

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES



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

COMPLAINT COUNSEL'S MOTION TO COMPEL DISCOVERY

Pursuant to Federal Trade Commission Rule of Practice 3.38(a), and for the reasons stated in the supporting Memorandum filed herewith, Complaint Counsel respectfully request that the Court order Respondents John Fanning and Jerk, LLC to provide responses to Complaint Counsel's Second Set of Interrogatories and documents responsive to Complaint Counsel's Second Request For Production.

**MEMORANDUM IN SUPPORT OF COMPLAINT COUNSEL'S MOTION TO
COMPEL DISCOVERY**

For the second time in this action, Complaint Counsel must seek the Court's intervention to have Respondents comply with their basic discovery obligations. This time, both Respondent John Fanning ("Fanning") and Jerk, LLC ("Jerk") have failed to provide any responses to Complaint Counsel's Second Set of Interrogatories ("Interrogatories") and Second Request for Production ("RFPs"). Neither has provided any justification for failing to respond.

BACKGROUND

On October 7, 2014, Complaint Counsel served the Interrogatories and RFPs on Respondents.¹ (Ortiz Dec. ¶ 2, Ex. A.) Neither Fanning nor Jerk has provided any response or objection to either the Interrogatories or the RFPs. (*Id.*) Neither sought an extension, or provided any justification for the failure to respond. (*Id.*)

ARGUMENT

A. Legal Standard.

Federal Trade Commission Rule of Practice ("Rule") 3.31(a) permits parties to obtain discovery by, *inter alia*, written interrogatories and the production of documents. 16 C.F.R. § 3.31(a). Rule 3.38(a) permits parties to move to compel discovery, including for deposition testimony, interrogatory responses, and production of documents. 16 C.F.R. § 3.38(a).

B. Respondents Should Be Compelled to Respond to the Interrogatories and the RFPs.

Respondents' responses to the Interrogatories and RFPs were due November 7, 2014. 16 C.F.R. §§ 3.35(a)(2), 3.37(b). Yet neither Respondent has responded or provided any justification for its non-response. Fanning's counsel did not even respond to Complaint Counsel's request to provide any explanation for Fanning's failure to respond to these discovery requests. (Ortiz Dec. ¶ 3, Ex. B.) Maria Speth, the lawyer who made an appearance for Jerk in

¹ Complaint Counsel served Jerk by emailing a copy to Maria Speth and mailing a copy, via overnight delivery, to Jerk's registered agent, as authorized by the Court's November 3, 2014 Order Granting Complaint Counsel's Motion for Alternate Service. (Ortiz Dec. Ex. A.)

this matter—and who later alerted the Court of her desire to withdraw from the case—has claimed, under oath, to not even know where Jerk currently does business and whether it has any members, directors, officers, managers, or members. (Ortiz Dec. Ex. C.) Assuming the truth of her assertions, inquiring with her about Jerk’s justification for its present failure to respond would be futile. Complaint Counsel know of no other point of contact at Jerk besides Fanning himself.

Under these circumstances, where Respondents have simply refused to comply with the rules governing discovery, an order compelling their responses is appropriate. *See Bullion v. Ramsaran*, No. 07-61463, 2008 U.S. Dist. LEXIS 65829, at *2 (S.D. Fla. July 7, 2008); *Haworth v. Patel*, No. 1:06-cv-1373, 2007 WL 1834696, at *3 (E.D. Cal. June 26, 2007). Additionally, by failing to respond in time, Respondents have waived their objections, and the Court should order that their compelled responses be without objection. *See Haworth*, 2007 WL 1834696, at *3. Finally, given that fact discovery closes today and other litigation deadlines are rapidly approaching, Respondents should be compelled to respond and provide responsive documents with dispatch—specifically, within seven days of the disposition of this motion. *See Bullion*, 2008 U.S. Dist. LEXIS 65829, at *2 (ordering responses to requests for production and interrogatories within seven days when facing an approaching close of discovery).

CONCLUSION

For the foregoing reasons, Complaint Counsel respectfully ask the Court to grant the relief set out in the Proposed Order attached hereto.

Dated: November 17, 2014

Respectfully submitted,



Sarah Schroeder
Yan Fang
Boris Yankilovich
Ken Abbe
Western Region – San Francisco
Federal Trade Commission

PUBLIC DOCUMENT

901 Market Street, Suite 570
San Francisco, CA 94103

COMPLAINT COUNSEL

STATEMENT CONCERNING MEET AND CONFER

The undersigned counsel certifies that Complaint Counsel conferred with Respondent John Fanning's counsel, Peter Carr, by email and letter correspondence on November 7, 2014, regarding Complaint Counsel's intention to file a Rule 3.38 motion for discovery sanctions. A copy of this correspondence is attached as Exhibit B to the Declaration of Kelly Ortiz, filed herewith. Complaint Counsel know of no counsel or other person representing Respondent Jerk, LLC, apart from John Fanning, with whom they can meet and confer about this motion.

Dated: November 17, 2014

Respectfully submitted,



Sarah Schroeder
Yan Fang
Boris Yankilovich
Ken Abbe
Western Region – San Francisco
Federal Trade Commission
901 Market Street, Suite 570
San Francisco, CA 94103

COMPLAINT COUNSEL

CERTIFICATE OF SERVICE

I hereby certify that on November 17, 2014, I served a true and correct copy of Complaint Counsel's Motion to Compel Discovery on:

The Office of the Secretary:

Donald S. Clark
Office of the Secretary
600 Pennsylvania Avenue, N.W.
Room H-172
Washington, D.C. 20580

The Office of the Administrative Law Judge

D. Michael Chappell
Chief Administrative Law Judge
600 Pennsylvania Avenue, N.W.
Room H-106
Washington, D.C. 20580

Counsel for John Fanning:

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

Jerk, LLC's Registered Agent:

National Registered Agents, Inc.
160 Greentree Drive, Suite 101
Dover, DE 19904

Counsel who entered an appearance for Jerk, LLC:

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

Date: November 17, 2014



Violet Orence (vorence@ftc.gov)
Federal Trade Commission
901 Market Street, Suite 570
San Francisco, CA 94103
Phone: 415-848-5100
Fax: 415-848-5184

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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

DECLARATION OF KELLY ORTIZ

In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury that the following is true and correct:

1. My name is Kelly Ortiz. I am employed by the Federal Trade Commission (“FTC”) as an Investigator. My business address is 901 Market Street, Suite 570, San Francisco, CA 94103. I have personal knowledge of the facts stated herein. If called to testify, I could and would competently testify to the facts set forth below.

2. On October 7, 2014, Complaint Counsel served their Second Set of Interrogatories and Second Requests for Production of documents on Respondents Jerk, LLC and John Fanning. True and correct copy of these, including their certificate of service, are attached as Exhibit A. As of November 17, 2014, neither Respondent has responded to these Interrogatories and Requests for Production, and neither has provided Complaint Counsel with any justification for the non-response.

3. On November 7, 2014, Complaint Counsel alerted Respondent Fanning's counsel of Fanning's failure to comply with these discovery requests. A true and correct copy of the correspondence between Complaint Counsel and Fanning's Counsel is attached as Exhibit B.

4. On October 7, 2014, Complaint Counsel deposed Maria Crimi Speth. A true and correct copy of an excerpt from the original transcript of that deposition is attached as Exhibit C.

Executed this November 17, 2014, in San Francisco, CA.



Kelly C. Ortiz

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

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

**[PROPOSED] ORDER GRANTING COMPLAINT COUNSEL’S MOTION TO
COMPEL DISCOVERY**

This matter having come before the Chief Administrative Law Judge on November 17, 2014 upon a Motion to Compel (the “Motion”) filed by Complaint Counsel pursuant to Commission Rule 3.38(a) for an order compelling Respondents Jerk, LLC (“Jerk”) and John Fanning (“Fanning”) to respond to Complaint Counsel’s Second Set of Interrogatories and to produce responsive documents in response to Complaint Counsel’s Second Set of Requests for Production;

Having considered Complaint Counsel’s Motion, the Memorandum in Support of the Motion, and all supporting and opposing submissions, and for good cause appearing, Complaint Counsel’s Motion is hereby GRANTED, and the Court ORDERS:

Respondents Jerk and Fanning to respond to Complaint Counsel’s Second Set of Interrogatories and to produce responsive documents in response to Complaint Counsel’s Second Set of Requests for Production, without objection, within seven days.

SO ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

Date:

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

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

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 SECOND SET OF INTERROGATORIES
TO RESPONDENTS JERK, LLC, AND JOHN FANNING**

Pursuant to Rule 3.35 of the Federal Trade Commission’s Rules of Practice, 16 C.F.R. § 3.35, and the Court’s *Scheduling Order* dated May 28, 2014 Complaint Counsel requests that Respondents respond to the following Interrogatories within 30 days from the date of service.

1. Identify all current and past investors in Jerk, LLC or Jerk.com, including any individual or entity that indirectly invested in Jerk, LLC or Jerk.com.
2. Identify (1) each email account that the Company has used, and (2) for each such account, each person who has corresponded through that account, including but not limited to support@jerk.com.
3. Identify all individuals who have sent messages from the email account john@netcapital.com.
4. Identify (1) each Twitter account that the Company has used, and (2) for each such account, each person who has used that account to post a message from that account.
5. Describe in detail any service or work that Respondent John Fanning has provided to Jerk, LLC.
6. Describe how Jerk.com grew to have 85 million profiles within a few months of the website’s launch.

7. Describe the “Find People I Know” feature on Jerk.com, including what happened when consumers logged in to Jerk.com using their Facebook credentials.

DEFINITIONS

- A. “**And**,” as well as “**or**,” shall be construed both conjunctively and disjunctively, as necessary, in order to bring within the scope of any specification in this Schedule all information that otherwise might be construed to be outside the scope of the specification.
- B. “**Any**” includes the word “**all**,” and “**all**” includes the word “**any**.”
- C. “**Document**” means the complete original and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or location, of any written, typed, printed, transcribed, filmed, punched, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated or made, including but not limited to any advertisement, book, pamphlet, periodical, contract, correspondence, file, invoice, memorandum, note, telegram, report, record, handwritten note, working paper, routing slip, chart, graph, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, agenda, minute, code book or label. “Document” includes Electronically Stored Information.
- D. “**Each**” includes the word “**every**,” and “**every**” includes the word “**each**.”
- E. “**FTC**” or “**Commission**” means the Federal Trade Commission.
- F. “**Identify**” or “**the identity of**” shall be construed to require identification of (a) natural persons by name, title, present business affiliation, present business address and telephone number, or if a present business affiliation or present business address is not known, the last known business and home addresses; and (b) businesses or other organizations by name, address, identities of natural persons who are officers, directors or managers of the business or organization, and contact persons, where applicable.
- G. “**Include**” or “**including**” means “without limitation,” or “including but not limited to,” so as to avoid excluding any information that might otherwise be construed to be within the scope of any specification
- H. “**Person**” or “**Persons**” means all natural persons, corporations, partnerships or other business associations, and all other legal entities, including all members, officers, predecessors assigns, divisions, affiliates, and subsidiaries.
- I. “**Referring to**” or “**relating to**” means discussing, describing, reflecting, containing, analyzing, studying, reporting, commenting, evidencing, constituting, setting forth, considering, recommending, concerning, or pertaining to, in whole or in part.

- J. “You” and “Your” means Respondents.
- K. The use of the singular includes the plural, and the plural includes the singular, so as to have the broadest meaning whenever necessary to bring within the scope of the Interrogatory that which might otherwise be construed to be outside its scope.
- L. The use of a verb in any tense shall be construed as the use of the verb in all other tenses, so as to have the broadest meaning whenever necessary to bring within the scope of the Interrogatory that which might otherwise be construed to be outside its scope.

INSTRUCTIONS

- A. The time period covered by an Interrogatory is not limited and all information responsive to the Interrogatory, regardless of dates or time period involved, must be provided.
- B. Provide separate and complete sworn responses for each Interrogatory and subpart.
- C. Answer each Interrogatory fully and completely based on the information and knowledge currently available to you, regardless of whether you intend to supplement your response. Your answers to any Interrogatory herein must include all information within your possession, custody or control, including information reasonably available to you and your agents, attorneys or representatives.
- D. State if you are unable to answer any of the Interrogatories herein fully and completely after exercising due diligence to secure the information necessary to make full and complete answers. Specify the reason(s) for your inability to answer any portion or aspect of such Interrogatory, including a description of all efforts you made to obtain the information necessary to answer the Interrogatory fully.
- E. To the extent that an Interrogatory may be answered by referencing a document, it is permissible to attach the document as an exhibit to the answer and refer to the document in the answer. If any such document contains more than one page, you must refer to the page and section where the relevant reference(s) can be found. 16 C.F.R. § 3.35(c).
- F. If in answering any of the Interrogatories you claim any ambiguity in either the Interrogatory or any applicable definition or instruction, identify in your response the language you consider ambiguous and state the interpretation you are using in responding.
- G. All objections to any Interrogatory must be raised in your initial response or otherwise waived.
- H. If you object or otherwise decline to set forth in your response any of the information requested by any Interrogatory, set forth the precise grounds upon which you rely with specificity so as to permit the Administrative Law Judge or other administrative or judicial entity to determine the legal sufficiency of your objection or position, and

provide the most responsive information you are willing to provide without an order.

- I. If you object to any Interrogatory or any portion of any Interrogatory on the ground that it requests information that is privileged (including the attorney-client privilege) or falls within the attorney work product doctrine, state the nature of the privilege or doctrine you claim and provide all other information as required by 16 C.F.R. § 3.38A.
- J. Each Interrogatory herein is continuing and requires prompt amendment of any prior response if you learn, after acquiring additional information or otherwise, that the response is in some material respect incomplete or incorrect. *See* 16 C.F.R. § 3.31(e).
- K. None of the Definitions or Interrogatories set forth herein shall be construed as an admission relating to the existence of any evidence, to the relevance or admissibility of any evidence, or to the truth or accuracy of any statement or characterization in the Definition or Interrogatory.

Date: October 7, 2014

/s/ Sarah Schroeder
Sarah Schroeder
Federal Trade Commission
Bureau of Consumer Protection
901 Market Street, Suite 570
San Francisco, CA 94103
Phone: (415) 848-5100

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

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

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 SECOND SET OF REQUESTS FOR DOCUMENTS
TO RESPONDENTS JERK, LLC AND JOHN FANNING**

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, Complaint Counsel requests that Respondents Jerk, LLC and John Fanning produce the following documentary material within 30 days.

DOCUMENTS REQUESTED

1. All documents relating to current and past investors in Jerk, LLC or Jerk.com, including documents relating to any individual or entity that indirectly invested in Jerk, LLC or Jerk.com.
2. All documents relating to any agreement or arrangement between Jerk, LLC and Respondent John Fanning.
3. All documents relating to Louie Lardas and Internet Domains.
4. All communications regarding Jerk, LLC or Jerk.com, other than communications with Complaint Counsel.

DEFINITIONS

- A. “**And**,” as well as “**or**,” shall be construed both conjunctively and disjunctively, as necessary, in order to bring within the scope of any specification in this Schedule all information that otherwise might be construed to be outside the scope of the specification.
- B. “**Any**” includes the word “**all**,” and “**all**” includes the word “**any**.”
- C. “**Complaint**” means the Complaint issued by the Federal Trade Commission in the above-captioned matter issued on April 2, 2014.
- D. “**Document**” means the complete original and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or location, of any written, typed, printed, transcribed, filmed, punched, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated or made, including but not limited to any advertisement, book, pamphlet, periodical, contract, correspondence, file, invoice, memorandum, note, telegram, report, record, handwritten note, working paper, routing slip, chart, graph, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, agenda, minute, code book or label. “Document” includes Electronically Stored Information.
- E. “**Electronically Stored Information**” or “**ESI**” means the complete original and any non-identical copy (whether different from the original because of notations, different metadata, or otherwise), regardless of origin or location, of any information created, manipulated, communicated, stored, or utilized in digital form, requiring the use of computer hardware or software. This includes, but is not limited to, electronic mail, instant messaging, videoconferencing, and other electronic correspondence (whether active, archived, or in a deleted items folder), word processing files, spreadsheets, databases, and video and sound recordings, whether stored on: cards; magnetic or electronic tapes; disks; computer hard drives, network shares or servers, or other drives; cloud-based platforms; cell phones, PDAs, computer tablets, or other mobile devices; or other storage media. “ESI” also includes such technical assistance or instructions as will enable conversion of such ESI into a reasonably usable form.
- F. “**Each**” includes the word “**every**,” and “**every**” includes the word “**each**.”
- G. “**FTC**” or “**Commission**” means the Federal Trade Commission.
- H. “**Include**” or “**including**” means “without limitation,” or “including but not limited to,” so as to avoid excluding any documents that might otherwise be construed to be within the scope of any specification.
- I. “**Person**” or “**Persons**” means all natural persons, corporations, partnerships or other business associations, and all other legal entities, including all members, officers,

predecessors assigns, divisions, affiliates, and subsidiaries.

- J. **“Referring to” or “relating to”** means discussing, describing, reflecting, containing, analyzing, studying, reporting, commenting, evidencing, constituting, setting forth, considering, recommending, concerning, or pertaining to, in whole or in part.
- K. **“You” and “Your”** means John Fanning and Jerk, LLC.

INSTRUCTIONS

- A. **Response Date:** All documents must be produced within 30 days from the date of service.
- B. **Applicable time period:** Unless otherwise directed in the specifications, the applicable time period for the request is from January 1, 2008 to present.
- C. **Supplemental Production:** The requests herein are continuing in nature and must be supplemented in the event that additional documents responsive to this request are created, prepared, or received between the time of any Respondent’s initial response and trial.
- D. **Scope of Search:** The requests herein cover documents and information in your possession or under your actual or constructive custody or control including, but not limited to, documents and information in the possession, custody, or control of your attorneys, accountants, directors, officers, employees, and other agents and consultants, whether or not such documents and information were received from or disseminated to any person or entity.
- E. **Document Production:** You must produce the documentary material by making all responsive documents available for inspection and copying at your principal place of business. Alternatively, you may elect to send all responsive documents to **Kelly Ortiz, Federal Trade Commission, Western Region, 901 Market Street, Suite 570, San Francisco, CA 94103**. Notice of your intended method of production shall be given by email or telephone to Sarah Schroeder, (415) 848-5100, at least five days prior to the return date. Please see the Bureau of Consumer Protection Production Guide provided to you on May 21, 2014 for detailed instructions for submitting ESI or digitally imaged hard copies. Please mark the exterior of all packages containing electronic media sent through the U.S. Postal Service or other delivery services as follows:

**MAGNETIC MEDIA- DO NOT X-RAY
MAY BE OPENED FOR POSTAL INSPECTION.**

- F. **Document Identification:** Documents that may be responsive to more than one specification of this subpoena need not be submitted more than once; however, your response should indicate, for each document submitted, each specification to which the document is responsive. If any documents responsive to this subpoena have been previously supplied to the Commission, you may comply with this subpoena by identifying the document(s) previously provided and the date of submission. Documents should be produced in the order in which they

appear in your files or as electronically stored and without being manipulated or otherwise rearranged; if documents are removed from their original folders, binders, covers, containers, or electronic source in order to be produced, then the documents must be identified in a manner so as to clearly specify the folder, binder, cover, container, or electronic media or file paths from which such documents came. In addition, number by page (or file, for those documents produced in native electronic format) all documents in your submission, preferably with a unique Bates identifier, and indicate the total number of documents in your submission.

G. **Production of Copies:** Unless otherwise stated, legible photocopies (or electronically rendered images or digital copies of native electronic files) may be submitted in lieu of original documents, provided that the originals are retained in their state at the time of receipt of this set of requests. Further, copies of originals may be submitted in lieu of originals only if they are true, correct, and complete copies of the original documents; provided, however, that submission of a copy will constitute a waiver of any claim as to the authenticity of the copy should it be necessary to introduce such copy into evidence in any Commission proceeding or court of law; and provided further that you will retain the original documents and produce them to Commission staff upon request. Copies of marketing materials and advertisements must be produced in color, and copies of other materials must be produced in color if necessary to interpret them or render them intelligible.

H. A complete copy of each document should be submitted even if only a portion of the document is within the terms of the document request. The document must not be edited, cut, or expunged and must include all covering letters and memoranda, transmittal slips, appendices, tables or other attachments.

I. Each request includes any and all copies of the responsive document and, to the extent applicable, preliminary drafts or documents that differ in any respect from the original or final draft or from each other (e.g., by reason of differences in form or content or by reason of handwritten notes or comments having been added to one copy of a document but not the original or other copies thereof).

J. In the event that any document covered by this set of requests was in your possession or actual or constructive custody or control and has been lost or destroyed, the document is to be identified in writing as follows: addressee, person who prepared or authored the document, date of preparation or transmittal, substance of the document and its subject matter, number of pages, attachments, or appendices, all persons to whom distributed, shown or explained, date of loss or destruction, and, if destroyed, the manner of destruction, the reason for destruction, the persons authorizing destruction, and the persons who destroyed the document.

K. If an objection is made to any request herein, all documents covered by the request not subject to the objection should be produced. Similarly, if an objection is made to production of a document, the portion of that document not subject to objection should be produced with the portion objected to redacted and clearly indicated as redacted.

L. All objections to these requests or to any individual request must be raised in the initial response or are otherwise waived.

M. **Claims of Privilege:** Pursuant to Federal Trade Commission Rules of Practice 3.38A, 16 C.F.R. § 3.38A, if any documents are withheld from production on a claim of privilege or any similar claims, you must provide, not later than the date set for production of materials, a schedule that describes the nature of the documents, communications, or tangible things not produced or disclosed with sufficient detail to enable Complaint Counsel to assess the claim of privilege. The schedule must state individually for each item withheld:

1. The custodian of the document;
2. The type of document, including any attachments (e.g., letter, memorandum);
3. The date of the document;
4. The general subject matter of the document;
5. The sender, author, and all recipients of the document; and
6. The basis on which you contend you are entitled to withhold the document from production.

If only a part of a responsive document is privileged, all non-privileged parts must be submitted.

L. **Sensitive Personally Identifiable Information:** If any material called for by these requests contains sensitive personally identifiable information or sensitive health information of any individual, please contact us before sending those materials to discuss ways to protect such information during production.

For purposes of these requests, sensitive personally identifiable information includes: an individual's Social Security number alone; or an individual's name or address or phone number in combination with one or more of the following: date of birth, Social Security number, driver's license number or other state identification number, or a foreign country equivalent, passport number, financial account number, credit card number, or debit card number. Sensitive health information includes medical records and other individually identifiable health information relating to the past, present, or future physical or mental health or conditions of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.

Date: October 7, 2014

/s/ Sarah Schroeder
Sarah Schroeder
Federal Trade Commission
Bureau of Consumer Protection
901 Market Street, Suite 570
San Francisco, CA 94103
Phone: (415) 848-5100

CERTIFICATE OF SERVICE

I hereby certify that on October 7, 2014, I served a true and correct copy of (1) COMPLAINT COUNSEL'S SECOND SET OF REQUESTS FOR DOCUMENTS TO RESPONDENTS JERK, LLC AND JOHN FANNING, and (2) COMPLAINT COUNSEL'S SECOND SET OF INTERROGATORIES TO RESPONDENTS JERK, LLC AND JOHN FANNING, and (3) DOCUMENTS RECEIVED FROM LARRY D. COX on:

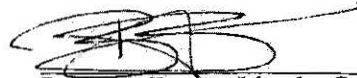
Counsel for John Fanning:

Peter F. Carr, II
Eckert, Seamans, Cherin & Mellott, LLC
Two International Place, 16th Floor
Boston, MA 02110
Phone: (617) 342-6800
Email: pcarr@eckertseamans.com

Jerk, LLC's Registered Agent:

National Registered Agents, Inc.
160 Greentree Drive, Suite 101
Dover, DE 19904

Date: October 7, 2014



Beatrice Burke (bburke@ftc.gov)
Federal Trade Commission
901 Market Street, Suite 570
San Francisco, CA 94103
Phone: 415-848-5183
Fax: 415-848-5184

From: Schroeder, Sarah
Sent: Friday, November 07, 2014 4:12 PM
To: Peter Carr (PCarr@eckertseamans.com)
Cc: Ortiz, Kelly
Subject: discovery violations
Attachments: FTC to Carr 11 7 14.pdf

Peter,

Attached please find a letter regarding several discovery issues in the Jerk, LLC matter.

Best Regards,
Sarah

Sarah Schroeder, Attorney
Federal Trade Commission
901 Market Street, Suite 570
San Francisco, CA 94103
Phone: (415) 848-5186
Email: sschroeder@ftc.gov



United States of America
FEDERAL TRADE COMMISSION
Western Region

Sarah Schroeder
Attorney

(415) 848-5186
sschroeder@ftc.gov

Western Region-San Francisco
901 Market Street, Suite 570
San Francisco, California 94103

November 7, 2014

Peter F. Carr, II, Esq.
Eckert Seamans
Two International Place, 16th Floor
Boston, MA 02110

Re: In the Matter of Jerk, LLC; FTC Docket No. 9361

Dear Peter:

I am writing regarding Mr. Fanning's failure to comply with his discovery obligations under the Commission's Rules and the Court's May 28, 2014 Scheduling Order ("Scheduling Order"). At this stage in the litigation, failing to timely provide required information severely prejudices Complaint Counsel's ability to gather evidence before the close of discovery and designate appropriate litigation resources.

First, Mr. Fanning failed to provide a response to Complaint Counsel's Second Set of Interrogatories and Second Set of Requests for Documents. Mr. Fanning received these discovery requests on October 7, 2014, and his responses were due yesterday. We have received neither a response nor a justification for his noncompliance. If Mr. Fanning does not provide the required responses by November 14, 2014, we will file a motion to compel. This is not assent to an extension, but rather an attempt to meet and confer with you prior to filing our motion. We reserve our right to move to strike any forthcoming responses as untimely.

Second, Mr. Fanning failed to provide Complaint Counsel with his expert witness list by October 14, 2014, the deadline set in the Scheduling Order. In a letter dated October 31, 2014, you indicated that Mr. Fanning chose not to disclose any expert witnesses by the Court's deadline because he "reserves all rights to disclose any and all experts necessary to rebut expert testimony offered by the Commission." The Court's Scheduling Order, not Mr. Fanning, dictates when parties must designate expert witnesses. Mr. Fanning's refusal to identify experts violated the Commission's Rules and the deadlines established in the Court's Scheduling Order, and we reserve our right to strike any expert testimony set forth by Mr. Fanning.

Finally, the errata sheet you submitted for Mr. Fanning's deposition was untimely. According to our records, the court reporter submitted to Mr. Fanning a copy of his deposition transcript on or before September 23, 2014. Mr. Fanning did not sign within 30 days of that submission. Instead, he provided an errata sheet on November 5, 2014, well after the 30-day

Peter Carr
November 7, 2014
Page 2

deadline. Pursuant to Rule 3.33(f), please provide by November 14, 2014 an explanation for why Mr. Fanning was unavailable or refused to sign the deposition transcript within 30 days of its submission to him. This request should not be construed as a stipulation to Mr. Fanning's proposed modifications to the transcript.

Please feel free to call me at (415) 848-5186 if you would like to discuss any matters in this letter.

Sincerely,



Sarah Schroeder

From: Schroeder, Sarah
Sent: Thursday, November 13, 2014 9:38 AM
To: 'Peter Carr'
Cc: Ortiz, Kelly
Subject: RE: discovery violations

Thanks Peter. I just called your office and left a message with Vicky.

From: Peter Carr [<mailto:PCarr@eckertseamans.com>]
Sent: Thursday, November 13, 2014 9:33 AM
To: Schroeder, Sarah
Cc: Ortiz, Kelly
Subject: RE: discovery violations

Sarah-

I left you a message trying to reach you to confer.

Thanks.

PFC

Peter F. Carr, II
ECKERT SEAMANS CHERIN & MELLOTT, LLC
Two International Place • 16th Floor • Boston, MA 02110
Direct (617) 342.6857 | Facsimile (617) 342.6899
pcarr@eckertseamans.com
eckertseamans.com | [bio](#) | [vCard](#)



From: Peter Carr
Sent: Thursday, November 13, 2014 6:54 AM
To: 'Schroeder, Sarah'
Cc: Ortiz, Kelly
Subject: RE: discovery violations

Sarah-

I have been busy all week.

I can try to call you today around noon my time.

Thanks.

PFC

Peter F. Carr, II
ECKERT SEAMANS CHERIN & MELLOTT, LLC
Two International Place • 16th Floor • Boston, MA 02110
Direct (617) 342.6857 | Facsimile (617) 342.6899
pcarr@eckertseamans.com
eckertseamans.com | [bio](#) | [vCard](#)



From: Schroeder, Sarah [<mailto:SSCHROEDER@ftc.gov>]
Sent: Friday, November 07, 2014 7:23 PM
To: Peter Carr
Cc: Ortiz, Kelly
Subject: RE: discovery violations

I'm happy to meet with you and am available the following times next week:

November 12th, 4-5pm (PT)
November 13th, 9am-1pm (PT) and 3:30-4:30pm (PT)
November 14th, 3-5pm (PT)

From: Peter Carr [<mailto:PCarr@eckertseamans.com>]
Sent: Friday, November 07, 2014 4:16 PM
To: Schroeder, Sarah
Cc: Ortiz, Kelly
Subject: RE: discovery violations

Sarah-

I will review but I also want to discuss the lack of responses to the ints served by my client. They are totally improper. I want to avoid a motion to compel but cannot let them stand as drafted. let me know when we may discuss.

PFC

Sent with Good (www.good.com)

From: Schroeder, Sarah <SSCHROEDER@ftc.gov>
Sent: Friday, November 7, 2014 7:11:57 PM
To: Peter Carr
Cc: Ortiz, Kelly
Subject: discovery violations

Peter,

Attached please find a letter regarding several discovery issues in the Jerk, LLC matter.

Best Regards,

Sarah

Sarah Schroeder, Attorney
Federal Trade Commission
901 Market Street, Suite 570
San Francisco, CA 94103
Phone: (415) 848-5186
Email: sschroeder@ftc.gov

This e-mail message and any files transmitted with it are subject to attorney-client privilege and contain confidential information intended only for the person(s) to whom this email message is addressed. If you have received this e-mail message in error, please notify the sender immediately by telephone or e-mail and destroy the original message without making a copy. Thank you.

Neither this information block, the typed name of the sender, nor anything else in this message is intended to constitute an electronic signature unless a specific statement to the contrary is included in this message.

This e-mail message and any files transmitted with it are subject to attorney-client privilege and contain confidential information intended only for the person(s) to whom this email message is addressed. If you have received this e-mail message in error, please notify the sender immediately by telephone or e-mail and destroy the original message without making a copy. Thank you.

Neither this information block, the typed name of the sender, nor anything else in this message is intended to constitute an electronic signature unless a specific statement to the contrary is included in this message.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

FEDERAL TRADE COMMISSION

In the Matter of) Docket No. 9361
Jerk, LLC, a limited)
liability company, also)
d/b/a JERK.COM, and John)
Fanning, individually and as)
a member of Jerk, LLC,)
Respondents.)
_____)

DEPOSITION OF MARIA CRIMI SPETH

October 7, 2014
10:02 a.m.
Phoenix, Arizona

Reported by: Gary W. Hill, RMR, CRR

1 A ER 1.6 prohibits me from answering that
2 question.

3 Q Did you ever stop your working relationship
4 for Jerk, LLC?

5 A I don't currently represent Jerk, LLC.

6 Q But you did in the past, is that right?

7 A Yes.

8 Q So does that mean at some point you stopped
9 representing Jerk, LLC?

10 A Yes.

11 Q When was that?

12 A ER 1.6 prohibits me from answering that
13 question.

14 Q When you're talking about your representation
15 of Jerk, LLC, are you talking about any particular
16 matter?

17 A I'm not talking about my representation of
18 Jerk, LLC. I am refusing to answer questions about my
19 representation of Jerk, LLC.

20 Q Okay. Let me put it another way. Can you
21 describe in what capacity you represented Jerk, LLC?

22 A No. ER 1.6 prohibits me from answering that
23 question.

24 Q Okay. Can you state why you stopped
25 representing Jerk, LLC?

1 A ER 1.6 prohibits me from answering that
2 question.

3 Q Have you represented Jerk, LLC in this matter,
4 FTC versus Jerk, LLC, et al?

5 A Yes.

6 Q Do you currently represent Jerk, LLC in this
7 matter, FTC versus Jerk, et al?

8 A No.

9 Q When did you stop representing Jerk, LLC in
10 this matter?

11 A ER 1.6 prohibits me from answering that
12 question.

13 Q Have you ever represented anyone else besides
14 Jerk, LLC in this matter?

15 A No.

16 Q Do you know when Jerk, LLC started operating?

17 A I don't.

18 Q Do you know if Jerk, LLC still operates today?

19 A I don't.

20 Q Do you know if Jerk, LLC exists in any way
21 today?

22 A I don't know. That was "know," K-N-O-W. I
23 don't know.

24 Q Does Jerk, LLC currently have a corporate
25 headquarters?

1 A I don't know.

2 Q Do you know if it ever had a corporate
3 headquarters?

4 A I don't know.

5 Q Do you know where Jerk, LLC has done business?

6 A ER 1.6 prohibits me from answering that
7 question.

8 Q Do you know where Jerk, LLC may be doing
9 business now?

10 A I don't.

11 Q Do you know if there's a location for Jerk,
12 LLC's corporate records?

13 A I don't know.

14 Q Do you know if there's ever been a location
15 for Jerk, LLC's corporate records?

16 A ER 1.6 prohibits me from answering that
17 question.

18 Q Do you know if there is a location for service
19 of process upon Jerk?

20 A I don't know.

21 Q Do you know if there has ever been a location
22 for service of process upon Jerk?

23 A ER 1.6 prohibits me from answering that
24 question.

25 Q Do you know if Jerk, LLC currently has any

1 assets?

2 A I don't know.

3 Q Do you know if Jerk, LLC has ever had any
4 assets?

5 A ER 1.6 prohibits me from answering that
6 question.

7 Q Do you know if Jerk, LLC has any managers?

8 A I don't know.

9 Q Do you know if Jerk, LLC has ever had any
10 managers?

11 A ER 1.6 prohibits me from answering that
12 question.

13 Q Do you know if Jerk, LLC has any officers?

14 A Currently?

15 Q Currently.

16 A I don't know.

17 Q Do you know if Jerk, LLC has ever had any
18 officers?

19 A ER 1.6 prohibits me from answering that
20 question.

21 Q Do you know if Jerk, LLC has any directors?

22 A I don't know.

23 Q Do you know if Jerk, LLC has ever had any
24 directors?

25 A ER 1.6 prohibits me from answering that

1 question.

2 Q Do you know if Jerk, LLC currently has any
3 members?

4 A I don't know.

5 Q Do you know if Jerk, LLC has ever had any
6 members?

7 A ER 1.6 prohibits me from answering that
8 question.

9 Q Do you know if Jerk, LLC currently carries out
10 any ongoing business?

11 A I don't know.

12 Q Do you know if Jerk, LLC ever carried out any
13 ongoing business?

14 A ER 1.6 prohibits me from answering that
15 question.

16 Q Do you know if Jerk, LLC currently engages in
17 any activities of any type?

18 A I don't know.

19 Q Do you know if Jerk, LLC has ever engaged in
20 any activities of any type?

21 A ER 1.6 prohibits me from answering that
22 question.

23 Q Do you know if Jerk, LLC is actively engaged
24 in this litigation?

25 A I don't know.

1 Q Do you know if Jerk, LLC has any counsel?

2 A I don't know.

3 Q Do you know if Jerk, LLC has any counsel in
4 the past besides yourself and your law firm?

5 A ER 1.6 prohibits me from answering that
6 question.

7 Q Do you know what type of company Jerk, LLC is?

8 A I don't know.

9 Q Do you know if Jerk, LLC is incorporated?

10 A I don't know.

11 Q Do you know who founded Jerk, LLC?

12 A ER 1.6 prohibits me from answering that
13 question.

14 Q Do you know if Jerk, LLC currently has any
15 employees?

16 A I don't know.

17 Q Do you know if Jerk, LLC has ever had any
18 employees?

19 A ER 1.6 prohibits me from answering that
20 question.

21 Q Are you able to identify any past or present
22 employee of Jerk, LLC?

23 A ER 1.6 prohibits me from answering that
24 question.

25 Q Are you able to identify any officer or