

# Landmark Spamming, Obscenity Appeals Case Heats Up

**XBIZ NEWS REPORT**

By Rhett Pardon

Tuesday, Mar 3, 2009 Text size: [+](#) [+](#) [-](#)



LOS ANGELES — Appellants representing the first convictions in the 9th U.S. Circuit Court of Appeals for online obscenity not involving child pornography and the first convictions ever under the federal CAN-SPAM Act filed their joint reply brief Tuesday.

Jeffrey Kilbride of Venice, Calif., was sentenced to more than six years and James Schaffer of Paradise Valley, Ariz., was sentenced to more than five years in prison after they were found guilty of embedding porn in mass emails.

The brief filed Tuesday answers the Justice Department's 81-page opposition brief filed last December in the case that has been coined a "landmark" obscenity and CAN-SPAM prosecution.

Schaffer's attorney, Gary Jay Kaufman of The Kaufman Law Group told XBIZ that he is confident the court will reverse his conviction.

"The government's opposition actually helped us; they had no comeback for the fact that never, in the 35-year history of the Miller test, has a

of 5) [3/3/2009 11:43:56 AM]



## XBIZ POLL

Are you interested in 3rd party 2257 services?

Yes, I want to use one

Yes, I want to operate one

No, I'm not interested

What's that?

**STATE OF THE INDUSTRY  
RESEARCHED & REVEALED**  
Competitive market  
intelligence for success.

**GET THE REPORT >>**



jury been instructed to consider both their own community standards and lay witness opinion testimony from outside their community,” Kaufman said. “They had no comeback because that case simply does not exist.”

Kilbride’s attorney, Greg Piccionelli of Piccionelli & Sarno, said the case provides “a great example of the difficulty in adapting old law to new facts.”

“The district court tried its best, but in the end crafted an absolutely unconstitutional jury instruction,” he said.

Both The Kaufman Law Group and Piccionelli & Sarno did not represent the appellants in their original trial in 2005.

Kilbride and Schaffer began their bulk email operation in 2003, using international servers and mismatching “reply to” and “from” addresses, making it difficult to trace the spam emails, according to court filings.

The Justice Department said they registered their domains under the name of a “fictitious employee at a shell corporation” and that the two had set up in the Republic of Mauritius, another CAN-SPAM violation.

They also are alleged to have used overseas banks to launder and hide money from the IRS.

Schaffer also was charged with 2257 violations, after the Justice Department discovered he had not maintained appropriate records for the adult performers featured on Boobs.com, CumShots.com and FaceSat.com, three websites he operated overseas through The Compliance Company and Ganymede Marketing.

With the convictions, both were fined \$100,000 and forced to hand over \$1.1 million of their \$2 million in spam profit.

They also were ordered to pay America Online \$77,500 after the conglomerate claimed to have had 1.5 million customers complain about spam.

In November 2007, after hiring The Kaufman Law Group and Piccionelli & Sarno, both Schaffer and Kilbride were granted bail pending appeal.

Colin Hardacre, also of The Kaufman Law Group, which represents Schaefer, told XBIZ that in the original trial, “the prosecution was allowed to put lay witnesses from other communities on the stand to testify as to how offended they were by the images they allegedly received from our clients.”

“This testimony was absolutely prejudicial and completely irrelevant,” he said.