

A\* JAN 25 2006

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

2006 JAN 25 AM 9:47

UNITED STATES OF AMERICA,

Plaintiff

vs.

GREG J. COSSMAN,

Defendant

Case Number:

**1106CR 0014**

INFORMATION

18 U.S.C. § 1349

**SPIEGEL**

The United States Attorney for the Southern District of Ohio charges that:

COUNT 1

**Conspiracy to Commit Mail and Wire Fraud**

**18 U.S.C. § 1349**

A. General Allegations

1. Berkeley Premium Nutraceuticals, Inc. ("BPN"), based in Cincinnati, Ohio in the Southern District of Ohio, is in the business of nationwide marketing, distribution, and sale of herbal supplements and vitamins, also known as nutraceuticals. BPN markets its products by using national media including magazine, radio, internet, and television advertising.

2. The defendant, **GREG J. COSSMAN**, was employed with BPN or its predecessor or subsidiary companies (hereafter collectively referred to as "BPN") in various capacities from about February 2002 until about March 2005, including in the capacity as President of BPN from about February 2002 until about December 2002.

**B. The Conspiracy**

3. From at least as early as February 2002, and continuing until about March 2005, in the Southern District of Ohio and elsewhere, the defendant, **GREG J. COSSMAN**, did unlawfully, knowingly, and willfully combine, conspire, confederate, and agree with other persons to commit, among other crimes, mail and wire fraud, 18 U.S.C. §§ 1341 and 1343, in violation of 18 U.S.C. § 1349.

**C. The Scheme to Defraud**

4. From at least as early as June 2001, and continuing up to and including the date of this Information, within the Southern District of Ohio and elsewhere, the defendant, **GREG J. COSSMAN**, and his co-conspirators (hereafter “the conspirators”) knowingly devised and intended to devise a scheme and artifice to defraud and to obtain money and property from thousands of consumers by means of false and fraudulent pretenses, representations, and promises.

**D. Execution of the Scheme**

5. In execution of the scheme to defraud, the conspirators knowingly and unlawfully used and caused others to use the U.S. Mail in various ways, including to advertise and promote BPN products for sale, to ship products to consumer victims, for product returns, and for other correspondence required by the conspirators from consumer victims purportedly to obtain a refund or credit, in violation of 18 U.S.C. §§ 1341 and 2; and used interstate telephone, wire, and radio communications in various ways, including to advertise and promote BPN products for sale, to make fraudulent telephone and internet sales and to make wire transfers of funds obtained pursuant to the scheme, and to induce and cause consumer victims to use interstate facsimile communications and telephone communications to seek refunds or credits for products they did not order and to fax credit card statements, doctors’ statements, and other documents required by the conspirators from consumer victims purportedly to obtain a refund or credit, in violation of 18 U.S.C. §§ 1343 and 2.

**E. Purpose and Operation of the Conspiracy**

6. The purpose and operation of the conspiracy, and its manner and means, included but were not limited to:

- a. designing and using advertisements containing materially false representations such as false medical claims, false doctor endorsements, false money-back guarantee promises and false surveys and other statistical claims;
- b. instructing the sales staff of BPN to not disclose or to make material misrepresentations to consumers about, among other things, the effectiveness of the product, the satisfaction rates, the auto-ship program, the return policy, and the money-back guarantee;
- c. designing and implementing an automatic bill program that would bill consumers without their knowledge or consent, and misrepresenting to consumers the terms of the auto-ship program;
- d. charging the credit cards of thousands of consumers without their authorization, knowledge, or consent;
- e. providing consumers with the name of a fictitious director of customer care;
- f. utilizing numerous schemes to promote refunds such as "Double Your Money Back" and "Triple Your Money Back," with no intention of providing such refunds to any consumers that sought them;
- g. utilizing a general scheme to delay refunds by various means in order to retain consumer funds for an extended period of time;

- h. implementing a "12-month money back guarantee" program and then providing consumers with numerous hurdles so obtaining such a refund was difficult, if not impossible;
- i. implementing a "Decline/Recovery" scheme whereby credit card expiration dates and credit card numbers were altered in order to charge consumers' credit card without the consumer's permission; and
- j. implementing numerous sales posting schemes to falsely inflate the number of sales transactions in order to cause the corresponding ratio of credit card chargebacks from disputed credit card charges to appear lower than, in fact, it was, thus allowing BPN to stay within the maximum chargeback percentage allowed by its merchant bank accounts and to continue the unauthorized charging of consumers' credit cards.

**F. Overt Acts**

7. In furtherance of the conspiracy and to effect the objects of the conspiracy, the following overt acts, among others, were committed by one or more of the conspirators in the Southern District of Ohio and elsewhere:

- a. at various times between the period of about February 2002 to about March 2005, in the Southern District of Ohio, the defendant, **GREG J. COSSMAN**, caused to be placed in the U.S. Mail and to be sent via facsimile, account applications to various brokers for credit card processors, or to the processors themselves, which applications were completed by the defendant, **GREG J. COSSMAN**, and which he had another co-conspirator sign, for approval of merchant accounts for credit

card processing, and which applications contained false statements and representations including, among other things, that the signing co-conspirator was the 100% owner of BPN when, as the defendant and his co-conspirators well knew, such representations were false; and

- b. from at least as early as June 2002 and continuing until about March 2005, the defendant, **GREG COSSMAN**, along with other co-conspirators, supervised and participated in the unauthorized charging of and then crediting back various amounts, or splitting sales into two or more separate transactions, on thousands of consumers' credit cards, for the purpose of falsely inflating the number of BPN sales transactions in order to reduce the ratio of chargebacks from disputed credit card sales, so that BPN would stay within the maximum chargeback percentage allowed by its merchant bank accounts.

All in violation of 18 U.S.C. § 1349.

#### **FORFEITURE**

The allegations in Count 1 of this Information are realleged as if fully set forth here, for the purpose of alleging forfeiture.

Upon the defendant's conviction of Count 1 of this Information, the defendant shall forfeit to the United States pursuant to 18 U.S.C. § 982(a)(2), any property constituting, or derived from, proceeds the defendant obtained directly or indirectly, as the result of such violation, including, but not limited to, a money judgment in the amount of \$1,000,000, representing the amount of proceeds he obtained as a result of the offense, conspiracy to commit mail fraud and wire fraud.

If any property subject to forfeiture under 18 U.S.C. § 982(a)(2) for any such offense, 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 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;

then it is the intent of the United States, pursuant to 21 U.S.C. § 853(p), as incorporated by 18 U.S.C. § 982(b)(1), to seek forfeiture of any other property of the defendant up to the value of \$1,000,000.

GREGORY G. LOCKHART  
United States Attorney

  
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RALPH W. KOHNEN  
Deputy Criminal Chief