

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
OCT 24 2017
CLERK, U.S. DISTRICT COURT
By _____ Deputy

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA

NO.

3-17CR-547-L

v.

SHANGHAI WASETA
INTERNATIONAL TRADE CO. LTD., A
CHINESE CORPORATION (1)
MAX PHARMATECH, INC., A
CALIFORNIA CORPORATION (2)
XU JIA BAO
a/k/a "FRED XU" (3)
LI TING TING
a/k/a "SUNNY LEE" (4)

INDICTMENT

The Grand Jury Charges:

At all times material to the indictment:

The Defendants

1. Shanghai Wasetta International Trade Co. Ltd. ("Wasetta") was a Chinese corporation that sold and imported into the United States chemicals and purported dietary supplement ingredients.
2. Max Pharmatech, Inc. ("Max Pharmatech") was a California corporation that sold chemicals and purported dietary supplement ingredients in the United States.
3. Xu Jia Bao (a.k.a. Fred Xu) ("Fred Xu") was a principal of Wasetta and was responsible for the firm's operations.

4. Li Ting Ting (a.k.a. Sunny Lee) (“Sunny Lee”) was a salesperson for Waseta and was responsible for some of the firm’s sales activities.

The Regulatory Agency

5. The United States Food and Drug Administration (“FDA”) was the federal agency charged with the responsibility of protecting the health and safety of the public by enforcing the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 301-399f (“FDCA”). One of the purposes of the FDCA was to ensure that foods entering interstate commerce are safe to eat and bear labeling containing true and accurate information.

6. The FDCA defined “food” as “articles used for food or drink for man or other animals” and “articles used for components of any such article.” 21 U.S.C. § 321(f)(1) and (3); 21 U.S.C. § 321(s). The FDCA defined a dietary supplement, in part, as “a product (other than tobacco) intended to supplement the diet that bears or contains one or more of the following dietary ingredients. . . (A) a vitamin; (B) a mineral; (C) an herb or other botanical. . . .” 21 U.S.C. § 321(ff)(1). A dietary supplement was deemed to be a food within the meaning of the FDCA. 21 U.S.C. § 321(ff).

7. Food was misbranded under the FDCA if its labeling was “false or misleading in any particular.” 21 U.S.C. § 343(a)(1).

Workout and Weight Loss Supplements

8. Two major segments of the dietary supplement industry were workout supplements and weight-loss supplements. These segments focused, respectively, on products purporting to heighten the impact of exercise and products purporting to help consumers lose weight. Some workout and weight-loss supplements contained ingredients with purported “stimulant” properties.
9. Workout supplements with strong stimulant properties could become popular products that would earn substantial revenue.
10. Due to safety concerns as well as increased compliance efforts, multiple major American dietary supplement retailers refused to carry supplements they knew to contain certain synthetic stimulant ingredients, including 1,3-dimethylbutylamine (“DMBA”), 2-amino-6-methylheptane (“DMHA”), and 1,3-dimethylamylamine (“1,3-DMAA”).

Count One
Wire Fraud

(Violation of 18 U.S.C. § 1343 and 18 U.S.C. § 2)

11. The Grand Jury re-alleges and incorporates by reference all of the allegations set out in Paragraphs 1 to 10 of this indictment as though fully set forth herein.
12. From in or around February 2017 until in or around August 2017, in the Dallas Division of the Northern District of Texas and elsewhere, the defendants, **Waseta, Max Pharmatech, Fred Xu, and Sunny Lee**, with intent to defraud, knowingly devised and intended to devise a scheme and artifice to defraud and to obtain money and property by materially false and fraudulent pretenses, representations, and promises.

Purpose of the Scheme and Artifice to Defraud

13. The purpose of the scheme and artifice to defraud was to profit from the sale of a mislabeled dietary supplement containing synthetic stimulant ingredients that major American dietary supplement retailers would not carry if the supplement was properly labeled.

Manner and Means of the Scheme and Artifice to Defraud

14. It was part of the scheme and artifice to defraud that the defendants agreed with a confidential informant (“CI”) to provide synthetic stimulant ingredients to the CI’s company for use in a new dietary supplement. The defendants believed that the ingredients they provided would not be accurately listed on the label of the dietary supplement produced with those ingredients. Instead, as the defendants knew, it was part of the scheme and artifice to defraud that the synthetic stimulant ingredients would be omitted from the ingredient label of the dietary supplement so that major dietary

supplement retailers would sell the product. It was also part of the scheme and artifice to defraud that the defendants would continue to supply the stimulant ingredients to the CI for the new dietary supplement.

15. It was part of the scheme and artifice to defraud that **Waseta** sent to the CI, via interstate commerce, sample synthetic stimulant ingredients—including DMBA, DMHA, and DMAA—mislabeled as “glutamine.”

16. It was part of the scheme and artifice to defraud that **Waseta** sent to the CI, via interstate commerce, containers holding DMHA but mislabeled as containing “beta-alanine.”

17. It was part of the scheme and artifice to defraud that the defendants sent to the CI a purported “AGREEMENT” signed by defendant **Fred Xu** reflecting the defendants’ knowledge that the CI planned to mislabel dietary supplements containing DMHA provided by **Waseta**.

18. It was part of the scheme and artifice to defraud that the defendants sent to the CI a fraudulent certificate of analysis falsely listing a botanical source for the mislabeled DMHA they sent to the CI.

19. On or about August 14, 2017, in the Dallas Division of the Northern District of Texas and elsewhere, for the purpose of executing and attempting to execute the scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, **Waseta, Max Pharmatech, Fred Xu, and Sunny Lee** did knowingly transmit and cause to be transmitted in interstate commerce, by means of wire and radio communications, certain writings, signs, signals,

and sounds—namely, an internet-based video conference call regarding the creation of a fraudulent certificate of analysis in furtherance of the scheme and artifice to defraud.

All in violation of 18 U.S.C. § 1343.

Count Two

Introduction of Misbranded Food Into Interstate Commerce
(Violation of 21 U.S.C. §§ 331(a) and 333(a)(1))

20. The Grand Jury re-alleges and incorporates by reference all of the allegations set out in Paragraphs 1 through 10 and 13 through 19 of this Indictment as though fully set forth herein.

21. On or about June 7, 2017, in the Dallas Division of the Northern District of Texas and elsewhere, the defendants, **Waseta, Max Pharmatech, Fred Xu, and Sunny Lee** caused the introduction and delivery for introduction into interstate commerce of a misbranded food, DMHA, from California to Dallas, Texas. The food was misbranded under the FDCA because it contained DMHA but its labeling declared it as “beta-alanine,” making its labeling false and misleading within the meaning of 21 U.S.C. § 343(a)(1).

All in violation of 21 U.S.C. §§ 331(a) and 333(a)(1).

Count Three
Smuggling
(Violation of 18 U.S.C. §§ 545 and 2)

22. The Grand Jury re-alleges and incorporates by reference all of the allegations set out in Paragraphs 1 through 10 and 13 through 19 of this indictment as though fully set forth herein.

23. On or about February 26, 2017, in the Dallas Division of the Northern District of Texas and elsewhere, **Waset**a knowingly and willfully, with intent to defraud the United States, made out and passed, and attempted to pass, through the customhouse a false, forged, and fraudulent document—namely, a false prior import notice stating that substances shipped by **Waset**a in an express mail package were “glutamine,” when in fact the substances included DMBA, DMHA, and DMAA.

All in violation of 18 U.S.C. §§ 545 and 2.

Forfeiture Notice

(18 U.S.C. § 981(a)(1)(C), 18 U.S.C. § 982(a)(2)(B), 18 U.S.C. § 982(a)(3)(E)
and 28 U.S.C. § 2461(c))

24. The allegations contained in Count One of this indictment are hereby realleged and incorporated by reference for the purpose of criminal forfeiture.

25. Upon conviction for the offense set forth in Count One of this indictment, the defendants, **Wasetta, Max Pharmatech, Fred Xu, and Sunny Lee**, shall forfeit to the United States of America, pursuant to 18 U.S.C. § 981(a)(1)(C), 18 U.S.C.

§ 982(a)(3)(F), and 28 U.S.C. § 2461(c), any property, real or personal, which constitutes or is derived from proceeds traceable to the offense.

26. Upon conviction for the offense set forth in Count Three of this indictment, defendant **Wasetta** shall forfeit to the United States of America, pursuant to 18 U.S.C. § 981(a)(1)(C), 18 U.S.C. § 982(a)(2)(B), and 28 U.S.C. § 2461(c), any property, real or personal, which constitutes or is derived from proceeds traceable to the offense.

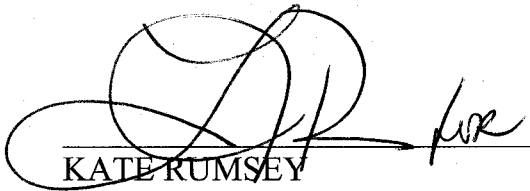
27. If any of the property described above, as a result of any act or omission of the defendants:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty,

the United States of America shall be entitled to forfeiture of substitute property pursuant to 21 U.S.C. § 853(p), as incorporated by 28 U.S.C. § 2461(c).

A TRUE BILL

FOREPERSON



KATE RUMSEY

Assistant United States Attorney
Northern District of Texas
Texas State Bar No. 24081130
1100 Commerce St., Third Floor
Dallas, Texas 75242-1699
Telephone: 214-659-8600
E-mail: kathryn.rumsey@usdoj.gov



DAVID SULLIVAN
Trial Attorney
Consumer Protection Branch
U.S. Department of Justice
P.O. Box 386
Washington, DC 20044-0386
Telephone: 202-616-0219
E-mail: david.sullivan2@usdoj.gov



PATRICK R. RUNKLE

Trial Attorney

Consumer Protection Branch

U.S. Department of Justice

P.O. Box 386

Washington, DC 20044-0386

Telephone: 202-616-0219

E-mail: patrick.r.runkle@usdoj.gov

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THE UNITED STATES OF AMERICA

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INDICTMENT

18 U.S.C. § 1343 and 18 U.S.C. § 2
Wire Fraud

21 U.S.C. §§ 331(a) and 333(a)(1)
Introduction of Misbranded Food Into Interstate Commerce

18 U.S.C. §§ 545 and 2
Smuggling

18 U.S.C. § 981(a)(1)(C), 18 U.S.C. § 982(a)(2)(B), 18 U.S.C. § 982(a)(3)(E)
and 28 U.S.C. § 2461(c)
Forfeiture Notice

3 Counts

A true bill rendered

DALLAS

FOREPERSON

Filed in open court this 24th day of October, 2017.

Warrant to be Issued - LI TING TING a/k/a "SUNNY LEE" (4)

**Summons to Issue - SHANGHAI WASETA INTERNATIONAL TRADE CO. LTD.,
A CHINESE CORPORATION (1)**

MAX PHARMATECH, INC., A CALIFORNIA CORPORATION (2)


UNITED STATES MAGISTRATE JUDGE
No Criminal Matter Pending