

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SPRINT NEXTEL CORPORATION, and
SPRINT COMMUNICATIONS
COMPANY, L.P.,

Plaintiffs,

v.

AARON SIMON WELCH, individually and
d/b/a/ THE CELL CYCLE,

Defendant.

Case No.: 1:13-cv-01174-AWI-SAB

**FINAL STIPULATED JUDGMENT
AND PERMANENT INJUNCTION
AGAINST DEFENDANT AARON
SIMON WELCH D/B/A THE CELL
CYCLE**

Plaintiffs Sprint Nextel Corporation and Sprint Communications Company, L.P. (collectively, “Sprint” or “Plaintiffs”) brought the above-captioned lawsuit against Defendant Aaron Simon Welch d/b/a The Cell Cycle (collectively, “Defendant”), alleging that Defendant is engaged in an unlawful enterprise involving the unauthorized and deceptive bulk purchase and resale overseas of specially-manufactured wireless telephones designed for use on Sprint’s wireless service, including the Sprint iPhone (collectively, “Sprint Phones” or “Sprint Handsets” or “Phones” or “Handsets”), the theft of Sprint’s subsidy investment in the Phones, the unlawful access of Sprint’s protected computer systems and wireless network, the trafficking of Sprint’s protected and

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FINAL JUDGMENT AND PERMANENT INJUNCTION AGAINST DEFENDANT
AARON SIMON WELCH

1:13-cv-01174

1 confidential computer passwords, and the willful infringement of Sprint's trademarks
2 (collectively, the "Bulk Handset Trafficking Scheme" or the "Scheme").

3 Defendant perpetrated the Bulk Handset Trafficking Scheme by acquiring large
4 quantities of Sprint Phones from Sprint and/or Sprint authorized retailers and dealers, and
5 by soliciting others to purchase Sprint Phones in large quantities for the benefit of
6 Defendant. Defendant acquired the Sprint Phones with the knowledge and intent that the
7 Phones will not be used on the Sprint wireless network (as required by the Sprint
8 contracts). Instead, the Phones are trafficked and the vast majority are resold as new
9 overseas where the Phones are not subsidized by wireless carriers (as they are in the United
10 States) and where the Phones are not as readily available. In some cases, Defendant
11 acquired the Sprint Phones with the knowledge and intent that the Phones will be
12 computer-hacked. The purpose of this hacking, known as "unlocking," is to disable
13 software installed in the Phones by the manufacturers at the request and expense of Sprint,
14 which enables the activation of the Sprint Phones exclusively on Sprint's wireless system.
15 The purpose of the software is to allow Sprint to offer the Phones at a discount to the
16 consumer while protecting Sprint's subsidy investment in the Phone. The illegally
17 unlocked Phones are trafficked and resold as new by Defendant, at a premium, under the
18 Sprint trademarks.

19 Sprint Phones are sold subject to terms and conditions ("Terms and Conditions")
20 which conspicuously restrict and limit the sale and use of the Phones. These Terms and
21 Conditions are set forth in printed inserts that are packaged with each Phone and are posted
22 on Sprint's website. Pursuant to the Terms and Conditions of Sprint Phones, purchasers
23 agree, among other things: (a) to pay the monthly service charges and other related fees; (b)
24 to pay an Early Termination Fee ("ETF") for each line of service that is terminated before
25 the contract term is concluded; (c) to activate the Sprint Phones on the Sprint CDMA

1 network; (d) not to resell the Sprint Phones and related products and services; and (e) not to
2 use the Phones for a purpose that could damage or adversely affect Sprint.

3 As a result of Defendant's involvement in the Bulk Handset Trafficking Scheme,
4 Sprint has asserted claims against Defendant for breach of contract, common law unfair
5 competition, tortious interference with business relationships and prospective advantage,
6 civil conspiracy, unjust enrichment, conspiracy to induce breach of contract, common law
7 fraud, fraudulent misrepresentation, violations of the federal Computer Fraud and Abuse
8 Act, 18 U.S.C. § 1030, *et seq.*, federal trademark infringement under 15 U.S.C. § 1114,
9 federal common law trademark infringement and false advertising under 15 U.S.C. §
10 1125(a)(1)(A) and (B), contributory trademark infringement, conversion and unfair
11 competition under Cal. Bus. & Pro. Code § 17200, *et. seq.*

12 The parties specifically stipulate (Docs. 36 and 36-1) to the following:

13 1. This Court has jurisdiction over all the parties and all of the claims set forth
14 in Sprint's Complaint.

15 2. Sprint has the right to use and enforce rights in the standard character
16 Sprint® mark and stylized Sprint® trademarks (collectively, the "Sprint Marks"), as
17 depicted below:



19
20 Sprint uses the Sprint Marks on and in connection with its telecommunications products
21 and services. The Sprint Marks are valid, distinctive, protectable, famous, have acquired
22 secondary meaning, and are associated exclusively with Sprint.

23 3. The Terms and Conditions and the language in and on the packaging
24 constitute a valid and binding contract enforceable against Defendant. The acts of (a)
25 failing to pay for monthly service charges; (b) failing to pay ETF fees; (c) failing to
26 activate the Phones on the Sprint wireless network; (d) reselling and exporting the Sprint

1 Phones and related products and services; and (e) using the Phones for a purpose that could
2 damage or adversely affect Sprint, constitute independent breaches of contract for which
3 Sprint is entitled to relief.

4 4. The conduct set forth in the Complaint constitutes violations of the Lanham
5 Act, 15 U.S.C. §§ 1114 and 1125(a)(1)(A) and (B) (federal trademark infringement and
6 false advertising). The conduct also constitutes breach of contract, common law unfair
7 competition, tortious interference with business relationships and prospective advantage,
8 civil conspiracy, unjust enrichment, conspiracy to induce breach of contract, common law
9 fraud, fraudulent misrepresentation, violations of the federal Computer Fraud and Abuse
10 Act, 18 U.S.C. § 1030, *et seq.*, contributory trademark infringement, conversion and unfair
11 competition under Cal. Bus. & Pro. Code § 17200, *et. seq.*

12 5. Sprint has suffered damages, including loss of goodwill and damage to its
13 reputation, as a result of Defendant's conduct. Sprint is entitled to damages and injunctive
14 relief on the claims as set forth in the Complaint for the amount of \$5 million.

15 6. The last known address of Defendant is 408 San Juan Drive, Modesto, CA
16 95354.

17 7. Defendant waives any and all rights to challenge the validity of this Final
18 Judgment in this Court or in any other court, and specifically waives his right of appeal
19 from the entry of this Final Judgment.

20 8. A violation of this Permanent Injunction should be enforced by payment of
21 compensatory damages to Plaintiffs in an amount of \$5,000 for each Sprint Phone that
22 Defendant is found to have purchased, sold or unlocked in violation of the Injunction.

23 Accordingly, it is ORDERED that,

24 Final judgment is entered against Defendant Aaron Simon Welch, and in favor of
25 the Plaintiffs, on all of the claims set forth in Plaintiffs' Complaint in the principal amount
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1 of Five Million Dollars and Zero Cents (\$5,000,000.00 (U.S.)), which shall bear interest at
2 the legal rate, for which let execution issue forthwith.

3 Defendant and all of his past and present agents, employees, heirs, personal
4 representatives, beneficiaries, relatives, and all other persons or entities acting or
5 purporting to act for them or on his behalf, including, but not limited to, any corporation,
6 partnership, proprietorship or entity of any type that is in any way affiliated or associated
7 with Defendant or Defendant's representatives, agents, assigns, employees, independent
8 contractors, associates, servants, and any and all persons and entities in active concert and
9 participation with Defendant who receive notice of this Order, shall be and hereby are
10 PERMANENTLY ENJOINED from, without Sprint's prior written consent:

- 11 a. purchasing, selling, unlocking, reflashing, altering, advertising,
12 soliciting and/or shipping, directly or indirectly, any Sprint Phones;
- 13 b. supplying Sprint Phones to or facilitating or in any way assisting
14 other persons or entities who Defendant knows or should know are
15 engaged in the purchase or sale of Sprint Phones or hacking, altering,
16 erasing, tampering with, deleting or otherwise disabling the software
17 installed in Sprint Phones;
- 18 c. engaging in any of the conduct described in the Complaint as the
19 "Bulk Handset Trafficking Scheme;"
- 20 d. supplying Sprint Phones to or facilitating or in any way assisting
21 other persons or entities who Defendant knows or should know are
22 engaged in any of the acts prohibited under this Permanent
23 Injunction, including, without limitation, the buying and/or selling of
24 Sprint Phones; and
- 25 e. knowingly using the Sprint Marks or any other trademark, service
26 mark, trade name and/or trade dress owned or used by Sprint now or

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in the future, or that is likely to cause confusion with Sprint's Marks,
without Sprint's prior written authorization.

The Court retains jurisdiction over this matter and the parties to this action in order
to enforce any violation of the terms of this Permanent Injunction. The Clerk of the Court
is directed to close this case.

IT IS SO ORDERED.

Dated: January 28, 2015



SENIOR DISTRICT JUDGE