

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION



In the Matter of

GEMTRONICS, INC.,
a corporation, and

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

PUBLIC

DOCKET NO. 9330

**EXPEDITED JOINT MOTION OF THE PARTIES
FOR REVISED SCHEDULING ORDER**

Pursuant to the Federal Trade Commission's Rule of Practice 3.21(c)(2), Complaint Counsel and Respondents ("the parties") hereby respectfully move to modify the Scheduling Order dated February 17, 2009, by extending each of the remaining deadlines and to schedule the hearing date to June 8, 2009. As set forth in detail below, settlement discussions have caused the events in the current Scheduling Order to be suspended as of March 19, 2009, thereby making essential information unavailable to the parties in order to adequately prepare for a hearing on May 5, 2009. Accordingly, the parties jointly request that the Court extend the deadline for the final hearing to June 8, 2009, and extend the intermittent deadlines by the amount of time forth in the attached proposed Revised Scheduling Order.

I. This Court Has Discretion To Extend Scheduling Order Deadlines Upon A Showing of "Good Cause"

FTC Rule of Practice 3.21(c)(2) states that the "Administrative Law Judge may grant a motion to extend any deadline or time specified in [the] scheduling order only upon a showing of good cause." 16 C.F.R. 3.21(c)(2). In determining whether to grant the motion for enlargement of time, the "Administrative Law Judge shall consider any extensions already granted, the length

of the proceedings to date, and the need to conclude the evidentiary hearing and render an initial decision in a timely manner.” *Id.*

Good cause is demonstrated if a party seeking to extend a deadline demonstrates that a deadline cannot reasonably be met despite the diligence of the party seeking the extension.

Bradford v. Dana Corp., 249 F.3d 807, 809 (8th Cir. 2001); *Sosa v. Airprint Systems, Inc.*, 133 F.3d 1417, 1418 (11th Cir. 1998); *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 607 (9th Cir. 1992); Fed. R. Civ. P. 16 Advisory Committee Notes (1983 amendment). The parties present their reasons for seeking this extension herewith:

1. Pursuant to the Court’s suggestion, on March 19, 2009, and continuing thereafter, the parties engaged in serious and protracted settlement discussions. Per the Court’s direction, the events and deadlines set forth in the Scheduling Order were suspended to allow the parties the unfettered ability to pursue settlement.
2. Despite the earnest efforts of the parties to reach a settlement, on April 28, 2009, Respondents notified Complaint Counsel and the Court, that a settlement of this matter had not been obtained, nor was it foreseeable that settlement would be attainable with continued efforts.
3. On April 29, 2009, the Court notified the parties that, per the Scheduling Order, this matter would go forward with the date scheduled for the hearing of May 7, 2009, with the intervening pre-hearing event deadlines to be condensed to allow the hearing to begin on time, unless counsel were to submit a modification of the Scheduling Order to include a new hearing date to take place within 60 days. That same day, Complaint Counsel and Respondents agreed that the scheduled date for the hearing could not be met by the parties and that the parties would file a joint Motion for Modification and a proposed new

Scheduling Order to comply with the Court's request for the following reasons:

- A. By suspending the Scheduling Order, the usual course of prehearing events have been halted thereby preventing such necessary information exchanges as Respondents' final proposed witness list and exhibit list, and both parties' pretrial briefs including findings of fact and conclusions of law.
 - B. Other events suspended under the Scheduling Order have precluded the parties from filing any motions in *limine*, motions to strike, and motions for *in camera* treatment.
 - C. Finally, as a result of the suspension, the parties have been precluded from pursuing and filing joint stipulations of law, facts and authenticity, which ultimately could have a significant bearing on substance and duration of the hearing in this matter. For instance, by agreeing to certain stipulations, the parties could eliminate the need for certain witnesses or expert witnesses thereby compressing the time and expense needed for the hearing.
 - D. Thus, by not having adequate time and the necessary information to prepare, the parties have been substantially disadvantaged in their ability to present their respective cases which serves neither the interests of justice nor judicial economy.
4. The parties agree that the requested modification to the scheduling order will not materially alter the positions of the parties. Further, the proposed modification should not materially impact the overall time constraints in this matter.¹ The proposed Revised Scheduling Order contemplates a trial date of June 8, 2009.

¹ Rule 3.51 states that the Court's initial decision must ordinarily be filed no later than one year after the issuance of the administrative complaint. Here, the Court's decision would need to be rendered by September 18, 2009.

Scheduling Order contemplates a trial date of June 8, 2009.

Thus, the parties have demonstrated good cause for, and respectfully request, a Modification of the Scheduling Order providing for a hearing date to take place on June 8, 2009.

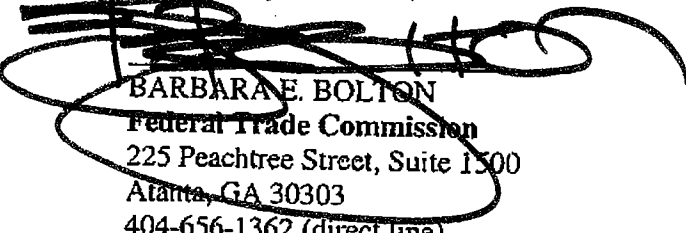
II. Proposed Modification to Scheduling Order

A proposed Revised Scheduling Order is attached which, beginning Respondents' proposed final witness list and trial exhibits, provides condensed deadlines for the pretrial process, leading to commencement of the trial on June 8, 2009, well within the Courts deadline of trial within 60 days. In preparing the proposed Revised Scheduling Order, the parties mirrored the structure of the existing order.

III. Conclusion

For the foregoing reasons, the parties believe that they have demonstrated good cause to amend the scheduling order and respectfully request the Court to GRANT the proposed Revised Scheduling Order.

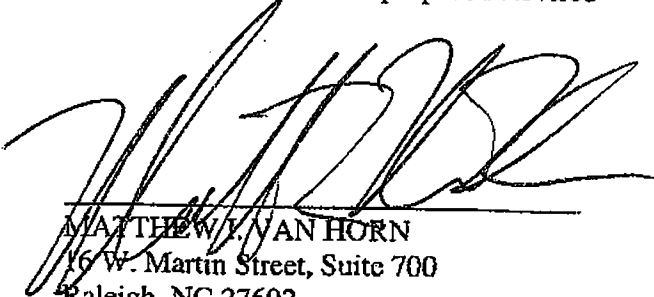
Respectfully submitted,



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COMPLAINT COUNSEL

Dated: April 30, 2009



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COUNSEL FOR RESPONDENTS

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

In the Matter of

**GEMTRONICS, INC.,
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**WILLIAM H. ISELY,
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[Proposed] REVISED SCHEDULING ORDER

On February 16, 2009, Complaint Counsel filed an unopposed Expedited Motion for Revised Scheduling Order. The motion is GRANTED. The Revised Scheduling Order is as follows:

- May 4, 2009 - Respondents' Counsel provides to Complaint Counsel its final proposed witness and exhibit lists, including designated testimony to be presented by deposition, copies of all exhibits (except for demonstrative, illustrative or summary exhibits), and a brief summary of the testimony of each witness.
- Respondents' Counsel serves courtesy copies on ALJ of its final proposed witness and exhibit lists and a brief summary of the testimony of each witness.
- May 6, 2009 - Parties that intend to offer confidential materials of an opposing party or non-party as evidence at the hearing must provide notice to the opposing party or non-party, pursuant to 16 C.F.R. § 3.45(b).
- May 11, 2009 - Deadline for filing responses to motions for summary decision.
- May 13, 2009 - Deadline for filing motions *in limine* and motions to strike.
- May 15, 2009 - Deadline for filing motions for *in camera* treatment of proposed trial exhibits.
- May 18, 2009 - Deadline for filing responses to motions *in limine* and motions to strike.

- May 20, 2009 - Deadline for filing responses to motions for *in camera* treatment of proposed trial exhibits.
- May 22, 2009 - Complaint Counsel files pretrial brief, to include proposed findings of fact and conclusions of law. To the extent possible, findings of fact shall be supported by document citations and/or deposition citations. Conclusions of law shall be supported by legal authority.
- May 26, 2009 - Exchange and serve courtesy copy on ALJ objections to final proposed witness lists and exhibit lists. Exchange objections to the designated testimony to be presented by deposition and counter designations.
- May 27, 2009 - Exchange proposed stipulations of law, facts, and authenticity.
- May 29, 2009 - Respondents' Counsel files pretrial brief, to include proposed findings of fact and conclusions of law. To the extent possible, findings of fact shall be supported by document citations and/or deposition citations. Conclusions of law shall be supported by legal authority.
- June 3, 2009 - File final stipulations of law, facts, and authenticity. Any subsequent stipulations may be offered as agreed by the parties.
- June 8, 2009 - Final prehearing conference to begin at 10:00 a.m. in room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, NW, Washington, DC 20580.
- The parties are to meet and confer prior to the conference regarding trial logistics and proposed stipulations of law, facts, and authenticity and any designated deposition testimony. Counsel may present any objections to the final proposed witness lists and exhibits, including the designated testimony to be presented by deposition. Trial exhibits will be admitted or excluded to the extent practicable.
- June 8, 2009 - Commencement of hearing to begin at 10:00 a.m. in room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, NW, Washington, DC 20580. (The date of the commencement of the hearing and other deadlines listed above are contingent upon scheduling constraints in other dockets. Should the dates change, the parties will be notified as soon as practicable.)

The "Additional Provisions" set forth in the Scheduling Order entered on October 28,

2009, remain unchanged.

ORDERED:

D. Michael Chappell
Administrative Law Judge

Date: April ____, 2009

CERTIFICATE OF SERVICE

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

1. **EXPEDITED JOINT MOTION OF THE PARTIES FOR REVISED SCHEDULING ORDER**
2. **[Proposed] REVISED SCHEDULING ORDER**

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: oalj@ftc.gov

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

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Dated: April 30, 2009



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