



FEDERAL ELECTION COMMISSION  
WASHINGTON, D C 20463

NOV 5 2004

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

<http://testhost.yahoogoogle.biz/>  
c/o Niles Kothair

Jaipur, India 302015

Re: MUR 5505 (<http://testhost.yahoogoogle.biz/>)

Dear Messrs. Kothair and Phatka:

On August 10, 2004, the Federal Election Commission notified you, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to you at that time.

Upon further review of the allegations contained in the complaint and public information, the Commission, on October 27, 2004, found that there is reason to believe that you violated 2 U.S.C. § 441h(b) of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with your responses to the enclosed subpoena and written questions within 30 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred

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Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

If you have any questions, please contact Camilla Jackson Jones, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Bradley A. Smith  
Chairman

Enclosures

Factual and Legal Analysis

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## FEDERAL ELECTION COMMISSION

### FACTUAL AND LEGAL ANALYSIS

**RESPONDENT:** <http://testhost.yahoogoogle.biz> MUR: 5505  
Nilesh Kothari  
and/or Persons Unknown

#### I. INTRODUCTION

This matter was generated by complaint filed with the Federal Election Commission filed by Kerry-Edwards 2004, Inc. (the "Kerry-Edwards Committee"), the principal campaign committees of Senators John F. Kerry and John Edwards, the Democratic Party nominees for President and Vice-President of the United States. Complainant alleges that the website site <http://testhost.yahoogoogle.biz/JohnKerry/contribute.html> and its owners Nilesh Kothari and (collectively "Respondents") violated the Federal Election Campaign Act of 1971, as amended ("the Act") by fraudulently soliciting and collecting contributions through an email solicitation and website, which Respondents claimed was authorized to solicit and collect contributions on behalf of the Kerry-Edwards Committee. The evidence demonstrates that Respondents were not acting under the direction or with the permission of the candidates' authorized committee.<sup>1</sup> Accordingly, there is reason to believe that Respondents violated § 441h(b) of the Act.

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<sup>1</sup> Respondents have gone to great lengths to hide their identities and we have been unable to verify that the persons named by complainant are the only persons responsible for the fraudulent solicitations. For this reason, we have included "Persons Unknown" as a Respondent to include any persons who are not yet known to the Commission who might have participated in this scheme to violate the Act.

## II. FACTUAL AND LEGAL ANALYSIS

### A. Background

On August 3, 2004, 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.<sup>2</sup> 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."<sup>3</sup>

An internet search of the site <http://testhost.yahoogoogle.biz/JohnKerry/contribute.html> indicates that the website is registered to Nilesh Kothari

Jaipur, India 302015 at the email address \_\_\_\_\_ A Notice  
of the complaint was sent to Messrs. Kothari and \_\_\_\_\_ on August 10, 2004.  
Respondents did not respond to the 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

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<sup>2</sup> The emails were forwarded to the campaign by these two individuals

<sup>3</sup> 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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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).

Respondents fraudulently misrepresented in their website and email solicitation that they are either acting on behalf of or are the authorized agents of the Kerry-Edwards Committee. The email solicitation at issue contained the statements, “This is a message sent by John Kerry Online Volunteer Center” and “This email is being sent on behalf of the JohnKerry.com system.” The solicitation also claimed to be “Paid for by John Kerry for President, Inc.” Additionally, Respondents requested contributions in the solicitation, which they falsely claimed would benefit the Kerry-Edwards campaign committee. The email expressly stated, “Please join me and make a secure contribution” above the link to the fraudulent website.

Complainants contend that neither the website nor the email solicitation were authorized and none of the funds, if any, collected through the website benefited the Kerry-Edwards Committee.<sup>4</sup> Thus, there is a prima facie case for reason to believe that Respondents misrepresented themselves and fraudulently solicited and collected contributions from potential donors. Accordingly, there is reason to believe that the website <http://testhost.yahoogoogole.biz/JohnKerry/contribute.html>, Nilesh Kothari

and/or Persons Unknown violated 2 U.S.C. § 441h(b) by fraudulently soliciting and collecting contributions.

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<sup>4</sup> Respondents have gone to great lengths to hide their identities, including using personal information stolen from Connie Bye to conceal the identity and location of the participants in this fraud scheme. For this reason, we have included “Persons Unknown” as a Respondent in this matter.