

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

UNITED STATES OF AMERICA : **CRIMINAL NO. 11-326**
v. : **DATE FILED: _____**
RANDY HUCKS : **VIOLATION:**
a/k/a “Abubakr Muhammed,” : **18 U.S.C. § 1341 (mail fraud - 2 counts)**
a/k/a “Randy Randolph Hucks,” : **18 U.S.C. § 545 (smuggling goods into the**
a/k/a “Abu Bakr” : **United States - 2 counts)**
: **18 U.S.C. §2320 (trafficking in counterfeit**
: **goods - 2 counts)**
: **Notice of forfeiture**

SUPERSEDING INDICTMENT

COUNT ONE

THE GRAND JURY CHARGES THAT:

INTRODUCTION

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 FFDCA 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, process, 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, Homeland Security Investigations (HSI), 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. HSI 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. 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.

7. These marks and characteristics were in use on the date of the offense and were registered for Viagra® on the principal register of the United States Patent and Trademark

Office.

8. Viagra is manufactured in three countries: France, Mexico and Turkey.

There is no factory in China that has been authorized by Pfizer to manufacture or produce genuine Viagra® tablets.

9. Cialis®, a registered trademark of Eli Lilly and Company (Lilly), 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 gold color, ovoid shape, and a stylized letter “C” imprinted on each tablet.

10. These distinctive marks and characteristics were in use on the date of the

offense, and were registered on the principal register of the United States Patent and Trademark Office.

11. Cialis® is manufactured in Puerto Rico. There is no factory in China that

has been authorized by Lilly to produce genuine Cialis® tablets.

THE SCHEME TO DEFRAUD

12. From on or about November 1, 2010 until on or about March 30, 2011,

defendant RANDY HUCKS devised and intended to devise a scheme to defraud and to obtain money and property by means of false and fraudulent pretenses, representations, and promises.

13. It was part of the scheme that defendant RANDY HUCKS rented several

mail boxes at the U.S. Postal Facility at 5209 Greene Street in the Germantown section of the city of Philadelphia, in the Eastern District of Pennsylvania, on behalf of businesses that he allegedly owned with names such as Bargain Basket, Inc., Fashionista Inc., and Fashionista

Emporium Inc., including P.O. Box number 48402, at the Greene Street postal facility.

14. It was part of the scheme that defendant obtained counterfeit Viagra® and counterfeit Cialis® from factories in China, and then smuggled these counterfeit pharmaceuticals into the United States via International Mail and the U.S. Postal System, for sale to unsuspecting consumers in the United States.

15. It was further part of the scheme that on or about a date unknown to the Grand Jury, but on or before November 18, 2010, defendant RANDY HUCKS ordered a package of counterfeit Cialis® tablets from a supplier in China.

16. On or about November 18, 2010, in the Eastern District of Pennsylvania, defendant

**RANDY HUCKS,
a/k/a "Abubakr Muhammed,"
a/k/a "Randy Randolph Hucks,"
a/k/a "Abu Barr,"**

for the purpose of executing and attempting to execute this scheme knowingly caused to be delivered by mail, according to the direction thereon, a package containing 3,040 counterfeit Cialis® tablets, which had been shipped from China.

In violation of Title 18, United States Code, Section 1341.

COUNT TWO

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs One through Fifteen of Count One are incorporated by reference.
2. It was further part of the scheme that on or about a date unknown to the Grand Jury, but before March 21, 2011, defendant RANDY HUCKS ordered a package of counterfeit Viagra® tablets from a supplier in China.
3. On or about March 30, 2011, in the Eastern District of Pennsylvania, defendant

**RANDY HUCKS,
a/k/a "Abubakr Muhammed,"
a/k/a "Randy Randolph Hucks,"
a/k/a "Abu Barr,"**

for the purpose of executing and attempting to execute this scheme knowingly caused to be delivered by mail, according to the direction thereon, a package containing 10,188 counterfeit Viagra® tablets, which had been shipped from China.

In violation of Title 18, United States Code, Section 1341.

COUNT THREE

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs One through Fifteen of Count One are incorporated by reference.
2. On or about November 18, 2010, in the Eastern District of Pennsylvania and elsewhere, defendant

**RANDY HUCKS,
a/k/a "Abubakr Muhammed,"
a/k/a "Randy Randolph Hucks,"
a/k/a "Abu Barr,"**

fraudulently and knowingly facilitated the importation of counterfeit pharmaceuticals, that is: 3,040 counterfeit Cialis® tablets, knowing the tablets to have been imported into the United States contrary to law, that is in violation of Title 19, United States Code, Section 1526, and Title 15, United States Code, Section 1124, which prohibits the importation of merchandise bearing infringing marks; Title 21, United States Code, Section 331(a) and (c) which prohibits the introduction or delivery for introduction into interstate commerce or the receipt in interstate commerce of an adulterated or misbranded drug; and Title 21 United States Code, Section 331(i), which prohibits the sale or dispensing, or the holding for sale or dispensing, of a counterfeit drug.

In violation of Title 18, United States Code, Section 545.

COUNT FOUR

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs One and Two of Count Two are incorporated by reference.
2. On or about March 30, 2011, in the Eastern District of Pennsylvania and defendant

**RANDY HUCKS,
a/k/a "Abubakr Muhammed,"
a/k/a "Randy Randolph Hucks,"
a/k/a "Abu Barr,"**

fraudulently and knowingly facilitated the importation of counterfeit pharmaceuticals, that is: 10,188 counterfeit Viagra® tablets, knowing the tablets to have been imported into the United States contrary to law, that is: in violation of Title 19, United States Code, Section 1526, and Title 15, United States Code, Section 1124, which prohibits the importation of merchandise bearing infringing marks; Title 21, United States Code, Section 331(a) and (c) which prohibits the introduction or delivery for introduction into interstate commerce or the receipt in interstate commerce of an adulterated or misbranded drug; and Title 21 United States Code, Section 331(i), which prohibits the sale or dispensing, or the holding for sale or dispensing, of a counterfeit drug.

In violation of Title 18, United States Code, section 545.

COUNT FIVE

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs One through Fifteen of Count One are incorporated by reference.
2. On or about November 18, 2010, in the Eastern District of Pennsylvania,

defendant

**RANDY HUCKS,
a/k/a "Abubakr Muhammed,"
a/k/a "Randy Randolph Hucks,"
a/k/a "Abu Barr,"**

knowingly and intentionally trafficked and attempted to traffic in goods, specifically 3,040 tablets purporting to be Cialis®, 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 medication, which marks were in use and 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 were likely to cause confusion, to cause mistake, and to deceive.

In violation of Title 18, United States Code, Section 2320(a)(1).

COUNT SIX

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs One through Fifteen of Count One are incorporated by reference.
2. On or about March 30, 2011, in the Eastern District of Pennsylvania, defendant

**RANDY HUCKS,
a/k/a "Abubakr Muhammed,"
a/k/a "Randy Randolph Hucks,"
a/k/a "Abu Barr,"**

knowingly and intentionally trafficked and attempted to traffic in goods, specifically 10,188 tablets purporting to be Viagra®, 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 medication, which marks were in use and 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 were likely to cause confusion, to cause mistake, and to deceive.

In violation of Title 18, United States Code, Section 2320(a)(1).

NOTICE OF FORFEITURE

THE GRAND JURY FURTHER CHARGES THAT:

1. As a result of the violations of Title 18, United States Code, Section 545, and 2320(a)(1) set forth in this indictment, defendant

**RANDY HUCKS,
a/k/a "Abubakr Muhammed,"
a/k/a "Randy Randolph Hucks,"
a/k/a "Abu Barr,"**

shall forfeit to the United States of America any property used or intended to be used, in any manner of part, to commit or to facilitate the commission of, such offenses, and merchandise introduced into the United States and the value thereof, including, but not limited to the 3,040 counterfeit "Cialis" tablets and the 10,188 counterfeit "Viagra" tablets; and

2. As a result of the violations of Title 18, United States Code, Sections 1341 and 2320(a)(1) set forth in this indictment, defendant

**RANDY HUCKS,
a/k/a "Abubakr Muhammed,"
a/k/a "Randy Randolph Hucks,"
a/k/a "Abu Barr,"**

shall forfeit to the United States of America any property constituting, or derived from, proceeds obtained directly or indirectly from the commission of such offenses.

3. If any of the property described above, as a result of any actor omission of the defendant:

- a. cannot be located upon the exercise of due diligence;
- b. Has been transferred to, sold to, or deposited with a third party;
- c. Has been placed beyond the jurisdiction of this Court;

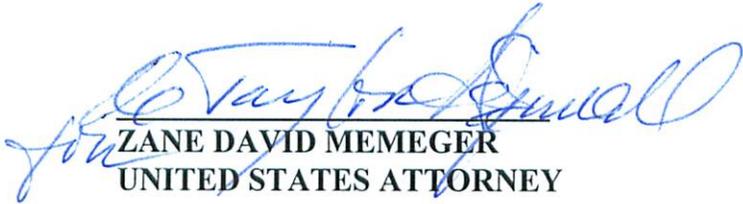
- d. Has been substantially diminished in value; or
- e. Has been commingled with other property which cannot be divided without difficulty;

it is the intention of the United States, pursuant to 18 U.S.C. § 2323(b)(1), to seek forfeiture of any other property of the defendant up to the value of the property subject to forfeiture.

All pursuant to Title 18, United States Code, Sections 545, 981(a)(1)(C), 2323, and Title 28, United States Code, Section 2461.

A TRUE BILL:

FOREPERSON


ZANE DAVID MEMEGER
UNITED STATES ATTORNEY