

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 MOTION FOR ALTERNATE SERVICE ON
RESPONDENT JERK, LLC**

Pursuant to Rule 3.22, and for the reasons stated in the supporting Memorandum filed herewith, Complaint Counsel respectfully requests that the Court permit the following forms of alternate service upon Respondent Jerk, LLC:

1. Service by registered or certified mail or personal delivery at

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

or another valid registered agent for Jerk should National Registered Agents, Inc. cease serving as Jerk's registered agent or accepting service for Jerk; and

2. Service by email to Maria Crimi Speth at mcs@jaburgwilk.com.

Dated: October 17, 2014

Respectfully submitted,

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

COMPLAINT COUNSEL

**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)	
John Fanning,)	DOCKET NO. 9361
individually and as a member of)	PUBLIC DOCUMENT
Jerk, LLC.)	
_____)	

**MEMORANDUM IN SUPPORT OF COMPLAINT COUNSEL’S MOTION FOR
ALTERNATE SERVICE ON RESPONDENT JERK, LLC**

After Respondent Jerk, LLC’s (“Jerk”) counsel of record, Maria Crimi Speth, informed Complaint Counsel that she would no longer represent Jerk, Complaint Counsel began to serve Jerk at its known business addresses. Recently, Federal Express and the U.S. Postal Service informed Complaint Counsel that Jerk ceased use of these addresses and had not provided any forwarding address. Complaint Counsel do not know of any current operational business address for Jerk. Consequently, to ensure that Jerk continues to stay apprised of and has a fair opportunity to participate in proceedings in this action, Complaint Counsel seek the Court’s permission to serve Jerk at its registered agent in Delaware and to continue to serve Ms. Speth.

BACKGROUND

At the time Complaint Counsel filed the Complaint in this action on April 7, 2014, Jerk was represented by Ms. Speth. (Declaration of Beatrice Burke, filed herewith (“Burke Dec.”) ¶ 2.) Initially, Jerk, through Ms. Speth, participated in the action, including by filing an Answer, responding to Complaint Counsel’s Requests for Admissions and Requests for Production, propounding discovery requests on Complaint Counsel, and designating Respondent John Fanning as the company’s representative for a deposition noticed under Rule 3.33(c)(1). (Burke Dec. ¶¶ 3, 4; Ex. A.)

On July 18, Ms. Speth alerted Complaint Counsel that, effective immediately, she no longer represented Jerk. (Burke Dec. ¶ 5; Ex. B.) Ms. Speth wrote that she considered her email to Complaint Counsel as effectuating her removal from this matter. (*Id.*) After repeated attempts by Complaint Counsel to encourage Ms. Speth to alert the Court of her intended withdrawal and facilitate an orderly transition, on July 30, Ms. Speth finally filed a notice that stated: “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.” (Burke Dec. ¶ 6; Ex. C.) Ms. Speth has not moved to withdraw as Jerk’s counsel. Nor has she identified successor counsel or any point of contact for Jerk to whom Complaint Counsel can send correspondence. (*Id.*)

Since July 18, Jerk has seemingly stopped participating in this action. Jerk never responded to Complaint Counsel’s Interrogatories, due July 24, and did not provide a reason for its non-response. (Burke Dec. ¶ 7.) Jerk also failed to provide a representative for its noticed deposition under Rule 3.33(c)(1) on July 28, even though it previously designated Respondent John Fanning as its representative. (Burke Dec. ¶¶ 8, 9; Exs. D, E.) On August 15, the Court ordered Jerk to produce an individual for a deposition under Rule 3.33(c)(1) and to respond to Complaint Counsel’s First Set of Interrogatories by August 20. Jerk has not responded to these Interrogatories, and again failed to produce anyone for its re-noticed deposition on August 27. (Burke Dec. ¶¶ 7, 10, 11; Exs. F, G.)

After July 18, Complaint Counsel has served Jerk by continuing to email service copies to Ms. Speth and by mailing copies to 165 Nantasket Avenue in Hull, Massachusetts and to P.O. Box 277 in Hingham, Massachusetts. (Burke Dec. ¶ 12.) During their investigation, Complaint Counsel identified both these addresses as Jerk’s business addresses. (Burke Dec. ¶ 12; Ex. H.) In fact, Jerk has admitted that it represented P.O. Box 277 in Hingham as a business address. (Burke Dec. Ex. I (No. 4).) Complaint Counsel also served Jerk through its registered agent, National Registered Agents, Inc. (“NRAI”), in Dover, Delaware, which is listed as Jerk’s

registered agent on the Delaware Secretary of State website (Burke Dec. ¶ 17; Ex. K), and

{

}

On August 21, Federal Express alerted Complaint Counsel that Jerk has moved from the 165 Nantasket Avenue address without providing a forwarding address. (Burke Dec. ¶ 14) Complaint Counsel continued serving Jerk at the Hingham, MA P.O. Box. (Burke Dec. ¶ 15) On October 6, however, Complaint Counsel received a return receipt from the U.S. Postal Service indicating that Jerk moved from that P.O. Box, without leaving a forwarding address. (Burke Dec. ¶ 16; Ex. J.) Since then, Complaint Counsel has continued to serve Jerk through its registered agent. (Burke Dec. ¶ 17; Ex. K.)

ARGUMENT

A. Legal Standard.

The Court's May 28, 2014, Scheduling Order requires the parties to serve each other by electronic mail. The Commission's Rules permit service by the Commission of complaints, initial decisions, final orders and other processes of the Commission under 15 U.S.C. § 45 through: (1) registered or certified mail; (2) delivery to an individual; and (3) delivery to an address. 16 C.F.R. 4.4(a)(1). They permit service of all other orders and notices "by any method reasonably certain to inform the affected person, partnership, corporation or unincorporated association, including any method specified in paragraph (a)(1)" 16 C.F.R. 4.4(a)(2). Similarly, constitutional due process requires that service to be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

B. Service on Jerk Through Its Delaware Registered Agent is Appropriate Under the Circumstances.

With Ms. Speth's departure from representing Jerk in this action, continuing to serve her by email, as required by the Court's Scheduling Order, creates uncertainty as to whether Jerk

will receive served materials. Serving Jerk directly would minimize that risk and would constitute a method reasonably certain to inform the company.

Serving NRAI, Jerk's registered agent in Delaware, is a lawful and appropriate means of serving Jerk. Jerk is a Delaware company. (Burke Dec. ¶ 19; Ex. M) NRAI is Jerk's registered agent in Delaware. (Burke Dec. ¶¶ 17, 18; Exs. K, L.) Under Delaware law, service on NRAI would constitute valid service on Jerk. *See* Del. Code Ann. tit. 8, § 321(a); *see also Peterson v. Sealed Air Corp.*, 902 F.2d 1232, 1236 (7th Cir. 1990) ("service on a registered agent is no different from service in hand to the president of the corporation").¹

Additionally, serving NRAI is the best means to ensure reasonable certainty of service upon Jerk because NRAI remains the only point of contact for Jerk, apart from Ms. Speth and Mr. Fanning, known to Complaint Counsel. Jerk has recently moved from its known street and P.O. Box addresses without providing any forwarding address. (Burke Dec. ¶¶ 14, 16.) {

} In her deposition, Ms.

Speth could not identify Jerk's corporate headquarters or where Jerk does business; she testified that she did not know whether Jerk had a location for accepting service, any managers, officers, or directors, or even whether Jerk carries out any ongoing business or any activity at all. (Burke Dec. ¶ 22; Ex. O at 44:20-51:1). Contrary to { } and Ms. Speth's general unawareness about Jerk's whereabouts, NRAI has recently confirmed that it continues to serve as Jerk's registered agent and would accept materials served on the company. (Burke Dec. ¶ 18.) Therefore, serving Jerk through NRAI is appropriate.

¹ Federal rules likewise permit service upon an "agent authorized by appointment or by law to receive service of process." Fed. R. Civ. P. 4(h)(1).

C. Continuing to Serve Jerk Through Ms. Speth is Appropriate Under the Circumstances.

Although Ms. Speth unilaterally withdrew from her representation of Jerk as of July 18, continuing to serve Jerk through her would maximize the reasonable certainty that Jerk will remain timely apprised of proceedings in this action because she appears to retain the ability, if not also the obligation, to forward service copies to Jerk.²

Ms. Speth, who is licensed and practices in Arizona (Burke Dec. ¶ 22; Ex. O at 6:15-18, 21:3-5)), has an ethical obligation as a withdrawing attorney to “advise the client and new counsel of pending court dates, status of the case, and anything else necessary and appropriate for the smooth transfer of the representation.” Ariz. Ethics Op. 09-02 (Sept. 2009). As an attorney in good standing with the state bar, Ms. Speth presumably has complied and will comply with her ethical obligations, and therefore must ensure the smooth transfer of representation by, at the very least, forwarding service copies to Jerk or its new counsel.³

Additionally, there is strong reason to believe that Ms. Speth has continued to represent, and therefore maintain contact with, Jerk beyond her withdrawal from this case on July 18. Ms. Speth was Jerk’s counsel of record in a recent case Jerk brought against Louie Lardas in Maricopa County, Arizona Superior Court, in which Jerk secured an \$84,629 default judgment. (Burke Dec. ¶ 23; Ex. P.) The most recent entry in that case to date was filed on July 21, 2014.

² It remains questionable whether Ms. Speth’s unilateral withdrawal as Jerk’s counsel was appropriate and valid, as she neither sought nor received leave to withdraw from the Court and did not advise the Court about her cause for withdrawal or whether she provided reasonable notice to her client, as would be required in federal court litigation. *See FTC v. Intellipay, Inc.*, 828 F. Supp. 33, 33-34 (S.D. Tex. 1993) (“An attorney of record may only withdraw by leave of court upon a showing of good cause and reasonable notice to the clients.”).

³ Even though Ms. Speth claimed not to know Jerk’s current place of business, she surely must have known Jerk’s contact information while representing the company, and can therefore forward materials to that address. Ms. Speth, citing ethical barriers, refused to provide that contact information during her deposition. (Burke Dec. ¶ 22; Ex. O at 45, 50:22-51:1.)

(*Id.*) Conspicuously absent from the Arizona Superior Court docket is any indication of Ms. Speth's withdrawal on or before July 18, or at any other time, even though Arizona rules permit withdrawal only upon a court order supported by a written application setting forth the reasons for the withdrawal. Ariz. R. Civ. P. 5.1(a)(2). Thus, Ms. Speth must have continued to represent Jerk in another matter after withdrawing her representation of Jerk in this one. She is therefore well positioned to, at the very least, continue to forward service materials to Jerk. Continuing to serve Ms. Speth by email is reasonably certain to alert Jerk of ongoing proceedings in this action.

CONCLUSION

For the foregoing reasons, Complaint Counsel respectfully asks the Court to permit Complaint Counsel to serve Jerk, LLC by mailing material to its registered agent and emailing Maria Speth.

Dated: October 17, 2014

Respectfully submitted,



Sarah Schroeder
Boris Yankilovich
Yan Fang
Kenneth Abbe
Western Region – San Francisco
Federal Trade Commission
901 Market Street, Suite 570
San Francisco, CA 94103
Phone: (415) 848-5100
Fax: (415) 848-5184

COMPLAINT COUNSEL

STATEMENT CONCERNING MEET AND CONFER

The undersigned counsel certifies that Complaint Counsel conferred with Respondent John Fanning's counsel, Mr. Carr, and sent him an advance copy of this motion and memorandum by email on October 16, 2014. As evidenced in the deposition transcript attached as Attachment O to the Declaration of Beatrice Burke filed herewith, Complaint Counsel also attempted to resolve the issues in this motion with Maria Speth, the attorney who entered an appearance for Jerk, LLC.

Dated: October 17, 2014

Respectfully submitted,



Sarah Schroeder
Boris Yankilovich
Yan Fang
Kenneth Abbe
Western Region – San Francisco
Federal Trade Commission
901 Market Street, Suite 570
San Francisco, CA 94103
Phone: (415) 848-5100
Fax: (415) 848-5184

COMPLAINT COUNSEL

CERTIFICATE OF SERVICE

I hereby certify that on October 17, 2014, I caused a true and correct copy of the foregoing to be served as follows:

One electronic copy through the FTC's e-filing system, as well as one electronic courtesy copy and one paper copy with the original signatures to the **Office of the Secretary:**

Donald S. Clark, Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Room H-159
Washington, DC 20580
Email: secretary@ftc.gov

One electronic copy to the **Office of the Administrative Law Judge:**

The Honorable D. Michael Chappell
Chief Administrative Law Judge
600 Pennsylvania Ave., NW, Room H-110
Washington, DC 20580

One electronic copy to counsel for **John Fanning:**

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

One electronic copy to counsel who entered an appearance for **Jerk, LLC:**

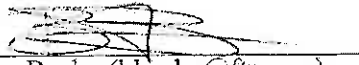
Maria Crimi Speth, Esq.
Jaburg & Wilk, P.C.
3200 N. Central Ave., Suite 2000
Phoenix, AZ 85012
Phone: (602) 248-1089
Email: mcs@jaburgwilk.com

One copy to **Jerk, LLC's registered agent** via Federal Express:

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

I further certify that I possess a paper copy of the signed original of the foregoing document that is available for review by the parties and the adjudicator.

Date: October 17, 2014


Beatrice Burke (bburke@ftc.gov)
Federal Trade Commission
901 Market Street, Suite 570, SF, CA 94103

**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
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)

**[PROPOSED] ORDER GRANTING COMPLAINT COUNSEL'S MOTION FOR
ALTERNATE SERVICE ON RESPONDENT JERK, LLC**

Having considered Complaint Counsel's Motion for Alternate Service on Jerk, LLC, and the supporting memorandum and opposing submissions, and for good cause appearing, Complaint Counsel's Motion is hereby GRANTED, and the Court ORDERS that service upon Respondent Jerk, LLC in this action may be made by:

1. Service by registered or certified mail or personal delivery at

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

or another valid registered agent for Jerk should National Registered Agents, Inc. cease serving as Jerk's registered agent or accepting service for Jerk; and

2. Service by email to Maria Crimi Speth at mcs@jaburgwilk.com.

SO ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

Date:

**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.**

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) **DOCKET NO. 9361**

) **PUBLIC DOCUMENT**
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**DECLARATION OF BEATRICE BURKE IN SUPPORT OF COMPLAINT COUNSEL'S
MOTION FOR ALTERNATE SERVICE ON RESPONDENT JERK, LLC**

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. Complaint Counsel served a copy of the Complaint on Ms. Speth at her email address, mcs@jaburgwilk.com, and continued to serve Jerk by serving Ms. Speth at that address.
3. Ms. Speth served on Complaint Counsel's Jerk's Answer on May 19, 2014; Jerk's responses to Complaint Counsel's First Requests for Admissions on May 29, 2014; Jerk's

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Interrogatory Requests, Requests for Admissions, and Requests for Production on July 2, 2014; and Jerk's responses to Complaint Counsel's First Requests for Production on July 7, 2014.

4. Attached hereto as Exhibit A is a true and correct copy of an email string between Complaint Counsel and Respondents Counsel between June 4, 2014 and June 11, 2014. These emails discuss Jerk, LLC's designation of Mr. Fanning as Jerk's corporate representative and his appearance in that capacity for a deposition in Boston on July 28, 2014.
5. Attached hereto as Exhibit B is a true and correct copy of an email exchange between Complaint Counsel and Ms. Speth dated July 18, 2014 to July 30, 2014, regarding Ms. Speth's withdrawal as Jerk's counsel.
6. Attached hereto as Exhibit C is a Notice Regarding Representation filed by Ms. Speth in this action on July 30, 2014. Despite filing this notice, Ms. Speth has not to date identified for Complaint Counsel new counsel for Jerk or anyone at the company to whom Complaint Counsel can send correspondence.
7. On June 24, 2014, Complaint Counsel served their First Set of Interrogatories on Jerk. To date, Jerk has not responded to this discovery request, notwithstanding the Court's August 15, 2014 order on Complaint Counsel's Motion to Compel Discovery, and has not provided Complaint Counsel any reason for its non-response.
8. Attached hereto as Exhibit D is a true and correct copy of Complaint Counsel's deposition notice, served on Jerk on July 2, 2014, noticing Jerk's deposition on July 28, 2014 in Boston, Massachusetts.
9. Attached hereto as Exhibit E is a true and correct copy of a transcript of Jerk's noticed deposition on July 28, 2014. No representative for Jerk appeared at this deposition.


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10. Attached hereto as Exhibit F is a true and correct copy of Complaint Counsel's deposition notice, served on Jerk on August 18, 2014, noticing Jerk's deposition on August 27, 2014 in San Francisco, CA.
11. Attached hereto as Exhibit G is a true and correct copy of a transcript of Jerk's noticed deposition on August 27, 2014. No representative for Jerk appeared at this deposition.
12. After July 18, Complaint Counsel has served Jerk by continuing to email service copies to Ms. Speth and by mailing copies, via Federal Express, to 165 Nantasket Avenue in Hull, Massachusetts and via U.S. Mail to P.O. Box 277 in Hingham, Massachusetts. During the investigation leading up to this action, Complaint Counsel identified both these addresses as Jerk's business addresses. For example, attached hereto as Exhibit H is a true and correct copy of materials provided by a payment processing company listing both these addresses for Jerk.
13. Attached hereto as Exhibit I is a true and correct copy of Jerk's Response to Complaint Counsel's First Request for Admissions.
14. On August 21, 2014, a Federal Express representative from Massachusetts left me a voicemail message stating that Jerk had apparently moved from its address at 165 Nantasket Avenue in Hull, Massachusetts, without leaving a forwarding address.
15. After August 21, 2014, Complaint Counsel continued to serve Jerk by continuing to email service copies to Ms. Speth and by mailing copies to Jerk, via U.S. Mail, to P.O. Box 277 in Hingham, Massachusetts and via Federal Express to Jerk's registered agent, National Registered Agents, Inc.
16. On October 6, 2014, Complaint Counsel received a return receipt from the United States Postal Service indicating that Jerk had moved out of the P.O. Box 277 in Hingham, Massachusetts, and left no forwarding address. Attached as Exhibit J is a true and correct copy of a printout from the U.S. Postal Service's website reflecting this information.

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17. Attached hereto as Exhibit K is a true and correct copy of a printout from the Delaware Secretary of State, Division of Corporations website (<http://corp.delaware.gov/>), that I captured on October 16, 2014, which lists National Registered Agents, Inc., as Jerk's registered Agent.
18. On October 6, 2014, Complaint Counsel contacted a representative of National Registered Agents, Inc., who confirmed that it continued to operate as Jerk's registered agent and, as such, would accept materials served on Jerk.
19. Attached hereto as Exhibit L is a true and correct copy of Jerk's response, dated October 26, 2012, to a Civil Investigative Demand issued by the FTC.
20. Attached hereto as Exhibit M is the Answer filed in this action by Jerk.
21. Attached hereto as Exhibit N are true and correct copies of portions of the transcript of the September 4, 2014 deposition of John Fanning in this action.
22. Attached hereto as Exhibit O is a true and correct copy of the transcript of the October 7, 2014 deposition of Maria Crimi Speth in this action.
23. Attached as Exhibit P is a true and correct copy of a printout from the Arizona Superior Court, Maricopa County online case docket system for the case docket number CV2013-011439, that I captured on October 16, 2014.

Executed on October 17, 2014 in San Francisco, California.



Beatrice Burke

Exhibit 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 | 602.248.1039

JABURG | WILK

Attorneys at Law



From: Yankilovich, Boris [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

From: Maria Crimi Speth [<mailto:mcs@jaburgwilk.com>]
Sent: Tuesday, June 10, 2014 11:00 AM
To: Schroeder, Sarah; Peter Carr (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



From: Schroeder, Sarah [<mailto:SSCHROEDER@ftc.gov>]
Sent: Tuesday, June 10, 2014 7:38 AM
To: Maria Crimi Speth; Peter Carr (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

From: Maria Crimi Speth [mailto:mcs@jaburgwilk.com]
Sent: Wednesday, June 04, 2014 4:40 PM
To: Schroeder, Sarah; Peter Carr (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

This communication is intended only for the individual or entity to whom it is directed. It may contain information that is privileged, confidential, or otherwise exempt from disclosure under applicable law. Dissemination, distribution, or copying of this communication by anyone other than the intended recipient, or a duly designated employee or agent of such recipient, is prohibited. If you have received this communication in error, please notify us immediately by telephone at (602) 248-1000, or via e-mail, and delete this message and all attachments thereto.

Exhibit 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]
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)
<pcarr@eckertseamans.com>; Debra A. Gower <dag@jaburgwilk.com>; vroy@eckertseamans.com
<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); Debra A. Gower; 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

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); Debra A. Gower; 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



Exhibit C

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION



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

ORIGINAL

In the matter of:)

Jerk, LLC, a limited liability company,)

Also d/b/a JERK.COM, and)

John Fanning,)

Individually and as a member of)

Jerk, LLC,)

Respondents.)

DOCKET NO. 9361

PUBLIC

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
Boris Yankilovich
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

/s/Debra Gower _____

Exhibit D

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

In the Matter of

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

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

DOCKET NO. 9361

**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

Exhibit E

1 FEDERAL TRADE COMMISSION

2 I N D E X

3 WITNESS: EXAMINATION:
4 STATEMENT BY MS. SCHROEDER 4

5

6 E X H I B I T:
7 Ex. No. Description Page
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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of

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

John Fanning,
Individually and as a member of
Jerk, LLC,

Monday, July 28, 2014
John Joseph Moakley
U.S. Federal Courthouse
1 Courthouse Way
Boston, MA
8:30 a.m.

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

1 APPEARANCES:
2 ON BEHALF OF THE FEDERAL TRADE COMMISSION:
3 SARAH SCHROEDER, ESQ., Federal Trade
4 Commission, 901 Market Street, Ste 570,
5 San Francisco, CA 94103, 415-848-5186,
6 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

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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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9

10

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.

17

18

19 DATED: July 29, 2014

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21

22

23 CAROL DiFAZIO,

24 CSR, RPR

25

Exhibit F

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

In the Matter of

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

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

DOCKET NO. 9361

**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 Fedral 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

Exhibit G

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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.)
_____)

Wednesday, August 27, 2014
901 Market Street, San Francisco, California

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

1 APPEARANCES:

2 ON BEHALF OF THE FEDERAL TRADE COMMISSION:

3 YAN FANG, ATTORNEY
4 Federal Trade Commission
5 901 Market Street, Suite 570
6 San Francisco, California 94103
7 415.848.5100 Fax 415.848.5184
8 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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CERTIFICATION OF REPORTER

DOCKET/FILE NUMBER: 9361
CASE TITLE: FTC vs. JERK, LLC; JOHN FANNING
DATE: 8/27/14

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

DATED: 8/28/2014

THERESA A. NARDELLO
CALIFORNIA CSR 9966

Exhibit H

DOCUMENT MARKED CONFIDENTIAL

Exhibit I

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,

Also d/b/a JERK.COM, and

John Fanning,

Individually and as a member of
Jerk, LLC,

Respondents.

DOCKET NO. 9361

PUBLIC

**JERK, LLC's RESPONSES TO COMPLAINT COUNSEL'S
FIRST REQUESTS FOR ADMISSIONS**

Pursuant to Rule 3.32(b), Jerk, LLC ("Jerk") provides the following responses to Complaint Counsel's First Requests for Admissions:

1. Respondents have operated the website Jerk.com.

Deny.

2. Respondents have controlled or have had the authority to control the content displayed on Jerk.com.

Deny.

3. Respondents have rented the domain name Jerk.com from Louis Lardas.

Deny.

4. Jerk, LLC's has represented P.O. Box 277, Hingham, MA 02043 as a business address.

Admit.

5. John Fanning has had authority to control Jerk, LLC.

Deny.

6. John Fanning hired Harvard Business Services to incorporate Jerk, LLC and serve as Jerk, LLC's registered agent.

Deny.

7. John Fanning has controlled a bank account for Jerk, LLC at Bank of America, N.A.

Deny.

8. John Fanning has controlled a PayPal, Inc. account for Jerk, LLC.

Object to the term "controlled" as ambiguous. Notwithstanding the objection, Respondent denies.

9. John Fanning has hired Stripe, Inc. to process payments from consumers to Jerk, LLC.

Deny.

10. John Fanning has hired Immedion to provide data hosting services for Jerk, LLC.

Deny.

11. John Fanning has rented P.O. Box 277, Hingham, MA 02043.

Deny.

12. John Fanning has solicited persons to invest in Jerk, LLC.

Deny.

13. John Fanning has supervised persons working for or on behalf of Jerk, LLC.

Deny.

14. John Fanning has corresponded through the email address support@jerk.com.

Deny.

15. John Fanning has received complaints from consumers regarding Jerk.com.

Deny.

16. John Fanning has ordered the removal of at least one profile from Jerk.com after receiving a consumer removal request.

Deny.

17. Jerk.com has displayed millions of unique profiles about persons.

Objections: (1) The term “profile” is undefined and ambiguous. (2) This information was as readily available to the FTC at Jerk.com and the burden of deriving or ascertaining whether the “Jerk.com has displayed millions of unique profiles about persons” is substantially same for the FTC as for Jerk. (3) This Request for Admission is an improper attempt by the FTC to shift the burden of proof from the FTC to Jerk. Notwithstanding the objection, Respondent Jerk, LLC denies.

18. Respondents have represented to consumers that users create all the profiles that appear on Jerk.com.

Deny.

19. The majority of profiles on Jerk.com reflect 0/0 votes for the Jerk/Not a Jerk votes tally.

Objections: (1) The term “profile” is undefined and ambiguous. (2) This information was readily available to the FTC at Jerk.com and the burden of deriving or ascertaining whether the “majority of profiles on Jerk.com reflect 0/0 votes for Jerk/Not a Jerk votes tally” is substantially same for the FTC as for Jerk. (3) This Request for Admission is an improper attempt by the FTC to shift the burden of proof from the FTC to Jerk. Notwithstanding the objection, Respondent Jerk, LLC denies.

20. The majority of profiles on Jerk.com have not contained comments about the profiled subject.

Objections: (1) The term “profile” is undefined and ambiguous. (2) This information was readily available to the FTC at Jerk.com and the burden of deriving or ascertaining whether the “majority of profiles on Jerk.com have not contained comments about the profiled subject” is substantially same for the FTC as for Jerk. (3) This Request for Admission is an improper attempt by the FTC to shift the burden of proof from the FTC to Jerk. Notwithstanding the objection, Respondent Jerk, LLC denies.

21. Respondents have created the majority of profiles on Jerk.com.

Objection. The term “created” and “profile” is undefined and ambiguous. Notwithstanding the objection, Respondent Jerk, LLC denies.

22. Respondents have created profiles on Jerk.com without the authorization of the profiled subject.

Objections: (1) The term “profile” is undefined and ambiguous. (2) Whether Jerk “created ‘profiles’ on Jerk.com without authorization of the profiled subject” is neither relevant to, nor reasonably expected to yield information relevant to, whether Jerk made alleged deceptive representations regarding the “source of Jerk content” or “Jerk memberships.” *See* Rule 3.31(c)(1), 3.32(a). Notwithstanding the objection, Respondent Jerk, LLC denies.

23. Respondents have hired a Romanian company called Software Assist to design Jerk.com.

Deny.

24. Respondents' agent(s) have registered the following applications with Facebook: Jerk.com, Jerk2.com, Jerk3.com, Jerk4.com, and Jerk.be.

Objection. Whether Jerk registered the above applications with Facebook is neither relevant to, nor reasonably expected to yield information relevant to, whether Jerk made alleged deceptive representations regarding the "source of Jerk content" or "Jerk memberships." See Rule 3.31(c)(1), 3.32(a). Notwithstanding the objection, Respondent Jerk, LLC denies.

25. Respondents' agent(s) have downloaded names and images of Facebook users by accessing Facebook's application programming interfaces.

Deny.

26. Respondents have created profiles on Jerk.com using names and images that Respondents' agent(s) obtained from Facebook.

Objection. The term "create" and the term "profile" is undefined and ambiguous. Notwithstanding the objection, Respondent Jerk, LLC denies.

27. Facebook disabled the applications Jerk.com, Jerk2.com, Jerk3.com, Jerk4.com, and Jerk.be.

Objection. Whether Jerk disabled the above applications with Facebook is neither relevant to, nor reasonably expected to yield information relevant to, whether Jerk made alleged deceptive representations regarding the "source of Jerk content" or "Jerk memberships." See Rule 3.31(c)(1), 3.32(a). Notwithstanding the objection, Respondent Jerk, LLC denies.

28. Respondents have posted user names and images obtained from Facebook on Jerk.com in violation of Facebook's policies.

Objection. Whether Jerk violated Facebook's policies is neither relevant to, nor reasonably expected to yield information relevant to, whether Jerk made alleged deceptive representations regarding the "source of Jerk content" or "Jerk memberships." See Rule 3.31(c)(1), 3.32(a). Notwithstanding the objection, Respondent denies the allegation.

29. The only method presented on Jerk.com for consumers to contact Jerk.com or Jerk, LLC has been through the "Contact" link on Jerk.com.

Objection. Whether the "only method presented on Jerk.com for consumers to contact Jerk.com or Jerk, LLC has been through the 'Contact' link on Jerk.com" is neither relevant to, nor reasonably expected to yield information

relevant to, whether Jerk made alleged deceptive representations regarding the “source of Jerk content” or “Jerk memberships.” *See* Rule 3.31(c)(1), 3.32(a). Notwithstanding the objection, Respondent denies the allegation.

30. Jerk.com, including on its “Contact Us” webpage, has not displayed any physical address, email address, or telephone number for Jerk.com or Jerk, LLC.

Objection. Whether “Jerk.com...has not displayed any physical address, email address, or telephone number for Jerk.com or Jerk, LLC” is neither relevant to, nor reasonably expected to yield information relevant to, whether Jerk made alleged deceptive representations regarding the “source of Jerk content” or “Jerk memberships.” *See* Rule 3.31(c)(1), 3.32(a).

Notwithstanding the objection, Respondent denies the allegation.

31. Jerk.com’s “Contact Us” webpage has offered consumers the ability to submit a message to Jerk.com for a \$25 fee.

Objection. Whether “Jerk.com’s ‘Contact Us’ webpage has offered” non-members “the ability to submit a message to Jerk.com for a \$25 fee” is neither relevant to, nor reasonably expected to yield information relevant to, whether Jerk made alleged deceptive representations regarding the “source of Jerk content” or “Jerk memberships.” *See* Rule 3.31(c)(1), 3.32(a). Furthermore, Jerk denies it cost a jerk.com user \$25.00 to send a single message to jerk.com. A Jerk.com user may email the website at support@jerk.com or utilize jerk.com’s paid support feature, which costs \$25.00. Notwithstanding the objection, Respondent Jerk, LLC denies.

32. Respondents have sold to consumers \$30 membership subscriptions to Jerk.com.

Deny.

33. Respondents have represented to consumers that the \$30 membership subscription to Jerk.com would offer subscribing consumers the ability to manage their reputations and to resolve disputes with people with whom they are in conflict.

Deny.

34. Compared with consumers who did not buy the \$30 membership subscription to Jerk.com, those who did buy the membership did not obtain from Respondents any additional ability to manage their reputations and to resolve disputes with people with whom they are in conflict.

Deny.

Respectfully submitted,

JERK, LLC

By its attorneys,

/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: May 29, 2014

CERTIFICATE OF SERVICE

I hereby certify that on May 29, 2014, I caused a true and accurate copy of the foregoing to be emailed to:

Sarah Schroeder
SSCHROEDER@ftc.gov
Yan Fang
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Kerry O'Brien
kobrien@ftc.gov
Boris Yankilovich
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Federal Trade Commission
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San Francisco, CA 94103

Peter F. Carr, II
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Eckert, Seamans, Cherin & Mellott, LLC
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/s/Debra Gower

Debra Gower
Jaburg & Wilk, P.C.
3200 N. Central Ave., Suite 2000
Phoenix, AZ 85012
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(602) 248-0522

Exhibit J



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ALERT

Your item was returned to the sender on October 4, 2014 at 8:44 am in HINGHAM, MA 02043 because the addressee moved and left no forwarding address.

Product & Tracking Information

Postal Product:

Features:
Certified Mail™

Available Actions

Text Updates

Email Updates

DATE & TIME	STATUS OF ITEM	LOCATION
October 4, 2014 , 8:44 am	Returned, Left no Address	HINGHAM, MA 02043
Your item was returned to the sender on October 4, 2014 at 8:44 am in HINGHAM, MA 02043 because the addressee moved and left no forwarding address.		
October 4, 2014 , 8:24 am	Out for Delivery	HINGHAM, MA 02043
October 4, 2014 , 8:14 am	Sorting Complete	HINGHAM, MA 02043
October 4, 2014 , 8:09 am	Arrived at Unit	HINGHAM, MA 02043
October 4, 2014 , 5:50 am	Departed USPS Facility	BROCKTON, MA 02301
October 4, 2014 , 1:15 am	Arrived at USPS Facility	BROCKTON, MA 02301
October 3, 2014 , 1:05 am	Departed USPS Facility	PROVIDENCE, RI 02904
October 2, 2014 , 8:38 pm	Arrived at USPS Facility	PROVIDENCE, RI 02904
October 1, 2014 , 12:33 am	Departed USPS Facility	SAN FRANCISCO, CA 94188
September 30, 2014 , 10:45 pm	Arrived at USPS Facility	SAN FRANCISCO, CA 94188

Track Another Package

Tracking (or receipt) number

Track It

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- [FOIA](#)
- [No FEAR And EEO Date](#)

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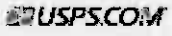
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Exhibit K

Department of State: Division of Corporations

- [HOME](#)
- [About Agency](#)
- [Secretary's Letter](#)
- [Newsroom](#)
- [Frequent Questions](#)
- [Related Links](#)
- [Contact Us](#)
- [Office Location](#)
- [SERVICES](#)
- [Pay Taxes](#)
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[Privacy Policy](#) [Frequently Asked Questions](#) [View Search Results](#)

Entity Details

THIS IS NOT A STATEMENT OF GOOD STANDING

File Number: **4647069** Incorporation Date / Formation Date: **01/21/2009**
 (mm/dd/yyyy)

Entity Name: **JERK LLC**

Entity Kind: **LIMITED LIABILITY COMPANY (LLC)** Entity Type: **GENERAL**

Residency: **DOMESTIC** State: **DE**

REGISTERED AGENT INFORMATION

Name: **NATIONAL REGISTERED AGENTS, INC.**

Address: **160 GREENTREE DR STE 101**

City: **DOVER** County: **KENT**

State: **DE** Postal Code: **19904**

Phone: **(302)674-4089**

Additional information is available for a fee. You can retrieve Status for a fee of \$10.00 or more detailed information including current franchise tax assessment, current filing history and more for a fee of \$20.00.

Would you like Status Status, Tax & History Information

[Back to Entity Search](#)

To contact a Delaware Online Agent [click here](#).

Exhibit L

DOCUMENT MARKED CONFIDENTIAL

Exhibit M

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION



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

ORIGINAL

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

ANSWER OF RESPONDENT JERK, LLC

For its Answer to the Complaint, Jerk, LLC responds as follows:

1. Respondent Jerk, LLC admits that Respondent Jerk, LLC, is a Delaware limited liability company but denies the remaining allegations of Paragraph 1 of the Complaint.
2. Respondent Jerk, LLC admits that Respondent John Fanning has done business at 165 Nantasket Avenue, Hull, MA 02045 but denies the remaining allegations of Paragraph 2 of the Complaint.
3. Respondent Jerk, LLC admits the allegation contained in Paragraph 3 of the Complaint.
4. Respondent Jerk, LLC admits that on Jerk.com, users could create profiles of other people using the "Post a Jerk" feature. Respondent Jerk, LLC denies the remaining allegations in Paragraph 4 of the Complaint.

5. Respondent Jerk, LLC 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 Jerk, LLC denies the remaining allegations of Paragraph 5 of the Complaint.
6. Respondent Jerk, LLC 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 Jerk, LLC, lacks sufficient knowledge to admit or deny the allegations set forth in Paragraph 7 of the Complaint and accordingly denies the same.
8. Respondent Jerk, LLC denies the allegations contained in Paragraph 8 of the Complaint.
9. Respondent Jerk, LLC denies that it represented that profiles reflected the views of other Jerk users. Respondent Jerk, LLC, 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 Jerk, LLC denies that Respondents created the vast majority of profiles using improperly obtained Facebook information. Respondent Jerk, LLC, lacks sufficient knowledge to admit or deny that Facebook is a social network that currently has over 1.2 billion members and accordingly denies the same. Respondent Jerk, LLC admits that Facebook permits third-party developers to integrate websites and applications with Facebook. Respondent Jerk, LLC admits that Developers can access data for all Facebook users through Facebook's application programming interfaces ("APIs"), which provide sets of tools developers can use to interact with Facebook. Respondent Jerk, LLC denies that developers that use the Facebook platform must agree to Facebook's policies, which include (1) obtaining users' explicit consent to share certain Facebook data; (2) deleting information obtained through Facebook once Facebook disables the developers' Facebook access; (3) providing an easily accessible mechanism for

consumers to request the deletion of their Facebook data; and (4) deleting information obtained from Facebook upon a consumer's request.

11. Respondent Jerk, LLC denies the allegations contained in Paragraph 11 of the Complaint.

12. Respondent Jerk, LLC denies that Respondents 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 Jerk, LLC admits that consumers subscribed by paying \$30 for a standard membership. Respondent Jerk, LLC, 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, Jerk, LLC denies that in numerous instances, consumers who paid for a standard membership received nothing from respondents in exchange for their payment of the membership fee.

13. Respondent Jerk, LLC admits that some consumers contacted Jerk's registered agent or web host and requested that respondents delete 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 Jerk, LLC denies that Respondents made it difficult for consumers to contact Jerk. Respondent Jerk, LLC denies that Respondents charged consumers a \$25 fee to email Jerk's customer service department. Respondent Jerk, LLC lacks sufficient knowledge or information to know whether numerous consumers were hesitant to provide their credit card information to Jerk. Respondent Jerk, LLC, 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 same.

14. Respondent Jerk, LLC denies that Respondents were unresponsive to law enforcement requests to remove harmful profiles. Respondent Jerk, LLC lacks sufficient

knowledge to admit or deny that in at least one instance, Respondents ignored a request from a sheriff's deputy to remove a Jerk profile that was endangering a 13-year old girl.

15. Respondent Jerk, LLC denies the allegations contained in Paragraph 15 of the Complaint.

16. Respondent Jerk, LLC denies the allegations contained in Paragraph 16 of the Complaint.

17. Respondent Jerk, LLC denies the allegations contained in Paragraph 17 of the Complaint.

18. Respondent Jerk, LLC denies the allegations contained in Paragraph 18 of the Complaint.

19. Respondent Jerk, LLC denies the allegations contained in Paragraph 19 of the Complaint.

Affirmative Defenses

First Affirmative Defense

The Complaint fails to state a claim upon which relief may be granted.

Second Affirmative Defense

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

Third 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.

Fourth Affirmative Defense

The regulations upon which the Federal Trade Commission relies cannot be applied in a manner as to restrict or prohibit free speech under the First Amendment.

Fifth Affirmative Defense

The requested relief is not in the public interest.

Sixth Affirmative Defense

No representation alleged to be deceptive is a material representation, omission or practice likely to affect a consumer's conduct.

Respectfully submitted,

JERK, LLC

By its attorneys,

/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: 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 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
Email: 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: oadj@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
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Email: sschroeder@ftc.gov
yfang@ftc.gov
kobrien@ftc.gov

One paper copy and one electronic copy to:

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/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: May 19, 2014

Exhibit N

DOCUMENT MARKED CONFIDENTIAL

Exhibit O

**CONFIDENTIAL MATERIAL
REDACTED**

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FEDERAL TRADE COMMISSION

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

DEPOSITION OF MARIA CRIMI SPETH

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

Reported by: Gary W. Hill, RMR, CRR

1 I N D E X

2

3 WITNESS PAGE

4 MARIA CRIMI SPETH

5 Examination by Mr. Yankilovich 6

6

7

8

9 I N D E X TO EXHIBITS

10 Exhibit	Description	Page
11 CX0072	E-mail dated May 30, 2014, from Fanning to Speth re: Videos	169
12 CX0527	Redacted E-mail string between Speth and Lardas	159
13 CX0528	Letter dated January 16, 2013, from Speth to Bommel	74
14 CX0529	Letter dated January 17, 2013, from Speth to Jepsen	78
15 CX0531	Letter dated February 7, 2013, from Speth to Lerner	73
16 CX0745	E-mail from Rand Tara to support@jerk.com dated November 16, 2012	71
17 CX0747	E-mail string re: Removal of Nelson Gepayo	91
18 CX0748	E-mail and correspondence re: Garrick Bernstein	95
19 CX0750	E-mail string between Speth and Candice Leontyuk	119

20
21
22
23
24
25

Exhibit	Description	Page
2	CX0751 E-mail string re: Christiane Campbell	111
3		
4	CX0752 E-mail letter from Speth to McLeod-Lofquist	92
5	CX0754 E-mail string between Speth and Vasso Kanistra	100
6		
7	CX0755 E-mail string re: Removal of posting of Naissan Vahman on jerk.com	82
8		
9	CX0756 E-mail string re: jerk.com and cancer patient	89
10	CX0757 E-mail string between Speth and Christiane Campbell	103
11		
12	CX0759 E-mail string re: Removal of posting of Naissan Vahman on jerk.com	85
13		
14	CX0760 E-mail string re: Removal of name and image of Mariana Carlito from jerk.com	87
15		
16	CX0761 E-mail string between Speth and Kellye Washington	115
17	CX0762 Redacted E-mail string re: Miri Ben-Dat	127
18		
19	CX0764 Redacted E-mail from Diana A. to Speth	129
20	CX0765 Redacted E-mail from Hailey Hodinski, RN	131
21		
22	CX0770 Bank Statement for Jerk, LLC, May 2012	161
23	CX0771 Bank Statement for Jerk, LLC, June 2012	161
24		
25		

1 Exhibit	Description	Page
2 CX0772	Bank Statement for Jerk, LLC July 2012	161
3		
4 CX0773	Bank Statement for Jerk, LLC August 2012	161
5 CX0774	Letter from Gaftoneanu, IeXpert, to Raluca Popa	133
6		
7 CX249	E-mail dated June 16, 2014, from Yosi Amram to Maria Crimi Speth re: Privileged attorney-client communication subpoenas	166
8		
9		
10		
11		
12		
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16		
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1 Deposition of MARIA CRIMI SPETH, was
2 taken on October 7, 2014, at the U.S. Courthouse and
3 Federal Building, 230 North First Avenue, Phoenix,
4 Arizona, commencing at the hour of 10:02 a.m., before
5 Gary W. Hill, a Registered Professional Reporter and
6 Arizona Certified Reporter, in and for the State of
7 Arizona.

8

9 APPEARANCES:

10 ON BEHALF OF THE FEDERAL TRADE COMMISSION:

11 BORIS YANKILOVICH, ESQ.
12 ERIC D. EDMONDSON, ESQ.
13 Federal Trade Commission
14 Western Region - San Francisco
15 901 Market Street, Suite 570
 San Francisco, California 94103
 (415) 848-5186
 byankilovich@ftc.gov

16 ON BEHALF OF RESPONDENT (JOHN FANNING):

17 PETER F. CARR, II, ESQ. (Via phone)
18 Eckert Seamans Cherin & Mellott, LLC
19 Two International Place
 16th Floor
 Boston, Massachusetts 02110
 (617) 342-6857
20 pcarr@eckertseamans.com
21 (Appearing from 10:49 a.m. to 12:41 p.m.
 via teleconference.)

22

23

24

25

1 MARIA CRIMI SPETH,
2 called as a witness herein, having been first duly
3 sworn by the Certified Reporter to speak the whole
4 truth and nothing but the truth, was examined and
5 testified as follows:

6

7 EXAMINATION

8 BY MR. YANKILOVICH:

9 Q Good morning, Ms. Speth. I'm Boris
10 Yankilovich with the Federal Trade Commission. If you
11 could, please state and spell your full name for the
12 record.

13 A Maria, M-A-R-I-A; Crimi, C-R-I-M-I; Speth,
14 S-P-E-T-H.

15 Q If you could, please state your business
16 address.

17 A It is 3200 North Central Avenue, Suite 2000,
18 Phoenix, Arizona, 85012.

19 Q And you're not represented by counsel here
20 today; is that right?

21 A I am not.

22 Q Have you ever had your deposition taken
23 before?

24 A Yes.

25 Q How many times?

1 A I don't know.

2 Q Can you approximate?

3 A Maybe twice.

4 Q Do you remember the cases?

5 A Oh, are you kidding me? Yes.

6 Q What were the cases?

7 A Oh, let's see, I was 17 years old in a car
8 accident on Long Island. How much more do you want
9 about that?

10 Q That's fine. What about the other one?

11 A I cannot remember if it was a deposition or if
12 it was at a, like a preliminary injunction hearing; but
13 I testified, I think it was in court. I don't think it
14 was a deposition. So actually I can only think of one
15 because the other one that I'm thinking of, I'm pretty
16 sure was in court and not a deposition.

17 Q Do you remember that court, the case and that
18 court testimony?

19 A Do I remember it? Yes.

20 Q What is the case?

21 A I'm not going to answer that question. That
22 involved a client, another client that -- I'm ethically
23 prohibited from talking about cases of my clients and I
24 won't do that. So it was a client of mine. I was
25 testifying for a client of mine. Therefore, I'm

1 ethically prohibited from answering.

2 Q So, but you were testifying in a public court
3 hearing?

4 A Correct, yes.

5 Q Can you tell us what court that was in?

6 A Yes. I believe it was in the United States
7 District Court for the District of Arizona.

8 Q Do you remember what year that was in?

9 A Probably three years ago.

10 Q And so the, and the basis that you can't
11 identify the case is what again?

12 A The Arizona Ethics Rules, the Rules of
13 Professional Responsibility.

14 Q What specifically about the rules prohibits
15 you from identifying that case?

16 A I am prohibited from talking about or
17 revealing any information regarding the representation
18 of a client unless the client gives me informed consent
19 or unless the disclosure is impliedly authorized in
20 order to carry out the representation, or otherwise
21 permitted by the Rules of Professional Conduct. And
22 none of those exceptions exist in what you just asked
23 me.

24 Q And your belief is that identifying the name
25 of that case would violate that rule?

1 A I don't think it's my belief. I think it
2 would violate that rule.

3 Q Any other reason why you can't identify --

4 A No.

5 Q Okay. Have you testified in court in any
6 other proceeding?

7 A I did. Yes.

8 Q What was that other proceeding?

9 A I testified in a case in Texas last year on
10 behalf of the United States government as a government
11 witness, and the case was the United States versus
12 Darren Chaker. C-H-A-K-E-R, I think it's spelled.

13 Q In what capacity were you testifying?

14 A As a witness.

15 Q So this was a criminal prosecution?

16 A I believe so. I'm not a criminal attorney.
17 It was a criminal case. I'm not -- it had something to
18 do with revoking a bond or something like that, but I'm
19 not really up on criminal jargon.

20 Q So besides that, have you testified in any
21 other court proceeding?

22 A Not that I can remember.

23 Q So let me lay out some of the ground rules
24 which will undoubtedly be very familiar to you. Here
25 at the deposition I will ask the questions, pose them

1 before you answer. The answers will be under the oath
2 that you just took. Do you understand that?

3 A I do.

4 Q And do you understand that you must answer
5 truthfully?

6 A I understand that I must answer truthfully if
7 you're not asking a question that's privileged, yes.

8 Q Okay. And do you understand that you must
9 answer completely?

10 A Again, I understand I should answer completely
11 unless you're asking a question to which my answer
12 would be covered by a privilege.

13 Q Okay. And if you need to refer to any
14 documents in answering, would you please let me know?

15 A Sure.

16 Q If you don't understand any question that I
17 may ask, can you please ask me to clarify that
18 question?

19 A Yes, of course.

20 Q Can you please speak clearly and vocalize your
21 answer for the record and the court reporter?

22 A Yes.

23 Q If opposing counsel, should opposing counsel
24 show, object, you must still answer my question unless
25 you are instructed by counsel to not answer. Do you

1 understand that?

2 A I disagree. I will not answer any questions
3 that impinge on the attorney-client privilege and
4 nobody needs to instruct me on that. I have my own
5 ethics rules to follow.

6 Q Okay. Well, to the extent that you believe an
7 answer impinges on the attorney-client privilege, you
8 must still answer with that assertion. You must let me
9 know that you believe that my question impinges on the
10 privilege.

11 A Yes, of course.

12 Q Okay. Please feel free to ask for breaks at
13 any time, but as is customary, please don't ask for a
14 break with a question pending. Do you understand that?

15 A I understand.

16 Q Do you understand all of the instructions that
17 I just gave you?

18 A I do.

19 Q Apologies for the following line of questions.
20 I'm sure you ask them and they're very awkward for both
21 the person asking and the person answering. Do you
22 happen to be ill today?

23 A I am not.

24 Q Are you currently under the influence of any
25 substance, whether it's medication, drugs, alcohol or

1 anything else that may make it difficult for you to
2 remember today?

3 A No.

4 Q Are you under the influence of any substance
5 that may make it difficult for you to answer truthfully
6 today?

7 A No.

8 Q Are you under the influence of any substance
9 that may make it difficult for you to answer accurately
10 today?

11 A No.

12 Q If during the course of the day your ability
13 to remember and answer truthfully or answer accurately
14 becomes inhibited, can you please let me know?

15 A Yes.

16 Q Is there any reason why you cannot give full,
17 complete and accurate testimony today?

18 A Again, if your questions involve something
19 that would be protected by an ethics rule, then I will
20 not give answers to that.

21 Q Okay. And you will alert me if that's the
22 basis for your refusal to give answers, correct?

23 A Yes, of course.

24 Q Okay. Did you consult with anyone about this
25 deposition?

1 A I did not.

2 Q Did you discuss this matter, FTC versus Jerk,
3 LLC, et al, with anyone since July 18, 2014?

4 A I believe my ethics rules prohibit me from
5 answering that question.

6 Q On what basis?

7 A On the basis that I shall not reveal
8 information relating to the representation of a client
9 unless the client gives informed consent, the
10 disclosure is impliedly authorized in order to carry
11 out the representation or the disclosure is permitted
12 or required by the rules.

13 Q And that's Arizona Ethics Rule -- I'm sorry,
14 if you can give me the number again.

15 A ER 1.6. I have a copy if you would like.

16 Q Sure.

17 A And I only brought the one copy. It is
18 highlighted. I'm happy to share it with you, but I
19 might want to refer to it again. I mean I'm happy to
20 give it to you as long as we can kind of share it.

21 Q I'm happy to take a look at it very briefly.
22 It's 1.6. Is it just (a), the highlighted part?

23 A There's some highlights in the comments that I
24 think are also relevant.

25 Q So the Ethics Rule 1.6(a) -- and I'll just

1 read for the record -- states, "A lawyer shall not
2 reveal information relating to the representation of a
3 client unless the client gives informed consent, the
4 disclosure is impliedly authorized in order to carry
5 out the representation or the disclosure is permitted
6 or required by paragraphs (b), (c), or (d) or
7 ER 3.3(a) (3)."

8 So is the basis for not answering the
9 question that the client has not given you informed
10 consent?

11 A I think the informed consent would be an
12 exception if it existed. The basis is you're asking me
13 for information relating to the representation of a
14 client.

15 Q You're right. I'm sorry about that. My
16 question or the question I should have been asking is,
17 you're invoking this because you don't believe any of
18 the exceptions, including the informed consent
19 exception, applies in this case?

20 A Correct.

21 Q Can you state as to what representation of
22 what client you're invoking this privilege or this
23 ethics rule?

24 A Your question specifically asked me about a
25 matter, and I was invoking the rule in response to that

1 question.

2 Q Right, but I'm asking, let me break that
3 apart.

4 Can you state as to which client, in
5 connection with which client you're invoking this
6 ethics rule?

7 A There is no current client.

8 Q Okay. Are you invoking this ethics rule in
9 connection with a former client?

10 A Correct.

11 Q In connection with which client?

12 A Can you read back the original question that
13 we started with, please?

14 (The question was read by the Certified
15 Reporter as follows: "Did you discuss this matter, FTC
16 versus Jerk, LLC, et al, with anyone since July 18,
17 2014?")

18 THE WITNESS: The client would be Jerk,
19 LLC.

20 BY MR. YANKILOVICH:

21 Q Any other client?

22 A No.

23 Q And when the ethics rule states relating to
24 the representation of a client, is the representation
25 on which you're basing your invocation of the rule your

1 previous representation of Jerk, LLC in this matter?

2 A And what is this matter a reference to?

3 Q FTC versus Jerk.

4 A Correct.

5 Q Have you had any conversations with Peter Carr
6 since July 18, 2014?

7 A I refuse to answer the question under ER 1.6.

8 Q Have you had any conversations with John
9 Fanning since July 18, 2014?

10 A I refuse to answer the question under ER 1.6.

11 Q Is there any other basis for your refusal to
12 answer the question?

13 A Yes.

14 Q What --

15 A Well, I'm not sure if it's the same rule.
16 Yeah, the rule that says attorney-client privilege.
17 Oh, but you're limiting it to after July --

18 Q Since July 18, 2014?

19 A Just 1.6.

20 Q Have you reviewed any documents in preparation
21 for this deposition?

22 A No. I'm sorry, let me change my answer on
23 that. Yes, I reviewed the Subpoena Ad Testificandum.
24 Is that right?

25 Q Close enough. You mean the subpoena for this

1 deposition?

2 A I do.

3 Q Have you reviewed any documents that relate to
4 this matter since July 18?

5 A I refuse to answer the question under ER 1.6.

6 Q Is there any other basis for your refusal?

7 A No.

8 Q Okay. Let's quickly go through your
9 background, if you don't mind. If you could, can you
10 please take me through your education since high
11 school?

12 A Sure. After high school I went to Suffolk
13 County Community College for a year and a half and got
14 my associate's degree. I couldn't tell you what it was
15 in. Don't remember. And then transferred over to
16 Hofstra University and got my bachelor's degree in
17 psychology and English. Graduated from Hofstra in 1985
18 undergrad. Went to law school in 1986 at Hofstra
19 University, Hofstra Law School from '86 through '88.
20 Graduated in 1988 from Hofstra Law School with my juris
21 doctorate.

22 Q So have you had any full-time jobs prior to
23 graduating from law school?

24 A Sure.

25 Q Can you take me through those full-time jobs?

1 A Really? You really want to know what I did 30
2 years ago? Okay.

3 Q As an adult. You can just quickly mention
4 them.

5 A How do you define adult?

6 Q Since the age of 18. And again, I'm asking
7 only since the age of 18 until graduating from law
8 school.

9 A I worked at a private mailing house. I cannot
10 remember the name of it. But we sorted mail and I
11 worked as a mail sorter, as an office manager and as a
12 truck driver at that place.

13 I worked at a retail store that sold
14 health and beauty aids at the Brentwood Market. I
15 worked at, I think that might be it until law school.
16 Those are the jobs I held during college.

17 Q And the mailing house position, what city was
18 that in?

19 A It was on Long Island.

20 Q Okay.

21 A I cannot remember the city.

22 Q That's close enough.

23 A We're going back, you know, I'm old. We're
24 going back 35 years.

25 Q And the retail store position, what city was

1 that in?

2 A That was in Brentwood. That I know because it
3 was right across the street from where I grew up. So
4 that was in Brentwood, Long Island.

5 Q In Long Island?

6 A Yes.

7 Q Got it.

8 A And the other one was Long Island, too, I
9 think I said that.

10 Q Since law school, have all of your jobs been
11 legal?

12 A Yes.

13 Q Okay. Can you briefly take me through your
14 legal positions since law school?

15 A Since law school? Including during law
16 school?

17 Q You can include the jobs during law school if
18 it's --

19 A Well, I think my first clerkship was with the
20 Suffolk County District Attorney's office in the
21 Appeals Division, doing appellate briefs on criminal
22 matters. That was for the first summer of law school.
23 And then my -- I could have the order backwards on
24 these, but I did an internship with a Magistrate Jordan
25 who was magistrate for the United States District Court

1 for the Eastern District of New York. And I did that
2 for, I believe I did that during the school year.

3 I was, I clerked for a law firm, Daniel
4 Lefkowitz Law Firm, and that then became the rest of my
5 law school clerkships. I stayed with them, with that
6 law firm on Long Island and I think they were located
7 in Garden City.

8 Q Okay. And that's during law school?

9 A That's during law school.

10 Q And then what about after law school?

11 A Graduated from law school, went to work for a
12 law firm called Furey, Furey, Lapping, Keller, O'Reilly
13 & Watson, and it was an insurance defense firm, and I
14 was there for two years.

15 And then I moved to Arizona, and in
16 Arizona my first job was with the law firm Beus Gilbert
17 & Morrill. You remember those guys, right? And that
18 was a reference to the court reporter. I'm sure,
19 Boris, you don't know those guys. And I was there for
20 eight years.

21 And then I went out with a firm called
22 Grant Williams, and I was with Grant Williams for five
23 years. Told you I was old. And then from Grant
24 Williams, I went to Jaburg & Wilk where I have been for
25 11 years.

1 Q Do you have any bar admissions?

2 A Sure.

3 Q What bar admissions do you have?

4 A Lots. So I'm admitted to the State Bar of
5 Arizona and the State Bar of New York. And then --
6 well, maybe those, the other ones are probably not bar
7 admissions. But the other courts that I'm admitted to
8 may not be bar admissions. They're courts.

9 Q Got it. And apart from Arizona and New York,
10 are you admitted anywhere else?

11 A I'm not licensed to practice anyplace but New
12 York or Arizona.

13 Q Do you have any particular practice
14 specialties or have you had any over the course of your
15 career?

16 A Yes, my focus areas are intellectual property
17 and Internet law.

18 Q Anything else?

19 A That's it. Well, I'm sorry. I want to make
20 sure I understood your question. If you mean over the
21 years, there was probably others, but today and for the
22 last ten years it would be intellectual property and
23 Internet law.

24 Q What other ones were there prior to the past
25 ten years?

1 A When I first started practicing, I did
2 insurance defense work. When I came to Arizona, I did
3 accounting malpractice cases. And then pretty much
4 intellectual property and Internet law.

5 Q Have you ever taken any roles or positions in
6 your client companies?

7 A No. Wait. Let me change that answer. There
8 are some nonprofit organizations that I have given
9 legal advice to. I don't necessarily consider them
10 clients, but in the technical sense of the word, I've
11 probably given them some legal advice, and I do sit on
12 some nonprofit boards.

13 Q Can you identify those nonprofits?

14 A Sure, the nonprofit boards I sit on, I sit on
15 the Institute of Harmonic Science. I sit on the board
16 of Safe Haven, Inc., which is a community redevelopment
17 organization. And that's it.

18 Q Okay. Have you had any shares or any other
19 ownership or interest in any business?

20 A Yes.

21 Q Have you had any share ownership interest in
22 any client of yours?

23 A No.

24 Q Are all of your shares or ownership interests
25 in publicly traded companies?

1 A No.

2 Q In roughly how many businesses do you have
3 shares or ownership interests?

4 A Three.

5 Q Can you identify those?

6 A Sure, my company, my family company is Raymar
7 Southwest Properties. We own real estate. It's an
8 LLC. So it's a membership interest, right?
9 Technically opened by my family trust.

10 I also have some stock in a company
11 called, I think it's called My Father's Honor. It's a
12 movie production. And I have some stock in a company
13 that's now defunct, but I still have the stock in a
14 company called Racing Vision.

15 Q Racing Vision, okay. And what about any
16 ownership interest in your current law firm?

17 A Oh, how could I forget that? Yes, I am a
18 shareholder in my current law firm. I can't believe I
19 forgot that.

20 Q We don't have to tell them.

21 Any other companies in which you have an
22 ownership interest?

23 A No.

24 Q With respect to e-mail, have you used e-mail
25 since the start of 2009?

1 A I don't think I could put a date on when I
2 started using e-mail. How long has e-mail been around?
3 I got to say yes. I would say yes, but like I don't
4 have a date in my calendar when I started using e-mail
5 but I would guess, yes.

6 Q Let me put it another way. You have been
7 using e-mail since at least 2009; is that correct?

8 A I think so. Let me think about this for a
9 second. I've been at my current firm for 11 years I
10 said, right? So that brings us back to way before
11 2009. So yes, I've been using e-mail for as long as
12 I've been at my current firm, at least.

13 Q Have you had e-mail addresses since at least
14 2009?

15 A Sure.

16 Q What e-mail addresses have you had since at
17 least 2009?

18 A mcs@jaburgwilk.com. And my home personal
19 e-mail address. Does my home personal e-mail address
20 need to be in the record? Can that be considered
21 confidential under -- is there a protective order in
22 this case?

23 Q There is a protective order. If you make the
24 request, we can, you know, designate it as confidential
25 unless the court rules otherwise.

- 1 A Please.
- 2 Q Sure.
- 3 A So my home e-mail address is currently
- 4 [REDACTED] and it was previously --
- 5 I shared it with my husband which was [REDACTED]
- 6 Q Any other e-mail addresses?
- 7 A Oh, I've got a gmail account that I barely
- 8 ever use, [REDACTED]
- 9 Q Any other ones?
- 10 A Not that I know of.
- 11 Q Okay. Over the past five years has it been
- 12 your practice to regularly review incoming e-mails into
- 13 your e-mail accounts?
- 14 A Depends on the e-mail account. Gmail, no. My
- 15 mcs account at work, certainly. My home account, it
- 16 depends how you define regularly. Probably once a
- 17 week.
- 18 Q How frequently do you check the mcs@jaburgwilk
- 19 account?
- 20 A It's my life. Like constantly.
- 21 Q I'm sorry.
- 22 A Yeah, I know.
- 23 Q By what means do you typically check your
- 24 e-mail? On a computer? On a mobile device?
- 25 A Either one. Depends where I am. I may check

1 my e-mail remotely. I may check my e-mail from my cell
2 phone, my smartphone. I may check my e-mail from my
3 iPad. Most often I would be checking my e-mail from my
4 desktop at my office or my laptop at home remoting it.

5 Q Okay.

6 A And I still can't keep up with it.

7 Q With respect to your work e-mail account, I'm
8 going to refer to the mcs@jaburgwilk as your work
9 e-mail account. Do you have a typical practice of
10 responding to e-mails that you receive?

11 A I would not call it a typical practice. It
12 depends on the e-mail and the circumstances, and how
13 busy I am and how many e-mails I have in my inbox. No,
14 I couldn't, I couldn't put it all into one bucket.

15 Q So again, relating to your work e-mail
16 account, with respect to e-mails that you believe
17 warrant a response, how fast do you typically respond
18 to those e-mails?

19 A Totally depends on how busy I am. If I'm
20 traveling, if I'm in court, if I'm busy, it could be,
21 you know, I'm not proud to say it could be two weeks.
22 It should never be two weeks, but, unfortunately, I've
23 had those instances. If I am on top of it, there are
24 people who send me an e-mail and get a response
25 immediately. It just depends on what's going on.

1 Q Is that the same or different for your
2 personal e-mail accounts? Those are the cox.net and
3 the gmail.com account.

4 A Oh, no, those are lucky if I get to them once
5 a week. Those are rare. I just don't spend a lot of
6 time with those.

7 Q Do you know how long you retain your e-mails
8 in your work e-mail account?

9 A I would say as a general rule, forever.
10 Meaning that I have no deletion policy. I put them
11 into folders and they go into the clients' files. If
12 they're not client related, I may delete things that
13 are just not -- don't need to be kept like
14 solicitations and things like that. But if they're
15 work related, they typically will be kept like any
16 other communication.

17 Q And do you know for your personal e-mail
18 accounts how long those are retained?

19 A I have no practice or policy. If I feel like
20 it's getting, if I feel like the trash bucket is
21 getting filled, I empty it.

22 Q Do you know for your work e-mail account, do
23 you know, I believe you mentioned this, but I don't
24 want to put words in your mouth. Do you know if
25 there's any automated deletion that happens for that

1 work e-mail account?

2 A I don't think so.

3 Q Okay.

4 A But I don't know for sure. But I don't think
5 so.

6 Q And from your personal e-mail accounts, do you
7 know if there's an automated deletion policy?

8 A I don't have one. I don't know if -- no, I
9 can't imagine that Cox would impose that on somebody.
10 So no, I don't have one.

11 Q Since 2009, have you had a practice of making
12 it a point to save important e-mails?

13 A Again, are we talking about home or work?

14 Q Let's tackle work first.

15 A Sure.

16 Q How do you do that?

17 A They go into the client's folder.

18 Q Are those archived somewhere so that they're
19 saved?

20 A They're on our servers.

21 Q And what about the home e-mail accounts?

22 A They're just sitting in my inbox forever, you
23 know, if I think they're important.

24 Q Do you recall when you started using the work
25 e-mail account at Jaburg Wilk?

1 A Sure, the day that I started.

2 Q That was 11 years ago, right?

3 A Correct.

4 Q Do you recall when you started using the
5 cox.net and the gmail accounts?

6 A Those are two different questions.

7 Q Let's address cox.net.

8 A I moved into my house in 2003. No, that's
9 wrong. I'm so bad with that sort of thing.

10 Q You can approximate, if you don't know the
11 exact date or month.

12 A I think I moved into my house in 1998 or 1999.
13 Boy, this answers the e-mail question, doesn't it.
14 Because I feel like I had e-mail when I moved into my
15 house, it seems to me. So I would say I probably got
16 that account when I moved into my house in around '99
17 or 2000.

18 Q That's the cox.net account?

19 A Yes.

20 Q What about the gmail account?

21 A I have no idea. I barely ever use it. I have
22 no idea when I got it.

23 Q Okay. Which of these three accounts is the
24 one that you ordinarily use to conduct business?

25 A Of course, mcs@jaburgwilk.

- 1 Q And that's your business at the law firm; is
2 that correct?
- 3 A Sure.
- 4 Q Do you have a password to access that e-mail
5 account?
- 6 A Yes.
- 7 Q Does anyone else besides you use that e-mail
8 account?
- 9 A No.
- 10 Q Does anyone else besides you have access to
11 that e-mail account?
- 12 A Sure. Our IT person, and my assistant.
- 13 Q Anyone else?
- 14 A No.
- 15 Q Does anyone else have access to the password
16 to that e-mail account besides you?
- 17 A My IT person and my assistant.
- 18 Q Do you know if either of the IT person or the
19 assistant have authority to go into your e-mail account
20 without your permission or your instruction?
- 21 A I don't know. Haven't thought about that. I
22 don't know.
- 23 Q Have they ever done that before, as far as you
24 know?
- 25 A I mean I think my assistant has my permission.

1 I think it's just that simple. If she needs to get
2 into my e-mail, she has my permission to do that. I
3 don't think she needs a specific instance-related
4 permission.

5 Q What about the IT person?

6 A That's just if something is not working right.

7 Q Is that a he or a she, the IT person?

8 A She.

9 Q So would she ask for your consent or alert you
10 she was going into your e-mail?

11 A It would typically be just the opposite.
12 Typically I would say to her I've got a problem with my
13 e-mail; come help me.

14 Q Do you know if your assistant has ever sent an
15 e-mail from your account without your knowledge or
16 consent?

17 A I'm sure she has.

18 Q Why would she do that?

19 A Because if I'm on vacation, she takes over my
20 e-mail account for me if I can't do it. And so again,
21 without your consent is a difficult part of the
22 question because I think she has ongoing consent, so --

23 Q Okay. What's the name of your assistant?

24 A Debbie Gower.

25 Q And so are there any other instances besides

1 you being out of the office in which she would send
2 e-mail through your account?

3 A I don't think so. I think if I'm there, I
4 would do it.

5 Q Now, her sending e-mails from your account in
6 your absence, is that something that you two
7 established at some point in your business
8 relationship, that she would be able to do that?

9 A Right.

10 Q And are you always aware that she's, you know,
11 when she is sending e-mails from your e-mail account?

12 A No.

13 Q So there could be instances where she's
14 e-mailing others from your e-mail account and you have
15 no idea about it?

16 A Well, I'm going to find out about it because
17 it's going to be in my sent box, but there might be
18 instances that I may find out afterwards.

19 Q Are there instances when you never find out?

20 A I don't know. Because I wouldn't know.

21 Q Okay. Does she ever send e-mail -- strike
22 that.

23 Do you know if she's ever sent e-mails
24 to clients without your knowledge or consent
25 beforehand?

1 A Again, I'm having a hard time with your, with
2 your question because of the consent part. I know that
3 she sends e-mails to clients from my e-mail address
4 occasionally. I would not call it without my consent.
5 I may not have specific knowledge of the instance, but
6 she generally has my consent.

7 Q Okay. And so, but there may be instances
8 where under this general consent she has sent an e-mail
9 to a client but you may not find out that she sent that
10 e-mail to a client after the fact?

11 A Right. That is within the realm of
12 possibility.

13 Q What about the IT person, does the IT person
14 have consent to send e-mails from your e-mail account?

15 A No.

16 Q Apart from this relationship you've
17 established with your assistant, are there any other
18 circumstances that you can think of where an e-mail
19 sent from your e-mail account would have been sent by
20 someone else other than you or your assistant?

21 A Not if it was really from my e-mail account.
22 I have seen more than one instance of people spoofing
23 my e-mail account. In fact, I got 3,000 e-mails two
24 weeks ago from myself which I clearly didn't send.

25 Q Have there been other instances?

1 A Yes, I have seen my e-mail address spoofed on
2 numerous occasions.

3 Q Do you know when this spoofing started
4 happening?

5 A First time I can think of would be in the last
6 couple of years.

7 Q Have you or the firm, your firm taken measures
8 to stop it?

9 A The IT person tells me these things happen,
10 people do things like that. It's like can you stop
11 spam? People just do things like that.

12 Q To be clear, what you're talking about is
13 someone essentially cloning or spoofing your e-mail
14 account so that the recipient thinks the e-mail is
15 coming from mcs@jaburgwilk.com?

16 A Correct.

17 Q Has anyone ever alerted you about this
18 thinking, you know, that other recipient getting a
19 surprising e-mail and not realizing why you would have
20 sent that person that e-mail?

21 A Yes, of course.

22 Q Have clients alerted you about this?

23 A I'm going to refuse to answer that question
24 under ER 1.6.

25 Q Have you considered getting a different e-mail

1 address?

2 A Oh, it doesn't matter. My understanding of
3 spoofing is they can do it with any e-mail address and
4 they don't need your password. It's just a way of
5 making an e-mail address look like it comes from a
6 different e-mail address. It happens to everybody.
7 You look confused, but it happens to everybody. I
8 imagine maybe they avoid the government agents,
9 perhaps.

10 Q I don't know. Has it happened to your
11 personal e-mail addresses?

12 A Yes, in fact, it has happened to my personal
13 e-mail address. I had Cox lock me out of my own e-mail
14 address because I was supposedly spamming people. I'm
15 looking up something on the rule, so forgive me for
16 multitasking.

17 Q Sure. That's fine. Should I continue asking
18 questions or do you want to take a break?

19 A It's up to you. I don't mind multitasking.
20 If you prefer to have my full attention, I just need a
21 minute to look something up.

22 MR. YANKILOVICH: Let's quickly go off
23 the record.

24 (Recessed from 10:39 a.m. to 10:48 a.m.)

25 (Peter Carr joined the deposition via

1 teleconference at 10:49.)

2 MR. YANKILOVICH: We're going back on
3 the record.

4 BY MR. YANKILOVICH:

5 Q Going back to your work e-mail account, does
6 anyone else but you ever receive e-mails from that
7 account?

8 A I don't understand the question.

9 Q I'm sorry, I phrased it inartfully. Does
10 anyone else except you receive e-mails going to that
11 account?

12 A Again, anybody looking at that account would
13 receive e-mails if they were reading them.

14 Q And those people are your assistant and the IT
15 person?

16 A Well, pretty much me and my assistant. The IT
17 person would not likely read my e-mails unless it was
18 part of a technical issue that she was trying to fix.

19 Q Got it. Is there any circumstance under which
20 an e-mail going to your e-mail account would not be
21 accessible by you, meaning that you somehow wouldn't
22 have the ability to look at it?

23 A Sure, if there was some sort of technical
24 problem.

25 Q But apart from technical problems, can you

1 think of any reason?

2 A I can't.

3 Q Just for the record, how many business phone
4 numbers have you used over the past five years?

5 A One.

6 Q Can you state that number for the record?

7 A 602-248-1089.

8 Q Has anyone else besides you used that phone
9 number?

10 A Sure, my assistant.

11 Q Anyone else?

12 A No.

13 Q Your assistant, has she used it under your
14 general consent and authority?

15 A Yes.

16 Q Okay. And with respect to your business
17 address, how many business addresses have you used over
18 the past five years?

19 A I don't understand the question. If you mean
20 my law firm, just one.

21 Q Okay. And that's Jaburg Wilk, right?

22 A Jaburg Wilk.

23 Q Jaburg Wilk. Have they stayed at the same
24 address?

25 A Correct.

1 Q What is that address?

2 A I gave that to you earlier, 3200 North Central
3 Avenue.

4 Q Okay. Are you aware of the company Jerk, LLC,
5 the respondent in this action?

6 A Am I aware of it?

7 Q Yes.

8 A Yes.

9 Q How did you first become aware of Jerk, LLC?

10 A I refuse to answer the question under ER 1.6.

11 Q Is there any other basis for your refusal to
12 answer the question?

13 A No.

14 Q When did you first become aware of Jerk, LLC?

15 A I refuse to answer the question under ER 1.6.

16 Q Any other basis for your refusal to answer the
17 question?

18 A No.

19 Q Are you able to describe what Jerk, LLC is?

20 A I refuse to answer the question under ER 1.6.

21 Q Is there any other basis for your refusal to
22 answer the question?

23 A I think I need to modify my answer that
24 there's no other basis. It's not clear to me whether
25 the attorney-client privilege is an additional -- there

1 is an attorney-client privilege, evidentiary
2 attorney-client privilege. I believe that's
3 encompassed within ER 1.6. To the extent that it's
4 not, then I would say certainly attorney-client
5 privilege to some of these questions, but I think
6 that's all encompassed within 1.6. So when I say no
7 other basis, it's because it's my belief that the
8 attorney-client privilege is encompassed within 1.6.

9 Q Okay. And I suspect we may get several of
10 these answers going forward. So I just want to make
11 sure in order for us to be efficient, you know, I've
12 still got to ask the questions and I think you still
13 have to answer, and to the extent that you have to
14 invoke the Arizona Rule 1.6 and the attorney-client
15 privilege, please do. But if we can come to an
16 agreement that those are the only two bases, then, I
17 will not have to ask that follow-up question. Does
18 that make sense to you?

19 A That makes sense, and what makes sense to me
20 is that you don't have to ask all the questions that
21 you know that my answer is going to be anything related
22 to this representation is confidential under ER 1.6, so
23 I'm not sure why we have to go through the exercise of
24 you asking every question. I will assure you that if
25 you ask me any question about this representation, I

1 will invoke my ethics rule.

2 Q That's fine. And I still have to ask them for
3 the purpose that I don't understand, and I frankly
4 knowing, having or will have having heard your answer,
5 I will try to figure out what the basis is, but it's
6 unclear to me whether the rule applies or doesn't
7 apply, and so I still have to ask the questions. And
8 frankly, you know, I don't necessarily want to get into
9 a legal debate about the scope of the Arizona Ethics
10 Rules or the scope of attorney-client privilege. I
11 will not -- I cannot have any power to compel you to
12 answer questions. If I think the privilege doesn't
13 apply or the Arizona Ethics Rule doesn't apply, we can
14 potentially try to compel you later if we feel they
15 don't apply, but today I'm not going to be combative
16 about it. So I realize it's a, you know, labor-
17 intensive exercise for me asking questions and you
18 invoking the rule, but we've got to go forward with it.

19 So going back to my questions. Are you
20 able to describe what Jerk, LLC is, and I'm not sure if
21 that's the last question I asked.

22 A I refuse to answer under Rule ER 1.6 of the
23 Rules of Professional Conduct.

24 Q Do you know who can describe what Jerk, LLC
25 is?

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

1 question.

2 Q Are you aware of the e-mail address
3 support@jerk.com?

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

6 Q If you don't mind, let me take a quick break.
7 I want to confer with Eric for a minute.

8 A I'm going to get some more water.

9 MR. YANKILOVICH: Let's go off the
10 record.

11 (Recessed from 11:07 a.m. to 11:18 a.m.)

12 MR. YANKILOVICH: We can go back on the
13 record.

14 BY MR. YANKILOVICH:

15 Q Have you ever represented any other business
16 associated with Jerk, LLC?

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

19 Q Have you ever worked for or with any other
20 business associated with Jerk, LLC?

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

23 Q Have you ever represented any individual who
24 has been associated with Jerk, LLC?

25 A ER 1.6 prohibits me from answering that

1 question.

2 Q Have you ever worked for or with any
3 individual associated with Jerk, LLC?

4 A When you say worked for or with, do you mean
5 as a legal -- in my legal capacity or not? I don't
6 understand the question.

7 Q Well, let's start not in your legal capacity.

8 A No, I have not.

9 Q What about in your legal capacity?

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

12 Q Have you ever represented anyone, any entity
13 or individual, who has invested money in Jerk, LLC?

14 A ER 1.6 prohibits me from answering question.

15 Q Have you ever worked for or with any entity or
16 individual who has invested money in Jerk, LLC, and we
17 can start with your nonlegal capacity. Should I read
18 the question back?

19 A Yeah. I don't know how it was different from
20 the question before. It sounds like you asked the same
21 question over again.

22 Q The prior one was representation. This one is
23 worked for or with.

24 A So I'm assuming you mean worked for as opposed
25 to not representing --

1 Q Correct.

2 A No.

3 Q Have you ever represented a company called
4 netcapital.com LLC?

5 A 1.6 prohibits me from answering that question.

6 Q Are you aware of the company called
7 netcapital.com LLC?

8 A I don't understand the question, aware of.
9 Have I ever heard of it? Yes.

10 Q How have you heard of it?

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

13 Q When have you first heard of netcapital.com
14 LLC?

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

17 Q Can you describe what netcapital.com LLC is?

18 A Sounds like it's a limited liability company.

19 Q Do you have any other information that would
20 help describe what netcapital.com LLC is?

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

23 Q So besides it being a limited liability
24 company, based on ER 1.6, you cannot describe what
25 netcapital LLC is?

- 1 A Correct.
- 2 Q Can you tell me whether netcapital is or has
3 ever been incorporated?
- 4 A No, I can't tell you. I don't know.
- 5 Q Can you tell me what netcapital.com LLC does?
- 6 A ER 1.6 prohibits me from answering that
7 question.
- 8 Q Can you tell me if netcapital.com LLC
9 currently has any officers?
- 10 A I have no idea.
- 11 Q Can you tell me whether it currently has any
12 directors?
- 13 A I don't know.
- 14 Q Can you tell me whether it currently has any
15 managers?
- 16 A I don't know.
- 17 Q Do you know if it currently has any employees?
- 18 A I don't know.
- 19 Q Do you know if it currently has any
20 shareholders?
- 21 A I don't know.
- 22 Q Do you know if it currently has any legal
23 counsel?
- 24 A I don't know.
- 25 Q I'm going to try to roll this up into an

1 omnibus question, but feel free to object for it being
2 compound because it will be. But do you know if it has
3 in the past, has had any officers, directors, managers,
4 employees or shareholders?

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

7 Q And that prohibition applies to all of those
8 categories that I listed, correct?

9 A Yes.

10 Q Do you know if netcapital.com LLC has ever had
11 any legal counsel in the past?

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

14 Q Do you know if netcapital.com LLC has,
15 currently has any connection to Jerk, LLC?

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

18 Q Do you know if netcapital.com LLC has in the
19 past had any connection to Jerk, LLC?

20 A I'm sorry, that question was currently?

21 Q Currently.

22 A I don't know.

23 Q So just to clarify for the record, your answer
24 to my prior question about the current connection is?

25 A I have no idea.

1 Q And in the past, do you know if there has been
2 a connection?

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

5 Q Do you know if netcapital.com LLC currently
6 has any connection to Mr. John Fanning?

7 A I don't know.

8 Q Do you know if netcapital.com LLC has in the
9 past had any connection to Mr. John Fanning?

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

12 Q And just to clarify, I believe I asked you
13 before, but again, I'm not doing this to be redundant.
14 You currently do not represent netcapital.com LLC,
15 right?

16 A I do not.

17 Q And have you in the past?

18 A I don't know.

19 Q Why don't you know?

20 A I don't know. I mean I don't know how to
21 answer I don't know. I just don't know.

22 Q You do know that -- I think earlier you
23 testified that you have represented Jerk, LLC in the
24 past, right?

25 A Right.

1 Q And you know that?

2 A Right.

3 Q But you don't know whether you have in the
4 past represented netcapital.com LLC?

5 A Right.

6 Q Can you explain the discrepancy between your
7 knowledge of a representation of one past client and
8 your not knowing whether you represented another
9 potential entity or potential client in the past?

10 A No, I think ER 1.6 prohibits me from answering
11 that question.

12 Q Are you aware of any other business entity
13 with the name Net Capital other than netcapital.com
14 LLC?

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

17 Q Do you currently represent any entity with the
18 name Net Capital other than netcapital.com LLC?

19 A I do not.

20 Q Have you in the past represented any entity
21 with the name Net Capital other than netcapital.com
22 LLC?

23 A I don't know.

24 Q Do you know if your law firm has in the past
25 represented any entity with the name Net Capital other

1 than netcapital.com LLC?

2 A I can tell you my absolutes with respect to my
3 law firm would not be any different than mine.

4 Q That applies to my prior question about your
5 past representation of netcapital.com LLC?

6 A Yes.

7 Q So you don't know whether your law firm has
8 represented it in the past?

9 A Right.

10 Q Do you know of any attorney that has in the
11 past represented netcapital.com LLC?

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

14 Q Do you know of any attorney that has in the
15 past represented any other entity with the name Net
16 Capital other than netcapital.com LLC?

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

19 Q Are you aware of any investment, whether
20 direct or indirect, in Jerk, LLC by the United States
21 government?

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

24 Q Are you aware of any role taken by the United
25 States government in or in connection with Jerk, LLC?

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

3 Q Are you aware of any investment in
4 netcapital.com LLC by the United States government?

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

7 Q Are you aware of any role taken by the United
8 States government in or in connection with
9 netcapital.com LLC?

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

12 Q I've mentioned Mr. John Fanning a few times
13 earlier in this deposition.

14 Are you aware of John Fanning who is the
15 respondent in this matter?

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

18 Q Have you ever heard of John Fanning's name
19 before?

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

22 Q Have you ever represented Mr. John Fanning as
23 an attorney?

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

1 Q Do you currently represent Mr. John Fanning as
2 an attorney?

3 A No.

4 Q Has your law firm ever represented Mr. John
5 Fanning as an attorney?

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

8 Q Do you know if your law firm currently
9 represents John Fanning as an attorney?

10 A No. Not "No, I don't know." No, they do not.

11 Q Wait, I'm sorry. Which one?

12 A No, they do not.

13 Q Apart from Mr. Carr on the phone, do you know
14 if John Fanning has any other attorney representing
15 him?

16 A ER -- well, actually currently, I just don't
17 know.

18 Q And apart from Mr. Carr on the phone, do you
19 know if John Fanning has in the past had any attorney
20 representing him?

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

23 Q Have you ever worked for or with John Fanning
24 in any capacity other than legal?

25 A No.

1 Q Have you ever provided any services to John
2 Fanning?

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

5 Q And I'm including in that question nonlegal
6 services.

7 A Well, then you'll have to separate it out if
8 you want an answer.

9 Q Sure. Let's start with legal, although I
10 think I know what your answer is going to be. But have
11 you ever provided legal services to John Fanning?

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

14 Q Have you ever provided nonlegal services to
15 John Fanning?

16 A No.

17 Q Has John Fanning ever provided any services to
18 you?

19 A No.

20 Q Has John Fanning ever advised you as your work
21 for Jerk, LLC?

22 A I'm sorry, I didn't hear or understand the
23 question.

24 Q Sure. Has John Fanning ever advised you as
25 part of your work in representing Jerk, LLC?

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

3 Q Does John Fanning currently advise you as part
4 of your work in any capacity?

5 A No.

6 Q If we go a little broader, has John Fanning
7 ever advised you in any legal matter?

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

10 Q Has John Fanning ever advised you in
11 connection with netcapital.com LLC?

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

14 Q Do you know if John Fanning is an attorney?

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

17 Q Has John Fanning ever provided legal
18 assistance to you or to your law firm?

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

21 Q Have you ever communicated with John Fanning?

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

24 Q Have you ever paid money to John Fanning?

25 A ER 1.6 prohibits me from answering that

1 question; but if you want to narrow that to some sort
2 of nonlegal representation, I would answer it.

3 Q Sure, let's narrow it to a nonlegal
4 representation.

5 A In connection with anything other than my
6 representation of a client, no.

7 Q And can you answer whether you ever paid money
8 to John Fanning in connection with legal representation
9 of a client?

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

12 Q Has John Fanning ever paid money to you in
13 connection with a nonlegal representation?

14 A No.

15 Q Has John Fanning ever paid money to you in
16 connection with a legal representation?

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

19 Q Are you aware of any relationship between John
20 Fanning and Jerk, LLC?

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

23 Q Are you aware of a website jerk.com?

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

1 Q Have you ever heard of the website jerk.com?

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

4 Q Are you aware of any relationship between
5 Jerk, LLC and jerk.com?

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

8 Q Are you aware of any relationship between
9 netcapital.com LLC and jerk.com?

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

12 Q Are you aware of any relationship between John
13 Fanning and jerk.com?

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

16 Q Do you know if John Fanning has had any
17 relationship with any company associated with Jerk,
18 LLC?

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

21 Q Have you ever had any conversations with John
22 Fanning?

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

25 Q Did John Fanning ever instruct you to search

- 1 for documents as part of this litigation?
- 2 A ER 1.6 prohibits me from answering that
3 question.
- 4 Q Do you know if John Fanning has any e-mail
5 address?
- 6 A ER 1.6 prohibits me from answering that
7 question.
- 8 Q Are you familiar with the e-mail address
9 john@netcapital.com?
- 10 A ER 1.6 prohibits me from answering that
11 question.
- 12 Q Have you ever sent e-mails to that address?
- 13 A ER 1.6 prohibits me from answering that
14 question.
- 15 Q Have you ever sent e-mails from that address?
- 16 A ER 1.6 prohibits me from answering that
17 question.
- 18 Q Have you ever accessed that e-mail address?
- 19 A ER 1.6 prohibits me from answering that
20 question.
- 21 Q Have you ever used that e-mail address in any
22 way?
- 23 A ER 1.6 prohibits me from answering that
24 question.
- 25 Q Do you know who has ever used that e-mail

1 address?

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

4 Q Have you ever discussed that e-mail address
5 with anyone?

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

8 Q Have you ever discussed e-mails sent to or
9 from that address with anyone?

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

12 Q Have you ever had access to any e-mail address
13 used by Jerk, LLC?

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

16 Q Have you ever had access or use of any e-mail
17 address used by netcapital.com LLC?

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

20 Q Have you ever had any access or use of any
21 e-mail address used by John Fanning?

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

24 Q Have you ever reviewed any e-mail going to or
25 from john@netcapital.com?

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

3 Q Have you ever reviewed any e-mail going to or
4 from any e-mail address associated with Jerk, LLC?

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

7 Q Have you ever reviewed any e-mail going to or
8 from any e-mail address associated with netcapital.com
9 LLC?

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

12 Q Have you ever reviewed any e-mail going to or
13 from any e-mail address used by John Fanning?

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

16 Q Are you aware of a Mr. Joseph Yosi Amram?

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

19 Q Have you heard that name before today?

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

22 Q Have you ever communicated with Mr. Joseph
23 Yosi Amram?

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

1 Q Just for the record, I'm going to refer to him
2 as Yosi Amram instead of saying Joseph Yosi Amram.

3 A Sure.

4 Q Are you aware of any connection between
5 Mr. Amram and Jerk, LLC?

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

8 Q Are you aware of any connection between
9 Mr. Amram and John Fanning?

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

12 Q Are you aware of any connection between
13 Mr. Amram and netcapital.com LLC?

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

16 Q Have you ever discussed a subpoena issued by
17 the FTC with Mr. Amram?

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

20 Q Have you ever discussed the invocation of any
21 privilege by Mr. Amram in response to a subpoena?

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

24 Q Have you ever provided Mr. Amram with any
25 advice or other input about whether or not he should

1 invoke a privilege?

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

4 Q Are you aware of the name Matt Patenaude?

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

7 Q Have you heard of the name Matt Patenaude
8 before today?

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

11 Q Have you ever communicated with Mr. Patenaude?

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

14 Q Are you aware of the name Henry Harding?

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

17 Q Have you heard the name Henry Harding before
18 today?

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

21 Q Have you ever communicated with Mr. Henry
22 Harding?

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

25 Q Are you aware of the name Peter Schmidt?

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

3 Q Have you heard the name Peter Schmidt before
4 today?

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

7 Q Have you ever communicated with Mr. Peter
8 Schmidt?

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

11 Q Are you aware of Mr. Peter Carr?

12 A ER 1.6 --

13 MR. CARR: I'm here.

14 THE WITNESS: ER 1.6 prohibits me from
15 answering that question.

16 BY MR. YANKILOVICH:

17 Q Have you heard the name Peter Carr before
18 today?

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

21 Q Have you ever communicated with Mr. Peter
22 Carr?

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

25 Q Can you state whether you've communicated with

1 anyone about Jerk, LLC?

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

4 Q Can you state whether you have communicated
5 with anyone about John Fanning?

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

8 Q Can you state whether you have communicated
9 with anyone about this matter?

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

12 MR. YANKILOVICH: Let me go off the
13 record for a little bit.

14 (Recessed from 11:39 a.m. to 12:16 p.m.)

15 MR. YANKILOVICH: We're back on the
16 record.

17 BY MR. YANKILOVICH:

18 Q Let me run through a few documents. So we
19 are -- I'm handing the witness what has been marked as
20 CX0745. It also has a Bates label of JERK 00222.
21 Ms. Speth, do you recognize this document?

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

24 Q Can you tell me what this document is?

25 A It looks to be an e-mail.

1 Q Do you see the two e-mail addresses on top,
2 support@jerk.com and info@jerk.com?

3 A I see that.

4 Q Are you familiar with these e-mail addresses?

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

7 Q And do you see the cc line, and it says your
8 name?

9 A I see that.

10 Q Do you know whether you were actually cc'd on
11 this e-mail?

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

14 Q Do you see the very top it's Rand Tara or Tara
15 Rand?

16 A I see that.

17 Q Are you familiar with that person?

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

20 Q And just to be clear, this is a document that
21 I believe you produced to us while in the context of
22 representing Jerk in this matter; is that right?

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

25 Q So you can't confirm that this is part of

1 Jerk's production to the FTC in this matter?

2 A I believe you're asking me to reveal
3 information that relates to my representation of a
4 client, and I believe I'm prohibited from doing so
5 under Arizona Rules of Professional Conduct.

6 MR. YANKILOVICH: Just as a matter of
7 protocol, we'll collect the exhibits right here, and
8 after we're through, you'll take them?

9 THE REPORTER: That's fine.

10 MR. YANKILOVICH: Okay, great.

11 BY MR. YANKILOVICH:

12 Q Let me hand you an exhibit that's been marked
13 CX0531 which is also labeled or Bates stamped JERK
14 00189. Do you recognize this document?

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

17 Q Can you confirm that this is a document that
18 Jerk produced to the FTC in this matter?

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

21 Q Can you confirm that this is a document that
22 was drafted by you?

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

25 Q Do you see in the first paragraph the document

1 states and I'll read, "First, I note that Jerk, LLC is
2 a Delaware company and has no contacts with the State
3 of New York that would subject it to jurisdiction
4 there."

5 Do you see that?

6 A I do.

7 Q Can you tell us whether that's an accurate
8 statement?

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

11 Q Are you able to explain what you meant by that
12 statement?

13 A What I mean is that my ethical rules prohibit
14 me from answering any questions that relate to the
15 representation of a client.

16 Q I'm sorry, I may not have been very clear.
17 Can you provide an explanation for the statement that I
18 just read that appears on the face of this document?

19 A No, I believe I'm prohibited from doing so
20 under ER 1.6.

21 Q Let's move to the next document. This is
22 CX528 which is also Bates stamped beginning with JERK
23 00163 through 164. Ms. Speth, do you recognize this
24 document?

25 A ER 1.6 prohibits me from answering this

1 question.

2 Q Can you confirm that this is a document that
3 Jerk, LLC produced to the FTC in this litigation?

4 A ER 1.6 prohibits me from answering this
5 question.

6 Q Can you state whether you've seen this
7 document before today?

8 A No, I cannot state whether I've seen this
9 document before today.

10 Q Why can't you?

11 A Because ER 1.6 prohibits me from so stating.

12 Q Any other reason why you can't state that?

13 A No.

14 Q Can you confirm whether you are the person who
15 drafted this document?

16 A I cannot confirm.

17 Q Why not?

18 A Because ER 1.6 prohibits me from answering the
19 question.

20 Q Do you see the statement at the bottom of the
21 second paragraph which -- the last sentence of the
22 second paragraph which states that if the subject of
23 the profile is 13 or younger, the profile will be
24 removed?

25 A I see it.

1 Q Can you state whether that's an accurate
2 statement?

3 A I cannot state whether that's an accurate
4 statement.

5 Q Why not?

6 A Because ER 1.6 prohibits me from answering the
7 question.

8 Q Do you see in the fourth paragraph the
9 document states, and I'll read, "Jerk, LLC is a
10 Delaware company and has no contacts with the State of
11 Missouri that would subject it to jurisdiction there."

12 A I see that.

13 Q Can you state whether that's an accurate
14 statement?

15 A I cannot state whether that's an accurate
16 statement because ER 1.6 prohibits me from saying so.

17 Q Any other reason why you can't state whether
18 that's an accurate statement?

19 A No.

20 Q So turning to the second page of this
21 document, page 002, there's something that appears to
22 be a signature block, and it states, "Sincerely, Jaburg
23 & Wilk, PC, Maria Crimi Speth," and there's a signature
24 there. Do you see that?

25 A I do.

1 Q Is that your signature?

2 A It is.

3 Q Do you remember signing this document?

4 A No.

5 Q Do you know who would have signed this
6 document if not you?

7 A No, I said it was my signature already. You
8 already asked me that. I said it was my signature.

9 Q But you don't recall signing this document?

10 A I do not.

11 Q Do you have any reason to believe that anyone
12 else would have signed with your signature on this
13 document besides you?

14 A Boris, it's my signature.

15 Q Okay.

16 A I'm not -- it is my signature.

17 Q All right. So is it fair for me to conclude
18 that you signed this document?

19 A Yes.

20 Q Very briefly -- and I'm sorry for not doing it
21 on the prior document -- if you could turn to CX0531.
22 Is that your signature as well?

23 A Yes.

24 Q And you signed this document as well?

25 A Yes.

1 Q Okay. I'll pass to you what has been marked
2 as Exhibit CX0529. Also Bates stamped JERK 00168
3 through 169. Lest I forget, at the end of that
4 document, is that your signature?

5 A It is.

6 Q And you signed this document?

7 A Yes.

8 Q Do you recognize this document?

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

11 Q Can you tell us what this document is?

12 A ER 1.6 prohibits me -- I'm sorry, I think I
13 can tell you it's a letter. It appears to be a letter.

14 Q And it's a letter from you to a Mr. George
15 Jepsen; is that right?

16 A It appears to be.

17 Q Do you remember if you ever actually sent this
18 letter to Mr. Jepsen?

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

21 Q Do you see the second paragraph where it
22 states and I'll read, "Initially, I note that Jerk, LLC
23 is a Delaware company and has no contacts with the
24 State of Connecticut that would subject it to
25 jurisdiction there."

- 1 A I see that.
- 2 Q Is that an accurate statement?
- 3 A ER 1.6 prohibits me from answering the
4 question.
- 5 Q Now, you wrote this letter, right?
- 6 A ER 1.6 prohibits me from answering the
7 question.
- 8 Q Okay. Do you ever write letters on behalf of
9 clients?
- 10 A Yes.
- 11 Q Do you ever write letters to third parties on
12 behalf of clients?
- 13 A Yes.
- 14 Q Are they usually truthful and accurate?
- 15 A Yes.
- 16 Q Is there any reason to believe why this letter
17 would contain information that's not truthful and
18 accurate?
- 19 A ER 1.6 prohibits me from answering that
20 question.
- 21 Q Can you think of any circumstances in which a
22 letter that you wrote on behalf of the client to a
23 third party would not be truthful or accurate?
- 24 A ER 1.6 prohibits me from answering that
25 question.

1 Q Do you see in the middle of the third
2 paragraph it states, and I'll read, "If I had received
3 a valid DMCA notice from Ms. Masciadrelli, the
4 allegedly infringing content will be promptly removed."

5 Do you see that?

6 A I see it.

7 Q Do you know whether that's an accurate
8 statement?

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

11 Q One more question on this one. Can you
12 explain that statement that I just read?

13 A No.

14 Q That appears in the letter?

15 A No.

16 Q Why can't you explain it?

17 A Because I believe ER 1.6 prohibits me from
18 answering that question.

19 Q Any other reason why you can't explain it?

20 A No.

21 Q Now, at the very end, the last paragraph, this
22 is on page 2 of the document, and I'll read this as
23 well. "Finally, the complaint states that the
24 photograph was taken when Ms. Masciadrelli was 14 years
25 old. Based on this representation, the website has

1 removed the profile. If Ms. Masciadrelli's parent had
2 written directly to the website, the profile would have
3 been removed based on her age."

4 Do you see that?

5 A I do.

6 Q Can you tell us whether that's an accurate
7 statement?

8 A I cannot.

9 Q Why not?

10 A Because ER 1.6 prohibits me from telling you.

11 Q Any other reason why you can't tell us?

12 A No.

13 Q Can you tell us what website you're referring
14 to in this letter?

15 A No.

16 Q Why not?

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

19 Q Can you tell us what you mean by "had written
20 directly to the website"?

21 A No.

22 Q Why not?

23 A Because ER 1.6 prohibits me from answering the
24 question.

25 Q Any other reason?

1 A No.

2 Q Okay. This is, next exhibit is marked CX0755
3 which is also Bates stamped JERK 285 through 286. Do
4 you recognize this document?

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

7 Q Can you tell us whether that is your e-mail
8 address that is being referenced at the very top in the
9 "From" line at the top of this document?

10 A No.

11 Q Why not?

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

14 Q Near the top of this document, I see what
15 appears to be a signature block that has your name,
16 your firm's name, your firm's address and your business
17 phone number. Do you see that?

18 A I do.

19 Q Is that a signature block?

20 A It appears to be.

21 Q Is that a signature block you typically use in
22 e-mails?

23 A It is.

24 Q Based on the presence of this signature block,
25 would it be accurate to conclude this is an e-mail

1 coming from you?

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

4 Q Can you tell me whether there's any reason to
5 believe that this is not an e-mail that's coming from
6 you?

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

9 Q Are you familiar with a Mr. Shadi Katirai?

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

12 Q Are you familiar with a Rose Keong?

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

15 Q Do you see the first line of the top e-mail,
16 it says, "Jerk.com is operated by a U.S. company and is
17 governed by U.S. law"?

18 A I see that.

19 Q Can you tell us whether that's an accurate
20 statement?

21 A No.

22 Q No, you can't tell us, or no, it's not an
23 accurate statement?

24 A No, I can't tell you.

25 Q Why not?

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

3 Q Any other reason why you can't tell us?

4 A No.

5 Q Can you tell us in general whether jerk.com is
6 operated by a U.S. company?

7 A No.

8 Q Why not?

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

11 Q Any other reason why you can't tell us that?

12 A No.

13 Q Can you tell us generally if jerk.com is
14 governed by U.S. law?

15 A No.

16 Q Why not?

17 A Because ER 1.6 prohibits me from answering
18 that question.

19 Q Any other reason?

20 A No. Well, maybe because I may not be
21 qualified to answer that question.

22 Q Why wouldn't you be qualified to answer that
23 question?

24 A Because I just -- I don't think I'm qualified
25 to answer whether or not a company is governed by U.S.

1 law.

2 Q Even if a company is a client company?

3 A Well, this is clearly not a client of mine at
4 this point.

5 Q I'm sorry?

6 A Currently this is not my client, so I have no
7 idea what law it's governed by.

8 Q But would you be qualified to state whether a
9 client at a point in time when you are representing
10 that client is governed by U.S. law?

11 A Maybe. Depends on the circumstances.

12 Q And similar to my earlier question about
13 letters, I want to extend it to e-mails. Do you as a
14 matter of practice send e-mails to third parties on
15 behalf of clients?

16 A Sure.

17 Q Are they usually honest and truthful?

18 A Yes.

19 Q Is there any reason why they wouldn't be
20 honest or truthful?

21 A No.

22 Q Handing you Exhibit CX0759 which is also JERK
23 00358 through JERK 0360, do you recognize this
24 document?

25 A ER 1.6 prohibits me from answering that

1 question.

2 Q Have you ever seen this document before?

3 A ER 1.6 prohibits me from answering that

4 question.

5 Q Do you see at the bottom of page 1 where it
6 says, "Original Message" -- still on page 1, going in
7 to page 2 where it ends with what appears to be your
8 signature block? Do you see that line of text, or that
9 area of text?

10 A I do.

11 Q Can you tell us whether that's an e-mail from
12 you going to the recipients listed?

13 A I'm sorry, Boris, isn't that the exact same
14 e-mail we just looked at? And if so, why are we doing
15 this twice? Just to waste my time or what?

16 Q I think this is a broader trail.

17 A But you're asking me -- you're asking me the
18 identical question that you just asked me. And in
19 light of the fact that you already know the answer, it
20 feels like a complete waste of my time.

21 Q Well, I'll state, I mean the exhibits will
22 bear that these are different e-mail trails. They may
23 contain parts of the same e-mail trail, and I'll move
24 through these, as you see, I'm moving through these as
25 quickly as possible.

1 A It doesn't feel quick at all to me. It feels
2 repetitive. That is exactly the same e-mail you asked
3 me about. My answers will be exactly the same.

4 Q Okay. Fair enough. We can move on to the
5 next exhibit. This is Exhibit CX0760, also JERK 00388.
6 Do you recognize this document?

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

9 Q Have you ever seen this document before?

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

12 Q So this document doesn't appear to have the
13 signature block that we've seen in some of the previous
14 e-mails. Instead it says, "Sent from my iPad." And
15 then your name and your phone number. Do you see that?

16 A Yes.

17 Q Can you tell us whether this was in fact an
18 e-mail sent from you to the recipient listed above?

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

21 Q Have you -- well, can you actually, can you
22 tell us whether this is a signature block that you've
23 used?

24 A I can tell you that when I send an e-mail from
25 my iPad, it typically says, "Sent from my iPad, Maria

1 Crimi Speth, 602-248-1089." That's what my iPad
2 signature looks like.

3 Q Do you see the only line here on top says,
4 "Mariana: If you want the response, you need to go
5 through the paid support function"?

6 A I see that.

7 Q Can you tell me what you were talking about
8 when you referred to the paid support function?

9 A No.

10 Q Why not?

11 A Because ER 1.6 prohibits me from telling you.

12 Q Any other reason why you can't tell me?

13 A No.

14 Q Can you tell me if this relates to a paid
15 support function for jerk.com?

16 A I cannot.

17 Q Can you tell me whether your statement to the
18 recipient Mariana is truthful and accurate?

19 A I cannot.

20 Q And why not?

21 A Because ER 1.6 prohibits me from doing so.

22 Q Any other reason?

23 A No.

24 Q Are you aware of this person, Mariana, who
25 also seems to be going by the e-mail address of

1 A-L-W-A-Y-S-I-N-N-O-V?

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

4 MR. CARR: Hey, Boris.

5 MR. YANKILOVICH: Hey, Peter.

6 MR. CARR: Can we go off the record for
7 a moment?

8 MR. YANKILOVICH: Sure. We're off the
9 record, Peter.

10 (Recessed from 12:39 p.m. to 12:41 p.m.)

11 (Mr. Carr terminated the teleconference
12 connection at 12:41 p.m.)

13 MR. YANKILOVICH: If we can go back on
14 the record.

15 Before I ask my next question, let me
16 state for the record that Mr. Carr, John Fanning's
17 counsel, has signed off from the conference line, so
18 he's no longer on the line.

19 BY MR. YANKILOVICH:

20 Q Moving on, I'm going to hand the witness
21 Exhibit CX0756 which is also Bates stamped JERK 00290
22 through 291.

23 All right. Do you recognize this
24 document?

25 A ER 1.6 prohibits me from answering that

1 question.

2 Q Have you seen this document?

3 A ER 1.6 prohibits me from answering that

4 question.

5 Q Can you tell us whether this line of text at
6 the top that ends with what appears to be your
7 signature block is an e-mail going from you to someone
8 named Sharron Pitcher?

9 A I cannot tell you.

10 Q Why not?

11 A Because ER 1.6 prohibits me from doing so.

12 Q Any other reason?

13 A No.

14 Q Can you tell us whether you know who Sharron
15 Pitcher is?

16 A No.

17 Q I'm sorry, you can't tell us?

18 A I cannot tell you.

19 Q Why not?

20 A Because ER 1.6 prohibits me from telling you.

21 Q Any other reason?

22 A No.

23 Q Do you see the last line of this e-mail, at
24 the top states, "The website has a paid support
25 function that addresses issues regarding profiles."

1 A I see that.

2 Q Can you tell us anything about this paid
3 support function?

4 A No.

5 Q Why not?

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

8 Q Any other reason?

9 A No.

10 Q Okay. Let me hand you Exhibit CX0747 which is
11 also Bates stamped JERK 00232. Do you recognize this
12 document?

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

15 Q Can you confirm whether what appears to be the
16 e-mail in the middle of this document is an e-mail from
17 you going to someone named Jessie Gepayo?

18 A No.

19 Q Why not?

20 A Because ER 1.6 prohibits me from doing so.

21 Q Any other reason?

22 A No.

23 Q Do you know who Jessie Gepayo is?

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

1 Q Have you heard that name before?

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

4 Q A line in the middle of this document nearly
5 directly or directly above what appears to be your
6 signature block states, "Requests such as these must be
7 made directly through the support feature of the
8 website. I only address legal issues." Do you see
9 that?

10 A I do.

11 Q Can you explain what the support feature is
12 here?

13 A No.

14 Q Why not?

15 A Because ER 1.6 prohibits me from doing so.

16 Q Any other reason?

17 A No.

18 Q Can you explain what you meant by "I only
19 address legal issues"?

20 A No.

21 Q Why not?

22 A Because ER 1.6 prohibits me from doing so.

23 Q Any other reason?

24 A No.

25 Q Next is Exhibit CX0752, which is also Bates

1 stamped JERK 00261 through 262. Do you recognize this
2 document?

3 THE WITNESS: Can we go off the record?

4 MR. YANKILOVICH: Sure.

5 (Discussion off the record.)

6 MR. YANKILOVICH: We can go back on the
7 record.

8 THE WITNESS: I'm sorry, what was the
9 question?

10 MR. YANKILOVICH: Can you read the
11 question?

12 (The question was read by the Certified
13 Reporter as follows: "Next is Exhibit CX0752, which is
14 also Bates stamped JERK 00261 through 262. Do you
15 recognize this document?")

16 THE WITNESS: ER 1.6 prohibits me from
17 answering that question.

18 BY MR. YANKILOVICH:

19 Q Have you seen this document before?

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

22 Q Are you familiar with a Ms. McLeod-Lofquist?

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

25 Q Are you familiar with a person named Callie

1 Rendall?

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

4 Q And the person at the top of this e-mail,
5 Debra Gower, that is your assistant, correct?

6 A That is my assistant, yes.

7 Q At the bottom of this right above your
8 signature block it states, "It may be helpful for you
9 to know that jerk.com does have a paid online support
10 feature through which your client can request removal."
11 Do you see that?

12 A I do.

13 Q Can you tell us whether that statement is
14 accurate?

15 A I cannot.

16 Q Why not?

17 A Because I'm prevented from doing so by ER 1.6.

18 Q Any other reason?

19 A No.

20 Q Now, the subject line of your e-mail is,
21 "Please put on letterhead and mail." Do you see that?

22 A Yes.

23 Q Can you tell us whether that's an instruction
24 from you to your assistant to mail this letter?

25 A ER 1.6 prohibits me from answering that

1 question.

2 Q Can you tell us -- strike that.

3 Can you explain to us what that subject
4 line is or what it means?

5 A I can tell you as I sit here today that it
6 appears to say that I'm telling my assistant to put it
7 on letterhead and mail it. I can't really offer more
8 than that.

9 Q Okay. Do you know if your assistant ever did
10 put this on letterhead and mail it?

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

13 Q Next is Exhibit CX0748 which is JERK 00233
14 through JERK 00239. There are several pages, so let me
15 know when you've had a chance to look through them.

16 A Okay.

17 Q Are you familiar with this document?

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

20 Q On the first page there appears to be an
21 e-mail coming from someone named Joseph Gioconda,
22 attorney. Do you see that?

23 A I do.

24 Q Are you familiar with who that person is?

25 A ER 1.6 prohibits me from answering that

1 question.

2 Q On pages 2 through 4 of this document appears
3 to be a photocopy of a letter addressed to you. Do you
4 see that?

5 A I do.

6 Q Do you recall receiving this letter?

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

9 Q Do you recall ever having a telephone
10 conversation with Mr. Joseph Gioconda?

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

13 Q Do you recall ever having a conversation with
14 anyone at the Gioconda Law Group?

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

17 Q On page 3 of the exhibit which corresponds to
18 page 2 of this document, this letter states in the
19 fourth paragraph, "Second, as I discussed further
20 below, it is not clear that the profile of
21 Mr. Bernstein depicted in Exhibit 1 attached hereto was
22 "user generated content.'" Do you see that?

23 A I do.

24 Q Do you have any understanding of what
25 Mr. Gioconda is talking about?

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

3 Q Do you remember discussing "user generated
4 content" with Mr. Gioconda or anyone at the Gioconda
5 Law Group?

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

8 Q In the third to the last paragraph this letter
9 states, "The reasons for our client's belief that this
10 profile was not user generated are as follows." Do you
11 see that?

12 A I do.

13 Q Do you know what Mr. Gioconda is referring to
14 by this?

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

17 Q Do you recall discussing this topic with
18 Mr. Gioconda?

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

21 Q And if you would turn to the following page,
22 which is page 4 of the exhibit or page 3 of the letter,
23 at the very top the paragraph states -- and I'm reading
24 it -- "You stated that you believed that all profiles
25 on jerk.com are user generated, because you believed

1 that jerk.com does not have the technical capacity to
2 unilaterally create content. You also stated that you
3 would ask your client about this fact, and confirm it.
4 However, we have not yet received any response from
5 you." Do you see that?

6 A I do see that.

7 Q Can you tell us what Mr. Gioconda is talking
8 about here?

9 A No.

10 Q Why not?

11 A Because ER 1.6 prohibits me from answering the
12 question.

13 Q Any other reasons?

14 A No. I guess the other reason would be that,
15 the other reason would be that I would have no personal
16 knowledge of what somebody else was thinking or, you
17 know, I just don't know what somebody else meant.

18 Q Okay. Fair enough. Can you tell us what you
19 understand this language to mean?

20 A No.

21 Q Why not?

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

24 Q Any other reason?

25 A No.

1 Q Do you recall discussing the topic in this
2 paragraph with Mr. Gioconda?

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

5 Q Do you recall stating to Mr. Gioconda that you
6 believe that jerk.com does not have the technical
7 capacity to unilaterally create content?

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

10 Q Do you recall ever telling Mr. Gioconda that
11 you would ask your client about this fact?

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

14 Q Do you recall ever getting back to
15 Mr. Gioconda with confirmation or lack of confirmation
16 about this fact?

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

19 Q Do you know whether jerk.com ever ended up
20 removing Mr. Gioconda's client, Mr. Bernstein's
21 profile?

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

24 Q Do you recall ever passing on this issue
25 raised by Mr. Gioconda to any client of yours?

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

3 Q Let me hand you Exhibit CX0754 which
4 corresponds to JERK 00274 through 00277. Do you
5 recognize this document?

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

8 Q Have you ever seen this document before?

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

11 Q Do you know who Vasso Kanistra is?

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

14 Q Turn to the very last page of this document
15 which is page 4 of the exhibit. Can you confirm
16 whether this is an e-mail going from you to
17 Ms. Kanistra?

18 A No.

19 Q Why not?

20 A Because ER 1.6 prohibits me from doing so.

21 Q But that's your typical signature block on
22 that page; is that right?

23 A The signature block that appears on CX754-04
24 appears to be my signature block.

25 Q So this e-mail states, and I'll read,

1 "Jerk.com has an online support service which is the
2 only procedure to request removal of a post." Do you
3 see that?

4 A No. I think you read it wrong or I
5 misunderstood you.

6 Q Okay. So let me read it again just to make
7 sure we're on the same page. What I see reading on
8 page 4, "Jerk.com has an online support service which
9 is the only procedure to request removal of a post."

10 A I see that.

11 Q Do you recall writing that in an e-mail to
12 Ms. Kanistra?

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

15 Q Do you recall making that statement to anyone?

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

18 Q Can you tell us whether this is a true and
19 accurate statement?

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

22 Q Can you tell us what online support service
23 this line is referring to?

24 A No.

25 Q Why not?

1 A Because ER 1.6 prohibits me from doing so.

2 Q If you'll look at page 1 of the document, near
3 the top, also above what appears to be your signature
4 block, this is what I see this document as stating and
5 I'll read it in.

6 "Here is all I know. The website
7 assures me that if you pay \$25 for service, they are
8 almost always able to help you handle your particular
9 issue. I have not received any complaints from people
10 who have paid for service."

11 Do you see that?

12 A I do.

13 Q Can you explain what this statement means?

14 A No.

15 Q Why not?

16 A Because ER 1.6 prohibits me from doing so.

17 Q Any other reason why you can't explain?

18 A No.

19 Q Are you familiar with a \$25 service fee for
20 the website jerk.com?

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

23 Q Are you familiar with -- strike that.

24 Are you aware of any complaints from
25 people using jerk.com?

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

3 Q Have you received any complaints from people
4 who have used jerk.com?

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

7 Q Have you received any complaints from people
8 who have paid for service to jerk.com?

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

11 Q At the very top of this e-mail it seems like
12 Vasso Kanistra is responding back, and she concludes
13 with, "Please let me know what the process is." Do you
14 see that?

15 A I do see that.

16 Q Do you recall ever responding to Vasso
17 Kanistra?

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

20 Q So let me hand you Exhibit CX0757 which
21 corresponds to JERK 00345 through 353. Have you taken
22 a quick look at it?

23 A Yes.

24 Q Do you recognize this document?

25 A ER 1.6 prohibits me from answering that

1 question.

2 Q Have you seen this document before?

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

5 Q Do you see at the very top there's a "From"
6 line and it has your name?

7 A I see that.

8 Q And the "To" line appears to be a Christiane
9 Campbell?

10 A I see that.

11 Q Do you know who that person is?

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

14 Q Have you heard of that name Christiane
15 Campbell before?

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

18 Q Do you recall corresponding with Christiane
19 Campbell?

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

22 Q Take a look at page 7 of this document.

23 A What is the Bates label?

24 Q CX00757-07.

25 A Okay. I'm there.

1 Q Near the lower portion of this document or
2 this page, there appears to be your signature block.
3 Do you see that?

4 A I do.

5 Q Above it the text states, "Ms. Campbell, the
6 photograph will be removed pursuant to the DMCA. The
7 remaining materials are user generated content and
8 jerk.com is protected from liability under the
9 Communications Decency Act." Do you see that?

10 A I do.

11 Q Can you explain what this statement means?

12 A No.

13 Q Why not?

14 A Because ER 1.6 prohibits me from answering the
15 question.

16 Q Any other reason?

17 A No.

18 Q Can you tell us whether this statement is
19 accurate and truthful?

20 A No.

21 Q Why not?

22 A Because ER 1.6 prohibits me from doing so.

23 Q Any other reason?

24 A No.

25 Q Do you recall consulting anyone before writing

1 this response?

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

4 Q If you turn to page 6, the previous page of
5 this document, right above your signature block in the
6 middle of the page, the text reads, "Ms. Campbell, I
7 handle legal issues, not the policy issues." Do you
8 see that?

9 A Yes.

10 Q Can you explain what that statement means?

11 A No.

12 Q Why not?

13 A Because ER 1.6 prohibits me from doing so.

14 Q Any other reason?

15 A No.

16 Q Can you generally explain the distinction of
17 legal issues versus policy issues in the context of
18 this response?

19 A No.

20 Q Why?

21 A No.

22 Q Why not?

23 A Because ER 1.6 prohibits me from doing so.

24 Q Can you tell us whether in your past
25 representation of Jerk, LLC you ever handled policy

1 issues?

2 A I think your question, I guess I would object
3 to the form of your question. I think it's -- I think
4 I can't answer it the way you've asked it.

5 Q What is unclear about it?

6 A Because representation would mean to me legal
7 representation, and policy issues would mean something
8 else. So I don't know what you mean. I don't know
9 what you mean by representation.

10 Q Okay. So you did represent jerk.com as an
11 attorney, right?

12 A Yes.

13 Q As part of that representation, did you ever
14 advise jerk.com on policy issues?

15 A The way you've asked the question I'm going to
16 refuse to answer it under ER 1.6.

17 Q Did you ever refuse to advise jerk.com --
18 sorry. Strike that.

19 As part of your representation of Jerk,
20 LLC, did you ever refuse to provide advice for counsel
21 because the topic was a policy issue as opposed to a
22 legal issue?

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

25 Q If you look at Page 5 of the document, in the

1 middle of this page, right above your signature block,
2 sent from iPad, it states, "Christi, I do not
3 understand. What happens when you try to reach
4 support? When you say that you are uncomfortable with
5 entering a credit card and making a payment, do you
6 mean that you haven't done that? My understanding is
7 that support is \$25. So, are you saying that you are
8 willing to charge your client for the time you have
9 taken in these communications and comfortable with me
10 billing my client for my time in this, but not
11 comfortable with paying \$25?" Do you see that?

12 A I do. Well, I think you read it mostly
13 accurate. There was a couple little words that I think
14 you corrected my typos.

15 Q Okay. But you see the text on the page,
16 right?

17 A I do.

18 Q You really don't want me to read it again?

19 A You essentially read it correctly.

20 Q Can you explain what the statement means?

21 A No.

22 Q Why not?

23 A Because I believe ER 1.6 prohibits me from
24 doing so.

25 Q Can you tell us whether this support function

1 is the support function that you've seen in prior
2 exhibits that we've reviewed?

3 A I cannot.

4 Q Why not?

5 A Because ER 1.6 prohibits me from telling you.

6 Q Any other reason?

7 A No.

8 Q Can you tell us whether a support function for
9 jerk.com cost \$25?

10 A No.

11 Q Why not?

12 A Because ER 1.6 prohibits me from doing so.

13 Q Do you know -- strike that.

14 Do you know whether jerk.com had any
15 users?

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

18 Q Do you know if users who paid a service fee to
19 jerk.com got any service from jerk.com?

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

22 Q Do you know if Jerk.com had a support
23 function?

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

1 Q Do you know if jerk.com charged users for
2 anything?

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

5 Q If you look at page -- just a few more on this
6 one. It's a long document. I'll move quickly. If you
7 look at page 4 in the middle, right above your
8 signature block, it states, "I can't help you. But if
9 you or the original poster pays for the support and
10 does not get help, then I will intervene."

11 A I see that.

12 Q Do you see that? Can you tell us what the
13 statement means?

14 A No.

15 Q Why not?

16 A Because ER 1.6 prevents me from doing so.

17 Q Can you tell me anything about this offer to
18 intervene?

19 A No.

20 Q Why not?

21 A Because ER 1.6 prevents me from doing so.

22 Q Have you ever intervened with jerk.com for
23 anything?

24 A I refuse to answer the question under ER 1.6.

25 Q And finally, on page 1 of this document, at

1 the very top right above your signature block it
2 states, "The profile has been removed again. Users are
3 able to repost and may do that. There may be other
4 profiles. Users have in fact made similar profiles
5 under other names. So long as the support payment is
6 up-to-date, your client can e-mail support requesting
7 removal of any additional profiles she discovers. If
8 the support request is not handled to your
9 satisfaction, please feel free to e-mail me."

10 Do you see that?

11 A I do.

12 Q Can you explain what this statement means?

13 A No.

14 Q Why not?

15 A Because ER 1.6 prohibits me from doing so.

16 Q Can you tell us whether all of the statements
17 that appear to be coming from you on the basis of being
18 above your signature block are truthful and accurate in
19 this e-mail?

20 A I cannot.

21 Q Why not?

22 A Because ER 1.6 prohibits me from doing so.

23 Q Any other reason?

24 A No.

25 Q Okay. So the next document is Exhibit CX0751

1 which corresponds to JERK 253 through JERK 258, and I
2 will say in advance that this appears to be another
3 e-mail exchange between you and Christiane Campbell;
4 but I will assure you that it's partly different in its
5 content, and it's the way we received it, so I'm not
6 rehashing the same exact text.

7 Do you recognize this document?

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

10 Q Have you ever seen this document before?

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

13 Q I just want to focus on the first page of this
14 document. This appears to be an e-mail coming from
15 Christiane Campbell to the address support@jerk.com and
16 support@jerk.la. Do you see that?

17 A I see that.

18 Q I think we've talked about support@jerk.com
19 before. Have you ever heard of the e-mail address
20 support@jerk.la?

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

23 Q Have you ever seen the e-mail address
24 support@jerk.la before?

25 A Yes, I see it right now.

1 Q But before --

2 A You mean before today?

3 Q Yes.

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

6 Q Your name appears to be on the cc line. Do
7 you see that?

8 A I do.

9 Q Can you confirm whether you in fact received
10 this e-mail?

11 A No.

12 Q Why not?

13 A Because ER 1.6 prohibits me from doing so.

14 Q This appears to be addressed to "Jerk Support"
15 at the top. Do you see that?

16 A Yes.

17 Q Do you know whether the e-mail address
18 support@jerk.com or support@jerk.la would send e-mails
19 to Jerk Support?

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

22 Q So Ms. Campbell seems to write, and I'll read
23 her text. This is at the bottom of the first
24 paragraph. "Despite Jerk's own promises that it will
25 respond to support requests within 24 hours, we've yet

1 to have any success in removing the objectionable posts
2 from the above profile." Do you see that?

3 A I do.

4 Q And then she continues in the following
5 paragraph, "We understand that support and a
6 subscription to jerk.com, to enable us to dispute or
7 report abuse for certain postings, may carry a \$25 and
8 \$30 or \$90 fee, respectively." Do you see that?

9 A I do.

10 Q Do you know if the statement that she makes in
11 the second sentence that I just read is an accurate
12 statement?

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

15 Q Do you have any reason to believe that it's an
16 inaccurate statement?

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

19 Q Did you ever speak with Christiane Campbell
20 about the content of this e-mail?

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

23 Q Did you ever speak with Christiane Campbell at
24 all?

25 A ER 1.6 prohibits me from answering that

1 question.

2 Q Did you ever respond to this e-mail from
3 Christiane Campbell?

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

6 Q This is Exhibit CX0761, which corresponds to
7 JERK 00403 through 406. Do you recognize this
8 document?

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

11 Q Have you ever seen this document before?

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

14 Q On the first page at the top of the page
15 appears to be an e-mail. The "From" line has your name
16 and the "To" line has a Kellye, spelled K-E-L-L-Y-E,
17 Washington. Do you see that?

18 A I see that.

19 Q Do you know who Kellye Washington is?

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

22 Q Have you ever heard of that name before?

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

25 Q Turning very quickly to page 3. In the middle

1 of the page there seems to be, right above your
2 signature block, text that states, "Ms. Washington, I
3 am only legal counsel and I do not have the ability to
4 remove profiles, nor do I address policy issues. The
5 website has an online support system which you may
6 direct your requests."

7 Do you see that?

8 A I do.

9 Q Can you tell us what the statement means?

10 A No.

11 Q Why not?

12 A Because ER 1.6 prohibits me from doing so.

13 Q Any other reason?

14 A No.

15 Q Can you state, can you tell us whether this
16 statement was truthful and accurate?

17 A No.

18 Q Why not?

19 A Because ER 1.6 prohibits me from doing so.

20 Q Any other reason?

21 A No.

22 Q On page 2, immediately prior page, right above
23 your signature block near the bottom it states, "My
24 understanding is that support is around \$30, not \$90.
25 Did you try that?" Do you see that?

1 A I see that.

2 Q Then right above appears to be a response from
3 Kellye Washington stating, "It's a monthly fee!
4 Outrageous." And it goes on. Do you see that?

5 A I do.

6 Q And then right above that, it appears to be a
7 statement right above your signature block which
8 states, "It is not my understanding that it" -- I'm
9 going to start over. It reads, "It is not my
10 understanding that it is a monthly fee, I thought it
11 was a one time." Do you see that?

12 A I do.

13 Q Referring to the two statements on this page
14 right above your signature block, can you explain any
15 of these two statements?

16 A No.

17 Q Why not?

18 A Because ER 1.6 prohibits me from doing so.

19 Q Can you tell us whether these statements were
20 truthful and accurate?

21 A No.

22 Q Why not?

23 A Because ER 1.6 prohibits me from doing so.

24 Q Finally going to page 1 of this document at
25 the very top right above your signature block, the

1 document reads, "I have confirmed that there is a
2 support function that does not include a monthly fee
3 where you can explain your situation and ask for
4 relief." Do you see that?

5 A I do.

6 Q Can you explain what the statement means?

7 A I can't.

8 Q Why not?

9 A Because ER 1.6 prohibits me from doing so.

10 Q Any other reason?

11 A No.

12 Q Can you state whether this statement is
13 truthful and accurate?

14 A No.

15 Q Why not?

16 A Because ER 1.6 prohibits me from doing so.

17 Q Can you tell us whether you in fact confirmed
18 with anyone that there's a support function that does
19 not include a monthly fee?

20 A No, I can't tell you.

21 Q Why not?

22 A Because ER 1.6 prohibits me from doing so.

23 Q Can you confirm or rather tell us whether
24 jerk.com had any way by which users could explain their
25 situations and ask for relief?

1 A No.

2 Q Why not?

3 A Because ER 1.6 prohibits me from doing so.

4 Q Any other reason?

5 A No.

6 Q Okay. Let me mark, rather let me hand you
7 Exhibit 750 which corresponds to Jerk -- this is
8 Exhibit CX0750 and it corresponds to Bates JERK 251
9 through 252. Do you recognize this document?

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

12 Q Have you seen it before?

13 A ER 1.6 prohibits me from answering this
14 question.

15 Q At the top it appears to be an e-mail and it
16 appears to be from a person named Candice Leontyuk,
17 L-E-O-N-T-Y-U-K. Do you see that?

18 A I do.

19 Q And it appears to be going to you, to your
20 name. Do you see that?

21 A I do.

22 Q Do you know who Candice Leontyuk is?

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

25 Q Have you heard of that name before that?

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

3 Q Turn to page 2. Ms. Leontyuk appears to be
4 writing to you, and on the third paragraph states, "My
5 picture from Facebook was taken by jerk.com about a
6 year and a half ago. Now they have somehow taken
7 private, personal family photos and posted them on my
8 name." Do you see that?

9 A I see that.

10 Q Can you tell us whether you reviewed this
11 statement before today?

12 A I cannot.

13 Q Why not?

14 A Because ER 1.6 prohibits me from doing so.

15 Q Any other reason that you can't tell us?

16 A No.

17 Q Then on page 1 in what appears to be a
18 response by you which is right above your signature
19 block it states, "My role is as legal counsel and I
20 only address legal issues, not policy issues. Jerk.com
21 has a paid support function for policy issues such as
22 this."

23 Do you see that?

24 A Yes.

25 Q Can you explain what this statement means?

1 A No.

2 Q Does the statement mean that the concern
3 relayed by Ms. Leontyuk is a policy issue and not a
4 legal issue?

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

7 Q Can you explain the distinction between legal
8 and policy issue with respect to this e-mail?

9 A Not with respect to this e-mail, no.

10 Q Why not?

11 A Because ER 1.6 prohibits me from doing so.

12 Q Can you explain the difference between legal
13 issue and policy issue in general?

14 A Sure. I think a legal issue is an issue that
15 would have legal implications that would have, you
16 know, follow the law, not follow the law, what does the
17 law say you can do, what does the law say you can't do.
18 A policy issue is an internal issue that a company
19 decides that doesn't have legal implications.

20 Q Is there a clear dividing line between the two
21 or do they overlap?

22 A I think it depends.

23 Q Well, would a website taking private, personal
24 family photos, assuming that was true, and posting them
25 on that website invoke legal issues or policy issues or

1 both?

2 A You're just asking my opinion?

3 Q Yeah.

4 A Both.

5 Q So to confirm, in addition to policy issues,
6 there would be legal issues implicated in that conduct?

7 A If they were private family photos, is that
8 how you described them?

9 Q Private, personal family photos.

10 A I think there would be legal implications if
11 it was private, family personal photos.

12 Q Why would there be legal implications for
13 private, family personal photos?

14 A Because you're using the word private which to
15 me implicates a legal issue which is a right to
16 privacy.

17 Q Would there be, in addition to right to
18 privacy legal issues, would there be other legal issues
19 involved in that conduct?

20 A I don't know. I would have to know more
21 facts.

22 Q Well, what about copyright issues, do you
23 think copyright issues would be involved in that
24 content?

25 A It depends on who took the picture.

1 Q And if they were somehow not private, personal
2 family photos, would there still be legal issues
3 involved?

4 A I don't know. Depends on the context.

5 Q So what would you do to find out more? What
6 questions would you ask?

7 A That depends on the context, too. Who am I
8 representing? What are their circumstances? Is
9 somebody asking me legal advice? Is somebody asking me
10 academic advice? It just totally depends.

11 Q But it sounds like you would want to do
12 follow-up?

13 A It depends. If somebody is hiring me to do
14 some work, I would do some follow-up for them. If
15 somebody asked me a question in a, while I'm teaching a
16 class, I might or might not do follow-up. I don't
17 know. Depends.

18 Q Well, if you have a client and as part of your
19 work for that client you have to respond to complaints
20 by users of that client, and that client raises a
21 concern that implicates private, personal family
22 photos, would you say that there are legal issues there
23 that warrant follow-up?

24 A It depends on the client and what the client's
25 needs are, what the client's situation is, what the

1 client's -- it just totally depends on the situation
2 and the client.

3 Q Well, is there any type of situation where you
4 wouldn't need to do any follow-up when a user comes in
5 and says I've got private, personal photos that your
6 client is using?

7 A Oh, you switched the question. Before it was
8 my client. Now it's a user.

9 Q Okay. To be clear, the question is, if you're
10 representing a client that operates a website and the
11 client has users, and part of your role for that client
12 is responding to users' complaints or concerns, if a
13 user comes to you -- or rather if the user's complaint
14 percolates up to you and the user claims that your
15 client is using that user's private, personal family
16 photos, is there any situation in which you wouldn't
17 have to do any more follow-up before responding to that
18 user?

19 A Yes.

20 Q What type of situation would that be?

21 A If I looked at the photos and they obviously
22 weren't private. I would imagine. We are still
23 talking hypothetically, right?

24 Q Yes.

25 A Yeah, I imagine if I can look at the photos, I

1 don't need to do any follow-up. I can tell if they're
2 private. Just because somebody says something is
3 private doesn't mean it is. If the photo on its face
4 is not private and if the photo on its face is not
5 taken by the person who claims to take it, like, for
6 instance, if you send me something that says I took
7 that photo or I am the owner of the copyright of that
8 photo, and I can tell you didn't take the photo from
9 the photo itself, I don't need to do any further
10 follow-up. It's going to be clear to me from looking
11 at the photo. You can tell me all day long that a
12 photo was private, but if it's a picture of you sitting
13 here in this chair, I would not need to follow up to
14 decide it wasn't private.

15 Q Okay. So besides that reason, it sounds -- to
16 clarify, it sounds like one reason where you wouldn't
17 need to do any further follow-up, if you can tell from
18 the face of the photo that it's not private and the
19 user is simply wrong in the user's assertion that its
20 private, is that --

21 A That's one thing as I sit here today that I
22 could think of would be a reason not to follow up.

23 Q Any other reasons?

24 A I can't think of any as we sit here today. Of
25 course, every, you know, every hypothetical has a

1 million potential facts that could come into play, but
2 based upon what you've told me, I can't think of any.

3 Q And your fascia review of the photo to
4 determine whether that photo is really private as the
5 user is claiming or just not private and the user is
6 wrong, is that something that you would do as part of
7 your function as legal counsel?

8 A Totally depends on the client.

9 Q Well, essentially if the client, if the client
10 is tasking you with this particular task in responding
11 to user complaints about private photos being used, I
12 mean is that something that you would be doing?

13 A It depends on the client.

14 Q Would you characterize that type of review,
15 assuming you are doing it as a legal review or a policy
16 review?

17 A What we've been talking about is legal. I'm
18 looking -- I was looking -- I was specifically limiting
19 my answers to the legal questions. What a client
20 chooses to do within their company is the client's
21 policy decision. Whether or not it has legal
22 implications is what I was answering to you --

23 Q Got it.

24 A -- in our hypothetical.

25 Q Got it. So to clarify, and I'm trying to make

1 it clear in my mind, the determination of whether a
2 photo is truly private or, in other words, is deserving
3 of copyright protections is a legal question, right?

4 A Seems to me to be.

5 Q But the call by the client to remove or not
6 remove that photo based on copyright protections or
7 privacy issues is a policy determination?

8 A I think so.

9 Q Okay. Do you know whether this person's
10 profile, Ms. Leontyuk's profile, was ever removed from
11 jerk.com?

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

14 Q And do you know -- strike that.

15 Rather, at the top of this document,
16 page 1, it seems to be Ms. Leontyuk e-mailing you on
17 December 8. Do you recall ever responding to her?

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

20 Q Can you tell us whether the statements made by
21 what appears to be you in this e-mail trail were true
22 and accurate?

23 A ER 1.6 prohibits me from answering that
24 question. So no, I cannot tell you.

25 Q Okay. I'll hand you Exhibit 762. Do you

1 recognize this document?

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

4 Q Have you ever seen this document before?

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

7 Q At the bottom of this document, and I'll note
8 that the top seems to be redacted and that's the way it
9 was produced to the FTC, but at the bottom of this
10 document appears to be an e-mail from someone named
11 Miri BD going to what appears to be you. Do you see
12 that?

13 A I see it.

14 Q And this e-mail states, "User Miri Ben-Dat is
15 13 years old. Remove profile." Do you see that?

16 A I do.

17 Q Do you know whether this relates to a profile
18 of Miri Ben-Dat on jerk.com?

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

21 Q Do you know whether Miri Ben-Dat's profile was
22 ever up on jerk.com?

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

25 Q Do you know if Miri Ben-Dat's profile was

1 removed from jerk.com by someone in charge of jerk.com?

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

4 Q Do you know why the top of this e-mail is
5 redacted?

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

8 Q And can you tell us who redacted the top of
9 this e-mail?

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

12 Q Let me hand you Exhibit CX0764. Do you
13 recognize this document?

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

16 Q Have you ever seen this document before?

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

19 Q So this appears to be an e-mail from someone
20 named Diana at Diana A. to your work e-mail address.
21 Do you see that in the middle of this document?

22 A I see that.

23 Q Do you recall whether you ever received this
24 e-mail?

25 A ER 1.6 prohibits me from answering that

1 question.

2 Q In the middle of this document, Diana seems to
3 write, "I am appalled to learn that your website
4 promotes bullying; especially when there is already a
5 major issue with bullying in schools across America as
6 I am sure you are aware. My son is also under the age
7 of 14, and I read that jerk.com should remove a page in
8 this case."

9 Do you see that?

10 A I see it.

11 Q Do you know whether -- strike that.

12 Do you see later in that e-mail it
13 states, "Here is the link to the page," and it's an
14 http link. Do you see that?

15 A I see that.

16 Q Do you know whether that link or the output of
17 that link ever appeared on jerk.com?

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

20 Q Do you know whether the user associated with
21 that link, whether that user's profile was ever removed
22 from jerk.com?

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

25 Q Do you see at the top there are several

1 redactions at the top of this document?

2 A I see that.

3 Q Do you know why the redactions are there?

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

6 Q Do you know who redacted the document?

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

9 Q I'll give you Exhibit 765, CX0765 which
10 corresponds to JERK 00418. Do you recognize this
11 document?

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

14 Q Have you ever seen this document before?

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

17 Q This appears to be, at the bottom of this
18 document it appears to be an e-mail from someone named
19 Hailey Hodinski to you as well as what appears to be an
20 e-mail from you on a trail between you and Hailey
21 Hodinski. Do you see that?

22 A I see it.

23 Q Okay. Do you recall receiving these e-mails
24 from Hailey Hodinski?

25 A ER 1.6 prohibits me from answering that

1 question.

2 Q Do you recall receiving any e-mail from Hailey
3 Hodinski?

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

6 Q Are you aware of who Hailey Hodinski is?

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

9 Q Have you heard of Hailey Hodinski before
10 today?

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

13 Q In the initial e-mail which appears to be an
14 e-mail from Hailey Hodinski to you, in the middle of
15 that paragraph it states, "Once again, this is an
16 underage child and in no way should her name be showing
17 up on your site or in any Google search that forwards
18 to your site." Do you see that?

19 A I disagree that that's the first e-mail. I
20 think that's the later e-mail.

21 Q What I meant to say, that's the e-mail portion
22 that appears near the top?

23 A Yes, I see that.

24 Q And then at the bottom what appears to be the
25 first or initial e-mail seems to be an e-mail from

1 Hailey Hodinski stating, "Please remove Hailey Hodinski
2 from your site jerk.com. This is a child under 14."

3 Do you see that?

4 A I do.

5 Q Do you recall whether jerk.com ever displayed
6 a profile for Hailey Hodinski?

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

9 Q Do you recall if jerk.com ever removed the
10 profile for Hailey Hodinski?

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

13 Q Do you see the top half of this e-mail seems
14 to be redacted?

15 A I do.

16 Q Do you know why it's redacted?

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

19 Q And do you know who redacted it?

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

22 Q I'll hand you Exhibit CX0774 which corresponds
23 to Bates FTC-JERK0018693 through 18699. Do you
24 recognize this document?

25 A No.

1 Q You have never seen it before?

2 A No.

3 Q Do you know what IeXpert, I-E-X-P-E-R-T, is?

4 A No.

5 Q Have you ever heard of that name before?

6 A No.

7 Q Do you know who Marcel Gaftoneanu,
8 G-A-F-T-O-N-E-A-N-U, is?

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

11 Q Have you ever heard of that name before today?

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

14 Q Do you know what Assist Software is?

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

17 Q Have you ever heard of that company before?

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

20 Q On the bottom of page 1 of this document, it
21 states, I'm going to read, "Jerk, LLC is a U.S. company
22 which operates under U.S. law. You request information
23 that is privileged and confidential under U.S. law and
24 is not in our possession or control to be delivered
25 without the consent of Jerk, LLC. You can contact

1 Maria Crimi Speth, Esq., at Jaburg & Wilk, 3200 North
2 Central Avenue, Suite 2000, in Phoenix, Arizona, to
3 obtain the information and consent from Maria." Do you
4 see that?

5 A I do see that.

6 Q Can you explain what this is referring to?

7 A No.

8 Q And why not?

9 A I don't know.

10 Q So if you look at the very last page of this
11 document at CX0774-07, it appears to be signed by
12 Marcel Gaftoneanu, Managing Partner at IeXpert. Do you
13 see that?

14 A I do.

15 Q Does it appear to you that this entire
16 document was sent and drafted by this person, Marcel
17 Gaftoneanu?

18 A I have no idea.

19 Q Now, back to the first page of this document,
20 it appears to be addressed to a Mrs. Raluca Popa,
21 P-O-P-A. Do you see that?

22 A I see that.

23 Q Do you know who that person is?

24 A I do not.

25 Q Have you ever heard of that name before today?

1 A No.

2 Q And this document, to me it appears to be a
3 letter. The first line states, "We Were designated by
4 Jerk, LLC to provide in a very short term responses
5 regarding jerk.com." Do you see that?

6 A I do.

7 Q Now, if you turn to page 2 of this document,
8 there is a, the second paragraph begins with, "You also
9 stated: The reported site collects personal data, such
10 as names and images obtained from the Internet,
11 especially from Facebook, these being posted without
12 informing the users." And it goes on. Do you see
13 that?

14 A I see it.

15 Q And then right below it, it states, "Response.
16 This statement was forwarded to Maria Crimi Speth, the
17 legal representative of Jerk, LLC who stated:" Do you
18 see that?

19 A I do.

20 Q And then there is a response, and what appears
21 to be italic font. Do you see that?

22 A I do.

23 Q Do you recall whether this statement, the one
24 that was read above, was actually forwarded to you?

25 A ER 1.6 prohibits me from responding to that

1 question.

2 Q Do you remember providing the response that
3 appears in the response area in italic font?

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

6 Q Do you recall specifically stating that
7 Internet users who have agreed to the terms of service
8 of most major social networking sites in the United
9 States have waived any protections otherwise available?

10 A ER 1.6 prohibits me from responding to that
11 question.

12 Q Can you provide any explanation for that
13 statement?

14 A No.

15 Q Why not?

16 A Because ER 1.6 prohibits me from doing so.

17 Q Any other reason?

18 A No.

19 Q Taking apart the context of this particular
20 response, do you as an attorney believe that Internet
21 users who have agreed to the terms of service of most
22 major social networking sites in the United States have
23 waived any protections otherwise available?

24 A I don't know. I would need to know the
25 context.

1 Q Do you think that statement would be accurate
2 in any context?

3 A I have no idea because I don't know what
4 protections are referred to.

5 Q Okay. A little later in this document on the
6 same page it states, "You asked: 1, if processing data
7 on the site jerk.com is being made as operator or as
8 authorized person empowered." And then it goes on. Do
9 you see that?

10 A Yes.

11 Q Then the response says, "The statement was
12 forwarded to Maria Crimi Speth, the legal
13 representative of Jerk, LLC, who stated:" Do you see
14 that?

15 A I see it.

16 Q Response in italic font follows. Do you see
17 that?

18 A I do.

19 Q Do you recall receiving this question that's
20 presented here after you asked?

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

23 Q Do you recall providing any response to this
24 question?

25 A ER 1.6 prohibits me from answering that

1 question.

2 Q As part of the response in italic, it states,
3 "Jerk, LLC, does not operate and does not host its
4 database in Romania." Do you see that?

5 A I see that.

6 Q Do you know whether that's a truthful and
7 accurate statement?

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

10 Q So if you glance over, just because I want to
11 make sure we cover this, but not spend too much time on
12 every one of these questions. As you glance over the
13 documents, there seems to be or rather there seem to be
14 24 individual numbered asks or questions. And the
15 response for each one begins with "This statement" --
16 and I infer that to mean this question -- "was
17 forwarded to Maria Crimi Speth, the legal
18 representative of Jerk, LLC who stated:"

19 And the only exception that I see to
20 that is question No. 12 on page 04 which the response
21 does not seem to reference your name.

22 A And No. 18.

23 Q 18?

24 A Oh, I missed it. It's there.

25 Q So 18 does reference your name?

1 A Right, it does. I missed it the first time.
2 I think you're right. I think 12 is the only one that
3 doesn't.

4 Q So let's try to address all of these in one
5 fell swoop.

6 A Oh, good.

7 Q But I want to make sure that you're able to
8 answer completely and accurately in one fell swoop.

9 A Okay, I'll tell you if it needs to be
10 switched.

11 Q Tell me.

12 A Uh-huh.

13 Q So for these 24 numbered Asks, do you recall
14 ever receiving these questions?

15 A ER 1.6 prohibits me from answering the
16 question.

17 Q Do you recall ever communicating with anyone
18 about these questions?

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

21 Q Do you recall in any way reviewing these
22 questions?

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

25 Q And with exception of question No. 12, do you

1 recall providing responses to any of these questions?

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

4 Q And for all of these questions, can you tell
5 us whether the responses provided are truthful and
6 accurate?

7 A ER 1.6 prevents me from answering the
8 question.

9 Q And you were comfortable with providing these
10 omnibus responses to all of these questions; is that
11 right?

12 A Yes.

13 Q And for all of these questions, 1 through 24,
14 would you be able to provide any explanation or any
15 additional information about what is meant by the
16 responses?

17 A No.

18 Q Why not?

19 A Because ER 1.6 prevents me from answering the
20 question.

21 Q And just looking specifically at No. 12 for a
22 second, the response says, "Jerk, LLC relies on the
23 advice and counsel of its attorneys to insure that it
24 is in compliance with all laws and regulations to which
25 it is subject." Do you see that?

- 1 A I do.
- 2 Q Do you know what attorneys this is
3 referencing?
- 4 A ER 1.6 prohibits me from answering the
5 question.
- 6 Q So this, I think, will cut through a lot of my
7 questions. So let me just focus on a handful of
8 specific ones, and then we can move on from the
9 document.
- 10 A Can we take a bathroom break?
- 11 Q Absolutely.
- 12 A I guess I could wait till the end of the
13 document.
- 14 Q That's fine. This is a decent stopping point.
15 We'll take a bathroom break, and we'll go off the
16 record.
- 17 (Recessed from 1:52 p.m. to 1:58 p.m.)
- 18 MR. YANKILOVICH: We'll go back on the
19 record.
- 20 BY MR. YANKILOVICH:
- 21 Q We were looking at CX0774. If you take a look
22 at page 3 of this document, in response to No. 4, the
23 response mentions Vendors of Jerk, LLC. Do you see
24 that?
- 25 A I do.

1 Q Do you know who vendors of Jerk, LLC are?

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

4 Q In response to item 5, the response states,
5 "The information processed is freely accessible public
6 domain Internet information." Do you see that?

7 A I do.

8 Q Do you know what that refers to?

9 A ER 1.6.

10 Q Do you know in general what freely accessible
11 public domain Internet information refers to?

12 A No.

13 Q Have you ever used that term before?

14 A Not that I can recall.

15 Q Have you ever heard of that term before?

16 A Sure, people misuse that all the time.

17 Q Do you know what the appropriate use of that
18 term would be?

19 A Public domain is a legal concept that means
20 that a copyright has expired and gone into the public
21 domain.

22 Q So freely accessible public domain Internet
23 information means --

24 A Nothing to me.

25 Q Okay. Outside the context of this, do you

1 know if you've used that term in correspondence with
2 anyone?

3 A What term?

4 Q Freely accessible public domain and Internet
5 information?

6 A I would be very surprised if I would have ever
7 used that term.

8 Q But you don't recall any particular instance
9 of using that term?

10 A I would be very surprised if I ever did. I
11 have no recollection of ever doing so and I would be
12 very surprised if I ever did. It's incorrect. Public
13 domain does not mean that, so I'm not going by memory
14 because don't pretend to remember things like this, but
15 it's not a term I can imagine ever using.

16 Q In response to No. 6, the response states,
17 "Individuals who have posted information publicly on
18 the Internet and publicly available Internet
19 information." Do you see that?

20 A I do.

21 Q Do you have any -- are you able to explain
22 what any of this means?

23 A No, ER 1.6 prohibits me from doing so.

24 Q In general, moving outside the four corners of
25 this document, do you know or can you explain what

1 publicly available Internet information means?

2 A Sure. Information you can get on the
3 Internet.

4 Q And is all information that you can get on the
5 Internet publicly available?

6 A Unless it's password protected. Or membership
7 site that you have to be a member of.

8 Q And in those cases, it's not publicly
9 available?

10 A Depends on how you define the public, I guess.

11 Q I mean how would you define the public in the
12 context of publicly available?

13 A I would think publicly available would be
14 something you can get without a password or a
15 membership.

16 Q Okay. So the converse proposition, if it's
17 information on the Internet you can't get without a
18 membership or password, then in your view it's not
19 publicly available?

20 A I'm sorry, repeat the question.

21 Q Sure. So if it's information on the Internet
22 that requires a membership or a password, then is it
23 not publicly available?

24 A Well, now you've gotten me thinking about what
25 I meant by membership. I was thinking of a membership

1 site as a, you know, a kind of a website that you, that
2 would be -- you have to qualify to be a member of. So
3 I was thinking of like a secure website that you would,
4 you would have to sign up for, pay for, and be
5 separately, you know, be part of an elite group. Then
6 I kind of wouldn't think of that as public. But if
7 you're thinking of a membership site like, you know,
8 every single site that we all, you know, click I
9 accept, I don't mean that. That's publicly available.

10 Q Okay. I think I get it. But do you have an
11 example of each one of those categories?

12 A Yeah, I have some clients who have some very,
13 you know, very distinct groups of people who can see
14 their websites. Like, this is not a real example.
15 This is just a hypothetical example. Like let's say
16 you're running something for doctors, and they have to
17 be, you know, they have to have a certain degree or a
18 certain qualification to be a member of that site.
19 Then I wouldn't think of that, in my parlance I
20 wouldn't think of that as public. But if we're talking
21 about like a social media site that anybody could just
22 click on and just click I agree, then I would think of
23 that as public.

24 Q So social media sites, we're talking about a
25 Facebook or MySpace or something like that?

1 A Yeah, I would think of those as public. I
2 would not think of like a little niched website as
3 public.

4 Q Got it. So just to clarify, when we're
5 talking about public, it's not the site itself that I'm
6 talking about being public. It's the information on
7 that site, right? So --

8 A I thought we were talking about publicly
9 available. So is it available to the general public is
10 what I thought we were talking about.

11 Q Right. So I'm going back to the language in
12 this response, in No. 6, "publicly available Internet
13 information." So not the existence of a website, but
14 Internet information, unless in your view the existence
15 of a website is equivalent to Internet information?

16 A If you're going to go back to the language of
17 this document, I'm going to refuse to answer under 1.6.

18 Q Okay. I'm referring to the document, but I'm
19 asking you what your understanding of the term in
20 general "publicly available Internet information" is?

21 A I would interpret the term "publicly available
22 Internet information" as stuff that's available on the
23 Internet, that's generally available on the Internet
24 without having to have some special qualification or
25 some special password.

1 Q So, for instance, content available on a site,
2 on a social media site like Facebook or MySpace, in
3 your view that is publicly available Internet
4 information?

5 A I would consider that publicly available, yes.

6 Q Despite the fact that users typically need
7 user names and passwords to log in and use those
8 services?

9 A Right.

10 Q On the other hand, content available through
11 hyper-niched websites like for professionals that not
12 any member of the public could join, that content would
13 not constitute publicly available Internet information?

14 A In my parlance, right.

15 Q Okay. That makes sense.

16 A Right.

17 Q Moving on quickly to Number 7, it states, the
18 response states, "All data is property of Jerk, LLC
19 exclusively." Do you have any explanation for what
20 that means?

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

23 Q In response to No. 9 on the following page,
24 the response states, "Individual users are informed of
25 the contents of jerk.com through the site's search

1 feature and Internet search engines." Do you see that?

2 A I see that.

3 Q Do you know what this means?

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

6 Q Do you have in general an idea of what an
7 Internet search engine is?

8 A Sure.

9 Q What is an Internet search engine?

10 A Any piece of software that helps you to find
11 data, content on the Internet based upon search terms.

12 Q Do you have a few examples of Internet search
13 engines?

14 A Sure, Google.

15 Q Any other ones?

16 A Dogpile, Yahoo. I'm sure there's tons of
17 them, but those are the ones coming to my mind. Bing.

18 Q In response to No. 10, the response states,
19 "Information is collected from public sources and under
20 the terms of service posted on jerk.com." Do you see
21 that?

22 A I do.

23 Q Do you have an explanation for what this
24 means?

25 A ER 1.6 prohibits me from answering that

1 question.

2 Q In general, not within the context of this
3 document, do you know what public sources refers to?

4 A I don't. Not out of context, I couldn't tell
5 you.

6 Q In response to Number 11, it states,
7 "Individuals have no rights to restrict the flow of
8 information already in the public domain." Do you see
9 that?

10 A I see that.

11 Q Do you know or can you explain what this
12 response means?

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

15 Q Outside the context of this document, can you
16 explain what the public domain is?

17 A Yes, public domain is when a copyright
18 protected item such as a photograph or a writing or a
19 sculpture or a piece of artwork, the copyright expires
20 and it goes into the public domain upon expiration.

21 Q And is that explanation applicable to
22 materials on the Internet?

23 A It can be.

24 Q The general statement that individuals have no
25 right to restrict the flow of information already in

1 the public domain, in your view, is that an accurate
2 statement?

3 A Seems to be. Generally it's accurate. Of
4 course, there's going to be exceptions.

5 Q Why is it generally accurate?

6 A Because if something is in the public domain,
7 by definition, it no longer has copyright protection.
8 When something no longer has copyright protection, then
9 you can't -- there's nobody to say you can't use it
10 anymore. It was copyright protected and it no longer
11 is.

12 Q Any other reason for why it's accurate in
13 general?

14 A That's why I think it's accurate.

15 Q On No. 14, on the following page, the response
16 states, "Individuals have waived their rights to
17 control information available in the public domain and
18 Jerk, LLC complies with all laws and regulations to
19 which it is subject." Do you see that?

20 A I do.

21 Q Can you explain this statement?

22 A ER 1.6 prohibits me from doing so.

23 Q Outside the context of this document, would it
24 be accurate from your perspective to state that
25 individuals have waived their rights to control

1 information in the public domain?

2 A No.

3 Q Why not?

4 A Because things don't go into the public domain
5 because you waive your rights. They go into the public
6 domain because the copyright expires.

7 Q So just because something is in the public
8 domain doesn't mean individuals have waived their
9 rights to control that information?

10 A No, again, by definition, it means that a time
11 period has elapsed, typically 70 years from the life of
12 the author, if it was from today, or it was published
13 before 1923. And that's not because anybody waived
14 their rights. It's because the United States laws say
15 they expire and it goes into the public domain.

16 Q You're talking about copyright laws?

17 A Yeah, the only way you can use the word public
18 domain accurately.

19 Q Got it. So once --

20 A In my opinion.

21 Q Okay. No, that's fine. So the only way by
22 which content can flow into the public domain is for
23 the copyright to expire?

24 A Correct, public domain is a term of art.

25 Q Right.

1 A That's my point.

2 Q Okay. Once copyrights have expired and the
3 materials have moved into the public domain, is it
4 accurate to say that individuals have waived their
5 rights to control that information?

6 A No, I just answered that question. No.
7 Individuals haven't waived their rights. The statute
8 has caused it to go into the public domain.

9 Q But that doesn't mean that individuals have
10 waived their rights?

11 A I don't think so. I think that the government
12 has imposed a law that says your rights are gone,
13 whether you want them to be or not.

14 Q Okay. Okay. So in effect, the government has
15 waived the rights of individuals?

16 A No, I don't think it's accurate to call it a
17 waiver of rights. It's an expiration of a copyright is
18 what it is.

19 Q Would it be accurate to say that individuals
20 no longer have any rights to control that information
21 once it enters the public domain?

22 A Generally, yes.

23 Q Are there exceptions?

24 A Yeah. I can think of exceptions. Yeah. I
25 think so.

1 Q What are the exceptions?

2 A Oh, why are we wasting time on this? Oh, my
3 God, this is so far off base.

4 Okay. So I think that I could take a
5 Shakespeare play that's in the public domain, and I
6 could agree to share it with you if you contractually
7 agree that you won't do something with respect to it.
8 And I think that would be enforceable. So I think you
9 can, I think you can contract around public domain
10 property, it seems to me.

11 Q So this Shakespeare play --

12 A You know you're getting a bill for this,
13 right? Since you're asking my legal advice?

14 Q The Shakespeare play in your example, that's
15 something for which the copyright has expired, right?

16 A Right. Clearly a Shakespeare play is in the
17 public domain.

18 Q So it's in the public domain. But essentially
19 you're saying that one party passing it along to
20 another party and contracting around the use of that
21 play will create some rights even though the play is in
22 the public domain?

23 A I think if there was an enforceable contract
24 there would have to be some consideration, but I can --
25 I won't rule out the possibility that that's possible,

1 but it would be hard, it would be hard to do, but
2 again, I don't know why that matters, but --

3 Q Okay. Moving on quickly to number 16. The
4 response states, "There has not been one single legal
5 action brought against Jerk, LLC anywhere in the
6 world." Do you see that?

7 A I do.

8 Q Are you able to explain that statement?

9 A No.

10 Q Why not?

11 A Because the ER 1.6 prohibits me from doing so.

12 Q Any other reason?

13 A No.

14 Q Do you know if that statement is accurate?

15 A Today as we sit here?

16 Q Sure, today as we sit here.

17 A It's not accurate.

18 Q Why not?

19 A Because the FTC brought a claim against Jerk
20 LLC. Either that or I'm sitting here for nothing.
21 Seems to me based upon the subpoena that I got that
22 that exists.

23 Q It does exist. Prior to the FTC bringing its
24 action against Jerk, LLC, do you know if this statement
25 was accurate?

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

3 Q On the response to No. 17, it states, "Under
4 the Jerk.com terms of service there are no restriction
5 on data storage." Do you see that?

6 A I see that.

7 Q Do you know whether that statement is
8 accurate?

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

11 Q Can you provide an explanation for that
12 statement?

13 A No.

14 Q Why not?

15 A Because ER 1.6 prohibits me from doing so.

16 Q Any other reason?

17 A No.

18 Q Do you know how data was being kept by Jerk,
19 LLC?

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

22 Q Do you know how data was being stored by Jerk,
23 LLC?

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

1 Q And the following response to question 18, the
2 response states, "All data that is kept is stored by
3 Jerk, LLC at its sole discretion." Do you see that?

4 A I do see that.

5 Q Can you provide any explanation to that
6 statement?

7 A I cannot.

8 Q Why not?

9 A Because ER 1.6 prohibits me from doing so.

10 Q Any other reason?

11 A No.

12 Q Moving on to the following page, page 6, the
13 response to question 20 states, "Jerk, LLC employs
14 industry standard systems to protect its data." Do you
15 see that?

16 A I do.

17 Q Can you provide any explanation for that
18 statement?

19 A I cannot.

20 Q Why not?

21 A Because ER 1.6 prohibits me from doing so.

22 Q Any other reason that you can't provide an
23 answer to this question?

24 A Because I don't know.

25 Q You don't know what?

1 A You asked me what the statement meant, and I
2 don't know what it means, so that would be the other
3 reason that I couldn't provide an answer.

4 Q Okay. I think I asked you if you can provide
5 any explanation for it.

6 A Yeah, okay, because I don't know, I don't have
7 an explanation anyway.

8 Q Okay. Do you know what "industry standard
9 systems" refers to in this context?

10 A I do not.

11 Q Do you know what it refers to in any context?

12 A I do not.

13 Q Would it be fair to say that this is a pretty
14 vague response?

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

17 Q And we covered industry standard systems in
18 the context of response 20, and I ask the same question
19 for the response to question 23. Do you have any idea
20 what "industry standard systems" means in this context?

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

23 Q I think to the last question in item 20, in
24 addition to ER 1.6, you also said I just don't know
25 what "industry standard systems" means in that context.

1 Was that right?

2 A I don't know what industry standard systems
3 means, that's true.

4 Q And would the same answer apply to the use of
5 that term in 23?

6 A I wasn't intending -- if I misspoke, I'm
7 sorry, but I wasn't intending to answer any specific
8 item. Just in general, I don't know what that means.

9 Q Okay. Fair enough. I think we're done with
10 this document. Moving on to 5.

11 A Do I have to push back my 3:00?

12 Q I think we'll be -- I have -- let's try to
13 move quickly. CX0527 which corresponds to JERK 00159
14 through 162. Do you recognize this document?

15 A ER 1.6 prohibits me from responding to that
16 question.

17 Q Have you ever seen this document before?

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

20 Q On the first page of the document there seems
21 to be an e-mail correspondence from you to a person
22 named Louie Lardas, L-A-R-D-A-S. Do you see that?

23 A I see that.

24 Q Do you know who Mr. Lardas is?

25 A ER 1.6 prohibits me from answering that

1 question.

2 Q Have you ever heard of Mr. Lardas' name
3 before?

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

6 Q Have you received this e-mail that appears to
7 be sent from Mr. Lardas on May 21, 2013?

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

10 Q Are you aware of any relationship between
11 Louie Lardas and Jerk, LLC?

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

14 Q Are you aware of any relationship between
15 Mr. Louie Lardas and jerk.com?

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

18 Q Are you aware of any relationship between
19 Louie Lardas and John Fanning?

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

22 Q Are you aware of any relationship between
23 Louie Lardas and netcapital.com LLC?

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

1 Q Have you had any conversations with Mr. Louie
2 Lardas?

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

5 Q On page 2 of this document near the bottom in
6 the text that appears right above your signature block,
7 it states, "Mr. Lardas, both I and Mr. Fanning
8 previously notified you that I was the contact for the
9 company, not him." Do you see that?

10 A I do.

11 Q Do you know what company this refers to?

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

14 Q Would it be accurate for John Fanning to state
15 that he was hired to provide you with advice in your
16 representation of Jerk, LLC?

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

19 Q Is there any other reason why you can't answer
20 that question?

21 A No.

22 Q Let me give you the following documents in one
23 fell swoop which will make it very quick. So I'm
24 handing the witness Exhibits CX0770, CX0771, CX0772,
25 and CX0773.

1 Do you recognize these documents?

2 A No.

3 Q Have you ever seen them before?

4 A I don't think so.

5 Q If you'll take a look at Page 2 of CX770, you
6 will see near the bottom a payment on what appears to
7 be May 23rd of \$227.50 to Jaburg & Wilk?

8 A You mean \$227.50?

9 Q Yeah, correct.

10 A I see that.

11 Q And if you look at the front of the statement,
12 the first page or at the top of any page, it appears to
13 be a statement for the bank account of Jerk, LLC. Do
14 you see that?

15 A I do.

16 Q Do you know if your firm received this payment
17 from Jerk, LLC?

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

20 Q Can you provide any information about this
21 payment?

22 A No.

23 Q Why not?

24 A Because ER 1.6 prohibits me from doing so.

25 Q Any other reason?

1 A No.

2 Q If you look at Exhibit 771, CX771, you'll see
3 that it also appears to be a bank statement for Jerk,
4 LLC. Do you see that?

5 A I do.

6 Q And if you turn to page 2 of CX771, near the
7 bottom, there's a payment on June 13 for \$65 to Jaburg
8 & Wilk. Do you see that?

9 A I do.

10 Q Do you know if your firm received this
11 payment?

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

14 Q Are you able to provide any information about
15 this payment?

16 A No.

17 Q Why not?

18 A Because ER 1.6 prohibits me from doing so.

19 Q If you'll look at Exhibit 772, at the top
20 you'll see that it also appears to be a bank statement
21 for Jerk, LLC. Do you see that?

22 A Yes.

23 Q If you look at the bottom of page 2, there
24 appears to be a payment on July 25 for 1,624.01. Do
25 you see that?

1 A I do.

2 Q And it goes to Jaburg & Wilk, PC. Do you see
3 that?

4 A I do.

5 Q Do you know if your firm ever received this
6 payment?

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

9 Q Are you able to provide any information about
10 this payment?

11 A No.

12 Q Why not?

13 A Because ER 1.6 prohibits me from doing so.

14 Q Any other reason?

15 A No.

16 Q And finally, if you look at page 773, which
17 also appears to be a statement for Jerk, LLC, do you
18 see that?

19 A Yes.

20 Q And on the second page near the bottom there
21 appears to be a payment from August 24 for 1,234.50
22 going to Jaburg & Wilk. Do you see that?

23 A I do.

24 Q Can you tell me whether your firm ever
25 received that payment?

- 1 A No.
- 2 Q Why not?
- 3 A Because ER 1.6 prohibits me from doing so.
- 4 Q Can you provide any information about this
5 payment?
- 6 A No.
- 7 Q Why not?
- 8 A Because ER 1.6 prohibits me from doing so.
- 9 Q Any other reason?
- 10 A No.
- 11 Q These four payments that we just went through
12 on CX770, 771, 772, 773, can you tell us whether these
13 were payments for legal services?
- 14 A No.
- 15 Q Why not?
- 16 A Because ER 1.6 prohibits me from doing so.
- 17 Q Any other reason?
- 18 A No.
- 19 Q Can you tell us whether Jerk, LLC has ever
20 paid you or Jaburg & Wilk for legal services?
- 21 A No.
- 22 Q Why not?
- 23 A Because ER 1.6 prohibits me from doing so.
- 24 Q Any other reason?
- 25 A No.

1 Q Can you tell us whether anyone or any other
2 company or entity has ever paid you for legal services
3 in connection with Jerk, LLC?

4 A No.

5 Q Why not?

6 A Because ER 1.6 prohibits me from doing so.

7 Q Any other reason?

8 A No.

9 Q Okay. Moving on to Exhibit -- before we move
10 on, speaking of payments, can you tell us whether you
11 are being paid by anyone to appear here today for this
12 deposition?

13 A Yes.

14 Q Who are you being paid by?

15 A No one. Your question was can I tell you?

16 Yes, I can tell you, and the answer is no one.

17 Q No one is compensating you?

18 A No, I guess my law firm is. I mean I'm on
19 salary.

20 Q Is your law firm being paid by anyone for you
21 to appear for this deposition?

22 A No.

23 Q Let me give you what is Exhibit CX249. Do you
24 recognize this document?

25 A Yeah, ER 1.6 prohibits me from responding to

1 this question.

2 Q Have you ever seen this document before?

3 A ER 1.6 prevents me from answering the
4 question.

5 Q Do you know if you ever had an attorney-client
6 relationship that would extend to Mr. Yosi Amram?

7 A I have not.

8 Q Do you know if you've ever had an
9 attorney-client relationship that would extend to John
10 Fanning?

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

13 Q Did Mr. Fanning ever consult with you about
14 speaking with Mr. Amram?

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

17 Q Did you ever have any discussions with
18 Mr. Amram about this matter?

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

21 Q Have you ever had any conversations with
22 Mr. Amram about Jerk, LLC?

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

25 Q Have you ever had any conversations with

1 Mr. Amram about Mr. Fanning?

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

4 Q Do you see at the top it appears to be an
5 e-mail from Yosi Amram to you with your e-mail account
6 copying John Fanning at john@netcapital.com?

7 A I see that.

8 Q And Mr. Amram appears to write, "Also, thanks
9 for taking the time to speak to me a week or two ago.
10 Unfortunately, based on your input and my independent
11 own research, I am not able claim privilege on the
12 e-mails and information exchanged between John and I
13 for the coaching and investment relationship I had with
14 John in connection with the venture/site in question."
15 Do you see that?

16 A I do.

17 Q Can you tell us or can you confirm whether you
18 did in fact speak with Mr. Amram as he references in
19 this e-mail?

20 A No.

21 Q Why not?

22 A Because ER 1.6 prohibits me from doing so.

23 Q Any other reason?

24 A No.

25 Q Have you had any conversation with anyone

1 about the subject matter in this e-mail?

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

4 Q We're moving on to Exhibit CX0072. Are you
5 familiar -- rather, do you recognize this document?

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

8 Q Have you ever seen this document before?

9 A ER 1.6 prevents me from answering this
10 question.

11 Q So at the top this appears to be an e-mail on
12 May 30, 2014, from John Fanning at john@netcapital.com
13 to you at your work e-mail address, and Peter Schmidt
14 at a gmail address; is that correct?

15 A Is Peter Schmidt an attorney?

16 Q That was my very next question to you.

17 A I would say if Peter Schmidt is an attorney, I
18 believe that my ethical rules require me to give it
19 back and not read it. It appears to be confidential
20 information that we shouldn't even be looking at from
21 what I can tell.

22 Q Well, you were -- I mean this is your e-mail
23 address at the top, right?

24 A Oh, that's true. I guess if I was a party to
25 it.

1 Q Yeah, I'm pretty sure I'm not showing you
2 anything that you haven't seen before.

3 A I think you're not supposed to be looking at
4 it, but again, that's just my opinion.

5 Q One question for you is whether Peter Schmidt
6 is an attorney, and if you know that information?

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

9 Q Do you have any idea why Peter Schmidt is on
10 this e-mail?

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

13 Q Do you recall discussing --

14 A But I can tell you that if you know Peter
15 Schmidt to be an attorney, I believe you have an
16 ethical obligation to not be using this e-mail.

17 Q Sure, and I represent to you on the record
18 that I do not have a good faith belief that Peter
19 Schmidt is an attorney.

20 A Okay.

21 Q Quite the contrary, I have a good faith belief
22 Peter Schmidt is not an attorney.

23 A Okay.

24 Q Have you had any conversations or
25 communications with John Fanning about the topic of

1 this e-mail?

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

4 Q Have you ever had any communications with
5 Peter Schmidt about the topic of this e-mail?

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

8 Q Have you ever had any communications with
9 Peter Schmidt at all?

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

12 Q Do you know if Peter Schmidt has any
13 connection to any current or former client of yours?

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

16 Q And do you know if John Fanning has any
17 connection to any current or former client of yours?

18 A I think you've asked me that question three
19 times today, but I'll answer it again. ER 1.6
20 prohibits me from answering that question.

21 Q And I think you said earlier that at some
22 point in time before today you stopped representing
23 Jerk, LLC as counsel, right?

24 A I do not currently represent Jerk, LLC, that's
25 correct.

1 Q But have you in the past?

2 A Correct.

3 Q Okay. And you, I believe you said that, you
4 telling us today when exactly you stopped that
5 representation would be a violation of Rule 1.6 and
6 therefore you can't tell us?

7 A It seems to me to be information relating to
8 the representation of the client, so yes, I believe it
9 falls within 1.6.

10 Q At the point in time whenever it was when you
11 stopped your representation of Jerk, LLC, as a
12 withdrawing attorney, have you advised Jerk, LLC and
13 its new counsel to the extent there is any pending
14 court dates, the status of the case, and anything else
15 necessary and appropriate for the smooth transfer of
16 the representation as is required by opinion 0902 of
17 the Arizona State Bar?

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

20 Q Do you feel like you, you have complied in
21 your representation, including the withdrawal of your
22 representation, with Arizona Ethics Rules as well as
23 opinions of the Arizona State Bar?

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

1 Q Okay. Let me take a very brief recess for 30
2 seconds, and then we can conclude.

3 (Discussion off the record.)

4 MR. YANKILOVICH: We're back on the
5 record.

6 BY MR. YANKILOVICH:

7 Q On a great number of my questions today, you
8 had refused to answer on the basis of Rule 1.6 of the
9 Arizona Rules of Professional Conduct, correct?

10 A Correct.

11 Q And has your refusal been in the good faith
12 belief that both Rule 1.6 applies and that none of the
13 exceptions to Rule 1.6 as stated or articulated by the
14 courts would apply to the question and thereby not
15 provide a basis to shield the answer?

16 A I want to restate your question, because I'm
17 not sure that I followed it. It is my understanding
18 that 1.6 applies and that none of the exceptions apply.

19 Q To all of the questions that you refused to
20 answer based on where you have invoked that rule?

21 A Yes.

22 Q Okay. I have no further questions.

23 (Discussion off the record.)

24 MR. YANKILOVICH: Let's go back on the
25 record. One final question after my last question is,

1 Ms. Speth, do you agree to waive signature of this
2 transcript?

3 THE WITNESS: Yes, I will waive my
4 signature of this transcript.

5 MR. YANKILOVICH: Do you still want to
6 receive a copy of the transcript?

7 THE WITNESS: I do not need a copy.

8 MR. YANKILOVICH: Okay, thank you. No
9 more questions.

10 (The deposition concluded at 2:43 p.m.)

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1 STATE OF ARIZONA.)

2 COUNTY OF MARICOPA)

3

4 I, Gary W. Hill, a Certified Reporter,
5 Certificate No. 50812 in the State of Arizona, do
6 hereby certify that the foregoing witness was duly
7 sworn to tell the whole truth; that the foregoing pages
8 constitute a full, true, and accurate transcript of all
9 proceedings had in the foregoing matter, all done to
10 the best of my skill and ability. Deposition review
11 and signature was waived.

12

13 I FURTHER CERTIFY that I am not related
14 to nor employed by any of the parties hereto, and have
15 no interest in the outcome.

16

17 WITNESS my hand this 8th day of October,
18 2014.

19

20

Gary W. Hill, RMR, CRR
Arizona Certified
Reporter No. 50812

21

22

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24

25

Exhibit P

Civil Court Case Information - Case History

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The Judicial Branch of Arizona, Maricopa County

Search

Civil Court Case Information - Case History

Case Information
 Case Number: CV2013-011439 Judge: Rea, John
 File Date: 8/14/2013 Location: Downtown
 Case Type: Civil

Party Information

Party Name	Relationship	Sex	Attorney
Jerk L L C	Plaintiff		Maria Speth
Louie Lardas	Defendant	Male	Pro Per

Case Documents

Filing Date	Description	Docket Date	Filing Party
7/21/2014	049 - ME: Judgment Signed	7/21/2014	
7/18/2014	DFJ - Default Judgment	7/31/2014	
NOTE: Copy mailed/provided to non-def. parties on date of filing			
7/7/2014	376 - Case Continued on Dismissal Calendar	7/7/2014	
7/2/2014	MAJ - Mot/Aff Entry Def Jud W/O Hear	7/2/2014	
NOTE: PLAINTIFF'S RULE 55(B)(1) MOTION FOR ENTRY OF DEFAULT JUDGMENT			
7/2/2014	AFP - Affidavit	7/3/2014	
NOTE: Sum Certain Affidavit			
7/2/2014	SOC - Statement Of Costs	7/3/2014	
NOTE: Statement of Costs			
6/23/2014	MOT - Motion	6/24/2014	
NOTE: Motion to Extend Date of Automatic Dismissal			
6/23/2014	AFP - Affidavit	6/24/2014	
NOTE: Sum Certain Affidavit			
6/23/2014	ASR - Affidavit in Support of Attorney Fees	6/24/2014	
NOTE: Affidavit of Attorney Aaron K. Haar in Support of Claim for Attorneys' Fees			
6/23/2014	SOC - Statement Of Costs	6/24/2014	
NOTE: Plaintiff's Statement of Costs			
6/23/2014	MAJ - Mot/Aff Entry Def Jud W/O Hear	6/24/2014	
NOTE: Plaintiff's Rule 55(B)(1) Motion for Entry of Default Judgment			
5/12/2014	375 - Case on Dismissal Calendar	5/12/2014	
5/12/2014	023 - ME: Order Entered By Court	5/12/2014	
5/7/2014	AAE - Application/Affidavit And Entry Of Default	5/7/2014	
NOTE: Application for Entry of Default			
5/7/2014	AAE - Application/Affidavit And Entry Of Default	5/7/2014	
NOTE: AFFIDAVIT OF DEFAULT			
5/6/2014	OVI - Order Vacating Judgment	5/6/2014	
NOTE: ORDER RE: MOTION TO SET ASIDE JUDGMENT OF DISMISSAL FOR LACK OF SERVICE			
5/1/2014	MOT - Motion	5/1/2014	
NOTE: Motion to Set Aside Judgment of Dismissal for Lack of Service			
5/1/2014	AFS - Affidavit Of Service	5/1/2014	
NOTE: Rule 4.1(K) ARIZ. CIV.P., Affidavit of Service by Alternative Service as to Defendant			
4/17/2014	047 - ME: Judgment Of Dismissal	4/22/2014	
2/14/2014	OXS - Order To Extend Time For Service	2/14/2014	
NOTE: ORDER RE: SECOND MOTION TO EXTEND TIME TO SERVE COMPLAINT			
2/3/2014	MXS - Motion To Extend Time For Service	2/3/2014	
NOTE: Second Motion to Extend Time to Serve Complaint			
1/30/2014	OXS - Order To Extend Time For Service	1/30/2014	
NOTE: ORDER RE: MOTION TO EXTEND TIME TO SERVE COMPLAINT AND MOTION FOR ALTERNATIVE SERVICE ON DEFENDANT			
LOUIE LARDAS DBA INTERNET DOMAINS			
1/15/2014	311 - ME: 150 Day Minute Entry	1/15/2014	
12/12/2013	MXS - Motion To Extend Time For Service	12/12/2013	
NOTE: Motion to Extend Time to Serve Complaint and Motion for Alternative Service on Louie Lardas dba Internet Domains			
11/20/2013	322 - ME: Notice Of Intent To Dismiss	11/20/2013	
11/1/2013	AAS - Affidavit Of Attempted Service	11/8/2013	
10/1/2013	AAS - Affidavit Of Attempted Service	10/7/2013	
8/14/2013	COM - Complaint	8/16/2013	
8/14/2013	CSH - Coversheet	8/16/2013	
8/14/2013	CCN - Cert Arbitration - Not Subject	8/16/2013	

There are no calendar events on file

Case Calendar

Judgments

Date	(F)or / (A)gainst	Amount	Frequency	Type	Status
7/18/2014	F:Jerk L L C	\$712.50	One Time	Costs	
7/18/2014	A: Louie Lardas				
7/18/2014	F:Jerk L L C	\$84,629.22	One Time	Principal	
	A: Louie Lardas				