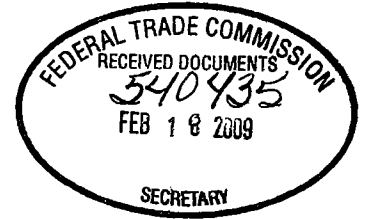


UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES



In the Matter of)
)
)

GEMTRONICS, INC.,)
a corporation, and)

WILLIAM H. ISELY,)
Respondents.)
_____)

DOCKET NO. 9330

**ORDER ON COMPLAINT COUNSEL'S MOTION
TO AMEND THE SCHEDULING ORDER**

I.

On February 17, 2009, Complaint Counsel submitted a motion to amend the Scheduling Order. Complaint Counsel represents that Respondents do not oppose the motion.

For the reasons set forth below, Complaint Counsel's motion to amend the Scheduling Order is GRANTED in part.

II.

Complaint Counsel seeks to extend the deadline for filing motions for summary decisions to March 16, 2009 and proposes to extend by twenty days the remaining deadlines set forth in the Scheduling Order. The Scheduling Order in this case, issued on October 28, 2008, sets February 24, 2009 as the deadline for filing motions for summary decision and April 28, 2009 as the trial start date.

The Scheduling Order may be modified upon a showing of good cause. FTC Rule 3.21. Good cause exists when a deadline in a scheduling order "cannot be met despite the diligence of the party seeking the extension." *In re Chicago Bridge & Iron Co.*, 2002 FTC LEXIS 69, *2 (2002). Complaint Counsel states that Respondents did not produce their Answers to Interrogatories until February 3, 2009, that the deposition of Respondent Isely was not conducted until February 4, 2009, and that, because of an accident suffered by the court reporter, the transcript of that deposition was not made available to Complaint Counsel until February 13, 2009. Complaint Counsel asserts that, while it has complied with the dates set forth in the

Scheduling Order, Complaint Counsel has been hampered in its efforts to move this case forward by Respondents' postponements of discovery.

Complaint Counsel has demonstrated good cause for an extension of the deadlines set forth in the Scheduling Order. However, Complaint Counsel has not demonstrated that an additional twenty days for all the remaining deadlines, especially the trial date, is necessary. The deadline for filing motions for summary decision is extended to March 16, 2009 and the remaining dates in the Scheduling Order are hereby extended as set forth below. All additional provisions in the October 28, 2008 Scheduling Order remain in effect.

- March 16, 2009 - Deadline for filing motions for summary decision.
- March 16, 2009 - Complaint Counsel provides to Respondents' counsel its final proposed witness and exhibit lists, including designated testimony to be presented by deposition, copies of all exhibits (except for demonstrative, illustrative or summary exhibits), and a brief summary of the testimony of each witness.

Complaint Counsel serves courtesy copies on ALJ of its final proposed witness and exhibit lists and a brief summary of the testimony of each witness.
- March 23, 2009 - Respondents' Counsel provides to Complaint Counsel its final proposed witness and exhibit lists, including designated testimony to be presented by deposition and copies of all exhibits (except for demonstrative, illustrative or summary exhibits), and a brief summary of the testimony of each witness.


Respondents' Counsel serves courtesy copies on ALJ its final proposed witness and exhibit lists and a brief summary of the testimony of each witness.
- March 25, 2009 - Parties that intend to offer confidential materials of an opposing party or non-party as evidence at the hearing must provide notice to the opposing party or non-party, pursuant to 16 C.F.R. § 3.45(b).
- March 26, 2009 - Deadline for filing responses to motions for summary decision.
- March 30, 2009 - Deadline for filing motions *in limine* and motions to strike.
- April 3, 2009 - Deadline for filing motions for *in camera* treatment of proposed trial exhibits.

- April 10, 2009 - Deadline for filing responses to motions *in limine* and motions to strike.
- April 10, 2009 - Deadline for filing responses to motions for *in camera* treatment of proposed trial exhibits.
- April 16, 2009 - Complaint Counsel files pretrial brief, to include proposed findings of fact and conclusions of law. To the extent possible, findings of fact shall be supported by document citations and/or deposition citations. Conclusions of law shall be supported by legal authority.
- April 20, 2009 - Exchange and serve courtesy copy on ALJ objections to final proposed witness lists and exhibit lists. Exchange objections to the designated testimony to be presented by deposition and counter designations.
- April 24, 2009 - Exchange proposed stipulations of law, facts, and authenticity.
- April 27, 2009 - Respondents' Counsel files pretrial brief, to include proposed findings of fact and conclusions of law. To the extent possible, findings of fact shall be supported by document citations and/or deposition citations. Conclusions of law shall be supported by legal authority.
- May 1, 2009 - File final stipulations of law, facts, and authenticity. Any subsequent stipulations may be offered as agreed by the parties.
- May 5, 2009 - Final prehearing conference to begin at 10:00 a.m. in room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

The parties are to meet and confer prior to the conference regarding trial logistics and proposed stipulations of law, facts, and authenticity and any designated deposition testimony. Counsel may present any objections to the final proposed witness lists and exhibits, including the designated testimony to be presented by deposition. Trial exhibits will be admitted or excluded to the extent practicable.
- May 5, 2009 - Commencement of hearing to begin immediately after the final prehearing conference in room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, NW, Washington, DC 20580. (The date of the commencement of the hearing and other deadlines

listed above are contingent upon scheduling constraints in other dockets. Should the dates change, the parties will be notified as soon as practicable.)

ORDERED:



D. Michael Chappell
Administrative Law Judge

Date: February 17, 2009