

MAR 10, 2009

STEVEN M. LARIMORE
CLERK U.S. DIST. CT.
S.D. OF FLA. - MIAMI

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
09-20210-CR-LENARD/GARBER**

CASE NO. _____

**18 U.S.C. § 1349
18 U.S.C. § 1341
18 U.S.C. § 1343
18 U.S.C. § 2326
18 U.S.C. § 2**

UNITED STATES OF AMERICA

vs.

**SIRTAJ "TOSH" MATHAUDA,
a/k/a "Mark Bolan,"**

Defendant.

INDICTMENT

The Grand Jury charges that:

GENERAL ALLEGATIONS

At various times relevant to this Indictment:

1. The defendant and his co-conspirators operated a series of companies in the Southern District of Florida and Costa Rica that marketed and sold to United States residents business opportunities to own and operate vending machines, beverage distributorships, and greeting card distributorships. The business opportunities the defendant and his co-conspirators sold cost thousands of dollars each, and most purchasers paid at least \$10,000. Each business opportunity company operated for several months. Typically, after one company closed, the next opened. The various companies used bank accounts, office space, and other services in the Southern District of Florida and elsewhere.

2. Apex Management Group, Inc. (“Apex”), was a Florida corporation. From in or around June 2004 to in or around December 2004, Apex sold business opportunities to own and operate soda/snack vending machines. Apex rented office space in Ft. Lauderdale, Florida, to make it appear to potential purchasers that Apex’s operations were fully within the United States. However, Apex also operated in Costa Rica.

3. USA Beverages, Inc. (“USA Beverages”) was a Florida and New Mexico corporation. From in or around May 2005 to in or around January 2006, USA Beverages sold business opportunities to own and operate coffee beverage display racks. USA Beverages rented office space in Las Cruces, New Mexico, and otherwise made it appear to potential purchasers that USA Beverages’ operations were fully within the United States. However, USA Beverages actually operated from Costa Rica.

4. Omega Business Systems, Incorporated (also known as O.B. Systems), (“Omega”) was a Wisconsin and Florida corporation. From in or around August 2007 to in or around March 2008, Omega sold business opportunities to own and operate greeting card display racks. Omega rented office space in Madison, Wisconsin, and otherwise made it appear to potential purchasers that Omega’s operations were fully within the United States. However, Omega actually operated from Costa Rica.

5. Nation West Distribution Company (“Nation West”) was a Colorado corporation. From in or around February 2008 to in or around January 2009, Nation West sold business opportunities to own and operate “mini-mall” vending machines that could dispense a variety of products. Nation West rented office space in Denver, Colorado, and otherwise made it appear to

potential purchasers that Nation West's operations were fully within the United States. However, Nation West actually operated from Costa Rica.

6. Apex, USA Beverages, Omega, and Nation West ("the companies") employed different types of sales representatives, including "fronters," "closers," and "references." A "fronter" spoke to potential purchasers when the potential purchasers initially contacted the company in response to an advertisement. A "closer" subsequently spoke to potential purchasers to close deals. "References" spoke to potential purchasers about the financial success they purportedly had experienced since purchasing one of the business opportunities.

7. Defendant **SIRTAJ "TOSH" MATHAUDA, a/k/a "Mark Bolan,"** using various assumed names, owned, operated, managed, and worked as a salesman for Apex, USA Beverages, Omega, and Nation West.

COUNT 1
(Conspiracy: 18 U.S.C. §§ 1349, 2326)

1. Paragraphs 1 through 7 of the General Allegations section of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. From in or around June 2004 through in or around January 2009, in Miami-Dade County, Broward County, and Palm Beach County, in the Southern District of Florida, and elsewhere, the defendant,

SIRTAJ "TOSH" MATHAUDA,
a/k/a "Mark Bolan,"

in connection with the conduct of telemarketing, did willfully, that is, with the intent to further the objects of the conspiracy, and knowingly combine, conspire, confederate and agree with others,

known and unknown to the Grand Jury, to commit certain offenses against the United States, that is:

(a) to knowingly and with intent to defraud devise and intend to devise a scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, knowing that they were false and fraudulent when made, did deposit and cause to be deposited matter to be sent and delivered by a private and commercial interstate carrier, and did knowingly cause to be delivered certain matters by a private and commercial interstate carrier, according to the directions thereon, for the purpose of executing the scheme and artifice, in violation of Title 18, United States Code, Section 1341;

(b) to knowingly and with intent to defraud devise and intend to devise a scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, knowing that they were false and fraudulent when made, did transmit and cause to be transmitted certain wire communications in interstate and foreign commerce, for the purpose of executing the scheme and artifice, in violation of Title 18, United States Code, Section 1343.

PURPOSE OF THE CONSPIRACY

3. It was the purpose of the conspiracy for the defendant and his co-conspirators to unlawfully enrich themselves by obtaining money from potential business opportunity purchasers by means of materially false statements and representations and the concealment of material facts concerning, among other things, the geographic location from which the companies operated, the expected profits of the business opportunities they sold, the services the companies would provide to purchasers, and the authenticity of company references.

MANNER AND MEANS OF THE CONSPIRACY

The manner and means by which the defendant and his co-conspirators sought to accomplish the objects and purpose of the conspiracy included, among others, the following:

4. To fraudulently induce others to purchase the business opportunities, **SIRTAJ “TOSH” MATHAUDA** and his co-conspirators reincorporated dissolved corporations in Florida, New Mexico, Wisconsin, and Colorado, to make it appear to potential purchasers that the companies had been established years earlier and had a track record of success.

5. The companies advertised the business opportunities through the Internet and in newspapers in the United States. Advertisements promoted distributorships for coffee, greeting cards, and vending machines. Advertisements included earnings claims, such as “Earn \$1-\$2K wkly.” Some advertisements claimed that the business opportunities had established locations for the machines and racks.

6. Advertisements urged readers to call toll-free numbers for more information. **SIRTAJ “TOSH” MATHAUDA** and his co-conspirators arranged for and paid for the toll-free numbers. The toll-free numbers appeared to potential purchasers to be telephone numbers in the United States, but the calls to USA Beverages, Omega, and Nation West were in fact routed to Costa Rica. Potential purchasers who called the companies were initially connected to a fronter, who described the business opportunity and screened out potential purchasers who did not have sufficient funds available.

7. The companies then arranged for interested potential purchasers to receive by overnight delivery service promotional packets that contained glossy brochures and other sales materials falsely describing the firms as companies located in the United States.

8. Usually after receiving the promotional packet, interested potential purchasers spoke by telephone to a closer, who, in some cases, was **SIRTAJ “TOSH” MATHAUDA** using an assumed name. The phone numbers for closers were toll-free numbers that gave no indication to consumers that they were connecting to telephones in Costa Rica. The closer further described the business opportunity and closed the sale.

9. Sales representatives, including **SIRTAJ “TOSH” MATHAUDA**, encouraged potential purchasers, before making a decision, to call certain “references,” who were characterized by the sales representatives as prior business opportunity purchasers. The phone numbers for references appeared to potential purchasers to be domestic numbers connecting within the United States, whereas in fact the calls generally were routed to Costa Rica.

10. Sales representatives, including **SIRTAJ “TOSH” MATHAUDA**, also encouraged potential purchasers, before making a decision, to call certain “locators,” who were characterized by the sales representatives as third parties who worked with the companies to find high-traffic locations for the machines and merchandise display racks.

11. Sales representatives, including **SIRTAJ “TOSH” MATHAUDA**, provided potential purchasers with instructions for wiring and otherwise transferring funds to the companies as payment for the business opportunities. Purchasers followed these instructions and sent money to certain addresses and bank accounts, some of which were located within the Southern District of Florida.

12. To fraudulently induce others to purchase the business opportunities, **SIRTAJ “TOSH” MATHAUDA** and his co-conspirators made, and caused others to make, numerous materially false statements, and omitted and concealed, and caused others to omit and conceal, numerous material facts, including, among others, the following:

Materially False Statements

- a. That USA Beverages, Omega, and Nation West were based in and operated out of the United States;
- b. That purchasers would likely earn substantial profits by purchasing one of the business opportunities;
- c. That prior purchasers of the business opportunities were earning substantial profits from their businesses;
- d. That purchasers would sell a guaranteed minimum amount of merchandise, such as greeting cards and beverages;
- e. That the business opportunity worked with locators familiar with the potential purchaser's area who would secure, and in some cases had already secured, high-traffic locations for the potential purchaser's merchandise stands;
- f. That the profits of the companies were based in part on the profits of the business opportunity purchasers, thus creating the false impression that the companies had a stake in the purchasers' success;
- g. That the companies were established years earlier, had a significant number of distributors across the country, and had a track record of success;
- h. That purchasers would receive their machines, display racks, merchandise, and locations promptly;
- i. That certain "references," whom the companies' sales representatives encouraged potential purchasers to call, had previously purchased one of the business opportunities offered and were making profits in line with or exceeding the companies' promises;

j. That a limited number of distributorships were available in any one particular area, and that potential purchasers must act quickly to secure the area;

Omission/Concealment of Material Facts

k. That the companies were operated almost entirely out of Costa Rica;

l. That the frontiers and closers worked in Costa Rica;

m. That funds sent to the companies' United States addresses and United States bank accounts were forwarded to Costa Rica and elsewhere;

n. That the companies were receiving complaints from prior purchasers about non-delivery of machines, merchandise, and merchandise racks, the failure to find high-traffic locations, and the companies' non-existent customer support;

o. That the companies had been in business only a short time, and were merely operating under the names of older, unrelated, now-defunct companies;

p. That the locators had not secured locations for the machines and merchandise racks as described;

q. That the references whom potential purchasers were encouraged to contact had not in fact purchased the business opportunities;

r. That many of the references resided in Costa Rica rather than the United States; and

s. That the company in which potential purchasers were considering investing was one in a series of similar companies that operated for a short period of time and then ceased to do business.

All in violation of Title 18, United States Code, Sections 1349 and 2326.

COUNTS 2 - 14
(Mail Fraud: 18 U.S.C. §§ 1341, 2326, and 2)

1. Paragraphs 1 through 7 of the General Allegations section of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. From in or around June 2004 through in or around January 2009, in the Southern District of Florida, and elsewhere, the defendant,

**SIRTAJ “TOSH” MATHAUDA,
a/k/a “Mark Bolan,”**

in connection with the conduct of telemarketing, did knowingly and with intent to defraud devise and intend to devise a scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, knowing that they were false and fraudulent when made, and for the purpose of executing such scheme and artifice to defraud, and attempting to do so, did deposit and cause to be deposited matter to be sent and delivered by a private and commercial interstate carrier, and did knowingly cause to be delivered certain mail matter by a private and commercial interstate carrier, according to the directions thereon.

PURPOSE OF THE SCHEME AND ARTIFICE

3. It was the purpose of the scheme for the defendant and his accomplices to unlawfully enrich themselves by obtaining money from potential business opportunity purchasers by means of materially false statements and representations and the concealment of material facts concerning, among other things, the geographic location from which the companies operated, the expected profits of the business opportunities they sold, the services the companies would provide to purchasers, and the authenticity of company references.

MANNER AND MEANS OF THE SCHEME AND ARTIFICE

4. Paragraphs 4 through 12 of the Manner and Means section of Count 1 of this Indictment are re-alleged and incorporated by reference as though fully set forth herein as a description of the scheme and artifice.

USE OF THE MAILS

5. On or about the dates specified as to each Count below, the defendant, for the purpose of executing and in furtherance of the aforesaid scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, and attempting so to do, did deposit and cause to be deposited matter to be sent and delivered by a private and commercial interstate carrier, as specified in each count below, and did knowingly cause to be delivered certain matters by a private and commercial interstate carrier, according to the directions thereon, as specified in each count below:

COUNT	APPROX. DATE	DESCRIPTION OF ITEM
2	June 18, 2004	Purchase order and check for \$250 sent via FedEx by M.N. from New Hampshire to Ft. Lauderdale, Florida, as partial payment for an Apex business opportunity.
3	June 23, 2004	Check for \$12,700 sent via FedEx by R.S. from Wisconsin to Ft. Lauderdale, Florida, as partial payment for an Apex business opportunity.
4	July 20, 2004	Check for \$7,965 sent via FedEx by C.M. from Ohio to Ft. Lauderdale, Florida, as partial payment for an Apex business opportunity.
5	September 24, 2004	Check for \$4,200 sent via FedEx by D.M. from Alabama to Ft. Lauderdale, Florida, as partial payment for an Apex business opportunity.
6	June 24, 2005	Check for \$17,500 sent via FedEx by M.W. from Ohio to Pompano Beach, Florida, as payment for a USA Beverages business opportunity.

COUNT	APPROX. DATE	DESCRIPTION OF ITEM
7	July 20, 2005	Sales packet sent via DHL Express on behalf of USA Beverages from Pompano Beach, Florida, to D.T. in Urbandale, Iowa.
8	August 30, 2005	Check for \$7,050 sent via FedEx by B.D.R. from Pennsylvania to the Southern District of Florida as partial payment for a USA Beverages business opportunity.
9	mid-September 2007	Sales packet sent via DHL Express on behalf of Omega Business Systems from the Southern District of Florida to V.W. in Missouri.
10	November 20, 2007	Sales packet sent via DHL Express on behalf of Omega Business Systems from the Southern District of Florida to W.O. in West Virginia.
11	April 11, 2008	Check for \$9,725 sent via FedEx by B.R. from Georgia to Miami, Florida, as partial payment for an Omega business opportunity.
12	April 18, 2008	Check for \$9,705.94 sent via FedEx by B.R. from Georgia to Miami, Florida, as partial payment for an Omega business opportunity.
13	April 30, 2008	Checks payable to Omega by business opportunity purchasers, sent via FedEx from San Jose, Costa Rica, by defendant SIRTAJ "TOSH" MATHAUDA to M.H. in Ft. Lauderdale, Florida.
14	May 1, 2008	Check for \$10,500 sent via FedEx by J.O. from Pennsylvania to Miami, Florida, as partial payment for an Omega business opportunity.

In violation of Title 18, United States Code, Sections 1341, 2326, and 2.

COUNTS 15 - 16
(Wire Fraud: 18 U.S.C. §§ 1343, 2326, and 2)

1. Paragraphs 1 through 7 of the General Allegations section of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. From in or around June 2004 through in or around January 2009, in the Southern District of Florida, and elsewhere, the defendant,

**SIRTAJ “TOSH” MATHAUDA,
a/k/a “Mark Bolan,”**

in connection with the conduct of telemarketing, did knowingly and with intent to defraud devise and intend to devise a scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, knowing that they were false and fraudulent when made, and did transmit and cause to be transmitted, by means of wire communications in interstate and foreign commerce, certain writings, signs, signals, pictures, and sounds.

PURPOSE OF THE SCHEME AND ARTIFICE

3. It was the purpose of the scheme for defendant and his accomplices to unlawfully enrich themselves by obtaining money from potential business opportunity purchasers by means of materially false statements and representations and the concealment of material facts concerning, among other things, the geographic location from which the companies operated, the expected profits of the business opportunities they sold, the services the companies would provide to purchasers, and the authenticity of company references.

MANNER AND MEANS OF THE SCHEME AND ARTIFICE

4. Paragraphs 4 through 12 of the Manner and Means section of Count 1 of this Indictment are re-alleged and incorporated by reference as though fully set forth herein as a description of the scheme and artifice.

USE OF THE WIRES

5. On or about the dates specified as to each Count below, the defendant, for the purpose of executing and in furtherance of the aforesaid scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, did transmit and cause to be transmitted, by means of wire communications in interstate and foreign commerce, certain writings, signs, signals, pictures, and sounds, as specified in each count below:

COUNT	APPROX. DATE	DESCRIPTION OF WIRE COMMUNICATION
15	April 25, 2008	Telephone call between defendant SIRTAJ "TOSH" MATHAUDA in Costa Rica and M.H. in the Southern District of Florida, regarding cashing checks for defendant SIRTAJ "TOSH" MATHAUDA .
16	October 21, 2008	Telephone call between accomplice in Costa Rica and E.S. in Boynton Beach, Florida, regarding Nation West.

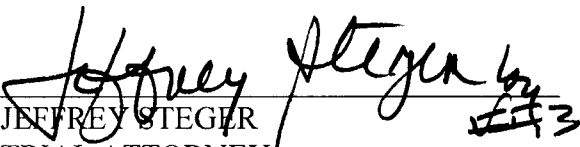
In violation of Title 18, United States Code, Sections 1343, 2326, and 2.

A TRUE BILL


(FOREPERSON)



R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY



JEFFREY STEGER
TRIAL ATTORNEY
U.S. DEPARTMENT OF JUSTICE



ALAN PHELPS
TRIAL ATTORNEY
U.S. DEPARTMENT OF JUSTICE

UNITED STATES OF AMERICA

CASE NO. _____

vs.

CERTIFICATE OF TRIAL ATTORNEY*

SIRTAJ "TOSH" MATHAUDA,
a/k/a "Mark Bolan,"

Defendant.

Superseding Case Information:

Court Division: (Select One)

X Miami _____ Key West
_____ FTL _____ WPB _____ FTP

New Defendant(s) Yes _____ No _____
Number of New Defendants _____
Total number of counts _____

I do hereby certify that:

1. I have carefully considered the allegations of the indictment, the number of defendants, the number of probable witnesses and the legal complexities of the Indictment/Information attached hereto.

2. I am aware that the information supplied on this statement will be relied upon by the Judges of this Court in setting their calendars and scheduling criminal trials under the mandate of the Speedy Trial Act, Title 28 U.S.C. Section 3161.

3. Interpreter: (Yes or No) No
List language and/or dialect _____

4. This case will take 10 days for the parties to try.

5. Please check appropriate category and type of offense listed below:

(Check only one)		(Check only one)	
I	0 to 5 days	_____	Petty
II	6 to 10 days	<u>X</u>	Minor
III	11 to 20 days	_____	Misdem
IV	21 to 60 days	_____	Felony
V	61 days and over	_____	_____

6. Has this case been previously filed in this District Court? (Yes or No) No

If yes:
Judge: _____ Case No. _____

(Attach copy of dispositive order)
Has a complaint been filed in this matter? (Yes or No) No

If yes:
Magistrate Case No. _____

Related Miscellaneous numbers: _____

Defendant(s) in federal custody as of _____


Defendant(s) in state custody as of _____

Rule 20 from the _____ District of _____

Is this a potential death penalty case? (Yes or No) No

7. Does this case originate from a matter pending in the Northern Region of the U.S. Attorney's Office prior to October 14, 2003? _____ Yes X No

8. Does this case originate from a matter pending in the Central Region of the U.S. Attorney's Office prior to September 1, 2007? _____ Yes X No


JEFFREY STEGER
DOJ TRIAL ATTORNEY
Court No. A5500681

*Penalty Sheet(s) attached

REV 4/8/08

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: SIRTAJ "TOSH" MATHAUDA, a/k/a "Mark Bolan"

Case No: _____

Count #: 1

18 U.S.C. §§ 1349 and 2326

Conspiracy

***Max Penalty:** 25 years' imprisonment

Counts #: 2 - 14

18 U.S.C. §§ 1341 and 2326

Mail Fraud

***Max Penalty:** 25 years' imprisonment

Counts #: 15 - 16

18 U.S.C. §§ 1343 and 2326

Wire Fraud

***Max Penalty:** 25 years' imprisonment

***Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.**