

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>UNITED STATES OF AMERICA</b>	<b>:</b>	<b>DATE FILED:</b>
<b>v.</b>	<b>:</b>	<b>CRIMINAL NUMBER:</b>
<b>NIAJA KANE</b>	<b>:</b>	<b>VIOLATIONS: 18 U.S.C. § 2320(a) (trafficking in counterfeit goods - 1 count) 21 U.S.C. §§ 331(i)(3) and 333(a)(2) (holding counterfeit drugs for sale with intent to defraud - 1 count) 21 U.S.C. § 846 (attempt to distrib- ute counterfeit controlled substance - 1 count)</b>

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**INDICTMENT**

**COUNT ONE**

**THE GRAND JURY CHARGES THAT:**

At all times material to this indictment:

1. The United States Food and Drug Administration (FDA) is the federal agency within the United States Department of Health and Human Services charged with the responsibility of ensuring that drugs sold in the United States are safe and effective for their intended uses, and that labeling for drugs contains true and accurate information. The FDA carries out these responsibilities through enforcement of the Federal Food, Drug and Cosmetic Act (FFDCA) and regulations promulgated pursuant to that statute.

2. The FFDAC defines “drug” to include articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals, and articles (other than food) intended to affect the structure or any function of the human body.

3. The FDCA defines a counterfeit drug as one which, “or the container or labeling of which, without authorization bears the trademark, trade name, or other identifying mark, imprint, or device, or any likeness thereof, of a drug manufacturer...other than the person or persons who in fact manufactured, processed, packed, or distributed such drug and which thereby falsely purports or is represented to be the product of such other drug manufacturer...”

4. The Department of Homeland Security, United States Immigration and Customs Enforcement Office of Investigations (ICE), is the federal agency charged with investigating criminal activity relating to immigration and customs violations, including the enforcement of laws prohibiting the importation of illegal merchandise, and the protection of intellectual property rights through enforcement of patent, trademark and copyright laws.

5. ICE is responsible for the investigation of the illegal importation of goods bearing “counterfeit marks.” A “counterfeit mark” is defined as a “spurious mark used in connection with trafficking that is identical to or indistinguishable from a registered trademark and the use of which is likely to confuse, cause mistake or deceive.”

6. Percocet® , a registered trademark of Endo Pharmaceuticals, Inc. (Endo), is a prescription drug manufactured for Endo, and used for the treatment of moderate to severe pain. Percocet® 7.5 mg tablets each contain approximately 6.7226 mg of oxycodone, and Percocet® 10 mg tablets each contain approximately 8.9637 mg of oxycodone. Oxycodone is a Schedule II controlled substance, the distribution and dispensing of which are regulated by the Drug Enforcement Administration. Percocet® tablets manufactured for Endo bear distinctive identifying marks, imprints, and other identifying characteristics, including the word “Percocet” imprinted on every tablet. This mark and characteristic were in use and were registered for

Percocet® on the principal register of the United States Patent and Trademark Office.

7. Viagra®, a registered trademark of Pfizer, Inc. (Pfizer), is a prescription drug manufactured by Pfizer, and used for the treatment of erectile dysfunction. Viagra® tablets manufactured by Pfizer bear distinctive identifying marks, imprints, and other identifying characteristics, including their blue color, diamond shape, the word “Pfizer” and the letters “VGR” imprinted on every tablet. These marks and characteristics were in use and were registered for Viagra® on the principal register of the United States Patent and Trademark Office.

8. Cialis®, a registered trademark of Lilly ICOS LLC, a joint venture of Ely Lilly and Company (Lilly) and the ICOS Corporation, is a prescription drug manufactured by Lilly, and used for the treatment of erectile dysfunction. Cialis® tablets manufactured by Lilly bear distinctive identifying marks, imprints, and other identifying characteristics, including their yellow color, almond shape and the stylized letter “C” followed by a space and the number “20.” These marks were in use and were registered for Cialis® by Lilly ICOS LLC on the principal register of the United States Patent and Trademark Office.

9. Defendant NIAJA KANE resided in Philadelphia and trafficked in certain counterfeit prescription drugs. Defendant KANE ordered counterfeit prescription drugs over the internet using the screen name “moreandmoreNiaja.”

10. On or about December 16, 2005, Person #1, a manufacturer of counterfeit prescription drugs in China, contacted Person #2, a business associate of Person #1 who was located in the United States, and asked Person #2 to contact defendant NIAJA KANE, who was using the screen name “moreandmoreNiaja,” in order to facilitate defendant NIAJA KANE’s

possible purchase of counterfeit prescription drugs from Person #1.

11. On or about December 16, 2005, during an internet chat, defendant NIAJA KANE told Person #2 that KANE was looking to make a first purchase of 5,000 counterfeit pills from Person #1, and that she would subsequently order 10,000 pills from Person #1 every month.

12. On or about December 19, 2005, during an internet chat, defendant NIAJA KANE told Person #2 that “we are making counterfeit drug, did he tell u.” During the same chat, defendant NIAJA KANE asked Person #2 to obtain a sample of Percocet® , and told Person #2 that she wanted pictures of Person #1's “5mg and 10 mg Percocet samples.”

13. On or about December 22, 2005, during an internet chat, defendant NIAJA KANE asked Person #2 if Person #1 would “send pills to u...u will send pills to me right.”

14. On or about December 28, 2005, during an internet chat, defendant NIAJA KANE told Person #2 that she had sent Person #1 samples of 1 mg Xanax®, 40 mg, 80 mg of Oxycontin® and 5mg Percocet® via Global Airmail Letter-post to China on December 23, 2005. Defendant NIAJA KANE told Person #2 that the medicines she had sent Person #1 were controlled, and wrote “How can trust who u are ...I mean...understand me... these drugs u can be trow in jail for.” Later in the chat, defendant NIAJA KANE agreed to pay Person #1 30 percent of the cost of the counterfeit drugs in advance to show good faith, asked Person #2 to ask Person #1 to manufacture the Percocet® 10 mg first, and stated that she would order 5,000 pieces for the first order.

15. On or about December 28, 2005, during an internet chat, defendant NIAJA KANE told Person #2 that she had sent Person #1 funds via Western Union to China.

16. On or about December 29, 2005, during an internet chat, defendant

NIAJA KANE told Person #2 that KANE would buy 5,000 counterfeit pills first, to be followed by a minimum of 20,000 pills. During this online chat, defendant NIAJA KANE also agreed to send a \$1,000 deposit that same day so that Person #1 could make a mold in order to manufacture KANE's order of counterfeit prescription medication in China.

17. On or about December 30, 2005, during an internet chat, defendant NIAJA KANE confirmed with Person #2 the color, shape and imprints she wanted on the 7.5 and 10 mg counterfeit Percocet® pills she was ordering. KANE then sent Person #2 a picture of a genuine 7.5 mg Percocet® pill.

18. On or about January 11, 2006, during an internet chat, defendant NIAJA KANE told Person #2 that she had sent Person #1 samples of Percocet® 5 and 7.5 mg tablets, Oxycontin® 40 and 80 mg tablets and Xanax® inside a magazine via China's Express Mail Service (EMS).

19. On or about February 7, 2006, during an internet chat, defendant NIAJA KANE told Person #2 that Person #1 would be shipping a total of 7,000 counterfeit Percocet® 10 mg and 3,000 counterfeit Percocet® 7.5 mg pills to her on February 10, 2006, and also told Person #2 that she needed the pills shipped on that date because she had customers waiting.

20. On or about February 21, 2006, two packages from China addressed to Russell Henderson, the name provided by Person #2 to Person #1, arrived in San Francisco. Person #1 instructed Person #2 to forward one of the packages, which contained counterfeit Percocet®, to defendant NIAJA KANE.

21. On or about February 28, 2006, defendant NIAJA KANE caused the package described in paragraph 20 to be delivered to 1704 Gratz Street, Philadelphia, PA 19121.

22. On or about February 28, 2006, in Philadelphia, in the Eastern District of Pennsylvania, defendant

**NIAJA KANE**

intentionally trafficked and attempted to traffic in goods, specifically approximately 2,040 tablets purporting to be Viagra®, 1,200 tablets purporting to be Cialis®, 2,333 tablets purporting to be Percocet® 7.5 mg, and 6,573 tablets purporting to be Percocet® 10 mg, all of which were counterfeit, and knowingly used on and in connection with such goods counterfeit marks, that is spurious marks identical to and substantially indistinguishable from the shape and imprints found on genuine Viagra® manufactured by Pfizer, genuine Cialis® manufactured by Lilly and genuine Percocet® manufactured for Endo, which marks were in use and were registered for those products by those companies on the principal register of the United States Patent and Trademark Office, the use of which counterfeit marks was likely to cause confusion, to cause mistake and to deceive.

In violation of Title 18, United States Code, Section 2320(a).

**COUNT TWO**

**THE GRAND JURY FURTHER CHARGES THAT:**

1. Paragraphs 1 through 21 of Count One are incorporated here.
2. On or about February 28, 2006, in Philadelphia, in the Eastern District of Pennsylvania, defendant

**NIAJA KANE,**

with the intent to defraud and mislead, willfully caused a drug to be a countererfeit drug and held for sale or dispensing such drugs, that is approximately:

- 1) 2,040 tablets marked Viagra®;
- 2) 1,200 tablets marked Cialis®;
- 3) 2,333 tablets marked Percocet® 7.5 mg; and
- 4) 6,573 tablets marked Percocet ®10 mg

all of which, without authorization, bore the trademark, trade name and identifying marks, imprints and other characteristics of those products, thereby falsely purporting to be manufactured, processed, packed, or distributed by the legitimate holders of such trademarks.

In violation of Title 21, United States Code, Sections 331(i)(3) and 333(a)(2).

**COUNT THREE**

**THE GRAND JURY FURTHER CHARGES THAT:**

1. Paragraphs 1 through 6 and 9 through 21 of Count One are incorporated here.
2. On or about February 28, 2006, in Philadelphia, in the Eastern District of Pennsylvania, defendant

**NIAJA KANE**

knowingly and intentionally attempted to possess with intent to distribute or dispense a mixture and substance containing oxycodone, a Schedule II controlled substance contained in Percocet®, that is approximately 2,333 tablets marked Percocet® 7.5 mg and 6,573 tablets marked Percocet® 10 mg, all of which without authorization bore the identifying mark of Endo, a manufacturer and distributor of controlled substances, which did not, in fact manufacture and distribute such substances, and which substances were thereby falsely purported and represented to be Percocet® 7.5 mg and Percocet® 10 mg tablets, products of Endo, in violation of Title 21, United States Code, Sections 841(a)(2) and (b)(1)(C).

In violation of Title 21, United States Code, Section 846.

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**A TRUE BILL:**

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**GRAND JURY FOREPERSON**

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**PATRICK L. MEEHAN  
UNITED STATES ATTORNEY**