

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

UNITED STATES OF AMERICA * **CRIMINAL NO. 13-154**

v. * **SECTION: “E”**

MARTIN VELLOZZI *

* * *

FACTUAL BASIS

The defendant, **MARTIN VELLOZZI**, (hereinafter, the “defendant” or “**VELLOZZI**”), has agreed to plead guilty as charged to the bill of information now pending against him, charging him with mail fraud, in violation of Title 18, United States Code, Section 1341. Both the Government and the defendant, **MARTIN VELLOZZI**, do hereby stipulate and agree that the following facts set forth a sufficient factual basis for the crimes to which the defendant is pleading guilty. The Government and the defendant further stipulate that the Government would have proven, through the introduction of competent testimony and admissible, tangible exhibits, the following facts, beyond a reasonable doubt, to support the allegations in the bill of information now pending against the defendant:

Mercedes-Benz and the Star Diagnostic System

Documentary evidence would be introduced to establish that Daimler AG was an automaker headquartered in Stuttgart, Germany, that produced and sold Mercedes-Benz (“Mercedes-Benz”) automobiles. Mercedes-Benz USA (“MBUSA”), a division of Daimler AG, was responsible for the distribution and marketing of Mercedes-Benz automobiles in the United States. In addition to automobiles, Daimler AG produced, and MBUSA distributed in the United States, automotive parts and equipment for both commercial and consumer use.

Representatives of MBUSA and Daimler AG would testify that Daimler AG produced the Star Diagnostic System (“SDS”), a hand-held computer designed to aid in the diagnosis of automotive systems with electronic controls and interfaces. The SDS consisted of a tablet-type computer with a touch screen interface running the Windows XP operating system. Included with the SDS was a multiplexer (used for combining signals, and, in effect, negotiating the transmission of diagnostic information between an automobile and the SDS) and various connection cables. Installed on the SDS were various software programs created by Mercedes-Benz in order to diagnose and repair Mercedes-Benz automobiles.

MBUSA representatives would testify that the SDS was designed to accommodate software updates provided by Daimler AG as often as every month. The updates included information for new vehicles or fixes to flaws or incorrect information in the software. The retail price of an authentic Mercedes-Benz SDS was between approximately \$8,300 and \$22,000 in the United States. Additionally, in some instances, purchasers of the SDS would pay Daimler AG (or, in the United States, MBUSA) an additional several thousand dollars per year to receive regular software updates.

MBUSA representatives would testify that the software programs for the SDS contained a license that governed the usage and distribution of computer software. The license recognized that the software on the SDS was “confidential, proprietary, trade secret information” and that recipients of a license were prohibited, in part, from transferring, assigning, or providing the software to others without authorization from Daimler AG or MBUSA. The Mercedes-Benz SDS software also sought to prevent unauthorized use of the software by issuing a code sequence that had to be entered into the application to “unlock” the software.

Representatives of MBUSA and Daimler AG would testify, and documentary evidence would be introduced to establish, that Daimler AG registered its trademarks in the principal register at the U.S. Patent and Trademark Office, including specifically the following:

- a. The stylized Mercedes-Benz, Three-Pointed Star logo pictured below (“Logo”), when used with a broad range of other related products, in addition to automobiles and their parts, and services, including, but not limited to, the repair, reconditioning, and servicing of motor vehicles, motors, and their parts and accessories (TM 72023897, 73068448; Registration # 0661311, 1045080).



- b. The word mark “Mercedes-Benz,” when used with automobiles and their parts and services, as well as a broad range of other, related products, including the repair, reconditioning, and servicing of motor vehicles, motors, and their parts and accessories (TM 72023779, 73089866; Registration # 0657386, 1060986).

Martin Vellozzi

Testimony and documentary evidence would be admitted to establish that at all material times, **VELLOZZI** was a resident of Rancho Palos Verdes, California and the owner and operator of Luxury Motor Vehicles Industries (“LMV Industries”). LMV Industries offered independent technical information and support for Mercedes-Benz automobiles, among others, through websites to which members paid a monthly fee. In addition to providing the

membership-only website to share information relating to the repair of automobiles, including Mercedes-Benz automobiles, **VELLOZZI** conducted frequent, regular multi-day diagnostic training seminars around the country focused on Mercedes-Benz automobiles for which individuals could pay and enroll. At the seminars, **VELLOZZI** and others lectured on matters related to the repair of Mercedes-Benz automobiles. **VELLOZZI** also made available for sale, and offered for purchase, unauthorized SDS units. **VELLOZZI** held seminars in New Orleans, Louisiana, approximately every June between 2006 and 2012.

Testimony and documentary evidence would also be admitted to establish that **VELLOZZI** had “sponsors” who would purchase tables at the seminars, advertise and sell their products, and occasionally act as lecturers during the seminars. R.W., in his capacity as owner of Company A, a Harahan, Louisiana-based company specializing in the sale and distribution of parts and equipment for used Mercedes-Benz automobiles, regularly purchased multiple tables at LMV’s seminars. R.W. utilized the LMV seminars as a way to build his customer base and sell Company A’s products, including unauthorized SDS.

Manufacture and Creation of Unauthorized SDS

Testimony and documentary evidence would further be admitted to establish that in about 2004, **VELLOZZI** learned that Company A, in conjunction with Company B, a Durham, North Carolina-based company owned by R.B. that specialized in the sale of remanufactured Mercedes-Benz parts and equipment, had developed, manufactured, and made available for sale unauthorized SDS units. Company B was responsible for creating hardware for the unauthorized SDS units, including a “black box” that served the role of a multiplexer, while Company A and Company B, through its owners and employees including R.W. and R.B., worked together to create, obtain, and modify the software so that it would operate on their unauthorized SDS units

without authorization from Daimler AG or MBUSA. The software that Company A and Company B developed and installed on their unauthorized SDS bore trademarks registered by Daimler AG on the principal register at the U.S. Patent and Trademark Office, as described on page 3.

Documentary evidence and eyewitness testimony would be introduced to establish that in about 2008, R.W., R.B, and **VELLOZZI** began purchasing software for the unauthorized SDS, as well as updates and “patches” for the software, from J.C., an individual who resided in the United Kingdom. The software and “patches” provided by J.C. and installed in the unauthorized SDS produced and sold by Company A, Company B, and **VELLOZZI** bore trademarks registered by Daimler AG on the principal register at the U.S. Patent and Trademark Office, as described on page 3.

Documentary evidence would be introduced, and representatives of Mercedes-Benz would testify, that one of the ways in which software and software updates were installed and activated on the unauthorized SDS sold by Company A, Company B, and **VELLOZZI** was through the use of key generators, or “keygens” purchased from J.C. Keygens are programs that generate an unauthorized license key or serial number that will activate (*i.e.*, “unlock”) software by bypassing or overriding protections embedded in the software license so that the software can be used without buying a licensed version from the supplier. Company A, Company B, and **VELLOZZI** used the keygens to override Mercedes-Benz’s security protections and protocol on its SDS software. The keygens were used in conjunction with other modifications made by Company A, Company B, and J.C. to make the software work on the unauthorized SDS without authorization from Mercedes-Benz.

The Sale and Mailing of SDS

Testimony and documentary evidence, including bank records, would be admitted to establish that in about 2005, **VELLOZZI** began offering for sale, and in fact selling, unauthorized SDS units containing software that bore trademarks registered by Daimler AG on the principal register at the U.S. Patent and Trademark Office, as described on page 3 without authorization. Between the 2005 and 2012, **VELLOZZI** typically sold an unauthorized SDS unit for approximately \$6,000, depending on market demand and other factors. **VELLOZZI** failed to disclose to customers that the SDS units (including software) he sold bearing logos of Mercedes-Benz were not authentic or authorized by Mercedes-Benz or Daimler AG.

On some occasions, the unauthorized SDS **VELLOZZI** sold came from Company A. Once a customer ordered an unauthorized SDS from **VELLOZZI**, **VELLOZZI** would notify R.W., and a representative of Company A would either send the unauthorized SDS via commercial interstate carrier, including Federal Express and United Parcel Service (“UPS”), from Harahan, Louisiana, to **VELLOZZI** who would then send it on to the customer or send the unauthorized SDS directly from Harahan, Louisiana to the customer. For example, documentary evidence would be presented to show that in about July 2008, **VELLOZZI** agreed to sell an unauthorized SDS to Customer 1, located in Memphis, Tennessee. Shortly thereafter, **VELLOZZI** notified Company A of the sale and caused Company A to send an unauthorized SDS via Federal Express from Harahan, Louisiana, to Memphis, Tennessee on about July 31, 2008. Later, **VELLOZZI** began purchasing hardware for the unauthorized SDS from Company B and the software for the unauthorized SDS from J.C. and creating and selling the unauthorized SDS himself.

Testimony and documentary evidence would further be admitted to establish that when **VELLOZZI** or one of the customers to whom he sold an unauthorized SDS had a problem or needed updated software, Company A would provide the updated software or perform the repairs. For example, in about October 2010, Customer 1, an auto repair company located in Encinitas, California, who had purchased an unauthorized SDS from **VELLOZZI**, developed a problem with the unauthorized SDS. **VELLOZZI** notified R.W., who instructed **VELLOZZI** to have Customer 1 send the unauthorized SDS to Company A, located in Harahan, Louisiana, via interstate commercial carrier. Company A repaired the unauthorized SDS at no charge and sent it via interstate commercial carrier from Harahan, Louisiana, to Customer 1, in Encinitas, California.

Testimony and documentary evidence would be admitted to demonstrate that **VELLOZZI** offered the unauthorized SDS for sale in person at his seminars, including his seminars in New Orleans, and through word of mouth among his attendees and website's subscribers. The unauthorized SDS and software updates bore trademarks registered by Daimler AG on the principal register at the U.S. Patent and Trademark Office described on page 3. For example, on about August 22, 2011, **VELLOZZI** agreed to sell an unauthorized SDS to Customer 2 for approximately \$5,500.00. As a result of this agreement, on about August 22, 2011, **VELLOZZI** caused an unauthorized SDS to be sent via interstate commercial carrier from Rancho Palos Verdes, California, to Ann Arbor, Michigan.

Agents with the FBI would testify that numerous copies of keygens were found on **VELLOZZI's** computers seized during the execution of validly issued search warrants at LMV Industries's office on July 13, 2012. The search also uncovered complete and specific instruction sheets detailing how to install Mercedes-Benz SDS software on unauthorized SDS

and how to use keygens and other methods on unauthorized SDS so that the software would work on a system for which it was not designed or authorized.

Representatives of Daimler AG would confirm that the SDS units, including the software, sold by **VELLOZZI** were not manufactured or sold with Daimler AG's authorization.

Records obtained during the execution of validly-issued search warrants on July 13, 2012, at LMV's offices, as well as upon the servers that hosted and stored LMV's e-mail servers, would establish that **VELLOZZI** sold approximately ninety-five (95) unauthorized SDS whose software bore trademarks registered by Daimler AG on the principal register at the U.S. Patent and Trademark Office described on page 3. Additional evidence seized during the execution of the search warrants, including various computer equipment and business records, would further link **VELLOZZI** to the sale of unauthorized SDS units.

The above facts come from an investigation conducted by, and would be proven at trial by credible testimony from, Special Agents from the Federal Bureau of Investigation, representatives of Daimler AG and MBUSA, documents and tangible exhibits in the custody of the Federal Bureau of Investigation, and statements of the defendant, **MARTIN VELLOZZI**.

MARTIN VELLOZZI
Defendant

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