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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
LAKE CHARLES DIVISION

FILED  
U.S. DISTRICT COURT, WESTERN DISTRICT OF LOUISIANA  
ROBERT H. SPENCER, CLERK  
DATE 5/26/04  
BY [Signature]

UNITED STATES OF AMERICA \* CRIMINAL NO. 2:04CR20075-01  
\*  
v. \* JUDGE MELANÇON  
\*  
GREGORY JAMES CATON \* MAGISTRATE JUDGE HILL

**ELEMENTS OF THE OFFENSE**  
**Introduction of Unapproved New Drugs in Interstate Commerce**  
**21 U.S.C. § 331(d), 333(2), and 355(a)**

Title 21, United States Code, Sections 331(d) and 355(a) make it a crime for anyone to introduce and/or deliver for introduction into interstate commerce an unapproved new drug. In order for the United States to prove the defendant guilty beyond reasonable doubt, the following elements must be proved:

1. That the defendant introduced or delivered for introduction into interstate commerce unapproved new drug(s);
2. That the defendant did so with the intent to defraud or mislead; and
3. That the defendant knowingly committed the above acts.

**MAXIMUM PENALTY:** A fine of not more than \$250,000.00 a term of imprisonment of not more than 3 years, a term of supervised release of not more than 1 year, and \$100.00 assessment to the Crime/Victim Fund.

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MAY 25 2004

ROBERT H. SHEMWELL, CLERK  
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DEPUTY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA

LAKE CHARLES DIVISION

**2:04CR20075-01**

UNITED STATES OF AMERICA

v.

GREGORY JAMES CATON

\* CRIMINAL NO.  
\* 18 U.S.C. §§ 1341, 2, 981(a)(1)(C)  
\* 21 U.S.C. §§ 331(d), 355(a), 333(a)(2)  
\* 28 U.S.C. § 2461(c)  
\* JUDGE MELANÇON  
\* MAGISTRATE JUDGE HILL

BILL OF INFORMATION

THE UNITED STATES ATTORNEY CHARGES:

INTRODUCTION

At all times relevant to this Information:

**THE FOOD AND DRUG ADMINISTRATION'S REGULATION OF DRUGS**

1. The United States Food and Drug Administration ("FDA") was the federal agency within the United States Department of Health and Human Services ("DHHS") charged with the responsibility for protecting the health and safety of the American public by assuring, among other things, that drugs sold for administration to humans were safe and effective for their intended uses and bore labeling containing true and accurate information. In order to legally market a drug in interstate commerce, the drug's manufacturer was required to comply with all applicable provisions of the Federal Food, Drug, and Cosmetic Act ("Act"), 21 U.S.C. § 321, et seq., and its implementing regulations.

2. The Act defined a "drug" to include articles that (1) are intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man; or (2) are

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Western District of Louisiana

intended to affect the structure or any function of the body of man. 21 U.S.C. § 321(g)(1)(B) and (C).

3. Under the Act, the term "label" meant a display of written, printed, or graphic matter upon the immediate container of any article. 21 U.S.C. § 321(k).

4. Under the Act, the term "labeling" meant 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(m).

5. "Cansema Tonic III" was a drug within the meaning of the Act, 21 U.S.C. §§ 321(g)(1)(B) and (C), and was intended for use in the cure, mitigation, treatment, or prevention of cancer.

6. "H<sub>3</sub>O" was a drug within the meaning of the Act, 21 U.S.C. §§ 321(g)(1)(B) and (C), and was intended for use in the cure, mitigation, treatment, or prevention of athlete's foot, cuts and burns, eczema, fingernail fungus, chronic gas, gastroenteritis, gingivitis and periodontal disease, halitosis, herpes sores, ophthalmia (including conjunctivitis), psoriasis, sore throat, strep throat, and wounds.

7. Among other prohibitions, the Act prohibited causing the introduction or delivery for introduction into interstate commerce or introducing or delivering for introduction into interstate commerce new drugs that were not the subject of an approved marketing or investigational application. 21 U.S.C. §§ 331(d) and 355. "Approved marketing or investigational applications" included new drug applications ("NDAs"), abbreviated new drug applications ("ANDAs"), and investigational new drug applications ("INDs"). 21 U.S.C. § 355.

8. A drug was a "new drug" if it was "not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in the labeling thereof ...." 21 U.S.C. § 321(p)(1).

9. "Cansema Tonic III" was not generally recognized as safe and effective by qualified experts for the treatment of cancer, and the defendant GREGORY JAMES CATON, dba Alpha Omega Labs, had no approved marketing or investigational applications on file with FDA for "Cansema Tonic III."

10. "H<sub>3</sub>O" was not generally recognized as safe and effective by qualified experts for the treatment of athlete's foot, cuts and burns, eczema, fingernail fungus, chronic gas, gastroenteritis, gingivitis and periodontal disease, halitosis, herpes sores, ophthalmia (including conjunctivitis), psoriasis, sore throat, strep throat, and wounds, and the defendant GREGORY JAMES CATON, dba Alpha Omega Labs, had no approved marketing or investigational drug applications on file with FDA for ""H<sub>3</sub>O."

11. GREGORY JAMES CATON, the defendant herein, was doing business as ALPHA OMEGA LABS from sometime in the year of 1999 to on or about September 17, 2003. During that time, the defendant falsely advertised ALPHA OMEGA LABS as being located in Nassau, Bahamas, when in fact, ALPHA OMEGA LABS was operated from the offices of Lumen Food Corporation, located at various U.S. locations, including: 409 Scott Street, Lake Charles, Louisiana; 1401 Hodges Street, Lake Charles, Louisiana; and 2200 Hodges Street, Lake Charles, Louisiana. The Articles of Incorporation for Lumen Food Corporation filed with the Secretary of State in Louisiana on or about February 1986 identified the defendant as the President and Director.

12. ALPHA OMEGA LABS was owned and operated by the defendant. There were no Articles of Incorporation for ALPHA OMEGA LABS filed with the Secretary of State in Louisiana. ALPHA OMEGA LABS sold products under its own name, and was a distributor of, among other things, "Cansema Tonic III" and "H<sub>3</sub>O" products. The defendant operated ALPHA OMEGA LABS' website located at [www.altcancer.com](http://www.altcancer.com) that sold products directly to consumers for the treatment of cancer, adult diabetes, muscular dystrophy, athlete's foot, cuts and burns, eczema, fingernail fungus, chronic gas, gastroenteritis, gingivitis and periodontal disease, halitosis, herpes sores, ophthalmia (including conjunctivitis), psoriasis, sore throat, strep throat, and wounds. This website was created and maintained by the defendant out of his residence located at 1139 Hodges Street, Lake Charles, Louisiana. ALPHA OMEGA LABS was not registered with any state or FDA as a drug wholesaler or a drug manufacturer.

**COUNT 1**  
**(18 U.S.C. §§ 1341 and 2 - Mail Fraud)**

13. The Introductory Allegations in paragraphs 1-12 above are realleged and incorporated herein by reference.

14. Beginning on a date uncertain to the United States Attorney, but believed to be in the year 1999 and continuing until on or about September 17, 2003, in the Western District of Louisiana and elsewhere, GREGORY JAMES CATON, the defendant herein and others known and unknown to the United States Attorney, each knowingly aided and abetted, one by the other, and did devise and intend to devise a scheme and artifice to defraud purchasers of "H<sub>3</sub>O" by means of false and fraudulent pretenses and representations, and to obtain approximately NINE HUNDRED AND FIFTY THOUSAND

(\$950,000) dollars of monies and property belonging to Sue Gilliatt, named herein as a victim, and numerous other victims not named herein, knowing that said pretenses and representations were false and fraudulent when made, the scheme and artifice to defraud being in substance as follows:

### **THE SCHEME**

15. It was part of the scheme that GREGORY JAMES CATON, the defendant herein, and others in his employ, would advertise for direct sale, by means of his website, ALPHA OMEGA LABS, located at [www.altcancer.com](http://www.altcancer.com), the products listed in paragraph 12 above as well as other products to numerous individuals in the United States.

16. It was further a part of the scheme and artifice that the defendant and others would, upon receiving orders for said products, cause the products to be transported and delivered into interstate commerce by, among other means, the services of United Parcel Service, a corporation that delivers packages and items in interstate and foreign commerce.

17. The defendant sold products under ALPHA OMEGA LABS' name, and was a distributor of, among other things, "H<sub>3</sub>O" products, which were labeled to treat athlete's foot, cuts and burns, eczema, fingernail fungus, chronic gas, gastroenteritis, gingivitis and periodontal disease, halitosis, herpes sores, ophthalmia (including conjunctivitis), psoriasis, sore throat, strep throat, and wounds. The defendant also sold "Cansema Tonic III" products, which were labeled for use in the cure, mitigation, treatment, or prevention of cancer. Under the Act, the "H<sub>3</sub>O" and "Cansema Tonic III" products were unapproved new drugs.

18. On October 10, 2001, the Lumen Food Corporation's website falsely and fraudulently represented that the "H<sub>3</sub>O" product was "FDA-approved." Specifically, the Lumen Food Corporation's website stated, "H3O – A revolutionary, stabilized hydronium – produced by applying scalar wave technology to ordinary sulphuric acid. The product is FDA-approved under 21 CFR 184.1095 - but through the use of scalar wave technology, entirely new properties have been developed (See write-up on AO Labs' site)," when in fact, there was no approved marketing or investigational drug application on file with FDA, as required by 21 U.S.C. § 355.

### **THE CHARGE**

19. On or about October 30, 2001, in the Western District of Louisiana and elsewhere, GREGORY JAMES CATON, the defendant herein, and others, both known and unknown to the United States, for the purpose of executing the aforementioned scheme and artifice to defraud and attempting to do so, did cause the introduction of an unapproved new drug, that is, "H<sub>3</sub>O," via a commercial interstate carrier, to-wit: United Parcel Service, into interstate commerce from Lake Charles, Louisiana, to Sue Gilliatt, named as a victim herein, located in Indianapolis, Indiana, all in violation of Title 18, United States Code, Sections 1341 and 2. [18 U.S.C. §§ 1341 & 2].

### **COUNT 2**

**21 U.S.C. §§ 331(d), 355(a) and 333(a)(2)**

**Introduction of Unapproved New Drugs into Interstate Commerce**

20. The allegations listed in paragraphs 1-11 above are hereby realleged and incorporated herein by reference.

21. On or about December 19, 2001, within the Western District of Louisiana, and elsewhere, the defendant, GREGORY JAMES CATON, dba Alpha Omega Labs, and others, both known and unknown to the United States Attorney, did, with intent to defraud and mislead, introduce and deliver for introduction into interstate commerce, and cause to be introduced and delivered into interstate commerce, a four-ounce bottle of "Cansema Tonic III," being shipped by commercial carrier, to-wit; United Parcel Service, from Lake Charles, Louisiana, to Plantation, Florida, which drug was a "new drug" within the meaning of the Act, 21 U.S.C. § 321(p), for which there was no approved marketing or investigational drug application on file with FDA, as required by 21 U.S.C. § 355, all in violation of 21 U.S.C. Sections 331(d), 355(a) and 333(a)(2). [21 U.S.C. §§ 331(d), 355(a), and 333(a)(2)].

**COUNT 3**  
**18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c)**  
**Forfeiture**

A. As a result of the violation of Title 18, United States Code, Section 1341 and the execution of the scheme to defraud as described in Count 1, the defendant shall forfeit to the United States any property, real or personal, which constitutes or is derived from proceeds of the violation described in Count 1 and the scheme to defraud as alleged therein. Such property includes but is not limited to the following:

- (1) Real Property located at Lots 4, 5, 6, 7, and Block "G" of Houston Subdivision, a subdivision as per Plat recorded in Conveyance Book 14, Page 111, of the records of Calcasieu Parish, Louisiana, together with all buildings and improvements situated thereon. Which property has a municipal address of 2116-2128 Hodges Street and 409 Scott Street, Lake Charles, Louisiana 70601. This property was purchased by Gregory J. Caton (Herbologics, LTD), May 31, 1995 for \$220,000.



- (2) Lots 1, 2 and 3 of Block F of Houston Subdivision, a subdivision in The North East Quarter of the North East Quarter (NE 1/4 of NE 1/4) of Section 7, Township 10 South, Range 8 West, as per plat recorded in the records of Calcasieu Parish, Louisiana, together with all improvements and component parts pertaining thereto. Which property has a municipal address of 2200-2202 Hodges Street, Lake Charles, Louisiana 70601. This property was purchased by Herbologics LTD (Gregory James Caton, President), December 9, 1993 for \$43,500, \$10,000 paid in cash and a \$35,500 promissory note to seller.
- (3) Real Property commencing at the Northeast Corner of Lot One (1) of Block Three (3) Peake Addition, as per Plat recorded in Conveyance Book 2, at page 577, records of Calcasieu Parish, Louisiana, thence West along the South side of Prewitt Street 50 feet, South parallel with Cole Street 85 feet, East 50 feet, North along West side of Cole Street 85 feet to the point of commencement, together with all buildings and improvements located thereon, municipality known as 324 Prewitt, Lake Charles, LA 70601. Purchased by Catheryn Caton (Herbologics LTD) 12/11/2001 for \$42,500.
- (4) \$950,000.00 in U.S. Currency.

B. By virtue of the commission of the offense charged in Count 1, any and all interest of the defendant, GREGORY JAMES CATON, in the above described property is vested in the United States and is forfeited to the United States pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c).

C. If any of the property described above as being subject to forfeiture, as a result of any act or omission of the defendants:

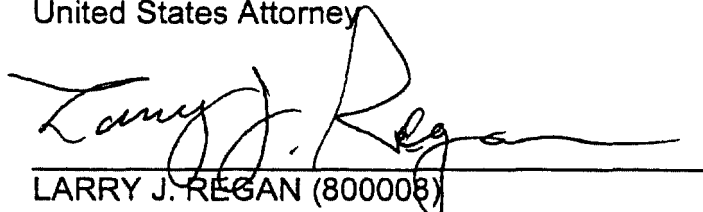
1. cannot be located upon the exercise of due diligence;
2. has been transferred or sold to, or deposited with, a third person;
3. has been placed beyond the jurisdiction of the Court;
4. has been substantially diminished in value; or,
5. has been co-mingled with other property which cannot be subdivided without difficulty; it is the intent of the United States pursuant to Title 28, United States Code,

Section 2461(c) and 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 identified above as being subject to forfeiture.

All in violation of Title 18, United States Code, Section 981(a)(1)(C) and 28 U.S.C. § 2461(c). [18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c)].

DONALD W. WASHINGTON  
United States Attorney

BY:



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LARRY J. REGAN (800008)  
Assistant United States Attorney  
800 Lafayette Street, Suite 2200  
Lafayette LA 70501-6832  
Telephone: (337) 262-6618