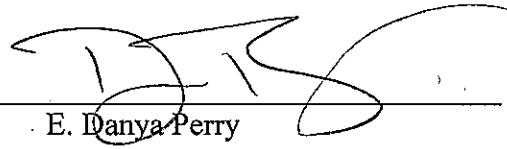


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Approved:



E. Danya Perry
Assistant United States Attorney

Before:

THE HONORABLE RONALD L. ELLIS
United States Magistrate Judge
Southern District of New York

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UNITED STATES OF AMERICA	:	<u>SEALED COMPLAINT</u>
- v. -	:	Violations of
	:	18 U.S.C. §§ 2261A(2),
	:	875(c), 1341, 1343, 2
VITALY BORKER,	:	
a/k/a "Tony Russo,"	:	
a/k/a "Stanley Bolds,"	:	
	:	COUNTY OF OFFENSE:
Defendant.	:	NEW YORK

-----x
SOUTHERN DISTRICT OF NEW YORK, ss.:

DOUGLAS G. VEATCH, being duly sworn, deposes and says that he is a Postal Inspector with the United States Postal Inspection Service ("USPIS"), and charges as follows:

COUNT ONE
(Cyberstalking)

1. From at least in or about January 2007, up to and including in or about December 2010, in the Southern District of New York and elsewhere, VITALY BORKER, a/k/a "Tony Russo," a/k/a "Stanley Bolds," the defendant, unlawfully, willfully, and knowingly, with the intent to kill, injure, harass, and place under surveillance with intent to kill, injure, harass, and intimidate, and to cause substantial emotional distress to a person in another State and tribal jurisdiction and within the special maritime and territorial jurisdiction of the United States, and to place that person in reasonable fear of the death of, and serious bodily injury to that person, a member of that person's immediate family, and a spouse and intimate partner of that person, used the mail, interactive computer services, and facilities of interstate and foreign commerce to engage in a course of conduct that caused substantial emotional distress to that person and placed that person in reasonable fear of the death of, or serious bodily injury to, any of the persons described above, to wit, BORKER communicated with, and threatened, numerous customers of his retail luxury eyewear website, "DecorMyEyes.com," via email and telephone in interstate

and foreign commerce, in order to harass, intimidate, and injure such victims, and to cause such victims substantial emotional distress.

(Title 18, United States Code, Section 2261A(2).)

COUNT TWO

(Threatening Interstate Communications)

2. From at least in or about January 2007, up to and including in or about December 2010, in the Southern District of New York and elsewhere, VITALY BORKER, a/k/a "Tony Russo," a/k/a "Stanley Bolds," the defendant, unlawfully, willfully, and knowingly transmitted, in interstate and foreign commerce, communications containing threats to injure the person of another, to wit, BORKER communicated with, and threatened, numerous customers of his retail luxury eyewear website, "DecorMyEyes.com," via email and telephone in interstate and foreign commerce, in order to harass, intimidate, and injure such victims, and to cause such victims substantial emotional distress.

(Title 18, United States Code, Section 875(c).)

COUNT THREE

(Mail Fraud)

3. From at least in or about January 2007, up to and including in or about December 2010, in the Southern District of New York and elsewhere, VITALY BORKER, a/k/a "Tony Russo," a/k/a "Stanley Bolds," the defendant, unlawfully, 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 to do so, placed in post offices and authorized depositories for mail matter, matters and things to be sent and delivered by the Postal Service, and deposited and caused to be deposited matters and things to be sent and delivered by private and commercial interstate carriers, and took and received therefrom such matters and things, and knowingly caused such matters and things to be delivered by mail and by such carriers according to the directions thereon, and at the places at which they were directed to be delivered by the persons to whom they were addressed, such matters and things, to wit, among other things, BORKER engaged in a scheme to defraud customers of his retail luxury eyewear website, "DecorMyEyes.com," by misrepresenting the authenticity and condition of merchandise he sold and mailed to such customers, and at times making unauthorized charges to customers' accounts and/or retaining their paid merchandise.

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

COUNT FOUR

(Wire Fraud)

4. From at least in or about January 2007, up to and including in or about December 2010, in the Southern District of New York and elsewhere, VITALY BORKER, a/k/a "Tony Russo," a/k/a "Stanley Bolds," the defendant, unlawfully, 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,

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, among other things, in electronic and telephonic communications, BORKER engaged in a scheme to defraud customers of his retail luxury eyewear website, "DecorMyEyes.com," by misrepresenting the authenticity and condition of merchandise he sold and mailed to such customers, and at times making unauthorized charges to customers' accounts and/or retaining their paid merchandise.

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

5. I am a Postal Inspector with the USPS in the New York Division. I have been personally involved in the investigation of this matter. This affidavit is based upon my conversations with other law enforcement officers and agents, my interviews of witnesses, and my examination of documents, reports and other records. Because this affidavit is being submitted for the limited purpose of establishing probable cause, it does not include all of the facts that I have learned during the course of my investigation. Where the contents of documents and the actions, statements, and conversations of others are reported herein, they are reported in substance and in part, except where otherwise indicated.

6. Based upon my investigation to date, I am aware that "DecorMyEyes.com" is an online retailer of purported luxury eyewear, based in Brooklyn, New York. I believe that both "Tony Russo" and "Stanley Bolds" are aliases used by VITALY BORKER, a/k/a "Tony Russo," a/k/a "Stanley Bolds," the defendant, who is the sole owner and operator of DecorMyEyes (according to witnesses with whom I have spoken, BORKER also has a female employee or employees who occasionally answer phones and respond to emails). Thus, where statements are attributed to BORKER herein, they were made to victims by the individual whom I believe to be BORKER, who used either the alias "Tony Russo" or "Stanley Bolds" when communicating with customers. Among other reasons, the bases for my belief that these aliases are used by BORKER include:

a. I have read an article published in the New York Times on or about November 26, 2010, in which BORKER appears effectively to have admitted using the alias "Tony Russo." In this same article, BORKER is quoted as explaining the business reasons for his conduct, essentially reasoning that the more negative comments DecorMyEyes receives, the higher its ranking on Internet search engines, and the more business it will do.

b. Other law enforcement agents and I have spoken with a number of victims, and I have also reviewed complaints filed with the Federal Trade Commission by well over 200 victims in many states within the United States as well as in countries abroad, each of whom made online purchases from DecorMyEyes.com. From my review of these complaints, a distinct pattern emerges: generally, many customers stated that they purchased eyewear from the website; that it was defective or appeared to be counterfeit; that they tried to return or exchange it; that a campaign of aggressive, obscene, and intimidating conduct followed from a representative of DecorMyEyes.com; and that, on many occasions, unauthorized payments (such as a twenty percent "restocking fee") were assessed, or the customers were not reimbursed for returned or unfulfilled orders, or the customers were never sent merchandise for which they had

been charged. The earlier complaints, dating from in or about January 2007 to in, roughly, or about mid-2009, generally identified "Stanley Bolds" as the perpetrator of this conduct, while later complaints, from roughly in or about mid-2009 to in or about December 2010, identified "Tony Russo." However, the *modus operandi* is identical throughout, with the same pattern of threats and abuse no matter whether the issuer identified himself as "Stanley Bolds" or "Tony Russo." For example, many customers received remarkably similar, profanity-laced threats from "Stanley Bolds" and "Tony Russo" alike that, among other things, he had their personal information, he knew where they lived, and he would visit horrific violence upon the complaining customers and their close family members. Several customers referred to the perpetrator of the conduct as BORKER.

c. I have reviewed an email exchange between a customer of DecorMyEyes.com (identified herein as "Victim-5") and the representative identifying himself as "Tony Russo," dated on or about November 10, 2010. In that email, Victim-5 communicated that he had learned that "Vito (Vitaly) Borker[]" used the different aliases of "Stanley Bolds" and "Tony Russo," and asked if he were living in Indonesia because he "had to flee the US??" In response, far from denying his true identity, and that he used those aliases, BORKER replied only that he has "been living here for many years now."

d. According to property tax and other documents I have reviewed, the address listed on DecorMyEyes.com is owned by BORKER.

7. I have reviewed dozens of email communications between VITALY BORKER, a/k/a "Tony Russo," a/k/a "Stanley Bolds," the defendant, and customers of DecorMyEyes.com. The tag line on each of these emails from DecorMyEyes.com is as follows: "These items are 100% brand new and Authentic, direct from the manufacturer. They come complete with certificate of authenticity, protective case and dust cloth. Every product is exactly as pictured. We own several stores around the country so there are no issues with authenticity. Our prices are much lower then the average retail location as we don't have to pay rent. Our site is the best place to buy sunglasses online. Our Prices are the lowest!!" Based upon the conversations that other law enforcement agents and I have had with many customers of DecorMyEyes.com, and the hundreds of complaints filed with the Federal Trade Commission that I have reviewed, the above-cited representation is false, in that, among other things, the eyewear was often defective, damaged, used, counterfeit, and/or did not come with any "certificate of authenticity."

8. I have spoken with a customer who resides in Long Island, New York, who purchased designer eyewear from DecorMyEyes in or about 2007 or 2008, for approximately \$200 ("Victim-1"). Victim-1 was dissatisfied with her service and attempted to cancel the order, and a dispute ensued with VITALY BORKER, a/k/a "Tony Russo," a/k/a "Stanley Bolds," the defendant, over an unauthorized fee charged by DecorMyEyes.com to Victim-1's credit card. In a series of threatening phone conversations, BORKER described Victim-1 to Victim-1's husband as a "fucking whore," and threatened to "come after" and to "get" Victim-1 and her husband, in such a way as to make Victim-1 fear for her life and that of her husband. Although BORKER also told Victim-1 and her husband that he had sued them, they subsequently learned that this was untrue.

9. I have spoken with a customer who resides in Manhattan, New York, who purchased merchandise from DecorMyEyes.com ("Victim-2"). I have also reviewed communications between Victim-2 and VITALY BORKER, a/k/a "Tony Russo," a/k/a "Stanley Bolds," the defendant, both in the form of email messages and on voicemail messages. Based upon the foregoing, I am aware that:

a. On or about July 27, 2010, Victim-2 placed an order for a pair of luxury prescription eyeglasses and some contact lenses with DecorMyEyes.com. At that time, she spoke with a DecorMyEyes.com representative via online chat, who informed her that the contact lenses were in stock, but that the eyeglasses would arrive in two weeks' time because they were going to be shipped from France. Victim-2 authorized DecorMyEyes.com to charge \$361.97 to her credit card for the merchandise.

b. On or about July 28, 2010, BORKER telephoned Victim-2, and instructed her to choose a different type of contact lenses, as the ones she had ordered had been discontinued. Victim-2 instead requested a refund, much to BORKER's apparent aggravation.

c. On or about August 2, 2010, Victim-2 received the eyeglasses at her residence in Manhattan via a private mail carrier service. The eyeglasses were defective, appeared to be counterfeit, and were missing the prescription lenses Victim-2 had ordered. Victim-2 then noticed that a payment of \$481.96 had been charged to her credit card. In a phone conversation later that day, when Victim-2 expressed concern about the eyeglasses and the unauthorized charge to her credit card, BORKER responded with abuse and threats of violence, specifically stating that he knew Victim-2's address, that he was only one bridge away, and that he would come to Victim-2's residence and "fuck [her] up the ass." After Victim-2 hung up the telephone, BORKER continued repeatedly to call Victim-2, including well into the night.

d. On or about August 3, 2010, Victim-2 mailed the eyeglasses to the address in Brooklyn, New York listed on DecorMyEyes.com. On the same day, she disputed the charges with her credit card company.

e. Beginning on or about September 23, 2010 (shortly before the time when DecorMyEyes.com would no longer be able to contest the dispute under the credit card company's rules), BORKER began again to repeatedly call Victim-2, using a blocked phone number. On or about September 27, 2010, "Tony Russo" left a voicemail message for Victim-2, which I have heard, replete with obscenities about the "fucking dispute" she had filed with her credit card company, and threatening to drag her into court for having "fucking stole[n]" the eyeglasses from him. On that same day, Victim-2 also spoke with BORKER on the telephone, hanging up on him when he threatened her with physical harm. Also on the same day, BORKER emailed Victim-2 with a document purporting to show a court date and docket number for a small claims action he had filed against her. Victim-2 later learned – and BORKER admitted to her – that this document had been falsified, and that no such claim had been filed against her.

f. Also on or about September 27, 2010, BORKER sent an email to Victim-2 that included information personal to Victim-2, and attached a photograph of the outside of Victim-2's residence. Victim-2 continued to receive calls from a blocked number well into the night and over the next week.

g. On or about September 29, 2010, Victim-2 posted a negative review of DecorMyEyes.com on a complaint board, which contained hundreds of similar complaints against DecorMyEyes.com. A short while later, BORKER forwarded that same review to Victim-2, and wrote that she should “[c]lose the dispute with the credit card company if you know whats good for you.” The email stated that he would cause her “financial problems” but went on to state: “Do the right thing and everyone goes away. I AM WATCHING YOU!”

h. BORKER refunded Victim-2 for the cost of the contact lenses she had ordered but never received. Yet BORKER continued to claim – falsely – that Victim-2 had never returned the counterfeit glasses, and thus refused to credit her the payment she had made for those glasses. Eventually, Victim-2’s credit card company credited this payment back to Victim-2’s card.

i. The result of the threatening electronic and telephonic communications by BORKER has been to cause Victim-2 extreme emotional distress and fear of injury or death. Each of the above-described communications occurred while Victim-2 was in Manhattan, New York.

10. I have spoken with another customer who resides in Manhattan, New York and who purchased eyewear from DecorMyEyes.com, on or about June 18, 2010 (“Victim-3”). I have also read a recitation of her dealings with VITALY BORKER, a/k/a “Tony Russo,” a/k/a “Stanley Bolds,” the defendant, and have reviewed certain email correspondence between them, all of which Victim-3 has verified as accurate. Based upon the foregoing, I am aware that Victim-3 had purchased a pair of designer sunglasses for approximately \$350 through DecorMyEyes.com in or about June 2010. When she still had not received them several weeks after placing the order, she called DecorMyEyes.com and spoke to BORKER, who called her a “stupid bitch” and a “cheap Jew,” and stated that he knew where Victim-3 lived and could make her life a living hell. Victim-3 later spoke again with BORKER who stated that the sunglasses she had ordered were out of stock and that she would have to pay a twenty percent “restocking fee.” Victim-3 later did receive a pair of sunglasses via mail, but they appeared to be counterfeit. Victim-3 thereafter confirmed with a legitimate eyewear retailer that the sunglasses she had received were fake and returned the sunglasses to DecorMyEyes.com. After an email exchange with BORKER in which Victim-3 stated her intention to report him to the New York Department of Consumer Affairs, BORKER sent back an email that read: “PS: don’t forget that I know where you live as well.” BORKER subsequently began calling Victim-3 repeatedly, often in the middle of the night, stating that he was watching her and threatening to “kick her ass,” rape her, and “fuck [her] in the ass.” Several months later, DecorMyEyes did refund Victim-3 the cost of her sunglasses. The result of the threatening electronic and telephonic communications initiated by BORKER has been to cause Victim-3 extreme emotional distress and fear of injury or death. The above-described communications generally occurred while Victim-3 was in Manhattan, New York.

11. I have spoken with another customer who resides in New Jersey and works in Manhattan, New York, and who purchased designer eyewear from DecorMyEyes.com, in or about June or July 2010 (“Victim-4”), which were mailed to Victim-4 through the United States Postal Service. I have also read descriptions of Victim-4’s dealings with VITALY

BORKER, a/k/a "Tony Russo," a/k/a "Stanley Bolds," the defendant, the accuracy of which Victim-4 has confirmed. Based upon the foregoing, I am aware that when Victim-4 attempted to return the frames, BORKER informed him, in a telephone call, that Victim-4 would have to pay a \$57 "restocking fee" – despite earlier assurances to Victim-4 that no fees would apply. When Victim-4 stated that he would file complaints with the Federal Trade Commission and with an Internet search engine that had highly ranked the website, BORKER thereafter threatened Victim-4, stating "I know where you work" and "I can hurt you." BORKER also sent a broadcast email to individuals within the company where Victim-4 worked, which was routed through servers in Maryland, falsely accusing Victim-4 of engaging in narcotics sales and homosexual practices. Certain of the above-described communications, which greatly frightened Victim-4, occurred while Victim-4 was in Manhattan, New York.

12. Other law enforcement agents and I have spoken with several customers who purchased designer eyewear from DecorMyEyes.com who were defrauded as a result of misrepresentations made to them by VITALY BORKER, a/k/a "Tony Russo," a/k/a "Stanley Bolds," the defendant. I have also reviewed documents containing communications between such victims and BORKER, which the victims have confirmed to be accurate. Based upon these conversations and these documents, I am aware that:

a. On or about June 22, 2010, BORKER emailed an individual who had purchased a pair of luxury sunglasses ("Victim-5") on or about August 31, 2009, inquiring if Victim-5 would be interested in selling those sunglasses back to DecorMyEyes.com (because another customer wished to buy this particular model, which had since been discontinued), in exchange for a new pair of luxury sunglasses. Victim-5 agreed and shipped the sunglasses to an overseas address provided to him by BORKER; however, despite repeated efforts, Victim-5 was never given payment or the new pair of sunglasses as promised.

b. In or about October 2010, a victim who resides in Colorado ("Victim-6") shipped two pairs of broken eyeglasses to DecorMyEyes.com for repair. Victim-6 subsequently received an email stating that the glasses were "unfixable" and was told that he would be required to pay a fee of \$12.95 to have the broken glasses sent back to him. When BORKER later agreed to ship the frames back to Victim-6 if Victim-6 paid the postage, Victim-6 duly sent a pre-paid United States Postal Service label to BORKER. However, BORKER never returned the frames to Victim-6. When Victim-6 complained and stated that he would post negative comments about DecorMyEyes.com on consumer websites, BORKER stated, in an email sent on or about October 27, 2010, that he was instructing his assistant to "crush" the glasses and then "take the pieces of what is left of his glasses and use the label he sent to ship the powder back to him," and told Victim-6 to "GO FUCK YOURSELF COCKSUCKER... I pee on your negative [comments]. Now you lost your glasse [sic] bitch!" In another email on the same day, BORKER referred to "cockers like you who I shit on... Please drop dead ok?" In another email the same day, entitled "LICK MY ASSHOLE," BORKER attached a vulgar and obscene photograph (relating broadly to the subject line's invitation) to an email sent to Victim-6. In an email dated November 10, 2010, BORKER followed a string of obscenities with the statement: "I hope you fall off a ladder and break your head."

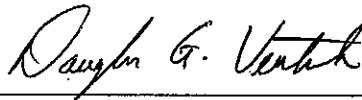
c. In or about October 2010, a customer ("Victim-7") shipped broken eyeglasses, worth approximately \$150, to DecorMyEyes.com for repair. Despite many emails

begging for assistance, and abusive responsive emails from BORKER, the glasses were never returned to Victim-7.

13. Other law enforcement agents have spoken with the mail carrier who delivers mail to the Brooklyn address listed for returns on the DecorMyEyes.com website. Based upon that, I am aware that, typically, many parcels are delivered on a daily basis to that address, and that VITALY BORKER, a/k/a "Tony Russo," a/k/a "Stanley Bolds," the defendant, also receives mail at that address. Based upon my conversations with customers, my review of documents, and my familiarity with DecorMyEyes.com, I am aware that eyewear is not shipped from this Brooklyn address, and thus I believe that the daily parcels that are delivered there are returns from dissatisfied customers. I have read a November 26, 2010 New York Times article about DecorMyEyes.com, in which BORKER is quoted as estimating that he, at that time, had in his home-office approximately \$500,000 in returned inventory, and the article notes that each of the hundreds of eyeglasses in the office "represents lost revenue and a brawl."

14. I am aware that civil and criminal complaints have been filed against VITALY BORKER, a/k/a "Tony Russo," a/k/a "Stanley Bolds," the defendant, based on his longstanding practice of defrauding and intimidating customers. For example, I am aware that BORKER was sued in a 2006 civil case filed in federal district court for the Southern District of New York by luxury brands who alleged trademark infringement due to BORKER's sale of counterfeit goods. I have seen settlement documents filed in that case on or about September 6, 2007, signed by BORKER, in which he agreed to pay a \$300,000 judgment and agreed to cease his infringing conduct.

WHEREFORE, deponent asks that a warrant be issued for the arrest of VITALY BORKER, a/k/a "Tony Russo," a/k/a "Stanley Bolds," the defendant, and that he be imprisoned or bailed, as the case may be.



DOUGLAS G. VEATCH

Postal Inspector

United States Postal Inspection Service

Sworn to before me this
3rd day of December, 2010



THE HONORABLE RONALD L. ELLIS
CHIEF UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK