

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

UNITED STATES OF AMERICA,)	
)	INFORMATION
Plaintiff,)	
)	(18 U.S.C. § 1030)
v.)	(18 U.S.C. § 1341)
)	(18 U.S.C. § 1343)
KATUN CORPORATION,)	(18 U.S.C. § 2)
)	(18 U.S.C. § 982)
Defendant.)	

THE UNITED STATES ATTORNEY CHARGES THAT:

INTRODUCTION

1. At all times material and relevant to this Information:
 - a. Katun Corporation ("Katun" or "Corporation") was a privately-owned Minnesota corporation located at 10951 Bush Lake Road in Bloomington, Minnesota. Katun manufactures and sells parts and supplies for photocopiers and office equipment to more than 19,000 customers throughout the United States and in more than 170 countries.
 - b. Terence Michael Clarke and David G. Jorgensen co-founded Katun in 1978. From 1978 until approximately May 2000, Clarke served as Katun's Chairman of the Board of Directors, President, and Chief Executive Officer. Clarke, a resident of Eden Prairie, Minnesota, also was an approximate one-third owner of Katun. Jorgensen, a California resident, served on Katun's Board of Directors from approximately 1978 until May 2003 and was an approximate one-third owner of Katun.
 - c. Between approximately June 2000 and June 2003, Larry J. Stroup served as Katun's President and Chief Executive Officer. In July 2002, PNA Holdings, LLC, a group of investors led by Banc of America Capital Investors and Svoboda, Collins, LLC, acquired Katun. Between June 2003 and the present, Daniel Olszewski has served as Katun's President and Chief Executive Officer.
 - d. Beginning prior to 1998 and continuing until about January 2003, Katun published corporate policies in the Corporation's Employee Handbook, including

provisions prohibiting unauthorized access to any computer, governing treatment of confidential information, and providing penalties for violations. In January 2003, Katun adopted and implemented Standards of Business Conduct, which applied to all Katun employees in the United States and other countries. Each employee was required to read these Standards of Business Conduct and provide a written acknowledgment of a personal commitment to act in accordance with them. One section, entitled "Proprietary Information or Trade Secrets: Competitive Intelligence" provided in part, that:

In collecting information about its competitors, Katun utilizes all legitimate sources, but must avoid any actions that are illegal, unethical or could cause embarrassment or liability to Katun. The U.S. Economic Espionage Act of 1996, for example, imposes criminal penalties on individuals and corporations that steal or attempt to steal trade secrets or knowingly receive or possess stolen trade secrets. In general terms, a trade secret is confidential information that a company has sought to protect because it provides a business advantage over those who do not know or use it. If a Katun employee receives or is offered competitive information of another company that appears to be subject to confidentiality restrictions or protections, do not use or distribute the information until it has been reviewed by Katun's legal counsel.

- e. Every state has legislation that requires companies to escheat, or turn over, abandoned property to the state after some period of time has elapsed. Escheat laws provide that the state becomes the legal owner of abandoned property, based on the concept of state sovereignty. In 1954, the Uniform Disposition of Unclaimed Property Act ("Uniform Act") was introduced to unify the states' statutory escheat provisions. Forty-two states, including Minnesota, have enacted some version of the Uniform Act. Further, Minnesota has entered into reciprocity agreements with at least twenty-five

other states whereby Minnesota is authorized to collect unclaimed property on their behalf.

- f. In Minnesota, the Department of Commerce's Unclaimed Property Division administers the Minnesota Uniform Disposition of Unclaimed Property Act ("Act"), Minn. Stat. § 345.31 to § 345.60. The Act requires businesses and other organizations to report and turn over to the Commissioner of Commerce certain funds and other property that have remained unclaimed for three years. The Act defines unclaimed property to include "customer overpayments" and "credit balances." Businesses must file the report by October 31st of each year. Prior to filing an unclaimed property report, Minnesota law requires businesses to send a letter to the presumed owner of unclaimed property at the owner's last known address, notifying the owner of the existence of the property and that it will be turned over to the state if not claimed.
- g. Beginning in approximately 1988 and continuing until about mid-2001, Katun routinely hired employees to work as in-house travel agents for the Corporation's travel department. During this time, while Katun affiliated with two authorized travel agencies to enable it to complete ticket purchases, Katun operated as a satellite ticket printer location, independent of those agencies. Thus, Katun's travel department was able to make domestic airline reservations and purchase tickets for its own employees, by using a dedicated phone line computer reservation system, such as the Apollo system, which was based in Denver, Colorado.

COUNTS 1-6

(Fraud and Related Activity in Connection with Computers)

2. From the inception of Katun Corporation until about January 2003, Katun employees routinely sought and obtained competitive information regarding Original Equipment Manufacturers ("OEMs"), which manufactured photocopiers and other equipment for which Katun produced and sold replacement parts and supplies.

These OEMs included Canon U.S.A., Inc. ("Canon"), Kyocera Mita, Inc. and its predecessor(s) ("Kyocera Mita"), Ricoh Corporation ("Ricoh"), Konica Business Technologies, Inc. ("Konica"), Minolta Corporation U.S.A. ("Minolta"), Sharp Electronics Corporation ("Sharp"), and Toshiba USA, Inc. ("Toshiba"). Prior to about 1998, Katun employees were able to obtain competitive information, including confidential, proprietary OEM information, directly from OEM authorized dealers and distributors with whom Katun also did business. Confidential OEM information included pricing, marketing, and technical data, which dealers obtained in hard copy form from OEMs, and which the dealers then passed on to Katun.

3. Beginning prior to 1998, Katun learned that OEMs were moving communications with their dealers to on-line Internet systems involving a secure website with password protections. For example, in September 1997, Katun obtained a confidential Toshiba communication stating that Toshiba was implementing an authorized dealer Internet website where "security is very tightly controlled by password" because the website contained pricing, marketing, and technical data that Toshiba "protected as the sole intellectual property" of that company.

4. Between about 1999 and October 2002, Katun employees used secret, improper means to obtain confidential passwords to OEM protected websites, which included sending \$900 tool kits to the homes of employees of OEM authorized dealers in exchange for

passwords to OEM websites. These same OEM dealer employees also provided Katun employees with user names to access the OEM websites. Katun employees thereafter maintained, and periodically updated, for limited use and distribution within Katun, a confidential document containing a list of the OEM website passwords and user names.

5. From in or about 1999 and continuing until about March 2003, Katun employees intentionally accessed password-protected websites belonging to Toshiba, Sharp, Minolta, Konica, Ricoh, Kyocera Mita, and Canon, and obtained OEM competitive information, including confidential or proprietary pricing, marketing, and technical information. Katun routinely distributed this OEM competitive information to its senior executives and others, which Katun then used for purposes of commercial advantage. Katun also kept and maintained this OEM competitive information in a so-called "competitive library", which Katun employees regularly accessed and utilized.

6. In January 2003, Katun instituted a Standards of Business Conduct that generally prohibited the use of another company's competitive information that appeared to be subject to confidentiality restrictions or protections. After the implementation of those Standards, however, at least one Katun employee continued to use confidential passwords to access OEM protected websites from his residence in order to obtain OEM

competitive information, later used by Katun. Further, Katun employees continued to access and utilize Katun's "competitive library", which contained OEM pricing, marketing, and technical information.

7. On or about the dates set forth below, in the State and District of Minnesota and elsewhere, the defendant,

KATUN CORPORATION,

through its employees, intentionally accessed computers of other business entities, without authorization, and thereby obtained information from protected computers where the conduct involved interstate communications and the offenses were committed for purposes of commercial advantage:

<u>Count</u>	<u>Approximate Date</u>	<u>Company Website Accessed</u>
1	February 23, 2001	Toshiba
2	March 29, 2001	Minolta
3	November 26, 2001	Sharp
4	September 25, 2002	Ricoh
5	November 1, 2002	Kyocera Mita
6	February 10, 2003	Canon

All in violation of Title 18, United States Code, Sections 1030(a)(2)(C), 1030(c)(2)(B)(i), and 2.

COUNTS 7-8
(Mail Fraud)

BACKGROUND

8. Beginning prior to 1995, Katun issued credits to customers for various reasons. For example, certain Katun customers sometimes mistakenly sent too much money to Katun as payment for particular invoices, sometimes paying the same invoice amount on two occasions (hereafter referred to as "customer overpayments"). On other occasions, certain Katun customers returned defective or unwanted parts or supplies to Katun for credit (hereafter referred to as "customer returns"). On other occasions, Katun waived shipping and handling charges for certain customers, for example, when Katun's shipments arrived late (hereafter referred to as "waived charges"). In some situations in which Katun issued credits to customers and the customers subsequently failed, for whatever reason, to utilize those credits, rather than issue a payment to the Katun customer in the amount owed, Katun's practice was to retain the amount. Initially, the amount would be characterized as a credit to the customer, which was reflected on a customer account statement. However, Katun developed a practice of not reflecting the amount of any customer credit on account statements if the customer did not use or claim it within six months, and sometimes within less time.

SCHEME TO DEFRAUD

9. Beginning prior to 1995 and continuing to in or about April 2003, Katun, through its employees, knowingly engaged in a scheme to defraud various Katun customers and state governments of more than \$1,000,000 by employing a scheme that enabled them to misappropriate customer overpayments and other credits owed customers by writing off or deleting certain customers' credit balances and taking those customers' funds as profit by booking them on Katun's financial statements as "other income", without ever properly notifying the customers involved, or reporting the existence of such funds to any state government agencies responsible for unclaimed property.

10. It was part of the scheme to defraud that, beginning prior to 1995, and continuing until about April 2003, Katun engaged in a scheme to defraud Katun customers by writing off customers' credit balances (consisting of customer overpayments, customer returns, and waived charges) that had remained unused for longer than three to six months and by booking the customers' funds as "other income", and treating and keeping them as Katun's profits.

11. When some active customers contacted Katun about the status of their available credits, it was further part of the scheme to defraud that Katun followed a practice of reversing the write-off of customer credits to "other income" and restoring or refunding the unused credits, all of which served to lull Katun's

customers and keep the scheme to defraud from being reported to authorities.

12. It was further part of the scheme to defraud that, although certain other customers failed to assert a claim for their unused credits and overpayments, particularly where the customer had ceased doing business with Katun, Katun failed to attempt to locate or contact such customers and failed to contact or report to any state government that Katun possessed unclaimed property of any of its customers, even though such unclaimed property was subject to the escheat laws of various states, including the State of Minnesota, and even though certain Katun employees repeatedly raised the risks of not complying with those laws.

13. It was further part of the scheme to defraud that, although Deloitte & Touche LLP, Katun's outside auditor, between 1998 and 2001, repeatedly warned Katun of Katun's high risks and potential significant liability under escheat laws regarding Katun's taking unused customer credits into "other income", Katun ignored the auditor's warnings and took affirmative steps to conceal the scheme to defraud.

14. On or about the dates set forth below, in the State and District of Minnesota and elsewhere, the defendant,

KATUN CORPORATION,

through its employees, for the purpose of executing the above-described scheme and artifice to defraud and to obtain money and

property by means of false and fraudulent pretenses, representations, and promises, did knowingly place and cause to be placed certain matters listed below in the United States mails to be sent and delivered according to the directions thereon by the United States Postal Service to the following addresses:

<u>Count</u>	<u>Approximate Date</u>	<u>Description of Matter Mailed</u>	<u>Addressee</u>
7	July 3, 1999	Account Statement	Danka Imaging Distribution 10701 Danka Way N. Accounts Payable Dept. 500 Saint Petersburg, FL 33716-3716
8	December 30, 2000	Account Statement	Keystone Business Machines PO Box 18224 Pittsburgh, PA 15236-0224

All in violation of Title 18, United States Code, Sections 1341 and 2.

COUNTS 9-12
(Wire Fraud)

BACKGROUND

15. Beginning prior to June 1988 and continuing until about November 1990, under the direction and with the knowledge of Katun's founders, not charged herein, Katun engaged in a fraudulent scheme with respect to an airline ticketing practice called "stickering". Katun employees in the Corporation's travel department obtained certain adhesive stickers available to travel agencies for making authorized ticket changes. Without authorization, however, Katun entered new travel dates on the

stickers and placed them on already purchased airline tickets. The new travel dates on the stickers permitted Katun to avoid Northwest Airlines' ticketing restrictions, such as advance purchase and Saturday night stay requirements, while at the same time taking advantage of lower fares that were based on such restrictions.

16. In about November-December 1990, after Northwest Airlines learned of and protested Katun's fraudulent stickering practices, Katun ended those practices and soon thereafter entered into private settlement negotiations with Northwest Airlines. On or about April 16, 1991, Katun paid approximately \$155,000 to Northwest Airlines in a confidential settlement of Northwest Airlines' claims regarding Katun's fraudulent stickering practices.

17. Beginning in about early 1991, under the direction and with the knowledge of Katun's founders, not charged herein, Katun thereafter engaged in a new type of fraudulent airline ticketing practice whereby Katun employees in the Corporation's travel department routinely booked and purchased reduced fare, extended stay airline tickets for Katun employees traveling on Katun business (hereafter "Saturday night stay fare practice"). Under the Saturday night stay fare practice, Katun employees never intended to engage in return travel on the dates ticketed, and did not travel on those dates, but instead were able to return on earlier dates than ticketed based on a new reservation obtained as a result of Katun travel department employees' fraudulent

manipulation of various airlines' reservations and ticketing systems. At times, new itineraries were issued to Katun employees with the earlier return dates to facilitate this part of the scheme.

18. In September 1991, after Northwest Airlines detected and protested Katun's new type of fraudulent airline ticketing practice, Katun claimed to have stopped the Saturday night stay fare practice with respect to Northwest Airlines and subsequently entered into new private settlement negotiations with Northwest Airlines. On or about September 22, 1992, Katun paid approximately \$13,500 to Northwest Airlines in a confidential settlement of Northwest Airlines' claims regarding Katun's Saturday night stay fare practice. However, under the direction and with the knowledge of Katun's founders, not charged herein, Katun continued to employ the same fraudulent Saturday night stay fare practice with respect to other airlines, and, on occasion, with Northwest Airlines.

SCHEME TO DEFRAUD

19. From prior to June 1994 until about June 2000, under the direction and with the knowledge of Katun's founders, not charged herein, Katun employees knowingly engaged in a scheme to defraud United Airlines, American Airlines, Delta Airlines, U.S. Airways, Continental Airlines, Trans World Airlines, America West Airlines, Air Canada Airlines, as well as Northwest Airlines, of more than \$350,000 by having Katun travel department employees purchase and

issue tickets which allowed Katun's employees to travel on a reduced fare, extended stay ticket, when, in fact, Katun's employees never intended to engage in return travel on the dates ticketed, and did not travel on those dates, but instead returned on earlier dates than ticketed, with the intent to defraud the airlines out of the increased fare that would have been incurred for the actual travel dates. In July 2000, Katun, at the direction of Larry J. Stroup, not charged herein, discontinued this practice.

20. It was further part of the scheme to defraud that certain Katun employees routinely attempted to deceive various airlines' gate agents who detected discrepancies between ticketed return dates and the new reservations or itinerary dates by misrepresenting facts, through misstatement or omission, in order to return on the earlier flights, without incurring additional expense. For example, certain Katun employees routinely misrepresented the reason for their earlier return.

21. On or about the dates set forth below, in the State and District of Minnesota and elsewhere, the defendant,

KATUN CORPORATION,

through its employees, for the purpose of executing the above-described scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations, and promises, did transmit and cause to be

transmitted by means of wire communication in interstate commerce, certain writings, signals, pictures and sounds as set forth below:

<u>Count</u>	<u>Approximate Date</u>	<u>Description of Wire Transmission</u>
9	June 14, 1996	Reservation and purchase of United Airlines ticket for T. Michael Clarke for travel between Minneapolis, MN and Washington, DC, via Apollo ticketing system
10	March 12, 1999	Reservation and purchase of United Airlines ticket for Glenn W. Spitzer for travel between Minneapolis, MN and White Plains, NY, via Apollo ticketing system
11	April 20, 1999	Reservation and purchase of United Airlines ticket for Kerry K. Baubie to travel between Minneapolis, MN and White Plains, NY, via Apollo ticketing system
12	January 14, 2000	Reservation and purchase of Delta Airlines ticket for James W. Moen to travel between Minneapolis, MN and Atlanta, GA, via Apollo ticketing system

All in violation of Title 18, United States Code, Sections 1343 and 2.

FORFEITURE ALLEGATIONS

Counts 1-6 of this Information are hereby realleged and incorporated as if fully set forth herein by reference, for the purpose of alleging forfeitures pursuant to Title 18, United States Code, Section 982(a)(2)(B).

As a result of the offenses alleged in Counts 1-6 of the Information, the defendant,

KATUN CORPORATION,

shall forfeit to the United States pursuant to Title 18, United States Code, Section 982(a)(2)(B), all its right, title and interest in any property constituting, or derived from, proceeds it obtained directly or indirectly, as a result of such violations.

If any of the above-described forfeitable property, as a result of any act or omission of the defendant:

- (1) cannot be located upon the exercise of due diligence;
- (2) has been transferred or sold to, or deposited with, a third person;
- (3) has been placed beyond the jurisdiction of the Court;
- (4) has been substantially diminished in value; or
- (5) has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b)(1), to seek forfeiture of other property of said defendant up to the value of the above forfeitable property.

All in violation of Title 18, United States Code, Sections
982(a)(2)(B) and 1030.

Dated: January __, 2004

Respectfully submitted,

THOMAS B. HEFFELFINGER
United States Attorney

BY: HENRY J. SHEA
Assistant U.S. Attorney
Attorney ID Number 165384