

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :
v. : INFORMATION
MARY BURKE, : Criminal No.: 99CR263
Defendant. : Filed: 03/18/1999
- - - - - x

COUNT ONE

The United States of America, acting through its attorneys, charges:

Conspiracy

The Relevant Parties And Entities

1. Except as otherwise noted, at all times relevant to this Information:

a. The defendant MARY BURKE was the owner and president of Burke, Inc., a provider of promotional and display materials and services, located in Fairfield, Connecticut.

b. Domecq Importers, Inc. ("Domecq Importers") imported and distributed several brands of alcoholic beverages, including Sauza tequila and Presidente brandy. Domecq Importers was Burke, Inc.'s largest customer. Prior to 1990, Domecq Importers had its headquarters in Larchmont, New York; from 1991 through 1996, its headquarters were located in Old Greenwich, Connecticut.

c. Gabriel Sagaz, a co-conspirator not named as a defendant herein, was the vice president of marketing, and later the president, of Domecq Importers. Along with other employees of Domecq Importers, including other senior executives, Sagaz was responsible for selecting and contracting with outside vendors to provide promotional and display materials and services, and to design, manufacture, and supply items -- such as T-shirts, glasses, umbrellas, banners, and signs -- which were used to promote sales of Domecq Importers' brands. Sagaz and these other employees controlled funds that Domecq Importers had allocated for the marketing and promotion of its various brands, including for the payment of vendors.

d. Domecq Importers had a corporate policy favoring competitive bidding as the method by which Domecq Importers would select outside vendors.

Statutory Allegations

2. From at least as early as September 1989, and continuing up to and including August 1996, in the Southern District of New York and elsewhere, the defendant MARY BURKE and other persons known and unknown, unlawfully, wilfully, and knowingly did conspire, combine, confederate, and agree together and with each other to violate Title 18, United States Code, Sections 1341 and 1346.

3. It was a part and object of the conspiracy that the defendant MARY BURKE, and her co-conspirators, having devised and intending to devise a scheme and artifice to: (a) defraud Domecq Importers; (b) obtain money and property from Domecq Importers by means of false and fraudulent pretenses, representations, and promises; and (c) deprive Domecq Importers of the intangible right to the honest services of certain of its executives and employees; and, for the purpose of executing such scheme and artifice and attempting to do so would and did (i) place in post offices and authorized depositories for mail matter, matters and things to be sent and delivered by the United States Postal Service; (ii) take and receive from the mails such matters and things; and (iii) knowingly cause such matters and things to be delivered by mail according to the directions thereon, in violation of Title 18, United States Code, Sections 1341 and 1346.

The Means And Methods Of The Conspiracy

Among the means and methods of the conspiracy were the following:

4. From at least as early as 1989 until at least as late as August 1996, Sagaz, certain other senior executives of Domecq Importers, and certain other employees of Domecq Importers (collectively referred to as the "Domecq Co-conspirators") caused Domecq Importers to enter into hundreds of contracts with Burke,

Inc. for the production of promotional and display materials and the provision of services. These contracts were worth a total of at least \$15 million. During this time, the defendant MARY BURKE paid kickbacks totaling approximately \$750,000 to: (a) the Domecq Co-conspirators, and (b) persons or entities designated by the Domecq Co-conspirators.

5. In order to generate a substantial portion of the funds used to pay the kickbacks, certain of the Domecq Co-conspirators arranged for Domecq Importers to issue purchase orders to Burke, Inc. for contracts that had not been awarded in accordance with Domecq Importers' competitive bidding policy. The defendant MARY BURKE then submitted numerous false and fraudulent invoices to Domecq Importers (the "fraudulent invoices"). The fraudulent invoices either: (a) reflected transactions that were entirely fictitious; or (b) sought payment for substantially more goods than Burke, Inc. had actually produced for Domecq Importers.

6. Certain of the Domecq Co-conspirators then approved the fraudulent invoices for payment and Domecq Importers paid them.

7. After the invoices were paid, the defendant MARY BURKE, at the direction of Gabriel Sagaz, used the funds generated through the fraudulent invoices to make payments to the Domecq Co-conspirators. These payments were made either: (a) to

the Domecq Co-conspirators directly; (b) to various entities, which were simply aliases for certain of the Domecq Co-conspirators; or (c) to family members and friends of certain of the Domecq Co-conspirators.

8. On occasion, the defendant MARY BURKE was allowed to keep a portion of the funds obtained from Domecq Importers by means of the fraudulent invoices.

9. Gabriel Sagaz also authorized the defendant MARY BURKE to receive funds from a company that manufactured display materials for Domecq Importers (the "Manufacturer") as commissions for BURKE's role in supervising the production of display materials that BURKE had designed. The Manufacturer, which was located in Manhattan, paid these commissions to an entity that was controlled by BURKE and one other person. This entity then paid one-half of the commissions received from the Manufacturer to Sagaz.

Overt Acts

10. In furtherance of the conspiracy, and to effect the objects thereof, the following overt acts were committed in the Southern District of New York, and elsewhere:

a. Between September 1989 and January 1995, the defendant MARY BURKE, at the direction of Gabriel Sagaz, issued more than 130 checks to the Domecq Co-conspirators or to persons or entities designated by them.

b. Between September 1989 and January 1995, Gabriel Sagaz, a co-conspirator not named as a defendant herein, deposited at least 37 of the checks that he received from the defendant MARY BURKE into a bank account that he maintained at Chemical Bank in Manhattan.

c. Between September 1989 and January 1995, the defendant MARY BURKE, together with the Domecq Co-conspirators, caused Domecq Importers to issue dozens of false and fraudulent purchase orders to Burke, Inc. and caused Burke, Inc. to issue dozens of false and fraudulent invoices to Domecq Importers. These documents were regularly sent via United States Mail from

the headquarters of Domecq Importers in either Larchmont, New York or Old Greenwich, Connecticut to the offices of Burke, Inc. in Fairfield, Connecticut, and vice versa.

(Title 18, United States Code, Section 371.)

_____/s/_____
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