

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA : Hon.
 :
 : Criminal No. 21-
 v. :
 : 21 U.S.C. § 331(a)
 : 21 U.S.C. § 333(a)(2)
 ROBERT ZENG : 18 U.S.C. § 2

INFORMATION

The defendant having waived in open court prosecution by indictment, the Acting United States Attorney for the District of New Jersey charges:

Count One
(Introduction of a Misbranded Drug in Interstate Commerce, With Intent to Defraud and Mislead)

1. At all times material to this Information:

a. Defendant ROBERT ZENG (“ZENG”) was a resident of Salt Lake City, Utah, and the owner of various businesses including NutopiaUSA (“Nutopia”), which sold purported natural supplements online and through e-commerce websites.

b. The United States Food and Drug Administration (“FDA”) was the federal agency within the executive branch responsible for protecting the health and safety of the American public by enforcing the Federal Food, Drug, and Cosmetic Act (“FDCA”). 21 U.S.C. §§ 301-399f. Among the purposes of the FDCA was to assure that drugs sold for human use were safe, effective, and bore

accurate labeling containing all required information. The FDA's responsibilities under the FDCA included regulating the manufacture, labeling, and distribution of all drugs shipped or received in interstate commerce.

c. Under the FDCA, drugs were defined as, among other things, articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in humans; articles intended to affect the structure or any function of the body of humans; or articles intended for use as components of other drugs.

d. The FDCA defined "interstate commerce," in relevant part, as "commerce between any State or Territory and any place outside thereof."

e. The FDCA prohibited, among other things, introducing or delivering for introduction into interstate commerce, or causing the introduction or delivery for introduction into interstate commerce, any drug that is misbranded.

f. Under the FDCA, a drug was misbranded if: (i) its labeling was false or misleading in any particular; (ii) it did not contain adequate directions for use; (iii) it was a prescription drug and was dispensed without a valid prescription; or (iv) it was a prescription drug, and its label failed to bear the statement "Rx only" at any time prior to dispensing.

g. Under the FDCA, the term "label" meant a display of written, printed, or graphic matter upon the immediate container of any article. The term "labeling" was broader and included all labels, as well as other printed or graphic

matter upon any article or any of its containers or wrappers, or accompanying such article.

h. Viagra was a branded drug product containing the active pharmaceutical ingredient sildenafil citrate (“sildenafil”). Viagra and several other products containing sildenafil were FDA-approved prescription drugs for the treatment of erectile dysfunction, among other things.

2. ZENG manufactured a drug, Mr. Richard Rocks, in his home in Utah and sold it on the Nutopia website and on e-commerce platforms to consumers across the United States, including in New Jersey, without requiring a prescription.

3. Mr. Richard Rocks purported to be a dietary supplement containing only natural ingredients that treated erectile dysfunction, enhanced sexual performance, improved mood, and reduced blood sugar and cholesterol.

4. In fact, Mr. Richard Rocks contained the undisclosed ingredient sildenafil, which ZENG imported into the United States from a manufacturer in China and used in each capsule of Mr. Richard Rocks.

5. The labeling for Mr. Richard Rocks did not disclose the presence of sildenafil in Mr. Richard Rocks; reveal the potentially adverse health consequences that may result from using a product containing sildenafil; nor provide adequate directions for use.

6. On or about May 27, 2020, in Morris County in the District of New Jersey and elsewhere, Defendant

ROBERT ZENG

with the intent to defraud and mislead, did cause to be introduced into interstate commerce a drug, specifically “Mr. Richard Rocks” which contained sildenafil among its ingredients despite its labeling failing to disclose sildenafil as an ingredient, that was misbranded within the meaning of Title 21, United States Code, Section 352(a) in that its labeling was false and misleading in any particular.

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

FORFEITURE ALLEGATION AS TO COUNT ONE

1. As a result of committing the offenses in violation of 21 U.S.C. §§ 331, 333(a)(1), alleged in Count One of this Information, defendant ZENG shall forfeit to the United States:

- a. pursuant to 18 U.S.C. § 982(a)(7), all property it obtained that constituted and was derived, directly and indirectly, from gross proceeds traceable to the violation of 21 U.S.C. §§ 331, 333(a)(1); and
- b. pursuant to 21 U.S.C. § 334 and 28 U.S.C. § 2461(c), the value of any and all misbranded drugs and unapproved drugs that were introduced and delivered for introduction into interstate commerce contrary to 21 U.S.C. § 331(k),


the value of which totaled \$6,120.50.

SUBSTITUTE ASSETS PROVISION

2. 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 commingled with other property which cannot be divided without difficulty;

the United States shall be entitled, pursuant to 21 U.S.C. § 853(p) (as incorporated by 28 U.S.C. § 2461(c), and 18 U.S.C. § 982(b)), to forfeiture of any other property of the defendant up to the value of the above-described forfeitable property.


RACHAEL A. HONIG
Acting United States Attorney

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INFORMATION FOR

21 U.S.C. § 331(a)

21 U.S.C. § 333(a)(2)

18 U.S.C. § 2

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