

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION



ORIGINAL

)
In the Matter of)
)
)
Jerk, LLC, a limited liability company,)
Also d/b/a JERK.COM, and)
)
)
John Fanning,)
Individually and as a member of)
Jerk, LLC,)
)
_____)

Docket No. 9361

**COMPLAINT COUNSEL'S RESPONSE TO
RESPONDENT'S FIRST SET OF REQUESTS FOR ADMISSIONS**

Pursuant to Rule 3.32 of the Federal Trade Commission's Rules of Practice for Adjudicative Proceedings, and the Scheduling Order entered by Chief Administrative Law Judge Chappell, Complaint Counsel hereby submits the following objections and responses to Respondent Jerk, LLC's First Requests for Admissions ("RFA").

GENERAL OBJECTIONS

The following General Objections apply to each of Respondent Jerk, LLC's RFAs and are incorporated into each subsequent response. The assertion of the same, similar or additional objections or the provision of partial answers in response to one part of an RFA does not waive any of Complaint Counsel's General Objections as to the other parts of the RFA.

1. Complaint Counsel objects to Respondent's RFAs to the extent they exceed the scope or authority of the Rules, or to the extent they purport to impose obligations on Complaint Counsel beyond what the Rules impose. Complaint Counsel will respond to each RFA consistent with its obligations under the Rules.

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2. Complaint Counsel objects to each RFA to the extent that it exceeds the scope of discovery pursuant to Rule 3.31(c)(2).

3. Complaint Counsel objects to each RFA to the extent it is not relevant to the pending proceeding against Respondent or does not relate to statements or opinions of fact or of the application of law to fact, and thereby exceed the scope or authority of Rule 3.32.

4. Complaint Counsel objects to each RFA to the extent it seeks the disclosure of information subject to the deliberative process privilege, the law enforcement privilege, the investigative privilege, the informant's privilege, the attorney-client privilege, the attorney work-product doctrine, the confidentiality provisions set forth in the Federal Trade Commission Act, the privilege for information given to the FTC on a Pledge of Confidentiality, a protective order from another litigation, or any other privilege, doctrine or protection as provided by any applicable law. Nothing contained in these responses is intended to be, or in any way shall be deemed, a waiver of such available privilege or doctrine.

5. Complaint Counsel objects to each RFA to the extent it seeks information that is not relevant to the subject matter of the litigation or not reasonably calculated to lead to the discovery of information relevant to the allegations of the complaint, to the proposed relief, or to Respondents' defenses. By providing information in response to any RFA, Complaint Counsel does not concede that such information is relevant, material, or admissible in evidence.

6. Complaint Counsel objects to each RFA to the extent that it is vague, ambiguous, overly broad, or unduly burdensome. To the extent Complaint Counsel's response to any RFA adopts any term or phrase defined or used by Respondent, Complaint Counsel does not accept or concede that any of the terms, phrases or definitions is appropriate, descriptive or accurate.

7. Complaint Counsel's objections and responses to each RFA are based on information now known to Counsel. Complaint Counsel has not yet completed its discovery of the facts in this case or prepared for trial and therefore reserves its rights under the Commission's Rules of Practice to amend, modify, or supplement its objections and responses if it learns of new information.

SPECIFIC OBJECTIONS AND RESPONSES

Subject to and without waiver of the foregoing General Objections or any other objections or claims of privilege, Complaint Counsel presents its specific objections and responses to Respondent's First Set of Requests for Admission.

RFA No. 1

1. The Jerk.com website has not been in operation since some time in 2013. See Comp. ¶ 4.

Complaint Counsel objects to this request as irrelevant, as it seeks information that is not relevant to the subject matter of the litigation or not reasonably calculated to lead to the discovery of information relevant to the allegations of the Complaint, to the proposed relief, or to Respondents' defenses. Complaint Counsel further objects to the request as vague and ambiguous, particularly with respect to the term "some time." Complaint Counsel further objects to the request as unduly burdensome, as information about the operation of the Jerk.com website is more convenient, less burdensome, and less expensive to obtain from Respondent Jerk, LLC or Respondent John Fanning.

RFA No. 2

2. **The term “profile,” with respect to Jerk.com, refers to a person’s first name, last name, and photo. See Comp. ¶¶ 4, 6.**

Complaint Counsel objects to the request as vague and ambiguous. Complaint Counsel further objects to the request as unduly burdensome, as information about the requested information is more convenient, less burdensome, and less expensive to obtain from Respondent Jerk, LLC or Respondent John Fanning.

RFA No. 3

3. **The first name, last name and photo of any person who uses Facebook are publicly available at <https://www.facebook.com/directory>.**

Complaint Counsel objects to this request as irrelevant, as it seeks information that is not relevant to the subject matter of the litigation or not reasonably calculated to lead to the discovery of information relevant to the allegations of the Complaint, to the proposed relief, or to Respondents’ defenses. Complaint Counsel further objects to the request as unduly burdensome, as information about the information available on the Facebook website is more convenient, less burdensome, and less expensive to obtain from another source, e.g., Facebook.

RFA No. 4

4. **The FTC has been investigating the Jerk.com website since at least August of 2012.**

Complaint Counsel objects to this request as irrelevant, as it seeks information that is not relevant to the subject matter of the litigation or not reasonably calculated to lead to the discovery of information relevant to the allegations of the Complaint, to the proposed relief, or to Respondents’ defenses. Complaint Counsel further objects to this request to the extent it seeks the disclosure of information subject to the deliberative process privilege, the law enforcement privilege, and the investigative privilege. Subject to and without waiver of the foregoing General

and Specific objections, Complaint Counsel admits that it has been investigating the Jerk.com website since at least August of 2012.

RFANo. 5

5. People have a First Amendment right to express their opinions.

Complaint Counsel objects to this request as irrelevant, as it seeks information that is not relevant to the subject matter of the litigation or not reasonably calculated to lead to the discovery of information relevant to the allegations of the Complaint, to the proposed relief, or to Respondents' defenses. Complaint Counsel further objects to the request as vague and ambiguous. Subject to and without waiver of the foregoing General and Specific objections, Complaint Counsel admits that the First Amendment to the United States Constitution states: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

RFANo. 6

6. People have a First Amendment right to make truthful statements of fact.

Complaint Counsel objects to this request as irrelevant, as it seeks information that is not relevant to the subject matter of the litigation or not reasonably calculated to lead to the discovery of information relevant to the allegations of the Complaint, to the proposed relief, or to Respondents' defenses. Complaint Counsel further objects to the request as vague and ambiguous. Subject to and without waiver of the foregoing General and Specific objections, Complaint Counsel admits that the First Amendment to the United States Constitution states: "Congress shall make no law respecting an establishment of religion, or prohibiting the free

exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.”

RFA No. 7

7. A website that provides people with a forum to express their opinions and make truthful statements provides an important public service.

Complaint Counsel objects to this request as irrelevant, as it seeks information that is not relevant to the subject matter of the litigation or not reasonably calculated to lead to the discovery of information relevant to the allegations of the Complaint, to the proposed relief, or to Respondents’ defenses. Complaint Counsel further objects to this request as vague, ambiguous, and overly broad, particularly with respect to the terms “forum” and “important public service.”

RFA No. 8

8. A website where people, investigators and law enforcement can research the factual statements and opinions of others regarding a potentially abusive, unstable or dangerous person provides an important public service.

Complaint Counsel objects to this request as irrelevant, as it seeks information that is not relevant to the subject matter of the litigation or not reasonably calculated to lead to the discovery of information relevant to the allegations of the Complaint, to the proposed relief, or to Respondents’ defenses. Complaint Counsel further objects to this request as vague, ambiguous, and overly broad, particularly with respect to the term “important public service.”

RFA No. 9

9. Some individuals did not sign drafts of declarations or affidavits submitted to them by the FTC.

Complaint Counsel objects to this request as irrelevant, as it seeks information that is not relevant to the subject matter of the litigation or not reasonably calculated to lead to the discovery of information relevant to the allegations of the Complaint, to the proposed relief, or to

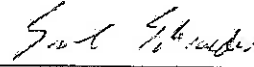
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Respondents' defenses. Complaint Counsel further objects to the request as overly burdensome, as it is not limited to the investigation of the instant matter or prosecution of the instant case.

Dated: July 10, 2014

Respectfully submitted,



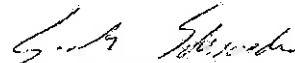
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Federal Trade Commission
901 Market St., Ste. 570
San Francisco, CA 94103

VERIFICATION OF SARAH SCHROEDER

I am an attorney of record in this matter and am authorized to make this verification for and on behalf of Complaint Counsel. I have read the foregoing Complaint Counsel's Response to Respondent's First Set of Requests for Admissions, and am familiar with the contents thereof. The answers are true and correct to the best of my knowledge, information, and belief.

I declare under penalty of perjury that the statements made in this Verification are true and correct.

July 10, 2014



Sarah Schroeder

CERTIFICATE OF SERVICE

I hereby certify that on July 10, 2014, I caused a true and correct copy of the paper original of the foregoing *Complaint Counsel's Response to Respondent's First Set of Requests for Admissions* to be served as follows:

One electronic copy to the **Office of the Secretary**, and one copy through the FTC's e-filing system:

Donald S. Clark, Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Room H-159
Washington, DC 20580
Email: secretary@ftc.gov

One electronic copy to the **Office of the Administrative Law Judge**:

The Honorable D. Michael Chappell
Administrative Law Judge
600 Pennsylvania Ave., NW, Room H-110
Washington, DC 20580

One electronic copy to **Counsel for Respondent Jerk, LLC**:

Maria Speth
Jaburg & Wilk, P.C.
3200 North Central Avenue
Suite 2000
Phoenix, AZ 85012
mcs@jaburgwilk.com

One electronic copy to **Counsel for Respondent John Fanning**:

Peter F. Carr, II
Eckert Seamans Cherin & Mellott, LLC
Two International Place, 16th Floor
Boston, MA 02110
pcarr@eckertseamans.com

I further certify that I possess a paper copy of the signed original of the foregoing document that is available for review by the parties and the adjudicator.

July 10, 2014



Beatrice Burke