

ORIGINAL



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

In the Matter of

**GEMTRONICS, INC.,
a corporation, and**

**WILLIAM H. ISELY,
individually and as the owner
of Gemtronics, Inc.**

PUBLIC

DOCKET NO. 9330

**COMPLAINT COUNSEL’S RESPONSE TO RESPONDENTS’ MOTION
FOR MONETARY SANCTIONS AGAINST COMPLAINT COUNSEL
FOR HER ALLEGED “IMPROPER ACTIONS”**

INTRODUCTION

The motion by Respondents, William Isely and Gemtronics, Inc. (“Respondents”), requests that this Court impose \$50,000 in punitive monetary sanctions against Complaint Counsel personally. There are multiple bases for denying this motion. First, neither the Commission nor its Administrative Law Judge (“ALJ”) has the authority to impose monetary sanctions – punitive or compensatory – against Complaint Counsel. Second, completion of the underlying adjudicative proceeding on November 9, 2009, when the ALJ’s Initial Decision (“ID”) became the Commission’s Decision, divested this Court of the jurisdiction to consider any issue relating to this matter other than an application under the Equal Access to Justice Act (“EAJA”) for reimbursement of attorney’s fees and costs. Third, Complaint Counsel has immunity from any personal sanctions because her alleged improper conduct occurred in the course of her official government duties. Finally, beyond these procedural deficiencies, Respondents’ allegations regarding Complaint Counsel’s conduct are wholly without merit.

BACKGROUND

On September 16, 2008, by a majority vote of its Commissioners, the Commission approved an administrative complaint against Respondents.¹ Pursuant to Section 5(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 45(b), the Commission, *not* Complaint Counsel, had sole discretion and the ultimate authority to decide which respondents to name in its complaint. Bolton Decla. at ¶ 2.

Following the trial, this Court concluded its adjudication with the issuance of its Initial Decision on October 2, 2009.² The Initial Decision dismissed the complaint (ID at 58) and was not appealed by either the Respondents or Complaint Counsel. As a result, this Court’s Initial Decision became the Decision of the Commission on November 9, 2009. The Decision of the Commission was the final resolution of all substantive issues arising from this proceeding. On December 2, 2009, Respondents filed an application under the EAJA for an award of attorney’s fees and costs pursuant to Commission Rules (“Rule”) 3.81-3.83, 16 C.F.R. §§ 3.81-3.83.

On February 26, 2010, Respondents filed the instant sanctions motion requesting that this Court impose on Complaint Counsel personally a \$10,000 punitive monetary sanction for each of the five “counts” in the motion. These “counts” allege that: (1) Complaint Counsel violated the FTC Act by failing to name an individual named George Otto and a website named agaricus.net as respondents in the Commission’s complaint (SM at 3-5); (2) Complaint Counsel erred by naming Mr. Isely and Gemtronics, Inc. as respondents in the Commission’s complaint (SM at 6-9); (3) Complaint Counsel proposed that Mr. Isely sign a letter containing false

¹ Declaration of Barbara Bolton (“Bolton Decla.”) at ¶ 2 – attached as Exhibit A hereto.

² Mr. Isely acknowledges that his former counsel advised him against filing the instant sanctions motion (“SM”) (SM at 1).

statements as part of a proposed settlement that never occurred (SM at 9-12); (4) Complaint Counsel failed to produce information regarding George Otto in response to discovery propounded by Respondents (SM at 12-17); and (5) Complaint Counsel contumaciously violated orders of this Court (SM at 18-22).

ARGUMENT

1. THIS COURT LACKS THE AUTHORITY TO ASSESS MONETARY SANCTIONS FOR IMPROPER CONDUCT

The sole relief sought by Respondents' motion is punitive monetary sanctions to be imposed against Complaint Counsel personally. Respondents, notably, do not cite any statute or administrative provision that authorizes either the Commission or an ALJ to assess such sanctions.

This critical omission is not the result of any inadvertence by Respondents. There is *no* statutory or regulatory authority that authorizes the Commission to impose monetary sanctions against Commission staff. The Commission recognized this in *Basic Research LLC*, 139 F.T.C. 601 (2005), where it expressly held that it lacks the authority to award monetary sanctions for improper conduct by Complaint Counsel, even when Complaint Counsel acknowledges he or she engaged in conduct in violation of Commission Rules. *Id.* at 609 n. 6, and accompanying text.

In *Basic Research*, the respondent sought only compensatory monetary sanctions – reimbursement from the Commission for its attorney's fees and expenses related to its motion to require compliance with the Commission's Rules. The *Basic Research* respondent did not, unlike Respondents here, seek the more draconian relief of imposing punitive monetary

sanctions against the Commission itself or Complaint Counsel.³ Indeed, even a federal district court lacks the authority in a civil proceeding to impose punitive monetary sanctions against an attorney – or anyone else – who acts contumaciously and is limited to compensating any actual monetary losses incurred by the movant. *E.g., In re Magwood*, 785 F.2d 1077, 1083-84 (D.C. Cir. 1986) (civil contempt monetary sanctions must be compensatory in nature, not punitive, and cannot be designed to punish past conduct); *S.E.C. v. Bilzerian*, 613 F. Supp. 2d 66, 77 (D.D.C. 2009).⁴

In sum, even if, *arguendo*, Complaint Counsel engaged in the improper conduct alleged by Respondents, this Court lacks the authority to impose the punitive monetary sanctions against her sought by Respondents.

2. THE ENTRY OF THE DECISION OF THE COMMISSION DIVESTED THIS COURT OF THE JURISDICTION TO CONSIDER ANY RELATED MATTER OTHER THAN AN EAJA PETITION

Even if this Court had the authority to impose punitive monetary sanctions, its jurisdiction to consider the Respondents' instant sanctions motion was divested upon the entry of the Decision of the Commission. As an administrative law forum, this Court is one of limited jurisdiction. *See* 5 U.S.C. § 556(c). Its jurisdictional limits, as delegated by the Commission, are set out in Commission Rule 3.42, 16 C.F.R. § 3.42. Subsection (c) of Rule 3.42 defines the powers and duties of an ALJ. Of relevance to this motion are Rules 3.42(c)(6) and (c)(8). Subsection 3.42(c)(6) authorizes an ALJ "to regulate the course of *hearings* and the conduct of

³ Respondents' sanctions motion does not assert that they incurred any monetary losses as a result of any of the alleged improper conduct by Complaint Counsel.

⁴ Respondents' motion contains some references to Fed. R. Civ. P. 11, *e.g.*, SM at 6, but such references are inapposite since the Commission's Rules contain no analogous provision.

the parties and counsel therein.” *Id.* (emphasis added). Subsection 3.42(c)(8) authorizes an ALJ, “to consider and rule upon, as justice may require, all procedural and other motions appropriate in an *adjudicative proceeding*.” *Id.* (emphasis added).⁵

Subsections (c)(6) and (c)(8) limit the authority and jurisdiction of this Court to situations involving “hearings” and “adjudicative proceedings.” The APA defines an “adjudication” as the “agency process for the formulation of an order.” 5 U.S.C. § 551(7). Read together, these provisions direct that this Court’s jurisdiction divests once a matter is finally resolved on the merits and no need for hearings or adjudicative proceedings remains.⁶ The adjudication ended, and the jurisdiction of this Court was divested, with the entry of the Decision of the Commission on November 9, 2009. With all hearings and adjudicative proceedings completed,⁷ this Court lacks the jurisdiction to resolve Respondents’ sanctions motion.⁸

⁵ Rule 3.42(c)(12), 16 C.F.R. § 3.42(c)(12), is a catch-all provision that authorizes an ALJ “to take any action authorized by the rules in this part or in conformance with the provisions of the Administrative Procedure Act [“APA”] as restated and incorporated in title 5, U.S.C.” *Id.* 5 U.S.C. § 558(b) prohibits the imposition of sanctions except as delegated to an agency or authorized by law. Since *Basic Research* holds that the Commission itself lacks the authority to impose monetary sanctions for improper conduct by Complaint Counsel, the APA does not provide a Commission ALJ with the jurisdiction or authority to impose monetary sanctions.

⁶ The *sole* post-adjudication authority and jurisdiction delegated by the Commission to its ALJs is the initial consideration of EAJA applications under Rules 3.81-3.83, 16 C.F.R. §§ 3.81-3.83. Necessarily, such applications can only be filed and resolved after the underlying proceeding is finally adjudicated on the merits and the Commission did not prevail.

⁷ Even if an adjudicative proceeding were pending, this Court would not have the jurisdiction to resolve the Respondents’ sanctions motion to the extent that it involves alleged contumacious conduct. The resolution of contempt sanctions has not been delegated to ALJs, Rule 3.42(h), 16 C.F.R. § 3.42(h), and all such motions must be certified to the Commission for resolution. *Id.* See also, Rule 3.22(a), 16 C.F.R. § 3.22(a), (an ALJ must certify to the Commission any motion on which he has no authority to rule).

⁸ This Court cannot reopen the adjudication to consider Respondents’ motion. The Commission reserves the authority to reopen proceedings for itself under Rules 3.71 and 3.72, 16

3. COMPLAINT COUNSEL HAS IMMUNITY FOR CONDUCT OCCURRING IN HER OFFICIAL CAPACITY

Government officials, such as Complaint Counsel, have qualified immunity from personal liability for their official conduct “insofar as their conduct does not violate clear established statutory or constitutional rights of which a reasonable person would know.” *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). Immunity exists where the government official either did not clearly violate the law *or* had an objectively reasonable basis to believe her actions did not violate the law. *Anderson v. Creighton*, 483 U.S. 635, 640 (1987). To decide if immunity applies, a court must determine if the party seeking to impose personal liability on the official has a clearly established right and if the facts show that the government official violated that right. *Pearson v. Callahan*, ___ U.S. ___, 129 S. Ct. 808, 818 (2009).

The shield of immunity covers Complaint Counsel. None of the motion’s five “counts” involves alleged violations of any cognizable statutory or Constitutional rights of the Respondents. Rather, Respondents’ grievances only involve: decisions by the Commission regarding which respondents to name in its complaint (Counts 1 and 2); a dispute over proposed settlement terms (Count 3); an alleged failure by Complaint Counsel to respond to Respondents’ discovery (Count 4); and alleged contumacious behavior by Complaint Counsel (Count 5). Even if true, none of these allegations would constitute a violation of Respondents’ statutory or Constitutional rights.

Complaint Counsel had an objective basis for believing her actions did not violate the law and, as discussed in Section 4, *infra*, the facts do not support Respondents’ allegations. With regard to Counts 1 and 2, a majority of the Commissioners voted to approve the complaint,

C.F.R. §§ 3.71 and 3.72.

so Complaint Counsel had an objectively reasonable basis to believe the legal sufficiency of the contents of the complaint, including the designation of Mr. Isely and Gemtronics, Inc. as Respondents. As to the Count 3, on its face, it is clear that the letter that Respondents find objectionable was not to be signed under oath – Complaint Counsel, therefore, had an objectively reasonable basis to believe no type of perjury could arise from Mr. Isely signing the letter. As to the Count 4, as Complaint Counsel’s declaration and the trial testimony of the Commission’s investigator establish, the Commission had no information responsive to the Respondents’ discovery requests regarding George Otto. Bolton Decla. at ¶ 3. Finally, as to Count 5, in its March 4, 2010, Order Confirming Bench Rulings on Pending Motions, this Court granted Complaint Counsel’s motions for leave, so her filing of these motions was not contumacious. Also contrary to the assertions in Count 5, Complaint Counsel complied with this Court’s trial instructions to limit the use of Joint Exhibit (“JX”) 59 to demonstrate consistent conduct by the Respondents and, therefore, this use by Complaint Counsel was not contumacious. Bolton Decla. at ¶ 4.

4. RESPONDENTS’ ALLEGATIONS THAT COMPLAINT COUNSEL ENGAGED IN ANY TYPE OF IMPROPER CONDUCT ARE WITHOUT MERIT

a. The Commission Properly Exercised Its Prosecutorial Discretion in Naming only Respondents Isely and Gemtronics in Its Complaint

In their first two “counts” Respondents contend that Complaint Counsel should be sanctioned because the Commission’s complaint named only Mr. Isely and Gemtronics, Inc. as respondents and did not name George Otto or the website agaricus.net as respondents (SM at 2-9). These contentions are flawed on several levels.

The Commission, by majority vote of its Commissioners, determines which persons, partnerships, or corporations it has “reason to believe * * * has been or is using any unfair method of competition or unfair or deceptive act or practice in or affecting commerce.” 15 U.S.C. § 45(b). Where the Commission views evidence as sufficient to meet this “reason to believe” standard, the Commission has the discretion to name such a person, partnership, or corporation as a respondent in a Commission complaint. *Id.* Here, there was ample evidence for the Commission to have “reason to believe” that both Mr. Isely and Gemtronics, Inc. were violating the FTC Act. Indeed, Respondents concede in their EAJA application that there “was a reasonable basis in law or fact” for the complaint at the time it was filed. (Respondents’ Application for Attorneys Fees at p. 5, ¶ 9.)

Even if Respondents did not concede the reasonableness of the Commission’s complaint, in its Initial Decision, this Court made factual findings that demonstrate that the Commission, at the time it approved its complaint, had “reason to believe” Mr. Isely and Gemtronics, Inc. should be named as respondents. Mr. Isely incorporated Gemtronics, Inc. in 2006 with his residence as its principal place of business (IDFOF of Fact (“IDFOF”) 1). Prior to that time, he had done business under the unregistered fictitious name “Gemtronics,” and had a bank account and merchant bank account in that name (IDFOF 13-14 & 16-17; *see also* JXs 35-42). He was listed on the WHOIS database as the registrant, and the administrative, technical and zone contact for agaricus.net (IDFOF 155; JXs 16-17). His name, his tradenames Takesun USA and Gemtronics (IDFOF 137), his phone number (IDFOF 96, 100, 104-05, 108, 111 & 119-21), and references to an FDA registered warehouse that was his residence (IDFOF 112) all appeared on the agaricus.net website. A testimonial by Mr. Isely appeared on the agaricus.net website (IDFOF 119). He fulfilled two undercover purchases by the Commission made from the agaricus.net

website, providing the Commission with both RAAX11 product and related product literature (IDFOF 124, 131, 141 & 143-49; *see also* JXs 47-48 & 56-59).

With regard to Respondents' complaint that the Commission did not name George Otto or agaricus.net as respondents in its complaint, the legally relevant issue is that the Commission has considerable prosecutorial discretion as to what entities are named as respondents in its complaints. Respondents also cite no authority from the FTC Act, the Commission's regulations, or the APA that would give this Court the authority to impose sanctions against the Commission or Complaint Counsel for the Commission's exercise of its prosecutorial discretion in deciding who it chose to name as respondents in one of its complaints.

Respondents also argue that the Commission wrongly named them as a respondents since this Court dismissed the Commission's complaint. Such *ex post facto* logic is simply wrong – while this Court found that the Commission failed to meet its “preponderance of the evidence” burden at trial, the evidence above indicates that the Commission had sufficient evidence to meet its lesser statutorily-set “reason to believe” burden necessary to include an individual or entity as a respondent in a complaint at the time it approved its complaint.

Finally, even if the Commission somehow erred in its selection of respondents, there is no basis for sanctioning Complaint Counsel for this error. As discussed above, statutorily, the Commission has the ultimate authority and responsibility for determining the respondents in its complaints. Respondents do not cite any authority that could impute liability for an error by the Commission to Complaint Counsel – nor is there any cognizable legal theory that would support such liability. As a result, Complaint Counsel cannot be sanctioned for an error made by the Commission.

b. The Commission had No Responsive Materials to Produce in Response to Respondents' Discovery Regarding George Otto

Respondents assert that, in response to two of their discovery requests, the Commission failed to produce evidence about George Otto that would be exculpatory for the Respondents. In fact, the Commission had no information to produce concerning George Otto. (IDFOF 191-92; Bolton Decla. at ¶ 3). Even if the Commission had not produced complete or accurate discovery responses, Respondents' proper remedy would have been to move compel disclosure pursuant to Rule 3.38, 16 C.F.R. § 3.38, while the adjudication was pending – not to seek punitive sanctions against Complaint Counsel after the adjudication concluded. Respondents' reference to Fed. R. Civ. P. 37 (SM at 10) is inapposite to its request for sanctions since the Commission's Rules govern proceedings before this Court, not the Federal Rules of Civil Procedure. Also, the sole monetary sanction case cited by Respondents, *United States v. Ranger Electronic Comm., Inc.*, 210 F.3d 627 (6th Cir. 2000), involves a criminal prosecution, not a civil administrative proceeding, and it only awarded compensatory attorney's fees to be paid by the federal government, not punitive monetary sanctions assessed against a government attorney personally.

c. Complaint Counsel did Not Attempt to Suborn Perjury

Respondents claim that Complaint Counsel attempted to suborn perjury by requiring Mr. Isely, as part of a proposed settlement, to sign a letter to consumers that would have been on a letterhead for "Gemtronics, Inc./www.agaricus.net." This argument is wrong as matter of law since, to suborn perjury, a party must persuade another party to make a false statement under oath. 18 U.S.C. §§ 1621 & 1622. This letter was part of the Notice Order attached to the Commission's administrative complaint issued in this matter.⁹ On its face, the letter did not

⁹ The letter, Attachment A to the Notice Order, is reproduced in SM at 15.

require Mr. Isely to sign it under oath. Even if Complaint Counsel had convinced, compelled, or coerced Mr. Isely to sign the letter and it contained inaccurate information, this could not possibly amount to perjury. Moreover, Mr. Isely had the opportunity to negotiate or correct any of the proposed terms of the letter as part of the parties' settlement negotiations if he believed it contained inaccurate information.

d. Complaint Counsel did Not Engage in Contumacious Behavior

As discussed above, per Rule 3.42(h), 16 C.F.R. § 3.42(h), the Commission has not delegated its contempt powers to its ALJs. Therefore, this Court lacks the jurisdiction to resolve this aspect of Respondents' motion to the extent it allegedly involves contumacious behavior by Complaint Counsel, much less to impose punitive monetary sanctions.

Even if the Court had the authority to make contempt findings or to assess sanctions for contempt, Complaint Counsel did not engage in contumacious behavior. First, this Court did not prohibit Complaint Counsel from referring to JX 59. Rather, it permitted Complaint Counsel to use JX 59 for the limited purpose of attempting to demonstrate consistent conduct by the Respondents. (Trial Tr. at 304:24-305:23, excerpt attached as Exhibit B, hereto). Respondents provide no evidence that Complaint Counsel used JX 59 for any another purpose and, therefore, she did not violate any order of this Court.¹⁰ Second, the motions filed by Complaint Counsel that were cited in Respondents' sanctions motion were granted by this Court in its Order Confirming Bench Rulings on Pending Motions issued on March 4, 2010.

Finally, Respondents contend that Complaint Counsel somehow acted inappropriately with regard to the "sensitive nature of the material" in Respondents' EAJA application.

¹⁰ Complaint Counsel affirms her limited use of JX 59. (Bolton Decla. at ¶ 4.)

Complaint Counsel used no confidential information from Respondents' EAJA application in her filings. Counsel for Respondents designated Respondents' EAJA application "public," so any improper posting of sensitive materials was the result solely of an error by Respondents' Counsel, not Complaint Counsel. Most important, however, even if Complaint Counsel somehow inadvertently posted confidential information contained in the application, *Basic Research* definitively holds that neither this Court nor the Commission could assess punitive monetary sanctions against Complaint Counsel.

CONCLUSION

For the reasons set out above, Respondents' Motion for Sanctions should be denied.

Respectfully submitted,



JOHN ANDREW SINGER
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EXHIBIT A

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

In the Matter of

**GEMTRONICS, INC.,
a corporation, and**

**WILLIAM H. ISELY,
individually and as the owner
of Gemtronics, Inc.**

PUBLIC

DOCKET NO. 9330

DECLARATION OF BARBARA E. BOLTON

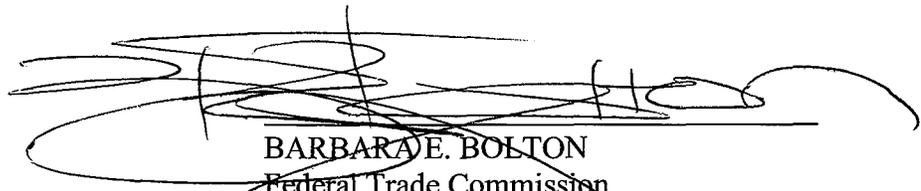
1. My name is Barbara E. Bolton and I am a staff attorney in the Southeast Region office of the Federal Trade Commission (“Commission”). I was the Complaint Counsel, representing the Commission in the above-captioned matter.
2. The Commission approved the administrative complaint that initiated the above-captioned matter on September 16, 2008. Only the Commission, at its sole discretion, has the authority to approve and authorize the filing of a complaint and it must do so by a majority vote of the Commission. 15 U.S.C. § 45(b). Commission staff members do not have the authority to approve complaints.
3. As part of its pre-complaint investigation in this matter, Commission staff attempted to find information about a “George Otto,” since his name appeared, along with the name William Isely, on the domain registration for the domain name “agaricus.net” at the same address in Franklin, North Carolina, as that of Mr. Isely. No information was found regarding Mr. Otto. As a result, the Commission had no “exculpatory” evidence to

produce to the Respondents in response to their discovery requesting that the Commission produce any such evidence in its possession.

4. At the trial of this matter, Counsel for both parties introduced Joint Exhibit (“JX”) 59. The FTC’s investigator testified regarding this exhibit. (TR. 90-91) The ALJ did not rule that JX 59 could not be “introduced again,” but instead, he allowed it to be used to show “consistent conduct” on the part of Respondents and for any purpose other than a claim under the complaint. (TR. 305)

I swear under penalty of perjury that the foregoing statement is true and correct.

Executed on this 16 day of MARCH, 2010.



BARBARA E. BOLTON
Federal Trade Commission
225 Peachtree Street, Suite 1500
Atlanta, GA 30303

EXHIBIT B

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UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In the Matter of:)
GEMTRONICS, INC., a corporation,)
and) Docket No. 9330
WILLIAM H. ISELY, individually and)
as the owner of Gemtronics, Inc.)
-----)

Thursday, June 25, 2009

9:41 a.m.

TRIAL VOLUME 2

PUBLIC RECORD

BEFORE THE HONORABLE D. MICHAEL CHAPPELL

Administrative Law Judge

Federal Trade Commission

600 Pennsylvania Avenue, N.W.

Washington, D.C.

Reported by: Josett F. Whalen, RMR-CRR

1 BY MS. BOLTON:

2 Q. And Mr. Isely, I'd like to point out the second
3 highlighted sentence: For cases at lower levels, such
4 as stage II -- what are you referring to when you talk
5 about stage II?

6 A. My same comments when you asked about stage IV.

7 Q. Would that possibly refer to stage II of
8 cancer?

9 A. I don't know.

10 Q. So your testimony is you're disseminating --
11 you're sending out literature talking about the product
12 that you're selling that you don't know the claims that
13 you're making for it?

14 A. You're trying to get me to convert what I
15 believe to what I know. There's a distinction when I
16 say I don't know --

17 Q. Well --

18 A. -- from what I think.

19 Q. I'm asking you what you mean by it. It's a
20 statement that you're making. I'm asking you what you
21 mean by it.

22 A. I was passing on material that I got. I was not
23 the expert to analyze it.

24 JUDGE CHAPPELL: If these supposed claims in
25 this document are not part of the complaint, why are we

1 wasting time on this?

2 MS. BOLTON: Yes. Exactly. Your Honor, because
3 they are consistent with the other claims that are being
4 made in the advertisement that Mr. Isely is saying that
5 he had nothing to do with when in fact he is directing
6 people to go to the Web site on his promotional
7 literature. He's telling him where to go. He's making
8 the same claims himself.

9 JUDGE CHAPPELL: But this claim, to the extent
10 that it is or is not a claim, this document is not part
11 of the allegations in the complaint, so I don't want to
12 see that in the posttrial brief and I don't want to hear
13 anybody arguing that.

14 This claim is not part of this case, is it,
15 JX-59?

16 MS. BOLTON: It's not an exhibit to the
17 complaint, no, it is not an exhibit to the complaint.

18 But it shows consistent conduct.

19 JUDGE CHAPPELL: To the extent you want to use
20 it for some other purpose, that's fine, but it's not an
21 allegation or something that I saw in the complaint in
22 this case.

23 MS. BOLTON: That's correct.

24 BY MS. BOLTON:

25 Q. Mr. Isely, I'd like you to now look at JX-61,

CERTIFICATE OF SERVICE

I hereby certify that on this date, I filed and served the attached:

1. Complaint Counsel's Response to Respondents' Motion for Monetary Sanctions Against Complaint Counsel for Her Alleged "Improper Actions"; and
2. Notice of Appearance by John Andrew Singer on behalf of Complaint Counsel

The original and one (1) paper copy via hand-delivery and one (1) electronic copy via email to:

Donald S. Clark, Secretary
Federal Trade Commission
600 Pennsylvania Ave., N.W., Room H-159
Washington, D.C. 20580
email: secretary@ftc.gov

One (1) electronic copy via email and four (4) paper copies via hand-delivery to:

The Honorable D. Michael Chappell
Chief Administrative Law Judge
600 Pennsylvania Ave., N.W. Room H-112
Washington, D.C. 20580
email: oalj@ftc.gov

One (1) electronic copy via email and one (1) paper copy via intra-office mail to:

Barbara E. Bolton, Esq.
Federal Trade Commission
225 Peachtree Street, Suite 1500
Atlanta, GA 30303
Email: bbolton@ftc.gov

One (1) electronic copy via email and one (1) paper copy via overnight delivery to:

William H. Isely
964 Walnut Creek Rd.
Franklin, NC 28734
email: b.isely@ftpmailbox.com

Dated: March 18, 2010



JOHN ANDREW SINGER