

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA	)	Criminal No. 21cr10157
)	
v.	)	Violations:
)	
MANISH KUMAR,	)	<u>Count One:</u> Conspiracy to Smuggle
a/k/a "Manish Dina Nath,"	)	Misbranded Drugs and Controlled Substances
a/k/a "Franky Knuckles,"	)	into the United States
a/k/a "Carl Cox,	)	(18 U.S.C. § 371)
)	
Defendant	)	<u>Count Two:</u> Conspiracy to Distribute
	)	Controlled Substances
	)	(21 U.S.C. § 846)
)	
	)	<u>Count Three:</u> False Statements
	)	(18 U.S.C. § 1001(a)(2))
)	
	)	<u>Smuggling Forfeiture Allegation:</u>
	)	(18 U.S.C. §§ 545, 982(a)(2)(B) & 28 U.S.C.
	)	§ 2461)
)	
	)	<u>Drug Forfeiture Allegation:</u>
	)	(21 U.S.C. § 853)

INDICTMENT

At all times relevant to this Indictment:

General Allegations

1. The defendant, MANISH KUMAR, also known as "Manish Dina Nath," also known as "Franky Knuckles," also known as "Carl Cox," is an Indian national, who resided until August 2019 in Dubai, in the United Arab Emirates.
2. KUMAR was a partner in Company A, a company located in Mumbai, India, which among other commercial activities operated an internet pharmacy that sold generic prescription drugs to persons in the United States, and had the drugs shipped into the United States by Company B and other drug suppliers in India and Singapore, among other countries.

3. The Food and Drug Administration (“FDA”) is the federal agency responsible for protecting the health and safety of the American public by enforcing the Federal Food, Drug, and Cosmetic Act (“FDCA”). A main purpose of the FDCA is to ensure that drugs sold in the United States are safe, effective, and bear labeling containing only true and accurate information. The FDA also regulates the manufacture, labeling, and distribution of all drugs shipped or received in interstate commerce.

4. The FDCA defines “drug” to include articles intended for use in the “diagnosis, cure, mitigation, treatment, or prevention of disease in man” and “articles (other than food) intended to affect the structure or any function of the body of man.” 21 U.S.C. § 321(g)(1).

5. The FDCA defines a “prescription drug” as any drug, which, “because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner licensed by law to administer such drug,” or any drug that is “limited by an approved application . . . to use under the professional supervision of a practitioner licensed by law to administer such drug.” 21 U.S.C. § 353(b)(1).

6. The FDCA defines a “label” as “a display of written, printed, or graphic matter upon the immediate container or any article,” and it defines “labeling” as “all labels and other written, printed, or graphic matter (1) upon any article or any of its containers or wrappers, or (2) accompanying such article.” 21 U.S.C. §§ 321(k) and (m).

7. Under the FDCA, it is illegal to introduce a “misbranded” drug into interstate commerce. The statute defines a prescription drug as “misbranded” if it is dispensed and distributed without a valid prescription, or if it is not approved for use in the United States by the FDA and its label does not contain adequate directions for safe use or is false or misleading in any

particular manner. The statute also prohibits any entity other than a drug's manufacturer from importing prescription drugs into the United States for sale to individuals in the United States.

8. Sildenafil is a prescription drug that is a generic version of Viagra. Tadalafil is a prescription drug that is a generic version of Cialis. Both are used to treat erectile dysfunction. Neither generic drug is approved for use in the United States by the FDA.

9. The Controlled Substances Act ("CSA") governs the manufacture, distribution, and dispensing of controlled substances in the United States. With limited exceptions for medical professionals, the CSA makes it unlawful for any person knowingly or intentionally to manufacture, distribute, or dispense a controlled substance or to conspire to do so. With limited exceptions, the CSA makes it unlawful to import a controlled substance without the legally required labeling under the FDCA, to import narcotic controlled substances (with very limited exceptions), or to import controlled substances without registering an importer with United States authorities.

10. The CSA and its implementing regulations set forth which drugs and other substances are defined by law as "controlled substances" and assigns those controlled substances to one of five schedules (Schedules I, II, III, IV, or V) depending on their potential for abuse, likelihood of physical or psychological dependency, accepted medical use, and accepted safety for use under medical supervision.

11. Under the CSA, it is illegal to distribute certain Schedule II or Schedule IV controlled substances to a patient unless the patient has a valid written prescription.

12. Adderall, hydrocodone, oxycodone, and tapentadol are Schedule II controlled substances which may only be distributed with a valid written prescription. Adderall is a stimulant used to treat hyperactivity and narcolepsy. Hydrocodone and oxycodone are narcotic

opioids. Tapentadol is a narcotic opioid marketed under the brand name Nucynta, and under various off-brand or generic names, including TopCynta.

13. Tramadol, carisoprodol, and modafinil are Schedule IV controlled substances which may only be distributed with a valid prescription. Tramadol is a painkiller marketed overseas under a variety of generic names, including Oltram and Topdol. Carisoprodol is a sedative marketed under brand names such as Soma or Pain O' Soma. Modafinil is a stimulant marketed under a variety of names, such as Waklert and Modvigil.

The Smuggling and Drug Conspiracies

14. Beginning in at least 2015, and continuing until in or about August 2019, KUMAR conspired with others known and unknown to the Grand Jury to smuggle prescription drugs from outside the United States to customers in the United States who did not have valid prescriptions for those drugs and to smuggle Schedule II and Schedule IV controlled substances to customers in the United States.

Objects and Purpose of the Smuggling and Drug Conspiracies

15. The object of the smuggling conspiracy was to smuggle misbranded prescription drugs into the United States, in violation of the FDCA and the CSA. The objects of the drug conspiracy were to distribute Schedule II and Schedule IV controlled substances—including Adderall, hydrocodone, oxycodone, tapentadol, tramadol, carisoprodol, and modafinil—in violation of Title 21, United States Code, Section 841(a)(1). The principal purpose of the conspiracies was to enrich the conspirators personally.

Manner and Means of the Smuggling and Drug Conspiracies

16. Among the manner and means by which KUMAR and others known and unknown to the Grand Jury carried out the smuggling and drug conspiracies were the following:

- a. Arranging for the shipment of prescription drugs by Company B to persons in the United States in brown, unmarked envelopes;
- b. Tracking the shipments containing prescription drugs from India and Singapore to the United States;
- c. Maintaining sales and shipment records that detailed the distribution of generic prescription drugs, including controlled substances, to persons in the United States;
- d. Calling customers in the United States from abroad to renew shipments of prescription drugs;
- e. Falsely telling customers that the callers were located in New York; and
- f. Falsely telling customers that they did not need valid prescriptions to purchase prescription drugs.

Overt Acts in Furtherance of the Smuggling Conspiracy

17. From in or about March 2015 through in or about August 2019, KUMAR and others known and unknown to the Grand Jury committed and caused to be committed the following overt acts, among others, in furtherance of the smuggling conspiracy:

- a. In or about January 2016, Company B emailed KUMAR to inform him, in substance, that the “old Singapore shipping” of prescription drugs went through Los Angeles, where it “got stuck,” but that Company B would use a new shipping method that involved routing packages from Singapore to Switzerland and then to New York.
- b. In or about March 2016, KUMAR emailed Co-Conspirator 1 (“CC-1”), an individual who worked for a shipping company based in India, a spreadsheet with a message stating, in relevant part, “Send hydro codone 5mg last order I send

yesterday if not then send 10 mg.” The spreadsheet also contained 23 orders to ship prescription erectile dysfunction drugs from India to customers in several states.

- c. In or about December 2016, KUMAR asked Company B to reship misbranded tadalafil to a customer in the United States because it was “stuck in custom[s].”
- d. In or about July 2017, KUMAR emailed CC-1 a spreadsheet containing orders to ship prescription sildenafil and tadalafil to customers in several states, including Massachusetts.
- e. On or about August 18, 2017, Co-Conspirator 2 (“CC-2”), an individual who worked with Kumar to arrange drug sales, forwarded an email to KUMAR with a \$155 order for carisoprodol. Along with the order, CC-2 sent KUMAR a recording of a sales call from a pharmaceutical representative to a customer in Michigan during which the customer confirmed a mailing address, chose a mailing method, and confirmed payment method. The pharmaceutical representative did not ask whether the customer had a valid prescription for carisoprodol.
- f. In or about August or September 2017, KUMAR and his co-conspirators shipped misbranded sildenafil to a customer in Massachusetts who did not have a prescription for the drug.
- g. In or about January 2018, KUMAR emailed Co-Conspirator 3 (“CC-3”), an individual who worked for an overseas shipping company, a spreadsheet reflecting 32 orders for controlled substances and prescription drugs to be shipped to customers in the United States, including in Massachusetts.

- h. In or about June 2018, Co-Conspirator 4 (“CC-4”), an individual who shipped drugs for KUMAR, sent KUMAR a spreadsheet of orders for prescription drugs sold to customers in the United States, including three orders for the Schedule II controlled substance “Nucynta” (tapentadol).
- i. Also in or about June 2018, KUMAR emailed Company B instructions to “pls [sic] do the shipping,” and noting, “Two customer are pending to ship in MANISH2 file, TRAMADOL 100mg &50mg.”
- j. In or about January 2019, KUMAR arranged with Co-Conspirator 5 (“CC-5”), an individual in the United States whose identity is known to the Grand Jury, to start processing KUMAR’s sales of prescription drugs—including oxycodone, hydrocodone and Adderall—through a merchant account.
- k. On or about June 12, 2019, KUMAR emailed Co-Conspirator 6 (“CC-6”), an individual who worked for a shipping company, three orders for shipments of tramadol to customers in three states.
- l. In or about August or September 2019, KUMAR and his co-conspirators shipped tramadol to a customer in Massachusetts who did not have a prescription for the drug.

False Statements to Federal Officers

18. On or about February 27, 2020, KUMAR met with Special Agents of the Federal Bureau of Investigation (“FBI”) in Boston, Massachusetts. The agents instructed KUMAR not to make false statements and told KUMAR that making false statements could constitute a federal crime.

19. KUMAR falsely told the agents that he and Company A did not sell controlled substances and that he was never part of any business deal in which any controlled substances were sold or shipped to a customer in the United States.

20. In fact, as KUMAR then and there knew, he had arranged for the shipments of multiple Schedule II and Schedule IV controlled substances from India, Singapore, and other locations outside of the United States to persons in the United States who did not have valid prescriptions for those drugs, as set forth above.

COUNT ONE

Conspiracy to Smuggle Misbranded Drugs and Controlled Substances into the United States
(18 U.S.C. § 371)

The Grand Jury charges:

21. The Grand Jury re-alleges and incorporates by reference paragraphs 1-20 of this Indictment.

22. Beginning no later than in or about March 2015, through in or about August 2019, in the District of Massachusetts, and elsewhere, the defendant,

MANISH KUMAR,

conspired with others known and unknown to the Grand Jury to fraudulently and knowingly import and bring into the United States merchandise—to wit, misbranded drugs and controlled substances—contrary to law, specifically the Food, Drug, and Cosmetic Act, Title 21, United States Code, Sections 331(a), and the Controlled Substances Act, Title 21 United States Code, Section 841(a)(1), and to receive, conceal, buy, sell, and in any manner facilitate the transportation, concealment, and sale of such merchandise after importation, knowing the same to have been imported and brought into the United States contrary to law, in violation of Title 18, United States Code, Section 545.

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

COUNT TWO
Conspiracy to Distribute Controlled Substances
(21 U.S.C. § 846)

The Grand Jury further charges:

23. The Grand Jury re-alleges and incorporates by reference paragraphs 1-20 of this Indictment.

24. Beginning no later than in or about March 2015, and continuing through in or about August 2019, in the District of Massachusetts and elsewhere, the defendant,

MANISH KUMAR,

conspired with others known and unknown to the Grand Jury to knowingly and intentionally distribute Adderall, hydrocodone, oxycodone and tapentadol, Schedule II controlled substances, and tramadol, carisoprodol, and modafinil, Schedule IV controlled substances, without a valid prescription in violation of Title 21, United States Code, Section 841(a)(1).

All in violation of Title 21, United States Code, Section 846.

COUNT THREE
False Statements
(18 U.S.C. § 1001(a)(2))

The Grand Jury further charges:

25. The Grand Jury re-alleges and incorporates by reference paragraphs 1-20 of this Indictment.

26. On or about February 27, 2020, in the District of Massachusetts and elsewhere, the defendant,

MANISH KUMAR,

knowingly and willfully made a materially false, fictitious and fraudulent statement and representation in a matter within the jurisdiction of the executive branch of the government of the United States, that is, falsely stating during an interview with federal law enforcement agents that his business did not involve the importation or shipment into the United States of controlled substances to persons without valid prescriptions.

All in violation of Title 18, United States Code, Section 1001(a)(2).

SMUGGLING FORFEITURE ALLEGATION
(18 U.S.C. §§ 545, 982(a)(2)(B) and 28 U.S.C. § 2461(c))

27. Upon conviction of the offense in violation of Title 18, United States Code, Section 371, set forth in Count One, the defendant,

MANISH KUMAR,

shall forfeit to the United States, pursuant to Title 18, United States Code, Section 545, any merchandise introduced into the United States in violation of Title 18, United States Code, Section 545, or the value thereof, and, pursuant to Title 18, United States Code, Section 982(a)(2)(B), any property constituting, or derived from, proceeds obtained directly or indirectly, as a result of such offense.

28. If any of the property described in Paragraph 28, above, as being forfeitable pursuant to Title 18, United States Code, Sections 545 and 982(a)(2), 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 party;
- 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 divided without difficulty;

it is the intention of the United States, pursuant to Title 21, United States Code, Section 853(p), incorporated by Title 18, United States Code, Section 982(b) and Title 21, United States Code, Section 2461(c), to seek forfeiture of any other property of the defendant up to the value of the property described in Paragraph 28 above.

All pursuant to Title 18, United States Code, Sections 545 and 982(a)(2) and Title 21, United States Code, Section 2461.

DRUG FORFEITURE ALLEGATION
(21 U.S.C. § 853)

29. Upon conviction of the offense in violation of Title 21, United States Code, Section 846, set forth in Count Two, the defendant,

MANISH KUMAR,

shall forfeit to the United States, pursuant to Title 21, United States Code, Section 853, any property constituting, or derived from, any proceeds obtained, directly or indirectly, as a result of such offense; and any property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such offense.

30. If any of the property described in Paragraph 29, above, as being forfeitable pursuant to Title 21, United States Code, Section 853, 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 party;
- 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 divided without difficulty;


it is the intention of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendant up to the value of the property described in Paragraph 29 above.

All pursuant to Title 21, United States Code, Section 853.

A TRUE BILL



FOREPERSON



KRISS BASIL
ASSISTANT UNITED STATES ATTORNEY
DISTRICT OF MASSACHUSETTS

District of Massachusetts: May 17, 2021
Returned into the District Court by the Grand Jurors and filed.

/s/ Harold Putnam 5/17/2021; 4:08 p.m.

DEPUTY CLERK



HON. MARIANNE B. BOWLER
United States Magistrate Judge


Date: May 17, 2021