

**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 Rosch**

**PUBLIC**

<p><b>In the Matter of</b></p> <p><b>GEMTRONICS, INC.,</b>           <b>a corporation, and</b></p> <p><b>WILLIAM H. ISELY,</b>           <b>individually and as the owner</b>           <b>of Gemtronics, Inc.</b></p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

**DOCKET NO. 9330**

**RESPONDENTS' MOTION FOR SUMMARY DECISION  
AND MEMORANDUM IN SUPPORT THEREOF**

Pursuant to Rule 3.24 of the Commission's Rules of Practice, Respondents GEMTRONICS, INC., and WILLIAM H. ISELY respectfully move for Summary Decision for the reasons set forth herein and based on the evidence in Respondents' Separate Statement of Material Facts as to Which there is no Genuine Dispute.

**I. INTRODUCTION**

Respondents move for Summary Decision, pursuant to Commission Rule of Practice 3.24, against Complaint Counsel and the Federal Trade Commission. The Complaint alleges that the Respondents violated Sections 5 and 12 of the Federal Trade Commission Act ("FTC Act")

in connection with marketing the product RAAX11, an alleged herbal “food” or “drug” product within the meaning of Sections 12 and 15 of the FTC Act.

Specifically, the Federal Trade Commission contends that the Respondents violated Sections 5(a) and 12 of the Federal Trade Commission Act because the Respondents disseminated or caused to be disseminated advertisements for RAAX11 through an Internet website, [www.agaricus.net](http://www.agaricus.net). To the contrary, the uncontroverted evidence in this case reveals that Respondents were not the owners of the alleged offending website and likewise had no ability to control the content of any advertisement or any other information disseminated through the alleged offending website. Accordingly, the Respondents’ respectfully request that the Presiding Law Judge grant summary decision against the Federal Trade Commission and dismiss Complaint Counsel’s Complaint.

## **II. STATEMENT OF FACTS**

This action was brought under the Federal Trade Commissions’ initiative described as a “sweep to stop peddlers of bogus cancer cures.” In large part, the scams prosecuted by the Federal Trade Commission are heartless attempts to target vulnerable individuals seeking last resorts to cure their or their family members’ terminal illness. Individuals perpetuating such scams should be punished to the full extent of the law. Here, however, the Respondents are innocent of the allegations propounded against them. Likewise, they do not fit the description of targets intended to be prosecuted under the policy behind the FTC’s initiative. To that end, and based on the undisputed evidence, the Respondents respectfully request that the FTC’s Complaint against them be dismissed.

The individual Respondent William H. Isely is 83 years old and resides with his wife in Franklin, North Carolina. Since he retired from his formal occupation, Mr. Isley has run a small

natural vitamin supplement mail order business. Mr. Isely has operated out of his house as a sole proprietor with no employees. He has never manufactured any vitamins or herbal products. He started his business thirty years ago after he was diagnosed with prostate cancer and became interested in treating his condition with alternative natural measures in conjunction with conventional medical treatment. He was fortunate as his cancer entered remission. During the time period that gave rise to this action, Mr. Isely operated his business under the name Gemtronics. However, since the FTC proceeded with this action Mr. Isely has terminated his business.

The corporate Respondent Gemtronics, Inc. deserves little discussion. It is an inactive corporate shell that Respondent Isely formed under North Carolina law during the year 2003 with the intent to benefit from operating his business through a corporation. However, the entity Gemtronics, Inc. never obtained a federal tax identification number, issued shares of stock, appointed a board of directors or elected officers. It has never conducted business or possessed a bank account. It has never observed corporate formalities such as keeping minutes or filing Annual Reports with the Secretary of State of North Carolina. As such, it soon will likely be administratively dissolved by the North Carolina Secretary of State office. Here, the proper party is Respondent Mr. Isely, individually, and doing business as "Gemtronics".

The undisputed evidence shows that the FTC, with what appears to be good intentions, brought this Complaint under the incorrect premise that the Respondents owned and controlled the subject internet website, [www.agaricus.net](http://www.agaricus.net), through which arguably deceptive advertisements were disseminated to market an herbal product called RAAX11.<sup>1</sup> [See

---

<sup>1</sup> RAAX11 is a trademarked name for an herbal product derived from mushrooms grown and harvested in rainforest regions in Brazil. RAAX11 and similar mushroom derived products have been marketed and sold throughout the world as a supplement which allegedly aids in the prevention and cure of cancers---otherwise vastly improving the strength of one's immune system.

Complaint, ¶ 5, and Complaint exhibits A-D]. Here, the content of the alleged offending advertisements is not at issue. What is relevant is that the Respondents have never owned the subject website----more importantly, the Respondents have never possessed the authority or ability to control the content of the subject website. To that end, the Respondents have never disseminated any advertisements or any information through the subject website—the sole basis on which the FTC’s Complaint is based.

What the evidence shows and what the FTC now knows is that the subject website and several similar websites are owned and controlled from Europe by an individual named George K. Otto through at least two foreign companies, the more prevalent company being named Takesun do Brasil. Through his foreign companies and the alleged offending website, Mr. Otto markets and sells RAAX11 and other herbal supplements.<sup>2</sup>

Basic knowledge of how Mr. Otto and consumers, own and control the content of a domain or website, here the alleged offending website, is a requisite to understanding how Respondent Isely was mistaken as the disseminator of advertisements through the alleged offending website. An individual purchases and becomes the owner of a website through a website hosting company online or over the telephone. Payment is made via a credit card and the owner is provided or selects a PIN number and password with which the owner can access and alter administrative information for the website, such as contact information for the website which is accessible by the public. In addition, the PIN number and password allows the website owner to access and control the content of the website once it is set up and supported by a hosting company.

When the website is purchased and activated, several designations are required to be selected by the owner with respect to individuals or companies which will hold the titles of

---

<sup>2</sup> The United States trademark RAAX11 is owned by one of Mr. Otto’s foreign companies.

Registrant, Administrative Contact, and Technical Contact for the website. The owner inputs the names of individuals who will hold these titles and their respective contact information. The owner can essentially select any individual for these designations. The owner can select itself for these titles or choose third parties, notably with or without the consent of the third parties. It is important to note that the identity of the website owner---the individual who possesses the PIN number and password---can remain confidential, while those designated with the title of Registrant and others titles (and their contact information) are accessible to any third party online through the hosting company.<sup>3</sup>

In this case, without Mr. Isely's permission, Mr. Otto designated Mr. Isely as the Registrant contact and all other contacts for the subject website.<sup>4</sup> Mr. Otto identified Mr. Isely by name and provided Mr. Isely's address and telephone number. However, Mr. Otto provided his own e-mail address as the email contact. Until he was informed by the FTC and FDA through this action, Respondent Isely had no knowledge he was identified as the Registrant and other titles for the alleged offending website. Initial communications by the FTC to the website owner were sent via email and presumably received by Mr. Otto. However, Mr. Isely never received communications from the FTC because correspondence from the FTC was sent only via email---to George Otto's email. Mr. Otto's likely intent in naming Mr. Isely as the contact person for the website was to hide Mr. Otto's identity. Further, Mr. Otto was no stranger to Mr. Isely as Mr. Isely had purchased product from Mr. Otto.

---

<sup>3</sup> An analogue is a Registered Agent for a corporate entity formed under the laws of a state. States where corporate entities are formed require that the owner(s) and organizer(s) of the corporation identify a street address and individual who is the contact for the corporation for purposes of serving correspondence or legal documents. However, a Registered Agent is not required to have any ownership interest in the corporate entity or hold any offices in the company. For instance, law firms often act as the Registered Agent for a corporate client.

<sup>4</sup> Interestingly, an officer for the web hosting company testified in his deposition that indeed an owner can identify any individual as a Registrant without the permission of the Registrant.

After it was brought to his attention by the FTC that he was identified with his name, address and telephone number as the Registrant and other contacts for the subject website, Mr. Isely took immediate steps to remove himself as the designee of the subject website. As he lacked the authority (PIN number and password) to access the control of the website, he contacted Mr. Otto and demanded that he be removed from the website. In addition, he contacted the web hosting company for the subject website and demanded that his information be removed. Mr. Isely concluded that it was Mr. Otto who had used Mr. Isely's identity without his consent because the contact email address was the email for Mr. Otto ([gotto@takesun.com](mailto:gotto@takesun.com)). Mr. Isely had a history of doing business with Mr. Otto and Takesun do Brasil through email and Mr. Otto's websites----never personally meeting Mr. Otto as he resides in Europe.

By way of background, in the year 2000, Mr. Isely learned about the RAAX11 product and similar products. Mr. Isely personally purchased and consumed RAAX11 in conjunction with other treatments to keep his cancer in remission. Mr. Isely experienced good results under this treatment and his cancer went into remission. The demand by consumers for RAAX11 increased. As such, Mr. Isely added it as a product to his business. To obtain the RAAX11 product, Mr. Isely began purchasing RAAX11 from Mr. Otto's company Takesun do Brasil and reselling it to his customers. Each purchase transaction was separately negotiated and not on an account. His purchases differed in quantity and he resold the product to his customers.

As he continued to purchase RAAX11 from Mr. Otto, Mr. Otto sought consent from Mr. Isely to use Mr. Isely's personal experience consuming RAAX11 as a testimony on Mr. Otto's website. Mr. Isely permitted Mr. Otto to use Mr. Isely's experience with RAAX11 on the condition that Mr. Otto not reveal Mr. Isely's true identity. Mr. Otto utilized Mr. Isely's testimony on the subject website and also provided Mr. Isely's telephone number on the subject

website. Isely immediately demanded that Mr. Otto remove any reference to Mr. Isely on the subject website when Mr. Isely learned of the FTC's involvement.

Since filing the Complaint, and identifying that Mr. Isely is not the owner of the subject website, the FTC has attempted to identify and focus on other circumstances where Isely has engaged with Mr. Otto (e.g. providing a testimonial, *supra.*). Moreover, after it learned that Isely lacked authority to control the content of the subject website, the FTC has changed its focus to results of under cover purchases of RAAX11 from Mr. Otto's website---in an attempt to tie Mr. Isley to the subject website and Mr. Otto's enterprise. To the extent any of the new allegations by the FTC (not alleged in the Complaint) connect Mr. Isely to Mr. Otto's enterprise, Mr. Isely's conduct is *de minimis* and public policy is not served by prosecuting Mr. Isely. The fact remains that Mr. Isely could not control the content of the alleged website---lacking authority equal to the ability to control the content of [www.ftc.gov](http://www.ftc.gov). As such, the FTC's Complaint should be dismissed.

### **III. SUMMARY DECISION STANDARD**

Commission Rule of Practice 3.24(a)(2) provides that summary decision "shall be rendered . . . if the pleadings and any depositions, answers to interrogatories, admissions on file, and affidavits show that there is no genuine issue as to any material fact and that the moving party is entitled to such decision as a matter of law." Rule 3.24(a)(3) provides that once a motion for summary decision is made and adequately supported, "a party opposing the motion may not rest upon the mere allegations or denials of his pleading; his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue of fact for trial." *See also Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Adikes v. S.H. Kress & Co.*, 398 U.S. 144, 157 (1970). The provisions of FTC Rule 3.24 are virtually

identical to the provisions of Fed. R. Civ. P. 56, governing summary judgment in the federal courts. *Hearst Corp.*, 80 F.T.C. 1011, 1014 (1972).

The Supreme Court has elaborated on this standard, holding that where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). The party moving for summary judgment must satisfy the evidentiary burden that it would bear at trial. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 254 (1986). If the moving party meets its burden, the opposing party must come forward with specific facts showing there is a genuine issue for trial. *See Matsushita*, 475 U.S. at 585-88. The opposing party must show more than a metaphysical doubt as to the material facts. *Id.* The "mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment." *Liberty Lobby*, 477 U.S. at 247-48.

Also, whether a marketing practice complies with the laws or regulations enforced by the FTC is a question of law that can be resolved on summary decision. *See FTC v. Bonnie & Co. Fashions*, 1992-2 Trade Cases (CCH) ¶ 69,980 (D.N.J. 1992) (on summary judgment, court decided care label did not comply with Care Labeling Rule); *see also United States v. Union Circulation Co.*, 1982-83 Trade Cases (CCH) ¶ 65,052 at 70,862 (N.D. Ga. 1982) (on summary judgment, court found defendants' practices to violate the FTC's Cooling Off Rule), *citing United States v. Reader's Digest Ass'n*, 662 F.2d 955, 963 (3d Cir. 1981), *cert. denied*, 455 U.S. 908 (1982); *see also FTC v. U.S. Sales Corp.*, 785 F. Supp. 737 (N.D. Ill. 1992), *aff'd sub nom. FTC v. Vlahos*, 51 F.3d 275 (7th Cir. ).

As such, there is no genuine issue as to any material fact that



Respondents could not make or disseminate the representations challenged in the complaint.

Thus, Respondents' are entitled to summary decision as a matter of law.

Since retiring from a lifetime career managing a defense contractor company hired by the United States to manufacture missiles, Respondent Isely has been in the natural vitamin business for approximately thirty years. During that time, he has never received a complaint from a customer—most of which he has developed personal relationships. Respondent Isely has always endeavored to provide truthful, accurate and complete information about the products he sells.

## **VI. CONCLUSION**

Respondents' request for summary adjudication is warranted based on the fact that the Respondents did not disseminate or cause to be disseminated advertisements for RAAX11 through the alleged offending website----which is the FTC's sole alleged wrong doing and sole basis of the Complaint.

This action is ripe for adjudication. Discovery in this action has concluded and all material evidence is before the Court, excepting perhaps ascertaining the truth and veracity of the witnesses through testimony at trial (which has not been raised as an issue). As such, the significant expenses and costs of judicial resources associated with a trial can be avoided.

Rule 3.24(a)(2) of the Commission's Rules of Practice states that a party is entitled to summary decision if the "pleadings and any depositions, answers to interrogatories, admissions on file, and affidavits show that there is no genuine issue as to any material fact and that the moving party is entitled to such decision as a matter of law." The uncontroverted record plainly demonstrates that Respondents have not violated Sections 5(a) and 12 of the FTC Act through any dissemination of false and unsubstantiated claims. Accordingly, the Respondents'

respectfully requests that the Presiding Law Judge grant summary decision against the Federal Trade Commission and dismiss Complaint Counsel's Complaint.

Respectfully Submitted:

THE LAW OFFICE OF  
MATTHEW I. VAN HORN, PLLC

By 

MATTHEW I. VAN HORN

N. C. Bar No. 26166

16 West Martin St., Suite 700

Raleigh, NC 27601

Telephone: (919) 835-0880

Facsimile: (919) 835-2121

*Counsel for Respondents*

This the 13th day of March, 2009.

**CERTIFICATE OF SERVICE**

This is to certify that the undersigned has this date served this **RESPONDENTS'**  
**MOTION FOR SUMMARY DECISION AND MEMORANDUM INCORPORATED**  
**THEREIN** 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 delivery to:***

Honorable D. Michael Chappell  
Chief Administrative Law Judge (Acting)  
Federal Trade Commission  
H106  
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  
Federal Trade Commission  
225 Peachtree Street, N.E.  
Suite 1500  
Atlanta, GA 30303

This the 13th day of March, 2009.

  
MATTHEW I. VAN HORN

**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 Rosch**

**PUBLIC**

**DOCKET NO. 9330**

<p><b>In the Matter of</b></p> <p><b>GEMTRONICS, INC., a corporation, and</b></p> <p><b>WILLIAM H. ISELY, individually and as the owner of Gemtronics, Inc.</b></p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

**RESPONDENTS' RULE 3.24 SEPARATE STATEMENT OF  
MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE ISSUE**

Pursuant to Rule 3.24 of the Commission's Rules of Practice, and in support of their Motion for Summary Decision, Respondents GEMTRONICS, INC., and WILIAM H. ISELY, hereby submit their Statement of Material Facts as to which there is no Genuine Dispute.

**A. Respondents Gemtronics, Inc. and William H. Isely**

1. Respondent Gemtronics, Inc. was formed on September 20, 2006, by the Respondent William H. Isely. Gemtronics, Inc. has never had a shareholder, board members or an employee and has never been activated. Moreover, Gemtronics, Inc. has never engaged in any business or entered into any contracts. Gemtronics, Inc. has never obtained a federal tax identification number and has never filed taxes. Gemtronics, Inc. has since its inception always been an inactive corporate shell. [See Ex. A, Gemtronics, Inc. Answer to Interrogatory Nos. 1

and 2; Ex. C, Isely Depo., pp. 98-105, and Resp. Depo. Ex. B; Isely's Answer to Interrogatory no. 2].

2. Respondent William H. Isely is 83 years of age and resides with his wife at 964 Walnut Creek Road, Franklin, North Carolina. For approximately 30 years, Mr. Isely operated a mail order vitamin supplement business. [See Complaint, ¶1; Ex. A, Isely's Answer to Interrogatory no. 4].

3. During the time period relevant to this case, Mr. Isely operated his mail order vitamin supplement business under the name "Gemtronics". When he operated his mail order vitamin supplement business under the name "Gemtronics", Mr. Isley solely handled all aspects of his mail order business and never had any employees. Since the Federal Trade Commission initiated the above-captioned action, Mr. Isely has ceased operating or owning any mail order dietary supplemental business. [See Complaint, ¶1; Ex. C, Isely Depo. pp. 41, 135-137].

4. During the year 1990, Mr. Isely was diagnosed with prostate cancer. In an effort to cure his prostate cancer, Mr. Isley began purchasing and consuming herbal products from the Brazilian company Takesun do Brasil and its owner Mr. George K. Otto. In the year 2000, Mr. Isely eventually began purchasing products from Takesun do Brasil and Mr. Otto in larger quantities in order to sell the products to Mr. Isely's retail customers of his mail order vitamin business. [See Ex. A, Isely's Answer to Interrogatory no. 7; Ex. C, Isely Depo. pp. 14-16]

5. Mr. Isley's purchases from Takesun do Brasil were each individually negotiated on a stand-alone basis regarding price, quantity, method of shipment and delivery, and the purchases were not made on an account. The products purchased by Mr. Isely from Takesun do Brasil and Mr. Otto for Mr. Isely's personal consumption and for re-sale included the herbal product RAAX11, which is the subject of this action. [See Ex. B, Isely's Answer to Interrogatory no. 1; Ex. C, Isely Depo. pp. 21 and 91.]

6. Complaint Counsel has alleged that the Respondents violated Sections 5(a) and 12 of the Federal Trade Commission Act when they disseminated or caused to be disseminated deceptive and unlawful advertisements for the product RAAX11 through an alleged offending Internet website, [www.agarius.net](http://www.agarius.net). [See Complaint ¶ 5]. Complaint Counsel's sole allegation that the Respondents violated Sections 5(a) and 12 of the Federal Trade Commission Act is by their alleged dissemination of advertisements through the alleged offending website [www.agarius.net](http://www.agarius.net). [See Complaint, ¶¶ 1-10]

**B. The Ownership and Control of [www.agarius.net](http://www.agarius.net)**

7. Neither of the Respondents have ever been the legal owner of the alleged offending website, [www.agarius.net](http://www.agarius.net); nor have they ever possessed the authority to control nor have they controlled the content of the alleged offending website, [www.agarius.net](http://www.agarius.net). Accordingly, the Respondents have never disseminated or caused to be disseminated any advertisements through the alleged offending website, [www.agarius.net](http://www.agarius.net). [See Ex. A, Isely Answer to Interrogatory No. 11; Ex. C, Isely Depo. pp. 52; Ex. D, document production from subpoena issued to web hosting company; Ex. E, Velasco Depo., pp. 10-22]

8. The alleged offending website, [www.agarius.net](http://www.agarius.net), was registered and created on June 13, 1998, by George Otto, the owner of Takesun do Brasil, through the domain registrant and maintenance company Tierra.net (d/b/a DomainDiscovery). [See Ex. D, document production from subpoena issued to web hosting company; Ex. E, Velasco Dep., pp. 10-22].

9. The company Tierra.net (d/b/a Domain Discovery) is the domain registrant company which registers and maintains the alleged offending website, [www.agarius.net](http://www.agarius.net). [See Ex. D, document production from subpoena issued to web hosting company; Ex. E, Velasco Dep., pp. 10-22].

10. According to Tierra.net (d/b/a Domain Discovery), the legal owner of the alleged offending website, www.agaricus.net, is Agarix International, a Brazilian company with an e-mail contact of gotto@takesun.com.br, the e-mail address for Mr. Otto. [See Ex. C, Isely Depo., Compl. Depo. Ex. 1 (indicating the email address gotto@takesun.com); Ex. D, document production from subpoena issued to web hosting company; Ex. E, Velasco Dep., pp. 10-22].

11. George Otto is the individual who has the user name and password to the alleged offending website, www.agaricus.net, because he is the individual that set up the Administrative Contact, Technical Contact and Billing contact. [See Ex. D, document production from subpoena issued to web hosting company; Ex. E, Velasco Dep., pp. 10-22].

12. According to Tierra.net (d/b/a Domain Discovery), whoever registers a domain can identify the Registrant Contact, Technical Contact, and Zone Contact as any third party chosen by the person who registers the domain. [See Ex. D, document production from subpoena issued to web hosting company; Ex. E, Velasco Dep., pp. 10-22].

13. According to Tierra.net (d/b/a Domain Discovery), a person could not create a website for the alleged offending website, www.agaricus.net, without access to the domain as provided to the individual who formed the website. [See Ex. D, document production from subpoena issued to web hosting company; Ex. E, Velasco Dep., pp.10-22].

14. According to Tierra.net (d/b/a Domain Discovery), the Registrant Contact for the alleged offending website, www.agaricus.net, is who the person who owns the domain name wants to show as the owner of the domain, but the Registrant Contact is not necessarily the legal owner of the domain name itself. The Registrant Contact is the published owner of the domain name, selected by the legal owner of the domain name, but not necessarily the legal owner of the domain. [See Ex. D, document production from subpoena issued to web hosting company; Ex. E, Velasco Dep., pp. 10-22].

15. According to Tierra.net (d/b/a Domain Discovery), the person who possesses the user name and password for the alleged offending website, [www.agaricus.net](http://www.agaricus.net), is not the Respondents, but an individual named George Otto. [See Ex. C, Isely Depo., Compl. Depo. Ex. 1 (indicating the email address [gotto@takesun.com](mailto:gotto@takesun.com)); Ex. D, document production from subpoena issued to web hosting company; Ex. E, Velasco Dep., pp. 10-22].

**C. Mr. Isely's Name and Information Was Utilized Without his Consent**

16. During the time period prior to and immediately after the Federal Trade Commission initiated this action, Respondent Isely and his contact information was identified without his consent as the Registrant for the alleged offending website, [www.agaricus.net](http://www.agaricus.net). [See Ex. C, Isely Depo. p. 50-53; Complaint, Ex. 2]. Mr. George Otto or Agarix International caused Respondent Isely to be identified as the Registrant for the alleged offending website, [www.agaricus.net](http://www.agaricus.net) without the consent of Mr. Isely. [See Ex. C, Isely Depo. pp. 50-53].

17. Mr. Isely's name and contact information was utilized without his consent for other domain's that Mr. Otto owns and controls. [See Ex. C, Isely Depo. pp. 38, 50-53].

18. Takesun do Brazil or George Otto used Mr. Isely's name, address and telephone number on the alleged offending website, [www.agaricus.net](http://www.agaricus.net), and for the purpose of registering the alleged offending website without Mr. Isely's knowledge or permission. Mr. Isely gave George Otto permission to use Mr. Isely's personal testimony about Mr. Isely's own health records for use on the alleged offending website, [www.agaricus.net](http://www.agaricus.net). [See Ex. C, Isely Depo. p. 50-53].

19. Mr. Isely ceased purchasing any products from Takesun do Brazil or George Otto Kather once Mr. Isely learned that Mr. Isely's name had been used without his permission to be designated as the Registrant and other contacts for the alleged offending website, [www.agaricus.net](http://www.agaricus.net). [See Ex. B, Isely Answer to Interrogatory no. 7].



20. Upon learning that this name and contact information was being utilized as a Registrant Contact for the website [www.agaricus.net](http://www.agaricus.net) without his consent, Mr. Isely immediately contacted Mr. George Otto and demanded that Mr. Isely's name and contact information be removed as any contact for the alleged offending website, [www.agaricus.net](http://www.agaricus.net), and any other websites where Mr. Isely's name has been utilized without his consent. In addition, Mr. Isely ceased purchasing any products from Takesun do Brasil or Mr. Otto. Mr. Otto removed Mr. Isely's name and address as a Registrant of [www.agaricus.net](http://www.agaricus.net) and other domains where Mr. Otto had utilized Mr. Isely's name and address without the consent of Mr. Isely. [See Ex. B, Isely Answer to Interrogatory no. 7; See Ex. C, Isely Depo. p. 50-53].

21. On or about March 28, 2008, after Mr. Isely made demands to Mr. Otto regarding Mr. Otto incorrectly identifying Mr. Isley as a Contact for the website [www.agaricus.net](http://www.agaricus.net), the contact information for domain [www.agaricus.net](http://www.agaricus.net) was changed and Mr. Isely's name was removed. [See Ex. D, document production responsive to Subpoena served on Tierra.net (d/b/a DomainDiscovery)].

22. After the Federal Trade Commission initiated this action, Mr. Isely was informed that the Federal Trade Commission had sent a Warning Letter to the website [www.agaricus.net](http://www.agaricus.net). Mr. Isely never received the subject Warning Letter because the contact email for the website [www.agaricus.net](http://www.agaricus.net) is [gotto@takesun.com.br](mailto:gotto@takesun.com.br), the email address for Mr. Otto, the owner of the website [www.agaricus.net](http://www.agaricus.net). [See Ex. B, Isely Depo. pp. 109-112, and Resp. Depo. Exhibit 3].

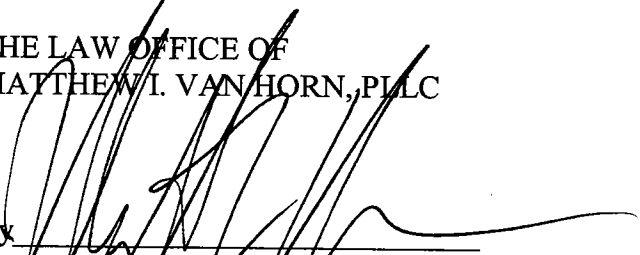
[END]

Dated: March 14, 2009.

Respectfully Submitted:

THE LAW OFFICE OF  
MATTHEW I. VAN HORN, PLLC

By



MATTHEW I. VAN HORN  
N. C. Bar No. 26166  
16 West Martin St., Suite 700  
Raleigh, NC 27601  
Telephone: (919) 835-0880  
Facsimile: (919) 835-2121

*Attorney for Respondents*

**CERTIFICATE OF SERVICE**

This is to certify that the undersigned has this date served this **RESPONDENTS' RULE 3.24 SEPARATE STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE ISSUE** 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 delivery to:***

Honorable D. Michael Chappell  
Chief Administrative Law Judge (Acting)  
Federal Trade Commission  
H106  
600 Pennsylvania Ave., NW  
Washington, D.C. 20580

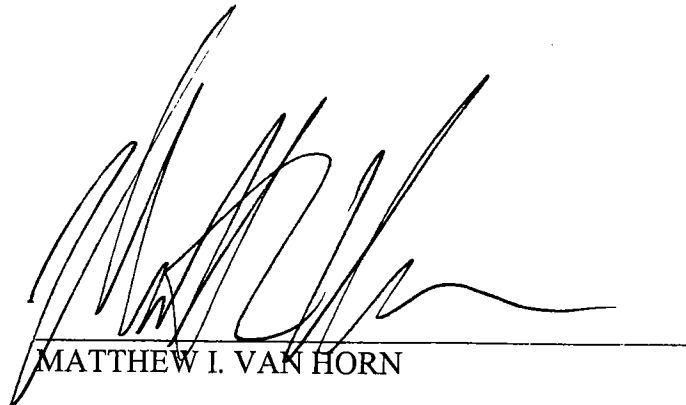
***The original and one (1) paper copy via United States mail delivery and one (1) electronic copy via e-mail:***

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  
Federal Trade Commission  
225 Peachtree Street, N.E.  
Suite 1500  
Atlanta, GA 30303

This the 14<sup>th</sup> day of March, 2009.



MATTHEW I. VAN HORN

**EXHIBIT "A"**

**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 Rosch**

**PUBLIC**

**In the Matter of**

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

**WILLIAM H. ISELY,  
individually and as the owner  
of GEMTRONICS, INC.**

**DOCKET NO. 9330**

**RESPONDENTS' COUNSEL'S ANSWERS TO COMPLAINT COUNSEL'S  
FIRST SET OF INTERROGATORIES TO RESPONDENT GEMTRONICS, INC.**

Pursuant to RULE OF PRACTICE 3.35, Respondent GEMTRONICS, INC., by and through its undersigned counsel, hereby responds to Complaint Counsel's First Set of Interrogatories as follows:

**INTRODUCTORY STATEMENTS AND GENERAL OBJECTIONS**

1. GEMTRONICS, INC. has not fully completed its investigation into the facts pertaining to this suit, has not completed its discovery, and has not completed its preparation for trial. Answers contained herein are based only on such information and materials as are presently available and known to GEMTRONICS, INC. This anticipated further discovery, investigation, legal research, and analysis may supply additional facts and will establish information which may vary from that set forth herein. The answers set forth are given without

prejudice to GEMTRONICS, INC.'S right to introduce evidence of any subsequently discovered fact(s) or circumstance(s). GEMTRONICS, INC. accordingly reserves its right to change or modify any response as additional facts or circumstances are ascertained, analyses are made, and legal research is completed.

2. GEMTRONICS, INC. objects to Complaint Counsel's Interrogatories to the extent that the Interrogatories seek to impose requirements or obligations on GEMTRONICS, INC. in addition to or different from those imposed by the Code of Federal Regulations, Rules of Practice for Adjudicative Proceedings. In responding to each Interrogatory, GEMTRONICS, INC. will respond by providing only such information as may be required and proper under the Code of Federal Regulations, Rules of Practice for Adjudicative Proceedings.

3. GEMTRONICS, INC. objects to Complaint Counsel's Interrogatories to the extent that the Interrogatories seek information or documents that are protected from discovery by the attorney-client privilege, the work-product doctrine, confidential commercial information, or any other applicable privilege. Nothing contained in these responses is intended to, or in any way shall be deemed, a waiver of any such available privilege or doctrine. In responding to each Interrogatory, GEMTRONICS, INC. will not provide privileged or otherwise protected information.

4. The foregoing objections and limitations shall be applicable to, and included in, GEMTRONICS, INC.'S response to every definition and Interrogatory propounded by Complaint Counsel.

## INTERROGATORIES

1. Provide the name, address and telephone number of each individual involved in the operations of the corporate respondent GEMTRONICS, INC., including but not limited to, providing the title, dates of employment and employment responsibilities of and any work performed by each individual, any percentage of ownership, and an explanation of that person's day-to-day responsibilities and activities with respect the corporation.

**ANSWER:** William H. Isely, 964 Walnut Creek Road, Franklin, NC 28734, Telephone: 828-369-7590, formed the subject corporation, GEMTRONICS, INC., as the incorporator, as is defined under the North Carolina General Statutes. Respondent further states that the Articles of Incorporation for GEMTRONICS, INC. speak for themselves. Respondent further states that GEMTRONICS, INC. has remained an inactive corporation since its inception. Respondents state that GEMTRONICS, INC. has no shareholder or board members or employee and has never been activated. Moreover, GEMTRONICS, INC. has never conducted any business or entered into any contracts. Respondents further state that GEMTRONICS, INC. has never obtained a federal tax identification number and has never filed taxes.

2. Confirm whether GEMTRONICS, INC. is still operating. If not, indicate the date the corporation ceased operations and describe in detail what measures were taken, if any, to dissolve the corporation, including, but not limited to the filing of any documents with the North Carolina Secretary of State, the transfer or other disposition of any assets of the corporation, and what efforts were undertaken to wind down the corporation's operations.

**ANSWER:** GEMTRONICS, INC. is an inactive North Carolina corporation.

Respondent hereby incorporates its Answer to Interrogatory No. 1 herein as though set forth in full.

3. Describe in detail all written and oral instructions you provided to GEMTRONICS, INC.'S' employees, agents, or representatives relating to the advertising, promoting, offered for sale, sale, and distributing the product RAAX11 by, or on behalf of, the corporate respondent.

**ANSWER:** None. Respondent hereby incorporates its Answer to Interrogatory No. 1 herein as though set forth in full.

4. Identify by name, location, and account number any bank other financial accounts that received or disbursed funds relating to the marketing, purchasing, sale, and/or distribution of the product RAAX11. Explain what responsibilities you exercised, or had the authority to exercise, for those bank or other financial accounts, including the names of persons with who you shared the authority, and the type of transactions that were processed through each account.

**ANSWER:** None. Respondent hereby incorporates its Answer to Interrogatory No. 1 herein as though set forth in full.

5. Identify by name, address and telephone number, the individuals who have or have ever had an ownership interest in the corporate respondent.

**ANSWER:** None. Respondent hereby incorporates its Answer to Interrogatory No. 1 herein as though set forth in full.



6. Provide the total amount of revenue earned each year by respondent from any activity, since January 2004, including identifying each activity and the amount earned each year for each activity.

**ANSWER:** None. Respondent hereby incorporates its Answer to Interrogatory No. 1 herein as though set forth in full.

7. Identify and describe in detail the process by which, from whom, and the dates that you have obtained the product RAAX11 and any promotional literature for the product, including, but not limited to, identifying the amount you paid for each bottle of the product RAAX11.

**ANSWER:** None. Respondent hereby incorporates its Answer to Interrogatory No. 1 herein as though set forth in full.

8. Identify each person consulted by you, or upon whose advice, opinion, or expertise you relied relating to advertising, promoting, offered for sale, sale, and distributing the product RAAX11, provide the substance of such advice, opinion, or expertise furnished to you and any compensation paid for such services.

**ANSWER:** None. Respondent hereby incorporates its Answer to Interrogatory No. 1 herein as though set forth in full.

9. For each year from 2004 to the present, disclose the total amount of sales in terms of units and dollars that you have achieved for the sales of RAAX11 and identify the source producing the sale, including, but not limited to, the specific Internet website, newspaper advertisement, promotional mailing, etc. For each year, provide a total amount of sales, as well as a break down of the amount of sales from each source.

**ANSWER:** None. Respondent hereby incorporates its Answer to Interrogatory No. 1 herein as though set forth in full.

10. Identify and describe in detail any other payments you have received (other than the sales listed in response to Interrogatory No. 9), directly or indirectly, in connection with the advertising, marketing, promotion, sale and/or distribution of the product RAAX11 for each year from 2004 to the present. (This request includes the total dollar amount and source for each payments.)

**ANSWER:** None. Respondent hereby incorporates its Answer to Interrogatory No. 1 herein as though set forth in full.

11. Identify and describe in detail the nature of your business relationship, and when and how you began doing business with Takesun do Brasil and/or George Otto, aka Georg Otto Kather, including, but no limited to, identifying all communications and any contracts or agreements, oral or written, any payments or other compensation, and the purchase or other provision of supplies, computer or other equipment, between you and Takesun do Brasil and/or George Otto. Also identify and describe in detail and any advertising or promotional material containing your name and Takesun do Brasil and/or George Otto.

**ANSWER:** None. Respondent hereby incorporates its Answer to Interrogatory No. 1 herein as though set forth in full.

12. Identify and describe in detail the nature of your business relationship, and when and how you began doing business with Takesun USA, including, but no limited to, identifying all communications and any contracts or agreements, oral or written, any payments or other

compensation between you and Takesun USA, and any advertising or promotional material containing your name and Takesun USA.

**ANSWER:** None. Respondent hereby incorporates its Answer to Interrogatory No. 1 herein as though set forth in full.

13. Describe in detail any communications and any contracts or agreements, oral or written, that you have had with any companies or individuals related to advertising, promoting, offering for sale, sale and/or distribution of RAAX11.

**ANSWER:** None. Respondent hereby incorporates its Answer to Interrogatory No. 1 herein as though set forth in full.

14. Disclose the total amount of dollars that you have spent to advertise, market, or otherwise promote the product RAAX11 for each year from 2004 to the present, broken down by each medium used (i.e., print, Internet, radio, or other means). (This request includes, but is not limited to, all expenditures attributable to the creation, development, evaluation, approval, modification, and dissemination of promotional materials).

**ANSWER:** None. Respondent hereby incorporates its Answer to Interrogatory No. 1 herein as though set forth in full.

15. Describe in detail your participation in the Internet website [www.agaricus.net](http://www.agaricus.net), including, but not limited to, the date you began receiving orders for RAAX11 placed on the Internet website [www.agaricus.net](http://www.agaricus.net), how you received these orders, how these orders were filled by you, how you received payment for such orders, and how much you were paid.

**ANSWER:** None. Respondent hereby incorporates its Answer to Interrogatory No. 1 herein as though set forth in full.

16. Describe in detail your participation in any other Internet websites, including, but not limited to, your name, address and/or telephone number appearing on the registration for any domain, and any links between websites, i.e., for ordering RAAX11.

**ANSWER:** None. Respondent hereby incorporates its Answer to Interrogatory No. 1 herein as though set forth in full.

17. Identify and describe in detail all oral and written communications, including email, you have had with the U.S. Food and Drug Administration including, but not limited to any communications concerning warehouse, facility, or other registrations you have had with the agency, and concerning the agency's letter to you dated April 2008.

**ANSWER:** None. Respondent hereby incorporates its Answer to Interrogatory No. 1 herein as though set forth in full.

18. 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:** None. Respondent hereby incorporates its Answer to Interrogatory No. 1 herein as though set forth in full.

19. Identify and describe in detail all oral and written communications, including email, you received, from consumers concerning the marketing and sale of the product RAAX11, and/or the participation in a study of RAAX11, including disclosing the total amount of refunds requested by consumers and the total amount of refunds to consumers, in terms of units and dollars, that you have made for RAAX11 for each year from 2004 to the present.

**ANSWER:** None. Respondent hereby incorporates its Answer to Interrogatory No. 1

herein as though set forth in full.

20. Identify and describe in detail all reliable scientific evidence that demonstrates that RAAX11 is effective in the prevention and cure of cancer.

**ANSWER:** None. Respondent hereby incorporates its Answer to Interrogatory No. 1 herein as though set forth in full.

21. Identify and describe in detail all evidence that you relied upon to substantiate the representations that RAAX11 is effective in the treatment and cure of various types of cancer, including, but not limited to leukemia and cancers of the breast, brain, lung, larynx, pancreas, and bowel; and that RAAX11 is effective in the prevention of cancer, including, but not limited to uterine cancer.

**ANSWER:** None. Respondent hereby incorporates its Answer to Interrogatory No. 1 herein as though set forth in full.

22. Identify by name, address, and account number any bank or other financial accounts that received or disbursed funds relating to the marketing, purchasing, sale, and/or distribution of the product RAAX11. Explain what responsibilities you exercised, or had the authority to exercise, for those bank or other financial accounts, including the names of persons with who you shared the authority, and the type of transactions that were processed through each account.

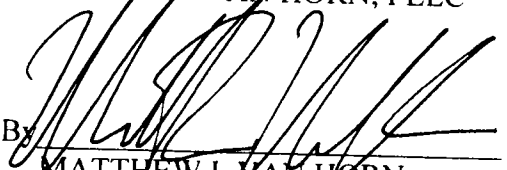
**ANSWER:** None. Respondent hereby incorporates its Answer to Interrogatory No. 1 herein as though set forth in full.

23. Identify and describe in detail all advertising, promotional literature, and other marketing or promotional material disseminated by you or which include your name, telephone number, or other contact information for you.

**ANSWER:** None. Respondent hereby incorporates its Answer to Interrogatory No. 1 herein as though set forth in full.

This the 3<sup>rd</sup> day of February, 2009.

LAW OFFICE OF  
MATTHEW I. VAN HORN, PLLC

By 

MATTHEW I. VAN HORN  
N. C. Bar No. 26166  
16 West Martin St., Suite 700  
Raleigh, NC 27601  
Telephone: (919) 835-0880  
Facsimile: (919) 835-2121

*Attorney for Respondents*

VERIFICATION

NORTH CAROLINA     )  
                                          ) SS.  
WAKE COUNTY         )

WILLIAM H. ISELY, being first duly sworn, deposes and says that he is the incorporator of Respondent GEMTRONICS, INC. in the above entitled action, that he has read the foregoing document and knows the contents thereof; that the same is true of its own knowledge except for those matters and things stated on information and belief and as to those he believes them to be true.

This the 4th day of February, 2009.

William H. Isely  
WILLIAM H. ISELY

SUBSCRIBED and SWORN to before me  
this 4th day of February, 2009.

[Signature]  
NOTARY PUBLIC

Matthew I. Van Horn  
Printed Name           NOTARY PUBLIC

My Commission expires: 9-29-2009

**CERTIFICATE OF SERVICE**

This is to certify that the undersigned has this date served this **RESPONDENT'S COUNSEL'S ANSWERS TO COMPLAINT COUNSEL'S FIRST SET OF INTERROGATORIES TO RESPONDENT GEMTRONICS, INC.** in the above entitled action upon all other parties to this cause by facsimile and 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.

Ms. Barbara E. Bolton  
Federal Trade Commission  
225 Peachtree Street, N.E.  
Suite 1500  
Atlanta, GA 30303  
Facsimile: (404) 656-1379

This the 3<sup>rd</sup> day of February, 2009.

  
\_\_\_\_\_  
MATTHEW I. VAN HORN



**EXHIBIT "B"**

**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 Rosch**

**PUBLIC**

<p><b>In the Matter of</b></p> <p><b>GEMTRONICS, INC., a corporation, and</b></p> <p><b>WILLIAM H. ISELY, individually and as the owner of Gemtronics, Inc.</b></p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

**DOCKET NO. 9330**

**RESPONDENT'S COUNSEL'S ANSWERS TO COMPLAINT COUNSEL'S  
FIRST SET OF INTERROGATORIES TO RESPONDENT WILLIAM H. ISELY**

Pursuant to RULE OF PRACTICE 3.35, Respondent WILLIAM H. ISELY, by and through his undersigned counsel, hereby responds to Complaint Counsel's First Set of Interrogatories as follows:

**INTRODUCTORY STATEMENTS AND GENERAL OBJECTIONS**

1. WILLIAM H. ISELY has not fully completed his investigation into the facts pertaining to this suit, has not completed his discovery, and has not completed his preparation for trial. Answers contained herein are based only on such information and materials as are presently available and known to WILLIAM H. ISELY. This anticipated further discovery, investigation, legal research, and analysis may supply additional facts and will establish

information which may vary from that set forth herein. The answers set forth are given without prejudice to WILLIAM H. ISELY'S right to introduce evidence of any subsequently discovered fact[s] or circumstance[s]. WILLIAM H. ISELY accordingly reserves his right to change or modify any response as additional facts or circumstances are ascertained, analyses are made, and legal research is completed.

2. WILLIAM H. ISELY objects to Complaint Counsel's Interrogatories to the extent that the Interrogatories seek to impose requirements or obligations on WILLIAM H. ISELY in addition to or different from those imposed by the Code of Federal Regulations, Rules of Practice for Adjudicative Proceedings. In responding to each Interrogatory, WILLIAM H. ISELY will respond by providing only such information as may be required and proper under the Code of Federal Regulations, Rules of Practice for Adjudicative Proceedings.

3. WILLIAM H. ISELY objects to Complaint Counsel's Interrogatories to the extent that the Interrogatories seek information or documents that are protected from discovery by the attorney-client privilege, the work-product doctrine, confidential commercial information, or any other applicable privilege. Nothing contained in these responses is intended to, or in any way shall be deemed, a waiver of any such available privilege or doctrine. In responding to each Interrogatory, WILLIAM H. ISELY will not provide privileged or otherwise protected information.

4. The foregoing objections and limitations shall be applicable to, and included in, WILLIAM H. ISELY'S response to every definition and Interrogatory propounded by Complaint Counsel.

## INTERROGATORIES

1. Identify and describe in detail the current and former duties, responsibilities, and work performed by you and others, either under your direction, supervision or otherwise, relating to advertising, promoting, offered for sale, sale, and distributing the product RAAX11, including but not limited to, providing an explanation of your day-to-day responsibilities and activities with respect thereto.

**ANSWER:** William H. Isely was the owner and operator of a sole proprietor business operating under the name Gemtronics which was a mail order dietary supplemental business. Mr. Isely had no employees and solely handled all necessary aspects required to operate a mail order dietary supplement business. He ordered products to stock, accepted orders by both mail and phone, filled orders, kept accounts, paid sales taxes as appropriate, as well as determining the income taxes to be paid resulting from income made by the business. In the year 2000, Takesun products were added to the line of products offered, adding the duties of importation from Brazil, which included additional interaction required with United States customs and the United States Federal Drug Administration, and custom brokers. Mr. Isely declined to sign as a Takesun distributor and purchases from Takesun by Mr. Isely were negotiated on a purchase by purchase basis with each transaction standing alone and not on the basis of any account.

Initial importation of RAAX11 was done under the name of "Nature First." Mr. Isely coordinated the content of a free web page of that name offered by Takesun to all wholesale buyers. For a period of seven months in 2001, Mr. Isely assumed the duties of senior partner of Takesun USA, a partnership established with a US citizen named Jane [Redacted for purposes of maintaining confidentiality], to import Takesun products to the US. This partnership was

dissolved in December of 2001, with the importation task transferred to Gemtronics but still ordering under the Name of Nature First since that name had been first used for importing. Jane's last name is withheld for the purposes of confidentiality, since her involvement was only prior to the sale of RAAX11.

The Web link from Takesun to Earth First became inoperative in 2002. In 2003, Mr. Isely operating under the name Gemtronics was registered as an approved FDA warehouse to comply with United States Homeland security requirements. In 2004, a free website offered by Takesun, our-agaricus.com, was established with no links to agarticus.net, and the importation and sale of RAAX11 was initiated. RAAX11 was imported until Mr. Isely was first contacted by Complaint Counsel. Once Mr. Isely was contacted by Complaint Counsel, Mr. Isely began ceasing to import RAAX11.

In 2006, Mr. Isely formed the corporation Gemtronics Inc. with the North Carolina Secretary of State as an organizer. Also in 2006, when Takesun renewed the registration of our-agaricus.com it, without the knowledge of Mr. Isely, Mr. Isely's name as registrant was attached to some of the Takesun web sites, including argaricus.net. A timeline of these events is shown in Exhibit A.

2. Identify and describe in detail the current and former duties, responsibilities, and work performed by you and others, either under your direction, supervision or otherwise, relating to the operations of the corporate respondent, Gemtronics, Inc., including but not limited to, providing an explanation of your day-to-day responsibilities and activities with respect thereto. Include a detailed description of your participation in the formation and operation of the corporate respondent, Gemtronics, Inc.

**ANSWER:** No actions were taken regarding Gemtronics, Inc. after it was formed with the North Carolina Secretary of State in 2006. It has remained an inactive corporation since its inception, only existing as a corporate shell. It has no shareholder or board members and has never been activated. It has never conducted any business or entered into any contracts. It has never obtained a federal tax identification number and has never filed taxes. To the extent the name "Gemtronics" has been utilized, it originated and has existed as an assumed name by Respondent William H. Isely, individually. However, Mr. Isely has never registered the assumed name "Gemtronics" with a Register of Deeds for any county in the state of North Carolina.

3. Identify and describe in detail the process by which, from whom, and the dates that you have obtained the product RAAX11 and any promotional literature for the product, including, but not limited to, identifying the amounts of product you obtained and the amount you paid for the product on each date.

**ANSWER:** Over a period from the middle of 2004 until approximately spring 2008 about 1150 bottles of RAAX11 were bought, usually from 12 to 108 at a time, approximately 4 months apart, depending on sales. A few less were sold due to lost shipments and returns. Specific order information is not available in a timely manner as records are kept manually and are in storage. Very few were bought in 2004, peaking in 2005. Sales dropped off as competition entered the market. No literature was purchased for the products.

4. Identify each person consulted by you, or upon whose advice, opinion, or expertise you relied relating to advertising, promoting, offered for sale, sale, and distributing the product RAAX11, provide the substance of such advice, opinion, or expertise furnished to you and any compensation paid for such services.

**ANSWER:** I consulted with no one on these aspects of this business, being well versed in dietary supplement sales for over 30 years.

5. For each year from 2004 to the present, disclose the total amount of sales in terms of units and dollars that you have achieved for the sales of RAAX11 and identify the source producing the sale, including, but not limited to, the specific Internet website, newspaper advertisement, promotional mailing, etc. For each year, provide a total amount of sales, as well as, a break down amount of sales from each source.

**OBJECTION:** Respondent objects to this Interrogatory on the grounds that it is vague, overbroad. 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.

**ANSWER:** Without waiving the afore-stated objections, Respondent states as follows:

Sales	<u>year</u>	# bottles sold	Gross sales Estimates	
	2004	19	\$ 7,200	\$ based on \$400/bottle
	2005	370	44,400	subsequent years
	2006	147	17,640	based on \$120/bottle
	2007	224	26,880	
	2008	158	18,960	

95% of orders were from repeat customers buying other products or referrals both contacting me by phone and email as I have been in the vitamin supplement business for approximately 30 years. 2 ½ % of orders were from [www.our-agaricus.com](http://www.our-agaricus.com). 2 ½ % of orders were by email from George Otto, generally for single bottle sample orders. None were direct from [www.agaricus.net](http://www.agaricus.net)

RAAX11 sales Jan 1, 2004 to Dec 31, 2008

a. Total Bottles sold	1134
b. Number of purchases	325
c. Number of customers	115

d. Distributions of sales

1). One time buy of a single bottle	33
2). Customers who bought twice	18
3). Largest orders by number of bottlers	27
	18
	18
	16
	15
	15
	12
	12
	12
4). Largest customers by number of bot.	276
	212
	59
	40
	31
	28

6. Identify and describe in detail any other payments you have received (other than the sales listed in response to Interrogatory No. 5), directly or indirectly, in connection with the advertising, marketing, promotion, sale and/or distribution of the product RAAX11 for each year from 2004 to the present. (This request includes the total dollar amount and source for each payments.)

**OBJECTION:** Respondent objects to this Interrogatory on the grounds that it is vague, overbroad. 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.



**ANSWER:** Without waiving the afore-stated objections, Respondent states that it has not received any other payments directly or indirectly, in connection with the advertising, marketing, promotion, sale and/or distribution of the product RAAX11 for each year from 2004 to the present other than those identified in Interrogatory 5.

7. Identify and describe in detail the nature of your business relationship, and when and how you began doing business with Takesun do Brasil and/or George Otto, aka Georg Otto Kather, including, but no limited to, identifying all communications and any contracts or agreements, oral or written, any payments or other compensation, and the purchase or other provision of supplies, computer or other equipment, between you and Takesun do Brasil and/or George Otto. Also identify and describe in detail and any advertising or promotional material containing your name and Takesun do Brasil and/or George Otto.

**ANSWER:** Mr. Isely's relationship with Takesun do Brazil aka George Otto Kather was one of wholesale buyer from Manufacturer. Isely refused a distributor contract as the terms were ambiguous, expensive, and settlement of disputes would be impossible due to its being importation from a foreign country. Each purchase was individually negotiated on a stand-alone basis on price, method of shipment, and delivery. The relationship started in 2000 after Mr. Isely had bought sample quantities of Takesun products from intermittent dealers in the United States. Over a period of six (6) months the quantity imported grew to about \$5,000 a month until the relationship was terminated in 2008 after Mr. Isely discovered his name had been used without his permission or knowledge to register internet Domains as well as to be a contact person on Takesun web sites. Mr. Isely is unable to recover most of the communications between himself

and Takesun, which took place over a period of nine (9) years, and which were routine dealings in the making of purchases in international commerce. Breaking down the business between RAAX11 and the nine other products is not possible. Mr. Isely refused any brochures and support material including computer materials as unusable in his US business for reasons of language as well as inappropriate medical claims since Mr. Isely's use was as dietary supplements only. Takesun did supply free web pages for two years and later a free domain, [www.our-agaricus.com](http://www.our-agaricus.com), as they did for anyone who bought from them in wholesale quantities. As a seller of Takesun products it was natural to mention the name Takesun do Brazil on Mr. Isely's brochure as the manufacturer of the products. This name was also on the products imported which were passed by the FDA. I received no other payments related to RAAX11 besides sales.

8. Identify and describe in detail the nature of your business relationship, and when and how you began doing business with Takesun USA, including, but no limited to, identifying all communications and any contracts or agreements, oral or written, any payments or other compensation between you and Takesun USA, and any advertising or promotional material containing your name and Takesun USA.

**ANSWER:** In 2001, Mr. Isely's largest customer, Jane [Redacted] wanted to become a partner with Mr. Isely. He and Jane [Redacted] formed Takesun USA and registered with a Fed. ID #. 565-226-1206. Mr. Isely's duties were to import products and his partner Jane was to warehouse products and ship to retail sellers, which turned out to be only Jane [Redacted] and myself. Mr. Isely and Jane envisioned other retail sellers who did not materialize. Coordination

with the West coast was difficult and there was not enough income for two people. As such, the partnership was dissolved before the end of 2001. Jane [Redacted] continued retail.

During the period of the partnership with Jane, Mr. Isely operated two separate business, Takesun USA and Gemtronics. Takesun USA imported products and the products were paid for by Mr. Isely and myself and Jane. Gemtronics bought products from Takesun USA and sold them at retail. This was before the era of RAAX11. The relationship of Mr. Isely to various assumed business names is shown within the attached Exhibit "A".

9. Describe in detail any communications and any contracts or agreements, oral or written, that you have had with any companies or individuals related to advertising, promoting, offering for sale, sale and/or distribution of RAAX11.

**ANSWER:** Other than the brief partnership with Jane [Redacted] Mr. Isely has had no contracts, agreements, oral or written with any individuals related to advertising, promoting, offering for sale, sale or distribution of RAAX11. This excludes the normal conduct of business of selling, giving prices, etc. of a mail order/phone business.

10. Disclose the total amount of dollars that you have spent to advertise, market, or otherwise promote the product RAAX11 for each year from 2004 to the present, broken down by each medium used (i.e., print, Internet, radio, or other means). (This request includes, but is not limited to, all expenditures attributable to the creation, development, evaluation, approval, modification, and dissemination of promotional materials).

**ANSWER:** Mr. Isely has spent no money advertising RAAX11 beyond the small percentage of space it takes up in my brochure which I print myself. Ink and paper for the brochure probably runs \$40/year so 10% allocated to RAAX11 would be \$4.

11. Describe in detail your participation in the Internet website [www.agaricus.net](http://www.agaricus.net), including, but not limited to, the registration for the domain "agaricus.net," the use of your name and telephone numbers appearing on the website, testimonials from you appearing on the website, and the solicitation for participation in an ongoing study in the USA of RAAX11 appearing on the website. Also include the date you began receiving orders for RAAX11 placed on the Internet website [www.agaricus.net](http://www.agaricus.net), how you received these orders, how these orders were filled by you, how you received payment for such orders, and how much you were paid.

**OBJECTION:** Respondent objects to this Interrogatory on the grounds that it is vague, overbroad. 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.

**ANSWER:** William H. Isely had no involvement with the website [www.agaricus.net](http://www.agaricus.net) & did not register [www.agaricus.net](http://www.agaricus.net) under his name; that was done by mistake by some member of the staff of Takesun do Brasil. William H. Isely's name, address and telephone number appearing for contact purposes included on the website, appeared on [www.agaricus.net](http://www.agaricus.net) without his knowledge or permission. William H. Isely gave George Otto permission to use the testimony about his health records, but not specifically for use on the website [www.agaricus.net](http://www.agaricus.net).

William H. Isely was not aware that his name had been linked to a study involving RAAX11 and he was not involved in any such study. William H. Isely did not know that he ever received any orders for RAAX11 from the website [www.agaricus.net](http://www.agaricus.net), having no interface with the website. On rare occasions he would receive an email from George Otto asking him to drop

ship a sample order, but he had no indication on such orders as to their source. He generally did not receive payment for such small orders.

12. Describe in detail your participation in any other Internet websites, including, but not limited to, your name, address and/or telephone number appearing on the registration for any domain, and any links between websites, i.e., for ordering RAAX11.

**ANSWER:** The only website Mr. Isely participated in during the time RAAX11 was for sale was [www.our-agaricus.com](http://www.our-agaricus.com) in which his name was given as the registrant. This website had no link to other websites, such as [www.agaricus.net](http://www.agaricus.net).

13. Identify and describe in detail all oral and written communications, including email, you have had with the U.S. Food and Drug Administration including, but not limited to any communications concerning warehouse, facility, or other registrations you have had with the agency, and concerning the agency's letter to you dated April 2008.

**ANSWER:** Mr. Isely did not keep records between himself and the FDA, particularly since most were by telephone. Some stand out in memory, based upon information and belief:

a. Mr. Isely's first large import order, probably in 2000, was held by the FDA for improper labeling. Mr. Isely redesigned the labels to be in accordance with the FDA Labeling Act. Takesun printed new labels and Mr. Isely arranged for his broker to re-label the products under the watchful eye of FDA inspectors. There were numerous letters, phone calls and package shipments over a period of six (6) weeks.

b. As a result of the Homeland Security Act, Mr. Isely registered Gemtronics, Inc. as an FDA approved warehouse.

c. Perhaps one shipment in ten was selected for special inspection and/or product testing for purity, contamination, etc. They always passed.

d. Perhaps another shipment in ten would be held because the FDA inspector was not familiar with the product and for clearance required that they be given botanical names and plant descriptions before clearance.

e. When Mr. Isely was expecting an order he would check and see that the Prior Notice had been filed by Takesun or his shipper.

f. The last shipment received in the spring/summer of 2008 was held for a month before Mr. Isely was informed that the identification of the preservative used was not given on the label. After several discussions the FDA released the shipment with the understanding that the label would be modified before the next shipment.

Regarding the FDA letter April 2008, it was properly served upon Mr. Isely requiring a return receipt rather than being sent to [www.agaricus.net](http://www.agaricus.net) by email. It was a warning that paralleled the one from the FTC, which was never served. It was answered through counsel providing the same evidence that was initially given the FTC that Mr. Isely does not participate in the control/management of [www.agaricus.net](http://www.agaricus.net) and that his name and contact information were used without his knowledge or permission, including domain registrations, with the exception that [www.agaricus.net](http://www.agaricus.net) could refer inquiries to Mr. Isely regarding his medical history with prostate cancer. Mr. Isely provided the FDA with George Otto Kather's name as their contact person with several email addresses, asked Takesun to correct their web site registrations, take his name off their web sites, and stop selling products to the US. Eventually the FDA wrote Mr. Isely a letter thanking him for his cooperation. Subsequently Phillip Campbell, when queried by a local news organization about Mr. Isely's case, said in equivalent words that Mr. Isely was innocent and since they had no leverage they were not pursuing the case.

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.

**OBJECTION:** Respondent objects to this Interrogatory on the grounds that it is vague, overbroad. 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.

15. Identify and describe in detail all oral and written communications, including email, you received, from consumers concerning the marketing and sale of the product RAAX11 and/or the participation in a study of RAAX11, including disclosing the total amount of refunds requested by consumers and the total amount of refunds to consumers, in terms of units and dollars, that you have made for RAAX11 for each year from 2004 to the present.

**OBJECTION:** Respondent objects to this Interrogatory on the grounds that it is vague, overbroad. 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:** Without waiving the objection, Mr. Isely states as follows:

Mr. Isely has no records of people asking about marketing or sale of RAAX except the normal business questions of price and delivery terms. Perhaps two potential customers asked about participating in a study to get a lower price and Mr. Isely told them that he was not part of a study, nor did he know of one. One customer wanted a refund when he changed his mind after placing an order and it had been shipped. Mr. Isely wanted him to pay for shipping, but he eventually paid the whole thing. One UK customer took delivery of a large order and gave a delivery receipt to the express company. Later she reversed the charge on her credit card telling the CC bank the order had not been delivered. Being a foreign customer, Mr. Isely had no recourse. For about six customers whose relatives had bought products and then later died, Mr. Isely provided refunds for the unused items.

16. Identify and describe in detail all reliable scientific evidence that demonstrates that RAAX11 is effective in the prevention and cure of cancer.

**ANSWER:** Mr. Isely has not seen data that provides a double blind quality study.

17. Identify and describe in detail all evidence that you relied upon to substantiate the representations that RAAX11 is effective in the treatment and cure of various types of cancer, including, but not limited to leukemia and cancers of the breast, brain, lung, larynx, pancreas, and bowel; and that RAAX11 is effective in the prevention of cancer, including, but not limited to uterine cancer.

**OBJECTION:** Respondent objects to this Interrogatory on the grounds that it is vague, overbroad. 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.

**ANSWER:** Respondent did not substantiate the representations that RAAX11 is



effective in the treatment and cure of various types of cancer, including, but not limited to leukemia and cancers of the breast, brain, lung, larynx, pancreas, and bowel; and that RAAX11 is effective in the prevention of cancer, including, but not limited to uterine cancer.

18. Identify by name, address, and account number any bank or other financial accounts that received or disbursed funds relating to the marketing, purchasing, sale, and/or distribution of the product RAAX11. Explain what responsibilities you exercised, or had the authority to exercise, for those bank or other financial accounts, including the names of persons with who you shared the authority, and the type of transactions that were processed through each account.

**ANSWER:** Bank account for period RAAX11 was sold

Bank account in the assumed name of Gemtronics [account number redacted].

Bank name RBC Centura  
Franklin, NC, 28734

William H. Isely was authorized to perform all actions associated with the account

Transactions were deposits of purchasers and payouts for expenses including the purchase of products from Brazil. Occasional profits were paid to owner.

Account was terminated in the fall of 2008 after the destruction of the business.

19. Provide the name and location of any other corporation or business entity in which you hold or held ownership, directorship, or other position of responsibility.

**ANSWER:** None.

20. Provide a detailed background, regarding your education, including any professional degrees or licenses that you hold, and employment history, including the name and location of your employers and dates of employment.

**ANSWER:** BSME, MSME

Westinghouse, Pittsburg, Baltimore , 1948 to 1953

Boeing Aircraft Co. Cape Kennedy, Fla 1953 to 1955

Honeywell Corp, St. Petersburg, Fla. 1955 to 1987

21. Identify the name and address of the owner of the following telephone numbers:

A) 866-944-7359; B) 828-369-7590; and C) 828-369-5861.

**ANSWER:** William H. Isely.

22. Identify and describe in detail all advertising, promotional literature, and other marketing or promotional material disseminated by you or which include your name, telephone number, or other contact information for you.

**ANSWER:** A product brochure which shows about 10 imported Takesun products that depicts price image, and a brief description of the contents. This product brochure includes a link to Nature First, which was discontinued approximately. This brochure also makes mention of Takesun USA, the importing partnership referred to above that was dissolved in approximately as described in previous responses to Interrogatories.

This the 3<sup>rd</sup> day of February, 2009.

LAW OFFICE OF  
MATTHEW I. VAN HORN, PLLC

By 

MATTHEW I. VAN HORN  
N. C. Bar No. 26166  
16 West Martin St., Suite 700  
Raleigh, NC 27601  
Telephone: (919) 835-0880  
Facsimile: (919) 835-2121

*Attorney for Respondents*

VERIFICATION

NORTH CAROLINA     )  
                                  ) SS.  
WAKE COUNTY         )

WILLIAM H. ISELY, being first duly sworn, deposes and says that he is the Respondent in the above entitled action, that he has read the foregoing document and knows the contents thereof; that the same is true of its own knowledge except for those matters and things stated on information and belief and as to those he believes them to be true.

This the 4<sup>th</sup> day of February, 2009.

*William H. Iseley*  
\_\_\_\_\_  
WILLIAM H. ISELY

SUBSCRIBED and SWORN to before me  
this 4<sup>th</sup> day of February, 2009.

*Matthew I. Van Horn*  
\_\_\_\_\_  
NOTARY PUBLIC  
*Matthew I. Van Horn*  
Printed Name         NOTARY PUBLIC  
My Commission expires: 9-29-2009

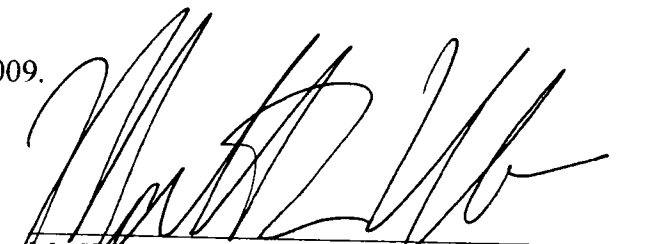


**CERTIFICATE OF SERVICE**

This is to certify that the undersigned has this date served this **RESPONDENTS' COUNSEL'S ANSWERS TO COMPLAINT COUNSEL'S FIRST SET OF INTERROGATORIES TO RESPONDENT WILLIAM H. ISELY** in the above entitled action upon all other parties to this cause by facsimile and 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.

Ms. Barbara E. Bolton  
Federal Trade Commission  
225 Peachtree Street, N.E.  
Suite 1500  
Atlanta, GA 30303

This the 3<sup>rd</sup> day of February, 2009.



MATTHEW I. VAN HORN

**William H. Isely Relationship..to Various AKA's**

<b>Year</b>	<b>Gemtronics</b>	<b>Nature First</b>	<b>Takesun USA</b>
1993	Registered 7-7-1993 with NC to act as a mail order supplier of dietary supplements		
2000	Added Takesun products to those already carried by Gemtronics	Began importing for WHI Under name of Nature First. Also had Web site arrived at by Clicking "US sales" on Agaricus.net	
2001			Formed Partnership with Jane, June '01, Fed ID 56-2261206 To import from Takesun. Dissolved partnership Dec. '01
2002	Business was conducted Without web site support	Link to Agaricus.net was terminated when web site became non functional	
2003			Because of confusion at Takesun do Brasil shipments were made to Wm. H., Isely variously addressed to Wm H.Isely, Gemtronics, Nature First & combinations,
	All functions of business Consolidated under Gemtronics		FDA registration was done Under Nature first, registra- # 10827550148
2004	Web Site Our-agaricus initiated in June		
	Importation of RAAX11 begun		
2005			
2006	Gemtronics Inc registered. Domain our-agaricus Registration renewed. By mistake G. Otto listed the registrant for three of his web sites as William Isely		
2007			
2008	With Gemtronics business destroyed, the domain our-agaricus was no longer useful and was allowed to lapse. Another business is now using this domain, Gemtronics registration with NC as a merchant is expected to lapse Dec. 31, 2008.		

**EXHIBIT "C"**

**OFFICIAL TRANSCRIPT PROCEEDING**

**FEDERAL TRADE COMMISSION**

**MATTER NO. D09330**

**TITLE GEMTRONICS, INC.**

**PLACE HAMPTON INN  
244 CUNNINGHAM ROAD  
FRANKLIN, NORTH CAROLINA**

**DATE FEBRUARY 4, 2009**

**PAGES 1 THROUGH 140**

**DEPOSITION OF WILLIAM H. ISELY**

---

**FOR THE RECORD, INC.  
10760 DEMARR ROAD  
WHITE PLAINS, MD 20695  
(301)870-8025**

---

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

## I N D E X

Examination	Page
By Ms. Bolton	4, 103, 122, 130
By Mr. Van Horn	98, 105, 125, 132

## E X H I B I T S

Complaint Exhibits Marked for Identification		Page
No. 1	(Search Report on Domain)	42
No. 2	(Sample Order)	46
No. 3	(Info on RAAX11)	52
No. 4	(Exhibit C to Comm. Complaint)	56
No. 5	(Priority Mail Envelope)	57
No. 6	(Invoice)	59
No. 7	(Express Mail Envelope)	63
No. 8	(Invoice)	64
No. 9	(Front of Brochure)	66
No. 10	(RAAX11/Agaricus Protocol)	69
No. 11	(Back of Brochure)	75
No. 12	(WHOIS)	77
No. 13	(Domain Solicitation)	81
No. 14	(WHOIS)	84
No. 15	(WHOIS)	89
Respondent's Exhibits Marked for Identification		
No. 1	(Articles of Incorporation)	98
No. 2	(P. Campbell Letter)	106
No. 3	(FTC Warning Letter)	109
No. 4	(Trademark Letter)	114
No. 5	(PayPal Riece Miles)	118
No. 6	(PayPal Dana Long)	120
No. 7	(Takesun Invoice)	125
No. 8	(Stmt. By P. Velasco)	127



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

4 In the Matter of:

5 GEMTRONICS, INC., a  
6 corporation, and

DOCKET NO. 9330

7 WILLIAM H. ISELY, Individually  
8 and as the Owner of Gemtronics,  
9 Inc.

---

10 Wednesday, February 4, 2009

11 Oakhill Country Inn

12 1689 Old Murphy Road

13 Franklin, North Carolina 28734

14  
15 The above-entitled matter came on for  
16 deposition, pursuant to notice, at 10:20 a.m.

17  
18 Reported by:

19 Mary K. Huth-Stepp, Registered Professional Reporter  
20  
21  
22  
23  
24  
25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A P P E A R A N C E S

On Behalf of the Federal Trade Commission:

BARBARA ELIZABETH BOLTON, ESQUIRE  
Federal Trade Commission, Southeast Region  
225 Peachtree Street, N.E.  
Suite 1500  
Atlanta, Georgia 30303  
404.656.1362 (telephone)  
404.656.1379 (fax)  
bbolton@ftc.gov

On Behalf of Gemtronics, Inc. and the witness:

MATTHEW I. VAN HORN, ESQUIRE  
16 West Martin Street, Suite 700  
Raleigh, North Carolina 27601  
919.835.0880 (telephone)  
919.835.2121 (fax)  
matthew@vanhornlawfirm.com

1 the same minerals.

2 Anyway, I made a little business of it. When I  
3 retired, I continued it.

4 Q. Did you sell under any particular name or were  
5 you just selling informally?

6 A. Well, I was just -- I was just selling under my  
7 own name. And then when I got up here and started some  
8 local sales, I realized I needed sales tax certificate  
9 and to collect sales tax.

10 Down in Florida, the products weren't under  
11 sales tax and so I hadn't been involved in that so much.  
12 And at the time I needed to -- I was also interested in  
13 rocks and gems. So I thought a name to connect some of  
14 the interests I had that represented that, I called it  
15 Gemtronics. And that's the name that I registered in, I  
16 think it was '93, with the state, as a -- let's see what  
17 my category is. Mail order, basically mail order and it  
18 was largely dietary supplements. And I picked up a  
19 couple other brands, Mannatech brands of products.

20 And what really happens is, I was watching for  
21 new things that would come out. And because one of my  
22 principles was if everybody is doing it, it's like  
23 there's another Chinese tailor down the corner and you  
24 can't charge more than he does. And so I was always  
25 looking for things that hadn't gotten widespread

1 distribution.

2 When something got saturated, I probably would  
3 start moving into something else. And let's see, how we  
4 got into --

5 Q. Were you selling -- as part of your nutritional  
6 supplement business, were you always doing business out  
7 of your home?

8 A. Yes.

9 Q. All right. So you didn't have any, any --

10 A. I didn't have an office.

11 Q. -- business location?

12 A. No. Originally it was by mail and then my son  
13 introduced me to computers. And kind of hard to say,  
14 early 1990s I think I had my first computer that ran on  
15 DOS rather than -- it was before Windows. I made up a  
16 chart that shows -- I'd like to pass this out.

17 MR. VAN HORN: It was the Exhibit A to our  
18 interrogatory responses.

19 MS. BOLTON: Uh-huh (affirmative).

20 MR. VAN HORN: I've provided her with that.

21 THE WITNESS: It will help if you have it while  
22 I talk, because my business got more complex as I got  
23 picking up Takesun products.

24 BY MS. BOLTON:

25 Q. All right. So, according to your chart, it says

1 you added Takesun, you started adding Takesun products to  
2 those you sold in 2000?

3 A. How about -- see, I had a neck surgery in late  
4 1990s. And they discovered that while I was in the  
5 hospital I had enlarged prostate. And they had me get on  
6 a screening program. And I had a rather -- a level of  
7 PSA for some time and then one year it spiked up from  
8 9 to 16 in a short period of time, and my doctor  
9 suggested I see a urologist. And he did a biopsy and  
10 found I had prostate cancer. And his solution was to  
11 load me up with radioactive pellets. And I asked him,  
12 well, what's the long-term result of that. And he said,  
13 well, it's too new. We don't know yet, but we think it's  
14 a good thing to do.

15 I had reservations about -- I have had about  
16 radiation for a long time. Particularly in Florida, when  
17 they started radiating tomatoes and all variety of other  
18 things. I wasn't sure that was good for me. So I  
19 started researching what natural -- well, my Doctor said,  
20 your rate of increase is not too bad. You can wait a  
21 while and see what you want to do, rather than go into a  
22 sudden surgery.

23 So I looked naturally on what was available on  
24 the Web, I tried a number of things. I eventually ran  
25 across Agaricus Blazei Murill, which is a technical name

1 for the mushroom that Takesun sells. And it was  
2 available from a couple of medical people, but they were  
3 basically buying for their patients. And they would  
4 quite often be out or they wouldn't have enough to spare  
5 for me, so -- and my PSA was coming down rather quickly,  
6 so I was quite interested in it. So I started buying it  
7 directly from Brazil.

8 Q. And what was the company name that you purchased  
9 from?

10 A. Takesun do Brasil. It's a Portugese spelling of  
11 Takesun of Brazil.

12 MR. VAN HORN: It's D-O?

13 THE WITNESS: It's D-O, then B-R-A-S-I-L. Then  
14 my point of contact was George Otto Kather, who was a  
15 German born, immigrated to Brazil. And my understanding  
16 is he married a Brazilian lady and set up his business  
17 there.

18 Q. Is he the president of Takesun do Brasil?

19 A. I have no idea what his official duties are. It  
20 seemed to be sort of a family-owned business. And I  
21 don't know. It is called LDA. I don't know if that's  
22 like limited in this country or what. They have that  
23 after the name, LDA.

24 Q. But as far as you know, does George Otto Kather  
25 run Takesun do Brasil?

1           A. As far as I know, he appears to be the main  
2 person, yes.

3           Q. Okay.

4           A. And because he's multi-lingual, he deals with  
5 the international business. He speaks German, Portugese,  
6 Spanish, and probably in order of proficiency English.  
7 His English is pretty bad, but he -- he gets along with  
8 it.

9           Q. And you started buying Agaricus products from  
10 Mr. Kather?

11          A. Well, from Takesun.

12          Q. From Takesun do Brasil?

13          A. Yes.

14          Q. And that was in 2000 you started that?

15          A. I would say early 2000 I was buying it basically  
16 retail and some of -- I had quite a lot of customers by  
17 that time buying other products. A lot of them was  
18 interested in anything new I came up with. So it looked  
19 like it was something to add to my business.

20                 So I needed a name and I came up with Nature  
21 First as the name. And that's what I imported under  
22 after I started more than just for myself.

23          Q. And was that a registered company or was that a  
24 d/b/a or what kind of --

25          A. No, it was just a/k/a, if you want.

1 Q. It was a name you did business under?

2 A. Yeah.

3 Q. Okay. And then when did you start using  
4 Gemtronics with regard to purchasing Agaricus products?

5 A. Not yet. What happened shortly after that was  
6 that one of my main buyers is a lady, Jane X, out in the  
7 West Coast, asked to be a partner in my importing  
8 business. She wanted to import to the West Coast and  
9 customers she had. So we formed a legal partnership.  
10 And I've given you the federal ID we registered under.  
11 And it was actually from probably around June of 2001  
12 until December.

13 And we originally planned -- we divided the  
14 business. I was going to continue handling the  
15 importing, she was going to be the warehouse and both of  
16 us had retail business, but she was going to ship out all  
17 our retail sales and maintain the stock in her place. We  
18 got halfway through that transition and she just didn't  
19 like the business. She didn't think it was making as  
20 much money as she thought it ought to and so we closed  
21 out the partnership that year.

22 In other words, we had -- December 31st we  
23 reported the taxes for the year we had been in business  
24 and closed it out. And that was Takesun, U.S.A.

25 Q. That was the name of your partnership was



1 Takesun, U.S.A.

2 A. Yes.

3 Q. Okay. And was that a registered partnership?

4 A. Well, it had a Federal ID. I guess to that  
5 extent it was registered.

6 Q. Okay. Now, after the dissolution of your  
7 partnership, did you continue doing business under the  
8 name Takesun, U.S.A.

9 A. Well, I had to close out the bank account and so  
10 on, but within a few months I made no more purchases. I  
11 transferred the stock, we divided up the stock. And as  
12 far as any business went, we were done by December of  
13 2001.

14 Q. And after --

15 A. Now, I left the name on my -- I left the name on  
16 my, what's the word, my brochure, in the event that  
17 somebody else would want to be under, at least under my  
18 importing of -- I wanted to keep my importing name. I  
19 wanted to keep that as a potential importing name, if I  
20 went back into that mode that I had been with Jane, but  
21 that never happened.

22 Q. So Takesun, U.S.A. was a name that you used to  
23 import product?

24 A. Yes.

25 Q. So you imported Agaricus products?

1 A. Yes.

2 Q. And were these Agaricus products imported from  
3 Takesun do Brasil?

4 A. Yes. And then I went back to using Nature First  
5 as my importing company, let's say, in 2002. And I  
6 switched over to selling from Gemtronics, which was --  
7 because Gemtronics had the retail registration and retail  
8 tax collection capability that Nature First did not.

9 Q. Oh, so let me just be clear. So Nature First is  
10 a name that you used in starting in 2002 for importing  
11 products from Takesun do Brasil?

12 A. No, I started -- no, I went back to that.

13 Q. But, I mean, you began using it again?

14 A. I started using it again.

15 Q. Now, did you have an importing license to import  
16 these products?

17 A. At some point I registered with the FDA and I  
18 have a registered approval, what they called an approved  
19 warehouse. This means that they have vetted your  
20 business background and so on and are a legitimate  
21 business, not, you know, somebody that's laundering money  
22 or something else. And it makes -- it helps the FDA in  
23 the customs aspect because of -- they can just go to the  
24 file and pull up anything they want, any information on  
25 you they want, without having to get it on every import.

1           And I was importing as often sometimes as once a  
2 month, so that's -- and then, of course, Homeland  
3 Security came in and put in their rules of prior notice.  
4 Where anything, any importing has to have a prior notice  
5 form filled out and filed with the FDA. And that turned  
6 out to be a fiasco because they wanted you to identify  
7 the flight and the time within an hour of when your  
8 shipment was going to arrive. Well, with international  
9 flights and weather, it turned out that three quarters of  
10 the time it came on a different airplane at different  
11 times and you were supposed to let them know. Well, the  
12 logistics of that just was difficult.

13           Q. All right. Now, let me clarify. So you have an  
14 FDA approved warehouse, correct, for importation?

15           A. I listed my house, right.

16           Q. And you imported product from Takesun do Brasil.  
17 Did you import any other products?

18           A. No.

19           Q. So you were the exclusive -- that was  
20 exclusively Takesun products that you imported?

21           A. Uh-huh (affirmative).

22           Q. Okay.

23           A. But I was not exclusive with Takesun.

24           Q. Takesun -- in other words, did Takesun -- were  
25 there other people in the United States or businesses in

1 the United States --

2 A. Oh, yes.

3 Q. -- that you knew that imported Takesun products?

4 Oh, yes. See, I was -- Takesun, I was importing  
5 enough volume that Takesun offered me an exclusive if I  
6 would sign up as a dealer. There were many reasons I  
7 didn't. For one thing, he offered me a contract which I  
8 would call written in pidgeon English. And George learns  
9 his English by hearing it. I don't think he ever had any  
10 official schooling. So two words that sound the same, he  
11 would use them interchangeably.

12 Q. So you had no distributorship, formal  
13 distributorship agreement?

14 A. No. Every purchase was a stand-alone,  
15 separately negotiated on price, on how it was to be sent  
16 and, you know, whether it was to be sent express or with  
17 one of the freight companies, and when it would be  
18 delivered. So that made it a little more difficult  
19 because I had been a distributor.

20 But I was concerned about his advertising and I  
21 became more concerned, I think, in about '62, about the  
22 time I had moved, moved out of the partnership.

23 MR. VAN HORN: 1962?

24 THE WITNESS: No, no, '92. '92. No, 2002. Go  
25 back to my chart and I won't forget. I think he told me

1 in an e-mail that FDA had been on his Website and told  
2 him they didn't like it or anyway there was some  
3 complaint to him. And he investigated it, and he told me  
4 that he didn't come under the FDA or the United States  
5 jurisdiction, so it wasn't a problem for him.

6 I recognized it might be a problem for me to  
7 have any formal ties with, any legal ties with Takesun,  
8 so I strictly avoided that.

9 Q. All right. So then all you did was buy product  
10 from him or import product from Takesun; is that correct?

11 A. Well, Takesun -- as an inducement to buy from  
12 him, Takesun had offered a free Web service. And at the  
13 time I was with Nature First, the way he did that was you  
14 went to an address at .net.

15 Q. What year now are we talking about?

16 A. Talking about -- years, I'd say 2001, 2002. You  
17 went to Agaricus.net and you clicked on U.S. sales, and  
18 that, that clicked over to my Web pages.

19 Q. And Agaricus -- tell us what Agaricus.net is.

20 A. Agaricus.net is the main Website for the  
21 Agaricus products that is owned and controlled by Takesun  
22 do Brasil. And so I got concerned that I was going  
23 through Agaricus.net to get to my pages. Actually, they  
24 weren't my pages in the sense that I was -- I never  
25 learned how to run a Website, but I would, I would say

1        what -- I would get the material in the way of general  
2        terms of what I wanted and we'd spend several  
3        interactions getting right English on it, you know, and  
4        making sure that this is on my pages of Nature First.

5            Q. All right. So Nature First had a Website; is  
6        that what you're saying?

7            A. No, they had pages. There's a difference.

8            Q. They had Web pages?

9            A. Web pages on Agaricus.net. And about 2002 --

10           MR. VAN HORN: Do we want to have him say what  
11        those Web pages are? Are they -- is it just a page or is  
12        it actual, like a Website?

13           MS. BOLTON: He just said it wasn't a Website.

14           MR. VAN HORN: It's just a page.

15           THE WITNESS: Well, it was pages. In other  
16        words, it was a subset of about four pages that you  
17        could -- when you clicked the U.S. sales on Agaricus.net,  
18        you went to what was my home page, and then there were  
19        several other things you could click to.

20           Q. So if you were on the Website of Agaricus.net  
21        and you wanted to buy product, Takesun products in the  
22        U.S., you would click on the U.S. sales whatever button  
23        and it would go to your Web pages; is that correct?

24           A. Uh-huh (affirmative).

25           Q. Okay. And those were, again, those were your --

1 included in a WHOIS generally. And if you look at the  
2 WHOIS you got, you'll find that every one of them has one  
3 of George Otto's e-mail addresses. None of them have  
4 mine.

5 MR. VAN HORN: Can we just clarify that when you  
6 say look at the WHOIS, for what?

7 THE WITNESS: I've got that here.

8 Q. Well, let's not go there because I will  
9 introduce these later.

10 A. Well, I'd like to make my point to show you what  
11 I'm talking about, so when you look at it later you'll  
12 understand.

13 MS. BOLTON: Well, are you going to introduce  
14 these as exhibits? I mean --

15 MR. VAN HORN: Sure.

16 THE WITNESS: These are yours.

17 MS. BOLTON: I understand that. And I'm going  
18 to introduce them as exhibits. If you want to just talk  
19 about them briefly, that's --

20 MR. VAN HORN: Why don't you do this, why don't  
21 you not introduce this as an exhibit. Why don't you show  
22 her what the page is and so it will be a reminder when  
23 she introduces it, we can discuss it then.

24 THE WITNESS: Okay.

25 MS. BOLTON: And --

1 MR. VAN HORN: And we'll let her --

2 THE WITNESS: I want to make sure this is -- no,  
3 that's Our-Agaricus. That's mine. That's Takesun.  
4 Yeah, it's the one for Agaricus.net is on FTC 00162. And  
5 then the, yeah, and the e-mail that was --

6 MR. VAN HORN: Just show it to Barbara.

7 THE WITNESS: Oh, okay. The mail, only e-mails  
8 on there are George Otto, Takesun.com.

9 MR. VAN HORN: So the import of it, you're  
10 saying that's your name, but next to it is somebody  
11 else's --

12 THE WITNESS: Yeah.

13 MS. BOLTON: Okay. All right. Let's go back  
14 to -- when did you start --

15 MR. VAN HORN: Hold on. Did you want to say  
16 something?

17 THE WITNESS: Well, we were going over the  
18 history, which we didn't finish.

19 BY MS. BOLTON:

20 Q. I'd like to get to -- you were saying that you  
21 imported -- when did you start doing business under the  
22 name Gemtronics, in terms of using Nature First and start  
23 using the name Gemtronics?

24 A. Nature First was to import. I used Gemtronics  
25 as a sales tool for retail from the beginning of the time



1 that I picked up Takesun products.

2 Q. And that was about what year did you start using  
3 the name Gemtronics again?

4 A. I was using it all the time.

5 Q. How far back, would you say?

6 A. From the time I registered at North Carolina in  
7 1993.

8 Q. Okay.

9 A. And, of course, I didn't have the Takesun as  
10 part of my offering until the year 2000.

11 Q. Now, at some point you incorporated Gemtronics?

12 A. Yes. Actually, just going down the history,  
13 RAAX started importation in 2004. I had my first sales  
14 of RAAX in 2004.

15 Q. All right. Let's, let's stop there for a  
16 minute. You're talking about the RAAX product?

17 A. RAAX product.

18 Q. And that's R-A-A-X11. It's actually RAAX11.

19 We'll --

20 A. RAAX11.

21 Q. We'll call it RAAX.

22 MR. VAN HORN: And it's capitalized.

23 Q. You started importing RAAX in 2004?

24 A. Yes.

25 Q. Okay. Were you importing under the Gemtronics

1 customers located? Were they located throughout the  
2 United States?

3 A. Throughout the United States, although  
4 predominant location was in California. There seemed to  
5 be a greater interest in natural products in California,  
6 the western states.

7 Q. And did you sell the RAAX product to consumers  
8 throughout the United States?

9 A. Yes.

10 Q. And you said you listed the product on your  
11 Website. Now, which Website are we referring to now?

12 A. Our-Agaricus.net. I mean, .com and .us.

13 Q. Okay. And did either of these Websites have  
14 links to other Websites?

15 A. No.

16 Q. All right. So you advertised by brochure and on  
17 the Website. Were there any other means you used to  
18 advertise RAAX?

19 A. No.

20 Q. Okay.

21 A. See, my philosophy was that I was retired, I had  
22 a retirement income. Rather, I wouldn't say meager, but  
23 just modest. And I was quite satisfied. I didn't want  
24 to work day and night. I got adequate sales just by  
25 having people find me on the Web, as well as customers

1 that I already had.

2 Q. Now, if a customer found you on the Web, how  
3 would they place an order with you via the Web?

4 A. Pardon me?

5 Q. How would a consumer who saw an advertisement on  
6 the Web, on a Website for RAAX, how would they order the  
7 product from you?

8 A. Almost always they would call because unless  
9 you're a very sophisticated business, you can't tell a  
10 person ahead of time what his shipping is going to cost.  
11 And he may want it overnight or he might be willing to  
12 have it next week. And because of the shipping issue,  
13 people almost always called me. And my telephone number  
14 was on the Agaricus, Our-Agaricus.com or, yeah, it's  
15 basically, if they found it there.

16 Actually, bulk of my customers were old  
17 customers and customers that were repeats. New customers  
18 were quite rare, as a matter of fact.

19 Q. And when customers called you, how would you  
20 know that they found your telephone number from a  
21 particular Website?

22 A. Usually they would tell you.

23 Q. And they would tell you -- did customers tell  
24 you that, I saw your phone number on Our-Agaricus.net?

25 A. If they didn't tell me, I could usually tell by

1 their questions. Because my Website was uniquely  
2 different from any others. So, you know, they would be  
3 asking me about this product, that product, and what I  
4 had said about it, which was generally just a list price.  
5 And Agaricus in general, I didn't put much more  
6 information on my Website.

7 Q. And --

8 A. Other than how the product was processed, so  
9 they would know that it was high-quality product.

10 Q. And did your phone number appear on other  
11 Websites that the -- other than Our-Agaricus.net and  
12 Our-Agaricus.us?

13 A. I had authorized -- George Otto asked if -- he  
14 used testimony, testimonials back in the beginning of our  
15 relationship. And he heard about my successful outcome  
16 on prostate cancer and he just wanted to have a  
17 testimonial. And I told him, well, my medical records  
18 are a fact that can be substantiated, if somebody has a  
19 question. And I'll give you a short summary of my  
20 medical records at best. And I prefer not to be  
21 identified by name, but I'll use my middle name. And I  
22 gave him a statement that he could use. And that was,  
23 that was all I authorized.

24 Q. Okay.

25 A. I subsequently, after your investigation,

1 discovered that he had used my name in other ways without  
2 my permission and without my knowledge.

3 Q. And what other ways was that?

4 A. As you pointed out, one was to call me to get  
5 information. It didn't say to call me to buy, because he  
6 was, he was selling -- during his last four years of this  
7 history I was telling you about, he was an active  
8 competitor of mine. Even though he was supplying me with  
9 product, he would, he would make more money if he could  
10 get the retail sale, rather than just the wholesale sale.

11 So he didn't say, call this number to buy, as I  
12 looked at it and as you have on your images of the Web  
13 pages that you've taken. I think, if I recall, it says,  
14 for more information call Bill Isely, and then there's a  
15 number.

16 And then the other thing I discovered, again,  
17 from you, is that he had used my name in renewing the  
18 registration of some of his domains.

19 Q. So when people called you to order RAAX product,  
20 you're not really sure whether they called you because  
21 your number was in your Website Our-Agaricus.net or  
22 whether your number appeared in one of Mr. Otto's  
23 Websites; is that correct?

24 A. As I told you, I would generally know from the  
25 conversation. And these calls are actually very rare

1 because particularly if they are international calls, I  
2 had some customers in Thailand, more of them in -- what's  
3 the Chinese island that broke away from the main land?

4 MR. VAN HORN: Japan?

5 THE WITNESS: No, not Japan. Taiwan. Yeah.

6 MR. VAN HORN: Taiwan.

7 A. And some from South Korea. People on the  
8 Internet don't like to use phones. And I think that was  
9 what Otto did. I don't know for what reason he put my  
10 name on there. I could speculate. But certainly wasn't  
11 successful. I can't remember a call and somebody said,  
12 I'm on Agaricus.net and your name is here and I'm calling  
13 you. People just don't call on the Internet anymore. It  
14 costs money to use a telephone, compared to sending an  
15 e-mail.

16 Q. But, in fact, you said that that's how you got  
17 your orders were from people calling you from your  
18 Website Our-Agaricus.net?

19 A. Well, I got -- I think I estimated for you in  
20 some material that you've been given that I got maybe two  
21 and a half percent of my calls that way. Or business,  
22 two and a half percent of my orders probably came in that  
23 way.

24 Q. So is it clear to say that you, when someone  
25 would call you, you really didn't know where they got

1 your number?

2 A. I wouldn't know in every case. In most cases I  
3 did.

4 Q. Now, when you fulfilled an order -- scratch  
5 that. Did you accept orders when -- when people ordered  
6 off -- they saw your name off the Web, did you have a  
7 PayPal account on your Website?

8 A. I did not accept PayPal. I do have a PayPal  
9 account where people can pay me, but it wasn't on my  
10 Website. I indicated, you know, if they called me, that  
11 they could pay with their credit card.

12 Q. All right. So you did accept credit card  
13 payments?

14 A. Uh-huh (affirmative).

15 Q. And I'm unclear about PayPal. Could people  
16 purchase product from you through PayPal?

17 A. No.

18 Q. Okay. And how -- when you fulfilled these  
19 orders, what -- if a consumer ordered RAAX from you, what  
20 would you send them? What would be in the package?

21 A. For an average customer, I would send the  
22 brochure.

23 Q. And by the brochure, you mean --

24 A. Well, the undercover agents that you had buy  
25 products got brochures, so you know what the brochure is.

1 It has about 10 products, a picture of it and prices  
2 associated with each product.

3 Q. And did you include invoices in your packages?

4 A. Invoices, yes.

5 MS. BOLTON: Okay. I'd like to take a break for  
6 a minute.

7 (Recess taken from 11:13 a.m. to 11:20 a.m.)

8 BY MS. BOLTON:

9 Q. Mr. Isely, are you still doing business under  
10 the name Gemtronics? Are you continuing to do business?

11 A. Gemtronics is out of business. Your publicity  
12 scared off most of my customers to the point where I was  
13 losing money and I stopped importing. And I've canceled  
14 my retail tax number.

15 Q. Are you continuing to sell any products?

16 A. I don't have any products. Well, this is -- I  
17 have this (indicating). I kept one.

18 Q. And by this, he's referring to a bottle of RAAX.  
19 He kept one.

20 MR. VAN HORN: Can I see that?

21 (Tendered).

22 Q. Okay. Mr. Isely, according to your Answers to  
23 Interrogatories, you sold approximately, from  
24 January 1st, 2004 to December 31st, 2008, 1,134 bottles  
25 of RAAX?



1 A. That's best as I can get from my records.

2 Q. Okay. And your sales were approximately about  
3 115,000 for that, for those years?

4 A. Hmm?

5 Q. Your sales for 2004 through 2008 were about,  
6 approximately, \$115,000?

7 A. On -- think I figured the average price is about  
8 120, so I guess so.

9 MS. BOLTON: I'd like to have this exhibit  
10 marked as Exhibit 1.

11 (Complaint Deposition Exhibit No. 1 was marked  
12 for identification).

13 BY MS. BOLTON:

14 Q. Mr. Isely, I'd like you to look at that. And  
15 this also has Respondent's Bates number as 00006. Can  
16 you tell me what this is, Mr. Isely?

17 A. Well, it looks like a search report on a domain.

18 Q. And the domain is Our-Agaricus.com. And is this  
19 one of the Websites that you sold the product RAAX from?

20 A. Well, let's see. I'm trying to find the -- oh,  
21 yeah, this is Our-Agaricus.com. This is my Website. I  
22 said my Website. It's the Website that had my material  
23 on it.

24 Q. Okay. And did you register this domain name?

25 A. No.

1 Q. Okay. Even though you are -- it states that you  
2 are listed as the registrant?

3 A. That's what it says, but I didn't do it. You  
4 notice Agaricus, George Otto at Takesun.com has got his  
5 name associated with mine.

6 MR. VAN HORN: When you talk about a document,  
7 she has to write it down.

8 THE WITNESS: Oh.

9 MR. VAN HORN: So you kind of have to be more  
10 specific than normal.

11 THE WITNESS: Okay.

12 MR. VAN HORN: So if you walk through the  
13 document, identify, like there's the administrative  
14 contact.

15 Q. So the registrant is listed as William Isely?

16 MR. VAN HORN: On the far left side of the  
17 document.

18 A. That's what it says.

19 Q. And are you also listed as the administrative  
20 contact?

21 A. Administrative contact is William Isely and then  
22 it gives George Otto at Takesun.com as the address for  
23 me. Yeah. Which is, of course, incorrect, because that,  
24 that's for a Website located in Brazil. I've never been  
25 in Brazil since 1941.

1 Q. Now, did you -- but as you said, this was your  
2 domain. So you gave Mr. Otto permission to use your name  
3 in registering this domain?

4 A. Yes.

5 Q. And is this your -- under the administrative  
6 contact, the telephone number, 828-369-7590; is that your  
7 telephone number?

8 A. Yes.

9 Q. Okay.

10 A. I might mention, since I did business with  
11 George every month, he had all my contact information at  
12 hand. So the fact that my telephone number is on there  
13 doesn't mean that I put it there.

14 Q. But you did state previously that you allowed  
15 Mr. Otto to register this under your name?

16 A. Yeah. At the time I didn't know there was a  
17 difference between a registrant, an administrative  
18 contact, technical contact. And for some reason they  
19 didn't put the billing contact on there. That's usually  
20 a third name that for some reason it was omitted.

21 MR. VAN HORN: Flip the page, see if it's on the  
22 next page.

23 THE WITNESS: Hmm?

24 MR. VAN HORN: Flip the page, see if it's on the  
25 next page.

1 I no longer had use of after 2002.

2 Q. So did you -- so it's your testimony that as of  
3 2004, you had no contact with this Website?

4 A. No, I say that's when it was created. George  
5 created it in June of 2004.

6 Q. Okay. As far as you're aware, did it have any  
7 information for you on this Website, any contact  
8 information for you?

9 A. Yes. It had my name, address and telephone  
10 number.

11 Q. And were you aware that your name, address and  
12 telephone number were on that, on the Website?

13 A. Yes. That's where -- that's how I expected  
14 people to contact me.

15 Q. And when customers placed orders through this  
16 Website for RAAX, how did they contact you?

17 A. Well, by calling.

18 Q. Do you know how many orders were placed for RAAX  
19 to you via Our-Agaricus.com?

20 A. I didn't keep records that way. No way I could  
21 tell you.

22 MS. BOLTON: All right. I would like to mark  
23 this as Exhibit 2.

24 (Complaint Deposition Exhibit No. 2 was marked  
25 for identification).

1 BY MS. BOLTON:

2 A. I did a sampling one time and I estimated about  
3 two-and-a-half percent of my orders, and they were almost  
4 always a sample type order, like one bottle or something  
5 like that that came off this Website.

6 Q. And how did you come to that figure?

7 A. I sampled a two-year period.

8 Q. And what two-year period was that?

9 A. Probably from May of 2008 going back two years,  
10 something like that. At one point in time you had asked  
11 for information that started and ended in May, and so I  
12 had made that sample, try to recreate how many orders I  
13 was getting from this Website.

14 Q. Mr. Isely, can you identify what this document  
15 is?

16 A. This is a WHOIS search results on the domain  
17 Agaricus.net. And it's kind of interesting, I notice  
18 that my name is misspelled, which I don't deliberately  
19 do.

20 Q. But you're noting that your name is listed as  
21 the registrant; is that correct?

22 A. Yes.

23 Q. And are you also the administrative, technical  
24 and zone contact?

25 A. Let's see. On the next page still misspelling

1 my name and giving my wrong telephone number. And the  
2 contact is given as e-mail address, gotto@takesun.com.  
3 And he also puts his name alongside mine. And I asked  
4 him about that one time.

5 Q. And when was that?

6 A. Hmm?

7 Q. When was that?

8 A. The spring of this year, where I was working  
9 pretty hard to get my name off of any of his material. I  
10 asked him about that. And he said, oh, I needed or I  
11 wanted to have an address in the United States. And he  
12 says, I only listed you as a contact point, I didn't put  
13 you down as a registrant. Well, I guess you have to get  
14 the experts on the registrant company to explain how they  
15 could put two names down in one place and get my  
16 telephone wrong and use George Otto's e-mail as to the  
17 point of contact.

18 Q. Mr. Isely, do you remember having a telephone  
19 conversation with me in March of 2008, after you received  
20 the Commission's --

21 A. Yes.

22 Q. -- proposed complaint?

23 MR. VAN HORN: Hold on. Don't interrupt. Let  
24 her finish, first of all. Second of all, you need to  
25 listen to that question closely.

1 THE WITNESS: Yeah, okay.

2 MR. VAN HORN: Because I'm just going to object  
3 to the extent you're stating evidence that's not in the  
4 record. You stated that after he received a letter from  
5 the FTC?

6 MS. BOLTON: No, I didn't say a letter from the  
7 FTC. I said, after he received our proposed complaint.

8 MR. VAN HORN: Okay.

9 Q. Do you recall receiving our proposed complaint  
10 package in March of 2008?

11 A. Yes.

12 Q. And did we have a telephone conversation on  
13 March 28th?

14 A. About that time. I couldn't -- you know,  
15 without looking at a calendar and my records, I couldn't  
16 be sure that was the date. But I think it's in that time  
17 period.

18 Q. And do you recall telling me during that  
19 telephone conversation that you had given Mr. Otto  
20 authorization for you to be a contact point for  
21 Agaricus.net?

22 A. No. I'm sure that at the time I was -- if I  
23 said anything like that, I was talking about  
24 Our-Agaricus.com. And I don't think you knew, at that  
25 time, that there were two Websites. And they sound very

1 similar to somebody who is just getting into it. I  
2 suspect that was a mistake you made.

3 Q. The complaint lists the Website Agaricus.net.  
4 It cites a complaint of Agaricus.net. So we were talking  
5 about Agaricus.net at the time because Our-Agaricus.com  
6 wasn't in the complaint.

7 A. I know it wasn't in the complaint, but it was in  
8 my conversation upon explaining it to you, as to what I  
9 had done and why you might be confusing me with George  
10 Otto.

11 Q. All right. And do you recall me asking you how  
12 it was that your name would have appeared on the domain  
13 registration for Agaricus.net, not Our-Agaricus.net?

14 A. I certainly gave -- I certainly wouldn't have  
15 told you that I gave him permission, when I didn't.

16 Q. Okay. So you did not give -- is it your  
17 testimony that you did not give Mr. Otto permission to  
18 use your name as a contact in the United States for the  
19 purposes of Agaricus.net?

20 A. No.

21 MR. VAN HORN: Did you understand that?

22 THE WITNESS: Well, it's a very general  
23 question. For the purposes of --

24 MR. VAN HORN: If you need her to specify and  
25 clarify, you know, you can ask her that. You don't want



1 to --

2 THE WITNESS: We were talking about registration  
3 and now you just broadened the question to any purpose.  
4 And maybe we could get back to a more specific question.

5 MR. VAN HORN: I think her question is fair, I  
6 just wanted to make sure you understood it.

7 Q. What -- why don't we say it this way. What  
8 permission did you give Mr. Otto in the sale of Agaricus  
9 products to use your name? When was he allowed to use  
10 your name and your address in the United States and your  
11 telephone number, to use your personal information for  
12 business purposes?

13 A. I never gave him permission to do that. Now,  
14 we've been talking about putting it on his Website. Are  
15 you expanding it beyond that?

16 Q. No, you said his Website. Is there -- you said  
17 that you allowed him to use your name and information on  
18 his Website. Were there any other instances where you  
19 allowed him to use your information?

20 A. The information about my cancer.

21 Q. No -- okay.

22 A. That was, at some point, if you want to know the  
23 recreation of the statement that I allowed him to use, we  
24 can put that into evidence. I don't know. Do you want  
25 to do that?

1 Q. Well, no. I mean, I don't -- we don't need to  
2 do that. That's fine. So you're saying then that to  
3 register Agaricus.net in your name as it's done here was  
4 done without your permission?

5 A. Yes. I really didn't know the details of how  
6 you go about registering it. All I knew is he was going  
7 to provide a service. And I couldn't have given him  
8 permission, when I didn't even know what he would do with  
9 it.

10 Q. When you say he was going to provide a service,  
11 what do you mean?

12 A. He was going to -- part of his business  
13 arrangements for his customers was to provide free either  
14 Web pages or Web domains for their use. And he would  
15 manage them in terms of putting the material up and  
16 paying for the rental and that sort of thing. Now, I  
17 expect him to use my name for registering the Website  
18 that I would be using.

19 Q. Which was?

20 A. Our-Agaricus.com.

21 MS. BOLTON: Mark this as Exhibit 3.

22 (Complaint Deposition Exhibit No. 3 was marked  
23 for identification).

24 BY MS. BOLTON:

25 Q. Mr. Isely, if you would take a look at this.

1 And this is Exhibit A to the complaint, to the  
2 Commission's complaint in this matter.

3 A. (Witness peruses document).

4 Q. Do you recognize what this is?

5 A. Well, it's an image of one of the pages off of  
6 Agaricus.net and it seems to be featuring questions or  
7 statements about RAAX11.

8 Q. And I just want to read from the first column  
9 here. Especially at breast cancer, the OPC Agaricus  
10 protocol shows that it works in 99.9 percent of all  
11 cases, even at late Stage IV it seems to work. From late  
12 2004 to today, about 5,217 women took the protocol. Many  
13 doctors all over the world are reporting since he is  
14 using the OPC Agaricus protocol, nobody of his patient  
15 died. We received this positive message every day from  
16 all over the world. Now many, many patients entered into  
17 protocol from UK where many clinics started to use our  
18 special protocol. If you are living in the U.S., just  
19 call Mr. Isely and he will explain how it works or fill  
20 out form.

21 Now, were you aware that your name appeared on  
22 this page?

23 A. No. See, I explained earlier that I -- the  
24 reason for getting Our-Agaricus.com was to isolate myself  
25 from this aspect of his business. I was selling RAAX as

1 a dietary supplement. He was -- maybe legally in Brazil,  
2 I don't know, he was selling RAAX as a medicine. So I  
3 figured even the less I knew about what he was doing, the  
4 better. And the only reason I go to his Web pages after  
5 I got my own was to go to a shopping cart and check his  
6 prices, just to make sure mine were lower than his.

7 Q. And when you say, he was using it as a medicine,  
8 are you talking about for cancer treatment?

9 A. Well, he's talking about a cure here. And this  
10 may be a true statement. On the other hand, I'm not  
11 going to protect George Otto and prove it is. That's his  
12 business.

13 Q. Right. And when you say cure, you're talking  
14 about a cure for cancer?

15 A. Yeah.

16 MR. VAN HORN: You're talking about -- you're  
17 referring to the language she just read?

18 THE WITNESS: I'm saying the language right here  
19 is George Otto's and I don't pretend to protect him.  
20 That's his business.

21 Q. And in the second column, in the middle, it  
22 says, Even very resistant Leukemia cells die off,  
23 informations U.S.A., 828-369-7590. Is that your  
24 telephone number?

25 A. Yes.

1 might have been in the 1000 number at the end of a time  
2 period, I started over again with a 2000 serial number.  
3 And so there's not much to be gained or to be -- in terms  
4 of the number, other than it's unique. I wouldn't have  
5 two numbers that were the same. And then they increased  
6 with time, but there were gaps in there.

7 Q. Does this number refer to the number of the  
8 customer ordering RAAX, particularly?

9 A. No. The numbers increase sequentially by  
10 calendar time. In other words, if the next day after  
11 this one, if I had an order, it would likely have been  
12 3006. I had some competition buying from me and  
13 sometimes I wanted to mislead them as to what I was  
14 doing, so I would put in a gap of maybe 50 between the  
15 time they bought and the next time.

16 Q. And on your invoices, do you typically include  
17 your e-mail address and your telephone number?

18 A. Yes.

19 Q. And at the bottom --

20 A. Uh-huh (affirmative).

21 Q. -- it says, William Isely, General Manager of  
22 Takesun, U.S.A.

23 A. Uh-huh (affirmative).

24 Q. Now, what does that mean?

25 A. I've explained in this here what Takesun U.S.A.

1 was. At one point it was the importing business name,  
2 Gemtronics was the retail. And although I generally  
3 dropped Takesun, U.S.A. after the time period when I had  
4 that partnership, I had a computer blank form that I  
5 would just fill out the details of this order and  
6 invoice, so I wouldn't type the whole thing all over  
7 again. And I had several blank forms and some of them  
8 have the Takesun, U.S.A. on there and some of them  
9 didn't.

10 Q. And on this, it's difficult to read, but it  
11 looks like method of payment, PayPal?

12 A. As I recall, this one was PayPal.

13 Q. Now, how would you know this was PayPal? How  
14 did you know this order was PayPal?

15 A. Because this order was sent to me in an e-mail  
16 from George Otto. And he would tell me in his e-mail  
17 that he had collected by PayPal. So I would know that  
18 the order had been paid for and I was authorized to send  
19 it out. He wasn't necessarily going to pay me, but he  
20 wanted to know that it was, it was clear it could be sent  
21 out. It wasn't being held up for lack of payment.

22 Q. Now, when you say it wasn't clear that he was  
23 going to pay you, what do you mean by that?

24 A. On these sample orders, this is obviously a  
25 sample order, somebody buying one of a kind. The reason

1       that I was asked to do it was that selling a sample order  
2       of one from Brazil -- if it had been a lucrative order,  
3       like 10 bottles or something, I never would have heard of  
4       it. He would have supplied them from Brazil. But for one  
5       bottle, it would cost him more to send it than he was  
6       getting because of various fees, like exporting, customs,  
7       banker's fees on collecting the money and whatever. So  
8       he would ask me to send that sample or fill that sample  
9       order as a drop ship. And this was a drop ship.

10           Q. And sample order, you just meant, again, like if  
11       it was one bottle?

12           A. Yeah.

13           Q. You call that a sample order?

14           A. Yeah, yeah.

15           Q. So he would ask you to send it out?

16           A. Send it from my stock. And he -- even though it  
17       would cost me \$7.00 to send it, and so I would do that.  
18       And sometimes he reimbursed me and sometimes he didn't.  
19       And in this case, my records don't show that he  
20       reimbursed me.

21           Q. And why would you fill an order that you  
22       wouldn't be paid for?

23           A. Well, I had a profitable business and it was  
24       based on being able to buy from this guy. And I wasn't  
25       going to quibble over one or two bottles a year, if he

1 didn't pay for them.

2 Q. And how would it benefit you to fill this order?

3 A. Well, probably the most benefit was maintaining  
4 a good relationship with the company that was supplying  
5 me with \$5,000 or so of stock a month that I was paying  
6 for, of course, which was -- I was able to make a  
7 business. It's like people give samples away. It's a  
8 matter of building good relations or maintaining good  
9 relations.

10 Q. Did you think that there was the potential that  
11 if this person were to order the product again, they  
12 would order it from you?

13 A. Well, they might. You know, they are free to go  
14 on the Web and find out what their prices are. I think  
15 if they did that, they would probably buy from me because  
16 that was my, that was my business model, have the low  
17 price.

18 MS. BOLTON: Let's go off the record for another  
19 second, if you don't mind.

20 (Off-record discussion).

21 (Complaint Deposition Exhibit No. 7 was marked  
22 for identification).

23 BY MS. BOLTON:

24 Q. All right. Mr. Isely, this page is Exhibit 7.

25 A. Yeah. This one?



1 Q. And do you recognize what that is?

2 A. Yeah. This is an Express Mail, otherwise it's  
3 the same as the other one. That's one I sent to -- it's  
4 for one bottle of RAAX. Method of my getting the order  
5 was the same as the other one. I got an e-mail message  
6 that said please drop ship this and also informed me that  
7 it had been paid for by PayPal.

8 Q. And that e-mail message would have been from  
9 Mr. Otto?

10 A. Uh-huh (affirmative).

11 Q. Okay.

12 A. I know the customer likes to have a receipt for  
13 what he bought, so even though I didn't receive the  
14 money, I knew about how much they paid for it, so I would  
15 include that on the invoice.

16 MS. BOLTON: Okay. And I would like to mark  
17 this as Exhibit 8.

18 (Complaint Deposition Exhibit No. 8 was marked  
19 for identification).

20 BY MS. BOLTON:

21 Q. And would this be the invoice that you were  
22 referring to?

23 A. Yeah.

24 Q. Now, do you know if you were compensated at all  
25 or do you know that you weren't compensated from Mr. Otto

1 for this order?

2 A. Well, George Otto was very irregular about --  
3 and it wasn't very often that he had anything to pay me  
4 for, but in that time period I don't have a record of  
5 receiving PayPal payment from him. I have -- he owed me  
6 some shipping. He paid me, I think, some months after  
7 this, he paid me for shipping some products he had sent  
8 me by mistake. I was holding them, asking him what was I  
9 supposed to do with them. Eventually he had me send them  
10 to Europe. I think that's the -- in my PayPal account  
11 records, that's where I have it, but I can't identify  
12 these.

13 Q. How frequently would Mr. Otto ask you to either  
14 fill one of these, what you call a sample order --

15 A. Uh-huh (affirmative).

16 Q. -- or a larger order?

17 A. Rather infrequently. I would -- I think I went  
18 back in that two-year sample period that I mentioned, and  
19 I think in the second year back there weren't any. And  
20 these two were probably -- I mean, very frequently, you  
21 know, it might be six, eight months apart before I got to  
22 having these two so close together. I thought at the  
23 time, hey, I wonder what's happening.

24 Q. And let's go back to the invoice. You have a  
25 note at the bottom of the invoice.

1 A. Uh-huh (affirmative).

2 Q. Please order direct by phone or e-mail in the  
3 future.

4 A. Uh-huh (affirmative).

5 Q. And why did you put that in there?

6 A. Well, it was kind of cumbersome to get orders  
7 from George. And I preferred to get them directly. And  
8 normally, in this case it wasn't -- George was running a  
9 special, but normally I'd be able to offer customers a  
10 special price.

11 MS. BOLTON: Mark that as Exhibit 9.

12 (Complaint Deposition Exhibit No. 9 was marked  
13 for identification).

14 BY MS. BOLTON:

15 Q. Mr. Isely, I'm showing you Exhibit 9. Do you  
16 recognize what this is?

17 A. Yes. This was front side of my brochure.

18 Q. And is this the brochure that you were referring  
19 to earlier that you put together?

20 A. Yes. My brochure was dynamic, as I told you.  
21 As products changed, different products would be on here.  
22 And --

23 Q. But this is something that you created?

24 A. Uh-huh (affirmative).

25 Q. Is that correct?

1 A. Yes.

2 Q. I wanted to draw your attention to the lower  
3 left-hand portion, where it says, For more information,  
4 go to Website, go to www. Agaricus.net, click on U.S.  
5 sales. So why did you direct customers to go there for,  
6 to purchase?

7 A. This was really archeology, in a way. This is  
8 what I had put on there when I had my earth -- Nature  
9 First link and I just hadn't taken it off. This didn't  
10 go -- in this time period, this would go nowhere because  
11 there's no U.S. sales on the home page. They have a  
12 U.S., which -- but it doesn't go to my pages. And so  
13 just a matter of omission, I hadn't removed it. But  
14 people would be mystified looking for U.S. sales button  
15 on Agaricus.net. If you look at the home page, you won't  
16 find it. The U.S. they put on there in place of it was  
17 to go to English speaking pages that George was using to  
18 sell directly to American customers in competition with  
19 me, so --

20 Q. But at one time, if you went to Agaricus.net and  
21 you clicked on U.S. sales, would that go to you or to  
22 your Web pages?

23 A. It would go to the Nature First Web pages that  
24 we talked about that were in existence for about two  
25 years and were taken down six years ago. There's another

1 artifact on here, which is the Takesun, U.S.A. And  
2 Takesun do Brasil is part of a sentence. I just  
3 highlighted it so -- because people expect to know who  
4 makes the products they are getting. So I left the name  
5 Takesun on there. It says Takesun do Brasil, then  
6 packages the mushrooms in various ways, so on, so on.

7 Q. And in the middle column --

8 A. Uh-huh (affirmative).

9 Q. -- the third paragraph down --

10 A. Yes.

11 Q. -- it says, Agaricus blazei Murill mushrooms  
12 were found to have other beneficial properties as well.  
13 Besides immune enhancing, they are anti-tumor, interferon  
14 and interleukin enhancing, anti-viral, cholesterol  
15 reducing, and a blood sugar modulator. You said you  
16 wrote this. What do you mean in that paragraph?

17 A. I was just listing phrases that I found in the,  
18 some of the reference documents on Sloan-Kettering, on  
19 the Agaricus, on their Web pages where they have about 13  
20 articles listed of characteristics of the Agaricus blazei  
21 Murill mushroom.

22 MS. BOLTON: I need to mark that as Exhibit 10.

23 THE WITNESS: That's my best recall. That was  
24 what -- that language probably goes back to when I first  
25 created this about eight years ago. So I'm a little bit

1 fuzzy about which article or -- but I'm pretty sure it  
2 was Sloan-Kettering.

3 (Complaint Deposition Exhibit No. 10 was marked  
4 for identification).

5 BY MS. BOLTON:

6 Q. Mr. Isely, I'd like you to look at Exhibit 10.

7 A. Uh-huh (affirmative).

8 Q. And do you recognize this document?

9 A. Yes. This was a thing I created at a time,  
10 let's see, a little more than a year ago. George was  
11 pushing e-mail I'd get from him, what he called the  
12 RAAX/Agaricus OPC Protocol, which was a schedule of use  
13 of certain dietary supplements that were common in some  
14 institutions in Europe. And he was talking about curing  
15 and remission and using terms like that, and as a result  
16 of what he called a study.

17 It bothered me because they didn't go so far as  
18 to have double-blind control. And the reports -- I tried  
19 to find out from him, is it really true? You know, what  
20 medical journal's reporting it? And I never got any  
21 answers. And so in my mind, the data was no better than  
22 just group testimonials.

23 But somebody who was buying RAAX -- my preferred  
24 method of dealing with a customer was to talk to them and  
25 explain that I was just selling dietary supplements and

1 that I didn't -- wasn't giving them medical advice. And  
2 if they wanted to buy it, they should recognize that I  
3 was not representing it that way.

4 And occasionally people would go to Agaricus.net  
5 and eventually order product. And like these box  
6 shipments, I didn't have an opportunity to talk to those  
7 people. And so my approach on that, substitute for a  
8 conversation, was to reduce what George had been putting  
9 out as a sophisticated study as to be no more than  
10 testimonials.

11 So I changed the terms of the things like,  
12 improvement or no improvement. I mean, what does that  
13 mean? It means you don't have a headache today or, you  
14 know, your nose is no longer dripping or whatever. And  
15 give them a more objective view of what is here, at least  
16 in terms of the degree of sophistication with which the  
17 results were reported.

18 Q. So did you create Exhibit No. 10?

19 A. Pardon me?

20 Q. Did you create this?

21 A. This was actually something that George sent me.  
22 And I wouldn't use it the way it came. It's the same as  
23 he sent me, except his description of the improvements,  
24 in his case it was remission or cure or, you know, no  
25 change. And that that is getting into what I consider to

1 be medical descriptions. I wanted to correct that  
2 impression that people might have had that led them to  
3 buy this product. And when I was drop shipping, I was  
4 adding this as a necessity to that.

5 Q. So this is your version of the --

6 A. Yeah.

7 Q. -- data that George supplied you?

8 A. Yeah. I tried to make it -- well, I think he  
9 had it on his Website, too. I was -- my idea was to  
10 concert it to a testimonial level. And I think, I think  
11 I did that.

12 Q. Okay. So you are confirming that you did, in  
13 fact, create this; is that correct? I mean, you printed  
14 this up, you --

15 A. I printed it. But the data is, data is -- other  
16 than the labeling of the columns, it's data that George  
17 gave me.

18 Q. And this is something that you submitted in  
19 packages of product that you shipped to consumers?

20 A. Only, only when they had already bought the  
21 product and I didn't have an opportunity to explain it to  
22 them, which was the case of the two box shipments. That  
23 was a very unusual circumstance I run into where I used  
24 it. I did not use it for advertising or try to get sales  
25 from it, but I figured if these people were buying anyway



1 and wanted to continue to buy, then I'd offer them the  
2 low price. That's why the price was on there.

3 Q. In the second sentence here, it says, The RAAX11  
4 Agaricus OPC Protocol for Stage IV conditions is the  
5 taking of 500 ML of RAAX11 and 1000 ML Agaricus OPC over  
6 a period of a month. What do you mean by Stage IV  
7 conditions?

8 A. I lifted that from George's material. I guess  
9 I'd leave it up to people to decide what they -- in other  
10 words, it's a testimonial, it's ambiguous, and I want  
11 people to recognize that.

12 Q. But what does Stage IV conditions refer to?

13 A. Well, typically people use that for talking  
14 about cancer. And I'm sure George was.

15 Q. And in the last sentence in that paragraph, it  
16 says, for cases at lower levels, such as Stage II, et  
17 cetera. What does Stage II refer to?

18 A. Well, that would probably refer to cancer as  
19 well.

20 Q. And in the next paragraph, the second  
21 sentence -- well, let's start with the first sentence.  
22 In the past it has been hard to collect --

23 A. I don't know where you are.

24 Q. I'm sorry. The second paragraph.

25 A. Okay.

1       been left off. And they said, well, the next time you  
2       buy this, make sure the label had been changed. And they  
3       put it through with the label.

4           Q. And when is it you did this label redesigning,  
5       approximately?

6           A. Well, since it was my first large order, that  
7       would have been in the year 2000. I'm not telling you  
8       that from looking at the documentation of the letters  
9       with the FDA, but I'm pretty sure that's when it was.

10           MS. BOLTON: I'm done. I'd like just a couple  
11       minutes to look through my notes and I might have a  
12       couple questions, but that's pretty much it for me.

13           MR. VAN HORN: All right.

14           (Recess taken from 1:50 p.m. to 1:53 p.m.)

15           MS. BOLTON: All right. We're back on. I've  
16       concluded my deposition. Thank you, very much,  
17       Mr. Isely. I appreciate your attendance and your  
18       answers.

19           MR. VAN HORN: All right. I'm just going to ask  
20       him a couple questions, go over a couple documents here.

21           (Respondent's Deposition Exhibit No. 1 was  
22       marked for identification).

23                                           EXAMINATION

24       BY MR. VAN HORN:

25           Q. All right. This is a four-page document or

1 four-page exhibit. It's actually two documents. And I  
2 represent that I've pulled this from the North Carolina  
3 Secretary of State's Website. I think you've probably  
4 seen these.

5 I don't have a copy for you.

6 MS. BOLTON: That's all right.

7 Q. I just wanted to get this into the record. You  
8 just want to take a second to look at that? I'll  
9 represent to you that that's information pulled from the  
10 North Carolina Secretary of State Website regarding the  
11 corporation Gemtronics, Inc. And you're holding the last  
12 two pages.

13 A. This is what I filled out.

14 Q. Okay. That's what I was going to ask you.  
15 You're holding the last two pages of this exhibit. This  
16 exhibit contains four pages. And these are Bates  
17 Nos. 0054 and 0055, respectively. Are you familiar with  
18 this document?

19 A. Yes.

20 Q. What's the title up there?

21 A. Articles of Incorporation, State of North  
22 Carolina, Department of Secretary of State.

23 Q. Okay. So you want to flip to the second page  
24 here, or the fourth of the exhibit. That's your  
25 signature down there?

1 A. Yes.

2 Q. And --

3 A. That's my signature.

4 Q. And there's a stamp under it that says  
5 incorporator?

6 A. Yes.

7 Q. So you formed or you caused the corporation,  
8 Gemtronics, Inc., to be formed; is that correct?

9 A. That's correct.

10 Q. Okay. And that was -- the document speaks for  
11 itself, but September 20th of 2006; does that sound about  
12 right?

13 A. Yeah. That was right after our visit to Raleigh  
14 in the summer to discuss this with my oldest son.

15 Q. Okay. Have you ever done anything else  
16 mechanically or administratively with regards to this  
17 corporation since you caused it to be formed?

18 A. I investigated what it would take to keep the  
19 accounts and turn in the tax forms for a corporation.

20 Q. Okay.

21 A. And I had thought that I had somebody who had  
22 the software to do it for a very low cost, but that  
23 source disappeared. And the cost of then continuing with  
24 the corporation looked exorbitant to me and I wasn't  
25 about to learn how to file taxes for a corporation, so I

1 thought of an alternative which would be a Limited  
2 Liability Company.

3 Q. Uh-huh (affirmative).

4 A. And neither one looked attractive, and so that  
5 was the end of it. I never went further with it.

6 Q. Okay. Now, this page three of the exhibit, line  
7 two, I'll represent states that the number of shares of  
8 the corporation was authorized to issue was 10,000; okay?  
9 You understand what that means, the number of shares the  
10 corporation --

11 A. Yes.

12 Q. So it's authorized to issue 10,000, according to  
13 the stock. Have any shares ever been issued?

14 A. No. They insisted I had to put some number  
15 down. That was just an arbitrary number. But no shares  
16 existed.

17 Q. Any members of -- any board of directors?

18 A. No officers, whatever, other than myself as the  
19 agent that sent the application to the state.

20 Q. Did you ever obtain a Federal tax ID number?

21 A. I did not.

22 Q. Did you ever obtain a state tax ID number  
23 through the Department of Revenue, State of North  
24 Carolina?

25 A. No.

1 Q. Have you ever executed any documents on behalf  
2 of this company?

3 A. No.

4 Q. For instance, a contract --

5 A. No.

6 Q. And --

7 A. No bank account, nothing.

8 Q. All right. So for all practical purposes, it's  
9 an inactive corporate shell; is that correct?

10 A. Oh, yes.

11 Q. Have you been filing your annual reports, to  
12 your knowledge?

13 A. I'm supposed to file an annual report on a  
14 corporation that hasn't come into existence?

15 Q. Well, these are legal terms.

16 A. Oh.

17 Q. In effect, it has come into existence, because  
18 you formed it.

19 A. Oh.

20 Q. And --

21 A. But there's nobody to fill out a report.  
22 There's no board of directors. Who is going to do it?

23 Q. Yeah, that's an interesting question. Well,  
24 I'll just represent that the state law requires that at  
25 the end of each year, you have to file what's called an

1 annual report, and you have to pay a \$25 fee.

2 A. Who is required to? Which officers of the  
3 corporation is required to do it?

4 Q. Somebody has to. But the answer to the question  
5 is, that has not been done; is that correct?

6 A. That hasn't been done.

7 Q. All right. Here's that.

8 A. Now I just committed a misdemeanor or something.

9 Q. No, you didn't. They just dissolve your  
10 corporation, is what they do.

11 MS. BOLTON: Do you want me to wait till your  
12 done for any follow-ups I have?

13 MR. VAN HORN: Oh, if we're on that subject now,  
14 if you want to go on, just to keep it consistent.

15 EXAMINATION

16 BY MS. BOLTON:

17 Q. If you registered -- Mr. Isely, did you register  
18 Gemtronics as a for-profit corporation?

19 A. Yes.

20 MR. VAN HORN: Hold on. I'm going to object to  
21 that question just because -- I don't think that -- well,  
22 just the term --

23 THE WITNESS: I'm not sure.

24 MS. BOLTON: We can do it in the negative. Did  
25 you register it as a not-for-profit organization?

1 MR. VAN HORN: I'm not objecting -- the only  
2 reason I'm objecting is the terminology assumes facts not  
3 in evidence. Just for the record, because --

4 MS. BOLTON: No. Is it a 501(c)(3), that's all  
5 I'm asking him.

6 MR. VAN HORN: Oh.

7 MS. BOLTON: Under technical terms. I'm not  
8 asking whether he made a profit or not. I'm asking how  
9 he incorporated himself.

10 MR. VAN HORN: Okay. Well, I was confused. I  
11 thought, I thought -- my confusion was the difference  
12 between filing an assumed name filing.

13 MS. BOLTON: No, no. I'm just asking --

14 MR. VAN HORN: You're asking whether it's a  
15 not-for-profit corporation.

16 MS. BOLTON: Yes.

17 MR. VAN HORN: Okay. I was confused.

18 THE WITNESS: The only filing is this piece of  
19 paper. If that doesn't say, then we don't know.

20 BY MS. BOLTON:

21 Q. All right. And did you ever have any employees  
22 at Gemtronics?

23 A. No.

24 Q. And you mentioned that Gemtronics did not have a  
25 bank account under --



1 A. Gemtronics, Inc.

2 Q. Gemtronics Inc. never had a bank account?

3 A. No.

4 Q. The monies that you -- the monies that you  
5 obtained from your transactions in selling the  
6 supplements, did you isolate them in a separate account  
7 or were they intermingled with your personal funds?

8 A. They went into an account that was called  
9 Gemtronics.

10 Q. And it was not a corporate account?

11 A. No.

12 Q. And is that the same account that you listed in  
13 your Answers to Interrogatories?

14 A. Uh-huh (affirmative).

15 MS. BOLTON: Okay.

16 EXAMINATION

17 BY MR. VAN HORN:

18 Q. So it's a -- you've been operating Gemtronics by  
19 yourself; is that correct?

20 A. Uh-huh (affirmative).

21 Q. As a sole proprietor?

22 A. Sole proprietor.

23 Q. Okay. Have you ever filed any assumed name  
24 filing documents with the --

25 A. A what?

1 Q. I'm sorry. Have you ever filed a, what's called  
2 an assumed name filing document with the Register of  
3 Deeds in your county, indicating to the public that you,  
4 William Isely, are operating as sole proprietor under the  
5 name of Gemtronics?

6 A. No.

7 (Respondent's Deposition Exhibit No. 2 was  
8 marked for identification).

9 BY MR. VAN HORN:

10 Q. Okay.

11 A. April 17th, it was a capricious date.

12 Q. It's a what?

13 A. It's an important date. These guys were piling  
14 on by that date.

15 Q. Have you seen that before, the document before?

16 A. Yes.

17 Q. What is that?

18 A. This was a warning letter from the FDA about the  
19 Website. I presume it was part of a concerted program  
20 with the FTC, in which they warned me that this  
21 Website -- they call it my Website.

22 Q. What Website?

23 A. They say your Website.

24 Q. What is that Website?

25 A. Agaricus.net and RAAX/Agaricus.com.

1 Q. Okay.

2 A. And they are complaining about the products as  
3 being drugs, since there are therapeutic claims made for  
4 them.

5 Q. Okay. Now, how was this, how was this letter  
6 sent? How was this correspondence sent, according to  
7 this document?

8 A. I believe it was by registered mail.

9 Q. Okay. I think -- I'll just represent for the  
10 record on top, on the first page --

11 A. Oh, it says by Federal Express. Okay.

12 Q. Do you remember receiving this?

13 A. I can't remember the specific time.

14 Q. Do you remember if your signature was required  
15 when it was delivered?

16 A. I don't know.

17 Q. So where did you receive this?

18 A. Oh, I probably received it at my front door.

19 These guys don't have an office in our town.

20 Q. Okay. And so -- and that letter is addressed to  
21 who?

22 A. William Isely, Gemtronics, Inc.

23 Q. And what's the address?

24 A. 964 Walnut Creek Road.

25 Q. Which we've previously established is your home

1 address?

2 A. Yes. And it was the same address that was used  
3 for registering Gemtronics, Inc., which they put on here.

4 Q. Okay. All right. And I guess you flipped to  
5 the second page. It directs you to contact who? What  
6 does it do, direct you to what?

7 A. Philip S. Campbell, the compliance officer at  
8 the FDA.

9 Q. Okay.

10 A. And because I was already involved with the FTC  
11 and had you as my counsel, I passed this letter to you,  
12 rather than contacting Philip. I've never talked to him  
13 myself.

14 Q. Okay. Do you remember what -- how he handled  
15 this matter?

16 A. Well, yes. We responded to his warning and  
17 pointed out that Agaricus was a Brazilian Website that  
18 was managed by parties other than myself.

19 Q. And that was done through a letter written by my  
20 office; is that correct?

21 A. That was a letter that was written -- that your  
22 office submitted to him.

23 Q. Right.

24 A. I believe you had some conversations with him.

25 Q. Okay.

1           A. And he responded after that with some questions  
2 about how to contact George Otto and so forth. And I had  
3 given you some information on how to, to pass on to  
4 Campbell. And he wrote another letter thanking us for  
5 our corporation. I haven't heard from him since.

6           MR. VAN HORN: Okay. You want -- I'm moving  
7 along.

8           MS. BOLTON: Keep going.

9           (Respondent's Deposition Exhibit No. 3 was  
10 marked for identification).

11 BY MR. VAN HORN:

12           Q. Okay. This is No. 3. Exhibit No. 3, I'm going  
13 to introduce. It's a three-page document and I've  
14 written some hand notes on the first page. But I  
15 represent this was received through discovery by the FTC.  
16 Okay. You want to take a moment just to look at that  
17 document. And what is it?

18           A. (Witness peruses document). You know, I've seen  
19 this recently. It's FTC Item 00195. This was the  
20 initial warnings.

21           Q. What's the date on it?

22           A. The date on it is -- letter is the 23rd of  
23 October of 2007.

24           Q. Okay. When did you -- do you remember when you  
25 first saw this letter?

1           A. I think I first saw this with material that the  
2           FTC sent us in the last month or so.

3           Q. Okay.

4           A. And it was -- I heard about this letter. And  
5           that the FTC counsel had sent this to Agaricus.net. So  
6           the letter is actually addressed to the Website. It's  
7           not addressed to me.

8           Q. Okay. Looking up above there, there's a --  
9           above that area of the letter, which says who it's to and  
10          who it is from, from being the FTC, Federal Trade  
11          Commission, it looks like it's a chain of e-mails; is  
12          that correct?

13          A. Well, let's see.

14          Q. I'm going to represent -- I think it's an  
15          internal chain between people at the FTC. I don't know  
16          how relevant it is, frankly. But, again, the letter, it  
17          says it's to -- the e-mail is addressed to Agaricus.net?

18          A. Yes.

19          Q. What is your opinion as to why you never  
20          received this on October 23rd, 2007?

21          A. Well, I presume at that time the FTC hadn't  
22          identified me as having any connection with Agaricus.net,  
23          so they sent it to whatever they had, which would be the  
24          Website. To consider it to be a proper warning letter to  
25          me, I think, is improper because it wasn't addressed to

1 me. I didn't -- it wasn't sent by a method where I could  
2 give them a receipt for it, if it was meant for me. So  
3 it probably would have ended up in Brazil and they looked  
4 at it and said, what do these crazy yankees think they  
5 are doing and threw it into the wastepaper basket because  
6 they have their own regulations and laws and they are  
7 probably operating -- I don't know. They may think they  
8 are operating according to Brazilian law and that this  
9 would be presumption to tell them what to do, but --

10 MR. VAN HORN: This can be off the record.

11 (Off-record discussion).

12 BY MR. VAN HORN:

13 Q. Okay. Previously introduced, or complaint  
14 counsel previously introduced and spoke to you about  
15 their Exhibit 2.

16 A. Which one of those is that? I'm nearsighted.

17 Q. You remember when he we went through some of  
18 these?

19 A. This is Agaricus.net. Sure.

20 Q. Okay. On page two, you remember going through  
21 this document earlier today?

22 A. Yes.

23 Q. Okay. On the second page, you identified this  
24 before, but you identified the contact information for  
25 who -- for who is the administrative contact person

1 identified for Agaricus.net; do you remember that?

2 A. Yeah.

3 Q. Okay. Administrative contact here; right? On  
4 the first page of complaint counsel's Exhibit 2. And  
5 then continues here; right?

6 A. Uh-huh (affirmative).

7 Q. On the second page -- and according to this  
8 document, the administrative contact person is who or  
9 what persons in this case?

10 A. William Isely, misspelled, and George Otto, both  
11 of us living at 964 Walnut Creek Road in Franklin, with  
12 the wrong telephone number.

13 Q. Why is it wrong?

14 A. Well --

15 Q. Is it close to your phone number?

16 A. It is close?

17 Q. Close, but it's not. So it appears someone  
18 attempted to put your phone number down?

19 A. And also to George Otto's e-mail.

20 Q. What is that?

21 A. What is that?

22 Q. What's his e-mail address?

23 A. George Otto at Takesun.com.

24 Q. No, it's not.

25 A. Sorry. G Otto.



1 Q. Okay. So if the e-mail contact for Agaricus.net  
2 is G Otto, just like you represented, and like this  
3 document says, do you think that's why you may have not  
4 received it, received Exhibit 3?

5 A. Well, see, www. Agaricus.net is not an e-mail  
6 address.

7 Q. I understand.

8 A. So I don't know where it went. See, to have an  
9 e-mail address, you have to have some name with an @.  
10 And you would leave off the www. So I don't know how it  
11 was delivered to them from this documentation.

12 Q. Okay. But repeating ourselves, you did not  
13 receive this documentation?

14 A. No.

15 Q. Until when?

16 A. I don't think -- I think you were supposed to  
17 have it in your office sometime this year, but I don't  
18 think I saw it until it showed up with this FTC number on  
19 the bottom, which was in the last month.

20 Q. Okay. Okay.

21 A. Can I make a comment on it?

22 Q. Certainly.

23 A. Well, I think it's quite relevant on the last  
24 page that the writer of this document was in a quandry as  
25 to whether they had jurisdiction. Because it says, If

1 you are not located in the United States -- which maybe  
2 they didn't know at the time -- we have referred the  
3 claims on your Website to the Consumer Protection  
4 Enforcement Agency that has jurisdiction in your locale.  
5 So at the time, at least, this warning letter was  
6 written, they didn't know if they had jurisdiction or  
7 not. I don't know if they have ever established it or  
8 not. Have you? Well, I can't ask her.

9 Q. You can do that in the parking lot.

10 A. I'm the only one that can answer questions.

11 (Respondent's Deposition Exhibit No. 4 was  
12 marked for identification).

13 BY MR. VAN HORN:

14 Q. You want to take a look at that?

15 A. Yes.

16 Q. Have you seen that before?

17 A. I think I saw it when you -- I think you dropped  
18 this off, got this off the Website for trademarks and  
19 sent it to me.

20 Q. Yeah. I'll represent that that came from the  
21 Website for the U.S. Patent and Trademark Office.

22 A. And you showed it to me --

23 Q. Okay.

24 A. -- I think the first time we met.

25 Q. Okay. What -- the trademark appears to be RAAX,

1 that we've discussed, and capital R, cap A, cap A, cap X,  
2 and the number 11.

3 A. Uh-huh (affirmative). And I think actually, the  
4 actual trademark has to also specify colors used in  
5 various areas.

6 Q. Well, let's see if it does.

7 A. Here. The color red letters on the yellow  
8 background is claimed as a feature of the mark.

9 Q. And that trademark, that's put on the bottles of  
10 RAAX that are manufactured or at least distributed by  
11 Takesun; is that correct?

12 A. Uh-huh (affirmative).

13 Q. Takesun being Takesun do Brasil?

14 A. Uh-huh (affirmative).

15 Q. Owned and operated by George Otto; is that  
16 correct?

17 A. To the best of my knowledge, yes.

18 Q. Okay. But this, the trademark represented in  
19 this Exhibit 4, which the Exhibit 4 states it's a valid  
20 trademark, recognized by U.S. Trademark or U.S. Patent  
21 and Trademark Office. That trademark, does it say who  
22 the owner is on here?

23 A. Oh, applicant is one of Takesun's branches.  
24 This one is Takesun Portugal, LDA. And he also lists a  
25 German company, that's his European business, I guess.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CERTIFICATION OF REPORTER

DOCKET/FILE NUMBER: 9330

CASE TITLE: GEMTRONICS, INC., and WILLIAM H. ISELY

I, HEREBY CERTIFY that the transcript contained herein is a full and accurate transcript of the notes taken by me at the hearing on the above cause before the FEDERAL TRADE COMMISSION to the best of my knowledge and belief.

DATED: February 11, 2009

Mary K. Huth  
MARY K. HUTH-STEPP, RPR  
Notary Public Number 20042390053  
State of North Carolina

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CERTIFICATE OF DEPONENT

I hereby certify that I have read and examined the foregoing transcript, and the same is a true and accurate record of the testimony given by me.

Any additions or corrections that I feel are necessary, I will attach on a separate sheet of paper to the original transcript.

William H. Iseley  
WILLIAM H. ISELY

I hereby certify that the individual representing himself to be the above-named individual, appeared before me this

24th day of Feb, 2009, and executed the above certificate in my presence.

Marilyn Walker  
Notary Public

My Commission Expires: 12/09/2012



1 WITNESS: WILLIAM H. ISELY  
 2 DATE: FEBRUARY 4, 2009  
 3 CASE: GEMTRONICS, INC., ET AL.  
 4

5 Please note any errors and the corrections thereof on  
 6 this errata sheet. The rules require a reason for  
 7 any change or correction. It may be general such as,  
 8 "To correct stenographic error," or, "To clarify the  
 9 record," or, "To conform with the facts."  
 10

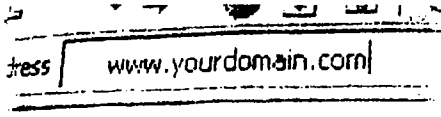
11	PAGE	LINE	CORRECTION	REASON FOR CHANGE
12	6	21	trans should be tramp	Steno misheard
13	9	6	take should be takes	WHI mispronounced
14	9	7	get should be gets	WHI misspoke
15	9	22	-- should be Centaur	Word not recognized by steno
16	12	8	put "a" after "needed"	not heard by steno
17	21	19	Should read "than had I been a distributor"	proper grammar
18	22	14	insert "agaricus" prior to "net"	omission
19	33	8	"go" should be "get"	misheard by steno
20	45	3	The way the question was phrased referring to "web pages"	
21			WHI thought question referred to agaricus.net & so answered it	
22	45	15	Counsel misspoke. Agaricus.com is a Japanese domain not	
23			related to the case. The question was answered as if she had	
24			said agaricus.net	
25				

1 WITNESS: WILLIAM H. ISELY  
 2 DATE: FEBRUARY 4, 2009  
 3 CASE: GEMTRONICS, INC., ET AL.

4  
 5 Please note any errors and the corrections thereof on  
 6 this errata sheet. The rules require a reason for  
 7 any change or correction. It may be general such as,  
 8 "To correct stenographic error," or, "To clarify the  
 9 record," or, "To conform with the facts."

10	11	PAGE	LINE	CORRECTION	REASON FOR CHANGE
12	70	5	"box" should be "drop"	misheard by steno	
13	71	10	"concert" should be "convert"	misheard by steno	
14	71	22	"box" should be "drop"	misheard by steno	
15	73	12	Schnookes" should be spelled "Schnuchel's	" " "	
16	70	12	"convertacar" should be "Convert-A-Car"	hyophons left out	
17	88	14	"pull" should be "get"	steno error	
18	94	19	"house" should be "warehouse"	Steno omission	
19	96	12	"company" should be "country"	Steno misheard	
20	97	16	"Pinnacle" should be "technical"	Steno misheard	
21	111	17	"he" should be omitted	typo	
22	106	11	"capricious" should be auspicious"	steno misheard	
23	136	11	"EPA" should be "FDA"	WHI mispoke	

# CHEAP - DOMAIN REGISTRATION



- FREE Email Forwarding
- FREE URL Forwarding
- FREE 24/7 Phone Support
- FREE 'For Sale' Page

Home Domain Names Web Hosting SSL Certificates Email Accounts Marketing Tools Guide & Website

DOMAIN My Account What's New Home FAQ Support: (480) 624-2500 Logout

## WHOIS Search Results for:

OUR-AGARICUS.COM

Search Again  
 Enter a Domain Name to Check  
 .com

The data contained in this Registrar's WHOIS database, while believed by the registrar to be reliable, is provided "as is" with no guarantee or warranties regarding its accuracy. This information is provided for the sole purpose of assisting you in obtaining information about domain name registration records. Any use of this data for any other purpose is expressly forbidden without the prior written permission of this registrar. By submitting an inquiry, you agree to these terms of usage and limitations of warranty. In particular, you agree not to use this data to allow, enable, or otherwise make possible, dissemination or collection of this data, in part or in its entirety, for any purpose, such as the transmission of unsolicited advertising and solicitations of any kind, including spam. You further agree not to use this data to enable high volume, automated or robotic electronic processes designed to collect or compile this data for any purpose, including mining this data for your own personal or commercial purposes.

Please note: the registrant of the domain name is specified in the "registrant" field. In most cases, the Registrar is not the registrant of domain names listed in this database.

Registrant:  
 William Isely  
 964, Walnut Creek, RD  
 Franklin, North Carolina 28734  
 United States

Registered through: Cheap-DomainRegistration.com  
 Domain Name: OUR-AGARICUS.COM  
 Created on: 01-Jul-04  
 Expires on: 01-Jul-08  
 Last Updated on: 31-Mar-08

Administrative Contact:  
 Isely, William gotto@takesun.com  
 964, Walnut Creek, RD  
 Franklin, North Carolina 28734  
 United States  
 8283697590

Technical Contact:  
 Isely, William gotto@takesun.com  
 964, Walnut Creek, RD  
 Franklin, North Carolina 28734  
 United States  
 8283697590

Domain servers in listed order:  
 NS35 DOMAINCONTROL.COM  
 NS36 DOMAINCONTROL.COM

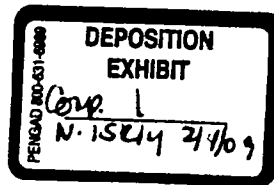
Registry Status: clientDeleteProhibited  
 Registry Status: clientRenewProhibited  
 Registry Status: clientTransferProhibited  
 Registry Status: clientUpdateProhibited

See Underlying Registry Data  
 Report Invalid Whois

### Available TLDs

- OUR-AGARICUS.NET \$9.99/yr
  - OUR-AGARICUS.ORG \$9.99/yr
  - OUR-AGARICUS.INFO \$1.99/yr SAVE!
  - OUR-AGARICUS.BIZ \$8.99/yr
  - OUR-AGARICUS.NAME \$9.75/yr
- You might also consider:
- OUR-AGARICUSONLINE.COM \$6.95/yr SAVE!
  - ONLINEOUR-AGARICUS.COM \$6.95/yr SAVE!
  - OUR-AGARICUSSITE.NET \$9.99/yr
  - SITEOUR-AGARICUS.NET \$9.99/yr
  - OUR-AGARICUSSTORE.ORG \$9.99/yr
  - STOREOUR-AGARICUS.ORG \$9.99/yr
  - OUR-AGARICUSTODAY.INFO \$1.99/yr SAVE!
  - TODAYOUR-AGARICUS.INFO \$1.99/yr SAVE!
  - OUR-AGARICUSBLOG.BIZ \$9.99/yr
  - BLOGOUR-AGARICUS.BIZ \$9.99/yr
  - OUR-AGARICUSNOW.US \$9.99/yr

**REGISTER NOW!**



00005



[Store Home](#) | [Catalog](#) | [Shopping Cart](#) | [My Account](#) | [Frequently Asked Questions](#) | [Support](#) | [Whois](#) | [What's New](#) | [Legal Agreements](#)

Now Pay with  
**PayPal**



012007

Log r

Customer Service  
Call us toll free

Your cart is empty

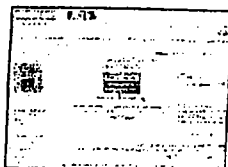
## WHOIS Search Results

Available agaricus extensions:

.tv	.bz
<input type="checkbox"/>	<input type="checkbox"/>

Order Selected Domain(s)

### Your WHOIS Search Results



#### agaricus.net

Services from Network Solutions:

- Certified Offer Service - Let us help you get this domain name!
- Backorder - Try to get this name when it becomes available.
- SSL Certificates - Get peace of mind with a secure certificate.
- Enhanced Business Listing - Promote your business to millions of viewers for only \$1 a month!

This WHOIS database is provided for information purposes only. We do not guarantee the accuracy of this data. The following uses of this system are expressly prohibited: (1) use of this system for unlawful purposes; (2) use of this system to collect information used in the mass transmission of unsolicited commercial messages in any medium; (3) use of high volume, automated, electronic processes against this database. By submitting this query, you agree to abide by this policy.

Registrant:  
William Isley  
964 Walnut Creek Rd  
Franklin, NC 28734-9533  
US

Domain Name: AGARICUS.NET

Administrative Contact, Technical Contact, Zone Contact:

## SAVE over 70%

when you transfer your domains to Network Solutions — your trusted domain name provider!

Choose Your Domain Name Provider Wisely and Transfer Domains for \$9.99/yr

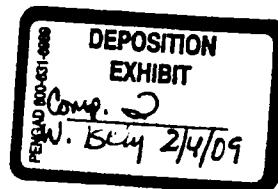
Learn the do's and don'ts of search engine optimization. Download our *Guide to Getting Found Online* now.

## Learn the Secrets of Search Engine Optimization

Attend our SEO Seminar

Special Introductory

TOP SECRET



00028

William Isley  
George Otto  
964 Walnut Creek Rd  
Franklin, NC 28734-9533  
US  
(828)389-7590  
gotto@lakesun.com

Domain created on 13-Jun-1998  
Domain expires on 12-Jun-2008  
Last updated on 26-Nov-2007

Domain servers in listed order:

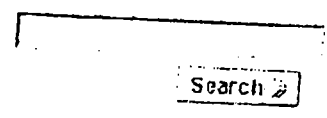
DNS1.SUPREMEDNS.COM  
DNS2.SUPREMEDNS.COM

Domain registration and hosting powered by DomainDiscover  
As low as \$9/year, including FREE, responsive toll-free support,  
URL/frame/email forwarding, easy management system, and full featured DNS.

The previous information has been obtained either directly from the registrant or a registrar  
of the domain name other than Network Solutions, Network Solutions, therefore, does not  
guarantee its accuracy or completeness.

Show underlying registry data for this record

Current Registrar: DOMAINDISCOVER  
IP Address: 209.25.170.23 (ARIN & RIPE IP search)  
IP Location: UK(UNITED KINGDOM)  
Record Type: Domain Name  
Server Type: Apache 2  
Lock Status: clientTransferProhibited  
Web Site Status: Active  
DMOZ: 1 listings  
Y! Directory: see listings  
Web Site Title: -Agaricus blazei Murill - Alternative Therapies  
Agaricus blazei Murill, Mushrooms Alternative Cancer  
Therapies, HIV, Free Visits, Icacoq, laume, Chrysobalanus icaco  
<meta name=  
Meta Keywords:  
Secure: No  
E-commerce: No  
Traffic Ranking: Not available  
Data as of: 13-Sep-2005



SEARCH AGAIN  
Enter a search term:  
e.g. networksolutions.com

Search by:  
 Domain Name  
 NIC Handle

00029



Need to get your business online? Our professional designers can build a custom Web site for your business.

\$11.95/month, plus a \$499.00 design fee

Go



PerformanceClicks™ from Network Solutions Create and manage your pay per click advertising from as low as \$125/month plus \$99 one time set-up fee

Go



All our services are backed by our 24/7 Support and Satisfaction Guarantee



100% Secure Transaction

For your protection, this Web site is secured with the highest level of SSL Certificate encryption.

© Copyright 2007 Network Solutions. All rights reserved

00030



Agaricus Net

Best Price/Best Quality

Not working Chemo ..and now..

OPC Agaricus Protocol try it

- Cancer
- Breast Cancer
- Cancer Form
- Leukemia
- Liver
- Lung Cancer
- Prostate Cancer
- Chemo Therapy
- Cancer research
- HIV Treatment
- Shopping Cart/Sales
- Research
- Wholesales
- Products
- RAAX11
- Testimonials
- Home

Cannot find your XML file  
You need to upload it for this form to work.

## Has a cancer killer been discovered?

RAAX11 Extract FDA registered \*

Brazilian scientists have discovered a tropical plant substance that holds great promise in the fight against various types of cancer. Up to now, this South American folk remedy has mainly been used against diabetes.

Scientists report that during laboratory tests the substance destroyed cancer cells that had been resistant to treatment up to now. This is a rare occurrence. The substance is so promising it is being kept under wraps at present. Even very resistant Leukemia cells die off  
Informations USA 828-369-7590 or Brazil 55 47 3001 5260 or UK 44 020 8133 2774

Specialty at breast cancer the OPC Agaricus protocol shows that it works in

99,9% of all cases. Even at late stage IV it seems to work. From late 2004 to today about 5217 women took the protocol. Many doctors all over the world are, reporting, since he is using the OPC Agaricus protocol nobody of his patient died. So we receive this positive message everyday from all over the world. Now many, many patients entered into the protocol from UK, where many clinics started to use our special protocol.

If you are living in the US, just call Mr. Isely and he will explain how it works. Or fill out form

\* Required



...and no hope

You need help?

Let's talk about it

**Anti cancer effect:** ABM contains natural steroids, known for its anti cancer effect. (It is different from the chemically produced steroids that enhance the body that is often said to be the cause of cancer). It is particularly effective in prevention of uteran cancer.

(Explanation)



\* Manufacture is FDA registered

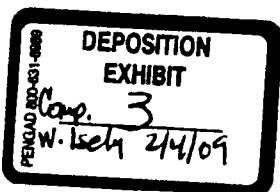
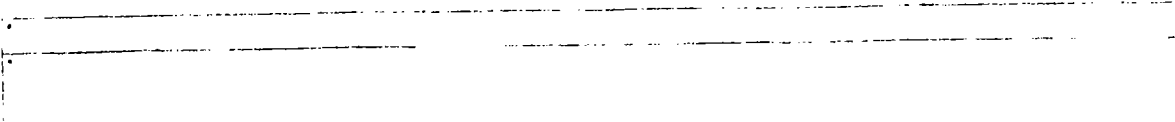


Exhibit A



all rights Agancus Net 1996 - 2007



Agaricus Net

Best Price/Best Quality

- Cancer
- Breast Cancer
- Leukemia
- Liver
- Lung Cancer
- Discount
- HIV Treatment
- Shopping
- Cart/Sales
- Research
- Wholesales
- Products
- RAAX11
- Testimonials
- Home

**Agaricus diazei Murill from Brazil**

**Breast Cancer Patients in remission (2006)**

621 out of 749 People in remission taking the RAAX11 protocol:

- 1) B.S Canada - 04.2006 (started IV)
  - 2) S.R Canada - 05.2006 (started IV)
  - 3) F.B China - 05.2006 (started IV)
  - 4) A.H. Hong Kong - 05.2006 (started IV)
  - 5) D.F. Macau - 05.2006 (started IV)
  - 6) A.S. Germany - 05.2006 (started IV)
  - 7) V.T. UK - 06.2006 (started IV)
  - 8) T.U. Norway - 06.2006 (started III)
  - 9) J.R. Spain - 06.2006 (started IV)
  - 10) R.L. Australia - 06.2006 (started II)
  - 11) B.W. USA - 06.2006 (started IV)
  - 12) L.A. USA - 07.2006 (started IV)
  - 13) F.G. USA - 07.2006 (started III)
  - 14) H.L. USA - 07.2006 (started IV)
  - 15) U.L. USA - 07.2006 (started IV)
  - 16) V.S. USA - 07.2006 (started III)
  - 17) J.S. UK - 07.2006 (started IV)
- ...ect....

tested very positive with other forms of cancer, and. In 2003 we later developed a new formula with even stronger rainforest herbs for women who had been diagnosed as hopeless. That product is our RAAX11.

In 2004 we began a trial with 91 women who were suffering from breast cancer and were diagnosed as either stage IIIb or stage IV, and who decided not to participate in a program of chemotherapy or use some other chemical therapy. These women began following a natural Agaricus program, where the Agaricus extract RF1000 was mainly used. By April, we had received confirmation that 3 women were 100% cancer free. That same month we added the new RAAX11 extract to the RF1000 protocol. Here are the results so far:



**Contact:**  
Int'l. Tel.xx1 828-369-7590  
US Tel. (free) 866-944-7359  
FAX. 828-369-5861

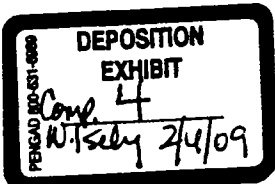
**RAAX11 Offers New Hope for an Alternative Breast Cancer Treatment**

In a recent study, 91 women who were suffering from breast cancer at stage IIIb or IV took part in our RAAX11 protocol. By April 2004, 41 women had totally recovered, 23 women were in remission, 27 were stable, and only 9 had not survived, a survival rate of 91.27%. If you would like to find out how you too can participate in our ongoing study in the USA, call 828-369-7590

**Results:**  
41 Patients, entered with stage IV/IIIb, taking RAAX11 plus RF 1000, are in total recovered.  
23 patients, entered with stage IV/IIIb, taking RAAX11 plus RF 1000, are in remission.  
27 Patients, entered with stage IV/IIIb, taking RAAX11, plus RF 1000, are in the same stage, no change  
9 Patients, entered with stage IV/IIIb, taking RAAX11, plus RF 1000, did not survive treatment.

These figures show an extremely encouraging survival rate during our trial of 91.27%. We are proud to say that our new program may offer hope for women who are looking for alternatives.

**History**



For personal reasons, in 1999 we began to try to develop a natural alternative to help women with breast cancer whose only choice seemed to be chemotherapy. So we developed the RF1000 protocol, which also

If you are interested in this program, feel free to contact us and we will set you up with an alternative clinic.

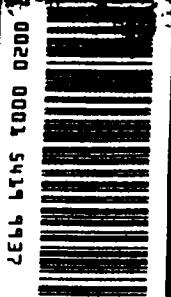
---

all rights Agaricus Net 1998 - 2004



Schedule package pickup right from your home or office at usps.com/pickup  
Print postage online - Go to usps.com/postageonline

Special Service Ready Service®  
**CONFIRMATION™**



1300 0001 3103 1332



3103 1332

**DOMESTIC ONLY**

PLEASE PRESS FIRMLY

**Flat Rate Mailing Envelope**  
For Domestic and International Use  
Visit us at usps.com

From/Expéditeur

William Leidy  
904 Walnut Creek Rd  
Friedley, NC 28734-8533

To/Destination:

**Riece Miles**  
[Redacted]  
**Lorton, VA, 22079**

Country of Destination/Pays de destination:

**BILINDIB  
FRAGILE  
OPERISHABLE**  
to schedule  
paid envelopes  
om/pickup.

Payment Method  
After postage or meter  
indicated in upper  
Address information in customer  
lock area or on label.



Grade 10 Cradle Certification is awarded to products that pursue an innovative vision of ecologically-intelligent design that eliminates the concept of waste. This USPS® packaging has been certified for its material content, recyclability, and manufacturing characteristics.

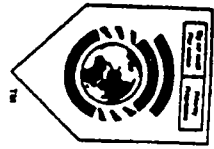
PLEASE PRESS



0000

22079

U.S. POSTAGE  
\$7.20  
FRIEDLEY, NC  
JAN 16 2008  
PHILADELPHIA



EP14F

This packaging is the property of the U.S. Postal Service® and is provided solely for use in sending Priority Mail®. Misuse may be a violation of federal law. This packaging is not for resale. EP14F MAY 2007 © U.S. Postal Service

DEPOSITION  
EXHIBIT  
Page 5  
J. Kelly 2/11/09

EA

- National Customer #3005

1000 G

13  
miles,

Date 1-10-08

Aut Creek Rd

NO 28734

TEL 828-361-7500

http://www.npmiller.com

Unit price

Wm. Isely & Co., Inc., Raleigh, NC

(Gentronics for sale)

DEPOSITION  
EXHIBIT  
1000 G  
Wm. Isely 4/4/09

# EXPRESS MAIL



EB61262311BUS

**POSTAGE WILL BE PAID BY ADDRESSEE**

NO POSTAGE  
NECESSARY  
IF MAILED  
IN THE  
UNITED STATES

NO. 28774

Post Office To Address: PHOENIX, AZ

Priority Mail

Day of Delivery:  AM  PM

Month: 05 Year: 05

Estimated Time of Delivery: 2-3 Business Days

Post Office to Address: PHOENIX, AZ

Post Office to Address: PHOENIX, AZ

FROM: PHOENIX FROM PHOENIX 828 369 7578

TO: PHOENIX FROM PHOENIX 828 369 7578

FOR PICKUP OR TRACKING  
VISIT WWW.USPS.COM  
CALL 1-800-375-8777

**EXPRESS MAIL**

Address Copy  
Label 1-8, March 2004

UNITED STATES POSTAL SERVICE®  
FIRST CLASS MAIL PERMIT NO. 1111 PHOENIX, AZ

Post Office To Address: PHOENIX, AZ

Factory Address	Type	<input type="checkbox"/> AM <input checked="" type="checkbox"/> PM	Employee Signature
City	Type	<input type="checkbox"/> AM <input checked="" type="checkbox"/> PM	Employee Signature
State	Type	<input type="checkbox"/> AM <input checked="" type="checkbox"/> PM	Employee Signature
Zip	Type	<input type="checkbox"/> AM <input checked="" type="checkbox"/> PM	Employee Signature

CUSTOMER USE ONLY

TO: PHOENIX FROM PHOENIX 828 369 7578

FOR PICKUP OR TRACKING  
VISIT WWW.USPS.COM  
CALL 1-800-375-8777

DEPOSITION  
EXHIBIT  
Comp 7  
W. 15674/109

# Shipment Invoice - National Customer #3019

**From Gemtronics,  
964 Walnut Creek Rd.  
Franklin, NC, 28734  
USA**

**Date\_1-24-08  
Tel: 828-369-7590  
w.isely@ftpmailbox.com**

---

**Ship to:**

**Customer: Dana Long**

**[REDACTED]  
Roanoke, VA, 24018**

**Phone: 703-[REDACTED] email:**

---

<b>Item</b>	<b>Unit price</b>	<b>No</b>	<b>Cost</b>
<b>RAAX11</b>	<b>\$119</b>	<b>1</b>	<b>\$119</b>

<b>Method Of Ship: UPS shipping &amp; Handling</b>	<b>Cost:</b>	<b>15</b>
----------------------------------------------------	--------------	-----------

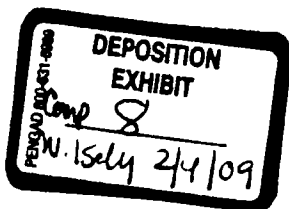
---

<b>Method of payment: Pay Pal</b>	<b>Total</b>	<b>\$134</b>
-----------------------------------	--------------	--------------

**Authentication # \_\_\_\_\_ WHI \_\_\_\_\_**

**Note: Please order direct by phone or email in the future.**

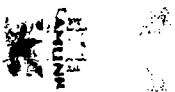
**Thanks, Bill Isely**





OPC  
500ml - new

Camu Camu  
120 Caps \$15



The Agaricus blazei Murill Mushrooms are grown in their natural location free of any contaminants, dried so as to conserve their important nutrients of which Beta Glucan is critical for strengthening the immune system.

## *Takesun do Brasil*

Then packages the mushrooms in various ways: dried, powder, extracts, capsules, and also in combination with other rain forest herbs for exporting to many countries around the world.

For more information go to web site:

*Go to [www.agaricus.net](http://www.agaricus.net)*

*Click on USA sales, or*

*[www.our--agaricus.com](http://www.our--agaricus.com)*

**Gemtronics**

Tel: 828-369-7590

Email: [w.isely@ftpmailbox.com](mailto:w.isely@ftpmailbox.com)

## The Agaricus Story

Some years ago a Japanese researcher in the Piedade section of Brazil noticed that the native people of the rain forest who used the Agaricus blazei Murill mushrooms as part of their diet were much healthier than the westerners who ate a conventional diet. He noticed that they were particularly free of conditions that we today call degenerative ones.

Samples of the mushrooms were sent to Japan where the mushrooms were seen to have beneficial effects which were attributed to the fact that the mushrooms were found to have the highest known natural source of beta glucan, among other nutrients. Beta glucan has long been known as a substance that stimulates killer cells of the immune system, cells very critical to the ability of the immune system to handle degenerative conditions.

Agaricus blazei Murill mushrooms were found to have other beneficial properties as well. Besides immune enhancing, they are anti-tumor, interferon and interleukin enhancing, anti-viral, cholesterol reducing, and a blood sugar modulator.

Agaricus has also been found valuable for certain conditions when combined with other rain forest herbs: cat's claw, pau d'arco, mutamba, camu camu, and Chrysobalanus Icaco.

**TAKESUN<sup>®</sup>**  
**U.S.A.**



**Agaricus  
Mushroom  
Products  
From The  
Rain Forest**

DEPOSITION  
EXHIBIT  
Camu 9  
W/15004 2/9/04  
PENGAD 800-631-6888



# RAAX11 / AGARICUS OPC PROTOCOL DESCRIPTION AND RESULTS

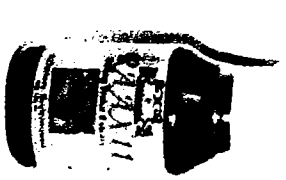
Takesun has been developing various Amazon Rain Forest derived liquid extract blends, all involving the Agaricus brazeli Murill mushroom, principally for support of combating various degenerative health conditions. The RAAX11 / Agaricus OPC protocol for stage IV conditions is the taking of 500ml of RAAX11 and 1000ml Agaricus OPC over a period of a month. The Agaricus OPC part is gradually introduced over a period of a month to six weeks to allow the adjustment of the body to the high level of waste elimination that results. For cases at lower levels, such as stage II, the protocol may be adjusted downward to 300ml of RAAX11 and 500ml of Agaricus OPC over a month's time period.

In the past it has been hard to collect meaningful results, other than occasional testimonials, as it was difficult to tell if the users followed the protocols and in most cases were not observed by health professionals. One study, using the older RF1000 / RAAX11 protocol, yielded a successful response in 80% of breast cancer cases over a 1 year period.

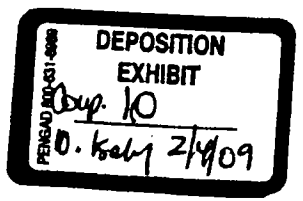
Takesun has now been able to gather meaningful data from professional practitioners and natural health clinics in a number of European countries, Germany, the UK, Austria, and Spain. The results, if compared on breast cancer only, are that the RAAX11 / Agaricus OPC protocol has improved the positive response from 80 to 92% over that which was demonstrated by the older protocol, RAAX11 with the RF1000. The older study did not gather information on other conditions. The information on the RAAX11 / Agaricus OPC protocol covers over 1000 cases and is tabulated below. For more information contact William H. Isely at [w.isely@fpmmailbox.com](mailto:w.isely@fpmmailbox.com) or call 828-369-7590.

CONDITION	No. OF CASES	No. RESPONDING	% RESPONDING	% NOT RESPONDING
Lung	413	321	78	22
Gastro	122	99	81	19
Intestinal	55	35	64	36
Larynx	21	9	43	57
Esophagus	25	13	52	48
Brain	29	21	72	28
Lymphatic	5	3	60	40
Breast	371	342	92	8
Leukemia	41	32	78	22
Sarcoma	4	3	75	25
Thyroid	5	4	80	20
Prostate	76	65	86	14

While the lifestyles of these individuals are not known, it is assumed that they represented a cross-section of Europeans. Someone on the protocol also going onto a Mediterranean diet, avoiding most meat, using organic sources as well as using good supplements, including anti-oxidants, could reasonably expect an even better outcome.



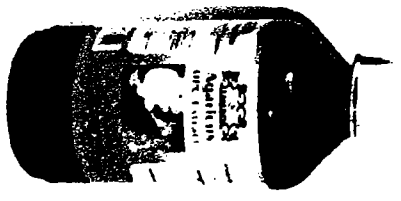
RAAX11 - 100ml



(Agaricus and Chrysobalanus Icaeco)

\$119 Each

Protocol - 5 bottles/month



Agaricus OPC - 500ml

(Agaricus, Nertium Olean-der, Pau d'Arco, and Cat's Claw)

\$130 Each

Protocol - 2 bottles/month

--- POPULAR PRODUCTS ---

**Agaricus**

**Blazei Murill**

**Mushrooms**

100 g,

**Grade A \$25**

**Golden \$29.90**

Normally packed in an air-tight bag for long-term preservation, the mushrooms can be soaked and cooked before eating or just soaked and cooked and the water then poured off to drink as a tea for therapeutic purposes.

The active constituents are Beta Glucan (1-3-3 glucan) and Ergosterol (provitamin D2) derivatives.

**Agaricus**

**blazei**

**\$25**

**Murill**

**Powder**

100 gram bag

For those making large quantities of tea, mainly for therapeutic purposes, the mushroom powder is available as the most economical form to take the Agaricus mushroom. For best results, Agaricus should be taken with about 6,000 mg of vitamin C every day, which can be in the form of Carnu Carnu. For good health it is also recommended to keep the body on the alkaline side.

**Agaricus**

**Blazei \$12**

**Murill**

**Capsules**

60 Capsules, 500 mg.

The capsules are commonly used for preventative purposes, similarly to taking vitamins. Usually several capsules are opened into a cup of hot water to make a tea.

**Extracts For Therapy Purposes**

Agaricus and blends of it with other rain forest herbs in the extract form are what are usually used for therapy purposes.

**RAAX11**

**An extract Blend**

**of Chrysobalanus**

**Icaco & Agaricus**

- 100 ml

**\$119**

For some conditions, the Agaricus works best when it is combined with other herbs. The RF 1000 is a combination with Cat's Claw and Pau d'Arco.

**RF 1000 Extract**

100 ml. **\$25**

As with the Agaricus powder, a liquid extract is available in the RF 1000 for those who prefer to use the liquid to make a tea.

**APM JUICE**

100 ml. **\$25**

A version of the RF 1000 extract is available in which the Cats Claw has been replaced with the herb Mutamba which is better for some conditions.

**Agaricus**

**Blazei \$ 25**

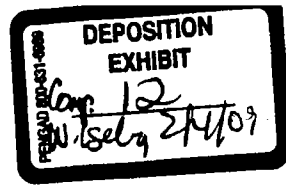
**Murill**

**Extract**

100 ml.

Depending on their status, people who take the extract for therapy reasons may use up to ten bottles of it in a month. For preventative purposes, people normally will use one bottle a month.

DEPOSITION EXHIBIT  
 60/142  
 10/15/09  
 000-153700-0000



WHOIS Lookup

.com

Go!

Lookup registration data for domains.

Domain Registration:

- our-agaricus.com [Whois](#)
- our-agaricus.net [Whois](#)
- our-agaricus.biz [Whois](#)
- our-agaricus.info [Whois](#)

Similar Domains Available for \$9.95

- ouragaricus.com
- ouragaricus.net
- ouragaricus.org
- myouragaricus.com
- bestouragaricus.com
- ouragaricuslive.com
- easyouragaricus.com
- ouragaricusonline.c...
- ouragaricusstore.co...
- myouragaricus.net
- bestouragaricus.net
- ouragaricuslive.net
- easyouragaricus.net
- ouragaricusonline.n...
- ouragaricusstore.ne...
- myouragaricus.org



00'037

[Click here](#) for a SiteTiki.com article about our-agaricus.us

WHOIS information for: **our-agaricus.us:**

```
[whois.nic.us]
Domain Name: OUR-AGARICUS.US
Domain ID: D6352363-US
Sponsoring Registrar: WILD WEST DOMAINS, INC.
Domain Status: clientDeleteProhibited
Domain Status: clientRenewProhibited
Domain Status: clientTransferProhibited
Domain Status: clientUpdateProhibited
Registrant ID: GODA-07167987
Registrant Name: William Isely
Registrant Organization: Unknown
Registrant Address: 964, Walnut Creek, RD
Registrant City: Franklin
Registrant State/Province: North Carolina
Registrant Postal Code: 28734
Registrant Country: United States
Registrant Country Code: US
Registrant Phone Number: +1.8283697590
Registrant Email: gotto@takesun.com
Registrant Application Purpose: P3
Registrant Nexus Category: C11
Administrative Contact ID: GODA-27167987
Administrative Contact Name: William Isely
Administrative Contact Organization: Unknown
Administrative Contact Address: 964, Walnut Creek, RD
Administrative Contact City: Franklin
Administrative Contact State/Province: North Carolina
Administrative Contact Postal Code: 28734
Administrative Contact Country: United States
Administrative Contact Country Code: US
Administrative Contact Phone Number: +1.8283697590
Administrative Contact Email: gotto@takesun.com
Administrative Contact Application Purpose: P3
Administrative Contact Nexus Category: C11
Billing Contact ID: GODA-37167987
Billing Contact Name: William Isely
Billing Contact Organization: Unknown
Billing Contact Address: 964, Walnut Creek, RD
Billing Contact City: Franklin
Billing Contact State/Province: North Carolina
Billing Contact Postal Code: 28734
Billing Contact Country: United States
Billing Contact Country Code: US
Billing Contact Phone Number: +1.8283697590
Billing Contact Email: gotto@takesun.com
Billing Contact Application Purpose: P3
Billing Contact Nexus Category: C11
Technical Contact ID: GODA-17167987
Technical Contact Name: William Isely
Technical Contact Organization: Unknown
Technical Contact Address: 964, Walnut Creek, RD
Technical Contact City: Franklin
Technical Contact State/Province: North Carolina
Technical Contact Postal Code: 28734
Technical Contact Country: United States
Technical Contact Country Code: US
Technical Contact Phone Number: +1.8283697590
Technical Contact Email: gotto@takesun.com
Technical Contact Application Purpose: P3
Technical Contact Nexus Category: C11
Name Server: NS35.DOMAINCONTROL.COM
```



Name Server: NS36.DOMAINCONTROL.COM  
Created by Registrar: WILD WEST DOMAINS, INC.  
Last Updated by Registrar: WILD WEST DOMAINS, INC.  
Domain Registration Date: Thu Jul 01 18:27:23 GMT 2004  
Domain Expiration Date: Mon Jun 30 23:59:59 GMT 2008  
Domain Last Updated Date: Mon Mar 31 15:08:49 GMT 2008

>>>> Whois database was last updated on: Wed Apr 09 14:56:59 GMT 2008 <<<<

NeuStar, Inc., the Registry Administrator for .US, has collected this information for the WHOIS database through a .US-Accredited Registrar. This information is provided to you for informational purposes only and is designed to assist persons in determining contents of a domain name registration record in the NeuStar registry database. NeuStar makes this information available to you "as is" and does not guarantee its accuracy. By submitting a WHOIS query, you agree that you will use this data only for lawful purposes and that, under no circumstances will you use this data: (1) to allow, enable, or otherwise support the transmission of mass unsolicited, commercial advertising or solicitations via direct mail, electronic mail, or by telephone; (2) in contravention of any applicable data and privacy protection laws; or (3) to enable high volume, automated, electronic processes that apply to the registry (or its systems). Compilation, repackaging, dissemination, or other use of the WHOIS database in its entirety, or of a substantial portion thereof, is not allowed without NeuStar's prior written permission. NeuStar reserves the right to modify or change these conditions at any time without prior or subsequent notification of any kind. By executing this query, in any manner whatsoever, you agree to abide by these terms.

NOTE: FAILURE TO LOCATE A RECORD IN THE WHOIS DATABASE IS NOT INDICATIVE OF THE AVAILABILITY OF A DOMAIN NAME.

All domain names are subject to certain additional domain name registration rules. For details, please visit our site at [www.whois.us](http://www.whois.us).

Verio Inc. - Growing Your Business, One Click At A Time

### Domain Information

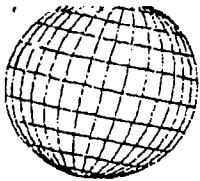
Domain Name Registration. News  
Daily DNS Changes. ICANN

Copyright © 1999-2008

### Hosting Resources

[Web Hosting](#), [VPS](#), [Managed Hosting](#),  
[Windows Hosting](#), [Windows Servers](#)  
[Dedicated Web Hosting](#)

00038



ICLS.NET

W. Isely

# Internet Corporation Listing Service

Domain Name: raaxagaricus.com  
Customer Number: DG158918  
Notice Date: July 15, 2008

DESCRIPTION OF SERVICES

ANNUAL WEBSITE SEARCH ENGINE LISTING

FROM July 15, 2008 THRU July 15, 2009

\$40.00

TOTAL

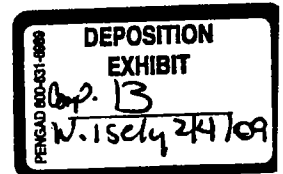
\$40.00

SUBSCRIPTION INCLUDES

DOMAIN NAME SUBMISSION TO 25 ESTABLISHED SEARCH ENGINES, QUARTERLY SEARCH ENGINE POSITION AND RANKING REPORTS FOR EIGHT KEYWORD/PHRASE LISTINGS FROM 25 MAJOR SEARCH ENGINES

INQUIRIES

E-mail: inquiries@icls.net  
Website: www.icls.net



THIS INTERNET LISTING OFFER IS PROVIDED TO MILLIONS OF WEBSITES THROUGHOUT THE UNITED STATES TO ENHANCE THEIR WEBSITE EXPOSURE. THIS IS A SOLICITATION FOR THE ORDER OF GOODS OR SERVICES, OR BOTH, AND NOT A BILL, INVOICE, OR STATEMENT OF ACCOUNT DUE. YOU ARE UNDER NO OBLIGATION TO MAKE ANY PAYMENTS ON ACCOUNT OF THIS OFFER UNLESS YOU ACCEPT THIS OFFER.

Please make checks payable to: Internet Corporation Listing Service.

Customer Number	Listing Date	Amount	Amount Paid
DG158918	July 15, 2008	\$40.00	

**IMPORTANT**

Please provide us with your current e-mail address. Submission instructions will be sent to you when payment is processed.

**Payment Options**

- 1 Year (\$40.00)     2 Years (\$70.00)     5 Years (\$160.00)

E-MAIL ADDRESS: \_\_\_\_\_

Please remit payment to address on reverse side. do not staple

THIS IS A SOLICITATION FOR THE ORDER OF GOODS OR SERVICES, OR BOTH, AND NOT A BILL, INVOICE, OR STATEMENT OF ACCOUNT DUE. YOU ARE UNDER NO OBLIGATION TO MAKE ANY PAYMENTS ON ACCOUNT OF THIS OFFER UNLESS YOU ACCEPT THIS OFFER.

\*\*\*\*\*AUTO\*\*3-DIGIT 287  
William Isely  
964 Walnut Creek Rd  
Franklin, NC 28734-9533

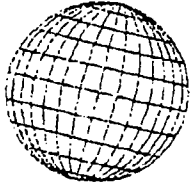
TZ15 P1



58916



00051



**ICLS.NET**

---

**HOW TO MAKE PAYMENT:**

Please make checks payable to Internet Corporation Listing Service  
Please write your customer number on the front of your check  
Enclose check in the addressed envelope provided  
**DO NOT SEND CASH**

**WEBSITE ADDRESS LISTING INCLUDES:**

Domain name submission to 25 established search engines  
Initial and quarterly search engine positions and ranking reports sent to you via email for eight  
keyword/phrase listing that you select from 25 MAJOR search engines  
Complete details are located on the internet at [www.icls.net](http://www.icls.net)

**PAYMENT INFORMATION:**

Please remit payment on or before July 15, 2008  
All listings are final

---

Current Payment Details

	Amount	Total
Annual Listing ( July 15, 2008 to July 15, 2009)	\$40.00	\$40.00
Total		\$40.00

**Payment Information**

Please make checks payable to Internet Corporation Listing Service  
Please write your customer number on the front of your check  
Do not send cash

Internet Corporation Listing Service  
303 Park Avenue S, #1073  
New York, NY 10010

00052

# NetworkSolutions

Login

Customer Service  
Call us toll free

Your cart is empty

## WHOIS Search Results

Available takesun extensions:

<input type="checkbox"/> .org	<input type="checkbox"/> .us	<input type="checkbox"/> .mobi	<input type="checkbox"/> .info	<input type="checkbox"/> .biz	<input type="checkbox"/> .tv	<input type="checkbox"/> .eu	<input type="checkbox"/> .bz
-------------------------------	------------------------------	--------------------------------	--------------------------------	-------------------------------	------------------------------	------------------------------	------------------------------

[Order Selected Domain\(s\) >](#)

### Your WHOIS Search Results



#### takesun.com

Services from Network Solutions:

- Certified Offer Service** - Let us help you get this domain name!
- Backorder** - Try to get this name when it becomes available.
- SSL Certificates** - Get peace of mind with a secure certificate.
- Enhanced Business Listing** - Promote your business to millions of viewers for only \$1 a month!

The data contained in this Registrar's Whois database, while believed by the registrar to be reliable, is provided "as is" with no guarantee or warranties regarding its accuracy. This information is provided for the sole purpose of assisting you in obtaining information about domain name registration records. Any use of this data for any other purpose is expressly forbidden without the prior written permission of this registrar. By submitting an inquiry, you agree to these terms of usage and limitations of warranty. In particular, you agree not to use this data to allow, enable, or otherwise make possible, dissemination or collection of this data, in part or in its entirety, for any purpose, such as the transmission of unsolicited advertising and solicitations of any kind, including spam. You further agree not to use this data to enable high volume, automated or robotic electronic processes designed to collect or compile this data for any purpose, including mining this data for your own personal or commercial purposes.

Please note: the owner of the domain name is specified in the "registrant" field.



**25% Off Web Site Hosting**  
 Just \$9.96 \$7.47/mo  
 1 yr domain 1 year 1st time online only offer

Our Lowest Price Ever!

[Get 25% OFF](#)

Choose Your Domain Name Provider Wisely and Transfer Domains for \$9.99/yr

Learn the do's and don'ts of search engine optimization. Download our *Guide to Getting Found Online* now.

**Learn the Secrets of Search Engine Optimization**

Attend our **SEO Seminar**

[Learn More >](#)

Search Engines

**TOP SECRET**

DEPOSITION EXHIBIT

Page 14

Wiscdy 2/1/09

PERIODIC 801-400

In most cases, the Registrar is not the owner of domain names listed in this database.

**Registrant:**

George Otto  
984 Walnut Creek Rd

Franklin, NC 28734

Registered through: Cheap-DomainRegistration.com

Domain Name: TAKESUN.COM

Created on: 23-Mar-00

Expires on: 23-Mar-08

Last Updated on: 09-Mar-07

**Administrative Contact:**

Isley, William webmaster@agaricus.net  
984 Walnut Creek Rd

Franklin, NC 28734

us Fax --

**Technical Contact:**

nocontactsfound@secureserver.net

Fax --

**Domain servers in listed order:**

DNS1.SUPREMESERVER20.COM

DNS2.SUPREMESERVER20.COM

The previous information has been obtained either directly from the registrant or a registrar of the domain name other than Network Solutions. Network Solutions, therefore, does not guarantee its accuracy or completeness.

[Show underlying registry data for this record](#)

**Current Registrar:** WILD WEST DOMAINS, INC.

**IP Address:** 209.25.170.23 (ARIN & RIPE IP search)

**IP Location:** UK(UNITED KINGDOM)

**Record Type:** Domain Name

**Server Type:** Apache 2

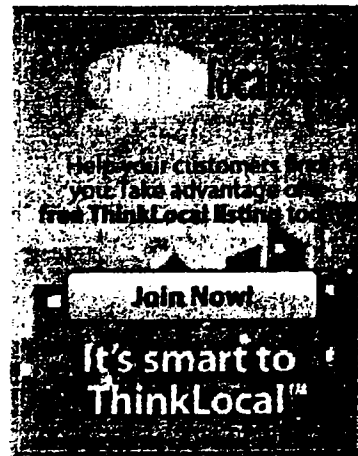
**Lock Status:** clientDeleteProhibited

**Web Site Status:** Active

**DMOZ:** no listings

**YI Directory:** see listings

**Secure:** No



**SEARCH AGAIN**

Enter a search term:

e.g. networksolutions.com

Search by:

Domain Name

NIC Handle

E-commerce: Yes  
Traffic Ranking: Not available  
Data as of: 14-Jun-2005

IP Address

Search



**Need to get your business online?**

Our professional designers can build a custom Web site for your business.

\$11.95/month, plus a \$499.00 design fee



**PerformanceClicks™ from Network Solutions**

Create and manage your pay per click advertising from as low as \$125/month plus \$99 one time set-up fee



"An outstanding customer service experience"  
J.D. Power and Associates



100% Secure Transaction

For your protection, this Web site is secured with the highest level of SSL Certificate encryption.

© Copyright 2007 Network Solutions. All rights reserved.

# NetworkSolutions

Login

Customer Service  
Call us toll free

Your cart is empty

## WHOIS Search Results

Available opc-agaricus extensions:

.com	.org	.us	.mobi	.info	.biz	.de	.tv	.co.uk	.eu	.bz
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Order Selected Domain(s) 

### Your WHOIS Search Results



#### opc-agaricus.net

Services from Network Solutions:

Certified Offer Service - Let us help you get this domain name!

Backorder - Try to get this name when it becomes available.

SSL Certificates - Get peace of mind with a secure certificate.

Enhanced Business Listing - Promote your business to millions of viewers for only \$1 a month!

The data contained in this Registrar's Whois database, while believed by the registrar to be reliable, is provided "as is" with no guarantee or warranties regarding its accuracy. This information is provided for the sole purpose of assisting you in obtaining information about domain name registration records. Any use of this data for any other purpose is expressly forbidden without the prior written permission of this registrar. By submitting an inquiry, you agree to these terms of usage and limitations of warranty. In particular, you agree not to use this data to allow, enable, or otherwise make possible, dissemination or collection of this data, in part or in its entirety, for any purpose, such as the transmission of unsolicited advertising and solicitations of any kind, including spam. You further agree not to use this data to enable high volume, automated or robotic electronic processes designed to collect or compile this data for any purpose, including mining this data for your own personal or commercial purposes.

Please note: the owner of the domain name is specified in the "registrant" field.

### SAVE over 70%

when you TRANSFER your domains to Network Solutions — your trusted domain name provider!

[Go >](#)

Choose Your Domain Name Provider Wisely and Transfer Domains for \$9.99/yr

Learn the do's and don'ts of search engine optimization. Download our *Guide to Getting Found Online* now.

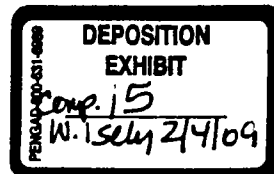
### Learn the Secrets of Search Engine Optimization

#### Attend our SEO Seminar

[Learn More >](#)

Search Engines

TOP SECRET



In most cases, the Registrar is not the owner of domain names listed in this database.

**Registrant:**

William Isely  
964, Walnut Creek, RD  
Franklin, North Carolina 28734  
United States

Registered through: Cheap-DomainRegistration.com

Domain Name: OPC-AGARICUS.NET

Created on: 02-Jun-06

Expires on: 02-Jun-08

Last Updated on: 09-Mar-07

**Administrative Contact:**

Isely, William gotto@takesun.com  
964, Walnut Creek, RD  
Franklin, North Carolina 28734  
United States  
(828) 369-7590 Fax --

**Technical Contact:**

Isely, William gotto@takesun.com  
964, Walnut Creek, RD  
Franklin, North Carolina 28734  
United States  
(828) 369-7590 Fax --

**Domain servers in listed order:**

DNS1.SUPREMECENTER20.COM

DNS2.SUPREMECENTER20.COM

The previous information has been obtained either directly from the registrant or a registrar of the domain name other than Network Solutions. Network Solutions, therefore, does not guarantee its accuracy or completeness.

[Show underlying registry data for this record](#)

**Current Registrar:** WILD WEST DOMAINS, INC.

**IP Address:** 209.25.170.23 (ARIN & RIPE IP search)

**IP Location:** UK(UNITED KINGDOM)

**Record Type:** Domain Name

**Server Type:** Apache 2

**Lock Status:** clientDeleteProhibited

**Web Site Status:** Active

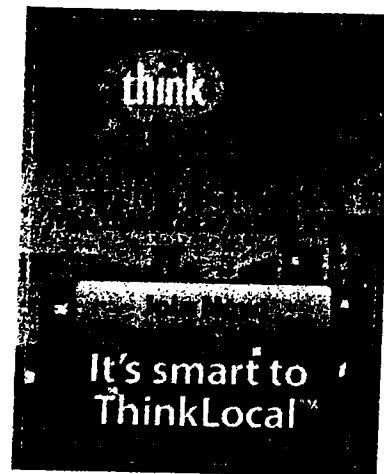
**DMOZ:** no listings

**Y! Directory:** see listings

**Secure:** No

**E-commerce:** No

**Traffic Ranking:** Not available



Search

**SEARCH AGAIN**

Enter a search term:

e.g. networksolutions.com

Search by:

Domain Name

NIC Handle



Date as of: 14-Jun-2005

IP Address

Search >



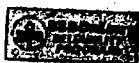
**Need to get your business online?**  
Our professional designers can build a custom Web site for your business.  
\$11.95/month, plus a \$499.00 design fee

Go >



**PerformanceClicks™ from Network Solutions**  
Create and manage your pay per click advertising from as low as \$125/month plus \$99 one time set-up fee

Go >



"An outstanding customer service experience"  
— J.D. Power and Associates



**100% Secure Transaction**

For your protection, this Web site is secured with the highest level of SSL Certificate encryption.

© Copyright 2007 Network Solutions. All rights reserved.



Elaine F. Marshall  
Secretary

North Carolina

DEPARTMENT OF THE  
SECRETARY OF STATE

PO Box 29622 Raleigh, NC 27626-0622 (919)807-2000

CORPORATIONS

- Corporations Home
- Search By Corporate Name
- Search For New Corporation
- Search By Registered Agent
- Important Notice
- Resale of Tickets Online
- Corporations FAQ
- Homeowners' Association FAQ
- Tobacco Manufacturers
- Unincorporated Non-Profits
- Dissolution Reports
- Non-Profit Reports
- Verify Certification
- Online Annual Reports

LINKS & LEGISLATION

- KBBE B2B Annual Reports
- SOSID Number Correction
- 2001 Bill Summaries
- 1999 Senate Bills
- Annual Reports 1997
- Corporations 1997
- Register for E-Procurement
- Dept. of Revenue

ONLINE ORDERS

- Start An Order
- New Payment Procedures

CONTACT US

- Corporations Division

TOOLS

- Secretary of State Home
- Secretary of State Site Map
- Printable Page

Date: 1/19/2009

Click here to:

[View Document Filings](#) | [Sign Up for E-Notifications](#) | [Print pre-populated Annual Report Form](#) | [Annual Report Count](#) | [File an Annual Report](#) |

Corporation Names

Name	Name Type
NC Gemtronics, Inc.	Legal

Business Corporation Information

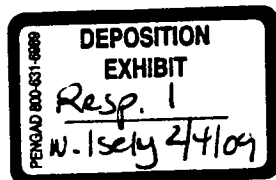
<b>SOSID:</b>	0867758
<b>Status:</b>	Current-Active
<b>Date Formed:</b>	9/20/2006
<b>Citizenship:</b>	Domestic
<b>State of Inc.:</b>	NC
<b>Duration:</b>	Perpetual

Registered Agent

<b>Agent Name:</b>	Isely, William H.
<b>Registered Office Address:</b>	964 Walnut Creek Road Franklin NC 28734
<b>Registered Mailing Address:</b>	964 Walnut Creek Road Franklin NC 28734
<b>Principal Office Address:</b>	964 Walnut Creek Road Franklin NC 28734
<b>Principal Mailing Address:</b>	964 Walnut Creek Road Franklin NC 28734

Stock

Class	Shares	No Par Value	Par Value
Common	10000	Yes	N/A



00053



*Elaine F. Marshall*  
*Secretary*

North Carolina


DEPARTMENT OF THE  
SECRETARY OF STATE

PO Box 29622 Raleigh, NC 27626-0622 (919)807-2000

**CORPORATIONS**

- Corporations Home
- Search By Corporate Name
- Search For New Corporation
- Search By Registered Agent
- Important Notice
- Resale of Tickets Online
- Corporations FAQ
- Homeowners' Association FAQ
- Tobacco Manufacturers
- Unincorporated Non-Profits
- Dissolution Reports
- Non-Profit Reports
- Verify Certification
- Online Annual Reports

Corporate Filings For: Gemtronics, Inc.

Image	Date	Document Id	Document
	9/20/2006	C200626100148	INC - Articles of Incorporation

[Click here for help downloading forms.](#)

**LINKS & LEGISLATION**

- KBBE B2B Annual Reports
- SOSID Number Correction
- 2001 Bill Summaries
- 1999 Senate Bills
- Annual Reports 1997
- Corporations 1997
- Register for E-Procurement
- Dept. of Revenue

**ONLINE ORDERS**

- Start An Order
- New Payment Procedures

**CONTACT US**

- Corporations Division

**TOOLS**

- Secretary of State Home
- Secretary of State Site Map
- Printable Page

00056

State of North Carolina  
Department of the Secretary of State

## ARTICLES OF INCORPORATION

SOSID: 867758  
Date Filed: 9/20/2006 4:21:00 PM  
Elaine F. Marshall  
North Carolina Secretary of State  
C200626100148

Pursuant to §55-2-02 of the General Statutes of North Carolina, the undersigned does hereby submit these Articles of Incorporation for the purpose of forming a business corporation.

1. The name of the corporation is: Gemtronics, Inc.
2. The number of shares the corporation is authorized to issue is: 10,000

3. These shares shall be: *(check either a or b)*

- a.  all of one class, designated as common stock; or
- b.  divided into classes or series within a class as provided in the attached schedule, with the information required by N.C.G.S. Section 55-6-01.

4. The street address and county of the initial registered office of the corporation is:

Number and Street 964 Walnut Creek Road

City Franklin State NC Zip Code 28734 County Macon

5. The mailing address, *if different from the street address*, of the initial registered office is:

Number and Street \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_ County \_\_\_\_\_

6. The name of the initial registered agent is: William H. Isely

7. Principal office information: *(must select either a or b.)*

- a.  The corporation has a principal office.

The street address and county of the principal office of the corporation is:

Number and Street 964 Walnut Creek Road

City Franklin State NC Zip Code 28734 County Macon

The mailing address, *if different from the street address*, of the principal office of the corporation is:

Number and Street \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_ County \_\_\_\_\_

- b.  The corporation does not have a principal office.

8. Any other provisions, which the corporation elects to include, are attached.

9. The name and address of each incorporator is as follows:

William H. Isely, 964 Walnut Creek Road, Franklin, NC 28734

---

---

---

---

---

10. These articles will be effective upon filing, unless a date and/or time is specified:

---

---

---

---

This the 4th day of Sept. 2006

---

William H. Isely  
**INCORPORATOR**  
William H. Isely - Agent  
*Type or Print Name and Title*

00055

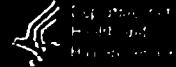
NOTES:

1. Filing fee is \$125. This document must be filed with the Secretary of State.  
CORPORATIONS DIVISION P. O. BOX 29622  
(Revised January, 2002)

RALEIGH, NC 27626-0622  
(Form B-01)



U.S. Food and Drug Administration



[FDA Home Page](#) | [Search FDA Site](#) | [FDA A-Z Index](#) | [Contact FDA](#)



Department of Health and Human Services

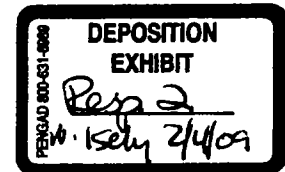
Public Health Service  
Food and Drug Administration  
Atlanta District Office  
60 8th Street, N.E.  
Atlanta, Georgia 30309

April 17, 2008

**VIA FEDERAL EXPRESS**

William Isely  
Gemtronics Inc.  
964 Walnut Creek Road  
Franklin, NC 28734-9533

**WARNING LETTER**  
(08-ATL-07)



Dear Mr. Isely:

This is to advise you that the Food and Drug Administration (FDA) has reviewed your websites at the Internet addresses <http://www.agaricus.net> and <http://raaxagaricus.com> and has determined that the products "Agaricus dried Grade A," "Agaricus dried Grade A Powder," "Agaricus Capsules," "Agaricus sweet Extract," "Agaricus strong Extract," "RF 1000 Extract," "APM Extract," "RAAX11 Extract," and "OPC Extract" are promoted for conditions that cause the products to be drugs under section 201(g)(1)(B) of the Federal Food, Drug, and Cosmetic Act (the Act) [21 U.S.C. § 321 (g)(1)(13)]. The therapeutic claims on your websites establish that the products are drugs because they are intended for use in the cure, mitigation, treatment, or prevention of disease. The marketing of these products with these claims violates the Act.

Examples of some of the claims observed on your websites include:

**RAAX11 Extract**

• "Raax 11 Agaricus Extract ... during laboratory tests the substance destroyed cancer cells that had been resistant to treatment up to now .... [B]esides these cancer cells, leukemia cells that are normally resistant to a lot of medicines and methods of treatment, were also killed' reported the scientists."

• "Even very resistant Leukemia cells die off"

**RAAX11 Extract and OPC Extract**

• "The RAAX Agaricus protocol is working at over 99% of all stage IV cancer patients. Even patients with no hope are recovered, if they took the right dosage during the programed [sic] time. What makes the difference between a Chemo Therapy and this kind of treatment. The chemo therapy destroys everything. Using the RAAX agaricus protocol only the cancer cells are destroyed. As effect of this, tumors will shrink very fast."

**RF 1000 Extract**

• "RF 1000 Extract - Specially used to help at traditional treatments of cancer."

[http://www.fda.gov/oc/uharming\\_letters/ls6746c.htm](http://www.fda.gov/oc/uharming_letters/ls6746c.htm)

5/1/2008

FTC-00001

According to your website at <http://www.agaricus.net>, the products listed in this letter contain Agaricus. Your website lists several disease claims for Agaricus, including:

•"Cancer - Agaricus blazei Murill ... has an affinity for nourishing the immune system ... there is an inter-dependent relationship between immune status and cancer development."

•"[R]esearchers' findings suggest that the Agaricus water extract reduces the pain associated with breast cancer and may be a viable substitute for the pharmaceuticals that impose side effects. In addition, the researchers noted the anti-tumor effect of the mushroom extract ...." Further, the "Research" page of your website <http://www.agaricus.net> cites an article about an animal study of the "Agaricus blazei Murill" ingredient used in your products. This article concerns the use of this ingredient for treatment or prevention of cancer.

When scientific publications are used commercially by the seller of a product to promote the product to consumers, such publications may become evidence of the product's intended use. For example, under 21 CFR 101.93(g)(2)(iv)(C), a citation of a publication or reference in the labeling of a product is considered a claim about disease treatment or prevention if the citation refers to a disease use, and if, in the context of the labeling as a whole, the citation implies treatment or prevention of a disease. The citation "Tumor-specific cytotoxic and immunopotentiating effects of relatively low molecular weight products derived from the basidiomycete, Agaricus blazei Murill .. Anticancer Res 1999 Jan-Feb;19(A):113-8" is a reference citation used to market your Agaricus products for disease treatment and prevention on your website.

This reference citation and other claims quoted above are supplemented by the metatags used to bring consumers to your websites through Internet searches. Examples of the metatags include "alternative cancer therapies" and "cancer."

Your products are not generally recognized as safe and effective for the above referenced uses and, therefore, the products are "new drugs" under section 201(p) of the Act [21 U.S.C. § 321(p)]. New drugs may not be legally marketed in the U.S. without prior approval from FDA as described in section 505(a) of the Act [21 U.S.C. § 355(a)]. FDA approves a new drug on the basis of scientific data submitted by a drug sponsor to demonstrate that the drug is safe and effective. Your products "Agaricus dried Grade A," "Agaricus dried Grade A Powder," "Agaricus Capsules," "Agaricus sweet Extract," "Agaricus strong Extract," "RF 1000 Extract," "APM Extract," "RAAX11 Extract," and "OPC Extract" are also misbranded within the meaning of section 502(f)(1) of the Act in that labeling for these drugs fails to bear adequate directions for use [21 U.S.C. § 352(f)(1)].

The above violations are not meant to be an all-inclusive list of deficiencies in your products and their labeling. While reviewing your websites, we noticed that you were also promoting these products for treatment and/or prevention of diseases other than cancer. It is your responsibility to ensure that products marketed by your firm comply with the Act and its implementing regulations. We advise you to review your websites, product labels, and other labeling and promotional materials for your products to ensure that the claims you make for your products do not cause them to violate the Act.

You should take prompt action to correct the violations described above and prevent their future recurrence. Failure to do so may result in enforcement action without further notice. The Act authorizes the seizure of illegal products and injunctions against manufacturers and distributors of those products [21 U.S.C. §§ 332 and 334].

Please notify this office, in writing, within fifteen (15) working days of the receipt of this letter, as to the specific steps you have taken to correct the violations noted above and to assure that similar violations do not occur. Include any documentation necessary to show that correction has been achieved. If corrective actions cannot be completed within fifteen working days, state the reason for the delay and the time within which the corrections will be completed.

Your response should be directed to Philip S. Campbell, Compliance Officer, at the address noted in the letterhead. If you wish to discuss this letter, you should contact Mr. Campbell at (404) 253-1280.

Sincerely,

/s/

Mary H. Woleske, Director  
Atlanta District

[FOIA Home Page](#) | [Most Recent Warning Letters](#)

[FDA Home Page](#) | [Search FDA Site](#) | [FDA A-Z Index](#) | [Contact FDA](#) | [Privacy](#) | [Accessibility](#)

FDA/Freedom of Information



**Bolton, Barbara E.**

**From:** Cancer@ftc.gov  
**Sent:** Friday, December 14, 2007 10:30 AM  
**To:** Bolton, Barbara E.  
**Subject:** FW: Urgent Message from the Federal Trade Commission Regarding Cancer Product Advertising on Your Website

-----Original Message-----

**From:** Cancer@ftc.gov  
**Sent:** Tuesday, October 23, 2007 3:28 PM  
**To:** 'support@ashnow.com'  
**Subject:** Urgent Message from the Federal Trade Commission Regarding Cancer Product Advertising on Your Website

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

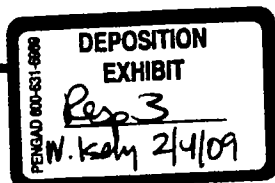
**TO:** www.agaricus.net — Never reviewed  
**FROM:** Federal Trade Commission  
**RE:** Health Claims on Your Website for Cancer Cures and Treatment Products  
**DATE:** October 23, 2007

**Deceptive Advertising Claims are Illegal**

The staff of the Federal Trade Commission (FTC) recently reviewed your website. We are sending you this letter to remind you of your obligations under the law. The FTC protects consumers from unfair or deceptive advertising or marketing practices that raise health or safety concerns.

The FTC Act prohibits deceptive advertising in any medium, including the Internet. Under the FTC Act, advertising claims for products and services must be truthful and not misleading. Health-related claims, like those made about cancer on your website, must be supported by competent and reliable scientific evidence – the kind of evidence scientists who are experts in the field would rely on. It is against the law to make health claims without scientific support, to exaggerate the benefits of products or services, or to misstate the level of scientific support you have for your claims. Please note that consumer testimonials are not proof that your product works. If you make a health claim through a consumer testimonial, you must have competent and reliable scientific evidence that your product will have the same benefit for other users.

If your website makes express claims (literally made in the ad) or claims by implication (made indirectly or by inference) about the benefits of any cancer-related products or services that are not substantiated by competent and reliable scientific evidence, or are otherwise deceptive or fraudulent, you must stop making those



claims immediately.

<http://www.ftc.gov/opa/2001/06/cureall.htm><http://www.ftc.gov/opa/2001/07/chrisenter.htm><http://www.ftc.gov/opa/2001/07/chrisenter.htm><http://www.ftc.gov/opa/2001/07/westbot.htm> If your website contains any untruthful or unsubstantiated claims, you could face law enforcement action. That could mean:

1. A federal court injunction. Violations of court orders could result in civil penalties or criminal prosecution.
2. An order to pay consumer refunds.
3. Administrative orders with fines up to \$11,000 per violation.

#### **Action Requested**

We urge you to review all cancer-related claims on your website. If you don't have competent and reliable scientific evidence to support the claims, please change them immediately or remove them altogether.

FTC investigators have saved your website and will be revisiting it soon. Within 10 business days, please send an email to [cancer@ftc.gov](mailto:cancer@ftc.gov) describing the actions you've taken or plan to take to address these concerns.

To ensure that your website complies with the FTC Act, we suggest reviewing the following guidance from the FTC:

- 1) ***Dietary Supplements: An Advertising Guide for Industry***  
[www.ftc.gov/bcp/online/pubs/buspubs/dietsupp.htm](http://www.ftc.gov/bcp/online/pubs/buspubs/dietsupp.htm)  
<http://www.ftc.gov/bcp/online/pubs/buspubs/dietsupp.htm/>
2. ***Frequently Asked Advertising Questions: A Guide for Small Business***  
[www.ftc.gov/bcp/online/pubs/buspubs/ad-faqs.htm](http://www.ftc.gov/bcp/online/pubs/buspubs/ad-faqs.htm)
3. ***Advertising and Marketing on the Internet: The Rules of the Road at***  
[www.ftc.gov/bcp/online/pubs/buspubs/ruleroad.htm](http://www.ftc.gov/bcp/online/pubs/buspubs/ruleroad.htm)

Please remember that you are responsible for complying with laws enforced by the Food and Drug Administration (FDA) in addition to laws enforced by the FTC. The Federal Food, Drug, and Cosmetic Act (FDCA) defines a drug, in part, as an article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of a disease, or to affect the structure or any function of the body.<sup>1</sup> Drugs that are not generally recognized by qualified, scientific experts as safe and effective for the uses recommended or suggested in their labeling are considered to be new drugs.<sup>2</sup> It is illegal to market a new drug in the U.S. without obtaining prior FDA approval.<sup>3</sup> Violations of the FDCA may result in seizure of illegal products and an injunction against the manufacturers and distributors. We have contacted the FDA about claims on your website. Remember, too,

that unfair or deceptive acts or practices also are illegal under many state laws. The standards under those laws may be different from the FTC Act.

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.

We look forward to hearing from you.

1 21 U.S.C. § 321(g).

2 21 U.S.C. § 321(p).

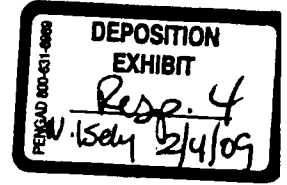
3 21 U.S.C. §§ 355 and 331(d).



United States Patent and Trademark Office

Home | Site Index | Search | FAQ | Glossary | Guides | Contacts | eBusiness | eBiz alerts | News | Help

### Trademarks > Trademark Electronic Search System (TESS)



TESS was last updated on Wed Apr 9 04:10:56 EDT 2008

[TESS HOME](#) [NEW USER](#) [STRUCTURED](#) [FREE FORM](#) [BROWSE DICT](#) [SEARCH OG](#) [BOTTOM](#) [HELP](#)

Please logout when you are done to release system resources allocated for you.

## Record 1 out of 1

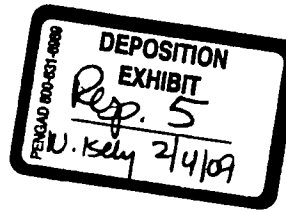
[TARR Status](#) [ASSIGN Status](#) [TDR](#) [TTAB Status](#) ( Use the "Back" button of the Internet Browser to return to TESS)

# RAAX11

<b>Word Mark</b>	RAAX11	
<b>Goods and Services</b>	IC 001. US 001 005 006 010 026 046. G & S: Plant extracts, namely ingredients Agaricus blazei Murill and Chrysobalanus Icaco, used in the manufacture of Takesun do Brasil	
<b>Mark Drawing Code</b>	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS	
<b>Design Search Code</b>	26.11.21 - Rectangles that are completely or partially shaded	
<b>Serial Number</b>	77337958	
<b>Filing Date</b>	November 27, 2007	
<b>Current Filing Basis</b>	1B	T0000
<b>Original Filing Basis</b>	1B	
<b>Owner</b>	(APPLICANT) Takesun Portugal Lda CORPORATION FED REP GERMANY In den Herrenbenden 6 53879 Euskirchen FED REP GERMANY	
<b>Description of Mark</b>	The color(s) Red letters on yellow background is/are claimed as a feature of the mark. The mark consists of Red Letters on a yellow background.	
<b>Type of Mark</b>	TRADEMARK	
<b>Register</b>	PRINCIPAL	C0000
<b>Live/Dead Indicator</b>	LIVE	

[TESS HOME](#) [NEW USER](#) [STRUCTURED](#) [FREE FORM](#) [BROWSE DICT](#) [SEARCH OG](#) [Top](#) [HELP](#)

From: service@paypal.com (service@paypal.com)  
To: Riece Miles  
Date: Thursday, January 3, 2008 1:08:19 PM  
Subject: Receipt for Your Payment to gotto@takesun.com



Dear Riece Miles,

This email confirms that you have paid ([gotto@takesun.com](mailto:gotto@takesun.com)) \$134.90 USD using PayPal.

This credit card transaction will appear on your bill as "PAYPAL".

**Payment Details**

Transaction ID: 20U8900657657914S  
Item Price: \$134.90 USD  
Total: \$134.90 USD  
Order Description: 11263984: 1 Agaricus blazel murill  
Raax11 bottle 100ml melhor qualidade  
original @ 119.90  
Item/Product Number: 11263984  
Invoice ID: 11263984  
Buyer: Riece Miles

It may take a few moments for this transaction to appear in the Recent Activity list on your Account Overview.

**Business Information**

Business:

**Your Confirmed Address**

Shipping Info: Riece Miles  
Lorton, VA 22079  
United States

*redacted*

If you have questions about the shipping and tracking of your purchased item or service, please contact at [gotto@takesun.com](mailto:gotto@takesun.com).

If your email program has problems with hypertext links, then you may also confirm your email address by logging into your PayPal account at [www.paypal.com/us](http://www.paypal.com/us). On your My Account page you will find a "Confirm Your Email Address" link. Click on this link and enter the following confirmation

number:

0653-8336-0122-8007-4430

Thank you for using PayPal  
The PayPal Team

Your monthly account statement is available anytime; just log in to your account at <https://www.paypal.com/us/HISTORY>. To correct any errors, please contact us through our Help Center at <https://www.paypal.com/us/HELP>.

---

FOR INTERNATIONAL PAYMENTS ONLY

---

Commissions and Fees incurred by sender: \$0.00

Rate of Exchange: The above exchange rate includes a 2.5% spread above the wholesale exchange rate at which PayPal obtains foreign currency, and the spread is retained by PayPal. If and when the Recipient chooses to withdraw these funds from the PayPal System, and if the withdrawal involves a currency conversion, the Recipient will convert the funds at the applicable currency exchange rate at the time of the withdrawal, and the Recipient may incur a withdrawal fee.

**RIGHT TO REFUND**

You, the customer, are entitled to a refund of the money to be transmitted as a result of this agreement if PayPal does not forward the money received from you within 10 days of the date of its receipt, or does not give instructions committing an equivalent amount of money to the person designated by you within 10 days of the date of the receipt of the funds from you unless otherwise instructed by you.

If your instructions as to when the money shall be forwarded or transmitted are not complied with, and the money has not yet been forwarded or transmitted, you have a right to a refund of your money.

If you want a refund, you must mail or deliver your written request to PayPal at P.O. Box 45950, Omaha, NE 68145-0950. If you do not receive your refund, you may be entitled to your money back plus a penalty of up to \$1,000.00 USD and attorney's fees pursuant to Section 1810.5 of the California Financial Code.

Important Note: The Right to Refund claim process applies only to payments that have not been successfully transmitted to the recipient. With PayPal, almost all payments are transmitted to the recipient immediately, except for eCheck payments, and payments to non-PayPal members.

Please do not file a Right to Refund claim if your payment has already been completed. If you have problems with a completed payment or need assistance with settling a dispute with a seller, go to PayPal's Resolution Center by logging into your account and clicking the Resolution Center sub tab located at the top center of the Account Overview page.

You can also click the Help link at the top right of any PayPal page to look up more information about the Resolution Center and filing complaints.

MA residents only: PayPal holds a Foreign Transmittal Agency license in the State of Massachusetts - License Number FT3345.

---

Please do not reply to this email. This mailbox is not monitored and you will not receive a response. For assistance, log in to your PayPal account and choose the Help link located in the top right corner of any paypal page.

To receive email notifications in plain text instead of HTML, update your preferences [here](#).

PayPal Email ID PP120

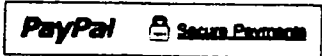
<http://us.mg3.mail.yahoo.com/dc/launch?.rand=c0faj20vnbmdn>

1/3/2008

FTC-00014

**gotto@takesun.com**

Receipt



Ship To: Riece Miles

Seller Information: gotto@takesun.com

Lorton, VA 22079  
United States

*redacted*

Transaction ID: 20U89006576579145

Placed on Jan. 3, 2008

Payment For

11263984: 1 Agaricus blazei muril Raax11 bottle 100ml melhor qualidade  
original ● 119.90  
Item #11263984

Quantity	Price
1	\$134.90 USD

Subtotal: \$134.90 USD

Sales Tax: \$0.00 USD

**Total Amount: \$134.90 USD**

Print

Done

PayPal. The safer, easier way to pay.  
For more information, read our [User Agreement](#) and [Privacy Policy](#).



Statement Date  
01/15/08



INDIVIDUAL CARDHOLDER ACTIVITY

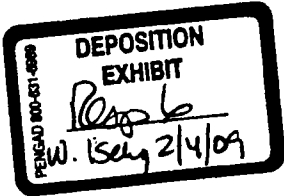
<b>MILES RIECE</b>					<b>-9704</b>
		Monthly Limit \$3,000	Cash Limit* \$3,000		
<b>Sale Date</b>	<b>Post Date</b>	<b>Reference Number</b>	<b>Type of Activity</b>	<b>Amount</b>	
01-03	01-07	24492158004849784728500	PAYPAL 402-835-7733 CA	134.90	
TOTAL PURCHASES/ADVANCES/CREDITS				134.90	

\*Cash Advance Limit is a portion of your Total Monthly Limit  
\*\*Available Cash Line is a portion of your Available Credit Line



Takesun do Brasil

Verify that you are in following countries: USA, Canada, Australia or Asia. Other countries will be delivered through other agents. Look into your country page. (EU-Distributors: Austria, Germany, Portugal, Spain) or contact sales@agaricus.net



Product	Quantity	Price	Amount
Agaricus blazei murill Raax11 bottle 100ml melhor qualidade original	1	119.90	119.90

	<b>Subtotal</b>	119.90
<b>All prices are in US Dollars</b>	<b>Shipping</b>	15.00
	<b>TOTAL</b>	134.90

US customers: UPS ground: 5 business days, UPS air: 3 business day delivery. International customers only Asia & Australia. Europe enter in your country page: EMS shipping arrives within 5-10 working days, Global Priority Mail 10 to 18 days.

**Billing details**

**Shipping address (if different from the billing address)**

Dana Long  
Roanoke, VA 24018  
United States  
Tel: 703-532-  
Fax:  
dana\_long@yahoo.com

*redacted*

**Payment options**

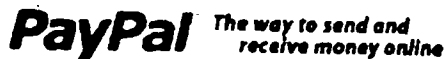
Credit card or direct cash payment via PayPal

**CONTINUE**

Your Credit Card is charged using a SSL secured server. On your statement will appear GEMTRONICS SECURE PAYMENTS

Mail's.....

**From:** service@paypal.com (service@paypal.com)  
**To:** Dana Long  
**Date:** Wednesday, January 23, 2008 11:27:52 AM  
**Subject:** Receipt for Your Payment to Takesun Portugal Lda. Verkauf Deutschland



Dear Dana Long,

This email confirms that you have paid Takesun Portugal Lda. Verkauf Deutschland (vendas@takesunportugal.com) \$134.90 USD using PayPal.

This credit card transaction will appear on your bill as "PAYPAL \*TAKESUNPORT".

### Payment Details

**Transaction ID:** 00061355NC651964H  
**Item Price:** \$134.90 USD  
**Total:** \$134.90 USD  
**Order Description:** 11306829: 1 Agaricus blazei murill  
Raax11 bottle 100ml melhor qualidade  
original @ 119.90  
**Item/Product Number:** 11306829  
**Invoice ID:** 11306829  
**Buyer:** Dana Long  
**Phone:** 703-532-

It may take a few moments for this transaction to appear in the Recent Activity list on your Account Overview.

### Business Information

**Business:** Takesun Portugal Lda. Verkauf  
Deutschland  
**Contact E-Mail:** vendas@takesunportugal.com

### Your Unconfirmed Address

**Shipping Info:** Dana Long  
Roanoke, VA 24018  
United States

*relocated*

If you have questions about the shipping and tracking of your purchased item or service, please contact Takesun Portugal Lda. Verkauf Deutschland at vendas@takesunportugal.com.

Thank you for using PayPal  
The PayPal Team

Your monthly account statement is available anytime; just log in to your account at <https://www.paypal.com/us/HISTORY>. To correct any errors, please contact us through our Help Center at <https://www.paypal.com/us/HELP>.

---

FOR INTERNATIONAL PAYMENTS ONLY

---

Commissions and Fees incurred by sender: \$0.00

Rate of Exchange: The above exchange rate includes a 2.5% spread above the wholesale exchange rate at which PayPal obtains foreign currency, and the spread is retained by PayPal. If and when the Recipient chooses to withdraw these funds from the PayPal System, and if the withdrawal involves a currency conversion, the Recipient will convert the funds at the applicable currency exchange rate at the time of the withdrawal, and the Recipient may incur a withdrawal fee.

**RIGHT TO REFUND**

You, the customer, are entitled to a refund of the money to be transmitted as a result of this agreement if PayPal does not forward the money received from you within 10 days of the date of its receipt, or does not give instructions committing an equivalent amount of money to the person designated by you within 10 days of the date of the receipt of the funds from you unless otherwise instructed by you.

If your instructions as to when the money shall be forwarded or transmitted are not complied with, and the money has not yet been forwarded or transmitted, you have a right to a refund of your money.

If you want a refund, you must mail or deliver your written request to PayPal at P.O. Box 45950, Omaha, NE 68145-0950. If you do not receive your refund, you may be entitled to your money back plus a penalty of up to \$1,000.00 USD and attorney's fees pursuant to Section 1810.5 of the California Financial Code.

Important Note: The Right to Refund claim process applies only to payments that have not been successfully transmitted to the recipient. With PayPal, almost all payments are transmitted to the recipient immediately, except for eCheck payments, and payments to non-PayPal members.

Please do not file a Right to Refund claim if your payment has already been completed. If you have problems with a completed payment or need assistance with settling a dispute with a seller, go to PayPal's Resolution Center by logging into your account and clicking the Resolution Center sub tab located at the top center of the Account Overview page.

You can also click the Help link at the top right of any PayPal page to look up more information about the Resolution Center and filing complaints.

MA residents only: PayPal holds a Foreign Transmittal Agency license in the State of Massachusetts - License Number FT3345.

---

Please do not reply to this email. This mailbox is not monitored and you will not receive a response. For assistance, [log in](#) to your PayPal account and choose the Help link located in the top right corner of any PayPal page.

To receive email notifications in plain text instead of HTML, update your preferences [here](#).

---

PayPal Email ID PP120



Takesun do Brasil Ind. Com e Exp. Ltda.

FDA Food Facility Registration Number 11841249604

Av. Vereador Benedito de Campos, 810  
 Ibiúna, SP, CEP 18150-000, Brasil  
 Fone xx15 3248 1267 - Fax xx 15 3248 3270  
 e-mail: vendas@takesun.com  
 Internet: www.takesun.com

# INVOICE

**paid by FDA Registration No. 10827550148 964**

Isely, William H. Gemtronics, Naturefirst  
 aka Nature First

, Walnut Creek, RD, 28734  
 Franklin, NC, USA  
 Phone 828 369 7590

**Shipping to Danzas Acct # 56-226120600**

Isely, William H. Gemtronics, Naturefirst  
 aka Nature First  
 FDA Registration No. 10827550148  
 964, Walnut Creek, RD, 28734  
 Franklin, NC, USA  
 Phone 828 369 7590

Numero 306

Data 27<sup>th</sup> February 2003

**PURCHASE ORDER NO. S/N**

**TERMS** Banco do Brasil

**SALES PERSON** George Otto

**SHIPPED VIA** Danzas/DHL

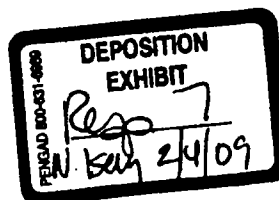
**INCO Terms** ex works

**Delivery** 27<sup>th</sup> February 2004

QTY	NCM Brasil	US Tariff		Unit USD	Total USD
KG					
10	07.12.31.00	0712.31.10 00	Agaricus blazei Murill, dried mushrooms, packed in into 100g bags	10,07	100,70
140	1302.1900	1302.19.90.40	Agaricus bl. Murill, bottle with 60 Vcaps, 500mg	6.00	840.00
72	1302.1900	1302.19.90.40	Agaricus RF 1000 extract, bottle with 200ml	9.89	712.00
144	1302.1900	1302.19.90.40	Agaricus ABM extract, bottle with 100ml	9.90	1425.60
240	2008.9900	2008.99.6000	Myrciaral dubia, Camu-Camu, bottle with 60 capsules	4.15	996.00
<b>FDA Product</b>				<b>Merchandise</b>	4074.30
<b>Code:</b> 1) 54FBK99 2) 54FBK99				<b>Insurance</b>	0.00%
					0.00
				<b>Freight</b>	0.00
					<b>4,074.30</b>
					<b>TOTAL DUE</b>

Takesun do Brasil USA FDA Agents: Gomez & FDA Associates FDA Experts, 3509 W. Beverly Blvd. Montebello, CA, 90640, USA,  
 Tel. 323-707-2504, e-mail: irenegomez@fdaexperts.com

Boxes total: 8  
 Liq. Weight total: 78,2 kg  
 Brut Weight total: 84,6kg  
 Cubic weight: 55,5 kg  
 Dimensiones Boxes cm: 38x42x42  
 Signed:  
 Name:  
 CPF:



00034



To whom it may concern,

I hereby confirm that the information listed for the domain **agaricus.net** is legitimate and is listed below:

**Registrant:**

Agarix International  
Br 101, KM 22,5  
Joinville, SC 89239500  
Brazil  
47 3001 5260  
gotto@takesun.com.br

Domain Name: AGARICUS.NET

**Administrative Contact, Technical Contact, Zone Contact:**

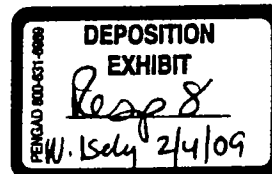
Takesun  
Attn: George Otto  
Br 101, KM 22,5  
Joinville, SC 89239500  
Brazil  
47 3001 5260  
gotto@takesun.com.br

Domain created on 13-Jun-1998  
Domain expires on 12-Jun-2009  
Last updated on 15-Apr-2008

Domain servers in listed order:

DNS1.SUPREMEDNS.COM  
DNS2.SUPREMEDNS.COM

Sincerely,  
Pablo Velasco  
TierraNet Customer Service Supervisor



**EXHIBIT "D"**



# SUBPOENA DUCES TECUM

Issued Pursuant to Rule 3.34(b), 16 C.F.R. § 3.34(b)(1997)

1. TO  
ATTN: Pablo Velasco, for  
Tierra.net (d/b/a DomainDiscover)  
14284 Danielson Street  
Poway, CA 92064

2. FROM  
  
UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION

This subpoena requires you to produce and permit inspection and copying of designated books, documents (as defined in Rule 3.34(b)), or tangible things - or to permit inspection of premises - at the date and time specified in Item 5, at the request of Counsel listed in Item 9, in the proceeding described in Item 6.

3. PLACE OF PRODUCTION OR INSPECTION  
Van Horn Law Firm, PLLC  
16 West Martin Street, Suite 700  
Raleigh NC 27601  
Fax: (919) 835-2121

4. MATERIAL WILL BE PRODUCED TO  
Attorney Matthew I. Van Horn

5. DATE AND TIME OF PRODUCTION OR INSPECTION  
February 4, 2009 at 10:00 am

6. SUBJECT OF PROCEEDING

In the Matter of Gemtronics, Inc., et al., Docket No. 9330

7. MATERIAL TO BE PRODUCED

See attached Exhibit "A"

8. ADMINISTRATIVE LAW JUDGE

The Honorable D. Michael Chappell  
  
Federal Trade Commission  
Washington, D.C. 20580

9. COUNSEL REQUESTING SUBPOENA

Matthew I. Van Horn  
16 West Martin Street, Suite 700  
Raleigh, NC 27601

DATE ISSUED

December 17, 2008

SECRETARY'S SIGNATURE

*Donald S. Clark*

GENERAL INSTRUCTIONS

**APPEARANCE**

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

**MOTION TO LIMIT OR QUASH**

The Commission's Rules of Practice require that any motion to limit or quash this subpoena be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed with the Secretary of the Federal Trade Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 9, and upon all other parties prescribed by the Rules of Practice.

**TRAVEL EXPENSES**

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to counsel listed in Item 9 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from counsel listed in Item 9.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

**Exhibit "A"**  
**to Subpoena issued to Tierra.net (d/b/a DomainDiscovery) Attn. Pablo Velasco**

1. Any and all documents, notes, phone slips, memoranda, electronically stored information (including but not limited to email, word processing, data base records, scanned or graphically stored images, electronic notes, etc.) or any other items in your possession or the possession of Tierra.net (d/b/a DomainDiscovery), including any of its offices, which in any way relate to the domain agaricus.net, the company Agarix International, or the individual George Otto.
  
2. Any and all documents, notes, phone slips, memoranda, electronically stored information (including but not limited to email, word processing, data base records, scanned or graphically stored images, electronic notes, etc.) or any other items in your possession or the possession of Tierra.net (d/b/a DomainDiscovery), including any of its offices, which in any way relate to the company Gemtronics, Inc. or the individual William H. Isely.
  
3. Any and all documents, notes, phone slips, memoranda, electronically stored information (including but not limited to email, word processing, data base records, scanned or graphically stored images, electronic notes, etc.) or any other items in your possession or the possession of Tierra.net (d/b/a DomainDiscovery), including any of its offices, which in any way relate to the domain agaricus.net, the company Gemtronics, Inc. or the individual William H. Isely, which have ever been provided to the United States Federal Trade Commission pursuant to a Subpoena or otherwise.

Note: Please indicate if you do not possess any information which is responsive to either item.

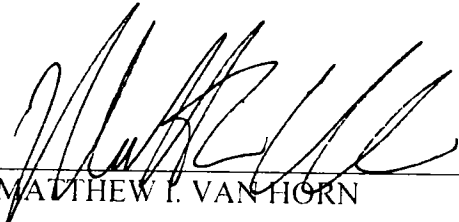


## CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this **NOTICE OF DEPOSITION AND THE ATTACHED SUBPOENA DUCES TECUM** 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.

Ms. Barbara E. Bolton  
Federal Trade Commission  
225 Peachtree Street, N.E.  
Suite 1500  
Atlanta, GA 30303

This the 27<sup>th</sup> day of January, 2009.

  
\_\_\_\_\_  
MATTHEW I. VAN HORN



To whom it may concern,


I hereby confirm that the information listed for the domain **agaricus.net** is legitimate as of 04/29/2008. The information has not been changed since this date.

The last time the contact information was changed on this domain was on 03/28/2008 and it was done from within the account control panel, connected from IP address 79.228.253.48, which at the time belonged to Deutsche Telekom AG in Germany.

The domain is currently using our domain privacy service, which hides the contact information on whois, but I can confirm that the information provided in this document is accurate and up to date.

I swear to the accuracy and truthfulness of this information.

Sincerely,  
Pablo Velasco  
TierraNet Customer Service Supervisor  
Pablo@tierra.net



02/05/2009



**Registrant:**

Agarix International  
Br 101, KM 22,5  
Joinville, SC 89239500  
Brazil  
47 3001 5260  
gotto@takesun.com.br

Domain Name: AGARICUS.NET

**Administrative Contact, Technical Contact, Zone Contact:**

Takesun  
Attn: George Otto  
Br 101, KM 22,5  
Joinville, SC 89239500  
Brazil  
47 3001 5260  
gotto@takesun.com.br

Domain created on 13-Jun-1998  
Domain expires on 12-Jun-2009  
Last updated on 15-Apr-2008

Domain servers in listed order:

DNS1.SUPREMEDNS.COM  
DNS2.SUPREMEDNS.COM

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of San Diego }

On Feb. 5, 2009 before me, GLORY SANCHEZ, Notary Public  
Date Here Insert Name and Title of the Officer

personally appeared Pablo Velasco  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature *Glory Sanchez*  
Signature of Notary Public



Place Notary Seal Above

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: Letter Responding to a Subpoena

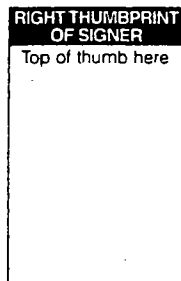
Document Date: Feb. 5, 2009 Number of Pages: 2

Signer(s) Other Than Named Above: N/A

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

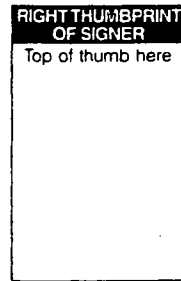
- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

**EXHIBIT "E"**

**OFFICIAL TRANSCRIPT PROCEEDING**

**FEDERAL TRADE COMMISSION**

**MATTER NO. D09330**

**TITLE GEMTRONICS, INC.**

**PLACE OAKHILL COUNTRY INN  
1689 OLD MURPHY ROAD  
FRANKLIN, NORTH CAROLINA**

**DATE FEBRUARY 4, 2009**

**PAGES 1 THROUGH 29**

**DEPOSITION OF PABLO VELASCO**

---

**FOR THE RECORD, INC.  
10760 DEMARR ROAD  
WHITE PLAINS, MD 20695  
(301)870-8025**

---

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I N D E X

Examination	Page
By Mr. Van Horn	4
By Ms. Bolton	19

E X H I B I T S

Respondent's Exhibits Marked for Identification	Page
No. 1                    (Subpoena Duces Tecum/Documents)	4

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

4 In the Matter of:

5 GEMTRONICS, INC., a  
6 corporation, and

DOCKET NO. 9330

7 WILLIAM H. ISELY, Individually  
8 and as the Owner of Gemtronics,  
9 Inc.

---

10 Wednesday, February 4, 2009

11 Oakhill Country Inn

12 1689 Old Murphy Road

13 Franklin, North Carolina 28734

14  
15 The above-entitled matter came on for the  
16 taking of a telephonic unsworn statement at 3:15 p.m.

17  
18 Reported by:

19 Mary K. Huth-Stepp, Registered Professional Reporter  
20  
21  
22  
23  
24  
25



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A P P E A R A N C E S

On Behalf of the Federal Trade Commission:

BARBARA ELIZABETH BOLTON, ESQUIRE  
Federal Trade Commission, Southeast Region  
225 Peachtree Street, N.E.  
Suite 1500  
Atlanta, Georgia 30303  
404.656.1362 (telephone)  
404.656.1379 (fax)  
bbolton@ftc.gov

On Behalf of Gemtronics, Inc. and the witness:

MATTHEW I. VAN HORN, ESQUIRE  
16 West Martin Street, Suite 700  
Raleigh, North Carolina 27601  
919.835.0880 (telephone)  
919.835.2121 (fax)  
matthew@vanhornlawfirm.com

1 PABLO VELASCO,  
2 called on behalf of the Respondent for a telephonic  
3 unsworn statement:

4 EXAMINATION

5 BY MR. VAN HORN:

6 Q. All right. She is officially transcribing what  
7 you're saying and what I'm saying; okay?

8 A. Okay.

9 (Respondent's Deposition Exhibit No. 1 was  
10 marked for identification).

11 BY MR. VAN HORN:

12 Q. First housekeeping matter, really there's two  
13 items here. One, you should have in front of you a  
14 Subpoena, what's called a Subpoena Duces Tecum. Do you  
15 see that form?

16 A. Yeah, I have it in front of me.

17 Q. Okay. It's mailed it your attention?

18 A. Okay.

19 Q. On behalf of TierraNet, doing business as Domain  
20 Discover. That's the company for whom you work; is that  
21 correct?

22 A. That is correct.

23 Q. Just for curiosity, are you an officer of the  
24 company? Are you a shareholder?

25 A. No, I'm just an employee. I'm a customer

1 service supervisor.

2 Q. We spoke earlier today about a document or  
3 documents that you e-mailed to me.

4 A. Uh-huh (affirmative).

5 Q. And one of them was a previous correspondence  
6 you had e-mailed to me on Domain Discover letterhead;  
7 does that ring a bell?

8 A. That is correct.

9 Q. And it was responsive to an inquiry I submitted  
10 to you regarding Agaricus.net, which is a domain, I  
11 believe. I'm going to spell it for you for the record.  
12 A-G-A-R-I-C-U-S.net. Do you remember that?

13 A. I do.

14 Q. Okay.

15 A. I actually have the document I sent you in front  
16 of me.

17 Q. Okay. So this is sort of the second  
18 housekeeping matter. This document, it doesn't have a  
19 date on it. And I know you sent it to me via e-mail and  
20 so I should have -- I do have that e-mail, just not with  
21 me. So that's a transmittal e-mail and that would  
22 reflect what day you prepared this document.

23 A. Uh-huh (affirmative).

24 Q. But earlier today we spoke and I said you needed  
25 to, that you needed -- in order to make this official,

1 you needed to send me a cover letter on behalf of your  
2 company saying that you were submitting documents in  
3 response to this Subpoena Duces Tecum.

4 A. Uh-huh (affirmative). Yes. You're cutting a  
5 little bit. Not sure if it's a line issue, but some of  
6 your words cut off a little bit.

7 Q. Oh.

8 A. So if I don't respond right away to something.

9 Q. Okay.

10 A. I did.

11 Q. So you -- since we spoke, you sent me a  
12 responsive letter saying these documents are responsive  
13 to the subpoena?

14 A. Uh-huh (affirmative). Yeah. I haven't sent the  
15 new version of the document with the cover letterhead,  
16 but I'm intending to do that before the end of my shift  
17 today, which is at 2:00.

18 Q. Okay. That's fine. So you may want to make a  
19 note, though, what we need is -- perhaps you can find the  
20 e-mail that you sent to me back when you first sent this  
21 correspondence.

22 A. Uh-huh (affirmative).

23 Q. And just so -- we need to know what date you  
24 prepared this document, the one from you that says  
25 Sincerely, Pablo, at the bottom.

1           A. Okay. Yeah. I will, I will go ahead and trace  
2 through my item folder to check exactly when the first  
3 issue of this document was sent to you.

4           Q. Okay. You don't happen to have anything in front  
5 of you that would tell you when you prepared it; do you?

6           A. I can take a look. Give me one second.

7           Q. Okay.

8           A. I might be able to track that down. Just give  
9 me a moment.

10           MR. VAN HORN: All right. No hurry.

11           MS. BOLTON: I'll go off --

12           A. Because sometimes I generate a document, but I  
13 don't necessarily send them on the same day. Probably  
14 send them the next day or two. So let me see if I can  
15 track down exactly when the document was generated.

16           Q. Okay.

17           A. I should be able to see it based on the files,  
18 when the file was created.

19           MR. VAN HORN: I understand. The other lawyer  
20 here wants to talk to me for a second; okay? Hold on.

21           THE WITNESS: Okay.

22           (Off-record discussion).

23 BY MR. VAN HORN:

24           Q. Pablo?

25           A. Yes.

1 Q. I'm going to interrupt you. Let me ask you,  
2 what is it that you're going to send in? What document  
3 or documents are you sending me in response to the  
4 Subpoena?

5 A. I'm basically just sending you a document  
6 confirming who the registrant for Agaricus.net is, who  
7 the administrative contact is, when the domain was  
8 created, when the domain was set to expire, the last time  
9 the domain was updated and the name server that the  
10 domain was pointing to at the time I got the information.

11 Q. Okay. So it's virtually identical to the  
12 document you e-mailed to me many months ago; is that  
13 right?

14 A. That is correct.

15 Q. Okay. So what we're dealing with here, though,  
16 is -- what's important is we need to know separate and  
17 apart from what this document says, we need to know when  
18 you prepared it. Actually, we need to know what date  
19 this information was effective.

20 A. Okay.

21 Q. And we can either know now or you can just tell  
22 me later.

23 A. Okay.

24 Q. I mean, if you want to take another second to  
25 find out.

1           A. Let me see if I'm able to find out. I thought I  
2 would be able to see when the document was first created,  
3 but unfortunately the file doesn't have the date when it  
4 was created. It reflects yesterday's date. So give me  
5 one second, I'll see when I first sent you a copy of the  
6 document. Just a second.

7           Q. Okay. Wonderful.

8           A. Okay. The first instance of the document was  
9 sent on April the 29th of 2008 at 1:48 p.m. And it was  
10 sent to Matthew@VanHornlawfirm.com.

11          Q. Let me ask you this, turning to the substance of  
12 that document, can you tell me -- we have information  
13 that shows us that this registrant information that's  
14 presently on the document that you sent to me April  
15 29th --

16          A. Uh-huh (affirmative).

17          Q. -- that there was, previously for this domain  
18 there was other -- there was a different registrant and a  
19 different administrative contact. Do you have anything  
20 in your office that shows when those were switched? Is  
21 it the last update date? Is that probably when it was?

22          A. Uhm.

23          Q. And you don't --

24          A. No. Actually, no. Because the last time -- the  
25 last update that I show on the domain was the domain

1 getting renewed --

2 Q. I got you.

3 A. -- or extended for one year.

4 Q. So is it -- can you tell us when these names,  
5 the current, the current names on the document you sent  
6 me April 29th, '08, that you're looking at in front of  
7 you, and I'm looking at, can you tell me when those names  
8 were inserted there, when that was changed? Because we  
9 have documents from the past that show a different, you  
10 follow, a different, different registrant, different  
11 administrative contact.

12 A. Okay.

13 Q. So I was curious if you could -- can you tell us  
14 when --

15 A. Looking, looking at the logs or the domain  
16 history, the last time I see that the contact information  
17 was updated on the account or on the domain was on March  
18 the 28th of 2008.

19 Q. Okay. Can you -- that document that you just  
20 referred to, that would actually fall within the scope of  
21 what we've requested in the Subpoena. Can you print that  
22 document and also send it to me?

23 A. Which document?

24 Q. The one you were just reading, the domain  
25 history?



1           A. No, the one with the contact information, when  
2           it was last updated and --

3           Q. Yeah. You just read a document that said  
4           March 28, 2008, and you called it domain history. Can  
5           you print that and -- because that's --

6           A. It's not actually a document, it's just a list  
7           of logs that are generated whenever changes are made on  
8           the domain name. And it shows where the changes were  
9           made from.

10          Q. So can you --

11          A. It's not actually a document.

12          Q. So you can't make a hard copy?

13          A. I could probably do it. However, the log itself  
14          doesn't show what the information was before and after  
15          the change was made. It's all coded in. It just shows  
16          codes for the old information and the new information.  
17          It doesn't explicitly show who the new contact person is,  
18          who the old was, it just shows the number of the code.

19          Q. Okay. So what you're testifying to is that on  
20          March 28th, correct me if I'm wrong, on March 28, the  
21          information within the individual or company identified  
22          as registrant and the entity under administrative  
23          contact, technical contact and zone contact, those  
24          changed?

25          A. Yes. The administrative and billing contact

1 were updated on the 28th of March.

2 Q. And the registrant? And the registrant was as  
3 well; is that correct?

4 A. No. The registrant does not show as being  
5 updated.

6 Q. Okay. So my next few questions, and then we  
7 should be done. I guess the mind-set that I need here is  
8 you're talking -- you need to explain this to someone who  
9 doesn't know anything about this stuff; all right?

10 A. Okay.

11 Q. So I guess the two things, if we could do first,  
12 if you could tell me what these terms are, registrant,  
13 administrative contact, technical contact and zone  
14 contact, and then I just want to have you walk us through  
15 the process of setting up a domain.

16 A. Okay. Well, first, the first item that shows on  
17 the document that I sent you is the registrant. And  
18 that's, that's information that I got from our database  
19 that shows information to the public on the Internet.

20 The registrant, as it appears on the WHOIS  
21 database, is who the person that holds the domain name  
22 wants to show as the owner of the domain, but is not  
23 necessarily the legal owner of the domain name itself.

24 Q. Okay.

25 A. Probably a little confusing, but that's the

1 published owner of the domain name, but not the actual  
2 legal owner.

3 Q. Okay.

4 A. I'm not sure if I'm making sense.

5 Q. No, you're right. It is confusing, but I  
6 understand. So do you know who the legal owner of it is?

7 A. The legal owner, as it appears on our system, is  
8 never shown on the WHOIS database or is never made  
9 available to the public unless, of course, owner of the  
10 domain name wants to show who the -- wants the actual  
11 published owner and legal owner.

12 Q. So who is the legal owner?

13 A. The legal owner as it shows on our system is, in  
14 this case -- let me go back there quickly. Okay. In  
15 this case, or in this specific case, the legal owner as  
16 it appears in our system is the same as the published  
17 registrant, which is Agarix International.

18 Q. Okay. What's the -- okay. And the address is a  
19 foreign address, right, it's not a --

20 A. Yeah, it's a foreign address in Brazil.

21 Q. And the contact e-mail is gotto@takesun.com.br?

22 A. Uhm, let me just make sure that that's it. Just  
23 a moment. That is correct.

24 Q. Okay. Now, the legal -- does the registrant, as  
25 you have just discussed, have any authority or ability to

1 control or alter the content on the domain?

2 A. If that person has access to the account control  
3 panel and entering the user name and the password for the  
4 account, yes, they can change contact information,  
5 billing information, anything related to the account. As  
6 long as they provide the password for it, they are, they  
7 are eligible to make any changes on that.

8 Q. Okay. The password and user name, is there a  
9 PIN number as well?

10 A. No. It's just a user name and a password.

11 Q. Okay. And is that held by the legal owner?

12 A. Not necessarily. The legal owner is entitled to  
13 know that information. And because a lot of times people  
14 that register domain names, they have their Web person or  
15 their Web administrator or their Web master, they just  
16 have them handle their website and domain registration  
17 and -- but if they are the ones, the Web master  
18 indicates -- it will have the password and the user name  
19 of the account, but they are not the legal owner. But if  
20 they don't have that, they are entitled to request it and  
21 provided that they authenticate themselves as the owner  
22 of the domain name, we can provide that information to  
23 them.

24 Q. Okay. Do your records reflect who paid for this  
25 domain?

1           A. Uhm, no. We show the charge to -- through a  
2 credit card for the rental of the domain name, but we  
3 don't have exactly, right off the record, we don't have  
4 the name on the credit card. We have the credit card  
5 number and all that stuff, but we don't have the actual  
6 account holder for the credit card or the bank. We have  
7 credit card type, we can have access probably to the  
8 expiration date on the card, but that's about it. We  
9 don't show exactly who specifically went and paid for the  
10 account or for the domain name.

11           Q. Okay. Who -- what entity or person in this case  
12 of Agaricus.net domain possesses the user name and  
13 password?

14           A. In this case, the administrative contact will be  
15 the one that has the password and the user name. The  
16 administrative contact in this case is listed as George  
17 Otto.

18           Q. Okay.

19           A. So if by any chance he would have forgotten what  
20 the password and the user name are, he could call and  
21 have us e-mail that to the e-mail address that we have on  
22 record.

23           Q. Okay. So do your records reflect that George  
24 Otto has always had the user name and password?

25           A. Hmm. No, not really. It isn't possible to know

1 who exactly has the user name and password because, in  
2 this case, George Otto could have submitted that to  
3 someone else, an employee, coworkers, whatever the case  
4 is. So there isn't really a way for us to know who  
5 possesses that information, you know, for sure.

6 In this case, we assume that George Otto is the  
7 only one that has the user name and password because he's  
8 the one that set up the administrative contact and  
9 technical and billing contact. So there isn't -- I can't  
10 assure that he's the only one that has the information.

11 Q. Okay. Thank you. I'm going to give you a for  
12 instance here; okay?

13 A. Uh-huh (affirmative).

14 Q. If I, Matthew Van Horn, called up your company  
15 and wanted to buy a domain --

16 A. Uh-huh (affirmative).

17 Q. -- I gave you the credit card number, I paid for  
18 it, I would be the one who is issued the user name and  
19 password; right?

20 A. I'm not exactly -- well, I guess you mean by  
21 buying a domain name, do you mean registering a domain  
22 name or buying an existing domain name?

23 Q. Registering a domain.

24 A. They are different from each other.

25 Q. Well, I don't know what that means, but --

1           A. For instance, if you as a lawyer want to  
2 register a domain name or want to get a domain name for  
3 your law firm. You contact us wanting to get or to  
4 register a domain name for your law firm, you can do so  
5 and we -- you can either do it on our website, search for  
6 a domain name that you like for your law firm. If it's  
7 available, you can register it online or we can do it for  
8 you over the phone. Whatever the case is the process is  
9 the same. We basically ask you for name, contact  
10 information, e-mail address, and we take your billing  
11 information. And when -- in the process of registering  
12 the domain name, we ask you for a user and password for  
13 you to use to access your account and manage it. That  
14 user name and password you provide to us. And if by any  
15 chance you forget what it is, we just e-mail it to the  
16 e-mail address you provide us. But when you register a  
17 domain name, you provide us what you want to use as user  
18 name and password for the account.

19           Q. At this time during the process, do I tell you  
20 who I want the registrant to be?

21           A. Yes. You can, you can, for instance, you can  
22 register a domain name and set yourself as the legal  
23 owner, or you can have the company or your law firm be  
24 listed as the legal owner, or, you know, you can have  
25 whoever you want, you know --

1 Q. Okay.

2 A. -- set as the legal owner.

3 Q. But the legal owner is not shown to the public;  
4 right?

5 A. No.

6 Q. Okay. So, for instance, following your example,  
7 I could, I could call you, buy a domain for my website  
8 and my brother, I could identify him as the registrant;  
9 correct? That is correct?

10 A. That is correct, yes. When you register a  
11 domain name by default, whoever the administrative  
12 contact is will show as the administrative, technical,  
13 billing and/or zone contact, which is public register.

14 Q. Okay.

15 A. Then after you're done with the registration,  
16 there is an option in our system, you can go and specify  
17 each contact separately. You can have one person listed  
18 as the administrative and billing contact, and a totally  
19 different person listed as the organizational or  
20 registrant and technical contact.

21 Q. Okay. And specifically with this example, if I  
22 called you and set up one for my law firm and paid for  
23 it, but became the legal owner, obtained my user name and  
24 domain name, I could identify my brother as the  
25 registrant, which is shown to the public, and I could put



1 his address and his e-mail as a contact?

2 A. That is correct.

3 Q. Okay. Secondly, with the second category, on  
4 the document administrative contact, technical contact  
5 and zone contact, I could also put my brother or any  
6 third party there as -- just like the registrant. I  
7 could put my brother or any third party there as the --  
8 and put their name and their contact information and  
9 their e-mail; is that correct?

10 A. That is correct.

11 MR. VAN HORN: Okay. I don't have any more  
12 questions.

13 MS. BOLTON: Okay. I have some questions,  
14 Pablo. This is Barbara Bolton from the FTC.

15 THE WITNESS: Okay.

16 EXAMINATION

17 BY MS. BOLTON:

18 Q. Now, is the document that you sent to Matthew on  
19 4/29 the same identical information as to what you have  
20 currently in the database?

21 A. I believe so. Let me double-check and confirm  
22 that. I haven't seen any changes as far as the contact  
23 information on the domain since I sent this document, so  
24 I would say yes, the information is identical as what we  
25 currently have in the system.

1 Q. All right. Are you looking at the two side by  
2 side, what you sent and what you have in there now, or  
3 are you just guessing?

4 A. No, I'm looking at the account right now. And I  
5 don't see any changes. Everything looks identical.

6 Q. Okay. Now, we're just talking about the  
7 registration of a domain?

8 A. Uh-huh (affirmative).

9 Q. If you actually set up a Website using that  
10 domain name, do you have any control over that, over who  
11 controls that website?

12 A. I'm sorry. Can you repeat the question, please?

13 Q. Yeah. This document just pertains to the  
14 registration of a domain; is that correct?

15 A. That is correct.

16 Q. All right. Now, if I were to set up a website  
17 using that domain name --

18 A. Uh-huh (affirmative).

19 Q. -- what is on this paper doesn't guarantee that  
20 the same person that owns this domain name is the person  
21 that's controlling that Website?

22 A. Exactly. The Website and the domain name are  
23 two separate different things. You can create a Website  
24 and name it Agaricus.net as a Website name, but does not  
25 necessarily have the domain name to attach to it. So you

1 can have a Webmaster build a website around a domain  
2 name, but if you don't have access or don't have the  
3 domain name, you won't be able to use it for that  
4 Website. I'm not sure if I'm making myself clear.

5 Q. So, in other words, somebody else couldn't come  
6 in and create a Website on a domain name that is not  
7 theirs; is that correct?

8 A. Create a domain name?

9 Q. Okay. Let's say, let's say I wanted to set up a  
10 Website named Agaricus.net.

11 A. Uh-huh (affirmative).

12 Q. And I don't own, I don't own that. I don't own  
13 the domain name. I'm not the registrant. Am I  
14 prohibited from doing that? How would I be blocked from  
15 doing that?

16 A. Well, like I said, you can build a Website and  
17 as a Website title you can just, you can use Agaricus or  
18 Agaricus.net, but if you don't have access to the domain  
19 name or if you don't own the domain, you would have no  
20 way to access the domain account. You won't be able to  
21 link that domain name with the Website you built for it.

22 So if someone, for instance, if you would build  
23 a Website for Agaricus.net and wanted to link that  
24 Website with the domain name and you don't have  
25 credentials to enter our system and make such changes,

1 you won't be able to.

2 MS. BOLTON: Okay. That's all I have.

3 MR. VAN HORN: Pablo, we really appreciate your  
4 help today.

5 THE WITNESS: Okay. No worries. If anything  
6 else comes up, I'll be more than happy to assist you.  
7 Again, I'm here to 2:00 Pacific. So if anything else  
8 comes up, feel free to give me a call; okay?

9 MR. VAN HORN: Hopefully we'll stay out of your  
10 hair.

11 MS. BOLTON: Pablo, this is Barbara again. Are  
12 you sending -- what documents are you going to be sending  
13 in compliance with this? Are you going to send us a log  
14 of the Web changes?

15 THE WITNESS: I can do so. However, I don't  
16 think you'll be able to use them like for anything  
17 because the log that we have does not reflect the changes  
18 that were made, like in terms of who, who the person was  
19 before it and after the changes. Like, everything in our  
20 logs is just -- it's just like a code that shows change,  
21 but it doesn't show -- if Matthew was the administrator  
22 of the domain name before the change, and then afterwards  
23 you were the administrator of the domain name, we won't  
24 be able to know that. This is just an example that I'm  
25 using. We won't be able to know that, to know that or

1 you won't be able to note it, because it's just, it's all  
2 like numbers.

3 MR. VAN HORN: Can I ask you this? Can you note  
4 from your log who made the change or what e-mail address  
5 the directive came from to make the change?

6 THE WITNESS: Yeah. Actually, I can send you  
7 where -- the IP address where whoever made the changes is  
8 connected from. However, since it's been a while since  
9 the changes were made, I'm not sure if they are still  
10 using the same IP, especially if they are on Dynamic DNS.

11 MR. VAN HORN: If you can do that, that would be  
12 a great help.

13 THE WITNESS: I'll go ahead and put that on.  
14 I'll just add a second page to the document basically  
15 explaining when the last time that the records of those  
16 domain names were updated, the address where whoever made  
17 the changes are connected from and the cover head, the  
18 cover letter for the document, basically stating when the  
19 document was generated.

20 MR. VAN HORN: Okay. That's perfect. Pablo?

21 THE WITNESS: Yes, I'm here.

22 MR. VAN HORN: Well, hold on.

23 MS. BOLTON: He's got to certify it.

24 THE WITNESS: I'm sorry. You're breaking up.

25 MR. VAN HORN: No, stand by.

1 THE WITNESS: So would it be better --

2 MR. VAN HORN: Pablo, stand by. I'm reading the  
3 rule here to figure out exactly how you need to respond  
4 to this thing.

5 THE WITNESS: Oh, okay.

6 MR. VAN HORN: Hold on.

7 THE WITNESS: Sure.

8 MR. VAN HORN: Hey, Pablo.

9 THE WITNESS: Yes.

10 MR. VAN HORN: That letter, that little  
11 transmittal letter, where you're saying that you're  
12 sending this responsive of the, you know, responsive to  
13 the Subpoena.

14 THE WITNESS: Uh-huh (affirmative).

15 MR. VAN HORN: I should suggest some language.

16 MS. BOLTON: Just say under penalty of perjury.  
17 It's not like a declaration, but it's a -- yeah.

18 MR. VAN HORN: I provide this information under  
19 penalty of perjury?

20 MS. BOLTON: Or he can just say I swear the  
21 truth and accuracy of this information under penalty of  
22 perjury.

23 MR. VAN HORN: Pablo, you may just want to jot  
24 this down, but you know the bottom of your transmittal  
25 letter?

1 THE WITNESS: Uh-huh (affirmative).

2 MR. VAN HORN: Just say -- just write out where  
3 you would sign it, where you would be signing off on it.  
4 Just write, I swear to the truthfulness of this  
5 information and then sign it. And if you can, I don't  
6 know if you're downtown San Diego or whatever, but if you  
7 can get that notarized. If you can get your signature  
8 notarized. Is that too much?

9 THE WITNESS: So let me see. You need me at the  
10 bottom before my signature, you need me to include, I  
11 swear?

12 MR. VAN HORN: I swear to the accuracy and  
13 truthfulness of this information. Is that fair? Does  
14 that work, Barbara?

15 MS. BOLTON: Why not just go to their legal  
16 department.

17 THE WITNESS: All right.

18 MR. VAN HORN: Do y'all have an in-house lawyer?

19 THE WITNESS: We do, however, they are not in  
20 our office.

21 MR. VAN HORN: You have outside counsel. I hear  
22 you. Hey, just put on the Subpoena -- I mean, just put  
23 on the letter, just say I swear -- are you going to write  
24 this down? You ready?

25 THE WITNESS: Yes. I'm writing it down.

1 MR. VAN HORN: I swear to the truthfulness of  
2 this information and then have that -- then sign it in  
3 front of a notary.

4 THE WITNESS: Okay.

5 MR. VAN HORN: So don't sign it and then go to  
6 your notary. Just walk across the street to your bank or  
7 whatever you got down there.

8 THE WITNESS: Yeah, I will do that.

9 MR. VAN HORN: All right, man. Again, I really  
10 appreciate your time.

11 THE WITNESS: Okay. No worries.

12 MR. VAN HORN: Say your address on the record.  
13 Hey, Pablo. Are you at -- you're at 1484 Danielson  
14 Street?

15 THE WITNESS: That is correct.

16 MR. VAN HORN: All right. That's fine.

17 (Unsworn statement concluded at 3:52 p.m.)  
18  
19  
20  
21  
22  
23  
24  
25



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25


## CERTIFICATION OF REPORTER

DOCKET/FILE NUMBER: 9330

CASE TITLE: GEMTRONICS, INC., and WILLIAM H. ISELY

I, HEREBY CERTIFY that the transcript contained herein is a full and accurate transcript of the notes taken by me at the telephonic unsworn statement on the above cause to the best of my knowledge and belief.

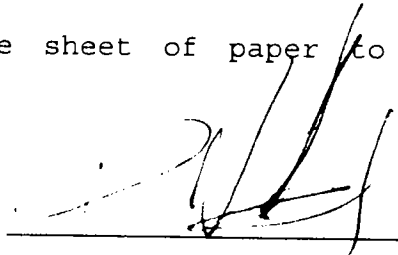
DATED: February 11, 2009

  
\_\_\_\_\_  
MARY K. HUTH-STEPP, RPR  
Notary Public Number 20042390053  
State of North Carolina

**CERTIFICATE OF DEPONENT**


I hereby certify that I have read and examined the foregoing transcript, and the same is a true and accurate record of the testimony given by me.

Any additions or corrections that I feel are necessary, I will attach on a separate sheet of paper to the original transcript.

  
\_\_\_\_\_

**WITNESS NAME**

I hereby certify that the individual representing himself/herself to be the above-named individual, appeared before me this 2nd day of March, 2009, and executed the above certificate in my presence.

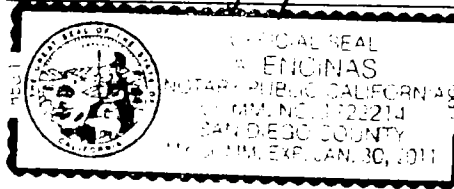
  
\_\_\_\_\_

**NOTARY PUBLIC IN AND FOR**

San Diego, CA

MY COMMISSION EXPIRES:

1.30.2011



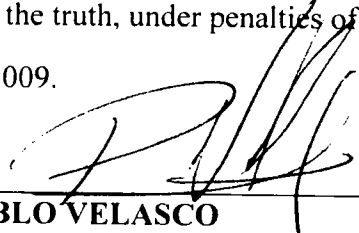
OATH OF DEPONENT

STATE OF CALIFORNIA )  
 ) SS.  
COUNTY OF )


PABLO VELASCO, being first duly sworn, according to law, deposes and says:

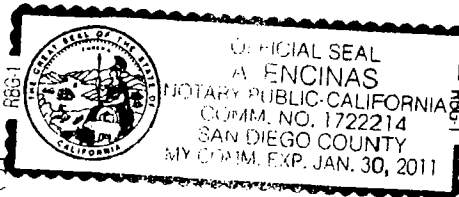
That I am the Deponent who gave testimony by way of telephonic deposition taken on February 4, 2009, in the matter entitled *In the Matter of: Gemtronics, Inc., et al.*, Docket No. 9330, Federal Trade Commission. That I have read the deposition attached hereto as transcribed by *For The Record, Inc.* and do solemnly swear that the testimony I gave in said Deposition was the truth, the whole truth and nothing but the truth, under penalties of perjury.

This the 4 day of February, 2009.

  
PABLO VELASCO

SUBSCRIBED and SWORN to before me  
this 4th day of ~~February~~ March, 2009.

  
Signature NOTARY PUBLIC



A. Encinas  
Typewritten Name NOTARY PUBLIC

My Commission Expires: 1. 30. 2011



# SUBPOENA DUCES TECUM

Issued Pursuant to Rule 3.34(b), 16 C.F.R. § 3.34(b)(1997)

1. TO ATTN: Pablo Velasco, for Tierra.net (d/b/a DomainDiscover) 14284 Danielson Street Poway, CA 92064	2. FROM  UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION
---------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------

This subpoena requires you to produce and permit inspection and copying of designated books, documents (as defined in Rule 3.34(b)), or tangible things - or to permit inspection of premises - at the date and time specified in Item 5, at the request of Counsel listed in Item 9, in the proceeding described in Item 6.

3. PLACE OF PRODUCTION OR INSPECTION Van Horn Law Firm, PLLC 16 West Martin Street, Suite 700 Raleigh NC 27601 Fax: (919) 835-2121	4. MATERIAL WILL BE PRODUCED TO Attorney Matthew I. Van Horn  5. DATE AND TIME OF PRODUCTION OR INSPECTION February 4, 2009 at 10:00 am
------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------

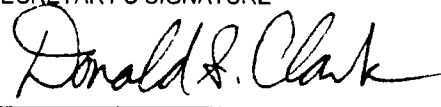
6. SUBJECT OF PROCEEDING

In the Matter of Gemtronics, Inc., et al., Docket No. 9330

7. MATERIAL TO BE PRODUCED

See attached Exhibit "A"

8. ADMINISTRATIVE LAW JUDGE  The Honorable D. Michael Chappell  Federal Trade Commission Washington, D.C. 20580	9. COUNSEL REQUESTING SUBPOENA  Matthew I. Van Horn 16 West Martin Street, Suite 700 Raleigh, NC 27601
--------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------

DATE ISSUED <i>December 17, 2008</i>	SECRETARY'S SIGNATURE 
-----------------------------------------	--------------------------------------------------------------------------------------------------------------

### GENERAL INSTRUCTIONS

#### APPEARANCE

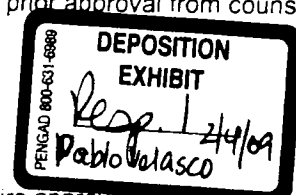
The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

#### MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed with the Secretary of the Federal Trade Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 9, and upon all other parties prescribed by the Rules of Practice.

#### TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to counsel listed in Item 9 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from counsel listed in Item 9.



This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

**Exhibit "A"**  
**to Subpoena issued to Tierra.net (d/b/a DomainDiscovery) Attn. Pablo Velasco**

1. Any and all documents, notes, phone slips, memoranda, electronically stored information (including but not limited to email, word processing, data base records, scanned or graphically stored images, electronic notes, etc.) or any other items in your possession or the possession of Tierra.net (d/b/a DomainDiscovery), including any of its offices, which in any way relate to the domain agaricus.net, the company Agarix International, or the individual George Otto.
  
2. Any and all documents, notes, phone slips, memoranda, electronically stored information (including but not limited to email, word processing, data base records, scanned or graphically stored images, electronic notes, etc.) or any other items in your possession or the possession of Tierra.net (d/b/a DomainDiscovery), including any of its offices, which in any way relate to the company Gemtronics, Inc. or the individual William H. Isely.
  
3. Any and all documents, notes, phone slips, memoranda, electronically stored information (including but not limited to email, word processing, data base records, scanned or graphically stored images, electronic notes, etc.) or any other items in your possession or the possession of Tierra.net (d/b/a DomainDiscovery), including any of its offices, which in any way relate to the domain agaricus.net, the company Gemtronics, Inc. or the individual William H. Isely, which have ever been provided to the United States Federal Trade Commission pursuant to a Subpoena or otherwise.

Note: Please indicate if you do not possess any information which is responsive to either item.

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 Rosch

PUBLIC

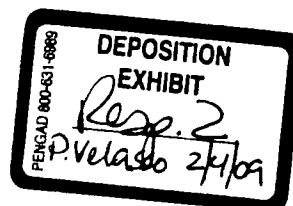
DOCKET NO. 9330

In the Matter of  
  
GEMTRONICS, INC.,  
a corporation, and  
  
WILLIAM H. ISELY,  
individually and as the owner  
of Gemtronics, Inc.

NOTICE OF DEPOSITION  
OF PABLO VELASCO

To: Pablo Velasco and/or Custodian of Records of:  
c/o Tierra.net (d/b/a DomainDiscover)  
14284 Danielson Street  
Poway, California 92064

YOU ARE HEREBY notified that on Wednesday, February 4, 2009, beginning at 10:00 o'clock a.m., EST, the undersigned will take the deposition of Pablo Velasco. The deposition will be taken before a notary public or some other officer duly authorized by law to take depositions, at the Law Office of Matthew I. Van Horn, 16 West Martin Street, Suite 700, Raleigh, NC 27601, and may also be taken by videotape, telephonically and by other means.



The oral deposition will continue from day to day until its completion, or on dates otherwise mutually agreeable to the parties and their counsel.

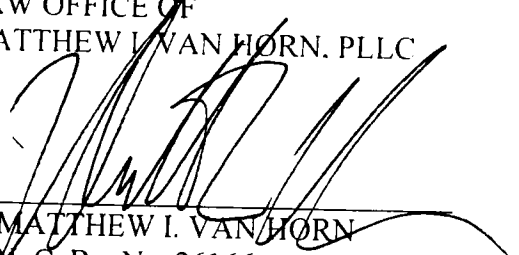
It is required that documents be produced at this deposition pursuant to the Subpoena Duces Tecum heretofore served upon you, which is attached hereto as Exhibit "A" and incorporated herein by referene.

This the 27<sup>th</sup> day of January, 2009.

Respectfully Submitted,

LAW OFFICE OF  
MATTHEW I. VAN HORN, PLLC

By



MATTHEW I. VAN HORN  
N. C. Bar No. 26166  
16 West Martin St., Suite 700  
Raleigh, NC 27601  
Telephone: (919) 835-0880  
Facsimile: (919) 835-2121


*Attorney for Respondents*

**CERTIFICATE OF SERVICE**

This is to certify that the undersigned has this date served this **NOTICE OF DEPOSITION AND THE ATTACHED SUBPOENA DUCES TECUM** 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.

Ms. Barbara E. Bolton  
Federal Trade Commission  
225 Peachtree Street, N.E.  
Suite 1500  
Atlanta, GA 30303

This the 27<sup>th</sup> day of January, 2009.

  
\_\_\_\_\_  
MATTHEW I. VAN HORN



To whom it may concern,

I hereby confirm that the information listed for the domain **agaricus.net** is legitimate and is listed below:

**Registrant:**

Agarix International  
Br 101, KM 22,5  
Joinville, SC 89239500  
Brazil  
47 3001 5260  
gotto@takesun.com.br

Domain Name: AGARICUS.NET

**Administrative Contact, Technical Contact, Zone Contact:**

Takesun  
Attn: George Otto  
Br 101, KM 22,5  
Joinville, SC 89239500  
Brazil  
47 3001 5260  
gotto@takesun.com.br

Domain created on 13-Jun-1998  
Domain expires on 12-Jun-2009  
Last updated on 15-Apr-2008

Domain servers in listed order:

DNS1.SUPREMEDNS.COM  
DNS2.SUPREMEDNS.COM

Sincerely,  
Pablo Velasco  
TierraNet Customer Service Supervisor

