



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' MOTION TO STRIKE

Respondents, GEMTRONICS, INC. and WILLIAM H. ISELY, through counsel, respectfully request that the Court enter an Order striking the following exhibits from Complaint Counsel's Exhibit List dated March 18, 2009, and further Order that the same exhibits are not permitted to be introduced at trial. The Exhibits are as follows: Complaint Counsel Exhibit Nos. 2, 4, 5, 6, 7, 8, 62, 63, 64, 65, and 66.

Complaint Counsel's Complaint against the Respondents is supported solely by allegations within Paragraph 5 of the Complaint. Paragraph 5 reads as follows: "Respondents disseminated or caused to be disseminated [false or misleading] advertisements for RAAX11 through an internet website, [www.agaricus.net](http://www.agaricus.net), including but not limited to, the attached Exhibits A through D. These advertisements contain the following statements among other: . . ." [The

Complaint Exhibits A through D are attached to the Complaint and are pages captured from [www.agaricus.net](http://www.agaricus.net)]. At trial, Complaint Counsel bears the burden of establishing that in fact the Respondents disseminated or caused to be disseminated [false or misleading advertisements for the product RAAX11 through the internet site [www.agaricus.net](http://www.agaricus.net).

However, Complaint Counsel's Exhibit List identifies several exhibits (referenced above and described with greater detail within Complaint Counsel's Exhibit List) which identify other websites or are pages captured from other websites which are not identified in the Complaint. These other websites possess names which are similar to or contain the word the "agaricus". However, Counsel has not indicated in any way, through its Complaint or otherwise, that intends to offer evidence related to these collateral websites that in any way implicate the Respondents.

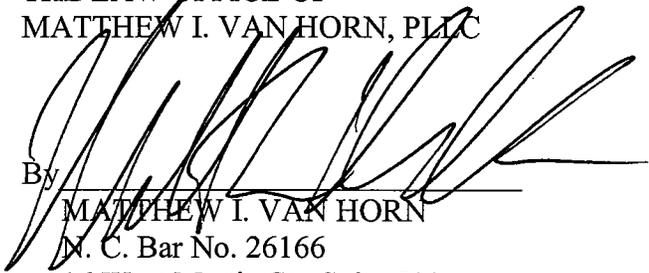
Introducing documents identifying these similarly named websites and offering pages from these similarly named websites would likely confuse the Court or, at the very least, significantly increase the time required to sift through evidence related to the alleged offending website and the non-relevant similarly named websites. The websites with names similar to the alleged offending website were not identified in the Complaint. Moreover, allowing information about them to be introduced at trial would increase the estimated time allotted for trial, would likely confuse the Court and would, thus, prejudice the Respondents. At the Court's request, Respondents' counsel will provide copies of the subject to the Court.

Wherefore, Respondents, GEMTRONICS, INC. and WILLIAM H. ISELY, respectfully request that the Court enter an Order striking Exhibit Numbers 2, 4, 5, 6, 7, 8, 62, 63, 64, 65, and 66 from the from Complaint Counsel's Exhibit List dated March 18, 2009, and further Order that

the same exhibits are not permitted to be introduced at trial.

Respectfully Submitted:

THE LAW OFFICE OF  
MATTHEW I. VAN HORN, PLLC

By 

MATTHEW I. VAN HORN

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*Counsel for Respondents*

This the 13th day of May, 2009.

**CERTIFICATE OF SERVICE**

This is to certify that the undersigned has this date served this **RESPONDENTS'** **MOTION TO STRIKE** and **PROPOSED ORDER** 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 overnight mail delivery to:***

Honorable D. Michael Chappell  
Chief Administrative Law Judge (Acting)  
Federal Trade Commission  
H112  
600 Pennsylvania Ave., NW  
Washington, D.C. 20580

***The original and one (1) paper copy via overnight 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 overnight 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 May, 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**  
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<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**

**PROPOSED ORDER**

Upon consideration of Respondents' Motion to Strike, the Court hereby grants Respondents' Motion to Strike. The Court will strike the following exhibits from Complaint Counsel's Exhibit List filed March 18, 2009, and it is further ordered that the Exhibits shall not be permitted to be introduced at the trial of this action. The exhibits from the Complaint Counsel's Exhibit list are as follows: Complaint Counsel Exhibit Nos. 2, 4, 5, 6, 7, 8, 62, 63, 64, 65, and 66.

\_\_\_\_\_  
D. Michael Chappell  
Administrative Law Judge

Date: \_\_\_\_\_, 2009

**MATTHEW I. VAN HORN**  
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May 13, 2009

ORIGINAL



Honorable Donald S. Clark  
Secretary  
Federal Trade Commission  
H135  
600 Pennsylvania Ave., NW  
Washington, D.C. 20580

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

Dear Mr. Clark:

Enclosed herewith please find the original and one copy of Respondents' Motion to Strike in the above referenced matter. I have also enclosed an original and one copy of a proposed order thereon. Would you be kind enough to please file the same.

Your cooperation will be appreciated.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Matthew I. Van Horn".

MATTHEW I. VAN HORN

MIVH:lr

Enclosures:  
As Stated