

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

TRACFONE WIRELESS, INC., a §
Florida corporation, §
§
Plaintiff, §
v. §
JAMES RAY THOMAS, JR. a/k/a Jim §
Thomas Hollis a/k/a James L. Ford, §
individually; JOHN DOES 1-50; and §
XYZ COMPANIES 1-50, §
Defendants. §

CASE NO.: 3-07-CV-1495-N

JURY TRIAL DEMANDED

**FINAL JUDGMENT AND PERMANENT
INJUNCTION AGAINST DEFENDANT**

Plaintiff, TracFone Wireless, Inc. (“TracFone”), brought the above-captioned lawsuit against Defendant, James Ray Thomas, Jr. a/k/a Jim Thomas Hollis a/k/a James L. Ford, individually (“Defendant”). TracFone alleges that Defendant is engaged in an unlawful enterprise 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”) 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 Defendant’s 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 ultimately selling 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”).

As a result of Defendant’s involvement in the Bulk Resale Scheme, TracFone asserted

claims against the Defendant 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 technological measures that control access to copyrighted software and trafficking in services that circumvent technological measures protecting copyrighted software under 17 U.S.C. § 1201, *et. seq.* as a violation of the Digital Millennium Copyright Act (“DMCA”); tortious interference with business relationships and prospective advantages; tortious interference with contract; dilution of TracFone’s trademarks under Tex. Code. Ann. § 16.29; civil conspiracy; and unjust enrichment.

On November 14, 2007, the Clerk of Court entered a Default against Defendant and Defendant has failed to file a responsive pleading in this lawsuit to date. Further, at TacFone’s request, the Court dismisses without prejudice all claims against Defendants John Does 1-50 and XYZ Companies 1-50. Accordingly, 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 Incontestable United States Trademark Registration No. 2,114,692, issued November 18, 1997, for TracFone and Incontestable United States Trademark Registration No. 2,71,017, issued September 9, 2003, for TracFone (the “TracFone Trademarks”). The TracFone Trademarks are valid, incontestable, distinctive, protectable, famous, have acquired secondary meaning and are

associated exclusively with TracFone. TracFone also holds a valid copyright on the TracFone Prepaid Software.

3. The Court finds that the Defendant's involvement in the Bulk Resale Scheme 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 technological measures that control access to copyrighted software and trafficking in services that circumvent technological measures protecting copyrighted software under 17 U.S.C. § 1201, *et. seq.* as a violation of the Digital Millennium Copyright Act ("DMCA"); tortious interference with business relationships and prospective advantages; tortious interference with contract; dilution of TracFone's trademarks under Tex. Code. Ann. § 16.29; civil conspiracy; and unjust enrichment.

4. The Court further finds that Defendant's participation in the Bulk Resale Scheme has caused substantial and irreparable harm to TracFone, and will continue to cause substantial and irreparable harm to TracFone unless enjoined.

5. TracFone is entitled to injunctive relief and damages on the claims set forth in the Complaint.

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 Defendant of liability for his violations of the DMCA as alleged in TracFone's complaint, because the Defendant's conduct as alleged in this case does not come within the scope of the new exemption. The Defendant's purchase and resale of the TracFone handsets 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. Final judgment is hereby entered against the Defendant, James Ray Thomas, Jr. a/k/a Jim Thomas Hollis a/k/a James L. Ford, individually, and in favor of the Plaintiff, TracFone Wireless, Inc., on all of the claims set forth in TracFone's complaint.

8. Pursuant to 17 U.S.C. 1203(c)(3)(A), TracFone is entitled to recover statutory damages "of not less than \$200 or more than \$2,500" for each TracFone/NET10 Prepaid Phone Defendant altered, or sold as part of a conspiracy to alter, in furtherance of the Bulk Resale Scheme for Defendant's violation of the DMCA. The Court finds Defendant altered, or sold as part of a conspiracy to alter, five thousand two hundred and eighty-three (5,283) TracFone/NET10 Prepaid Phones in furtherance of the Bulk Resale Scheme in violation of the DMCA. Final Judgment is therefore entered against Defendant

and in favor of TracFone Wireless, Inc. in the principal amount of \$1,056,600, which shall bear interest at the legal rate, for which let execution issue forthwith.

9. TracFone is also entitled to recover its costs and reasonable attorneys' fees incurred in bringing this action as a prevailing party pursuant to 17 U.S.C. 1203(b)(4)-(5). Should TracFone decide to pursue recovery of its reasonable attorneys' fees and costs, TracFone shall submit proof thereof within ten days of the date of this Order.

10. Defendant, and each and all of his representatives, agents, employees, independent contractors, relatives, associates, servants and any and all persons and entities in active concert and participation with them who receive notice of this order 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 Defendant is 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 Defendant knows 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 Defendant 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 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.

11. The last known address of Defendant James Ray Thomas, Jr. a/k/a Jim Thomas Hollis a/k/a James L. Ford, is 1957 Greenwood Lane, Newcastle, Oklahoma, 73065.

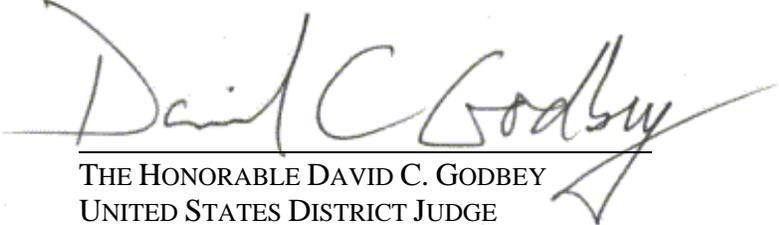
12. The address of Plaintiff, TracFone Wireless, Inc. is 9700 N.W. 112th Avenue, Miami, Florida 33178.

13. 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. for each TracFone/NET10 Handset that Defendant is found to have purchased, sold, or unlocked in violation of this injunction.

14. 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.

15. All relief not expressly granted is denied. This is a Final Judgment.

Signed March 5, 2008.


THE HONORABLE DAVID C. GODBEY
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel and pro se litigants of record.