

CX0278

Innovative
Software
Solutions
for
your
Business



Support

Quality

Security

Innovation

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Testimonials

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Blog

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Latest projects

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- NetCapital.com
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Our vision

We seek to be the most admired company by our clients from all over the world in the position of a leader IT company in the NE part of Romania.

Our mision

We grow to provide people access to the best IT&C solutions, to support them to communicate and improve the quality of life.

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CX0278-002

What level of education do your software developers usually have?

All our software developers are graduates from or students in computer science and systems engineering departments of Romanian universities/colleges. All of them are well educated, creative, and goal driven specialists.

How would you describe your staff's fluency in English?

To be offered a software development position in the company, a candidate must meet our standards of English proficiency. The job interview includes an oral interview held in English and it is conducted by specialists with an excellent track record. Our staff has high standards of English proficiency, with very few exceptions. Employees with acceptable English skills will receive help from other staff members , until they reach the desired level.

How do you group your personnel according to their experience?

Based on experience and efficiency, we have split our personnel into the following main categories:

- Experienced juniors: employees who have completed the ASSIST probation test and are ready to do programming tasks for real-life projects;
- Developers: specialists with comprehensive work experience and skills. We do not regard the number of years as the key factor in promoting a developer from junior to developer, but rather the depth of expertise, the results achieved and the professionalism shown while working on ASSIST projects;
- Senior developers: specialists that have both a broad expertise and leadership skills. It is from this group that we select team leaders, project managers and architects. There is no limit as to the minimum number of years a developer has to spend at the mid level before becoming a senior. A star developer can reach this status in 2 years, while the average one might need 7 years.

Partnerships & Awards

Romania and Assist Software Sign Partnership Agreement, to strenghten the successfull sales

ABOUT OUR TEAM

Level of Education

Staff's Fluency in English

Experience

Partnerships&Awards

Retention Initiatives

RELATED LINKS

About Us

Latest Projects

Our Products

Blog

results of Assist's Technical Solutions Services.
Assist Software is awarded "Best Regional Reseller" for Small&Medium Market Software Solutions by [redacted] Romania.
We just launched the new Shimmer Research website for our client. You can read their testimonial on the Testimonials Page.

What retention initiatives have you implemented at ASSIST?

The retention initiatives in place at ASSIST include:

- objective based management of individual performance;
 - a flexible schedule;
 - opportunities for people to share their knowledge via training sessions, presentations, and the mentoring program;
 - performance feedback, employee recognition;
 - traditional company events;
 - open and clear communication of goals, roles and responsibilities (induction plan);
 - periodic training programs with senior experts.
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Blog

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Latest projects

- Zelgor iPhone Game
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About Us

Founded in 1992, Assist Software is present on the international market as a supplier of innovative solutions adding business value through technology implementation at a professional level. Focusing its activities toward developing complex software products, Assist Software provides consistent results in emerging fields such as web-based custom business applications, e-commerce, e-payment, e-security, e-health or enterprise & resource planning.

Focused on developing powerful and cutting edge applications, we offer solutions which provide real business benefits. We deliver products and services with quantifiable ROI and we support your strategic developing directions as well.

Our team continuously fulfills our partners' demands by constantly updating our knowledge, conquering new areas of expertise, increasing the quality of our consultancy and support services.

We build long lasting relationships with our business partners, easily adapting to each one of their requirements. Our Microsoft Certified Partner status is a recognition for our performances. These competences are greatly supported by the software developers team.

Advantages to our partners:

- Software solutions developed to effectively meet the clients' needs, also adapting to the organizational structure of their business.
- Software design process compliant with the ISO 9001 Quality Management System, OMCAS system and MI CCAS
- Project management assistance to our business partners, in high complexity offers for national and international projects.
- Client support in using our applications, through collaborating with Assist Education and Testing Centre.
- Long term experience in assistance, maintenance and service with specialized staff for software and hardware products and services.

Outsourcing services

Analyzing, designing, planning and developing of software solutions based on the most advanced software technology.

Extended range of services: programs, media design, marketing, assistance and education, re-design of applications, upgrade from older platforms to new ones.

RELATED LINKS

[Our Team](#)

[Latest Projects](#)

[Our Products](#)

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Blog

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Our mission

We grow to provide people access to the best IT&C solutions, to support them to communicate and improve the quality of life.

Programming

- Java (SE+EE): RMI, JDBC, JNI, JMX, JDO, JNDI, Servlet, JSP, JSF, EJB, WebServices (JAX-WS, JAX-RPC)
- Microsoft (C++, C#, ASP.NET, VB, Silverlight)
- C, C++
- Web (HTML, XHTML, XSLT)
- PHP

Desktop, Servers Platforms

- Microsoft Windows
- Linux (Red Hat, Suse)
- Mac OS X

Mobile Platforms

- iOS
- Android
- Symbian
- Windows mobile

Database management systems

- Microsoft SQL Server 2005, 2008
- MySQL , PostgreSQL
- HBase

Web technologies

- Javascript: jQuery, Ajax, JSON
- CSS, CSS 3
- HTML5
- Flash, Flex, ActionScript
- Google App Engine

EXPERTISES

Programming

Desktop, Servers Platforms

Mobile platforms

Database management systems

Web technologies

Development tools and environments

Development tools and environments

- Java Frameworks and tools: Maven, Hudson, GWT, Struts, Struts2, JFreeChart, JasperReports, Spring, Hibernate
- UML and Design tools: Rational Rose, Visio
- Planning tool: Microsoft Project, Redmine
- Issue Tracker: Jira, Bugzilla, Redmine
- Application Servers: IBM WebSphere, Tomcat, Bea Weblogic
- PHP Frameworks/CMS: Wordpress, Typo3, Code Igniter, Joomla, Drupal, Drupal 7, Magento
- Version control: CVS , Sourcesafe, Subversion, git
- Build: Ant, Maven
- Testing: Automated testing tools, unit, load testing tools
- API's : Facebook API, Twitter API, MySpace API, Google API
- Payments processors: Paypal, Linkpoint

Blog

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Contact us

contact-us@assist.ro contact-us@assist.ro

You can contact us by phone using our main line: (0040) 230-521100 .

Our address is:

Assist Software

[Redacted address information]

If you need more information about our products, services or solutions, please fill in the following form. It will be a pleasure to contact you soon.

Enter your Name:

E-mail address:

Message Subject:

Enter your Message:

E-mail a copy of this message to your own address.

Input error: Invalid referer Input error: Invalid referer

Send

Blog

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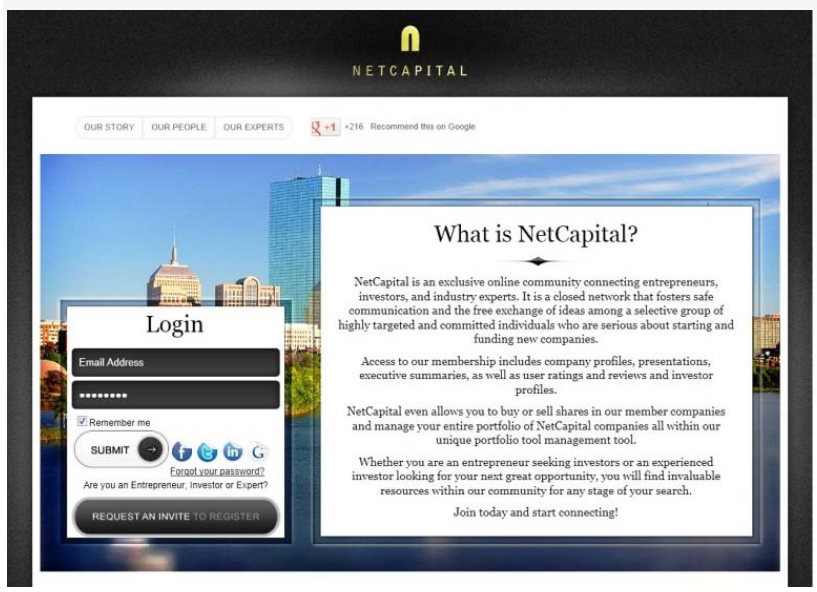
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NetCapital.com



NetCapital.com

Year: 2012

Project description:

NetCapital.com is a business/entrepreneurial social network, which connects entrepreneurs, investors and experts; is the place where entrepreneurs can look for help and start growing their business. The platform has two major sections dedicated to Companies and People offering the following features:

- Library - users share all kind of useful stuff, and comment it, news, latest articles on the Dashboard
- Featured companies/people - Premium users displayed on the featured page; promote companies as featured. Service under a subscription
- Build network - build networks (collect friends/contacts from social media)
- Invitations - send invitations to friends, and ask them to join PLATFORM
- Ratings - rate people/companies, based on some categories; view who rated what
- Updates - post updates, on user profile, or on user companies' wall
- Track - track companies/people; the updates are displayed chronologically on user Dashboard
- Add connection - send connection requests to users for posting messages on other user profile walls
- Messages - message system, send internal messages to users (multiple recipients allowed)

Technologies & Skills:

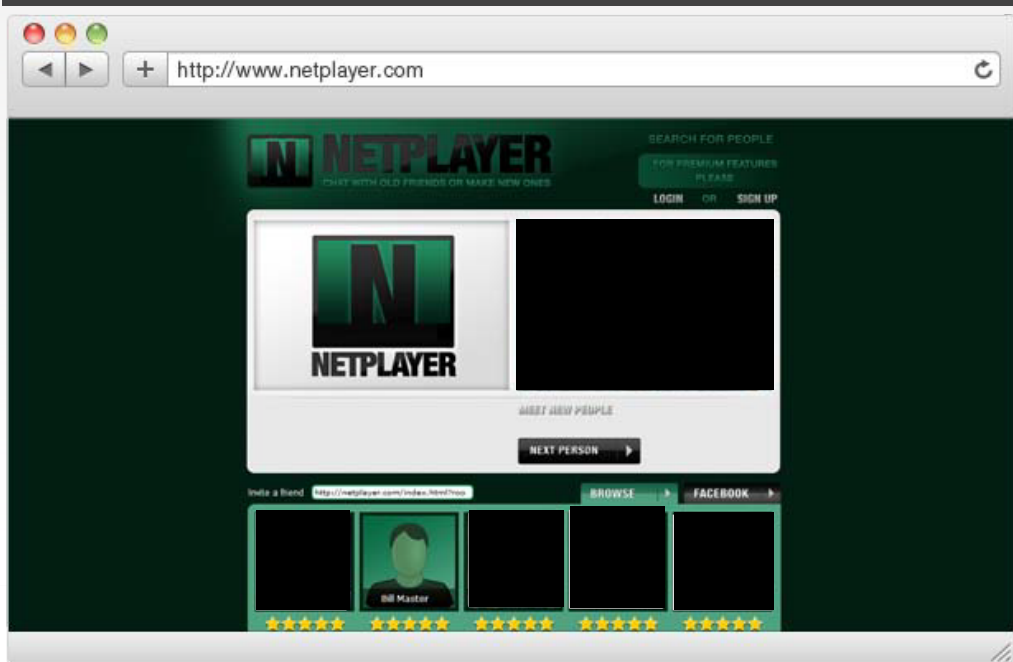
CakePHP, MySQL, Facebook, Twitter, Stripe, Paypal

See more

netcapital.com

OUR NEW SUCCESSFUL PROJECTS

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- tiptd.com
- Netcapital Network
- iPhone app
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netplayer.com

Year: 2011

Project description:

A platform that enables video/audio chat between random people from Internet on Flash platform. Also, are available premium features like tips that are integrated with www.netwire.com payment system. The tight integration was possible by combining the netwire API with latest technologies like OAuth for authentication. Also was developed a Facebook application that integrates the platform with Facebook. This will enable to video chat with your friends from Facebook.

Technologies & Skills:

Flex, Flash, Cirrus, PHP, MySQL, Facebook

See more

netplayer.com

OUR NEW SUCCESSFUL PROJECTS

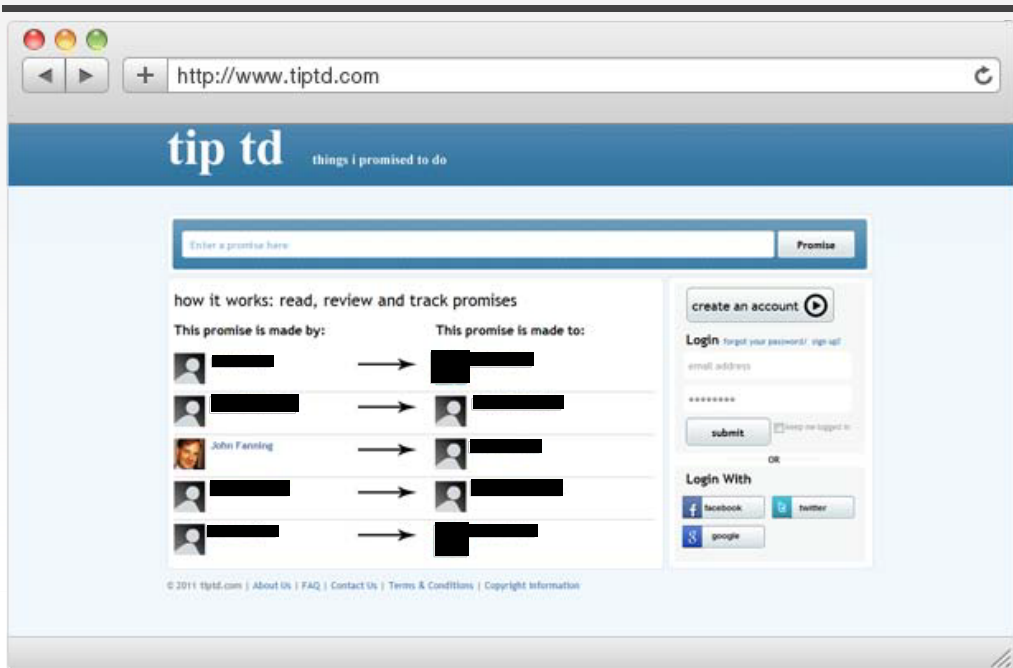
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Latest projects

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tiptd.com

Year: 2011

Project description:

A website for tracking things(promises) that people promise to do to other people. We developed the underlying platform and frontend website. The accounts are integrated with Facebook and Twitter.

Technologies & Skills:

PHP, jQuery, MySQL, social media integration

See more

tiptd.com

OUR NEW SUCCESSFUL PROJECTS

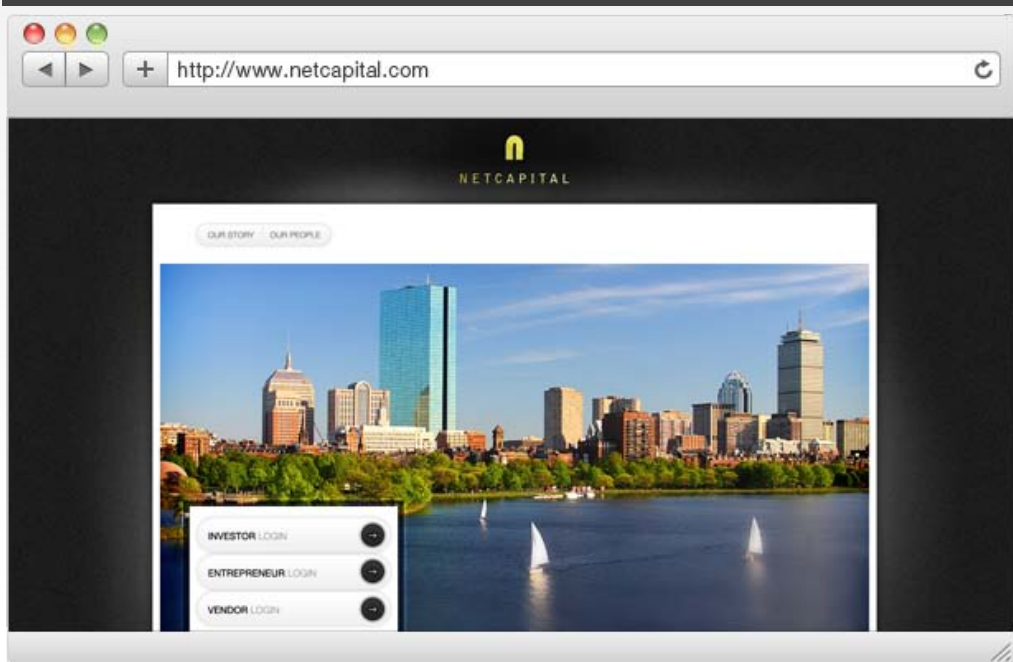
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Latest projects

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Netcapital Network

Year: 2011

Project description:

Netcapital Network is a powerful business tool developed both as desktop and web application to manage business contacts of a company.

Desktop application it's an agent that will collect contacts from Outlook and add them to a central database.

Web application allows to manage the business contacts and relations between them and users.

The users of the manager will interact with that contact or add new information and/or will assign tasks for other user to continue the communication.

Technologies & Skills:

ASP.net, SQL Server, Outlook plugin

See more

www.netcapital.com

OUR NEW SUCCESSFUL PROJECTS

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iPhone App



Year: 2011

Project description:

We developed an iPhone version of a popular website with interesting features like face recognition, location based data. The application it's integrated with APIs of the website, Facebook, and LinkedIn.

For iPhone application we developed a REST API, so the application communicates with backend services. Common API calls are sending a photo from iPhone to the web services which processes the photo and returns the results.

Technologies & Skills:

JSON, iOS, Face recognition, Location aware

See more

[John Fanning's testimonial](#)

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Blog

Latest projects

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CX0279

CX0280

Partners

PARTNERS

[Redacted]

John W. Fanning

[Redacted]

[Redacted]

[Redacted]

[Redacted]

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[Redacted]

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X John Fanning

John W. Fanning, Founding Chairman and CEO, Napster, CTO, Netcapital

"We started working with Assist Software Ltd. two years ago, and since then we have always been impressed with your speed of implementation, the timely recommendation for improvements, the adaptability to change and the willingness to do whatever it takes to ensure a successful project. Assist Software really won us over by performing other than just as a vendor, but as a partner fighting with us for our mutual success; this was proven time-after-time on many diverse projects. Assist has the ability and skills to work as an offshore contractor, as distance or language is often a factor with other offshore vendors, Assist has really mastered the process needed to communicate and deliver effectively.

It is hard finding a company that has the knowledge and customer service skills to meet the needs of a sophisticated project, but Assist Software has delivered the results and amiability we were looking for every time, on time. I highly recommend doing business with Assist Software, as we are very happy with the results that you produce. Assist Software not only provides excellent service, but you can independently arrive at unique and creative solutions to very difficult problems, which is a great characteristic in any company".



About Us

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RELATED LINKS

[Our Team](#)

[Latest Projects](#)

[Our Products](#)

[Blog](#)

Blog

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Latest projects

- [Redacted]
- Jerk
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Jerk

Year: 2011

Project description:

Jerk is a social network that provides online consumer reputation management. Jerk offers a framework for posting praise and disputes, computing ratings, and gathering feedback and comments. The system allows to Jerk users to create profiles including photos, movies and personal information. Jerk ratings are the ubiquitous reputation service across the internet.

The platform was developed using a wide range of programming techniques in order to meet very specific features from SOW. The application has a very powerful and dynamic engine, that allows it to grow by itself. It also has a strong controlling tool for back-end users where they can watch website evolution and update its content.

Technologies & Skills:

PHP, Ajax, jQuery, HTML, JavaScript, CSS, MySQL, MS SQL Server

API Integration:

Facebook API, Twitter API, MySpace API, Mobile Version, C++

See more

[John Fanning's testimonial](#)

OUR NEW SUCCESSFUL PROJECTS

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Jerk iPhone App



Year: 2011

Project description:

We developed an iPhone version of the jerk.com website with interesting features like face recognition, location based data. The application it's integrated with APIs of Jerk.com, Facebook, and LinkedIn. For jerk.com iPhone application we developed a REST API, so the application communicates with backend services. Common API calls are sending a photo from iPhone to the web services which processes the photo and returns the results.

Technologies & Skills:

JSON, iOS, Face recognition, Location aware

See more

[John Fanning's testimonial](#)
[Jerk](#)

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ASSIST



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Year: 2011

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CX0281



[track this profile](#)

John Fanning

83%
(11 reviews)

Info: [edit history](#)

gender: male

location: [REDACTED]

age: [REDACTED]

university: Hard Knox

high School: Musical High

occupation: entrepreneur

employer: self-employed

Promise Kept	0
Compromise	0
Promise Broken	0
Stalled	0
In the works	0
Ignored by others	3
Ignored by this user	1

promises made

promises recieved

photos

current status



Post a Promise

You need to [sign in](#), or [create an account](#) to post a promise

recent tracking activity

[Sign In](#) to track reviews and comments
 Don't have an account yet?
[create an account](#)

recent promises made to you

[Sign In](#) to track promises made to you
 Don't have an account yet?
[create an account](#)

recent promises made by you

[Sign In](#) to track promises made by you
 Don't have an account yet?
[create an account](#)

how it works: read, review and track promises

This promise is made by:

This promise is made to:



Login [forgot your password/](#) [sign up?](#)

 keep me logged in

OR

Login With



1. Create an Account

2. Track Friends

3. Invite Friends

4. Confirm Activation

Create an Account

First Name

Last Name

Email

used for logging in

Password

Confirm Password

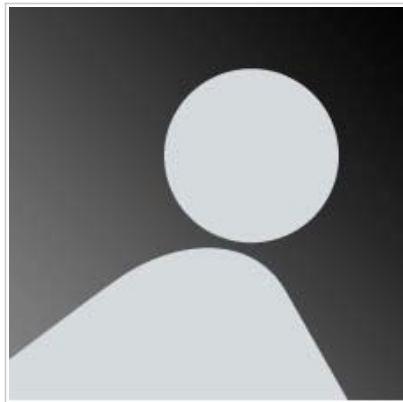
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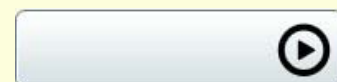
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Photo



by clicking on "create account" you confirm that you accept our [term of services](#)



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By posting information on tiptd.com, you understand and agree that the material will not be removed even at your request. You shall remain solely responsible for the content of your postings on tiptd.com. While we do not and cannot review every message posted by users of the Service, and are not responsible for any content of these messages, we reserve the right, but are not obligated, to delete or remove profanity, obscenities, threats of physical violence or damage to property, and private financial information such as social security numbers and credit card information.

6. Proprietary Rights/Grant of Exclusive Rights

By posting information or content to any public area of tiptd LLC, you automatically grant, and you represent and warrant that you have the right to grant, to tiptd LLC an irrevocable, perpetual, fully-paid, worldwide exclusive license to use, copy, perform, display and distribute such information and content and to prepare derivative works of, or incorporate into other works, such information and content, and to grant and authorize sublicenses of the foregoing.

7. Information Supplied by You

Except as provided otherwise in its privacy policy, tiptd LLC will not keep confidential information supplied by you to tiptd LLC, and shall use or disclose such information for the purposes for which such information was collected, or as required by law. Whereas you are legally entitled to publish your comments anonymously, at the discretion of tiptd LLC, the personally identifying information of any user who is found to have posted numerous complaints about the same company and/or individual using different pseudonyms may lose any confidential protections.

CX0281-004

8. Disclaimer of Warranty

tiptd LLC provides tiptd.com on an "as is" basis and grants no warranties of any kind, express, implied, statutory, in connection with tiptd.com or in connection with any communication with tiptd LLC or its representatives, or otherwise with respect to tiptd.com. tiptd LLC specifically disclaims any implied warranties of merchantability, fitness for a particular purpose, or non-infringement. tiptd LLC does not warrant that tiptd.com's connection to the internet will be secure, uninterrupted, always available, or error-free, or will meet your requirements, or that any defects in tiptd.com will be corrected.

9. Limitation of Liability

In no event will tiptd LLC be liable: (i) to you for any incidental, consequential, or indirect damages arising out of the use of or inability to use tiptd.com, even if tiptd LLC or its agents or representatives know or have been advised of the possibility of such damages or: (ii) to any person other than you. In addition, tiptd LLC disclaims all liability, regardless of the form of action, for the acts or omissions of other members or users (including, but not limited to, unauthorized users, or "hackers") of tiptd.com.

10. State by State Variations

Certain jurisdictions limit the applicability of warranty disclaimers and limitations of liability so the above disclaimers of warranty and limitations of liability may not apply to you.

11. General Provisions

You agree that Arizona law (regardless of conflicts of law principles) shall govern this Agreement, that any dispute arising out of or relating to this Agreement shall be subject to the exclusive venue of the federal and state courts in the State of Arizona, and that you submit to the exclusive jurisdiction of the federal and state courts in the State of Arizona in connection with tiptd.com or this Agreement. The failure of tiptd LLC to exercise or enforce any right or provision of the Terms of Service shall not constitute a waiver of such right or provision. The failure of tiptd LLC or You to exercise in any respect any right provided for herein shall not be deemed a waiver of any further rights hereunder. This Agreement, accepted upon registering for tiptd.com, contains the entire agreement between you and tiptd LLC regarding the use of tiptd.com. This Agreement may only be amended upon notice by tiptd LLC to you, or by a writing signed by you and an authorized official of tiptd LLC. Unless otherwise explicitly stated, the Terms will survive termination of your registration with tiptd.com. If any provision of this Agreement is held invalid, the remainder of this Agreement shall continue in full force and effect.

12. Copyright Policy/Termination of User Privileges for Infringement and Contact Information for Suspected Copyright Infringement/DMCA Notices

We will terminate the privileges of any user who uses tiptd.com to unlawfully transmit copyrighted material without a license, express consent, valid defense or fair use exemption to do so. In particular, users who submit user content to tiptd.com, whether articles, images, stories, software or other copyrightable material must ensure that the content they upload does not infringe the copyrights of third parties. If you believe that your copyright has been infringed through the use of tiptd.com, please contact our Customer Service.

Copyright Tips

What is copyright? Copyright is a form of protection provided for original works of authorship, including literary, dramatic, musical, graphic and audiovisual creations. "Copyright" literally means the right to copy, but has come to mean that body of exclusive rights granted by law to copyright owners for protection of their work.

What is copyright infringement? Copyright infringement occurs when a copyrighted work is reproduced, distributed, performed, publicly displayed, or made into a derivative work without the permission of the copyright owner.

Posting copyright-infringing content can lead to the termination of your account, and possibly monetary damages if a copyright owner decides to take legal action (this is serious—you can get sued!). Below are some guidelines to help you determine whether your photo text or video is eligible or whether it infringes someone else's copyright.

As a general matter, we at tiptd respect the rights of artists and creators, and hope you will work with us to keep our community a creative, legal and positive experience for everyone, including artists and creators.

Copyright Infringement Notification

To file a copyright infringement notification with us, you will need to send a written communication that includes substantially the following (please consult your legal counsel or see Section 512(c)(3) of the Digital Millennium Copyright Act to confirm these requirements):

- i. A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.
- ii. Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site.
- iii. Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the service provider to locate the material. Providing URLs in the body of an email is the best way to help us locate content quickly.
- iv. Information reasonably sufficient to permit the service provider to contact the complaining party, such as an address, telephone number, and, if available, an electronic mail address at which the complaining party may be contacted.
- v. A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law.
- vi. A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

To expedite our ability to process your request, such written notice should be sent to our designated agent via our online copyright complaint form below. You will need a tiptd account in order to utilize this tool.

[Copyright Complaint Webform](#) (coming soon)

Please note that under Section 512(f) any person who knowingly materially misrepresents that material or activity is infringing may be subject to liability for damages. Don't make false claims!

Please also note that the information provided in this legal notice may be forwarded to the person who provided the allegedly infringing content.

Claimant information will be published on the tiptd site in place of disabled content.

Counter-Notification

If you elect to send us a [counter notice](#) (coming soon), please go to our Counter Notice to access the instructions.

Please note that under Section 512(f) of the Copyright Act, any person who knowingly materially misrepresents that material or activity was removed or disabled by mistake or misidentification may be subject to liability. Please also be advised that we enforce a policy that provides for the termination in appropriate circumstances of subscribers who are repeat infringers.

CX0282



Jerk.com

@jerk_com

<http://www.jerk.com>

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0 FOLLOWING

10 FOLLOWERS

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Email

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Tweets



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3 Mar 10

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24 Feb 10

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24 Feb 10

JERK.COM - Where the truth comes out!

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CX0283

1 William W. Bunting III (#141981)
Douglas P. Drayton (#142043)
2 BUNTING, DRAYTON & ALWARD LLP
582 Market Street, Suite 812
3 San Francisco, CA 94104
Telephone: (415) 617-0244
4 Facsimile: (415) 617-0248
e-mail:BuntingDrayton@pacbell.net

5 Attorneys for Defendants

6
7
8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

10 Results ByIQ, LLC

11 Plaintiffs,

12 vs.

13 JOHN FANNING, [REDACTED]
14 NETCAPITAL.COM LLC, NETWIRE
INC., NETMOVIES INC; DOES 1-20,
15 INCLUSIVE,

16 Defendants.

) **CASE No. CV11 0550JCS**

) **DECLARATION OF JOHN FANNING**
) **IN SUPPORT OF MOTION TO QUASH**
) **SERVICE OF SUMMONS, AND TO**
) **DISMISS COMPLAINT**

) Complaint Filed: February 7, 2011

) Mag. Judge: Hon.: Joseph C. Spero

) Hearing Date: August 12, 2011

) Time: 9:30 a.m.

) Courtroom: G, 15th Floor

17
18
19
20 I, John Fanning, declare:

21 1. I am a Founder of defendants: NetCapital.com, Netwire, Inc., and Netmovies, Inc. (the
22 "Defendants") and have held that title since March, 2000. As a manager and officer of the Defendants,
23 I am readily familiar with their business practices. If called as a witness, I could and would testify to
24 the truth of the following facts:

25 2. All of the Defendants were formed in Delaware. Netcapital.com is a Delaware limited
26 liability company, and Netwire, Inc. and Netmovies, Inc. are Delaware corporations. None of the
27 Defendants are registered as foreign corporations to do business in Massachusetts. Netmovies, Inc. and
28 Netwire, Inc. allowed their authorizations to do business in Massachusetts expire in 2008.

1 3. The agent for service of process for the Defendants, registered with the Delaware
2 Secretary of State, is [REDACTED]

3 [REDACTED]

4 4. The principal place of the business of the Defendants (the nerve center for their day
5 to day operations) is [REDACTED]

6 5. I have seen the "CERTIFICATE OF SERVICE" filed in this lawsuit by the plaintiff
7 which indicates that the summons and complaint were left with the current occupant of 165 Nantaskat
8 Beach Avenue, in Hull, Massachusetts. The Defendants have not done any business at this location since
9 prior to January, 2008. [REDACTED] (the person identified in the "CERTIFICATE OF SERVICE")
10 is not an officer, director, manager or employee of any of the Defendants.

11 I declare under penalty of perjury, under the laws of the United States of America, that the
12 foregoing is true and correct.

13

14 Dated: July 1, 2011

/s/ John Fanning

15

John Fanning

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CX0285



CIVIL INVESTIGATIVE DEMAND

1. TO

Jerk LLC



This demand is issued pursuant to Section 20 of the Federal Trade Commission Act, 15 U.S.C. § 57b-1, in the course of an investigation to determine whether there is, has been, or may be a violation of any laws administered by the Federal Trade Commission by conduct, activities or proposed action as described in Item 3.

2. ACTION REQUIRED

You are required to appear and testify.

LOCATION OF HEARING

YOUR APPEARANCE WILL BE BEFORE

DATE AND TIME OF HEARING OR DEPOSITION

You are required to produce all documents described in the attached schedule that are in your possession, custody, or control, and to make them available at your address indicated above for inspection and copying or reproduction at the date and time specified below.

You are required to answer the interrogatories or provide the written report described on the attached schedule. Answer each interrogatory or report separately and fully in writing. Submit your answers or report to the Records Custodian named in Item 4 on or before the date specified below.

DATE AND TIME THE DOCUMENTS MUST BE AVAILABLE

AUG 28 2012

3. SUBJECT OF INVESTIGATION

See attached resolution.

4. RECORDS CUSTODIAN/DEPUTY RECORDS CUSTODIAN

Jeffrey Klurfeld/Kelly Ortiz
Federal Trade Commission
901 Market Street, Suite 570
San Francisco, CA 94103

5. COMMISSION COUNSEL

Sarah Schroeder, Federal Trade Commission
901 Market Street, Suite 570
San Francisco, CA 94103
(415) 848-5189

DATE ISSUED

7/27/12

COMMISSIONER'S SIGNATURE

INSTRUCTIONS AND NOTICES

The delivery of this demand to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply. The production of documents or the submission of answers and report in response to this demand must be made under a sworn certificate, in the form printed on the second page of this demand, by the person to whom this demand is directed or, if not a natural person, by a person or persons having knowledge of the facts and circumstances of such production or responsible for answering each interrogatory or report question. This demand does not require approval by OMB under the Paperwork Reduction Act of 1980.

PETITION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any petition to limit or quash this demand be filed within 20 days after service, or, if the return date is less than 20 days after service, prior to the return date. The original and twelve copies of the petition must be filed with the Secretary of the Federal Trade Commission, and one copy should be sent to the Commission Counsel named in Item 5.

YOUR RIGHTS TO REGULATORY ENFORCEMENT FAIRNESS

The FTC has a longstanding commitment to a fair regulatory enforcement environment. If you are a small business (under Small Business Administration standards), you have a right to contact the Small Business Administration's National Ombudsman at 1-888-REGFAIR (1-888-734-3247) or www.sba.gov/ombudsman regarding the fairness of the compliance and enforcement activities of the agency. You should understand, however, that the National Ombudsman cannot change, stop, or delay a federal agency enforcement action.

The FTC strictly forbids retaliatory acts by its employees, and you will not be penalized for expressing a concern about these activities.

TRAVEL EXPENSES

Use the enclosed travel voucher to claim compensation to which you are entitled as a witness for the Commission. The completed travel voucher and this demand should be presented to Commission Counsel for payment. If you are permanently or temporarily living somewhere other than the address on this demand and it would require excessive travel for you to appear, you must get prior approval from Commission Counsel.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

Form of Certificate of Compliance*

I/We do certify that all of the documents and information required by the attached Civil Investigative Demand which are in the possession, custody, control, or knowledge of the person to whom the demand is directed have been submitted to a custodian named herein.

If a document responsive to this Civil Investigative Demand has not been submitted, the objections to its submission and the reasons for the objection have been stated.

If an interrogatory or a portion of the request has not been fully answered or a portion of the report has not been completed, the objections to such interrogatory or uncompleted portion and the reasons for the objections have been stated.

Signature _____

Title _____

Sworn to before me this day

Notary Public

*In the event that more than one person is responsible for complying with this demand, the certificate shall identify the documents for which each certifying individual was responsible. In place of a sworn statement, the above certificate of compliance may be supported by an unsworn declaration as provided for by 28 U.S.C. § 1746.

CX0286

CX0287



CIVIL INVESTIGATIVE DEMAND
Oral Testimony

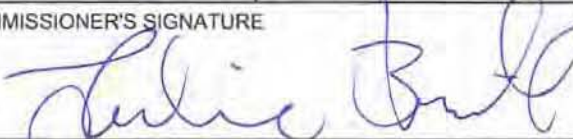
1. TO Jerk, LLC c/o National Registered Agents, Inc. 160 Greentree Dr., Suite 101 Dover, DE 19904	2. FROM UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION
---------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------

This demand is issued pursuant to Section 20 of the Federal Trade Commission Act, 15 U.S.C. § 57b-1, in the course of an investigation to determine whether there is, has been, or may be a violation of any laws administered by the Federal Trade Commission by conduct, activities or proposed action as described in Item 6.

3. LOCATION OF HEARING Federal Trade Commission 901 Market Street, Suite 570 San Francisco, CA 94103	4. YOUR APPEARANCE WILL BE BEFORE Sarah Schroeder or other designated person 5. DATE AND TIME OF HEARING April 3, 2013 at 9 a.m. (PST)
-------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------

6. SUBJECT OF INVESTIGATION See attached resolutions.

7. RECORDS CUSTODIAN/DEPUTY CUSTODIAN Jeffrey Klurfeld, Regional Director (Custodian) Kelly Ortiz, Paralegal (Deputy) Federal Trade Commission, Western Region 901 Market Street, Suite 570, San Francisco, CA 94103	8. COMMISSION COUNSEL Sarah Schroeder - (415) 848-5186 Federal Trade Commission, Western Region 901 Market Street, Suite 570, San Francisco, CA 94103
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------

DATE ISSUED 2/13/13	COMMISSIONER'S SIGNATURE 
------------------------	------------------------------------------------------------------------------------------------------------------

INSTRUCTIONS AND NOTICES

The delivery of this demand to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply. This demand does not require approval by OMB under the Paperwork Reduction Act of 1980.

PETITION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any petition to limit or quash this demand be filed within 20 days after service, or, if the return date is less than 20 days after service, prior to the return date. The original and twelve copies of the petition must be filed with the Secretary of the Federal Trade Commission, and one copy should be sent to the Commission Counsel named in Item 8.

YOUR RIGHTS TO REGULATORY ENFORCEMENT FAIRNESS

The FTC has a longstanding commitment to a fair regulatory enforcement environment. If you are a small business (under Small Business Administration standards), you have a right to contact the Small Business Administration's National Ombudsman at 1-888-REGFAIR (1-888-734-3247) or www.sba.gov/ombudsman regarding the fairness of the compliance and enforcement activities of the agency. You should understand, however, that the National Ombudsman cannot change, stop, or delay a federal agency enforcement action.

The FTC strictly forbids retaliatory acts by its employees, and you will not be penalized for expressing a concern about these activities.

TRAVEL EXPENSES

Use the enclosed travel voucher to claim compensation to which you are entitled as a witness for the Commission. The completed travel voucher and this demand should be presented to Commission Counsel for payment. If you are permanently or temporarily living somewhere other than the address on this demand and it would require excessive travel for you to appear, you must get prior approval from Commission Counsel.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

Form of Certificate of Compliance*

I/We do certify that all of the information required by the attached Civil Investigative Demand which is in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted to a custodian named herein.

If an interrogatory or a portion of the request has not been fully answered or portion of the report has not been completed the objection to such interrogatory or uncompleted portion and the reasons for the objection have been stated.

Signature _____

Title _____

Sworn to before me this day

Notary Public

*In the event that more than one person is responsible for answering the interrogatories or preparing the report, the certificate shall identify the interrogatories or portion of the report for which each certifying individual was responsible. In place of a sworn statement, the above certificate of compliance may be supported by an unsworn declaration as provided for by 28 U.S.C. § 1746.

CX0288



CIVIL INVESTIGATIVE DEMAND

1. TO

John Fanning
[REDACTED]
[REDACTED]

Note: a copy of this CID was also sent to John Fanning [REDACTED]

This demand is issued pursuant to Section 20 of the Federal Trade Commission Act, 15 U.S.C. § 57b-1, in the course of an investigation to determine whether there is, has been, or may be a violation of any laws administered by the Federal Trade Commission by conduct, activities or proposed action as described in Item 3.

2. ACTION REQUIRED

You are required to appear and testify.

LOCATION OF HEARING Federal Trade Commission 901 Market Street, Suite 570 San Francisco, CA 94103	YOUR APPEARANCE WILL BE BEFORE Sarah Schroeder or other designated person
DATE AND TIME OF HEARING OR DEPOSITION	

You are required to produce all documents described in the attached schedule that are in your possession, custody, or control, and to make them available at your address indicated above for inspection and copying or reproduction at the date and time specified below.

You are required to answer the interrogatories or provide the written report described on the attached schedule. Answer each interrogatory or report separately and fully in writing. Submit your answers or report to the Records Custodian named in Item 4 on or before the date specified below.

DATE AND TIME THE DOCUMENTS MUST BE AVAILABLE

March 14, 2013 at 5 p.m. (PST)

3. SUBJECT OF INVESTIGATION

See attached resolutions.

4. RECORDS CUSTODIAN/DEPUTY RECORDS CUSTODIAN

Jeffrey Klurfeld, Regional Director (Custodian)
Kelly Ortiz, Paralegal (Deputy)
Federal Trade Commission, Western Region
901 Market Street, Suite 570, San Francisco, CA 94103

5. COMMISSION COUNSEL

Sarah Schroeder - (415) 848-5186
Federal Trade Commission, Western Region
901 Market Street, Suite 570, San Francisco, CA 94103

DATE ISSUED

2/13/13

COMMISSIONER'S SIGNATURE

INSTRUCTIONS AND NOTICES

The delivery of this demand to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply. The production of documents or the submission of answers and report in response to this demand must be made under a sworn certificate, in the form printed on the second page of this demand, by the person to whom this demand is directed or, if not a natural person, by a person or persons having knowledge of the facts and circumstances of such production or responsible for answering each interrogatory or report question. This demand does not require approval by OMB under the Paperwork Reduction Act of 1980.

PETITION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any petition to limit or quash this demand be filed within 20 days after service, or, if the return date is less than 20 days after service, prior to the return date. The original and twelve copies of the petition must be filed with the Secretary of the Federal Trade Commission, and one copy should be sent to the Commission Counsel named in Item 5.

YOUR RIGHTS TO REGULATORY ENFORCEMENT FAIRNESS

The FTC has a longstanding commitment to a fair regulatory enforcement environment. If you are a small business (under Small Business Administration standards), you have a right to contact the Small Business Administration's National Ombudsman at 1-888-REGFAIR (1-888-734-3247) or www.sba.gov/ombudsman regarding the fairness of the compliance and enforcement activities of the agency. You should understand, however, that the National Ombudsman cannot change, stop, or delay a federal agency enforcement action.

The FTC strictly forbids retaliatory acts by its employees, and you will not be penalized for expressing a concern about these activities.

TRAVEL EXPENSES

Use the enclosed travel voucher to claim compensation to which you are entitled as a witness for the Commission. The completed travel voucher and this demand should be presented to Commission Counsel for payment. If you are permanently or temporarily living somewhere other than the address on this demand and it would require excessive travel for you to appear, you must get prior approval from Commission Counsel.

A copy of the Commission's Rules of Practice is available online at www.ftc.gov/ftc/rules/practice. Paper copies are available upon request.

Form of Certificate of Compliance*

I/We do certify that all of the documents and information required by the attached Civil Investigative Demand which are in the possession, custody, control, or knowledge of the person to whom the demand is directed have been submitted to a custodian named herein.

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Signature _____

Title _____

Sworn to before me this day

Notary Public

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CX0289



United States of America
Federal Trade Commission

CIVIL INVESTIGATIVE DEMAND

1. TO

John Fanning
[REDACTED]

This demand is issued pursuant to Section 20 of the Federal Trade Commission Act, 15 U.S.C. § 57b-1, in the course of an investigation to determine whether there is, has been, or may be a violation of any laws administered by the Federal Trade Commission by conduct, activities or proposed action as described in Item 3.

2. ACTION REQUIRED

You are required to appear and testify.

LOCATION OF HEARING

Federal Trade Commission
901 Market Street, Suite 570
San Francisco, CA 94103

YOUR APPEARANCE WILL BE BEFORE

Sarah Schroeder or other designated person

DATE AND TIME OF HEARING OR DEPOSITION

April 4, 2013, at 9 a.m. (PST)

You are required to produce all documents described in the attached schedule that are in your possession, custody, or control, and to make them available at your address indicated above for inspection and copying or reproduction at the date and time specified below.

You are required to answer the interrogatories or provide the written report described on the attached schedule. Answer each interrogatory or report separately and fully in writing. Submit your answers or report to the Records Custodian named in Item 4 on or before the date specified below.

DATE AND TIME THE DOCUMENTS MUST BE AVAILABLE

March 14, 2013, at 5 p.m. (PST)

3. SUBJECT OF INVESTIGATION

See attached resolutions.

4. RECORDS CUSTODIAN/DEPUTY RECORDS CUSTODIAN

Jeffrey Klurfeld, Regional Director (Custodian)
Kelly Ortiz, Paralegal (Deputy)
Federal Trade Commission, Western Region
901 Market Street, Suite 570, San Francisco, CA 94103

5. COMMISSION COUNSEL

Sarah Schroeder - (415) 848-5186
Federal Trade Commission, Western Region
901 Market Street, Suite 570, San Francisco, CA 94103

DATE ISSUED

2/27/13

COMMISSIONER'S SIGNATURE

INSTRUCTIONS AND NOTICES

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A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

Form of Certificate of Compliance*

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If a document responsive to this Civil Investigative Demand has not been submitted, the objections to its submission and the reasons for the objection have been stated.

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Signature _____

Title _____

Sworn to before me this day

Notary Public

*In the event that more than one person is responsible for complying with this demand, the certificate shall identify the documents for which each certifying individual was responsible. In place of a sworn statement, the above certificate of compliance may be supported by an unsworn declaration as provided for by 28 U.S.C. § 1746.

CX0290

FedEx Express
Customer Support
Domestic Trace
3875 Airways Boulevard
Module H, 4th Floor
Memphis, TN 38116

U.S. Mail: PO Box 727
Memphis, TN 38194-4643

Telephone 901-369-3600



March 20, 2013

[Redacted]

Dear [Redacted]

Our records reflect the following delivery information for the shipment with the tracking number

[Redacted]

Delivery Information:

Signed For By: J.FANNING

JL

Delivered to: [Redacted]

Delivery Date: March 06, 2013

Delivery Time: 12:07 PM

Shipping Information:

Shipment Reference Information: 122 3141

Tracking No: [Redacted]

Ship Date: March 01, 2013

Shipper: [Redacted]

Recipient: JOHN FANNING

FEDERAL TRADE
COMMISSION
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CX0291

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

IN THE MATTER OF FEBRUARY 13,
2013 CIVIL INVESTIGATIVE DEMAND
TO JERK, LLC

File No. P954807

Pursuant to 16 C.F.R. §2.7(d), Jerk, LLC petitions to quash the Civil Investigative Demand (“CID”) issued on February 13, 2013 and served on Jerk, LLC on February 22, 2013.

I. BACKGROUND

Jerk, LLC operates the website Jerk.com which features user generated content about individuals. The information contained in this background has all been previously supplied to the FTC in response to a CID for written answers to questions pursuant to 16 C.F.R. §2.7(b)(3). Profiles are submitted to Jerk.com by users by choosing the “post a jerk” option. Information collected and displayed on jerk.com may include photographs, names, ages, schools attended, and opinions. The content in profiles often displays information that is publicly available in a Google internet search as well as newly created user generated content. Jerk.com has almost 100,000 visitors per day.

The Terms and Conditions of the jerk.com website prohibit use by children under the age of 14. Every person who uses the website consent to the Company's information collection, use and disclosure practices pursuant to the Terms and Conditions which provide that use of the website constitutes agreement to the Terms and Conditions. If an abusive user submits information about a child by posting it online in violation of Jerk.com's terms of service, such information is stored on its servers and displayed on the site until removed. If the fact that the profile is of a child is brought to the attention of Jerk.com, it is or if there is a request to remove information about a child under the age of 14, the content is removed and the poster is banned.

Jerk.com offers the following paid services: Bid or vote for Jerk or Saint of the day - \$1.00; Customer support - \$25.00; Paid Subscriptions - \$30.00; Redirect/Link forwarding - \$90.

Paid customer support (\$25.00) may be used by users to request removal of a profile from Jerk.com. Removal requests are also received through email and through Jerk.com's DMCA agent. Children's profiles are removed regardless of the source of the removal request. Jerk.com also routinely removes photographs in response to DMCA notices.

In the "Remove Me!" link of the Jerk.com website, it once stated: "No one's profile is ever removed because Jerk is based on searching free open databases and it's not possible to remove things from the internet." The quoted statement, that removal from the Internet is not possible, is meant to educate consumers that removal from Jerk.com is not removal of the content from the source on the Internet. The quote is

meant to explain that content displayed on Jerk.com is often content displayed elsewhere in other publicly accessible databases. That quote has been removed.

In 2012, Jerk.com only had 22 people subscribe to its service and its total revenue was approximately \$3,000.

II. ARGUMENT

A subpoena from the FTC is not self-enforcing. *Wearly v. FTC*, 616 F.2d 662, 665 (3d Cir. 1980). The FTC must seek an order from the federal court compelling compliance. *Id.* Federal courts, however, do not act as a rubber stamp; instead, they act as an independent reviewing authority with "the power to condition enforcement upon observance of safeguards to [a petitioner's] valid interests." *Id.*; *see also Okla. Press Publ'g Co. v. Walling*, 327 U.S. 186, 208 (1946) (noting that the courts serve as a safeguard against agency abuse); *SEC v. Arthur Young & Co.*, 584 F.2d 1018, 1024 (D.C. Cir. 1978) (citations omitted) ("The federal courts stand guard, of course, against abuses of ... subpoena-enforcement processes.").

In *U.S. v. Morton Salt Co.*, 338 U.S. 632 (1950), the United States Supreme Court established the standard for determining when a CID should be quashed. A CID is not enforceable if (i) it is not "within the authority of the agency," (ii) is "too indefinite," or (iii) is not "reasonably relevant [to the inquiry]." *Id.* at 652. Courts applying this test have consistently held that an administrative subpoena must be "reasonable." *See, e.g., U.S. v. Constr. Prods. Research, Inc.*, 73 F.3d 464, 471 (2d Cir. 1996).

A governmental investigation into corporate matters may be of such a sweeping nature and so unrelated to the matter properly under inquiry as to exceed the investigatory power of the agency.

In *SEC v. Blaclifoot Bituminous, Inc.*, 622 F.2d512 (10th Cir. 1980), the Court of Appeals for the Tenth Circuit confirmed that "an agency must show that the inquiry is not too indefinite, is reasonably relevant to an investigation which the agency has authority to conduct, and all administrative prerequisites have been met.

A party challenging a subpoena can also successfully do so on the grounds that compliance would be overly burdensome or unreasonable. *FTC v. Texaco, Inc.*, 555 F.2d 862, 882 (D.C. Cir. 1977). An administrative agency may not use its investigative powers to go on a fishing expedition. *FDIC v. Garner*, 126 F.3d 1138, 1146 (9th Cir. 1997); *FTC v. Nat'l Claims Serv., Inc.*, No. S. 98-283,1999 WL 819640, at * 1 (B.D. Cal. Feb. 9, 1999). See also S. Rep. 96-500 at 4, 96th Congress 1st Session (1979) ("The FTC's broad investigatory powers have been retained but modified to prevent fishing expeditions undertaken merely to satisfy its 'official curiosity.'").

In *FTC v. Am. Tobacco Co.* 264 U.S. 298,306 (1924), the Supreme Court stated that "[i]t is contrary to the first principles of justice to allow a search through all the respondents' records, relevant or irrelevant, in the hope that something will turn up."

The FTC may not demand information unless the CID is signed by a Commissioner acting pursuant to an FTC resolution. 15 U.S.C. § 57b-1(i). "Any person ... under investigation compelled or requested to furnish information or documentary material shall be advised of the purpose and scope of the investigation, the nature of the

acts or practices under investigation, and the applicable provisions of law.” 16 C.F.R. §2.6. The FTC Operating Manual requires that “Investigational resolutions must ... be specific enough to enable a court in an enforcement action to determine whether the investigation is within the authority of the Commission and the material demanded by the compulsory process is within the scope of the resolution.” (at§ .3.6.7.4.1) A court may only look at the resolution to evaluate the scope of an investigation. *FTC v. Invention Submission Corp.*, 965 F.2d 1086, 1088 (D.C. Cir. 1992).

Here, the CID is purported issued pursuant to a Resolution directing use of compulsory process in nonpublic investigation of acts and practices related to consumer privacy and/or data security. The nature and scope of the investigation is stated to be to determine whether unnamed persons are engaged or have been engaged in deceptive or unfair acts or practices related to consumer privacy and/or data security including the collection, acquisition, use, disclosure, security, storage, retention or disposition of consumer information. The language of the Resolution is so broad that it would seem to permit the FTC to investigate any website, such as Facebook, that contains user profiles, and any website that permits users to provide any information whatsoever about another person. There is no way to determine whether the information identified in the CID as the subjects of the testimony bears any relation to a lawful investigation. This is contrary to the statutory requirements imposed on the FTC. *See, e.g., FTC v. Carter*, 636 F.2d 781,788 (D.C. Cir. 1980) (the bare recitation of “Section 5’s prohibition of unfair and deceptive practices ... standing broadly alone would not serve very specific notice of [a resolution’s] purpose”); *FTC v. Foremost-McKesson, Inc.*, 1981 WL 2029, at *4

S.D.N.Y.) (noting that the FTC Improvements Act of 1980 “is intended to limit the practice of the Commission of giving a vague description of the general subject matter of the inquiry and provide a standard by which relevance may be determined).

During the good faith attempt to resolve the issues raised in this Petition, the FTC cited to the April 11, 2012 Commission Letter granting in part and denying in part the Petition to Quash filed by Wyndham Hotels & Resorts, LLC and Wyndham Worldwide. In that Letter, the Commission determined that the authorizing resolution adequately delineated the purpose and scope of the investigation as “[t]o determine whether unnamed persons, partnerships; corporations, or others are engaged in, or may have engaged in, deceptive or unfair acts or practices related to consumer privacy and/or data security, in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended”

While the scope of investigation found to be adequate in Wyndham was almost identical to the scope of the investigation in this matter, the facts dictate a different result. In Wyndham, the CID was issued nearly two years after the investigation commenced, was issued after substantial ongoing communications, and the production of over a million pages of documents at significant expense. Most importantly, in Wyndham, it was abundantly clear that the investigation was the result of breaches of Wyndham’s computer networks that resulted in access to hundreds of thousands of credit card numbers. When a company that knows that it is being investigated for failure to secure the credit card data of its customers, a Resolution that describes the scope of the investigation as engaging in deceptive or unfair acts or practices related to consumer

privacy and/or data security, may very well be adequate disclosure of the scope of the investigation. Here, however, Jerk, LLC has been led to believe that the investigation relates to the display on Jerk.com of photographs that are publicly available on the Internet. Jerk, LLC does not have an understanding of what is claimed to be improper about that display and the Resolution adds no clarity.

On this basis, the CID should be quashed in its entirety.

In addition, CID states an incredibly overbroad description of the subject matters of the requested testimony. The CID defines the Company as “Jerk, LLC, its wholly or partially owned subsidiaries, including unincorporated divisions, joint ventures, operations under assumed names, and affiliates, including and (sic) all directors, officers, employees, agents, consultants, and other persons working for or on behalf of the foregoing.” The Specifications section of the CID requires the appearance of one or more officers, directors, or managing agents to testify regarding ten subjects and 21 subparts. Specification A, B, and C relates to the interrogatories, requests for documents and responses contained in the Commission’s July 27, 2012 CID. That CID, however, stated a different nature and scope of the investigation than this CID. There, the FTC cited alleged COPPA violations.

Specification D is the subject of “the Company’s” relationship with a list of ten individuals and entities. In light of the very broad definition of “the Company,” this subject includes the relationship between each of the ten listed individuals and entities and every agent, consultant and affiliate of Jerk, LLC, including undersigned counsel. That clearly implicates attorney client privilege and is incredibly broad. Moreover, it is

entirely unclear what that subject matter has to do with the investigation of deceptive or unfair acts or practices related to consumer privacy and/or data security including the collection, acquisition, use, disclosure, security, storage, retention or disposition of consumer information.

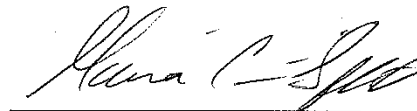
Subjects E and F relate to Jerk.com's use of the Facebook platform and photos obtained from Facebook and Twitter. This subject is particularly disturbing in light of the purported purpose of the CID. The subject matter expressly relates to publicly available information, the exact opposite of the Resolution.

Subjects G through J are extremely broad general topics regarding how Jerk.com works, information that has either previously been provided or is readily ascertainable from the website itself.

III. CONCLUSION

The CID requests the personal appearance in California of an individual or individuals who are knowledgeable about a wide range of broad topics related to Jerk.com. It is clearly a fishing expedition and it is being conducted at the expense and burden of Jerk, LLC. The CID should be quashed in its entirety.

DATED: March 15, 2013




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Counsel for Petitioner

CERTIFICATION

Pursuant to 16 C.F.R. § 2.7(d)(2), counsel for Petitioner hereby certifies that counsel engaged in good faith talks to attempt to resolve by agreement the issues set forth in this Petition. The good faith talks occurred telephonically on March 15, 2013 at 10:30 a.m. Pacific Time between Sarah Schroeder, Kerri O'Brien and undersigned counsel. Despite a discussion lasting more than an hour, we were unable to resolve the issues.



Maria Crimi Speth

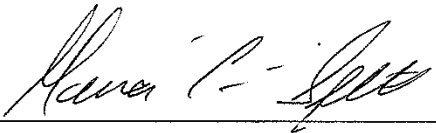
CERTIFICATE OF SERVICE

I certify that, on March 15, 2013, I deposited the original and twelve (12) copies of Jerk, LLC's Petition to Quash Civil Investigative Demand with Federal Express for overnight delivery to the Secretary of the Federal Trade Commission at the following address:

Federal Trade Commission
600 Pennsylvania Avenue, NW, H-113
Washington, D.C. 20580

I also certify that, on March 15, 2013, I emailed and mailed via first class mail, a copy of Jerk, LLC's Petition to Quash Civil Investigative Demand, to the following address:

Sarah Schroeder
Federal Trade Commission, Western Region
901 Market Street, Suite 570
San Francisco, CA 94103



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FEDERAL TRADE COMMISSION

I N D E X

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EXHIBIT	DESCRIPTION	PAGE
None		

OTHER EXHIBITS REFERENCED		PAGE
None		

Statement for the Record

Jerk, LLC

4/4/2013

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FEDERAL TRADE COMMISSION

CIVIL INVESTIGATIVE DEMAND)
FOR ORAL TESTIMONY OF)
JERK, LLC)
_____)

Thursday, April 4, 2013

Room 570
Federal Trade Commission
901 Market Street
San Francisco, California 94103

The above-entitled matter came on for
investigational hearing, pursuant to Civil Investigative
Demand for Oral Testimony at 9:15 a.m.

For The Record, Inc.
(301) 870-8025 - www.ftrinc.net - (800) 921-5555

Statement for the Record

Jerk, LLC

4/4/2013

1 APPEARANCES:

2

3

4 ON BEHALF OF THE FEDERAL TRADE COMMISSION:

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6 YAN FANG, Attorney

7 Federal Trade Commission

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For The Record, Inc.
(301) 870-8025 - www.ftrinc.net - (800) 921-5555

Statement for the Record

Jerk, LLC

4/4/2013

1 P R O C E E D I N G S

2 - - - - -

3 MS. SCHROEDER: The Federal Trade Commission ordered
4 John Fanning to appear for an investigational hearing to
5 testify about Jerk, LLC.

6 The Commission's Civil Investigative Demand for
7 oral testimony specified that Mr. Fanning's hearing would
8 take place on April 4th, 2013 at 9:00 a.m. in the FTC's
9 San Francisco office.

10 Commission staff notified Mr. Fanning of the
11 hearing by serving the demand for oral testimony on an
12 adult at his personal residence through a FedEx delivery
13 that Mr. Fanning personally signed for and through
14 multiple e-mails and telephone messages.

15 Today is April 4th, 2013, and the time is
16 approximately 9:16 a.m. We are in the FTC's San
17 Francisco office. Mr. Fanning is not present for the
18 hearing. Mr. Fanning has not notified Commission staff
19 of any reason for his absence.

20 That concludes this statement.

21 (Whereupon, at 9:16 a.m., the proceedings concluded.)

22

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For The Record, Inc.
(301) 870-8025 - www.ftrinc.net - (800) 921-5555

CX0292-004

Statement for the Record

Jerk, LLC

4/4/2013

1 C E R T I F I C A T I O N O F R E P O R T E R

2 DOCKET/FILE NUMBER: None

3 CASE TITLE: CIVIL INVESTIGATIVE DEMAND FOR

4 ORAL TESTIMONY OF JERK, LLC

5 DATE: APRIL 4, 2013

6

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

12 DATED: 4/4/13

13

14

15

16

17

18 C E R T I F I C A T I O N O F P R O O F R E A D E R

19

20 I HEREBY CERTIFY that I proofread the transcript
21 for accuracy in spelling, hyphenation, punctuation and
22 format.

23

24

25

For The Record, Inc.
(301) 870-8025 - www.ftrinc.net - (800) 921-5555

CX0293

**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)	
)	PUBLIC
)	
FEBRUARY 13, 2013 CIVIL INVESTIGATIVE DEMAND ISSUED TO JERK, LLC)	File No. 122 3141 April 17, 2013
)	
)	

**ORDER DENYING PETITION TO QUASH
CIVIL INVESTIGATIVE DEMAND**

By OHLHAUSEN, Commissioner:

Jerk, LLC has filed a petition to quash a civil investigative demand (“CID”) issued by the Federal Trade Commission (“FTC” or “Commission”) on February 13, 2013. For the reasons stated below, the petition is denied.

I. BACKGROUND

Jerk, LLC (“Jerk”) operates Jerk.com, a social networking website that contains millions of unique profiles. Information collected and displayed in profiles includes photographs, names, ages, email and physical addresses, telephone numbers, and opinions. Information on the website includes, among other things, information that is publicly available on other Internet sites and newly created user-generated content. Jerk.com encourages users to add personal information to profiles and to rate the profiled individuals as either “jerks” or “saints.”

Jerk offers consumers the opportunity to bid or vote for “Jerk” or “Saint of the Day” for \$1.00. According to Jerk’s petition, a consumer who wants his or her profile removed from Jerk.com may pay a \$25 fee for customer support, which is offered on the website. The petition also claims that Jerk receives requests to remove a profile by email and through its Digital Millennium Copyright Act (“DMCA”)¹ agent. In its petition, Jerk also claims that it removes children’s profiles regardless of the source of the removal request.

¹ 17 U.S.C. § 512(C)(2). The DMCA, *inter alia*, implements two World Intellectual Property Organization treaties that provide copyright protection to certain works among member countries. The DMCA also limits liability of online service providers for copyright infringement

In April 2012, after receiving hundreds of complaints about Jerk, FTC staff opened an investigation. The investigation focused initially on whether Jerk.com was collecting information from children in violation of the Children’s Online Privacy Protection Act (“COPPA”).² On July 27, 2012, the Commission issued a CID for documents and interrogatories for information relating to Jerk.com’s data collection practices and its profiles of children. The CID was issued pursuant to a Commission Resolution Directing the Use of Compulsory Process in a Non-Public Investigation Into Violations of COPPA and Rule, or Section 5 of the FTC Act, in Connection With the Online Collection, Use, and/or Disclosure of Children’s Personal Information, File No. P994504.

After reviewing Jerk’s responses to the CID and information from other sources, including consumer complaints, staff determined that it was necessary to expand the focus of the investigation also to inquire into the source of information appearing on Jerk.com – in particular, whether Jerk may have created profiles on its website by harvesting photos from the Internet. In various fora, consumers have complained that Jerk.com contains private photos from Facebook. On February 13, 2013, as part of the broader inquiry, the Commission issued a CID to Jerk seeking testimony on ten subjects relating to Jerk’s responses to the prior CID; Jerk’s operations; Jerk’s interactions with other social media sites, including Facebook and Twitter; and Jerk’s communications with consumers. The CID was issued pursuant to a different resolution that reflects the broader investigation, Commission Resolution Directing the Use of Compulsory Process in a Non-Public Investigation of Acts and Practices Related to Consumer Privacy and/or Data Security, File No. P954807. The CID asked Jerk to designate and make available one or more officers, directors, or others to testify on Jerk’s behalf at an investigational hearing on April 3, 2013 at the FTC’s San Francisco office.

On March 15, 2013, Jerk submitted the instant petition seeking to quash the CID seeking its testimony on the topics enumerated above.³

when the service provider has met several conditions, including the designation of an agent to receive notifications of claimed infringement and, upon receiving proper notification of claimed infringement, the provider takes down or blocks access to the material. *See* The Digital Millennium Copyright Act of 1998, U.S. Copyright Office Summary (Dec. 1998), available at <http://www.copyright.gov/legislation/dmca.pdf>.

² 15 U.S.C. §§ 6501-6506.

³ At a meet-and-confer conference on March 14, 2013, Jerk’s counsel stated that the only individuals knowledgeable about Jerk reside in Romania. Although Jerk’s petition to quash does not object on this basis, we note that “[t]he burden of showing that the request is unreasonable is on the subpoenaed party.” *FTC v. Texaco*, 555 F.2d 862, 882 (D.C. Cir. 1977) (*en banc*). Moreover, the Commission has previously recognized that CIDs that call for testimony are less likely to be unduly burdensome than CIDs that call for large-scale document productions. *See LabMD, Inc.*, No. 102-3099, at 7 (Apr. 20, 2012), *aff’d*, *LabMD, Inc.*, No. 102-3099 (June 21, 2012) (enforced). This is especially true in this case because FTC staff have offered to mitigate any burden that may be imposed by this CID by arranging for a teleconference and a translator for any witness who resides abroad.

II. ANALYSIS

A. The Applicable Legal Standards

Agency compulsory process is proper if the inquiry is within the authority of the agency, the demand is not too indefinite, and the information sought is reasonably relevant to the inquiry, as that inquiry is defined in the investigatory resolution.⁴ It is well established that agencies have wide latitude to determine what information is relevant to their law enforcement investigations and are not required to have “a justifiable belief that wrongdoing has actually occurred.”⁵

Jerk contends that the CID seeking the testimony of a corporate representative does not satisfy these standards. First, Jerk claims that the Commission resolution authorizing the CID does not provide adequate notice of the nature and scope of the investigation. Second, Jerk argues that the ten subjects listed in the CID are not relevant to an investigation of acts and practices related to consumer privacy and/or data security.

B. The CID is Supported by a Specific and Valid Resolution

The resolution authorizing the process provides the requisite statement of the purpose and scope of the investigation.⁶ A resolution may define the investigation generally, and need not state the purpose with specificity, or tie it to any particular theory of violation.⁷ In issuing the instant CID, the Commission relied on the omnibus Resolution Directing Use of Compulsory Process in Nonpublic Investigation of Acts and Practices Related to Consumer Privacy and/or Data Security, File No. P954807 (Jan. 24, 2013). That resolution authorizes the use of compulsory process:

⁴ *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950); *FTC v. Invention Submission Corp.*, 965 F.2d 1086, 1088 (D.C. Cir. 1992); *FTC v. Texaco, Inc.*, 555 F.2d 862, 874 (D.C. Cir. 1977).

⁵ *See, e.g., Morton Salt*, 338 U.S. at 642-43 (“[Administrative agencies have] a power of inquisition, if one chooses to call it that, which is not derived from the judicial function. It is more analogous to the Grand Jury, which does not depend on a case or controversy for power to get evidence but can investigate merely on suspicion that the law is being violated, or even just because it wants an assurance that it is not.”).

⁶ *Invention Submission*, 965 F.2d at 1091-92; *accord, Texaco*, 555 F.2d at 874; *FTC v. Carter*, 636 F.2d 781, 789 (D.C. Cir. 1980); *FTC v. Anderson*, 631 F.2d 741, 746 (D.C. Cir. 1979).

⁷ *Invention Submission*, 965 F.2d at 1090; *Texaco*, 555 F.2d at 874 & n.26; *FTC v. Nat’l Claims Serv., Inc.*, No. S 98-283 FCD DAD, 1999 WL 819640, at *2 (E.D. Cal. Feb. 9, 1999) (citing *EPA v. Alyeska Pipeline Serv. Co.*, 836 F.2d 443, 477 (9th Cir. 1988)).

To determine whether unnamed persons, partnerships, corporations, or others are engaged in, or may have engaged in, deceptive or unfair acts or practices related to consumer privacy and/or data security, including but not limited to the collection, acquisition, use, disclosure, security, storage, retention, or disposition of consumer information, in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended. Such investigation shall, in addition, determine whether Commission action to obtain redress of injury to consumers or others would be in the public interest.

Jerk contends that the Resolution is “so broad” that “[t]here is no way to determine whether the information identified in the CID as the subjects of the testimony bears any relation to a lawful investigation.”⁸ A general statement of the purpose and scope of the investigation is sufficient, however, and courts have enforced compulsory process issued under similarly broad resolutions.⁹ We note, moreover, that Resolution No. P954807 is more specific in its description of the purpose and scope of the investigation than its predecessor, which both the Commission and reviewing courts found sufficiently specific.¹⁰

Jerk’s reliance on the decision in *FTC v. Carter*, 636 F.2d 781, 788 (D.C. Cir. 1980), is misplaced. Although *Carter* held that a bare reference to Section 5 of the FTC Act, without more, “would not serve very specific notice of purpose,” the Court approved the resolution at issue, noting that it also referred to specific statutory provisions of the Cigarette Labeling and Advertising Act, and further related it to the subject matter of the investigation.¹¹ With this additional information, the Court felt “comfortably apprised of the purposes of the investigation and the subpoenas issued in its pursuit.”¹² Similarly, the resolution at issue here provides

⁸ Petition at 5.

⁹ See *FTC v. Nat’l Claims Serv.*, 1999 WL 819640, at *2 (E.D. Cal. 1999) (concluding that omnibus resolution referring to FTC Act and Fair Credit Reporting Act provided sufficient notice); *FTC v. O’Connell Assoc., Inc.*, 828 F. Supp. 165, 171 (E.D.N.Y. 1993) (enforcing CIDs issued pursuant to omnibus resolution). The Commission has repeatedly rejected similar arguments about such omnibus resolutions. See, e.g., *Firefighters Charitable Found.*, No. 102-3023, at 4 (Sept. 23, 2010); *D.R. Horton, Inc.*, Nos. 102-3050, 102-3051, at 4 (July 12, 2010); *CVS Caremark Corp.*, No. 072-3119, at 4 (Dec. 3, 2008).

¹⁰ See *FTC v. LabMD, Inc.*, No. 1:12-cv-3005-WSD, at 11-12 (N.D. Ga. Nov. 26, 2012); *LabMD, Inc.*, No. 102-3099 at 9 (Apr. 20, 2012) (finding Resolution provides sufficient notice of purpose and scope of investigation when Resolution “authorizes the use of compulsory process: ‘to determine whether unnamed persons partnerships, corporations, or others are engaged in, or may have engaged in, deceptive or unfair acts or practices related to consumer privacy and/or data security, in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended.’”); see also *CVS Caremark Corp.*, No. 072-3119, at 4 (Dec. 3, 2008) (affirming *CVS Caremark Corp.*, No. 072-3119, at 5 (Aug. 6, 2008)).

¹¹ *Carter*, 636 F.2d at 788.

substantially more information than the bare text of Section 5, and thus adequately notifies Jerk of both the nature and scope of the investigation.

Similarly, *FTC v. Foremost-McKesson, Inc.*, 1981 WL 2029, at *4 (S.D.N.Y. 1981), does not support Jerk's argument. Jerk cites this case for its discussion of the legislative history underpinning Section 20 of the FTC Act, which requires that CIDs be signed by a Commissioner acting pursuant to a resolution. But it is plain that the CID here meets the requirements of Section 20 because the CID and its authorizing resolution "state the nature of the conduct constituting the alleged violation . . . and the provision of law applicable to such violation[,]” *i.e.*, unfair or deceptive acts or practices involving consumer privacy and/or data security in a variety of contexts, and Section 5.¹³ No more specific notice need be given.

Jerk's argument also fails in light of the history of communications between the company and the FTC. The purpose of an authorizing resolution is to notify a CID recipient of the nature and scope of the investigation.¹⁴ Given the dialogue between staff and counsel for Jerk, there is no doubt that the company is aware of the nature of staff's investigation, particularly in light of Jerk's response to the earlier CID and the meet-and-confer discussion. The Commission has previously found that such interactions may be considered along with the resolution in evaluating the notice provided to Petitioners: “[T]he notice provided in the compulsory process resolutions, CIDs, and other communications with Petitioner more than meets the Commission's obligation of providing notice of the conduct and the potential statutory violations under investigation.”¹⁵

C. Jerk's Objections to Providing Testimony on Each of the Specifications Listed in the CID are Without Merit.

Jerk raises various challenges to each of the ten specific subjects for which the Commission seeks testimony. The ten subjects identified in the CID are listed as specifications III.A. to III.J.:

- A. The subject of the interrogatories and request for documents contained in the Commission's July 27, 2012, civil investigative demand.
- B. The Company's responses to the Commission's July 27, 2012, civil investigative demand.
- C. The process undertaken by the Company to respond to the Commission's July 27, 2012, civil investigative demand.

¹² *Id.*

¹³ Section 20(c)(2); 15 U.S.C. § 57b-1(c)(2).

¹⁴ *O'Connell Assocs., Inc.*, 828 F. Supp. at 170-71.

¹⁵ *Assoc. First Capital Corp.*, 127 F.T.C. 910, 915 (1999).

- D. The Company's relationship with ten named entities and individuals.
- E. Applications on the Facebook platform that the Company currently operates, has operated, or has paid a third party to operate.
- F. Information and photos that the Company obtained from Facebook and Twitter that have been displayed on Jerk.com.
- G. The number of unique monthly visitors to Jerk.com.
- H. Technical information about how Jerk.com operates, including the Company's current and former data hosts.
- I. The Company's policies, procedures, and practices relating to consumer requests to remove information from Jerk.com, including requests to remove copyrighted material and profiles about children.
- J. The Company's policies, procedures, and practices relating to consumer complaints.

The first three subjects identified in the CID's Specifications (III.A. to III.C.) seek testimony regarding the topics covered by the interrogatories and document requests in the earlier CID and procedures used by Jerk to produce its responses to the earlier inquiry. Jerk challenges these specifications on the grounds that the July 27, 2012, CID was issued pursuant to a different resolution, one that related to protecting children's privacy. But it cannot be unexpected that an investigation that initially focused on possible violations of COPPA or the FTC Act to protect children's privacy may uncover conduct or practices that might raise additional privacy concerns. Thus, the fact that the direction of the investigation has changed or expanded since the initial CID was issued in July 2012 has no bearing on our disposition of the instant petition to quash. Indeed, in *FTC v. Texaco, Inc.*, the D.C. Circuit recognized that investigating agencies need not be locked into a single theory of violation when it explained that "in the pre-complaint stage, an investigating agency is under no obligation to propound a narrowly focused theory of a possible future case. . . . The court must not lose sight of the fact that the agency is merely exercising its legitimate right to determine the facts, and that a complaint may not, and need not, ever issue."¹⁶ As the D.C. Circuit acknowledged, "a wide range of investigation is necessary and appropriate where . . . multifaceted activities are involved, and the precise character of possible violations cannot be known in advance."¹⁷ The

¹⁶ *Texaco*, 555 F.2d at 874. This holding from *Texaco* has been repeatedly reaffirmed, most recently in *FTC v. Church & Dwight Co.*, 747 F. Supp.2d 3, 6, *aff'd*, 665 F.3d 1312 (D.C. Cir. 2011).

¹⁷ *Texaco*, 555 F.2d at 877. Jerk has not directly challenged specifications III.A.-III.C. on relevancy grounds. In any event, these specifications seek relevant material because assessing a CID recipient's compliance with and response to compulsory process is a legitimate part of a law enforcement investigation.

only question is whether the February 13, 2013, CID was issued pursuant to a valid Commission resolution that describes the current purpose and scope of the investigation. For the reasons discussed above, we conclude it was.¹⁸

Jerk also challenges Specification III.D., which calls for information on Jerk’s relationship with ten individuals, because “it is entirely unclear what that subject matter has to do with the investigation of deceptive or unfair acts or practices related to consumer privacy and/or data security.” Thus, Jerk appears to be claiming that this specification is not relevant to the investigatory purpose expressed in the resolution. But, in the context of an administrative CID, “relevance” is defined broadly and with deference to an administrative agency’s determination.¹⁹ An administrative agency is to be accorded “extreme breadth” in conducting an investigation.²⁰ As the D.C. Circuit has stated, the standard for judging relevance in an administrative investigation is “more relaxed” than in an adjudicatory proceeding.²¹ As a result, the agency is entitled to testimony or documents unless the CID recipient can show that the agency’s determination is “obviously wrong,” or that the testimony or documents are “plainly irrelevant” to the investigation’s purpose.²² It is the petitioner’s burden to demonstrate that the Commission has exceeded this standard.²³ We find that Jerk has failed to do so. The relationship between Jerk and the named individuals and entities is relevant to identifying those who control, or provide services to, the company, and thus, is relevant to the investigation.²⁴

Jerk further challenges the relevance of Specifications III.E. and III.F, provisions that call for testimony on Jerk’s use of the Facebook platform and photos obtained from Facebook and Twitter, on the grounds that “[t]he subject matter expressly relates to publicly available information, [which is] the exact opposite of the Resolution” that addresses consumer privacy

¹⁸ See *CVS Caremark Corp.*, No. 0723119, at 4 (Dec. 3, 2008) (“While those incidents were the initial impetus for the investigation, nothing in the CID resolution limits the scope of the investigation to [the initial focus] --- the resolution authorizes the investigation of all of [the company’s] consumer privacy and data security practices.”).

¹⁹ *FTC v. Church & Dwight Co., Inc.*, 665 F.3d 1312, 1315-16 (D.C. Cir. 2011); *FTC v. Ken Roberts Co.*, 276 F.3d 583, 586 (D.C. Cir. 2001).

²⁰ *Linde Thomsen Langworthy Kohn & Van Dyke, P.C. v. RTC*, 5 F.3d 1508, 1517 (D.C. Cir. 1993).

²¹ *Invention Submission*, 965 F.2d at 1090.

²² *Id.* at 1089; *Carter*, 636 F.2d at 788.

²³ *Invention Submission*, 965 F.2d at 1090 (citing *Texaco*, 555 F.2d at 882).

²⁴ See, e.g. *FTC v. Amy Travel Servs., Inc.*, 875 F.2d 564, 573-75 (7th Cir. 1989) (describing the standard for individual liability under the FTC Act).

and/or data security. Again, Jerk's arguments are to no avail. These specifications seek testimony on possible avenues by which Jerk could access private consumer data, including photos, from social media sites without the consumer's consent. Such information is directly relevant to "consumer privacy and/or data security[.]"²⁵

Finally, Jerk challenges Specifications III.G. through III.I., claiming that these topics relating to Jerk's operations and interactions with consumers "ha[ve] either previously been provided or [are] readily ascertainable from the website itself." It is not clear on what basis Jerk is objecting. However, if Jerk is claiming that these specifications present an undue burden, its argument is without merit. "Some burden on subpoenaed parties is to be expected and is necessary in furtherance of the agency's legitimate inquiry and the public interest."²⁶ It is well established that the party claiming undue burden has the responsibility to demonstrate the burden with specific information,²⁷ and Jerk's conclusory challenge does not rise to this level. It is appropriate to probe further through questions and obtain additional explanation through testimony about documents and responses that have been provided during the investigation.

III. CONCLUSION

For the foregoing reasons,

IT IS HEREBY ORDERED THAT the Petition of Jerk, LLC to quash the Civil Investigative Demand be, and it hereby is, **DENIED**; and

IT IS FURTHER ORDERED THAT Petitioner Jerk LLC is required to appear and testify before Sarah Schroeder or other designated person, at Federal Trade Commission, 901 Market Street, Suite 570, San Francisco, California, 94103 at 9:00 a.m. on May 1, 2013, or at such other date and time as Commission staff may direct in writing.

By the Commission.

Donald S. Clark
Secretary

ISSUED: April 17, 2013

²⁵ Resolution P954807.

²⁶ *Texaco*, 555 F.2d at 881.

²⁷ *Texaco*, 555 F.2d at 882 & n.49. Similarly, a party claiming undue burden on the grounds that the specified documents are duplicative or already in the government's possession must identify the overlapping documents with specificity. *Fresenius Medical Care v. United States*, 526 F.3d 372, 377 (8th Cir. 2008). Jerk's brief statement quoted above fails to do that.

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FEDERAL TRADE COMMISSION

INVESTIGATIONAL HEARING OF
JERK.COM

_____ /

May 1, 2013

Federal Trade Commission
901 Market Street
Suite 570
San Francisco, CA 94706

The above-entitled matter came on for
investigational hearing, pursuant to notice, at 9:15
a.m.

1 APPEARANCES

2

3 ON BEHALF OF THE FEDERAL TRADE COMMISSION:

4 SARAH SCHROEDER, Attorney
5 Federal Trade Commission
6 901 Market Street, Suite 570
7 San Francisco, California 94103
8 (415) 848-5186
9 sschroeder@ftc.gov

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1 P R O C E E D I N G S

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3 BY MS. SCHROEDER: The Federal Trade Commission ordered
4 a representative of Jerk, LLC to appear for an
5 investigational hearing on May 1st, 2013, at 9:00 a.m.
6 in the FTC's San Francisco office. Commission staff
7 noticed Jerk, LLC of the hearing by serving the notice
8 on Jerk's registered agent, sending Jerk the notice via
9 Federal Express and e-mailing the notice to Jerk's
10 counsel Maria Speth. Staff also left multiple phone
11 messages for Ms. Speth.

12 Today is May 1st, and the time is
13 approximately 9:15 a.m. We are in the FTC's San
14 Francisco office. A representative from Jerk, LLC is
15 not present for the hearing. Jerk, LLC has not notified
16 commission staff of any reason for its absence.

17 (Whereupon, the proceedings concluded at 9:15
18 a.m.)

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CERTIFICATE OF REPORTER

I, [REDACTED], Certified Shorthand Reporter, hereby certify that the foregoing proceedings were taken in shorthand by me, at the time and place therein stated, and that the said proceedings were thereafter reduced to typewriting, by computer, under my direction and supervision.

I further certify that I am not of counsel or attorney for either or any of the parties nor in any way interested in the event of this cause, and that I am not related to any of the parties thereto.

Dated: May 8, 2013.

[REDACTED]

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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,)
Respondents.)
-----)

May 28, 2014
9:33 a.m.

PRETRIAL SCHEDULING CONFERENCE

BEFORE THE HONORABLE D. MICHAEL CHAPPELL
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C.

Reported by: [REDACTED]

1 APPEARANCES:

2

3 ON BEHALF OF THE FEDERAL TRADE COMMISSION:

4 SARAH SCHROEDER, ESQ.

5 BORIS YANKILOVICH, ESQ. (via phone)

6 YAN FANG, ESQ. (via phone)

7 KERRY O'BRIEN, ESQ. (via phone)

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15

16 ON BEHALF OF RESPONDENT (JOHN FANNING):

17 PETER F. CARR, II, ESQ.

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25

1 APPEARANCES: (continued)

2

3 ON BEHALF OF RESPONDENT (JERK, LLC):

4 MARIA CRIMI SPETH, ESQ. (via phone)

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7 Suite 2000

8 Phoenix, Arizona 85012

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1 P R O C E E D I N G S

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3 JUDGE CHAPPELL: This is Docket 9361,
4 In Re Jerk, LLC, et al.

5 Good morning, everyone.

6 I'm going to start by taking appearances of the
7 parties, government first.

8 MS. SCHROEDER: Good morning, Your Honor.

9 Sarah Schroeder with the
10 Federal Trade Commission.

11 And with me on the phone is Boris Yankilovich,
12 Yan Fang and Kerry O'Brien in our San Francisco office.
13 And thank you for letting them appear via telephone.

14 JUDGE CHAPPELL: Those are all attorneys?

15 MS. SCHROEDER: They are.

16 JUDGE CHAPPELL: And him?

17 MR. KENNEDY: My name is Joseph Kennedy,
18 Your Honor. I'm an investigative assistant with the
19 FTC.

20 JUDGE CHAPPELL: Okay. Thank you.

21 And for respondents?

22 MR. CARR: Good morning, Your Honor.

23 Peter Carr representing respondent John Fanning.

24 MS. SPETH: And Your Honor, on the telephone,
25 this is Maria Speth representing the respondent

1 Jerk, LLC. And I appreciate the court's assistance in
2 helping me get on the phone in light of the fact that my
3 flight was canceled last night.

4 JUDGE CHAPPELL: Yes. We had some exciting
5 thunderstorms last night in the area.

6 Can you turn that phone up, please.

7 All right. We e-mail courtesy copies of orders
8 to the parties. These are just courtesy copies.
9 Official service is made by the Office of the Secretary.

10 I'll need each party to designate no more than
11 two individuals to receive communications from the
12 OALJ. And please send an e-mail to my assistant,
13 Dana Gross -- and that's the oalj.ftc.gov Web site --
14 to inform her of the e-mail addresses of the
15 individuals you wish to designate to receive
16 communications from our office.

17 There will be times when more than two will get
18 the communication because we will simply "reply all,"
19 but we want a maximum of two for e-mails that we send
20 out.

21 A scheduling order was provided, a proposed
22 scheduling order, to the parties with a request to
23 provide any modification requests by 11:00 a.m.
24 yesterday. I got no such requests, so I'm intending to
25 issue the scheduling order as previously provided to the

1 parties no later than Friday.

2 Any objection to that?

3 MS. SCHROEDER: No, Your Honor.

4 MR. CARR: No, Your Honor.

5 I just want to note that I wanted to raise with
6 the court at some point, there's nothing in there with
7 respect to any motion dates, and I just wanted to
8 address that with the court at some point in time. But
9 there is no objection from Mr. Fanning.

10 JUDGE CHAPPELL: What type of motion phase?

11 MR. CARR: Well, Your Honor, there are a few
12 issues that particularly with respect to Mr. Fanning
13 and the individual claims against Mr. Fanning
14 individually that I believe would be ripe for some
15 motion practice before Your Honor. And I can get into
16 that now or I can talk about that later, whatever
17 Your Honor would prefer.

18 Specifically, there's -- the claims against
19 Mr. Fanning in the complaint as alleged, there's not
20 one single factual allegation that Mr. Fanning engaged
21 in any individual conduct.

22 There's no factual allegation that Mr. Fanning,
23 for instance, made any misrepresentation or made any
24 communication to consumers or made any statements at
25 all.

1 And so on that grounds, at least the intention
2 at the end of discovery, I would probably be filing some
3 sort of a summary motion for Your Honor's consideration
4 on those issues.

5 JUDGE CHAPPELL: It sounds like something like a
6 12(b)(6) motion?

7 MR. CARR: Either a 12(b)(6) or a rule 56,
8 Your Honor. If Your Honor would consider 12(b)(6), I
9 would certainly do that early on in this stage here. I
10 would not let it linger very long.

11 I just am concerned about the lack of any
12 specific allegation against Mr. Fanning, as I indicated,
13 in this generalized allegation, early on in the
14 complaint, that Mr. Fanning is a member and a manager of
15 Jerk and that he directed, controlled and was able to
16 control the activities, and that being the sole basis
17 for liability asserted against the individual is in
18 essence the argument by the FTC, that any acts of the
19 company are imputed to Mr. Fanning merely because he
20 allegedly had control of the company, which we would
21 probably dispute that as we go from a factual basis.
22 However, it is not a fact actually Mr. Fanning is a
23 member of the LLC.

24 But in any event, I have concern about those
25 types of claims proceeding against an individual under

1 some sort of a vicarious liability theory that is being
2 espoused by the FTC in this case.

3 JUDGE CHAPPELL: Well, those sound like motions
4 to dismiss. And for whatever reason, a number of years
5 ago, when the rules were changed, by a general counsel
6 who is no longer here and by no commissioners who are
7 still here, so that the commission wants to hear motions
8 to dismiss directly. And if you want to look up the
9 history of that, it might be interesting.

10 But those motions before the start of evidence
11 are filed directly with the commission, and I might add
12 the same commission that voted out the complaint against
13 your client. But that's the way it works here at this
14 time.

15 So I would advise you just to look over the
16 rules. There are certain motions some would call
17 dispositive, some would not, that go directly to the
18 commission for a number of reasons, but that's just the
19 way the rules are, so maybe that will help you.

20 MR. CARR: Thank you, Your Honor.

21 JUDGE CHAPPELL: I believe it's rule 3.22(a) as
22 in alpha.

23 Pursuant to rule 3.41(b), also a recent rule,
24 the hearing is limited to no more than 210 hours. And
25 that's to be divided among the parties, and they're

1 required to keep track of trial time.

2 Let's talk about settlement discussions.

3 Who wants to provide the status?

4 MS. SCHROEDER: Thank you, Your Honor.

5 Complaint counsel submitted a proposed
6 settlement to respondents but has not received a
7 response.

8 MR. CARR: Your Honor, that is correct.

9 We are still reviewing the settlement proposed
10 by the commission. I've indicated to counsel that we
11 would like to have a continuing dialogue on a potential
12 resolution. However, what has been proposed at this
13 point in time is not acceptable.

14 I'm trying to work with my client to see if
15 there's something we can propose back in some
16 additional or revised language on the consent order
17 that the commission is seeking, but as it currently
18 stands, it's not something that my client is able to
19 accept.

20 JUDGE CHAPPELL: So although you haven't given
21 a definitive answer, the current proposal will be
22 rejected. Did I hear that right? The current
23 settlement proposal is not acceptable?

24 MR. CARR: That is correct, Your Honor, it is
25 not acceptable. It has not been formally rejected, but

1 I'm telling the court that in the form that I received,
2 it was not acceptable, and we would probably, if we
3 thought there was language that Mr. Fanning, from
4 Mr. Fanning's perspective, could propose back, we would
5 do that in the near term or continue to have conferences
6 with counsel.

7 JUDGE CHAPPELL: Okay. What about from the
8 other respondent's counsel? If you want to speak, just
9 jump in, and we will listen to you.

10 MS. SPETH: Yes, I agree with Mr. Carr. The
11 settlement proposal is not acceptable. And I guess I
12 would go as far as to say I think it is in fact
13 rejected, but we haven't made a counterproposal yet.

14 JUDGE CHAPPELL: All right. Thank you.

15 At this time I allow the parties to present an
16 overview of the case.

17 Will there be two speaking for respondent or
18 only one?

19 MR. CARR: Your Honor, there's --

20 MS. SPETH: Your Honor, we represent the
21 respondents. I represent the company, and Mr. Carr
22 represents Mr. Fanning individually, so yes.

23 JUDGE CHAPPELL: Okay. We're having difficulty
24 hearing, and Madam Court Reporter is having some
25 difficulty transcribing what's coming over the phone.

1 We'll do the best we can.

2 But I'll start with the government, and if you
3 would like to, you can present your overview limited to
4 no more than ten minutes.

5 Go ahead.

6 MS. SCHROEDER: Thank you, Your Honor.

7 With your permission, I'd like to use some
8 slides to illustrate the theory of our case. I can
9 provide a copy of the slides to opposing counsel and to
10 Your Honor and the clerk.

11 JUDGE CHAPPELL: As long as I can see them, I'm
12 fine.

13 Do you want a copy?

14 MR. CARR: I would like one, Your Honor.

15 JUDGE CHAPPELL: It should be on your monitor
16 also.

17 MS. SCHROEDER: From 2009 until 2013,
18 respondents Jerk, LLC and John Fanning operated
19 Jerk.com, a social networking Web site that encouraged
20 users to rate people a jerk or not a jerk. The Web site
21 contained millions of unique consumer profiles.

22 Although respondents represented to consumers
23 that users created the millions of profiles on Jerk, in
24 fact the respondents created the vast majority of
25 profiles using information obtained from Facebook in

1 violation of Facebook's policies.

2 In addition to misleading consumers about the
3 source of content on Jerk, respondents misrepresented to
4 consumers the benefits of a paid Jerk membership.

5 This is a standard FTC deception case. The
6 complaint alleges two violations of section 5 of the
7 FTC Act.

8 First, the respondents misrepresent -- misled
9 consumers about the source of content on Jerk.com.

10 Specifically, the respondents falsely
11 represented that all content on Jerk.com was
12 user-generated.

13 This deception was important to consumers
14 because it led some consumers to believe that someone
15 who's familiar with them created their profile and that
16 it reflected that person's views of them.

17 This deception also misled consumers at large,
18 some of whom mistakenly believed that Jerk was an
19 organic social Web site and that people with profiles on
20 Jerk had been labeled "jerks" by their peers.

21 The second count is that respondents misled
22 consumers about the benefits of a \$30 membership fee.

23 JUDGE CHAPPELL: Is it the government's
24 position that all the alleged conduct is ongoing at
25 this time?

1 MS. SCHROEDER: Your Honor, it seems that the
2 Web site has been down since 2013.

3 JUDGE CHAPPELL: Completely down.

4 MS. SCHROEDER: Respondents have moved the data
5 to different Web sites. It was moved from Jerk.be to
6 Jerk.com to Jerk.org. At the present time, it doesn't
7 appear to be on the Internet.

8 JUDGE CHAPPELL: All right.

9 MS. SCHROEDER: The best way to understand
10 respondents' deceptive practices is to walk through a
11 typical consumer's experience.

12 Most consumers discovered that they had a
13 Jerk.com profile when they entered their name into an
14 Internet search engine, such as Google. In many
15 instances, an individual's Jerk profile was one of the
16 top results on Google.

17 When consumers clicked on the link listed on
18 Google, they were directed to their Jerk.com profile.

19 Every profile contained a person's first and
20 last name, buttons for users to vote whether the person
21 was a jerk or not, and fields for users to enter
22 personal information about the profiled subject, such
23 as age, address, e-mail, employer, license plate
24 number.

25 Many profiles also contained a large photo of

1 the profiled subject.

2 Most profiles contained no data beyond a name
3 and photo, and over 99 percent of Jerk profiles did not
4 contain a vote of jerk or not a jerk.

5 A small percentage of profiles did contain what
6 appear to be user-generated comments about the profiled
7 subject.

8 Complaint counsel will present evidence showing
9 that in 2012 Jerk.com contained between 73 and
10 81 million profiles.

11 JUDGE CHAPPELL: How did you come up with that
12 number, Counselor?

13 MS. SCHROEDER: We had an economist from BE
14 look at the Web site and take a sample of 400 profiles
15 and then evaluated them based on whether they had a
16 photo, whether there was a photo of a child, and that
17 economist will be presenting evidence to Your Honor.

18 JUDGE CHAPPELL: All right.

19 MS. SCHROEDER: Millions of these profiles
20 featured a photo of a child who appeared to be under age
21 ten.

22 Many consumers were upset about the existence
23 of their profile on Jerk.com, especially parents of
24 young children, stalking victims, teenagers, job
25 seekers, and people who were concerned about their

1 online reputation.

2 JUDGE CHAPPELL: So were some of these young
3 children designated jerks on the Web site?

4 MS. SCHROEDER: The way the Web site works, the
5 heading was Jerk, and then below the photo it would
6 sometimes say "is not a jerk" or other things, but the
7 overall heading was Jerk.

8 Many consumers were particularly alarmed by
9 their profiles because their impression was that
10 someone familiar with them created their Jerk.com
11 profile.

12 Respondents made numerous representations that
13 reinforced this belief, including "Content made
14 available through Jerk.com are those of their respective
15 authors and not of Jerk, LLC and "Join the millions of
16 people who use Jerk for important updates for business,
17 dating and more" and "Find out what your 'friends' are
18 saying about you behind your back."

19 However, respondents, not users, actually
20 created the vast majority of profiles on Jerk.com using
21 information from Facebook.

22 Evidence will show that respondents' agent
23 registered as an application developer with Facebook,
24 gained access to Facebook's application programming
25 interfaces, and downloaded names and photos of Facebook

1 users.

2 You'll also hear testimony --

3 JUDGE CHAPPELL: Just so I'm clear -- I've read
4 the complaint as well -- this part of the government's
5 allegation is that this obtaining the data or
6 information from Facebook was unlawful?

7 MS. SCHROEDER: Yes, Your Honor.

8 And that's important because that's the
9 mechanism through which Jerk populated its Web site.

10 You'll also hear testimony that computer
11 programmers at Jerk discussed, quote, bulk-loading user
12 information from Facebook to Jerk.

13 And Facebook sent Jerk, LLC a cease and desist
14 letter in 2012, but respondents continued their
15 violative practices.

16 After viewing their profile, many consumers
17 wanted to remove it from Jerk.com. However, when
18 consumers clicked on the "contact us" link on Jerk.com,
19 respondents required them to pay \$25 to contact the
20 company. Often consumers received no response to their
21 inquiry.

22 Consumers then searched for other ways to
23 remove their profile and discovered Jerk's paid
24 memberships.

25 Respondents advertised that its paid premium

1 users.

2 You'll also hear testimony --

3 JUDGE CHAPPELL: Just so I'm clear -- I've read
4 the complaint as well -- this part of the government's
5 allegation is that this obtaining the data or
6 information from Facebook was unlawful?

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12 information from Facebook to Jerk.

13 And Facebook sent Jerk, LLC a cease and desist
14 letter in 2012, but respondents continued their
15 violative practices.

16 After viewing their profile, many consumers
17 wanted to remove it from Jerk.com. However, when
18 consumers clicked on the "contact us" link on Jerk.com,
19 respondents required them to pay \$25 to contact the
20 company. Often consumers received no response to their
21 inquiry.

22 Consumers then searched for other ways to
23 remove their profile and discovered Jerk's paid
24 memberships.

25 Respondents advertised that its paid premium

1 features would allow consumers to dispute information on
2 Jerk.com.

3 Many consumers also assumed that a membership
4 would enable them to delete their profile. However,
5 consumers who purchased the \$30 membership received no
6 additional services or benefits.

7 JUDGE CHAPPELL: Can you go back to the -- well,
8 two slides back?

9 MS. SCHROEDER: The \$25 "contact us" fee?

10 JUDGE CHAPPELL: Before this one.

11 On this slide, beside the yellow arrow, is that
12 an official symbol or logo?

13 MS. SCHROEDER: I believe it is, Your Honor.

14 JUDGE CHAPPELL: What appears to be a joker or
15 something?

16 MS. SCHROEDER: It was used on a presentation
17 that was given to potential investors, and it is a
18 joker.

19 JUDGE CHAPPELL: And what is that joker doing
20 with his left hand?

21 MS. SCHROEDER: Yeah, I didn't look that
22 closely, Your Honor. We can try to enlarge it.

23 JUDGE CHAPPELL: All right. Go ahead.

24 MS. SCHROEDER: The FTC opened this
25 investigation in 2012. However, respondents did not

1 cooperate with the commission's investigation.

2 Jerk, LLC produced only a handful of documents
3 in response to the commission's civil investigative
4 demand.

5 In addition, a Jerk, LLC representative and
6 John Fanning both failed to appear at investigational
7 hearings.

8 In fact, counsel for Jerk, LLC still refuses to
9 identify the owner of Jerk, LLC or identify anyone who
10 controls the company.

11 This is a company that availed itself of U.S.
12 laws and was incorporated in the U.S. and now that
13 they're being brought before a court have become
14 phantom.

15 JUDGE CHAPPELL: And how do you connect this to
16 Mr. Fanning?

17 MS. SCHROEDER: So the next -- despite
18 respondents' refusal to reveal Jerk, LLC's owner,
19 evidence will show that John Fanning controlled the acts
20 and practices alleged in the complaint.

21 The types of evidence that complaint counsel
22 will be presenting to the court include bank records,
23 payment processor records, P.O. box application,
24 testimony from Jerk's registered agent, testimony from
25 vendors who did business with Jerk, and testimony from

1 individuals who worked with John Fanning.

2 Respondents' answers to the complaint raised
3 several improper defenses.

4 For example, Mr. Fanning claims that
5 allegations in the complaint are moot. However, it is
6 well-established that voluntary cessation of illegal
7 activity does not render a case moot. As courts have
8 noted, otherwise, the defendant is free to return to his
9 old ways.

10 This is particularly true here where respondents
11 routinely removed and then reposted the Web site under
12 different names.

13 Respondents also assert the requested relief is
14 not in the public interest.

15 Judge McGuire struck a similar defense in the
16 Basic Research case, stating that the commission's
17 public interest determination can only be reviewed for
18 abuse of discretion or extraordinary circumstances.

19 Respondents also claim the commission has
20 exceeded and abused its statutory authority. However,
21 courts have long recognized that Congress gave the FTC
22 broad authority to prevent deceptive practices. And
23 courts have affirmed the FTC's authority to bring
24 privacy cases.

25 Respondents also raise the First Amendment

1 defense. However, deceptive commercial speech is not
2 protected.

3 As the Supreme Court noted in
4 Central Hudson Gas, the government may ban forms of
5 communication more likely to deceive the public than to
6 inform it.

7 The relief the commission is seeking is very
8 reasonable and will prevent further consumer harm. The
9 commission is not seeking any monetary relief. Rather,
10 the notice order prohibits misrepresentations and
11 requires respondents to delete the data used in
12 violation of Facebook's policies.

13 Thank you, Your Honor.

14 JUDGE CHAPPELL: Thank you.

15 Who goes first for respondent?

16 MR. CARR: Your Honor, I'll proceed first
17 because I think I'll probably be shorter than Ms. Speth
18 on the other line.

19 Thank you, Your Honor. I appreciate the
20 opportunity to be here today.

21 As I indicated, I represent Mr. Fanning
22 individually. I do not represent Jerk, LLC. Ms. Speth
23 represents the company.

24 As the allegations go, the only claim is that
25 Mr. Fanning was in control of Jerk, LLC and, in quotes,

1 allegedly formulated, directed, controlled or had
2 authority to control the acts.

3 We submit that the evidence will show that
4 Mr. Fanning in fact did not formulate, direct, control
5 or have authority to control the acts of the company.

6 We further submit that the evidence will show
7 that Mr. Fanning is not a member of Jerk, LLC, and I'll
8 make that representation to the court that he's not.

9 JUDGE CHAPPELL: What do you mean by "a member"?

10 MR. CARR: The -- Jerk is a limited liability
11 company. The owners of a limited liability company are
12 called members as opposed to stockholders.

13 JUDGE CHAPPELL: This is a Delaware corp?

14 MR. CARR: Yes, it is. And he is not a member
15 of that Delaware corporation.

16 JUDGE CHAPPELL: Do you know who is?

17 MR. CARR: Excuse me?

18 JUDGE CHAPPELL: Do you know who is?

19 MR. CARR: I do not know.

20 JUDGE CHAPPELL: Do you know how many members
21 there are?

22 MR. CARR: I do not know.

23 JUDGE CHAPPELL: Is that information available
24 in the filing in the state of Delaware?

25 MR. CARR: It is not. The members are not

1 listed.

2 My understanding is that the members are not
3 required to be listed in the Delaware Secretary of
4 State's Office, in large part again -- now, I'm kind of
5 going off a little bit -- but because there's a
6 recognition that the public does not necessarily have a
7 right to know who the members of an LLC are.

8 So the allegations against Mr. Fanning that he
9 was the one behind all the activities of this company
10 we submit will not be able to be proven, and they're
11 just rank allegations at this point by the commission.

12 And our position, Mr. Fanning's position, is
13 that it's very simple. If you look at the proposed
14 relief sought by the commission in this case,
15 Your Honor, it's to -- it's really to restrain
16 Mr. Fanning.

17 The commission in this case seeks to monitor
18 Mr. Fanning and all of his activities going forward I
19 believe it was for a ten-year period, every business he
20 owns, every transaction he engages in. That's what the
21 commission wants to do. And that's why they've named
22 Mr. Fanning without a basis in law or in fact to bring
23 these charges individually against him. That's what our
24 case will be.

25 JUDGE CHAPPELL: And just so we're clear, all

1 the connections to Jerk.com that we heard some moments
2 ago, those are going to prove to be false? Or it's
3 going to be insufficient to connect it?

4 MR. CARR: It's insufficient -- the mere fact
5 that -- for example, there's an allegation that
6 Mr. Fanning hired engineers that I think was in one of
7 the slides we just saw. That does not mean that
8 Mr. Fanning is liable for the actions of the company.

9 JUDGE CHAPPELL: Are you going to deny that he
10 was at least an agent for Jerk?

11 MR. CARR: I don't believe he was an agent,
12 Your Honor. I don't deny that he was involved with the
13 project, but I don't know that he was an agent of Jerk.

14 I don't know how to quantify Mr. Fanning
15 necessarily because his role may have been different at
16 different times. He's no longer -- and you've heard,
17 the Web site -- Ms. Speth will speak to this further --
18 but the Web site has been down for some significant
19 amount of time. Mr. Fanning has no involvement
20 whatsoever right now, my understanding is, with Jerk.com
21 because it doesn't exist.

22 JUDGE CHAPPELL: Did he make any money off the
23 Web site?

24 MR. CARR: I don't believe he did, Your Honor.
25 I don't believe he did.

1 So to the -- if the commission comes to this
2 court and says that an individual has personal
3 responsibility, liability, for violations of federal
4 law merely because they helped the company open a bank
5 account, merely because they hired people to work on
6 content, merely because they hired a Web design
7 company, whatever that may be -- and I'm talking
8 generically now -- I cannot imagine -- I cannot
9 imagine, notwithstanding the broad authority that the
10 Congress has provided to the FTC, that that is within
11 the statutory and regulatory authority granted to the
12 FTC.

13 And I do concede that the FTC does have broad
14 authority. However, it cannot exceed its regulatory
15 authority.

16 And I do not believe and I will argue at the
17 close of the evidence that the FTC does not have the
18 authority to regulate the conduct of Mr. Fanning
19 individually, as they seek in this case, without
20 specific evidence that Mr. Fanning is personally
21 responsible for the conduct that they've claimed to
22 consumers in this case.

23 And Your Honor, furthermore on that point, if
24 you look at the complaint -- and they've -- I think
25 we've narrowed it down to basically two issues, this

1 content of consumers issue and the issue of payments
2 made by consumers.

3 Mr. Fanning didn't receive those payments. The
4 company received those payments.

5 The evidence will show that Mr. Fanning did not
6 place content into the Jerk.com Web site.

7 Notwithstanding that, Your Honor, there's no
8 allegation that Mr. Fanning personally made any
9 misrepresentation of material fact to any consumer to
10 induce a consumer to act to its detriment individually
11 or at large.

12 And even if you look at count 1 of the charge,
13 Your Honor, there's not even an allegation in that
14 count 1 of any consumer inducement. It's a count
15 alleging that somehow there was a violation of
16 Facebook's contractual obligations or rights with its
17 consumers, and I'll have Ms. Speth address that.

18 But I'm here on behalf of Mr. Fanning. That's
19 essentially the case that we intend to put on,
20 Your Honor, but I would also say this.

21 To the extent -- to the extent that there would
22 be a finding -- and I'm not saying there would -- that
23 Mr. Fanning was involved with content on the Internet,
24 where I do not disagree with counsel that the FTC has
25 some ability to regulate speech, some ability to

1 regulate speech, but not to quash speech.

2 And to the extent that this content that was on
3 the Internet and was generated by Mr. Fanning, which
4 again they'd have to prove up -- and I submit there
5 would not be the evidence to do so -- Mr. Fanning has
6 an absolutely First Amendment right to post content on
7 the Internet that is not a violation of individual
8 rights.

9 And that -- and the evidence I think will
10 show -- and Ms. Speth will speak to this more
11 specifically -- that many of the postings that were
12 issued on Jerk.com were -- came -- that did come from
13 Facebook were obtained via public means. There was no
14 invasion of privacy. There was no hacking.

15 There's no allegations of hacking, especially
16 with respect to Mr. Fanning. There's none of those
17 allegations here.

18 So what this is, Your Honor, is a case where
19 you have information in the Internet, on the Internet
20 or in cyberspace, accessible to the public, that's
21 being brought out of the public domain and put onto a
22 public Web site called Jerk.com.

23 That is First Amendment through and through.
24 And not even the FTC has the authority to regulate or
25 quash that type of speech.

1 And that's the case we intend to prove up to
2 Your Honor, in a nutshell.

3 JUDGE CHAPPELL: So you're saying that even if
4 the allegations are true, there's no violation of law.

5 MR. CARR: That's correct, Your Honor.

6 JUDGE CHAPPELL: All right. Thank you.

7 MR. CARR: And Your Honor, I would add to that
8 that it would be Mr. Fanning's position that it would be
9 an abuse of the regulatory authority of the FTC, so that
10 would be a violation of law.

11 Thank you, Your Honor.

12 JUDGE CHAPPELL: All right.

13 MS. SPETH: Thank you, Your Honor. I will do my
14 best to speak up and to speak slowly and because I
15 understand that you are having a little bit of a hard
16 time hearing me, so is this better at this -- if I speak
17 louder and slower?

18 JUDGE CHAPPELL: Yes. Thank you.

19 MS. SPETH: Okay. I'll do my best.

20 Your Honor, I think it's important factually to
21 start with the understanding that Jerk, LLC is not the
22 registrant of the domain name Jerk.com. It has never
23 been the registrant of that domain name.

24 The domain name is registered to someone named
25 [REDACTED]. It has always been registered to someone

1 named [REDACTED].

2 JUDGE CHAPPELL: Could you spell that name.

3 Could you spell the last name, please.

4 MS. SPETH: I'm sorry, Your Honor?

5 JUDGE CHAPPELL: Could you spell that last name.

6 MS. SPETH: [REDACTED].

7 And this past year, Jerk, LLC filed a lawsuit
8 against [REDACTED] because [REDACTED] will not provide
9 any access to that domain name to Jerk, LLC.

10 There was at one time an option agreement for
11 Jerk, LLC to purchase that domain name; however, that
12 option agreement was breached by [REDACTED], which
13 resulted in a dispute and a lawsuit. [REDACTED] will
14 not give anyone associated with Jerk, LLC any access to
15 that Web site right now.

16 But one of the reasons that it is impossible to
17 respond to a settlement proposal that proposes that
18 certain changes be made is because there is absolutely
19 no ability to control the content that is displayed at
20 that Web site right now.

21 In fact, the content displayed at that Web site
22 right now is content that is incredibly offensive, was
23 intended by [REDACTED] to be incredibly offensive so
24 that it would hurt the domain name. But that's a whole
25 another litigation. But it is important that he has

1 always had that control.

2 JUDGE CHAPPELL: Let me clarify something.

3 Is it your position then that the government is
4 suing the wrong party?

5 MS. SPETH: Not exactly, Your Honor.

6 It's the position of Jerk, LLC that the content
7 at that Web site that is currently there is certainly
8 not their responsibility in any way, shape, or form.

9 The content that was there before, the content
10 that Ms. -- that the FTC has pointed to, was put on
11 during the time where Jerk, LLC did have involvement in
12 what that content would look like.

13 So we're not saying that we never had any input
14 into that content, but we are saying that we certainly
15 do not right now.

16 So the important aspects from a legal
17 perspective of what the FTC has alleged and the
18 responses to that are as follows.

19 First of all, the FTC says -- and there's really
20 only two allegations here. It's really quite a simple
21 case.

22 The first allegation is that Jerk, LLC
23 misrepresented that all content was created by users.

24 That is simply not correct. There's nothing --
25 there was nothing on the Web site, there was nothing

1 publicly available where there was any representation
2 made, express or implied, that all content on the
3 Web site was in fact created by users.

4 The FTC says that consumers complained that
5 their photographs and other information about them on
6 Jerk.com were originally posted by them on Facebook and
7 that they had used the controls that Facebook has to
8 enable those users to designate material only to a
9 limited group and that the information was not for
10 designated public viewing.

11 So I think it's just as simple as I've got a
12 Facebook profile, I tell Facebook I don't want the
13 world to see my photos, I only want my friends to see
14 my photos, and I believe that I -- being the consumer,
15 I believe that if I have designated my information as
16 friends only, then it should be in fact friends only.

17 And the FTC has alleged that people believed
18 that and that Jerk, LLC somehow obtained photographs
19 that were designated as friends only.

20 In reality -- and the evidence is
21 crystal-clear -- the allegation that Jerk, LLC accessed
22 Facebook's data beyond the terms of use makes no sense
23 on two different levels.

24 First, consumers were misled by Facebook to
25 believe that their photos of their profiles could only

1 be viewed by friends.

2 In reality -- and we have proof and we will
3 provide that proof in the case -- approximately
4 five billion Facebook profile photos were readily
5 available at [REDACTED]. And this
6 information has been disclosed to the FTC.

7 Now, at this early stage, it's unclear whether
8 a developer accessed Facebook's data and downloaded
9 names and photographs onto Jerk.com. It's also unclear
10 whether the developers were directed to do so by anyone
11 at Jerk, LLC.

12 But the determination of that fact is not
13 material to the outcome of this matter at all because
14 it's not a deceptive practice to in fact violate
15 Facebook's terms, if that did happen. And again, I'm
16 not saying that happened, but if it did happen, it is at
17 most a breach of contract dispute between Facebook and
18 the developers and Jerk, LLC.

19 And I don't -- I don't know how the FTC could
20 have regulatory power over a breach of contract over the
21 violation of terms of service.

22 JUDGE CHAPPELL: Is there a contract breach
23 dispute between your client and Facebook?

24 MS. SPETH: I'm sorry, Your Honor?

25 JUDGE CHAPPELL: Is there a current breach of

1 contract dispute going on between your client and
2 Facebook?

3 MS. SPETH: I don't know how I would define
4 "current." Approximately -- I'm going to guess
5 approximately two years ago, maybe longer -- I'd have
6 to look at the date -- Facebook sent a demand letter to
7 Jerk, LLC and argued that Jerk, LLC had violated its
8 terms of use.

9 And Facebook basically kicked Jerk off of
10 Facebook as an app, you know, because there was -- at
11 one time there was an app on Facebook, a Jerk app on
12 Facebook. And they terminated that and said we
13 violated the terms of service.

14 The demand letter was responded to
15 approximately two years ago, and that was the end of
16 it, so I don't know that I would consider that a
17 current dispute.

18 JUDGE CHAPPELL: Okay.

19 MS. SPETH: But then shortly after responding
20 to the demand letter, the FTC contacted Jerk with
21 similar allegations, to which my response has always
22 been: I don't know why the FTC is acting on behalf of
23 Facebook.

24 And the FTC has told us that they're not,
25 quote, carrying Facebook's water, but it appears to us

1 that that is what is going on, because the main claim
2 in this case seems to have always been that we violated
3 Facebook's terms of use, which again I don't understand
4 the regulatory authority over that claim.

5 But perhaps even more importantly or as
6 importantly, you or I or anyone with an Internet
7 connection, even someone who does not have a Facebook
8 account and has never agreed to Facebook's terms of
9 service, can easily access all five billion names and
10 photographs at [REDACTED].

11 It is -- if I were in the court, I could do a
12 demonstration for you and show you exactly where all
13 these names are. I've produced it to the FTC.

14 And so if I can easily do that, why would I
15 have to violate anyone's terms of use to do that?

16 So the allegation is that it was done violating
17 the terms of use, and what I'm saying is, you can do
18 that easily without ever agreeing to terms of use.

19 So again, I don't at this point without
20 discovery know exactly what the developers did. But
21 either way, number one, it's not a violation of the
22 deceptive acts -- deceptive practices act; and number
23 two, there would just be no reason to violate the terms
24 of service because you can easily get it.

25 So that's the first allegation. The first

1 allegation -- well, actually, I'm sorry, Your Honor.

2 The first allegation is that -- not that they
3 violated Facebook's terms of use but that they took all
4 of these names and profiles and put them on Jerk and
5 led consumers to believe that it had been done by
6 users.

7 Well, the exact quote on the Web site was:
8 "Opinions, advice, statements, offers or other
9 information or content made available through Jerk.com
10 are those of their respective authors and not of
11 Jerk, LLC."

12 That's the quote that the FTC lays its entire
13 case upon to argue that Jerk, LLC represented that
14 users had put all of the content on Jerk, LLC.

15 That quote doesn't say that. That is a typical
16 legal disclaimer.

17 There's nothing about that statement that
18 represents or even implies that every name and photo was
19 placed on Jerk.com by someone who knew the person, and
20 yet the allegation is that it was represented to the
21 public that if they're on Jerk.com, somebody thinks
22 they're a jerk. That was never ever represented by
23 Jerk, LLC, but FTC -- the FTC argues that that's the
24 misrepresentation.

25 The other misrepresentation that the FTC claims

1 in this case is that consumers who paid \$30 for a
2 membership received nothing.

3 Now, I've not seen the evidence that the FTC
4 relies on. I can tell you that Jerk, LLC earned only
5 \$2,000 in its best year. It never had very many
6 members. And if a member paid \$30, it received
7 services.

8 Now, is it possible that a member signed up and
9 didn't get, you know, either a password or some service
10 or maybe some sort of technical issue? I would imagine
11 that's possible, and I would imagine that the FTC must
12 have some evidence of that or they would not have
13 claimed it. But, you know, a technical problem with one
14 membership is not a deceptive practice.

15 There are, you know -- there were not that many
16 members, and the members that there were received the
17 services of membership.

18 And in fact, hundreds, perhaps -- perhaps
19 thousands of profiles were removed at the request of
20 members and at the request of nonmembers if they were
21 under age.

22 The other argument that's been made by the FTC,
23 not today so much but in the complaint, is that
24 respondents made it difficult to contact Jerk.

25 Well, that's not a deceptive practice. Even if

1 it's completely true that it was difficult to contact
2 Jerk, that's simply not a deceptive practice. As
3 anybody who has ever used an Internet Web site knows,
4 it's often incredibly difficult to contact a person on a
5 Web site.

6 Although none of the actual claims are that
7 there were children, that certainly has been a theme of
8 the FTC's case. And it seems to be there to prejudice
9 the court against Jerk, LLC to make it look like,
10 you know, that it's a really bad practice because
11 really nobody obviously wants children's photos to be
12 profiled on this Web site. And although it's not one of
13 the claims brought, it's been talked about so much that
14 I do want to address it.

15 It is a violation and was a violation of
16 Jerk, LLC's terms to post about a child. It was
17 absolutely a violation.

18 Children's profiles were on Facebook, and some
19 of those profiles made it from Facebook to Jerk.

20 Many, many parents post their children's
21 profiles on Facebook and think that that's just fine,
22 but those same parents were very unhappy when somebody
23 then put them on Jerk, even though it was exactly the
24 same name and photo.

25 Every single child's photo and name that was

1 brought to the attention of Jerk, LLC that I know of at
2 least -- and I believe we can show every one of them --
3 was removed when it was brought to the attention of the
4 company.

5 JUDGE CHAPPELL: You said they made it to Jerk.
6 How did they make it to Jerk, LLC, these photos?

7 MS. SPETH: I'm sorry, Your Honor. I'm going to
8 ask you to repeat that.

9 JUDGE CHAPPELL: Hang on a second. I'm looking
10 at the notes here.

11 You said that "Children's profiles were on
12 Facebook, and some of those profiles made it from
13 Facebook to Jerk."

14 How did they make it from Facebook to Jerk?

15 MS. SPETH: Well, that's not -- that's what's
16 not clear at this point. The profiles, they were --
17 the profiles and names seem to have been bulk-loaded
18 onto Facebook. And the evidence -- at this stage, the
19 evidence is unclear, to me at least, whether that was
20 done by a developer who worked for Jerk or whether that
21 was done by an independent party.

22 There was an independent party who posted a
23 bunch of profiles onto Jerk that were -- that -- and we
24 never did figure out who it was. The person posted
25 anonymously and bulk-loaded many, many names and photos.

1 And that person was ultimately banned from Jerk.com
2 because of this activity.

3 So it's not clear to me whether the -- you know,
4 whether -- and it may be a mixture. It may be that some
5 of them were posted by people who individually posted
6 them, it may be that some were posted by developers who
7 were hired by Jerk, and it may be that some were posted
8 by developers who were unhappy with Jerk and wanted
9 to -- and in fact, we know in several instances of --
10 I'm going to call him a developer, although I don't
11 exactly know what his role was, but somebody posted bulk
12 content on Jerk that was content that we believe was
13 intended to basically, you know, make Jerk look bad with
14 the FTC.

15 And so we're investigating that, so it's not
16 really clear where all of these profiles came from.

17 What is clear from looking at them is that they
18 match the Facebook photos.

19 So, you know, we do not deny that they appear to
20 come from Facebook. They come from the open, public
21 Facebook directory in many, many, many instances.

22 As soon as it was brought to the attention of
23 Jerk, LLC that they were children or that some of them
24 were children, the children were removed.

25 In fact, I requested a list of children's names

1 and -- from FTC counsel or from complaint counsel,
2 you know, as to which ones were children. I received a
3 list. My memory is it was approximately a hundred,
4 approximately 100 or 150 names. And every single one of
5 those were removed. And then I asked for more and
6 didn't, you know, get more. And the response that I got
7 from complaint counsel was, we can't possibly tell you
8 all of them, and not that they didn't want to but just
9 that it was too numerous.

10 And Jerk, LLC has the same problem. It's --
11 there are millions of profiles on the Web site, and it
12 is impossible to go through and figure out how many are
13 children. But every time one is found that's a child,
14 it is removed at least while the Web site -- at least
15 while the removal was within the control of Jerk, LLC,
16 which it's not and hasn't been for some time.

17 JUDGE CHAPPELL: You're going to need to wrap it
18 up, Counselor. Even with my questions, you're way past
19 the ten-minute deadline.

20 MS. SPETH: Okay. Then I'll be done,
21 Your Honor.

22 JUDGE CHAPPELL: You're finished?

23 MS. SPETH: I'm sorry?

24 JUDGE CHAPPELL: Did you say you're finished?

25 THE WITNESS: Oh, well, I thought you said I was

1 finished.

2 JUDGE CHAPPELL: I said you need to wrap it up.

3 I'll give you another minute if you need it.

4 MS. SPETH: Oh. Thank you, Your Honor.

5 So the only thing I would add is that there's a
6 serious free speech issue here.

7 You know, is the Web site controversial? Yes.
8 It was intended to be.

9 One of the purposes of the Web site was to shed
10 light on the issue of what is private and what is public
11 on the Internet.

12 One of the purposes of the Web site is to make
13 people understand that when you post a photo on the
14 Internet, it is a public photo. It is not necessarily
15 only going to be posted where you would think it's going
16 to be posted. That is absolutely a free speech issue.

17 Also the ability to say, Hey, I went on a date
18 with this guy last night and he treated me bad, that's a
19 free speech issue.

20 Calling someone a jerk is absolutely free
21 speech.

22 And you know, I think the FTC sort of cringes
23 and says, Oh, you shouldn't do that, but it's a free
24 speech issue.

25 And with that, I'll wrap up, Your Honor.

1 JUDGE CHAPPELL: All right. Thank you.

2 Anything further from any party?

3 MR. CARR: Not at this time, Your Honor.

4 MS. SCHROEDER: No, Your Honor. Thank you.

5 JUDGE CHAPPELL: All right. Hearing nothing
6 further, until our next session we are adjourned.

7 (Whereupon, the foregoing pretrial scheduling
8 conference was concluded at 10:20 a.m.)

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1 C E R T I F I C A T I O N O F R E P O R T E R

2

3 DOCKET/FILE NUMBER: 9361

4 CASE TITLE: Jerk, LLC and John Fanning

5 HEARING DATE: May 28, 2014

6

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

12

13 DATED: JUNE 4, 2014

14

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16

17

18

19 C E R T I F I C A T I O N O F P R O O F R E A D E R

20

21 I HEREBY CERTIFY that I proofread the transcript
22 for accuracy in spelling, hyphenation, punctuation and
23 format.

24

25

CX0296

**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

CX0297

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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

In the Matter of)

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

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

DOCKET NO. 9361
PUBLIC DOCUMENT

**RESPONDENT JOHN FANNING’S RESPONSES TO
FIRST SET OF REQUESTS FOR DOCUMENTS**

Pursuant to Rule 3.37 of the Federal Trade Commission’s Rules of Practice, 16 C.F.R.
§ 3.37, and the Court’s *Scheduling Order* dated May 28, 2014, Respondent John Fanning
respond to Complaint Counsel’s First Set of Request for Documents as follows.

GENERAL OBJECTIONS

1. Respondent Fanning objects to the requests to the extent they seek information protected by the attorney-client privilege or other recognized privilege.
2. Respondent Fanning objects to the requests to the extent they seek information protected by the attorney work product doctrine.
3. Respondent Fanning objects to the requests to the extent they seek confidential or private information.
4. Respondent Fanning objects to the requests to the extent they seek information that is more readily accessible to the Commission through other means.
5. Respondent Fanning objects to the requests to the extent they seek information already in the possession, custody, or control of the Commission.

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

RESPONSES

1. All documents relating to the relationship between Jerk, LLC and NetCapital.

Response No. 1

After a diligent search, Respondent Fanning is not able to locate any responsive documents in his possession, custody or control. Respondent Fanning will supplement responsive documents in the event that he locates any documents in the future.

2. All correspondence between any Respondent and Jerk, LLC's registered agents.

Response No. 2

After a diligent search, Respondent Fanning is not able to locate any responsive documents in his possession, custody or control. Respondent Fanning will supplement responsive documents in the event that he locates any documents in the future.

3. All documents prepared for third parties relating to investment in or funding of Jerk.com, including business and investment plans, proposals, slides, presentations, brochures, press releases, video news releases, displays, and earnings projections.

Response No. 3

After a diligent search, Respondent Fanning is not able to locate any responsive documents in his possession, custody or control. Respondent Fanning will supplement responsive documents in the event that he locates any documents in the future.

4. All documents relating to the formation or ownership of Jerk, LLC, including but not limited to incorporation records and corporate filings.

Response No. 4

After a diligent search, Respondent Fanning is not able to locate any responsive documents in his possession, custody or control. Respondent Fanning will supplement responsive documents in the event that he locates any documents in the future.

5. All copies of Jerk.com, including printouts, screenshots, source code, log files, and archived versions of the website.

Response No. 5

After a diligent search, Respondent Fanning is not able to locate any responsive documents in his possession, custody or control. Respondent Fanning will supplement responsive documents in the event that he locates any documents in the future.

6. All copies of Jerk.org, including printouts, screenshots, source code, log files, and archived versions of the website.

Response No. 6

After a diligent search, Respondent Fanning is not able to locate any responsive documents in his possession, custody or control. Respondent Fanning will supplement responsive documents in the event that he locates any documents in the future.

7. All documents stating, describing, or summarizing the number of visitors to Jerk.com.

Response No. 7

After a diligent search, Respondent Fanning is not able to locate any responsive documents in his possession, custody or control. Respondent Fanning will supplement responsive documents in the event that he locates any documents in the future.

8. All documents relating to the statement “millions of people who already use Jerk” on Jerk.com, *see* Complaint Exhibit C, including but not limited to all documents demonstrating, supporting, or calling into question that statement.

Response No. 8

After a diligent search, Respondent Fanning is not able to locate any responsive documents in his possession, custody or control. Respondent Fanning will supplement responsive documents in the event that he locates any documents in the future.

9. All documents relating to the statement “Less than 5% of the millions of people on Jerk are jerks” on Jerk.com, *see* Complaint Exhibit G, including but not limited to all documents demonstrating, supporting, or calling into question that statement.

Response No. 9

After a diligent search, Respondent Fanning is not able to locate any responsive documents in his possession, custody or control. Respondent Fanning will supplement responsive documents in the event that he locates any documents in the future.

10. All documents relating to (1) the number of profiles maintained or displayed on Jerk.com; (2) the number of profiles featuring a photograph of the profiled person; (3) the number of profiles where the age or depiction of the person indicates that the person is less than 13 years of age; or (4) the number of Jerk.com profiles that reflect a 0/0 vote for the Jerk/Not a Jerk votes tally.

Response No. 10

After a diligent search, Respondent Fanning is not able to locate any responsive documents in his possession, custody or control. Respondent Fanning will supplement responsive documents in the event that he locates any documents in the future.

11. All documents relating to each method by which a Jerk.com profile has been created for display on Jerk.com, including but not limited to how any Respondent obtained information, images, and depictions displayed in Jerk.com profiles that were not created or submitted through the “post a jerk” feature.

Response No. 11

After a diligent search, Respondent Fanning is not able to locate any responsive documents in his possession, custody or control. Respondent Fanning will supplement responsive documents in the event that he locates any documents in the future.

12. All documents relating to the directory produced to Complaint Counsel with Respondents’ Initial Disclosures on May 27, 2014.

Response No. 12

After a diligent search, Respondent Fanning is not able to locate any responsive documents in his possession, custody or control. Respondent Fanning will supplement responsive documents in the event that he locates any documents in the future.

13. All documents relating to any acts or omissions by third parties, including but not limited to Facebook, Software Assist, or any third-party hackers, alleged in any Respondent's Answer to the Complaint.

Response No. 13

After a diligent search, Respondent Fanning is not able to locate any responsive documents in his possession, custody or control. Respondent Fanning will supplement responsive documents in the event that he locates any documents in the future.

14. All documents relating to any First Amendment defense asserted in any Respondent's Answer to the Complaint.

Response No. 14

After a diligent search, Respondent Fanning is not able to locate any responsive documents in his possession, custody or control. Respondent Fanning will supplement responsive documents in the event that he locates any documents in the future.

15. All documents relating to any Respondent's right to or control over any of the following domains: Jerk.com, Jerk2.com, Jerk3.com, Jerk4.com, Jerk.be, jerk.la, and Jerk.org.

Response No. 15

After a diligent search, Respondent Fanning is not able to locate any responsive documents in his possession, custody or control. Respondent Fanning will supplement responsive documents in the event that he locates any documents in the future.

16. All documents relating to any service or feature offered to consumers who have paid for Jerk.com customer service.

Response No. 16

After a diligent search, Respondent Fanning is not able to locate any responsive documents in his possession, custody or control. Respondent Fanning will supplement responsive documents in the event that he locates any documents in the future.

17. All documents relating to any service or feature offered to consumers who have paid for a Jerk.com membership.

Response No. 17

After a diligent search, Respondent Fanning is not able to locate any responsive documents in his possession, custody or control. Respondent Fanning will supplement responsive documents in the event that he locates any documents in the future.

18. All documents relating to consumers who received “Fast notifications of postings about you,” as described on Jerk.com. *See* Complaint Exhibit C.

Response No. 18

After a diligent search, Respondent Fanning is not able to locate any responsive documents in his possession, custody or control. Respondent Fanning will supplement responsive documents in the event that he locates any documents in the future.

19. All documents relating to consumers who received “Updates on people you know and are tracking,” as stated on Jerk.com. *See* Complaint Exhibit C.

Response No. 19

After a diligent search, Respondent Fanning is not able to locate any responsive documents in his possession, custody or control. Respondent Fanning will supplement responsive documents in the event that he locates any documents in the future.

20. All documents relating to consumers who entered “comments and reviews,” as stated on Jerk.com. *See* Complaint Exhibit C.

Response No. 20

After a diligent search, Respondent Fanning is not able to locate any responsive documents in his possession, custody or control. Respondent Fanning will supplement responsive documents in the event that he locates any documents in the future.

21. All documents relating to consumers who “create[d] a dispute,” as stated on Jerk.com. *See* Complaint Exhibit H.

Response No. 21

After a diligent search, Respondent Fanning is not able to locate any responsive documents in his possession, custody or control. Respondent Fanning will supplement responsive documents in the event that he locates any documents in the future.

22. All documents relating to consumers who “post[ed] a Jerk,” as stated on Jerk.com. *See* Complaint Exhibit E.

Response No. 22

After a diligent search, Respondent Fanning is not able to locate any responsive documents in his possession, custody or control. Respondent Fanning will supplement responsive documents in the event that he locates any documents in the future.

23. All documents relating to the following applications on Facebook: Jerk.com, Jerk2.com, Jerk3.com, Jerk4.com, Jerk.be, jerk.la, and Jerk.org.

Response No. 23

After a diligent search, Respondent Fanning is not able to locate any responsive documents in his possession, custody or control. Respondent Fanning will supplement responsive documents in the event that he locates any documents in the future.

24. All emails sent to and from the support@jerk.com email account.

Response No. 24

After a diligent search, Respondent Fanning is not able to locate any responsive documents in his possession, custody or control. Respondent Fanning will supplement responsive documents in the event that he locates any documents in the future.

25. All documents identifying any person who has access to or has corresponded through the support@jerk.com email account.

Response No. 25

After a diligent search, Respondent Fanning is not able to locate any responsive documents in his possession, custody or control. Respondent Fanning will supplement responsive documents in the event that he locates any documents in the future.

26. All documents identifying any person who has access to or has posted through each Twitter account used by Jerk, LLC.

Response No. 26

After a diligent search, Respondent Fanning is not able to locate any responsive documents in his possession, custody or control. Respondent Fanning will supplement responsive documents in the event that he locates any documents in the future.

27. All documents relating to Jerk, LLC's policies and procedures on consumers' requests to remove a Jerk.com profile or content from a Jerk.com profile, including a consumer's request to remove copyrighted content from Jerk.com.

Response No. 27

After a diligent search, Respondent Fanning is not able to locate any responsive documents in his possession, custody or control. Respondent Fanning will supplement responsive documents in the event that he locates any documents in the future.

28. All correspondence from consumers regarding Jerk.com.

Response No. 28

After a diligent search, Respondent Fanning is not able to locate any responsive documents in his possession, custody or control. Respondent Fanning will supplement responsive documents in the event that he locates any documents in the future.

29. All correspondence between Jerk, LLC and Facebook.

Response No. 29

After a diligent search, Respondent Fanning is not able to locate any responsive documents in his possession, custody or control. Respondent Fanning will supplement responsive documents in the event that he locates any documents in the future.

30. All correspondence relating to Jerk.com or Jerk, LLC between any Respondent and any software developer, including but not limited to Software Assist.

Response No. 30

After a diligent search, Respondent Fanning is not able to locate any responsive documents in his possession, custody or control. Respondent Fanning will supplement responsive documents in the event that he locates any documents in the future.

31. All correspondence between any Respondent and any government agency or consumer protection organization, including but not limited to state attorneys general, local law enforcement, the Better Business Bureau, and government agencies outside of the United States relating to Jerk.com or Jerk, LLC.

Response No. 31

After a diligent search, Respondent Fanning is not able to locate any responsive documents in his possession, custody or control. Respondent Fanning will supplement responsive documents in the event that he locates any documents in the future.

32. All agreements retaining or otherwise securing the provision of legal services for Jerk, LLC in this matter.

Response No. 32

After a diligent search, Respondent Fanning is not able to locate any responsive documents in his possession, custody or control. Respondent Fanning will supplement responsive documents in the event that he locates any documents in the future.

Respectfully submitted,
JOHN FANNING,
By his attorneys,

/s/ Peter F. Carr, II _____

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

CERTIFICATE OF SERVICE

I hereby certify that on July 11, 2014, I caused a true and accurate copy of the foregoing document entitled Respondent John Fanning's Responses to Complaint Counsel's First Requests for Documents to be served electronically through the FTC's e-filing system and I caused a true and accurate copy of the foregoing to be served as follows:

One electronic copy to the Office of the Secretary, and one copy through the FTC's e-filing system:

Donald S. Clark, Secretary
Federal Trade Commission
600 Pennsylvania Ave., N.W., 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 Avenue, N.E., Room H-110
Washington, DC 20580
Email: [REDACTED]

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

Sarah Schroeder
Yan Fang
Kerry O'Brien
Federal Trade Commission
901 Market Street, Suite 670
San Francisco, CA 94103
Email: sschroeder@ftc.gov
yfang@ftc.gov
kobrien@ftc.gov

One electronic copy to counsel for Jerk, LLC:

Maria Crimi Speth
Jaburg & Wilk, P.C.
3200 N. Central Ave., Suite 2000
Phoenix, AZ 85012

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

Dated: July 11, 2014

CX0298

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
Office of Administrative Law Judges**

In the Matter of

JERK LLC, et al.

Docket No. 9361

NOTICE OF DEPOSITION

PLEASE TAKE NOTICE that, pursuant to Rule 3.33(a) of the Federal Trade Commission's Rules of Practice for Adjudicative Proceedings (16 C.F.R. § 3.33(a)), Complaint Counsel will take the deposition of Respondent John Fanning. This deposition will be conducted before a person authorized to administer oaths and will be recorded by stenographic and videographic means. The testimony will be taken at Eckert Seamans Cherin & Merlott, LLC, Two International Place, 16th Floor, Boston, Massachusetts, on July 29, 2014 at 9:00 a.m. (ET).

Date: July 25, 2014

/s/ Sarah Schroeder
Sarah Schroeder
Yan Fang
Western Region – San Francisco
Federal Trade Commission
901 Market Street, Suite 570
San Francisco, California 94103
Telephone: (415) 848-5100
Facsimile: (415) 848-5184
Electronic Mail: sschroeder@ftc.gov;
yfang@ftc.gov
Complaint Counsel

CX0299

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
8 NONE

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

2

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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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.

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DATED: July 29, 2014

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CSR, RPR

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CX0300

MARKED CONFIDENTIAL

REDACTED IN ITS ENTIRETY