

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.)

ORIGINAL

DOCKET NO. 9361

PUBLIC DOCUMENT

**COMPLAINT COUNSEL'S RENEWED MOTION TO COMPEL DISCOVERY FROM
JOHN FANNING**

Pursuant to Commission Rule of Practice 3.38(a), Complaint Counsel respectfully files this Renewed Motion to Compel Respondent John Fanning to provide appropriate and adequate responses to Complaint Counsel's Second Set of Interrogatories and Second Set of Requests for Documents.

MEMORANDUM IN SUPPORT OF COMPLAINT COUNSEL'S RENEWED MOTION TO COMPEL DISCOVERY FROM JOHN FANNING

Last week, Complaint Counsel moved to compel Respondent John Fanning (“Fanning”) to respond to Complaint Counsel’s Second Set of Interrogatories (“Interrogatories”) and Second Set of Requests for Documents (“Requests for Production” or “RFPs”). Only after Complaint Counsel so moved did Fanning begin responding. Even then, his responses were pure gamesmanship. To most of the Interrogatories, Fanning responded that he was “unsure” of the response. He also impermissibly filed objections to the RFPs, despite his unjustified delay, and failed to respond to one of the four RFPs. This falls far short of adequate responses to discovery.¹

BACKGROUND

On October 7, 2014, Complaint Counsel served the Interrogatories and RFPs on Fanning. (Burke Dec. ¶¶ 2-3, Att. A-B.) Fanning did not respond by the November 7, 2014 deadline; nor did he provide any justification for his failure to respond. (Burke Dec. ¶ 4, Att. C.) He ignored Complaint Counsel’s repeated attempts to meet and confer about his delinquency, forcing Complaint Counsel to finally move to compel on November 17. (*Id.*)

The day after Complaint Counsel moved to compel, Fanning sent Complaint Counsel his responses to Interrogatories. (Burke Dec. ¶ 5, Att. D.) Of the six Interrogatories propounded, Fanning responded to four with one line: “I am unsure of the answer to this question.” (*Id.*) He responded to another Interrogatory, which asked him to describe the work he provided to Jerk,

¹ The Court denied Complaint Counsel’s prior Motion to Compel without prejudice, and gave Complaint Counsel the opportunity to renew their motion to Compel if Fanning’s responses were inadequate. (Chief Administrative Judge’s Order of Nov. 25, 2014.)

LLC (“Jerk”), by stating that he did not provide any service to Jerk “in my personal capacity.”
(*Id.*)

Three days later, on November 21, Fanning’s counsel asked Complaint Counsel whether they intended to withdraw their then-pending motion to compel in light of Fanning’s responses to the Interrogatories. (Burke Dec. ¶ 6, Att. E) Complaint Counsel replied that they could not withdraw the motion for three reasons. (*Id.*) First, it was a joint motion that covered both Fanning and Jerk, and Jerk had provided no response. (*Id.*) Second, Fanning’s RFP responses were still outstanding and delinquent. (*Id.*) And third, Fanning’s tardy Interrogatory responses were substantively inappropriate and inadequate. (*Id.*) However, not wanting to pursue the issue in Court if another resolution was possible, Complaint Counsel proposed a reasonable solution. They asked Fanning to respond to the RFPs and supplement his inadequate Interrogatory responses by November 25. (*Id.*) Complaint Counsel would then take one day to review these responses, and if the responses were adequate, the parties would jointly stipulate to withdraw Complaint Counsel’s sought relief against Fanning. (*Id.*)

Fanning did not accept Complaint Counsel’s offer. Instead, the next business day, he served his response to the RFPs (Burke Dec. ¶ 7, Att. F), immediately followed by his opposition to Complaint Counsel’s motion to compel. His RFP response included a litany of objections, but did not include any documents or even a substantive response to RFP No. 4.

ARGUMENT

A. Fanning’s Responses to the Interrogatories Are Inappropriate and Inadequate.

Fanning’s responses to the Interrogatories fall far short of complying with Rule

3.35(a)(2)'s mandate that each interrogatory is to be answered "fully."² Fanning responded to Interrogatories 1, 2, 3, and 4 with one line: "I am unsure of the answer to this question." (Burke Dec., Att. D.) "I am unsure" is not a valid or adequate response to discovery in litigation. *See Hicks v. Mercedes-Benz U.S. Int'l, Inc.*, 877 F. Supp. 2d 1161, 1170 n.5 (N.D. Ala. 2012) (finding party's "unsure" response to a request for admission defective). Perhaps by invoking "unsure" Fanning meant to say that he did not know the answer. *See id.* (construing "unsure" response as "indicating a lack of knowledge"). Unlike "unsure," "I don't know" can be a valid response. *U.S. ex rel. Minge v. TECT Aerospace, Inc.*, No. 07-1212, 2011 WL 1885934, at *2 (D. Kan. May 18, 2011). If "I don't know" is actually—and truthfully—what Fanning meant to convey, amending his response to plainly say so would pose no burden. Conversely, if Fanning does know at least part of the response to the Interrogatories, he has an obligation to answer fully, and he should do so. The Court therefore should compel Fanning to adequately respond to Interrogatories 1 through 4.³

Fanning also provided an inadequate response to Interrogatory No. 5 by claiming that he did not provide services to Jerk "in my personal capacity." (Burke Dec., Att. D.) But Interrogatory No. 5 asked Fanning for a description of any service or work that he has provided to Jerk, regardless of the capacity under which he had done so. It is beyond doubt that Fanning

² Likewise, the Interrogatories instructed Fanning to: "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." (Burke Dec. Att. A, Interrogatory Instruction C.)

³ Alternatively, given the closing of fact discovery, and with the objective to resolve this issue expeditiously without further motions practice, Complaint Counsel respectfully submits that the Court could order that Fanning's "I am unsure" responses be construed as "I don't know."

provided services to Jerk, since he already testified so at his deposition. (*See* CX0092, filed with Complaint Counsel's Motion for Summary Decision.) He cannot now obstruct legitimate inquiry into the scope of that work by invoking some artificial distinction between his conduct in a personal versus non-personal capacity. Accordingly, the Court should compel Fanning to provide a full and adequate response to Interrogatory No. 5.

B. The Court Should Compel Fanning to Respond to Complaint Counsel's RFP No. 4 and Strike Fanning's Improper Objections.

Like his responses to the Interrogatories, Fanning's tardy response to the RFPs are inadequate and improper. Failing to produce a single document, his response contains no fewer than fourteen objections. (Burke Dec., Att. F.) Yet Fanning served his response, including the objections, more than two weeks after it was due, without providing any justification for the delay. As such, Fanning has waived his right to object to Complaint Counsel's RFPs. *See In re Daniel Chapter One*, No. 9329, 2009 WL 569694, at * 1 (F.T.C. Jan 9, 2009) (Respondents waived objections to Complaint Counsel's document request because they failed to timely object). Therefore, the Court should strike Fanning's objections, and in doing so, compel Fanning to respond substantively to RFP No. 4, to which Fanning has provided only objections.

C. Fanning Should Produce Full and Adequate Responses Promptly.

If the Court compels discovery, it should require Fanning to produce full and adequate responses promptly. Discovery has now closed and the evidentiary hearing is approaching rapidly. If Fanning's full and adequate responses unveil previously undiscovered information or documents, and especially if Complaint Counsel is forced to seek leave to reopen discovery on that basis, the parties and the Court need to know and face this issue immediately. Consequently, Fanning should be compelled to provide full and adequate responses within seven days of the disposition of this motion. *Bullion v. Ramsaran*, No. 07-61463, 2008 U.S. Dist.

LEXIS 65829, at *2 (S.D. Fla. July 7, 2008) (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 26, 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

STATEMENT CONCERNING MEET AND CONFER

The undersigned counsel certifies that Complaint Counsel conferred with Respondent John Fanning's counsel, Peter Carr, by email correspondence on November 21, 2014, regarding the deficiencies in Respondent Fanning's late discovery responses and the continued need for Complaint Counsel to pursue a Rule 3.38 motion to compel discovery. A copy of this correspondence is attached as Exhibit E to the Declaration of Beatrice Burke, filed herewith.

Dated: November 26, 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 26, 2014, I served a true and correct copy of Complaint Counsel's Renewed Motion to Compel Discovery From John Fanning on:

The Office of the Secretary:

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

The Office of the Administrative Law Judge

D. Michael Chappell
Chief Administrative Law Judge
600 Pennsylvania Avenue, N.W.
Room H-106
Washington, DC 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 26, 2014

/s/ Beatrice Burke
Beatrice Burke (bburke@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

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 RENEWED
MOTION TO COMPEL DISCOVERY**

This matter having come before the Chief Administrative Law Judge on November 26, 2014 upon Complaint Counsel’s Renewed Motion to Compel Discovery (the “Motion”) to compel Respondent John Fanning (“Fanning”) to respond fully and adequately to Complaint Counsel’s Second Sets of Interrogatories and Requests for Documents;

Having considered the 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:

1. With respect to Complaint Counsel’s Second Set of Interrogatories:

- Fanning shall, within seven days, fully and adequately respond to Complaint Counsel’s Second Set of Interrogatories Nos. 1 through 5; or
- Fanning’s responses of “I am unsure of” shall be construed “I do not know,” and Fanning shall, within seven days, fully and adequately respond to Complaint Counsel’s Second Set of Interrogatories No. 5.

2. With respect to Complaint Counsel’s Second Set of Requests for Documents:

Fanning’s objections are hereby stricken and Fanning shall, within seven days, fully and adequately respond to Request No. 4 without objection.

SO ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

Date:

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.

DOCKET NO. 9361

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DECLARATION OF BEATRICE BURKE

1. My name is Beatrice Burke. I am employed by the Federal Trade Commission (“FTC”) as a paralegal in the FTC – Western Region, San Francisco Office. 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 Respondent served John Fanning with Complaint Counsel’s Second Set of Interrogatories. Attached to this declaration as Attachment A is a true and correct copy of this document.

3. Also on October 7, 2014, Complaint Counsel served Respondent John Fanning with Complaint Counsel’s Second Set of Requests for Documents. Attached to this declaration as Attachment B is a true and correct copy of this document.

4. Attached to this declaration as Attachment C is a true and correct copy of an email sent on November 17, 2014 by Complaint Counsel to counsel for Respondent John Fanning.

5. On November 18, 2014, Complaint Counsel received via email from Respondent John Fanning’s counsel a copy of a document titled “Respondent John Fanning’s Answers to

Complaint Counsel's Second Set of Interrogatories." Attached to this declaration as Attachment D is a true and correct copy of this document.

6. Attached to this declaration as Attachment E is a true and correct copy of an email sent on November 21, 2014 by Complaint Counsel to counsel for Respondent John Fanning.

7. On November 24, 2014, Complaint Counsel received via email from Respondent John Fanning's counsel a copy of a document titled "Respondent John Fanning's Responses to Second Set of Requests for Documents." Attached to this declaration as Attachment F is a true and correct copy of this document.

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

Executed this November 26, 2014, in San Francisco, CA.

/s/ Beatrice Burke
Beatrice Burke

ATTACHMENT A

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,) DOCKET NO. 9361
individually and as a member of)
Jerk, LLC.)
)
)
)

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 [REDACTED].
3. Identify all individuals who have sent messages from the email account [REDACTED].
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

PUBLIC

ATTACHMENT B

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

ATTACHMENT C

Abbe, Kenneth

From: Schroeder, Sarah
Sent: Monday, November 17, 2014 4:42 PM
To: 'Peter Carr'; Orence, Violet B.; 'mcs@jaburgwilk.com'
Cc: Yankilovich, Boris; Fang, Yan; Abbe, Kenneth; Burke, Beatrice
Subject: RE: FTC Docket #9361 - Complaint Counsel's Motion to Compel Discovery

Peter,

We filed a motion to compel Mr. Fanning's discovery responses because despite repeated requests you provided no justification for the delay and gave no indication that his overdue responses were forthcoming.

Regarding your accusation of stonewalling, we have produced thousands of documents in response to Respondents' document requests. If you still want to meet and confer about your planned motion to compel additional responses, I'm available tomorrow from 9-10am (PT), Wednesday from 11am-5pm (PT), and Thursday from 9-10am and 11am-2pm (PT). Like I said, depending on what it is that you're seeking, we may be able to supplement, but we need to know what the dispute is about first.

From: Peter Carr [mailto:PCarr@eckertseamans.com]
Sent: Monday, November 17, 2014 4:10 PM
To: Schroeder, Sarah; Orence, Violet B.; 'mcs@jaburgwilk.com'
Cc: Yankilovich, Boris; Fang, Yan; Abbe, Kenneth; Burke, Beatrice
Subject: RE: FTC Docket #9361 - Complaint Counsel's Motion to Compel Discovery

Then why file the motion you did and why stonewall the discovery.

PFC

Sent with Good (www.good.com)

From: Schroeder, Sarah <SSCHROEDER@ftc.gov>
Sent: Monday, November 17, 2014 6:44:09 PM
To: Peter Carr; Orence, Violet B.; 'mcs@jaburgwilk.com'
Cc: Yankilovich, Boris; Fang, Yan; Abbe, Kenneth; Burke, Beatrice
Subject: RE: FTC Docket #9361 - Complaint Counsel's Motion to Compel Discovery

To be clear, we are willing to supplement our interrogatory response if you confer with us regarding your concerns. As always, we are willing to work with you to avoid unnecessary motions to Chief Judge Chappell.

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Subject: RE: FTC Docket #9361 - Complaint Counsel's Motion to Compel Discovery

Peter,

If you are referring to our 9am (PT) call on November 13th, I was waiting at my desk for a half hour and you did not call.

You still have not articulated your concerns about our interrogatory response. We are willing to supplement our response if you meet and confer with us.

Best Regards,
Sarah

From: Peter Carr [<mailto:PCarr@eckertseamans.com>]
Sent: Monday, November 17, 2014 3:22 PM
To: Schroeder, Sarah; Orence, Violet B.; 'mcs@jaburgwilk.com'
Cc: Yankilovich, Boris; Fang, Yan; Abbe, Kenneth; Burke, Beatrice
Subject: RE: FTC Docket #9361 - Complaint Counsel's Motion to Compel Discovery

No. We were supposed to conference all issues and you were not available. Again, sharp practice.

I will move to compel. Fanning's responses are done and were on my desk. I have more than one case.

Looking forward to trial.

PFC

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Cc: Yankilovich, Boris; Fang, Yan; Abbe, Kenneth; Burke, Beatrice
Subject: RE: FTC Docket #9361 - Complaint Counsel's Motion to Compel Discovery

Peter,

PUBLIC

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If your email is referring to a call regarding your alleged deficiencies in Complaint Counsel's interrogatory response, I am still waiting for you to send me the times that you can meet and confer. I'm available tomorrow from 9-10am (PT), Wednesday from 11am-5pm (PT), and Thursday from 9-10am and 11am-2pm (PT). Please let me know the specific time you would like to meet, as I also have other commitments.

As this case nears trial, we'll have to work together on multiple issues to ensure a smooth hearing. I'm sympathetic to your busy schedule and have made myself available to meet and confer at your convenience. My hope is that we can both represent our clients while being respectful of each other.

Best Regards,
Sarah

From: Peter Carr [<mailto:PCarr@eckertseamans.com>]
Sent: Monday, November 17, 2014 2:10 PM
To: Orence, Violet B.; 'mcs@jaburgwilk.com'
Cc: Schroeder, Sarah; Yankilovich, Boris; Fang, Yan; Abbe, Kenneth; Burke, Beatrice
Subject: RE: FTC Docket #9361 - Complaint Counsel's Motion to Compel Discovery

Sarah-

What happened to our call.

PFC

Sent with Good (www.good.com)

From: Orence, Violet B. <VORENCE@ftc.gov>
Sent: Monday, November 17, 2014 5:08:00 PM
To: Peter Carr; 'mcs@jaburgwilk.com'
Cc: Schroeder, Sarah; Yankilovich, Boris; Fang, Yan; Abbe, Kenneth; Burke, Beatrice
Subject: FTC Docket #9361 - Complaint Counsel's Motion to Compel Discovery

Pursuant to Rule 3.38(a) please find attached copies of Complaint Counsel's Motion to Compel Discovery filed today.

Sincerely,
Violet Orence

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.

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ATTACHMENT D

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,)	DOCKET NO. 9361
Also d/b/a JERK.COM, and)	
John Fanning,)	
Individually and as a member of)	
Jerk, LLC,)	
Respondents.)	

**RESPONDENT JOHN FANNING'S ANSWERS TO COMPLAINT COUNSEL'S
SECOND SET OF INTERROGATORIES**

Respondent John Fanning provides the following answers to Complaint Counsel's

Second set of Interrogatories:

1. Identify all current and past investors in Jerk, LLC or Jerk.com, including any individual or entity directly invested in Jerk, LLC or Jerk.com.

Answer to Int. 1

I am unsure of the answer to this question.

2. Identify (1) each email account that the Company has used, and (2) for each account, each person who has corresponded through that account, including but not limited to



Answer to Int. 2

I am unsure of the answer to this question.

3. Identify all individuals who have sent messages from the email account
[REDACTED]

Answer to Int. 3

I am unsure of the answer to this question.

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.

Answer to Int. 4

I am unsure of the answer to this question.

5. Describe in detail any service or work that Respondent John Fanning has provided to Jerk, LLC.

Answer to Int. 5

I did not provide services to Jerk, LLC in my personal capacity.

6. Describe how Jerk.com grew to have 85 million profiles within a few months of the website's launch.

Answer to Int. 6

I do not know the answer to this question.

SWORN TO AND SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY
THIS 11th DAY NOVEMBER, 2014.

/s/ John Fanning

John Fanning, Individually

CERTIFICATE OF SERVICE

I hereby certify that on November 18, 2014, I caused a true and accurate copy of the foregoing document entitled Respondent John Fanning's Answers to Complaint Counsel's Second Set of Interrogatories to be served as follows:

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

Sarah Schroeder
Federal Trade Commission
901 Market Street, Suite 670
San Francisco, CA 94103.
Email: sschroeder@ftc.gov

/s/ Peter F. Carr, II
Peter F. Carr, II
ECKERT, SEAMANS, CHERIN & MELLOTT, LLC
Two International Place, 16th Floor
Boston, MA 02110
617.342.6800
617.342.6899 (FAX)

Dated: November 18, 2014

ATTACHMENT E

Abbe, Kenneth

From: Schroeder, Sarah
Sent: Friday, November 21, 2014 1:06 PM
To: 'Peter Carr'; 'mcs@jaburgwilk.com'
Cc: Yankilovich, Boris; Fang, Yan; Abbe, Kenneth; Ortiz, Kelly
Subject: RE: FTC Docket #9361 - Complaint Counsel's Motion to Compel Discovery

Follow Up Flag: Follow up
Flag Status: Flagged

Peter,

We can't withdraw our motion because it covers both Respondents' failure to provide timely responses. Additionally, at this time, we can't seek a partial withdrawal for Mr. Fanning because, even though you sent us his Interrogatory responses after we filed our motion to compel, we still haven't received his responses to our Requests for Production. Plus, the untimely Interrogatory responses are so fundamentally insufficient that we would still need to compel proper responses on them. The responses to Interrogatories 1 through 4 are all "I am unsure of the answer to this question." That's not an appropriate response. If Mr. Fanning, after satisfying his discovery obligations, including Instruction C to our Interrogatories, truly does not know the answer to a particular interrogatory, he can say that. But the vague "unsure" is an unacceptable response. Also, Mr. Fanning's response to Interrogatory no. 5 seems to invoke some distinction between services he provided to Jerk in his personal capacity versus in some other capacity. That Interrogatory is broad enough to cover services he provided to Jerk in any capacity and he needs to describe those services in detail.

Having laid out the deficiencies, let me propose a reasonable solution to save the Court and the parties time and effort in resolving this dispute. If by end of day next Tuesday, Nov. 25, you can provide to us (1) full, complete, and proper responses to the RFPs and (2) supplemental responses to Interrogatories 1 through 5 that fully resolve the deficiencies I described, we can review them and tell you by end of day (Pacific) on Nov. 26 whether we'd be amenable to filing a joint stipulation withdrawing our sought relief against Mr. Fanning. Please let me know if you want to proceed this way.

Thanks,
Sarah

From: Peter Carr [mailto:PCarr@eckertseamans.com]
Sent: Friday, November 21, 2014 12:54 PM
To: Schroeder, Sarah; Orence, Violet B.; 'mcs@jaburgwilk.com'
Cc: Yankilovich, Boris; Fang, Yan; Abbe, Kenneth; Burke, Beatrice
Subject: RE: FTC Docket #9361 - Complaint Counsel's Motion to Compel Discovery

Let me know if you want to speak before 11-25.

Also, please advise if you intend to withdraw the motion to compel since we served the answers to supplemental ints. I just want to know so I can decide whether I need to continue preparing an opposition.

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: Tuesday, November 18, 2014 3:43 PM
To: Peter Carr; Orence, Violet B.; 'mcs@jaburgwilk.com'
Cc: Yankilovich, Boris; Fang, Yan; Abbe, Kenneth; Burke, Beatrice
Subject: RE: FTC Docket #9361 - Complaint Counsel's Motion to Compel Discovery

Peter,

Although you still have not identified any alleged deficiencies in our interrogatory response, and we strongly believe that our response was thorough and appropriate, to avoid an unnecessary motion we will provide you with a supplemental response on November 25th. As always, my door is open if you want to discuss any issues in this matter.

Best Regards,
Sarah

From: Peter Carr [<mailto:PCarr@eckertseamans.com>]
Sent: Monday, November 17, 2014 5:02 PM
To: Schroeder, Sarah; Orence, Violet B.; 'mcs@jaburgwilk.com'
Cc: Yankilovich, Boris; Fang, Yan; Abbe, Kenneth; Burke, Beatrice
Subject: RE: FTC Docket #9361 - Complaint Counsel's Motion to Compel Discovery

Just answer the ints and we need not confer. You brought the case.

PFC

Sent with Good (www.good.com)

From: Schroeder, Sarah <SSCHROEDER@ftc.gov>
Sent: Monday, November 17, 2014 7:42:22 PM
To: Peter Carr; Orence, Violet B.; 'mcs@jaburgwilk.com'
Cc: Yankilovich, Boris; Fang, Yan; Abbe, Kenneth; Burke, Beatrice
Subject: RE: FTC Docket #9361 - Complaint Counsel's Motion to Compel Discovery

Peter,

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Subject: RE: FTC Docket #9361 - Complaint Counsel's Motion to Compel Discovery

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Subject: RE: FTC Docket #9361 - Complaint Counsel's Motion to Compel Discovery

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What happened to our call.

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Pursuant to Rule 3.38(a) please find attached copies of Complaint Counsel's Motion to Compel Discovery filed today.

Sincerely,
Violet Orence

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ATTACHMENT F

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
PUBLIC DOCUMENT

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

Respondent John Fanning ("Fanning") responds to Complaint Counsel's Second Set of Request for Documents as follows.

GENERAL OBJECTIONS

1. Respondent Fanning objects to the requests to the extent they seek information protected by the attorney-client privilege or other recognized privilege.
2. Respondent Fanning objects to the requests to the extent they seek information protected by the attorney work product doctrine.
3. Respondent Fanning objects to the requests to the extent they seek confidential or private information.
4. Respondent Fanning objects to the requests to the extent they seek information that is more readily accessible to the Commission through other means.
5. Respondent Fanning objects to the requests to the extent they seek information already in the possession, custody, or control of the Commission.
6. Respondent Fanning objects to the requests to the extent they seek information in the possession, custody, or control of a person, entity or other third-party over which Fanning does not have any control or authority.

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

RESPONSES

1. All documents relating to 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.

Response No. 1

OBJECTION. The Request is overly broad, vague and ambiguous. Without waiving and subject to the Objection, Fanning has not located any responsive documents in his possession, custody, or control after a diligent search.

2. All documents relating to any agreement or arrangement between Jerk, LLC and Respondent John Fanning.

Response No. 2

OBJECTION. The Request is overly broad, vague and ambiguous. Without waiving and subject to the Objection, Fanning has not located any responsive documents in his possession, custody, or control after a diligent search.

3. All documents relating to Louie Lardas and Internet Domains.

Response No. 3

OBJECTION. The Request is overly broad, vague and ambiguous. Without waiving and subject to the Objection, Fanning has not located any responsive documents currently in his possession, custody, or control.

4. All communications regarding Jerk, LLC or Jerk.com, other than communications with Complaint Counsel.

Response No. 4

OBJECTION. The Request is overly broad, unduly burdensome, vague and ambiguous.

Respectfully submitted,

JOHN FANNING,

By his attorneys,

/s/ Peter F. Carr, II

Peter F. Carr, II

ECKERT, SEAMANS, CHERIN & MELLOTT, LLC

Two International Place, 16th Floor

Boston, MA 02110

617.342.6800

617.342.6899 (FAX)

pcarr@eckertseamans.com

CERTIFICATE OF SERVICE

I hereby certify that on November 24, 2014, I caused a true and accurate copy of the foregoing document entitled Respondent John Fanning's Responses to Complaint Counsel's Second Requests for Documents to be served as follows:

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

Sarah Schroeder
Federal Trade Commission
901 Market Street, Suite 670
San Francisco, CA 94103
Email: sschroeder@ftc.gov

/s/ Peter F. Carr, II
Peter F. Carr, II
ECKERT, SEAMANS, CHERN & MELLOTT, LLC
Two International Place, 16th Floor
Boston, MA 02110
617.342.6800
617.342.6899 (FAX)

Dated: November 24, 2014