

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

MOTION FOR MODIFICATION OF SCHEDULING ORDER

The Respondents, GEMTRONICS, INC. and WILLIAM H. ISELY, through undersigned counsel, respectfully request that the Presiding Administrative Law Judge enter the attached order which modifies the previously entered Scheduling Order in the above-captioned Action.

The Scheduling Order in this case presently closes discovery on January 21, 2009, other than discovery permitted under Rule 3.24(a)(4), deposition of experts, and discovery for purposes of authenticity and admissibility of exhibits. By agreement of counsel, Respondents were to have responded to Complaint Counsel's written discovery by January 16, 2009. Further, by agreement of counsel, the deposition of Respondent William H. Isely was scheduled to commence on Tuesday, January 27, 2009. On Wednesday, January 21, 2009, Complaint Counsel filed a Motion to Compel Discovery and on Friday, January 22, 2009, Respondents'

Counsel filed a Response and Opposition to Complaint Counsel's Motion to Compel, which is incorporated herein by reference.

On Saturday, January 24, 2009, Respondents' Counsel's wife went into labor and gave birth to a child on January 25, 2009. Respondents' Counsel's wife and child are still admitted in the hospital and do not anticipate discharge before Wednesday, January 27, 2009. Due to the above circumstances, Respondents' Counsel requests extensions under the current Scheduling Order as set forth below and in the attached proposed order.

The undersigned contacted Complaint Counsel by telephone on the same day as this Motion to determine if Complaint Counsel would consent to the undersigned's requests. After a telephone conversation with Complaint Counsel, the undersigned was under the impression that Complaint Counsel consented to the undersigned's requests made herein. However, Complaint Counsel sent Respondents' Counsel a letter and an email which are attached hereto and are incorporated herein by reference.

WHEREFORE, based on the above-foregoing information, as well as the facts contained in Respondents' Counsel's Reply and Opposition to Complaint Counsel's Motion to Compel, Respondents' Counsel requests that the Presiding Administrative Law Judge enter the attached Order which provides that:

1. The deadline for the Close of Discovery in the Scheduling Order shall be extended from January 21, 2009, until through February 13, 2009, including discovery to be propounded on third-parties;
2. Respondents' Counsel shall not be permitted to serve any new written discovery on the Complaint Counsel for the remainder of this action; and

3. The deadline for filing motions for summary decision in the Scheduling Order shall be extended from February 24, 2009, through March 13, 2009.

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 26th day of January, 2009.

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this **RESPONDENTS'**
COUNSEL'S 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 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 26th day of January, 2009.



MATTHEW I. VAN HORN



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
SOUTHEAST REGION

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Atlanta, Georgia 30303-1729

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1362

Barbara Elizabeth Bolton
Attorney

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(404) 656-

1379

January 26, 2009

Electronic Transmission, Fax, and 1st Class Mail

Matthew I. Van Horn, Esq.
Matthew I. Van Horn Law Office
16 W. Martin Street
Raleigh, NC 27601

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

Dear Matthew:

This will confirm the substance of our telephone conversation of 10:00 a.m. today. You have postponed the deposition of Respondent William Isely scheduled for tomorrow in North Carolina. You have told me that you will confirm later today the rescheduling of the deposition of Respondent Isely to take place on Monday, February 2 or Tuesday, February 3, 2009. You have told me that you will be contacting the ALJ to seek an extension of discovery through and including Friday, February 13, 2009, for the limited purposes of providing 1) the responses due to the FTC; and 2) in order to conduct third-party discovery of Tierranet. You have confirmed that, during this extended discover period, you will not seek to propound any further discovery from the FTC. You have further stated that you will also seek that the ALJ extend the deadline for filing motions for summary decision up to and including March 13, 2009. You stated that you do not plan to seek an extension of the trial date in this matter.

I have agreed to not oppose your request given these parameters.

I am copying this letter to the Office of the Administrative Law Judges.

Very truly yours,

/s/

Matthew I. Van Horn

From: Bolton, Barbara E. [BBOLTON@ftc.gov]
Sent: Monday, January 26, 2009 1:57 PM
To: Arthaud, Victoria; matthew@vanhornlawfirm.com
Subject: RE: Docket 9330

Victoria,

Two matters need clarification:

1) Complaint Counsel's Motion to Compel is still outstanding, irrespective of Judge Chappell's decision whether to grant Respondents' Counsel's Motion to extend discovery. Respondents' have not provided responses to discovery nor have they produced Respondent Isely to be deposed, despite repeated scheduling and rescheduling of the deposition, and there is no guarantee that Respondents' will be duly forthcoming in either regard even given an extension of time.

2) Unfortunately, my letter to Mr. Van Horn (which I copied to your office) was unclear: the letter served only to indicate the substance of my telephone call with Mr. Van Horn this morning and that I acknowledged that Respondents were planning to make an ex parte informal request to the offices of the ALJ this morning and that I would not also be calling your office to oppose it. However, I have not agreed to a joint Motion nor have I agreed that any formal Motion by Respondents would be unopposed. If and when Respondents file a motion with the court to extend discovery, which, by the way, lapsed on January 21, 2009, it will, in fact, be opposed by Complaint Counsel.

I apologize for the confusion.

Sincerely,
Barbara Bolton

From: Arthaud, Victoria
Sent: Monday, January 26, 2009 12:54 PM
To: Bolton, Barbara E.; 'matthew@vanhornlawfirm.com'
Subject: Docket 9330

Dear Counsel,

I write in response to the voice mail message from Mr. Van Horn and the letter from Ms. Bolton.

The changes to the Scheduling Order that have been agreed to by the parties, as stated in the letter from Complaint Counsel, will be approved by Judge Chappell. However, because the changes do affect dates in the Scheduling Order, Judge Chappell needs to have a written motion making such requests. The most appropriate form is for Respondents' counsel to file an unopposed motion. Judge Chappell will then issue a revised scheduling order.

With respect to Complaint Counsel's motion to compel, it is not clear to me whether the issues raised in that motion are still disputed. If the parties have worked out an agreement that obviates Complaint Counsel's motion, Judge Chappell will need Complaint Counsel to file a notice of withdrawal of its motion.

Thank you,

Victoria C. Arthaud
Attorney Advisor
Office of Administrative Law Judges
Federal Trade Commission