

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

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

**ORDER DENYING RESPONDENTS' MOTION TO AMEND
THE SCHEDULING ORDER**

I.

On January 26, 2009, Respondents submitted to the Office of Administrative Law Judges a Motion for Modification of Scheduling Order ("Motion").¹ Respondents request an extension of the discovery deadline from January 21, 2009 to February 13, 2009, and an extension of the deadline for submitting motions for summary decision from February 24, 2009 to March 13, 2009. Complaint Counsel submitted its Opposition to the Motion on January 30, 2009. For the reasons that follow, Respondents' Motion is DENIED.

On February 2, 2009, Respondents submitted a Reply to Complaint Counsel's Opposition to Respondents' Motion to Modify Scheduling Order. Commission Rule of Practice 3.22(c) states that "[t]he moving party shall have no right to reply, except as permitted by the Administrative Law Judge or the Commission." 16 C.F.R. § 3.22(c). Respondents failed to request leave to submit a reply. The Reply will not be considered.

¹ According to the Office of the Secretary of the FTC, contrary to their certificates of service, Respondents have failed throughout this proceeding to file their pleadings, motions, and other documents with the Office of the Secretary, as required by Commission Rule 4.2(a). 16 C.F.R. § 4.2 ("[A]ll documents submitted to the Commission, including those addressed to the Administrative Law Judge, shall be filed with the Secretary of the Commission..."). Service of courtesy copies upon the Office of the Administrative Law Judges does not constitute filing with the Office of the Secretary of the Commission and is not sufficient.

II.

The Scheduling Order may be modified upon a showing of good cause. Commission 3.21(c)(2). 16 C.F.R. § 3.21(c)(2). Good cause exists when a deadline in a scheduling order “cannot be met despite the diligence of the party seeking the extension.” *In re Chicago Bridge & Iron Co.*, 2002 FTC LEXIS 69, *2 (2002). Respondents have not demonstrated good cause for extending the deadlines set forth in the Scheduling Order, as explained below.

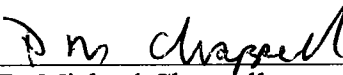
Respondents contend that the extensions are necessary because they were unable to provide Complaint Counsel with all its requested discovery by the Scheduling Order discovery deadline of January 21, 2009. As reasons for this failure, Respondents state that counsel’s wife went into labor on January 24, 2009, gave birth on January 25, 2009, and was not likely to be discharged from the hospital before January 27, 2009. Respondents also refer to additional reasons cited in their Opposition to Complaint Counsel’s previously submitted Motion to Compel Answers to Interrogatories, Production of Documents, and Deposition of Respondent Isely, incorporated by reference into the pending Motion, including counsel’s wife’s physical condition prior to childbirth and incidents of inclement weather.

Respondents’ Motion fails to demonstrate good cause for extending the deadlines in the Scheduling Order. Respondents fail to explain how the birth of counsel’s child on January 25, 2009, prevented Respondents from completing discovery prior to January 21, 2009. Moreover, Respondents do not explain why they waited until five days after the discovery deadline to move for a modification of the Scheduling Order. In short, the Motion fails to establish that Respondents exercised due diligence in attempting to meet the deadlines in the Scheduling Order. Finally, this Court’s Order of January 28, 2009 granting Complaint Counsel’s motion to compel, gave Respondents an extension through February 4, 2009 to provide outstanding discovery.

III.

For all the foregoing reasons, Respondents’ Motion to Modify Scheduling Order is DENIED.

ORDERED:



D. Michael Chappell
Administrative Law Judge

DATED: February 12, 2009