera K126C |
| Motorola V60i | |

- b. accessing, altering, erasing, tampering with, deleting, reflashing, unlocking, or otherwise disabling TracFone

Software contained within any and all models of TracFone/NET10 Prepaid Phones;

- c. supplying or transferring (or facilitating or assisting others in do so) TracFone/NET10 Prepaid Phones to other persons or entities Defendants know or should know are engaged in reflashing and/or unlocking TracFone/NET10 Prepaid Phones and/or hacking, altering, erasing, tampering with, deleting or otherwise disabling the TracFone Software installed in TracFone/NET10 Prepaid Phones;
- d. purchasing, offering to purchase, selling, offering to sell, or facilitating or brokering any purchase or sales of the TracFone C-139 Unlocking Solution and/or any and all other TracFone/NET10 Unlocking Solutions currently in the Defendants' possession or otherwise offered or made available to Defendants presently, or that may be offered or made available to Defendants at any time in the future;
- e. supplying (or facilitating or assisting others to supply) TracFone/NET10 Prepaid Phones and/or the TracFone C-139 Unlocking Solution and/or any and all other TracFone/NET10 Unlocking Solutions to other persons or

entities who Defendants know or should know are engaged in any of the acts prohibited under this permanent injunction; and

- f. knowingly using the Registered TracFone Trademarks or any other trademark owned or used by TracFone now or in the future, without TracFone's prior written authorization.

11. The: (a) purchase, sale, shipping, transfer, or alteration, including unlocking or reflashing, of any TracFone/NET10 Prepaid Phones within or outside of the continental United States, (b) the use of the TracFone C-139 Unlocking Solution and/or any TracFone/NET10 Unlocking Solutions on any TracFone/NET10 Prepaid Phones or (c) the sale or transfer of the TracFone C-139 Unlocking Solution or any TracFone/NET10 Unlocking Solutions are, and shall be deemed, a presumptive violations of this permanent injunction.

12. It is not a violation of this final judgment and permanent injunction if the Defendants receive used TracFone/NET 10 Prepaid Phones as part of a Recycle Purchase so long as the Defendants comply strictly with the terms and conditions agreed to by the parties for the handling of TracFone/NET10 Phones acquired as part of a Recycle Purchase.

13. The address of Defendant GCA Electronics, LLC, a Georgia limited liability company d/b/a UNLOCKCELLULAR.COM, is 6950 Peachtree Industrial Boulevard, Norcross, GA 30071.

14. The address of Lie is 2324 Oakshire Court, Decatur, GA 30033.

15. The address of TracFone Wireless, Inc. is 9700 NW 112th Avenue, Miami, FL 33178.

16. Defendants waive their right to appeal from the entry of this Final Judgment.

17. 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 compensatory liquidated damages to TracFone Wireless, Inc. in the amount of \$5,000 per TracFone/NET10 Prepaid Phone Defendants are found to have bought, sold, unlocked, reflashed or otherwise altered in violation of this permanent injunction and \$20,000 per TracFone C-139 Unlocking Solution or TracFone/NET10 Unlocking Solution Defendants are found to have bought, sold, advertised or otherwise utilized in violation of this permanent injunction.

18. 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.

19. The Court determines, pursuant to Fed. R. Civ. P. 54(b), that Judgment should be entered against Defendants, GCA Electronics, LLC, a Georgia limited liability company d/b/a Unlockercellular.com and Gunawan Lie, individually, as set forth herein, and there is no just reason for delay.

DONE AND ORDERED in Atlanta, Georgia, this 23rd day of July, 2008.



UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel and parties of record