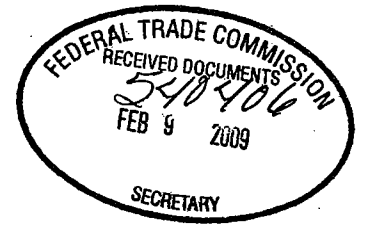


UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES



In the Matter of

**GEMTRONICS, INC.,
a corporation, and**

**WILLIAM H. ISELY,
individually and as the owner
of Gemtronics, Inc.**

PUBLIC

DOCKET NO. 9330

COMPLAINT COUNSEL'S STATUS REPORT

Pursuant to the Court's Order Requiring Status Report, dated January 28, 2009,

Complaint Counsel hereby files its status report.

I. STATUS OF COMPLAINT COUNSEL'S AND RESPONDENTS' DISCOVERY

Per the Scheduling Order in this matter dated October 28, 2008, discovery in this matter closed on January 21, 2009. Respondents were neither cooperative nor expeditious in responding to Complaint Counsel's discovery requests. With Respondents having failed to: 1) provide responses to interrogatories; 2) produce documents for Respondent Gemtronics, Inc.; 3) provide any identification of 89 pages of documents produced by Respondents Isely; and 4) provide Respondent Isely for deposition, Complaint Counsel filed a Motion to Compel on January 22, 2009. This Court issued an Order Granting Complaint Counsel's Motion, ordering Respondents to 1) provide full and complete responses to written discovery, including production of documents, no later than 5:00 p.m. on the day before the day of commencement of the deposition of Respondent Isely; and 2) produce Respondent Isely for deposition to be concluded no later than February 5, 2009.

On Tuesday, February 3, 2009, Respondents provided Complaint Counsel with their discovery responses, and on Wednesday, February 4, 2009, the deposition of Respondent Isely was taken.¹ Respondents' responses were woefully deficient, and failed to provide Complaint Counsel with 1) any documents from Respondent Gemtronics; 2) any substantive response to Interrogatories from Respondent Gemtronics; 3) sufficient or responsive answers to a number of Interrogatories to Respondent Isely; and 4) any identification of the 89 pages of documents produced by Respondent Isely to Complaint Counsel on January 20, 2009.

Given Respondents' consistent failure to provide discovery and/or substantive responses to discovery, in the interests of progressing this matter forward towards trial or settlement, Complaint Counsel seeks only the outstanding information below.

A. Outstanding Discovery

Despite numerous requests by Complaint Counsel, both pre-complaint and post-complaint, that Respondents provide customer information, Respondents have been steadfast in their refusal to disclose any of this information. Accordingly, since this data is relevant and within the proper scope of discovery, Complaint Counsel, pursuant to this Court's Order dated January 28, 2009, seeks that the Court further compel Respondent Isely to provide responses to the following discovery requests below seeking relevant information about his customers who purchased RAAX11.

¹ Immediately after Respondent Isely's deposition, Respondents' counsel took the unsworn statement of a Tierra.net employee pursuant to a *subpoena duces tecum* issued by Respondents on January 27, 2009. (See Attachment A, Complaint Counsel's Opposition to Respondents' Motion to Extend Discovery and Modify the Scheduling Order, filed January 30, 2009.)

(1) **Complaint Counsel's Interrogatories to Respondent Isely**

14. Disclose the name, address, and telephone number of each consumer either that has purchased the product RAAX11 from you or to whom you have shipped the product RAAX11, and provide the amount each consumer purchased in terms of total number of bottles and total amounts paid for the product.

Answer: OBJECTION: Respondent objects to this Interrogatory on the grounds that it is vague, over broad. Respondent further objects to this Interrogatory on the ground that it seeks information that is neither relevant, nor reasonably calculated to lead to the discovery of admissible evidence. Respondent further objects on the basis that the information sought contains confidential information of third parties who provided said information with an expectation of privacy. **ANSWER:** Based on the above-foregoing objections, Mr. Isely respectfully submits no response to this Interrogatory.²

(2) **Complaint Counsel's Request for Production to Respondent Isely**

16. All documents and communications relating to consumers, including but not limited to documents and communications relating to the purchase and sale of RAAX11, such as consumer complaints, inquiries about the product, invoices, bills of sale, and shipping documentation; and relating to the participation by any consumer in any test or study of RAAX11.

RESPONSE: Respondent objects to the extent this Request seeks customers' names, addresses and other contact information in that the information

² Under Rules of Practice 3.35(c), Respondents have the option of producing records.

sought is not discoverable under Rule 3.31(c) and the customers had a reasonable expectation of privacy when they provided said information to Respondent.

Without waiving the above stated objections, all documents not objected to will be produced.³

II. SETTLEMENT NEGOTIATIONS

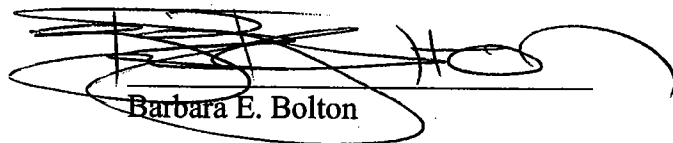
The parties have conferred twice since the Complaint was filed and will continue to confer on settlement. While some progress has been made, Complaint Counsel, again despite repeated requests, has only this week received any data regarding Respondents' sales figures. Given the lack of such data, Complaint Counsel has been challenged to move any proposed settlement forward.

III. PROPOSED MODIFICATION TO SCHEDULING ORDER

In addition to needing additional time to obtain the compelled discovery from Respondents sought above in I.A., Complaint Counsel is now seeking additional time in order to serve a subpoena on Respondents' bank for information on the bank account identified this week by Respondents as Gemtronics' business account during the pendency of its operations. Accordingly, Complaint Counsel requests this Court to Modify the Scheduling Order allowing limited third-party discovery to obtain Gemtronics bank account data to March 6, 2009, and extend the date for filing Motions for Summary Decision up to and including March 27, 2009.

Dated: February 6, 2009

Respectfully submitted,



Barbara E. Bolton

³ Respondents have produced no customer information.

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404-656-1379 (facsimile)
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CERTIFICATE OF SERVICE

I hereby certify that on this date, I filed and served the attached:

COMPLAINT COUNSEL'S STATUS REPORT

The original and one (1) paper copy via overnight delivery and one (1) electronic copy via email to:

Donald S. Clark, Secretary
Federal Trade Commission
600 Pennsylvania Ave., N.W., Room H-159
Washington, D.C. 20580
email: secretary@ftc.gov

One (1) email copy and two (2) paper copies served by overnight mail delivery to:

The Honorable D. Michael Chappell
Administrative Law Judge
600 Pennsylvania Ave., N.W. Room H-112
Washington, D.C. 20580
email: oyalj@ftc.gov

One (1) electronic copy via email and one (1) paper copy via overnight delivery to:

Matthew I. Van Horn
16 W. Martin Street, Suite 700
Raleigh, NC 27602
email: matthew@vanhornlawfirm.com

Dated: February 6, 2009


Barbara E. Bolton