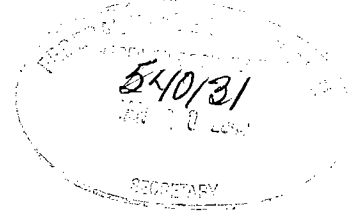


UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES



_____)
In the Matter of)
)
GEMTRONICS, INC.,)
a corporation, and)
)
WILLIAM H. ISELY,)
Respondents.)
_____)

DOCKET NO. 9330

**ORDER GRANTING COMPLAINT COUNSEL'S MOTION TO COMPEL
ANSWERS TO INTERROGATORIES, PRODUCTION OF DOCUMENTS, AND
DEPOSITION OF RESPONDENT ISELY**

I.

On January 22, 2009, pursuant to Commission Rule 3.38, Complaint Counsel submitted a Motion and Memorandum to Compel Answers to Interrogatories, Production of Documents, and Deposition of Respondent Isely ("Motion"). On January 23, 2009, Respondents submitted Respondents' Counsel's Reply and Opposition to the Motion ("Opposition"). For the following reasons, the Motion is GRANTED.

II.

Complaint Counsel states that it served Interrogatories and Requests for Production of Documents on both Respondents on December 16, 2008, with responses due January 6, 2009. *See* Scheduling Order, ¶ 10. Complaint Counsel further states that Respondents' counsel sought and obtained an extension to January 16, but that despite assurances from Respondents' counsel that responses would be forwarded on January 16 by overnight mail, nothing was received by Complaint Counsel until January 20. On January 20, according to the Motion, Complaint Counsel received a partially responsive package of documents, no written response or objections to the document requests, and no answers to interrogatories, from either Respondent.

Regarding the deposition of Respondent Isely, Complaint Counsel contends that Respondents' counsel was uncooperative in setting a date, and that the date set by Complaint Counsel in its Notice of Deposition, as of the date of the Motion, had been postponed twice by Respondents. According to correspondence sent to the Court dated

January 26, 2009, Respondents' counsel was to confirm a "rescheduling of the deposition of Respondent Isely to take place on Monday, February 2 or Tuesday, February 3, 2009."

Complaint Counsel contends that the discovery requests and deposition are relevant and within the proper scope of discovery, and that Respondents have not submitted any objections to the discovery, but rather Respondents' counsel has continually assured Complaint Counsel that discovery responses would be received and the deposition would take place. Because of past delays despite assurances, Complaint Counsel urges that a court order is necessary to ensure Respondents' compliance.

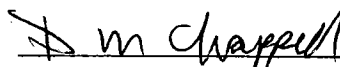
Respondents' counsel does not dispute the history of the delays, and concedes that Complaint Counsel is entitled to both the deposition and the responses to written discovery. Respondents' counsel contends, however, that he is working in good faith to gather all responsive documents and prepare all written responses – an effort he characterizes as "no small task." He contends that the deposition has been delayed due to a variety of factors, ranging from inclement weather, Respondent Isely's age and home situation, and the birth of Respondents' counsel's new baby. Respondents' counsel agrees in the Opposition to provide all responses to written discovery within the "proper time" before the deposition of Respondent Isely.

III.

There is no dispute that Complaint Counsel is entitled to the requested discovery or that Respondents have failed to provide full and complete discovery within the time required under the Scheduling Order. Respondents' Counsel represents that he is agreeable to providing discovery by a certain date. Given the history of delays, it is appropriate to incorporate that agreement into an Order. Accordingly, it is hereby ordered as follows:

1. Complaint Counsel's Motion to Compel is granted.
2. Respondents shall provide full and complete responses to written discovery, including production of documents, no later than 5:00 p.m. on the day before the day of commencement of the deposition of Respondent Isely.
3. Respondent Isely shall be produced for deposition, at a mutually convenient date and time; provided however that the deposition shall be concluded no later than February 5, 2009.

ORDERED:



D. Michael Chappell
Administrative Law Judge

Dated: January 28, 2009