

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

ORIGINAL

**COMPLAINT COUNSEL'S OPPOSITION TO  
RESPONDENT JERK, LLC'S MOTION TO EXTEND TIME TO ANSWER  
COMPLAINT COUNSEL'S SECOND REQUEST FOR ADMISSIONS**

Respondent Jerk, LLC (“Jerk”) asks this Court to permit it to withdraw its admissions and provide amended responses to Complaint Counsel’s Second Request for Admissions (“RFAs”)—a full month after Jerk’s admissions become deemed under the Commission’s Rules of Practice. Jerk provides no justification for its extreme delay, or its continual failures to meet discovery obligations and comply with the Court’s orders. Jerk’s proposed relief would both undermine the resolution of this action on its merits and significantly prejudice Complaint Counsel. The Court should deny Jerk’s request.

**I. BACKGROUND**

On November 4, 2014 Complaint Counsel served the RFAs on Jerk by emailing Ms. Maria Crimi Speth, the counsel who had previously entered an appearance for Jerk in this action, and by mailing a copy to Jerk’s registered agent—both methods authorized by the Chief Administrative Law Judge’s Order of November 3, 2014. (Burke Dec. ¶ 14) Complaint Counsel

also provided copies of the RFAs to the Secretary. (*Id.*)

Complaint Counsel did not receive any response to the RFAs from Jerk by the end of the ten-day period prescribed by Rule 3.32(b), nor was a copy provided to the Secretary. (*Id.* at ¶ 15) Jerk's non-response was not surprising for at least two reasons. First, Jerk has failed to participate in this litigation for the past five months. Since mid-July, Jerk has not produced any documents, subpoenaed any party, attended any deposition, or responded to any motion. (*Id.* at ¶ 13) Jerk twice failed to produce any representative for a noticed company deposition, even after the Court ordered Jerk to produce a deponent on August 15. (*Id.* at ¶¶ 9-10) Similarly, Jerk has not responded to Complaint Counsel's two sets of interrogatories and second set of document requests, in violation of this Court's orders of August 15 and November 25. (*Id.* at ¶¶ 8, 11)<sup>1</sup> Second, Jerk did not controvert any of the material facts and supporting evidence submitted to the Commission by Complaint Counsel in support of their Motion for Summary Decision. (*Id.* at ¶ 13) Since these uncontested material facts independently established many of the matters the RFAs sought Jerk to admit, Jerk's constructive admission through silence was not unexpected.

On November 25, 2014, Complaint Counsel filed its *Motion to Supplement the Record on Complaint Counsel's Pending Motion for Summary Decision* to supplement the record with Jerk's and Fanning's deemed admissions. After taking no action in this case for months, Jerk immediately hired new counsel on December 2. (Burke Dec. ¶ 16) On December 5, 2014, the

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<sup>1</sup> After announcing her intention to withdraw from representation in this action, Jerk's first counsel, Maria Crimi Speth, has ignored Complaint Counsel's repeated requests to seek leave to withdraw and to provide a point of contact at Jerk with whom Complaint Counsel could discuss this action in the absence of outside representation. (Burke Dec. ¶¶ 4, 6, Atts. B, C) Even at her deposition, Ms. Speth would not identify any Jerk member, officer, director, or employee, or any other counsel who represented Jerk. (*Id.* Att. I at 46:7-49:7)

Commission denied the Motion to Supplement without prejudice, and granted Respondents a week to seek relief under Rule 3.32(c) for their failure to timely respond to the RFAs. After that order, Jerk's new counsel filed a notice of appearance, contacted Complaint Counsel for the first time, and filed the pending motion. (*Id.* at ¶ 16)

## II. LEGAL STANDARD

By operation of the Commission's rules, a party that does not respond to requests for admission by the prescribed deadline is deemed to have admitted all the matters presented therein. *See* 16 C.F.R. § 3.32(b); *see also Luick v. Graybar Electric Co.*, 473 F.2d 1360, 1362 (8th Cir. 1973) (holding that, under the Federal Rules of Civil Procedure, “[u]nanswered requests for admissions render the matter requested conclusively established for the purpose of that suit”); *United States v. 2204 Barbara Lane*, 960 F.2d 126, 129 (11th Cir. 1992) (defendants' failure to respond to requests for admissions constituted conclusive admission on decisive matters); *cf. Rainbolt v. Johnson*, 669 F.2d 767, 768 (D.C. Cir. 1981) (reversing the district court for failing to give binding and conclusive effect to unanswered requests for admissions).

The deemed admission is “conclusively established, unless the Administrative Law Judge on motion permits withdrawal or amendment of the admission.” 16 C.F.R. § 3.32(c). The Administrative Law Judge may permit withdrawal or amendment of admissions when (1) the presentation of the merits of the action will be subserved thereby, and (2) the party who obtained the admission fails to satisfy the ALJ that withdrawal or amendment will prejudice that party in maintaining the action or defense on the merits. *Id.* Federal Rule of Civil Procedure 36(b) articulates an almost identical standard. *See Hadley v. United States*, 45 F.3d 1345, 1347 (9th Cir. 1995). Because the standard is discretionary, even where both factors are present, a court may still exercise its discretion to refuse withdrawal and substitution of admissions. *See*

*Kingstro v. Cnty. of San Bernardino*, No. CV 12-4673-S, 2014 WL 3571803, at \*8-9 (C.D. Cal. July 18, 2014). Additionally, courts may consider other circumstances, such as whether the party seeking withdrawal has good cause for doing so or has a strong case on the merits. *Conlon v. United States*, 474 F.3d 616, 624-25 (9th Cir. 2007).

### III. ARGUMENT

#### A. Allowing Jerk to withdraw its admissions at this late stage will not promote the resolution of this case on the merits.

Permitting Jerk to withdraw its admissions and instead provide substitute responses will not promote the resolution of this case on the merits versus maintaining the deemed admissions. Complaint Counsel have already established, through overwhelming evidence developed independent of Jerk's admissions, the matters that Jerk has constructively admitted on RFAs 1 through 5. (*See generally* Complaint Counsel's Statement of Material Facts, Sept. 29, 2014). This evidentiary record, presented with Complaint Counsel's Motion for Summary Decision, was submitted to the Commission more than a month before Jerk's deemed admissions. Thus, this is not a situation where Complaint Counsel want to rely on Jerk's deemed admissions to bypass the presentation of the case on the merits and eliminate the matter by virtue of the admissions alone. *Cf. Kingstro*, 2014 WL 3571803, at \*9 (citing *Hadley*, 45 F.3d at 1348). On the contrary, Jerk's deemed admissions wholly parallel and reaffirm Complaint Counsel's independently developed evidence, which remains uncontested by either Respondent. (*See* Complaint Counsel's Mtn. to Supplement the Record on Summary Decision, Nov. 25, 2014, at pp. 6-7).

Now, having evaded its obligations to participate in discovery and to rebut the pending motion for summary decision with facts and evidence of its own, Jerk openly admits that it plans to use its substitute RFA responses to challenge summary decision, by manufacturing the

appearance of a factual dispute where none exists. *See Jerk's Mtn. to Extend Time*, Dec. 8, 2014, at p. 2) (“Jerk seeks the opportunity to attempt to vacate any findings or admissions entered against it by default, and to respond to the Motion for Summary Decision on the merits.”)

If it survives summary decision, Jerk, in the purported interest of resolving this case on the “merits,” will undoubtedly proceed to rely on its substituted RFA denials to marshal previously undiscovered evidence and witnesses for trial, despite the fact that discovery has been closed for weeks and Complaint Counsel have already submitted their exhibit and witness lists. This proceeding will become subsumed by countless requests to excuse Jerk’s delinquencies on other matters, undermining the Commission’s objective for speedy litigation. *See* 16 C.F.R. § 3.11(b)(4); see also 74 FR 1808 (Jan. 13, 2009) (“the five and eight month deadlines” set by Rule 3.11(b)(4) are “more than satisfy due process requirements because respondent will have *ample time for broad discovery* and a respondent may also move for more time upon a showing of good cause under Rule 3.21(c)” (emphasis added)). Jerk has already received several extensions to comply with its discovery obligations and to oppose summary decision. (*See, e.g.*, Court Order of Aug. 15, 2014; Court Order of Nov. 25, 2014; Comm’n Order of Oct. 9, 2014). It has ignored all those orders. Permitting Jerk yet another do-over on the eve of trial would move from leniency to indulgence. *Rockwell Automation, Inc. v. United States*, 7 F. Supp. 3d 1278, 1304 (United States Court of International Trade) (after obtaining relief, movant “should expect no leniency whatsoever in the future”).<sup>2</sup>

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<sup>2</sup> Furthermore, Jerk has made no specific showing, other than the bare assertion that cases should generally be decided on the merits, that allowing Jerk to withdraw its admissions will promote the resolution of this case on the merits. The fact that Jerk does not even state which of its eight admissions are factually wrong, let alone explain how the facts of the case contradict them, further exposes its present request as a maneuver to secure a tactical advantage for itself,

**B. Allowing Jerk to withdraw its admissions at this late stage will prejudice Complaint Counsel.**

Permitting withdrawal and substitution of Jerk's admissions at this late stage poses significant prejudice to Complaint Counsel because Jerk has deprived Complaint Counsel of the opportunity to obtain discovery needed to counter Jerk's intended denials. Despite the title of its pending motion, Jerk is not merely seeking an opportunity to make up for one missed deadline. It seeks an opportunity to redo the entire pretrial phase of this litigation. Jerk has effectively disappeared from the case for the majority of the discovery period, ignoring multiple deadlines, motions, and Court orders, including the Court's warning that "Jerk remains a party in this case and is not entitled to ignore a discovery motion." (Order of Aug. 15, 2014).<sup>3</sup>

In adopting this strategy, Jerk has insulated itself from depositions and numerous interrogatories and document requests. Jerk's present admissions stand as the bulwark against its noncompliance strategy. With the admissions, the pernicious impact of Jerk's noncompliance strategy has been mitigated; the admissions prevent Jerk from resting on previously undiscovered

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not an endeavor toward a resolution on the merits.

<sup>3</sup> Jerk has not provided a justification for its dilatory behavior. Jerk merely asserts that it found itself unrepresented by counsel when it received the RFAs, and that it "recognizes the difficulties presented by the withdrawal of its counsel . . ." (Jerk Mtn. at 1) Construing Jerk as arguing that it faced difficulty in finding another attorney after the withdrawal of a previous one, Jerk fails to explain what that difficulty was or why it prevented Jerk from participating in this action for *five months*. See *Kagan v. Caterpillar Tractor Co.*, 795 F.2d 601, 611 (7th Cir. 1986) (while difficulty in obtaining counsel "might explain a brief delay," it does "not justify the total silence . . . for more than 45 days"). Indeed, Jerk's systematic failure to participate in discovery and obey Court orders illustrates not only a lack of good cause for seeking to withdraw its admissions, see *Conlon*, 474 F.3d at 625, but also an absence of good faith. See *Rockwell*, 7 F. Supp. 3d at 1302 (rejecting good faith where the tardy party's "track record smacks of a blatant disregard for the rules"); *Nafziger v. McDermott Int'l, Inc.*, 467 F.3d 514, 523 (6th Cir. 2006) (citing "numerous instances of 'previous dilatory conduct'"); cf. *Perry v. Wolaver*, 2006 WL 1071888, at \*2 (D. Me. Apr. 24, 2006) (finding good faith where the action "has otherwise been dutifully litigated"). Indeed, Jerk's misconduct is so severe, it likely constitutes a basis for sanctions under Rule 3.38(b).

and untested evidence to ambush Complaint Counsel and the Court. Without the admissions, now that fact discovery has closed, Jerk will be free to sidestep its discovery obligations and to proceed to the evidentiary hearing six weeks away unencumbered by the rigors of discovery.<sup>4</sup> Such an outcome would contravene both the Commission's rules and well-established principles of American litigation and would force Complaint Counsel into a trial by ambush.<sup>5</sup>

#### IV. CONCLUSION

For the foregoing reasons, the Court should deny Jerk's motion.

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<sup>4</sup> Instead of addressing, or even acknowledging, the obvious prejudice to Complaint Counsel, Jerk merely concludes that there will be no prejudice and moves on. (Jerk Mtn. p. 2) On the other hand, Jerk argues that the prejudice *to itself* for having to suffer the naturally-flowing consequences of its noncompliance strategy would constitute "manifest" prejudice by preventing Jerk from defending the case on the merits. First, the prejudice to Jerk is irrelevant under Rule 3.32(c). Second, as explained in Part A, *supra*, the orderly resolution of this case on the merits would be disserved by Jerk's gamesmanship. Third, the cases on which Jerk relies are entirely inapposite in light of Jerk's conduct in this action. In each of these cases, a party received relief from default because it was genuinely unaware of some critical component of the case against it and promptly attempted to cure the default when made aware of it. *See Coon v. Grenier*, 867 F.2d 73 (1st Cir. 1989) (setting aside default because the defendant had never been served and thus had no opportunity to contest); *United States v. One Parcel of Real Property*, 763 F.2d 181 (5th Cir. 1985) (setting aside default where the owner had no awareness of the forfeiture action); *Feliciano v. Reliant Tool Col., Ltd.*, 691 F.2D 653 (3d Cir. 1982) (setting aside default because the party had attempted to comply with discovery obligations diligently and without bad faith). That is not the case here, where Jerk affirmatively dropped out of this litigation with full knowledge of the consequences for doing so and then willfully ignored its discovery obligations and Court orders.

<sup>5</sup> See "How Courts Work," American Bar Association, [http://www.americanbar.org/groups/public\\_education/resources/law\\_related\\_education\\_network/how\\_courts\\_work/discovery](http://www.americanbar.org/groups/public_education/resources/law_related_education_network/how_courts_work/discovery) (discovery is "designed to prevent 'trial by ambush,' where one side doesn't learn of the other side's evidence or witnesses until trial, when there's no time to obtain answering evidence.").

Dated: December 16, 2014

Respectfully submitted,



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

COMPLAINT COUNSEL

**CERTIFICATE OF SERVICE**

I hereby certify that on December 16, 2014, I served a true and correct copy of Complaint Counsel's Opposition to Respondent Jerk, LLC's Motion to Extend Time to Answer Complaint Counsel's Second Request for Admissions 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, 16<sup>th</sup> Floor  
Boston, MA 02110  
Email: pcarr@eckertseamans.com

**Counsel who have entered an appearance for Jerk, LLC:**

David Duncan  
David Russcol  
Zalkind Duncan & Bernstein LLP  
65A Atlantic Ave.  
Boston, MA 02110  
Email: dduncan@zalkindlaw.com;  
drusscol@zalkindlaw.com

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

Dated: December 16, 2014



Kelly Ortiz (kortiz@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  
OFFICE OF ADMINISTRATIVE LAW JUDGES

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In the Matter of )  
Jerk, LLC, a limited liability company, )  
also d/b/a JERK.COM, and ) DOCKET NO. 9361  
John Fanning, ) PUBLIC DOCUMENT  
individually and as a member of )  
Jerk, LLC. )  
)

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**DECLARATION OF BEATRICE BURKE IN SUPPORT OF COMPLAINT COUNSEL'S  
OPPOSITION TO RESPONDENT JERK, LLC'S MOTION TO EXTEND TIME TO  
ANSWER COMPLAINT COUNSEL'S SECOND REQUEST FOR ADMISSIONS**

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

1. I am over 18 years of age, and I am a citizen of the United States. I am employed by the Federal Trade Commission ("FTC") as a paralegal in the FTC's Western Regional Office in San Francisco. I have worked and continue to work as a paralegal for Complaint Counsel in the above-captioned matter, and I have personal knowledge of the facts set forth herein. I am currently a member of the California Army National Guard Reserve and a United States Army veteran from active duty.
2. When Complaint Counsel filed the Complaint in this action on April 7, 2014, Respondent Jerk, LLC ("Jerk") was represented by Counsel Maria Speth of the law firm Jaburg & Wilk, P.C. These counsel filed a notice of appearance on Jerk's behalf on April 24, 2014 and filed Jerk's Answer to the Complaint on May 19, 2014.
3. Attached hereto as **Attachment A** is a true and correct copy of an email string between Complaint Counsel and Ms. Speth in June 2014 discussing Jerk's designation of Mr.

Fanning as Jerk's company representative and his appearance in that capacity for deposition in Boston on July 28, 2014.

4. Attached hereto as **Attachment B** and **Attachment C** are true and correct copies of email exchanges between Complaint Counsel and Ms. Speth between July 18 and July 30, 2014.
5. Attached hereto as **Attachment D** is a Notice Regarding Representation filed by Ms. Speth in this action on July 30, 2014. Despite filing this notice, neither Ms. Speth nor Jaburg & Wilk have moved to withdraw from this action as Jerk's counsel.
6. Neither Ms. Speth nor Jaburg & Wilk identified for Complaint Counsel any other counsel representing Jerk. Nor has Jerk identified to Complaint Counsel any other counsel representing it until December 8, 2014, when Jerk's counsel David Duncan called Complaint Counsel Sarah Schroeder to discuss Jerk's opposition to summary decision.
7. Since July 18, Jerk has not responded to Complaint Counsel's discovery requests; has not produced any documents to Complaint Counsel; has not provided to Complaint Counsel any copies of subpoenas sent by Jerk to any party; has not attended any deposition noticed or attended by Complaint Counsel; and has not served Complaint Counsel with a response to motions filed in this action.
8. On June 24, 2014, Complaint Counsel served their First Set of Interrogatories on Jerk. To date, Jerk has not responded to these Interrogatories, notwithstanding the Chief Administrative Law Judge's August 15, 2014 order requiring Jerk to provide responses by August 20, 2014.
9. To date, no designated representative for Jerk has appeared to be deposed by Complaint Counsel in this action. On July 2, 2014, Complaint Counsel served on Jerk a notice for deposition, pursuant to Commission Rule 3.33(c)(1), of Jerk's representative(s) to be held on July 28, 2014 in Boston, Massachusetts. Attached hereto as **Attachment E** is a true and correct copy of this notice. No representative for Jerk appeared at this deposition.

Attached hereto as **Attachment F** is a true and correct copy of the transcript of this deposition.

10. After the Chief Administrative Law Judge's August 15, 2014 order requiring Jerk to produce an individual to testify as to matters known or reasonably available to the organization in response to Complaint Counsel's 3.33(c)(l) deposition notice, Complaint Counsel served Jerk with a second deposition notice on August 18, 2014, noticing Jerk's deposition for August 27, 2014 in San Francisco, CA. Attached hereto as **Attachment G** is a true and correct copy of this notice. No representative for Jerk appeared at this deposition. Attached hereto as **Attachment H** is a true and correct copy of the transcript of this deposition.
11. On October 7, 2014, Complaint Counsel served their Second Set of Interrogatories and Second Requests for Production of Documents on Jerk. To date, Jerk has not responded to these Interrogatories and Requests for Production, in spite of the Chief Administrative Law Judge's November 25, 2014 Order granting Complaint Counsel's motion to require Jerk to provide responses within seven days of the Order.
12. Attached hereto as **Attachment I** is a true and correct copy of transcript excerpts from the October 7, 2014 deposition of Ms. Speth in this action.
13. On information and belief, since mid-July, Jerk has not produced any documents, subpoenaed any party, attended any deposition, or responded to any motion in this matter. Jerk submitted no opposition to Complaint Counsel's Motion for Summary Decision, and did not controvert any of the material facts or supporting evidence submitted to the Commission by Complaint Counsel in support of their Motion for Summary Decision.
14. Attached hereto as **Attachment J** is a true and correct copy of Complaint Counsel's Second Request for Admissions to Respondent Jerk, LLC ("2<sup>nd</sup> Set of RFAs"), which I served on Jerk on November 4, 2014, at approximately 1:46 pm Pacific by email to counsel Ms. Maria Crimi Speth, at the email address Ms. Speth had previously provided

for use in this litigation and has used to correspond with Complaint Counsel. That day, I also served an additional copy on Jerk by overnight delivery to Jerk's registered agent, National Registered Agents, Inc. in Dover, Delaware. I also emailed a copy of the 2<sup>nd</sup> Set of RFAs to the Office of the Secretary of the Federal Trade Commission.

15. Complaint Counsel never received a response to the 2<sup>nd</sup> Set of RFAs, whether within ten days or otherwise. A representative of the Office of the Secretary has confirmed to Complaint Counsel that it also has not received any response to the 2<sup>nd</sup> Set of RFAs.
16. On December 8, 2014, Jerk's new counsel, David A. Russcol and David Duncan of Zalkind Duncan & Bernstein LLP, first contacted Complaint Counsel. On information and belief, Jerk retained this new counsel on December 2, 2014.

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on December 16, 2014, in San Francisco, CA.



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Beatrice Burke

## **ATTACHMENT A**

**From:** Maria Crimi Speth <mcs@jaburgwilk.com>  
**Sent:** Wednesday, June 11, 2014 10:35 PM  
**To:** Yankilovich, Boris  
**Cc:** Fang, Yan; Ortiz, Kelly; Schroeder, Sarah; Peter Carr (PCarr@eckertseamans.com)  
**Subject:** RE: Docket 9361-Jerk, LLC. et al. - Jerk, LLC deposition

Boris:

I asked for the categories so I could figure out who to designate, or frankly, if I had anyone to designate. As you know Jerk, LLC is not an operating entity. Once you provided the categories, I was able to determine that John Fanning is a person with some knowledge. I re-read Rule 3.3.3 to make sure I wasn't missing something. It says:

"The organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which he or she will testify."

I think the use of the word "may" makes it very clear that it is at the option of the organization.

Also, there is nothing to scramble about. The company has no way of compelling anyone to appear for a deposition, so if John doesn't know an answer, I very likely can't produce someone who does.

MARIA CRIMI SPETH | Shareholder | 602.248.1089

JABURG|WILK  
Attorneys at Law



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**From:** Yankilovich, Boris [mailto:[byankilovich@ftc.gov](mailto:byankilovich@ftc.gov)]  
**Sent:** Wednesday, June 11, 2014 11:46 AM  
**To:** Maria Crimi Speth  
**Cc:** Fang, Yan; Ortiz, Kelly; Schroeder, Sarah; Peter Carr (PCarr@eckertseamans.com)  
**Subject:** RE: Docket 9361-Jerk, LLC. et al. - Jerk, LLC deposition

Hi Maria,

Whether you want to move to quash or limit is of course up to you. If you want to object to some of our categories as beyond the scope of permissible discovery, you should do that in advance of the deposition, as contemplated by Rule 3.33(b). In any event, you must, under Rule 3.33(c), set forth the topics on which the corporate representative will testify. This is squarely a matter of complying with the Rules, and doing so in good faith.

You asked us, emphatically, to provide you with a list of deposition categories in advance of even telling us who Jerk's corporate representative will be. We did that very quickly, working diligently to set out a clearly articulated list of categories reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, and to your defenses. Now that you've designated Mr. Fanning, you need to identify the categories for which you've designated him. We can't go into the 3.33(c) deposition blind, without knowing what Mr. Fanning will and won't be able to testify about on behalf of Jerk. That would just set us up for having to scramble for additional depositions and motions to compel, wasting everyone's time, including the court's. If we have a legitimate dispute about the scope of our deposition categories or the need for additional corporate designees if Mr. Fanning can't testify fully, we should work to resolve it now as opposed to waiting another month and a half. But we can't begin until you let us know what topics Mr. Fanning will be able to cover.

Boris Yankilovich  
Federal Trade Commission  
901 Market Street, Suite 570 | San Francisco, CA 94103  
Office: 415.848.5120 | Mobile: 202.468.2013 | Fax: 415.848.5184  
Email: [byankilovich@ftc.gov](mailto:byankilovich@ftc.gov)

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**From:** Maria Crimi Speth [<mailto:mcs@jaburgwilk.com>]  
**Sent:** Tuesday, June 10, 2014 11:00 AM  
**To:** Schroeder, Sarah; Peter Carr ([PCarr@eckertseamans.com](mailto:PCarr@eckertseamans.com))  
**Cc:** Fang, Yan; Yankilovich, Boris; Ortiz, Kelly  
**Subject:** RE: Docket 9361-Jerk, LLC. et al. - Jerk, LLC deposition

Sarah:

I don't think the rules require me to do any of those things. I do not think a motion to quash is warranted. I was simply trying to avoid the FTC saying that Jerk, LLC has somehow agreed to the relevance of everything in your list just because we designated a witness. I also do not think that I need to identify which categories Mr. Fanning has knowledge about and which he doesn't. I think that is the purpose of the deposition.

MARIA CRIMI SPETH | Shareholder | 602.248.1089  
**JABURG|WILK**  
Attorneys at Law 

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**From:** Schroeder, Sarah [<mailto:SSCHROEDER@ftc.gov>]  
**Sent:** Tuesday, June 10, 2014 7:38 AM  
**To:** Maria Crimi Speth; Peter Carr ([PCarr@eckertseamans.com](mailto:PCarr@eckertseamans.com))  
**Cc:** Fang, Yan; Yankilovich, Boris; Ortiz, Kelly  
**Subject:** RE: Docket 9361-Jerk, LLC. et al. - Jerk, LLC deposition

Maria:

Thank you for confirming. In rereading your disclaimers at the end of your email, I want to make sure we're on the same page about the deposition. While I didn't set out to interpret your designation of Mr. Fanning as a waiver of objections, it's hard for me to evaluate your objections before I understand what they are. We discussed some of your reservations about some of the deposition categories very quickly during our call last week, but I don't think we made it through all the topics, and to be honest, my notes about your objections aren't crystal clear.

Here's what I propose: To the extent you have legitimate objections to any of the deposition topics, I encourage you to prepare a motion to quash or limit under Rule 3.34. We are of course happy to discuss those topics beforehand with the aim of obviating the need for the motion or reducing its scope. Speaking candidly, we took great pains to make sure that the deposition categories were clearly stated and well within the scope of permissible discovery under the Rules, so there's a good chance that any disagreement between us may be about semantics, in which case we will likely be able to work through it without need for the court's intervention.

If your reservations are not about the propriety of our questions but instead about Mr. Fanning's inability to testify about certain categories for lack of knowledge, can you please let us know for which categories you will designate Mr. Fanning as a testifying as Jerk's rep, and then we can discuss the potential need to line up other Jerk officers to cover the remaining categories. Since I'm out of the office next week and want to make progress on this, it would be very helpful if you could get that designation list to us before Thursday so we can have a meet and confer on Thursday or Friday.

Best Regards,  
Sarah

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**From:** Maria Crimi Speth [<mailto:mcs@jaburgwilk.com>]  
**Sent:** Wednesday, June 04, 2014 4:40 PM  
**To:** Schroeder, Sarah; Peter Carr ([PCarr@eckertseamans.com](mailto:PCarr@eckertseamans.com))  
**Cc:** Fang, Yan; Yankilovich, Boris; Ortiz, Kelly  
**Subject:** RE: Docket 9361-Jerk, LLC. et al. - Jerk, LLC deposition

Sarah:

This is to confirm our conversation today regarding your notice of deposition of Jerk, LLC. Jerk, LLC designates John Fanning as a person who has knowledge on some of the matters specified in your attached notice. Rule 3.33(c ) (1) requires you to describe with reasonable particularity the matters on which examination is requested. While some of the categories are reasonably particular, others are not. Based upon the information it has, Jerk, LLC believes that John Fanning is the proper person to designate.

As we also discussed, we have agreed to July 28 as the date of that deposition, which is the day before Mr. Fanning's deposition in his personal capacity.

Also, I want to be clear that the designation of John Fanning under Rule 3.33(c )(1) is not a waiver of our objection that some of the categories in the attached notice are not reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of any respondent. It is also not an admission that John Fanning is designated for any purpose other than that he has knowledge of some of the categories.

Maria Crimi Speth, Esq.  
Jaburg & Wilk, P.C.  
3200 N. Central Ave., Suite 2000  
Phoenix, AZ 85012

602-248-1089  
602-248-0522 (fax)

[www.jaburgwilk.com](http://www.jaburgwilk.com)

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## **ATTACHMENT B**

**From:** Maria Crimi Speth <mcs@jaburgwilk.com>  
**Sent:** Wednesday, July 30, 2014 4:27 PM  
**To:** Schroeder, Sarah; Ortiz, Kelly; 'pcarr@eckertseamans.com'; Debra A. Gower; 'vroy@eckertseamans.com'  
**Cc:** Yankilovich, Boris; Fang, Yan; Abbe, Kenneth; O'Brien, Kerry  
**Subject:** RE: interrogatory response

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

I don't have any information that I am authorized to share with anyone.

MARIA CRIMI SPETH | Shareholder | 602.248.1089  
**JABURG|WILK**  
Attorneys at Law  

---

**From:** Schroeder, Sarah [mailto:[SSCHROEDER@ftc.gov](mailto:SSCHROEDER@ftc.gov)]  
**Sent:** Wednesday, July 30, 2014 4:10 PM  
**To:** Maria Crimi Speth; Ortiz, Kelly; 'pcarr@eckertseamans.com'; Debra A. Gower; 'vroy@eckertseamans.com'  
**Cc:** Yankilovich, Boris; Fang, Yan; Abbe, Kenneth; O'Brien, Kerry  
**Subject:** interrogatory response

Maria,

Jerk, LLC's interrogatory response was due last week and we have not received anything. Do you know who we can follow up with to discuss the status of Jerk's interrogatory response?

---

**From:** Maria Crimi Speth [<mailto:mcs@jaburgwilk.com>]  
**Sent:** Wednesday, July 30, 2014 10:40 AM  
**To:** Schroeder, Sarah; Ortiz, Kelly; 'pcarr@eckertseamans.com'; Debra A. Gower; 'vroy@eckertseamans.com'  
**Cc:** Yankilovich, Boris; Fang, Yan; Abbe, Kenneth; O'Brien, Kerry  
**Subject:** RE: Motion to withdraw as counsel

Sarah:

I am not available to meet and confer because I don't represent any party.

MARIA CRIMI SPETH | Shareholder | 602.248.1089  
**JABURG|WILK**  
Attorneys at Law  

---

**From:** Schroeder, Sarah [<mailto:SSCHROEDER@ftc.gov>]  
**Sent:** Wednesday, July 30, 2014 6:23 AM  
**To:** Maria Crimi Speth; Ortiz, Kelly; 'pcarr@eckertseamans.com'; Debra A. Gower; 'vroy@eckertseamans.com'  
**Cc:** Yankilovich, Boris; Fang, Yan; Abbe, Kenneth; O'Brien, Kerry  
**Subject:** Re: Motion to withdraw as counsel

Maria,

I hope you had a good vacation.

I understand your frustration, but Complaint Counsel is obligated to share certain material with attorneys who have entered an appearance in this matter. I again urge you to file a motion to withdraw or contact Chief Judge Chappell's clerk. In the meantime, we will continue to satisfy our obligations under the rules. If you would prefer, we can send material just to your legal assistant.

Also, we intend to file a motion for discovery sanctions pursuant to Rule 3.38. Please let me know when you are available to meet and confer about this motion.

Best Regards  
Sarah

---

**From:** Maria Crimi Speth [<mailto:mcs@jaburgwilk.com>]

**Sent:** Wednesday, July 30, 2014 12:19 AM

**To:** Schroeder, Sarah; Ortiz, Kelly; 'pcarr@eckertseamans.com' ([pcarr@eckertseamans.com](mailto:pcarr@eckertseamans.com))  
<[pcarr@eckertseamans.com](mailto:pcarr@eckertseamans.com)>; Debra A. Gower <[dag@jaburgwilk.com](mailto:dag@jaburgwilk.com)>; [vroy@eckertseamans.com](mailto:vroy@eckertseamans.com)  
<[vroy@eckertseamans.com](mailto:vroy@eckertseamans.com)>

**Cc:** Yankilovich, Boris; Fang, Yan; Abbe, Kenneth; O'Brien, Kerry

**Subject:** RE: Motion to withdraw as counsel

Sarah:

I am back and trying to catch up. Your email below says the FTC administrative rules are unclear. I actually think they are silent on the issue. Absent a rule stating otherwise, I have no reason to believe that I have to file a motion to withdraw and I don't plan to do so. I don't represent this client any longer, I have no authority to act on its behalf, and there is no rule or any reference that would lead me to believe that I have to seek permission from the ALJ.

---

MARIA CRIMI SPETH | Shareholder | 602.248.1089

JABURG|WILK  
Attorneys at Law



**From:** Schroeder, Sarah [<mailto:SSCHROEDER@ftc.gov>]

**Sent:** Monday, July 21, 2014 10:27 AM

**To:** Maria Crimi Speth; Ortiz, Kelly; 'pcarr@eckertseamans.com' ([pcarr@eckertseamans.com](mailto:pcarr@eckertseamans.com)); Debra A. Gower; [vroy@eckertseamans.com](mailto:vroy@eckertseamans.com)

**Cc:** Yankilovich, Boris; Fang, Yan; Abbe, Kenneth; O'Brien, Kerry

**Subject:** Motion to withdraw as counsel

Thanks Maria. I know it's a hassle, but you need to file a Motion to Withdraw as Counsel. When the FTC administrative rules are unclear, Chief Judge Chappell has referred to the federal rules or the rules of other courts for guidance. As you know, most courts require attorneys who have entered an appearance to obtain the judge's permission to withdraw as counsel. These rules are designed to prevent prejudice to the other party. We would not oppose your motion to withdraw provided that you give us contact information for Jerk, LLC or the individual that you have been dealing with on behalf of Jerk, LLC, or successor counsel if you've now been informed of one. We need this information to get a sense of how Jerk plans to proceed in the litigation after your withdrawal, and more immediately, to confirm the corporate deposition set for next Monday.

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](mailto:sschroeder@ftc.gov)

---

**From:** Maria Crimi Speth [<mailto:mcs@jaburgwilk.com>]  
**Sent:** Friday, July 18, 2014 6:36 PM  
**To:** Ortiz, Kelly; 'pcarr@eckertseamans.com' ([pcarr@eckertseamans.com](mailto:pcarr@eckertseamans.com)); Debra A. Gower; [vroy@eckertseamans.com](mailto:vroy@eckertseamans.com)  
**Cc:** Schroeder, Sarah; Yankilovich, Boris; Fang, Yan; Burke, Beatrice  
**Subject:** RE: FTC Dkt#9361 In the Matter of Jerk LLC -

Counsel:

Please be advised that effective today, I no longer represent Jerk, LLC. As far as I can tell from the rules, there is no withdrawal procedure in this forum so I consider this notice to be my removal from the matter. I do not know if Jerk, LLC can or will obtain new counsel.

MARIA CRIMI SPETH | Shareholder | 602.248.1089  
**JABURG|WILK**  
Attorneys at Law  

## **ATTACHMENT C**

**From:** Schroeder, Sarah  
**Sent:** Thursday, July 24, 2014 10:33 AM  
**To:** 'Maria Crimi Speth'  
**Cc:** Debra A. Gower; Yankilovich, Boris  
**Subject:** RE: Zinman document production

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Maria,

I understand that you're no longer representing Jerk, but per my email last week, until the ALJ actually grants your withdrawal, we still have an obligation to communicate with Jerk through you. If you're no longer authorized to represent Jerk, what I can propose is to have us communicate directly with the company -- presumably, with Mr. Fanning in his representative capacity -- until Jerk retains new counsel, as long as I have your and the company's authorization to do so. Please let me know if that works for you.

-----Original Message-----

From: Maria Crimi Speth [mailto:[mcs@jaburgwil.com](mailto:mcs@jaburgwil.com)]  
Sent: Wednesday, July 23, 2014 1:38 PM  
To: Schroeder, Sarah  
Cc: Debra A. Gower; Yankilovich, Boris  
Subject: Re: Zinman document production

Sarah:

I no longer represent Jerk, LLC. There is no need to keep me apprised of issues.

Sent from my iPad  
Maria Crimi Speth  
(602) 248-1089

## **ATTACHMENT D**

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION



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

---

In the matter of: )  
Jerk, LLC, a limited liability company, ) DOCKET NO. 9361  
Also d/b/a JERK.COM, and )  
John Fanning, ) PUBLIC  
Individually and as a member of )  
Jerk, LLC, )  
Respondents. )  
)

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**NOTICE REGARDING REPRESENTATION**

Counsel, Maria Crimi Speth and the law firm Jaburg & Wilk, P.C. hereby give notice that as of July 18, 2014, they no longer represent Jerk, LLC.

Respectfully submitted,

/s/Maria Crimi Speth  
Maria Crimi Speth  
Jaburg & Wilk, P.C.  
3200 N. Central Ave., Suite 2000  
Phoenix, AZ 85012  
(602) 248-1089  
(602) 248-0522

Dated: July 30, 2014

**CERTIFICATE OF SERVICE**

I hereby certify that on July 30, 2014, I caused a true and accurate copy of the foregoing to be served electronically through the FTC's e-filing system and on July 30, 2014, I caused a true and accurate copy of the foregoing to be served as follows:

One electronic courtesy copy to the Office of the Secretary:

Donald S. Clark, Secretary  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W., Room H-159  
Washington, DC 20580

One paper copy and 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

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

Sarah Schroeder  
[SSCHROEDER@ftc.gov](mailto:SSCHROEDER@ftc.gov)  
Yan Fang  
[yfang@ftc.gov](mailto:yfang@ftc.gov)  
Boris Yankilovich  
[byankilovich@ftc.gov](mailto:byankilovich@ftc.gov)  
Federal Trade Commission  
901 Market Street, Suite 670  
San Francisco, CA 94103

One paper copy and one electronic copy to:

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

/s/Debra Gower

## **ATTACHMENT E**

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

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**In the Matter of**

**Jerk, LLC, a limited liability company,  
also d/b/a JERK.COM, and**

**DOCKET NO. 9361**

**John Fanning,  
individually and as a member of Jerk, LLC.**

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**COMPLAINT COUNSEL'S NOTICE OF  
RULE 3.33(c)(1) DEPOSITION OF RESPONDENT JERK, LLC**

PLEASE TAKE NOTICE that, pursuant to Rule 3.33(c)(1) of the Federal Trade Commission's Rules of Practice for Adjudicative Proceedings (16 C.F.R. § 3.33(c)(1)), Complaint Counsel will take the deposition of Jerk, LLC on the matters set forth below. Jerk, LLC is required to designate to testify on its behalf one or more officers, directors, managing agents, or other persons who have knowledge on the matters specified below. Pursuant to Rule 3.33(c)(1) and other applicable authority, Jerk, LLC's designee(s) must testify regarding all information known or reasonably available to Jerk, LLC.

1. The allegations in the Complaint.
2. The statements made in Jerk, LLC's Answer.
3. Any and all bases for Jerk, LLC's refusal to unequivocally admit every allegation in the Complaint where Jerk, LLC has not done so.
4. Jerk, LLC's affirmative defenses.
5. Any and all objections to the conduct relief Complaint Counsel seeks to obtain.
6. Jerk, LLC's responses and documents produced in response to the Federal Trade Commission's July 27, 2012 Civil Investigative Demand.
7. The identities of persons who have formulated, controlled, directed, or had authority to control Jerk, LLC since 2009.

8. The identities of persons who have had an ownership interest or investments in Jerk, LLC since 2009.
9. The identities of employees (including interns), independent contractors, and agents of Jerk, LLC since 2009, and their respective roles or duties at Jerk, LLC.
10. Respondent John Fanning's involvement with, work performed for or on behalf of, or connection to Jerk, LLC.
11. Jerk, LLC's use of and/or control over the Jerk.com domain name since 2009.
12. Jerk, LLC's use of and/or control over the www.jerk.com, www.jerk.be, and www.jerk.org URLs (collectively, the "Jerk.com website(s)") since 2009.
13. The number of unique visitors to the Jerk.com website(s), in aggregate and on a monthly and/or annual basis since 2009.
14. Technical information about the operation of and the display of individuals' profiles on the Jerk.com website(s).
15. The source of individuals' profiles, including statements, images, and other content associated with profiles, displayed on the Jerk.com website(s) since 2009.
16. The number of individuals' profiles displayed on the Jerk.com website(s) since 2009 containing content that was generated by Jerk.com users not associated with Jerk, LLC and/or the Jerk.com website(s).
17. Jerk, LLC's representations about the source of individuals' profiles, including statements, images, and other content associated with user profiles, displayed on the Jerk.com website(s) since 2009.
18. Jerk, LLC's policies, procedures, and practices for displaying images of children in profiles on the Jerk.com website(s).
19. Jerk, LLC's role and/or work as a third-party application developer for the Facebook platform.
20. Jerk, LLC's access to and use of Facebook users' profiles.
21. Means by which consumers could contact Jerk, LLC to complain about content displayed on the Jerk.com website(s) or request that content be removed from the Jerk.com website(s).
22. Jerk, LLC's policies, procedures, and practices for responding to and/or addressing consumers' complaints about content displayed on the Jerk.com website(s) and/or consumers' requests that content be removed from the Jerk.com website(s).

23. The benefits or features promised and/or delivered to consumers who purchased membership subscriptions from the Jerk.com website(s).
24. The identities of consumers who purchased membership subscriptions from the Jerk.com website(s).
25. The identities of consumers who paid money to contact Jerk, LLC through the Jerk.com website(s).
26. The revenues, costs, and profits, including sources thereof, of Jerk, LLC since 2009.

This deposition will be held on July 28, 2014 at 8:30 a.m. (ET) at the United States Attorney's Office, John Joseph Moakley Federal Courthouse, 1 Courthouse Way, Suite 9200, Boston, Massachusetts, or at such other time or place as the parties agree, before a person authorized to administer oaths, and will be recorded by stenographic and videographic means.

Date: July 2, 2014

*/s/ Sarah Schroeder*

Sarah Schroeder (sschroeder@ftc.gov)  
Yan Fang (yfang@ftc.gov)  
Boris Yankilovich (byankilovich@ftc.gov)  
Western Region – San Francisco  
Federal Trade Commission  
901 Market Street, Suite 570  
San Francisco, California 94103  
Telephone: (415) 848-5100  
Facsimile: (415) 848-5184  
COMPLAINT COUNSEL

## **ATTACHMENT F**

1           FEDERAL TRADE COMMISSION

2           I N D E X

3 WITNESS:                   EXAMINATION:  
STATEMENT                   BY MS. SCHROEDER      4  
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6 E X H I B I T:  
Ex. No.                   Description                   Page  
7 NONE

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CX0299-001  
Burke Attachment F - 1

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2           UNITED STATES OF AMERICA  
3           BEFORE THE FEDERAL TRADE COMMISSION

4

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6           In the Matter of

7           Jerk, LLC, a limited liability  
company, also d/b/a JERK.COM, and8           John Fanning,  
9           Individually and as a member of  
Jerk, LLC,

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12          Monday, July 28, 2014  
13          John Joseph Moakley  
14          U.S. Federal Courthouse  
15          1 Courthouse Way  
16          Boston, MA  
17          8:30 a.m.

18

19

20          The above-entitled matter came on for  
21          deposition, pursuant to notice, at 8:30  
22          a.m.

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## 1 APPEARANCES:

2 ON BEHALF OF THE FEDERAL TRADE COMMISSION:  
3 SARAH SCHROEDER, ESQ., Federal Trade  
Commission, 901 Market Street, Ste 570,  
San Francisco, CA 94103, 415-848-5186,  
sschroeder@ftc.gov

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## 1                   P R O C E E D I N G S

2                   MS. SCHROEDER: Counsel for the  
3                   Federal Trade Commission served a  
4                   deposition notice on Jerk, LLC, setting a  
5                   deposition for July 28th, 2014, at 8:30  
6                   a.m. at 1 Courthouse Way, Ste 9200, in  
7                   Boston, Massachusetts.

8                   Counsel for Jerk, LLC, represented  
9                   that Mr. John Fanning would attend the  
10                  deposition as Jerk, LLC's corporate  
11                  representative.

12                  Today's date is July 28th, 2014.  
13                  The time is approximately 8:55 a.m. We  
14                  are at 1 Courthouse Way, Suite 9200, in  
15                  Boston, Massachusetts. A representative  
16                  from Jerk, LLC, is not present for the  
17                  deposition. This concludes the  
18                  deposition.

19                  (The proceedings adjourned  
20                  at 9:04 a.m.)

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1 CERTIFICATION OF REPORTER

2

3 DOCKET NUMBER: 9361

4 CASE TITLE: In the Matter of Jerk, LLC, a  
5 limited liability company, also d/b/a  
6 JERK.COM, and John Fanning, individually  
7 and as a member of Jerk, LLC,

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11 I HEREBY CERTIFY that the  
12 transcript contained herein is a full and  
13 accurate transcript of the notes taken by  
14 me at the hearing on the above cause  
15 before the FEDERAL TRADE COMMISSION, to  
16 the best of my knowledge and belief.

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DATED: July 29, 2014

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CAROL DiFAZIO,

CSR, RPR

## **ATTACHMENT G**

**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**

**DOCKET NO. 9361**

**John Fanning,  
individually and as a member of Jerk, LLC.**

**COMPLAINT COUNSEL'S NOTICE OF  
RULE 3.33(c)(1) DEPOSITION OF RESPONDENT JERK, LLC**

PLEASE TAKE NOTICE that, pursuant to Rule 3.33(c)(1) of the Federal Trade Commission's Rules of Practice for Adjudicative Proceedings (16 C.F.R. § 3.33(c)(1)), Complaint Counsel will take the deposition of Jerk, LLC on the matters set forth below. Jerk, LLC is required to designate to testify on its behalf one or more officers, directors, managing agents, or other persons who have knowledge on the matters specified below. Pursuant to Rule 3.33(c)(1) and other applicable authority, Jerk, LLC's designee(s) must testify regarding all information known or reasonably available to Jerk, LLC.

1. The allegations in the Complaint.
2. The statements made in Jerk, LLC's Answer.
3. Any and all bases for Jerk, LLC's refusal to unequivocally admit every allegation in the Complaint where Jerk, LLC has not done so.
4. Jerk, LLC's affirmative defenses.
5. Any and all objections to the conduct relief Complaint Counsel seeks to obtain.
6. Jerk, LLC's responses and documents produced in response to the Federal Trade Commission's July 27, 2012 Civil Investigative Demand.
7. The identities of persons who have formulated, controlled, directed, or had authority to control Jerk, LLC since 2009.

8. The identities of persons who have had an ownership interest or investments in Jerk, LLC since 2009.
9. The identities of employees (including interns), independent contractors, and agents of Jerk, LLC since 2009, and their respective roles or duties at Jerk, LLC.
10. Respondent John Fanning's involvement with, work performed for or on behalf of, or connection to Jerk, LLC.
11. Jerk, LLC's use of and/or control over the Jerk.com domain name since 2009.
12. Jerk, LLC's use of and/or control over the www.jerk.com, www.jerk.be, and www.jerk.org URLs (collectively, the "Jerk.com website(s)") since 2009.
13. The number of unique visitors to the Jerk.com website(s), in aggregate and on a monthly and/or annual basis since 2009.
14. Technical information about the operation of and the display of individuals' profiles on the Jerk.com website(s).
15. The source of individuals' profiles, including statements, images, and other content associated with profiles, displayed on the Jerk.com website(s) since 2009.
16. The number of individuals' profiles displayed on the Jerk.com website(s) since 2009 containing content that was generated by Jerk.com users not associated with Jerk, LLC and/or the Jerk.com website(s).
17. Jerk, LLC's representations about the source of individuals' profiles, including statements, images, and other content associated with user profiles, displayed on the Jerk.com website(s) since 2009.
18. Jerk, LLC's policies, procedures, and practices for displaying images of children in profiles on the Jerk.com website(s).
19. Jerk, LLC's role and/or work as a third-party application developer for the Facebook platform.
20. Jerk, LLC's access to and use of Facebook users' profiles.
21. Means by which consumers could contact Jerk, LLC to complain about content displayed on the Jerk.com website(s) or request that content be removed from the Jerk.com website(s).
22. Jerk, LLC's policies, procedures, and practices for responding to and/or addressing consumers' complaints about content displayed on the Jerk.com website(s) and/or consumers' requests that content be removed from the Jerk.com website(s).

23. The benefits or features promised and/or delivered to consumers who purchased membership subscriptions from the Jerk.com website(s).
24. The identities of consumers who purchased membership subscriptions from the Jerk.com website(s).
25. The identities of consumers who paid money to contact Jerk, LLC through the Jerk.com website(s).
26. The revenues, costs, and profits, including sources thereof, of Jerk, LLC since 2009.

This deposition will be held on August 27, 2014 at 9:30 a.m. (PT) at the Federal Trade Commission, 901 Market Street, Suite 570, San Francisco, CA 94103, or at such other time or place as the parties agree, before a person authorized to administer oaths, and will be recorded by stenographic means.

Date: August 18, 2014

*/s/ Sarah Schroeder*

Sarah Schroeder (sschroeder@ftc.gov)  
Yan Fang (yfang@ftc.gov)  
Boris Yankilovich (byankilovich@ftc.gov)  
Western Region – San Francisco  
Federal Trade Commission  
901 Market Street, Suite 570  
San Francisco, California 94103  
Telephone: (415) 848-5100  
Facsimile: (415) 848-5184  
COMPLAINT COUNSEL

## **ATTACHMENT H**

1 1223141

2 UNITED STATES OF AMERICA

3 BEFORE THE FEDERAL TRADE COMMISSION

4

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6 In the Matter of )

7 JERK, LLC, a limited liability company, )

8 also d/b/a JERK.COM, and ) Docket No. 9361

9 )

10 JOHN FANNING, )

11 individually and as a member of )

12 JERK, LLC. )

13 \_\_\_\_\_ )

14 )

15 Wednesday, August 27, 2014

16 901 Market Street, San Francisco, California

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19 The above-entitled matter came on for  
20 investigational hearing, pursuant to notice, at 9:33 a.m.

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1 APPEARANCES:

2 ON BEHALF OF THE FEDERAL TRADE COMMISSION:

3           YAN FANG, ATTORNEY  
4           Federal Trade Commission  
4           901 Market Street, Suite 570  
5           San Francisco, California 94103  
5           415.848.5100 Fax 415.848.5184  
6           E-mail: yfang@ftc.gov

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1                   P R O C E E D I N G S  
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3                 MS. FANG: Complaint counsel for the Federal  
4 Trade Commission served a Rule 3.33(C)(1) deposition  
5 notice on Jerk LLC setting a deposition for August 27,  
6 2014 at 9:30 a.m. Pacific time at the Federal Trade  
7 Commission's office at 901 Market Street, Suite 570,  
8 San Francisco, California 94103.

9                 Along with the deposition notice complaint  
10 counsel included a copy of Chief Judge Chappell's August  
11 15, 2014 order instructing that Jerk LLC is still  
12 required to produce an individual to testify as to the  
13 matters known or reasonably available to the organization  
14 in response to complaint counsel's 3.33(C)(1) deposition  
15 notice.

16                 Complaint counsel noticed Jerk LLC by serving  
17 the notice package with the deposition notice and Chief  
18 Judge Chappell's order on Jerk LLC's registered agent,  
19 National Registered Agents, Inc. via Federal Express at  
20 160 Greentree Drive, Suite 101, in Dover, Delaware,  
21 19904. The package to National Registered Agents was  
22 signed for on August 20th, 2014.

23                 Complaint counsel also sent the notice package  
24 to Jerk LLC by certified mail to Jerk LLC's address at  
25 P.O. Box 5277, Hingham, Massachusetts 02043, and by

1 Federal Express to Jerk LLC's address at 165 Nantasket  
2 Avenue, Hull, Massachusetts 02043.

3           In addition, complaint counsel e-mailed the  
4 notice to Maria Speth, counsel who previously entered an  
5 appearance for Jerk LLC. Complaint counsel also e-mailed  
6 the notice to Peter Carr, counsel for John Fanning.

7 During discovery Maria Speth had designated John Fanning  
8 as a person with some knowledge about the matters  
9 specified in complaint counsel's deposition notice.

10           Today's date is August 27th, 2014. The time is  
11 9:33 a.m. Pacific time. We are at 901 Market Street,  
12 Suite 570, San Francisco, California 94103. A  
13 representative from Jerk LLC is not present for the  
14 deposition. No one from Jerk LLC has notified complaint  
15 counsel of any reason for the absence of a representative  
16 at this deposition. Because no representative from Jerk  
17 LLC is present, this deposition will now conclude at  
18 9:34.

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## 1 CERTIFICATION OF REPORTER

2 DOCKET/FILE NUMBER: 9361

3 CASE TITLE: FTC vs. JERK, LLC; JOHN FANNING

4 DATE: 8/27/14

5

6 I HEREBY CERTIFY that the transcript contained  
7 herein is a full and accurate transcript of the notes  
8 taken by me at the hearing on the above cause before the  
9 FEDERAL TRADE COMMISSION to the best of my knowledge and  
10 belief.

11

12 DATED: 8/28/2014

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17 THERESA A. NARDELLO

18 CALIFORNIA CSR 9966

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## **ATTACHMENT I**

1 FEDERAL TRADE COMMISSION

2

3 In the Matter of ) Docket No. 9361  
4 Jerk, LLC, a limited )  
5 liability company, also )  
6 d/b/a JERK.COM, and John )  
7 Fanning, individually and as )  
8 a member of Jerk, LLC, )  
9 Respondents. )

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14 DEPOSITION OF MARIA CRIMI SPETH

15 October 7, 2014

16 10:02 a.m.

17 Phoenix, Arizona

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

3 Q Do you know whether there's a connection  
4 between Jerk, LLC and the website jerk.com?

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

7 Q Have you at some point in time served as  
8 counsel for Jerk, LLC?

9 A ER 1.6 prohibits me from answering that  
10 question.

11 Q Did you at any point in time have any other  
12 relationship with Jerk, LLC?

13 A No.

14 Q Do you know when you first became aware of  
15 Jerk, LLC?

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

18 Q Can you state when you first had contact with  
19 Jerk, LLC?

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

22 Q Was your connection with Jerk, LLC exclusively  
23 in providing Jerk, LLC with legal counsel or advice?

24 A Yes.

25 Q Have you ever communicated with Jerk, LLC

1 about Jerk, LLC's business strategy?

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

4 Q Have you ever communicated with Jerk, LLC  
5 about its company structure?

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

8 Q Have you ever been involved in Jerk, LLC's  
9 compliance with the Digital Millennium Copyright Act?

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

12 Q Did you report to anyone at Jerk, LLC when  
13 providing work for Jerk, LLC?

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

16 Q Were you the only attorney at your law firm  
17 working or who has ever worked for Jerk, LLC?

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

20 Q Has anyone ever assisted you in your work for  
21 Jerk, LLC?

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

24 Q Have you received any payment or other forms  
25 of compensation for your work for Jerk, LLC?

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

1 manager, director or member of Jerk, LLC?

2 A Currently?

3 Q Currently.

4 A No.

5 Q What about in the past?

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

8 Q Do you know if anyone has ever invested money  
9 or anything else of value in Jerk, LLC?

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

12 Q Are you able to identify any, anyone who  
13 invested anything in Jerk, LLC?

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

16 Q Now, to be clear, Jerk, LLC was a client of  
17 yours in the past, right?

18 A Yes.

19 Q And was Jerk, LLC a client of yours personally  
20 or of yours as well as Jaburg Wilk's?

21 A I guess the firm as well.

22 Q But Jerk, LLC is currently not a client of  
23 either you nor your firm?

24 A That's correct.

25 Q And you cannot state when that relationship

1 ended?

2 A I don't believe the rules permit me to answer  
3 that question.

4 Q Okay. Are you able to state whether anyone  
5 has instructed you not to answer that question?

6 A Yes.

7 Q Who has instructed you not to answer that  
8 question?

9 A The Arizona State Bar.

10 Q Anyone else?

11 A No.

12 Q Have you communicated with Jerk, LLC as part  
13 of your representation of Jerk, LLC?

14 A I'm sorry, can you repeat the question?

15 Q Sure. Have you communicated with Jerk, LLC as  
16 part of your representation of Jerk, LLC?

17 A ER 1.6 prohibits me from answering the  
18 question.

19 Q Are you aware of any means of communication  
20 currently used by Jerk, LLC?

21 A No.

22 Q Are you aware of any means of communication,  
23 by that I mean e-mail, phone number, mail, or any other  
24 means used by Jerk, LLC in the past?

25 A ER 1.6 prohibits me from answering that

## **ATTACHMENT J**

**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 REQUEST FOR ADMISSIONS TO  
RESPONDENT JERK, LLC**

Pursuant to Commission Rule of Practice 3.32, Complaint Counsel request that Respondent Jerk, LLC admit the truth of the statements set forth below within ten (10) days after service of this Request.

## **INSTRUCTIONS**

For the purposes of this Request for Admissions, each paragraph constitutes a separate statement and is to be admitted or denied separately.

Pursuant to Rule 3.32(b), you must specifically admit or deny the requested admission, or set forth in detail the reasons why you cannot admit or deny the matter. A denial must fairly meet the substance of the requested admission, and when good faith requires that you qualify your answer or deny only a part of the requested admission, you must specify what portion of it is true and qualify or deny the remainder. In addition, you may not give lack of information or knowledge as a reason for failure to admit or deny unless you state that you have made reasonable inquiry and that the information known or readily obtainable by you is insufficient to enable you to admit or deny.

Rule 3.32(b) requires that your responses be sworn to under oath.

It is not grounds for objection that the requested admission relates to opinions of fact or the application of law to fact. Your belief that the matter on which an admission is requested

presents a genuine issue for trial does not, on that ground alone, provide a valid basis for objection.

For the purposes of this Request for Admissions, the term "profile" shall mean a page on the website Jerk.com that displayed a person's name, picture (or a blank square or avatar in lieu of a picture), buttons to vote the profiled person a "jerk" or "not a jerk," a tally of the vote results, and a space to enter comments and add other information about the profiled person.

Unless otherwise specified, the relevant time period is from January 1, 2008 to the date of full and complete compliance with this Request for Admissions.

#### **ADMISSION REQUESTS**

Complaint Counsel requests the following admissions.

1. Paragraphs 4 through 14 of the Federal Trade Commission's Complaint in this action (the "Complaint") accurately describe Jerk, LLC's acts and practices.
2. Jerk, LLC has made deceptive representations in violation of Section 5(a) of the Federal Trade Commission Act as described in Paragraphs 15 through 19 of the Complaint.
3. John Fanning has been a managing member of Jerk, LLC.
4. John Fanning has had authority to control Jerk, LLC's acts and practices.
5. NetCapital.com, LLC has been the majority shareholder of Jerk, LLC.
6. Jerk, LLC does not currently carry out any activities, including any ongoing business.
7. Jerk, LLC does not currently have any place of business.
8. Jerk, LLC does not currently have any members, officers, directors, managers, or employees.

Date: November 4, 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