

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

UNITED STATES OF AMERICA)

v.)

ALAIN LAMONTAGNE, also known as)
ALAN LAMONTAGNE)

U.S. DISTRICT COURT
PORTLAND, MAINE
RECEIVED AND FILED

Case No.: 2:17-mj- 138-JHR

2017 JUN 02 P 1:09

) Violation:

21 U.S.C. §§ 331(a), 333(a)(2) and
352(a) and (e)(1)(A); 18 U.S.C. § 2

DEPUTY CLERK

CRIMINAL COMPLAINT

I, Robert E. Ekey, the complainant in this case, being duly sworn, state that the following is true and correct to the best of my knowledge and belief:

Counts One and Two

(Misbranding of Animal Drugs -- 21 U.S.C. §§ 331(a), 333(a)(2) and 352(a))

1. At all times relevant to this complaint, the Federal Food, Drug and Cosmetic Act (hereinafter, "the FDCA"), 21 U.S.C. § 301 *et seq.*, regulated, among other things, drugs intended for humans and animals to ensure that they were safe and effective for their intended uses and that the labeling of such drugs bore true and accurate information.
2. The FDCA prohibited, among other things the delivery into interstate commerce drugs that are adulterated or misbranded.
3. Under the FDCA, a drug was deemed to be misbranded if, among other things:
 - a. The labeling was false or misleading in any particular (21 U.S.C. § 352(a)); and
 - b. The label failed to bear the established name and quantity of each active and inactive ingredient (21 U.S.C. § 352(e)(1)(A)(ii) and (iii)).
4. The defendant, **ALAIN LAMONTAGNE**, also known as **ALAN LAMONTAGNE**, marketed various health supplements intended for horses using the website www.equinesolutions.com. He would also provide customers with a list of injectable animal

drugs intended for horses upon request. One of the injectable drugs he sold was called "Thrust," which the defendant marketed as a stimulant.

5. On or about the dates set forth below, in the District of Maine and elsewhere, the defendant,

**ALAIN LAMONTAGNE,
also known as ALAN LAMONTAGNE**

did with intent to defraud and mislead, introduced and delivered, and cause the introduction and delivery, into interstate commerce an animal drug, namely "Thrust," that was misbranded in that:

- a. The labeling was false and misleading as to a particular, namely, it falsely stated that the source of the animal drug was Trutina Pharmacy; and
- b. The label failed to disclose that the animal drug's active ingredient was stanozolol, an anabolic steroid and a Schedule III controlled substance under federal law.

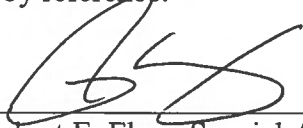
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Count One: March 21, 2017

Count Two: May 15, 2017

6. All in violation of Title 21, United States Code, Sections 331(a), 333(a)(2) and 352(a), 352(e)(1)(A)(ii) and (iii), and Title 18, United States Code, Section 2.

7. This criminal complaint is based on the facts set forth in my affidavit, dated June 12, 2017, attached hereto and incorporated herein by reference.

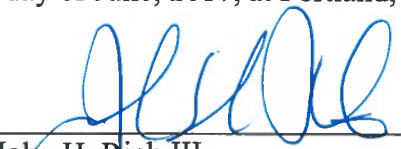


Robert E. Ekey, Special Agent
U.S. Food and Drug Administration
Office of Criminal Investigation

Dated: 6/12/17

STATE OF MAINE
Cumberland County

Subscribed and sworn to before me this 12th day of June, 2017, at Portland, Maine.



John H. Rich III
United States Magistrate Judge

**AFFIDAVIT OF SPECIAL AGENT ROBERT E. EKEY
IN SUPPORT OF CRIMINAL COMPLAINT**

I, Robert E. Ekey, being duly sworn, depose and state as follows:

Background

1. I am a Special Agent of the U.S. Food and Drug Administration, Office of Criminal Investigations (FDA OCI), assigned to the Boston Resident Office in Wakefield, Massachusetts. I have been a FDI OIC Special Agent for eight years. I have been a federal law enforcement officer since 1998, and was previously employed as a Special Agent with the Department of Housing and Urban Development, Office of Inspector General and the Treasury Inspector General for Tax Administration, and as an Inspector with the Internal Revenue Service (IRS), Inspection Service.
2. I have completed the Special Agent Training Program at the Federal Law Enforcement Training Center, IRS Inspector Basic Training Program, FDA OCI Special Agent Training Program, and the FDA OCI Food and Drug Law Training Program. The FDA training covered various legal aspects of criminal enforcement of the FDCA related to the sale of misbranded and adulterated drugs. I have been the affiant on numerous search and arrest warrants and have conducted numerous investigations regarding violations of Titles 18 and 21 of the United States Code.
3. As a Special Agent with FDA OCI, I am authorized to conduct criminal investigations, make arrests, and execute search and arrest warrants for offenses in violation of the Federal Food, Drug and Cosmetic Act (FDCA), Title 21, United States Code, Sections 301 through 399f

and related violations of Title 18 of the United State Code. This affidavit is submitted in support of an Application for a Criminal Complaint and Arrest Warrant for Alain LaMontagne.

4. Since December 2016, I have been involved in the investigation of Alain LaMontagne for interstate distribution of misbranded drugs and controlled substances for equine use. The facts and information in this affidavit are based on my personal knowledge as well as that of other law enforcement officers involved in this investigation. All observations that were not made by me personally were related to me by the persons who made the observations. This affidavit contains information necessary to establish probable cause in support of an application for an arrest warrant.

Relevant Statutes

5. The United States Food and Drug Administration (“FDA”) is the federal agency charged with the responsibility of protecting the health and safety of the American public by ensuring, among other things, that drug products that were intended for use in animals were safe and effective for their intended uses and bore labeling containing only true and accurate information. Under the Food Drug and Cosmetic Act, 21 U.S.C. § 301 *et seq.* (the FDCA), an “animal drug” includes: (1) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals; and (2) articles (other than food) intended to affect the structure or any function of the body of animals. 21 U.S.C. § 321(g)(1)(B) and (C).

6. Under the FDCA, an animal drug is “misbranded” if, among other things, its labeling is false or misleading in any particular. 21 U.S.C. § 352(a). The FDCA 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(m). In turn, “label” is defined as

“a display of written, printed, or graphic matter upon the immediate container of any article.” *Id.* at 321(k).

7. The FDCA prohibits the introduction or delivery for introduction into interstate commerce of any misbranded animal drug, or the causing thereof. 21 U.S.C. § 331(a). The FDCA defines “interstate commerce” as “(1) commerce between any State or Territory and any place outside thereof, and (2) commerce within the District of Columbia or within any other territory not organized with a legislative body.” 21 U.S.C. § 321(b).

8. Any person who commits a prohibited act under the FDCA commits a misdemeanor, regardless of any *mens rea*, punishable by a maximum of imprisonment for one year. 21 U.S.C. § 333(a)(1). If committed with the intent to defraud or mislead, the violation constitutes a felony and is punishable by up to three years imprisonment. 21 U.S.C. § 333(a)(2).

Details of the Investigation

9. In December 2016, I received information that Alain LaMontagne (LaMontagne) was engaged in selling unapproved and misbranded drugs for equine use. Specifically, the information indicated LaMontagne sold animal health supplements and drugs online through the website “equinesolution.com” and distributed a price list of intravenous (IV) drugs for sale.

10. Beginning in January 2017, I began exchanging emails, in an undercover capacity, with “Alan” who used the email addresses “services@equinesolution.com” and “alan@purenutrients.life.” The website for “equinesolution.com” listed various health supplements for horses for sale, but it offered no IV products for sale.

11. In March 2017, I asked “Alan” to send me a list of IV products that were for sale. “Alan” emailed to me a price list of IV products broken down under the headers, “BREATHING-

BLEEDER (sic)", "PAIN-INFLAMATION (sic)", "BLOOD BUILDER", "STIMULANT", "TIE-UP – STAMINA", "JOINT" and "CALMING."

12. In March 2017 and May 2017, I sent emails to "Alan" at the email addresses "services@equinesolution.com" and "alan@purenutrients.life" to order a stimulant from his IV price list named "Thrust." On approximately March 21, 2017 and May 15, 2017, I received packages of "Thrust" at my undercover address in York, Maine.

13. The product was shipped via U.S. Postal Service Priority Mail from a return address of P.O. Box 2256, Middletown, New York 10940-7735. I secured a copy of the Post Office Box application for P.O. Box 2256 in Middletown, New York. According to the application form, "Alain LaMontagne" opened the box in April 2015, and supplied his street address as 226 East Main Street, Middletown, NY 10940.

14. The "Thrust" came in clear bottles or vials with labels identifying the source as "Trutina Pharmacy, 201 Wilson E, Ancaster, ON L9G-2B8." Detective Constable Allan LeBlanc, Ontario Provisional Police, interviewed Nick Luciani, the owner of Trutina Pharmacy. Luciani stated that the Trutina Pharmacy labels on the bottles of "Thrust" were not an authentic Trutina Pharmacy labels and that there was no record of LaMontagne making any purchases from Trutina Pharmacy. Additionally, Luciani provided copies of legitimate Trutina Pharmacy labels that were markedly different than the Trutina Pharmacy labels on the bottles of "Thrust."

15. Detective Constable LeBlanc advised that, in Ontario, Canada in 2012, Alain LaMontagne pled guilty to Labeling a Drug in a False Manner and Preparing Drugs Under Unsanitary Conditions after an investigation into LaMontagne's sales of unapproved and misbranded drugs for equine use. LaMontagne was sentenced to twelve months of probation.

16. I sent the two bottles of “Thrust” to the FDA Forensic Chemistry Center for analysis. According to the FDA chemists, the bottles of “Thrust” contained stanozolol. This drug is an anabolic steroid and a Schedule III controlled substance. Neither the label or the labeling associated with vials of “Thrust” listed stanozolol or any other ingredient.

17. In May 2017, I observed a 2007 Chrysler Town and Country van with New York license plate HDG 9843 parked at 226 East Main Street, Middletown, New York. According to New York Division of Motor Vehicles records, this vehicle was registered to Alain LaMontagne, 226 E. Main Street, Middletown, New York 10940.

18. Also in May 2017, I went to the business located at 226 E. Main Street, Middletown, New York, and spoke to a woman who identified herself as an employee of Alain LaMontagne. She stated that this address was the address of Equine Solution. The employee stated that LaMontagne ordered IV products from a third party. She further stated that when IV products are received from this third party, either LaMontagne or someone at LaMontagne’s direction immediately repackages and ships the products to the customers. The employee claimed no knowledge of the third party source.

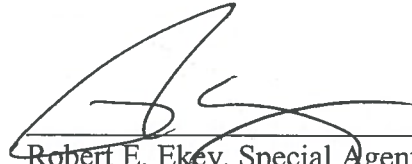
19. U.S. border patrol agents administratively arrested Alain LaMontagne, a citizen of Canada, on May 11, 2017, after he was observed entering the country on foot near Champlain, New York without first being inspected by U.S. immigration officials. He was released on bail on May 30, 2017, by an immigration judge with a condition that he reside in Middletown, New York until his immigration hearing.

20. Based on the aforementioned facts, I believe that there is probable cause to believe that Alain LaMontagne has committed violations of the FDCA, namely, Introducing Into Interstate

Commerce Misbranded Animal Drugs, in violation of Title 21, United States Code, Sections 331(a), 333(a)(2) and 352(a).

6/12/17

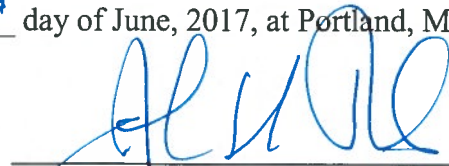
Date



Robert E. Ekey, Special Agent
U.S. Food and Drug Administration
Office of Criminal Investigation

STATE OF MAINE
Cumberland County

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John H. Rich III
United States Magistrate Judge