

United States District Court
NORTHERN DISTRICT OF GEORGIA

UNITED STATES OF AMERICA

v.

RONG SUN a/k/a VICKY SUN

CRIMINAL COMPLAINT

Case Number: 1:20-MJ-00289

UNDER SEAL

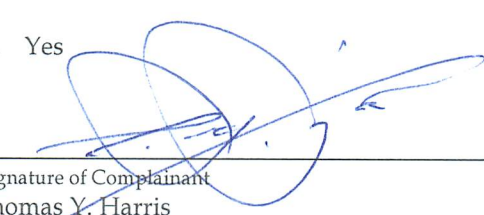
I, the undersigned complainant being duly sworn, state the following is true and correct to the best of my knowledge and belief. On or about April 2, 2020 in Fayette County, in the Northern District of Georgia, defendant(s) did, (1) knowingly distribute and sell a pesticide that is not registered and that is adulterated and misbranded; (2) fraudulently and knowingly import and bring into the United States pesticide that is not registered and that is adulterated and misbranded contrary to law; and (3) knowingly deposit for mailing and delivery and cause to be delivered by mail, a poison, hazardous material, and a natural and artificial material which may kill and injure another, and injure the mails and other property

in violation of Title 7, United States Code, Section(s) 136j(a)(1)(A), 136j(a)(1)(E), and 136l(b)(1)(B), and Title 18, United States Code, Section(s) 545 and 1716.

I further state that I am a(n) Special Agent and that this complaint is based on the following facts:

PLEASE SEE ATTACHED AFFIDAVIT

Continued on the attached sheet and made a part hereof. Yes



Signature of Complainant
Thomas Y. Harris

Based upon this complaint, this Court finds that there is probable cause to believe that an offense has been committed and that the defendant has committed it. Sworn to me by telephone pursuant to Federal Rule of Criminal Procedure 4.1.

April 8, 2020 @ 11:00 am
Date

at Atlanta, Georgia
City and State

ALAN J. BAVERMAN
UNITED STATES MAGISTRATE JUDGE

Name and Title of Judicial Officer
AUSA Christopher J. Huber / 2020R00303



Signature of Judicial Officer

AFFIDAVIT

I, Thomas Harris, depose and say under penalty of perjury:

1. I make this affidavit in support of an application for a criminal complaint against RONG SUN, a/k/a VICKY SUN charging violations of Title 7, United States Code, Sections 136j(a)(1)(A), 136j(a)(1)(E), and 136l(b)(1)(B), and Title 18, United States Code, Sections 545 and 1716. The investigation relates to importation and sale of unregistered pesticides marketed as personal protection against viruses.

2. I am a Special Agent (SA) with the Department of Homeland Security, Immigration and Customs Enforcement, Homeland Security Investigations (HSI), assigned to the Special Agent in Charge, Atlanta, Georgia. I have been employed as an HSI Special Agent since 2003 and prior to the creation of the Department of Homeland Security was employed as a U.S. Customs Service Special Agent since 2001. I investigate criminal violations relating to the entry of goods falsely classified in violation of Title 18, United States Code, Section 541; the entry of goods by means of false statements in violation of Title 18, United States Code, Section 542; the smuggling of goods into the United States in violation of Title 18, United States Code, Section 545; making false statements in violation of Title 18, United States Code, Section 1001; and conspiracy to violate these statutes in violation of Title 18, United States Code,

Section 371. I am authorized to investigate violations of the laws of the United States and execute warrants issued under the authority of the United States. I am duly authorized by Title 18, United States Code, Section 3063, to carry firearms, to execute and serve any warrant or other process issued under the authority of the United States, and to make arrests without warrant for any offense committed in my presence or any felony offense for which I have probable cause to believe that the person to be arrested has committed or is committing.

3. On or about April 1, 2020, I was assigned to help investigate allegations of the illegal sale and use of pesticides by an individual named RONG SUN a/k/a VICKY SUN in Fayetteville, Georgia.

4. The information contained in this affidavit is submitted for the purpose of demonstrating probable cause to obtain a criminal complaint against RONG SUN a/k/a VICKY SUN for knowingly distributing and selling a pesticide that is not registered and that is adulterated and misbranded; (2) fraudulently and knowingly importing and bringing into the United States pesticide that is not registered and that is adulterated and misbranded contrary to law; and (3) knowingly depositing for mailing and delivery and causing to be delivered by mail, a poison, hazardous material, and a natural and artificial material which may kill and injure another, and injure the mails and other

property, in violation of 7 U.S.C. §§ 136j(a)(1)(A), 136j(a)(1)(E), and 136l(b)(1)(B) (FIFRA), and 18 U.S.C. §§ 545 (smuggling) and 1716 (illegal mailing).

5. Concurrent to this application for a criminal complaint, the United States is seeking the issuance of a search warrant of [REDACTED] Fayetteville, Georgia, SUN's residence.

6. The statements in this affidavit are based on my personal knowledge, training, education and experience, and on information I have received from other law enforcement personnel and persons with knowledge of relevant facts. Because this affidavit is being submitted for the limited purpose of securing a search warrant, I have not included each and every fact known to me concerning this investigation. I have set forth only those facts that I believe are necessary to establish probable cause for the requested warrant.

STATUTORY AND REGULATORY BACKGROUND

I. The Federal Insecticide, Fungicide and Rodenticide Act.

7. FIFRA regulates the production, sale, distribution and use of pesticides in the United States. A "pesticide" is any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. 7 U.S.C. § 136(u); 40 C.F.R. § 152.3. The term "pest" is broadly defined to include, among other things, viruses, bacteria, or other micro-organisms. 7 U.S.C. § 136(t).

8. FIFRA requires all pesticides to be registered with the U.S. Environmental Protection Agency (EPA) before they can be sold or distributed. 7 U.S.C. § 136a(a). The registration process is detailed, and applicants are required to submit a substantial amount of information to the EPA in support of a request for registration. Items of information that must be submitted in support of an application to register a pesticide include the complete formula of each pesticide for which registration is sought, including the identity of its active and inert ingredients; all proposed labeling for the pesticide; and a statement of all pesticidal claims to be made for the pesticide. See 7 U.S.C. § 136a(c); 40 C.F.R. § 158.155.

9. Registered pesticides are given a product registration number beginning with the phrase “EPA Reg. No.” Pesticide-producing establishments also receive an establishment-registration number (designated by the phrase “EPA est. No.”). 40 C.F.R. §§ 156.10(e) and 156.10(f). As a condition of registration, all registered pesticides must have a label that bears both the product registration and establishment numbers. 40 C.F.R. § 156.10(a). This label also must contain several other pieces of information, such as the directions for use of the pesticide (40 C.F.R. § 156.10(i); child hazard warnings (40 C.F.R. § 156.66); a first aid statement (40 C.F.R. § 156.68); precautionary statements for humans and domestic animals (40 C.F.R. § 156.70); and environmental hazard

and precautionary statements (40 C.F.R. §§ 156.80 and 156.85). Proposed labels must be submitted to the EPA along with the application for registration. 40 C.F.R. § 152.50(e).

10. It is unlawful for any person in any state to distribute or sell to any other person a pesticide that has not been registered under FIFRA. 7 U.S.C. § 136j(a)(1)(A). FIFRA defines “distribute or sell” to include not only actual sale or distribution of a pesticide, but also the act of offering a pesticide for sale. 7 U.S.C. § 136(gg); 40 C.F.R. § 152.3.

11. It is also unlawful for any person to sell or distribute to any other person a pesticide that is “misbranded.” 7 U.S.C. § 136j(a)(1)(E). A pesticide is “misbranded” under FIFRA if, *inter alia*, its container does not have a label bearing the pesticide’s registration number; or one with labeling that bears any statement, design or graphic representation relative to the pesticide or its ingredients, which is false or misleading. 7 U.S.C. § 136(q)(1)(A).

12. Under FIFRA, it is a misdemeanor criminal offense to knowingly violate any provision of the statute. 7 U.S.C. § 136l(b)(1)(B).

13. 18 U.S.C. § 545 makes it a federal crime to fraudulently or knowingly import or bring into the United States, any merchandise contrary to law, or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of such merchandise after importation,

knowing the same to have been imported or brought into the United States contrary to law. This includes the importation of a pesticide not registered with the EPA.

14. 18 U.S.C. § 1716 makes it a federal crime to mail poison, hazardous materials, and all other natural or artificial articles, compositions, or material which may kill or injure another, or injure the mails or other property.

FACTS SUPPORTING PROBABLE CAUSE TO SEARCH

15. Since approximately April 1, 2020, I have been investigating allegations that SUN has marketed and sold “Virus Shut Out” and “Stop The Virus” via eBay.com, both products claiming to control viruses and bacteria. During the course of my investigation, I reviewed reports of interviews conducted by agents with EPA’s Criminal Investigation Division, reviewed records provided to HSI by the representatives of different agencies and spoke to representatives of those agencies.

16. Virus Shut Out and Stop The Virus are not registered with the EPA in accordance with FIFRA. They cannot be legally imported into the United States and may not legally be sold or distributed within the United States.

17. In late March 2020, EPA began researching on eBay.com the product Virus Shut Out to determine approximately whether and how much of the product was for sale in the United States.

18. Within the 100 miles search of Atlanta, Georgia, approximately six listings appeared for Virus Shut Out. A seller listed as Strawberry1011 had five separate listings for Virus Shut Out.

19. eBay account Strawberry1011 had four listings that had ten or more Virus Shut Out products available. Strawberry1011 had one listing that was selling the Virus Shut Out in lots of 50 with 10 lots available or approximately 500 units. This listing showed one lot of 50 had already been sold.

20. Strawberry1011 had photographs of the Express Mail Service shipping labels, United States Postal Service tracking label and photographs of the Virus Shut Out products on a store shelf, all within one of its eBay.com listing.

21. EPA captured the images from one of the eBay.com listing pages as well as copies of shipping labels:



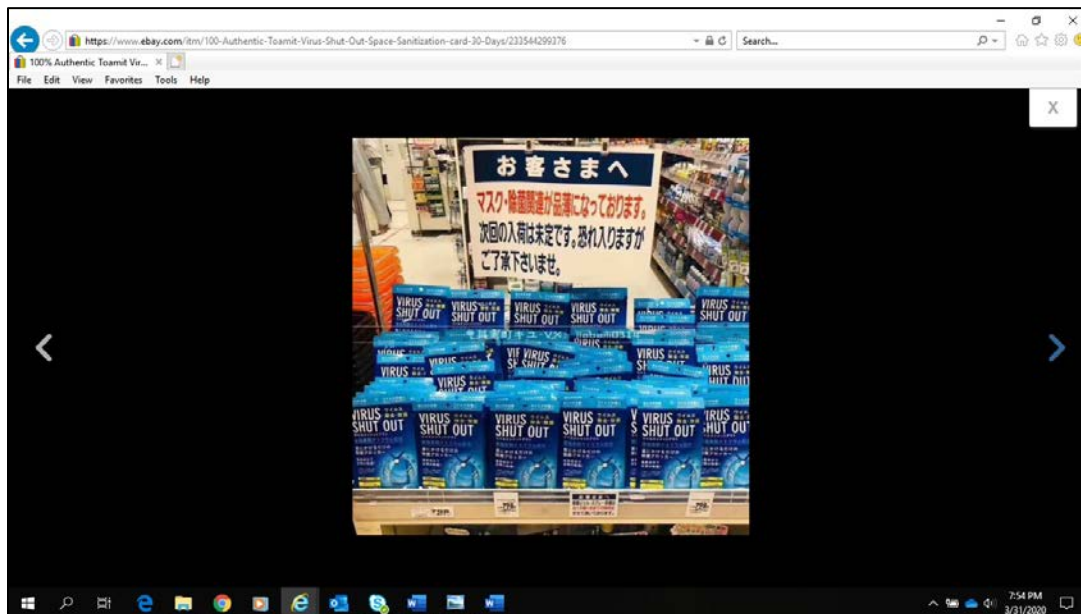


OFFICE necessity

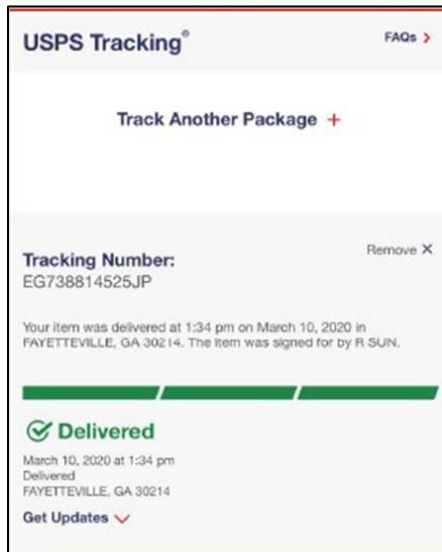
Japanese shop assistants wear masks and degerming card as a layer of protection

Mothers no longer have to worry about children's exposure to various bacteria

 When using, just tear it apart, wear it and take it out of the door. It can be used for up to one month. Don't forget to record the date of use.



22. According to United States Postal Service tracking information for tracking number EG738814525JP, the package was delivered to a location in Fayetteville, Georgia, on March 10, 2020, and R. SUN signed for the delivery.



23. According to the Express Mail Service shipping label ending in 525JP; the sender was printed in Japanese, the package was shipped on March 6, 2020, the label identified the contents as nursing care products and the shipment was delivered to Vicky SUN, [REDACTED], Fayetteville, Georgia 30215. Photo above.

24. The following information was obtained from a separate Express Mail Service shipping label ending in 551JP:

- a. Package was shipped on March 17, 2020
- b. Sender was printed in Japanese
- c. Package was shipped to Vicky SUN, [REDACTED] Fayetteville,

Georgia 30215

- d. Telephone number associated with the shipment was [REDACTED].
- e. A shipping bar code, 30200, shows the box arrived at John F. Kennedy Airport, New York City, New York, and then was forwarded to the Atlanta, Georgia, airport.
- f. A Safety Data Sheet from TOA Industry was affixed to the outside of the box.



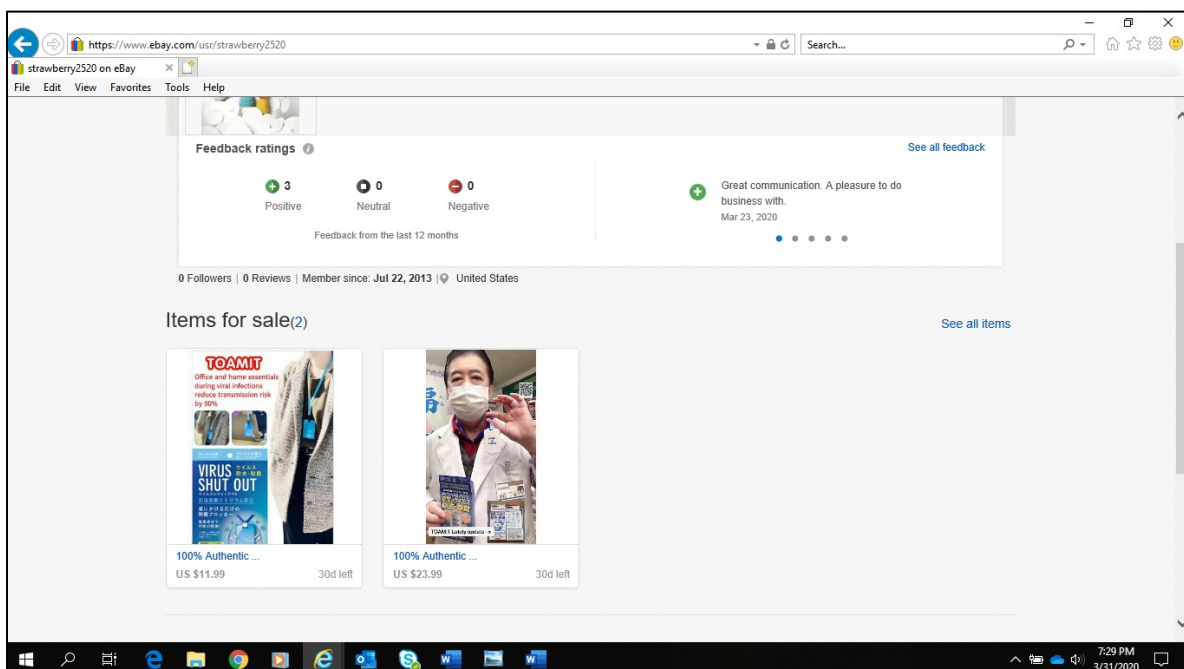
25. EPA confirmed that Rong SUN is associated with [REDACTED], Fayetteville, Georgia 30215. Rong SUN's initials matched the United

States Postal Service tracking form which showed that R. SUN signed for the package when delivered.

26. According to open source research, Rong SUN is the same person as Vicky SUN. Vicky SUN was previously identified on the Express Mail Service shipping labels as the addressee. See photo above.

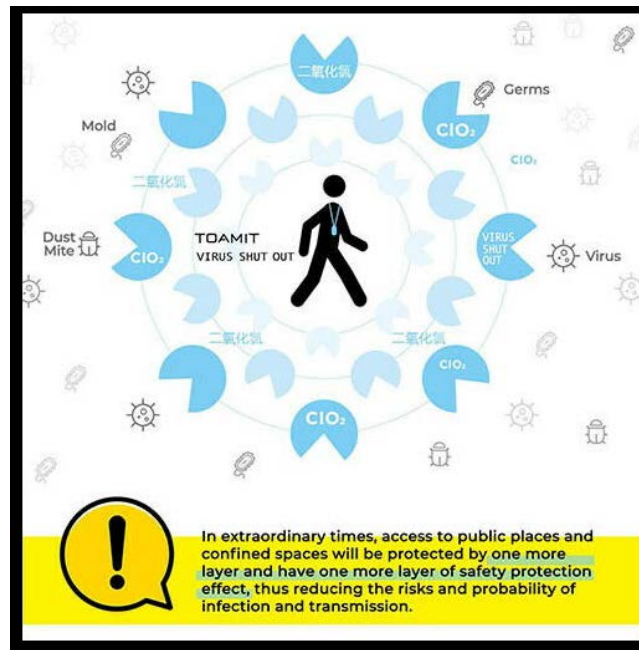
27. eBay, Incorporated and eBay.com is an internet-based marketplace where individuals and companies can sell commodities to anyone in the world. To begin the process a potential seller must create an account with a specific username.

28. Additional research on the eBay.com internet website and the account Strawberry2520, EPA learned through photographs on the page offered for sale “Virus Shut Out” and “Stop The Virus” that Vicky SUN operated the Strawberry2520 account on the eBay.com internet website.



29. The Strawberry 2520 account claimed that the products, “Virus Shut Out” and “Stop The Virus” would protect the buyer or wearer of the product from viruses and bacteria. Multiple photographs on the website depicted the removal of bacteria, germs and virus by wearing the “Virus Shut Out” and “Stop The Virus”. Additionally, the photographs stated, “Its main ingredient is ClO₂, which is a new generation of widely effective and powerful fungicide recognized internationally at present. Bacteria and viruses can be lifted up within 1 meter of the wearer’s body, just like a portable air cleaner with its own protective cover.” The photographs also stated, “In extraordinary times, access to public places and confined spaces will be protected by one more layer and have one more layer of safety protection effect, thus reducing the risks and probability of infection and transmission.” The product page also stated that the ingredients were “Chlorine Dioxide.”





30. It appears that eBay accounts Strawberry1011 and Stawberry2520 are operated by SUN and both accounts offered the Virus Shut Out or Stop the Virus products. According to records provided by eBay, Strawberry1001 was registered by Vicky SUN and Strawberry2520 was registered by Da Chen. In May 2014, the contact information for Strawberry 2520 was changed to Vicky SUN. Both accounts list Vicky SUN, at [REDACTED], Fayetteville, GA, 30215 as the shipping address.

31. On April 2, 2020, an undercover agent (UCA) utilizing an identity accessed the Strawberry2520, eBay.com, electronic storefront and purchased one Virus Shut Out and one Stop the Virus product.

32. eBay allows purchasers to communicate with sellers directly. The UCA contacted Strawberry2520 through eBay's communication system.

33. Strawberry2520 responded using strawberry2520@yahoo.com. The UCA and the seller discussed the likelihood of the Virus Shut Out and the Stop The Virus product protecting the UCA from the "19 virus". The seller responded to the UCA and stated, "This card is like air refresher to keep common bacteria away from you within 0.5 meter circle from the product. It just add one more layer of protection. We not guarantee to keep Covid-19 away from you.let me know if you still want them. I can cancel the order if you change your mind. Thank you!" (At the bottom of the screenshot message from strawberry2520@yahoo.com was the message "Sent from my iPhone.") The UCA responded, "I bought two products. One says air sanitization. Will either of them help me against corona virus?" The seller responded, "Hi dear, We will cancel your order and give you a full refund for both of items. My list have been removed by eBay because they have made the decision to prohibit the sale of mask/sanitizer/wipes/toilet paper rolls.. on ebay. Sorry for any inconvenience." (At the bottom of the screenshot message from strawberry2520@yahoo.com was the message "Sent from my iPhone."). The UCA responded, "Hi there Well since I've already ordered it, you can go ahead

and send it to me. I'd still like to try it. Every little bit helps right, lol. Thx for everything. When do you think I should receive it?"

34. On April 3, 2020, the UCA received a confirmation email from eBay stating that the order was being shipped.

35. On April 3, 2020, the UCA communicated with the seller via e-mail at strawberry2520@yahoo.com and asked directly what the name of the seller was, the seller referred to herself as Vicky.

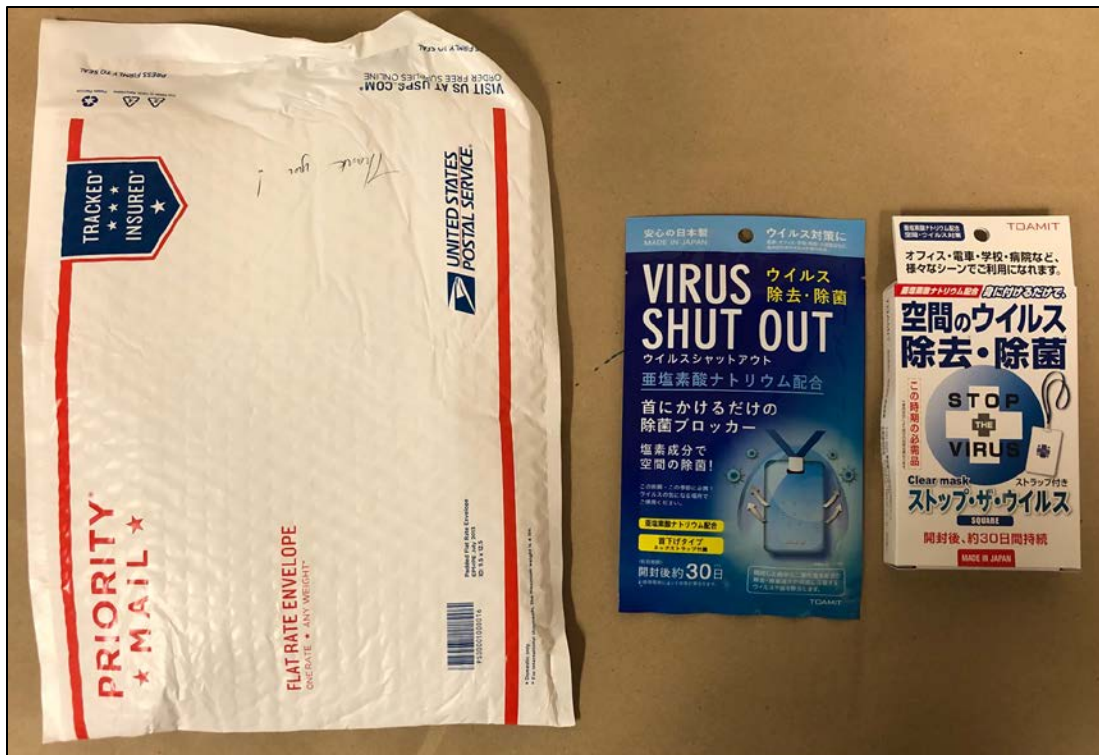
36. eBay reported that the IP address associated with the eBay account was 67.191.201.94.

37. Comcast Cable Communications, LLC, was served a subpoena for Internet Protocol Addresses (IP): 67.191.201.94.

38. IP Address 67.191.201.94 returned to Chen, Da of [REDACTED] Fayetteville, GA 30215, with an associated phone number of [REDACTED].

39. On or about April 4, 2020, the shipment of the products ordered by the UCA arrived at the address provided by the UCA. Vicky SUN was identified as the sender in the return address label. The return address on the received package bore the address [REDACTED]

40. The shipment included the two products ordered by the UCA.



41. The two products' labels are almost entirely in Japanese. They state that the product contains chlorine dioxide. Chlorine dioxide is not permitted to be sent through the U.S. Postal system and is specifically identified as nonmailable.



42. On or about March 27, 2020, eBay notified

strawberry2520@yahoo.com that it removed one or more listings from the

strawberry1001 account. Its notification stated in part:

In accordance with recent tragedy and to support our community, we have made the decision to prohibit the sale of mask/sanitiser/wipes / toilet paper rolls on eBay. Due to recent changes, these listings may violate applicable US laws or regulations, eBay policies, and exhibit unfair pricing behavior for our buyers. Also, listing mask/sanitiser/wipes with unauthorized curative medical claim about corona virus, virus etc. is prohibited on eBay. Kindly do not relist such items on the site. For further information, request you to visit our site:
<https://community.ebay.com/t5/Announcements/UPDATE-Important-information-about-listings-associated-with/ba-p/30734312>

Here are the listings we removed:

223951538677 - 100% Authentic TOAMIT Virus shut out air card
made in Japan US Seller 30day

43. On or about March 30, 2020, eBay again notified

strawberry2520@yahoo.com that it removed one or more listings from the
strawberry1001 account. Its notification stated in part:

You listed a medical device that has not been approved by the FDA
for sale within the United States. While we appreciate that you
chose to utilize our site, we must ask you not to relist in this case.

Here are the listings we removed:

223942535232 - 50pc 100% Authentic TOAMIT Virus shut out space
sanitization card US Seller

223942864374 - 100% Authentic TOAMIT Virus shut out air card
made in Japan US Seller 30day

223959302179 - 100% Authentic TOAMIT Virus shut out space
sanitization card 30 Days US Seller

324106814245 - 100% Authentic NEW TOAMIT Virus shut out air
sanitization card 30days-US Seller

324109483619 - Portable Protection Air Sterilization Card,Great for
Virus shut out 30days

44. According to the Georgia Department of Drivers Services, SUN's
residence is [REDACTED], Fayetteville, Georgia 30215.

45. On April 4, 2020, HSI conducted surveillance at SUN's residence
located at [REDACTED], Fayetteville, Georgia 30215.

46. Agents observed a two-story brick-faced residence located on a cul-de-sac, with two vehicles parked in the driveway of the residence.

47. Agents observed two vehicles parked in the driveway of the residence. A 2010 silver Lexus RX310 SUV bearing GA license plate [REDACTED] was observed parked on the left side of the driveway. Database checks indicated this vehicle is currently registered to RONG SUN (VICKY SUN) of [REDACTED], Fayetteville, GA.

48. A 2014 silver Toyota Camry bearing GA license plate [REDACTED] was observed parked on the right side of this same driveway. Database checks indicate this vehicle is currently registered to DA CHEN of [REDACTED], Fayetteville, GA.

REQUEST FOR SEALING

49. Because this investigation is ongoing, disclosure of the search warrant, this Affidavit, and/or the application and the attachments thereto could jeopardize the progress of the investigation. Premature disclosure of the contents of this Affidavit could alert the targets of the investigation and any potential co-conspirators or accomplices to the status of the investigation to date and compromise the government's on-going investigation, such as by alerting the targets and possibly leading the targets or their co-conspirators or accomplices to flee or remove, destroy, or alter evidence. Accordingly, I

respectfully request that the search warrant, this Affidavit, and all attachments thereto be sealed until further order of this Court.

CONCLUSION

50. Based on the above information, I respectfully submit there is probable cause to believe that RONG SUN a/k/a VICKY SUN knowingly distributed and sold a pesticide that is not registered and that is adulterated and misbranded; (2) fraudulently and knowingly imported and brought into the United States pesticide that is not registered and that is adulterated and misbranded contrary to law; and (3) knowingly deposited for mailing and delivery and caused to be delivered by mail, a poison, hazardous material, and a natural and artificial material which may kill and injure another, and injure the mails and other property, in violation of 7 U.S.C. §§ 136j(a)(1)(A), 136j(a)(1)(E), and 136l(b)(1)(B) (FIFRA), and 18 U.S.C. §§ 545 (smuggling) and 1716 (illegal mailing).