

**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**

<p><b>In the Matter of</b></p> <p><b>GEMTRONICS, INC.,</b>                  <b>a corporation, and</b></p> <p><b>WILLIAM H. ISELY,</b>                  <b>individually and as the owner</b>                  <b>of Gemtronics, Inc.</b></p>
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**DOCKET NO. 9330**

**RESPONDENTS' MOTION FOR SUMMARY DECISION  
AND MEMORANDUM IN SUPPORT THEREOF**

Pursuant to Rule 3.24 of the Commission's Rules of Practice, Respondents GEMTRONICS, INC., and WILLIAM H. ISELY respectfully move for Summary Decision for the reasons set forth herein and based on the evidence in Respondents' Separate Statement of Material Facts as to Which there is no Genuine Dispute.

**I. INTRODUCTION**

Respondents move for Summary Decision, pursuant to Commission Rule of Practice 3.24, against Complaint Counsel and the Federal Trade Commission. The Complaint alleges that the Respondents violated Sections 5 and 12 of the Federal Trade Commission Act ("FTC Act")

in connection with marketing the product RAAX11, an alleged herbal “food” or “drug” product within the meaning of Sections 12 and 15 of the FTC Act.

Specifically, the Federal Trade Commission contends that the Respondents violated Sections 5(a) and 12 of the Federal Trade Commission Act because the Respondents disseminated or caused to be disseminated advertisements for RAAX11 through an Internet website, [www.agaricus.net](http://www.agaricus.net). To the contrary, the uncontroverted evidence in this case reveals that Respondents were not the owners of the alleged offending website and likewise had no ability to control the content of any advertisement or any other information disseminated through the alleged offending website. Accordingly, the Respondents’ respectfully request that the Presiding Law Judge grant summary decision against the Federal Trade Commission and dismiss Complaint Counsel’s Complaint.

## **II. STATEMENT OF FACTS**

This action was brought under the Federal Trade Commissions’ initiative described as a “sweep to stop peddlers of bogus cancer cures.” In large part, the scams prosecuted by the Federal Trade Commission are heartless attempts to target vulnerable individuals seeking last resorts to cure their or their family members’ terminal illness. Individuals perpetuating such scams should be punished to the full extent of the law. Here, however, the Respondents are innocent of the allegations propounded against them. Likewise, they do not fit the description of targets intended to be prosecuted under the policy behind the FTC’s initiative. To that end, and based on the undisputed evidence, the Respondents respectfully request that the FTC’s Complaint against them be dismissed.

The individual Respondent William H. Isely is 83 years old and resides with his wife in Franklin, North Carolina. Since he retired from his formal occupation, Mr. Isley has run a small

natural vitamin supplement mail order business. Mr. Isely has operated out of his house as a sole proprietor with no employees. He has never manufactured any vitamins or herbal products. He started his business thirty years ago after he was diagnosed with prostate cancer and became interested in treating his condition with alternative natural measures in conjunction with conventional medical treatment. He was fortunate as his cancer entered remission. During the time period that gave rise to this action, Mr. Isely operated his business under the name Gemtronics. However, since the FTC proceeded with this action Mr. Isely has terminated his business.

The corporate Respondent Gemtronics, Inc. deserves little discussion. It is an inactive corporate shell that Respondent Isely formed under North Carolina law during the year 2003 with the intent to benefit from operating his business through a corporation. However, the entity Gemtronics, Inc. never obtained a federal tax identification number, issued shares of stock, appointed a board of directors or elected officers. It has never conducted business or possessed a bank account. It has never observed corporate formalities such as keeping minutes or filing Annual Reports with the Secretary of State of North Carolina. As such, it soon will likely be administratively dissolved by the North Carolina Secretary of State office. Here, the proper party is Respondent Mr. Isely, individually, and doing business as "Gemtronics".

The undisputed evidence shows that the FTC, with what appears to be good intentions, brought this Complaint under the incorrect premise that the Respondents owned and controlled the subject internet website, [www.agaricus.net](http://www.agaricus.net), through which arguably deceptive advertisements were disseminated to market an herbal product called RAAX11.<sup>1</sup> [See

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<sup>1</sup> RAAX11 is a trademarked name for an herbal product derived from mushrooms grown and harvested in rainforest regions in Brazil. RAAX11 and similar mushroom derived products have been marketed and sold throughout the world as a supplement which allegedly aids in the prevention and cure of cancers---otherwise vastly improving the strength of one's immune system.

Complaint, ¶ 5, and Complaint exhibits A-D]. Here, the content of the alleged offending advertisements is not at issue. What is relevant is that the Respondents have never owned the subject website----more importantly, the Respondents have never possessed the authority or ability to control the content of the subject website. To that end, the Respondents have never disseminated any advertisements or any information through the subject website—the sole basis on which the FTC’s Complaint is based.

What the evidence shows and what the FTC now knows is that the subject website and several similar websites are owned and controlled from Europe by an individual named George K. Otto through at least two foreign companies, the more prevalent company being named Takesun do Brasil. Through his foreign companies and the alleged offending website, Mr. Otto markets and sells RAAX11 and other herbal supplements.<sup>2</sup>

Basic knowledge of how Mr. Otto and consumers, own and control the content of a domain or website, here the alleged offending website, is a requisite to understanding how Respondent Isely was mistaken as the disseminator of advertisements through the alleged offending website. An individual purchases and becomes the owner of a website through a website hosting company online or over the telephone. Payment is made via a credit card and the owner is provided or selects a PIN number and password with which the owner can access and alter administrative information for the website, such as contact information for the website which is accessible by the public. In addition, the PIN number and password allows the website owner to access and control the content of the website once it is set up and supported by a hosting company.

When the website is purchased and activated, several designations are required to be selected by the owner with respect to individuals or companies which will hold the titles of

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<sup>2</sup> The United States trademark RAAX11 is owned by one of Mr. Otto’s foreign companies.

Registrant, Administrative Contact, and Technical Contact for the website. The owner inputs the names of individuals who will hold these titles and their respective contact information. The owner can essentially select any individual for these designations. The owner can select itself for these titles or choose third parties, notably with or without the consent of the third parties. It is important to note that the identity of the website owner---the individual who possesses the PIN number and password---can remain confidential, while those designated with the title of Registrant and others titles (and their contact information) are accessible to any third party online through the hosting company.<sup>3</sup>

In this case, without Mr. Isely's permission, Mr. Otto designated Mr. Isely as the Registrant contact and all other contacts for the subject website.<sup>4</sup> Mr. Otto identified Mr. Isely by name and provided Mr. Isely's address and telephone number. However, Mr. Otto provided his own e-mail address as the email contact. Until he was informed by the FTC and FDA through this action, Respondent Isely had no knowledge he was identified as the Registrant and other titles for the alleged offending website. Initial communications by the FTC to the website owner were sent via email and presumably received by Mr. Otto. However, Mr. Isely never received communications from the FTC because correspondence from the FTC was sent only via email---to George Otto's email. Mr. Otto's likely intent in naming Mr. Isely as the contact person for the website was to hide Mr. Otto's identity. Further, Mr. Otto was no stranger to Mr. Isely as Mr. Isely had purchased product from Mr. Otto.

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<sup>3</sup> An analogue is a Registered Agent for a corporate entity formed under the laws of a state. States where corporate entities are formed require that the owner(s) and organizer(s) of the corporation identify a street address and individual who is the contact for the corporation for purposes of serving correspondence or legal documents. However, a Registered Agent is not required to have any ownership interest in the corporate entity or hold any offices in the company. For instance, law firms often act as the Registered Agent for a corporate client.

<sup>4</sup> Interestingly, an officer for the web hosting company testified in his deposition that indeed an owner can identify any individual as a Registrant without the permission of the Registrant.

After it was brought to his attention by the FTC that he was identified with his name, address and telephone number as the Registrant and other contacts for the subject website, Mr. Isely took immediate steps to remove himself as the designee of the subject website. As he lacked the authority (PIN number and password) to access the control of the website, he contacted Mr. Otto and demanded that he be removed from the website. In addition, he contacted the web hosting company for the subject website and demanded that his information be removed. Mr. Isely concluded that it was Mr. Otto who had used Mr. Isely's identity without his consent because the contact email address was the email for Mr. Otto ([gotto@takesun.com](mailto:gotto@takesun.com)). Mr. Isely had a history of doing business with Mr. Otto and Takesun do Brasil through email and Mr. Otto's websites----never personally meeting Mr. Otto as he resides in Europe.

By way of background, in the year 2000, Mr. Isely learned about the RAAX11 product and similar products. Mr. Isely personally purchased and consumed RAAX11 in conjunction with other treatments to keep his cancer in remission. Mr. Isely experienced good results under this treatment and his cancer went into remission. The demand by consumers for RAAX11 increased. As such, Mr. Isely added it as a product to his business. To obtain the RAAX11 product, Mr. Isely began purchasing RAAX11 from Mr. Otto's company Takesun do Brasil and reselling it to his customers. Each purchase transaction was separately negotiated and not on an account. His purchases differed in quantity and he resold the product to his customers.

As he continued to purchase RAAX11 from Mr. Otto, Mr. Otto sought consent from Mr. Isely to use Mr. Isely's personal experience consuming RAAX11 as a testimony on Mr. Otto's website. Mr. Isely permitted Mr. Otto to use Mr. Isely's experience with RAAX11 on the condition that Mr. Otto not reveal Mr. Isely's true identity. Mr. Otto utilized Mr. Isely's testimony on the subject website and also provided Mr. Isely's telephone number on the subject

website. Isely immediately demanded that Mr. Otto remove any reference to Mr. Isely on the subject website when Mr. Isely learned of the FTC's involvement.

Since filing the Complaint, and identifying that Mr. Isely is not the owner of the subject website, the FTC has attempted to identify and focus on other circumstances where Isely has engaged with Mr. Otto (e.g. providing a testimonial, *supra.*). Moreover, after it learned that Isely lacked authority to control the content of the subject website, the FTC has changed its focus to results of under cover purchases of RAAX11 from Mr. Otto's website---in an attempt to tie Mr. Isley to the subject website and Mr. Otto's enterprise. To the extent any of the new allegations by the FTC (not alleged in the Complaint) connect Mr. Isely to Mr. Otto's enterprise, Mr. Isely's conduct is *de minimis* and public policy is not served by prosecuting Mr. Isely. The fact remains that Mr. Isely could not control the content of the alleged website---lacking authority equal to the ability to control the content of [www.ftc.gov](http://www.ftc.gov). As such, the FTC's Complaint should be dismissed.

### **III. SUMMARY DECISION STANDARD**

Commission Rule of Practice 3.24(a)(2) provides that summary decision "shall be rendered . . . if the pleadings and any depositions, answers to interrogatories, admissions on file, and affidavits show that there is no genuine issue as to any material fact and that the moving party is entitled to such decision as a matter of law." Rule 3.24(a)(3) provides that once a motion for summary decision is made and adequately supported, "a party opposing the motion may not rest upon the mere allegations or denials of his pleading; his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue of fact for trial." *See also Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Adikes v. S.H. Kress & Co.*, 398 U.S. 144, 157 (1970). The provisions of FTC Rule 3.24 are virtually

identical to the provisions of Fed. R. Civ. P. 56, governing summary judgment in the federal courts. *Hearst Corp.*, 80 F.T.C. 1011, 1014 (1972).

The Supreme Court has elaborated on this standard, holding that where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). The party moving for summary judgment must satisfy the evidentiary burden that it would bear at trial. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 254 (1986). If the moving party meets its burden, the opposing party must come forward with specific facts showing there is a genuine issue for trial. *See Matsushita*, 475 U.S. at 585-88. The opposing party must show more than a metaphysical doubt as to the material facts. *Id.* The "mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment." *Liberty Lobby*, 477 U.S. at 247-48.

Also, whether a marketing practice complies with the laws or regulations enforced by the FTC is a question of law that can be resolved on summary decision. *See FTC v. Bonnie & Co. Fashions*, 1992-2 Trade Cases (CCH) ¶ 69,980 (D.N.J. 1992) (on summary judgment, court decided care label did not comply with Care Labeling Rule); *see also United States v. Union Circulation Co.*, 1982-83 Trade Cases (CCH) ¶ 65,052 at 70,862 (N.D. Ga. 1982) (on summary judgment, court found defendants' practices to violate the FTC's Cooling Off Rule), *citing United States v. Reader's Digest Ass'n*, 662 F.2d 955, 963 (3d Cir. 1981), *cert. denied*, 455 U.S. 908 (1982); *see also FTC v. U.S. Sales Corp.*, 785 F. Supp. 737 (N.D. Ill. 1992), *aff'd sub nom. FTC v. Vlahos*, 51 F.3d 275 (7th Cir. ).

As such, there is no genuine issue as to any material fact that



Respondents could not make or disseminate the representations challenged in the complaint.

Thus, Respondents' are entitled to summary decision as a matter of law.

Since retiring from a lifetime career managing a defense contractor company hired by the United States to manufacture missiles, Respondent Isely has been in the natural vitamin business for approximately thirty years. During that time, he has never received a complaint from a customer—most of which he has developed personal relationships. Respondent Isely has always endeavored to provide truthful, accurate and complete information about the products he sells.

## **VI. CONCLUSION**

Respondents' request for summary adjudication is warranted based on the fact that the Respondents did not disseminate or cause to be disseminated advertisements for RAAX11 through the alleged offending website----which is the FTC's sole alleged wrong doing and sole basis of the Complaint.

This action is ripe for adjudication. Discovery in this action has concluded and all material evidence is before the Court, excepting perhaps ascertaining the truth and veracity of the witnesses through testimony at trial (which has not been raised as an issue). As such, the significant expenses and costs of judicial resources associated with a trial can be avoided.

Rule 3.24(a)(2) of the Commission's Rules of Practice states that a party is entitled to summary decision if the "pleadings and any depositions, answers to interrogatories, admissions on file, and affidavits show that there is no genuine issue as to any material fact and that the moving party is entitled to such decision as a matter of law." The uncontroverted record plainly demonstrates that Respondents have not violated Sections 5(a) and 12 of the FTC Act through any dissemination of false and unsubstantiated claims. Accordingly, the Respondents'

respectfully requests that the Presiding Law Judge grant summary decision against the Federal Trade Commission and dismiss Complaint Counsel's Complaint.

Respectfully Submitted:

THE 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

*Counsel for Respondents*

This the 13th day of March, 2009.

**CERTIFICATE OF SERVICE**

This is to certify that the undersigned has this date served this **RESPONDENTS'**  
**MOTION FOR SUMMARY DECISION AND MEMORANDUM INCORPORATED**  
**THEREIN** 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 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 13th day of March, 2009.

  
MATTHEW I. VAN HORN

**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**

**DOCKET NO. 9330**

<p><b>In the Matter of</b></p> <p><b>GEMTRONICS, INC., a corporation, and</b></p> <p><b>WILLIAM H. ISELY, individually and as the owner of Gemtronics, Inc.</b></p>
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**RESPONDENTS' RULE 3.24 SEPARATE STATEMENT OF  
MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE ISSUE**

Pursuant to Rule 3.24 of the Commission's Rules of Practice, and in support of their Motion for Summary Decision, Respondents GEMTRONICS, INC., and WILIAM H. ISELY, hereby submit their Statement of Material Facts as to which there is no Genuine Dispute.

**A. Respondents Gemtronics, Inc. and William H. Isely**

1. Respondent Gemtronics, Inc. was formed on September 20, 2006, by the Respondent William H. Isely. Gemtronics, Inc. has never had a shareholder, board members or an employee and has never been activated. Moreover, Gemtronics, Inc. has never engaged in any business or entered into any contracts. Gemtronics, Inc. has never obtained a federal tax identification number and has never filed taxes. Gemtronics, Inc. has since its inception always been an inactive corporate shell. [See Ex. A, Gemtronics, Inc. Answer to Interrogatory Nos. 1

and 2; Ex. C, Isely Depo., pp. 98-105, and Resp. Depo. Ex. B; Isely's Answer to Interrogatory no. 2].

2. Respondent William H. Isely is 83 years of age and resides with his wife at 964 Walnut Creek Road, Franklin, North Carolina. For approximately 30 years, Mr. Isely operated a mail order vitamin supplement business. [See Complaint, ¶1; Ex. A, Isely's Answer to Interrogatory no. 4].

3. During the time period relevant to this case, Mr. Isely operated his mail order vitamin supplement business under the name "Gemtronics". When he operated his mail order vitamin supplement business under the name "Gemtronics", Mr. Isley solely handled all aspects of his mail order business and never had any employees. Since the Federal Trade Commission initiated the above-captioned action, Mr. Isely has ceased operating or owning any mail order dietary supplemental business. [See Complaint, ¶1; Ex. C, Isely Depo. pp. 41, 135-137].

4. During the year 1990, Mr. Isely was diagnosed with prostate cancer. In an effort to cure his prostate cancer, Mr. Isley began purchasing and consuming herbal products from the Brazilian company Takesun do Brasil and its owner Mr. George K. Otto. In the year 2000, Mr. Isely eventually began purchasing products from Takesun do Brasil and Mr. Otto in larger quantities in order to sell the products to Mr. Isely's retail customers of his mail order vitamin business. [See Ex. A, Isely's Answer to Interrogatory no. 7; Ex. C, Isely Depo. pp. 14-16]

5. Mr. Isley's purchases from Takesun do Brasil were each individually negotiated on a stand-alone basis regarding price, quantity, method of shipment and delivery, and the purchases were not made on an account. The products purchased by Mr. Isely from Takesun do Brasil and Mr. Otto for Mr. Isely's personal consumption and for re-sale included the herbal product RAAX11, which is the subject of this action. [See Ex. B, Isely's Answer to Interrogatory no. 1; Ex. C, Isely Depo. pp. 21 and 91.]

6. Complaint Counsel has alleged that the Respondents violated Sections 5(a) and 12 of the Federal Trade Commission Act when they disseminated or caused to be disseminated deceptive and unlawful advertisements for the product RAAX11 through an alleged offending Internet website, [www.agarius.net](http://www.agarius.net). [See Complaint ¶ 5]. Complaint Counsel's sole allegation that the Respondents violated Sections 5(a) and 12 of the Federal Trade Commission Act is by their alleged dissemination of advertisements through the alleged offending website [www.agarius.net](http://www.agarius.net). [See Complaint, ¶¶ 1-10]

**B. The Ownership and Control of [www.agarius.net](http://www.agarius.net)**

7. Neither of the Respondents have ever been the legal owner of the alleged offending website, [www.agarius.net](http://www.agarius.net); nor have they ever possessed the authority to control nor have they controlled the content of the alleged offending website, [www.agarius.net](http://www.agarius.net). Accordingly, the Respondents have never disseminated or caused to be disseminated any advertisements through the alleged offending website, [www.agarius.net](http://www.agarius.net). [See Ex. A, Isely Answer to Interrogatory No. 11; Ex. C, Isely Depo. pp. 52; Ex. D, document production from subpoena issued to web hosting company; Ex. E, Velasco Depo., pp. 10-22]

8. The alleged offending website, [www.agarius.net](http://www.agarius.net), was registered and created on June 13, 1998, by George Otto, the owner of Takesun do Brasil, through the domain registrant and maintenance company Tierra.net (d/b/a DomainDiscovery). [See Ex. D, document production from subpoena issued to web hosting company; Ex. E, Velasco Dep., pp. 10-22].

9. The company Tierra.net (d/b/a Domain Discovery) is the domain registrant company which registers and maintains the alleged offending website, [www.agarius.net](http://www.agarius.net). [See Ex. D, document production from subpoena issued to web hosting company; Ex. E, Velasco Dep., pp. 10-22].

10. According to Tierra.net (d/b/a Domain Discovery), the legal owner of the alleged offending website, www.agaricus.net, is Agarix International, a Brazilian company with an e-mail contact of gotto@takesun.com.br, the e-mail address for Mr. Otto. [See Ex. C, Isely Depo., Compl. Depo. Ex. 1 (indicating the email address gotto@takesun.com); Ex. D, document production from subpoena issued to web hosting company; Ex. E, Velasco Dep., pp. 10-22].

11. George Otto is the individual who has the user name and password to the alleged offending website, www.agaricus.net, because he is the individual that set up the Administrative Contact, Technical Contact and Billing contact. [See Ex. D, document production from subpoena issued to web hosting company; Ex. E, Velasco Dep., pp. 10-22].

12. 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 Ex. D, document production from subpoena issued to web hosting company; Ex. E, Velasco Dep., pp. 10-22].

13. According to Tierra.net (d/b/a Domain Discovery), a person could not create a website for the alleged offending website, www.agaricus.net, without access to the domain as provided to the individual who formed the website. [See Ex. D, document production from subpoena issued to web hosting company; Ex. E, Velasco Dep., pp.10-22].

14. According to Tierra.net (d/b/a Domain Discovery), the Registrant Contact for the alleged offending website, www.agaricus.net, is who the person who owns the domain name wants to show as the owner of the domain, 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 Ex. D, document production from subpoena issued to web hosting company; Ex. E, Velasco Dep., pp. 10-22].

15. 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](http://www.agaricus.net), is not the Respondents, but an individual named George Otto. [See Ex. C, Isely Depo., Compl. Depo. Ex. 1 (indicating the email address [gotto@takesun.com](mailto:gotto@takesun.com)); Ex. D, document production from subpoena issued to web hosting company; Ex. E, Velasco Dep., pp. 10-22].

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

16. During the time period prior to and immediately after the Federal Trade Commission initiated this action, Respondent Isely and his contact information was identified without his consent as the Registrant for the alleged offending website, [www.agaricus.net](http://www.agaricus.net). [See Ex. C, Isely Depo. p. 50-53; Complaint, Ex. 2]. Mr. George Otto or Agarix International caused Respondent Isely to be identified as the Registrant for the alleged offending website, [www.agaricus.net](http://www.agaricus.net) without the consent of Mr. Isely. [See Ex. C, Isely Depo. pp. 50-53].

17. Mr. Isely's name and contact information was utilized without his consent for other domain's that Mr. Otto owns and controls. [See Ex. C, Isely Depo. pp. 38, 50-53].

18. Takesun do Brazil or George Otto used Mr. Isley's name, address and telephone number on the alleged offending website, [www.agaricus.net](http://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. Isley's personal testimony about Mr. Isely's own health records for use on the alleged offending website, [www.agaricus.net](http://www.agaricus.net). [See Ex. C, Isely Depo. p. 50-53].

19. Mr. Isely ceased purchasing any products from Takesun do Brazil or George Otto Kather once Mr. Isely learned that Mr. Isely's name had been used without his permission to be designated as the Registrant and other contacts for the alleged offending website, [www.agaricus.net](http://www.agaricus.net). [See Ex. B, Isely Answer to Interrogatory no. 7].



20. Upon learning that this name and contact information was being utilized as a Registrant Contact for the website [www.agaricus.net](http://www.agaricus.net) without his consent, Mr. Isely immediately contacted Mr. George Otto and demanded that Mr. Isely's name and contact information be removed as any contact for the alleged offending website, [www.agaricus.net](http://www.agaricus.net), and any other websites where Mr. Isely's name has been utilized without his consent. In addition, Mr. Isely ceased purchasing any products from Takesun do Brasil or Mr. Otto. Mr. Otto removed Mr. Isely's name and address as a Registrant of [www.agaricus.net](http://www.agaricus.net) and other domains where Mr. Otto had utilized Mr. Isely's name and address without the consent of Mr. Isely. [See Ex. B, Isely Answer to Interrogatory no. 7; See Ex. C, Isely Depo. p. 50-53].

21. On or about March 28, 2008, after Mr. Isely made demands to Mr. Otto regarding Mr. Otto incorrectly identifying Mr. Isely as a Contact for the website [www.agaricus.net](http://www.agaricus.net), the contact information for domain [www.agaricus.net](http://www.agaricus.net) was changed and Mr. Isely's name was removed. [See Ex. D, document production responsive to Subpoena served on Tierra.net (d/b/a DomainDiscovery)].

22. 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](http://www.agaricus.net). Mr. Isely never received the subject Warning Letter because the contact email for the website [www.agaricus.net](http://www.agaricus.net) is [gotto@takesun.com.br](mailto:gotto@takesun.com.br), the email address for Mr. Otto, the owner of the website [www.agaricus.net](http://www.agaricus.net). [See Ex. B, Isely Depo. pp. 109-112, and Resp. Depo. Exhibit 3].

[END]

Dated: March 14, 2009.

Respectfully Submitted:

THE 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*

**CERTIFICATE OF SERVICE**

This is to certify that the undersigned has this date served this **RESPONDENTS' RULE 3.24 SEPARATE STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE ISSUE** 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 delivery to:***

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

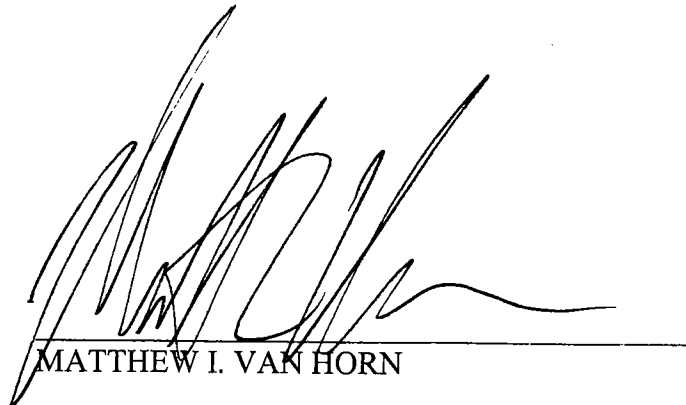
***The original and one (1) paper copy via United States mail delivery and one (1) electronic copy via e-mail:***

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 14<sup>th</sup> day of March, 2009.



MATTHEW I. VAN HORN

**EXHIBIT "A"**

**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 ANSWERS TO COMPLAINT COUNSEL'S  
FIRST SET OF INTERROGATORIES TO RESPONDENT GEMTRONICS, INC.**

Pursuant to RULE OF PRACTICE 3.35, Respondent GEMTRONICS, INC., by and through its undersigned counsel, hereby responds to Complaint Counsel's First Set of Interrogatories as follows:

**INTRODUCTORY STATEMENTS AND GENERAL OBJECTIONS**

1. GEMTRONICS, INC. has not fully completed its investigation into the facts pertaining to this suit, has not completed its discovery, and has not completed its preparation for trial. Answers contained herein are based only on such information and materials as are presently available and known to GEMTRONICS, INC. This anticipated further discovery, investigation, legal research, and analysis may supply additional facts and will establish information which may vary from that set forth herein. The answers set forth are given without

prejudice to GEMTRONICS, INC.'S right to introduce evidence of any subsequently discovered fact(s) or circumstance(s). GEMTRONICS, INC. accordingly reserves its right to change or modify any response as additional facts or circumstances are ascertained, analyses are made, and legal research is completed.

2. GEMTRONICS, INC. objects to Complaint Counsel's Interrogatories to the extent that the Interrogatories seek to impose requirements or obligations on GEMTRONICS, INC. in addition to or different from those imposed by the Code of Federal Regulations, Rules of Practice for Adjudicative Proceedings. In responding to each Interrogatory, GEMTRONICS, INC. will respond by providing only such information as may be required and proper under the Code of Federal Regulations, Rules of Practice for Adjudicative Proceedings.

3. GEMTRONICS, INC. objects to Complaint Counsel's Interrogatories to the extent that the Interrogatories seek information or documents that are protected from discovery by the attorney-client privilege, the work-product doctrine, confidential commercial information, or any other applicable privilege. Nothing contained in these responses is intended to, or in any way shall be deemed, a waiver of any such available privilege or doctrine. In responding to each Interrogatory, GEMTRONICS, INC. will not provide privileged or otherwise protected information.

4. The foregoing objections and limitations shall be applicable to, and included in, GEMTRONICS, INC.'S response to every definition and Interrogatory propounded by Complaint Counsel.

## INTERROGATORIES

1. Provide the name, address and telephone number of each individual involved in the operations of the corporate respondent GEMTRONICS, INC., including but not limited to, providing the title, dates of employment and employment responsibilities of and any work performed by each individual, any percentage of ownership, and an explanation of that person's day-to-day responsibilities and activities with respect the corporation.

**ANSWER:** William H. Isely, 964 Walnut Creek Road, Franklin, NC 28734, Telephone: 828-369-7590, formed the subject corporation, GEMTRONICS, INC., as the incorporator, as is defined under the North Carolina General Statutes. Respondent further states that the Articles of Incorporation for GEMTRONICS, INC. speak for themselves. Respondent further states that GEMTRONICS, INC. has remained an inactive corporation since its inception. Respondents state that GEMTRONICS, INC. has no shareholder or board members or employee and has never been activated. Moreover, GEMTRONICS, INC. has never conducted any business or entered into any contracts. Respondents further state that GEMTRONICS, INC. has never obtained a federal tax identification number and has never filed taxes.

2. Confirm whether GEMTRONICS, INC. is still operating. If not, indicate the date the corporation ceased operations and describe in detail what measures were taken, if any, to dissolve the corporation, including, but not limited to the filing of any documents with the North Carolina Secretary of State, the transfer or other disposition of any assets of the corporation, and what efforts were undertaken to wind down the corporation's operations.

**ANSWER:** GEMTRONICS, INC. is an inactive North Carolina corporation.

Respondent hereby incorporates its Answer to Interrogatory No. 1 herein as though set forth in full.

3. Describe in detail all written and oral instructions you provided to GEMTRONICS, INC.'S' employees, agents, or representatives relating to the advertising, promoting, offered for sale, sale, and distributing the product RAAX11 by, or on behalf of, the corporate respondent.

**ANSWER:** None. Respondent hereby incorporates its Answer to Interrogatory No. 1 herein as though set forth in full.

4. Identify by name, location, and account number any bank other financial accounts that received or disbursed funds relating to the marketing, purchasing, sale, and/or distribution of the product RAAX11. Explain what responsibilities you exercised, or had the authority to exercise, for those bank or other financial accounts, including the names of persons with who you shared the authority, and the type of transactions that were processed through each account.

**ANSWER:** None. Respondent hereby incorporates its Answer to Interrogatory No. 1 herein as though set forth in full.

5. Identify by name, address and telephone number, the individuals who have or have ever had an ownership interest in the corporate respondent.

**ANSWER:** None. Respondent hereby incorporates its Answer to Interrogatory No. 1 herein as though set forth in full.



6. Provide the total amount of revenue earned each year by respondent from any activity, since January 2004, including identifying each activity and the amount earned each year for each activity.

**ANSWER:** None. Respondent hereby incorporates its Answer to Interrogatory No. 1 herein as though set forth in full.

7. Identify and describe in detail the process by which, from whom, and the dates that you have obtained the product RAAX11 and any promotional literature for the product, including, but not limited to, identifying the amount you paid for each bottle of the product RAAX11.

**ANSWER:** None. Respondent hereby incorporates its Answer to Interrogatory No. 1 herein as though set forth in full.

8. Identify each person consulted by you, or upon whose advice, opinion, or expertise you relied relating to advertising, promoting, offered for sale, sale, and distributing the product RAAX11, provide the substance of such advice, opinion, or expertise furnished to you and any compensation paid for such services.

**ANSWER:** None. Respondent hereby incorporates its Answer to Interrogatory No. 1 herein as though set forth in full.

9. For each year from 2004 to the present, disclose the total amount of sales in terms of units and dollars that you have achieved for the sales of RAAX11 and identify the source producing the sale, including, but not limited to, the specific Internet website, newspaper advertisement, promotional mailing, etc. For each year, provide a total amount of sales, as well as a break down of the amount of sales from each source.

**ANSWER:** None. Respondent hereby incorporates its Answer to Interrogatory No. 1 herein as though set forth in full.

10. Identify and describe in detail any other payments you have received (other than the sales listed in response to Interrogatory No. 9), directly or indirectly, in connection with the advertising, marketing, promotion, sale and/or distribution of the product RAAX11 for each year from 2004 to the present. (This request includes the total dollar amount and source for each payments.)

**ANSWER:** None. Respondent hereby incorporates its Answer to Interrogatory No. 1 herein as though set forth in full.

11. Identify and describe in detail the nature of your business relationship, and when and how you began doing business with Takesun do Brasil and/or George Otto, aka Georg Otto Kather, including, but no limited to, identifying all communications and any contracts or agreements, oral or written, any payments or other compensation, and the purchase or other provision of supplies, computer or other equipment, between you and Takesun do Brasil and/or George Otto. Also identify and describe in detail and any advertising or promotional material containing your name and Takesun do Brasil and/or George Otto.

**ANSWER:** None. Respondent hereby incorporates its Answer to Interrogatory No. 1 herein as though set forth in full.

12. Identify and describe in detail the nature of your business relationship, and when and how you began doing business with Takesun USA, including, but no limited to, identifying all communications and any contracts or agreements, oral or written, any payments or other

compensation between you and Takesun USA, and any advertising or promotional material containing your name and Takesun USA.

**ANSWER:** None. Respondent hereby incorporates its Answer to Interrogatory No. 1 herein as though set forth in full.

13. Describe in detail any communications and any contracts or agreements, oral or written, that you have had with any companies or individuals related to advertising, promoting, offering for sale, sale and/or distribution of RAAX11.

**ANSWER:** None. Respondent hereby incorporates its Answer to Interrogatory No. 1 herein as though set forth in full.

14. Disclose the total amount of dollars that you have spent to advertise, market, or otherwise promote the product RAAX11 for each year from 2004 to the present, broken down by each medium used (i.e., print, Internet, radio, or other means). (This request includes, but is not limited to, all expenditures attributable to the creation, development, evaluation, approval, modification, and dissemination of promotional materials).

**ANSWER:** None. Respondent hereby incorporates its Answer to Interrogatory No. 1 herein as though set forth in full.

15. Describe in detail your participation in the Internet website [www.agaricus.net](http://www.agaricus.net), including, but not limited to, the date you began receiving orders for RAAX11 placed on the Internet website [www.agaricus.net](http://www.agaricus.net), how you received these orders, how these orders were filled by you, how you received payment for such orders, and how much you were paid.

**ANSWER:** None. Respondent hereby incorporates its Answer to Interrogatory No. 1 herein as though set forth in full.

