

APR 02 2010

JAMES N. HATTEN, Clerk
By:  Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

T-MOBILE USA, INC., a Delaware
Corporation,

Plaintiff,

v.

SHERMAN TERRY; CUSTOM
ACCESS, INC.; JOHN DOES 1-10;
XYZ COMPANIES 1-10,

Defendants.

1:10-CV-0977

Civil Action No: _____

CAP

[PROPOSED] PRELIMINARY INJUNCTION

Plaintiff T-Mobile USA, Inc. ("T-Mobile"), brought the above-captioned lawsuit against Defendants Sherman Terry and Custom Access, Inc. ("Defendant"), alleging that Defendants are engaged in a scheme to bulk purchase, computer hack, and traffic T-Mobile-branded SIM cards that have been improperly loaded with stolen T-Mobile airtime, and to unlawfully purchase, computer hack, and traffic T-Mobile prepaid telephones and related accessories. Based on that conduct, the Complaint asserts claims against the Defendants for federal trademark infringement and unfair competition under the Lanham Act, 15 U.S.C. § 1125, *et seq.*, contributory trademark infringement, violations of the Computer Fraud and Abuse Act, 18 U.S.C. 1030, *et seq.*, common law fraud, common law unfair

competition, unfair competition under O.C.G.A. § 23-2-55, *et seq.*, civil conspiracy, unjust enrichment, tortious interference with prospective economic advantage, conversion, and violation of the Georgia Computer Systems Protection Act, O.C.G.A. § 16-9-93. *et seq.*

With its Complaint, T-Mobile filed a Motion for a Preliminary Injunction, a Motion for Expedited Discovery, and a Motion to Preserve Evidence, with supporting declarations, exhibits, and accompanying memoranda of law. This Court, having considered the Complaint, declarations and exhibits, motions, memoranda of law, and further evidence submitted therewith, hereby:

ORDERS, ADJUDGES, and DECREES as follows:

1. T-Mobile's Motion for Preliminary Injunction is GRANTED.
2. Defendant Sherman Terry and Custom Access, Inc., and each and all of their past and present respective officers, directors, successors, assigns, parents, subsidiaries, affiliates, related companies, predecessors-in-interest, companies, respective agents, employees, heirs, personal representatives, beneficiaries, relatives, and all other persons or entities acting or purporting to act for it or on its behalf, including but not limited to any corporation, partnership, proprietorship or entity of any type that is in any way affiliated or associated with Defendants or their representatives, agents, assigns, parent entities, employees, independent

contractors, associates, servants, affiliated entities, and any and all persons and entities in active concert and participation with Defendants who receive notice of this Order, shall be and hereby immediately are ENJOINED from:

- a. purchasing, selling, altering, advertising, soliciting, using, and/or shipping, directly or indirectly, any T-Mobile "Activation Materials," which consist of SIM Cards, PIN numbers, dealer activation codes, and/or other mechanism, process or materials used to activate service or acquire airtime in connection with a new activation;
- b. purchasing, selling, unlocking, reflashing, altering, advertising, soliciting, using, and/or shipping, directly or indirectly, any T-Mobile prepaid Handsets.
- c. purchasing, selling, unlocking, reflashing, altering, advertising, soliciting and/or shipping, directly or indirectly, any Activation Materials or T-Mobile mobile device that Defendants know or should know bears any T-Mobile marks or any marks likely to cause confusion with the T-Mobile marks, or any other trademark, service mark, trade name and/or trade dress owned or used by T-Mobile now or in the future;

- d. purchasing, selling, advertising, soliciting, and/or shipping, directly, or indirectly, any T-Mobile dealer activation codes;
- e. accessing, directly or indirectly, T-Mobile's internal computer systems;
- f. unlocking of any T-Mobile Handset;
- g. accessing, altering, erasing, tampering with, deleting or otherwise disabling the software contained in any T-Mobile Prepaid Handset;
- h. supplying T-Mobile Activation Materials or Handsets to or facilitating or in any way assisting other persons or entities who Defendants know or should know are engaged in selling SIM cards or unlocking T-Mobile Handsets and/or hacking, altering, erasing, tampering with, deleting or otherwise disabling the software installed in T-Mobile Handsets;
- i. supplying T-Mobile Activation Materials or Handsets to or facilitating or in any way assisting other persons or entities who Defendants know or should know are engaged in any of the acts prohibited under this Preliminary Injunction, including, without

limitation, the buying and/or selling T-Mobile Activation Materials or Handsets; and

- j. knowingly using the T-Mobile Marks or any other trademark, service mark, trade name and/or trade dress owned or used by T-Mobile now or in the future, or that is likely to cause confusion with T-Mobile's marks, without T-Mobile's prior written authorization.

3. Any violation of the terms of this Preliminary Injunction is punishable, *inter alia*, by a finding of contempt of court.

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

DONE AND ORDERED in Chambers this 28th day of December, 2010.

/s/ Charles A. Pannell, Jr.

UNITED STATES DISTRICT JUDGE