

13. According to Tierra.net (d/b/a Domain Discovery), whoever registers a domain can identify the Registrant Contact, Technical Contact, and Zone Contact as any third party chosen by the person who registers the domain. See Document production from subpoena issued to web hosting company (RX 6, 7, 23, 25 and 26); Velasco Dep., pp. 10-22.(RX.8).

14. According to Tierra.net (d/b/a Domain Discovery), a person could not create a website for the alleged offending website, www.agaricus.net, or control its contents, without access to the domain as provided to the individual who formed the website. See Document production from subpoena issued to web hosting company (RX 6, 7, 23, 25 and 26); Velasco Dep., pp.10-22 (RX 8).

15. According to Tierra.net (d/b/a Domain Discovery), the Registrant Contact for the alleged offending website, www.agaricus.net, is who the owner of the domain and website chooses to identify as the Registrant, but the Registrant Contact is not necessarily the legal owner of the domain name itself. The Registrant Contact is the published owner of the domain name, selected by the legal owner of the domain name, but not necessarily the legal owner of the domain. See Document production from subpoena issued to web hosting company (RX 6, 7, 23, 25 and 26); Velasco Dep., pp. 10-22 (RX 8).

16. According to Tierra.net (d/b/a Domain Discovery), the person who possesses the user name and password for the alleged offending website, www.agaricus.net, is not the Respondents, but an individual named George Otto. See WHOIS results for www.agaricus.net (RX 10) (indicating the email address gotto@takesun.com); Document production from subpoena issued to web hosting company (RX 6, 7, 23, 25 and 26); Velasco Dep., pp. 10-22 (RX 8).

D. Mr. Isely's Name and Information Was Utilized Without his Consent

17. During the time period prior to and immediately after the Federal Trade Commission initiated this action, Respondent Isely and his contact information was utilized without his consent as the Registrant, among other items, for the alleged offending website, www.agaricus.net. See Isely Depo. pp. 37-38; 49-57 (RX 24); Complaint (RX 1). Mr. George Otto or Agarix International caused Respondent Isely to be identified as the Registrant for the alleged offending website, www.agaricus.net, without the consent of Mr. Isely. See Isely Depo. pp. 37-38, 49-57 (RX 24); Emails between Isely and G. Otto (RX 28, 30, 31 and 35); WHOIS results for www.agaricus.net (RX 10); See Document production from subpoena issued to web hosting company (RX 6, 7, 23, 25 and 26); Velasco Dep., pp. 10-22 (RX 8).

18. Mr. Isely's name and contact information was utilized without his consent for other domain's that Mr. Otto owns and controls. See Isely Depo. pp. 37-38, 49-57 (RX 24); Emails between Isely and G. Otto (RX 28, 30, 31 and 35); WHOIS results for www.agaricus.net (RX 10).

19. Takesun do Brazil or George Otto also used Mr. Isely's name, address and telephone number on the alleged offending website, www.agaricus.net, and for the purpose of registering the alleged offending website without Mr. Isely's knowledge or permission. Mr. Isely gave George Otto permission to use Mr. Isely's information, but not his name, about Mr. Isely's own health records and his use of RAAX11 to battle cancer. However, Mr. Isely never permitted Mr. Otto to utilize his name for the purpose of marketing United States sales on the website or for showing Mr. Isely as a Registrant or any other title for www.agaricus.net. See Isely Depo. pp. 37-38, 49-57 (RX 24); Emails between Isely and G. Otto (RX 28, 30, 31 and 35); WHOIS results for www.agaricus.net (RX 10).

20. Learning that his identity was being used without his consent, Mr. Isely immediately contacted Mr. George Otto and demanded that Mr. Isely's name and contact

information be removed from the website and as any contact for the alleged offending website, www.agaricus.net, and any other websites where Mr. Isley's name had been utilized without his consent. Mr. Isley sent emails to Mr. Otto asking why Mr. Isley's name had been used without his permission. Mr. Otto emailed to Isely explaining that Mr. Otto was the owner of the website was a company owned by George Otto and that the Mr. Isely's name and address was used only as the contact information for the website. See Isely Answer to Interrogatory no. 7 (RX 3); Emails between Isely and G. Otto (RX 28, 30, 31 and 35).

21. In addition, after learning of the misuse of his identity, Mr. Isely ceased purchasing any products from Takesun do Brasil or Mr. Otto. Mr. Otto removed Mr. Isely's name and address from the website as well as a Registrant of www.agaricus.net and other domains where Mr. Otto had utilized Mr. Isely's name and address without the consent of Mr. Isely. See Isely Depo. pp. 37-38; 49-57 (RX 24); See Isely Answer to Interrogatory no. 7 (RX 3); Emails between Isely and G. Otto (RX 28, 30, 31 and 35).

22. On or about March 28, 2008, after Mr. Isely made demands to Mr. Otto regarding Mr. Otto incorrectly identifying Mr. Isley as a Contact for the website www.agaricus.net, the contact information for domain www.agaricus.net was changed and Mr. Isely's name was removed. See Document production from subpoena issued to web hosting company (RX 6, 7, 23, 25 and 26); Velaseo Dep., pp. 10-22 (RX 8); E-mails between Isely and G. Otto (RX 28, 20, 31 and 35)

23. After the Federal Trade Commission initiated this action, Mr. Isely was informed that the Federal Trade Commission had sent a Warning Letter to the website www.agaricus.net. Mr. Isely never received the subject Warning Letter because the contact email for the website www.agaricus.net is gotto@takesun.com.br, the email address for Mr. Otto, the owner of the website www.agaricus.net. As a result of identified without his permission as a Registrant for

www.agaricus.net, Mr. Isely also received a Notice from the United States Food and Drug Administration (“FDA”) at his home address because the FDA did not send the notice via email. After Mr. Isely spoke with the FDA representative, the FDA elected to not bring any action against Mr. Isely or Respondent Gemtronics, Inc. See WHOIS results for www.agaricus.net (RX 10); See Isely Depo. pp. 109-112 (RX 24), and Notice letters from FTC and FDA (RX 16 and RX 17).

E. Mr. Isely Did Not Sell Products Through the Website www.agaricus.net

24. As part of his vitamin supplement business, Mr. Isely operated his own website selling herbal supplements, including RAAX11. However, Complaint Counsel has not alleged and, in fact, Mr. Isely has never disseminated any misleading advertisements for RAAX11 or any other supplements through his own Internet website. See Complaint (RX 1). Likewise, Mr. Isely has not sold any product from RAAX11 products sold on www.agaricus.net. Isely Deposition pp. 119-124 (RX 24); Respondent Isely’s Responses to Complaint Counsel’s Interrogatories Nos. 11 and 12. (RX 3).

25. On or about January, 2008, about nine months before the FTC initiated this action, the FTC apparently made two separate undercover purchases through www.agaricus.net. The purchases were each for a single bottle of the RAAX11 product. The purchases have produced several documents that Complaint Counsel is using in an attempt to show that Mr. Isely was selling products through the website www.agaricus.net. Many of the documents apparently printed from the webpages of www.agaricus.net at the time of the purchase and produced as part of the purchases contain Mr. Isely’s name, telephone number and refer to “Gemtronics”---not to be confused with the entity Gemtronics, Inc. The references to Mr. Isely were made on the website and on Paypal receipts were made without his consent. See RCPP ¶¶ 17-23; Isely Depo.

pp. 37-38; 49-57 (RX 24); See Riece Miles' documents for PayPal Order for RAAX11 and Dana Long PayPal order documents (CX 9 - 27).

26. The under cover purchases for the single bottle orders were paid to PayPal accounts for Takesun do Brazil, not on any account for or directed to either of the Respondents. When the orders were apparently made by the under cover FTC agents, Mr. George Otto sent an email to Respondent Isely, requesting that Mr. Isely ship the single bottles of the RAAX11 purchased by the under cover agents. Respondent Isely mailed the single bottle product to the purchasers and included with the mailing a receipt and literature related to RAAX11. See Riece Miles' documents for PayPal Order for RAAX11 and Dana Long PayPal order documents (CX 9 - 27); Isely Deposition pp. 119-124 (RX 24); Respondent Isely's Responses to Complaint Counsel's Interrogatories Nos. 11 and 12. (RX 3).

27. Neither Respondent received any money, proceeds or tangible financial benefit from the purchase made by the under cover FTC agents. Moreover, neither of the under cover agents relied on any information mailed with the single products orders by Respondent Isely when they made their purchases through the website www.agaricus.net See Riece Miles' documents for PayPal Order for RAAX11 and Dana Long PayPal order documents (CX 9 - 27); Isely Deposition pp. 119-124 (RX 24); Respondent Isely's Responses to Complaint Counsel's Interrogatories Nos. 11 and 12. (RX 3).

