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

MOTION FOR THE ALJ TO EXCLUDE THE COMPLAINT COUNSEL'S BELATED ANSWER TO THE RESPONDENT'S APPLICATION FOR AWARD AND NOT MAKE IT PART OF THE RECORD BECAUSE ITS SUBMITTAL DID NOT MEET THE 30 DAY TIME REQUIREMENT.

The Respondent also requests the due date for his reply be put on hold until this motion is dealt with.

Respondent brings this motion with the intent that justice be provided even handedly and that the rules be applied in the same manner to both sides. During the trial, a late motion made by the Respondent's Counsel was denied with the comment that "That boat has sailed.". The rule, 3.83(b), allows for the complaint counsel to apply for an extension of time, but presumably it must be done before reaching the deadline. No request for extension has been served on the respondent. The deadline having past on Jan 4th, the rule states that a failure to file an answer may be treated as a consent to the reward requested, and the Respondent requests that the ALJ so treat it.

Rule 3.83(a) states the date of filing of the application is the day the Office of the Secretary received it. This date is posted on the FTC website as Dec. 2, This was the date of electronic service to all parties. Due to holidays and weekends, the 30 days expired Jan 4th. Service as late as Dec 5 would still run 30 days through Jan 4. Complaint Counsel received her hard copy of the Award Application on December 2, 2009 Complaint Counsel's answer was dated Jan 6, two days overdue. The timing dates were calculated per rule 4.3(a) for a 30 day period.

While Complaint Counsel has taken the position that the Respondent has protracted the proceedings, the real cause was that the Complaint Counsel negotiated every proposed settlement in bad faith. Every proposal she made required the Respondent to sign a letter to his customers in the name of the website, www.agaricus.net which likely would have been a felony. When this was pointed out to her by the Respondent's Counsel, he reported she said. "Just get him to sign it, no one will notice." [1]

The Complaint Counsel is using the process she has used throughout which is to delay and stretch out the process with the intent of psychologically and financially exhausting the respondent. She started these tactics nearly 2 years ago when she drafted a complaint from the Atlanta office. She had already recognized George Otto was the real operator behind www.agaricus.net and he was the one who had received her warning letter. This latter knowledge she concealed from the Respondent.[2]

To accept the belated answer from the Complaint Counsel will just plow old ground and only aid and abet her in her tactics of delay, with the initiation of further hearings, arguments, and the possible introduction of additional allegations. Even if the ALJ were to give his decision on the award immediately, the proceedings will have involved the respondent for over two years by the time they come to an end, proceedings that had no basis for having been brought in the first place.

Respectfully Submitted:

GEMTRONICS, INC &

WILLIAM H. ISELY, Respondents

By William H. Isely
William H. Isely

964 Walnut Creek Rd.
Franklin, NC, 28734

This 7th day of January, 2010

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

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[1] Attachment A – Settlement draft letter required by Complaint counsel in every proposed settlement (from proposed order contained in Complaint Counsel's Motion for Summary Decision.

[2] Attachment B. –Warning letter (FTC 00195-00197) sent to www.agaricus.net when G.Otto was being investigated in late 2007.

CERTIFICATE OF SERVICE

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

MOTION FOR THE ALJ TO EXCLUDE THE COMPLAINT COUNSEL'S BELATED ANSWER TO THE RESPONDENT'S APPLICATION FOR AWARD AND NOT MAKE IT PART OF THE RECORD BECAUSE ITS SUBMITTAL DID NOT MEET THE 30 DAY TIME REQUIREMENT.

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

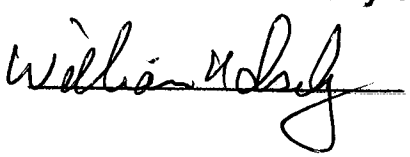
The original and one (1) paper copy via United States mail delivery and one (1) electronic copy via e-mail:

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

This 7th day of January, 2010.



Wiliam H, Isely

ATTACHMENT A

LETTER TO BE SENT BY FIRST CLASS MAIL

[To be printed on letterhead of Gemtronics, Inc./www.agaricus.net]

To Whom It May Concern:

Our records show that you bought RAAX11 from our website www.agaricus.net. We are writing to tell you that the Federal Trade Commission ("FTC") has found that our advertising claims for these products were false or unsubstantiated, and has issued an Order prohibiting us from making those claims in the future. The Order entered against us also requires that we send you the following information about the scientific evidence on these products.

No scientific research has been done concerning the product RAAX11 as a prevention, treatment, or cure for cancer in humans. Very little scientific research has been done concerning either of the ingredients in RAAX11, *Chrysobalanus Icaco* extract and *Agaricus blazei Murill* mushroom extract, as a prevention, treatment, or cure for cancer in humans. The scientific studies that have been done do not demonstrate that RAAX11, or the ingredients in RAAX11, are effective when used as treatments for cancer.

It is very important that you talk to your doctor or health care provider before using ***any*** alternative or herbal product, including RAAX11. Speaking with your doctor is important to make sure that all aspects of your medical treatment work together. Things that seem safe, such as certain foods, herbs, or pills, may interfere or affect your cancer or other medical treatment, or other medicines you might be taking. Some herbs or other complementary or alternative treatments may keep your medicines from doing what they are supposed to do, or could be harmful when taken with other medicines or in high doses. It also is very important that you talk to your doctor or health care provider before you decide to take any alternative or herbal product, including RAAX11, instead of taking conventional cancer treatments that have been scientifically proven to be safe and effective in humans.

If you would like further information about complementary and alternative treatments for cancer, the following Internet web sites may be helpful:

1. The National Cancer Institute: www.cancer.gov/cancertopics/pdq; or
2. The National Center for Complementary and Alternative Medicines: www.nccam.nih.gov

You also can contact the National Cancer Institute's Cancer Information Service at 1-800-4-CANCER or 1-800-422-6237.

Sincerely,

William H. "Bill" Isely
Gemtronics, Inc./www.agaricus.net

Bolton, Barbara E.

From: Cancer@ftc.gov
Sent: Friday, December 14, 2007 10:30 AM
To: Bolton, Barbara E.
Subject: FW: Urgent Message from the Federal Trade Commission Regarding Cancer Product Advertising on Your Website

Attachment B.

-----Original Message-----
From: Cancer@ftc.gov
Sent: Tuesday, October 23, 2007 3:28 PM
To: 'support@ashnow.com'
Subject: Urgent Message from the Federal Trade Commission Regarding Cancer Product Advertising on Your Website

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

TO: www.agaricus.net

FROM: Federal Trade Commission

RE: Health Claims on Your Website for Cancer Cures and Treatment Products

DATE: October 23, 2007

Deceptive Advertising Claims are Illegal

The staff of the Federal Trade Commission (FTC) recently reviewed your website. We are sending you this letter to remind you of your obligations under the law. The FTC protects consumers from unfair or deceptive advertising or marketing practices that raise health or safety concerns.

The FTC Act prohibits deceptive advertising in any medium, including the Internet. Under the FTC Act, advertising claims for products and services must be truthful and not misleading. Health-related claims, like those made about cancer on your website, must be supported by competent and reliable scientific evidence – the kind of evidence scientists who are experts in the field would rely on. It is against the law to make health claims without scientific support, to exaggerate the benefits of products or services, or to misstate the level of scientific support you have for your claims. Please note that consumer testimonials are not proof that your product works. If you make a health claim through a consumer testimonial, you must have competent and reliable scientific evidence that your product will have the same benefit for other users.

If your website makes express claims (literally made in the ad) or claims by implication (made indirectly or by inference) about the benefits of any cancer-related products or services that are not substantiated by competent and reliable scientific evidence, or are otherwise deceptive or fraudulent, you must stop making those

claims immediately.

http://www.ftc.gov/opa/2001/06/cureall.htmhttp://www.ftc.gov/opa/2001/07/chrisenter.htmhttp://www.ftc.gov.opa/2001/07/chrisenter.htmhttp://www.ftc.gov/opa/2001/07/westbot.htmIf your website contains any untruthful or unsubstantiated claims, you could face law enforcement action. That could mean:

1. ***A federal court injunction. Violations of court orders could result in civil penalties or criminal prosecution.***
2. ***An order to pay consumer refunds.***
3. ***Administrative orders with fines up to $11,000 per violation.***

Action Requested

We urge you to review all cancer-related claims on your website. If you don't have competent and reliable scientific evidence to support the claims, please change them immediately or remove them altogether.

FTC investigators have saved your website and will be revisiting it soon. ***Within 10 business days, please send an email to cancer@ftc.gov*** describing the actions you've taken or plan to take to address these concerns.

To ensure that your website complies with the FTC Act, we suggest reviewing the following guidance from the FTC:

1) ***Dietary Supplements: An Advertising Guide for Industry***
www.ftc.gov/bcp/conline/pubs/buspubs/dietsupp.htm
http://www.ftc.gov/bcp/conline/pubs/buspubs/dietsupp.htm/

2. ***Frequently Asked Advertising Questions: A Guide for Small Business***
www.ftc.gov/bcp/conline/pubs/buspubs/ad-faqs.htm

3. ***Advertising and Marketing on the Internet: The Rules of the Road*** at
www.ftc.gov/bcp/conline/pubs/buspubs/ruleroad.htm

Please remember that you are responsible for complying with laws enforced by the Food and Drug Administration (FDA) in addition to laws enforced by the FTC. The Federal Food, Drug, and Cosmetic Act (FDCA) defines a drug, in part, as an article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of a disease, or to affect the structure or any function of the body.[1] Drugs that are not generally recognized by qualified, scientific experts as safe and effective for the uses recommended or suggested in their labeling are considered to be new drugs.[2] It is illegal to market a new drug in the U.S. without obtaining prior FDA approval.[3] Violations of the FDCA may result in seizure of illegal products and an injunction against the manufacturers and distributors. We have contacted the FDA about claims on your website. Remember, too,