

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION  
OFFICE OF THE 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, )  
 )  
Respondents. )  
\_\_\_\_\_ )

DOCKET NO. 9361

PUBLIC

**ORIGINAL**

**ANSWER OF RESPONDENT JOHN FANNING**

For his Answer to the Complaint, Respondent John Fanning (“Fanning” or “Respondent”) responds as follows:

1. Respondent Fanning admits that Respondent Jerk, LLC is a Delaware limited liability company, but denies the remaining allegations of Paragraph 1 of the Complaint.
2. Respondent Fanning admits that he has done business at 165 Nantasket Avenue, Hull, MA 02045, but denies the remaining allegations of Paragraph 2 of the Complaint.
3. Respondent Fanning admits the allegation contained in Paragraph 3 of the Complaint.
4. Respondent Fanning admits that on Jerk.com, users could create profiles of other people using the "Post a Jerk" feature. Respondent Fanning denies the remaining allegations in Paragraph 4 of the Complaint.
5. Respondent Fanning admits that Respondent Jerk, LLC earned revenue by selling memberships for \$30, by charging consumers a \$25 customer service fee to contact jerk.com, and by placing third-party advertisements on jerk.com. Respondent Fanning denies the remaining allegations of Paragraph 5 of the Complaint.

6. Respondent Fanning denies that many profile subjects were identified as a "Jerk" or "not a Jerk" but admits the remaining allegations of Paragraph 6 of the Complaint.

7. Respondent Fanning lacks sufficient knowledge to admit or deny the allegations set forth in Paragraph 7 of the Complaint and accordingly denies the same.

8. Respondent Fanning denies the allegations contained in Paragraph 8 of the Complaint. In further answering, Respondent Fanning asserts that he does not create, control or disseminate any content on jerk.com.

9. Respondent Fanning denies that Respondent Jerk. LLC represented that profiles reflected the views of other Jerk users. Respondent Fanning lacks sufficient knowledge to admit or deny the remaining allegations set forth in Paragraph 9 of the Complaint and accordingly denies the same.

10. Respondent Fanning denies that he created the vast majority of profiles using improperly obtained Facebook information. Respondent Fanning lacks sufficient knowledge to admit or deny the remaining allegations in Paragraph 10 of the Complaint.

11. Respondent Fanning denies the allegations contained in Paragraph 11 of the Complaint.

12. Respondent Fanning denies that he represented that by purchasing a subscription to Jerk, users obtained "additional paid premium features," including the ability to dispute information posted on Jerk and receive fast notifications and special updates. Respondent Fanning denies that he charged anyone \$30 for a standard membership. Respondent Fanning lacks sufficient knowledge to admit or deny that numerous consumers believed that purchasing a Jerk membership would permit them to alter or delete their Jerk profile and dispute false information on their profile and accordingly denies the same. Respondent Fanning lacks sufficient knowledge to admit or deny that that in numerous instances, consumers who paid for a standard membership received nothing in exchange for their payment of the membership fee and therefore denies it.

13. Respondent Fanning admits that, upon belief and information, some consumers contacted Jerk's registered agent or web host and requested deletion of their photo, or a photo of their child, which was originally posted on Facebook, but lacks sufficient knowledge or information to know whether they were savvy. Respondent Fanning denies that he made it difficult for consumers to contact Jerk. Respondent Fanning denies that he charged consumers a \$25 fee to email Jerk's customer service department. Respondent Fanning lacks sufficient knowledge or information to know whether numerous consumers were hesitant to provide their credit card information to Jerk. Respondent Fanning lacks sufficient knowledge to admit or deny that in numerous instances, Jerk did not respond to consumers' requests and did not remove their photos from Jerk's website and accordingly denies the allegations.

14. Respondent Fanning denies that he was unresponsive to law enforcement requests to remove harmful profiles. Respondent Fanning denies that he ignored a request from a sheriff's deputy to remove a Jerk profile that was endangering a 13-year old girl.

15. Respondent Fanning denies the allegations contained in Paragraph 15 of the Complaint.

16. Respondent Fanning denies the allegations contained in Paragraph 16 of the Complaint.

17. Respondent Fanning denies the allegations contained in Paragraph 17 of the Complaint.

18. Respondent Fanning denies the allegations contained in Paragraph 18 of the Complaint.

19. Respondent Fanning denies the allegations contained in Paragraph 19 of the Complaint.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

The Complaint fails to state a cognizable claim against Respondent for which relief may be granted as a matter of law.

**SECOND AFFIRMATIVE DEFENSE**

The Commission has exceeded and/or abused its statutory and regulatory authority in bringing the Complaint against Respondent.

**THIRD AFFIRMATIVE DEFENSE**

To the extent that Respondent ever had the power, right, or ability to control any content posted on the site at issue, which Respondent denies, the claims asserted and relief requested by the Commission in the Complaint are moot where the site at issue is no longer in operation and Respondent does not currently have any right to or control over the domain for the site.

**FOURTH AFFIRMATIVE DEFENSE**

Any injury or harm to any individual consumer or to the public in general alleged by the Commission in the Complaint was caused by the acts or omissions of a third-party over which Respondent had no authority or control.

**FIFTH AFFIRMATIVE DEFENSE**

Respondent is not responsible or liable for the acts or omissions of any third-party which may form the basis of the Complaint.

**SIXTH AFFIRMATIVE DEFENSE**

Respondent did not make any misrepresentation of material fact concerning Jerk, LLC or jerk.com or any other product or service upon which any individual consumer relied to his or her detriment, and did not cause any harm to any consumer.

**SEVENTH AFFIRMATIVE DEFENSE**

To the extent that Respondent ever had the power, right, or ability to control any content posted on the site at issue, which Respondent denies, the claims asserted and relief requested by the Commission in the Complaint unlawfully impinge upon and violate the rights and privileges of Respondent established by and protected under the United States Constitution, including the First Amendment right to free speech.

**EIGHTH AFFIRMATIVE DEFENSE**

Respondent reserves the right to amend or update the defenses based upon discovery in this matter, and waives no applicable defenses in answering the Complaint.

Respectfully submitted,

**JOHN FANNING,**

By his attorneys,

/s/ Peter F. Carr, II \_\_\_\_\_

Peter F. Carr, II (BBO #600069)

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Dated: May 19, 2014

**CERTIFICATE OF SERVICE**

I hereby certify that on May 19, 2014, I caused a true and accurate copy of the foregoing to be served electronically through the FTC's e-filing system and on May 19, 2014, I caused a true and accurate copy of the foregoing to be served as follows:

One electronic copy electronic courtesy copy to the Office of the Secretary:

Donald S. Clark, Secretary  
Federal Trade Commission  
600 Pennsylvania Ave., N.W., Room H-159  
Washington, DC 20580  
Email: [secretary@ftc.gov](mailto:secretary@ftc.gov)

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  
Email: [ojl@ftc.gov](mailto:ojl@ftc.gov)

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

Sarah Schroeder  
Yan Fang  
Kerry O'Brien  
Federal Trade Commission  
901 Market Street, Suite 670  
San Francisco, CA 94103  
Email: [sschroeder@ftc.gov](mailto:sschroeder@ftc.gov)  
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One paper copy and one electronic copy to the counsel for Jerk, LLC

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/s/ Peter F. Carr, II

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Dated: May 19, 2014