

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA

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CRIMINAL NO. 14-035

v.

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SECTION: "G"

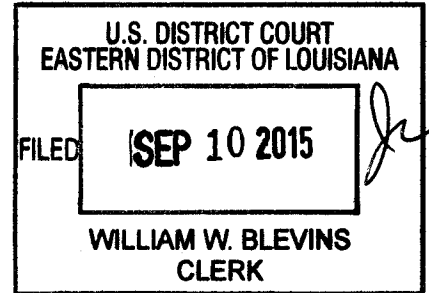
THE BRINSON COMPANY

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FACTUAL BASIS



The defendant, **THE BRINSON COMPANY** (hereinafter, "TBC"), has agreed to plead guilty as charged to the Fourth Superseding Bill of Information now pending against it, charging **TBC** with violating Title 18, United States Code, Section 371, by conspiring to violate Title 18, United States Code, Section 2319(b)(1) and Title 17, United States Code Sections 506(a)(1)(A), 1201(a)(1)(A), and 1204(a)(1). Both the government and the defendant, **TBC**, do hereby stipulate and agree that the following facts set forth a sufficient factual basis for the crime to which **TBC** is pleading guilty. The Government and **TBC** further stipulate that the Government would prove, through the introduction of competent testimony and admissible, tangible exhibits, the following facts, beyond a reasonable doubt, to support the allegations in the Fourth Superseding Bill of Information now pending against **TBC**.

Mercedes-Benz and the Star Diagnostic System

The Government would present testimonial evidence, including testimony from Special Agents from the Federal Bureau of Investigation ("FBI"), Daimler AG and Mercedes-Benz USA ("MBUSA"), as well as documentary evidence, 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 autom

Fee _____
 Process _____
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 CtRmDep _____
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Daimler AG produced, and MBUSA distributed in the United States, automotive parts and equipment for both commercial and consumer use.

The Government would further establish, through the testimony of employees of Daimler AG and MBUSA, as well as documentary evidence, that Daimler AG produced the Star Diagnostic System (“SDS”), a portable computer designed to aid in the diagnosis of automotive systems with electronic controls and interfaces. Since at least June 2004, 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 software programs created by Mercedes-Benz to diagnose and repair Mercedes-Benz automobiles. Daimler AG also distributed regular software updates to authorized SDS users. The SDS software also sought to prevent unauthorized access to or use of the software by requiring the input of an alpha-numeric code sequence (a “key” or “license key”) to “unlock” the software.

Representatives of Daimler AG and MBUSA would provide testimony to establish that the software contained within the SDS and software updates constituted original works of authorship created and developed by Daimler AG that were fixed in a tangible medium of expression, now known or later developed, from which they could be perceived, reproduced, or otherwise communicated, either directly or the aid of a machine or device. As such the SDS software and software updates were protected by copyright laws of the United States. *See* 17 U.S.C. § 102(a). Consequently, Daimler AG enjoyed the exclusive right to copy, distribute, and make certain other uses of the SDS software and software updates.

The Government would further introduce documentary evidence that in order to purchase

or lease an SDS from MBUSA, a purchaser or lessee had to execute a license agreement that governed the usage and distribution of the SDS and the SDS software. The license agreement stipulated that the software on the SDS was “confidential, proprietary, trade secret information” and that recipients of a license were prohibited from transferring, assigning, or providing the software to others without authorization from Daimler AG or MBUSA.

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 a 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.

The Parties

Self-authenticating records from the Louisiana Secretary of State would be introduced to establish that **TBC** was a business located in Harahan, Louisiana, that specialized in the sale of replacement parts for Mercedes-Benz automobiles. Additionally, **TBC** sold diagnostic equipment for automobiles, including diagnostic equipment for Mercedes-Benz automobiles. Neither **TBC**, nor any of its employees, agents, or partners obtained a license to maintain, modify, resell, or distribute the SDS or SDS software.

The Government would introduce documentary evidence, including business records from the State of North Carolina, that Company A was a Durham, North Carolina-based company owned by R. B. Company A sold, among other things, specialized in the sale of remanufactured Mercedes-Benz parts and equipment.

The Government would introduce documentary evidence, including business records from the State of California, that Company B was a Rancho Palos Verdes, California-based company owned by M.V. Company B provided a membership-only website to share information relating to the repair of automobiles, included Mercedes-Benz automobiles. M.V. also 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, M.V. and others lectured on matters related to the repair of Mercedes-Benz automobiles. **TBC** regularly provided money to serve as a “sponsor” for the seminars, which served as a way to build **TBC**’s customer base and to advertise and sell **TBC**’s products, including unlicensed, non-authentic SDS units.

The Conspiracy to Sell Copyright-Infringing SDS

The Government would introduce documentary evidence, including business records and e-mail correspondence, that beginning in about 2001, **TBC**, in conjunction with Company A, began developing, manufacturing, and making available for sale non-authentic, unauthorized SDS units. Company A and **TBC** agreed that they would purchase specific, previously agreed-upon models of laptop computers to serve as the SDS units and install modified and duplicated SDS proprietary software created by Daimler AG onto the computers.

The Government would introduce documentary evidence and present eyewitness testimony that Company A was responsible for creating hardware later incorporated into non-authentic SDS units, including a “black box” that served the role of multiplexer.

The Government would introduce documentary evidence and present eyewitness testimony that in about 2004, M.V. learned that **TBC** and Company A were manufacturing and selling non-authentic SDS units. Shortly thereafter, Company B began working collaboratively

with **TBC** and Company A to manufacture and sell black boxes, and non-authentic SDS units. After M.V. and Company B became involved, principals of **TBC**, Company A and Company B would regularly discuss the type of computer they would use to create non-authentic SDS units and the price at which they should sell the non-authentic SDS units.

Documentary evidence would be introduced to show that a part of **TBC**'s "sponsorship" of M.V.'s seminars, **TBC** received space in the seminar room to advertise and sell non-authentic SDS units. Representatives of **TBC**, occasionally participated in the seminars as well.

Documentary evidence, including email correspondence, eyewitness testimony, and the testimony of representatives from MBUSA would be introduced to establish that not later than June 2010, Company A, Company B, and **TBC** began purchasing software for the non-authentic SDS units, as well as updates and "patches" for the software, from J.C. an individual who resided in the United Kingdom. **TBC** paid J.C. to manipulate Daimler AG's proprietary SDS software to make it operate on laptop computers without Daimler AG's authorization or license. **TBC** obtained, without authorization from MBUSA or Daimler AG, updates to pre-existing versions of Mercedes-Benz proprietary software for the non-authentic SDS units on storage media such as CDs, DVDs, and laptop computer hard drives. After receiving new software or updates, employees of **TBC** made copies of the discs and shared them with Company A and Company B. When problems arose with the manipulated software for the non-authentic SDS units that required sophisticated analysis, employees of **TBC** worked with J.C. to fix the problem.

Documentary evidence including email correspondence, would be introduced to demonstrate that representatives of **TBC**, Company A, Company B, J. C., and others discussed how to overcome measures Daimler AG continued to implement on updates to its factory-made SDS software "as a direct result of cracks and fixes" that J.C. made as a result of requests made by

TBC, Company A and Company B in the aforementioned conspiracy. Representatives of **TBC**, Company A, Company B and J.C. further discussed how to keep secret from Daimler AG and MBUSA their manipulation of genuine SDS software, as well as their manufacturer and sale of non-authentic SDS units. The Government would further introduce documentary evidence, including invoices and order logs, as well as the testimony of eyewitnesses, that **TBC**, Company A and Company B, used non-specific terms such as “diagnostic,” “Misc. Dell,” and “Misc. Rebuilt Control Unit” in their invoices and bills documenting the sale of non-authentic SDS units.

The Government would further introduce documentary evidence and testimony from eyewitnesses and Special Agents with Federal Bureau of Investigation that on about June 16, 2012, upon learning that Daimler AG had notified J.C. that his conduct was in violation of civil and / or criminal laws, a principal of Company B sent an email to principals of Company A, **TBC**, and others concerning a plan to have J.C. “Go underground and off the radar,” but continue to provide assistant and support in the production of non-authentic SDS units. After J.C. stopped providing **TBC** with software and components necessary to manufacture and sell non-authentic SDS units **TBC** began purchasing software and components for non-authentic SDS units from one or more companies located in China.


TBC continued to manufacture, offer for sale, and distribute non-authentic SDS units and SDS software updates.

The Government would further introduce documentary evidence that between about 2001 and not later than December 2013, Company A, Company B and **TBC** sold the non-authentic SDS units for up to approximately \$11,000 each, depending on market demand and other factors. The Government would introduce records, invoices and eyewitnesses testimony that **TBC** sold not fewer than approximately 725 non-authentic SDS units and non-authentic SDS software updates,


and Company B sold not fewer than 95 non-authentic SDS units, including at least 10 copies that were reproduced and distributed during a 180-day period.

The above facts come from an investigation conducted by, and would be proven at trial by testimony from, Special Agents from the FBI, representatives of Daimler AG and MBUSA, eyewitnesses, and documents and tangible exhibits in the custody of the Federal Bureau of Investigations.


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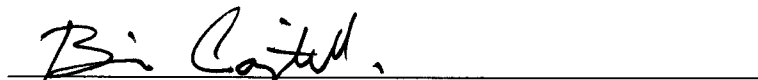
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