

OCT 20 2004

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

SENSITIVE

FIRST GENERAL COUNSEL'S REPORT

MUR: 5443, 5495, 5505
DATE COMPLAINT FILED: April 22,
2004, July 29, 2004, August 3, 2004
DATE OF NOTIFICATION: August 12,
2004, August 4, 2004, August 10, 2004
DATE ACTIVATED: June 21, 2004,
August 26, 2004, September 3, 2004

EXPIRATION OF SOL: April 22, 2009,
July 29, 2009, August 3, 2009

COMPLAINANTS: John Kerry for President, Inc.
Kerry-Edwards 2004, Inc.

RESPONDENTS: www.johnfkerry-2004.com
Yimikaw Wickliffe
Executive Services International
and/or Persons Unknown

www.johnkerry-edwards.org
and/or Persons Unknown
Connie Bye

<http://testhost.yahoogoogle.biz/JohnKerry/contribute.html>
Nilesh Kothari, and/or Persons Unknown

RELEVANT STATUTES: 2 U.S.C. § 441h(b)

INTERNAL REPORTS CHECKED: None

FEDERAL AGENCIES CHECKED: Federal Trade Commission

I. INTRODUCTION

These matters stem from complaints filed by John Kerry for President, Inc. and Kerry-Edwards 2004, Inc., the principal campaign committees of Senator John F. Kerry and later

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Senators Kerry and Edwards, the Democratic Party nominees for President and Vice-President of the United States. Because the issues in all three complaints are substantially similar, these matters have been consolidated in this report.

Complainants allege that the respondents in each matter violated the Federal Election Campaign Act of 1971, as amended ("the Act") by fraudulently soliciting and collecting contributions through websites and/or email solicitations, in which the respondents misrepresented that they were authorized to collect contributions on behalf of the candidates' authorized campaign committees and that the contributions collected would benefit the candidates. In each instance, the respondents do not appear to have been acting under the direction or with the permission of the candidates' authorized committee.

The respondents in each of these schemes do not appear to be associated, and the information we have acquired thus far shows that the schemes appear to have originated in different parts of the world. Moreover, while the schemes do involve attempts to defraud contributors using the Internet, they do not appear to be connected in any other way.

Accordingly, this Office recommends that the Commission find reason to believe that Respondents violated § 441h(b) of the Act, and grant this Office authority to open an investigation

II. FACTUAL AND LEGAL ANALYSIS

A. Background

1. MUR 5443

John Kerry for President, Inc., the principal campaign committee for Senator John F. Kerry ("the Kerry Committee"), filed a complaint with the Commission alleging that a website

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located at <http://www.johnfkerry-2004.com> was fraudulently soliciting and collecting contributions by passing itself off as a website authorized by the Kerry Committee. *See* Complaint, Attachment A. The fraudulent website's content borrowed extensively from the actual authorized website of the campaign, located at <http://www.johnkerry.com>. The fraudulent website appropriated the official website's campaign logo and the content of the "John Kerry on the Issues" page of the authorized websites. *Id.* Additionally, the fraudulent website falsely used the statement, "paid for and authorized by John Kerry for President, Inc. 2004." *Id.* Finally, the fraudulent website solicits contributions and suggests these contributions will benefit Senator Kerry's campaign. The Home page of the site uses the prominently displayed slogan, "Bring It On! Join Our Fight, Make a Contribution!" and links this solicitation to a Contributions page, which permits contributions to be made exclusively through two payment services -- e-gold Ltd. and e-Bullion.com.¹ *Id.*

The web host for this unauthorized website, UnifiedNames.com, provided the name and address it has on file for the registered owner of the website.² The owner of the site is identified as Yimikaw Wickliffe, Executive Services International, One Chestnut Drive, Suite 92, Nashua, NH 03060, email:

On August 12, 2004 the Commission sent a Notice of the complaint via Federal Express to Yimikaw Wickliffe and Executive Services International at the address provided by the Kerry Committee in the complaint. Federal Express has been unable to deliver the Notice because it could not find the recipient at the address provided.³

¹ e-gold Ltd. is a Nevis, West Indies company and e-Bullion is a registered corporate entity of the Republic of Panama.

² The owner of the website attempted to mask his identity using a service called ProtectFly. However, ProtectFly provided the Kerry Committee with the information it has on file about the website owner's identity.

³ While there is a One Chestnut "Street" in Nashua, NH 03060, which appears to be an office building at which Federal Express attempted delivery, neither the Suite number nor the address One Chestnut "Drive" provided by the web host, exists.

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This Office has not been able to locate a person named Yimikaw Wickliffe in New Hampshire or the United States. Through a search of the internet, this Office has located a person by the name of Yimika Wickliffe (note the differently spelled name) who lives in Nigeria and who maintains an email address and web page at _____ on which he lists his occupation as "Network Administrator" involved in "web database design and programming." At this juncture, other than the similarity in name and the web-related occupation, we have no other evidence to verify that the Yimika Wickliffe in Nigeria is the owner/operator of the fraudulent website at issue.

This Office has confirmed that there is a company named Executive Services International that is located in Nashua, NH and registered with the Secretary of State. However, the company may not be associated with the fraudulent website, as it is not located at the address, telephone number or email address provided by the web host. The legitimate company has been registered with the Secretary of State in New Hampshire since 2000, maintains a website, address and telephone number, and is engaged in manufacturing and engineering. However, this Office also located, through internet searches of the name "Executive Services International," a different company called "virtual-offices-online.com," which is operated out of India and allows subscribers located all over to world to set up "virtual offices" so that they may have an address, telephone number and call center that appears to be located in the United States, but is actually owned and operated internationally.⁴

⁴ We found no official address or telephone number for virtual-offices-online.com; it appears to be strictly an online business.

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2. MUR 5495

On July 29, 2004 the Kerry Campaign filed a second complaint alleging that unknown persons were fraudulently soliciting and collecting contributions by electronic mail and that the links in that fraudulent solicitation directed recipients to a fraudulent website. Both the email and the website claimed that the solicitation was authorized by the Kerry Committee and that funds collected would benefit Senator Kerry. *See* Complaint, Attachment A. The email solicitation used in the scheme was almost identical to a legitimate bulk email solicitation that had been distributed by the Kerry Committee on July 20, 2004, two days before the Kerry Committee became aware of the fraudulent email solicitation.⁵

There were only two, almost indecipherable, differences between the legitimate and the fraudulent emails. First, the fraudulent email appeared to be sent from a false address, info@johnkerry.com, and correspondents who used the reply function in the email message were directed to another fake address, johnkerry@johnkerry.com.⁶ The use of both of these fraudulent addresses in the email would have probably been unremarkable or at least confusing to a recipient of the fraudulent solicitation, as the legitimate email address for the Kerry Committee's website is www.johnkerry.com. Second, all of the links embedded in the fraudulent email solicitation were modified so a recipient who clicked on any of the links, including the contribution link, would be redirected to the unauthorized website located at www.johnkerry-edwards.org.

⁵ By July 22, 2004, when the Kerry Committee became aware of the fraudulent website, the site had been taken down and was no longer accessible.

⁶ Complainant asserted that the Kerry Committee has received over 30,000 undeliverable emails to the johnkerry@johnkerry.com address.

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Both the fraudulent email solicitation and website purported to be authorized by and for the benefit of the Kerry Committee. In fact, the email solicitation purports to be authored by Mary Beth Cahill, Campaign Manager. *See* Complaint, Attachment A. The email also contains the several misleading statements designed to confuse recipients, including "Paid for by John Kerry for President, Inc.," and the disclaimer "Contributions or gifts to John Kerry for President, Inc. are not deductible for federal income tax purposes." *Id.* One of the links embedded in the email solicitation falsely purports to permit recipients to contact the campaign by stating, "To contact John Kerry for President, please click here," but the link actually directs recipients to the fake website. Another link that directs to recipients to the false website contains the message, "Keep the ball rolling: Contribute!" *Id.*

The purported registered owner of the www.johnkerry-edwards.org website was identified as Connie Bye New Braunfels, TX 78132, at the email address jkerry@safe-mail.net. The Commission sent Ms. Bye a Notice of the complaint on August 4, 2004. On August 12, 2004, Ms. Bye contacted the Commission by telephone and letter stating that she had received the complaint and categorically denying the allegations contained therein. Attachment 1. Furthermore, Ms. Bye stated that she has been a victim of identity theft

This Office has interviewed Ms. Bye and reviewed evidence of her claims of identity theft, as well as verified that she has reported these claims to the appropriate authorities.

This Office has identified the web host of the fraudulent website as a German company called Joker.com. Joker.com also has Connie Bye listed as the owner/operator of the fraudulent

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website on its public database. It appears that Ms. Bye is not the website's owner. At this time we are unable to link the email solicitation to any other individual.

This Office has also done an internet search of the email address jkerry@SAFe-mail.net and found that the email address is provided by a company called SAFe-mail Ltd., an email system that purports to provide email accounts for its clients with a higher level of security and privacy than other email systems. We have not been able to link the email address at SAFe-mail.net to Ms. Bye or anyone else at this time.

3. MUR 5505

On August 3, 2004, Kerry-Edwards 2004, Inc., the principal campaign committee of Senators John F. Kerry and John Edwards ("the Kerry-Edwards Committee"), filed a complaint alleging that someone was fraudulently soliciting and collecting contributions by electronic mail and falsely claiming that they were authorized to make such solicitations by John Kerry for President, Inc. ("the Kerry Committee"). The complaint alleged that on August 1, 2004 at least two individuals had received the fraudulent email solicitations, which purported to be from the Kerry Committee.⁷

The email solicitation requested the recipient make a "secure contribution." The contribution link directed the potential donor to a website located at <http://testhost.yahoogoogle.biz/JohnKerry/contribute.html>. An identical link was embedded at the end of the email solicitation under the words, "Contact Us."⁸

⁷ The emails were forwarded to the campaign by these two individuals

⁸ By August 2, 2004, when the Kerry-Edwards Committee became aware of the email solicitation, the website linked to the email was no longer publicly available and remains inaccessible.

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A WHOIS search of the site <http://testhost.yahoogoogle.biz/JohnKerry/contribute.html>

indicates that the website is registered to Nilesh Kothoari India 302015 at
the email address A Notice of the complaint was sent to Messrs.

Kothari and on August 10, 2004, this Office has received no response to this Notice.

B. Analysis

1. Section 441h Violations

The Act prohibits the fraudulent solicitation of contributions. *See* 2 U.S.C. § 441h.

Specifically, § 441h(b)(1) provides that no person shall fraudulently misrepresent that they are “speaking, writing, or otherwise acting for or on behalf of any candidate or political party or employee or agent thereof for the purpose of soliciting contributions or donations.” 2 U.S.C. §441h(b)(1). The Act also prohibits the “willful and knowing” participation or conspiracy to participate in any scheme designed to violate the prohibition of fraudulent misrepresentation in the solicitation of contributions or donations. 2 U.S.C. § 441h(b)(2).

In all three MURs, the persons responsible for the scheme fraudulently misrepresented in their websites and email communications that they are either acting on behalf of or are the authorized agents of the Kerry and/or Kerry-Edwards Committee. In MUR 5443, the website contained the statement, “Paid for and authorized by John Kerry for President, Inc.” Similarly, in MUR 5495 the website claimed to be “Paid for by John Kerry for President, Inc.” and the email solicitation received by potential donors came from the fake email address info@johnkerry.com, which would appear to the unknowing recipient to be affiliated with the candidate’s authorized website www.johnkerry.com. In MUR 5505, the email solicitations contained the statements, “This is a message sent by John Kerry Online Volunteer Center” and “This email is being sent on

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behalf of the JohnKerry.com system.” The solicitation also claimed to be “Paid for by John Kerry for President, Inc.”

Additionally, the persons responsible for the schemes in MURs 5443 and 5495 crafted their solicitations to closely mirror solicitations sent by the authorized candidate committee in a deliberate effort to mislead and confuse contributors. In MUR 5443, the persons responsible for the scheme copied several pages from the legitimate website operated by the Kerry Committee in an effort to make the fake website look authentic. In fact, the fake website appropriates the legitimate websites' logo and the entire “John Kerry on the Issues” page. The persons responsible for the scheme in MUR 5495 went even further and copied the entire legitimate email solicitation sent out by the Kerry Committee, only changing the links to redirect recipients to their fraudulent website.

The persons responsible for the schemes in all three MURs requested contributions in their solicitations, which they all falsely claimed would benefit the Kerry or Kerry-Edwards campaign committees. In MUR 5443 there are numerous appeals for contributions distributed throughout the website, including the phrases, “Bring it On! Join Our Fight, Make a Contribution!” and “Contribute Today!” There is an entire Contribution page, which is almost identical to the legitimate site's page and which invites recipients to make contributions via two payment services -- e-gold and e-Bullion. Similarly, the email solicitation in MUR 5495 includes the heading “Keep the ball rolling: Contribute!” Likewise, the email in MUR 5505 includes the explicit solicitation, “Please join me and make a secure contribution” above the link to the fraudulent website.

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The persons responsible for each of these schemes have gone to great lengths to hide their identities.⁹ The information about the possible identities of the persons responsible for the schemes in MURs 5443 and 5505 suggests that the offenders might be located outside of the United States.¹⁰ Since the only name provided in connection with MUR 5495 appears to be that of a victim of identity theft, Connie Bye, and we have confirmed that Ms. Bye is not involved in this scheme, we have no information as to the possible identity or location of the participants in this matter.

This Office has been unable to verify that the persons named by complainant are in fact the persons responsible for the fraudulent solicitations. For this reason, we have included "Persons Unknown" as a Respondent in each MUR. Determining the actual identity of the violators will require further investigation. To that end, this Office proposes to ask all third parties that we have been able to identify as being connected to the fraudulent websites and/or solicitations, including the web hosts, email service providers and payment services, to provide all information available about the identities of the owners and any financial institutions associated with the fraudulent websites.

⁹ In MUR 5443, the persons responsible for the scheme used the service ProtectFly.com to hide their identity and the information we have acquired from ProtectFly.com about their identity has not been verified to be correct. Thus, at this point we are unable to identify the true owner/operator of the www.johnfkerry-2004.com website. Similarly, in MUR 5495, the owners/operators of the www.johnkerry-edwards.org website are unknown. The information provided to the web host about the site's owner was false and the based on identifying information that was stolen from Connie Bye, a citizen who has demonstrated that she is not involved in and has no knowledge of the scheme. Additionally, in MUR 5505, notices have been sent to the persons who were identified by the web host as operating the fraudulent website, but this Office has received no response or confirmation that the persons to whom we sent notifications exist.

¹⁰ In 5443, the only name identified in connection with the website, Yimikaw Wickliffe, is similar to that of a man who is a Network Administrator that lives in Nigeria, and the business name provided by the web service, Executive

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The Complainants, the Kerry Committee and the Kerry-Edwards Committee, contend that none of these websites or email solicitations were authorized and none of the funds, if any, collected through these websites benefited the complainants. Thus, there is reason to believe that the respondents in all three MURs, with the exception of Connie Bye, misrepresented themselves and fraudulently solicited and collected contributions from potential donors. Accordingly, this Office recommends the Commission find reason to believe that respondents www.johnfkerry-2004.com, Yimikaw Wickliffe, Executive Services International and/or Persons Unknown in MUR 5443, www.johnkerry-edwards.org and/or Persons Unknown in MUR 5495 and http://testhost.yahoogoogole.biz/JohnKerry/ contribute.html and/or Persons Unknown in MUR 5505, have violated 2 U.S.C. § 441h(b) by fraudulently soliciting and collecting contributions.

In the instance of Connie Bye, who was named as a respondent in MUR 5495, this Office has reviewed Ms. Bye's response to the complaint and documents submitted by Ms. Bye. An OGC investigator has also interviewed Ms. Bye. All of the evidence gathered to date supports Ms. Bye's contention that she is not the owner/operator of the website at issue, but is instead the victim of identity theft. Accordingly, this Office recommends that the Commission find no reason to believe that Connie Bye violated 2 U.S.C. § 441h(b) and that the matter be dismissed as to Ms. Bye.

III. RECOMMENDATIONS

A. In MUR 5443:

1. Find reason to believe that www.johnfkerry-2004.com, Yimikaw Wickliffe, Executive Services International and/or Persons Unknown violated 2 U.S.C. § 441h(b);
- 2.
3. Approve the attached Factual and Legal Analyses; and
4. Approve the appropriate letters.

B. In MUR 5495:

1. Find reason to believe that www.johnkerry-edwards.org and/or Persons Unknown violated 2 U.S.C. § 441h(b);
2. Find no reason to believe that Connie Bye violated 2 U.S.C. § 441h(b) and dismiss the matter as to Ms. Bye;
- 3.
4. Approve the attached Factual and Legal Analyses; and
5. Approve the appropriate letters.

C. In MUR 5505:

1. Find reason to believe that http://testhost.yahoogoogole.biz/JohnKerry/contribute.html, Niles Kothari, and/or Persons Unknown violated 2 U.S.C. § 441h(b);

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2.

3. Approve the attached Factual and Legal Analyses; and

4. Approve the appropriate letters.

Lawrence H. Norton
General Counsel

Rhonda J. Vosdingh
Associate General Counsel
for Enforcement

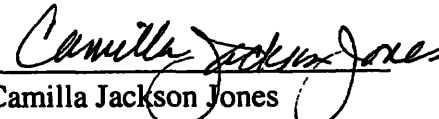
10/20/04

Date

BY:



Mark D. Shonkwiler
Assistant General Counsel


Camilla Jackson Jones
Attorney

Attachments:

1. Response Letter from Connie Bye dated August 12, 2004.
2. Factual and Legal Analysis for MUR 5443.
3. Factual and Legal Analysis for MUR 5495.
4. Factual and Legal Analysis for MUR 5495 (Bye).
5. Factual and Legal Analysis for MUR 5505.

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