

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

INDICTMENT

- v. - :

13 Cr.

SHASHI MALHOTRA, and :
FADI KILANI, :

Defendants. :

- - - - - X

COUNT ONE

(Conspiracy to Traffic in Counterfeit Goods)

The Grand Jury charges:

Relevant Persons and Entities

1. At all times relevant to this Indictment, SHASHI MALHOTRA, the defendant, operated Worldwide Auto Parts and S&S International Products and Manufacturing, two automotive parts suppliers and distributors, located in Paterson, New Jersey.

2. At all times relevant to this Indictment, FADI KILANI, the defendant, operated Cypros Trading and Shipping, an automotive parts supplier and distributor, located in Paterson, New Jersey.

Background On The Automotive Parts Market

3. New automobiles sold to consumers are equipped with automotive parts that are manufactured or provided by the automobile's manufacturer (the "Original Equipment Manufacturer" or "OEM"). OEMs in the United States include automobile

manufacturers such as the Ford Motor Company and General Motors, as well as companies, such as Federal Mogul, which contract with automobile manufacturers to produce specific parts. When a consumer needs to replace a part in an automobile, the consumer can generally purchase one of two types of replacement parts: (i) parts made by the OEMs and which are sold under the OEMs' brand names and trademarks ("OEM Parts") or (ii) generic parts made by other manufacturers that are commonly referred to as "aftermarket" parts. Many types of aftermarket parts, including specifically those sold and falsely packaged as OEM Parts by SHASHI MALHOTRA and FADI KILANI, the defendants, do not have to meet independent federal safety standards, and all types of aftermarket parts are regularly bought and sold lawfully as aftermarket parts, typically for lower prices than OEM Parts.

Overview of the Counterfeit Goods Conspiracy

4. Since at least in or about October 2011, up to and including in or about February 2013, SHASHI MALHOTRA and FADI KILANI, the defendants, and others deceptively packaged and caused to be packaged certain aftermarket automotive parts - including brakes, brake pads, brake shoes, ignition coils, water pumps, window regulators, suspension sway bar links, wheel hubs, anti-lock braking sensors, control arm bushings, transmission filters, pitman arms, tie rod ends and suspension air springs - in packaging bearing counterfeit marks purporting to be

authentic marks registered with the United States Patent and Trademark Office by OEMs such as the Ford Motor Company, General Motors, and Federal Mogul (the "Manufacturers") to make it appear that those parts were manufactured by these OEMs when in truth and in fact they were not. MALHOTRA and KILANI sold these parts to individuals and entities that they understood would resell them to the general public and to certain automotive repair shops, including those that service New York City's taxis and limousines (which are subject to separate and regularly scheduled safety testing by the New York City Taxi and Limousine Commission). At various times relevant to this Indictment, MALHOTRA and KILANI caused these deceptively-labeled parts to travel through New York, New York, as they were delivered from MALHOTRA's and KILANI's respective places of business in New Jersey to Long Island City, New York.

5. At various times relevant to this Indictment, including, but not limited to, in or about July 2012, SHASHI MALHOTRA, the defendant, imported and attempted to import from China, among other locations overseas, aftermarket parts and packaging materials bearing counterfeit marks purporting to be authentic marks registered by the Manufacturers with the United States Patent and Trademark Office.

6. At various times relevant to this Indictment, including, but not limited to, in or about November 2012, FADI

KILANI, the defendant, exported and attempted to export to locations overseas, including Saudi Arabia, among other countries, aftermarket parts packaged in materials bearing counterfeit marks purporting to be authentic marks registered by the Manufacturers with the United States Patent and Trademark Office.

7. At various times relevant to this Indictment, SHASHI MALHOTRA and FADI KILANI, the defendants, purchased from and sold to each other aftermarket parts packaged in materials bearing counterfeit marks purporting to be authentic marks registered by the Manufacturers with the United States Patent and Trademark Office.

Statutory Allegations

8. From at least in or about October 2011, up to and including in or about February 2013, in the Southern District of New York and elsewhere, SHASHI MALHOTRA and FADI KILANI, the defendants, and others known and unknown, willfully and knowingly did combine, conspire, confederate, and agree together and with each other to commit an offense against the United States, to wit, to violate Title 18, United States Code, Section 2320(a).

9. It was a part and an object of the conspiracy that SHASHI MALHOTRA and FADI KILANI, the defendants, and others known and unknown, intentionally and knowingly would and did

traffic in goods and services, and would and did knowingly use a counterfeit mark on and in connection with such goods and services, and would and did intentionally and knowingly traffic in labels, patches, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases, hangtags, documentation and packaging of a type and nature, knowing that a counterfeit mark had been applied thereto, the use of which was likely to cause confusion, to cause mistake, and to deceive, in violation of Title 18, United States Code, Section 2320(a).

Overt Acts

10. In furtherance of the conspiracy and to effect the illegal object thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:

a. On or about August 20, 2012, SHASHI MALHOTRA, the defendant, delivered a quantity of brake pads packaged in materials bearing counterfeit Ford Motorcraft marks through New York, New York to an individual located in Long Island, City, New York.

b. On or about July 14, 2012, FADI KILANI, the defendant, employed a delivery driver to deliver a quantity of ignition coils packaged in materials bearing counterfeit Ford Motorcraft marks through New York, New York to an automotive parts distributor located in Long Island City, New York.

c. On or about October 4, 2012, SHASHI MALHOTRA and FADI KILANI, the defendants, discussed, by phone, the purchase of tie rods bearing counterfeit Ford Motorcraft marks.

(Title 18, United States Code, Section 371.)

COUNT TWO
(Trafficking in Counterfeit Goods)

The Grand Jury further charges:

11. The allegations contained in paragraphs 1 through 7 and 10 of this Indictment are repeated and re-alleged as if fully set forth herein.

12. From at least in or October 2011, up to and including in or about February 2013, in the Southern District of New York and elsewhere, SHASHI MALHOTRA and FADI KILANI, the defendants, intentionally and knowingly did traffic in goods and services, and did knowingly use a counterfeit mark on and in connection with such goods and services, and did intentionally and knowingly traffic in labels, patches, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases, hangtags, documentation and packaging of a type and nature, knowing that a counterfeit mark had been applied thereto, the use of which was likely to cause confusion, to cause mistake, and to deceive, to wit, MALHOTRA and KILANI packaged and thereafter sold certain aftermarket automotive parts, including brakes, brake pads, and ignition coils, in

packaging bearing counterfeit marks purporting to be authentic marks registered by certain automotive manufacturers with the United States Patent and Trademark Office.

(Title 18, United States Code, Sections 2320(a) and 2.)

FORFEITURE ALLEGATION
(As to Counts One and Two)

13. As a result of committing one or more of the offenses alleged in Counts One and Two of this Indictment, SHASHI MALHOTRA and FADI KILANI, the defendants, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 981(a)(1)(C), and Title 28, United States Code, Section 2461, any property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the offenses, and pursuant to Title 18, United States Code, Sections 2320(c) and 2323(b), any article, the making or trafficking of which is prohibited by Title 18, United States Code, Section 2320(a), and any property used, or intended to be used, in any manner or part to commit or facilitate the commission of the offenses, including but not limited to the following:

a. All right, title, and interest in items belonging to Cypros Trading and Shipping in shipping container number UACU5073389 officially seized by U.S. Customs and Border Protection at Newark, New Jersey on or about January 9, 2013.

b. All right, title, and interest in 94 Fulton Street, Second Floor, Paterson, New Jersey 07501.

c. All right, title, and interest in 250 East 17th Street, Paterson, New Jersey 07524.

d. All right, title, and interest in 35-01 Vernon Boulevard, Astoria, New York 11106.

Substitute Asset Provision

14. If any of the above-described forfeitable property, as a result of any act or omission of the defendants:

a. cannot be located upon the exercise of due diligence;

b. has been transferred or sold to, or deposited with, a third person;

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 subdivided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), and Title 28, United States Code, Section 2461(c), to seek forfeiture of any other property of SHASHI MALHOTRA and FADI KILANI, the defendants, up to the value of the above forfeitable property.

(Title 18, United States Code, Section 981; Title 21, United States Code, Section 853; and Title 28, United States Code, Section 2461.)


FOREPERSON


PREET BHARARA
United States Attorney

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(18 U.S.C. §§ 371, 2320(a) and 2.)

PREET BHARARA
United States Attorney.

A TRUE BILL



Foreperson.
