

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA**

Florida Department of Law Enforcement
and Florida Department of State,
Petitioners,

Case No: 2008 CA 003619

v.

CMI, Inc., a Kentucky corporation, et al.,

Respondents.

**CMI INC.'S RESPONSE TO INTERVENOR/RESPONDENTS'
REQUEST FOR ADMISSIONS**

Respondent, CMI, Inc., by and through its undersigned counsel, responds to the Intervenor/Respondents' Request for Admissions dated March 26, 2009 as follows:

General Objections

1. CMI objects to the definition of "State of Florida" as vague and ambiguous as CMI has engaged in numerous separate transactions with other state, local and municipal law enforcement agencies in Florida and such transactions were not contemplated, negotiated, consummated with, nor paid for by, a unitary entity as defined by Intervenors.

2. CMI objects to the definition of "Software Version 8100.10" as vague and ambiguous.

3. CMI objects to the definition of "Software Version 8100.26" as vague and ambiguous.

4. CMI objects to the definition of "Software Version 8100.27" as vague and ambiguous.

5. CMI objects to the requests to the extent that they are directed towards obtaining admissions with no relevance to the narrow issue of source code ownership in the instant litigation and which are not calculated to lead to the discovery of admissible evidence, but instead appear designed for use in other proceedings.

Specific Responses

Subject to the foregoing General Objections and without waiving same, CMI responds as follows:

1. CMI prepared Software Version 8100.10 for the State of Florida.

RESPONSE: Admitted that, based upon works previously created by CMI, CMI created, prepared and installed Software Version 8100.10 into Intoxilyzer 8000 units sold to the Florida Department of Law Enforcement (“FDLE”).

2. CMI has neither sold nor distributed an Intoxilyzer 8000 installed with Software Version 8100.10 to any entity other than the State of Florida.

RESPONSE: Denied subject to General Objection No. 1.

3. CMI will neither sell nor distribute an Intoxilyzer 8000 installed with Software Version 8100.10 to any entity other than the State of Florida.

RESPONSE: CMI cannot admit nor deny because the request calls for CMI to speculate about events that may or may not occur in the future and, as such, is not a proper request for admission.

4. CMI has neither sold nor distributed Software Version 8100.10 for installation in an Intoxilyzer 8000 to any entity other than the State of Florida.

RESPONSE: Denied subject to General Objection No. 1.

5. CMI will neither sell nor distribute Software Version 8100.10 for installation in an Intoxilyzer 8000 to any entity other than the State of Florida.

RESPONSE: CMI cannot admit nor deny because the request calls for CMI to speculate about events that may or may not occur in the future and, as such, is not a proper request for admission.

6. CMI prepared Software Version 8100.26 for the State of Florida.

RESPONSE: Admitted that, based upon works previously created by CMI, CMI created, prepared and installed Software Version 8100.26 into Intoxilyzer 8000 units sold to the Florida Department of Law Enforcement (“FDLE”) as well as numerous other state, local and municipal law enforcement agencies located within the state of Florida.

7. CMI has neither sold nor distributed an Intoxilyzer 8000 installed with Software Version 8100.26 to any entity other than the State of Florida.

RESPONSE: Denied subject to General Objection No. 1.

8. CMI will neither sell nor distribute an Intoxilyzer 8000 installed with Software Version 8100.26 to any entity other than the State of Florida.

RESPONSE: CMI cannot admit nor deny because the request calls for CMI to speculate about events that may or may not occur in the future and, as such, is not a proper request for admission.

9. CMI has neither sold nor distributed Software Version 8100.26 for installation in an Intoxilyzer 8000 to any entity other than the State of Florida.

RESPONSE: Denied subject to General Objection No. 1.

10. CMI will neither sell nor distribute Software Version 8100.26 for installation in an Intoxilyzer 8000 to any entity other than the State of Florida.

RESPONSE: CMI cannot admit nor deny because the request calls for CMI to speculate about events that may or may not occur in the future and, as such, is not a proper request for admission.

11. CMI prepared Software Version 8100.27 for the State of Florida.

RESPONSE: Admitted that, based upon works previously created by CMI, CMI created, prepared and installed Software Version 8100.27 into Intoxilyzer 8000 units sold to the Florida Department of Law Enforcement (“FDLE”) as well as numerous other state, local and municipal law enforcement agencies located within the state of Florida.

12. CMI has neither sold nor distributed an Intoxilyzer 8000 installed with Software Version 8100.27 to any entity other than the State of Florida.

RESPONSE: Denied subject to General Objection No. 1.

13. CMI will neither sell nor distribute an Intoxilyzer 8000 installed with Software Version 8100.27 to any entity other than the State of Florida.

RESPONSE: CMI cannot admit nor deny because the request calls for CMI to speculate about events that may or may not occur in the future and, as such, is not a proper request for admission..

14. CMI has neither sold nor distributed Software Version 8100.27 for installation in an Intoxilyzer 8000 to any entity other than the State of Florida.

RESPONSE: Denied subject to General Objection No. 1.

15. CMI will neither sell nor distribute Software Version 8100.27 for installation in an Intoxilyzer 8000 to any entity other than the State of Florida.

RESPONSE: CMI cannot admit nor deny because the request calls for CMI to speculate about events that may or may not occur in the future and, as such, is not a proper request for

admission.

16. The first sale of an Intoxilyzer 8000 to the State of Florida occurred in 2005, pursuant to the purchase order attached to the Amended Petition in this cause.

RESPONSE: Denied.

17. At the time of CMI's initial sale of Intoxilyzer 8000's to the State of Florida, there were no written instrument(s), other than those attached to the Amended Petition, which addressed the ownership of either the software (or the source code to the software) installed on these Intoxilyzer 8000's.

RESPONSE: Denied.

18. At the time of the initial sale of the Intoxilyzer 8000's to the State of Florida, "The Standard Software License Agreement", attached as an exhibit to the Amended Petition, was not made a condition of the sale.

RESPONSE: Admitted that the specific document referenced was not made a condition of the initial sale to FDLE, but CMI further states that it conveyed to FDLE a limited license to use the software installed upon the Intoxilyzer 8000 as attendant to the operation of said unit.

19. "The Standard Software license agreement", attached as an exhibit to the Amended Petition, was first provided to the State of Florida on the disc for the update to Software Version 8100.26.

RESPONSE: Admitted that the referenced Standard Software License Agreement was first provided to FDLE on the disc for the update to Software Version 8100.26.

20. CMI provided to the State of Florida the disc(s) for the update to Software Version 8100.26 in either December 2005 or January 2006.

RESPONSE: Admitted that CMI provided the disc(s) to FDLE for the update to

Software Version 8100.26 in January 2006.

21. The installation disc for Software Version 8100.26 required the State of Florida to agree to the terms of “The Standard Software License Agreement” in order to install the software.

RESPONSE: Admitted that the installation disc required FDLE to agree to the terms of the referenced Standard Software License Agreement in order to install the software.

22. Software Version 8100.10 is materially different from the software which was installed in the Intoxilyzer 8000 submitted to the U.S. Department of Transportation in order for the Intoxilyzer 8000 to be placed on the US DOT conforming products list in 2002.

RESPONSE: CMI can neither admit nor deny; the term “materially different” is undefined, vague, and ambiguous therefore requiring CMI to speculate as the request’s meaning and intent. Moreover, the request is subject to General Objection 5.

23. Software Version 8100.26 is materially different from the software which was installed the Intoxilyzer 8000 submitted to the U.S. Department of Transportation in order for the Intoxilyzer 8000 to be placed on the US DOT conforming products list in 2002.

RESPONSE: CMI can neither admit nor deny; the term “materially different” is undefined, vague, and ambiguous therefore requiring CMI to speculate as the request’s meaning and intent. Moreover, the request is subject to General Objection 5.

24. Software Version 8100.27 is materially different from the software which was installed the Intoxilyzer 8000 submitted to the U.S. Department of Transportation in order for the Intoxilyzer 8000 to be placed on the US DOT conforming products list in 2002.

RESPONSE: CMI can neither admit nor deny; the term “materially different” is undefined, vague, and ambiguous therefore requiring CMI to speculate as the request’s meaning

and intent. Moreover, the request is subject to General Objection 5.

25. Software Version 8100.10 is not subject to a Federal Copyright.

RESPONSE: Objection as to the vagueness of the phrase “subject to a Federal Copyright.” Notwithstanding said objection and without waiving same, CMI denies the request to the extent the request states, suggests or otherwise implies that Software Version 8100.10 is not subject to protection under the federal copyright laws, including but not limited to the Copyright Act, 17 U.S.C. §§ 101, *et seq.*, regulations promulgated thereunder, and the case law decided thereunder; admitted to the extent CMI has not registered Software Version 8100.10 with the United States Copyright Office.

26. Software Version 8100.26 is not subject to a Federal Copyright.

RESPONSE: Objection as to the vagueness of the phrase “subject to a Federal Copyright.” Notwithstanding said objection and without waiving same, CMI denies the request to the extent the request states, suggests or otherwise implies that Software Version 8100.26 is not subject to protection under the federal copyright laws, including but not limited to the Copyright Act, 17 U.S.C. §§ 101, *et seq.*, regulations promulgated thereunder, and the case law decided thereunder; admitted to the extent CMI has not registered Software Version 8100.26 with the United States Copyright Office.

27. Software Version 8100.27 is not subject to a Federal Copyright.

RESPONSE: Objection as to the vagueness of the phrase “subject to a Federal Copyright.” Notwithstanding said objection and without waiving same, CMI denies the request to the extent the request states, suggests or otherwise implies that Software Version 8100.27 is not subject to protection under the federal copyright laws, including but not limited to the Copyright Act, 17 U.S.C. §§ 101, *et seq.*, regulations promulgated thereunder, and the case law

decided thereunder; admitted to the extent CMI has not registered Software Version 8100.27 with the United States Copyright Office.

28. The software which was installed the Intoxilyzer 8000 submitted to the U.S. Department of Transportation in order for the Intoxilyzer 8000 to be placed on the US DOT conforming products list in 2002 is not subject to a Federal Copyright.

RESPONSE: Objection as to the vagueness of the phrase “subject to a Federal Copyright.” Notwithstanding said objection and without waiving same, CMI denies the request to the extent the request states, suggests or otherwise implies that referenced software is not subject to protection under the federal copyright laws, including but not limited to the Copyright Act, 17 U.S.C. §§ 101, *et seq.*, regulations promulgated thereunder, and the case law decided thereunder; admitted to the extent CMI has not registered the referenced software with the United States Copyright Office.

29. The mouth alcohol detect routine contained in Software Version 8100.10 is based on raw-raw comparison.

RESPONSE: CMI can neither admit nor deny because the term “raw-raw comparison” is undefined, vague, and ambiguous therefore requiring CMI to speculate as to the request’s meaning. Moreover, the request is subject to General Objection 5.

30. The mouth alcohol detect routine contained in Software Version 8100.26 is based on raw-raw comparison.

RESPONSE: CMI can neither admit nor deny because the term “raw-raw comparison” is undefined, vague, and ambiguous therefore requiring CMI to speculate as to the request’s meaning. Moreover, the request is subject to General Objection 5.

31. The mouth alcohol detect routine contained in Software Version 8100.27 is based

on raw-raw comparison.

RESPONSE: CMI can neither admit nor deny because the term “raw-raw comparison” is undefined, vague, and ambiguous therefore requiring CMI to speculate as to the request’s meaning. Moreover, the request is subject to General Objection 5.

32. The mouth alcohol detect routine contained in the software which was installed the Intoxilyzer 8000 submitted to the U.S. Department of Transportation in order for the Intoxilyzer 8000 to be placed on the US DOT conforming products list in 2002 is based on raw-raw comparison.

RESPONSE: CMI can neither admit nor deny because the term “raw-raw comparison” is undefined, vague, and ambiguous therefore requiring CMI to speculate as to the request’s meaning. Moreover, the request is subject to General Objection 5.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served via Registered E-mail upon the following counsel of record this 30th day of April, 2009:

James A. Peters
Special Counsel
Office of the Attorney General
PL-01, The Capitol
Tallahassee, FL 32399-1050
Jim.Peters@myfloridalegal.com

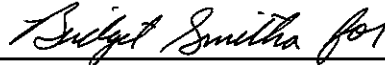
Linton B. Eason
Assistant General Counsel
Florida Department of Law Enforcement
P.O. Box 1489
Tallahassee, FL 32302
LintonEason@fdle.state.fl.us

Robert N. Harrison
825 Tamiami Trail South, Suite 2
Venice, FL 34285
robert@harrisonlawoffice.com

Thomas M. Findley
Messer Caparello & Self, P.A.
2618 Centennial Place
Tallahassee, FL 32308
tfindley@lawfla.com

Michael R. Ufferman
2022-1 Raymond Diehl Road
Tallahassee, FL 32308
Ufferman@uffermanlaw.com

GREENBERG TRAUIG P.A.



GLENN T. BURHANS, JR.
FLORIDA BAR NUMBER 605867
101 EAST COLLEGE AVENUE
TALLAHASSEE, FL 32301
TELEPHONE (850) 222-6891
FACSIMILE (850) 681-0207
BURHANS@GTLAW.COM

EDWARD G. GUEDES
FLORIDA BAR NUMBER 768103
1221 BRICKELL AVENUE
MIAMI, FLORIDA 33131
TELEPHONE: (305) 579-0500
FACSIMILE: (305) 579-0717
GUEDESE@GTLAW.COM

Counsel for Respondent CMI, Inc.