

MATTHEW I. VAN HORN
PROFESSIONAL LIMITED LIABILITY COMPANY
ATTORNEY AT LAW

16 WEST MARTIN STREET, SUITE 700
RALEIGH, NORTH CAROLINA 27601

TELEPHONE (919) 835-0880
FACSIMILE (919) 835-2121

POST OFFICE BOX 1309
RALEIGH, NORTH CAROLINA 27602

matthew@vanhornlawfirm.com

also licenced in VA, DC and OK

February 16, 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:

Per our telephone conversation of last Friday, enclosed herewith please find an original and one copy of Respondents' Counsel's Reply and Opposition to Complaint Counsel's Motion and Memorandum to Compel Answers to Interrogatories, Production of Documents, and Deposition of Respondent Isely which was initially served on January 23, 2009. I left the date of signature for the pleading and Certificate of Service as originally submitted.

Also enclosed is an original and one copy of Respondents' Counsel's Reply to Complaint Counsel's Opposition to Respondents' Motion for Modification of Scheduling Order. Again, I have left the date of signature for the pleading and Certificate of Service as originally submitted.

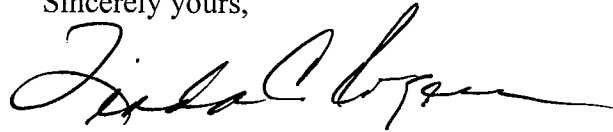
Would you be kind enough to please file the same. I will call you in a couple of days to make sure this was received. Any documents sent to you and/or the judge requiring overnight delivery in the future will be sent via Federal Express or Post Office Express mail instead of UPS delivery. We were very surprised that the documents were not received when originally sent and apologize for any inconvenience this has caused your office and Judge Chappell.

Honorable Donald S. Clark
Page -two-

February 16, 2009

Your assistance and kindness in this matter has been very much appreciated.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Linda C. Rogers", written in a cursive style.

LINDA C. ROGERS
Paralegal to MATTHEW I. VAN HORN

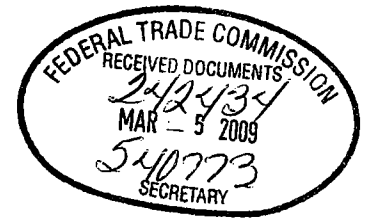
MIVH:lr

cc: Honorable D. Michael Chappell, w/encls.
Chief Administrative Law Judge (Acting)

Ms. Barbara E. Bolton, w/o encls.

Enclosures:
As Stated

ORIGINAL



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 REPLY AND OPPOSITION TO
COMPLAINT COUNSEL'S MOTION AND MEMORANDUM TO COMPEL ANSWERS
TO INTERROGATORIES, PRODUCTION OF DOCUMENTS, AND DEPOSITION OF
RESPONDENT ISELY

Respondents GEMTRONICS, INC. and WILLIAM H. ISELY, by and through undersigned counsel, respectfully submit their reply and opposition to Complaint Counsel's Motion and Memorandum to Compel Answers to Interrogatories, Production of Documents, and Deposition of Respondent Isely and state as follows:

Complaint Counsel is seeking an Order compelling Respondents' to fully respond to Complaint Counsel's written discovery and the deposition of Respondent William H. Isely. Respondents are dutifully completing responses to the written discovery propounded on them. In addition, William Isely has no reservations about providing his testimony under oath. The responses to written discovery and deposition of William Isely are matters that Complaint

Counsel is entitled to. And, but for false allegations made in Complaint Counsel's Motion to Compel, Respondents would have not likely responded to Complaint Counsel's Motion to Compel. However, Respondents respectfully request that the Court consider the following before ruling on Complaint Counsel's Motion.

First, the FTC states in its Motion that Respondents' Counsel stated to the Complaint Counsel that all that we gave the FTC in response to discovery is all that they will receive. In short, this statement is false. We have informed the FTC regularly that we that we were still gathering evidence responsive to Complaint Counsel's written discovery requests. Responding to Complaint Counsel's written is not a small task in that Counsel's written discovery seeks much information that is not relevant to allegations in the Complaint. Moreover, the information sought is for a lengthy period of time and the FTC is seeking very detailed items which, again, lack a nexus to its allegations in the Complaint.

With respect to the subject deposition of William H. Isely, Complaint Counsel has reported an inaccurate account of the attempts to schedule the deposition. Initially, after receiving a Notice of Deposition form Complaint Counsel, the parties established the first hard setting for the deposition ----that hard setting was January 21, 2009. The deposition did not occur on January 21, 2009, because of inclement weather.

The undersigned telephoned Complaint Counsel early in the morning on January 20, 2009, to inform Complaint Counsel that the undersigned would not be able to attend the deposition because North Carolina (particularly Raleigh and the western portion of the state where the deposition was to occur) had received approximately 6 inches of snow. I reported that it would be unsafe for the undersigned, counsel for the FTC or the deponent to travel. In addition, the deponent Respondent William Isely is 83 years old and lives alone with his wife

who exhibits signs of dementia. It is very difficult for Respondent William Isely to leave his wife home alone---let alone in snow conditions.

Moreover, Respondents' Counsel's wife is scheduled to go into labor with their first child on January 24, 2009. Respondent Counsel and his wife no other family support and Respondents' Counsel's wife has been ordered to bed rest. Under these conditions, Respondents' Counsel has made his best effort to accommodate FTC's counsel. Respondents' Counsel and William Isely have no reservations about providing sworn testimony in a deposition. As such, the parties agreed to re-schedule the deposition for January 27, 2009---- only the first time the deposition has been re-scheduled.

Also, Respondents' Counsel takes strong issue with Complaint Counsel's statement that Respondents' Counsel or Respondents have "expressly misrepresented their intent to comply with discovery and have acted in bad faith." In short, Complaint Counsel has falsely called the Respondents' Counsel and the Respondents liars-----prejudicing the Respondents as to their credibility. Based on the above-foregoing facts, it is clear that Respondents and their counsel have been forthright and communicative with the FTC and have acted in good faith.

To the contrary, the undersigned and Respondents have been attempting to resolve all differences with the FTC and abide by the requests of the FTC. Based on the Court's recommendation at the Scheduling Conference for this case, the undersigned has expended great efforts to settle the matter and has been under the impression that he and FTC's counsel have been agreeing to delay response deadlines with the hopes of resolving this case. However, counsel for the FTC has not made one concession or compromise from what the FTC has requested in its Complaint that initiated this case.

For instance, Respondents' Counsel has explained verbally and in writing numerous times that the corporate Respondent Gemtronics, Inc. is an corporate empty shell that has never

possessed any shareholders, any officers board of director members of owner. However, Complaint Counsel still blindly demands that the individual respondent William Isely agree to commit perjury by signing a proposed Court order affirming that he is the owner of respondent Gemtronics, Inc.-----when it has been shown to the FTC's counsel several times that he is not the owner of and has no signatory authority for respondent Gemtronics, Inc.

If any acts of bad faith have occurred-----it is the FTC's counsel failure to make any offer to compromise. Even more disappointing is FTC's counsel's misrepresentation to this tribunal that the FTC has made any offers to compromise where, in fact none have been made.

Conclusion

Respondents' Counsel has utmost respect for and does not take lightly court imposed deadlines and the discovery process. Respondents' Counsel is aware of his responsibilities to timely respond to deadlines and is in good faith doing his best to accommodate the Complaint Counsel. Respondents' Counsel and his staff are working dutifully working on responses to the written discover request and are hopeful of being able to so do no later than Saturday, January 24, 2009, or at least within proper time before the deposition of William H. Isely.

In addition, Respondents' Counsel and Respondent William Isely intend to attend the presently scheduled deposition on Tuesday, January 27, 2009-----excepting the possibility that Respondents' Counsel's wife goes into labor on or prior to January 27, 2009. Based on the above-foregoing, Complaint Counsel's Motion to Compel should be denied.

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

This the 23rd day of January, 2009.

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this **RESPONDENTS'**
COUNSEL'S REPLY AND OPPOSITION TO COMPLAINT COUNSEL'S MOTION
AND MEMORANDUM TO COMPEL ANSWERS TO INTERROGATORIES,
PRODUCTION OF DOCUMENTS, AND DEPOSITION OF RESPONDENT ISELY in the
above entitled action upon all other parties to this cause as indicated below.

One (1) e-mail copy and two (2) paper copies served by overnight mail delivery to:

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

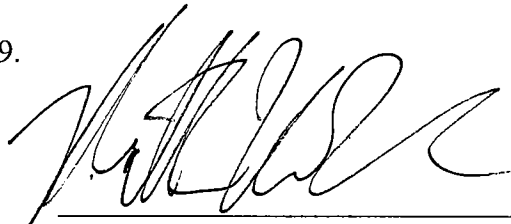
The original and one (1) paper copy via overnight delivery and one (1) electronic copy via e-mail:

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 overnight delivery to:

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

This the 23rd day of January, 2009.



MATTHEW I. VAN HORN