

FILED 2

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

MAY 23 1994

WILLIAM T. WALSH
CLERK

UNITED STATES OF AMERICA,)	Criminal No. 94-253
v.)	
VITUSA CORPORATION)	Count One
)	15 U.S.C. § 78dd-2
)	(Foreign Corrupt
)	Practices Act)

INFORMATION

THE UNITED STATES CHARGES THAT:

At all times material herein:

A. Introduction

1. The defendant VITUSA CORPORATION [VITUSA] was a New Jersey corporation engaged in the business of selling commodities and other goods in the United States and elsewhere. Denny J. Herzberg was the president and sole shareholder of VITUSA.

2. VITUSA was a domestic concern as that term is defined in the Foreign Corrupt Practices Act of 1977, as amended [FCPA], 15 U.S.C. § 78dd-2(h)(1)(A).

3. Servio Tulio Mancebo [Mancebo], a citizen of the Dominican Republic, was the president and owner of Horizontes Dominicanos, C. por A. [Horizontes], a business entity with its principal place of business in Santo Domingo, Dominican Republic.

4. In October 1989, VITUSA entered into a lawful contract to sell milk powder to the Government of the Dominican Republic. Horizontes was VITUSA's agent for the sale, through its principal, Mancebo.

5. Although VITUSA delivered the milk powder to the

Government of the Dominican Republic, the Dominican government did not pay VITUSA promptly for the milk powder received and, in fact, maintained an outstanding balance due for an extended period of time. VITUSA, therefore, made various efforts to collect the outstanding balance due, including contacting officials of the United States and Dominican Governments to obtain their assistance in securing payment in full.

6. During the pendency of the contract, Mancebo communicated to Herzberg a demand made by a foreign official which called for the payment of a "service fee" to that official in return for the official using that official's influence to obtain the balance due to Vitusa for the milk powder contract from the Dominican Government.

7. The intended recipient of the corrupt payment was a senior official of the Government of the Dominican Republic and a foreign official as that term is defined in 15 U.S.C. § 78dd-2(h)(2).

8. In or about August 1992, Herzberg agreed to Mancebo's proposal that Vitusa would pay a "service fee" indirectly to the foreign official.

9. On or about August 11, 1992, Herzberg caused a letter to be transmitted by facsimile from VITUSA in New Jersey to Banco de Reservas de la Republica Dominicana [Banco de Reservas] in Santo Domingo. In that letter, Herzberg, acting on behalf of VITUSA, authorized Banco de Reservas to withhold a specified

VITUSA CRIMINAL INFORMATION

portion of the payment expected from the Government of the Dominican Republic and transfer those withheld funds to Mancebo.

10. On or about September 3, 1992, the Government of the Dominican Republic made a payment of \$63,905.12 to Vitusa. Following Herzberg's prior written instructions, Mancebo retained \$20,000 from that payment, and the Banco de Reservas transferred the balance of \$43,905.12 by wire to VITUSA's bank account in New Jersey.

11. On or about September 3, 1992, VITUSA authorized, promised and offered the payment of all or a portion of the \$20,000 "service fee" through Mancebo to the senior foreign official, while knowing that all or a portion of the money would be given to the foreign official for the purpose of inducing the official to use that official's position and influence with the Government of the Dominican Republic in order to obtain and retain business, that is, full payment of the balance due for VITUSA's prior sale of milk powder to the Government of the Dominican Republic.

B. Corrupt Payment to Foreign Official

On or about September 3, 1992 in the District of New Jersey and elsewhere the defendant, VITUSA, unlawfully, corruptly and willfully used and caused the use of interstate and foreign wire transmissions to transfer funds in the amount of \$20,000, in furtherance of an offer, promise to pay and authorization of the payment of money, that is a "service fee" of \$20,000, to an

associate of the foreign official, while knowing that all or a portion of such money would be offered, given, and promised indirectly to the official, for the purpose of inducing the official to use that same official's position and influence with the Government of the Dominican Republic, to wit: VITUSA caused Mancebo to transfer \$20,000, which transfer was made by wire from Banco de Reservas in Santo Domingo, Dominican Republic into an account at the First Union National Bank of Florida in Miami, Florida, while knowing that some portion of those funds were to be delivered indirectly to the foreign official, in order to

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obtain and retain business with the Dominican Government, that is, full payment of the balance due for VITUSA's prior sale of milk powder to the Government of the Dominican Republic.

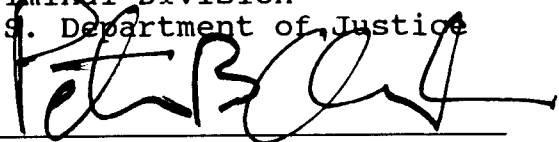
All in violation of Title 15, United States Code, Section 78dd-2(a)(3), and Title 18, United States Code, Section 2.

Michael Chertoff
United States Attorney
District of New Jersey



Eric Tunis
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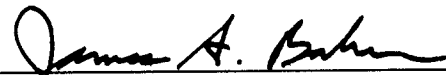
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