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Approved: Nick Landsman-Roos
NICOLAS LANDSMAN-ROOS
DANIELLE SASSOON
Assistant United States Attorneys

Before: HONORABLE GABRIEL W. GORENSTEIN
United States Magistrate Judge
Southern District of New York

UNITED STATES OF AMERICA	:	**SEALED COMPLAINT**
	:	
	:	Violation of
- v. -	:	18 U.S.C. §§ 1341
	:	1343, and 2
VITALY BORKER,	:	
	:	COUNTY OF OFFENSE:
Defendant.	:	NEW YORK
	:	

SOUTHERN DISTRICT OF NEW YORK, ss.:

Ashley Borofsky, being duly sworn, deposes and says that she is a Postal Inspector with the United States Postal Inspection Service ("USPIS"), and charges as follows:

COUNT ONE
(Mail Fraud)

1. From at least in or about July 2011, up to and including the present, in the Southern District of New York and elsewhere, VITALY BORKER, the defendant, willfully and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, for the purpose of executing such scheme and artifice and attempting so to do, did place in a post office and authorized depository for mail matter, matters and things to be sent and delivered by the Postal Service, and did deposit and cause to be deposited matters and things to be sent and delivered by private and commercial interstate carriers, and did take and receive therefrom, such matters and things, and did cause to be delivered by mail and such carriers, according to the directions thereon, and at the places at which they were directed to be delivered by the person to whom they were addressed, such matters and things, to wit, BORKER defrauded

customers of his retail eyewear website, "OpticsFast.com," by, among other things, misrepresenting the authenticity and condition of merchandise he sold and mailed to such customers.

(Title 18, United States Code, Sections 1341 and 2.)

COUNT TWO
(Wire Fraud)

2. From at least in or about July 2011, up to and including the present, in the Southern District of New York and elsewhere, VITALY BORKER, the defendant, willfully and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, did transmit and cause to be transmitted by means of wire, radio, and television communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds, for the purpose of executing such scheme and artifice, to wit, in electronic and telephonic communications, BORKER engaged in a scheme to defraud customers of his retail eyewear website, "OpticsFast.com," by misrepresenting the authenticity and condition of merchandise he offered for sale and sold to customers.

(Title 18, United States Code, Sections 1343 and 2.)

The bases for my knowledge and for the foregoing charge are, in part, as follows:

3. I am a Postal Inspector with the USPIS. I have been personally involved in the investigation of this matter, and I base this affidavit on that personal experience, as well as on my conversations with other law enforcement agents and my examination of various reports and records. Because this affidavit is being submitted for the limited purpose of establishing probable cause for the offenses cited above, it does not include all the facts that I have learned during the course of the investigation. Where the contents of conversations of others are reported herein, they are reported in substance and in part.

OVERVIEW

4. On or about December 16, 2010, VITALY BORKER, the defendant, was charged with mail and wire fraud, cyberstalking,

and making threatening communications in connection with his operation of an online eyewear business, DecorMyEyes.com. *See infra* ¶ 11. BORKER pled guilty to those crimes on or about May 12, 2011. Shortly after pleading guilty, and since at least July 2011, BORKER has been the owner and operator of another online retailer of purported new designer eyewear, known as OpticsFast.com. But the eyewear sold to customers through OpticsFast.com has, instead, often been defective, damaged, used, or counterfeit. On many occasions, BORKER has also refused to refund customers' purchases, charged unauthorized restocking fees, or never sent eyewear for which customers had been charged. When those customers tried to return merchandise, BORKER subjected them to a campaign of abusive emails and text messages, often using aliases. As described below, OpticsFast.com has repeatedly defrauded its customers, *see infra* ¶¶ 5-9, and it is owned and operated by BORKER, *see infra* ¶¶ 10-14.

OPTICSFAST.COM DEFRAUDS CUSTOMERS

5. Based on my participation in this investigation, I am aware that "OpticsFast.com" is the website of an online retailer of purported luxury eyewear ("OpticsFast"), based in Brooklyn, New York. Based on my review of OpticsFast.com, I am aware that as of April 21, 2017, the website advertises OpticsFast as "the planet's biggest online website for designer discount sunglasses and eyeglasses." The website includes claims that "[a]ll items are brand new and 100% authentic," and "[a]ll merchandise comes with the designer eyewear case, authenticity card and dust cloth where appropriate." The website also markets prescription and eyewear repair services, including offers to fit eyeglasses with custom prescriptions. OpticsFast.com indicates that the business will provide a "free pre-paid shipping label" to customers using the website's repair or prescription services.

6. Similar representations are made to prospective and realized customers of OpticsFast through email communications from the email address sales@opticsfast.com (the "OpticsFast Email Account"). Based on my review of dozens of email communications sent from the OpticsFast Email Account, I have learned that the user(s) of the OpticsFast Email Account tells OpticsFast customers that eyeglasses sold by OpticsFast are "designer brands," and that the company offers a "Free Pre-Paid shipping label" for eyeglasses sent to the company for repair.

7. Based on my review of customer complaints registered with the United States Postal Service, the Federal Trade

Commission, and the Better Business Bureau of New York, and my conversations with a USPIS Postal Inspector who has spoken to customers of OpticsFast ("Postal Inspector-1"), I have learned that the foregoing representations made about OpticsFast, *see supra* ¶¶ 5-6, are false, in that, among other things, the eyewear that customers purchased from OpticsFast was often defective, damaged, used, counterfeit, and did not come with any "certificate of authenticity." Specifically, from my review of customer complaints, of which there are at least five hundred, and interviews by Postal Inspector-1 with some of these complainants, I have learned, among other things, the following:

a. Many customers that have purchased eyewear from OpticsFast—eyewear advertised on OpticsFast.com as "brand new" and "100% authentic"—instead received damaged and/or counterfeit items. Multiple customers, including customers located in Manhattan, New York, reported ordering name-brand eyeglasses or sunglasses, paying a premium because of the brand, and then receiving inexpensive knockoff glasses. I know from speaking with another USPIS Postal Inspector that other customers have stated that they received poorly-made, dirty, and/or damaged glasses from OpticsFast.

b. For instance, I have spoken to Postal Inspector-1 who interviewed an individual living in California ("Victim-1"), who, in or about January 2017, purchased from OpticsFast what was advertised on OpticsFast.com as a hard-to-find pair of Ray-Ban glasses with prescription lens. When Victim-1 received damaged knockoff Ray-Ban glasses of a different model, with the wrong prescription, she complained to OpticsFast and asked for a refund. The company refused, and she wrote a negative review online of OpticsFast. She then began receiving approximately 35 telephone calls per day and a torrent of emails from the OpticsFast Email Account, including emails calling Victim-1 a "stupid stupid lady" and a "total degenerate." After Victim-1 convinced her bank to freeze her payment to OpticsFast, she received an email from the OpticsFast Email Account, signed by "Becky S.," which stated, "[it] could have been done another way but you choose this route… Now sit in what you made." Victim-1 also received a telephone call from a man who identified himself as a police officer and told Victim-1 that a "civil harassment suit" had been filed against her by OpticsFast.

c. I have spoken to Postal Inspector-1 who interviewed an individual living in Texas ("Victim-2"), who ordered Carvell eyeglasses from OpticsFast in or about January 2017. Victim-2 did not receive anything from OpticsFast for over three weeks and was put on hold when she called the

company, so she wrote an email to inquire about her order and complain about the delay. Victim-2 received a response from the OpticsFast Email Account, signed by "Becky S.," which stated, "you will be put on hold when we are busy. That is for shits sure." When Victim-2 tried calling the company, a purported OpticsFast employee yelled at her and said, in sum and substance, that OpticsFast would subpoena and sue her.

d. Based on conversations with other OpticsFast customers who have spoken to the USPIS, and my review of customer complaints filed with the Better Business Bureau or posted to the Internet, I have learned that when OpticsFast customers have attempted to return purchased items for being counterfeit, damaged, or not as advertised, OpticsFast has refused to issue refunds, or has only issued partial refunds. Additionally, OpticsFast has charged customers a "restocking fee" of $40 or of twenty percent of the original purchase price, and shipping charges on many of these returned orders.

8. I have also reviewed customer complaints relating to OpticsFast's purported eyewear repair services. Based on my review of complaints from customers living in Manhattan, New York, and elsewhere, and my conversations with Postal Inspector-1 who spoke with OpticsFast customers, I have learned that OpticsFast has returned eyewear sent in for repair, often after weeks of delays, unfixed or further damaged. In some cases, OpticsFast has sent customers eyeglasses different from those that the customers sent in, or it has refused to return customers' eyeglasses. Among other things, I have learned the following:

a. I have reviewed a complaint submitted by an individual living in Georgia ("Victim-3"), who, in or about September 2016, sent a pair of sunglasses to OpticsFast to be repaired. When the sunglasses were returned to Victim-3 by OpticsFast, they were a different, inexpensive pair of sunglasses. When Victim-3 complained to OpticsFast.com, she received an email from the OpticsFast Email Account, signed by "Becky S.," which stated "shit happens" and "maybe it just wasn't meant to be."

b. I have spoken to Postal Inspector-1 who interviewed an individual living in New York, New York ("Victim-4"), who, in or about November 2016, sent her eyeglasses to OpticsFast to have the bridge repaired. OpticsFast emailed Victim-4 that the repair would take approximately ten days and charged Victim-4's credit card for the repair. After six weeks of waiting, Victim-4 contacted OpticsFast about her eyeglasses.

The company claimed it had returned the eyeglasses, but when Victim-4 ultimately received them, they were a different pair of eyeglasses that had been shipped from China.

c. I have spoken to Postal Inspector-1 who interviewed an individual in New Jersey ("Victim-5"), who, in or about February 2017, sent his sunglasses to OpticsFast to have the lenses replaced. OpticsFast returned the sunglasses to Victim-5 with a note that said the company could not fix the sunglasses. Victim-5 emailed OpticsFast for a refund, and OpticsFast responded that returning the sunglasses was a mistake, and that Victim-5 should send them back. Victim-5 told OpticsFast that he was going to dispute the charge with his credit card, and received a response from the OpticsFast Email Account, signed by "Becky S.," which stated, "I am very not worried. I have been doing this for a decade. I will teach you a thing or 2 indeed." Victim-5 also spoke to a male individual who claimed to be the owner of OpticsFast, and he stated, "I've been doing this a long time - over 10 years - and I promise you won't get your money back."

9. I have also reviewed complaints by prospective customers of OpticsFast who were sent purportedly "free" United States Postal Service shipping labels by OpticsFast. Based on my review of customer complaints, and my conversations with law enforcement agents who have spoken to individuals who received these shipping labels from OpticsFast, I have learned that after prospective customers have filled out a form on OpticsFast.com to get a quote for eyewear, replacement lenses, or repairs, OpticsFast has sent a shipping label instead of a quote. These prospective customers did not request the shipping label and did not use it. Nonetheless, OpticsFast began contacting them through emails and by text message, requesting that they pay approximately $6 for the shipping label. When prospective customers have refused, OpticsFast has retaliated with harassment and threats of referring the matter to a debt collector, as follows:

a. I have spoken to Postal Inspector-1 who interviewed an individual in New Mexico ("Victim-6"), who visited OpticsFast.com in or about February 2017 and requested a quote for a lens repairs. Victim-6 then received a mailing label from the OpticsFast Email Account. Victim-6 subsequently saw poor reviews on the Internet for OpticsFast, decided not to send his lenses to the company, and never used the label. OpticsFast then began harassing Victim-6 to pay the cost of the shipping label. Victim-6 started receiving hundreds of emails per day from the OpticsFast Email Account and, after Victim-6

blocked the email address, he continued to receive emails from other accounts on behalf of OpticsFast. Victim-6 also received approximately 70 text messages per day from approximately 70 different numbers (all about OpticsFast), and he had to change his phone number to avoid being contacted. One email sent from the OpticsFast Email Account, signed by "Becky S.," threatened, "Very soon we are going to send this to collections. Be happy for now its just an email."

b. I have also reviewed a complaint filed by an individual in California ("Victim-7"), who contacted OpticsFast in or about 2016 about whether OpticsFast would honor a warranty on glasses that OpticsFast attempted to repair previously. Victim-7 did not receive a response, but did receive an email from the OpticsFast Email Account with an attached shipping label. Victim-7 responded that she did not intend to send her glasses back to OpticsFast. Victim-7 spoke on the telephone to a woman at OpticsFast who refused to give her name, and she told Victim-7, "We're taking you to collections!"

c. I have spoken to a USPIS Postal Inspector who interviewed an individual in California ("Victim-8"), who contacted OpticsFast in or about October 2016 to learn whether OpticsFast could fix his sunglasses. Victim-8 clicked on a link on OpticsFast.com, which resulted in a shipping label being mailed to Victim-8. Victim-8, however, never used the shipping label or any service from OpticsFast. When Victim-8 refused to pay the cost of the shipping label that he did not use, OpticsFast began sending Victim-8 a text message every morning at 6 a.m. to demand payment. The OpticsFast Email Account also sent Victim-8 hundreds of emails, including approximately 456 emails on a single day, hundreds of which had the subject line "I WIN!!!"

VITALY BORKER OWNS AND OPERATES OPTICSFAST

10. As detailed below, VITALY BORKER, the defendant, owns and operates OpticsFast. *See infra* ¶¶ 11-14. Although BORKER has employees who answer telephones and respond to emails, BORKER directs the operations of OpticsFast and deals directly with customers using the alias "Becky S." *See supra* ¶¶ 7(b)-(c), 8(a)-(c); *infra* ¶¶ 13(c)-(f). While BORKER attempts to obscure his identity publicly, he has admitted his role in OpticsFast.com to his friends and work associates. *Id.*

11. Based on my participation in this investigation, my conversations with other law enforcement agents, and my review

of court records, I have learned that from in or about January 2007 to in or about December 2010, VITALY BORKER, the defendant, operated DecorMyEyes.com, an online retailer of purported luxury eyewear, based in Brooklyn, New York. Throughout the time DecorMyEyes.com was active, customers complained that the website sold counterfeit and defective eyewear, and when they complained, BORKER responded, often using aliases, with harassing and threatening emails. BORKER was indicted by a federal grand jury sitting in this District on or about December 16, 2010, charging him with, among other things, mail and wire fraud. He pled guilty on or about May 12, 2011, and was sentenced on or about September 6, 2012, principally to a term of four years' imprisonment to be followed by three years' supervised release. BORKER was released from prison in or about 2015.

12. Based on my review of records provided by an email and website hosting company, I have learned that since August 2006, BORKER has leased, and continues to lease, computer servers under the company name DecorMyEyes.com. The website OpticsFast.com and the emails sent to and received by the email domain @opticsfast.com are stored on the servers leased by DecorMyEyes.com.

13. VITALY BORKER's operation of OpticsFast is also evident from his postings and conversations with others on Facebook. Specifically, based on my review of records provided by Facebook pursuant to a court-authorized search warrant, I have learned, among other things, the following:

a. VITALY BORKER, the defendant, uses a Facebook account "vitaly.borker" with the public name "Vito Borker." Among other things, the profile photograph on this account resembles pictures of BORKER in law enforcement databases, and the biographical information available for the account states that the user lives in Brooklyn, New York, and is from Ukraine, which I know to be true of BORKER.

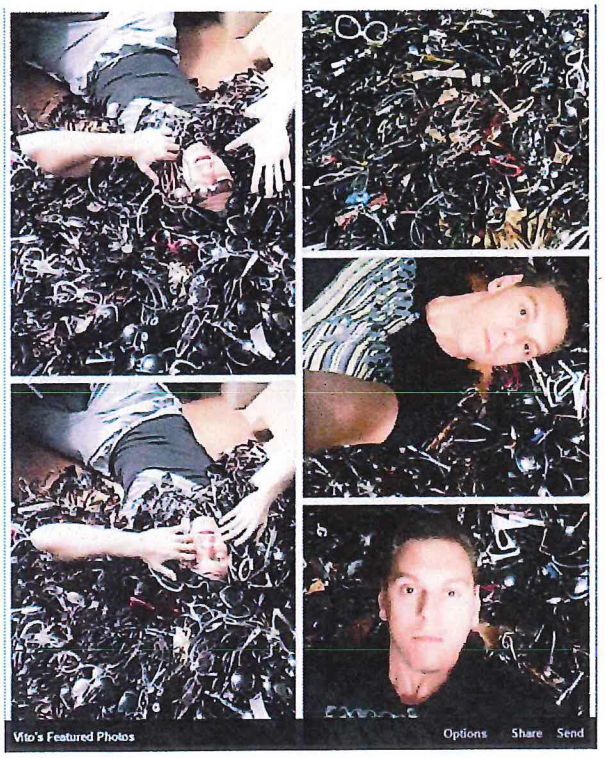
b. The banner photograph on the homepage of BORKER's Facebook, which was posted on or about June 12, 2015, is a photograph of a pile of hundreds of sunglass cases. Based on my training and experiences, many of these cases appear to be for designer eyewear, including for eyewear designed by Chanel and Dolce & Gabbana.

c. On or about May 5, 2015, a friend of BORKER on Facebook (the "Facebook Friend") sent a message to BORKER asking, "So what's the plan, building the website back up?"

BORKER responded in pertinent part, "I have a mess on my hands." The Facebook Friend asked BORKER if he "still ha[s] any of the girls working?" BORKER responded, "Nobody at this moment. I cut everyone off. No money leaves this company until I bring it back up." The Facebook Friend then asked, "What's the website again?" and BORKER responded, "www.opticsfast.com."

d. Beginning on or about February 2, 2016, BORKER communicated through Facebook messenger with a website programmer who appears to be based in Pakistan (the "Programmer") about making changes to OpticsFast.com. BORKER wrote to the Programmer that he "built" OpticsFast.com, that "this is my website, I designed it I did it all," and that "opticsfast.com is MY baby.. its my site its what I been working on for years." BORKER gave the Programmer instructions on edits to make to OpticsFast.com and told the Programmer to email him at the OpticsFast Email Account.

e. On or about February 8, 2016, BORKER posted a photo collage, pictured below, of several photographs of himself lying in what appears to be hundreds of sunglasses. With the photograph, BORKER wrote in pertinent part, "I am looking for a responsible fast paced person who can assist me at my Brighton Beach office doing various projects for my eye wear e-Commerce business. . . . Project one will be to help me sort this mess and help me list the glasses on websites."



f. On or about June 2, 2016, BORKER contacted an individual who had previously worked for BORKER when BORKER operated DecorMyEyes.com ("Former Employee-1").[1] BORKER asked Former Employee-1, in sum and substance, if she would start working for BORKER again. BORKER stated, "I need everything, you know how it is . . .it will end up being back to same as it was." Former Employee-1 eventually agreed to work for BORKER again. BORKER provided Former Employee-1 a login for his website. When the login for Former Employee-1 did not work, BORKER provided his own login identification, which was "becky."

g. On or about August 9, 2016, an individual who worked for DecorMyEyes.com ("Former Employee-2") contacted BORKER. Former Employee-2 told BORKER that he had previously worked for DecorMyEyes.com and asked BORKER, in sum and substance, whether he was still in the eyeglasses business and whether he needed any assistance. BORKER responded, "Becky on opticsfast that is me :-)."

14. Based on my review of bank records, I have learned that VITALY BORKER, the defendant, maintains a bank account in the name of Emalish Corporation and that he is the sole signatory on the account. Based on my review of records from the Emalish Corporation account, I have learned that BORKER typically receives over one hundred electronic payments per month from "Optics Fast Inc." that range from approximately $80 to $300. Based on my training, experience, and participation in this investigation, it appears that these are payments by OpticsFast.com customers for eyeglasses.

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[1] Specifically, based on my review of notes taken by a USPIS Postal Inspector during an interview with Former Employee-1 on or about April 13, 2011, I have learned that Former Employee-1 was employed by BORKER to work for DecorMyEyes.com.

WHEREFORE, deponent respectfully requests that a warrant be issued for the arrest of VITALY BORKER, the defendant, and that he be arrested and imprisoned or bailed, as the case may be.

Ashley Borofsky
Postal Inspector
United States Postal Inspection Service

Sworn to before me this
19th day of May, 2017

HONORABLE GABRIEL W. GORENSTEIN
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK