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SECOND DEFENDANT PLEADS GUILTY IN PROSECUTION OF MAJOR INTERNATIONAL SPAM OPERATION

WASHINGTON, D.C. – A California man has pleaded guilty to aiding and abetting others to violate the CAN-SPAM Act of 2003 – a federal law designed to crack down on the transmission of bulk, unsolicited commercial electronic mail messages – Assistant Attorney General Alice S. Fisher of the Criminal Division and U.S. Attorney Paul K. Charlton of the District of Arizona announced today.

The guilty plea entered by Kirk F. Rogers, 43, of Manhattan Beach, California is the second-ever conviction related to the transmission of obscene e-mails. The plea was entered today at federal court in Phoenix, Arizona.

Rogers pleaded guilty to one spamming count under the CAN-SPAM Act. Rogers agreed to forfeit money obtained in the commission of these crimes and faces a maximum sentence of five years in prison for the offense. Sentencing is scheduled for June 5, 2006.

According to the plea agreement, Rogers aided and abetted three individuals in the transmission of numerous spam e-mails containing graphic pornographic images: Jennifer R. Clason, 32, formerly of Tempe, Arizona; Jeffrey A. Kilbride, 39, of Venice, California, and James R. Schaffer, 39, of Paradise Valley, Arizona. The plea agreement states that Rogers developed, and then managed the computer system used to transmit the spam e-mails on behalf of Kilbride and Schaffer.

“This ongoing prosecution addresses two of the most significant problems to arise in the age of the Internet: online obscenity and the intrusive, costly and often harmful practice of e-mail spam,” said Assistant Attorney General Fisher. “We will use all the laws provided to us by the Congress, including the CAN-SPAM Act, to make sure that the Internet provides as safe an environment as possible for our children and communities.”

“We want to put a stop to pornographers who enter our houses uninvited and threaten our children’s innocence. This case, the first in the country, should send a strong message to other pornographers,” said U.S. Attorney Charlton.

On Aug. 25, 2005, a nine-count indictment was returned against Kilbride, Schaffer, and Clason by a federal grand jury in Phoenix, charging all three defendants with two counts of fraud and related activity in connection with electronic mail under the CAN-SPAM Act and one count

of criminal conspiracy. The indictment also charges Kilbride and Schaffer with two counts of interstate transportation of obscene material using an interactive computer service, two counts of interstate transportation of obscene material for the purpose of sale or distribution, and one count of money laundering. Schaffer is also charged with one count of operating three pornographic Internet websites without including required statements describing the location of identification and other records for the performers portrayed in the websites, as is required by federal law. The trial of Clason, Kilbride, and Schaffer is scheduled for May 2, 2006.

According to the Aug. 25, 2005 indictment, Clason, Kilbride, and Schaffer conspired to engage in the business of sending spam e-mails for their own personal gain, benefit, profit and advantage. America Online, Inc. received more than 600,000 complaints between Jan. 30, 2004 and June 9, 2004 from its users regarding spam e-mails that had allegedly been sent by the defendants' spamming operation.

The indictment further alleges that the spam e-mails sent by the defendants advertised pornographic Internet websites in order to earn commissions for directing Internet traffic to these websites. It is alleged that graphic pornographic images were embedded in each of the defendants' e-mails. Four counts of the indictment charge felony obscenity offenses for such transmission of hard-core pornographic images of adults engaged in explicit sexual conduct, which meet the Supreme Court's test for adult obscenity.

According to the indictment, the spam e-mails were sent in a manner that would impair the ability of recipients, Internet service providers processing the e-mails on behalf of recipients, and law enforcement agencies to identify, locate, or respond to the senders. The indictment further alleges that Kilbride and Schaffer also created and utilized overseas companies named The Compliance Company and Ganymede Marketing to conceal and disguise their activities. According to the indictment, Kilbride and Schaffer also utilized overseas bank accounts in Mauritius and the Isle of Man (a British Crown dependency) for the purpose of laundering and distributing the proceeds of the spamming operation.

Another defendant involved in the conspiracy, Andrew Ellifson, 31, of Scottsdale, Arizona, pleaded guilty on Feb. 18, 2005 to one spamming count under the CAN-SPAM Act, and one count of criminal conspiracy. This marked the first conviction in the nation related to the transmission of obscene spam e-mails. According to the Aug. 25, 2005 indictment, Ellifson assisted in the creation, operation, and management of the computer network used to transmit the spam e-mails sent by the operation. Ellifson faces a maximum penalty of five years in prison for each of the spamming and criminal conspiracy offenses.

This case is being prosecuted by Trial Attorney William A. Hall, Jr., of the Child Exploitation and Obscenity Section (CEOS) of Criminal Division at the U.S. Department of Justice, Washington, D.C., and John J. Tuchi and John R. Lopez, IV, Assistant U.S. Attorneys, District of Arizona. It was investigated by the Phoenix Field Office of the Federal Bureau of Investigation and CEOS's High Tech Investigative Unit.

The charges contained in the Aug. 25, 2005 indictment are allegations only and Clason, Kilbride, and Schaffer are presumed innocent until and unless convicted at trial.

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