

1 KEVIN V. RYAN (CASBN 118321)
United States Attorney

FILED
MAR 10 2006
RICHARD W. WIEKING
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

11
12 UNITED STATES OF AMERICA,)
13 Plaintiff,)
14 v.)
15 YE TENG WEN,)
aka Michael Wen, and)
16 HAO HE,)
aka Kevin He,)
17 Defendants.)

No. CR 05-00641-RMW
VIOLATIONS: 18 U.S.C. § 371 -
Conspiracy to Commit Criminal Copyright
Infringement and to Traffic in Counterfeit
Labels; 17 U.S.C. § 506(a)(1)(A), 18 U.S.C.
§ 2319(b)(1) - Criminal Copyright
Infringement; 18 U.S.C. §§ 2318(a),
2318(c)(3) - Trafficking in Counterfeit
Labels; 17 U.S.C. § 506(b), 18 U.S.C.
§ 2318(d) - Criminal Trademark Violations;
18 U.S.C. § 506 - Counterfeiting
Department Seal; 17 U.S.C. §§ 506(b) and
509(a) - Criminal Forfeiture and
Destruction; 18 U.S.C. § 2 - Aiding and
Abetting

20
21 SAN JOSE VENUE

22 SUPERSEDING INFORMATION

23 The United States Attorney charges:

24 I. INTRODUCTION

25 At all times relevant to this Superseding Information:

26 Pirating Conspiracy

27 1. Defendants and others conspired and were engaged in the unauthorized
28 duplication and reproduction of copyrighted software and music in violation of federal copyright

laws. The defendants, serving as replicators, were actively engaged in the mass unauthorized replication and supply of copyrighted works which were distributed through the retail level.

Copyrighted Software and Music

2. The replication conspiracy involved the mass unauthorized reproduction of a variety of copyrighted works, including but not limited to Symantec Software, such as Norton Anti-Virus 2005®, Norton Internet Security 2005®, Norton PC Anywhere®, Adobe Photoshop CS®, and music from numerous artists primarily in the Spanish language.

Defendants

3. Defendant YE TENG WEN, aka Michael Wen, served as a replicator. In this position, he requested and obtained an unauthorized supply of copyrighted works for reproduction and distribution for private financial gain and commercial advantage.

4. Defendant HAO HE, aka Kevin He, served as a replicator, and was a partner of defendant WEN in the mass unauthorized reproduction of copyrighted works.

COUNT ONE: (18 U.S.C. § 371 - Conspiracy to Commit Criminal Copyright Infringement and to Traffic in Counterfeit Labels)

5. The allegations in paragraphs one through four are realleged and incorporated herein as if set forth in full.

6. Beginning at a time unknown, but not later than in or about September 2003, and continuing thereafter up to and including October 6, 2005, in the Northern District of California, and elsewhere, defendants,

YE TENG WEN,
aka Michael Wen,
and
HAO HE,
aka Kevin He,

and others, did knowingly agree, combine, and conspire to commit offenses against the United States, that is:

- a. Criminal infringement of a copyright by reproducing and distributing at least ten infringing copies of one or more copyrighted works, without the authorization of the copyright holder, with a total retail value of more than \$2,500, during a 180-day period, for purposes of private financial gain and commercial advantage, in violation of Title 17, United States Code, Section 506(a)(1)(A), and Title 18, United States Code, Section 2319(b)(1);

- 1 b. Knowingly trafficking in counterfeit labels affixed and designed to be affixed to
2 copies of audiovisual works, each of which were copies of a copyrighted work, all
3 in violation of Title 18, United States Code, Sections 2318 and 2.

4 II. MANNER AND MEANS OF THE CONSPIRACY

5 In furtherance of the conspiracy, defendants and others employed the following manner
6 and means, among others:

7 Copyright Infringement

8 7. It was a part of the conspiracy that the conspirators obtained unauthorized copies
9 of copyrighted works, including software and music, all the while knowing that they did not own
10 the copyrighted works they replicated; further, the conspirators did not have license, permission,
11 or other authority from the owners of those copyrighted works to reproduce and distribute them.

12 8. It was a part of the conspiracy that the conspirators obtained and used more than
13 one thousand stampers for the mass reproduction and distribution of copyrighted software and
14 music.

15 9. It was a part of the conspiracy that the conspirators reproduced and distributed
16 more than 300,000 compact discs (CDs) containing copyrighted software and music.

17 Distinct Conspiracy Roles

18 10. It was further a part of the conspiracy that the replication conspiracy consisted of a
19 highly structured, hierarchal organization of individuals organized for the purpose of reproducing
20 and distributing copyrighted software and music in violation of federal copyright law. The
21 conspirators fulfilled distinct roles which served to promote the success of the replication
22 conspiracy from the supply of the unauthorized reproduction of the copyrighted work to the retail
23 sale. While some members held multiple roles, other members were responsible for one role
24 each. Some of the distinct roles included, but were not limited to, the following:

25 a. “Replicator” - The replicator produced a substantial supply of a
26 copyrighted work for reproduction and distribution. The replicator typically obtained a
27 “stamper” (or mold) which contained the copyrighted work (music or software) to be pressed
28 onto a CD. The replicator used the stamper in a replication machine for the unauthorized mass
29 reproduction of the copyrighted work. The replicator used a silk screening machine to complete

the artwork onto the replicated CDs.

1 b. “Broker” - The broker solicited orders of unauthorized copyrighted works
2 (including CDs and Digital Versatile Discs (DVDs)) from retailers or other entities, and ordered
3 the reproduction of the infringed item for distribution. The broker typically worked with the
4 replicator on the production of the order for the unauthorized copyrighted works.

5 c. “Assembler/Packager” - The assembler/packager assembled the final CD
6 or DVD package for retail distribution and sale, including the CD/DVD case, labels, inserts, and
7 booklets. The labels, inserts, and booklets often contained counterfeit and unauthorized
8 copyrighted photographs and trademarks that served to make the CD/DVD appear as a genuine
9 production. Upon final assembly, the CDs/DVDs were sent to the distributor.

10 d. “Printer” - The printer produced high quality print media for use in the
11 packaging of CDs/DVDs. Artwork for the CD/DVD labels, inserts, and booklets was provided
12 to the printer at times by the assembler/packager and at other times by the broker.

13 e. “Distributor” - The distributor stored and delivered the completed
14 unauthorized copyrighted works to the retail store or consumer.

15 f. “Retail Store/Consumer” - The retail store/consumer provided a
16 distribution outlet to a customer and included a fixed location music/video store and also a flea
17 market vendor.

18 Unique Tracking Numbering System

19 11. It was further a part of the conspiracy that the defendants often assigned a unique
20 tracking number to identify the job and unauthorized copyright works. The tracking number was
21 often patterned on the Inner Mirror Band (IMB) number placed on a CD or DVD during the
22 replication process. For example, the unauthorized CD entitled “Abba vs. BeeGees” was labeled
23 with the tracking number “LMG-001” on the inner mirror band of the CD.

24 12. It was further a part of the conspiracy that on some occasions the defendants used
25 IMB numbers for counterfeit Adobe and Norton products.

26 //

27 //

Counterfeit Labeling

1 13. It was further a part of the conspiracy that unauthorized reproductions were
2 assembled and distributed with counterfeit labels, including the unauthorized use of the copyright
3 symbol, trademarks, bar code print, and other misleading marks, to deceive customers and others
4 into believing the unauthorized product was genuine and legitimate. Some of the counterfeit
5 labels included the FBI Anti-Piracy Warning, stating "Unauthorized copying is punishable under
6 federal law," and bearing the seal of the FBI with an Anti-Piracy banner superimposed over the
7 seal. Some of the counterfeit labels contained the false statement: "Manufactured and
8 Distributed by Universal Music & Video Distribution."

Compensation

9
10 14. It was further a part of the conspiracy that the conspirators reproduced and
11 distributed the copyrighted works for private financial gain and commercial advantage, and for
12 distribution to retailers and consumers.

13 15. It was further a part of the conspiracy that the conspirators were often
14 compensated in cash to avoid the creation of records of the illegal transactions.

15 16. It was further a part of the conspiracy that conconspirators paid others for various
16 services in the replication conspiracy including for stampers, production, assembly, and other
17 services connected with reproduction and distribution of copyrighted software and music.

18 III. OVERT ACTS

19 17. In furtherance of the conspiracy, and to effectuate its objects, defendant YE TENG
20 WEN, aka Michael Wen, committed overt acts in the Northern District of California and elsewhere,
21 including:

22 a. On or about December 7, 2004, defendant YE TENG WEN, aka Michael
23 Wen, provided approximately 14 CDs, 12 containing music in the Spanish language, and two CDs
24 containing Norton Anti-Virus 2005® and Norton Internet Security 2005®, for the purpose of the
25 unauthorized reproduction and distribution of the copyrighted works.

26 b. On or about December 11, 2004, defendant YE TENG WEN, aka Michael
27 Wen, instructed a person to remove International Federation of the Phonographic Industry (IFPI)
28

1 numbers in order to conceal WEN's involvement in the unauthorized reproduction of Norton
 2 Internet Security 2005®, Norton Anti-Virus 2005®, and approximately twelve other titles.

3 c. On or about April 15, 2005, defendant YE TENG WEN, aka Michael Wen,
 4 received approximately 30 CD masters, all of which contained Spanish language music.

5 18. In furtherance of the conspiracy, and to effectuate its objects, defendant HAO HE,
 6 aka Kevin He, committed overt acts in the Northern District of California and elsewhere, including:

7 a. On or about February 4, 2005, defendant HAO HE, aka Kevin He, requested
 8 and received approximately 17 CD masters, all of which contained Spanish language music.

9 b. On or about June 26, 2005, defendant HAO HE, aka Kevin He, provided
 10 approximately six CDs, containing music in the Spanish language, for the purpose of the
 11 unauthorized reproduction and distribution of the copyrighted works.

12 All in violation of Title 18, United States Code, Section 371.

13 **COUNT TWO:** (17 U.S.C. § 506(a)(1)(A), 18 U.S.C. §§ 2319(b)(1) and 2 - Criminal Copyright
 14 Infringement By Electronic Means, and Aiding and Abetting)

15 19. On or about October 6, 2005, in the Northern District of California, and elsewhere,
 16 defendants,

17 YE TENG WEN,
 18 aka Michael Wen,
 19 and
 20 HAO HE,
 21 aka Kevin He,

22 did willfully infringe the copyrights of copyrighted works, that is, software as set forth below, for
 23 purposes of commercial advantage and private financial gain, by the reproduction and distribution,
 24 during a 180-day period, of ten or more copies of one or more of the copyrighted works, which had
 25 a total retail value of more than \$2,500:

Software Title	Copyright Owner	Approximate Quantity
Norton Internet Security 2005®	Symantec Corporation	500
Norton Anti-Virus 2005®	Symantec Corporation	1,100
Norton PC Anywhere 2005®	Symantec Corporation	850

1 All in violation of Title 17, United States Code, Section 506(a)(1)(A), and Title 18, United
2 States Code, Sections 2319(b)(1) and 2.

3 COUNT THREE: (18 U.S.C. §§ 2318(a), 2318(c)(3), and 2 - Trafficking in Counterfeit Labels, and
4 Aiding and Abetting)

5 20. On or about October 6, 2005, in the Northern District of California, and elsewhere,
6 defendants,

7 YE TENG WEN,
8 aka Michael Wen,
9 and
10 HAO HE,
11 aka Kevin He,

12 did knowingly traffic in counterfeit labels affixed and designed to be affixed to copies of a motion
13 picture or other audiovisual work, each of which were copies of a copyrighted work, specifically,
14 approximately 1,100 counterfeit labels for Norton Anti-Virus 2005®.

15 All in violation of Title 18, United States Code, Sections 2318(a), 2318(c)(3), and 2.

16 COUNT FOUR: (17 U.S.C. § 506(b), 18 U.S.C. §§ 2318(d) and 2 - Criminal Trademark Violations,
17 and Aiding and Abetting)

18 21. On or about October 6, 2005, in the Northern District of California, and
19 elsewhere, defendants,

20 YE TENG WEN,
21 aka Michael Wen, and
22 HAO HE,
23 aka Kevin He,

24 did intentionally traffic in goods, namely anti-virus software compact disks, knowingly using on or
25 in connection with such goods or services a counterfeit mark, that is, marks depicting
26 the names Norton AntiVirus 2005, Norton Internet Security 2005, Norton pcAnywhere 2005, which
27 counterfeit marks were identical to and substantially indistinguishable from genuine marks in use
28 and registered for those goods on the principal register of the United States Patent and Trademark
Office, the use of which counterfeit mark was likely to cause confusion, to cause mistake, and to
deceive.

All in violation of Title 17, United States Code, Section 506(b), and Title 18, United States
Code, Sections 2318(d) and 2.

1 COUNT FIVE: (18 U.S.C. § 506(a)(1) - Counterfeiting Department Seal)

2 22. On or about October 6, 2005, in the Northern District of California, and
3 elsewhere, defendants,

4 YE TENG WEN,
aka Michael Wen,
5 and
6 HAO HE,
aka Kevin He,

7 did falsely make, forge, and counterfeit the seal of the Federal Bureau of Investigation of the
8 United States Department of Justice, that is, the Federal Bureau of Investigation Anti-Piracy Seal,
9 affixing it to compact discs of musical works.

10 All in violation of Title 18, United States Code, Section 506(a)(1).

11 FORFEITURE ALLEGATION: (17 U.S.C. §§ 506(b) and 509(a) - Criminal Forfeiture and
12 Destruction)

13 23. As a result of the offenses alleged in Counts Two through Five of this indictment,
14 defendants,

15 YE TENG WEN,
aka Michael Wen,
16 and
17 HAO HE,
aka Kevin He,

18 shall forfeit to the United States, pursuant to Title 17, United States Code, Sections 506(b) and
19 509(a), all copies manufactured, reproduced, distributed, sold, or otherwise used, intended for
20 use, or possessed with intent to use in violation of the offense under Section 506(a), and all
21 plates, molds, matrices, masters, tapes, film negatives, or other articles by means of which such
22 copies may be reproduced, and all electronic, mechanical, and other devices for manufacturing,
23 reproducing, and assembling such copies, including but not limited to the items listed below:

- 24 1. KraussMaffei, Replication Machine, Model 80-190 CD, Serial Number: 84306
- 25 2. TCM, Silk Screening Machine, Model CDP-503, Tung Han Technology Co., Ltd.,
NSN
- 26 3. SATO, Barcode Printer, Model CL408e, Serial Number: 45590083
- 27 4. DVD 6 Bay, Replicators, No Brand, NSN
- 5. DVD 6 Bay, Replicators, No Brand, NSN
- 6. DVD 6 Bay, Replicators, No Brand, NSN

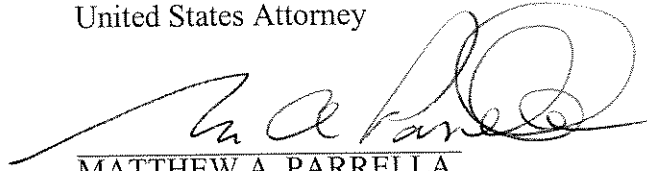
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- 7. Chiller, Unknown Brand, NSN
- 8. Forklift, Unknown Manufacturer

DATED: 3/10/06

KEVIN V. RYAN
United States Attorney



MATTHEW A. PARRELLA
Chief, San Jose Branch Office

(Approved as to form: 
AUSA MARK L. KROTOSKI

(Approved as to form: 
AUSA MATTHEW A. LAMBERTI

DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT

BY: COMPLAINT INFORMATION INDICTMENT
 SUPERSEDING

OFFENSE CHARGED

See attached sheet.

- Petty
- Minor
- Misdemeanor
- Felony

PENALTY:

See attached sheet.

PROCEEDING

Name of Complainant Agency, or Person (& Title, if any)
Special Agent Mark Barfield--Federal Bureau of Investigation

person is awaiting trial in another Federal or State Court, give name of court

this person/proceeding is transferred from another district per (circle one) FRCrP 20, 21 or 40. Show District

this is a re prosecution of charges previously dismissed which were dismissed on motion of:

U.S. Att'y Defense

SHOW DOCKET NO.

CR 05-00641

MAGISTRATE CASE NO.

this prosecution relates to a pending case involving this same defendant

prior proceedings or appearance(s) before U.S. Magistrate regarding this defendant were recorded under

Name and Office of Person
Furnishing Information on
THIS FORM

KEVIN V. RYAN

U.S. Att'y Other U.S. Agency

Name of Asst. U.S. Att'y
(if assigned)

MARK L. KROTOSKI

Name of District Court, and/or Judge/Magistrate Location
NORTHERN DISTRICT OF CALIFORNIA

DEFENDANT - U.S.

YE TENG WEN and HAO HE

DISTRICT COURT NUMBER

CR 05-000641 RMW

FILED
MAR 10 2006
RICHARD W. WIEKING
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DEFENDANT

IS NOT IN CUSTODY

- 1) Has not been arrested, pending outcome this proceeding. If not detained give date any prior summons was served on above charges
- 2) Is a Fugitive
- 3) Is on Bail or Release from (show District)

IS IN CUSTODY

- 4) On this charge
 - 5) On another conviction
 - 6) Awaiting trial on other charges
- } Fed'l State
- If answer to (6) is "Yes", show name of institution

Has detainer been filed? Yes No

} If "Yes" give date filed

DATE OF ARREST

Month/Day/Year

Or... if Arresting Agency & Warrant were not

Month/Day/Year

DATE TRANSFERRED TO U.S. CUSTODY

This report amends AO 257 previously submitted

ADDITIONAL INFORMATION OR COMMENTS

PROCESS:

SUMMONS NO PROCESS* WARRANT Bail Amount: _____

If Summons, complete following:

Arraignment Initial Appearance

Defendant Address: _____

**Where defendant previously apprehended on complaint, no new summons or warrant needed, since Magistrate has scheduled arraignment*

Date/Time: _____

Before Judge: _____

Comments: _____

**ATTACHMENT TO PENALTY SHEET
YE TENG WEN and
HAO HE**

COUNT ONE: 18 U.S.C. § 371 - Conspiracy to Commit Criminal Copyright Infringement and to Traffic in Counterfeit Labels

Penalty: 5 years imprisonment
3 years supervised release
\$250,000 fine or twice the value of the property involved in the transaction,
whichever is greater
\$100 special assessment

COUNT TWO: 17 U.S.C. § 506(a)(1)(A), 18 U.S.C. §§ 2319(b)(1) and 2 - Criminal Copyright Infringement By Electronic Means, and Aiding and Abetting

Penalty: 5 years imprisonment
3 years supervised release
\$250,000 fine or twice the value of the property involved in the transaction,
whichever is greater
\$100 special assessment

COUNT THREE: 18 U.S.C. §§ 2318(a), 2318(c)(3), and 2 - Trafficking in Counterfeit Labels, and Aiding and Abetting

Penalty: 5 years imprisonment
3 years supervised release
\$250,000 fine or twice the value of the property involved in the transaction,
whichever is greater
\$100 special assessment

COUNT FOUR: 17 U.S.C. § 506(b), 18 U.S.C. §§ 2318(d) and 2 - Criminal Trademark Violations, and Aiding and Abetting

Penalty: 5 years imprisonment
3 years supervised release
\$250,000 fine or twice the value of the property involved in the transaction,
whichever is greater
\$100 special assessment

ATTACHMENT TO PENALTY SHEET
YE TENG WEN and
HAO HE
(continued)

COUNT FIVE: 18 U.S.C. § 506(a)(1) - Counterfeiting Department Seal

Penalty: 5 years imprisonment
3 years supervised release
\$250,000 fine or twice the value of the property involved in the transaction,
whichever is greater
\$100 special assessment

FORFEITURE ALLEGATION: 17 U.S.C. §§ 506(b) and 509(a) - Criminal Forfeiture and
Destruction