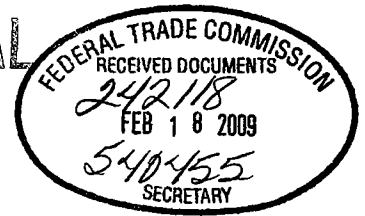


ORIGINAL



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February 2, 2009

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

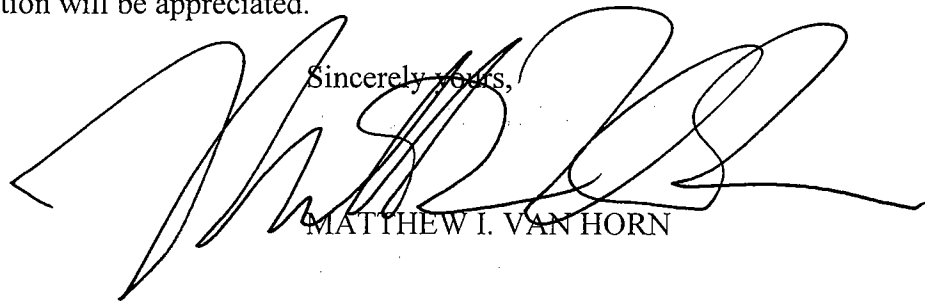
Re: Gemtronics, Inc. and William H. Isely, FTC Docket No. 9330

Dear Mr. Clark:

Enclosed herewith please find the original and one copy of Respondents' Counsel's Reply to Complaint Counsel's Opposition to Respondents' Motion for Modification of Scheduling Order. Would you be kind enough to please file the same.

Your cooperation will be appreciated.

Sincerely yours,

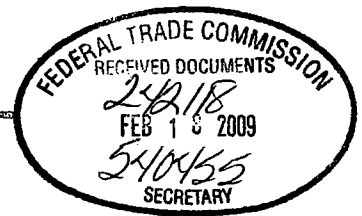


MATTHEW I. VAN HORN

MIVH:lr

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 TO
COMPLAINT COUNSEL'S OPPOSITION TO RESPONDENTS'
MOTION FOR MODIFICATION OF SCHEDULING ORDER

Respondents GEMTRONICS, INC. and WILLIAM H. ISELY, by and through undersigned counsel, respectfully submit their Reply to Complaint Counsel's Opposition to Respondents' Motion for Modification of Scheduling Order, and state as follows:

Respondents' Counsel hereby incorporates by reference their Motion for Modification of Scheduling Order as though set forth in full herein.

Respondents respectfully contend that their Motion for Modification of Scheduling Order contains more than adequate grounds for the modification sought thereby. Respondents take issue with Complaint Counsel's statement that "justification for delay was clearly foreseeable at the time the Scheduling Order was entered and any need for a further extension of time is solely attributable to Respondents' Counsel's own lack of diligence," in that Respondents' Counsel had

no way of knowing a fellow attorney in his office would suddenly and unexpectedly die (which caused not only chaos in counsel's office but also led to its relocation); Respondents' Counsel had no way of predicting a severe winter storm that was so severe the Governor of the State of North Carolina declared an emergency which delayed the deposition of William Isely; and Respondents' Counsel had no control over the timing of the birth of his first-born child. In addition, Respondents' Counsel, notwithstanding all of the above, was of the belief that he was in good-faith settlement negotiations with Complaint Counsel until that last two weeks. As a matter of fact, all deadlines up to the January 16, 2009, discovery deadline were granted by mutual consent of the parties.

As an aside, Respondents' Counsel respectfully disagrees with Complaint Counsel's definition of the aforescribed calamity as being "a myriad of seemingly petty excuses to stall and delay the progress of discovery in this matter."

As to the "issuance" of a third-party subpoena *duces tecum* "several days ago – [being] well outside the scope of the Scheduling Order," the third-party subpoena *duces tecum* was sent to the Office of the Secretary of the Federal Trade Commission before the expiration of the deadline for issuance. The subpoena was in fact issued on December 17, 2008, and "served" several days ago for appearance and production in advance of the discovery cutoff deadline.

As Complaint Counsel was informed, Respondents provided no expert witness list as required under the Scheduling Order because Respondents are not offering expert witness testimony. Likewise, counsel did not submit a revised witness list because there are no revisions to the witness list heretofore submitted.

Respondents respectfully submit that no prejudice has been suffered by any party to this action as of this time. Mr. Isely's deposition has been scheduled as agreed upon by the parties hereto for February 4, 2009. Respondents will be in compliance with this Court's Order

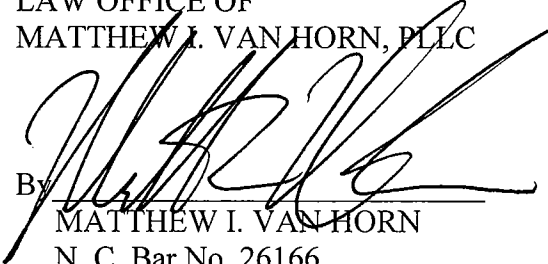
concerning discovery production. The hearing dates herein are literally unaffected. However, based on the above described events and the rescheduling of Mr. Isely's deposition, the undersigned requests an extension of the deadline for filing Requests for Summary Decision.

Respondents' Counsel is still hopeful of resolving the issues in the instant matter short of hearing. However, to exclude Respondents from establishing their defense for the scheduled hearing, which appears to be the desire of Complaint Counsel, would significantly prejudice the Respondents.

Finally, this is the first request by Respondents' Counsel for any modification of the Scheduling Order.

Respectfully Submitted:

LAW OFFICE OF
MATTHEW I. VAN HORN, PLLC

By 
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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 2nd day of February, 2009.

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this **RESPONDENTS' COUNSEL'S REPLY TO COMPLAINT COUNSEL'S OPPOSITION TO RESPONDENTS' MOTION FOR MODIFICATION OF SCHEDULING ORDER** 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 regular mail delivery to:

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

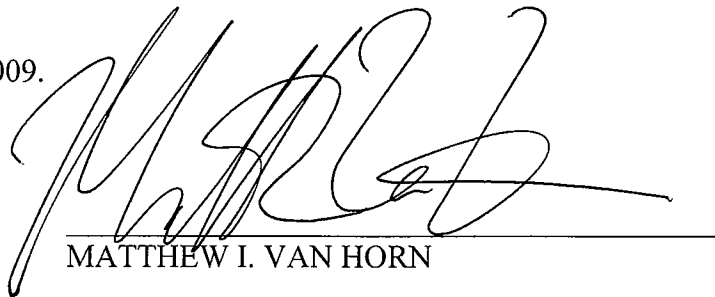
The original and one (1) paper copy via regular mail delivery and one (1) electronic copy via e-mail:

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 regular mail delivery to:

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

This the 2nd day of February, 2009.



MATTHEW I. VAN HORN