

FILED

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

2006 AUG 23 AM 11:35

U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO, FLORIDA

TRACFONE WIRELESS, INC.

Plaintiff,

vs.

CASE NO.: 6:06-cv-1257-ORL-18JGG

CLINTON RIEDEMAN d/b/a
LARRY'S CELL, LAWRENCE RIEDEMAN
d/b/a LARRY'S CELL, and ROBIN KETCHAM
d/b/a LARRY'S CELL,

Defendants.

COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

Plaintiff, TracFone Wireless, Inc. ("TracFone"), hereby sues Defendants, Clinton Riedeman d/b/a Larry's Cell ("Clinton Riedeman"), Lawrence Riedeman d/b/a Larry's Cell ("Larry Riedeman"), and Robin Ketcham d/b/a Larry's Cell ("Robin Ketcham"), (collectively, "Defendants" or "Larry's Cell"), and states:

INTRODUCTION AND BACKGROUND

1. This is an action for damages and injunctive relief arising out of Defendants' involvement in a conspiracy to defraud consumers and TracFone by improperly infringing on TracFone's copyrights, trademarks and other rights in wireless telephones manufactured for TracFone. As set forth in this Complaint, Defendants are engaged in an enterprise and conspiracy involving the unauthorized and illegal bulk purchase of TracFone prepaid wireless telephones ("TracFone prepaid phones"), handset or phone software computer hacking of these TracFone prepaid phones, alteration of TracFone's proprietary handset or phone software computer code, infringement of TracFone's incontestable trademarks, unfair competition, and violations of other state and federal laws.

2. Defendants perpetrate their unlawful business practices and further the conspiracy by unlawfully making bulk purchases of TracFone prepaid phones from retail stores such as Wal-Mart, Target or Sam's Club, and by soliciting others via email communications and other methods to purchase these TracFone prepaid phones in bulk for the benefit of Defendants. Defendants pay above retail rates for the solicited TracFone prepaid phones which are then hacked. The purpose of this hacking, or "reflashing," is to erase, remove and/or disable TracFone proprietary prepaid software installed in the TracFone prepaid phones at the manufacturing level that enables use of the TracFone prepaid phones on TracFone's network.

3. The reflashed and counterfeit TracFone wireless telephones are then trafficked and resold at a premium as new phones under the TracFone trademark to end consumers for use on other wireless carriers' networks/systems.

4. To prevent this misconduct, retailers have instituted polices limiting the number of TracFone wireless phones an individual can purchase. Together with unknown civil and criminal co-conspirators, Defendants' misconduct is causing TracFone to incur millions of dollars in losses.

PARTIES, JURISDICTION AND VENUE

5. TracFone is a Florida corporation, with its principal place of business in Miami, Florida.

6. On information and belief, Clinton Riedeman is an individual residing in Winter Park, Florida.

7. On information and belief, Larry Riedeman is an individual residing in Altamonte Springs, Florida.

8. On information and belief, Robin Ketcham is an individual residing in Valrico, Florida.

9. Jurisdiction in this Court is proper pursuant to 28 U.S.C. §§ 1331, 1338, and 17 U.S.C. § 1203 because TracFone's claims for violations of the United States Copyright Act and United States Trademark Act arise under federal law. This Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367 over TracFone's state law claims because those claims are so related to the federal claims that they form part of the same case or controversy.

10. Venue is proper pursuant to 28 U.S.C. § 1391(b) and 1400 because, based on information and belief, all defendants reside in the State of Florida, at least one of the individual defendants resides in this judicial district, and a substantial part of the events or omissions giving rise to the causes of action brought herein occurred in this judicial district. This lawsuit is properly brought in this Division pursuant to Local Rule 1.02(c) because it has the greatest nexus with the causes of action brought by plaintiff, giving due regard to the place where the claims arose and where the parties reside.

GENERAL ALLEGATIONS

11. TracFone is the largest provider of prepaid wireless telephone service in the United States. TracFone's service enables its customers to prepay for their wireless service by purchasing airtime cards and specially manufactured wireless phones. Customers load airtime into their TracFone wireless phones using codes generated from the PIN numbers found on the airtime cards. TracFone wireless phones and airtime cards are sold through major national retailers such as Wal-Mart, Target, and Sam's Club.

12. Manufacturers that produce wireless phones for TracFone install special proprietary prepaid software, developed and owned by TracFone ("TracFone Prepaid Software"), into the TracFone prepaid phones sold to TracFone by the manufacturers. The proprietary TracFone Prepaid Software prevents the phone from being used without loading airtime minutes from a TracFone prepaid airtime card.

13. TracFone sells its TracFone prepaid phones to consumers for substantially less than it pays to purchase them from the manufacturers of the phones. TracFone recoups its losses on the sale of its TracFone prepaid phones by earning its profits through the sale of prepaid airtime cards required to make and receive calls.

14. As set forth in more detail below, Defendants have knowingly and willfully engaged in an unlawful enterprise and conspiracy involving the bulk purchase of discounted TracFone prepaid phones at retail outlets, the solicitation of others to bulk purchase the TracFone prepaid phones for Defendants' benefit, for the purpose of having them reflashed and rendered counterfeit, thereby allowing their use outside the TracFone network without prepaid TracFone airtime cards. Defendants have knowingly and willfully engaged in trafficking and reselling of the unlawfully reflashed counterfeit TracFone prepaid phones, or TracFone prepaid phones that they knew or should have known would subsequently reflashed and resold, under the TracFone trademark as new for a substantial profit.

15. Defendants' actions have substantially harmed TracFone by, *inter alia*, depriving TracFone of the opportunity to recoup its losses on the sale of its TracFone prepaid phones and to earn profits by providing wireless service to those phones. The misconduct of Defendants, their unknown co-conspirators, and others who engage in the unlawful bulk purchasing, reflashing, and re-sale of reflashed and altered TracFone prepaid phones, has resulted in a shortage of available TracFone prepaid phones, thereby substantially harming TracFone and its relationship with retailers because TracFone was not able to supply them with sufficient handsets to satisfy the demand from their legitimate consumers. Defendants' actions also substantially harm consumers who ultimately purchase TracFone handsets that have been improperly reflashed. These reflashed TracFone prepaid phones will not work as intended, and therefore consumers of these phones are unable to access TracFone's prepaid wireless service.

INITIAL INVESTIGATION OF LARRY'S CELL AND DEFENDANTS

16. In or about July 2006, TracFone obtained knowledge that an enterprise named Larry's Cell was in the business of purchasing large quantities of TracFone prepaid phones, both directly from retailers and from individuals and/or entities that Larry's Cell solicited for the purchase of TracFone prepaid phones.

17. As a result, TracFone hired a private investigation firm, Stumar/Michaels Investigations/SR ("Stumar Investigations/SR"), to determine the scope of the Larry's Cell enterprise, its misuse of the TracFone prepaid cellular phones, and the principal individuals involved in the enterprise.

18. Stuart Drobny ("Drobny"), investigator and president of Stumar Investigations/SR, has been actively involved in TracFone's investigation of Defendants, individually, and Larry's Cell. Drobny's Affidavit, which substantially recounts the facts described in the following paragraphs, is attached hereto as **Exhibit A**.

19. As part of TracFone's investigation of Larry's Cell, Drobny's firm began surveilling Clinton Riedeman, Larry Riedeman and Robin Ketcham on or about July 21, 2006. The surveillance and subsequent investigation revealed that these Defendants were active and willing participants in Larry's Cell.

20. Drobny's initial surveillance showed Clinton Riedeman and Larry Riedeman were receiving frequent deliveries from FedEx and UPS at, and were making frequent shipments via FedEx and UPS from, Larry Riedeman's residence. As alleged more specifically below, these FedEx and UPS packages contained bulk quantities of TracFone prepaid phones which Larry's Cell had (i) purchased and received from solicited buyers, and (ii) sold and delivered to unknown co-conspirators.

21. Specifically, Drobny's surveillance revealed that on July 27, 2006, Clinton Riedeman signed for and received a shipment of two boxes containing bulk shipments of TracFone prepaid phones. Upon receipt of this delivery, Clinton Riedeman removed the bulk TracFone prepaid phones from the FedEx boxes and placed them into other boxes he later taped closed.

22. The surveillance also showed Larry Riedeman receiving UPS deliveries on July 24, 2006, August 1, 2006 and August 3, 2006. The surveillance showed Clinton Riedeman receiving FedEx deliveries on July 26, 2006 and July 27, 2006. Upon information and belief, these boxes contained bulk quantities of TracFone prepaid phones.

23. Additionally, the surveillance showed Clinton Riedeman routinely meeting with, delivering boxes to, and receiving boxes from, Robin Ketcham. Upon information and belief, these boxes contained bulk quantities of TracFone prepaid phones.

EMAILS REVEALING LARRY'S CELL'S ENTERPRISE

24. In or about July 2006, Drobny, under an assumed name, contacted Larry's Cell via email at an email account held in Lawrence Riedeman's name. Drobny indicated he had seen the email solicitations of Larry's Cell for the purchase of TracFone prepaid phones, among others wireless prepaid telephones, and wished to sell such wireless telephones to Larry's Cell.

25. On or about August 10, 2006, Larry's Cell responded to Drobny via email. The August 10, 2006 email contained a solicitation for Drobny and others to purchase TracFone prepaid phones and stated that Larry's Cell would buy these TracFone prepaid phones at above retail prices; the email specifically set prices for certain model TracFone prepaid phones Larry's Cell sought to purchase. It also stated that Larry's Cell would pay cash bonuses to any individual who sold it large quantities of TracFone prepaid phones. A true and accurate copy of the August 10, 2006 email thread is attached to the Drobny Affidavit as **Exhibit 1**.

26. In the August 10, 2006 email, Larry's Cell noted that "Hundreds of phones are coming in daily from new buyers." The August 10, 2006 email encouraged individuals to purchase as many TracFone prepaid phones as possible; stated that Larry's Cell did not need TracFone airtime minute cards to enable the TracFone prepaid phones it purchased; noted that retail stores have policies in place to prevent consumer bulk buying to prevent the reselling of TracFone prepaid phones; and provided guidance on how to circumvent the retail store's policies limiting the number of TracFone prepaid phones that can be purchased by an individual by: (i) misrepresenting to the retailer the true purpose of the purchases, (ii) asking unwary customers in the retail store to purchase the TracFone cellular phones on behalf of the individual, (iii) using different registers in the retail store to make the purchases, (iv) making purchases at the same retail store during different times of the day, and (v) making purchases at different retailers of TracFone prepaid phones.

27. The August 10, 2006 email stated "Don't leave a phone behind. To make real money buy them all." Upon information and belief, Clinton Riedeman was the author of the August 10, 2006 email. The August 10, 2006 email indicated that Clinton Riedeman personally purchases at minimum 250 prepaid phones each day directly from retailers, and that he has purchased as many as 700 prepaid phones in a single day from retailers through his efforts.

28. In the August 10, 2006 email, Larry's Cell also encouraged its solicited buyers to ship the TracFone prepaid phones they sold to it via FedEx or UPS to Larry' Riedeman's current address.

29. On or about August 11, 2006, Larry's Cell sent another email to Drobný stating that it was increasing the price it was willing to pay for TracFone prepaid phones and other prepaid phones. The August 11, 2006 email indicated that the price increases were a result of "major telephone calls" Larry's Cell had with unidentified co-conspirators in Hong Kong, China,

which resulted in Larry's Cell receiving a higher price for each TracFone prepaid phone it sold to these Hong Kong buyers. Upon information and belief, Clinton Riedeman was the author of the August 14, 2006 email. A true and accurate copy of the August 11, 2006 email thread is attached to the Drobny Affidavit as **Exhibit 2**.

THE CEASE AND DESIST LETTERS

30. On August 18, 2006, Larry Riedeman was hand delivered a cease and desist letter regarding his involvement in the above-described conspiracy by agents of Stumar Investigations/SR at his residence. A true and accurate copy of the cease and desist letter served on Larry Riedeman, with exhibits, is attached to the Drobny Affidavit as composite **Exhibit 3**. At that time, Larry Riedeman admitted to the agents of Stumar Investigations/SR that he and his son, Clinton Riedeman, were involved with Larry's Cell.

31. At that time, Larry Riedeman voluntarily surrendered to Stumar Investigations/SR hundreds of prepaid wireless telephones, including 268 TracFone prepaid phones that were stored at his residence in FedEx and UPS boxes. A spreadsheet cataloging and identifying the TracFone prepaid phones, among other prepaid wireless telephones, voluntarily surrendered by Larry Riedeman to Stumar Investigations/SR is attached to the Drobny Affidavit as **Exhibit 4**. The spreadsheet at Exhibit 4 to the Drobny Affidavit identifies the wireless telephones voluntarily surrendered by Larry Riedeman by manufacturer, model number, IME number and/or ESN number and/or serial number. The FedEx and UPS boxes containing the TracFone prepaid phones voluntarily surrendered by Larry Riedeman to Stumar Investigations/SR contained mailing labels showing these boxes had been shipped to Larry's Cell from numerous states across the country.

32. On August 18, 2006, Robin Ketcham was hand delivered a cease and desist letter regarding her involvement in the above-described conspiracy by agents of Stumar

Investigations/SR at her residence. At the time of the delivery, Robin Ketcham was speaking with Clinton Riedeman on the telephone about Larry's Cell and the cease and desist letter Larry Riedeman had received. Also at this time, Robin Ketcham admitted to agents of Stumar Investigations/SR that she was bulk selling TracFone prepaid phones. A true and accurate copy of the cease and desist letter served on Robin Ketcham, with exhibits, is attached to the Drobny Affidavit as composite **Exhibit 5**.

33. On August 21, 2006, Clinton Riedeman was hand delivered a cease and desist letter regarding his involvement in the above-described conspiracy by agents of Stumar Investigations/SR. A true and accurate copy of the cease and desist letter served on Clinton Riedeman, with exhibits, is attached to the Drobny Affidavit as composite **Exhibit 3**.

34. To date, upon information and belief, Clinton Riedeman, Larry Riedeman and Robin Ketcham have not complied with the terms of the cease and desist letters.

35. Clinton Riedeman, Larry Riedeman, and Robin Ketcham are individually, or are knowingly aiding and abetting co-conspirators that are, bulk purchasing TracFone prepaid phones, reflashing these bulk purchased TracFone prepaid phones, removing or altering TracFone's Prepaid Software on these TracFone prepaid phones, improperly repackaging these TracFone prepaid phones under the TracFone trademark, and trafficking and reselling the reflashed, altered and repackaged TracFone prepaid phones to end consumers or to co-conspirators that sell to end consumers.

CIVIL AND CRIMINAL PROCEEDINGS IN OTHER FEDERAL COURTS

36. In cases involving conduct similar or identical to Defendants', federal courts and federal prosecutors have recognized such conduct violates existing civil and criminal laws.

37. TracFone and Nokia Corporation ("Nokia"), respectively, have filed independent lawsuits in the Southern District of Florida against other defendants similarly engaged in the

practice of defrauding legitimate consumers, TracFone and Nokia, by bulk purchasing prepaid wireless telephones and reflashing, repackaging, and reselling these counterfeit prepaid wireless telephones for profit.

38. TracFone obtained a Final Judgment and Permanent Injunction in the United States District Court for the Southern District of Florida in the case of *TracFone Wireless, Inc., a Florida corporation v. Sol Wireless Group, Inc., a Florida corporation, Carlos Pino, an individual, and Jorge Romero, an individual*, Case No.: 05-23279-CIV, on February 27, 2006. A true and accurate copy of the TracFone-Sol Wireless Final Judgment and Permanent Injunction is attached hereto as **Exhibit B**.

39. TracFone also obtained a Final Judgment and Permanent Injunction in the United States District Court for the Southern District of Florida in the case of *TracFone Wireless, Inc., a Florida corporation v. Pan Ocean Communications, Inc., Samar Munir, and Syed M. Hussain*, Case No. 05-61956-CIV, on August 7, 2006. A true and accurate copy of the TracFone-Pan Ocean Final Judgment and Permanent Injunction is attached hereto as **Exhibit C**.

40. Nokia obtained a Final Judgment and Permanent Injunction in the United States District Court for the Southern District of Florida in the case of *Nokia Corporation, a Finnish corporation v. Sol Wireless Group, Inc., a Florida corporation, Carlos Pino, an individual, and Jorge Romero, an individual*, Case No.: 06-20011-CIV, on March 1, 2006. A true and accurate copy of the Noikia-Sol Wireless Final Judgment and Permanent Injunction is attached hereto as **Exhibit D**.

41. Nokia obtained a Final Judgment and Permanent Injunction in the United States District Court for the Southern District of Florida in the case of *Nokia Corporation, a Finnish corporation v. Pan Ocean Communications, Inc., Samar Munir, and Syed M. Hussain*, Case No.:

06-20012-CIV, on August 8, 2006. A true and accurate copy of the Nokia Final Judgment and Permanent Injunction is attached hereto as **Exhibit E**.

42. The United States of America recently filed a criminal complaint in the United States District Court for the Eastern District of Michigan in the case of, *United States of America v. Louai Abdelhamied Othman, Adham Abdelhamid Othman, Maruan Awad Muhareb*, Case No.: 06-MI-30401-BC, alleging that the defendants engaged in the practice of defrauding legitimate consumers, TracFone and Nokia, by bulk purchasing TracFone prepaid phones for the purpose of having these phones reflashed, repackaged, and resold as counterfeit TracFone prepaid phones. A true and accurate copy of the criminal complaint is attached hereto as **Exhibit F**.

COUNT ONE
CIRCUMVENTION OF TECHNOLOGICAL MEASURES THAT
CONTROL ACCESS TO PROPRIETARY SOFTWARE
(TRACFONE PREPAID SOFTWARE)

43. TracFone incorporates and realleges the allegations of paragraphs 1-42 above.

44. The TracFone Prepaid Software contains technological measures that in the ordinary course of the measures' operation require the application of information, or a process or a treatment, with TracFone's authority, to gain access to the proprietary software as set forth in 17 U.S.C. § 1201.

45. The TracFone Prepaid Software contains technological measures that effectively control access to the proprietary software.

46. TracFone did not give Defendants or their co-conspirators authority to reflash or otherwise to avoid, bypass, remove, disable, deactivate, or impair the technological measures for effectively controlling access to and operation of the TracFone Prepaid Software.

47. TracFone did not grant Defendants or their co-conspirators the authority to circumvent the technological measures for effectively controlling access to the TracFone Prepaid Software.

48. Defendants individually acted to, and/or knowingly engaged in a conspiracy to, avoid, bypass, remove, disable, deactivate, or impair a technological measure for effectively controlling access to the proprietary software within the TracFone Prepaid Software without TracFone's authority.

49. Defendants individually acted to, and/or knowingly engaged in a conspiracy designed to, circumvent a technological measure that effectively controls access to the TracFone Prepaid Software that is protected under title 17 of the United States Code, and thereby violated 17 U.S.C. § 1201(a)(1).

50. Defendants' actions have caused and, unless restrained, will continue to cause TracFone severe, immediate, and irreparable injury and damages for which TracFone has no adequate remedy at law. TracFone is entitled to injunctive relief restraining such conduct, an award of damages, including punitive damages, as well as other equitable and legal relief.

COUNT TWO
CIRCUMVENTION OF TECHNOLOGICAL MEASURES THAT
CONTROL ACCESS TO PROPRIETARY SOFTWARE
(TRACFONE PREPAID SOFTWARE)

51. TracFone incorporates and realleges the allegations of paragraphs 1-42 above.

52. The TracFone Prepaid Software contains technological measures that in the ordinary course of the measures' operation require the application of information, or a process or a treatment, with TracFone's authority, to gain access to the proprietary software as set forth in 17 U.S.C. § 1201.

53. Defendants have provided or otherwise trafficked in TracFone technology and products that have been marketed by Defendants, or others acting in concert with Defendants with Defendants' knowledge, for the purpose and use of circumventing a technological measures that effectively controls access to the proprietary TracFone Prepaid Software in violation of 17 U.S.C. § 1201.

54. Defendants have also provided or otherwise trafficked in TracFone technology and products that have been marketed by Defendants, or others acting in concert with Defendants with Defendants' knowledge, for the purpose and use of circumventing protection afforded by a technological measure that effectively protects a right TracFone possesses as a copyright owner, in violation of 17 U.S.C. § 1201.

55. Defendants' actions have caused and, unless restrained, will continue to cause TracFone severe, immediate, and irreparable injury and damages for which TracFone has no adequate remedy at law. TracFone is entitled to injunctive relief restraining such conduct, an award of damages, including punitive damages, as well as other equitable and legal relief.

COUNT THREE
TRAFFICKING IN SERVICES THAT CIRCUMVENT
TECHNOLOGICAL MEASURES PROTECTING PROPRIETARY SOFTWARE

56. TracFone incorporates and realleges the allegations of paragraphs 1-42 above.

57. Defendants are individually, or are knowingly aiding and abetting co-conspirators, in possession of certain instrumentalities that avoid, bypass, remove, disable, deactivate, or otherwise impair the technological measures within the TracFone Prepaid Software that effectively control access to the proprietary TracFone Prepaid Software.

58. Defendants are individually, or are knowingly aiding and abetting co-conspirators who are, trafficking in the service of circumventing the technological measures that protect the TracFone Prepaid Software from alteration or modification.

59. Individuals purchasing altered phones from Defendants or their co-conspirators purchase both the TracFone prepaid wireless phone and the service of circumventing the technological measures that protect the TracFone Prepaid Software from alteration or modification provided by Defendants or their co-conspirators.

60. Accordingly, Defendants have individually, or are knowingly aiding and abetting co-conspirators who are, trafficking in the service of circumventing TracFone's technological measures that effectively control access to TracFone's Prepaid Software by offering to the public its alteration service for a fee.

61. The service of altering the TracFone Prepaid Software in TracFone prepaid wireless phones is primarily designed or produced for the purpose of circumventing TracFone's technological measures that effectively control access to TracFone's Prepaid Software that is protected under title 17 of the United States Code.

62. Accordingly, Defendants have violated and continue to violate Section 1201(a)(2)(A) of the Copyright Act and, as a result, TracFone has been irreparably injured and will continue to be irreparably injured unless the violating activities of Defendants are enjoined by this Court.

63. The service of altering the TracFone Prepaid Software has, at most, only a limited commercially significant purpose or use other than circumventing TracFone's technological measures that effectively control access to TracFone's Prepaid Software that is protected under title 17 of the United States Code.

64. Therefore, Defendants have violated and continue to violate Section 1201(a)(2)(B) of the Copyright Act and, as a result, TracFone has been irreparably injured and will continue to be irreparably injured unless the violating activities of Defendants are enjoined by this Court.

COUNT FOUR
FEDERAL TRADEMARK INFRINGEMENT

65. TracFone incorporates and realleges the allegations of paragraphs 1-42 above.

66. TracFone is one of the oldest and leading providers of national prepaid wireless telecommunications services. TracFone has used, and continues to use, trademarks in commerce

including the mark TRACFONE. In particular, TracFone owns and has also used the registered trademarks identified below:

a. Incontestable United States Trademark Registration No. 2,114,692, issued November 18, 1997, for TRACFONE, used in connection with prepaid airtime cellular telephones and cellular telephone accessories, in international category 9; for cell phone telephone services and providing monitoring and control services for use in connection with prepaid airtime cellular phones and debit cards, in international category 38; and wholesale distributorship featuring the same, in international category 42, issued on November 18, 1997 and based on dates of first use in June, 1996.

b. Incontestable United States Trademark Registration No. 2,71,017, issued September 9, 2003, for TRACFONE and Design, used in connection with prepaid air time cellular telephones and cellular telephone accessories in international category 9; for on-line retail store services featuring the same, in category 35; and for cellular telephone services and monitoring and control services for use in conjunction with prepaid airtime cellular phones and debit cards, in category 38, issued on September 9, 2003 and based on dates of first use in December, 2001.

67. TracFone's aforementioned marks constitute the lawful, valued, subsisting and exclusive property of TracFone, and as a result of the high quality of TracFone's services, sales, promotion and advertising thereof, the marks have become an intrinsic and essential part of the valuable goodwill and property of TracFone, and are well known and established to customers

and the trade as symbols identifying and distinguishing TracFone's services and signifying distinctive services of exceptional quality.

68. Defendants' and/or their co-conspirator's aforementioned conduct entailed use of the marks without authorization in connection with their conspiracy to sell and offer for sale of reflashed and modified TracFone prepaid phones, which downstream customers will discover are not capable of use with the TracFone prepaid wireless service.

69. Defendants' and/or their co-conspirator's use of TracFone's marks in connection with the sale of reflashed and modified TracFone handsets has caused, and will further cause, a likelihood of confusion, mistake and deception as to the source of origin of Defendants' products, as to the relationship between TracFone and Defendants.

70. Defendants' and/or their co-conspirator's unauthorized use of the TracFone trademarks is likely to continue in the future, all to the great and irreparable damage to the business, reputation and goodwill of TracFone.

71. Defendants' and/or their co-conspirator's use and sale of the TracFone trademarks in connection with the reflashed and modified TracFone handsets, which are no longer capable of use with the TracFone prepaid wireless service, constitutes a misappropriation of TracFone's distinguishing and identifying marks that were created as a result of effort and expense by TracFone over a long period of time. Defendants' and/or their co-conspirator's use of the TracFone trademarks evokes an immediate, favorable impression or association and constitutes a false representation that the products and business of Defendants have some connection, association, or affiliation with TracFone, and thus constitutes false designation of origin.

72. Defendants, in committing the foregoing acts in commerce, have damaged and will continue to damage TracFone and the reputation and goodwill of TracFone, and each has unjustly enriched and will continue to unjustly enrich itself at the expense of TracFone.

TracFone is without an adequate remedy at law to redress such acts, and will be irreparably damaged unless Defendants are enjoined from committing and continuing to commit such acts.

73. As a complete ground for relief, the Defendants' aforesaid acts constitute infringement of TracFone's federally registered trademarks in violation of 15 U.S.C. § 1114.

COUNT FIVE
FEDERAL UNFAIR COMPETITION

74. TracFone incorporates and realleges the allegations of paragraphs 1-42 above.

75. Defendants' aforesaid acts constitute unfair competition in violation of 15 U.S.C. § 1125(a).

COUNT SIX
TORTIOUS INTERFERENCE WITH BUSINESS
RELATIONSHIPS AND PROSPECTIVE ADVANTAGE

76. TracFone incorporates and realleges the allegations of paragraphs 1-42 above.

77. A business relationship and an expectancy of business relationship exist between TracFone and retailers of TracFone prepaid phones.

78. A business relationship and an expectancy of business relationships exist between TracFone and the purchasers and prospective purchasers of its phones and service.

79. There exists a high probability of future economic benefit to TracFone as a result of these present and prospective relationships.

80. Defendants have knowledge of and have intentionally and unjustifiably interfered with, and/or have aided and abetted in a conspiracy to interfere with, these business relationships and with prospective relationships between TracFone, retailers that sell TracFone prepaid phones, and TracFone customers.

81. Specifically, but without limitation, Defendants knew that TracFone had business relationships with retailers of TracFone prepaid phones to provide said retailers with sufficient quantities of TracFone prepaid phones for said retailer's legitimate consumers. Defendants'

deliberate actions has caused a shortage of available TracFone prepaid phones, thereby substantially harming TracFone and its relationship with retailers because TracFone was not able to supply them with sufficient handsets to satisfy the demand from their legitimate consumers. Moreover, Defendants knew that TracFone had business relationships with legitimate consumers of TracFone prepaid phones and that TracFone prepaid phones are designed for the use by TracFone customers for TracFone service. Defendants are intentionally interfering with these relationships through improper means and in violation of the law.

82. But for Defendants' conduct, TracFone was reasonably certain to have continued its business relationships and prospective relationships with its retailers and legitimate customers.

83. TracFone has been damaged and continues to be damaged as a result of Defendants' interference.

COUNT SEVEN
UNFAIR COMPETITION AND FALSE ADVERTISING

84. TracFone incorporates and realleges the allegations of paragraphs 1-42 above.

85. Defendants' and/or its co-conspirator's conduct in bulk purchasing TracFone prepaid phones, reflashing, disabling or removing the TracFone Prepaid Software from these prepaid phones, and reselling these reflashed phones constitutes an unfair method of competition, an unconscionable act or practice, and an unfair or deceptive act or practice in violation on § 501.204, Fla. Stat.

86. In addition, the TracFone prepaid cellular phones that Defendants and/or their co-conspirators reflashed and sold as new are branded with the TracFone name. Defendants' participation in the sale of altered and counterfeit TracFone prepaid wireless phones as new products carrying the TracFone trademark constitutes an unfair method of competition, an

unconscionable act or practice, and an unfair or deceptive act or practice in violation on § 501.204, Fla. Stat.

87. TracFone has suffered damage as a direct and proximate result of Defendants' conduct. Pursuant to § 501.211, TracFone is entitled to enjoin Defendants from any further violations of this section. Section 501.211 further provides that TracFone is entitled to recover its actual damages, plus attorneys' fees and court costs.

COUNT EIGHT
HARM TO TRACFONE'S GOODWILL AND BUSINESS REPUTATION

88. TracFone incorporates and realleges the allegations of paragraphs 1-42 above.

89. TracFone is the largest provider of prepaid wireless telephone service in the United States. It is in the business of and has earned a reputation for providing its customers with high quality prepaid wireless telephone service.

90. The TracFone prepaid cellular phones that Defendants and/or its co-conspirators reflashed and resold as new are branded with the TracFone name.

91. Defendants' misconduct regarding the sale of altered TracFone prepaid wireless phones as new products carrying the TracFone trademark harms TracFone's goodwill and business reputation because the handsets are no longer set to operate as TracFone intended on its prepaid network. Purchasers of the altered handsets are likely to attribute malfunctions and poor service due to the alterations to reflashed TracFone prepaid phones.

92. Purchasers are also likely to contact TracFone's customer care department with complaints and questions, causing TracFone to incur substantial costs associated with responding to such inquiries. In addition, TracFone's customer service personnel will be diverted from assisting TracFone's legitimate customers, thereby causing additional harm to TracFone's business reputation and goodwill as a result of Defendants' misconduct.

93. Defendants' misconduct in selling, or knowingly aiding and abetting in the sale of, altered TracFone prepaid phones units is likely to injure TracFone's business reputation and dilute the distinctive quality of their marks, trade names, or labels in violation of § 495.151, Fla. Stat.

94. TracFone requests preliminary and permanent injunctive relief against Defendants pursuant to § 495.151, Fla. Stat.

WHEREFORE, TracFone respectfully requests that this Court enter final judgment in favor of TracFone and against Defendants for the damages sustained by TracFone, injunctive relief against Defendants, and for its reasonable attorneys' fees and costs, and order any further relief as this Court deems just and proper.

Dated: August 23, 2006

Respectfully submitted,



James B. Baldinger
Florida Bar Number 869899
CARLTON FIELDS, P.A.
P.O. Box 150
West Palm Beach, FL 33402-0150
Telephone: 561.659.7070
Facsimile: 561.659.7368
Email: Jbaldinger@carltonfields.com

Christopher M. Paolini
Florida Bar Number 669199
CARLTON FIELDS, P.A.
P.O. Box 1171
Orlando, Florida 32802
Phone: (407) 244-8253
Fax: (407) 648-9099
Email: CPaolini@carltonfields.com

Attorneys for Plaintiff, TracFone Wireless, Inc.