

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA

v.

JAMAL KHATTAB and
FAYEZ AL-JABRI
aka FRANK AL-JABRI
Defendants

§
§ CRIMINAL NO. H-
§ 18 U.S.C. § 2
§ 18 U.S.C. § 371
§ 18 U.S.C. § 545
§ 18 U.S.C. § 2320(a)
§ 21 U.S.C. § 331(a)
§ 21 U.S.C. § 331(i)
§ 21 U.S.C. § 333(a)(2)
§ 21 U.S.C. § 353

12 CR 514

United States Court
Southern District of Texas
FILED

AUG 22 2012

David J. Bradley, Clerk of Court

Sealed

Public and unofficial staff access
to this instrument are
prohibited by court order.

INDICTMENT

THE GRAND JURY CHARGES:

COUNT ONE

(Conspiracy – 18 U.S.C. § 371)

A. INTRODUCTION

At all times material to this indictment:

1. The United States Food and Drug Administration (FDA) is the agency of the United States charged with the responsibility of protecting the health and safety of the American public by ensuring, among other things, that drugs sold for administration to humans bear labeling containing true and accurate information. The FDA's responsibilities include regulating the labeling and distributing of prescription drugs shipped or received in interstate commerce.

2. Under the Food, Drug and Cosmetic Act (FDC Act), the definition of a "drug" includes articles which (1) are intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man, and (2) are intended to affect the structure or function of the body

TRUE COPY I CERTIFY

ATTEST: AUG 29 2012

DAVID J. BRADLEY, Clerk of Court

By Deborah
Deputy Clerk

of man. Due to toxicity and other potential harmful effects, certain drugs are not considered safe for use except for use under the supervision of a practitioner licensed by law to administer such drugs. These drugs are known as prescription drugs. Furthermore, the FDC Act states that these drugs shall be dispensed only by practitioners licensed by law to administer such drugs. The act of dispensing a drug in violation of the Act shall be deemed an act which results in the drug being misbranded while held for sale.

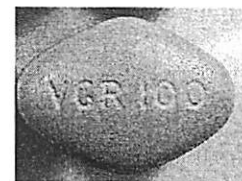
3. Viagra is a prescription drug product that has been approved by the FDA for distribution within the United States.

4. Pfizer Inc. (Pfizer) has the exclusive right to manufacture Viagra for distribution within the United States.

5. The United States Patent and Trademark Office is an agency of the United States that, among other functions, examines and registers trademarks. A trademark is a word, name, symbol or device that is intended to identify and distinguish one producer's goods from those manufactured or sold by others and to indicate the source of the goods so that consumers are not confused about the source of the good.

6. The following trademarks are owned by Pfizer and are registered in the principal registry in the United States Patent and Trademark Office:

- a. The name "Viagra",
- b. The name "Pfizer",
- c. A stylized font for the word "Pfizer",
- d. The "VGR" mark, and
- e. A diamond-shaped dosage tablet combined with the



color blue.

7. The Food, Drug and Cosmetic Act also regulates the importation, delivery, distribution and receipt of prescription drugs in interstate commerce. Under the Act, a prescription drug is deemed misbranded if its labeling is false or misleading in any particular manner. A prescription drug is also deemed to be counterfeit if it bears a trademark without the authorization of the registrant of the trademark.

B. THE CONSPIRACY

8. Beginning in or about June 2010, and continuing thereafter to the present in the Houston Division of the Southern District of Texas and elsewhere

JAMAL KHATTAB and
FAYEZ AL-JABRI,

defendants herein, did knowingly, intentionally, and willfully combine, conspire and confederate and agree with each other, and with other persons unknown to the Grand Jury to commit certain offenses against the United States, namely:

- a. To traffic and attempt to traffic in counterfeit goods in violation of Title 18, United States Code, Section 2320(a).
- b. To violate the Food, Drug and Cosmetic Act, namely, with the intent to defraud and mislead, cause the introduction and delivery for introduction of prescription drugs into interstate commerce that are misbranded, in violation of Title 21, United States Code, Section 331(a) and 333(a)(2).
- c. To violate the Food, Drug and Cosmetic Act, namely, with the intent to defraud and mislead, cause the counterfeiting of trademarks associated with Viagra, for sale of a counterfeit drug in violation of Title 21, United States Code, Section

331(i)(3), 333(a)(2).

- d. To import merchandise contrary to law or receive, conceal, buy, sell, or facilitate the transportation, concealment, or sale of such merchandise after importation in violation of Title 18, United States Code, Section 545.
- e. To import merchandise contrary to law or receive, conceal, buy, sell, or facilitate the transportation, concealment, or sale of such merchandise after importation in violation of Title 18, United States Code, Section 545.

C. OBJECT OF THE CONSPIRACY

9. It was the object of the conspiracy for the defendants and others to unlawfully enrich themselves by distributing pharmaceutical drug products that bore the trademarks associated with Viagra, without the authorization of the manufacturer of said drug.

D. MANNER AND MEANS

The manner and means of the conspiracy included, but were not limited to the following:

10. Defendants JAMAL KHATTAB and FAYEZ AL-JABRI would and did cause individuals to ship counterfeit pharmaceuticals from China to the United States. The pharmaceuticals were counterfeit in that they were falsely represented to be Pfizer-brand Viagra tablets. The counterfeit tablets bore the same mark, shape and appearance as the genuine Viagra tablets.

11. Defendants JAMAL KHATTAB and FAYEZ AL-JABRI would and did cause individuals to ship misbranded pharmaceuticals from China to the United States. The

pharmaceuticals were misbranded in that,

a. The mark, shape and appearance of the pharmaceutical tablets falsely represented that the tablets were genuine Viagra pharmaceutical products; and

b. The tablets were manufactured and dispensed from a non-FDA approved facility.

12. Defendants JAMAL KHATTAB and FAYEZ AL-JABRI would and did negotiate the sale of counterfeit and misbranded Viagra tablets with a federal agent acting in an undercover capacity. The Viagra tablets received from the defendants were analyzed by the registered trademark holder and were determined to be counterfeit.

OVERT ACTS

13. In furtherance of the conspiracy and to affect the objects thereof, the following Overt Acts, among others, were committed in the Southern District of Texas and elsewhere:

(a) On or about July 22, 2010, defendant JAMAL KHATTAB, smuggled an international mail parcel containing approximately 2,621 counterfeit and misbranded Viagra tablets into the United States from China.

(b) On or about January 4, 2011, defendant JAMAL KHATTAB met with a federal agent acting in an undercover capacity. During the meeting the defendant caused the delivery of approximately 298 counterfeit and misbranded Viagra tablets to the federal agent.

(c) On or about January 20, 2011, defendant JAMAL KHATTAB met with a federal agent acting in an undercover capacity. During the meeting the defendant caused the delivery of approximately 300 counterfeit and misbranded Viagra tablets to the federal agent.

(d) On or about March 30, 2011, defendant JAMAL KHATTAB met with a federal agent acting in an undercover capacity. During the meeting the defendant caused the delivery of approximately 300 counterfeit and misbranded Viagra tablets to the federal agent.

(e) On or about June 14, 2011, defendants JAMAL KHATTAB and FAYEZ AL-JABRI, delivered approximately 9,800 counterfeit Viagra tablets to an undercover federal agent in Chicago, Illinois.

(f) On or about September 8, 2011, defendant FAYEZ AL-JABRI sent approximately 3,500 counterfeit Viagra tablets from Chicago Illinois, to an undercover federal agent in Houston, Texas.

(g) On or about September 20, 2011, defendant FAYEZ AL-JABRI sent approximately 2,500 counterfeit Viagra tablets from Chicago Illinois, to an undercover federal agent in Houston, Texas.

In violation of Title 18, United States Code, Section 371.

COUNT TWO
(Misbranded Drugs)

On or about July 22, 2010, in the Houston Division of the Southern District of Texas and elsewhere, defendant,

JAMAL KHATTAB,

aided and abetted by others known and unknown to the Grand Jury, with the intent to defraud and mislead, caused the introduction and delivery for introduction into interstate commerce drugs that were misbranded, namely counterfeit Viagra tablets that were marked in a manner to falsely represent that the tablets were genuine Viagra tablets.

In violation of Title 21, United States Code, Sections 331(a) and 333(a)(2) and Title 18, United States Code, Section 2.

COUNT THREE
(Misbranded Drugs)

On or about January 20, 2011, in the Houston Division of the Southern District of Texas and elsewhere, defendant,

JAMAL KHATTAB,

aided and abetted by others known and unknown to the Grand Jury, with the intent to defraud and mislead, caused the introduction and delivery for introduction into interstate commerce drugs that were misbranded, namely counterfeit Viagra tablets that were marked in a manner to falsely represent that the tablets were genuine Viagra tablets.

In violation of Title 21, United States Code, Sections 331(a) and 333(a)(2) and Title 18, United States Code, Section 2.

COUNT FOUR
(Misbranded Drugs)

On or about March 8, 2012, in the Houston Division of the Southern District of Texas and elsewhere, defendant,

FAYEZ AL-JABRI,

aided and abetted by others unknown to the Grand Jury, with the intent to defraud and mislead, caused the introduction and delivery for introduction into interstate commerce drugs that were misbranded, namely counterfeit Viagra tablets that were marked in a manner to falsely represent that the tablets were genuine Viagra tablets.

In violation of Title 21, United States Code, Sections 331(a) and 333(a)(2) and Title 18, United States Code, Section 2.

COUNT FIVE
(Counterfeit Drugs)

On or about July 22, 2010, in the Houston Division of the Southern District of Texas and elsewhere, defendant,

JAMAL KHATTAB,

aided and abetted by others known and unknown to the Grand Jury, with the intent to defraud and mislead, caused the introduction and delivery for introduction into interstate commerce pharmaceutical drug tablets that were marked with the trademarks VGR and Pfizer without the authorization of Pfizer Inc., the registered holder of said trademarks.

In violation of Title 21, United States Code, Sections 331(i) and 333(a)(2) and Title 18, United States Code, Section 2.

COUNT SIX
(Counterfeit Drugs)

On or about January 20, 2011, in the Houston Division of the Southern District of Texas and elsewhere, defendant,

JAMAL KHATTAB,

aided and abetted by others known and unknown to the Grand Jury, with the intent to defraud and mislead, caused the introduction and delivery for introduction into interstate commerce pharmaceutical drug tablets that were marked with the trademarks VGR and Pfizer without the authorization of Pfizer Inc., the registered holder of said trademarks.

In violation of Title 21, United States Code, Sections 331(i) and 333(a)(2) and Title 18, United States Code, Section 2.

COUNT SEVEN
(Counterfeit Drugs)

On or about March 8, 2012, in the Houston Division of the Southern District of Texas and elsewhere, defendant,

FAYEZ AL-JABRI,

aided and abetted by others unknown to the Grand Jury, with the intent to defraud and mislead, caused the introduction and delivery for introduction into interstate commerce pharmaceutical drug tablets that were marked with the trademarks VGR and Pfizer without the authorization of Pfizer Inc., the registered holder of said trademarks.

In violation of Title 21, United States Code, Sections 331(i) and 333(a)(2) and Title 18, United States Code, Section 2.

COUNT EIGHT
(Trafficking in Counterfeit Goods)

On or about July 22, 2010, in the Houston Division of the Southern District of Texas and elsewhere, defendant,

JAMAL KHATTAB,

aided and abetted by others known and unknown to the Grand Jury, did intentionally traffic and attempt to traffic in goods, namely, pharmaceutical drugs, and knowingly used counterfeit marks on and in connection with such goods, that is, the VGR and Pfizer trademarks used to identify a pharmaceutical product marketed by Pfizer Inc., which counterfeit marks were identical with and substantially indistinguishable from the genuine marks in use and registered for that good on the principle register in the United States Patent and Trademark Office, and the use of which marks was likely to cause confusion, mistake and deception regarding said marks.

In violation of Title 18, United States Code, Section 2320(a) and 2.

COUNT NINE
(Trafficking in Counterfeit Goods)

On or about January 20, 2011, in the Houston Division of the Southern District of Texas and elsewhere, defendant,

JAMAL KHATTAB,

aided and abetted by others known and unknown to the Grand Jury, did intentionally traffic and attempt to traffic in goods, namely, pharmaceutical drugs, and knowingly used counterfeit marks on and in connection with such goods, that is, the VGR and Pfizer trademarks used to identify a pharmaceutical product marketed by Pfizer Inc., which counterfeit marks were identical with and substantially indistinguishable from the genuine marks in use and registered for that good on the principle register in the United States Patent and Trademark Office, and the use of which marks was likely to cause confusion, mistake and deception regarding said marks.

In violation of Title 18, United States Code, Section 2320(a) and 2.

COUNT TEN
(Trafficking in Counterfeit Goods)

On or about March 8, 2012, in the Houston Division of the Southern District of Texas and elsewhere, defendant,

FAYEZ AL-JABRI,

aided and abetted by others unknown to the Grand Jury, did intentionally traffic and attempt to traffic in goods, namely, pharmaceutical drugs, and knowingly used a counterfeit mark on and in connection with such goods, that is, the VGR and Pfizer trademarks used to identify a pharmaceutical product marketed by Pfizer Inc., which counterfeit marks were identical with and substantially indistinguishable from the genuine marks in use and registered for that good on the

principal register in the United States Patent and Trademark Office, and the use of which marks was likely to cause confusion, mistake and deception regarding said marks.

In violation of Title 18, United States Code, Section 2320(a) and 2.

COUNT ELEVEN
(Smuggling Goods into the United States)

On or about July 22, 2010, in the Houston Division of the Southern District of Texas and elsewhere, defendant,

JAMAL KHATTAB,

aided and abetted by others known and unknown to the Grand Jury, fraudulently and knowingly imported and brought into the United States merchandise contrary to law, namely, pharmaceutical drugs bearing counterfeit marks on and in connection with such goods, that is, the VGR and Pfizer trademarks used to identify a pharmaceutical product marked by Pfizer Inc., which counterfeit marks were identical with and substantially indistinguishable from the genuine marks in use and registered for that good on the principal register in the United States Patent and Trademark Office, and the use of which mark was likely to cause confusion, mistake and deception regarding said marks, in violation of Title 18, United States Code, Section 2320(a). Furthermore, the pharmaceutical drugs were marked with the trademarks VGR and Pfizer without the authorization of Pfizer Inc., the registered holder of said trademarks in violation of Title 21, United States Code, Sections 331(i) and 333(a)(2). Furthermore, the pharmaceutical drugs were misbranded in that they were marked in a manner to falsely represent that the tablets were genuine Viagra tablets in violation of Title 21 United States Code, Sections 331(a) and 333(a)(2).

In violation of Title 18, United States Code, Section 545 and 2.

NOTICE OF CRIMINAL FORFEITURE

A. Pursuant to 18, U.S.C. § 2323(b), 18 USC § 982(a)(2)(B), 18 USC § 545, 21 USC § 334 and 28 USC § 2461, upon conviction of Count One, the defendants

JAMAL KHATTAB and
FAYEZ AL-JABRI,

shall forfeit to the United States of America:

(A) any article, the making or trafficking of which is, prohibited under 18 U.S.C. § 2320;

(B) any property used, or intended to be used, in any manner or part to commit or facilitate the commission of Count One;

(C) any property constituting or derived from any proceeds obtained directly or indirectly as a result of the commission of Count One; and

(D) any merchandise introduced into the United States in violation of Count One, or the value thereof.

B. Pursuant to 21 USC § 334 and 28 USC § 2461, upon conviction of Counts Two thru Eight, the defendants,

JAMAL KHATTAB, (Counts 2, 3, 6, and 8),
FAYEZ AL-JABRI (Counts 4, 5, and 7)

shall forfeit to the United States of America any property used, or intended to be used, in any manner or part to commit or facilitate the commission of any offense referred to in Counts 2 thru 8.

C. Pursuant to 18, U.S.C. § 2323(b), upon conviction of any violation charged in Counts 6 -7, the defendants

JAMAL KHATTAB, (Count 6) and
FAYEZ AL-JABRI (Count 7)

shall forfeit to the United States of America any article, the making or trafficking of which is, prohibited under 18 U.S.C. § 2320.

D. Pursuant to 18 USC § 982(a)(2)(B), upon conviction of any violation charged in Counts 6 -7, the defendants

JAMAL KHATTAB, (Count 6)
FAYEZ AL-JABRI (Count 7)

shall forfeit to the United States of America:

- (A) any property constituting, or derived from, proceeds the person obtained directly or indirectly, as the result of a violation of Count 8, and
- (B) any merchandise introduced into the United States in violation of Count 8, or the value thereof.

Substitute Property

C. In the event that the property which is subject to forfeiture to the United States, as a result of any act or omission of the defendant:

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

it is the intent of the United States to seek forfeiture of any other property of the defendant up to the value of such property, pursuant to 21 U.S.C. §853(p).

A TRUE BILL:

Original Signature on File

FOREPERSON

KENNETH MAGIDSON
UNITED STATES ATTORNEY

By

A handwritten signature in black ink, appearing to read "Kebharu H. Smith", written over a horizontal line.

Kebharu H. Smith

Assistant United States Attorney

SECRET

CONFIDENTIAL

SECRET

CONFIDENTIAL

SECRET

CONFIDENTIAL