

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
UNITED STATES OF AMERICA :
:
- v. - :
:
KYLE TSUI, :
:
Defendant. :
:
----- X

SEALED INDICTMENT

20 Cr. 47

COUNT ONE
(Wire Fraud)

The Grand Jury charges:

RELEVANT INDIVIDUALS AND ENTITIES

1. At all times relevant to this Indictment

a. KYLE TSUI, the defendant, was a resident of Canada and the president of 2608980 Ontario Inc., a Canadian corporation that conducted business using the names "Allergy Testing Company" and the "Laboratory Group."

b. Mailbox Operator-1 was a commercial mail receiving agency located in Hyde Park, New York, in the Southern District of New York.

c. E-commerce Company-1 operated an online marketplace to connect merchants, generally offering goods and services at a discounted prices, with prospective consumers.

THE SCHEME TO DEFRAUD

2. From at least in or about 2018 up to and including in

or about 2019, KYLE TSUI, the defendant, engaged in a scheme to defraud customers of the "Allergy Testing Company" by purporting to sell food sensitivity testing services that TSUI, in fact, knew were not being performed. In total, customers paid approximately \$5.9 million, through E-Commerce Company-1, for tests that TSUI claimed would be done on their hair samples. But rather than actually test the hair samples as customers were promised, over several months, TSUI directed that the hair samples be discarded in the trash without any laboratory analysis. Customers then received fabricated test results purporting to identify certain foods and environmental factors that were "safe" for them, and others that the customers were supposedly "sensitive" to and should avoid.

Promotion and Sales of the Food Sensitivity Tests

3. On or about September 12, 2018, KYLE TSUI, the defendant, entered into agreement with E-Commerce Company-1 for the promotion and sale of food and environmental sensitivity tests through E-Commerce Company-1's website. Customers paid between approximately \$26 and \$79 for a menu of tests.

4. KYLE TSUI, the defendant, approved the terms of the promotion, which was posted on E-Commerce Company-1's website. These terms contained the following claims, among others:

a. "Highly-rated, top selling sensitivity and intolerance test determines how your body responds to 800

different food and environmental items”;

b. “Customers submit a hair sample to test their sensitivity/intolerance to food, drink, and environmental factors,” including “more than 400 types of food and drink,” “more than 400 non-food items like pet hair, pollen, and detergents,” and “vitamins, minerals, and metals, including vitamins B12 and D,” as well as an “[o]ptional digestive health analysis, metabolism analysis, and histamine sensitivity test;” and

c. “We make sample collection easy by only requiring a small hair sample and our online reports are easy to follow with details on how to avoid the sensitive foods in your diet Reports will not only outline what to avoid but also recommend certain foods, supplements, and vitamins that can improve your overall health.”

5. Customers who purchased the Allergy Testing Company’s tests through E-Commerce Company-1 received instructions to download a “test submission form” from a website and to send their completed form, along with a hair sample, to the “Laboratory Group” at an address in Hyde Park, New York, which was in fact the address for Mailbox Operator-1, a commercial mail receiving agency where KYLE TSUI, the defendant, had opened a mailbox. Customers subsequently received emails containing reports purporting to show the results of the food and

environmental sensitivity testing supposedly done on their hair samples.

6. From in or about September 2018 through in or about April 2019, sales of the Allergy Testing Company's tests through E-Commerce Company-1 totaled approximately \$5.9 million. But contrary to the representations by KYLE TSUI, the defendant, in at least most cases, no tests were performed on the hair samples. Instead, through at least February 2019, TSUI directed personnel at Mailbox Operator-1 to simply discard all the hair samples sent in by his customers. Accordingly, at TSUI's direction, personnel at Mailbox Operator-1 generally opened the envelopes addressed to the "Laboratory Group," emailed the test submission forms or associated bar code numbers to TSUI, and disposed of the hair samples in the trash. As a result, the purported results provided to customers were not based on testing the hair samples as promised, but were simply made up.

STATUTORY ALLEGATIONS

7. From at least in or about 2018 through in or about 2019, in the Southern District of New York and elsewhere, KYLE TSUI, the defendant, willfully and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, transmitted and caused to be transmitted by means of wire, radio, and television

communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, to wit, TSUI, executed a scheme to defraud his company's customers through false representations that food and environmental sensitivity tests would be performed on their hair samples and causing the transmission of fabricated test results, and he used emails and interstate and foreign telephone calls and transfers of funds in furtherance of his scheme.

(Title 18, United States Code, Sections 1343 & 2.)

COUNT TWO
(Mail Fraud)

8. The allegations set forth in paragraphs 1 through 6 of this Indictment are repeated, realleged, and incorporated by reference as if fully set forth herein.

9. From at least in or about 2018 up to and including in or about 2019, in the Southern District of New York and elsewhere, KYLE TSUI, the defendant, willfully and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and for the purpose of executing such scheme and artifice, did place in a post office and authorized depository for mail matter, matters and things to be sent and delivered by the United States Postal

Service, and did deposit and cause to be deposited matters and things to be sent and delivered by private and commercial interstate carriers, and did take and receive therefrom, such matters and things, and did knowingly cause to be delivered by mail and such carriers according to the directions thereon, and at the places at which they were directed to be delivered by the person to whom they were addressed, such matters and things, to wit, TSUI, executed a scheme to defraud his company's customers through false representations that food and environmental sensitivity tests would be performed on their hair samples, which TSUI induced victims to send by mail to an address in Hyde Park, New York, in the Southern District of New York, and causing the transmission of fabricated results.

(Title 18, United States Code, Sections 1341 and 2)

FORFEITURE ALLEGATION

10. As a result of committing the offenses alleged in Counts One through Two of this Indictment, KYLE TSUI, the defendant, shall forfeit to the United States, pursuant to Title 18, United States Code Section 982(a)(2)(A), any and all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of said offenses, including but not limited to a sum of money in United States currency representing the amount of proceeds traceable to the commission of said offenses.

Substitute Asset Provision

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

- 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 comingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p) and Title 28, United States Code, Section 2461, to seek forfeiture of any other property of the defendants up to the value of the above forfeitable property.

(Title 18, United States Code, Section 981;
Title 21, United States Code, Section 853; and
Title 28, United States Code, Section 2461.)



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Form No. USA-33s-274 (Ed. 9-25-58)

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SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

KYLE TSUI,

Defendant.

INDICTMENT

20 Cr. 47

(Title 18, United States Code, Sections
1341, 1343, and 2.)

GEOFFREY S. BERMAN
United States Attorney

