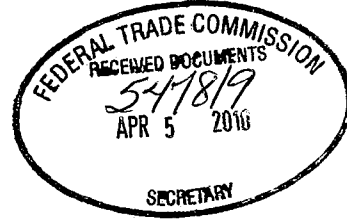


*Original*  
William H. Isely, Respondent

b.isely@ftpmailbox.com  
964 Walnut Creek Rd.  
Franklin, NC, 28734

Tel/FAX 828-369-7590  
April 2<sup>nd</sup>, 2010

ORIGINAL



Honorable D. Michael Chappell  
Chief Administrative Law Judge (Acting)  
Federal Trade Commission  
H113  
600 Pennsylvania Ave, NW  
Washington DC, 20580

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

Enclosed is My

**REPLY TO COMPLAINT COUNSELS ATTORNEY'S ANSWER TO MOTION TO SANCTION  
THE COMPLAINT COUNSEL FOR HER IMPROPER ACTIONS IN THE MATTER OF  
GEMTRONICS, INC, AND WILLIAM H. ISELY, RESPONDENTS.**

Your consideration will be greatly appreciated.

Respectively Submitted

William H. Isely *William H. Isely* April 2<sup>nd</sup>, 2010

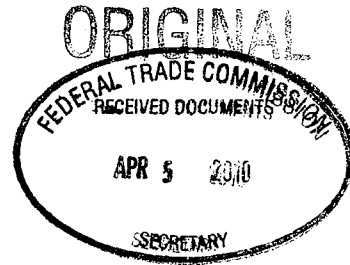
964 Walnut Creek Rd.  
Franklin NC, 28734

828-369-7590 b.isely@ftpmailbox.com

CC: Ms. Barbara E. Bolton  
Honorable Donald S. Clark

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 Rosc



PUBLIC

In the Matter of
GEMTRONICS INC a corporation and,
WILLIAM H. ISELY

DOCKET NO. 9330

REPLY TO COMPLAINT COUNSEL'S ATTORNEY'S ANSWER TO MOTION TO SANCTION  
THE COMPLAINT COUNSEL FOR HER IMPROPER ACTIONS IN THE MATTER OF  
GEMTRONICS, INC, AND WILLIAM H. ISELY, RESPONDENTS.

**1. Background**

Sanctions were requested by the Respondent on Feb 28, 2010 against Complaint Counsel for her conduct in the case, Docket 9330, against Gemtronics, Inc. and William H Isely, Respondents. The Complaint Counsel's Attorney answered the motion on March 18, 2010. Herein is Respondents' Reply to the Answer of Complaint Counsel's Attorney.

**2. Summary**

The Complaint Counsel's Attorney attached to his Answer a sworn statement, subject to perjury, from the Complaint Counsel, defending her actions, and he based her defense on her sworn statements. As will be shown below, the major elements of her statements are contradicted by the findings and record of the case, and so sanctioning is in order.

### 3. Argument

A review of key aspects of the case show that the Complaint Counsel committed improper actions both with regard to the Facts and the Law.

**a. Authority of the Court.** By taking up the Motion for Sanctions for consideration, the Court is affirming its right of jurisdiction. The Court has declared the sanction matter to be separate from consideration of the Attorney Fees award under AEJA. By the Rule § 0.5, under the Federal Tort Claims Act (28 U.S.A. 2671-2680) the Court has the authority to consider the damages done to the Respondent that he claimed in an amount of \$42,902.17

**b. Limited Immunity of the Complaint Counsel.** The major actions taken by the Complaint Counsel which greatly damaged the Respondent were done In her role as an investigator working with her chief investigator, Mr. Liggins. This was the time period of the year before the bringing of the Complaint by the Complaint Counsel, the time period when she was not acting in a prosecutorial role and hence would not have the shield of immunity claimed by her attorney.

**c. The facts in the record do not show there was reason for the Commission to believe that the Respondents were liable for the charge in the Complaint, that the Respondents were responsible for the advertising on www.agaricus.net.** To have reason means that one has sufficient evidence to convince another person when all the facts are in evidence and pertinent facts are not concealed. That the Commission accepted the Complaint Counsel's position without due oversight of the Complaint Counsel and was not aware of her omissions does not change the facts on record. The Commissioners, like the Complaint Counsel, are obligated to follow the evidence wherever it goes, however inconvenient. The Complaint Counsel made assumptions from hearsay information from WHOIS about the control of the

website which her Chief Investigator testified at trial were not valid, based on his own experience managing a website. The email address to make changes to the website was known to the Complaint Counsel to be [gotto@takesun.com](mailto:gotto@takesun.com) and from information on the website to be located in Brazil. Prior to the filing of the Complaint in September 2008, the Complaint Counsel was furnished with a letter from the Registrar of the Website, DOMAINDISCOVER, identifying it as being owned and controlled by a company in Brazil with the principal being one, G. Otto of the Takesun Company. Confronted with this factual evidence the Complaint Counsel choose to ignore it and to go with her hearsay assumptions and mislead the Commission to follow suit. Even after being presented with the information in the letter from DOMAINDISCOVER, per Mr. Liggins testimony at trial, no effort, not even a phone call, was made to ascertain the truth of the matter which was later given by deposition to be the same as was contained in the prior letter.

That the Respondent's Application contained a statement that the Commission was justified in bringing the Complaint was a typographical error in the leaving out of the word "not" as noted in his Reply. Such a statement was completely at odds with Respondent's arguments throughout the case and in no way could have influenced the Commission in the bringing of the Complaint which predated this erroneous statement in the Application by 15 months.

**d. The Commission Had Significant Information to Produce before bringing the Complaint and afterward in Discovery Regarding George Otto.(Kather).** Complaint counsel says they had nothing to produce because they had not located him personally. In a five months investigation, culminating in January 2008, a great deal was known, as documented in the record, about George Otto, but not provided to the Respondent. Per Liggins, the investigation of G Otto began in August of 2007. In October of 2007 the Complaint Counsel was convinced sufficiently that he was responsible for [www.agaricus.net](http://www.agaricus.net) , that she issued a warning letter to the

website, using the email address of [gotto@takesun.com](mailto:gotto@takesun.com) she had found from the WHOIS information. Apparently, the approved method of sending the warning letter, requiring the getting of a return receipt, was not followed as no receipt has been exhibited by the Complaint Counsel. The sample purchases made on the website were paid to Takesun accounts in Brazil and Germany per Liggins testimony. The home page country code telephone number of the website was 55, the country code of Brazil. Liggins did not testify that G. Otto was dropped as the person liable for the advertising on [www.agaricus.net](http://www.agaricus.net) for lack of evidence, but rather he said at trial he was dropped when no assets of his could be located in the US. This demonstrates the shallowness of the investigation made by the Complaint Counsel, that no phone calls were made to the website which would have given G Otto's proper last name as Kather. Per Liggins, Takesun was found to have two Pay Pal accounts. Since Pay Pal is a US company these accounts could have been attached had a proper search been done using the correct name.

**e Complaint Counsel's Requirement that Respondent Sign an Untruthful letter.**

Even if the signing was not under oath, it would have been damaging to his customers and himself. Some of his customers would have been motivated by the letter to invest in damage suits against an entity Gemtronics, Inc./[www.agaricus.net](http://www.agaricus.net), only to discover after some expense that such an entity did not exist. Besides being drawn into frivolous law suites to defend himself from irate past customers, the Respondent would have opened himself to a damage suite from Takesun on the grounds that the discrediting of the product RAAX11 in the letter did not take into account research done in Brazil and elsewhere outside the US. Since the website was based in Brazil, the Respondent would have had to defend himself under Brazilian law where the website could very well have been found to comply with Brazilian law and regulations.

**f. The Complaint Counsel acted Inappropriately with the Sensitive Nature of Respondent' Materials.** Even though it was wrongly classified as first published, reclassification was done by the Secretary of the FTC and all parties so notified. Until the classification is removed, the Complaint Counsel should honor the classification.

**g. The Case against the Respondent was Unlawfully Brought and Remains Unlawful.** This is so grievous a situation that the Complaint Counsel's Attorney did not even address a defense that the Respondent claims that the FTC had no jurisdiction to bring the Complaint.

IN THIS CASE THE FTC VIOLATED THEIR OWN TITLE 15. Chapter 2, Subchapter 45. which Gives the FTC its basic authority to regulate commerce to counter unfair methods of competition, but paragraph (3) says:

"This subsection shall not apply to unfair methods of competition involving commerce with Foreign Nations (other than import commerce) unless--" ( These don't apply).

What the FTC did went beyond commerce with Foreign Nations, It was to try to regulate commerce in a Foreign Nation. They were trying to regulate material posted on a foreign website by a foreign company, located outside the United Sates. The sovereign country of Brazil is the only power with the authority to decide if what was posted violates the laws of Brazil, and if it violated US law, that is of no consequence. So every cent spent on this case was in violation of the law, since the Congress has never appropriated any money for such a purpose as trying to regulate Brazilian commerce.

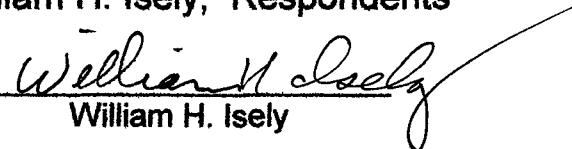
In the Complaint Counsel's warning letter to [www.agaricus.net](http://www.agaricus.net), the last sentence states that if the website is located in a Foreign Country that some foreign agency has jurisdiction, (not the FTC), Then the Complaint Counsel went on to violate her own letter. Perhaps it was just a form letter she had never read, even though its contents described the law as it actually is.

**4. Conclusions** – For the reasons set out above The Complaint Counsel's defense should be denied as being based on her erroneously sworn statement rather than the facts in the record.

Respectfully Submitted:

**GEMTRONICS, INC &**

William H. Isely, Respondents

By   
William H. Isely

964 Walnut Creek Rd.  
Franklin, NC, 28734

This 2<sup>nd</sup> day of April, 2010

Respondent Isely certifies that to his best knowledge all the information contained in this document is correct and truthful.

**CERTIFICATE OF SERVICE**

This is to certify that the undersigned has this date served this

**REPLY TO COMPLAINT COUNSELS ATTORNEY'S ANSWER TO MOTION TO SANCTION THE COMPLAINT COUNSEL FOR HER IMPROPER ACTIONS IN THE MATTER OF GEMTRONICS, INC, AND WILLIAM H. ISELY, RESPONDENTS.**

In the above entitled action upon all other parties to this cause by depositing a copy hereof in a postpaid wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service, properly addressed to the attorney or attorneys for the parties as listed below.

***One (1) e-mail copy and two (2) paper copies served by United States mail to***

Honorable D. Michael Chappell  
Chief Administrative Law Judge (Acting)  
Federal Trade Commission, H113  
600 Pennsylvania Ave., NW  
Washington, D.C. 20580

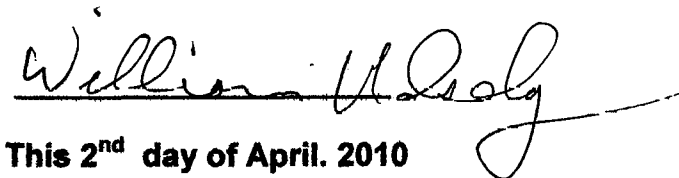
***The original and one (1) paper copy via United States mail delivery and one (1) electronic copy via e-mail:***

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-  
FTC, .. Suite 1500  
225 Peachtree Street, N.E  
Atlanta, GA 30303

William H. Isely - Respondent

  
This 2<sup>nd</sup> day of April, 2010