

Presented to the Court by the foreman of the Grand Jury in open Court, in the presence of the Grand Jury and FILED in The U.S. DISTRICT COURT at Seattle, Washington.

AUGUST 20 2009
BRUCE RIFKIN, Clerk
By [Signature] Deputy

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,
Plaintiff,
v.
TOAN LE and HANG HO,
Defendants.

CR09 0284 RSM
CASE NO.

INDICTMENT



The Grand Jury charges that:

09-CR-00284-INDI

COUNT 1

(Conspiracy to Bribe Public Official)

A. The Offense

1. Beginning on or about July 2, 2009, and continuing through on or about July 13, 2009, within the Western District of Washington, TOAN LE and HANG HO did knowingly and willfully combine, conspire, confederate and agree together to commit an offense against the United States, to wit, to directly and indirectly, corruptly give, offer, and promise a thing of value to a public official, with intent to influence an official act, by paying a bribe of eight hundred dollars (\$800.00) to a Consumer Safety Officer of the Food and Drug Administration, an agency of the United States government, with the intent to influence the Consumer Safety Officer's decision

1 regarding the release for entry into the United States of imported cosmetics and medical
2 devices that did not comport with federal requirements, in violation of Title 18, United
3 States Code, Sections 201(b)(1)(A) and 2.

4 **B. The Object of the Conspiracy**

5 2. The object of the conspiracy was to influence and cause an official of the
6 Food and Drug Administration to change her decision regarding the recommendation
7 for detention and mandated destruction or return to the country of origin, of various
8 cosmetics and medical devices that had been imported by TOAN LE and HANG HO
9 into the Western District of Washington, so that the cosmetics and medical devices
10 would instead be released to TOAN LE and HANG HO, and then be available to them
11 to sell to, or to use on, their beauty salon customers.

12 **C. Background**

13 At all times material herein:

14 3. The United States Food and Drug Administration ("FDA"), an agency of
15 the United States government, regulates the manufacture and distribution of medical
16 devices and cosmetics in the United States according to the provisions of the Food,
17 Drug and Cosmetic Act ("FDCA"), Title 21, United States Code, Section 301, *et seq.*

18 4. Primary responsibility for administering United States law relating to
19 import, export and the collection of duties is given to the United States Customs and
20 Border Protection Agency ("CBP"), an agency within the Department of Homeland
21 Security. However, FDA is responsible for determining whether an article offered for
22 importation is in compliance with the FDCA and regulations implementing the same.
23 Pursuant to this responsibility, the FDA is charged with the examination of products,
24 including cosmetics and medical devices, that have been imported into the United
25 States, in order to determine if those cosmetics and medical devices are compliant with
26 the FDCA and relevant regulations. If the cosmetics and medical devices are not
27 compliant, they may be detained and refused entry into the United States by FDA
28 personnel.

1 5. The FDA employs officers with the title of “Consumer Safety Officer”
2 who conduct examinations of imported cosmetics and medical devices to determine
3 whether those products comply with the FDCA and its relevant regulations. If a
4 Consumer Safety Officer (“CSO”) finds that imported products are not in compliance,
5 the CSO will recommend to the FDA Compliance Officer first to detain those goods.
6 The Compliance Officer will then either order them to be destroyed, in the presence of
7 an FDA officer, or to be returned to the country of origin.

8 **D. Manner and Means of the Conspiracy**

9 6. It was part of the conspiracy that TOAN LE is an owner, and HANG HO
10 is an employee of Crystal Nails beauty salon, in Burien, Washington.

11 7. It was part of the conspiracy that TOAN LE and HANG HO purchased,
12 and arranged for the importation of various cosmetic products and also various medical
13 devices into the United States for sale to, and/or commercial use on their beauty salon
14 customers.

15 8. It was part of the conspiracy that some of the cosmetic products that
16 TOAN LE and HANG HO purchased for importation into the United States did not list
17 their component ingredients on their labels, as required by the FDCA and relevant
18 regulations.

19 9. It was part of the conspiracy that some of the medical devices that TOAN
20 LE and HANG HO purchased for importation into the United States were not
21 purchased from manufacturers registered with the FDA; further, that certain of the
22 medical devices emitted radiation and did not comply with the FDCA requirements for
23 radiation-emitting devices.

24 10. It was further part of the conspiracy that TOAN LE and HANG HO
25 arranged for the delivery of the cosmetic products and medical devices to their Crystal
26 Nails beauty salon, in Burien, Washington, once they were released from the importing
27 broker prior to examination by the FDA.
28

1 11. It was further part of the conspiracy that when TOAN LE and HANG HO
2 were advised on July 2, 2009, by FDA CSO T.N., who examined the items on that
3 date at the Crystal Nails beauty salon, that some of the cosmetics and medical devices
4 that TOAN LE and HANG HO had imported into the United States were not in
5 compliance with the FDCA and its regulations, and were subject to detention by the
6 FDA, and further, if the products were detained, that TOAN LE and HANG HO would
7 be required either to destroy those products in the presence of an FDA officer, or
8 return them to the country of origin, TOAN LE and HANG HO initiated jointly their
9 mutual efforts to influence CSO T.N. to change her decision regarding recommending
10 the detention and mandated destruction or return to the country of origin of the subject
11 cosmetics and medical devices, by paying CSO T.N. a cash bribe, to do so.

12 **D. Overt Acts**

13 12. Count 2 of this Indictment is incorporated by reference herein and is
14 alleged as a separate overt act in furtherance of the conspiracy and to accomplish one or
15 more of its objects as if fully set forth herein. In addition, TOAN LE and HANG HO
16 committed the following overt acts within the Western District of Washington, in
17 furtherance of this conspiracy:

18 a. On July 2, 2009, at approximately 2:08 p.m., TOAN LE handed a
19 cell telephone to CSO T.N., while CSO T.N. was still present at the Crystal Nails
20 beauty salon, and told CSO T.N. that his wife, HANG HO, was on the phone. When
21 CSO T.N. explained over the phone to HANG HO which items were subject to
22 detention, and why, HANG HO stated to CSO T.N. that, “[i]f you release everything, I
23 will give you \$500. If you release everything, I will give you \$500.”

24 b. After CSO T.N. had ended the telephone call with HANG HO, but
25 while she was still present and continuing the official FDA examination at Crystal Nails
26 salon on July 2, 2009, TOAN LE approached CSO T.N. several times, asking
27 repeatedly that she “[t]ry to help [him],” and also asked once that she “[t]ry to help me
28 and do what my wife said.”

1 c. On July 2, 2009, at approximately 10:19 p.m., HANG HO placed
2 a telephone call from TOAN LE's cell phone number (206-225-9803), to CSO N.T.'s
3 cell telephone, and left a message that she was HANG, TOAN's wife, and asked that
4 CSO N.T. call her back.

5 d. On July 3, 2009, at approximately 8:34 a.m., TOAN LE or HANG
6 HO made a call to CSO N.T.'s cell telephone from phone number 206-227-2626.

7 e. On July 6, 2009, at approximately 8:31 a.m., HANG HO placed a
8 call to CSO N.T.'s cell telephone from TOAN LE's cell phone number 206-225-9803,
9 and left a voice mail message asking CSO N.T. to call her back on cell phone number
10 206-227-2626.

11 f. On July 6, 2009, at approximately 7:48 a.m., TOAN LE or HANG
12 HO placed a call to CSO N.T.'s cell telephone from phone number 206-227-2626.

13 g. On July 6, 2009, at approximately 10:26 a.m., TOAN LE or
14 HANG HO placed a call to CSO N.T.'s cell telephone from phone number 206-227-
15 2626.

16 h. On July 9, 2009, during a telephone conversation between CSO
17 N.T. and HANG HO, HANG HO repeatedly stated that she would pay \$500 to CSO
18 N.T. if CSO N.T. would release the subject products and allow HANG HO and TOAN
19 LE to keep all the products; and also that TOAN LE would "give the money that I put
20 in an envelope ahead of times; five hundred dollars, you can take and spend it."

21 Later during the same conversation, HANG HO acknowledged understanding that CSO
22 N.T. could lose her job if she received a payment like that offered by HANG HO.
23 Finally, HANG HO offered to pay \$800 to CSO N.T. if CSO N.T. would release all of
24 the products, and stated that TOAN LE would make delivery of the payment that
25 HANG HO would put in an envelope.

26 i. On July 13, 2009, during a telephone conversation between CSO
27 N.T. and TOAN LE, TOAN LE told CSO N.T. that HANG HO had told him that
28 CSO N.T. would "help [them] and we will give you a present," that he knew he was to

1 give "eight" [hundred dollars] to CSO N.T., and that he understood that CSO N.T.
2 could lose her job for the receipt of such a payment. During that same conversation,
3 TOAN LE agreed to meet CSO N.T. on that same day, at a designated location, to
4 make the payment to her.

5 All in violation of Title 18, United States Code, Sections 371, and 2.

6
7 **COUNT 2**

8 **(Bribery of Public Official)**

9 1. The Grand Jury realleges and incorporates as if fully set forth herein the
10 allegations set forth in Paragraphs 1 through 12 of Count 1.

11 2. On or about July 13, 2009, in Tukwila, in the Western District of
12 Washington, TOAN LE and HANG HO did, directly and indirectly, corruptly give,
13 offer, and promise a thing of value to a public official, with intent to influence an
14 official act, in that TOAN LE and HANG HO gave to T.N., a Consumer Safety
15 Officer of the Food and Drug Administration, an envelope containing eight hundred
16 dollars (\$800.00) in cash and currency, with the intent to influence T.N.'s decision, in
17 her official capacity as an FDA Consumer Safety Officer, regarding the release for

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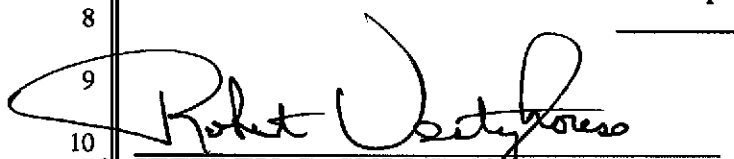
1 entry into the United States of cosmetics and medical devices that did not comport with
2 federal requirements that had been imported into the United States by TOAN LE and
3 HANG HO.

4 All in violation of Title 18, United States Code, Sections 201(b)(1)(A) and 2.

5 A TRUE BILL:

6 DATED: Aug 20 2009

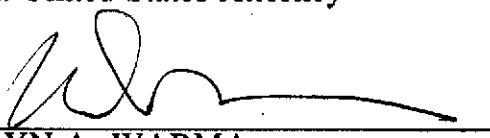
7 Signature of the Foreperson redacted pursuant
8 to the policy of the Judicial Conference

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10 JEFFREY C. SULLIVAN
11 United States Attorney

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13 CARL BLACKSTONE
14 Assistant United States Attorney

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17 Assistant United States Attorney