

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION



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

In the matter of }
 }
Jerk, LLC, a limited liability company, }
also d/b/a JERK.COM, and }
 }
John Fanning, individually and as a }
member of Jerk, LLC, }
 }
Respondents. }

Docket No. 9361

MOTION OF RESPONDENT JERK, LLC, TO EXTEND TIME
TO RESPOND TO MOTION FOR SUMMARY DECISION,
AND TO RESCHEDULE EVIDENTIARY HEARING

Respondent Jerk, LLC (hereinafter "Jerk") hereby moves, pursuant to 16 C.F.R. §§ 3.21(c)(1) and (2) and 16 C.F.R. § 3.22(a), that the Commission: ¹ (1) extend the time for Jerk to respond to Commission Counsel's Motion for Summary Decision to a date on or after January 26, 2015; (2) extend the deadline for a decision on said Motion accordingly; (3) reschedule the evidentiary hearing in this matter for a date on or after March 2, 2015; and (4) issue an appropriately revised scheduling order so that the matter may be resolved expeditiously after hearing.² As reasons therefor, Jerk relies upon the Declaration of David Duncan submitted herewith and states as follows.

¹ To the extent that any of the relief requested is exclusively within the authority of the Administrative Law Judge, Jerk requests that the Commission refer that portion of this Motion to the Administrative Law Judge.

² In the alternative, Jerk requests that the Commission grant Jerk no less than ten (10) days to submit a response on the merits to the Motion for Summary Decision without changing the date

Up until July, 2014, Jerk was represented by Attorney Maria Crimi Speth and fully participated in this matter. After Attorney Speth abruptly terminated her representation of Jerk, it had substantial difficulty finding an attorney to represent it. While Jerk was unrepresented in this matter, Complaint Counsel filed a Motion for Summary Decision, to which the time to respond has expired. However, on or about December 2, 2014, Jerk retained undersigned counsel to represent it in this matter. Until that date, there was no person authorized to represent Jerk in this proceeding. Jerk seeks the opportunity to attempt to vacate any findings or admissions entered against it by default, and to respond to the Motion for Summary Decision on the merits.

Jerk regrets any delays or inconvenience that its failures to respond may have occasioned. However, there is a strong preference for having disputes resolved on the merits rather than by default. See, e.g. *Coon v. Grenier*, 867 F.2d 73, 76 (1st Cir. 1989) (“actions should ordinarily be resolved on their merits”); *United States v. One Parcel of Real Property*, 763 F.2d 181, 183 (5th Cir. 1985) (noting that “modern federal practice favors trial on the merits” and ordering removal of default where failure to file timely oppositions was not willful and government was not prejudiced); *Feliciano v. Reliant Tool Co., Ltd.*, 691 F.2d 653, 656 (3d Cir. 1982) (“Any doubt should be resolved in favor of the petition to set aside the [default] judgment so that cases may be decided on their merits”). Jerk understands the Commission’s policy in favor of resolving administrative matters quickly. Undersigned counsel wishes, if given the chance, to bring this matter to a resolution as expeditiously as possible.

of the evidentiary hearing. Jerk is concerned that such a compressed schedule would not give undersigned counsel a sufficient opportunity to research and formulate Jerk’s positions and contentions, nor would it give the Commission adequate time to consider the Motion fully on the merits. However, if the Commission is not inclined to move the evidentiary hearing, Jerk requests, at a minimum, a renewed opportunity to be heard on the Motion for Summary Decision.

Undersigned counsel has just been retained, and will need some time to get up to speed on the voluminous documents filed in support of Complaint Counsel's Motion for Summary Decision and to formulate Jerk's legal positions. In order to allow Jerk a meaningful opportunity to respond and the Commission adequate time to consider the Motion for Summary Decision fully in advance of trial, Jerk requests that the evidentiary hearing be postponed by approximately one month. Jerk is not seeking a significant delay; instead, it wishes to ensure that those matters that should be appropriately settled by summary decision on the merits are resolved well in advance of the evidentiary hearing, to save the parties and the Commission the time and expense of unnecessary preparation. Jerk expects that no party would suffer undue prejudice from this changed schedule, and as Jerk no longer operates JERK.COM or any other website, there is no possibility of any detriment to consumers or the public.³

It is in the interests of justice for Jerk's legal and factual arguments to be fully heard on the merits. Therefore, Jerk respectfully requests that this Motion be allowed.

³ Of course, Jerk vigorously denies that any of its actions have been unlawful or have caused harm to consumers.

WHEREFORE, Jerk respectfully requests that this Honorable Commission (1) extend the time for Jerk to respond to Commission Counsel's Motion for Summary Decision to a date on or after January 26, 2015; (2) extend the deadline for a decision on said Motion accordingly; (3) reschedule the evidentiary hearing for a date on or after March 2, 2015; and (4) revise the scheduling order appropriately. In the alternative, Jerk respectfully requests that this Honorable Commission allow Jerk a period of no less than ten (10) days to respond on the merits to Complaint Counsel's Motion for Summary Decision.

Respectfully submitted,

JERK, LLC,
By its attorneys,

/s/David A. Russcol
David Duncan (Mass. BBO #546121)
David A. Russcol (Mass. BBO #670768)
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Dated: December 8, 2014

CERTIFICATE OF COMPLIANCE

In accordance with Additional Provision 4 of the Scheduling Order, I, David A. Russcol, hereby certify that, on December 8, 2014, at approximately 2:00 PM Eastern time, David Duncan and I conferred by telephone with Sarah Schroeder, Complaint Counsel, regarding the substance of this Motion in an effort in good faith to resolve the issues in dispute and were unsuccessful in doing so. Ms. Schroeder indicated that Complaint Counsel did not assent to the relief sought.

/s/David A. Russcol_____

David A. Russcol

CERTIFICATE OF SERVICE

I, David A. Russcol, hereby certify that I have, on December ___, 2014, caused a copy of the foregoing document, with supporting declaration and proposed order, to be served by email on Complaint Counsel and counsel for Respondent John Fanning, and that I have filed copies of thereof electronically with the Secretary of the Commission and the Office of the Chief Administrative Law Judge. In addition, I have this day caused an original and twelve copies to be delivered by Federal Express to Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, N.W., Room H-172, Washington, D.C., 20580.

/s/David A. Russcol_____

David A. Russcol

CERTIFICATE OF E-FILING

I, David A. Russcol, hereby certify that the foregoing document, and the supporting declaration and proposed order, are true and correct copies of the signed originals, which I have, on December 8, 2014, caused to be delivered to the Secretary of the Federal Trade Commission by Federal Express.

/s/David A. Russcol_____

David A. Russcol

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In the matter of	}	
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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,	}	
	}	
Respondents.	}	

DECLARATION OF DAVID DUNCAN IN SUPPORT OF MOTION OF
RESPONDENT JERK, LLC, TO EXTEND TIME TO RESPOND TO MOTION FOR
SUMMARY DECISION, AND TO RESCHEDULE EVIDENTIARY HEARING

I, David Duncan, hereby depose and state as follows:

1. I am an attorney licensed and authorized to practice law before the highest court of the Commonwealth of Massachusetts, among other courts.
2. On or about December 2, 2014, I and my firm were retained to represent Respondent Jerk, LLC, in the above-captioned matter.
3. Prior to the end of July, 2014, Jerk, LLC, was represented by Maria Crimi Speth, an attorney in Arizona.
4. Attorney Speth withdrew from her representation of Jerk, LLC on or about July 18, 2014.
5. On information and belief, Jerk, LLC was unsuccessful in finding replacement counsel until my firm agreed to represent it.

6. From Attorney Speth's withdrawal until we were retained, Jerk, LLC was unrepresented by counsel in the above-captioned matter.

7. Jerk, LLC has not responded to Complaint Counsel's Motion for Summary Decision, which was filed while Jerk, LLC was unrepresented.

8. If permitted to do so, my firm expects to devote all necessary attention to this matter to prepare and file a response to the Motion for Summary Decision as quickly as possible.

9. The evidentiary hearing in this matter is scheduled for January 27, 2015.

10. It would not be feasible at this juncture to respond to the Motion for Summary Decision far enough in advance of the currently-scheduled evidentiary hearing to avoid preparations and expenses by all parties on issues that may become moot after the Commission's ruling on the Motion for Summary Decision.

11. It would be in the interests of justice and administrative economy to allow the Motion of Jerk, LLC, to grant it a reasonable and limited amount of time to respond, and to reschedule the evidentiary hearing so that all parties may be fully and fairly heard on the merits in the first instance.

Signed under the pains and penalties of perjury this 8th day of December, 2014.

/s/David Duncan _____
David Duncan

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[PROPOSED] ORDER ON MOTION OF RESPONDENT JERK, LLC,
TO EXTEND TIME TO RESPOND TO MOTION FOR SUMMARY DECISION,
AND TO RESCHEDULE EVIDENTIARY HEARING

This matter having come before the Federal Trade Commission on Respondent Jerk, LLC’s Motion to Extend Time to Respond to Motion for Summary Decision, and to Reschedule Evidentiary Hearing (the “Motion”);

Having considered the Motion, the Declaration in Support of the Motion, and all supporting and opposing submissions, and for good cause appearing, the Commission hereby GRANTS the Motion, and the Commission ORDERS:

1. The evidentiary hearing in this matter is rescheduled, and shall be held on _____, 2015, at _____ in FTC Courtroom, Room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

2. Respondent Jerk, LLC shall, no later than _____, 2015, file a response to Complaint Counsel's Motion for Summary Decision complying with all applicable Rules of the Commission.
3. Any reply to Respondent Jerk, LLC's response shall be filed in accordance with 16 C.F.R. § 3.23(d), unless an extension of time is granted by the Administrative Law Judge.
4. The deadline for the Commission to rule upon Complaint Counsel's Motion for Summary Decision as to both Respondents is extended to 45 days from the last answer or reply filed as provided above.
5. The Administrative Law Judge shall issue a revised scheduling order consistent with the new date for the evidentiary hearing.

SO ORDERED:

Federal Trade Commission

By:

Date: