JOSEPH P. RUSSONIELLO (SCBN 9990) United States Attorney

2010 FEB -9 A 9:53

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION 00082

UNITED STATES OF AMERICA,

Plaintiff,

v.

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14 CHRISTOPHER KENNEDY, a/k/a biglevel, 15

Defendant.

No.

VIOLATIONS: 18 U.S.C. § 371 -Conspiracy to Commit Wire Fraud

SAN JOSE VENUE

INFORMATION

The United States Attorney charges:

BACKGROUND

- 1. At all times relevant to this Information:
- eBay, Inc. ("eBay") is a San Jose, California based company which is a. engaged in the online auction business.
- eBay maintains an advertising and promotion program, known as the eBay Partner Network ("EPN"), through which website that display eBay advertisements are reimbursed for referrals. Under the EPN, eBay will pay a referral fee to an affiliate when an advertisement on that affiliate's website directs a web user to the eBay website. When that user

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accesses the eBay website, a text string of code ("cookie") is deposited on the user's computer. This cookie contains information identifying the referring website ("EPN ID") and may be used to track whether and when the user returns to the eBay website. A subsequent visit to the eBay website may result in payment of a referral fee if the user engages in a revenue action, which occurs when the user utilizes eBay's auction service. If multiple cookies are present on the user's computer, which may occur if the user has clicked on several different advertisements before engaging in a revenue action, the most recently deposited cookie (and its corresponding affiliate website) will be credited for any revenue action. Many users visit eBay's website without being referred by an affiliate and the revenue actions performed by such users do not result in a commission payment.

- c. Defendant Christopher Kennedy ("defendant"), a resident of Las Vegas, Nevada, created a "cookie stuffing" program, known as saucekit. Cookie-stuffing is the act of depositing a cookie containing an affiliate website's EPN ID onto an individual's computer without that individual having to click on an advertisement or link. Cookie-stuffing occurs when an individual visits an affiliate website or webpage, such as an eBay auction page, and without clicking on an advertisement or link (and in some cases, without ever seeing an advertisement), a cookie containing the affiliate website's EPN ID is placed onto the individual's computer. The cookie remains on that individual's computer for a period of time and, if that individual engages in a revenue action, eBay will credit the affiliate. As a result, eBay will pay referral fees to an affiliate, even though the individual who visited the affiliate website or webpage had not been referred to eBay by that website or webpage.
- d. The saucekit program operated by directing the browser of a visitor to the affiliate website to defendant's servers in Nevada to retrieve the affiliate website's EPN ID. The visitor's browser is then redirected to eBay servers in California or Arizona, which subsequently generated and placed a cookie with the affiliate website's EPN ID onto the visitor's computer. Defendant sold the saucekit program through his website, www.saucekit.com.

 COUNT ONE: (18 U.S.C. § 371 - Conspiracy to Commit Wire Fraud)

THE OBJECT AND MEANS OF THE CONSPIRACY

- 2. The object of the conspiracy to defraud was that defendant sold the saucekit program to EPN affiliates who used the program to obtain advertising compensation from eBay to which they were not entitled.
- 3. It was part of the conspiracy to defraud that defendant created and sold the saucekit program through his website, www.saucekit.com.
- 4. It was also part of the conspiracy to defraud that individuals known to the United States, who were all EPN affiliates, purchased the saucekit program and used it to generate code to be placed on their websites and webpages. Once the code was in place, cookies with the affiliate's EPN ID would be placed onto the computers of anyone who visited the affiliate websites or webpages even if those visitors never clicked on an eBay advertisement or link.
- 5. It was further part of the conspiracy that if those visitors engaged in a revenue action on the eBay website, the eBay website identified the presence of the cookie with the affiliate's EPN ID and credited the affiliate with referring a visitor to the eBay website despite the fact that no eBay advertisement or link on the affiliate website or webpage had actually been clicked. The affiliate then received referral fees to which it was not entitled.
- 6. Beginning in or around January 2009 and continuing to in or around November 2009, in the Northern District of California and elsewhere, the defendant,

CHRISTOPHER KENNEDY

did knowingly and intentionally, combine, conspire and agree with individuals known to the United States to defraud eBay as to a material matter, to obtain money by means of materially false or misleading pretenses, representations, omissions and promises, in violation of Title 18, United States Code, Section 1343.

OVERT ACTS

7. On or about March 18, 2009, eBay sent a cease and desist letter to defendant. On or about March 25, 2009, defendant posted a comment on the www.blackhatworld.com Internet forum, mocking the cease and desist letter that had been sent to him.

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- 8. On or about October 8, 2008, an individual known to the United States stated on the www.blackhatworld.com forum that he had been using the saucekit program as a beta tester for a month and is currently up to \$4,000 in his eBay account which is a credit to saucekit.
- 9. On or about November 22, 2008, defendant submitted a posting on the www.blackhatworld.com forum stating that he had a client make almost \$10,000 in one month and the \$7,000 in the prior month.
- 10. On or abut February 6, 2009, a web browser accessed an eBay auction for a Western Digital hard drive. The browser was directed to defendant's server in Nevada, which then redirected the browser to an eBay server in either California or Arizona. An eBay cookie with EPN ID xxxxxx2002 was then placed on computer from which the browser originated. The individual using the browser did not click upon an eBay advertisement or link.
- 11. On or abut February 9, 2009, a web browser accessed an eBay auction for a Sony Play Station. The browser was directed to defendant's server in Nevada, which then redirected the browser to an eBay server in either California or Arizona. An eBay cookie with EPN ID xxxxxx0765 was then placed on computer from which the browser originated. The individual using the browser did not click upon an eBay advertisement or link.
- 12. On or abut February 10, 2009, a web browser accessed an eBay auction for a T-Mobile cellphone. The browser was directed to defendant's server in Nevada, which then redirected the browser to an eBay server in either California or Arizona. An eBay cookie with EPN ID xxxxxx0204 was then placed on computer from which the browser originated. The individual using the browser did not click upon an eBay advertisement or link.
- 13. On or about March 12, 2009, defendant posted an advertisement on the www.blackhatworld.com forum, stating that the saucekit program was one of the most effective cookie stuffing methods available on the Internet and providing information and instructions on who to purchase and utilize the saucekit program.
- 14. On or about August 12, 2009, an individual known to the United States sent an email to defendant inquiring whether the saucekit program was still available for purchase. That same day, defendant responded in an e-mail, stating that the saucekit program was still available.

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1	15. On or about August 13, 2009, defendant provided a promotional code and website	
2	link from which the saucekit program could be purchased to an individual known to	
3	the Grand Jury. That same day, this individual purchased access to the saucekit program.	
4	All in violation of Title 18, United States Code, Section 371.	
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6	Dated: 2/9/10 JOSEPH P. RUSSONIELLO United States Attorney	
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8	MATTHEW A. PARRELLA Chief, CHIP Unit	
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AO 257 (Rev. 6/78)	COMMINAL ACTION IN HE DISTRICT COURT
DEFENDANT INFORMATION RELATIVE TO A	CRIMINAL ACTION - IN U.S. DISTRICT COURT
BY: COMPLAINT INFORMATION INDICTMENT SUPERSEDING	Name of District Court, and/or Judge/Magistrate Location NORTHERN DISTRICT OF CALIFORNIA
OFFENSE CHARGED	
18 U.S.C. 371 - Conspiracy to Commit Wire Fraud Petty	DEFENDANT - U.S. 2010 FEB - 9 A 9: 55
☐ Minor ☐ Misde-	CHRISTOPHER KENNEDY
☐ meanor	DISTRICT COURT NUMBER RICHARD W. WEKING
✓ Felony	CLERK U.S. DISTRICT COUGH
PENALTY:	$\mathbb{R} - 1000000$
5 year term of imprisonment \$250,000 or twice the amount involved in the offense	Y-1 10 00082
3 year period of supervised release	
\$100 mandatory special assessment	DEFENDANT
DD00FFDW0	IS NOT IN CUSTODY
PROCEEDING Name of Complaintant Agency, or Person (&Title, if any)	Has not been arrested, pending outcome this proceeding.
U.S. Secret Service Special Agent Katherine Pierce	1) If not detained give date any prior summons was served on above charges
—	2) Is a Fugitive
person is awaiting trial in another Federal or State Court, give name of court	3) Is on Bail or Release from (show District)
	o) [_] is on ball of Release from (show district)
this person/proceeding is transferred from another district per (circle one) FRCrP 20, 21 or 40. Show	
District	IS IN CUSTODY
	4) On this charge
this is a reprosecution of	5) On another conviction
charges previously dismissed	Awaiting trial on other Fed'l State
which were dismissed on SHOW notion of:	Chames
U.S. Att'y Defense	If answer to (6) is "Yes", show name of institution
this prosecution relates to a	
✓ pending case involving this same defendant	Has detainer Yes \ If "Yes"
defendant MAGISTRATE prior proceedings or appearance(s), CASE NO.	been filed? No J give date filed
before U.S. Magistrate regarding	Month/Dov/Near
this defendant were recorded under	DATE OF
Name and Office of Person	ARREST 7
Furnishing Information on Joseph P. Russoniello	Or if Arresting Agency & Warrant were not
INIS FORIVI	DATE TRANSFERRED Month/Day/Year
U.S. Att'y Other U.S. Agency	TO U.S. CUSTODY
Name of Asst. U.S. Att'y (If assigned) Hanley Chew	This report amends AO 257 previously submitted
ADDITIONAL INFOR	RMATION OR COMMENTS ————————————————————————————————————
PROCESS:	THE PART OF THE PA
☑ SUMMONS ☐ NO PROCESS* ☐ WARRA	ANT Bail Amount:
If Summons, complete following:	
Arraignment Initial Appearance *Where	defendant previously apprehended on complaint, no new summons
Defendant Address: or warra	ant needed, since Magistrate has scheduled arraignment
Christopher Kennedy c/o Assistant Federal Public Defender Varrell Fuller	Date/Time: May 13, 2010/9:30 a.m.
160 West Santa Clara Street, Suite 575	
San Jose, California 95113	Before Judge: Howard R. Lloyd
Comments: Please have United States Marshal's Service deliver summ	ions.