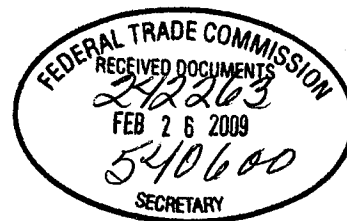


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February 9, 2009

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

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

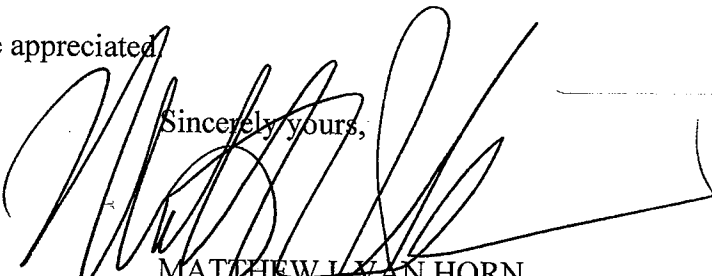
Dear Mr. Clark:

Enclosed herewith please find the original and one copy of Respondents' Counsel's Status Report and Respondents' Counsel's Modified Certificate of Service Regarding Respondents' Counsel's Status Report for filing in the above captioned matter.

The Modified Certificate of Service pertaining to the Status Report is being filed since the document was in fact served electronically on the date indicated in the original Certificate of Service (February 6, 2009); however, paper copies were not mailed until February 9, 2009.

Your cooperation will be appreciated.

Sincerely yours,



MATTHEW I. VAN HORN

MIVH:lr

Enclosures:
As Stated

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

ORIGINAL



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.

RESPONDENTS' COUNSEL'S STATUS REPORT

Pursuant to the Order Requiring Status Report entered on the 28th day of January, 2009, by the Honorable D. Michael Chappell, Administrative Law Judge, Respondents' Counsel hereby states as follows.

OUTSTANDING DISCOVERY AND DISCOVERY DISPUTES

Respondents have provided full responses to all Interrogatories propounded by Complaint Counsel which are not objectionable. Likewise, Respondents have provided full responses to all Requests for Documents propounded by Complaint Counsel which are not objectionable. Respondents have objected to all or portions of Interrogatories and Requests for Documents which are objectionable. Respondents' Counsel will continue to supplement its responses to Complaint Counsel's written discovery should further information become available.

(a) Gemtronics, Inc.---As Complaint Counsel has been made aware since the inception of this case, Respondent Gemtronics, Inc. is a shell corporation which was formed by Respondent William Isely when he anticipated doing business through Gemtronics, Inc. However, neither Respondent Isely nor any one else has ever conducted any business through Gemtronics, Inc. Gemtronics, Inc. is an empty shell corporation which has never issued stock and never elected a board of directors or officers. These circumstances as to the status of Gemtronics, Inc. have been explained to Complaint Counsel informally several times and in Respondents' Answer to the Complaint, in Respondents' responses to Complaint Counsel's written discovery and through sworn testimony given by Respondent Isely. Based on the status of Gemtronics, Inc., Gemtronics, Inc. has no documents to produce except corporate formation documents. The corporate formation documents were provided to Complaint Counsel at the inception of this case. Likewise, because Gemtronics, Inc. has never been an active entity, it has virtually no information to provide in response to the Interrogatories propounded upon it. All of the evidence and documents which Complaint Counsel seeks to obtain as related to Gemtronics, Inc. can be and has been obtained through Respondent Isely.

(b) William H. Isely-----Respondent Isely has fully responded to or rightfully objected to all Interrogatories and Requests for Documents propounded on Respondent Isely. Moreover, his deposition has been taken, which appears to eliminate the need for Complaint Counsel to still seek to obtain responses to Mr. Isely's Interrogatories. In other words, at the deposition of Respondent Isely, Complaint Counsel had the opportunity to ask and obtain answers from Respondent Isely to the very same Interrogatories served on Respondent Isely. Respondent Isely has rightfully objected to Complaint Counsel's Interrogatory 14 and Request for Production 16. In short, Complaint Counsel seeks to have Respondent Isely produce all records related to and identify the names and contact information for all of his customers who

purchased RAAX11. This information identifies third parties who had an expectation of privacy when they legally purchased products from Respondent Isely. When weighing the privacy of these third parties against the fact that the information sought has no probative value as to the liability of the Respondents, the information sought in Complaint Counsel's subject interrogatory and document request is not discoverable under Rule 3.31(c).

Outstanding discovery-----Respondents' Counsel would like to serve three third-party *subpoena duces tecum* to addition domain registry companies for documents. Respondents' Counsel respectfully requests two weeks from the date of this Status Report to serve the *subpoena*.

SETTLEMENT NEGOTIATIONS AND THE POSITION OF THE RESPONDENTS

The essence of Complaint Counsel's allegations is that the Respondents unlawfully disseminated advertisements for the herbal product RAAX11 through an internet website, www.agaricus.com. In addition, the Complaint Counsel has alleged that in concert with unlawfully advertising RAAX11, Respondents unlawfully offered to sell, sold and distributed RAAX11. Respondents deny these allegations.

However, in response to Complaint Counsel's demands and in an effort to compromise, the Respondents ceased entirely offering to sell, selling, distributing or advertising the product RAAX11. In short, as result of compromising with Complaint Counsel, Respondent Isely has ceased having anything to do with the vitamin and herbal business. It is noteworthy that Respondent Isely established a quality reputation and experienced not one complaint in the vitamin supplement business since starting it approximately 30 years ago.

On the other hand, Complaint Counsel has not offered one compromise since filing the Complaint. As the Court is aware, attached to the Complaint is a proposed Order which Complaint Counsel prepared for the Commission to enter. The Complaint states that the

Complaint Counsel's proposed Order should be issued "if the facts are found to be as alleged in the complaint." See Complaint, p. 5. The evidence and testimony produced through discovery has shown that virtually all the facts are not as they are alleged in the Complaint. Yet, Complaint Counsel has not agreed to change one allegation within the proposed Order.

For instance, as was explained to Complaint Counsel from the outset of this case and as was discussed in open court at the Scheduling Conference on October 28, 2008, the alleged offending website, www.agaricus.com, is owned and controlled by a third party named George K. Otto, not the Respondents. This information was confirmed through document production and the depositions of Respondent Isely and Mr. Pablo Velasco, a representative of the domain company which leases the alleged offending website. However, Complaint Counsel has not made one concession as to what is alleged within the Complaint or in the proposed Order.

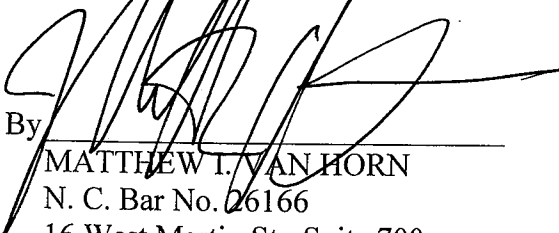
In addition, when discovery commenced, Complaint Counsel represented that if certain information was provided by the Respondents then Complaint Counsel could evaluate the case for settlement and offer a settlement alternative. For instance, Complaint Counsel requested that Respondent Isely provide his personal financial information. In addition, Complaint Counsel requested that Respondent Isely identify how many bottles of the herbal product RAAX11 he has sold. Respondent Isely provided his financial information before Complaint Counsel served any written discovery and has identified the number of bottle of RAAX! sold. However, no settlement offered has been proffered by Complaint Counsel.

Respondents Position----Without conceding any liability as to the allegations made in the Complaint, Respondents have offered to and are willing to enter into an Order enjoining them from ever engaging in the business of advertising, selling or distributing the herbal product RAAX11. At this time, since no alternative has been provided, Respondent Isely is not inclined to provide Complaint Counsel with the names and contact information of his customers. Also, at

this time Respondent Isely is not willing to pay alleged restitution.

Respectfully submitted,

LAW OFFICE OF
MATTHEW I. VAN HORN, PLLC

A large, stylized handwritten signature in black ink, appearing to read 'M. Van Horn', is written over a horizontal line.

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

This the 6th day of February, 2009.

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this **RESPONDENTS'**
COUSNEL'S STATUS REPORT 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

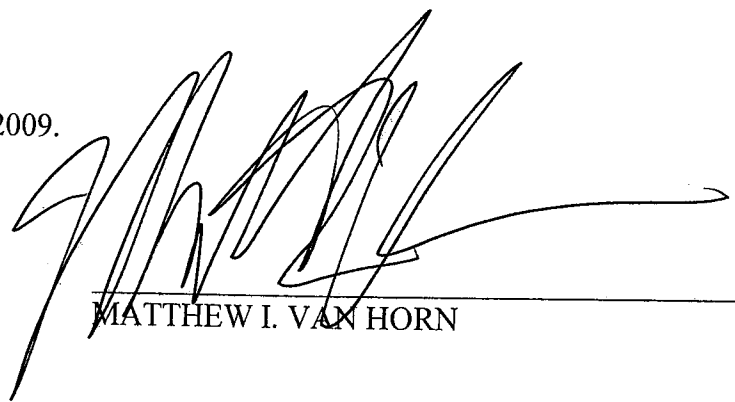
*The original and one (1) paper copy via United States mail delivery and one (1) electronic copy
via e-mail:*

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:

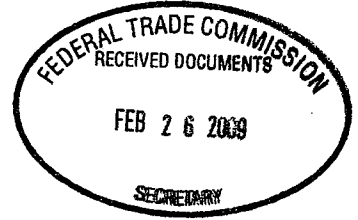
Ms. Barbara E. Bolton
Federal Trade Commission
225 Peachtree Street, N.E.
Suite 1500
Atlanta, GA 30303

This the 6th day of February, 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

In the Matter of
GEMTRONICS, INC.,
a corporation, and
WILLIAM H. ISELY,
individually and as the owner
of Gemtronics, Inc.

**RESPONDENTS' COUNSEL'S MODIFIED
CERTIFICATE OF SERVICE REGARDING
RESPONDENTS' COUNSEL'S STATUS REPORT**

This is to certify that on the 6th day of February, 2009, the undersigned served **RESPONDENTS' COUNSEL'S STATUS REPORT** in the above entitled action upon all other parties to this cause by electronic mail properly addressed to the attorney or attorneys for the parties as listed below.

This is to further certify that on the 9th day of February, 2009, the undersigned served **RESPONDENTS' COUNSEL'S STATUS REPORT** in the above entitled action upon all other parties to this cause by depositing a copy thereof 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 9th day of February, 2009.


MATTHEW I. VAN HORN