

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

COMMISSIONERS: **Edith Ramirez, Chairwoman
Maureen K. Ohlhausen
Terrell McSweeney**

_____)	
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.)	
)	
)	
_____)	

ORDER MODIFYING AUGUST 23, 2016 ORDER

On May 9, 2016, the United States Court of Appeals for the First Circuit issued an opinion affirming “the Commission’s entry of summary decision as to liability [in this proceeding] and all provisions of its remedial order except for compliance monitoring as to [Respondent John] Fanning.” *Fanning v. Federal Trade Commission*, 821 F.3d 164, 177-78 (1st Cir. 2016). The court vacated and remanded that portion of the Commission’s Final Order for further proceedings consistent with the court’s opinion. *Id.* at 178. The court entered its judgment on May 9, 2016; no petition for rehearing or rehearing *en banc* was filed; and no petition for writ of *certiorari* was filed within the ninety days prescribed by the Rules of the United States Supreme Court. Therefore, on August 23, the Commission issued an Order Scheduling Briefing On Remand requesting briefing on how to address the Court of Appeals’ ruling.

On September 6, Mr. Fanning filed a Response and Opposition to our Order informing us that he had in fact attempted to file a petition for writ of *certiorari* with the Supreme Court, but that it had been returned to him for failure to comply with the Rules of the Supreme Court. Mr. Fanning submitted a copy of a letter dated August 15, 2016 from the Clerk of Court confirming what had happened and stating that Mr. Fanning has 60 days from the date of the letter to file a corrected petition.

In light of the additional time that has been given to Mr. Fanning to file a corrected petition for writ of *certiorari*, the judgment of the Court of Appeals is not yet final. We have therefore determined to vacate the briefing schedule set forth in our August 23 Order until all appellate judicial proceedings in this case have been completed. At that point, the Commission will issue an order resuming proceedings as appropriate.

Accordingly,

IT IS ORDERED THAT the August 23, 2016 Order is hereby modified by vacating the briefing schedule set forth in the ordering paragraph.

By the Commission.

Donald S. Clark
Secretary

SEAL:
ISSUED: September 14, 2016