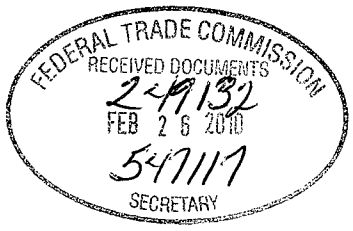
original

William H. Isely, Respondent
964 Walnut Creek Rd.
Franklin, NC, 28734

b.isely@ftpmailbox.com
Tel/FAX 828-369-7590
Feb. 28 , 2010

Honorable D. Michael Chappell
Chief Administrative Law Judge (Acting)
Federal Trade Commission
H113
600 Pennsylvania Ave, NW
Washington DC, 20580



Re: ***Gemtronics, Inc and William H. Isely, FTC Docket No 9330***

Enclosed is My

MOTION TO SANCTION THE COMPLAINT COUNSEL FOR HER IMPROPER ACTIONS IN THE MATTER OF GEMTRONICS, INC, AND WILLLIAM H. ISELY, RESPONDENTS.

I had been persuaded by my ex-Counsel not to bring up this topic, but the recent false reporting by the Complaint Counsel of our telephone conversation after we had agreement on what she would report tipped the scale in the other direction. I clearly said several times I objected to her two amendment motions and she agreed to note that when they were submitted. She did not, however, report that I was objecting, but made a different note. Making this motion now would allow it to be discussed in the coming conference if that is appropriate.

Your consideration will be greatly appreciated.

Respectively Submitted

William H. Isely William H. Isely Feb 28 , 2010

964 Walnut Creek Rd.
Franklin NC, 28734

828-369-7590 b.isely@ftpmailbox.com

CC: Ms. Barbara E. Bolton
Honorable Donald S. Clark

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

COMMISSIONERS: William E. Kovacic, Chairman
Pamela Jones Harbour
Jon Leibowitz
J. Thomas Rosc

PUBLIC

In the Matter of	**DOCKET NO. 9330**
GEMTRONICS INC a corporation and,	
WILLIAM H. ISELY	

MOTION TO SANCTION THE COMPLAINT COUNSEL FOR HER IMPROPER ACTIONS IN THE MATTER OF GEMTRONICS, INC, AND WILLLIAM H. ISELY, RESPONDENTS.

Sanctions are requested against complaint counsel, on five counts, of ten thousand dollars ($10,000) for each sanction to be payable to the defendant for unjustly bringing him to trial, willfully, with fore knowledge, and in bad faith, and thereby causing the destruction of his business and ruining him financially. Sanctions requested against the Complaint Counsel are for:

1. Not following FTC law, which would have required the Complaint Counsel to seek a remedy against www.agaricus.net , a foreign owned and operated website, utilizing the US Safe WEB Act.

2. Shifting the target of the investigation away from G Otto, against whom all the evidence pointed, and even to whom a warning letter had been sent, instead to the Respondents, based on no valid evidence against them, but because no assets of G. Otto could be located in the US. Concealing the exculpatory evidence, that an investigation of G. Otto had been mounted as the prime suspect, and its only coming to light in the questioning at Trial of her Senior Investigator, Mr. Liggins. Continuing to pursue the Respondent after being presented with a letter from DomainDiscover absolving Respondent of liability for the operations of www.agaricus.net. .

3. Requiring in proposed Orders that the Respondent, William H. Isely, produce and sign a letter containing false statements, including the letter be on the letterhead of a fictitious entity, "Gemtronics, Inc./www.agaricus.net", and for Respondent to sign for this fictitious entity.

4. Not providing any information on the G. Otto investigation when in Discovery Complaint Counsel was requested to provide the following information:

a.."Identify to Counsel for Representative the existence of any evidence which tends or may tend to negate the guilt of the Respondents, mitigate the degree set forth in the complaint herein, or reduce the requested penalty and/or punishment."

b.."Identify to Counsel for Respondents any and all exculpatory and impeaching evidence or information."

5. Participating in contumacious behavior by disobeying a direct order of the ALJ, for violating the procedural order, for disregarding protection of confidential information, and in bad faith reporting incorrect information regarding the respondent to the ALJ.

BRIEF IN SUPPORT OF SANCTIONING THE COMPLAINT COUNSEL.

The case for sanctioning the Complaint Counsel is clear and can be made without developing any further evidence beyond that which is already in the record. Although the candidate actions for sanctioning are related in that they all involved the basic theme of finding the Respondent liable for acts done by another party, each involves a separate aspect which will be analyzed separately. Most of Complaint Counsel's santionable actions were committed in her role as an investigator rather than as a prosecutor.

1. Not following FTC law, which would have required the Complaint Counsel to seek a remedy against www.agaricus.net , a foreign owned and operated website, utilizing the US Safe WEB Act.

While the Complaint was brought against the Respondent, it consisted wholly of alleged misrepresentations and advertising found on the website, www.agaricus.net , a foreign website. Inherent in the bringing of the Complaint was the assumption of the Complaint Counsel that the basic charter of the FTC, granting it the authority to regulate

national commerce, including advertising, marketing, or sales, could be stretched to cover activity taking place on a foreign website which falls in the category of **international** commerce.

The Law

The Respondent found no case where a complaint by the FTC was brought against a respondent for advertising and misrepresentations posted on a foreign website,

The limitation in Title 15 of the FTC's jurisdiction to **national** commerce is clear and was certainly known to the Complaint Counsel as she quoted it in her Post Trial Brief, II. Proposed Conclusions of Law , Sect. 1[1]. National verses Foreign commerce are clearly distinguishable.

Title 15, chapter 2, subchapter § 45. The FTC is excluded from regulating foreign commerce[2] except for those involved in import commerce. (Foreign websites are not import commerce)

Complaint Counsel's Actions

Complaint Counsel certainly knew in the fall of 2007 that foreign websites were out of her jurisdiction because of the wording of the last sentence in her warning letter[3] to

---

[1] . The acts and practices charged in the Complaint in this matter took place in or effecting commerce within the meaning of the Federal Trade Commission Act, as amended. Nationwide advertising marketing, or sales activity of the sort that Respondents engaged in constitutes commerce under the FTC act".

[2] **Unfair methods of competition unlawful; prevention by Commission**

Declaration of unlawfulness; power to prohibit unfair practices; inapplicability to foreign trade

(1) Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful.

(2) The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, savings and loan institutions described in section 57a (f)(3) of this title, Federal credit unions described in section 57a (f)(4) of this title, common carriers subject to the Acts to regulate commerce, air carriers and foreign air carriers subject to part A of subtitle VII of title 49, and persons, partnerships, or corporations insofar as they are subject to the Packers and Stockyards Act, 1921, as amended [7 U.S.C. 181 et seq.], except as provided in section 406(b) of said Act [7 U.S.C. 227 (b)], from using unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce.

(3) This subsection shall not apply to unfair methods of competition involving commerce with foreign nations (other than import commerce) unless—

(A)such methods of competition have a direct, substantial, and reasonably foreseeable effect

(i) on commerce which is not with foreign nations, or on import commerce with foreign commerce in the United states, and

(ii) on export commerce with foreign nations, of persons engaged in such commerce in the United States

[3] Warning letter to www.agaricus.net introduced in the record as FTC 195, FTC 196, & FTC 197

www.agaricus.net , October 23, 2007, she wrote,

"If you are not located in the United States, we have referred the claims on your website to the consumer protection enforcement agency that has jurisdiction in your locale". This should have been the first step of the US SAFE WEB Act of 2006[4], going the route of the appropriate procedure for a foreign web site with misrepresentations. There is no glory, however, in the US SAFE WEB Act and the Complaint Counsel chose instead to use hundreds of thousands of dollars of government resources in a venture not authorized by the Congress. The US SAFE WEB Act gives the FTC no more authority over foreign entities than it had before. It only authorizes the expenditure of money to assist other governments in their regulatory operations, a process the FTC does not seem to favor, since it has only used the ACT twice since its enactment.

Using the US SAFE WEB Act was not what the Complaint Counsel did. She instead wrote up the Complaint as if www.agaricus.net were an American website, thus avoiding oversight curbs by the Commission. Had the Commission recognized the diversion of its resource into unauthorized usage, it would no doubt not have approved the Complaint. Complaint Counsel and her Chief investigator did not state that they knew www.agaricus.net was a foreign website, but by the time the Complaint had been drawn it must have been obvious to them. The registration of the site had been done by George Otto with a Takesun e-mail. The sample products bought had a Brazilian origin and were paid to Takesun accounts. The home page had a Brazilian tel. no. and she had been serviced with a letter from the domain registrar stating the website had been Brazilian owned since 1998. All these facts are in the trial record from Liggin's testifing about his investigation and being questioned by the Respondent's Counsel(Tr 44-179).

---

[4] The U.S. SAFE WEB Act permits the FTC to provide investigative assistance to foreign law enforcement agencies, including conducting investigations to collect information and evidence for these foreign agencies. 15 U.S.C. § 46(j). It also permits the FTC to share investigative materials, such as documents, written reports or answers to questions and transcripts of oral testimony with foreign law enforcement agencies. 15 U.S.C. § 57b-2(6).

2. Shifting the target of the investigation away from G Otto, against whom all the evidence pointed, and even to whom a warning letter had been sent, instead to the Respondents, based on no valid evidence against them, but because no assets of G. Otto could be located in the US. Concealing the exculpatory evidence that an investigation of G. Otto had been mounted as the prime suspect, and its only coming to light in the questioning at Trial of her Senior Investigator, Mr. Liggins. Then continuing to pursue the Respondent after being presented with a letter from DomainDiscover absolving Respondent of liability for the operations of www.agaricus.net

.

The Complaint Counsel abandoned her prosecutorial duty to make a through investigation before bringing the complaint, and also picked the information she brought as evidence to suit her motivation to garner assets rather that follow the evidence wherever it might lead,

The Law

Federal Rules of Civil Procedure, Chapter III, Rule 11 " provides for sanctions against the Attorney or client for harassment, frivolous arguments, or a lack of factual investigation."

US Gov. vs. Sen. Ted Stevens. Prosecutors sanctioned for over $600,000 for, among other misconduct, for withholding key evidence.

Actions of Complaint Counsel and her Chief Investigator Mr. Liggins

The case had originally been opened and some information had been gathered against George Otto by the FDA and turned over to the FTC around Aug 15 of 2007[5](Tr 92). George Otto (Kather) was the target and apparently Liggins spent several months searching US data bases for any assets of George Otto's that could be located in the United States[6]. Not finding any assets in the US, the Complaint Counsel decided in October to send him a warning letter, directed to the website www.agaricus.net to see if that would flush him out[7]. With no response from the website, Liggins turned his attention to gathering more information from the several

[5] Liggins testimony (Tr92)
[6] Liggins testimony (Tr 177)
[7] FTC warning letter, (FTC 00195, 00196, & 00197)

websites managed by George Otto in the late December 2007[8] and early January 2008 , and Liggins must soon have recognized Otto was not in the US and was beyond the FTC reach.

Respondent's name appeared linked to one of George Otto's websites in particular, and the Complaint Counsel realized that there was a possibility she could build a circumstantial case against the Respondent, if the information displayed on the images related to George Otto was entirely ignored and only information linked to the Respondent's name was highlighted. Because there was more information linked to George Otto, no substantiating research was done as it would likely have turned up more exculpatory evidence that would have spoiled the whole plan. A lame excuse for not even making a few phone calls was given in Liggin's testimony that he was resource limited[9].

Examples of cherry picking the evidence are:

(a), In relating the WHOIS results on names associated with the registration[10] of the website www.agaricus.net, Liggins mentioned the Respondent's name and the name of George Otto, which was also there. It also came out that any name can be put in association with a website[11]. When JX 16 & JX 17 are critically examined, the email address used to make the registration appears as gotto@takesun.com, which had not been volunteered previously.

(b). Even though in cross examination Liggins had admitted that WHOIS information is at the level of hearsay[12] he never made a call to the domain registrar DomainDiscover to confirm whether the WHOIS information was correct[13].This was a pattern of not looking for information that would contradict what he already had.

(c). The Complaint Counsel made the case that Respondent was the only US supplier of RAAX11 because it said so on one web page of www.agaricus.net. It was the ALJ who noticed

[8] Liggins testimony (Tr47)
[9] Liggins testimony (Tr 161)
[10] Liggins testimony (Tr 64)
[11] Liggins testimony (Tr 122, 123)
[12] Liggins testimony (Tr 110)
[13] Liggins testimony (Tr 124)

that Green :Pharmacy was also a supplier of RAAX11, mentioned on another page[14] that the Complaint Counsel had chosen to ignore. Liggins knew about Green Pharmacy, but stated he had not investigated them,

(d). The Complaint Counsel never brought in evidence on how websites are controlled, leaving the incorrect inference that the person's name shown as the registrant has control. It is hard to imagine she didn't know because Liggins had exact knowledge of the process which he had learned in managing his personal website[15]. It was crucial for the Complaint Counsel to stay away from how websites are actually controlled, since that information would destroy the credibility of her WHOIS information and break the apparent link she was trying to forge between the Respondent and www.agaricus.net.

(e). The Complaint Counsel also pinned her hopes on tying the Respondent to the web page www.agaricus.net by the purchases of the undercover sample orders place by Liggins. The issue was, could a customer buy RAAX11 directly from Gemtronics using a credit card at a shopping cart on www.agaricus.net?. The name Gemtronics appeared on a shopping cart as a relic from Pre RAAX11 times when a customer could order other products at the shopping cart from Gemtronics, although never directly with a credit card, since Gemtronics had its own website, www.our-agaricus.com . When Liggins tried to buy with his credit card, his purchases were taken by each of two different Takesun Pay Pal accounts. Defective software sent Liggins multiple receipts for his orders, each charged by a different entity, one being Gemtronics Secure Payments. On the two orders Liggins was actually charged to two separate Pay Pal accounts owned by Takesun entities, but not Gemtronics[16]. Since a fake receipt from Gemtronics was falsely sent to Liggins from the website www.agaricus.net , Complaint Counsel has wrongly stated that RAAX11 could be purchased from Gemtronics at

---

[14] Liggins testimony (Tr 159, 160)
[15] Liggins testimony (Tr 120 – 124.)
[16] Liggins testimony (Tr 134--144)

www.agaricus.net , using a credit card.

(f) In her trial presentation the Complaint Counsel largely picked the few web images that included the Respondent's name in some manner to try to give the impression that the Respondent managed the website. The website actually contains hundreds and hundreds of pages in 5 different languages and the Respondents name showed on very few. To make the impression she did, the Complaint Counsel had to use archived pages from before RAAX11 was for sale.

.(g) When asked about the Pablo Valasco Deposition, Liggins[17] had to admit that the Respondent had no control of the website www.agaricus.net, and there was no evidence that he had ever had in the past. Also, that the Rspondeny's name as registrant could had been placed in that position without his permission or knowledge by the party who did control it.

Clearly these seven samples show that during the time in this case that Complaint Counsel was acting in an investigative capacity, that her investigation against the Respondent was lacking in factual content. She based her case on what could be found on the internet without trying to validate the information she used with information from independent sources. That she did learn of George Otto's involvement with www.agaricus.net is in the record, but she then concealed what she had learned about George Otto, which was excalpatory for the Respondent.

3. Not providing any information on the G. Otto investigation.
During Discovery, Complaint Counsel was requested for the following information:
a.."Identify to Counsel for Respondent the existence of any evidence which tends or may tend to negate the guilt of the Respondents, mitigate the degree set forth in the complaint herein, or reduce the requested penalty and/or punishment."
b.."Identify to Counsel for Respondents any and all exculpatory and impeaching evidence or information."

[17] Liggins testimony (Tr114—125, 131--134

As has been detailed in 2. above, much evidence had been accumulated by the end of 2007 by the Complaint Counsel against Takesun do Brazil and specifically George Otto. The evidence was essentially what was later assembled into the Complaint that was brought against the Respondent, but as the wrong target. At the beginning of judication against the Respondent, the Complaint Counsel was obligated to reveal this file against George Otto as exculpatory Evidence. Not having done so the Complaint Counsel was still required to reveal this information when it was asked for in the discovery phase, but not having done so leaves her a candidate for being sanctioned. She did not have privilege to withhold the George Otto information as allowed for under Commission rule § 2.8A, and at the time Respondent's Counsel did not know it was being concealed or even existed to be able to ask for a remedy.

Law

Discovery is the backbone of litigation so that the parties should not be surprised at trial. Federal Rules of Civil Procedure, Chapter 15, Rule 28 deals with the general provisions of discovery. Rule 28 (b) (1) allows discovery for any item relevant to the case for which privilege is not claimed and granted[18].

Rule 37 deals with sanctions for not complying with the rules of discovery. Specifically Rule 37 (a) (3) deals with evasion[19] and Rule (c) (1) deals with failure to disclose[20]

---

[18] Rule 28 (b) (1) Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. All discovery is subject to the limitations imposed by Rule 26(b)(2)(i), (ii), and (iii).

[19] Rule 37 (a) (3)Evasive or Incomplete Disclosure, Answer, or Response.

For purposes of this subdivision an evasive or incomplete disclosure, answer, or response is to be treated as a failure to disclose, answer, or respond.

[20] Failure to Disclose; False or Misleading Disclosure; Refusal to Admit.

In US vs. Ranger Electronic Communications Inc. the court ordered the federal government to pay attorney's fees to the attorneys for the corporate criminal defendant as a sanction for the prosecution's failure to disclose exculpatory evidence, after the criminal case was dismissed.

In United States vs. Donatelli, 484 F.2d 505 (1st Cir. 1973), reflected that same Brady interpretation. It noted that, "[a] defendant in a criminal trial has the right to a fair trial, and as one aspect of this right he must be supplied by the prosecution all evidence which may be materially favorable to him, [citing Brady], including evidence which would have a material effect upon trial preparation." Id. at 507-08. (Same right applies in a civil trial)

Brady vs. Maryland, 373 U.S. 83 (1963),* was a United States Supreme Court case. The court held that withholding exculpatory evidence violates due process "where the evidence is material either to guilt or to punishment";

Actions of the Complaint Counsel

The Complaint Counsel provided no discovery material in response to either of the requests quoted at the beginning of this section, giving the same unreasonable reason to both requests which might best be characterized as deceitful, considering the extent of the investigation of George Otto (Kather) that the Complaint Counsel had participated in during the last half of 2007.

---

* A party that without substantial justification fails to disclose information required by Rule 26(a) or 26(e)(1), or to amend a prior response to discovery as required by Rule 26(e)(2), is not, unless such failure is harmless, permitted to use as evidence at a trial, at a hearing, or on a motion any witness or information not so disclosed. In addition to or in lieu of this sanction, the court, on motion and after affording an opportunity to be heard, may impose other appropriate sanctions. In addition to requiring payment of reasonable expenses, including attorney's fees, caused by the failure, these sanctions may include any of the actions authorized under Rule 37(b)(2)(A), (B), and (C) and may include informing the jury of the failure to make the disclosure.

To both requests the answers were the same and are on the bottom of page 2 and the top of page 3 of her **Complaint Counsel's Response to Respondent's Interrogatories and Request of Production of Documents**[21],

"Complaint Counsel objects to Respondents' Interrogatory to the extent that it requires Complaint Counsel to undertake legal research for Respondents or organize the factual evidence for them. Without waiving and subject to these objections, Complaint Counsel is not in possession, custody, or control of any such evidence requested."

Since Complaint Counsel already had done the research on George Otto and www.agaricus.net , and would have it on file, no research or organization of evidence would have been needed to provide it. It existed and was in her possession, which she flatly denied, even though it was investigated, per Liggins[22] at trial for the last part of 2007, and the Complaint Counsel sent www.agaricus.,net a warning letter in October of 2007.,

4 Requiring in proposed Orders that the Respondent, William H. Isely, produce and sign a letter containing false statements, including the letter be on the letterhead of a fictitious entity, "Gemtronics, Inc./www.agaricus.net", and for Respondent to sign for this fictitious entity.

The Complaint Counsel was always negotiating in bad faith because none of her proffered settlements provided real relief; the Respondent was always required to perform an unlawful act in order to satisfy the requirements that were contained in any of the proposed Orders. This was true of the first settlements offered, and the orders proposed by the Complaint Counsel associated with the Summary Decision and the Trial itself.

Besides the forgery of a fictitious letterhead, the letter falsely stated that Respondent's customers had purchased RAAX11 from www.agaricus.net when, being customers of his, they had purchased RAAX11 from Gemtronics. This letter adds to the fiction that Gemtronics, Inc

[21] Interrogatory No. 2 and Interrogatory No 3
[22] Liggins testimony (Tr 74, 106, 114, 115, 116, 117, 125, 130, 135, 140,142, 161, 163,177, 178

was a viable entity. Lastly the letter would have the Respondent sign for a fictitious entity which implied a union of Gemtronics, Inc. with www.agaracus.net, Insisting that the Respondent commit an unlawful act rises to the level of prosecutorial misconduct.

Law

Prosecutorial misconduct is an act which violates ethical standards of law practice.

a). **Jay E, Lentz vs. U S Government – District court in Alexandria**. Mistrial declared when prosecutors apparently provided jury with banned evidence.

b). Pottwatamime County et, a., vs. McGhee, et all. Supreme Court. At issue was the question of **A freestanding Right Not to Be Framed.** Settled for $12 M and dismissed.

c). Berger vs. US, 295 U.S. 78. Judge Justice Sutherland , said, the duty of the prosecution was "not that it shall win a case, but that justice shall be done." These words were quoted by a Judge in a recent Texas case where a prosecutor coached a witness to lie.

d). Thomas J. Sawada (prosecuting attorney) vs. Arizona Supreme Court, - Sanctioned and fined for various misconducts during his career.

Actions of Complaint Counsel

This action of the Complaint Counsel is best described by the expression **attempted suborning perjury**. Had the Respondent accepted settlement it would have become **suborning perjury.** Had the Respondent ever sent out the letters, as was intended by the Complaint Counsel, his actions would then have become ones of **fraud** in the legal sense that all five elements of fraud would have been present. The Respondent would also have been open to a damage suit from Takesun do Brasil[23]. Therefore the Respondent judged at the time that to acquiesce to the Complaint counsel's demands would have put him in greater risk. In other words in order to settle on the Complaint Counsel's terms he would be committing acts

[23] The investigation of the Complaint Counsel's expert witness was limited to the United States. Since his investigation was not international in scope and did not include researches done in Brazil, Japan, and Germany where RAAX11 was in greatest use, the expert witness statements to be quoted in the letter were not likely to be defensible in Brazil where a damage suite would most likely be filed if one were to develop.

more unlawful than the one he was charged with. Respondent's Counsel on several occasions had communicated this problem to the Complaint Counsel and she would not relent. So it was clear that it was her willful intent to coerce the Respondent into the proposed unlawful act, which was to issue the forged letter under his signature for the combined businesses of **Gemtronics, Inc./www.agaricus.net.** The letter is reproduced on the next page.

Except for having to sign this letter, which would have been an unlawful act, the Respondent was prepared to settle with the FTC before the formal complaint was brought. At that time, as shown on the financial graphs of legal expenditures already supplied in numerical form in his application and shown on pages 16 and 17 as figure 1 and figure 2, the Respondent's legal expenses would not have exceeded $7,000. So it was the unacceptable, uncompromising insistance of the Complaint Counsel that the Respondent sign the fraudulant letter that has caused the great expenses for the Respondent and no doubt even greater expenses for the government.

"

ATTACHMENT A

LETTER TO BE SENT BY FIRST CLASS MAIL

(To be printed on letterhead of Gemtronics, Inc./www.agaricus.net)

To Whom it may concern: Date

Our records show that you bought RAAX11 from our website agaricus.net. We are writing to tell you that the Federal Trade Commission ("FTC") has found that our advertising claims for these products were false or unsubstantiated, and has issued an Order prohibiting us from making these claims in the future. The Order entered against us also requires that we send you the following information about the scientific evidence on these products.

No scientific research has been done concerning the product RAAX11 as a preventive, treatment, or cure for cancer in humans. Very little scientific research has been done concerning either of the ingredients in RAAX11, *chrysobalanus Icaco* extract and *Agaricus blazei Murill* mushroom extract, as a preventative, treatment, or cure for cancer in humans. The scientific studies that have been done do not demonstrate that RAAX11, or the ingredients in RAAX!!, are effective when used as a treatment for cancer.

It is very important that you talk to your doctor or health care provider before using *any* alternative or herbal products, including RAAX11. Speaking with your doctor is important to make sure that all aspects of your medical treatment work together. Things that seem safe, such as certain foods, herbs, or pills, may interfere or effect your cancer or other medical treatment, or other medicines you might be taking. Some herbs or other complementary or alternative treatments may keep your medicines from doing what they are supposed to do, or could be harmful when taken with other medicines or in high doses. It is also very important that you talk to your doctor or health care provider before you decide to take any alternative or herbal product, including RAAX11, instead of taking conventional cancer treatments that have been scientifically proven to be safe and effective in humans.

If you would like further information about complementary and alternative treatments for cancer, the following Internet web sites may be helpful.

1. The National Cancer Institute. www.cancer.gov/cancertopics/pdq;
2. The National Center for Complementary and Alternative Medicines: www.nccam.nih.gov

You also can contact the National Cancer Institute's Cancer Information Service at 1-800-4-CANCER or 1-800-422-6237.

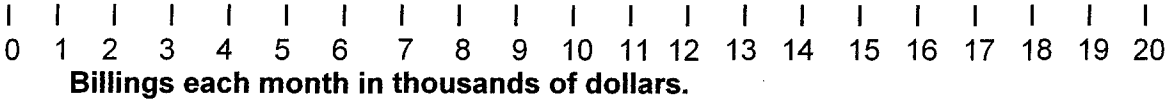
Sincerely,

William H. "Bill": Isely
Gemtronics, Inc./www.agaricus.net "

Fig 1. Billings Each Month Correlate Well With Tasks (Sep. '08 added 2-2-10)

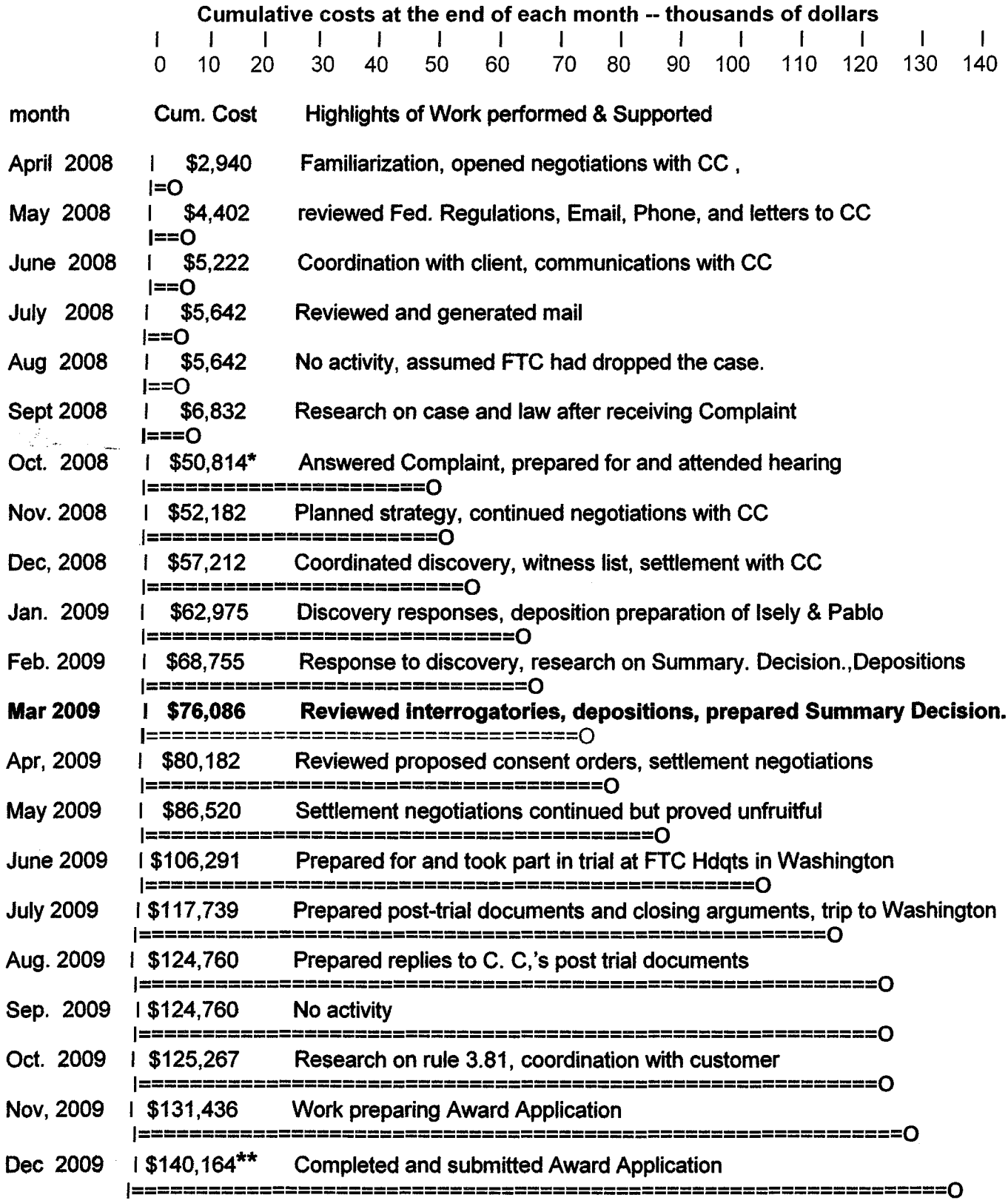
Respondent Counsel's monthly invoiced Legal fees and Expenses

month	billed fees & expenses	Highlights of Work performed & Supported
April 2008	$2,940	Familiarization, opened negotiations with CC ,
May 2008	1,452.61	reviewed Fed. Regulations, Email, Phone, and letters to CC
June 2008	820	Coordination with client, communications with CC
July 2008	420	Reviewed and generated mail
Aug 2008		No activity, assumed FTC had dropped the case.
Sept 2008	1,189.50	Research on case and law after receiving Complaint
Oct. 2008	7,078.57	Answered Complaint, prepared for and attended hearing
Nov. 2008	1,369.60	Planned strategy, continued negotiations with CC
Dec, 2008	5,029.62	Coordinated discovery, witness list, settlement with CC
Jan. 2009	5,863.23	Discovery responses, deposition preparation of Isely & Pablo
Feb. 2009	5,680.23	Response to discovery, research on Summary. Decision.,Depositions
Mar 2009	**7,430.81**	**Reviewed interrogatories, depositions, prepared Summary Decision.**
Apr, 2009	3,996.00	Reviewed proposed consent orders, settlement negotiations
May 2009	6,338.15	Settlement negotiations continued but proved unfruitful
June 2009	19,770.61	Prepared for and took part in trial at FTC Hdqts in Washington
July 2009	11,438.91	Prepared post-trial documents and closing arguments, trip to Wash.
Aug. 2009	7,030.68	Prepared replies to C. C,'s post trial documents
Sep. 2009	0.00	No activity
Oct. 2009	507.68	Research on rule 3.81, coordination with customer
Nov, 2009	6.169.22	Work preparing Award Application
Dec 2009	2,727.89	Completed and submitted Award Application



Billings each month in thousands of dollars.

Fig 2, Respondent's Cumulative Costs –



* Loss of Business added on Oct 15, 2008 X Estimated debt when Application was submitted

** Respondent's expenses added on Dec 1, 2009

5. Participating in contumacious behavior by disobeying a direct order of the ALJ, for violating the procedural order, for disregarding protection of Respondent's confidential information, and in bad faith reporting incorrect information to the ALJ regarding the respondent's objecting to three of her motions

These actions of the Complaint Counsel show a general pattern of disregard for the requirements of ethical conduct on her part, a pattern that has been labeled – **"Win at all cost"** and deserves to be sanctioned as a part of insuring there is some accountability of Federal Prosecutors for their actions.

a) During the trial the Complaint Counsel tried to bring into the record information that was not part of the Complaint[24]. When she admitted it was extraneous, the ALJ struck the information from the record, and stated that information (JX-59) was not to be introduced again[25], specifically not in the post trial brief. In spite of this prohibition by the ALJ, the Complaint Counsel in her list of facts in her Post Trial Facts refers to JX 59 multiple times[26]

b) The FTC rules for the Application for an Award, the Answer, and the Reply[27] as well as the Federal Rules of Civil Procedure[28] call for particular sequences and time intervals which the Complaint Counsel violated during the Award of Attorney Fees process. The window for her answer closed January 9th but she filed two Amendments, Feb 1 and Feb 3, both after the window closed and also after the Respondents reply on January 22nd . Since there is no amendment process outlined in the FTC rules she depended on filing a motion of leave, as specified in Rule 15 of the Federal Rules of Civil Procedure. She couldn't wait for leave to be

---

[24] Respondent's information sheet, (JX-59)

[25] Tr 303,304,305, quote from the ALJ, " this document is not part of the allegations in the complaint, so I don't want to see that in the post trial brief and I don't want to hear anybody arguing that."

[26] JX 59 is referred to in her fact 62 on page 9 of her brief, fact 87 on page 11, and lastly in fact 90 on page 11.

[27] Rule 3.83

[28] Rule 15.

granted but filed her motions immediately.. It is outrageous that she would expect more generous treatment beyond the time and sequence limits in Rule[29] 15, It allows 1 amendment by the plaintiff before a reply has been filed. Complaint Counsel filed two, one 8 and the other 10 days after the Reply. There is no basis that the right to seek leave of the court should result in more generous treatment than when they are specified. Complaint Counsel is seeking two amendments well beyond the window for her Answer, and both after the Reply was filed.

c) The Complaint Counsel has violated the sensitive nature of the material in the Respondent's Application. The Respondent's Application, originally submitted as Public, was modified as Confidential and Sensitive, non Public. This change in classification was documented in a letter by the then Respondent's Counsel on Dec. 10 to the Honorable S. Clark and the Complaint Counsel was copied. The change in classification was confirmed in the Attachment of the Honorable Donald S. Clark's email of January 8 which was also copied to the Complaint Counsel. In spite of all this redundant notification, the Complaint counsel has treated this information, which she used in her amendments, as Public and so marked them. At this stage it is hard to know how widely this information was spread and whether it can be retrieved. Even if Complaint Counsel's motions containing this sensitive information are rejected, as they should be, The FTC should take actions needed to retrieve this information and destroy it. This would include information from files both at FTC Headquarters and in Atlanta.

The December 10, 2009 letter from Respondent's Counsel is duplicated for reference on the following page and the Summary from the Secretary describing the change in classification of the sensitive material Is duplicated on the page following next where the sequence of events is covered in the second paragraph.

---

[29] Rule 15 allows pleadings to be mended or supplemented. Plaintiffs may amend once before an answer is filed, a defendant can amend once within 20 days of serving an answer, and if there is no right to amend, seek leave of court, ("leave shall be given when justice so requires")

MATTHEW I. VAN HORN
PROFESSIONAL LIMITED LIABILITY COMPANY
ATTORNEY AT LAW

16 WEST MARTIN STREET, SUITE 700
RALEIGH, NORTH CAROLINA 27601

TELEPHONE (919) 835-0880
FACSIMILE (919) 835-2121

POST OFFICE BOX 1309
RALEIGH, NORTH CAROLINA 27602

matthew@vanhornlawfirm.com

also licenced in VA, DC and OK

December 10, 2009

Honorable Donald S. Clark
Secretary
Federal Trade Commission
H135
600 Pennsylvania Ave., NW
Washington, D.C. 20580

Re: ***Gemtronics, Inc. and William H. Isely, FTC Docket No. 9330***

Dear Mr. Clark:

Thank you for removing the Respondents' Application for an Award of Attorney Fees and Other Expenses Pursuant to Commission Rule 3.81, *et seq.* and attached exhibits in support thereof from the public website so quickly upon request. Respondents have no objection to the Application, *per se,* being posted publicly but request that the exhibits in support thereof remain unpublished due to the private financial content such as Mr. Isely's social security number and bank and loan account numbers.

Pursuant to your instructions, future documents, if any, which contain confidential financial information will be filed as separate addendums without the reference to "Public". In addition, pursuant to Rule 3.45, Code of Federal Regulations, any such addendums will be submitted to the Administrative Law Judge with a motion for *in camera* treatment.

Sincerely yours,

MATTHEW I. VAN HORN

MIVH:lr

cc: Honorable D. Michael Chappell
Chief Administrative Law Judge

Ms. Barbara E. Bolton

SUMMARY

1. The Initial Decision issued by Chief Administrative Law Judge Chappell became the Decision of the Commission on November 9, 2009. Therefore, pursuant to Commission Rule 3.82(d)(1)(i) and Commission Rule 3.82(d)(3)(i), the period prescribed for the Respondents to file an Application for an award of fees and expenses ended thirty days thereafter; that is, on December 9, 2009.

2. Respondents filed as a single document an Application For An Award of Attorney Fees and Other Expenses -- with Exhibits A-D attached -- pursuant to Commission Rule 3.81 et seq. on December 2, 2009, and the first page of the document was labeled "PUBLIC." However, by letter dated December 10, 2009 (and through a telephone call that morning), counsel for the Respondents requested confidential treatment for the exhibits to the Application. As filed on December 2, 2009, the Application therefore did not comply with the requirements of Commission Rule 3.45(b), Commission Rule 3.82(b)(2), Commission Rule 4.2(c)(2), or Commission Rule 4.2(c)(4), because it was labeled as "public" but nevertheless contained sensitive personal or otherwise confidential information. Commission Rule 4.2(g) provides that the "[t]he Secretary of the Commission may reject a document for filing that fails to comply with the Commission's rules." It also provides that "[i]n cases of extreme hardship, the Secretary may excuse compliance with a rule regarding the filing of documents if the Secretary determines that the non-compliance would not interfere with the functions of the Commission." One could argue that the problems with the Application were corrected -- and that the Application therefore can be treated as having been filed with the Commission on December 10, 2009 -- by means of the letter from counsel for the Respondents requesting confidential treatment for the exhibits to the Application.

4. The Certificate of Service attached to the Application indicates that a paper copy was served on Complaint Counsel "via United States mail delivery." If the Application is treated as having been filed and served on Complaint Counsel by mail on December 10, 2009, then the period prescribed by Commission Rule 3.83(b) for filing an Answer to the Application ended on January 14, 2010, as a consequence of Commission Rule 4.3(a) and Commission Rule 4.3(c), which together provide that when a document in an adjudicative proceeding is "served by first-class mail," three business days should be added to the prescribed period. If, notwithstanding the rule compliance problems cited above, the Application is instead treated as having been filed and served on Complaint Counsel by mail on December 2, 2009, then the period prescribed by Commission Rule 3.83(b) ended on January 7, 2010.

5. The Certificate of Service attached to the Answer which Complaint Counsel has now filed indicates that paper copies were served on counsel for the Respondents, and on Respondent William H. Isely, on January 6, 2010, "via overnight delivery." If Mr. Isely and his counsel therefore received their copies on January 7, 2010, the period prescribed **by Commission Rule 3.83(c) for the filing of a Reply will end on January 22, 2010.**

d) The Complaint Counsel provided deliberate false information to the ALJ in her Motion submitted February 3, 2010. She called the Respondent on Feb 3, asking for his approval of her supplying a second motion with an amendment. The respondent told her he objected and that the only amendment she was justified were comments on the additional costs the Respondent had provided on Dec. 23, 2009. The Complaint Counsel said she would relay Respondent's objections but would send in her second amendment anyway. What she relayed grossly misrepresented Respondent's position as Note 2 on page 1 of her motion shows, reading as,

"Complaint Counsel has conferred with Mr. Isely, who is now representing himself, in an attempt to discuss EAJA issues related to fees and expenses, and the motions pertaining thereto. Said discussions did not produced any articulable resolution."

PROPOSED ORDER

Sanctions are ordered against complaint counsel, on five counts, of ten thousand dollars ($10,000) for each sanction to be payable to the defendant for unjustly bringing him to trial, willfully, with fore knowledge, and in bad faith.

Respectfully Submitted:

GEMTRONICS, INC &

WILLIAM H. ISELY, Respondents

By William H. Isely
William H. Isely

964 Walnut Creek Rd.
Franklin, NC, 28734

This 28 day of February, 2010

Respondent Isely certifies that to his best knowledge all the information contained in this document is correct and truthful.

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this

FURTHER MOTION TO STRIKE & OPPOSE COMPLAINT COUNSEL'S THREE MOTIONS, FEB 1 THROUGH FEB 3, 2010,

COMPLAINT COUNSEL'S MOTION FOR LEAVE TO FILE A RESPONSE IN SUPPORT OF ITS ANSWER IN OPPOSITION TO RESPONDENTS' APPLICATION FOR AN AWARD UNDER THE EQUAL ACCESS TO JUSTICE ACT

COMPLAINT COUNSEL'S RESPONSE OF ITS ANSWER IN OPPOSITION TO RESPONDENT'S APPLICATION FOR AN AWARD UNDER THE EQUAL ACCESS TO JUSTICE ACT.

COMPLAINT COUNSEL'S MOTION FOR LEAVE TO FILE AN AMENDED ATTACHMENT A TO ITS RESPONSE IN SUPPORT OF ITS ANSWER IN OPPOSITION TO RESPONDENT'S APPLICATION FOR AN AWARD UNDER THE EQUAL ACCESS TO JUSTICE ACT,.

In the above entitled action upon all other parties to this cause by depositing a copy hereof in a postpaid wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service, properly addressed to the attorney or attorneys for the parties as listed below.
One (1) e-mail copy and two (2) paper copies served by United States mail to

Honorable D. Michael Chappell
Chief Administrative Law Judge (Acting)
Federal Trade Commission, H113
600 Pennsylvania Ave., NW
Washington, D.C. 20580

The original and one (1) paper copy via United States mail delivery and one (1) electronic copy via e-mail:

Honorable Donald S. Clark
Secretary
Federal Trade Commission H135
600 Pennsylvania Ave., NW
Washington, D.C. 20580

One (1) electronic copy via e-mail and one (1) paper copy via United States mail delivery to:

Ms. Barbara E. Bolton- FTC, .. Suite 1500
225 Peachtree Street, N.E, Atlanta, GA 30303

William H. Isely - Respondent
William H. Isely
This 28th day of Feb. 2010