

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION



COMMISSIONERS: Edith Ramirez, Chairwoman
Julie Brill
Maureen K. Ohlhausen
Joshua D. Wright
Terrell McSweeney

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
PUBLIC DOCUMENT

**RESPONDENT JOHN FANNING'S RESPONSES TO
FIRST SET OF REQUESTS FOR DOCUMENTS**

Pursuant to Rule 3.37 of the Federal Trade Commission's Rules of Practice, 16 C.F.R.
§ 3.37, and the Court's *Scheduling Order* dated May 28, 2014, Respondent John Fanning
respond to Complaint Counsel's First Set of Request for Documents as follows.

GENERAL OBJECTIONS

1. Respondent Fanning objects to the requests to the extent they seek information protected by the attorney-client privilege or other recognized privilege.
2. Respondent Fanning objects to the requests to the extent they seek information protected by the attorney work product doctrine.
3. Respondent Fanning objects to the requests to the extent they seek confidential or private information.
4. Respondent Fanning objects to the requests to the extent they seek information that is more readily accessible to the Commission through other means.
5. Respondent Fanning objects to the requests to the extent they seek information already in the possession, custody, or control of the Commission.

6. Respondent Fanning objects to the requests to the extent they seek information in the possession, custody, or control of a person, entity or other third-party over which Fanning does not have any control or authority.
7. Respondent Fanning objects to the requests to the extent they seek information that is not reasonably calculated to lead to the discovery of admissible evidence or otherwise seeks irrelevant materials in violation of the Commissions' procedures and the regulatory authority granted to the Commission.
8. Respondent Fanning objects to the requests to the extent they state legal conclusions or require Fanning to engage in a legal analysis.
9. Respondent Fanning objects to the requests to the extent they do not differentiate from Respondent Fanning and Respondent Jerk, LLC and imply that Respondent Fanning and Respondent Jerk LLC are one and the same.
10. Respondent Fanning objects to the requests to the extent they seek to harass or annoy Fanning, or otherwise interfere with his business or professional relationships.

RESPONSES

1. All documents relating to the relationship between Jerk, LLC and NetCapital.

Response No. 1

After a diligent search, Respondent Fanning is not able to locate any responsive documents in his possession, custody or control. Respondent Fanning will supplement responsive documents in the event that he locates any documents in the future.

2. All correspondence between any Respondent and Jerk, LLC's registered agents.

Response No. 2

After a diligent search, Respondent Fanning is not able to locate any responsive documents in his possession, custody or control. Respondent Fanning will supplement responsive documents in the event that he locates any documents in the future.

3. All documents prepared for third parties relating to investment in or funding of Jerk.com, including business and investment plans, proposals, slides, presentations, brochures, press releases, video news releases, displays, and earnings projections.

Response No. 3

After a diligent search, Respondent Fanning is not able to locate any responsive documents in his possession, custody or control. Respondent Fanning will supplement responsive documents in the event that he locates any documents in the future.

4. All documents relating to the formation or ownership of Jerk, LLC, including but not limited to incorporation records and corporate filings.

Response No. 4

After a diligent search, Respondent Fanning is not able to locate any responsive documents in his possession, custody or control. Respondent Fanning will supplement responsive documents in the event that he locates any documents in the future.

5. All copies of Jerk.com, including printouts, screenshots, source code, log files, and archived versions of the website.

Response No. 5

After a diligent search, Respondent Fanning is not able to locate any responsive documents in his possession, custody or control. Respondent Fanning will supplement responsive documents in the event that he locates any documents in the future.

6. All copies of Jerk.org, including printouts, screenshots, source code, log files, and archived versions of the website.

Response No. 6

After a diligent search, Respondent Fanning is not able to locate any responsive documents in his possession, custody or control. Respondent Fanning will supplement responsive documents in the event that he locates any documents in the future.

7. All documents stating, describing, or summarizing the number of visitors to Jerk.com.

Response No. 7

After a diligent search, Respondent Fanning is not able to locate any responsive documents in his possession, custody or control. Respondent Fanning will supplement responsive documents in the event that he locates any documents in the future.

8. All documents relating to the statement “millions of people who already use Jerk” on Jerk.com, *see* Complaint Exhibit C, including but not limited to all documents demonstrating, supporting, or calling into question that statement.

Response No. 8

After a diligent search, Respondent Fanning is not able to locate any responsive documents in his possession, custody or control. Respondent Fanning will supplement responsive documents in the event that he locates any documents in the future.

9. All documents relating to the statement “Less than 5% of the millions of people on Jerk are jerks” on Jerk.com, *see* Complaint Exhibit G, including but not limited to all documents demonstrating, supporting, or calling into question that statement.

Response No. 9

After a diligent search, Respondent Fanning is not able to locate any responsive documents in his possession, custody or control. Respondent Fanning will supplement responsive documents in the event that he locates any documents in the future.

10. All documents relating to (1) the number of profiles maintained or displayed on Jerk.com; (2) the number of profiles featuring a photograph of the profiled person; (3) the number of profiles where the age or depiction of the person indicates that the person is less than 13 years of age; or (4) the number of Jerk.com profiles that reflect a 0/0 vote for the Jerk/Not a Jerk votes tally.

Response No. 10

After a diligent search, Respondent Fanning is not able to locate any responsive documents in his possession, custody or control. Respondent Fanning will supplement responsive documents in the event that he locates any documents in the future.

11. All documents relating to each method by which a Jerk.com profile has been created for display on Jerk.com, including but not limited to how any Respondent obtained information, images, and depictions displayed in Jerk.com profiles that were not created or submitted through the “post a jerk” feature.

Response No. 11

After a diligent search, Respondent Fanning is not able to locate any responsive documents in his possession, custody or control. Respondent Fanning will supplement responsive documents in the event that he locates any documents in the future.

12. All documents relating to the directory produced to Complaint Counsel with Respondents’ Initial Disclosures on May 27, 2014.

Response No. 12

After a diligent search, Respondent Fanning is not able to locate any responsive documents in his possession, custody or control. Respondent Fanning will supplement responsive documents in the event that he locates any documents in the future.

13. All documents relating to any acts or omissions by third parties, including but not limited to Facebook, Software Assist, or any third-party hackers, alleged in any Respondent's Answer to the Complaint.

Response No. 13

After a diligent search, Respondent Fanning is not able to locate any responsive documents in his possession, custody or control. Respondent Fanning will supplement responsive documents in the event that he locates any documents in the future.

14. All documents relating to any First Amendment defense asserted in any Respondent's Answer to the Complaint.

Response No. 14

After a diligent search, Respondent Fanning is not able to locate any responsive documents in his possession, custody or control. Respondent Fanning will supplement responsive documents in the event that he locates any documents in the future.

15. All documents relating to any Respondent's right to or control over any of the following domains: Jerk.com, Jerk2.com, Jerk3.com, Jerk4.com, Jerk.be, jerk.la, and Jerk.org.

Response No. 15

After a diligent search, Respondent Fanning is not able to locate any responsive documents in his possession, custody or control. Respondent Fanning will supplement responsive documents in the event that he locates any documents in the future.

16. All documents relating to any service or feature offered to consumers who have paid for Jerk.com customer service.

Response No. 16

After a diligent search, Respondent Fanning is not able to locate any responsive documents in his possession, custody or control. Respondent Fanning will supplement responsive documents in the event that he locates any documents in the future.

17. All documents relating to any service or feature offered to consumers who have paid for a Jerk.com membership.

Response No. 17

After a diligent search, Respondent Fanning is not able to locate any responsive documents in his possession, custody or control. Respondent Fanning will supplement responsive documents in the event that he locates any documents in the future.

18. All documents relating to consumers who received “Fast notifications of postings about you,” as described on Jerk.com. *See* Complaint Exhibit C.

Response No. 18

After a diligent search, Respondent Fanning is not able to locate any responsive documents in his possession, custody or control. Respondent Fanning will supplement responsive documents in the event that he locates any documents in the future.

19. All documents relating to consumers who received “Updates on people you know and are tracking,” as stated on Jerk.com. *See* Complaint Exhibit C.

Response No. 19

After a diligent search, Respondent Fanning is not able to locate any responsive documents in his possession, custody or control. Respondent Fanning will supplement responsive documents in the event that he locates any documents in the future.

20. All documents relating to consumers who entered “comments and reviews,” as stated on Jerk.com. *See* Complaint Exhibit C.

Response No. 20

After a diligent search, Respondent Fanning is not able to locate any responsive documents in his possession, custody or control. Respondent Fanning will supplement responsive documents in the event that he locates any documents in the future.

21. All documents relating to consumers who “create[d] a dispute,” as stated on Jerk.com. *See* Complaint Exhibit H.

Response No. 21

After a diligent search, Respondent Fanning is not able to locate any responsive documents in his possession, custody or control. Respondent Fanning will supplement responsive documents in the event that he locates any documents in the future.

22. All documents relating to consumers who “post[ed] a Jerk,” as stated on Jerk.com. *See* Complaint Exhibit E.

Response No. 22

After a diligent search, Respondent Fanning is not able to locate any responsive documents in his possession, custody or control. Respondent Fanning will supplement responsive documents in the event that he locates any documents in the future.

23. All documents relating to the following applications on Facebook: Jerk.com, Jerk2.com, Jerk3.com, Jerk4.com, Jerk.be, jerk.la, and Jerk.org.

Response No. 23

After a diligent search, Respondent Fanning is not able to locate any responsive documents in his possession, custody or control. Respondent Fanning will supplement responsive documents in the event that he locates any documents in the future.

24. All emails sent to and from the support@jerk.com email account.

Response No. 24

After a diligent search, Respondent Fanning is not able to locate any responsive documents in his possession, custody or control. Respondent Fanning will supplement responsive documents in the event that he locates any documents in the future.

25. All documents identifying any person who has access to or has corresponded through the support@jerk.com email account.

Response No. 25

After a diligent search, Respondent Fanning is not able to locate any responsive documents in his possession, custody or control. Respondent Fanning will supplement responsive documents in the event that he locates any documents in the future.

26. All documents identifying any person who has access to or has posted through each Twitter account used by Jerk, LLC.

Response No. 26

After a diligent search, Respondent Fanning is not able to locate any responsive documents in his possession, custody or control. Respondent Fanning will supplement responsive documents in the event that he locates any documents in the future.

27. All documents relating to Jerk, LLC's policies and procedures on consumers' requests to remove a Jerk.com profile or content from a Jerk.com profile, including a consumer's request to remove copyrighted content from Jerk.com.

Response No. 27

After a diligent search, Respondent Fanning is not able to locate any responsive documents in his possession, custody or control. Respondent Fanning will supplement responsive documents in the event that he locates any documents in the future.

28. All correspondence from consumers regarding Jerk.com.

Response No. 28

After a diligent search, Respondent Fanning is not able to locate any responsive documents in his possession, custody or control. Respondent Fanning will supplement responsive documents in the event that he locates any documents in the future.

29. All correspondence between Jerk, LLC and Facebook.

Response No. 29

After a diligent search, Respondent Fanning is not able to locate any responsive documents in his possession, custody or control. Respondent Fanning will supplement responsive documents in the event that he locates any documents in the future.

30. All correspondence relating to Jerk.com or Jerk, LLC between any Respondent and any software developer, including but not limited to Software Assist.

Response No. 30

After a diligent search, Respondent Fanning is not able to locate any responsive documents in his possession, custody or control. Respondent Fanning will supplement responsive documents in the event that he locates any documents in the future.

31. All correspondence between any Respondent and any government agency or consumer protection organization, including but not limited to state attorneys general, local law enforcement, the Better Business Bureau, and government agencies outside of the United States relating to Jerk.com or Jerk, LLC.

Response No. 31

After a diligent search, Respondent Fanning is not able to locate any responsive documents in his possession, custody or control. Respondent Fanning will supplement responsive documents in the event that he locates any documents in the future.

32. All agreements retaining or otherwise securing the provision of legal services for Jerk, LLC in this matter.

Response No. 32

After a diligent search, Respondent Fanning is not able to locate any responsive documents in his possession, custody or control. Respondent Fanning will supplement responsive documents in the event that he locates any documents in the future.

Respectfully submitted,
JOHN FANNING,
By his attorneys,

/s/ Peter F. Carr, II

Peter F. Carr, II

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CERTIFICATE OF SERVICE

I hereby certify that on July 11, 2014, I caused a true and accurate copy of the foregoing document entitled Respondent John Fanning's Responses to Complaint Counsel's First Requests for Documents to be served electronically through the FTC's e-filing system and I caused a true and accurate copy of the foregoing 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., N.W., 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
Chief Administrative Law Judge
600 Pennsylvania Avenue, N.E., Room H-110
Washington, DC 20580
Email: oalj@ftc.gov

One electronic copy to the Office of the Counsel for the Federal Trade Commission:

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One electronic copy to counsel for Jerk, LLC:

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/s/ Peter F. Carr, II
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Dated: July 11, 2014