

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

TRACFONE WIRELESS, INC.,
Plaintiffs,

vs.

RAFIQ WAZIR-ALI, *ET AL.*,
Defendants.

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CIVIL ACTION H-08-0641

ORDER

This trademark and copyright infringement case is before the court on plaintiff's motions for expedited discovery (Dkt. 4) and to preserve evidence (Dkt. 5).

Generally, parties may not conduct discovery until after they have met and conferred pursuant to Federal Rule of Civil Procedure 26(f). FED. R. CIV. PRO. 26(d). However, expedited discovery will be appropriate in cases involving a request for preliminary injunctive relief. A. Wright, Arthur R. Miller & Richard L. Marcus, FED. PRAC. & PRO. CIVIL 2d § 2046.1 (West 1994) (citing advisory committee notes to Rule 26(d)). The court finds that the facts asserted in the declaration of Jill C. Garcia (Dkt. 4-2) evidence good cause for expedited discovery in this case. It is therefore ORDERED that plaintiff's motion for expedited discovery (Dkt. 4) is granted.

Parties have an obligation to preserve evidence that they know may be relevant to litigation. Intentional destruction of relevant evidence may lead to an inference at trial that the evidence would have been detrimental to the destroyer. *King v. Illinois Cent. R.R.*, 337 F.3d 550, 556 (5th Cir. 2003). Once served with the complaint in this action, it is clear that

defendants will have reason to know that any Tracfone/NET 10 phones in their possession are relevant to the claims in this lawsuit. It is therefore ORDERED that plaintiff's motion to preserve evidence (Dkt. 5) is granted. Defendants are further ORDERED to preserve all evidence they have reason to know is relevant to this lawsuit, including:

- (1) all Tracfone/NET 10 prepaid phones currently in their possession and/or subject to their control;
- (2) evidence relating to the bulk purchase, sale, distribution and altering of Tracfone/NET 10 prepaid phones, including copies of hardware used to modify or alter Tracfone/NET 10 prepaid phones, transaction records related to Tracfone/NET 10 phones, all Tracfone/NET 10 clamshells or other packaging, and communications with third parties on the subjects of the sale or alteration of Tracfone/NET 10 prepaid phones and the security measures contained therein; and
- (3) all information, items, and documents responsive to plaintiff's First Request for Production of Documents and Things.

Defendants shall provide an inventory of Tracfone/NET 10 prepaid phones in their possession and/or subject to their control and the location of such items within 10 days of receipt of this Order.

Signed at Houston, Texas on March 17, 2008.


Stephen Wm Smith
United States Magistrate Judge